


2-14-2023

**CURRENT INTERNATIONAL LEGAL MEASURES FOR THE
PROTECTION OF CHILDREN USED IN ARMED CONFLICTS:
RECOMMENDATIONS FOR THE RESOLUTION OF THE PROBLEM**

Elliot Bibaje

Follow this and additional works at: <https://digitalcommons.law.ggu.edu/theses>

 Part of the [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), [International Law Commons](#), and the [Military, War, and Peace Commons](#)

GOLDEN GATE UNIVERSITY SCHOOL OF LAW

**CURRENT INTERNATIONAL LEGAL MEASURES FOR THE
PROTECTION OF CHILDREN USED IN ARMED CONFLICTS:
RECOMMENDATIONS FOR THE RESOLUTION OF THE PROBLEM.**

**BY
ELLIOT BIBAJE**

**SUBMITTED TO
THE GOLDEN GATE UNIVERSITY SCHOOL OF LAW, DEPARTMENT
OF INTERNATIONAL LEGAL STUDIES, IN FULFILMENT OF THE
REQUIREMENT FOR THE CONFERMENT OF THE DEGREE OF
SCIENTIAE JURIDICAL DOCTOR (S.J.D)**

COMMITTEE MEMBERS

Professor Remigius Chibueze (Chairman, Dissertation committee)

Professor Chris Okeke (Supervisor)

Professor Zakia Afrin (Reader)

SAN FRANCISCO, CALIFORNIA

FEBRUARY 14th, 2023

**CURRENT INTERNATIONAL LEGAL MEASURES FOR THE
PROTECTION OF CHILDREN USED IN ARMED CONFLICTS:
RECOMMENDATIONS FOR THE RESOLUTION OF THE PROBLEM.**

BY

ELLIOT BIBAJE

Barrister and solicitor of the Supreme Court of Nigeria,
SJD Candidate Golden Gate University School of Law San Francisco California
LLM University of Benin, Benin City, Edo State; Nigerian
LLB University of Benin, Benin City, Edo state Nigeria
BL Nigeria Law School, Bwauri, Abuja, Nigeria
Public administration, University of Benin, Benin City, Edo State Nigeria.

DEDICATION

To my late father Mr. Josiah Agboki Bibaje (who was a chartered accountant and to my mother Mrs. Comfort Onowenerien Bibaje (a fashion designer and a textile merchant)

I wish to dedicate this work to Professor Gozie Ogbodo, a lecturer at the faculty of Law University of Benin, Benin City Nigeria who showed the way, my family and friends, most especially to my late sisters, Victoria Bibaje and Grace Bibaje Who passed away in Nigeria while I am in the United States of America in furtherance of my SJD Degree at Golden Gate University School of Law, San Francisco California. Though shattered and emotionally shredded. I give all glory to God for His grace and mercies to still have the zest to carry on.

ACKNOWLEDGEMENT

I wish to express my sincere gratitude and thanks to my God and Lord Jesus Christ, whose unfailing mercies, love, goodness and kindness have sustained me to this day. Even when my other classmates could not continue this program, “He kept me.” I am highly grateful to Professor Gozie Ogbodo of Faculty of Law University of Benin, Benin City Nigeria who showed me the way and light in my Enrolment in this program. Here at GGU Law School I want to thank our erudite scholar of international Law, Professor Chris Okeke for his invaluable and sustainable support and encouragement without whom I could not have continued this program.

I wish to specifically thank the associate director of Golden Gate University Law Library, Professor Mohamed A Nasralla, my immediate boss, who hired me as a library aide when Life was extremely rough for me. He has been so respectful, helpful, patient and tolerant, not only to me but to everyone. Vain, profane, abusive, or derogatory words are not in his dictionary. He is always ready to help even when it is not convenient. His intellectual, professional, financial and moral support is unparalleled and shall ever remain indelible and evergreen in my memory. He once told me that: “when you die, everything and everyone will leave you except your good deeds.” It is my view that people of such character are extinct rather than scarce.

My special thanks and appreciation go to John Pluebell, a former Designated School Official (DSO) OF Golden Gate University who was so charismatic and supportive, so much so that he worked tirelessly to ensure I enrolled in this program. Unfortunately, he left GGU before I came here for my studies. He has such a magnetic aura!

The director of The Golden Gate University Library, Professor Michael Daw, is another rare gem. He is always busy and active like a young man always ready to

help. My thanks to the entire staff of the Law Library for their warmth and love. I will confess that the entire Law Library staff made me enjoy the school.

I wish to express my thanks and appreciation to the committee members, Professor Remigius Chibueze and Professor Zakia Afrin for their guidance, support and encouragement.

My special thanks to Professor Ashmeed Ali and Deacon Akin Awoma, a former principal officer at the Institute of Public Administration and extension services (IPAES) University of Benin City Nigeria who assisted me in pursuing my higher education and set my education advancement in motion. He has been a pillar of support till this day.

A special thanks to Mrs. Mabel Ighomi, Barrister Henry Okoro, Barrister Daracourt Osawe and Pastor Wesley Omoregie for helping me with accommodation when things was though for me without judging me. Thanks also to Obi Ndekwu (Mamaigbo) Barrister Pat Nkechi Ojo, Barrister Victor Elume, Barrister Osawaru Yesufu, Barrister Osayande Ugbogbo, Barrister Charles Ewo-Michael, mr and Mrs. Christopher and Comfort evbayekha, Onome Peters, of Osawaru Yesufu law firm, Benin City Nigeria. Mr Omomila of Pharmacy department University of Benin Nigeria. Mr Douglas Odens, Miss Motilayo Adewuyi, Mrs. Sharon Modupe Crown, Faith Emaguene, Kelvin Amorighoye, and others too numerous to mention here.

I want to thank the Samaritan house of San Mateo, Mrs. Wanboi Lipari, and Mrs. Navida, chairperson of Ecumenical hunger center in East Palo Alto California, "Project We hope," Salvation Army and other nonprofit/ non-governmental organizations who have the interest of humanity at heart! I would say 'you have a special place in God's Heart.'

I want to thank Professor Chris Okeke once again specifically for his precision, incisive teaching and mentoring. I want to thank the graduate law support staffs and all my friends and acquaintances at Golden Gate University, San Francisco California U S A.

Finally, I am forever grateful to my Mum, Aunts, brothers, sisters, friends and all my family back home in Nigeria for the total support in my furtherance of this program. My God richly bless you all in Jesus's name Amen!

Elliot BibajeEsq

TABLE OF CONTENTS

PAGE

CHAPTER ONE

THE DYNAMICS AND EVOLUTION OF ARMED CONFLICTS; PAST AND PRESENT.

Abstract-----	xvii
1. Introduction.....	1
1.1 Armed Conflicts and general overview.....	1
1.2 Historical perspectives of the use of Children in Armed Conflicts.....	7
1.2.1 Contemporary perspective.....	9
1.3 Terminology of Armed Conflicts.....	14
1.4 Key Concepts in Armed Conflicts.....	18
1.5 Laws and Norms: An Overview.....	22
1.5.1 Global burden of Armed Conflicts on Child Health.....	24
1.5.2 Problems of Armed Conflicts.....	26
1.5.3 Direct effects of Armed conflicts on Child health.....	27
1.5.4 Environmental hazards.....	30
1.6 Damage to Health, public infrastructures and targeting of health facilities.....	31
1.6.1 Forced Displacement.....	33
1.6.2 Effects of Armed Conflicts on Children’s mental and psychological Health.....	34
1.6.3 Children unaccompanied and separated.....	36
1.6.4 Children with remote exposure to Armed Conflicts.....	38
1.7 Delicate and Dangerous special groups of Children associated with Armed Groups.....	39
1.8 Intergenerational Effects of Armed Conflicts on Children.....	41

1.9	Conclusion.....	45
-----	-----------------	----

CHAPTER TWO

2.0 THE LEGAL REGIMES OF ARMED CONFLICTS

2.1	Current International Legal Instruments for the protection of Children involved in Armed Conflicts.....	46
2.2	The Geneva Convention (1949) and it's additional Protocols.....	48
2.3	Additional Protocols to the Geneva Conventions (1977)	50
2.4	Additional Protocol I.....	50
2.5	Additional Protocol ii.....	51
2.6	United Nations Assembly Declarations on the Protection of Women and Children in Emergency and Armed Conflict (1974)	52
2.7	Conventions on Conventional Weapons (1980)	53
2.8	Conventions on the Prohibitions of the Use, Stockpiling, Production and the Transfer of Anti-Personal Landmines and their Destruction (1977) (Also known as the Ottawa Treaty and Mine Ban Treaty)	54
2.9	Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (1997)	56
2.10	Protocols against the Illicit Manufacturing of and Trafficking in Firearms (2001)	57
2.11	Conventions on Cluster Munitions (2008)	58
2.12	UN Convention on the Rights of the Child (1989)	62

2.13	African Charter on the Rights and Welfare of the Child (1990)	64
2.14	Rome Statute of the International Criminal Court (1998)	66
2.15	International Labour Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	69
2.16	Optional Protocols to the Convention on the Elimination of Discrimination Against Women (1999)	79
2.17	Optional Protocols to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000)	80
2.18	Statute of the Special Court for Sierra Leone (2002)	83
2.19	UN Convention on the Rights of Persons with Disabilities (200)	87
2.20	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)	88
2.21	Convention relating to the Status of Refugees (1951)	89
2.22	Optional Protocols to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	104
2.23	Statute of the International Criminal Tribunal for the former Yugoslavia (1993)	105
2.24	Statute of the International Criminal Tribunal for Rwanda (1994)	106
2.25	Beijing Platform for Action (1995)	107
2.26	The Slavery Convention (1926)	108
2.26.1	Conventions Governing the Special Aspects of the Refugee Problem in Africa (1969)	109
2.27	Security Council Resolutions in relation to Children and Armed Conflicts.....	109
2.28	International Framework on Juvenile Justice.....	113
2.29	Conclusion.....	114

CHAPTER THREE

3.0 Legal protections for Children involved in Armed Conflicts

3.1	Children as “Child Soldier”: In search of adequate legal protection.....	117
3.2	International Humanitarian Law.....	120
3.3	International Human Rights Law.....	122
3.4	The “straight 18” Position: Reason for resilience.....	126
3.5	The nature of States Obligations.....	130
3.6	Direct and Indirect Participation in hostilities.....	131
3.7	Voluntary Recruitment.....	139
3.8	How voluntary is Voluntary?.....	139
3.9	Double standard as no “standard”	143
3.10	Disarmament, demobilization and reintegration.....	144
3.11	Girl soldiers.....	145
3.12	Cross-border recruitment.....	148
3.13	Enforcement.....	149
3.14	International criminal Law.....	153
3.15	Conclusion.....	155

CHAPTER FOUR

4.0 FAILURE OF THE PROTECTION OF CHILDREN INVOLVED IN ARMED CONFLICTS INSPITE OF INTERNATIONAL CO-OPERATION

4.1	Children as “Child soldiers”: The challenge of enforcing international standard.....	156
4.2	Existing Legal protections.....	157
4.3	Implementation.....	166
4.4	Interventions.....	170
4.5	Definition of terms and Concepts under International Law.....	179
4.6	Acceptance and Approval.....	179
4.7	Accession.....	180
4.8	Adoption.....	180
4.9	Armed conflict.....	181
4.10	Armed Forces.....	182
4.11	Armed Groups.....	182
4.12	Cape Town Principles.....	182
4.13	Child.....	183
4.14	“Child Soldier”	183
4.15	Children affected by Armed Conflicts.....	184
4.15.1	Child victims or witness of a crime.....	184
4.16	Child protection.....	185
4.17	Child Protection Adviser.....	186
4.18	Child Labor.....	188
4.19	Cluster bomb or munition.....	189

4.20	Committee on the Rights of the Child.....	190
4.21	Demobilization.....	191
4.22	Disarmament.....	192
4.23	Domestic Law.....	192
4.24	Explosive remnant of war (ERW).....	192
4.25	General Assembly of the United Nations.....	193
4.26	Geneva Conventions.....	193
4.27	Internally displaced children.....	194
4.28	International Customary Law.....	194
4.29	International Humanitarian Law.....	195
4.30	International Human rights Law.....	195
4.31	International Law.....	196
4.32	Landmine.....	196
4.33	Orphans.....	197
4.34	Ratification.....	198
4.35	Refugee.....	198
4.36	Reintegration.....	199
4.37	Reservation.....	199
4.38	Security Council.....	200
4.39	Separated children.....	201
4.40	Sexual abuse.....	202
4.41	Sexual Exploitation.....	202
4.42	Signature subject to ratification, acceptance or approval.....	203
4.42	Small arms and light weapons.....	204

4.43	Succession.....	204
4.44	Truth and reconciliation commission.....	204
4.45	Unaccompanied Child.....	205
4.46	United Nations.....	206
4.47	Conclusion.....	207

CHAPTER FIVE

5.0 Children in Armed Conflicts: The difference between Legalism, realism, facts and fiction

5.1	Introduction.....	208
5.2	Difference between theory and practice.....	211
5.3	Problems of Armed Conflicts.....	222
5.4	Denial of Humanitarian Access.....	224
5.5	Targeting of Educational Facilities.....	225
5.6	Question of Identity.....	226
5.7	Prevalence of Emergencies.....	226
5.8	Lack of Personal safety and Security.....	227
5.9	Lack of Family’s Emotional, Financial and Educational Wellbeing.....	227
5.10	Family Separation.....	228
5.11	Sexual Assault.....	229
5.12	Proliferation of Small Arms and Light weapons.....	230
5.13	Conflicts with the Law.....	231
5.14	Denial of The Right to play.....	231

5.15	Solutions to the involvement of children in Armed conflicts.....	232
5.16	Prevention.....	234
5.17	Protection.....	235
5.18	Reintegration.....	236
5.19	Monitoring and Reporting of Child Violation Rights.....	237
5.20	Health, psycho-social, well-being and education.....	237
5.21	Adolescents.....	237
5.22	Gender Based violence.....	237
5.23	Internally Displaced Children.....	238
5.24	“Child Soldiers”	238
5.25	Landmines.....	238
5.26	Prevention.....	238
5.27	Special Representative.....	238
5.28	A livable Income.....	238
5.29	Food for Everyone.....	239
5.30	Primary Education for all Children.....	239
5.31	Clean Water.....	239
5.32	Debt Relief for poor Nations.....	239
5.33	Peace building.....	240
5.34	Equal opportunities for Girls.....	240
5.35	A sustainable Environment.....	240
5.36	An End to Child Exploitation.....	240
5.37	Freedom to Believe.....	240
5.38	Recommendation.....	241

5.39	Conclusion.....	250
5.39	Bibliography.....	253

ABSTRACT

War is not new; Armed Conflicts are not new. The use of Children in Armed Conflicts is not new. From Afghanistan, Syria, Yemen, Nigeria, Sudan, Democratic Republic of Congo (DCR) and the world over, children are being used in Armed Conflicts. These have led to crime, criminality, diseases, rape destruction of basic infrastructure, the eco system and future of the dead, living and unborn generation.

Despite International legal instruments put in place to curb the use of children in Armed conflicts, in the area International Human Rights and Humanitarian Law, Labor Law and International criminal Law, the use of children in Armed conflicts persists.

There is the need for the international community to rise above primordial, parochial and regional sentiments and galvanize the political will to confront and defeat this monster. It would be foolhardy to expect to live in peace when Children have no peace.

Crime has no border. The time to act is now. In the words of Julius Caesar, “we must not fold our arms akimbo while Rome burns.”

CHAPTER ONE

1.0 THE DYNAMICS AND EVOLUTION OF ARMED CONFLICTS; PAST AND PRESENT

1.1-Armed Conflict and general overview

This dissertation shall consist of five chapters; Chapter one is the introduction of this study and consist of The Definition of a Child, historical perspectives of the involvements of children in Armed conflicts, general overview and problems of the use of children in armed conflicts. Chapter two shall consist of current international Law and legal development for the protection of children involved in Armed Conflict. Chapter three shall dwell on the use of children as “child soldiers” and the search for adequate legal protection. Chapter four shall deal with the enforcement of international standards in curbing the use of children in armed conflicts among others and Chapter five shall deal with the difference between theory and practice, problems, solutions of the use of children in armed conflicts, among other recommendations and conclusions.

Globally, over 1 billion children under the age of 18 live in countries or territories affected by armed conflict – almost one sixth of the total world population. Of these, approximately 300 million are under the age of five.¹ In 2006, an estimated 18.1 million children were among populations living with the effects of displacement. Within that group were an estimated 5.8 million refugee children and 8.8 million internally displaced children.²

¹ The number of children was calculated based on the set of 33 conflict-affected countries described later in this chapter and data from UNICEF’s State of the World’s Children 2008 report.

² Figures were calculated by UNICEF based on a combination of data from the Office of the United Nations High Commissioner for Refugees, the United Nations Relief and Works Agency for Palestinian Refugees, the US Committee for Refugees and Immigrants, and the Internal Displacement Monitoring Centre of the Norwegian Refugee Council

The dynamics of conflict have changed—and conflict is legendary and evolutionary, putting children in the frontline in new and terrible ways. Wars are lasting longer.³ They are more likely to be fought in urban areas amongst civilian populations leading to deaths, life-changing injuries, and laying waste to the infrastructure needed to guarantee access to food and water. Attacks on schools and hospitals are up. The denial of humanitarian aid is used yet another weapon of war.⁴ The international rules and basic standards of conduct that exist to protect civilians in conflict are being flouted with impunity.⁵

Children are disproportionately suffering the consequences of these brutal trends; almost one fifth of children worldwide are now living in areas affected by armed conflict.⁶ We are seeing more children facing unimaginable mental and physical trauma; more children going hungry; more children falling victim to preventable diseases; more children out of school; more children at risk of sexual violence and recruitment by armed groups; and more children trapped on the frontline without access to humanitarian aid.⁷

New evidence presented by Save the Children is damning: 420 million children – nearly one-fifth of children worldwide – are living in a conflict zone; a rise of nearly 30 million children from

³ Program on Humanitarian Policy and Conflict Research, *Transnationality, War and the Law: A report on a roundtable on the transformation of warfare, international law, and the role of transnational armed groups*, Program on Humanitarian Policy and Conflict Research, Harvard University, Cambridge, MA, April 2006, p. 6.

⁴ <https://www.unicef.org/children-under-attack>(Last visited 10-12-2022)

⁵ <https://civiliansinconflict.org/press-releases/protecting-civilians-affected-by-conflict-in-the-age-of-impunity/>(Last visited 09-05-2022)

⁶ <https://www.cnn.com/2019/02/14/africa/1-in-5-children-live-in-conflict-zones-intl/index.html#:~:text=Nearly%20one%20in%20five%20children,the%20charity%20Save%20the%20Children.>(Last visited 09-12-2022)

⁷ <https://publications.aap.org/pediatrics/article/142/6/e20182585/37469/The-Effects-of-Armed-Conflict-on-Children?autologincheck=redirected>(Last visited 10-10-2022)

2016.⁸ The number of children living in conflict zones has doubled since the end of the cold war.⁹ 142 million children are living in high-intensity conflict-zones; that is, in conflict zones with more than 1,000 battle-related deaths in a year.¹⁰ New analysis from Save the Children shows that the numbers of ‘grave violations’ of children’s rights in conflict reported and verified by the United Nations have almost tripled since 2010. Hundreds of thousands of children are dying every year as a result of indirect effects of conflict – including malnutrition, disease and the breakdown of healthcare, water and sanitation.¹¹

The nature of conflict – and its impact on children – is evolving. Intra-state conflict is increasing, as are the numbers of armed actors involved¹². The world is witnessing deliberate campaigns of violence against civilians, including the targeting of schools, the abduction and enslavement of girls, and deliberate starvation.¹³ Armed conflicts are more protracted; for instance, the most prominent conflict in recent times – the war in Syria – has lasted longer than the Second World War.¹⁴ The longer a conflict lasts, the greater the indirect harm caused as essential services cease to function. In many protracted situations the lines between ‘conflict’ and ‘peace’ have become blurred.¹⁵ Conflict is also increasingly urban; in Mosul and Mogadishu, for example, children’s homes and schools are on the front line, vulnerable to indiscriminate attack.¹⁶ In today’s armed

⁸ <https://givingcompass.org/article/protecting-children-in-21st-century-conflict>(Last visited 10-11-2022)

⁹ <https://www.telegraph.co.uk/global-health/terror-and-security/worlds-children-failed-report-reveals-one-five-live-conflict/>(Last visited 09-08-2022)

¹⁰ <https://www.catholicnewsagency.com/news/40593/report-children-living-in-the-shadow-of-war>(Last visited 04-09-2022)

¹¹ Supra note 8.

¹² <https://www.savethechildren.org/us/charity-stories/impact-of-syria-conflict-children-mental-health>(Last visited 10-12-2022)

¹³ Ibid

¹⁴ Supra note 8.

¹⁵ Ibid

¹⁶ Ibid

conflicts, there is often no longer a clearly demarcated battlefield: children's homes and schools are the battlefield.¹⁷

The protection of children in conflict – and with it the realization of the promises made in the declarations, conventions and statutes of the 20th century – is one of the defining challenges of the 21st century.¹⁸ Our humanity demands that we act, and our future depends on it. If these children are left behind, we cannot live in peace and bequeath peace to the future generation and lay the foundation for a peaceful and prosperous society; a society where we can guarantee survival, protection and hope for all children.

The United Nations Convention on the Rights of the Child suggests that a child is 'every human being below the age of eighteen.'¹⁹ While the participation of children in armed conflict has been evident for some time, internal community, mobilization on the issue is recent. In 1993, the General Assembly of the United Nations adopted resolution 48/157 in response to a request by the Committee on the Rights of the Child²⁰

Armed conflict is defined as any organized dispute that involves the use of weapons, violence, or force, whether within national borders or beyond them, and whether involving state actors or nongovernment entities. Examples include international wars, civil wars, and conflicts between

¹⁷ Supra note 12.

¹⁸ Supra note 8.

¹⁹ Art. 1 of the United Nations Convention on the Right of the Child: UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577: available at <http://www.refworld.org/docid/3ae6b38f0.html>, (last visited 5/10/2018).

²⁰ The General Assembly requested the Secretary General to appoint an expert to head a study on children in armed conflicts (including combatants). G Machel was appointed in 1994 and her report was submitted in 1996.

other kinds of groups, such as ethnic conflicts and violence associated with narcotics trafficking and narco-gang violence.²¹

Armed conflict is an enduring global plague, displacing an increasing number of people within their countries and across borders.²² If armed conflict is a political act, quantifying and analyzing it is political as well. Many of the tools used to measure the impact of conflict (such as body counts and battlefield injuries) were established under a traditional notion of war – that wars occur between States. Given the major changes in the nature of armed conflict outlined below,²³ these tools are no longer as relevant, nor as accurate for measurement.²⁴ That said, the Center for International Development and Conflict Management, one of the most reputable organizations working in this field, puts the number of armed conflicts worldwide in 2008 at 26, many of which were long-standing grievances and recurrences of previous wars.²⁵ More than 1 in 10 children worldwide are affected by armed conflict.²⁶ Combat activities and population displacement caused by conflict have direct effects on child mortality and morbidity. In addition, there are long-lasting indirect effects that are mediated by complex political, social, economic, and environmental changes. In 2015, there were 223 violent conflicts, of which 43 were limited- or full-scale wars.²⁷

²¹Shenoda S, Kadir A, Pitterman S, Goldhagen J; American Academy of Pediatrics, Section on International Child Health. The effects of armed conflict on children. *Pediatrics*.142(6): e20182585 (2018)

²² . Joseph Hewitt, “Trends in Global Conflict, 1946-2007”, in *Peace and Conflict 2010: Executive Summary*, CIDCM, 2009, pg. 19, available on-line at http://www.cidcm.umd.edu/pc/executive_summary/exec_sum_2010.pdf. (last visited 5/10/2018. Hewitt found that 31 of 39 different conflicts that became active in the last decade were flare-ups of old wars.

²³ . See “A contemporary perspective” below in the text for the definition and discussion of the term ‘armed conflict.’

²⁴ For more details, see <http://www.globalsecurity.org/military/world/japan/bushi-do.htm> (last visited 10/3/2019)

²⁵ For further information on this military event, see, <http://www.atomicarchive.com/Docs/Hiroshima/index.shtml> (last visited 10/8/2019) and <http://www.saint-petersburg.com/history/siege.asp> (last visited 10/7/2019)

²⁶ UNICEF. *More Than 1 in 10 Children Living in Countries and Areas Affected by Armed Conflict*. New York, NY: UNICEF; (2015)

²⁷ Heidelberg Institute for International Conflict Research. *Conflict Barometer [2015]*. Heidelberg, Germany: Department of Political Science, University of Heidelberg; (2016)

The nature of war has changed. Combat zones are increasingly widespread, weapons cause destruction on a larger scale²⁸, conflicts are more protracted (waxing and waning over lengthier periods of time),²⁹ and the availability and use of small arms facilitates the use of children as combatants.³⁰ These changes have led to geographically widespread, complex, and nuanced effects on children's physical, developmental, and mental health and wellbeing. Furthermore, the effects of armed conflict continue long after hostilities have ceased. Unexploded ordnances, such as landmines and cluster bombs, result in injuries and death for decades after combat has ended.³¹ Similarly, the adverse effects of population displacement, the destruction of health systems and social infrastructure, environmental damage, and economic sanctions may compromise children's access to necessities, such as food, health care, and education, for decades. As a result, even short-lived armed conflicts affect child health and wellbeing across the life course and through adulthood.

The rules of war have also changed. Schools, which have been traditionally safe places, are targeted, and children are often attacked while on their way to or from school.³² In many armed conflicts, schools and educational facilities are used by combatant forces, including government forces, as bases for combat and to recruit children.³³ The result is reduced school enrollment, high

²⁸ Garfield R. The epidemiology of war. In: Levy BS, Sidel VW, eds. War and Public Health. 2nd ed. Oxford, United Kingdom: Oxford University Press; p23 (2008). Levy BS, Sidel VW, Levy B, Sidel V, eds. War and Public Health: An Overview. 2nd ed. Oxford, United Kingdom: Oxford University Press; (2008)

²⁹ Smith D. Trends and causes of armed conflict. In: Austin A, Fischer M, Ropers N, eds. Transforming Ethnopolitical Conflict: The Berghof Handbook. New York, NY: Springer; p 111–127(2004)

³⁰ UNICEF. No guns, please. We are children! 2001. Available at: [https://www.unicef.org/publications/files/No_Guns_Please_-_We_Are_Children_\(1\).pdf](https://www.unicef.org/publications/files/No_Guns_Please_-_We_Are_Children_(1).pdf) (. last visited 12/10/2018)

³¹ World Health Organization. Guidance for Surveillance of Injuries Due to Landmines and Unexploded Ordnance. Geneva, Switzerland: World Health Organization; (2000)

³² Guha-Sapir D, D'Aoust O. Global Coalition to Protect Education from Attack. Education under attack 2014. Available at: www.protectingeducation.org/educationunder-attack-2014. (last visited 12/10/2018), Demographic and Health Consequences of Civil Conflict. World Development Report. Washington, DC: World Bank; 2011. Available at: <http://hdl.handle.net/10986/9083>. (last visited 12/11/2018)

³³Ibid

dropout rates, lower educational attainment, poor schooling conditions, and the exploitation of children.³⁴ Similarly, attacks on both government and nongovernmental health facilities and mobile clinics are increasingly prevalent.³⁵ These attacks violate the Geneva Conventions³⁶ and result in the death of patients and health workers, the destruction of health infrastructure,³⁷ and increasing barriers to care because of people's fear of being injured or killed while seeking treatment.³⁸

This chapter establishes a broad framework for the discussion of armed conflict,³⁹ providing definitions of key terminology, select military history and an examination of the current trends in armed conflict, in both form and function.

1.2 Historical perspectives of the use of children in Armed conflicts

There is a debate among humanitarian workers, policymakers, military analysts and academics about whether one can speak of new wars' or 'contemporary armed conflict.' To enter this debate, it is important to first explore the traditional, almost nostalgic, view of war as a period of open confrontation or fighting between government armies, following a political declaration of hostilities. Throughout history and in many cultures, children have been involved in military campaigns.⁴⁰ The earliest mentions of minors being involved in wars come from antiquity.⁴¹ It was customary for youths in the Mediterranean basin to serve as aides, charioteers and armor bearers

³⁴ Poirier T. The effects of armed conflict on schooling in Sub-Saharan Africa. *Int J Educ Dev*;32(2):341–351(2012)

³⁵ safeguarding Health in Conflict Coalition. No protection, no respect: health workers and health facilities under attack: available at: <https://www.safeguardinghealth.org/sites/shcc/files/SHCC2016final.pdf>. (last visited 12/10/2018)

³⁶International Committee of the Red Cross. The Geneva Conventions and commentaries: available at: <https://www.icrc.org/en/war-and-law/treatiescustomary-law/geneva-conventions>.(last visited 12/11/2018)

³⁷Supra note 13.

³⁸ Ibid

³⁹ See "A contemporary perspective" below in the text for the definition and discussion of the term 'armed conflict.'

⁴⁰ Wessels, Michael (1997). "Child Soldiers". *Bulletin of the Atomic Scientists*. **53** (4): 32.

⁴¹ <https://www.smithsonianmag.com/science-nature/ancient-brutal-massacre-may-be-earliest-evidence-war-180957884/>(last visited 11/2/2020)

to adult warriors. Examples of this practice can be found in the Bible, such as David's service to King Saul,⁴² in Hittite and ancient Egyptian art, and in ancient Greek (such as the story of Hercules and Hylas), philosophy and literature. In a practice dating back to antiquity, children were routinely taken on a campaign, together with the rest of a military man's family, as part of the baggage.⁴³ , several Roman legionaries were known to have enlisted aged 14 in the Imperial army, such as Quintus Postunius Solus who completed 21 years of service in Legio XX Valeria Victrix, and Caecilius Donatus who served 26 years in the Legio XX and died shortly before his honorable discharge.⁴⁴

Thousands of children participated on all sides of the First World War and the Second World War.⁴⁵ The Crimean War, World War I and the Sino-Japanese War of 1894-5 would be examples of this sort of warfare. In such a paradigm, the intended targets of weapons were soldiers and obvious military assets (such as supply warehouses, barracks, and tanks), and the theatre of war was in rural areas and at a distance from civilian populations. Hostilities had strict rules to govern them, although they were not always respected. These rules varied widely, according to times and cultures. Common examples include the use of a white flag to symbolize peace or surrender, the cessation of combat at dusk, attacks made solely from the front, the capture of the leading soldier on a battlefield putting an immediate end to fighting, hand-to-hand combat of the

⁴² 1Samuel 16: 16-21

⁴³ Military use of Children available at https://psychology.wikia.org/wiki/Military_use_of_children(last visited 11/3/2019)

⁴⁴ ^ Cowan, Ross. Roman Legionary AD 69–161. Oxford: Osprey Publishing. p. 12 (2013)

⁴⁵ "How did Britain let 250000 underage soldiers fight in WW1?". BBC News. Archived from the original on 21 March 2018. Retrieved 22 January 2016. Norman Davies, Rising '44: The Battle for Warsaw, Archived 6 February 2016 at the Wayback Machine Pan Books p.603(2004) David M. Rosen (January 2005). Armies of the Young: Child Soldiers in War and Terrorism. Rutgers University Press. pp. 54–55. ISBN 978-0-8135-3568-5. Archived from the original on 6 February 2016. Retrieved 3 February 2016. The participation of Jewish children and youth in warfare was driven by a combination of necessity, honor, and moral duty. Kucherenko, Olga (13 January 2011). Little Soldiers: How Soviet Children Went to War, 1941–1945. OUP Oxford. p. 3. ISBN 978-0-19-161099-8. Archived from the original on 6 February 2016. Retrieved 3 February 2016.

two most senior warriors as a means to decide a dispute, and ‘battle’ defined as a series of one-on-one dueling matches.⁴⁶ Violations of the shared military code brought great shame on both the military and political leaders of the time. Events that broke these norms (such as the siege of Leningrad or the nuclear bombing of Hiroshima, both occurring during World War II⁴⁷) led to the codification of human rights law.

1.2.1 Contemporary perspective

In the late 20th and the early 21st centuries, the term ‘armed conflict’ replaced that of ‘war’. While there is no universally accepted definition of the term, the Office for the Coordination of Humanitarian Affairs (OCHA) defines it as: “A dispute involving the use of armed force between two or more parties. International humanitarian law distinguishes between international and non-international armed conflicts.”⁴⁸ The International Committee of the Red Cross (ICRC) further differentiates between the two forms of conflict: “International armed conflicts exist whenever there is resort to armed force between two or more States. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more-armed groups, or between such groups arising on the territory of a State (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum organization.”⁴⁹ The term ‘armed conflict’ covers a much broader spectrum of violence than does ‘war’ and is marked by an elevated level of

⁴⁶ For more details, see <http://www.globalsecurity.org/military/world/japan/bushi-do.htm> (last visited 10/2/2019)

⁴⁷ For further information on these military events, see <http://www.atomicarchive.com/Docs/Hiroshima/index.shtml> and <http://www.saintpetersburg.com/history/siege.asp> (last visited 5/15/2019)

⁴⁸ OCHA, “Glossary of Humanitarian Terms”, New York, 2003, available on-line at <http://un-interpreters.org/glossaries/ocha%20glossary.pdf> (last visited 6/14/2019)

⁴⁹ ICRC, “How is the term armed conflict defined in International Humanitarian Law?”, Geneva, 2008: available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/\\$file/Opinion-paper armed conflict.Pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/armed-conflict-article-170308/$file/Opinion-paper%20armed%20conflict.Pdf) (Last visited 5/10/2019)

fluidity and fragmentation. Significant trends in armed conflict in the past years include the deliberate targeting of civilians, the multiplication of armed actors not limited to States, increased and easier access to small arms and light weapons, the prolonged duration of conflicts, especially where natural resources are concerned, the inability of external actors to force a termination of hostilities and the linking of armed groups to illegal trafficking and criminal networks.

