



**WHEN A CONSCIOUS IMPULSE FROM CIVIL SOCIETY TRANSFORM: THE
EMERGENCY PEDAGOGY UNDER THE SCOPE OF HUMANITARIAN LAW.
A CASE STUDY**

**QUANDO UM IMPULSO CONSCIENTE DA SOCIEDADE CIVIL
TRANSFORMA: A PEDAGOGIA DA EMERGÊNCIA COMO UM DIREITO
HUMANITÁRIO. UM ESTUDO DE CASO**

Antonio Grillo Neto¹

ABSTRACT:

Living among migrants confronts us with the possibility of looking at ourselves. It is not a matter of accepting them, but of being in their place. Since 2006 the pedagogy of emergence seeks to treat two of deep wounds that migrant children experienced in situations of war or calamity: their traumas and griefs. This article aims to investigate how a civil society movement became a successful educational case and how international humanitarian and international human rights law legal framework could support this initiative. "I am the other" (Rimbaud).

KEYWORDS: Human Rights. International Law. International Humanitarian Law. Geneva Conventions. UN Convention on Rights of Child. Refugee Crisis. Education as a Basic Human Right. Right to Education. Right to Education for Refugee Children. Emergency Pedagogy. Civil Society Advocacy on Human Rights. Martens Clause.

RESUMO: Conviver com migrantes e refugiados nos confronta com a possibilidade de olharmos para nós mesmos. Não se trata de aceitá-los, mas de nos colocarmos em seu lugar. Desde 2006 a pedagogia da emergência busca tratar os traumas e o luto que crianças migrantes e refugiadas experimentaram em grandes calamidades ou situações de guerra. O presente artigo almeja investigar como um movimento organizado da sociedade civil se tornou um bem sucedido caso de recuperação de crianças através da educação, em estado de luto ou traumas profundos causados por situações extremas, e como o direito internacional humanitário e o sistema internacional de direitos humanos pode dar suporte

¹ LLM Northwestern University Pritzker School of Law, Chicago Il with honors. Mestrando em Direitos Humanos pela Pontifícia Universidade Católica de São Paulo. Especialista em Direito Internacional pela Escola Superior de Advocacia da OAB-SP. Advogado.

a esse tipo de iniciativa que olhado de perto é o mesmo que levou à criação do Direito Humanitário Internacional. “Eu sou o outro” (Rimbaud)

PALAVRAS CHAVE: Direito Humanitário Internacional. Direitos Humanos. Convenção de Genebra. Cláusula “Martens”. Convenção Internacional sobre os Direitos das Crianças. Educação. Educação como direito Fundamental. Pedagogia da Emergência. Dignidade Humana.

1-. A BRIEF INTRODUCTION.

International Humanitarian Law ("jus in bello") is notorious for dealing with situations in which the human spirit finds its limit.

They are wars, insurrections, widespread violence, natural disasters, health epidemics, crises whose magnitude alarms and threatens entire populations and ethnic groups, imposes massive withdrawal of people from their homes, cities and countries, separates families, traumatizes all those who have subjected themselves to their horrors.

The chaos witnessed in 1859 by Henry Dunant at the Battle of Solferino between the French and Austrians in which 40,000 men died, mostly from untreated wounds, served as the impetus to treat war under a more compassionate gaze, with rules that respected dignity human rights of combatants. This idea was the beginning of a movement that would lead to the creation of the International Committee of the Red Cross, and in 1864 the Geneva Convention, which initiated modern international humanitarian law (IHL).

International Humanitarian Law, "jus in bello", determines how wars can be fought. It differs from the norms that determine when wars can be waged: the "jus ad bellum" of the UN Charter and self-defense² (Byers, 2007).

Today the norms of international humanitarian law can be found basically in the four Geneva Conventions of 1949 (and in their predecessors, the Hague Conventions of 1907). It has been followed by many other treaties in order to incorporate the following basic principle: wars must be waged within certain limits which must be respected in order to preserve the life and dignity of human beings (Melzer, 2016)³.