Examples of this contemporary form of conflict can be seen in the current hostilities in Afghanistan, the complexity of armed actors in Colombia, the prolonged fighting in Sri Lanka, the armed violence in Haiti and the insurgency in the Philippines. In addition, terrorism can be viewed as a considerable challenge since armed actors are less accessible or definable. In the past year, the world has seen a proliferation of armed actors from rebel armies to insurgency cells, government-linked paramilitaries to local defense groups.⁵⁰ Contemporary command structures tend to be loose, with frequent switches in allegiance. Where structures are formalized, armed groups often present themselves as alternative governments in order to extract money and favors from civilians, while hiding behind a facade of legitimacy. Examples of this phenomenon can be seen in the Sudan Peoples' Liberation Army/Movement, the Liberation Tigers of Tamil Eelam and the National Congress for Defense of the People in the eastern Democratic Republic of Congo. The most shocking development in contemporary conflict is the deliberate targeting of civilians, due in part to the strategic blurring of the lines between combatants and civilians. The former often live or find shelter in villages and refugee camps, sometimes using civilians as human shields. The

⁵⁰ The main terms are: armed forces (an umbrella term for the government-controlled military force of a country, including its army, navy and air force), armed groups (an umbrella term for any non-State [nongovernmental] actor who has taken up arms against a government), paramilitaries (military forces that have no allegiance to the armed forces of a particular country but are organized in the same manner and they may have an allegiance to the government of a country), rebels (a group opposed by force to a government or local authority), insurgents (similar to rebels but known to use guerrilla tactics), and local or civil defense units (communally organized groups that are on 'stand-by' to defend local interests with the use of violence).

targeting of civilians most often involves killing, maiming and sexual violence, with claims that these acts are in reprisal for suspected support of the opposition or for attacks by opposing forces. In other instances, combatants force civilians to support their efforts. This support, whether voluntary or forced, places civilians at greater risk of attack by the opposing forces. Armed actors “seek to bring the battle more immediately, more systematically, and more massively to the core of the civilian population.”⁵¹ Today, fighting is rarely carried out between uniformed soldiers from two national armies. With the decrease in international warfare and the growth of internal conflicts and urban violence, conflict has moved into the informal sector. Combatants rarely have uniforms, rations and a standard kit. Frequently, it is extremely difficult to identify who is fighting for whom. This confusion is strategic, as it allows individuals and combat units to operate more freely and with less risk of sanctions since the command structures are harder to identify and ‘prove.’ Nevertheless, while there may be fewer military battle casualties, there are high human costs, including civilian and child casualties, the destruction of infrastructure and minimal access to basic social services, resulting in diminished development and economic opportunities.

In addition to their national armies, governments increasingly develop arm’s length, covert relationships with paramilitary squads or private military companies. Both groups can form quickly, are easy to train and require little support. Even Russia, India and China, three countries with the largest national armies in the world, are thought to currently rely on paramilitary forces for one third to one half of their military personnel.⁵² Governments are criticized for “‘outsourcing’ one- sided violence and other ‘dirty’ tasks to loosely affiliated and less accountable actors who

⁵¹ Program on Humanitarian Policy and Conflict Research, “Transnationality, War and the Law”, as quoted in “Machel Study 10-year Strategic Review”, 2009, pg. 8, available at http://www.UNICEF.org/publications/index_49985.html(Last visited 2/15/2019)

⁵² The International Institute for Strategic Studies, “The Military Balance 2002–2003”, Oxford University Press, (2002)

often prove to be particularly brutal in their treatment of civilians.”⁵³ The rise of ‘auto-defense’, or self-defense, militias that emerge as a community level response to actions of armed groups or State forces is another dimension of today’s conflicts.⁵⁴ Significantly, these self-defense militias are often responsible for enlisting children. Examples can be found in the militias in Côte d’Ivoire; the militia groups in areas where the Lord’s Resistance Army is present in the Democratic Republic of Congo and the Kamajors in Sierra Leone.⁵⁵ In resource rich countries, “the exploitation, trafficking and illicit trade of natural resources have contributed to the outbreak, escalation or continuation of armed conflict”⁵⁶ External actors, such as regional diplomats and international peacekeepers, do not often have sufficient leverage to end the fighting. Moreover, perpetuating armed conflict may be financially advantageous to a handful of powerful individuals and groups, often supported by foreign business interests. Clear examples of this trend are found in Nigeria, Sierra Leone, Angola (although the conflict has now ended) and eastern Democratic Republic of Congo, where the original political objectives of the conflict have been pushed to the backburner as warring parties struggle to control the natural resources in territories they have conquered.⁵⁷

⁵³ Ekaterina Stepanova, “Trends in armed conflicts: one-sided violence against civilians,” SIPRI Yearbook 2009, Stockholm International Peace Research Institute, 2009, available at <http://www.sipri.org/yearbook> (Last visited 10/5/2019)

⁵⁴ Self-defense outfit has been a growing trend in most developing countries especially African Countries in particular in Northern Nigeria where the locals form a Civilian outfit to supplement the Nigerian army in their fight against the Islamist Boko Haram and its Isis affiliates. In Western Nigerian, there is currently a Civilian outfit on formation by the Regional Government of Nigeria, comprising, Lagos, Ogun, Oyo, Osun, Ekiti and Ondo state, available at <http://www.pulse.ng/news/local/south-west-governors-explain-why-operation-amotekun-was-established/f5rxgk29> (last visited 3/10/2020)

⁵⁵ United Nations, “Children and Armed Conflict: Report of the Secretary-General,” A/63/785-S/2009/158, UN, 2009, pg. 10, available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N09/282/44/PDF/N0928244.pdf?OpenElement> (Last visited 5/10/2019)

⁵⁶ United Nations, ‘Statement by the President of the Security Council,’ 25/06/2007, S/PRST/2007/22, para. 5, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CPR%20S%20PRST%202007%2022.pdf> (Last visited 10/15/202019)

⁵⁷ For further information, see Paul Collier, “Natural Resources and Conflict in Africa,” 2004, available at http://www.crimesofwar.org/africa-mag/afr_04_collier.html or Human Rights Watch, “Rivers and Blood,” New York, 2005, available at <http://www.hrw.org/en/reports/2005/02/04/rivers-and-blood> or Abiodun Alao and Funmi Olonisakin, “Economic Fragility and Political Fluidity”, in *Managing Conflict in the 21st Century*, 2001, available on-line at

Linkages between actors in armed conflicts and transnational criminal networks have increased.⁵⁸ These networks are eager to take advantage of security vacuums, capitalizing on and even prolonging the mayhem in order to export natural resources, launder money and traffic in people, among other activities. Civilians, particularly children, get caught in the middle of criminal pursuits. Haiti is frequently cited as a key example of a country where the shifting distinction between warrior and criminal are evident in the conflict. The criminal or political character and motivation of armed groups that are mostly perceived as criminal gangs may change, depending on the circumstances and timing. In Haiti, children were initially seen as victims who had been unlawfully recruited; however, they are now seen as members of criminal gangs. With so many actors and shifting perspectives on the conflict, it is understandable that outsiders, such as peacekeepers, have difficulty performing their duties and influencing armed actors to lay down their weapons. The deployment of complex humanitarian operations and peacekeeping missions is another aspect of the changing nature of conflict. Even as these operations are part of the solution, they sometimes compound the problem. For instance, allegations of sexual abuse by humanitarian personnel represent one of the most pressing crises of credibility for the international community.⁵⁹ It is increasingly common for peace negotiations to be a delicate dance between, not two or even three, but four or more parties to a conflict. To bring together all parties to hammer out an agreement is proving increasingly challenging. Frequently, only a partial peace agreement

<http://www.arts.ualberta.ca/~courses/PoliticalScience/474A1/documents/AlaoandOlonisakinEconFragilityPolFluidityResourceConflict.pdf> (last visited 5/18/2018)

⁵⁸ This is defined by the UN Convention against Transnational Organised Crime (2000); Article 2.a, as “a structured group of three or more persons that exists over a period, the members of which act in concert aiming at the commission of serious crimes in order to obtain a direct or indirect financial or other material benefit.”

⁵⁹ For additional background reading or information, a useful source is Nicola Dahrendorf’s report entitled, “Addressing Sexual Exploitation and Abuse in MONUC: Lessons Learned Study,” published in May 2005 by the Peacekeeping Best Practices Section of the United Nations Department of Peacekeeping Operations. Available at <http://www.peacekeepingbestpractices.unlb.org/PBPS/Library/OASEA%20LL%20Paper%20Final%20Version%20WITHOUT%20Ref%20to%20Annexes.pdf> (Last visited 5/11/2019)

is reached, leaving some non-State actors on the periphery, where they can disrupt the peace and make the lives of civilians miserable, as witnessed recently in eastern Democratic Republic of Congo, Sudan and Colombia. In addition, because the enforceability of these agreements is linked to the legitimacy and accountability of these new actors, peace has proven elusive. At the end of the day, it is important to consider that, while the character of armed conflict is liable to change, its very nature, the use of violence to secure advantage over others, is eternal.

1.3 Terminology of Armed Conflicts

Armed Conflict is a violent event, an act of terrorism or an act of war? Is war internal or is it international when foreign forces prop up the government? The definition of war becomes complex when different perceptions of war and armed conflict are brought together. There is no universally agreed upon definition of ‘armed conflict.’ One can speak of different manifestations of armed conflict, such as international conflict, internal conflict, terrorism and urban violence. This section will clarify the key terms in current usage. International warfare is a conflict fought between two (or more) Nation-States and their armies. In the technical sense, it is a formal status produced by a declaration of war.⁶⁰ It has been the form of armed conflict that was the main concern for the international community for centuries. The breakup of the Soviet Union led to a shift in the global power grid, with the United States assuming the lone position of global leader, without the balancing power of the Soviet Union. This event, along with other factors, encouraged diverse groups to achieve their own autonomy, creating a proliferation of internal conflicts in the 1990s that would become of interest to the rest of the world. The most common form of warfare in the

⁶⁰ Yoram Dinstein, “War, Aggression and Self-Defense,” Cambridge: Cambridge University Press, 3rd Edition, (2001)

21st century⁶¹ is internal conflict, which is extremely varied in both cause and conduct. It is generated by the actual use of armed force, which must be comprehensive on the part of at least one party to the conflict.⁶² It is difficult to apply international humanitarian law in such settings, despite some clear guidance in Article 3 of the 1949 Geneva Conventions and the 1977 Additional Protocol II, that is specific to non-international armed conflicts. A country may experience more than one internal conflict simultaneously, as different allied or non-allied groups struggle for recognition of their issues. Myanmar and Sudan provide examples of this. Internal conflicts tend to be fought by small, poorly trained and lightly armed troops that avoid major military clashes, but often direct their attacks against civilians as ‘soft targets’ to achieve maximum impact for their cause. Asymmetric conflicts are those where one side (usually the government or a coalition of forces) has far greater technological power than the other. The battle phase is rapid and sometimes bloody. Despite a quick end to hostilities, insurgencies may linger for years, as in Iraq and Afghanistan. This form of conflict poses a challenge to the notions of reciprocity and universal rules of hostilities that are at the core of international humanitarian law.⁶³ One-sided violence is a growing trend.⁶⁴ Attacks on camps of displaced persons, bombings of markets, and massacres of civilians are examples. This violence has been recently witnessed in Colombia, Somalia and Iraq. Its use is a conscious choice to harm civilians, although it can have other objectives beyond just injuring or killing civilians. Its use may be intended to terrorize the population. In keeping with

⁶¹ In fact, 100% of current internal conflicts, according to the Human Security Centre, “Human Security Brief 2007”, Simon Fraser University, 2007, pg. 23, available on-line at <http://www.humansecuritybrief.info/access.html>. To clarify, “Iraq and Afghanistan, which many people might think of as interstate conflicts, are what [the database] calls “internationalized intrastate conflicts” – i.e., conflicts that take place within a country, but which involve foreign military forces.” pg. 32.

⁶² Supra note 38.

⁶³ For further information, see Toni Pfanner, “Asymmetrical warfare from the perspective of humanitarian law and humanitarian action,” ICRC, 2005, available on-line at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p149/\\$File/irrc_857_Pfanner.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p149/$File/irrc_857_Pfanner.pdf) (last visited 7/10/2019)

⁶⁴ Supra note 31.

this motive, patterns of violence are of low, but constant, intensity. The latest Stockholm International Peace Research Institute's Yearbook,⁶⁵ an annual, independent analysis of armed conflicts world- wide, reveals a correlation between the decrease in State-based armed conflicts over the past decade and a half and an increase in organized campaigns of one-sided violence. This development can be interpreted as a shift away from governments using traditional military tactics (combat, soldiers as targets) to the adoption of terror-based tactics, which in turn reinforce the use of terror-based tactics by government opponents. Terrorism⁶⁶ is a form of irregular warfare that entails the threat or use of violence against non-combatants, either by State or non-State actors. Its documented use dates to the first century, when religious groups used it to pursue their agenda and later, when certain States used terrorism against their enemies.⁶⁷ The threat of international terrorism by rebel groups in Europe and Latin America, as well as nationalist groups across the globe, was acute in the 1960s and 1970s. There is no internationally agreed upon definition of terrorism. An example can be found during anti-colonial wars, where groups rebelling against the colonial power were identified as terrorists by some, and as liberation fighters by others. In recent decades, a terrorist threat has emerged, with members prepared to commit suicide and use weapons of mass destruction to create great mayhem among enemies. The impact of terrorism, particularly within the 'War on Terror' paradigm, is high, even though research shows that civilians worldwide have much more reason to fear direct fighting than terrorism.⁶⁸ Terrorist actions disproportionately affect children. Counter- terrorism measures also have an impact on children. Incarceration and

⁶⁵ Produced each year by an organization based in Sweden, the SIPRI Yearbook is a summary of data and analysis of developments in security and conflicts, military spending, armaments and non-proliferation, arms control and disarmament. SIPRI's reports can be found at <http://www.sipri.org/yearbook/lay>(last visited 4/5/2019)

⁶⁶ Adapted from Richard W Mansbach and Kirsten L Taylor, "Introduction to Global Politics," Routledge, 2007

⁶⁷ These would include the government during the French Revolution and Vladimir Lenin after Russia's 1917 Bolshevik Revolution.

⁶⁸ Center for International Development and Conflict Management, "Peace and Conflict 2010: Executive Summary", CIDCM, 2009, pg. 4, available at http://www.cidcm.umd.edu/pc/executive_summary/exec_sum_2010.pdf 4/6/19(last visited 10/10/2019)

torture of children is in contravention of basic juvenile justice standards for minor offences, such as stone throwing.⁶⁹ There are many gaps in international law about terrorism, which weakens the global system of governance and justice. While the notion of ‘war’ against terrorism is based more on politics than a legal reference, it has sparked much analysis and evolving debates on the validity of international law. Many countries trying to move past a period of armed conflict find themselves immersed in a phase of urban violence. This has been particularly true in Latin America, where gang-related deaths of children are higher than in many armed conflict areas.⁷⁰ With growing, young urban populations, devastated rural areas with little or no infrastructure and limited access to basic social services, high youth unemployment, a sizeable proportion of children and youth who have witnessed and/or participated in fighting and atrocities, the continued availability of weapons and access to drugs, patterns of urban violence are quickly engrained. One analyst in El Salvador wrote: “The war may have ended, but social and political relations remain characterized by... ‘terror as usual,’ exhibiting itself through a sharp rise in street crime, a growing gang culture and high levels of violence in the private realm.”⁷¹ Urban violence may also plague a country that has not gone through armed conflict. The same factors enumerated above create violence and children and young people are often seen as perpetrators, rather than the victims they really are. Some urban areas of Brazil, for instance, have seen an increase in this type of violence. Moreover, urban settings create a challenging environment for the application of international humanitarian

⁶⁹ Coalition to Stop the Use of Child Soldiers, “Child Soldiers: Global Report 2008 - Israel”, 2008, available at <http://www.child-soldiers.org/document/get?id=13817/2018/19>(last visited 2/8/2019)

⁷⁰ Luke Dowdney, “Child combatants in organized armed violence: a study of children and adolescents involved in territorial drug faction disputes in Rio de Janeiro,” ISER/Viva Rio, Rio de Janeiro, 2002, available on-line at http://www.dreamscanbe.org/Dowdney%20-%20Child%20combatants_ENG_.pdf(last visited 9/4/2019)

⁷¹ Mo Hume, quoted in “Editorial,” *Environment and Urbanization*, Vol. 16 No. 2, 2004, pg. 6, available at <http://www.brookings.edu/views/op-ed/200410moser.pdf>(last visited 10/10/2019)

law. Among these challenges are the varied forms of violence, the jurisdiction of the State and weak or corrupted enforcement mechanisms.⁷²

1.4 Key Concept in Armed Conflicts

The topic of armed conflict is a complex area of study because there is great controversy and fast-moving debate. To better understand current thinking on the topic, it may be useful to review some key concepts. First, whatever form it takes, armed conflict directly affects peoples' human rights. Human rights are universal legal guarantees protecting individuals and groups against actions and inaction that affect their freedom and human dignity. They include the necessities to which everyone is entitled to live (among them, adequate food, privacy, safety, education) and other crucial aspects of life, such as participation and non-discrimination.

At the heart of most armed conflicts is control over territory and the people and resources found within it. The system of Nation-States is central to this struggle for control. The Nation-State system rests on countries recognizing two fundamental concepts: 'territory' (a defined area of land and/or water that is in a state's possession) and 'sovereignty' (a State having independent authority over a territory).

The struggle for territorial control is waged by armed actors, but civilians will assert repeatedly that their wish is simply for peace and security to go about their daily lives. In the late 1990s, a movement emerged to reconceptualize security beyond physical and military parameters, on which the United Nations Security Council tended to focus. This movement highlighted the importance of the larger notion of human security. According to the Commission on Human Security, this

⁷² See Carlos Ivan Fuentes, "The Applicability of International Humanitarian Law to Situations of Urban Violence," available on-line at http://www.irmgard-coninxstiftung.de/fileadmin/user_upload/pdf/urbanplanet/collective_identities/Fuentes_Essay.pdf (last visited 10/11/2019)

notion refers to protecting fundamental freedoms and protecting people from critical and pervasive threats and situations, while using processes that build on people's strengths and aspirations to address these threats. Human security goes beyond the mere absence of violent conflict; it entails a situation where civilians can enjoy their human rights and can access economic opportunity, education and health.⁷³ Supporters of human security challenged the traditional notion of national security, arguing that the proper referent for security should be the individual, rather than the State. Human security posits that a people-centered view of security is necessary for national, regional and global stability.

Efforts to protect civilians, enabling them to go about their daily lives without fear, have always been at the heart of humanitarian and human rights work. In the past decade, there has been a campaign to reframe the definition of protection from a state's responsibility to refrain from certain actions during conflict (the approach of the Geneva Conventions) to a state's responsibility to protect (R2P) all civilians. The Responsibility to Protect doctrine further argues that, if States are unable or unwilling to fulfill the responsibility to protect their citizens, other States are obliged to intervene to stop mass human rights violations of international law, such as occurred in the Democratic Republic of Congo in the 1990s. Initially, such intervention is to take place through peaceful means, but if that fails, intervention may include the use of military force. The Responsibility to Protect engendered a significant shift in the humanitarian paradigm, placing

⁷³ United Nations Trust Fund for Human Security, Commission on Human Security, "Human Security Now", 2003, pg. 4, available at <http://www.humansecurity-chs.org/finalreport/English/FinalReport.pdf> (last visited 7/7/2018). The Commission's definition of human security is as follows: "to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms—freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity."

responsibility on humanitarian actors to increase their work in the field, improve their quality of reporting and increase advocacy to protect civilians.

In 2006, the United Nations Security Council adopted resolution 1674⁷⁴ reaffirming its commitment to protect people from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2008, the United Nations Secretary-General⁷⁵ appointed a Special Representative on the matter.⁷⁶ On 14 September 2009, the United Nations General Assembly adopted by consensus its first resolution on this. Although noticeably short and procedural, the resolution affirms the global commitment to this issue.⁷⁷ Civilians affected by armed conflict are, by definition, vulnerable to several hardships and a host of rights' violations and problems. Humanitarian vulnerability⁷⁸ is characterized by decreased access to essential goods and services relative to the needs of the individual. The International Committee of the Red Cross argues that vulnerability is “a result of precarious conditions of existence of individuals or collectives in combination with the

⁷⁴ Reaffirms also its condemnation in the strongest terms of all acts of violence or abuses committed against civilians in situations of armed conflict in violation of applicable international obligations with respect in particular to
(I) torture and other prohibited treatment,
(ii) gender-based and sexual violence,
(iii) violence against children,
(iv) the recruitment and use of child soldiers,
(v) trafficking in humans,
(vi) forced displacement, and
(vii) the intentional denial of humanitarian assistance, and demands that all parties put an end to such practices.....

⁷⁵ The Secretary-General is the leader of the United Nations. It is a post nominated by the Security Council and officially appointed by the General Assembly for a renewable five-year term. See www.un.org/sg/ (Last visited 5/8/2018)

⁷⁶ For further information, see the International Coalition for the Responsibility to Protect, <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/427-security-councilresolution-reaffirms-r2p> (last visited 8/9/2019)

⁷⁷ United Nations General Assembly, “Resolution 63/308. The Responsibility to Protect”, A/RES/63/308, 14 September 2009, available at <http://globalr2p.org/media/pdf/UNResolutionA63L.80Rev.1.pdf> (Last visited 10/9/2019)

⁷⁸ Adapted from “Sanctions Assessment Handbook”, UN Inter-Agency Standing Committee, 2007, available at <http://www.humanitarianinfo.org/sanctions/handbook/index.htm> (last visited 5/5/2019)

threat of a brutal change in their environment.”⁷⁹ When sanctions or other punitive measures have been enacted or if humanitarian access is intermittent, it is critical to assess the vulnerability of affected populations in order to establish an effective baseline to monitor the possible impact of armed conflict. This information should serve to better respond to the needs of the vulnerable population. A population’s living conditions may change over the course of an emergency,⁸⁰ particularly when natural disaster and armed conflict intersect. Vulnerability needs to be monitored on an ongoing basis. This requires humanitarian access to the affected population, the denial of which can be a major obstacle to the provision of humanitarian assistance and protection. Parties to the conflict may deny or delay access or may make the security situation so difficult as to force the withdrawal of a humanitarian organization. Whether the goal is to hide the worst of their actions (or inactions) or to prevent their enemies or allies of their enemies from receiving assistance, the end result deprives civilians of their basic rights, quite possibly including the right to life. Access becomes even more complicated if an armed group has been mislabeled as irrelevant, weak or unwilling to engage in humanitarian protocols and thereby excluded from humanitarian dialogues or peace talks. These dynamics are likely to further impede access to populations in need of assistance. Analyses of the Responsibility to Protect have found that one of the key obstacles to its implementation is the lack of sufficient commitment by Nation-States to ensure that atrocities and violations of human rights, including child rights, leading up to and

⁷⁹ ICRC, as quoted in “Vulnerability in Humanitarian Crisis”, Voice Out Loud, Vol. 5, May 2007, pg. 4, available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/TBRL-73NKZA/\\$file/voice-newsletter-may07.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/TBRL-73NKZA/$file/voice-newsletter-may07.pdf?openelement)(Last visited 5/6/2019)

⁸⁰ Used here, an “emergency” is an imminent or actual threat to peoples’ survival and well-being.

during armed conflict, do not take place. The authors of a recent report conclude that, among powerful nations, there is in fact “the will not to intervene.”⁸¹

Prevention of armed conflict is the goal. If achieved, it has a myriad of positive effects on the lives of children and their communities. Yet, prevention is not an all or nothing option. At a micro-level, community-based peace building initiatives that enable communities to sidestep conflict or mute its effects are valuable contributions. Equally, at the macro-level, national and regional initiatives to foster social cohesion have been essential in contributing to conflict prevention. At the international level, the United Nations Peacebuilding Commission⁸² aims to prevent the recurrence of conflicts through legal, economic and social reforms, among other actions.

1.5 Laws and Norms --- An overview

The ways in which warfare is waged change constantly, but there are always rules of one form or another. In 21st century armed conflict, “rules and regulations on war tactics are determined locally and therefore, are more difficult to influence and control at the national and international level.”⁸³

This section examines and explains fundamental concepts in the legal framework that guides work on children and armed conflict. It is vital for human rights and humanitarian workers to gain an understanding of this framework and seize opportunities to influence it at whatever level.

A fundamental element to recall when discussing the protection of civilians is the recognition that States have primary responsibility to uphold the rights of all persons within their jurisdiction. Children share the same protected universal human rights as all other persons and, in addition, they

⁸¹ The Will to Intervene Project, “Mobilizing the Will to Intervene”, Montreal Institute for Genocide and Human Rights Studies, 2009, pg. iv, available on-line at http://migs.concordia.ca/W2I/W2I_Project.html(last visited 7/9/2019)

⁸² For more details, see <http://www.un.org/peace/peacebuilding/>(last visited 6/7/2019)

⁸³ Irma Specht, as quoted in Youth, Gender and the Changing Nature of Armed Conflict, available at <http://forum.peacebuild.ca/content/view/31/40>(last visited 7/9/2019)

have certain rights as laid out in the Geneva Conventions and the United Nations Convention on the Rights of the Child, because of their dependence, vulnerability and developmental needs.⁸⁴ During times of armed conflict, all civilians enjoy equal protection under international humanitarian law, and, in addition to this, children are accorded certain special protections under the Geneva Conventions. The legal basis for the protection of children is well established in international law, although the law is still evolving and expanding to incorporate the status and protection of children and “child soldiers.” International and national law provide the framework within which those who work on behalf of children should operate, since this framework provides the components of a rights-based approach to humanitarian practice. National law refers to the set of laws that are in place in a country. This is usually the primary framework setting out the standards that apply within a state’s territory. In some cases, national laws may be more protective than international law, while in others, they provide a lower level of protection. Although armed conflict may compromise the functioning of domestic legal systems, human rights and humanitarian workers should be familiar with national laws that protect human rights and may be useful for their advocacy and programming work. The legal framework governing relations between States is known as international law. Its sources include treaties, international customs, general principles of law, judicial decisions and the work of prominent legal scholars. Sovereign States designed international law to advance their interests, to protect territory, manage violence and ensure mutual understanding of an issue and appropriate mechanisms to solve any problems that may arise. Customary international law⁸⁵ is based on the universal acceptance and consistent practice of common legal principles, whether written or unwritten. To prove that a certain rule is

⁸⁴ Slavery Convention of 1926; Art 1 and 2: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 1949; art 3,4,14,17,23,24,27,29,38,50,51,68 and 76.

⁸⁵ Action for the Rights of the Child (International Legal Standards Module), ARC Steering Committee, 2009, available at www.arc-online.org(Last visited 7/8/19)

customary, one must show that it is reflected in official State practice and that the international community is convinced that such practice is required as a matter of law. Some of the guarantees and protection found in international instruments have become part of customary international law, which means that such rules can be invoked to protect children in a country, regardless of whether it has ratified a treaty that contains that specific right or guarantee. For example, all children are protected against racial discrimination, slavery, torture or other cruel, inhuman or degrading treatment or punishment.

1.5.1 Global burden of Armed Conflicts on Child Health

Armed conflict is a public health issue.⁸⁶ An estimated 246 million children live in areas affected by conflict.⁸⁷ Forced displacement is at a record high: more than 68.5 million people, including 28 million children, are currently living as refugees, asylum seekers, stateless people, or internally displaced people.⁸⁸ Of the world's 25 million refugees, half are children: nearly 1 in 200 children across the globe.⁸⁹ The authors of the 2005 State of the World's Children report, "Childhood Under Threat," suggested that 90% of conflict-related deaths from 1990 to 2005 were civilians,

⁸⁶ Murray CJ, King G, Lopez AD, Tomijima N, Krug EG. Armed conflict as a public health problem. *BMJ*. 2002;324(7333):346–349

⁸⁷ UNICEF. Children and emergencies in 2014: facts and figures. 2015. Available at: www.unicef.org/media/files/UNICEF_Children_and_Emergencies_2014_fact_sheet.pdf. (Last visited 10/5/18), UNICEF, United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict. Machel study 10-year strategic review: children and conflict in a changing world. 2009. Available at: https://www.unicef.org/publications/index_49985 (Last visited 7/8/18) Lake A. Development must target the millions of children affected by humanitarian crises. *The Guardian*. September 11, 2015. Available at: <https://www.theguardian.com/global-development/2015/sep/11/sustainable-development-goals-target-millions-children-humanitarian-crises> (Last visited 10/8/19)

⁸⁸ United Nations High Commissioner for Refugees. Global trends: forced displacement in 2017. Available at: <http://www.unhcr.org/globaltrends2017/>. (last visited 6/21/2019), United Nations. *The Millennium Development Goals Report 2015*. New York, NY: United Nations; 2015, United Nations High Commissioner for Refugees. Figures at a glance. Available at: www.unhcr.org/figures-at-a-glance.html. (last visited 7/9/2019), UNICEF. Uprooted: the growing crisis for refugee and migrant children. 2016. Available at: https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children.pdf. (last visited 6/8/2019)

Institute of Medicine. Key migration terms. 2004. Available at: <https://www.iom.int/key-migration-terms>. (Last visited 7/11/2018)

⁸⁹ Ibid

many of whom were children.⁹⁰ However, the precise effect of any given armed conflict on child health is difficult to determine.⁹¹ Conflicts disrupt the health information systems that report morbidity and mortality under typical circumstances.⁹² As a result, most published estimates of the population health effects of armed conflict are based on media reports and official pronouncements from governments and combating parties, which may politicize or intentionally misrepresent information.⁹³ Deaths are also difficult to verify, and this may lead to underestimation. For example, in a report by the UN special rapporteur on children and armed conflict, it was estimated that thousands of children had died in the Syrian conflict in 2015.⁹⁴ However, only 591 child deaths were verified by the UN, which accounts for barely 0.01% of the 50,000 deaths that other analysts had estimated to have occurred during that year.⁹⁵ Other problems in estimating the child health impact of armed conflict include the near absence of population-level data on morbidity and the tendency to aggregate child and adult data. As a result, there are no pooled estimates for the total number of children killed, injured, orphaned, handicapped, and/or psychologically traumatized by exposure to armed conflicts.

⁹⁰ UNICEF. *State of the World's Children: Childhood Under Threat*. New York, NY: UNICEF; 2005.

⁹¹ Uppsala Conflict Data Program. Number of conflicts: 1975–2017. Available at: <http://ucdp.uu.se/>. (last visited 7/8/2019), International Institute for Strategic Studies. The armed conflict database. Available at: <https://www.iiss.org/en/Publications/ACD>. (Last visited 5/7/2019), Armed Conflict Event Location and Event Data Project. Available at: <https://www.acleddata.com/> (Last visited 9/6/2019).

⁹² Supra note 64.

⁹³ Ibid, Uppsala Conflict Data Program. How are UCDP data collected? 2016. Available at: www.pcr.uu.se/research/ucdp/faq/#How_are_UCDP_data_collected_. (last visited 7/5/2019)

⁹⁴ Children and Armed Conflict. *Report of the UN Secretary General*. General Assembly Seventieth Session. Agenda Item 68. New York, NY: United Nations; 2016.

⁹⁵ Heidelberg Institute for International Conflict Research. *Conflict Barometer 2015*. Heidelberg, Germany: Department of Political Science, University of Heidelberg; 2016, Supra note 69.

1.5.2 Problems of Armed conflicts

The problems of armed conflicts have led to grave dislocation of the life of children in society. For example, the conflict in Yemen is having a serious impact on children's right to a quality education. Worryingly, the number of children in need of assistance to access education has risen year on year, reaching 4.7 million by the end of 2018.⁹⁶ The UN reports annually on the six grave violations⁹⁷ of children's rights in Yemen, which have been committed by several parties to the conflict, including the Saudi-led coalition, Ansar Allah (otherwise known as the Houthis) and other armed parties. One of these violations is attacks on schools. Reports of attacks on schools have risen dramatically since 2015, and UN assessments confirm over 2,000 schools are not fit for purpose due to physical damage caused by the conflict as well as the presence of armed parties.⁹⁸ The UN has identified 95 attacks on schools between 2015 and 2017⁹⁹ which meet the evidence requirement to be classified as a grave violation. Three quarters of these have been conducted by the Saudi- led coalition.¹⁰⁰

Where schools remain safe and undamaged, insufficient teachers hamper their operation, due to non-payment of salaries, and inadequate basic resources, including drinking water and latrines.¹⁰¹

⁹⁶ UN OCHA (14 February 2019), Yemen: 2019 Humanitarian Needs Overview

⁹⁷ The UN has identified six violations that warrant priority attention by the international community: 1) killing or maiming of children, 2) recruitment or use of child soldiers, 3) rape and other forms of sexual violence against children, 4) abduction of children, 5) attacks against schools or hospitals and 6) denial of humanitarian access to children. These six grave violations were selected because of their ability to be monitored, their egregious nature and the severity of their consequences on children's lives (<http://s3.amazonaws.com/inee-assets/resources/SixGraveViolationspaper.pdf>(last visited 12/2/2019)

⁹⁸ UN OCHA (14 February 2019), Yemen: 2019 Humanitarian Needs Overview

⁹⁹ UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict News (2 June 2016), Shock at the Scale of Grave Violations Committed Against Children in 2015, UN Security Council, UN General Assembly Report (24 August 2017) Children and armed conflict, Report of the Secretary-General.

¹⁰⁰ UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict News (27 June 2018), Annual Report of the Secretary-General on Children and Armed Conflict.

¹⁰¹Ibid

War Child research, carried out in December 2018 across ten districts in Yemen, also highlighted that families are often concerned for the safety of children at and on their way to schools, this often leads to parents keeping children at home. Even when at school, it is difficult for children to learn as they struggle to deal with the psychological impact of living through war and the effects of hunger and malnourishment.¹⁰²

These factors are having a disproportionate impact on girls' access to education during the conflict, with the UN reporting that 36% of girls are currently out of school compared to 24% of boys.¹⁰³ In many cases, families have de-prioritized girls' education as a reaction to economic hardship and greater fear for their safety. Child marriage figures have undergone a threefold increase between 2017 and 2018.¹⁰⁴

Setbacks in children's education not only have consequences for the lives of individuals but also for the development and prosperity of the country. Damage to the education sector now will have long-lasting consequences, impacting the education of future generations.

Despite the urgency of need, UN Yemen humanitarian response plans have remained underfunded year on year, with the education cluster securing less than half (43%) of appeal amounts requested between 2011 and 2018.¹⁰⁵

1.5.3 Direct effects of Armed Conflicts on child health

The kinds of injuries children sustain from armed conflict vary depending on the nature of combat, with all age groups being affected. In Iraq and Afghanistan, the most common forms of war trauma

¹⁰² Id at 80

¹⁰³ UN OCHA (14 February 2019), Yemen: 2019 Humanitarian Needs Overview

¹⁰⁴ Ibid

¹⁰⁵ UN OCHA Financial Tracking Service, Yemen 2018 (Humanitarian response plan) s

in children are blast and bullet injuries.¹⁰⁶ Blast injuries are caused by explosions and result in shockwave and shearing injuries, penetrating trauma, burns, crush injuries, and contamination injuries from the explosive device or environment.¹⁰⁷ Children suffering from blast injuries usually present with multiple injury sites and types. Burns and severe head and neck injuries, and particularly penetrating head trauma,¹⁰⁸ are the most common and the most lethal.¹⁰⁹ This pattern differs from blast injury in adults, who more often suffer injuries to the extremities.¹¹⁰ The high prevalence of penetrating trauma sustained by children in combat zones also differs markedly from pediatric trauma in the United States, where blunt trauma is more common and mortality is significantly lower.¹¹¹ Pediatric trauma patients in combat zones have high mortality rates, which are likely attributable to both the severity of the injuries sustained as well as barriers in accessing adequate and timely care.¹¹² Chemical warfare has been documented in numerous conflicts dating back to World War I.¹¹³ Despite international law banning the development, stockpiling, and use of chemical weapons,¹¹⁴ reports of the continued use of these weapons

¹⁰⁶ Creamer KM, Edwards MJ, Shields CH, Thompson MW, Yu CE, Adelman W. Pediatric wartime admissions to US military combat support hospitals in Afghanistan and Iraq: learning from the first 2,000 admissions. *J Trauma*. 2009;67(4):762–768

¹⁰⁷ Champion HR, Holcomb JB, Young LA. Injuries from explosions: physics, biophysics, pathology, and required research focus. *J Trauma*. 2009;66(5):1468–1477; discussion 1477

¹⁰⁸ Klimo P Jr, Ragel BT, Jones GM, McCafferty R. Severe pediatric head injury during the Iraq and Afghanistan conflicts. *Neurosurgery*. 2015;77(1): 1–7; discussion 7

¹⁰⁹ Edwards MJ, Lustik M, Eichelberger MR, Elster E, Azarow K, Coppola C. Blast injury in children: an analysis from Afghanistan and Iraq, 2002–2010. *J Trauma Acute Care Surg*. 2012;73(5):1278–1283

¹¹⁰ Edwards MJ, Lustik M, Eichelberger MR, Elster E, Azarow K, Coppola C. Blast injury in children: an analysis from Afghanistan and Iraq, 2002–2010. *J Trauma Acute Care Surg*. 2012;73(5):1278–1283

¹¹¹ Borgman M, Matos RI, Blackbourne LH, Spinella PC. Ten years of military pediatric care in Afghanistan and Iraq. *J Trauma Acute Care Surg*. 2012;73(6, suppl 5): S509–S513

¹¹² *Ibid*

¹¹³ Fitzgerald GJ. Chemical warfare and medical response during World War I. *Am J Public Health*. 2008;98(4):611–62, Cook-Deegan R, Hu H, Shukri A. *Winds of Death: Iraq's Use of Poison Gas Against its Kurdish Population*. Boston, MA: Physicians for Human Rights; 1989, Leaning J, Barron RA, Rumack BH. *Bloody Sunday: Trauma in Tbilisi*. Boston, MA: Physicians for Human Rights; 1990 and *Middle East Watch; Physicians for Human Rights. Unquiet Graves: The Search for the Disappeared in Iraqi Kurdistan*. New York, NY: Human Rights Watch; 1992

¹¹⁴ Organization for the Prohibition of Chemical Weapons. Chemical weapons convention. Available at: <https://www.opcw.org/chemical-weapons-convention/> (last visited 5/14/208)

against civilian populations have been issued as recently as May 2018.¹¹⁵ Children are thought to be at higher risk of toxicity from chemical weapons because of their smaller mass, higher respiratory rate and minute volume, smaller airway diameter, lower fluid reserve, lower seizure threshold, and more limited cardiovascular stress response when compared with adults.¹¹⁶ Estimates suggest that the prevalence of rape and sexual exploitation of children in armed conflict is increasing.¹¹⁷ In addition to the psychological trauma of sexual violence during armed conflict, girls who suffer rape are less likely than adults to seek medical attention and are at increased risk for sexually transmitted infections (STIs), pregnancy, obstetric or gynecologic complications (e.g., vesicovaginal fistulas), and subsequent infertility.¹¹⁸ Boys also experience rape and STIs, although they are less likely than girls to report these violations because of stigma.¹¹⁹ Those who survive their experiences suffer from psychological trauma and often face stigma and exclusion when they return to their communities.¹²⁰ Children born of rape during armed conflicts are a population that requires special attention. Girls who become pregnant as a result of rape may have ambivalent feelings toward their children, and the children may not be accepted into their communities.¹²¹

¹¹⁵Organization for the Prohibition of Chemical Weapons. Report of the OPCW fact-finding mission in Syria regarding an alleged incident in Saraqib, Syrian Arab Republic on February 4, 2018. 2018. Available at: https://www.opcw.org/fileadmin/OPCW/S_series/2018/en/s-1626-2018_e_.pdf (last visited 5/22/2018)

¹¹⁶ Rotenberg JS, Newmark J. Nerve agent attacks on children: diagnosis and management. *Pediatrics*. 2003;112(3, pt 1):648–658

¹¹⁷Betancourt TS, Borisova II, de la Soudière M, Williamson J. Sierra Leone's child soldiers: war exposures and mental health problems by gender. *J Adolesc Health*. 2011;49(1):21–28

¹¹⁸ Malemo Kalisya L, Lussy Justin P, Kimona C, et al. Sexual violence toward children and youth in war-torn eastern Democratic Republic of Congo. *PLoS One*. 2011;6(1): e15911.

¹¹⁹ Humphreys G. Healing child soldiers. *Bull World Health Organ*. 2009;87(5):330–331

¹²⁰ Betancourt TS, Agnew-Blais J, Gilman SE, Williams DR, Ellis BH. Past horrors, present struggles: the role of stigma in the association between war experiences and psychosocial adjustment among former child soldiers in Sierra Leone. *Soc Sci Med*. 2010;70(1):17–26

¹²¹ Bilukha OO, Brennan M. Injuries and deaths caused by unexploded ordnance in Afghanistan: review of surveillance data, 1997-2002. *BMJ*. 2005;330(7483):127–128

1.5.4 Environmental hazards

Armed conflict creates environmental hazards that continue to affect children long after hostilities have ended. Landmines and unexploded ordnances pose a major risk for death and disability for decades.¹²² Studies from Afghanistan, Eritrea, Laos, and Nepal revealed that children accounted for approximately half of all injuries caused by explosive remnants of war.¹²³ Children are most likely to sustain injuries to the upper extremities, face, and torso.¹²⁴ These injury patterns are seen because children are most often injured while playing, tampering with an explosive device, or performing economic activities, such as herding livestock.¹²⁵ Chemical weapons and other chemical contaminants can also have long-term effects. A recent systematic review and meta-analysis of the association between Agent Orange and birth defects in Vietnam revealed that children born to individuals who had been exposed to Agent Orange were nearly twice as likely to have birth defects than children of individuals who were unexposed.¹²⁶ The destruction of buildings, water supplies, wastewater systems, factories, fuel stations, and farms has been shown to limit access to potable water and sanitation and release infectious and chemical contaminants

¹²² Bilukha OO, Brennan M, Anderson M. The lasting legacy of war: epidemiology of injuries from landmines and unexploded ordnance in Afghanistan, 2002-2006. *Prehosp Disaster Med.* 2008;23(6):493–499

¹²³ Bilukha OO, Laurence H, Danee L, Subedi KP, Becknell K. Injuries and deaths due to victim-activated improvised explosive devices, landmines and other explosive remnants of war in Nepal. *Inj Prev.* 2011;17(5):326–331, Morikawa M, Taylor S, Persons M. Deaths and injuries due to unexploded ordnance (UXO) in northern Lao PDR (Laos). *Injury.* 1998;29(4):301–304 and Hanevik K, Kvåle G. Landmine injuries in Eritrea. *BMJ.* 2000;321(7270):1189

¹²⁴ Mousavi B, Soroush MR, Masoumi M, et al. Epidemiological study of child casualties of landmines and unexploded ordnances: a national study from Iran. *Prehosp Disaster Med.* 2015;30(5):472–477, Bendinelli C. Effects of land mines and unexploded ordnance on the pediatric population and comparison with adults in rural Cambodia. *World J Surg.* 2009;33(5):1070–1074.

¹²⁵ Bilukha OO, Brennan M, Anderson M, Tsitsaev Z, Murtazaeva E, Ibragimov R. Seen but not heard: injuries and deaths from landmines and unexploded ordnance in Chechnya, 1994-2005. *Prehosp Disaster Med.* 2007;22(6):507–512, Save the Children; UNICEF. *Small Hands Heavy Burden: How the Syria Conflict Is Driving More Children into the Workforce.* Amman, Jordan: Save the Children; 2015.

¹²⁶ Ngo AD, Taylor R, Roberts CL, Nguyen TV. Association between Agent Orange and birth defects: systematic review and meta-analysis. *Int J Epidemiol.* 2006;35(5):1220–1230.

into the air, water, and soil.¹²⁷The long-term effects of these hazards on child health have not been well studied.

1.6 Damage to Health, public infrastructures and targeting of health facilities.

The destruction of health care and public health systems is a major cause of morbidity and mortality in children affected by armed conflict. Children, especially those younger than 5 years old, bear the highest burden of indirect conflict-related death.¹²⁸ Lower respiratory tract infections, diarrhea, measles, malaria, and malnutrition are among the leading causes of mortality in children in conflict-affected areas.¹²⁹The deterioration of health systems during armed conflict is characterized by the destruction of physical infrastructure, disruptions in supply chains, and the diversion of state funds from health to the military.¹³⁰Health workers and health care facilities are increasingly targeted by combatants, resulting in the killing and flight of the health workforce.¹³¹ In some recent instances, military operations have been conducted under the guise of public health services, thus undermining local trust in health workers and placing health teams at risk for attack.¹³² Families may be increasingly reluctant to seek medical care at both formal and informal

¹²⁷ United Nations Environment Programme. Environmental Assessment of the Gaza Strip Following the Escalation of Hostilities in December 2008 – January 2009. Nairobi, Kenya: United Nations Environment Programme; 2009.

¹²⁸ Toole MJ, Waldman RJ. The public health aspects of complex emergencies and refugee situations. *Annu Rev Public Health.* 1997; 18:283–312, Zwi AB, Grove NJ, Kelly P, Gayer M, Ramos-Jimenez P, Sommerfeld J. Child health in armed conflict: time to rethink. *Lancet.* 2006;367(9526):1886–1888 and Kruk ME, Freedman LP, Anglin GA, Waldman RJ. Rebuilding health systems to improve health and promote state-building in post-conflict countries: a theoretical framework and research agenda. *Soc Sci Med.* 2010;70(1):89–97.

¹²⁹ Requejo JH, Bryce J, Barros AJ, et al. Countdown to 2015 and beyond: fulfilling the health agenda for women and children. *Lancet.* 2015;385(9966):466–476.

¹³⁰ Human Rights Watch; Safeguarding Health in Conflict Coalition. Attacks on Health: Global Report. New York, NY: Human Rights Watch; 2015, Berry I, Berrang-Ford L. Leishmaniasis, conflict, and political terror: a spatiotemporal analysis. *Soc Sci Med.* 2016; 167:140–149, Physicians for Human Rights. A map of attacks on health care in Syria. Available at: <http://physiciansforhumanrights.org/library/multimedia/a-map-of-attacks-on-health-care-in-syria.html> (last visited 5/14/2018) and Connolly MA, Gayer M, Ryan MJ, Salama P, Spiegel P, Heymann DL. Communicable diseases in complex emergencies: impact and challenges. *Lancet.* 2004;364(9449):1974–1983.

¹³¹ Chan M, Lake A. Statement on Attacks on Medical Facilities and Personnel in the Syrian Arab Republic. Geneva, Switzerland: World Health Organization; 2016

¹³² Riaz H, Rehman A. Polio vaccination workers gunned down in Pakistan. *Lancet Infect Dis.* 2013;13(2):120.

health facilities,¹³³ fearing that children in the facilities will be targeted by attacks.¹³⁴ Sieges, snipers, and active fighting may also prevent families from traveling to health facilities. The conditions created by armed conflict compromise key public health functions, including vaccine delivery, health surveillance, and disease outbreak investigation,¹³⁵ resulting in increased rates of infectious disease transmission.¹³⁶ Previously eradicated, vaccine-preventable diseases may reemerge in conflict-affected areas, as evidenced by an outbreak of polio in the Syrian Arab Republic in 2013.¹³⁷ Similarly, there is a clear relationship between violent conflict and the incidence of HIV and/or AIDS, tuberculosis, and malaria.¹³⁸ Countries experiencing high levels of armed conflict or political terror are also vulnerable to other diseases associated with crowding, population displacement, and lack of access to health care, such as the neglected tropical disease leishmaniasis.¹³⁹ Indeed, there is a direct dose-response relationship between the intensity of violent conflict and the incidence of cutaneous and visceral leishmaniasis.¹⁴⁰ Food may be used as a weapon of war, and the effect of food insecurity on child health is exacerbated by the destruction of health and public health programs used to target malnutrition. Attacks on crops and livestock, food stores and shops, and transport links compromise the food supply during periods of conflict, and infrastructure and agriculture may require years to recover after the cessation of hostilities.¹⁴¹ Children in conflict and humanitarian settings have high levels of moderate and severe acute

¹³³ World Health Organization. Donor Update 2016. Damascus, Syria: World Health Organization; 2016

¹³⁴ Id at 109

¹³⁵ Beyrer C, Villar JC, Suwanvanichkij V, Singh S, Baral SD, Mills EJ. Neglected diseases, civil conflicts, and the right to health. *Lancet*. 2007;370(9587):619–627

¹³⁶ Ghobarah HA, Huth P, Russett B. The post-war public health effects of civil conflict. *Soc Sci Med*. 2004;59(4):869–884.

¹³⁷ Akil L, Ahmad HA. The recent outbreaks and reemergence of poliovirus in war and conflict-affected areas. *Int J Infect Dis*. 2016; 49:40–46.

¹³⁸ Ibid

¹³⁹ Id 109

¹⁴⁰ Ibid

¹⁴¹ Supra note 109, Medecins Sans Frontieres. Syria: starvation continues in Madaya - MSF denounces continued blockage of essential aid and medical evacuations. 2016. Available at: www.msf.org/en/article/syria-starvation-continues-madaya-msf-denounces-continued-blockage-essential-aid-and-medical (last visited 5/14/2018)

malnutrition, anemia, and other nutritional deficiencies.¹⁴² For example, a report on South Sudanese refugee children living in camps in Ethiopia described global acute malnutrition rates of 25% to 30% in children 6 months to 5 years of age with a severe acute malnutrition prevalence of 5.7% to 10%.¹⁴³

1.6.1 Forced Displacement

Whether within the borders of the country or across international boundaries, carries with it specific health risks and needs that are influenced by conditions before the journey, during travel, and in the place of arrival.¹⁴⁴ Low- income regions host 85% of refugees worldwide.¹⁴⁵ Children who are forcibly displaced have more limited access to health care and basic services when compared with local populations even in countries with longstanding refugee resettlement programs.¹⁴⁶ In addition, children who are forcibly displaced often lack access to other basic needs,

¹⁴² Bilukha OO, Jayasekaran D, Burton A, et al; Division of Global Health Protection, Center for Global Health; Centers for Disease Control and Prevention (CDC). Nutritional status of women and child refugees from Syria/Jordan, April-May 2014. *MMWR Morb Mortal Wkly Rep.* 2014;63(29):638–63, Andresen E, Bilukha OO, Menkir Z, et al; Centers for Disease Control and Prevention. Notes from the field: malnutrition and elevated mortality among refugees from South Sudan - Ethiopia, June-July 2014. *MMWR Morb Mortal Wkly Rep.* 2014;63(32):700–701 and Centers for Disease Control (CDC). Nutritional status of Somali refugees– eastern Ethiopia, September 1988-May 1989. *MMWR Morb Mortal Wkly Rep.* 1989;38(26):455–456, 461–463.

¹⁴³ Andresen E, Bilukha OO, Menkir Z, et al; Centers for Disease Control and Prevention. Notes from the field: malnutrition and elevated mortality among refugees from South Sudan - Ethiopia, June-July 2014. *MMWR Morb Mortal Wkly Rep.* 2014;63(32):700–70

¹⁴⁴ Gushulak BD, MacPherson DW. Health aspects of the pre-departure phase of migration. *PLoS Med.* 2011;8(5): e1001035, Lynch C, Roper C. The transit phase of migration: circulation of malaria and its multidrug-resistant forms in Africa. *PLoS Med.* 2011;8(5): e1001040 and Zimmerman C, Kiss L, Hossain M. Migration and health: a framework for 21st century policy-making. *PLoS Med.* 2011;8(5): e1001034.

¹⁴⁵ United Nations High Commissioner for Refugees. Global trends: forced displacement in 2017. Available at: [http:// www. unhcr. org/ globaltrends2017/](http://www.unhcr.org/globaltrends2017/) (last visited 6/19/2018)

¹⁴⁶ Habib RR, Hojeij S, Elzein K, Chaaban J, Seyfert K. Associations between life conditions and multi-morbidity in marginalized populations: the case of Palestinian refugees. *Eur J Public Health.* 2014;24(5):727–733, Cáceres DC, Izquierdo VF, Mantilla L, Jara J, Velandia M. Epidemiologic profile of the population displaced by the internal armed conflict of the country in a neighborhood of Cartagena, Colombia, 2000 [in Spanish]. *Biomedica.* 2002;22(suppl 2):425–444.

such as food, potable water, adequate sanitation, and education.¹⁴⁷ Crowding of people who are displaced in camps and urban areas has been associated with outbreaks of cholera and other communicable diseases.¹⁴⁸ Disruptions in immunization programs and a simultaneous worsening of sanitary and living conditions are associated with outbreaks of vaccine-preventable diseases, such as measles, meningitis, and pertussis.¹⁴⁹

Children who are displaced are at elevated risk for trafficking, violence, and exploitation, including sexual violence, labor, detention by government authorities, xenophobic attacks from the general public, bullying in schools, and domestic violence.¹⁵⁰ Half of primary school-aged children who are refugees and 75% of adolescent refugees are out of school.¹⁵¹

1.6.2 Effects of Armed Conflicts on Children’s mental and psychological Health

Exposure to armed conflict has social and psychological repercussions that endure long after the termination of hostilities.¹⁵² As with physical health, post conflict mental health is dependent on multiple factors, including mental health status before the conflict, the nature of the conflict, exposure to stressors, and the cultural and community context.¹⁵³ Children who are affected by war have an increased prevalence of posttraumatic stress disorder (PTSD), depression, anxiety, and

¹⁴⁷ Davidson N, Skull S, Burgner D, et al. An issue of access: delivering equitable health care for newly arrived refugee children in Australia. *J Paediatr Child Health*. 2004;40(9–10):569–575.

¹⁴⁸ Connolly MA, Gayer M, Ryan MJ, Salama P, Spiegel P, Heymann DL. Communicable diseases in complex emergencies: impact and challenges. *Lancet*. 2004;364(9449):1974–1983.

¹⁴⁹ Ibid

¹⁵⁰ UNICEF. Uprooted: the growing crisis for refugee and migrant children. 2016. Available at: https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children. Pdf (last visited 5/14/2018)

¹⁵¹ United Nations High Commissioner for Refugees, *Global Education Monitoring Report. No More Excuses: Provide Education to All Forcibly Displaced People*. Paris, France: United Nations Educational, Scientific and Cultural Organization; 2016.

¹⁵² Betancourt TS, Meyers-Ohki SE, Charrow AP, Tol WA. Interventions for children affected by war: an ecological perspective on psychosocial support and mental health care. *Harv Rev Psychiatry*. 2013;21(2):70–91.

¹⁵³ Krug E, Dahlberg L, Mercy J, Zwi A, Lozano R, eds. *Collective violence*. In: *World Report on Violence and Health*. Geneva, Switzerland: World Health Organization; 2002.

behavioral and psychosomatic complaints.¹⁵⁴ Pooled estimates from a systematic review of nearly 8000 children who were exposed to war revealed that the prevalence of PTSD is 47%, that of depression is 43%, and that of anxiety is 27%, although rates are lower among children with more remote exposures.¹⁵⁵ Young children ages 0 to 6 years exhibit increased anxiety, fear, startling, attention seeking, temper tantrums, sadness, and crying as well as difficulty sleeping alone and frequent awakenings.¹⁵⁶ They are more likely to suffer psychosomatic symptoms, such as stomach aches and irregular bowel movements, and they demonstrate alterations in their play, which can become either more aggressive or more withdrawn.¹⁵⁷ Parental mental health has an important influence on the mental health of children affected by conflict, particularly in young children.¹⁵⁸ Adolescents with cumulative exposure to war events and those with PTSD resulting from war events have also been found have significantly higher rates of substance abuse.¹⁵⁹ The mental health impact of displacement appears to vary depending on where children are resettled. Factors that negatively affect mental health and social wellbeing among children who are displaced in low- and middle-income countries (LMICs) include exposure to mass trauma and

¹⁵⁴ Ibid

¹⁵⁵ Attanayake V, McKay R, Joffres M, Singh S, Burkle F Jr, Mills E. Prevalence of mental disorders among children exposed to war: a systematic review of 7, 920 children. *Med Confl Surviv*. 2009;25(1):4–19.

¹⁵⁶ Slone M, Mann S. Effects of war, terrorism and armed conflict on young children: a systematic review. *Child Psychiatry Hum Dev*. 2016;47(6):950–965.

¹⁵⁷ Ibid

¹⁵⁸ Id 134

¹⁵⁹ Schiff M, Pat-Horenczyk R, Benbenishty R, Brom D, Baum N, Astor RA. High school students' posttraumatic symptoms, substance abuse and involvement in violence in the aftermath of war. *Soc Sci Med*. 2012;75(7):1321–1328.

family violence,¹⁶⁰ displacement,¹⁶¹ social isolation, loss of social status, and perceived discrimination.^{162, 163} Among children who are resettled in high-income countries, risk factors for negative mental health outcomes include exposure to postmigration violence, multiple changes of residence in host countries, parental exposure to violence, poor financial support, having a single parent, and having a parent with a psychiatric disorder.¹⁶⁴ Learning problems in these children have been associated with traumatic experiences, detention, barriers in communication, low expectations from teachers, bullying, and discrimination.¹⁶⁵

1.6.3 Children unaccompanied and separated:

Armed conflict separates children from their families, as evidenced by the increasing numbers of children fleeing conflict between both state and non-state actors without parents or guardians. The number of children who are unaccompanied and separated who applied for asylum worldwide nearly tripled in 2015 to a staggering 98,400 children.¹⁶⁶ These children often do not possess official documents, making it challenging for authorities to identify their age, risks, needs, and

¹⁶⁰ Sriskandarajah V, Neuner F, Catani C. Parental care protects traumatized Sri Lankan children from internalizing behavior problems. *BMC Psychiatry*. 2015; 15:203.

¹⁶¹ Sriskandarajah V, Neuner F, Catani C. Parental care protects traumatized Sri Lankan children from internalizing behavior problems. *BMC Psychiatry*. 2015; 15:203

¹⁶² *Supra* note 131,

¹⁶³ Reed RV, Fazel M, Jones L, Panter-Brick C, Stein A. Mental health of displaced and refugee children resettled in low-income and middle-income countries: risk and protective factors. *Lancet*. 2012;379(9812):250–265.

¹⁶⁴ Fazel M, Reed RV, Panter-Brick C, Stein A. Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors. *Lancet*. 2012;379(9812):266–282.

¹⁶⁵ Graham HR, Minhas RS, Paxton G. Learning problems in children of refugee background: a systematic review. *Pediatrics*. 2016;137(6): e20153994.

¹⁶⁶ United Nations High Commissioner for Refugees. Global trends: forced displacement in 2017. Available at: <http://www.unhcr.org/globaltrends2017/> (last visited 6/19/2018)

rights to protection.¹⁶⁷ Health workers may be asked to assess their age, but a lack of reliable methods and the use of arbitrary practices place these children at risk for inappropriate treatment by authorities.¹⁶⁸ When they are identified by authorities and brought into state care, children who are unaccompanied and separated may face migration detention, discriminatory treatment, long delays in family reunification (if reunification is possible), and limited access to health care, social services, and education¹⁶⁹.¹⁷⁰ Health issues of particular concern include infections, nutritional deficiencies, and mental health problems relating to their traumatic experiences, particularly anxiety, depression, and PTSD¹⁷¹.¹⁷² Their young age, lack of documentation, and subsequent barriers in access to care and protection place children who are unaccompanied and separated at a high risk for trafficking and exploitation even after they are in the care of responsible authorities

¹⁶⁷ Aynsley-Green A, Cole TJ, Crawley H, Lessof N, Boag LR, Wallace RM. Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control. *Br Med Bull.* 2012; 102:17–42

¹⁶⁸ Hjern A, Brendler-Lindqvist M, Norredam M. Age assessment of young asylum seekers. *Acta Paediatr.* 2012;101(1):4–7

¹⁶⁹ UNICEF. Uprooted: the growing crisis for refugee and migrant children. 2016. Available at: https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children. Pdf (last visited 5/14/2018)

¹⁷⁰ Linton JM, Griffin M, Shapiro AJ; Council on Community Pediatrics. Detention of immigrant children. *Pediatrics.* 2017;139(5): e20170483.

¹⁷¹ Marquardt L, Krämer A, Fischer F, Prüfer-Krämer L. Health status and disease burden of unaccompanied asylum-seeking adolescents in Bielefeld, Germany: cross-sectional pilot study. *Trop Med Int Health.* 2016;21(2):210–218

¹⁷² Jensen TK, Skårdalsmo EM, Fjermestad KW. Development of mental health problems - a follow-up study of unaccompanied refugee minors. *Child Adolesc Psychiatry Ment Health.* 2014; 8:29, Bean T, Derluyn I, Eurelings-Bontekoe E, Broekaert E, Spinhoven P. Comparing psychological distress, traumatic stress reactions, and experiences of unaccompanied refugee minors with experiences of adolescents accompanied by parents. *J Nerv Ment Dis.* 2007;195(4):288–297, Hodes M, Jagdev D, Chandra N, Cunniff A. Risk and resilience for psychological distress amongst unaccompanied asylum-seeking adolescents. *J Child Psychol Psychiatry.* 2008;49(7):723–732.

in the destination country.¹⁷³ Of the nearly 90 000 unaccompanied minors who applied for asylum in Europe in 2015,¹⁷⁴ at least 10 000 have gone missing.¹⁷⁵

1.6.4 Children with remote exposure to Armed Conflict.

Children With Remote Exposure to Armed Conflict, Children who are not in close proximity to or are displaced by armed conflict may also face health and social risks related to the conflict. News and media coverage of war and extreme violence events have been shown to increase PTSD symptoms among US school children.¹⁷⁶ Children of deployed US military personnel have higher rates of emotional and behavioral problems and substance abuse¹⁷⁷, ¹⁷⁸ and are at a higher risk for physical abuse and neglect both during and after parental return from deployment.¹⁷⁹

¹⁷³ Bhabha J. Seeking asylum alone: treatment of separated and trafficked children in need of refugee protection. *Int Migr.* 2004;42(1):141–148

¹⁷⁴ Eurostat. Almost 90 000 Unaccompanied Minors Among Asylum Seekers Registered in the EU in 2015. Aachen, Luxembourg: Eurostat Press Office; 2016.

¹⁷⁵ European Parliament Press Release. Fate of 10, 000 missing refugee children debated in Civil Liberties Committee. 2016. Available at: www.europarl.europa.eu/pdfs/news/expert/infopress/20160419IPR23951/20160419IPR23951_en.Pdf (last visited 5/14/2018)

¹⁷⁶ Pfefferbaum B, Seale TW, Brandt EN Jr, Pfefferbaum RL, Doughty DE, Rainwater SM. Media exposure in children one hundred miles from a terrorist bombing. *Ann Clin Psychiatry.* 2003;15(1):1–8.

¹⁷⁷ White CJ, de Burgh HT, Fear NT, Iversen AC. The impact of deployment to Iraq or Afghanistan on military children: a review of the literature. *Int Rev Psychiatry.* 2011;23(2):210–217.

¹⁷⁸ Siegel BS, Davis BE; Committee on Psychosocial Aspects of Child and Family Health and Section on Uniformed Services. Health and mental health needs of children in US military families. *Pediatrics.* 2013;131(6). Available at: www.pediatrics.org/cgi/content/full/131/6/e2002 (last visited 5/10/2018)

¹⁷⁹ Ibid, Taylor CM, Ross ME, Wood JN, et al. Differential child maltreatment risk across deployment periods of US Army soldiers. *Am J Public Health.* 2016;106(1):153–158, Rabenhorst MM, McCarthy RJ, Thomsen CJ, Milner JS, Travis WJ, Colasanti MP. Child maltreatment among U.S. Air Force parents deployed in support of Operation Iraqi Freedom/ Operation Enduring Freedom. *Child Maltreat.* 2015;20(1):61–71.

1.7 Delicate and Dangerous special groups of Children associated with Armed Groups.

Children are recruited or forced to participate in armed conflict in many different ways, including as soldiers, cooks, domestic workers, porters, human shields, mine sweepers, gang members, and sex slaves.¹⁸⁰

The number of children associated with armed forces and armed groups worldwide is unknown but is thought to run into the hundreds of thousands,¹⁸¹ suggesting a pervasive violation of the UNCRC optional protocol on the involvement of children in armed conflict.¹⁸² Children are recruited into armed conflict because they are easier to condition and control in part because their cognitive and social development is not yet complete.¹⁸³ The description given by children released from the Lord's Resistance Army in Uganda and the Democratic Republic of the Congo provides insight into the harrowing process of turning a child into a soldier: newly abducted children are placed in strictly controlled environments, socially isolated, forced to deidentify with their families

¹⁸⁰ UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict. Working paper no. 3, children and justice during and in the aftermath of armed conflict. 2011. Available at: www.refworld.org/docid/4e6f2f132.html (last visited 5/14/2018), UNICEF. State of the World's Children: Childhood Under Threat. New York, NY: UNICEF; 2005, Betancourt TS, Borisova II, de la Soudière M, Williamson J. Sierra Leone's child soldiers: war exposures and mental health problems by gender. *J Adolesc Health*. 2011;49(1):21–28, Betancourt TS, Borisova I, Williams TP, et al. Psychosocial adjustment and mental health in former child soldiers—systematic review of the literature and recommendations for future research. *J Child Psychol Psychiatry*. 2013;54(1):17–36.