The event of War on Terror radically changed the ways International Humanitarian Law was designed. In order to combat terrorist groups a broader concept of

² Michael Byers. A Lei da Guerra. Direito Internacional e Conflito Armado. Ed. Record. 2007, 159/160

³ Nils Melzer. International Humanitarian Law. A Comprehensive introduction. CRC. 2007

self-defense known as Bush doctrine was set to justify all kinds of military interventions without the consent of UN Security's Counsel.

As a result, not only, combatants but also civilians were kept prisoners without due process and/or guarantees, without a fair and dignified treatment a situation that resulted in the principles of Cleveland⁴.

One of the fundamental principles of the IHL prohibits civilians from being directly targeted, according to article 51 (2) Protocol 1 (1977): “(2) the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”.

Despite all efforts to set war under rules and conditions that's seek to limits casualties of combatants and non-combatants, armed conflicts have been the main cause on why the refugee crisis the World has witnessed. When the worst happen, and people are forced to left behind their houses, cities and countries they are counting on their own and their home States are no longer able to guarantee their basic rights. When the situation describe above happens these people became migrants.

In international law, there is no universally accepted definition of the term “migrant”, although some categories are defined in specialized international instruments. Furthermore, various organizations define a migrant as “any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence”⁵. There are three basic principles of Human Rights that

And it is in this grey zone between the protection of migrant civilians, refugee camps and reconstructing cities that children surviving armed conflict pass. Amid traumas and mourning, they try to rebuild their lives, but very little is guaranteed even with regard their basic and fundamental humans rights.

For the purposes of international humanitarian law, education, as a fundamental right idealized in Article 26 of the Universal Declaration of Human Rights, is also referred to as human right in Article 13 of the International Covenant on Economic, Social and Cultural Rights. And little more insight is provided, assumes the

⁴ <http://hrlibrary.umn.edu/instreet/clevelandprinciples.html> (last access 01/27/2019)

⁵ https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf p.4

seminal role of transforming the vulnerability of migrants and refugee children who are materially, psychologically, and spiritually devastated. This is where emergency pedagogy will act, addressing not only content that is taught in the classroom, but using Waldorf pedagogy as a starting point for children to overcome their traumas and griefs, incorporating them as much as possible to their life biographies. This initiative has achieved positive results in a very short space of time.

"Jus in Bello" is much more than determining how wars should be fought. It closes a much more noble objective which is to minimize the suffering of civilians. It is an exercise in compassion. The same spirit that educators seek in the interventions of emergency pedagogy in areas of conflict.

2-. THE HUMAN BEING, ITS MOBILITY AND SEARCH. CONFLICTS.

Man has always been a nomad. No wonder, the protection of persecuted human beings has been a practice known since Antiquity.

Scientists agree that about 70,000 years ago, sapiens from West Africa spread through the Arabian Peninsula and from there quickly took over the territory of Eurasia (Harari, 2017) and since then people have formed, together with these narratives centered on survival, mutual support, religions, myths, legends, reason, art, law. And there are also wars, conflicts, clashes, the trail of which millions of disadvantaged people are not only losing everything they have built in life but are also forced to start a new journey to some place where they can live in peace, migrants or, in the worst version of this military spectrum, refugees.

The refugee crisis is the greatest challenge of the twenty-first century. The number of migrants⁶, national and international refugees has grown by more than the world population to 258 million⁷. Between 1990 and 2017 the profusion of migrants increased by 105 million people, or 69%. This rapid increase occurs between 2005 and

⁶ International migrants mean persons residing in a country other than their country of birth or foreign. See also:

https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf (last accessed 31.01.2019)

⁷ UN-DESA, Department of Economic and Social Affairs of the United Nations. International Migration Wallchart, 2015. Available at <http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017.pdf>. Last access on 01/27/2019.

2017 when the annual number of migrants rises to 5.6 million compared to an average of 2.5 million between 1990 and 2005⁸.

Forced displacement has also reached record levels in recent years, currently affecting 68.5 million people, of which 25.4 million are refugees, 3.1 million are asylum seekers, and 44.0 million are internally displaced⁹.

Considering the magnitude of this crisis and the complexity of the issue, a major challenge in the elaboration of the Global Pacts is to guarantee a participatory process and positive and effective results in the implementation of these laws, involving governments, civil society, migrants, international protection subjects and their families, international organizations, teams of experts, academics, religious groups, companies and other stakeholders.