¹⁸¹ UNICEF. The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups. New York, NY: UNICEF; 2007

¹⁸² United Nations Human Rights Office of the High Commissioner. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. 2000. Available at: www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCR.aspx (last visited 5/14/2018)

¹⁸³ UNICEF. State of the World's Children: Childhood Under Threat. New York, NY: UNICEF; 2005

and communities, and made to develop new identities.¹⁸⁴To force the acquisition of these new identities, children may be required to kill members of their own families.¹⁸⁵

A more recent phenomenon is the use of children as young as 8 years old to conduct suicide bombings.¹⁸⁶ This phenomenon has a disproportionate impact on girls, who constitute up to 40% of Children associated with armed groups¹⁸⁷ but three-quarters of child suicide bombers,¹⁸⁸Children who were associated with armed groups experience particular physical, developmental, and mental health risks; barriers in access to health services; and significant obstacles to social reintegration. In addition to physical injury and death, they are at high risk for HIV and other STIs, obstetric complications, and substance abuse.¹⁸⁹Social isolation, loss of identity, and being forced to act in strictly defined gendered roles negatively affect mental health and can result in a disconnect between these children and their families and communities on return to civilian life.¹⁹⁰ Abduction, younger age of conscription, exposure to violence, female sex, and community stigma are associated with PTSD, depression, anxiety, and hostility.¹⁹¹ Those who have lost parents and/or were involved in raping, injuring, or killing have worse mental health outcomes than those who have not.¹⁹²Children associated with armed groups display gendered differences in mental health outcomes, with girls being more likely to have anxiety, depression,

¹⁸⁴ Kelly JT, Branham L, Decker MR. Abducted children and youth in Lord's Resistance Army in Northeastern Democratic Republic of the Congo (DRC): mechanisms of indoctrination and control. *Confl Health*. 2016;10(1):11

¹⁸⁵ Supra note 162, UNICEF. *State of the World's Children: Childhood Under Threat*. New York, NY: UNICEF; 2005

¹⁸⁶ UNICEF Regional Office for West and Central Africa. *Beyond Chibok*. 2016. Available at: https://www.unicef.org/infobycountry/files/Beyond_Chibok.Pdf (last visited 9/14/2018)

¹⁸⁷ War Child. Key facts and statistics about child soldiers. Available at: <https://www.warchild.org.uk/issues/child-soldiers> (last visited 6/9/2018)

¹⁸⁸ Id 168

¹⁸⁹ Humphreys G. Healing child soldiers. *Bull World Health Organ*. 2009;87(5):330–331

¹⁹⁰ Kelly JT, Branham L, Decker MR. Abducted children and youth in Lord's Resistance Army in Northeastern Democratic Republic of the Congo (DRC): mechanisms of indoctrination and control. *Confl Health*. 2016;10(1):11

¹⁹¹ UNICEF. *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. New York, NY: UNICEF; 2007

¹⁹² Betancourt TS, Borisova II, de la Soudière M, Williamson J. Sierra Leone's child soldiers: war exposures and mental health problems by gender. *J Adolesc Health*. 2011;49(1):21–28

and feelings of hostility than boys.¹⁹³ Protective factors for psychosocial adjustment include perceptions of respect, understanding, and acceptance from family members; social support; and educational and economic opportunities.¹⁹⁴ ¹⁹⁵Despite growing knowledge about their health risks and needs, children who were associated with armed groups continue to face social stigma and have limited access to treatment and rehabilitative care.¹⁹⁶

Furthermore, states are increasingly arresting and detaining children who are perceived to be associated or potentially associated with armed groups,¹⁹⁷ and these children are often held in conditions that violate their rights as articulated in the UNCRC and do not meet international standard of juvenile justice¹⁹⁸

1.8 Intergenerational Effects of Armed Conflicts on Children

Stressful emotions can be passed from one generation to the next, but maternal buffering provides an important damping effect, so that children are less affected than their parents. Children exhibit a form of resilience¹⁹⁹ that is related in turn to their mothers' wellbeing, quality of caregiving and

¹⁹³ Betancourt TS, Borisova I, Williams TP, et al. Psychosocial adjustment and mental health in former child soldiers—systematic review of the literature and recommendations for future research. *J Child Psychol Psychiatry*. 2013;54(1):17–36

¹⁹⁴ Id at 173

¹⁹⁵ Betancourt TS, Borisova II, Williams TP, et al. Sierra Leone's former child soldiers: a follow-up study of psychosocial adjustment and community reintegration. *Child Dev*. 2010;81(4):1077–1095

¹⁹⁶ UNICEF. *State of the World's Children: Childhood Under Threat*. New York, NY: UNICEF; 2005, Humphreys G. Healing child soldiers. *Bull World Health Organ*. 2009;87(5):330–331, UNICEF. *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. New York, NY: UNICEF; 2007

¹⁹⁷ Hamilton C, Anderson K, Barnes R, Dorling K. *Administrative Detention of Children: A Global Report*. New York, NY: UNICEF; 2011

¹⁹⁸ Ibid

¹⁹⁹ Betancourt TS, Khan KT. The mental health of children affected by armed conflict: protective processes and pathways to resilience. *Int Rev Psychiatry*. 2008; 20:317–328.

environmental support²⁰⁰, but traumatic events, such as those occurring in a conflict, may override this buffering. For example, children of Australian veterans of the Vietnam war were found to have a suicide rate three times that of the general community²⁰¹ and elevated rates of PTSD and other mental illness have been described in the offspring of Holocaust survivors²⁰². Mothers, but not fathers, who were themselves offspring of Holocaust survivors had ‘higher levels of psychological stress and less positive parenting,’ while in the grand-offspring generation, children had less positive self-perception and were said by their peers to show ‘inferior emotional, instrumental, and social functioning’²⁰³.

There is also evidence of intergenerational mental health effects in non-conflict settings, and these are likely to be exacerbated by conflict. A meta-analysis by Surkan *et al.* showed that maternal depression or depressive symptoms were associated with 95% of children being underweight and 95% for stunting. The reasons for this include poorer antenatal care, increased risk-taking behaviors and impaired maternal caring²⁰⁴, with reduced or early cessation of breastfeeding as one

²⁰⁰ Chu AT, Lieberman AF. Clinical implications of traumatic stress from birth to age five. *Annu Rev Clin Psychol.* 2010; 6:469–494. doi: 10.1146/annurev.clinpsy.121208.131204.

²⁰¹ Australian Institute of Health and Welfare. Morbidity of Vietnam Veterans. Suicide in Vietnam Veterans’ Children, Supplementary Report 1. 1. Canberra: Australian Institute of Health and Welfare; 2000.

²⁰² Kellerman NP. Psychopathology in children of Holocaust survivors: a review of the research literature. *Isr J Psychiatry Relat Sci.* 2001; 38:36–46., Yehuda R, Bell A, Bierer LM, Schmeidler J. Maternal, not paternal, PTSD is related to increased risk for PTSD in offspring of Holocaust survivors. *J Psychiatr Res.* 2008; 42:1104–1111. doi: 10.1016/j.jpsychires.2008.01.002, Scharf M, Mayseless O. Disorganizing experiences in second- and third-generation holocaust survivors. *Qual Health Res.* 2011; 21:1539–1553. doi: 10.1177/1049732310393747, Gangi S, Talamo A, Ferracuti S. The long-term effects of extreme war-related trauma on the second generation of Holocaust survivors. *Violence Vict.* 2009; 24:687–700. doi: 10.1891/0886-6708.24.5.687, Summerfield D. The psychological legacy of war and atrocity: the question of long-term and transgenerational effects and the need for a broad view. *J Nerv Ment Dis.* 1996; 184:375–377.

²⁰³ Scharf M. Long-term effects of trauma: psychosocial functioning of the second and third generation of Holocaust survivors. *Dev Psychopathol.* 2007; 19:603–622

²⁰⁴ Patel V, Rahman A, Jacob KS, Hughes M. Effect of maternal mental health on infant growth in low-income countries: new evidence from South Asia. *BMJ.* 2004; 328:820–823.

possible mediator²⁰⁵. Maternal mental illness has also been linked to children's cognitive abilities²⁰⁶. In India, maternal common mental disorder was associated negatively with mental development in infants at six months of age²⁰⁷ and, in Barbados, with cognitive outcomes²⁰⁸. The latter association persisted when assessed via a school entrance exam at 11 to 12 years of age²⁰⁹.

Infectious diseases can affect subsequent generations through direct effects on pregnant women or through the effects of long-term morbidity on their future health, reproductive capacity and finances. The Spanish influenza outbreak, which resulted in up to forty million deaths, is considered to have originated in and been exacerbated by the conditions of the First World War²¹⁰, and research on prenatal exposure suggests both long-term health costs, such as increased rates of cardiovascular disease and potentially increased disability, and economic penalties²¹¹. More specifically, infection *in utero* may lead to abortion or congenital malformations, and many infections can trigger premature birth. A fall in immunization rates may be accompanied by reductions in herd immunity: outbreaks of rubella, which can lead to severe congenital abnormalities, occurred during the conflict in Bosnia and Herzegovina²¹². Congenital infections

²⁰⁵ Galler JR, Harrison RH, Biggs MA, Ramsey F, Forde V. Maternal moods predict breastfeeding in Barbados. *J Dev Behav Pediatr.* 1999; 20:80–87, Falceto OG, Giugliani ER, Fernandes CL. Influence of parental mental health on early termination of breast-feeding: a case-control study. *J Am Board Fam Pract.* 2004; 17:173–183.

²⁰⁶ Murray L, Cooper P. Effects of postnatal depression on infant development. *Arch Dis Child.* 1997; 77:99–101.

²⁰⁷ Patel V, DeSouza N, Rodrigues M. Postnatal depression and infant growth and development in low-income countries: a cohort study from Goa, India. *Arch Dis Child.* 2003; 88:34–37.

²⁰⁸ Galler JR, Harrison RH, Ramsey F, Forde V, Butler SC. Maternal depressive symptoms affect infant cognitive development in Barbados. *J Child Psychol Psychiatry.* 2000; 41:747–757.

²⁰⁹ Galler JR, Ramsey FC, Harrison RH, Taylor J, Cumberbatch G, Forde V. Postpartum maternal moods and infant size predict performance on a national high school entrance examination. *J Child Psychol Psychiatry.* 2004; 45:1064–1075.

²¹⁰ Oxford JS, Sefton A, Jackson R, Innes W, Daniels RS, Johnson NP. World War I may have allowed the emergence of “Spanish” influenza. *Lancet Infect Dis.* 2002; 2:111–114, Erkoreka A. Origins of the Spanish Influenza pandemic (1918–1920) and its relation to the First World War. *J Mol Genet Med.* 2009; 3:190–194

²¹¹ Mazumder B, Almond D, Park K, Crimmins EM, Finch CE. Lingering prenatal effects of the 1918 influenza pandemic on cardiovascular disease. *J Dev Orig Health Dis.* 2010; 1:26–34, Almond D. Is the 1918 influenza pandemic over? Long-term effects of in utero influenza exposure in the post-1940 U.S. population. *J Polit Econ* 2006. 114:672–712.

²¹² Novo A, Huebschen JM, Muller CP, Tesanovic M, Bojanic J. Ongoing rubella outbreak in Bosnia and Herzegovina, March–July 2009—preliminary report. *Euro Surveill.* 2009;14 pii: 19343.

lead to impaired cognitive development, respiratory and gastrointestinal disease, and may leave children vulnerable to infections during their lifetime ²¹³.

Malnourished mothers pass on the stress to their children, whose poor nutritional status may affect subsequent generations. In the Dutch Hunger Winter of 1944 to 1945 during the German occupation, maternal under-nutrition was associated with increased risk of low birth weight²¹⁴. Although not directly attributed to malnutrition, a higher proportion of babies were born with moderate low birth weight in Croatia during the war period (1991 to 1995) ²¹⁵. Low birth weight is the strongest risk factor for mortality in early infancy ²¹⁶and is associated with reduced educational attainment and physical work capacity²¹⁷. Subtler effects include maternal micronutrient deficiencies, such as iron deficiency anemia²¹⁸, and conditions that directly affect the fetus, such as neural tube defects associated with folate deficiency ²¹⁹. Prenatal malnutrition, leading to low birth weight, results in lower subsequent height and lean mass²²⁰. Short maternal stature is associated with an increased risk of gestational diabetes, macrosomia, and birth injury and shorter gestation ²²¹. Among Hmong refugees from the Second Indochina war, children

²¹³ Saigal S, Doyle LW. An overview of mortality and sequelae of preterm birth from infancy to adulthood. *Lancet*. 2008; 371:261–269.

²¹⁴ Lumey LH. Decreased birthweights in infants after maternal in utero exposure to the Dutch famine of 1944–1945. *Paediatr Perinat Epidemiol*. 1992; 6:240–253.

²¹⁵ Brialic I, Rodin U, Vrdoljak J, Plavec D, Capkun V. Secular birth weight changes in liveborn infants before, during, and after 1991–1995 homeland war in Croatia. *Croat Med J*. 2006; 47:452–458.

²¹⁶ Hogue CJ, Buehler JW, Strauss LT, Smith JC. Overview of the national infant mortality surveillance (NIMS) project—design, methods, results. *Public Health Rep*. 1987; 102:126–138.

²¹⁷ Victora CG, Adair L, Fall C, Hallal PC, Martorell R, Richter L, Sachdev HS. Maternal and child undernutrition: consequences for adult health and human capital. *Lancet*. 2008; 371:340–357.

²¹⁸ Pena-Rosas JP, Viteri FE. Effects and safety of preventive oral iron or iron folic acid supplementation for women during pregnancy. *Cochrane Database Syst Rev*. 2009;4 CD004736.

²¹⁹ De-Regil LM, Fernandez-Gaxiola AC, Dowswell T, Pena-Rosas JP. Effects and safety of periconceptional folate supplementation for preventing birth defects. *Cochrane Database Syst Rev*.

²²⁰ Wells JC, Chomtho S, Fewtrell MS. Programming of body composition by early growth and nutrition. *Proc Nutr Soc*. 2007;66:423–434

²²¹ Gudmundsson S, Henningsson AC, Lindqvist P. Correlation of birth injury with maternal height and birthweight. *BJOG*. 2005;112:764–767, Mykkestad K, Vatten LJ, Magnussen EB, Salvesen KA, Romundstad PR. Do parental heights influence pregnancy length? A population-based prospective study, HUNT 2. *BMC Pregnancy Childbirth*. 2013; 13:33.

displaced during infancy were shorter as adults, whereas children born during the war were found to have greater adiposity, particularly central adiposity ²²². Such growth penalties may take generations to resolve. Maternal short stature is a risk factor for obstructed labor, Caesarean section, and low birth weight ²²³, potentially generating a long-term intergenerational cycle ²²⁴. Contrasting with sperm production in men, women's ova are formed primarily early in life, and damage to the reproductive system in young girls, from infections, trauma or harmful substances, for example, can have long-term effects on their reproductive capacity and their children²²⁵

1.9 CONCLUSION

Armed conflict is a neglected social determinant of child health, and the acute and chronic effects of armed conflict on child health and wellbeing are among the greatest child rights violations of the 21st century. The destructive effects of conflict include all 6 grave child rights violations as well as a broad range of both direct and indirect effects that follow children through the life course and into adulthood. Despite the extraordinary number of children living in areas affected by conflict, our understanding of the scale of conflict's effects on children, the nuances of these effects, and ways to mitigate and treat them remain limited.

²²² Clarkin PF. Adiposity and height of adult Hmong refugees: relationship with war-related early malnutrition and later migration. *Am J Hum Biol.* 2008; 20:174–184.

²²³ Fishman SM, Caulfield L, de Onis M. In: *Comparative Quantification of Health Risks: Global and Regional Burden of Disease Attributable to Selected Major Risk Factors*. Ezzati M, Lopez AD, Rodgers A, Murray CLJ, editor. Geneva: World Health Organization; 2004. Childhood and maternal underweight; pp. 39–161, Maternal anthropometry and pregnancy outcomes. A WHO collaborative study. *Bull World Health Organ.* 1995; 73:1–98, Horta BL, Gigante DP, Osmond C, Barros FC, Victora CG. Intergenerational effect of weight gain in childhood on offspring birthweight. *Int J Epidemiol.* 2009; 38:724–732

²²⁴ Wells JC. Maternal capital and the metabolic ghetto: an evolutionary perspective on the transgenerational basis of health inequalities. *Am J Hum Biol.* 2010; 22:1–17

²²⁵ Greenfeld C, Flaws JA. Renewed debate over postnatal oogenesis in the mammalian ovary. *BioEssays.* 2004; 26:829–832, Bukovsky A, Caudle MR, Svetlikova M, Wimalasena J, Ayala ME, Dominguez R. Oogenesis in adult mammals, including humans: a review. *Endocrine.* 2005; 26:301–316.

In many armed conflicts, schools and educational facilities are used by combatant forces, including government forces, as bases for combat and to recruit children. The result is reduced school enrollment, high dropout rates, lower educational attainment, poor schooling conditions, and the exploitation of children. Despite regional and international prohibition, this madness continues.

A lot have been done in theory to mitigate the effects of Armed conflicts on Children involved in armed conflict and its intergenerational effects, but it is too little and discouraging. There is the need to be more active and proactive by regional and international players and policy makers in a more pragmatic and honest manner. This is what this Dissertation is poised to explore in subsequent chapters.

CHAPTER TWO

2.0 THE LEGAL REGIMES OF ARMED CONFLICT

2.1 International Legal Instruments for the protection of Children involved in Armed Conflicts

The current international law and legal instruments for the protection of Children involved in Armed conflicts, spanned across: International human Rights law and International humanitarian law, International criminal law and labor law.

This Chapter looks in detail at the legal framework relevant to armed conflict, focusing on the protection of children during and after conflicts occur. Legal protections for children are contained principally in two bodies of international law – International Humanitarian Law and International Human Rights Law.²²⁶

International Humanitarian Law (also known as the law of war or law of armed conflict) is the body of law that regulates the methods and means of warfare and the treatment of people in times of war, including those who are not participating in the hostilities (civilians) and those who are no longer participants (prisoners of war or injured soldiers, for example).²²⁷

On the other hand, International Human Rights Law primarily regulates the ways in which States treat people under their jurisdiction. While human rights law is not specifically designed to protect persons during times of armed conflict, its provisions remain applicable²²⁸

²²⁶ International treaties are only binding on a State if: The State has ratified the text (i.e., agreed formally to be bound by it). It must be noted that States will not be bound by certain provisions of a treaty, if they have entered a reservation (an intention to not be bound) to specific articles on ratification; or the relevant provisions have acquired the status of customary international law, which applies regardless of ratification.

²²⁷ See, for example, International Committee of the Red Cross (ICRC), International Humanitarian Law and International Human Rights Law, Similarities and Differences, available at: http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf(last visited 10/10/2020)

²²⁸ Ibid

These two distinct, yet complementary, areas of law will be examined in turn. This Chapter will not list every humanitarian law and human rights instrument related to the protection of children during and post-conflict. Instead, key instruments will be discussed in chronological order, to illustrate the evolution of the legal and normative framework,²²⁹ beginning with the adoption of the Geneva Conventions in 1949.

2.2 The Geneva Conventions (1949) and its additional Protocols.

The overarching goal of the four Geneva Conventions is the protection of victims of international conflicts. Geneva Convention I²³⁰ concerns the treatment and protection of members of the armed forces who are wounded and sick in the field. Geneva Convention II²³¹ regulates the treatment and protection of members of the armed forces who are shipwrecked or wounded and sick at sea.

Geneva Convention III²³² provides a framework for the treatment and protection of prisoners of war. Geneva Convention IV²³³ addresses the treatment and protection of civilian persons in times of war, occupation or internment. Geneva Convention IV was the first treaty that exclusively sought to provide protection for civilians during armed conflict; however, it is mainly concerned with the treatment of civilians who are in the hands of an opposing party or who are victims of war, rather than with regulating the conduct of parties to a conflict in order to protect civilians. Importantly, in its general protection measures for civilians,²³⁴ the Convention incorporated a

²²⁹ This section sets out both binding international instruments and standards that have been adopted by UN bodies.

²³⁰ 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

²³¹ 1949 Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

²³² 1949 Geneva Convention III Relative to the Treatment of Prisoners of War.

²³³ 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War.

²³⁴ . Articles 13-26, Geneva Convention IV. These articles are primarily concerned with the provision of medical facilities and supplies.

limited number of obligations on parties to a conflict to provide special protection to children.²³⁵ These include allowing free passage of food, clothing and medicine intended for children²³⁶ and assisting children who are separated or orphaned.²³⁷ State parties are also permitted to establish hospital and safety zones to protect children, as well as other vulnerable groups.²³⁸

Yet, most Convention provisions do not afford protection to all children under 18 years of age. This is because the legal definition that all persons under 18 years are children, and are therefore entitled to special protection, did not exist in 1949 and was only accepted by the international community with the adoption of the UN Convention on the Rights of the Child in 1989.

Although Geneva Convention IV only provides limited protection for children, its provisions are applicable to every armed conflict because, not only are 194 States party to the 1949 Geneva Conventions, but these conventions are now considered (at least in large part) to be customary international law.²³⁹ Although the Geneva Conventions mainly apply to international armed conflicts, Common Article 3 (so-called because the Article is contained in all four of the Geneva Conventions) requires that parties to an internal conflict provide a limited set of fundamental guarantees to non-combatants.²⁴⁰ Although this Article applies to both State and non-State

²³⁵ There are also a number of provisions that provide specific protection for pregnant women, for example, “... expectant mothers shall be the object of particular protection and respect” (Article 16).

²³⁶ Article 23, Geneva Convention IV

²³⁷ Article 24, Geneva Convention IV

²³⁸ . Article 14, Geneva Convention IV

²³⁹ See, for example, UN Security Council, “Report of the Secretary-General pursuant to paragraph 2 of the Security Council resolution 808 on the Establishment of the International Criminal Tribunal for Yugoslavia”, S/25704, 1993, available on-line at http://www.un.org/ga/search/view_doc.asp?symbol=S/25704(Last visited 11/9/2020) The Secretary-General stated that the law enshrined in the four Geneva Conventions had become part of customary international law.

²⁴⁰ This includes former combatants who are no longer taking part in hostilities due to injury, sickness or for any other reason (Article 3(1), Geneva Convention IV).

combatants, it is recognized that this Article is insufficient to address and regulate the growing number and diversity²⁴¹ of internal conflicts

2.4 Additional Protocols to the Geneva Conventions (1977)

In 1977, the international community adopted two Additional Protocols to the Geneva Conventions. Additional Protocol I²⁴² extended protection for those caught up in international conflicts, by updating the rules applicable to the conduct of hostilities, while Additional Protocol II²⁴³ provided minimum guarantees to be upheld in non-international (internal) conflicts.

2.5 Additional Protocol I

Additional Protocol I broadened the protection afforded to children in international conflicts, declaring that they shall be the object of special respect and be protected from any form of indecent assault. Parties to the conflict must also provide them with the care and aid that they require.²⁴⁴ Significantly, Additional Protocol I set the minimum age for recruitment by armed forces and for the direct participation of children in armed conflict. This was the first time that the issue of children associated with armed groups and armed forces was addressed in a binding international document. The Protocol set 15, not 18, years as the minimum age for participation

²⁴¹ For example, the application of law to guerilla warfare needed to be addressed.

²⁴² 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, available at: <http://www2.ohchr.org/english/law/protocol1.htm>.

According to the ICRC website, available at

[http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.pdf](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (Last visited 5/6/2020) as of 10 November 2009, there were 168 States party to this instrument.

²⁴³ 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, available at

<http://www2.ohchr.org/english/law/protocol2.htm>. According to the ICRC website, available at

[http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.pdf](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (Last visited 8/8/2020) as of 10 November 2009, there were 164 States party to this instrument

²⁴⁴ Article 77(1), Additional Protocol I

and recruitment.²⁴⁵ Limited juvenile justice guarantees are provided for in Article 77 of the Additional Protocol I. Children who commit a crime related to the armed conflict are to be held separately from adults, unless families are being accommodated together in family units. Moreover, individuals are not to be subjected to the death penalty for a crime they committed when they were under 18 years of age.²⁴⁶ Article 78 of Additional Protocol I address the evacuation of children from war-torn countries, providing that children are not to be evacuated, unless there are compelling reasons.²⁴⁷ This condition averts the risk of removal for the purposes of ethnic cleansing or unnecessary reasons. This represents a major change in practice from World War II when mass evacuations of children took place. Prior to any evacuation, parental consent is to be sought, if the parents can be found²⁴⁸ and everything is to be done to ensure that children are reunited with their parents when the danger has passed.²⁴⁹ In addition, a child's education is to continue if he or she is evacuated.²⁵⁰

2.6 Additional Protocol II

Additional Protocol II was the first binding international document to directly address the conduct of parties in non-international armed conflicts, developing the basic guarantees enshrined in Common Article 3 of the Geneva Conventions. Yet, this Protocol has fewer provisions and restricts the conduct of parties to the conflict far less than the provisions in Additional Protocol I. In addition, its application is restricted to conflicts that fulfil the criteria laid out in Article

²⁴⁵ . Article 77(2) & (3), Additional Protocol I

²⁴⁶ Articles 77(4) & (5) respectively, Additional Protocol I

²⁴⁷ Article 78(1), Additional Protocol I

²⁴⁸ Article 78(1), Additional Protocol I

²⁴⁹ Article 78(3), Additional Protocol I

²⁵⁰ . Article 78(2), Additional Protocol I; it must be noted that slightly different rules apply to evacuation carried out by one's own State and evacuation carried out by the authorities of another.

1.²⁵¹ Additional Protocol II contains a similar, if somewhat curtailed, version of the child protection provisions contained in Additional Protocol I. Under Additional Protocol II, children are entitled to the care and aid that they require. Specifically, children are entitled to education,²⁵² to be reunited with their families when they have been temporarily separated²⁵³ and to be removed from conflict zones to safer areas in the country.²⁵⁴ Before removal, if possible, consent should be obtained from their parents or guardians and they should be accompanied by persons who are responsible for their safety and well-being. In addition, both Protocols state that children who are prosecuted for criminal offences related to the armed conflict must not be subject to the death penalty, if they were under 18 years at the time of their offence.²⁵⁵ Significantly, Additional Protocol II recognizes that children need protection from recruitment by both government and armed opposition groups.²⁵⁶ As with Additional Protocol I, the minimum age for recruitment and participation in hostilities is maintained at 15 years.

²⁵¹ Additional Protocol II applies to all conflicts that are not covered by Additional Protocol I, that take place in the territory of a State that is party to the Protocol, between its armed forces and rebel armed forces or other organized armed groups. Nongovernmental groups must be under responsible command and exercise enough control over part of the State's territory as to enable them to, firstly, carry out sustained and concerted military operations, and secondly, to implement Protocol II (Article 1). There are therefore internal conflicts in which both Common Article 3, discussed above, and Protocol II apply, and internal conflicts in which only Common Article 3 applies. In particular, Common Article 3 does not require State armed forces to be involved in the conflict, unlike Protocol II, and it is applicable at a much lower level of intensity of conflict, for example, nongovernment forces do not be in control of territory.

²⁵² Article 4(3)(a), Additional Protocol II

²⁵³ . Article 4(3)(b), Additional Protocol II

²⁵⁴ Article 4(3)(e), Additional Protocol II

²⁵⁵ Article 6(4), Additional Protocol II

²⁵⁶ . Article 4(3)(c), Additional Protocol II

2.7 United Nations General Assembly Declarations on the Protection of Women and Children in Emergency and Armed Conflict (1974)

In 1974, the United Nations General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict. Although this declaration is not legally binding on the parties to a conflict, it succeeded in drawing international attention to the plight of women and children as victims of inhuman acts and the importance of increasing protection for these vulnerable groups in internal conflicts²⁵⁷

2.8 Conventions on Conventional Weapons (1980)

The growing sophistication of weaponry has not reduced the impact of armed conflict on civilians and children. Landmines and cluster bombs leave an indiscriminate and deadly legacy, while the proliferation of light weapons has significantly increased the use of children as soldiers.²⁵⁸ Recognizing the impact these weapons have on civilians and youth, the international community has made attempts to regulate their transfer and use.²⁵⁹ In 1980, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be

²⁵⁷ United Nations General Assembly, "Resolution 3318 (XXIX): Declaration on the Protection of Women and Children in Emergency and Armed Conflict", A/RES/29/3318, 1974, available on-line at <http://www.un-documents.net/a29r3318.htm>(Last visited 10/12/2020)

²⁵⁸ . United Nations, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001), 10 October 1980. According to the United Nations Treaty Collection website, available at <http://treaties.un.org>(Last visited 3/8/2020) as of 18 November 2009, there were 50 Signatories and 110 Parties to this instrument

²⁵⁹ . In addition to the instruments listed below, the international community has adopted the following: Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and Warfare (1925); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993).

Excessively Injurious or to Have Indiscriminate Effects²⁶⁰ was adopted. It protects military personnel, civilians, and civilian assets from the impact of certain weapons. The Convention is made up of five Protocols dealing with different weaponry.²⁶¹ Protocol II of the Convention (Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices),²⁶² which entered into force in 1983, specifically regulates the transfer and use in international armed conflicts of all landmines, including anti-personnel mines. Also included are rules for marking and mapping minefields and the removal of mines at the end of wars. Importantly, Protocol II was amended in May 1996 to extend its application to non-international armed conflicts²⁶³ and to strengthen the rules relating to the use and transfer of mines. Still, this Convention and Amended Protocol II fall far short of a worldwide ban on landmines and made an insignificant impact on their transfer and use.

2.9 Conventions on the Prohibition of the Use, Stockpiling, Production, and the Transfer of Anti-Personnel Landmines and on their Destruction (1997) (also known as the Ottawa Treaty and the Mine Ban Treaty)

There are two types of landmines – anti-personnel mines, activated by a person, and anti-vehicle mines, which take a much heavier weight to activate them. Both types of landmines are used

²⁶⁰ . United Nations, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001), 10 October 1980.

²⁶¹ . Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention), 1980; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 1980; Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 1980; Protocol on Blinding Laser Weapons (Protocol IV), 1995; Protocol on Explosive Remnants of War (Protocol V), 2003; available on-line at <http://www.icrc.org/ihl.nsf/TOPICS?OpenView#Methods%20and%20Means%20of%20Warfare> (Last visited 10/10/2019)

²⁶² Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May, 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996)

²⁶³ Article 1(3), Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II), 1996

widely and remain a threat for years, if not decades, after a conflict has ended. A landmine, unlike a bullet or a bomb, is not aimed at a specific ‘enemy’ soldier or territory. Instead, it kills and maims indiscriminately those who are unlucky enough to stumble upon it. The mine cannot distinguish a soldier from a civilian and does not respect a ceasefire.²⁶⁴ Children are particularly vulnerable to injury and death by anti-personnel landmines because: they are closer to the center of the blast and their chances of surviving massive loss of blood are minimal; they are often victims of their own curiosity and love of play, something they are eager to resume following the cessation of hostilities. Mines, which come in different shapes, sizes, and colors, can be enticing to children; children perform jobs that are crucial to the economic survival of the family, such as tending livestock, scavenging, gathering firewood and collecting water. These tasks are often carried out in heavily mined areas; and it has become widespread practice in some areas for children to be paid a small amount of money to retrieve landmines for re-sale.

Children’s lives can be devastated in the short and long term when they sustain horrific injuries caused by landmines. Children’s employment and their economic prospects suffer dramatically when they have disabilities. Opportunities for education also become limited, as they are unable to get to school or learn in a normal school environment. For many children, especially girls, their prospects for marriage and stability in adult life are severely diminished. These practical difficulties compound the deep emotional trauma suffered, for which adequate counselling is rarely available. An inter-governmental conference, spearheaded by Canada, was held in Ottawa in 1996 to bring together States, who were dissatisfied with the 1980 Convention on

²⁶⁴ The Mine Ban Treaty is the common name for the Convention on the Prohibition of the Use, Stockpiling, Production and the Transfer of Anti-Personnel Landmines and on their Destruction 1997 (entered into force 1 March 1999). For full text of the Convention, see http://www.un.org/Depts/mine/UNDocs/ban_trty.htm (Last visited 10/15/2019)

Conventional Weapons, to draft and enact a real international ban of anti-personnel mines, without exceptions, exemptions or loopholes. The conference resulted in the Ottawa Declaration, which called for their global ban.

During the following year, the International Campaign to Ban Landmines²⁶⁵ worked with governmental agencies and local, national and international organizations on the text and the recommendations that came out of the inter-governmental conference to move the global landmine ban legislation forward. The Campaign's efforts were so successful that the Mine Ban Treaty (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction) was finalized the following year.²⁶⁶ The treaty prohibits the production, use, stockpiling or transfer of anti-personnel landmines, and requires the destruction of stockpiled landmines. It also calls for assistance for mine clearance, mine awareness and victim assistance. One particular criticism of the Convention on Conventional Weapons, Protocol II, referred to the definition of an anti-personnel mine: "Anti-personnel mine means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons".²⁶⁷ It was argued that the inclusion of the word 'primarily' allowed States to escape their obligations by asserting that the landmines they were using had a different primary purpose. Importantly, the Ottawa Treaty removed the word 'primarily,' therefore strengthening the prohibition on the use of landmines.

²⁶⁵ The International Campaign to Ban Landmines is a coalition of relevant organizations working all over the world to bring about a ban on the production, transfer and use of anti-personnel mines. For more information, see the website of the International Campaign to Ban Landmines: www.icbl.org (Last visited 4/5/2020)

²⁶⁶ As of 22 October 2009, 156 States were party to the treaty. 157. Article 2(3) Protocol II, Article 2, Ottawa Treaty 158. Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials was adopted 14 November 1997 and entered into force 1 July 1998.

²⁶⁷ . Article 2(3) Protocol II, Article 2, Ottawa Treaty

This treaty is significant because it marks the first time that countries, through international law, have agreed to completely ban a weapon that was already in widespread use.

2.10 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (1997)

At the regional level, the Organization of American States (OAS)²⁶⁸ adopted the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials in 1997. This was the first international treaty designed to prevent and eradicate illegal, transnational trafficking in firearms, ammunition and explosives.²⁶⁹ The Convention contains measures to facilitate enhanced cooperation among OAS countries to deal with illicit transnational trafficking of firearms, their parts and components, ammunition and explosives, as well as other destructive devices such as bombs, grenades, rockets, rocket launchers, missiles and missile systems.

2.11 Protocols against the Illicit Manufacturing of and Trafficking in Firearms (2001)

While there are yet no specific global treaties addressing the proliferation of small arms in relation to armed conflict, some progress has been made to curb the use of small arms in armed conflict through efforts to address transnational organized crime. In 2001, the Protocol against

²⁶⁸ Established in 1889, the Organization of American States is the world's oldest regional inter-governmental organization. For more information, see the OAS's website available at <http://www.oas.org/en/about/default.asp> (Last visited 10/10/2019)

²⁶⁹ U.S. Department of State, Fact Sheet, The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, available at http://www.fas.org/asmp/campaigns/smallarms/Cifta_FactSheet_DoS.htm (Last visited 10/9/2019)

the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention on Transnational Organized Crime,²⁷⁰ was adopted.²⁷¹ The Protocol provides an international law enforcement mechanism for crime prevention and the prosecution of traffickers. Among other things, the Protocol calls for establishing internationally recognized standards and provisions regarding marking, recordkeeping and import/export control of firearms.

The proliferation of small arms fuels internal conflict and is responsible for an increase in the use of children as soldiers, who, at an incredibly youthful age, can competently handle this weaponry to deadly effect. Regulating their trade is one important action to curb the use of children as combatants.

The First Committee of the General Assembly of the United Nations adopted on 30 October 2009 a resolution on “An Arms Trade Treaty”, by which it “decides, therefore, to convene the United Nations Conference on the Arms Trade Treaty to sit for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards

²⁷⁰ . Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (2001) (entered into force 3 July 2005), available on-line at http://www.unodc.org/pdf/crime/a_res_55/255e.pdf (Last visited 7/9/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 52 Signatories and 79 Parties to this instrument, The UN Convention on Transnational Organized Crime was adopted in 2000.

²⁷¹ The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition entered into force in 2005.

for the transfer of conventional arms.”²⁷² States were negotiating the treaty and its inclusion of small arms and light weapons.

2.12 Conventions on Cluster Munitions (2008)

Another weapon with a devastating impact on civilian populations is the cluster bomb. Cluster bombs (also referred to as cluster munitions) consist of submunitions or bomblets packed in cargo containers. Fired, launched, or dropped by aircraft or land-based artillery, the container opens in the air and disperses bomblets or submunitions over a wide area, often resulting in very dense contamination. These were originally designed to quickly block a large area of land in a battlefield to prevent tanks and soldiers from moving closer. As such, the bomblets are designed to pierce armor and can kill anyone within a range of fifty meters with its explosive lethal charge. A single cluster bomb strike can spread hundreds to thousands of bomblets over as much as one square kilometers, with no distinction between military or civilian targets during the time of its use or after conflict ends.²⁷³

By design, cluster bombs are different from landmines because they are intended to explode on impact or shortly before or after impact. Yet, a significant problem with cluster bombs is that, every time they have been used, they have had consistently high failure rates, resulting in a significant number of failed cluster bombs being left on the ground.²⁷⁴ Those that do not explode on impact become explosive remnants of war.²⁷⁵ These dud munitions become de facto

²⁷². A/C.1/64/L.38/Rev.1, First Committee of the General Assembly of the United Nations, 30 October 2009. The draft resolution was referred to the General Assembly for official adoption in December 2009.

²⁷³ International Committee of the Red Cross, “Cluster munitions and international humanitarian law”, available online at <http://icrc.org/Web/Eng/siteeng0.nsf/htmlall/section-ihl-cluster-munition?OpenDocument> (Last visited 10-12-2020)

²⁷⁴ Mines Action Canada, “Banning Cluster Munitions: Government Policy and Practice”, pg. 1, 2009, available online at <http://lm.icbl.org/index.php/publications/display?url=cm/2009/> (Last visited 08-20-2020)

²⁷⁵ . The term explosive remnants of war (ERW) include all abandoned and/or unexploded weapons and ordnance left behind after a conflict and no longer effectively controlled. See Landmine Monitor, “Lebanon,” available at

landmines and must be treated and cleared as such. The result is a similar impact on affected communities as is found with landmines – limited ability to use the land, move about freely and conduct daily life activities.

During the 2006 conflict between Israel and Lebanon, Israel fired more than 4 million bomblets into southern Lebanon over the last three days of conflict. It is estimated that one million of these failed to detonate and now contaminate the land.²⁷⁶ At one of the conference's leading up to the negotiation of a new treaty banning cluster bombs, Lebanese Ambassador Gebran Soufan stated, "Today across Lebanon unexploded submunitions are stuck in the branches of olive trees... they are on roof tops, mixed with rubble, littered across fields, farms, backyards, driveways, roads and outside of schools."²⁷⁷

Because cluster bombs are a larger, more complex weapon, requiring air or artillery equipment to launch- use of this weapon has been almost exclusively by States. Nonetheless, Hezbollah in Lebanon did fire more than 100 cluster munition rockets into northern Israel during the 2006 conflict, which is the first recorded use of cluster bombs by a non-State armed group.²⁷⁸ The most cluster bomb affected countries or areas in the world include Afghanistan, Cambodia, Chechnya, Croatia, Democratic Republic of Congo, Iraq, Kosovo, Lao PDR, Lebanon and Vietnam²⁷⁹

[http://lm.icbl.org/index.php/publications/display?act=submit&pqs_year=2007&pqs_type=lm&pqs_report=lebanon & pqs section](http://lm.icbl.org/index.php/publications/display?act=submit&pqs_year=2007&pqs_type=lm&pqs_report=lebanon&pqs_section) (Last visited 09-23-2020)

²⁷⁶ . Mines Action Canada, "Landmine Monitor Report 2007", pg. 895, available on-line at [http://lm.icbl.org/index.php/publications/display?act=submit&pqs_year=2007&pqs_type=lm&pqs_report=lebanon &pqs section](http://lm.icbl.org/index.php/publications/display?act=submit&pqs_year=2007&pqs_type=lm&pqs_report=lebanon&pqs_section) (Last visited 07-23-2020)

²⁷⁷ Mines Action Canada, "Banning Cluster Munitions: Government Policy and Practice", pg. 105, available online at <http://lm.icbl.org/index.php/publications/display?url=cm/2009/>(Last visited 07-25-2020)

²⁷⁸ Mines Action Canada, "Banning Cluster Munitions: Government Policy and Practice", pg. 106, available online at <http://lm.icbl.org/index.php/publications/display?url=cm/2009/>(Last visited 09-25-2020)

²⁷⁹ Cluster Munition Coalition, "A History of Harm", available on-line at <http://stopclustermunitions.org/theproblem/history-harm/>(Last visited 09-27-2020)

Up until December 2008, there was no international treaty that regulated the use of cluster bombs, although the same principles of customary law and international humanitarian law with respect to the use of landmines are equally relevant to cluster bombs. Humanitarian concerns have been raised about cluster bombs since the 1960s and the 1970s witnessed the first government backed proposal for a prohibition²⁸⁰ These efforts were primarily a response to the widespread use of cluster bombs in Southeast Asia. The proponents of the ban could not know at that time that unexploded submunitions from these cluster bombs would still be killing and injuring civilians in Lao PDR, Vietnam and Cambodia more than four decades later.²⁸¹

In 1999, the use of cluster bombs by the North Atlantic Treaty Organization (NATO) in the Federal Republic of Yugoslavia, particularly in Kosovo and Serbia, caused civilian casualties, both at the time of use and afterwards, rekindling international concern over these weapons.²⁸²

Large scale use of cluster bombs in Afghanistan in 2001 and 2002 and in Iraq in 2003 deepened recognition of the humanitarian and legal problems posed by these weapons.²⁸³

In response to these developments, on 13 November 2003, the Cluster Munition Coalition (CMC)²⁸⁴ was launched in The Hague. The CMC was united behind a call for the immediate moratorium on the use of cluster munitions, the acknowledgement of States' responsibility for

²⁸⁰ Landmine Monitor, "Introduction," available on-line at

http://lm.icbl.org/index.php/publications/display?url=cm/2009/CMM_Intro.html(last visited 10-12-2021)

²⁸¹ Mines Action Canada, "Banning Cluster Munitions: Government Policy and Practice", 2009, summarized from pg. 2-9, available on-line at <http://lm.icbl.org/index.php/publications/display?url=cm/2009/>(last visited 10-09-2021)

²⁸² Cluster Munition Coalition, "A History of Harm", available on-line at <http://stopclustermunitions.org/theproblem/history-harm/>(last visited 09-10-2021)

²⁸³ Cluster Munition Coalition, "A History of Harm", available on-line at <http://stopclustermunitions.org/theproblem/history-harm/> (last visited 11-20-2021)

²⁸⁴ Cluster Munition Coalition, "Cluster Munition Coalition," available on-line at <http://www.stopclustermunitions.org>(last visited 08-23-2021)

the explosive remnants they leave behind and a commitment to provide resources to areas affected by explosive remnants of war (ERW)

Cluster munitions have an enormous impact on civilian populations, especially children, both during and after armed conflict. The very nature of the weapon, which entails scattering munitions over large areas, fails to distinguish between civilians and combatants. As a result, during armed conflict, civilians are often killed or maimed by these bombs, especially when the bombs are released near or in populated areas. Additionally, a significant percentage of sub-munitions fail to detonate on impact. This leaves a dangerous, and often deadly, legacy for the civilian population, especially for children, after the conflict has ended.²⁸⁵

The Convention on Cluster Munitions completely bans cluster munitions, their use, development, production, stockpiling and transfer, as well as prohibiting the encouragement of any other party to engage in these activities.²⁸⁶ The Convention requires that States destroy their stockpiles within eight years²⁸⁷ and clear remnants of cluster munitions within 10 years of the treaty entering into force.²⁸⁸ State parties who have used cluster munitions (prior to this Convention entering into force) in the territory of another State party are strongly urged to provide technical, financial, material and human resource assistance to support the marking, clearance and destruction of munition remnants.

²⁸⁵ Full text of the Convention on Cluster Munitions is available at <http://www.clusterconvention.org>. According to the United Nations Treaty Collection website, available at <http://treaties.un.org> (Last visited 6/8/2020) as of 18 November 2009, there were 103 Signatories and 24 Parties to this instrument. The Convention will enter into force six months after it receives 30 ratifications, See the explanation of the Mine Ban Treaty (1997) for the specific impact that landmines have on children. Cluster munitions leave the same legacy for children.

²⁸⁶ Article 1, Convention on Cluster Munitions

²⁸⁷ Article 3(2), Convention on Cluster Munitions.

²⁸⁸ Article 4(1), Convention on Cluster Munitions

The Convention also obliges States to provide comprehensive and age-appropriate assistance to victims, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.²⁸⁹ States who are party to this Treaty must report regularly on their progress in implementing its provisions.

2.13 UN Convention on the Rights of the Child (1989)

Children's rights were formally recognized by the international community²⁹⁰ through the adoption of the UN Convention on the Rights of the Child (CRC) in 1989. With 196 State Parties, Somalia ratified the convention on September 21st 2020²⁹¹ the Convention has been almost universally ratified (only the United States is not a party to the Convention) and remains the most widely ratified international human rights treaty to date.

The UN Convention on the Rights of the Child defines children as all human beings under the age of 18 years.²⁹² The Convention contains a comprehensive set of economic, social and cultural rights, as well as civil and political rights, which are universal, indivisible and interdependent. There is to be no hierarchy in their implementation. Four general principles underpin the CRC: non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right for children to have their views heard and given due

²⁸⁹ Article 5, Convention on Cluster Munitions.

²⁹⁰ . It must be noted, however, that the League of Nations (the forerunner to the United Nations) endorsed the Geneva Declaration of the Rights of the Child in 1924 and the United Nations General Assembly unanimously adopted a more detailed Declaration of the Rights of the Child in 1959. However, neither of these documents is legally binding. League of Nations, Geneva Declaration of the Rights of the Child, available on-line at <http://www1.umn.edu/humanrts/instree/childrights.html>(Last visited 7/8/2020) and UN General Assembly, Declaration of the Rights of the Child, available on-line at <http://www1.umn.edu/humanrts/instree/k1drc.htm>(last visited 10/8/2020)

²⁹¹ <https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches>(Last visited 3/9/2021)

²⁹² . Article 1, Convention on the Rights of the Child

weight in all decisions affecting them (Article 12). These principles are to be considered in implementing all provisions of the Convention.

Article 38 specifically addresses the issue of protecting children in times of armed conflict, requiring States to take “all feasible measures” to ensure the protection and care of children. This Article reflects the protection contained in the Additional Protocols to the Geneva Conventions, specifically, retaining a minimum age of 15 for recruitment and direct participation in hostilities. This is the only provision of the CRC that does not apply to all children under 18 years.

Article 39 concerns the post-conflict care of children, obligating States to assist in the physical and psychological recovery and reintegration of children who are victims of armed conflict.

Article 22 addresses the rights of children seeking refugee status.

Even though the only a few provisions of the UN Convention on the Rights of the Child relate specifically to armed conflict, all of its provisions apply to children during conflict and internal disturbances and there are no provisions allowing derogation of these rights in times of national emergency. Yet, the enforcement of the Convention is limited in times of conflict. The monitoring instrument of the Convention, the UN Committee on the Rights of the Child,²⁹³ is unable to respond in situations of emergency and cannot make ad hoc recommendations or comment on situations in countries, except through concluding observations on State reports. Moreover, the Committee cannot hear individual complaints,²⁹⁴ impose sanctions on offenders, nor order victim compensation. Interestingly, education is now seen as the fourth pillar of

²⁹³ The Committee on the Rights of the Child is composed of 18 independent experts on child rights and monitors States’ implementation of the Convention on the Rights of the Child through regular reporting sessions. For more information, please see the Committee’s website at <http://www2.ohchr.org/english/bodies/crc/index.htm>(Last visited 10/8/2020)

²⁹⁴ There is a proposal to establish a complaints mechanism through an Optional Protocol to the Convention. For more information, see the Campaign for a Complaints Mechanism website available at http://www.crin.org/law/CRC_complaints/(Last visited 6/7/2020)

humanitarian assistance, along with food, clothing and shelter.²⁹⁵ Child-friendly versions of the Convention exist and are available through UNICEF and various nongovernmental organizations.

2.14 African Charter on the Rights and Welfare of the Child (1990)

The African Charter on the Rights and Welfare of the Child is the only comprehensive (covering civil, political, economic, social and cultural rights) and binding regional treaty focused on children's rights. The African Union adopted it to address perceived shortcomings in the UN Convention on the Rights of the Child, as the Convention does not fully reflect the specific realities of children in Africa.²⁹⁶

Like the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child cannot be suspended in times of armed conflict. In addition, Article 22 obliges States to “respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child” and “take all feasible measures to ensure the

²⁹⁵ In 1996, the importance of education was highlighted in Graça Machel's report to the UN Security Council on the Impact of Armed Conflict on Children (paras 184-203), A/51/306, 1996, available on-line at <http://www.un.org/children/conflict/english/reports.html> (Last visited 10/10/2020). Machel set out the mitigating impact that education can have on the effects of armed conflict on children and called for educational activity to be established as a priority for humanitarian assistance. A decade after Machel's report, the provision of education, whether formal or informal, is not only seen as important in and of itself, but is also seen by some as the fourth pillar of humanitarian assistance (for example, see UNESCO, “Educating in Emergencies, available on-line at <http://portal.unesco.org/education/en/ev.php> URL_ID=37748&URL_DO=DO_TOPIC&URL_SECTION=201.html (Last visited 6/6/2020) and Peter Buckland, “Reshaping the future: Education in post conflict reconstruction”, 2004, available on-line at [http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/\\$file/Reshaping_the_Future.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/$file/Reshaping_the_Future.pdf?openelement) (Last visited 9/9/2020)

²⁹⁶ African Charter on the Rights and Welfare of the Child, adopted on 27 June 1981 (entered into force on 21 Oct. 1986), available on-line at http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf. (Last visited 10/10/2019) According to the African Union, as of September 2018, 55 Member States were party to this instrument. For an analysis of the two instruments, see Mzikenge Chirwa, D., “The Merits and Demerits of the African Charter on the Rights and Welfare of the Child”, first appeared in “The International Journal of Children's Rights”, Volume 10, Number 2, 2002, pg. 157-177, available on-line at http://www.crin.org/docs/acrwc_merits_demerits.pdf (Last visited 9/11/2020)

protection and care of children who are affected by armed conflicts”. The Charter does not limit itself to international conflicts: “Such rules shall also apply to children in situations of internal armed conflicts, tension and strife” (Article 22).

Unlike the UN Convention on the Rights of the Child, the provisions of the African Charter apply to all children under the age of 18 years,²⁹⁷ including the provision on their recruitment and use in armed conflict: “States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child” (Article 22(2)).

2.15 Rome Statute of the International Criminal Court (1998)

The Rome Statute of the International Criminal Court (ICC), which came into force in 2002, established the first permanent, treaty-based, international criminal court.²⁹⁸

The Statute gives the court jurisdiction over the most serious crimes of concern under international law: genocide, crimes against humanity, war crimes and aggression.²⁹⁹ There are, however, some limitations to the circumstances under which the ICC can carry out prosecutions.³⁰⁰

²⁹⁷ Article 2, African Charter on the Rights and Welfare of the Child.

²⁹⁸ Rome Statute of the International Criminal Court (ICC), (entered into force 1 July 2002), available on-line at <http://untreaty.un.org/cod/icc/index.html>. (Last visited 10/9/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 139 Signatories and 110 Parties to this instrument.

²⁹⁹ Ad hoc international tribunals were set up following the conflicts in the Former Republic of Yugoslavia and Rwanda – International Criminal Tribunal for Yugoslavia (ICTY) in 1993 (established by Security Council resolution 827) and the International Criminal Tribunal for Rwanda (ICTR) in 1994 (established by Security Council resolution 955).

³⁰⁰ . Article 5, Rome Statute of the International Criminal Court, Article 12 limits the ICC’s jurisdiction to crimes committed after 1 July 2002 (when the Statute came into force); either where the individual is a national of a State Party; or where the crime was committed on the territory of a State Party; or where a non-State party agrees to the jurisdiction of the Court to prosecute a specific individual, Article 17 provides that the ICC also only has the jurisdiction to prosecute if a State is unable or unwilling to investigate and prosecute that person for one of the

The Rome Statute, which came into force in 2002, has provided a vital channel to address the impunity of those who commit atrocities against civilians and children during armed conflict. The Rome Statute established the International Criminal Court, which has jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression. In defining these crimes, specific references to children are made. According to the Rome Statute: it is a war crime to conscript or enlist children under age 15 or to use them to participate actively in hostilities; the definition of genocide includes the forcible transfer of children of one group to another; the trafficking of children is expressly included in the definition of “enslavement”, which is a crime against humanity; and it is a war crime to direct attacks against buildings dedicated to education.

In order to support children and provide for their safety during court proceedings, the International Criminal Court has put several protective measures in place. These include the adoption of closed sessions and the establishment of a victim and witness protection unit that considers the special needs of children who have experienced trauma or sexual violence. The Statute of the International Criminal Court and its Rules of Procedure and Evidence state that the Court shall respond appropriately to protect the safety, physical and psychological wellbeing, dignity and privacy of child victims and witnesses during investigation and prosecution. The Rules of Procedure and Evidence include several key provisions to facilitate the involvement of children in the process. These include provisions: to assist traumatized children in giving their testimony (for example, the presence of a psychologist or a family member) – Rule 88(2) Rules of Procedure and Evidence; to allow applications for child victims to participate in proceedings –

crimes within the ICC's jurisdiction or has investigated the crime and decided not to prosecute. This principle of ‘complementarity,’ where the ICC does not usurp national courts, does not exist for the two ad hoc tribunals, which have primacy over national courts.

Rule 89(3) Rules of Procedure and Evidence; to ensure that the questioning of a child is carried out in a way that reduces the chances of further traumatizing the child – Rule 112(4) Rules of Procedure and Evidence; to address the need for staff with expertise in supporting children who are victims or witnesses of violence – Article 42(9) Rome Statute; to appoint child supporters to protect and assist children through all stages of the proceedings – Rule 17(3) Rules of Procedure and Evidence; and to set up a Victims and Witnesses Unit, which provides “protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses” – Article 43(6), Rome Statute.

Although crimes against children are covered by the general list of crimes in the Statute of the International Criminal Court, in recognition of the increased targeting of children in armed conflict, the Statute explicitly sets out crimes for which the victims are children:³⁰¹ These include: a definition of genocide which includes the forcible transfer of children of one group to another;³⁰² and the trafficking of children, mentioned in the definition of “enslavement”, which is a crime against humanity.³⁰³ This clause recognizes the widespread practice of trafficking of children for sexual and other purposes, in times of both conflict and peace. In its list of ‘war crimes’ the Statute includes: the intentional directing of attacks against buildings dedicated to education during international conflicts and conflicts of a non-international character.³⁰⁴

³⁰¹ In both the Statute of the ICTY and ICTR the only specific reference to children appears in the list of crimes that constitute genocide, which includes “forcibly transferring children of the group to another group committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group” (Article 4(2)(e) Statute of the ICTY, Article 2(2)(e) Statute of the ICTR).

³⁰² Article 6(e), Rome Statute of the International Criminal Court.

³⁰³ Article 7(c), Rome Statute of the International Criminal Court

³⁰⁴ Article 8(2)(b)(ix) and Article 8(2)(e)(iv), respectively, Rome Statute of the International Criminal Court.

The inclusion of these articles recognizes that children and their schools are often deliberately targeted to terrorize a community and acknowledges the long-term adverse consequences for children and their communities when they are deprived of education; and the conscription or enlistment.³⁰⁵ of children under the age of 15 into national armed forces (and armed forces or groups in conflicts of a non-international character) or using them to participate actively in both international and non-international armed conflicts.³⁰⁶ The inclusion of this provision indicates the seriousness with which the international community treats the recruitment and use of children and illustrates its willingness to hold both State and non-State actors accountable for such practices.

In addition, recognizing that children may need to be called to give evidence, the Statute of the ICC and its Rules of Procedure and Evidence³⁰⁷ set out specific measures to protect the safety, physical and psychological well-being, dignity and privacy of child victims and witnesses during investigation and prosecution,³⁰⁸ as well as during the trial.³⁰⁹

³⁰⁵ These terms are not further defined within the Rome Statute and should, therefore, be read according to the plain and ordinary meaning of the terms. The United Nations Special Representative of the Secretary-General on Children and Armed Conflict in the Amicus Curiae brief for the case in the International Criminal Court “Situation in the Democratic Republic of the Congo in the case of Prosecutor v. Thomas Lubanga Dyilo,” endorsed the definition that: “Conscription refers to the compulsory entry into the armed forces. Enlistment...refers to the generally voluntary act of joining armed forces by enrolment, typically on the 'list' of a military body or by engagement indicating membership and incorporation in the forces.”; Otto Triffterer ed., “Commentary on the Rome Statute of the International Criminal Court 261”, 1999, in ICC, Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo, Written Submissions of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict Submitted in application of Rule 103 of the Rules of Procedure and Evidence, available at

http://www.un.org/children/conflict/_documents/AmicuscuriaeICCLubanga.pdf(Last visited 7/8/2019)

³⁰⁶ . Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii), respectively, Rome Statute of the International Criminal Court.

³⁰⁷ . Rules of Procedure and Evidence adopted by the Preparatory Commission for the International Criminal Court, at its 23rd meeting on 30 June 2000 (PCNICC/2000/1/Add.1), available on-line at

<http://untreaty.un.org/cod/icc/prepcomm/report/reportdocuments.htm>.(Last visited 2/6/2020) These rules guarantee that international standards for a fair trial are adhered to and witnesses receive appropriate protection.

³⁰⁸ Article 68(1), Rome Statute of the International Criminal Court

³⁰⁹ . Articles 88 and 89, Rome Statute of the International Criminal Court

There was a great deal of debate as to whether the International Criminal Court should have jurisdiction over offences committed by children under age 18. Ultimately, it was decided that the Statute would limit its jurisdiction to individuals who were over 18 at the time of alleged commission of the crime.³¹⁰

2.16 International Labour Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

The nature of armed conflict has been changing over the past few decades, as discussed in Chapter 1. The United Nations reports that, in recent decades, the proportion of civilian casualties in armed conflicts has increased considerably and is now estimated at more than 90% of all casualties. About half of these victims are children.³¹¹

Although armed conflicts appear to be highly detrimental and disruptive for populations as a whole and for the economic development of a country or a region, they also create economic and political opportunities for some individuals, armed groups, corporations and governments. The control and exploitation of valuable mineral resources, for example, is one of the major benefits of many armed conflicts today.³¹²

³¹⁰ . Article 26, Rome Statute of the International Criminal Court

³¹¹ UNICEF, “Child Protection from Violence, Exploitation and Abuse – Armed Conflict”, available on-line at http://www.UNICEF.org/protection/index_armedconflict.html(last visited 10-10-2021)

³¹² Amnesty International, “Blood Diamonds”, Amnesty Magazine, available on-line at <http://www.amnestyusa.org/amnestynow/diamonds.html>(last visited 09-03-2021)

Child labor comes in a wide variety of forms and is perpetuated to an even greater extent in times of armed conflict by those who exploit children. According to the International Labor Organization (ILO), some 218 million children were working in 2004, out of whom 126 million were engaged in hazardous work. The majority of these child laborers are between the ages of 5 and 14.³¹³ These children are doing work that is damaging to their mental, physical and emotional development, but they continue doing so because their survival and that of their families depend on it. According to the ILO, nearly three quarters of working children are engaged in the worst forms of child labor, including domestic work, bonded labor, slavery, trafficking, sexual exploitation, forced recruitment into armed forces and groups, mining, agricultural work and other forms of hazardous work.³¹⁴

The ILO classifies mining³¹⁵ as hazardous work, but some parties to armed conflict use children and other vulnerable groups to carry out this work. Sierra Leone emerged from a decade of armed conflict in 2002,³¹⁶ during which time, brutally mined ‘conflict diamonds’³¹⁷ provided funds for the rebel group, the Revolutionary United Front.³¹⁸

³¹³ International Labour Organization, “The End of Child Labour: Within Reach”, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 95th session 2006, Report I (B), ILO, Geneva, 2006, pg. 6, available on-line at

<http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=2419>(last visited 01-23-2020)

³¹⁴ International Labour Organization, “The End of Child Labour: Within Reach”, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 95th session 2006, Report I (B), ILO, Geneva, 2006, available on-line at

<http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=2419>(last visited 08-10-2021)

³¹⁵ . The International Labour Organization (ILO) is the United Nations agency dedicated towards promoting rights at work, encouraging decent employment opportunities, enhancing social protection and strengthening dialogue in handling work-related issue.

³¹⁶ British Broadcasting Corporation, “Country Profile, Sierra Leone”, available on-line at

http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1061561.stm(last visited 07-12-2021)

³¹⁷ The Kimberly Process defines ‘conflict diamonds’ as rough diamonds used by rebel movements to finance wars against legitimate governments.

³¹⁸Amnesty International, “Blood Diamonds”, Amnesty Magazine, available on-line at <http://www.amnestyusa.org/amnestynow/diamonds.htm>(last visited 09-03-2021)

Children are also used to extract rubies in Myanmar (where they also face the risk of HIV/AIDS in the mining areas), emeralds in Colombia and bauxite in Guinea. Children in the Democratic Republic of Congo have suffered a similar fate. The Democratic Republic of Congo is one of the richest countries in the world with respect to natural resources. The country has most of the world's coltan, a mineral used in the production of mobile phones and computer chips. The country also possesses large deposits of minerals such as gold, diamonds and uranium, among a host of others.³¹⁹In addition, the country is also home to large exploitation of precious timber and rubber plantations. The battle to control and exploit the east of the country, where most of these resources are found, has been going on for more than 10 years and has taken the lives of hundreds of thousands of civilians and involved various armed forces and groups, including those from neighboring countries.

UNICEF estimated that in 2007 at least 50,000 children participated in artisan mining across the Democratic Republic of Congo, where children worked in dangerous and hazardous conditions.³²⁰ Children living in the streets have also been involved in illegal mining activities. Human Rights Watch reports that “children may be sent down small tunnels to dig for gems. Others work panning gravel and filtering out precious stones. Still other children engage in weighing, selling and other activities around gem buying counters.”³²¹

Armed conflicts increase the risk of illegal exploitation of natural resources by various parties to the conflict and also by private firms that take advantage of the security vacuum. In this

³¹⁹ The Washington Post, “Features, International Spotlight, Democratic Republic of Congo”, 28 November 2001, available on-line at <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/congo/diamond.html>(last visited 10-24-2021)

³²⁰ UNICEF, “Briefing Note on Child Labour in the DRC,” Unpublished, 2007

³²¹ Human Rights Watch, “What Future? Street Children in the Democratic Republic of Congo”, 2006, available on-line at <http://www.hrw.org/reports/2006/drc0406/5.htm>(last visited 10-12-2021)

environment, children and other vulnerable groups are at greater risk of being used to perform dangerous tasks in resource extraction. Examples of this phenomenon can be seen in the Democratic Republic of Congo, as well as Liberia and Sierra Leone, when they were still affected by armed conflict.

As mentioned above, child labor during conflict is not only related to the exploitation of resources. There are a number of studies that show that the recruitment and use of children by armed forces and groups, as well as trafficking and sexual exploitation of children, increase in times of conflict because of a security vacuum and the unrestricted movement permitted from one country to another. All the worst forms of child labor listed in the ILO Convention significantly increase in times of armed conflict.

In 2008, the United Nations Committee on the Rights of the Child held a day of general discussion about the economic exploitation of children.³²² In that discussion, economic exploitation was defined as “taking unjust advantage of another for one’s own advantage or benefit. It covers situations of manipulation, misuse, victimization, oppression or ill-treatment. The human dignity of the child or the harmonious development of the child’s personality is not respected when he or she is economically exploited.”³²³

Article 32 of the UN Convention of the Rights of the Child is the foundation upon which the protection of children from economic exploitation and harmful work rests. It asserts that: “States Parties recognize the right of the child to be protected from economic exploitation and from

³²² UNICEF, “Handbook on Legislative Reforms: Realising Children’s Rights”, vol. 1, November 2008, available on-line at http://www.UNICEF.org/crc/files/Handbook_on_Legislative_Reform.pdf(last visited 06-21-2021)

³²³ Committee on the Rights of the Child, “Report on the fourth session,” 25 October 1993, CRC/C/20, Annex V, available on-line at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/190/38/PDF/G9319038.pdf?OpenElement>(last visited 04-25-2021)

performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

Not all work performed by children should be considered child labor and subsequently eliminated. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling is regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays.³²⁴

The International Labor Organization (ILO) defines child laborers as all children younger than 12 years working in any economic activities; children aged between 12 and 14 years engaged in more than light work; and all children engaged in the worst forms of child labor, to which they are enslaved, forcibly recruited, sexually exploited, trafficked, forced into illegal activities or exposed to hazards.³²⁵ The International Program on the Elimination of Child Labor (IPEC) defines child labor as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development”.³²⁶

The ILO specifically refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. In its most extreme forms, child labor involves children being enslaved, separated from their families, exposed to serious

³²⁴ International Labour Organization, *The end of child labour: Within reach*, 2006, available on-line at <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=2419> (last visited 06-27-2021)

³²⁵ . UNICEF, “Child Protection Information Sheet: Child Labour”, available online at http://www.unicef.org/protection/files/Child_Labour.pdf (last visited 05-23-2021)

³²⁶ . International Labour Organization, “About Child Labour,” available on-line at <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (last visited 03-27-2021)

hazards and illnesses or left to fend for themselves on the streets of large cities, often at a very early age.³²⁷ UNICEF estimates that, worldwide, 158 million children aged 5 to 14 are engaged in child labor that constitutes one in every six children.³²⁸

There are some categories of child labor that can be made safer or more child-friendly by removing the harm caused to children. For example, if a sixteen-year-old girl is working as a vendor of firewood for eight hours each day, seven days a week and missing school, she may be re-enrolled in school and still continue selling firewood for a few hours over the weekend. Such regulation allows children to work, but also have the time to enjoy their right to education³²⁹ and to play,³³⁰ among other rights.