And while humanitarian law demands that wars be waged within certain limits that must be respected, situations do not always occur as expected in a military intervention in Gaza, a bombardment in Lebanon, a massacre between tribes in Burundi, ethnic motivations in the wars involving Bosnia and Herzegovina in the Balkans, or in the civil wars in Syria and Iraq, when what is impossible to assimilate nothing else will be as before.

After chaos, beyond ruins and lack of structure, "traumas forever change the lives of victims: they change the way of thinking, feeling and acting, as well as the values and the view that people have of themselves and of the world"¹⁰ (Ruf, 2018, 31).

When it comes to migrant children whose vulnerability is a perennial and natural condition until they have completed at least 14 years for their physical structure to establish (Harari, 2017), but which legally endures until they reach the age of 18, as recommended by the Convention on the Rights of the Child, the experience of the horrors of war and the uncertainties that the refugee situation imposes on them until they resume normalcy in their lives, whether in their country of origin or in another country that receives them is traumatizing. Most of the time, the mourning of relatives can never be assimilated as a natural consequence of life.

⁸<http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017.pdf> Last access on 27/01/2019

⁹ UNHCR, United Nations High Commissioner for Refugees. UNHCR Global Trends: Forced Displacement in 2016, Jun / 2017. Available at: <https://www.unhcr.org/5b27be547.pdf>. Last access on 01/20/2019.

¹⁰ Bernd Ruf. Destroços e traumas. Embasamentos antropológicos para intervenções com a pedagogia da emergência. Pág. 29/30. Ed. Antropológica. São Paulo. 2018

That is why it is necessary to give all support to refugee children. They need to have their condition of vulnerability worked out by education to overcome their traumas and griefs and redo their life biographies under the overcoming bias rather than revenge, after all, "they are not a blank sheet"¹¹

However, if left to the mercy of the desolation of their surroundings, this overcoming will be compromised.

2.1-. SOME STORIES OF TRAUMA AND GRIEF

After suffering an allergic crisis at nine months of age, Teddy's family took him to the hospital for examination, and the baby was taken care of by the board of physicians who took turns evaluating his case and subjected him to experiences as spotlights linked in his direction, probing in his body. In the end he was quarantined for a week, totally isolated from contact, during which time his mother could not visit him. On leaving, he no longer recognized his mother. "She states that after that experience the child never really raised and/or developed affective connection with her or anyone else in the family. He also did not make friends with other children, moved more and more away from people and ended up completely isolating himself, living in his own world"¹².

It is likely that the trauma experienced by Theodore Kaczynski at the hospital later affected the development of his personality. Known as "Unabomber" he sent bomb letters between 1978 and 1995, creating inmate and antisocial habits. Psychologists interpreted his actions as a war of revenge "against inhuman forces that had overcome him and dominated him as a baby, leaving him completely prostrate".¹³

Traumas are like a quake in the soul. They shake inner landscapes and can cause great psychic regions to collapse, block the child's developmental potential, feel a void and lack of sense and motivation that result in states of aggression, addiction, and suicide (Frankl, 2008, 185, quoted by Ruf).

Mourning is part of life "(...) it may be our response to feelings of loss that arise from situations such as death, divorce, separation of attachment figures, mistreatment, abuse or neglect or even natural disasters, such as earthquakes, burnings, floods, among others "(ibid., 37). The feeling that the world is a safe place is completely lost (Levine and Klein, 2010, 210, quoted by Ruf, 37).

¹¹ Ibid. p.31/32

¹² Ibid. p. 32. Levine and Cline, 140

¹³ Ibid., 32/140.

They are mourners like Mieko (9) who attended the 4th year of Waldorf School in Fujino, Japan. When on March 12, Fukushima's reactor 1 exploded, she ran away with her parents and younger sister Kurumi (6). In Oita, a refugee camp in the south of the country, her younger sister was run over by a car dying. While her parents were unable to accept the death of their daughter internally, Mieko did not demonstrate her frustration nor any sign of behavioral changes that caused concern. She comforted her mother and got in touch with her grandparents, communicating what had happened. "Since her death, she may have become timid and caring. Sometimes she is sad, sometimes angry" says her father, Katsonube (35). Mieko showed no sign of trauma at this time, she was in mourning¹⁴.