There are, however, some categories of work, such as forced labor, which are forbidden by international law and classified among the ‘worst forms of child labor.’ The only way to protect children is to liberate them from such work. According to data from the International Labor Organization (ILO), approximately eight million children around the world are believed to be involved in work that falls within one of the categories of the worst forms of child labour.³³¹ The majority of children who engage in hazardous work live in Sub-Saharan Africa and Asia, where many work in mines. When armed conflict occurs in these regions, some of these children are

³²⁷ International Labour Organization, *The end of child labour: Within reach*, 2006, available on-line at <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=2419>(last visited 09-05-2021)

³²⁸UNICEF, “Child Protection from Violence, Exploitation and Abuse- Child Labour,” 2008, available on-line at http://www.UNICEF.org/protection/index_childlabour.html (last visited 08-03-2021)

³²⁹ Convention on the Rights of the Child, 20 November 1989, entry into force 2 September 1990, Article 28, available on-line at <http://www2.ohchr.org/english/law/crc.htm>(last visited 02-12-2021)

³³⁰ . Convention on the Rights of the Child, 20 November 1989, entry into force 2 September 1990, Article 31, available on-line at <http://www2.ohchr.org/english/law/crc.htm>(last visited 09-06-2021)

³³¹ UNICEF, “End Child Exploitation, Child Labour Today”, 2005, pg. 27, available on-line at http://www.UNICEF.org.uk/publications/pdf/ECECHILD2_A4.pdf(last visited 06-23-2021)

also forcibly recruited and used by armed forces and armed groups. Moreover, children under these conditions face sexual exploitation and the risk of being trafficked.³³²

The ILO Convention on the Worst Forms of Child Labor (Convention 182) defines the worst forms of child labor as: Forms of slavery,³³³ servitude³³⁴ and forced labor, including forced recruitment for use in armed conflicts; Commercial sexual exploitation³³⁵ (prostitution or pornography); Illicit activities³³⁶ (for example, involving children in drug production and trafficking); and Hazardous work³³⁷ that jeopardizes the lives, health or morals of those involved. The ILO planned to work with all of its Member States to eliminate the worst forms of child labor by 2016.³³⁸

Armed conflicts leave children vulnerable to many types of abuse, including economic exploitation, because protective structures, like family and community units, as well as governance institutions, are disrupted or severely weakened. Under such conditions, children can easily become victims of abductions,³³⁹ enslavement³⁴⁰ or forced recruitment and use³⁴¹ by armed forces and groups. In Uganda, for instance, approximately 30,000 children are believed to

³³²UNICEF, 'End Child Exploitation, Child Labour Today,' 2005, pg. 22, available on-line at http://www.unicef.org.uk/publications/pdf/ECECHILD2_A4.pdf (last visited 09-02-2021)

³³³ . Slavery is the condition where a person is forced to work very hard without proper remuneration or appreciation.

³³⁴ Servitude is the state of being a slave or completely subject to someone more powerful.

³³⁵ The Stockholm Declaration and Plan of Action define 'sexual exploitation' as "sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object." The commercial sexual exploitation of children constitutes a form of coercion and violence against children and amounts to forced labour and a contemporary form of slavery.

³³⁶ Illicit activities are activities that are forbidden by law, rules or customs.

³³⁷ Hazardous work is work which, by its nature or circumstances, is likely to harm the health, safety or morals of children.

³³⁸ . International Labour Organizaton, "ILO's Global Report on Child Labour, The end of Child Labour within reach, Part IV, Towards a Global Action Plan", Geneva, 2006, pg. 3, available on-line at <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=10992>(last visited 09-12-2021)

³³⁹ Abduction is the act of forcibly taking someone away against his or her will.

³⁴⁰ . Enslavement is causing one to lose his or her freedom of choice or action.

³⁴¹ . Forced conscription is compulsory enlistment into armed service.

flee their homes at night for urban areas or larger camps for internally displaced persons, in order to escape attacks or abduction by the Lord's Resistance Army (LRA). This "night commuting" is a dangerous practice in and of itself, as it exposes children to various forms of harassment and violence, including rape and sexual exploitation, since they are without their family's protection.³⁴²

During armed conflicts, families and communities may be forced to flee their homes, becoming refugees or internally displaced persons. They often leave their property behind. In addition to losing loved ones and their sense of personal security, many families lose their only source of income when they lose their homes. In such cases when livelihoods are lost or overstretched, children may be forced to work, even in harmful labor, in order to survive.³⁴³ Although poverty often contributes to child labor, it is not the only factor and not all poor children work.

Armed conflicts can cause the loss of lives and leave children without parental care. Sometimes, when communities are fleeing armed conflict, children may get separated from their primary caregivers. In such situations, child-headed households may emerge and, if not supported by the wider community or other actors from the government or humanitarian sectors, such minors may offer themselves to work in order to meet basic needs. One young boy in the Democratic Republic of Congo, while describing his life to a humanitarian worker said, "If you don't work,

³⁴² Amnesty International, "Uganda: Child "Night Commuters"", 2005, AI Index: AFR 59/013/2005, available on-line at <http://www.amnesty.org/en/library/asset/AFR59/013/2005/en/ef37fb59-d492-11dd-8a23-d58a49c0d652/afr590132005en.pdf> (last visited 10-23-2021)

³⁴³ "Report of the Special Representative of the Secretary-General for Children and Armed Conflict", 13/07/2007, A/62/228, pg. 2, available on-line at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N07/457/60/PDF/N0745760.pdf?OpenElement>(last visited 10-12-2021)

you don't eat.”³⁴⁴The phenomenon of child-headed households has increased across the globe due to natural disasters, war and civil strife.³⁴⁵

Child labor is sometimes preferred to adult labor because children are considered by their exploiters to possess certain ‘advantages’ over adults. For example, children may not be in a position to stand up to their ‘employer’ because of the unequal power relations between the child and the adult. A UNICEF report also revealed that child labor is sometimes preferred because it is cheaper, because children are less conscious of the risk their work involves and because children are more malleable and more ‘obedient’ than adults.³⁴⁶

Armed conflicts tend to disrupt education because schools can be destroyed and communities, including teachers and students, may be displaced. According to UNICEF, “not attending school is consequently both a cause and effect of child labour.”³⁴⁷ When children do not attend school, they are more vulnerable to exploitation. Research undertaken by the Uganda Bureau of Statistics in 2008 revealed that children living in internally displaced camps in the war-ravaged north of the country are about 20% less likely to attend school full-time and more likely to combine work and school, when compared with their counterparts living in the rest of the country.³⁴⁸

³⁴⁴ Human Rights Watch, “What Future? Street Children in the Democratic Republic of Congo”, 2006, available on-line at <http://www.hrw.org/reports/2006/drc0406/5.htm>(last visited 10-12-2021)

³⁴⁵ Aid Workers Network, “Child-Headed Households,” available on-line at <http://www.aidworkers.net/?q=node/652>(last visited 10-12-2021)

³⁴⁶ UNICEF, “End Child Exploitation, Child Labour Today”, 2005, available on-line at http://www.UNICEF.org.uk/publications/pdf/ECECHILD2_A4.pdf(last visited 05-01-2021)

³⁴⁷ . UNICEF, “End Child Exploitation, Child Labour Today”, 2005, available on-line at http://www.UNICEF.org.uk/publications/pdf/ECECHILD2_A4.pd(last visited 10-20-2021)

³⁴⁸ Uganda Bureau of Standards, “Understanding Child Work in Uganda, Country Report, Kampala,” August 2008, pg. 9

Even in the absence of armed conflict, child labor and harmful children's work also exist; however, armed conflicts bring a different dimension to the issue of child labor. Children may be caught in the middle of a fight for resources and may even be used as slaves to extract and transport these resources. Examples have been especially noted in mining. "Some children have been forced at gunpoint... to carry loads of extracted minerals. Child slaves have also been reported working in mines in Guinea, Sierra Leone and Liberia,"³⁴⁹ during the armed conflicts in those countries.

A 2009 report from the United Nations on Colombia revealed that the presence of illegal armed groups and criminal gangs is more prominent in areas with coca³⁵⁰ cultivation and in strategic corridors used for the commercialization of drugs. Children are often used in the cultivation of coca as 'raspachines' (coca harvesters). Moreover, the report recounts that communities do not report such cases of child labor because of fear of reprisal.³⁵¹

In Haiti, the United Nations reports that armed groups recruit children as spies, fighters, informants, and gun and drug carriers.³⁵² The widespread forced use of children as porters by Myanmar's army has also been documented. This is distinct from the army's recruitment of boys as soldiers, since porters are often used for just a few days and then released.³⁵³

³⁴⁹Save the Children UK, "The Small Hands of Slavery: Modern Day Slavery; A report by Save the Children UK", March 2007, available on-line at http://www.savethechildren.org.uk/en/docs/child_slavery_briefing.pdf(last visited 12-04-2021)

³⁵⁰ Coca is the raw material for making the drug called cocaine.

³⁵¹ "Report of the Secretary-General on Children and Armed Conflict in Colombia", 28/09/2009, S/2009/434, pg. 2, available on-line at http://www.vicepresidencia.gov.co/Documents/Resolucion1612/ReportSG_en.pdf(last visited 11-09-2021)

³⁵²"Report of the Special Representative of the Secretary-General for Children in Armed Conflict," 13 August 2007, A/62/228, available on-line at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N07/457/60/PDF/N0745760.pdf?OpenElement> (last visited 08-12-2021)

³⁵³ United States Department of Labor, "Report on Labor Practices in Burma", 1998, available on-line at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm#CH4>(last visited 06-07-2021)

ILO Convention 182 is relevant to the protection of children from recruitment and deployment in armed conflict. The Convention, which applies to all children under 18 years of age, addresses the worst forms of child labor, including the forced or compulsory recruitment of children for use in armed conflict.³⁵⁴ ILO Recommendation 190,³⁵⁵ which accompanies this Convention, calls on Member States to make such recruitment practices a criminal offence.³⁵⁶

2.17 Optional Protocols to the Convention on the Elimination of Discrimination Against Women (1999)

In 1999, the Optional Protocol to the Convention on the Elimination of Discrimination Against Women was adopted. The Protocol expands the mandate of the Committee on the Elimination of Discrimination Against Women³⁵⁷ to consider individual or group complaints of Convention violations. The Protocol also creates a procedure that enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

³⁵⁴ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention no. 182), 1999 (entered into force 19 Nov 2000). According to the ILO website available online at <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182>. (Last visited 10/9/2020) As of 17 November 2009, 171 States had ratified this instrument, Article 2, ILO Convention no.182.

³⁵⁵ ILO Recommendation 190 concerning the prohibition and immediate action for the elimination of the worst forms of child labour was adopted by the conference at its eighty-seventh session, Geneva, 17 June 1999.

³⁵⁶ . ILO Recommendation 190 on Worst Forms of Child Labour Recommendation, Para 12(a)

³⁵⁷ United Nations Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 2000 (entered into force on 22 Dec. 2000), available on-line at <http://www2.ohchr.org/english/law/cedaw-one.htm>. (Last visited 9/6/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, (Last visited 9/6/2019) as of 18 November 2009, there were 79 Signatories and 99 Parties to this instrument, The Committee on the Elimination of Discrimination Against Women is an expert body established in 1982, whose mandate is to monitor progress for women in States party to the Convention on the Elimination of Discrimination Against Women. The Committee consists of 23 experts on the rights of women and reviews national reports on the status of women, publishes recommendations on issues affecting women and, under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, can consider individual complaints against Parties to the Protocol and issue decisions and views in consideration of these. More information can be found on the Committee's website at <http://www.un.org/womenwatch/daw/cedaw/committee.htm> (Last visited 12/10/2019)

2.18 Optional Protocols to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)

In May 2000, the General Assembly adopted the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Optional Protocol was adopted to curb the growing use of children in armed conflict and to raise the standards set out in the UN Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions for recruitment and use of children.³⁵⁸

The Optional Protocol raised the minimum age for direct participation in hostilities to 18 years for State forces³⁵⁹ and prohibited the forced or compulsory recruitment of those under 18 years into national armed forces.³⁶⁰ The Optional Protocol did not, however, prevent the voluntary recruitment of children under 18 by States. Under the Optional Protocol, States are only required to raise the age of voluntary recruitment above 15 (the standard in the UN Convention on the Rights of the Child, Article 38(3)). They must develop safeguards to ensure that recruitment is voluntary, and that proof of age has been sought and verified.³⁶¹ Article 1, which prohibits children taking a direct part in hostilities, only requires States to take “all feasible measures” to fulfil this obligation. This wording has allowed States to enter declarations interpreting the word

³⁵⁸ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000 (entered into force 12 February 2002), available on-line at <http://www2.ohchr.org/english/law/crcconflict.htm>. (Last visited 6/9/2020) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 125 Signatories and 130 Parties to this instrument.

³⁵⁹ Article 1, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

³⁶⁰ . Article 2, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

³⁶¹ Article 3, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

‘feasible’, so as to weaken their obligation to ensure under 18 year old are not deployed.³⁶² The Optional Protocol explicitly prohibits non-State armed groups from both recruiting and using persons under 18.³⁶³ States are obliged to criminalize such activities.³⁶⁴ The Committee on the Rights of the Child is responsible for monitoring the implementation of the Optional Protocol through the examination of periodic State reports. The following articles provides:

Article 1 – Direct participation

States parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2 – Compulsory recruitment

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3(1) – Voluntary recruitment

States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in Article 38, paragraph 3 [15 years], of the Convention on the Rights of the Child...

³⁶² For example, the declaration of the United Kingdom, available on-line at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en#EndDec (Last visited 10/10/2020)

³⁶³ . Article 4, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

³⁶⁴ Article 4(2), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Article 3(3) provides that in voluntary recruitment in recruiting under 18s, minimum safeguards must be in place to ensure:

(a) recruitment is genuinely voluntary

(b) recruitment is carried out with the informed consent of the person's parents or legal guardians

(c) such persons are fully informed of the duties involved in such military service

(d) such persons provide reliable proof of age prior to acceptance into national military service.

Article 4(1) – Recruitment and use by non-state armed forces. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

Article 6(3) – Demobilization: States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7 - Cooperation

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation

with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programs or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

2.19 Statute of the Special Court for Sierra Leone (2002)

In 2000, Security Council resolution 1315³⁶⁵ requested that the Secretary-General negotiate with the Government of Sierra Leone to establish a Special Court to prosecute those who had committed crimes against humanity, war crimes and other serious violations of international humanitarian law during the civil war.

The Special Court was established in 2002 “to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996”.³⁶⁶ An amnesty was in place that precluded prosecutions for crimes committed before that date (the civil war began in 1991). The Special Court was a new structure for bringing perpetrators to justice—neither a UN body, like the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, nor a national tribunal or court. The Security Council did not want to establish yet another ad hoc tribunal because of the cost involved. Yet, the establishment of a national court was also rejected because there were concerns that it would be a ‘victor’s court.’

³⁶⁵. UN Security Council, Statute of the Special Court for Sierra Leone, 16 January 2002, available on-line at <http://www.unhcr.org/refworld/type,INTINSTRUMENT,,,3dda29f94,0.html>(Last visited 10/10/2019), United Nations Security Council resolution 1315 (2000) on the situation in Sierra Leone, S/RES/1315(2000)

³⁶⁶. Article 1, Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 2002, available on-line at <http://www.specialcourt.org/documents/Agreement.htm>(Last visited 8/9/2019)

The Special Court was established as an international tribunal, with jurisdiction over some domestic crimes and the employment of Sierra Leonean lawyers and judges. The Court, located in Freetown, the capital of Sierra Leone, is jointly administered by the United Nations and the Government of Sierra Leone. It is composed of international and national judges and prosecutors. By establishing the court as a joint body, a certain level of independence and credibility was ensured.

The Statute gives the Court jurisdiction over specific crimes against children, such as the conscription or enlistment of children under the age of 15 years into armed forces or groups and the active use of children in hostilities.³⁶⁷ By 2009, the Prosecutor of the Special Court had issued a total of 13 indictments, all of them in 2003. Of these, three were for leaders of the Civil Defense Forces, five were for leaders of the former Revolutionary United Front, four were for leaders of the Armed Forces Revolutionary Council and one for Charles Taylor, the former leader of Liberia.³⁶⁸ All of the defendants were indicted for the crime of “conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities”, with six of the eight whose trials were completed in November 2009 found guilty of the charge, although both defendants from the Civil Defense Forces, Moinina Fofana and Allieu Kondewa, later had their convictions for that charge overturned on appeal.³⁶⁹ Perhaps the most notorious case to be heard before the Special Court is that of Charles Taylor, who was indicted in 2003 and brought before the Court in 2006. Mr. Taylor’s case was

³⁶⁷ Article 4(c), Statute of the Special Court for Sierra Leone

³⁶⁸ . Of these 13 indictments, three were withdrawn when the accused died. One of the accused from the Armed Forces Revolutionary Council has never been located; “About the Special Court of Sierra Leone”, available on-line at <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx>(Last visited 10/12/2020)

³⁶⁹ . For more information on all judgements, see <http://www.sc-sl.org/CASES/tabid/71/Default.aspx>(Last visited 12/10/2019)

still ongoing, with the Prosecution beginning its cross-examination of the defendant in November 2009.³⁷⁰

Significantly, the Special Court for Sierra Leone was the first court with international involvement that had explicit jurisdiction to prosecute children aged 15-18 years.³⁷¹ This reflected the fact that many children were forcibly abducted and took part in the worst atrocities committed during the conflict. Still, the Prosecutor for the Court announced that, consistent with the Court's mandate to prosecute individuals bearing the "greatest responsibility" for crimes, he would not prosecute individuals for crimes committed before age 18.

Below is a summary of the powers of the special court for Sierra Leone. Viz:

Article 4(c) – Violation of international humanitarian law:

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

(c) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Article 5(a) – Crime under Sierra Leonean Law.

³⁷⁰ . For more information, see <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx> (Last visited 9/9/2020)

³⁷¹ Article 7, Statute of the Special Court for Sierra Leone; the Statute of the Special Court does not specify the grounds for deciding whether a particular child should be prosecuted. However, Article 15(5) states that "[i]n the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk, and that where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability". Neither the Statute of the ICTY nor the Statute of the ICTR explicitly excludes the prosecution of under 18s; however, both tribunals focused on the prosecution of key adult perpetrators of war crimes.

The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

(a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap.31):

- (i) Abusing a girl under 13 years of age, contrary to section 6;
- (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;
- (iii) Abduction of a girl for immoral purposes, contrary to section 12

Article 7 – Jurisdiction over persons of 15 years of age

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, considering his or her youthful age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling,

foster care, correctional, educational and vocational training programs, approved schools and, as appropriate, any programs of disarmament, demobilization and reintegration programs of child protection agencies.

2.20 UN Convention on the Rights of Persons with Disabilities (2006)

Disability is a legacy of war for many children. through the remnants of war, such as landmines and unexploded ordnance. The 2006 Convention on the Rights of Persons with Disabilities binds States to protect and respect the rights of children with disabilities and to ensure them access equal to that which other children receive with respect to services.³⁷² The Convention obliges States to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict”.³⁷³

³⁷² UN Convention on the Rights of Persons with Disabilities, 2006 (entered into force 3 May 2008), available online at <http://www2.ohchr.org/english/law/disabilities-convention.htm> (Last visited 11/10/2020) According to the United Nations Treaty Collection website, available at <http://treaties.un.org> (Last visited 4/7/2020) as of 18 November 2009, there were 143 Signatories and 73 Parties to this instrument, Article 7, Convention on the Rights of Persons with Disabilities.

³⁷³ . Article 11, Convention on the Rights of Persons with Disabilities

2.21 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)

Africa accounts for 45 to 50% of the total number of internally displaced persons in the world.³⁷⁴ Recognizing the need to provide protection to this particularly vulnerable group, the African Union adopted the Convention on Internal Displacement in 2009. This Convention is the first binding regional instrument to protect internally displaced persons. Internally displaced children are specifically protected from recruitment and use in hostilities³⁷⁵ and forcible recruitment, kidnapping, trafficking and sexual slavery³⁷⁶ by armed groups. States have an explicit requirement to protect children from these acts, as well as forced labor, trafficking and smuggling.³⁷⁷ Separated and unaccompanied children are to be provided special protection.³⁷⁸

2.22 Convention relating to the Status of Refugees (1951)

The 1951 Convention relating to the Status of Refugees (hereafter cited as the 1951 Refugee Convention) is the main international instrument governing who is to be considered a refugee, the rights flowing from this status and the legal obligations of receiving countries.

As of 13 November 2009, 144 States were party to this Convention.³⁷⁹ The majority of countries that have neither signed, nor ratified, the Convention are in Asia. The convention was adopted in

³⁷⁴ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted by the Special Summit of the Union held in Kampala, Uganda, 22-23 October 2009 (not yet in force: 18 signatories, no States Parties), available on-line at http://www.africaunion.org/root/AR/index/Convention%20on%20IDPs%20_Eng_%20-%20Final.pdf (Last visited 12.10/2020), See the website of the Internal Displacement Monitoring Centre (Norwegian Refugee Council), available at www.internaldisplacement.org (Last visited 9/10/2020)

³⁷⁵ Article 7(5)(e), Kampala Convention.

³⁷⁶ . Article 7(5)(f), Kampala Convention

³⁷⁷ Article 9(1)(d), Kampala Convention

³⁷⁸ . Articles 9(2)(c) & 13(4), Kampala Convention

³⁷⁹ United Nations Treaty Collection, “Convention Relating to the Status of Refugees”, Status as of 13 November 2009, available on-line at

response to the mass displacement of people in Europe during World War II, the 1951 Refugee Convention was designed to address the rights of those people who became refugees due to events occurring before 1951. Recognizing the continuing need to provide protection for refugees fleeing subsequent conflicts, the 1967 Protocol relating to the Status of Refugees removed this timeframe, enabling the Convention to be applied to anyone who fulfilled the relevant criteria, regardless of when he or she became a refugee.

The 1951 Refugee Convention defines a refugee as a person who: is outside of his or her home country; is unable or unwilling to have protection in that country, or to return there; can demonstrate that this inability or unwillingness is due to a well-founded fear of being persecuted; and can show that this fear of persecution is based on reasons of race, religion, nationality, membership of a particular social group or political group.³⁸⁰

This legal definition is restrictive and is applied on a case-by-case basis. It requires that claimants demonstrate that they specifically meet all of these conditions. Those who cannot prove this status may be returned to their home country; however, under the principle of nonrefoulement in the 1951 Refugee Convention, people cannot be sent back to a situation where their lives or human rights are threatened.³⁸¹ Nonrefoulement refers to situations of danger that people may face which are not resulting from discrimination, but rather from dangerous living conditions. People in this situation have an ambiguous legal status – they are not legally considered refugees, but they cannot be returned to their home country.

http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en (Last visited 10/10/2020)

³⁸⁰ United Nations, Convention relating to the status of refugees 1951, Article 1(A)(2)

³⁸¹ United Nations, Convention relating to the status of refugees, 1951, Article 33

The individualist refugee definition in the 1951 Refugee Convention is thus impractical in responding to mass migration in contexts of generalized insecurity and conflict. In reaction, some regional instruments have been created to expand the definition.

Millions of children and their families have been forcibly displaced from their homes due to war, political instability, insecurity, human rights violations, environmental degradation and natural disasters. A refugee is, as said earlier, a person who flees across an international border, while an internally displaced person is forced from his or her community but remains in the country of origin. In order to obtain formal refugee status, a person has to satisfy criteria laid out in applicable domestic, regional and international law. While this status is in the process of being determined, the person is called an asylum seeker.

Furthermore, according to the international legal definition provided by the Convention relating to the Status of Refugees, a refugee is a person who: Leaves his or her home country; Does so because of a well-founded fear of persecution; and is persecuted because of his/her race, religion, nationality, political opinion or membership of a particular social group. An asylum seeker is a person who has applied for refugee status in a foreign country. He or she is still waiting for a decision to be made on the application. The United Nations has produced guidelines for defining an internally displaced person as someone who: Leaves his or her home but remains in the home country; and He or she is forced to leave because of armed conflict, generalized violence, human rights violations, natural disasters or manufactured disasters.

The Office of the United Nations High Commissioner for Refugees (UNHCR), the main international organization responsible for refugees and internally displaced people, estimates that, in 2008, there were 15.2 million refugees and 26 million internally displaced people

globally.³⁸² Of this total population, children under the age of 18 make up 44% of refugees and 43% of IDPs.³⁸³ In situations where large numbers of people flee at the same time, UNHCR and the host government will often establish together camps for refugees or the internally displaced. Because it is administratively more efficient to aid people grouped together in these camps, governments may require refugees or internally displaced people to be registered and resident in a camp in order to access social services. In some countries, it is illegal for refugees to live outside of camps without special authorization. Nevertheless, some refugees decide not to go to camps and settle instead in border areas or towns. These people are called ‘self-settled’ refugees. They often cannot access assistance or services, such as healthcare and education. In many cases, self-settled refugees do not have identity documents and may be arrested and put in prison for being outside of refugee camps. In other cases, refugees live within local communities and are provided some identification documents and access to basic services. Even then, however, they often suffer from discrimination, restricted access to services and animosity from local communities who perceive their presence as draining already scarce existing resources.

Forced migration³⁸⁴ may inhibit or prevent the realization of children’s rights, particularly in relation to education and health. Formal schooling is often disrupted when children leave their home communities. According to the Office of the United Nations High Commissioner for Refugees, at least one third of refugee children and young people under the age of 18 in camps

³⁸² United Nations High Commission for Refugees (UNHCR), “2008 Global Trends: Refugees, Asylum seekers, Returnees, Internally Displaced and Stateless Persons”, Geneva, 2009, pg. 2, available on-line at <http://www.unhcr.org/4a375c426.html>(last visited 10-12-2021)

³⁸³ UNHCR, “2008 Global Trends: Refugees, Asylum seekers, Returnees, Internally Displaced and Stateless Persons”, Geneva, 2009, pg. 14, available on-line at <http://www.unhcr.org/4a375c426.html>(last visited 10-09-2021). It should be noted that age disaggregated data is not available for all refugee and internally displaced populations.

³⁸⁴ Refugees and internally displaced people are categorized as being in situations of forced migration because they were obliged to leave their homes due to war, violence or insecurity. In contrast, other groups of migrants, such as those that move for employment or education, are categorized as being in situations of voluntary migration, because they have chosen to leave their homes to pursue other opportunities.

were not attending school in 2005.³⁸⁵ Refugee children may face language barriers and changes in curriculum in the host country. While primary education is technically free in most countries, fees for books, uniforms, school lunches and other necessary items may be prohibitive for refugee and displaced families in unstable economic situations. In addition, strict registration requirements, such as the possession of identification documents, can also be an impediment to children attending school. In many countries, secondary school is not provided for free. Under the UN Convention on the Rights of the Child, countries are only obliged to provide primary education to refugees. Similarly, UNHCR upholds international commitments to universal access to primary education and provides some funding for secondary schooling, vocational training and university scholarships.³⁸⁶ Teachers are vital role models for refugee and internally displaced children and can educate them about their rights. Yet, evaluations in some refugee contexts have also revealed that some teachers commit violence, including corporal punishment, sexual exploitation and forced labor against children.³⁸⁷

Infants, children and young people in critical stages of physical development may be adversely affected by forced migration. Where quality food is scarce, the nutritional needs of infants, children under the age of five and adolescents are frequently unmet.³⁸⁸ Infants and young children are particularly vulnerable to diseases, such as cholera and malaria. A 2001 Multiple

³⁸⁵ . UNHCR, "United Nations High Commission for Refugees Education Strategy 2007-2009: Policy, Challenges and Objectives", Geneva, 2007, pg. 14, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4af7e71d9&query=education> (last visited 07-08-2021) This figure is based on available data.

³⁸⁶ UNHCR, "United Nations High Commission for Refugees Education Strategy 2007-2009: Policy, Challenges and Objectives", Geneva, 2007, pg. 9, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4af7e71d9&query=education>(last visited 04-09-2021)

³⁸⁷ UNHCR, "United Nations High Commission for Refugees Education Strategy 2007-2009: Policy, Challenges and Objectives", Geneva, 2007, pg. 15, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4af7e71d9&query=education> (last visited 09-06-2021)

³⁸⁸ UNHCR, et al, "Food and Nutrition Needs in Emergencies", 2002, pg. 8, available on-line at <http://whqlibdoc.who.int/hq/2004/a83743.pdf>(last visited 10-11-2021)

Indicator Cluster Survey conducted by UNICEF in Angola reported that 30% of all children affected by conflict die before reaching the age of five.³⁸⁹ Preventable diseases are prevalent in densely populated refugee and internally displaced persons camps, where water, sanitation and health services are inadequate. Young people going through puberty in refugee and displacement contexts do not always have access to reproductive health information, services and supplies.³⁹⁰ In addition, the psychosocial effects of forced migration may be detrimental to the cognitive, emotional and physical development of the child.

Due to the sudden circumstances of flight or the large numbers of people moving at the same time, a child may become temporarily or permanently separated from his or her parents. The Office of the United Nations High Commissioner for Refugees uses the term ‘unaccompanied children’ or ‘unaccompanied minors’ to designate people under the age of 18 “who are separated from both parents and are not being cared for by an adult who, by law or custom, is responsible to do so.”³⁹¹ Other agencies prefer to use the broader category of ‘separated children’ to describe “those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”³⁹² The term ‘orphan’ is often used to refer to children, whose

³⁸⁹ . Norwegian Refugee Council, “Profile of internal displacement,” Global IDP Database, 9 August 2002, http://www.sarpn.org.za/documents/d0000337/P319_Internal_DisplacementE.pdf(last visited 08-09-2021)

³⁹⁰ Women’s Refugee Commission, “Reproductive Health for Displaced Adolescents”, available on-line at <http://www.womensrefugeecommission.org/programs/rh/56-rh/72-youth>(last visited 07-08-2021)

³⁹¹ UNHCR, “Refugee Children: Guidelines on Protection and Care”, Geneva, 1994, pg. 121, available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b84c6c67&query=refugee%20children%20guidelines>(last visited 11-12-2021)

³⁹² . International Committee of the Red Cross, “Inter-Agency Guiding Principles on Unaccompanied and Separated Children”, Geneva, 2004, available on-line at [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p1101/\\$File/ICRC_002_1011.PDF](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p1101/$File/ICRC_002_1011.PDF)(last visited 02-05-2021). See also Gillian Mann, “Separated Children: Care and Support in Context,” in *Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement*, edited by J. Boyden and J. de Berry, New York and Oxford: Berghahn Books, 2004, pg. 4; and David Tolfree, “Whose Children? Separated Children's Protection and Participation in Emergencies,” Stockholm: Save the Children, 2004.

parent or parents, caregivers or guardians have died.³⁹³ Given the cultural variations in defining orphans, as well as the stigma attached to the word, UNICEF prefers the broader term ‘children without parental care.’ Moreover, ‘orphan’ implies availability for adoption, while the UNHCR policy indicates that refugee children in emergency contexts should not be adopted.³⁹⁴ Instead, refugee and internally displaced children who are temporarily or permanently separated from their parents or guardians are placed in fostering situations or form child-headed households with siblings, cousins or peers.

UNHCR has designated unaccompanied refugee children a particularly vulnerable group. The United Nations General Assembly has asked that unaccompanied children to be given special assistance and care because they face particular risks, including: neglect; violence; forced military recruitment; sexual assault; abuse; and infectious diseases.³⁹⁵

In displacement contexts characterized by insecurity and shrinking family and social networks, children and young people face a number of protection challenges. Research indicates that there are strong linkages between displacement and recruitment into armed forces or groups.³⁹⁶

Refugee and internally displaced children and young people are vulnerable to recruitment when displacement camps are militarized, targeted by groups abducting children for military purposes or sites of desperate socioeconomic conditions that make military life an attractive alternative.