Trauma and grief are a constant in every person's life. If we adults emotionally collapse in situations of this kind, what about children who witnessed the destruction of their homes, suffered abuse and violence of all kinds, or experienced loss and passing of their family and close friends?

There is a difference in the processes of trauma and bereavement: in the latter the anger suffered by the loss is not usually manifested by violence, whereas in traumatic reactions it often erupts into aggression and self-harm. Finally, time heals grief reactions, unlike untrained traumatic experiences, which over time usually show an increase and intensification of their symptoms¹⁵.

Traumatized children interrupt contact with the people around them or simply lose it, showing disorganized and insecure attachments, becoming overly alert, emotionally unstable and hyperactive with attack and escape reactions.

Almesa and Zenab are two thirteen-year-old girls who also belong to the Samouni clan of Zeitoun, who were the victims of the house attack in the Gaza Strip. Under the rubble, Almesa clung to his dead parents for four days. She recounts how she tried desperately, and with her last strength, to ward off the rats that began to eat the corpses. When asked what his life would be like, she replied in a voice filled with tears: "When I grow up, I will join the brigades and kill all those who killed my family"¹⁶.

If the traumatic experiences cannot be transformed, it is possible that the cycle of violence repeats itself and it is possible that the experiences of children in the

¹⁴ Ibid. 37

¹⁵ Ibid. 39

¹⁶ Ibid. 90

Gaza Strip will bring light to a new generation of young people and adults capable of revenge.

Armed conflicts and situations of calamity leave a strong contradiction in the children's memory: what became a scene of devastation, debris, emptiness and collapse was their habitat. It was the place from which came his most authentic memories, where many experiences and important memories happened. How to deal with it?

2.2-. THE CASE OF EMERGENCY PEDAGOGY AS A CIVIL SOCIETY ACTION APPLIED IN SUPPORT OF MIGRANT CHILDREN IN SITUATIONS OF WAR AND CALAMITIES.

According to Bernd Ruf, emergency pedagogy begun in 2006 in Stuttgart, Germany, during an event of schools practicing Waldorf pedagogy around the world, when the war between Israel and Lebanon broke out. Among the participants were 21 Lebanese students who were unable to return to their homeland because of the destruction that had compromised all of Beirut's infrastructure. With support and commitment from the school and the city, the students were received as refugees and provided with all assistance. However, their families called for their return, which came after continued negotiations with the Lebanese and Israeli military.

A group of educators accompanied the students on this return and faced a totally unusual situation: the war was still going on. In the refugee camps they confronted the human victims with the "collateral damage" of political interests - "traumatized, disturbed, frightened, pale, apathetic children with a dull and empty look, children whose childhood had been stolen"¹⁷.

It was then that these educators had the same compassionate drive that Dunant had in 1859, they decided to stay in Beirut to help the refugee children. Knowing that it is in the initial stage of a trauma that is more effective and accessible to help a child transform and solve their experiences in a lasting way, they began to help through pedagogical interventions in the resumption of school activities through Waldorf pedagogy, creating the which was called Emergency Pedagogy for Crisis Situations, whose central objective is to place itself as an educational approach focused on

¹⁷ Ibid. 105

stabilizing and supporting traumatized children and young people, which they do through four levels of action described below.

Physical-corporeal stabilization¹⁸. In this first stage, it is critical to make children feel safe again. For this, they need an adequate and safe physical location. In addition, contact with the physical body needs to be restored, and therefore the treatment of injuries and illnesses must be a priority.

Somatic stabilization. ¹⁹Every etheric experience of events needs to be stabilized and the functions of vital organization established. Attention to locks and jams need to be undone.

Psychosocial stabilization. A network of trusted, supportive, and protective relationships must be created. It is about creating trust in the environment. It is at this stage that stabilization methods that include pedagogical-artistic procedures (painting, drawing, modeling, theater), work with movement (sports, walking, gymnastics, eurhythmia), processes oriented to reconditioning (diary techniques, imaginative techniques), and behavioral therapy (training to master fear, acquisition of self-confidence). The goal here is to strengthen the self-confidence that is undermined and self-valorization by the traumatized child in his relationship with the environment that surrounds him.