³⁹³ . UNICEF, “Children without Parental Care”, available on-line at http://www.UNICEF.org/protection/index_orphans.html(last visited 04-07-2021)

³⁹⁴ . UNHCR, “Refugee Children: Guidelines on Protection and Care”, Geneva, 1994, pg. 130, available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b84c6c67&query=refugee%20children%20guidelines>(last visited 10-12-2021)

³⁹⁵ United Nations Secretary-General, “Assistance to Unaccompanied Refugee Minors,” August 2005, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=43bce4782&query=unaccompanied%20minors>(last visited 08-12-2021)

³⁹⁶Lisa Alfredson, “Child Soldiers, Displacement and Human Security,” Disarmament Forum, 2002

Once recruited, children associated with armed forces and groups move with their units, both within their home countries and across borders, resulting in further displacement.³⁹⁷

Sexual violence and exploitation are another child protection concern in forced migration contexts. Communal living arrangements, precarious security conditions and limited access to the legal system increase the likelihood of sexual harassment and violence. Because of unequal intergenerational power dynamics and their physical size, children and young people are particularly vulnerable to sexual violence.³⁹⁸ While girls and young women are disproportionately affected by sexual harassment and violence in most contexts, boys and young men can also be harmed, although they tend to underreport abuse because of cultural norms of masculinity and machismo.³⁹⁹ In fact, in some countries, male rape does not legally exist.⁴⁰⁰ In migration contexts with limited resources and few employment opportunities, some children and young people engage in sex work or informally exchange sexual favors for goods and services.⁴⁰¹

Children born in refugee and internally displaced contexts are not always formally registered. Birth registration is “the permanent and official record of a child’s existence.”⁴⁰²By providing

³⁹⁷ Ibid

³⁹⁸ UNHCR, “Sexual Violence Against Refugees: Guidelines on Prevention and Response”, Geneva, 2005, pg. 4-5, available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b9cc26c4&query=sexual%20violence>(last visited 10-23-2021)

³⁹⁹ . Peter Sternberg, “Challenging Machismo: Promoting Sexual and Reproductive Health with Nicaraguan Men,” in *Gender and Development* 8(1), 2000, pg. 89-99 and Pauline Oosterhoff, Prisca Zwanikken and Evert Keting, “Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret”, in *Reproductive Health Matters* 12(23), 2004.

⁴⁰⁰ Nathan Pino, “Sex Differences in Rape Reporting,” MSc Thesis, Iowa State University, 1995, pg. 13

⁴⁰¹ . United Nations Population Fund, “Reproductive Health in Refugee Situations: An Inter-Agency Field Manual”, 1999, available on-line at <http://www.unfpa.org/emergencies/manual/>(last visited 10-12-2021)

⁴⁰² UNHCR, “Handbook for Registration,” Geneva, 2003, pg. 62, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4a278ea1d&query=birth%20registration> (last visited 07-24-2021)

proof of a person's name, age and identity, birth certificates are important child protection tools. Refugee and internally displaced children who lack this documentation become legally invisible. They are also "more vulnerable to abuse and exploitation, such as trafficking, slavery, forced recruitment, early marriages, child labor and detention and prosecution as an adult."⁴⁰³

Children and their families, especially those waiting to be formally granted refugee status, are also frequently detained or deprived of their liberty and freedom of movement. Conditions in waiting centers may also be detrimental to a child's development when educational, healthcare and protection needs go unmet.

Trafficking is also a form of forced migration because the person is coerced in some way.

Trafficking is defined as the recruitment and transportation of people by force or the threat of force for the purposes of exploitation.⁴⁰⁴ International law recognizes that unequal power relations may result in children being trafficked by trusted adults and therefore includes 'the abuse of power or of a position of vulnerability' as an element of coercion in the definition of trafficking.⁴⁰⁵ While trafficking affects every country of the world, situations of poverty, conflict and displacement make some refugee and displaced children particularly vulnerable to trafficking.⁴⁰⁶

⁴⁰³ 6. UNHCR, "Handbook for Registration", Geneva, 2003, pg. 62, available on-line at <http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4a278ea1d&query=birth%20registration> (last visited 08-07-2021)

⁴⁰⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Article 3(a), available on-line at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf(last visited 07-09-2021)

⁴⁰⁵ Ibid

⁴⁰⁶ United Nations Office on Drugs and Crime, "Global Report on Trafficking in Persons", February 2009, available on-line at http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf(last visited 12-06-2021)

In some cases, children born in refugee contexts are stateless. A stateless person is not considered to be a citizen according to the law of any country.⁴⁰⁷ Statelessness is often the result of laws in host countries that explicitly prevent children of refugees from gaining citizenship.⁴⁰⁸ Refugee and internally displaced children can also be stateless if they are born in disputed territory. Stateless people can have more difficulty asserting their rights and cannot travel without the permission of the country of residence. This may make it impossible for refugee children to return to their parents' homeland.

In protracted refugee situations, children and young people are born and grow up outside their home countries. A protracted refugee situation is defined as a temporary refugee community in which a group of 25,000 people or more has lived for more than five years. According to this definition, these situations exist in over 22 countries⁴⁰⁹ and account for over two thirds of refugees globally.⁴¹⁰ Living in refugee contexts for extended periods of time has consequences for children's development and intergenerational relationships.⁴¹¹ For example, refugee children may face discrimination because of their status as refugees, rather than citizens. In order to respond to these protection concerns, a number of key international organizations work to establish and protect the rights of refugees and internally displaced persons. As discussed earlier, The Office of the United Nations High Commissioner for Refugees (UNHCR) is the principal

⁴⁰⁷ Convention Relating to the Status of Stateless Persons, article 1, available on-line at <http://www2.ohchr.org/english/law/stateless.htm>(last visited 09-26-2021)

⁴⁰⁸ . UNHCR, "Handbook for Registration," Geneva, 2003, pg. 62, available on-line at [http://www.United Nations High Commission for Refugees.org/cgi-](http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4a278ea1d&query=birth%20registration)

[bin/texis/vtx/search?page=search&docid=4a278ea1d&query=birth%20registration](http://www.United Nations High Commission for Refugees.org/cgi-bin/texis/vtx/search?page=search&docid=4a278ea1d&query=birth%20registration) (last visited 08-26-2021)

⁴⁰⁹ UNHCR, "2008 Global Trends: Refugees, Asylum seekers, Returnees, Internally Displaced and Stateless Persons", Geneva, 2009, pg. 7, available on-line at <http://www.unhcr.org/4a375c426.html>(last visited 11-23-2021)

⁴¹⁰ Gil Loescher et al., "Protracted refugee situations: Political, human rights and security implications" pg3, edited by Gil Loescher et al, United Nations University Press: Tokyo (2008)

⁴¹¹ Julie Guyot, "Child and Youth Participation in Protracted Refugee Situations," in *Children, Youth and Environments* 17(3), 2007 and Barbara Harrell-Bond, "Are Refugee Camps Good for Children?" in *New Issues in Refugee Research. Working Paper No. 29*

United Nations agency working with refugees and internally displaced people. It was established by the United Nations General Assembly in 1951, under the United Nations Convention Relating to the Status of Refugees, the General Assembly initially gave the agency a three-year mandate to protect and resettle 1.2 million European refugees displaced during World War II. However, it has regularly renewed this mandate for five-year periods up to the present. In 1967, a Protocol to the 1951 UN Refugee Convention extended the geographic mandate of UNHCR beyond Europe.⁴¹² The agency's mandate has also increased from an exclusive focus on refugees, to a broader, more inclusive category of 'persons of concern'. Persons of concern include refugees, internally displaced people, stateless people and former refugees who have returned to their home country. In 2008, UNHCR provided protection or assistance to 24.9 million people around the world.⁴¹³

The Statute of the UN High Commissioner for Refugees tasks the organization with two areas of work in relation to refugees: to provide "international protection;" and to seek "permanent solutions for the problem of refugees."⁴¹⁴ The international protection work of UNHCR is primarily concerned with the adoption and implementation of international law and norms to protect refugees. It also assists in the provision of three 'permanent solutions' to refugees. These are: voluntary repatriation to the refugee's country of origin when conditions are safe to do so; integration in the country of asylum; and resettlement to a third country.⁴¹⁵

⁴¹² Protocol Relating to the Status of Refugees, 1967, available on-line at <http://www2.ohchr.org/english/law/protocolrefugees.htm>(last visited 10-12-2021)

⁴¹³ UNHCR, "2008 Global Trends: Refugees, Asylum seekers, Returnees, Internally Displaced and Stateless Persons", Geneva, 2009, pg. 2, available on-line at <http://www.unhcr.org/4a375c426.html>(last visited 12-23-2021)

⁴¹⁴ Article 1, Statute of the Office of the United Nations High Commissioner for Refugees adopted by General Assembly Resolution 428 (v) of 14 December 1950, Annex

⁴¹⁵ UNHCR, "Durable Solutions," available on-line at <http://www.United Nations High Commission for Refugees.org/pages/49c3646cf8.htm> (last visited 11-10-2021)

Resettlement refers to the transfer of refugees from the country where they initially sought protection to another country, known as the “resettlement country”.⁴¹⁶The United States resettles the most refugees in the world, followed by Australia, Canada, Sweden, Norway and Finland.⁴¹⁷ In 2008, 65,548 refugees were transferred to 26 resettlement countries.⁴¹⁸ The three top source countries producing resettled refugees in 2008 were Iraq, Myanmar and Bhutan.⁴¹⁹ Resettlement is used only in special cases. UNHCR refers only 1% of refugees for resettlement.⁴²⁰ Refugees with special protection needs are identified for resettlement. ‘Women at risk,’ including refugee girls, children and adolescents, are among the categories of people given priority for resettlement.⁴²¹

Once in the resettlement country, refugees often have to adapt to vastly diverse cultural and social contexts. They must also usually learn a new language. Children and young people who are enrolled in schools in the resettlement country have to learn in a different language. Because they often learn new languages more quickly than adults, children may be called on to function as interpreters for their parents and other adult relatives.

UNHCR is more restricted in its work with internally displaced people than with refugees. In 2008, for example, it assisted approximately two thirds of all refugees globally, compared with

⁴¹⁶ UNHCR, “Resettlement Handbook,” pg. 2, available on-line at <http://www.unhcr.org/3d464b239.html>(last visited 10-12-2021)

⁴¹⁷ UNHCR, “Resettlement: A New Beginning in a Third Country,” available on-line at <http://www.unhcr.org/3d464b239.html>(last visited 09-12-2021)

⁴¹⁸ UNHCR, “Resettlement: A New Beginning in a Third Country,” available on-line at <http://www.unhcr.org/3d464b239.html>(last visited 08-23-2021)

⁴¹⁹ . UNHCR, “Resettlement: A New Beginning in a Third Country,” available on-line at <http://www.unhcr.org/3d464b239.html>(last visited 07-12-2021)

⁴²⁰ UNHCR, “Resettlement: A New Beginning in a Third Country,” available on-line at <http://www.unhcr.org/3d464b239.html>(last visited 05-09-2021)

⁴²¹ UNHCR, “Frequently Asked Questions About Resettlement,” September 2009, pg. 3, available on-line at <http://www.unhcr.org/4ac0873d6.html>(last visited 10-25-2021)

just over one half of internally displaced people.⁴²² Because internally displaced people remain within their own country, their governments feel that they have primary responsibility to deal with internal displacement. As discussed in the next section, there is also no existing international law that protects internally displaced people.

In order to provide assistance to internally displaced people, UNHCR requires: a request or authorization from the General Assembly, Secretary-general or a competent principal organ of the UN; consent of the State concerned and, where applicable, other entities in a conflict; access to the affected population; and an adequate security environment for staff of UNHCR and other organizations in which to work.⁴²³

While children and young people have always made up a sizable proportion of refugee and internally displaced populations, it was not until the 1990s that UNHCR developed specific policies and guidelines to address their special needs and rights. In 1993, UNHCR adopted its Policy on Refugee Children, in which the guiding principle is the best interests of the child.⁴²⁴ In 1994, UNCHR published guidelines on the protection and care of refugee children. This document emphasizes that the UN Convention on the Rights of the Child is the framework within which assistance and protection of refugee children should be provided.⁴²⁵ In 2005, it identified five issues affecting refugee children that needed priority attention. These were:

⁴²² . UNHCR, “2008 Global Trends: Refugees, Asylum seekers, Returnees, Internally Displaced and Stateless Persons”, Geneva, 2009, pg. 2, available on-line at <http://www.unhcr.org/4a375c426.htm>(last visited 07-09-2021)

⁴²³ . UNHCR, “Internally Displaced People,” available on-line at <http://www.unhcr.org/pages/49c3646c146.html>(last visited 02-12-2021)

⁴²⁴ UNHCR, “Refugee Children: Guidelines on Protection and Care,” Geneva, 1994, paragraph 26(a), available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3b84c6c67&query=refugee%20children%20guidelines>. The term “best interests” refers to the well-being of a child. (Last visited 04-05-2021)

⁴²⁵ UNHCR, “Refugee Children: Guidelines on Protection and Care”, Geneva, United Nations High Commission for Refugees, 1994, available on-line at <http://www.unhcr.org/3b84c6c67.html>(Last visited 10-08-2021)

separation from families; sexual exploitation, violence and abuse; military recruitment; education; and specific concerns of adolescents.⁴²⁶

In 2007, the Executive Committee of the High Commissioner adopted a Conclusion on Children at Risk.⁴²⁷ This provides operational guidance for UNHCR, countries and other agencies on the protection of children affected by displacement and statelessness. It is intended to help these organizations develop a comprehensive protection system for refugee and displaced children. The Conclusion on Children at Risk includes recommendations on best interests' determination, registration and status determination, integration, settlement, and return. The document also includes recommended measures to address specific risk factors for separated and unaccompanied children, as well as gender issues. While this declaration provides important guidance to UNHCR and other agencies working with refugee and displaced children, it has not transformed into a funded program. As a result, implementation of these recommendations cannot be guaranteed.

In fact, despite the policies and guidelines aimed at mainstreaming children's rights into its policy, protection strategies and programming, UNHCR still has room for improvement in the protection of children's rights. An independent evaluation commissioned by the agency found that greater staff awareness and organizational change are still necessary to ensure comprehensive protection of refugees and displaced children. The first Global Analysis of the UNHCR Accountability Framework for Age, Gender and Diversity Mainstreaming found that only 41% of all respondents claimed that they were fully meeting the objective of enhancing the

⁴²⁶ . UNHCR, "UNHCR's Five Priorities for Girls and Boys of Concern to UNHCR", Geneva, 2005, available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4486a1d92&query=five%20priorities%20for%20children>(Last visited 10-12-2021)

⁴²⁷ UNHCR, "Executive Committee Conclusion on Children at Risk, No. 107 (LVIII) – 2007", available on-line at <http://www.unhcr.org/4868ada74.htm>(Last visited 11-09-2021)

protection of children, including adolescents. The key constraints listed for not being able to perform better were lack of adequate staffing, lack of financial resourcing, sociocultural obstacles and lack of partner engagement.⁴²⁸

UNHCR does not have responsibility for Palestinian refugees, who are served under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Established in 1949 by United Nations General Assembly resolution 302(IV), following the 1948 Arab-Israeli conflict, its mandate has been repeatedly renewed to respond to the protracted situation of Palestinian refugees. The United Nations Relief and Works Agency for Palestine Refugees in the Near East is the main provider of education, health, relief and social services to 4.6 million registered Palestine refugees in the Middle East,⁴²⁹ of whom approximately 40% are under the age of 18.⁵³⁸ The Agency does not have an explicit policy on refugee children, but the UN Convention on the Rights of the Child is one of the international legal instruments that guide its work.⁵³⁹ Education of refugee children is one of its main activities and it also has child-specific health initiatives.⁵⁴⁰

The International Organization for Migration also has a mandate for managing forced migration.⁵⁴¹ Established in 1951, it is an intergovernmental organization composed of 127 member countries. The International organization for Migration works with UNHCR and with its member governments to facilitate the resettlement of refugees to refugee-receiving countries. It does not have a specific policy for refugees.

⁴²⁸ . Dr Leslie Groves, "First Global Analysis: UNHCR Accountability Framework for Age, Gender and Diversity Mainstreaming", 2007, available online at <http://www.unhcr.org/48ce26402.htm>(Last visited 11-07-2021)

⁴²⁹ . United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) website, <http://www.un.org/unrwa/overview/index.htm>(Last visited 10-04-2021)

Although UNHCR is beginning to work with internally displaced persons under the ‘persons of concern’ category, the main United Nations body responsible for internal displacement remains the Office of the Representative of the Secretary-General on Internally Displaced Persons.

Established by the UN General Assembly in 1992, at the request of the Commission on Human Rights,⁴³⁰ the Office of the Representative’s mandate includes: engaging in advocacy for the protection and rights of internally displaced persons; dialoguing with governments, nongovernmental organizations and other actors; strengthening the international response to internal displacement; and mainstreaming the human rights of internally displaced persons into the UN system.⁴³⁰

The Office of the Representative is not an operational agency. Although the Representative conducts fact finding missions to countries of concern, with the permission of the host government, it does not implement programs.⁴³¹ Instead, programming is undertaken by UNCHR. The Office of the Representative is focused on developing guidelines, principles and standards to promote the rights of internally displaced persons. Its most significant work in this area has been the development of the Guiding Principles on Internal Displacement (1998), which contains several explicit references to children.

To support the work of the Office of the Representative, the Brookings-Bern Project on Internal Displacement was created.⁴³² It is jointly directed by the Representative and a senior fellow of the Brookings Institute, a nonprofit, public policy organization. The Brookings-Bern Project

⁴³⁰ OHCHR, “Introduction to the mandate of the Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin”, available on-line at <http://www2.ohchr.org/english/issues/idp/mandate.htm>(Last visited 10-12-2022)

⁴³¹ OHCHR, “Representative of the Secretary-General on the human rights of internally displaced persons: Areas of activity”, available on-line at <http://www2.ohchr.org/english/issues/idp/activity.htm>(Last visited 10-12-2022)

⁴³² Brookings-Bern Project on Internal Displacement, “About the Project”, available on-line at <http://www.brookings.edu/projects/idp/About-Us.aspx>(Last visited 09-12-2022)

works to “promote a more effective national, regional and international response” to internal displacement.⁴³³The Internal Displacement Monitoring Centre⁴³⁴ is another initiative that promotes the rights of internally displaced persons. Established in 1998 by the Norwegian Refugee Council, it monitors internal displacement caused by conflict around the world. At the request of the United Nations, the Internal Displacement Monitoring Centre runs an on-line database to provide information on internal displacement in 50 countries.⁴³⁵

Many local and international nongovernmental organizations work with refugees and internally displaced persons. These include: The Women’s Refugee Commission, which advocates for “laws, policies and programs to improve the lives and protect the rights of refugee and internally displaced women, children and young people, including those seeking asylum”;⁴³⁶ Refugees International, which advocates for “assistance and protection for displaced people and promotes solutions to displacement crises”;⁴³⁷ and The Norwegian Refugee Council, which provides “assistance, protection and durable solutions to refugees and internally displaced persons worldwide”.⁴³⁸

⁴³³ Brookings-Bern Project on Internal Displacement, “About the Project”, available on-line at <http://www.brookings.edu/projects/idp/About-Us.aspx>(Last visited 09-09-2021)

⁴³⁴ Internal Displacement Monitoring Centre website available at <http://www.internal-displacement.org/>(Last visited 09-11-2020)

⁴³⁵ For more information, see Internal Displacement Monitoring Centre website at <http://www.internal-displacement.org/>(Last visited 06-04-2021)

⁴³⁶ For more information, see Women’s Refugee Commission website, available at <http://www.womensrefugeecommission.org/>(Last visited 12-23-2021)

⁴³⁷ For more information, see Refugees International website, available at <http://www.refintl.org/>(Last visited 04-07-2020)

⁴³⁸ For more information, see Norwegian Refugee Council website, <http://www.nrc.no/>(Last visited 01-12-2020)

2.23 Optional Protocols to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)

The States Parties to the present protocols provides that in consideration of the protocol, members should endeavor in furtherance to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography, Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁴³⁹

2.24 Statute of the International Criminal Tribunal for the former Yugoslavia (1993)

In May 1993, following armed conflict that produced ethnic cleansing and genocide, the United Nations (UN) Security Council established the International Criminal Tribunal for Yugoslavia to try those responsible for violations of international humanitarian law in the territory of the former Yugoslavia. The tribunal seeks to bring justice to the victims of the conflict and deter future leaders from committing similar atrocities. The International Criminal Tribunal for the former Yugoslavia was the first war crimes court created by the UN. In the International Criminal Tribunal for the former Yugoslavia, children are afforded the same protections provided to adult victims and witnesses.⁴⁴⁰ These include a Victims and Witnesses Unit and

⁴³⁹ Art 1,11,21,32,33,34,35 and 36

⁴⁴⁰ Children who are detained and prosecuted are entitled to the protection of the international juvenile justice guarantees, which govern detention, trial, sentencing and rehabilitation: Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, pg. 3, Article 37, 39, 40, available on-line at

safeguards for security and privacy during testimony. The Statute and Rules of Procedure and Evidence of the International Criminal Tribunals for the former Yugoslavia and Rwanda do not explicitly limit their jurisdiction to over 18-year-olds. In theory, the ad hoc tribunal could seek prosecutions of those who were under 18 at the time of their crime; however, the International Criminal Tribunal for Yugoslavia has not sought to prosecute children, largely because children did not play a significant role in the conflict in the former Yugoslavia. The International Criminal Tribunal for the former Yugoslavia was scheduled to complete its work in 2010.

2.25 Statute of the International Criminal Tribunal for Rwanda (1994)

Recognizing that serious violations of international humanitarian law were committed during the 1994 genocide in Rwanda, the Security Council created the International Criminal Tribunal for Rwanda. In post-conflict Rwanda, the issue of prosecuting children was much more pertinent than it had been in former Yugoslavia, as many children had taken part in the genocide. It was decided that, since 14 years is the national age of criminal responsibility, children under the age of 14 would not be prosecuted. Provisions were made to prosecute children aged 14 to 18 in national courts, rather than in the International Tribunal.⁴⁴¹ In the Statute of the International

<http://www.unhcr.org/refworld/docid/3ae6b38f0.html>(Last visited 10/12/2019) and United Nations, “Standard Minimum Rules for the Administration of Juvenile Justice”, UN Res 40/33-Beijing Rules, 1985, Annex 2.; United Nations, “Rules for the Protection of Juveniles Deprived of their Liberty”, UN Res 45/113-JDLs, 1990, Annex 4; United Nations, “Guidelines for the Prevention of Juvenile Delinquency”, UN Res 45/112-Riyadh Guidelines, 1990, Annex 3.

⁴⁴⁰ Statute of the International Criminal Tribunal for Yugoslavia, 25/05/1993, S/R/827, Article 4(2)(e), available on-line at <http://www1.umn.edu/humanrts/icty/statute.html>(Last visited 10/12/2020) and Statute of the International Criminal Tribunal for Rwanda, 8/11/1994, S/R/955, Article 2(2)(e), available on-line at <http://www2.ohchr.org/english/law/itr.htm>(Last visited 9/10/2020)

⁴⁴⁰ Supra note 309.

⁴⁴¹ Children who are detained and prosecuted are entitled to the protection of the international juvenile justice guarantees, which govern detention, trial, sentencing and rehabilitation: Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, pg. 3, Article 37, 39, 40, available on-line at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>(Last visited 10/12/2019) and United Nations, “Standard Minimum Rules for the Administration of Juvenile Justice”, UN Res 40/33-Beijing Rules, 1985, Annex 2.; United Nations, “Rules for the Protection of Juveniles Deprived of their Liberty”, UN Res 45/113-JDLs, 1990, Annex 4;

Criminal Tribunal for Rwanda, the only specific reference to children appears in the list of crimes that constitute genocide, which includes “forcibly transferring children of the group to another group committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.⁴⁴² As in Yugoslavia, the Tribunal afforded children the same protection provided to all victims and witnesses.⁴⁴³ These include a Victims and Witnesses Unit and safeguards for security and privacy during testimony, provided for in Rule 34. The Rules of Procedure and Evidence of the Tribunal do not limit jurisdiction to over 18-year-olds. In theory, the Tribunal could seek prosecution of those who were under 18 at the time of their crime; however, they have not sought to do so. Gacacas, semi-traditional local courts, were established in 2001 to speed up prosecution of those who had perpetrated less serious crimes. Gacacas also conveyed a sense of local justice, by using a traditional method of transitional justice and by recognizing that telling the truth, at times, is more important for a society to move on and heal than sentencing all perpetrators.⁴⁴⁴ The Tribunal was scheduled to complete its work in 2010.

2.26 Beijing Platform for Action (1995)

The Beijing Platform for action was a veritable platform in an attempt to prohibit all sorts of violence in Armed conflicts particularly against women and children. Grave violations of the human rights of women occur, particularly in times of armed conflict, and include murder, torture, systematic rape, forced pregnancy and forced abortion, in particular under policies of

United Nations, “Guidelines for the Prevention of Juvenile Delinquency”, UN Res 45/112-Riyadh Guidelines, 1990, Annex 3.

⁴⁴² Statute of the International Criminal Tribunal for Yugoslavia, 25/05/1993, S/R/827, Article 4(2)(e), available on-line at <http://www1.umn.edu/humanrts/icty/statute.html> (Last visited 10/12/2020) and Statute of the International Criminal Tribunal for Rwanda, 8/11/1994, S/R/955, Article 2(2)(e), available on-line at <http://www2.ohchr.org/english/law/itr.htm> (Last visited 9/10/2020)

⁴⁴³ *Supra* note 309.

⁴⁴⁴ Rwandan Government, “Gacaca to establish truth about genocide,” President Kagame, Press Release, 4 October 2001

“ethnic cleansing”⁴⁴⁵The maintenance of peace and security at the global, regional and local levels, together with the prevention of policies of aggression and ethnic cleansing and the resolution of armed conflict, is crucial for the protection of the human rights of women and girl children, as well as for the elimination of all forms of violence against them and of their use as a weapon of war.⁴⁴⁶

2.27 The Slavery Convention (1926)

International humanitarian law and human rights instruments have increasingly sought to address the use of sexual violence, although earlier instruments also provided a basis for prosecution. The 1926 Slavery Convention prohibits slavery in all situations.⁴⁴⁷ Since sexual violence may be defined as a form of slavery (as in the case of ‘bush wives’ and ‘comfort women’), it is considered a crime under this Convention.

The slavery convention is one among the international instruments put in place to prevent the exploitation of children and person used in prosecuting Armed conflicts. For the purpose of the present Convention, the following definitions were agreed upon: 1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. 2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in

⁴⁴⁵ Art 11

⁴⁴⁶ Art 12

⁴⁴⁷ " Slavery Convention, 25 September 1926, entry into force 9 March 1927, available on-line at <http://www2.ohchr.org/english/law/pdf/slavery.pdf>(Last visited 10/11/2019)

slaves.⁴⁴⁸ The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps: a. To prevent and suppress the slave trade; b. To bring about, progressively and as soon as possible, the complete abolition of slavery in all its form.⁴⁴⁹

2.27.1 Conventions Governing the Specific Aspects of the Refugee Problem in Africa (1969)

The 1969 Convention Governing the Specific Aspects of the Refugee Problem in Africa extends the refugee definition to people experiencing generalized “aggression, occupation, foreign domination or events seriously disturbing public order”⁴⁵⁰ This allows for large groups of people fleeing generalized insecurity to gain legal refugee status. As of 25 November 2009, 45 States were party to this Convention and four States have signed it but have yet to ratify it.⁴⁵¹ Given that there are only four African countries who have neither signed nor ratified the Convention, this Convention provides comprehensive legal status to most refugees fleeing conflict and insecurity in Africa.

⁴⁴⁸ Art 1

⁴⁴⁹ Art 2

⁴⁵⁰ . African Union, Convention Governing the Specific Aspects of Refugee Problems in Africa, article 1(2), available on-line at http://www.africanunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf (Last visited 10/10/2020}

⁴⁵¹ African Union, “List of Countries that Have Signed, Ratified/Accepted the Convention Governing the Specific Aspects of Refugee Problems in Africa”, available on-line at <http://www.africanunion.org/root/AU/Documents/Treaties/treaties.htm>(Last visited 11/11/2020)

2.28 Security Council Resolutions in relation to children and Armed Conflicts

In addition to court rulings, statutes, and international conventions, several United Nations Security Council resolutions have further strengthened the protection of children and worked towards ending their involvement in armed conflict.

UN Security Council resolution 1261(1999)⁴⁵² was the first resolution to formally establish that the protection of the rights and welfare of war-affected children was a peace and security concern. The resolution urged all Member States to intensify their efforts to end the recruitment and use of children as combatants, as well to facilitate the disarmament, demobilization, rehabilitation and reintegration of children. In addition, it urged warring parties to take extraordinary measures to protect children, especially girls, from rape and other forms of sexual violence.

UN Security Council resolution 1314 (2000)⁴⁵³ emphasized the responsibility of all countries not to grant amnesty to those responsible for grave crimes against children. It also called for measures against the illicit trade in natural resources, such as diamonds, which contributes to the exploitation of children. Resolution 1314 called for increased efforts to release abducted children and emphasized the need to protect internally displaced persons and refugees. Increased regional and cross-border initiatives on children associated with armed forces or armed groups and the illicit traffic in small arms was recommended, as was the development of child protection policies and programs, especially the strengthening of national capacities for child protection.

⁴⁵² . United Nations Security Council resolution 1261 (1999) on Children and armed conflict, 30/07/1999, S/RES/1261, available on-line at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/248/59/PDF/N9924859.pdf?OpenElement>(Last visited 7/9/2020)

⁴⁵³ . United Nations Security Council resolution 1314 (2000) on Children and armed conflict, 11/07/ 2000, S/RES/1314, available on-line at <http://www.unhcr.org/refworld/docid/3b00f2740.html>(Last visited 12-8-2019)

The resolution also committed the inclusion of Child Protection Advisers⁴⁵⁴ in peacekeeping operations.

UN Security Council resolution 1379 (2001)⁴⁵⁵ called on the UN Secretary-General to create a list of parties that recruited or used children in violation of international obligations (the ‘list of shame’). This resolution initiated further developments on monitoring and reporting violations of children’s rights in armed conflict.⁴⁵⁶

UN Security Council resolution 1460 (2003)⁴⁵⁷ called upon the States and armed groups named in the ‘list of shame’ to report on steps they have taken to halt the recruitment and use of children.⁴⁵⁸ The UN Security Council expressed its intention to take appropriate steps to further address this issue, if it deemed that insufficient progress had been made by these warring parties. In this resolution, the UN Security Council urged Member States to take effective action to “control the illicit trade of small arms to parties in armed conflict that do not fully respect the relevant provisions of applicable international law.”⁴⁵⁹ The resolution also requested that the protection and rights of children be integrated into peace agreements and peace processes.

⁴⁵⁴ . Child Protection Advisers in UN peacekeeping missions provide training for peacekeepers and document child rights violations, as well as dialoguing with parties to conflict and advocating on sensitive child rights issues.

⁴⁵⁵ . United Nations Security Council resolution 1379 (2001) on Children and armed conflict, 20/11/2001, S/RES/1379, available on-line at <http://www.unhcr.org/refworld/docid/3c4e94561c.html>(Last visited 10/12/2020)

⁴⁵⁶ Ibid

⁴⁵⁷ . United Nations Security Council resolution 1460 (2003) on Children and armed conflict, 30/01/2003, S/RES/1460, available on-line at <http://www.unhcr.org/refworld/docid/3f45dbdd0.html>(Last visited 12-18-2019)

⁴⁵⁸ United Nations Security Council resolution 1460 (2003) on Children and armed conflict, 30/01/2003, S/RES/1460, para 5, available on-line at <http://www.unhcr.org/refworld/docid/3f45dbdd0.html>(Last visited 10-12-2020)

⁴⁵⁹ . United Nations Security Council resolution 1460 (2003) on Children and armed conflict, 30/01/2003, S/RES/1460, para 7, available on-line at <http://www.unhcr.org/refworld/docid/3f45dbdd0.htm>(Last visited 9/8/2019)

UN Security Council resolution 1539 (2004) is important because it is the first resolution to mention the possibility of using targeted measures against parties to arm conflict that refuse to stop their recruitment and use of children.

UN Security Council resolution 1612 (2005)⁴⁶⁰ was a key advancement for the protection of children in armed conflict, as it established a comprehensive monitoring and reporting mechanism (MRM) designed to improve the protection of children in armed conflict, notably through the collection and provision of “timely, objective, accurate and reliable information,” so that the Security Council’s capacity to take concrete responsive action to violations could be improved. Resolution 1612 required that the MRM focus on six grave violations against children in conflict: killing or maiming of children; recruiting or using children by armed forces or armed groups; attacks against schools or hospitals; rape or other sexual violence against children; abduction of children; and denial of humanitarian access for children.