Mental and biographical stabilization. It means that traumatic negative experiences must be corrected and replaced by positive life experiences. This encourages trauma victims to master and shape their lives again. (Ruf, 2018, 107/108)

Emergency pedagogy is not trauma therapy; appears before, preparing space for the therapies that the child will need in the future.

His artistic-pedagogical methods are based on the principles of Waldorf pedagogy, which are applied in the first weeks after a traumatic event, but before the stage of post-traumatic disorders. It is precisely this moment in which the action of this pedagogy becomes effective, preventing or ameliorating a pathological picture in a child. (Ruf, 109)

According to Ruf, trauma is like paralysis due to a shock. Children become tense, stiff, almost as "frozen." Victims of a trauma become dysfunctional. Traumatized children and youth often suffer from pronounced rhythm disturbances,

¹⁸ Ibid. 109

¹⁹ Ibid. 109

resulting in symptoms and pathologies such as attention deficit, eating or digestive disorders, amnesia or flashbacks, respiratory disorders.

In caring for the souls of children in emergency situations, these educators have transformed the lives of refugee children; and more than that: show courage and engagement in humanitarian causes.

3-. THE LEGAL REGIME GUARANTEEING THE RIGHT TO EDUCATION FOR REFUGEE CHILDREN IN INTERNATIONAL HUMANITARIAN LAW.

Both individuals and society benefit from the right to education. It is fundamental for human, social, and economic development and the key element for achieving lasting peace and sustainable development. It is a powerful tool in developing the full potential of everyone and ensuring human dignity, and in promoting individual and collective wellbeing.

In view of SDG4 Education 2030 and the current large movements of refugees, UNESCO seeks to draw attention to the fact that, in order to effectively guarantee the right to education, it is critical that all people enjoy equal access to an education of good quality, including refugees. Education can provide long-term, dependable and safe environments, for some of the most vulnerable refugee populations.

3.1-. EDUCATION AS A HUMANITARIAN DUTY IN THE GENEVA CONVENTIONS.

International Humanitarian Law is a set of rules that seek to limit the humanitarian consequences of armed conflicts. It is sometimes referred to as the law of armed conflict or the law of war. The primary purpose of IHL “is to restrict the means and methods of warfare that parties to a conflict may employ and to ensure the protection and humane treatment of persons who are not, or no longer, taking direct part in the hostilities”²⁰. In short, IHL comprises those rules of international law which establish minimum standards of humanity that must be respected in any situation of armed conflict. (Melzer, 2016)

The cornerstone of IHL governing non-international armed conflicts is common Article 3. Often held to be the single most important provision of contemporary treaty IHL. In essence, common Article 3 provides that each party to a non-international

²⁰ Nils Melzer. Ibid.

armed conflict, whether represented by "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. (Melzer, 2016)

The Protocol to the Treaty on the Functioning of the European Union, on the one hand, and on the other, been restricted.

Despite all these provisions, children affected by non-international armed conflicts are particularly exposed to the risk of being separated from their families, recruited as child soldiers, or otherwise physically and mentally abused.

All appropriate steps must be taken to facilitate the reunification of families who have been temporarily separated and, in the meantime, children must be given an education in keeping with the wishes of their parents or others responsible for their care. (Melzer, 2016)

According to UNCHR, half of the world's refugees are children (more precisely 7.4 million²¹). Of the children who are of school age, more than half are not getting an education - that equates to four million young minds in school even though they are bursting with potential²².

The number of out-of-school refugee children has increased by 500,000 in the last year alone. If current trends continue, hundreds of thousands more refugees will be added to these disturbing statistics unless urgent investment is made.

As part of the 2030 Agenda for Sustainable Development, the members of the United Nations are invited to ensure "inclusive and equitable quality education" and to promote "lifelong learning opportunities for all". And in the New York Declaration for Refugees and Migrants, adopted by the United Nations General Assembly in 2016, governments pledged to share responsibility for the world's refugees and to improve access to education for refugee children²³.

3.1.1-. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT.

An important legal tool that emerges within the United Nations as a response to the problems that national armed conflicts, civil wars and widespread

²¹ <https://www.unhcr.org/5b852f8e4.pdf> (last accessed on 01.30.2019)

²² <https://www.unhcr.org/5b852f8e4.pdf> (last accessed 01.30.2019)

²³ <https://www.unhcr.org/5b852f8e4.pdf> (last accessed 01.30.2019)

violence and persecution of civilians become refugees in their own internal national territory. The legal definition of internal displaced persons is in the preamble of this document and states as follows: "For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or forced to leave their homes or places of a residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border"²⁴.

According to article one, internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as the other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

Also, the right on education receives a praised look from guiding principles as stated in their article 23 which prescribes the following: "1. Every human being has the right to education. 2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. 3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs. 4. Education and training facilities shall be made available to internally displaced persons, adolescents and women, whether or not living in camps, as soon as conditions permit"²⁵.

Although mirroring the Convention on the rights of child, article 23 enables the moral foundation that will guide Governments and Civil Society to implement all measures to meet most vulnerable civilians needs with respect education.

3.2-. EMERGENCY PEDAGOGY AND THE LEGAL REGIME GUARANTEEING THE RIGHT TO EDUCATION FOR REFUGEE CHILDREN IN SITUATIONS GOVERNED BY INTERNATIONAL HUMANITARIAN LAW: CONVENTION ON THE RIGHTS OF THE CHILD - CRC (1989)

²⁴ <http://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf> (last accessed 01/30/2019)

²⁵ <http://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf> (last accessed 1/30/2019)

3.2.1- But after all why do children enjoy legal protection?

With the greater brains among animals, in addition to the characteristic of standing upright on two legs, the unnecessary arms for locomotion, however, free for other activities, required of this species a physical structure capable of sustaining an extra-large upright skull. This upright gait, on the other hand, required narrow hips, constricting the birth canal (and this when the babies' heads grew larger), thus killing the female sapiens during childbirth. This has favored the birth of preterm infants when many of their vital systems are underdeveloped (Harari, 2017). "A foal can trot soon after birth; a cat leaves the mother on its own to get food with a few weeks to live. But human infants "are defenseless and for many years depend on the elders for sustenance, protection and education."²⁶

That is why treaties and laws guarantee children maximum protection because their limiting physical condition puts them in a situation of vulnerability that persists for years until they are formed physically, mentally and spiritually, so they must have their human dignity preserved under all circumstances, especially amid armed conflicts, hence the justified concern of international humanitarian law.

3.2.2-. EDUCATION AS A HUMANITARIAN DUTY IN THE CONVENTION ON THE RIGHTS OF THE CHILD.

In order to guarantee children their human dignity and the inalienable rights of the Charter of the United Nations through sound physical and mental development, the Convention on the Rights of the Child (CRC) was enacted in 1989. This Convention places equal emphasis on all children's rights so that it does not rank rights. It assumes that children's rights are indivisible and interrelated, and that the focus should be on the child. CRC seeks that this foundation permeates all government decisions that interact or relate to the issues it disciplines.

For the purpose of CRC, a child will only be considered an adult upon reaching the age of 18, unless otherwise provided in the domestic legislation of the countries²⁷.

²⁶ Harari, Yuval N., *Sapiens*, p.18, ed. LPM, 2017

²⁷ UN Convention on the rights of the Children adopted in November 1989 "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."

As one of the instruments for the legal protection of children, this convention contains important guidelines and fundamental principles, of which we emphasize the principle of choosing the best interest of the child (Article 3²⁸) and so called the principle of effectiveness (Article 4²⁹). demands that measures for the realization of children's rights must be carried out with absolute priority, under penalty of harming their development, always observing the highest standard possible by the State (article 41³⁰).

Refugee children do not lose the rights and protection that the Convention guarantees them regardless of where they are, as provided in art. 22.

The right to education of refugee children is guaranteed in CRC, whose maximum value is to preserve the human dignity of the learner by encouraging as much as possible the young people to engage in the context of school learning. This is the understanding of article 28 whose right to education is established and is now referred to as education in a broader sense in which the family, the state and the school participate, as well as education in the sense of school learning.

Regarding the type of education, article 29 of the CRC states that the learning process stimulates the best in each student, that is, that creates means for

²⁸ **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, considering the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

²⁹ **Article 4**

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

³⁰ **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

expressing and developing skills in the learning process. It emphasizes the harmony in the social relations with its friends, its parents, with the environment and with its culture's expression. It seeks to create an environment conducive to problem solving through dialogue and peaceful understanding.

Regarding refugee protection rights, CRC is in dialogue with international humanitarian law through articles 22, 38 and 39, which are emphatic about the duty of political actors to guarantee the rights of children in situations of armed conflict, insurrection, violence generalized or wars, with rules regarding the participation of children in armies and enlistment.

However, it is article 39 that takes care of the rehabilitation of children who have been abused. Children who have been neglected, abused or exploited must receive and have all possible support to recover physically and psychologically from the trauma or mourning suffered, and to reintegrate into society. Here, special attention is required to restore health, self-respect and the dignity of the child.

All legal framework embodied on CRC perfectly dialog with what emergency pedagogy embodies. Both born with the same humanitarian purposes, and both put emphasis to restore human dignity to migrant children.

Unfortunately, the US and Somalia were the only two countries who did not ratify this convention and we have witnessed what happen in both countries.

According to UNICEF³¹, there are 4.2 million migrants in Somalia in which 2.5 million are children requiring humanitarian assistance, although it is important to notice that Somalia has no functional government being close to a no men's land by all means.

The US enters this conversation as well due to general attorney Jeff Sessions "zero-tolerance" policy against illegal immigration when the World shockingly watched migrant children held in cages like prisoned animals. The Dept. of Homeland State (DHS) also removed an estimated 2,000 children from their parents who happened to be jailed by entered illegally in the US, who were kept in facilities that mirror prisons³². A lot of controversy has been emerged ever since and Trump administration defends their actions on the basis of law: I) putting the blame on parents who violate the

³¹ <https://www.unicef.org/appeals/somalia.html> (last accessed 02.01.2019)

³² <https://www.theguardian.com/us-news/2018/jun/16/children-separated-parents-border-trump-administration>

US laws by entering illegally³³; II) that policies are discouraging illegal immigrants from making children endure that treacherous journey³⁴; III) that ‘open borders lobby’ is doing is encouraging that and endangering these children³⁵; and IV) that children are receiving appropriate treatment at detention facilities.

Is it right to remove migrant children from their parents who allegedly break the law? Does humanitarian treatment apply in favor of those children? With regard humanitarian law DHS policies on migrant children holds all elements for a discussion of illegality under Martens Clause³⁶ of 1907’s Hague Convention, a customary law viewed in the words of Rupert Ticehurst “it’s not only a reminder that in the absence of other norms not contained in a specific treaty but it has a normative status on his own right and therefore works independently of other norms”³⁷.

Also noted by many phycologists, detained children are already suffering traumatic and psychologic damages by living separated from his parents.

What the Martens clause does is to provide a link between the law of war and that of natural law in order to determine what the public conscious is. Humanitarian and Human Rights law demands full protection of migrant children which contrasts with US DHS detentions, specially their removal from their parents constitute unhuman treatment, therefore it can be argued that those detentions are in breach of Martens Clause and therefore that the US are in breach of the Geneva Conventions.

Although as every legal matter ought to be verified in a case by case basis, since it’s not clear for what purposes a person become an illegal immigrant in the US, the way DHS has been detaining migrants children needs to be under scrutiny and must be followed closely by advocacy groups, human rights activists and civil society groups as well the Judiciary Systems both local and international since “*raison d’état*” commonly invoked by administrative branches are sometimes a polite excuse to justify a widespread criminalization against poor people as even asylum seekers have been detained in US borders since the implementation of zero tolerance policy.

³³ <https://www.theguardian.com/us-news/2018/jun/17/us-immigration-family-separations-beto-orourke-texas>

³⁴ <https://www.theguardian.com/us-news/2018/jun/16/children-separated-parents-border-trump-administration>

³⁵ <https://www.theguardian.com/us-news/2018/jun/16/children-separated-parents-border-trump-administration>

³⁶ <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm>

³⁷ <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm>

Has also to be noted what aims and purposes are lying behind this “zero-tolerance” policy. Does it have been implemented to resolve social problems brought up by this worldwide migrant’s crisis? Or is mere election’s campaign populism to please part of electorate? It’s up to advocacy groups, lawyers, lawmakers, Judiciary and the DHS to provide not just the right answer for these questions but long-term solutions to a crisis that affect all of us.

The best way to address for these challenges is to place children’s interest above all others. We all have to treat them well and with dignity because of their vulnerable conditions. What public consciousness means is that no one can be a passive viewer in a Democracy as we have the moral duty to protect those who cannot defend themselves. This is why so many people died to defend and affirm so many civil liberties and human rights that we claim today, and this has to be the goal of all of the so called human centric and civilized Society ought to achieve.

4-. CONCLUSION

The two great world wars in the twentieth century, in addition to redesigning the global political map, have introduced profound changes in the way society has established the rights inherent in the human person, including the protection of migrants and children. Issues relating to international humanitarian law and human rights although different subjects have also become part of a global agenda beyond the exclusive competence of the nation-state.

In the situations inherent to the migrants and refugees, Andrade³⁸ makes an affirmation that reflects the actuality of large urban centers in which violence often escapes control: "What happens is that the human being, when invested with state power, has been shown still capable of innovating and increasing its capacity for destruction, which is no longer restricted only to communities alien to its own, affecting and annihilating its own societies”.

In general, wars expose the weaknesses of the National States involved. Bernd Ruf’s emergency pedagogy is an indispensable educational tool for migrant children, and its application is most welcome in situations of conflict, and totally

³⁸ TRINDADE, Antonio Augusto C. A proteção internacional dos direitos humanos no limiar do novo século e as perspectivas brasileiras. In: FONSECA JR, Gelson; CASTRO, Sergio Henrique Nabuco de (Org.). *Temas de política externa brasileira II*. Brasília: FUNAG, 1994. p. 167-187.

compatible with the legal framework that regulates education in humanitarian law as well.

"Jus in bello" regulates the conduct of parties involved in an armed conflict. IHL aims to take care of civilians to minimize suffering during armed conflicts, by protecting and assisting all victims of conflict to the greatest extent possible therefore education a children fundamental right ought to be preserved not only in the event of an armed conflict but also in camps where migrants, refugees and internal displaced wait for a new beginning or the same old march to the next unknown.

What pedagogy of the emergency became is less relevant than what had started it: a civil society impulse when teachers imbued by a compassionate view of life decided to exercise their freedom and were willing to help vulnerable refugees during the war between Israel and Lebanon. Since then, they are often called upon to act at the onset of conflicts and calamities to assist children through education. Their task and aims is to help and support those vulnerable children to overcome its griefs, pains and traumas through a resilient and compassionate view of the events when given a chance.

This moral impulse in understanding the vulnerable and caring for their souls was what led Henry Dunant and Henri Dufour to design what we now understand as International Humanitarian Law. Helping the most vulnerable amid the chaos to maintain their sanity and as far as possible to go through the conflicts, traumas and griefs through education, is to share that same compassionate impetus that motivated the conventions of Geneva with regard IHL.

We have witnessed the visibility occupied by migratory issues in public agendas. Unfortunately, however, the debate is often marked by politicization of the issue and by xenophobic attitudes. The challenge is to make the discussion, instead of permeated by fear and a sense of preservation, marked by the recognition of the right to migrate, the rights and the need to protect the people in a situation of mobility, and the contributions that the migrants and refugees bring both to the host States and to their home States.

Employing and applying all possible efforts to understand and meet the needs of migrant children is a core task that today's IHL lawyers and jurists must devote to. It is a matter that needs to be incorporated into public policies without populism as well. To create legal frameworks to support civil society initiatives like emergency pedagogy is a task that jurists will have to advocate and put all his hands on.

In the end we all shall insist that all countries must comply with legal standards being it humanitarian or human rights. That's what public consciousness means.

To conclude, as History taught us that it has always been easier to understand the movements of change and human displacement since men are nomadic by nature and par excellence. The most difficult narrative to explain has always been that of limits, traits, borders, nationalities, ethnicities, differences because “sympathies and antipathies are the greatest enemies of the true social interest”³⁹ and this current migrant crisis has presented itself not only as an opportunity to understand what went wrong but also to reclaim that Human spirit in which our greatest legal statutes and works are derived from.

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³⁹ Rudolf Steiner. As carências da alma em nossa época. Como superá-las? Pág. 17. Ed. Antroposófica. 2013.



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