A Security Council Working Group⁴⁶¹ was established to review the information submitted through the MRM and make concrete recommendations for action against parties that continue to violate children’s security and rights. The Security Council reiterated it will consider “targeted measures” against violators if there is no end or progress towards ending violations.⁴⁶² Task forces at the country level monitor the resolution. In his eighth report to the Security Council on children and armed conflict in March 2009, the Secretary-General documented grave violations against children in 20 countries, including Afghanistan, Burundi, Central African Republic,

⁴⁶⁰United Nations Security Council resolution 1612 (2005) on Children and armed conflict, 26/07/2005, S/RES/1612, available on-line at <http://www.unhcr.org/refworld/docid/43f308d6c.html>(Last visited 10-11-2020)

⁴⁶¹ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Security Council Working Group”, available on-line at <http://www.un.org/children/conflict/english/securitycouncilwg.html>(Last visited 9/1/2020)

⁴⁶² . United Nations Security Council resolution 1612 (2005) on Children and armed conflict, 26/07/2005, S/RES/1612, available on-line at <http://www.unhcr.org/refworld/docid/43f308d6c.html>(Last visited 10/10/2020)

Chad, Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Georgia, Haiti, Iraq, Lebanon, Myanmar, Nepal, Occupied Palestinian Territory/Israel, the Philippines, Somalia, Sri Lanka, Sudan, Thailand and Uganda.⁴⁶³

UN Security Council resolution 1882 (2009) builds on and strengthens previous resolutions. The Security Council: “strongly condemn[s] all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access by parties to armed conflict and all other violations of international law committed against children in situations of armed conflict.”⁴⁶⁴

This resolution recognizes the importance of halting sexual violence against children, particularly girls, as well as killing and maiming of children under situations of armed conflict. Resolution 1882 therefore made these violations a criterion equal to recruiting or using children that allows for the listing of parties that commit this grave violation in the annexes of the Secretary-General’s Report on Children and Armed Conflict. Another development in the area of accountability for crimes against children is that resolution 1882 requests more communication between the Working Group of the Security Council and the Sanctions Committees. This would enhance individual responsibilities and the credibility of the threat of targeted measures.⁴⁶⁵

2.29 International Framework on Juvenile Justice

⁴⁶³ “Children and armed conflict, Report of the Secretary-General”, 26 March 2009, A/63/785–S/2009/158, available on-line at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/282/45/PDF/N0928245.pdf?OpenElement>(Last visited 10-10-2020)

⁴⁶⁴ . United Nations Security Council resolution 1882 (2009) on Children and armed conflict, 4/07/2009, S/RES/1882 (2009), s. 19, available on-line at <http://www.unhcr.org/refworld/docid/4a7bdb432.htm>(Last visited 11-10-2020)

⁴⁶⁵ United Nations Security Council resolution 1882 (2009) on Children and armed conflict, 4/07/2009, S/RES/1882 (2009), s. 19, available at <http://www.unhcr.org/refworld/docid/4a7bdb432.htm>(Last visited 10-12-2019)

The UN Convention on the Rights of the Child (Article 40) protects the rights of children in conflict with the law with respect to due process and considers the need for rehabilitative, rather than punitive, measures. There are four main supporting juvenile justice documents: UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985;⁴⁶⁶ UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990;⁴⁶⁷ UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990;⁴⁶⁸ and the Vienna Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) 1997.⁴⁶⁹

Both during and in the aftermath of conflict, children under 18 who directly participated in the conflict can find themselves subject to charges in criminal or military courts. The standards noted above are important in ensuring that children charged with committing crimes in the context of armed conflict are treated in a manner that respects their human rights (for example, that they have access to legal representation, they are provided a fair trial, they are only deprived of liberty as a last resort, they are detained separately from adults and they are treated humanely while detained) and promotes their rehabilitation and reintegration.

⁴⁶⁶ In 1996, the importance of education was highlighted in Graça Machel's report to the UN Security Council on the Impact of Armed Conflict on Children (paras 184-203), A/51/306, 1996, available on-line at <http://www.un.org/children/conflict/english/reports.html> (Last visited 12-12-2020) Machel set out the mitigating impact that education can have on the effects of armed conflict on children and called for educational activity to be established as a priority for humanitarian assistance. A decade after Machel's report, the provision of education, whether formal or informal, is not only seen as important in and of itself, but is also seen by some as the fourth pillar of humanitarian assistance (for example, see UNESCO, "Educating in Emergencies, available on-line at http://portal.unesco.org/education/en/ev.php-URL_ID=37748&URL_DO=DO_TOPIC&URL_SECTION=201.html (Last visited 10-12-2020), and Peter Buckland, "Reshaping the future: Education in post conflict reconstruction", 2004, available on-line at [http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/\\$file/Reshaping_the_Future.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/$file/Reshaping_the_Future.pdf?openelement) (Last visited 9-8-2020)

⁴⁶⁷ Ibid

⁴⁶⁸ Ibid

⁴⁶⁹ Ibid

2.30 CONCLUSION

The protection of Children in Armed conflicts the world over, have been amply amplified in various international, regional law, conventions, treaties, and other legal instruments.

In the last two decades, international law and international community have in theory, taken concrete steps to protect children in Armed conflicts.

Notwithstanding these laudable steps, there appears to be an upsurge in the involvement of Children in Armed conflicts.

One question that is begging for answers, is that, can the international community in general and African communities in particular place the safety of Children above hypocritical perspectives?

Laws are made by man and not man made by law. From my research so far, there appears to be abundance of Laws to protect and prevent Children being used in Armed Conflicts but unfortunately there is absent of political will to provide solutions in this direction.

From the perspective of the international communities, the big players of International Law namely, The United States of America, Russia, China, Canada, Britain, France, Belgium and others dance to different tunes when it suits them. It has been established in this studies that the bigger players in the international communities, recruits Children below the threshold of 18 years old into their Armed forces and participation of same in Armed conflicts in disobedience to international Law. As we can see, the United States, China and others do not recognize the International Criminal court. Others who do recognize it and other instruments to protect Children Used in Armed Conflicts only pay lip service to this problem.

In Africa, it is even more complex. The different leaders and government are more interested in what they can benefit from the Continent, Problems in Africa Ranges from corruption, ineptitude ethnicism, tribalism, nepotism and other negative attitude in solving problems of such magnitude.

It is my Candide opinion that where there is a Will, there is always a way. Both the international and African communities must be willing and ready with sincerity of purpose to prevent and protect children from being used in Armed Conflicts.

CHAPTER THREE

3.0 Legal protections for Children involved in Armed Conflicts

3.1 Children as “Child soldier”: In search of adequate legal protection

Both international humanitarian law (IHL) and international human rights law (IHRL) strive to protect the lives, health and dignity of individuals, albeit from a different angle. It is therefore not surprising that, while vastly different in formulation, the essence of some of the rules is similar, if not identical. For example, the two bodies of law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, regulate aspects of the right to food and health. On the other hand, rules of IHL deal with many issues that are outside the purview of IHRL, such as the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross and red crescent emblems. Similarly, IHRL deals with aspects of life in peacetime that are not regulated by IHL, such as freedom of the press, the right to assembly, to vote and to strike.

IHL is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice. IHL main treaty sources applicable in international armed conflict are the four Geneva Conventions of 1949 and their Additional Protocol I of 1977. The main treaty sources applicable in Non-International armed conflict are article 3 common to the Geneva Conventions and Additional Protocol II of 1977.

On the other hand, IHRL is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. Human rights are inherent entitlements which belong to every person as a consequence of being human. Numerous non-treaty-based principles and guidelines ("soft law") also belong to the body of international human rights standards.

IHRL main treaty sources are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984) and Rights of the Child (1989). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981). While IHL and IHRL have historically had a separate development, recent treaties include provisions from both bodies of law. Examples are the Convention on the Rights of the Child, its Optional Protocol on the Participation of Children in Armed Conflict, and the Rome Statute of the International Criminal Court. When are they applicable? IHL is applicable in times of armed conflict, whether international or Non-International. International conflicts are wars involving two or more states, and wars of liberation, regardless of whether a declaration of war has been made or whether the parties involved recognize that there is a state of war.

Non-international armed conflicts are those in which government forces are fighting against armed insurgents, or rebel groups are fighting among themselves. Because IHL deals with an exceptional situation – armed conflict – no derogations whatsoever from its provisions are permitted. In principle, IHRL applies at all times, i.e., both in peacetime and in situations of armed conflict. However, some IHRL treaties permit governments to derogate from certain rights in

situations of public emergency threatening the life of the nation. Derogations must, however, be proportional to the crisis at hand, must not be introduced on a discriminatory basis and must not contravene other rules of international law – including the rules of IHL.

Certain human rights are never derogable. Among them are the right to life, prohibition of torture or cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude and the prohibition of retroactive criminal laws. Who is bound by these bodies of law? IHL binds all actors to an armed conflict: in international conflicts it must be observed by the states involved, whereas in internal conflict it binds the government, as well the groups fighting against it or among themselves. Thus, IHL lays down rules that are applicable to both state and non-state actors. IHRL lays down rules binding governments in their relations with individuals. While there is a growing body of opinion according to which nonstate actors – particularly if they exercise government-like functions – must also be expected to respect human rights norms, the issue remains unsettled.

In this chapter, in the area of international human rights, the Optional Protocol is given more emphasis because of its particular importance in addressing the issue of child soldiers. However, where appropriate, reference is also made to the CRC and African Children’s Charter. An attempt is made to offer an insight into the specific challenges that may be faced in the context of Africa to alleviate the problem of child soldiers.

Now it must be mentioned that, as is often the case, a large problem involved in solving big problems is political will. This squarely applies to the issue of child soldiers and there is no oversight of this fact here. Notwithstanding the issue of lack of political will, certain minimum standards should be adhered to so as to afford meaningful protection to these children. Therefore, it is on this premise that suggestions to produce a comprehensive and up-to-date normative framework are made.

Finally, it is not believed that better legal standards even with full implementation are a magic wand. Admittedly, the most effective means of ending this offensive is a multi-faceted approach.⁴⁷⁰ However, the attempt made here is to indicate how the law can at its utmost contribute its share towards fighting this “evil.”

3.1 International humanitarian law

IHL imposes obligations on individuals and also provides that persons may be held individually criminally responsible for "grave breaches" of the Geneva Conventions and of Additional Protocol I, and for other serious violations of the laws and customs of war (war crimes). IHL establishes universal jurisdiction over persons suspected of having committed all such acts. With the entry into force of the International Criminal Court, individuals will also be accountable for war crimes committed in non-international armed conflict. While individuals do not have specific duties under IHL treaties, IHL also provides for individual criminal responsibility for violations that may constitute international crimes, such as genocide, crimes against humanity and torture. These crimes are also subject to universal jurisdiction. The ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as the International Criminal Court, have jurisdiction over violations of both IHL and IHL.

IHL aims to protect persons who do not or are no longer taking part in hostilities. Applicable in international armed conflicts, the Geneva Conventions deal with the treatment of the wounded and sick in the armed forces in the field (Convention I), wounded, sick and shipwrecked members of the armed forces at sea (Convention II), prisoners of war (Convention III) and civilian persons

⁴⁷⁰ providing better economic opportunities, providing education to both children and parents, curbing the easy availability of small arms and military aid, avoiding situations which generally because armed conflict is some of the elements in this multi-faceted approach.

(Convention IV). Civilian persons include internally displaced persons, women, children, refugees, stateless persons, journalists and other categories of individuals (Convention IV and Protocol I). Similarly, the rules applicable in Non-International armed conflict (article 3 common to the Geneva Conventions and Protocol II) deal with the treatment of persons not taking, or no longer taking part in the hostilities.

IHL also protects civilians through rules on the conduct of hostilities. For example, parties to a conflict must at all times distinguish between combatants and non-combatants and between military and non-military targets. Neither the civilian population as a whole nor individual civilians may be the object of attack. It is also prohibited to attack military objectives if they cause disproportionate harm to civilians or civilian objects.

The international community has tried to regulate warfare for well over a century and a half. In 1859, Henry Dunant witnessed the horrors of the Battle of Solferino in Northern Italy, in which thousands of wounded soldiers were left to die on the battlefield. In the book published shortly afterward, *A Memory of Solferino*, Henry Dunant called for the formation of relief societies and medical services to tend to the sick and wounded, which would be protected through an international agreement. His ideas led to the creation of the International Committee for Relief to the Wounded in 1863 (which later became the International Committee of the Red Cross⁴⁷¹ and, in 1864, the first international humanitarian law treaty, the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, was adopted by a conference

⁴⁷¹ ICRC, “From the battle of Solferino to the eve of the First World War,” 2004, available online at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNVP>(last visited 10-12-2021)

of 16 States. Additional treaties were subsequently developed to address specific aspects of armed conflict, such as the status and rights of prisoners of war and the use of methods of warfare.⁴⁷²

The most significant humanitarian law treaties that apply to warfare today are the Geneva Conventions, which were drafted in the aftermath of World War II, and the two Additional Protocols to these Conventions that were adopted in 1977. These instruments provide protection to civilians and those who can no longer take part in hostilities.

3.2 International Human Rights Law

IHRL, being tailored primarily for peacetime, applies to all persons. What is the system of implementation at the national level? The duty to implement both IHL and IHRL lies primarily with states. States have a duty to take a number of legal and practical measures – both in peacetime and in armed conflict situations – aimed at ensuring full compliance with IHL, including translating IHL treaties; preventing and punishing war crimes, through the enactment of penal legislation; protecting the red cross and red crescent emblems; applying fundamental and judicial guarantees; disseminating IHL; training personnel qualified in IHL and appointing legal advisers to the armed forces.

IHRL also contains provisions obliging states to implement its rules, whether immediately or progressively. They must adopt a variety of legislative, administrative, judicial and other measures that may be necessary to give effect to the rights provided for in the treaties. This may include enacting criminal legislation to outlaw and repress acts prohibited under IHRL treaties, or

⁴⁷² For a list of all international humanitarian law instruments, see the website of the International Committee of the Red Cross at www.icrc.org/ihl. For more information on the history of international humanitarian law, see the website of the International Committee of the Red Cross at http://www.icrc.org/Web/Eng/siteeng0.nsf/html/section_ihl_history (last visited 11-23-2021)

providing for a remedy before domestic courts for violations of specific rights and ensuring that the remedy is effective at the international level.

As regards international implementation, states have a collective responsibility under article 1 common to the Geneva Conventions to respect and to ensure respect for the Conventions in all circumstances. The supervisory system also comprises the Protecting Power mechanism, the enquiry procedure and the International Fact-Finding Commission envisaged in Article 90 of Protocol I.

States parties to Protocol I also undertake to act in cooperation with the United Nations in situations of serious violations of Protocol I or of the Geneva Conventions. The ICRC is a key component of the system, by virtue of the mandate entrusted to it under the Geneva Conventions, their Additional Protocols and the Statutes of the International Red Cross and Red Crescent Movement. It ensures protection and assistance to victims of war, encourages states to implement their IHL obligations and promotes and develops IHL. ICRC's right of initiative allows it to offer its services or to undertake any action which it deems necessary to ensure the faithful application of IHL. The IHRL supervisory system consists of bodies established either by the United Nations Charter or by the main IHRL treaties. The principal UN Charter-based organ is the UN Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights. "Special procedures" have also been developed by the Commission over the last two decades, i.e., thematic or country specific special rapporteurs, and working groups entrusted with monitoring and reporting on the human rights situations within their mandates. Six of the main IHRL treaties also provide for the establishment of committees of independent experts charged with monitoring their implementation.

A key role is played by the Office of the High Commissioner for Human Rights which has primary responsibility for the overall protection and promotion of human rights. The Office aims to enhance the effectiveness of the UN's human rights machinery, to increase UN system-wide implementation and coordination of human rights, to build national, regional and international capacity to promote and protect human rights and to disseminate human rights texts and information.at the regional level.

The work of regional human rights courts and commissions established under the main regional human rights treaties in Europe, the Americas and Africa is a distinct feature of IHRL, with no equivalent in IHL. Regional human rights mechanisms are, however, increasingly examining violations of IHL. The European Court of Human Rights is the centerpiece of the European system of human rights protection under the 1950 European Convention. The main regional supervisory bodies in the Americas are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The African Commission on Human and Peoples' Rights is the supervisory body established under the 1981 African Charter. A treaty establishing an African human rights court has not yet come into force.⁴⁷³

As pointed out in the previous chapter, international humanitarian law has some role to play in protecting children in general and child soldiers in particular.⁴⁷⁴ The first three Geneva Conventions afford little or no protection for children in general.⁴⁷⁵ Although the fourth Geneva Convention provides specific protection to children in general, it falls short of addressing protection for child soldiers.⁴⁷⁶ Therefore, this leaves the

⁴⁷³ See https://www.icrc.org/en/doc/assets/files/other/ihl_and_ihrl.pdf(last visited 10-31-2022)

⁴⁷⁴ See <http://www.ohchr.org/english/bodies/crc/index.htm>(last visited 10/12/2019)

⁴⁷⁵ The Conventions relate to wounded and sick, the shipwrecked and prisoners of war and do not address the concerns of children specifically.

⁴⁷⁶ The provisions do not aim to regulate the participation of children in hostilities. See sub-section 2.2 CRC convention.

two Additional Protocols as the only relevant international humanitarian law instruments worthy of further discussion.

One general strong point of international humanitarian law from the perspective of child soldiers is that it applies once a conflict has begun. Beside this, it also binds equally all sides of the conflict, including insurgent groups who do not have the legal capacity to sign the Geneva Conventions.⁴⁷⁷ In this regard, even rebel groups who are not signatories of the relevant legal instruments are bound and obliged to abide by the relevant provisions of the law.

However, in general, it is rightly argued by Wells that

...international humanitarian law maintains dated distinctions between persons involved in hostilities and persons needing protection from the effects of hostilities that do not reflect conditions of modern armed conflicts and act to preclude needed legal protection of those among the most vulnerable in wartime, namely child soldiers.⁴⁷⁸

This argument holds water, for instance, in relation to Additional Protocol I as it is limited to international conflicts.⁴⁷⁹ Presently in Africa, where conflicts have taken the strict dimension of being internal,⁴⁸⁰ Additional Protocol have failed to provide protection for the child soldier in internal armed conflicts.

On the other hand, although Additional Protocol II is commendable for child soldiers in Africa as it applies to non-international armed conflicts, it does not establish any measures of implementation or supervision

⁴⁷⁷S L Wells "Crimes against child soldiers in armed conflict situations: Applications and limits of international humanitarian law" (2004) 12 *Tulane Journal of International and Comparative Law* 292.

⁴⁷⁸*Ibid* 72 at 288

⁴⁷⁹ The word "international armed conflict" is somewhat misleading because Additional Protocol I do not apply only to the international armed conflicts covered by common article 2 of the Geneva Conventions, which are defined as conflicts between two or more States Parties to the treaty. Instead, for instance, according to article 1(4) of Additional Protocol I applies to "...armed conflict against racist regimes in the exercise of self-determination...".

⁴⁸⁰ For example, the conflicts in Sudan, Uganda, DRC, Sierra Leone, Liberia and Burundi which have all engaged child soldiers.

to ensure compliance with its provisions.⁴⁸¹ In addition, it requires a higher degree of intensity for its application as it does not apply to riots, isolated and sporadic acts of violence which have not reached the level of internal armed conflicts.⁴⁸² Moreover, both Additional Protocols, just like the Rome Statute, prescribe fifteen as the minimum age for recruitment and participation in hostilities.⁴⁸³ This is a major drawback and an inconsistency with other international legal standards for the protection of the child which have adopted 18 as the maximum threshold. It also sends the wrong message that the recruitment and use of children between 15 and 18 is acceptable. Rectifying this drawback in line with current international legal standards could optimize the role international humanitarian law could play.

International human rights law affords the main protection pertaining to child soldiers. For the purpose of “child soldiers,” it is composed of the CRC, the African Children’s Charter and the Optional Protocol, the latter addressed particularly to child soldiers. The following is an analysis of the relevant provisions of these instruments with emphasis on the Optional Protocol.

3.3 The “straight 18” position: reason for resilience

Article 1 of the CRC as referred to in chapter one, establishes that a “child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.” The function of this article is to define who is to be considered a child for purposes of the CRC.⁴⁸⁴ The only restriction placed on this principle in the CRC itself is to be found in article 38 on recruitment and

⁴⁸¹ See, generally, S Ramcharan “The role of international bodies in the implementation and enforcement of humanitarian law and human rights law in non-international armed conflicts” (1983) 33 American University Law Review 99

⁴⁸² Most current conflicts involving child soldiers in Africa are internal and below the Additional Protocol II minimum threshold: Article 22(3) of the African Children’s Charter provides that it does not only apply to children caught up in international and internal armed conflict, but also to lower levels of violence described as “tension and strife”. Thus, the African Children’s Charter recognizes that it is the best interest of the child which ought to predominate in international law and not the form of the conflict.

⁴⁸³ Article 77 of Additional Protocol I and article 4 of Additional Protocol II.

⁴⁸⁴ S Detrick A commentary on the United Nations Convention on the Rights of the Child 653.p51

participation in hostilities which allows the minimum age to be at 15. The Optional Protocol refers to article 1 of the CRC for its definition of the “child”.⁴⁸⁵

Under article 2 of the African Children’s Charter every person under the age of 18 is regarded as a child falling within the scope of the Charter. Unlike article 1 of the CRC, the provision in the African Children’s Charter does not allow for any exception.

According to Alston, the CRC’s drafters put 18 as the age limit in order to maximize the protection offered by the CRC and to ensure that the rights set forth therein would uniformly apply to as large a group as possible.⁴⁸⁶ Probably a similar reason could be ascribed to the drafters of the African Children’s Charter. Therefore, as “child soldiers” are one of the most vulnerable groups of children, it becomes imperative to ensure they benefit from the maximum threshold of the age 18.

Furthermore, there is a tendency within the international community to fix the age of majority at 18.⁴⁸⁷ By way of example, the experts meeting in Vienna from 30 October to 4 November 1994 to discuss the question of children and adolescents held in detention, urged States to ensure “that legislation concerning the age of criminal responsibility, civil majority and consent does not have the effect of depriving any child of the full enjoyment of the rights recognized by the CRC.”⁴⁸⁸ Similarly, in interpreting article 10 of the ICCPR, the Human Rights Committee mentioned that the age of majority should be 18 as far as criminal matters are concerned.⁴⁸⁹

⁴⁸⁵ para 7 of Preamble of Optional Protocol.

⁴⁸⁶ P Alston “The legal framework of the Convention on the Rights of the Child” (1992) 91 UN Bulletin of Human Rights: The Rights of the Child 2, 3.

⁴⁸⁷ For example, the regional European Convention on the Exercise of Children’s Rights adopted by the Council of Europe on 26 January 1996 states that the age of majority is 18 years. See 13 European Treaty Series, No. 160, article 1, para 1.

⁴⁸⁸ UN doc. E/CN.4/1995/100, para. 28(a) of the Recommendations.

⁴⁸⁹ Report of the Human Rights Committee of 9 October 1992, UN doc. A/47/40, para. 13. 85 M Gose: The African Charter on the Rights and Welfare of the Child: An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child (2002) 28.

By adhering to 18, it is not implied that someone by some magic wand on the stroke of a pen turns into a fully competent, mature, wise and autonomous individual upon attaining a certain arbitrarily fixed age.⁴⁹⁰ Rather, it is necessary for international law to do so in order to grant a comprehensive protection for all persons under the age of 18 years who are deemed to be in need of protection. It is the best way of achieving the Convention's and Charter's aim of protecting the youngest and most vulnerable members of society, and in this particular case "child soldiers."

One of the main purposes for a legal regime specifically addressed to children, as outlined in paragraph 9 of the Preamble of CRC is that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". Moreover, paragraph 11 of the Preamble of CRC provides that "in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration." With these purposes in mind, it is clearly unsatisfactory that children should be entitled to a lower level of protection in situations of armed conflict which, by definition, places their rights in even greater danger.

Finally, from a practical point of view for recruitment and participation purposes, the "straight 18" position offers an advantage. This is because, for instance, in cases where children do not possess birth certificates, it is easy for their superiors to pass them off as being older than they really are.⁴⁹¹ However, if the age limit were fixed at 18 years, the recruitment of very young children could certainly be avoided, as their reduced physical appearance would speak for itself.

For example, a commander might think that it is not feasible to let his soldiers under the age of 18 not to be deployed in direct hostilities because the other party in the conflict has more power than his. In this

⁴⁹⁰ Report of the Human Rights Committee of 9 October 1992, UN doc. A/47/40, para. 13

⁴⁹¹ good example is Southern Sudan where the physical appearance of the children is relatively larger than their real age.

situation the state is not in violation of its “all feasible measures” obligation as feasibility is limited by whether the actual possibility of undertaking a certain measure exists while “all necessary measures” would not have looked to the possibility of the realization of a measure, but to whether there is an actual need.⁴⁹²

Therefore, although article 1 is the most important provision of the Optional Protocol, the scope of the obligation contained in it is one of conduct rather than of result.⁴⁹³ It would have provided children with better protection if states had undertaken to “take all necessary measures” to this end or, even better, if they had a duty to “ensure” that such participation does not take place.⁴⁹⁴ It is to be hoped that the Committee on the Rights of the Child will apply a strict interpretation when reviewing whether States have indeed taken all “feasible measures” towards the stated objective.⁴⁹⁵

In the meantime, for instance, the obligations under article 2 of the Optional Protocol place a stronger obligation of “to ensure” that persons who have not attained the age of 18 years are not compulsorily recruited into armed forces.⁴⁹⁶ Also, under the African Children’s Charter, the obligation that a state undertakes is “to take all necessary measures to ensure” that no child takes a direct part in hostilities and refrain in particular, from recruiting any child.⁴⁹⁷ This obviously accords a better standard for the protection of children and is commendable.

⁴⁹² UNICEF Implementation handbook for the Convention on the Rights of the Child (2002) 642. See also CR Revaz “The Optional Protocols to the UN Convention the Rights of the Child on sex trafficking and child soldiers” (2001) 9 No. 1 Human Rights Brief 13

⁴⁹³ It contains a wording that is largely in common with the corresponding text of Additional Protocol I

⁴⁹⁴ ICRC “Optional Protocol to the Convention on the Rights of the Child concerning involvement of children in armed conflicts: Position of the International Committee of the Red Cross” (1998) 322 International Review of the Red Cross 113.

⁴⁹⁵ Ibid

⁴⁹⁶ See also article 4(2) of Optional Protocol

⁴⁹⁷ Article 22(2) of African Children’s Charter.

3.4 The Nature of States Obligation

The Optional Protocol is a compromise.⁴⁹⁸ As a result, the nature of the state obligation suffers from vagueness. The employment of the phrase “all feasible measures,” for instance, as opposed to “ensure” could be considered as a lesser and more imprecise obligation on the part of the state.

In this regard, article 1 of the Optional Protocol stipulates those states "shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities." The deliberate vagueness of this provision enables states to determine what constitutes "all feasible measures" and to define "direct part in hostilities." By setting the standards by which they are judged, states may easily escape the scrutiny of the international community.⁴⁹⁹

For example, a commander might think that it is not feasible to let his soldiers under the age of 18 not to be deployed in direct hostilities because the other party in the conflict has more power than his. In this situation the state is not in violation of its “all feasible measures” obligation as feasibility is limited by whether the actual possibility of undertaking a certain measure exists while “all necessary measures” would not have looked to the possibility of the realization of a measure, but to whether there is an actual need.⁵⁰⁰

Therefore, although article 1 is the most important provision of the Optional Protocol, the scope of the obligation contained in it is one of conduct rather than of result.⁵⁰¹ It would have provided

⁴⁹⁸ UNICEF *Implementation handbook for the Convention on the Rights of the Child* (2002) 642. See also CR Revaz “The Optional Protocols to the UN Convention the Rights of the Child on sex trafficking and child soldiers” (2001) 9 No. 1 *Human Rights Brief* 13.

⁴⁹⁹ S Abraham “Child soldiers and the capacity of the Optional Protocol to protect children in conflict” (2003) 10 *Human Rights Spring: American Bar Association* 15.

⁵⁰⁰ M Gose. *The African Charter on the Rights and Welfare of the Child: An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child* (2002) 28.

⁵⁰¹ It contains a wording that is largely in common with the corresponding text of Additional Protocol I.

children with better protection if states had undertaken to “take all necessary measures” to this end or, even better, if they had a duty to “ensure” that such participation does not take place.⁵⁰² It is to be hoped that the Committee on the Rights of the Child will apply a strict interpretation when reviewing whether States have indeed taken all “feasible measures” towards the stated objective.⁵⁰³

In the meantime, for instance, the obligations under article 2 of the Optional Protocol place a stronger obligation of “to ensure” that persons who have not attained the age of 18 years are not compulsorily recruited into armed forces.⁵⁰⁴ Also, under the African Children’s Charter, the obligation that a state undertakes is “to take all necessary measures to ensure” that no child takes a direct part in hostilities and refrain in particular, from recruiting any child.⁵⁰⁵ This obviously accords a better standard for the protection of children and is commendable.

3.5 Direct and indirect participation in hostilities

The participation of children in armed conflicts brings into focus what should be made of the words “direct” and “indirect” part in hostilities. The CRC under article 38(2), the Optional Protocol under article 1 and the African Children’s Charter under article 22(2) all prohibit children taking a “direct part in hostilities”. “Direct” seems to imply a combatant position and exclude supplementary roles (serving as a scout, porter and the like) which also involve a significant risk for the survival and development of the child.⁵⁰⁶

During the drafting of the CRC, the phrase “direct part in hostilities” had faced a lot of challenge and criticism from a number of delegations.⁵⁰⁷ This is the same phrase that was already in existence in Additional

⁵⁰² children in armed conflicts: Position of the International Committee of the Red Cross” (1998) 322 *International Review of the Red Cross* 113.

⁵⁰³ Ibid

⁵⁰⁴ See also article 4(2) of Optional Protocol.

⁵⁰⁵ Article 22(2) of African Children’s Charter

⁵⁰⁶ For the position taken during the negotiation of the drafting of the ICC in regard to what is meant by “direct part in hostilities” see sub-section 2.5 of C R C.

⁵⁰⁷ S Detrick A commentary on the United Nations Convention on the Rights of the Child 652-656.

Protocol II under article 77(2), and it has proved inadequate to protect children in armed conflict. In this regard it is argued that it is surely correct to question the usefulness of a new treaty standard that merely reiterates existing standards and approaches.⁵⁰⁸

In order to provide children with the maximum level of protection, as Bueren rightly argues, a combination of “to take part in hostilities” as incorporated in article 4(3) of Additional Protocol II and the “to take all the necessary measures to ensure that children under 18 would not participate” obligation of article 22(2) of the African Children’s Charter is important.⁵⁰⁹ Otherwise, children who are involved in non-combatant status but in the meantime are at the risk of real danger towards their survival and development would not be able to benefit from the protection that is called for.

While the law was intended to establish a requirement for a direct link between the contribution of a civilian and the conduct of a military operation, the ICRC Study on Customary International Humanitarian Law has concluded that there is no clear and uniform definition of “direct” participation in hostilities in state practice.⁵¹⁰

Both the ICRC Commentaries and the ICTY have defined “direct” participation in hostilities as “acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces.”⁵¹¹ They further note that determining what is “direct” participation requires a margin of judgment because direct participation includes more than just combat and active military operations but at the same time must not be so broadly defined as to include the entire war effort.⁵¹² At the ICRC Third Expert Meeting on the Notion of Direct Participation in Hostilities, some participants argued for a narrow definition of “hostilities” (i.e., violent acts) in order to maximize the number of civilians protected by the

⁵⁰⁸ G Van Bueren *The international law of the rights of the child* 335.

⁵⁰⁹ *Ibid*

⁵¹⁰ Michael N. Schmitt, “Direct Participation in Hostilities’ and the 21st Century Armed Conflict,” in *Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, at page 509 (Berlin: BWV, Horst Fischer et al eds., 2004) available at: <http://www.michaelschmitt.org/images/Directparticipationpageproofs.pdf> (Last visited 10-12-2022)

⁵¹¹ *Ibid*

⁵¹² ICRC commentary on Additional Protocol 1.

principle of distinction, while others argued that a broad interpretation of “hostilities” (i.e., acts that go beyond the use of violence) might strengthen the actual protection of civilians by offering clear incentives for noncombatants to stay away from the battlefield or any hostile activity.⁵¹³ There were disagreements at the ICRC Second Expert Meeting as to whether a civilian acting as a voluntary human shield, or gathering intelligence, would be considered to have taken a “direct part” in hostilities.⁵¹⁴

The Inter-American Commission on Human Rights has distinguished between “direct” and “indirect” participation by stating that civilian activities which “merely support the adverse party’s war or military effort” are indirect participation in hostilities. Such indirect activities include “selling goods to one or more of the armed parties, expressing sympathy for the cause of one of the parties or, even more clearly, failing to act to prevent and incursion by one of the armed parties.” In contrast, direct participation involves “acts of violence which pose an immediate threat of actual harm to the adverse party.”⁵¹⁵

In the “targeted killings” case, the Israeli Supreme Court defined taking a “direct part” in hostilities broadly, to include not only the commission of attacks, but also direct support for the commission of such acts, including intelligence-gathering, the transportation of combatants, the operation, supervision, service to combatants or their weaponry,⁵¹⁶ enlisting or sending combatants to commit hostilities, and “deciding” and “planning” the attack. Those who enlist others, guide them and send them to commit terrorist acts are also seen as directly participating in hostilities.⁵¹⁷ “Targeted killings” of civilians who take such a “direct part” in hostilities may be lawful, subject to the Israeli Supreme Court’s procedural requirements.⁵¹⁸ However, the Court classified the following as examples of “indirect” participation in hostilities: general strategic

⁵¹³ ICRC, Third Expert Meeting, on the Notion of Direct Participation in Hostilities, Summary Report, October 23-25, 2005, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/\\$File/Direct_participation_in_hostilities_2005_eng.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/$File/Direct_participation_in_hostilities_2005_eng.pdf) at page 19-24. (Last visited 08-12-2022)

⁵¹⁴ ICRC, Second Expert Meeting: Direct Participation in Hostilities, Summary Report, at pages 5-7, October 25-26 2004, available at: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/\\$File/Direct_participation_in_hostilities_2004_eng.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/$File/Direct_participation_in_hostilities_2004_eng.pdf). (Last visited 09-12-2022)

⁵¹⁵ Inter-American Commission on Human Rights, Third Report on Human Rights in Columbia, at 811 (1999).

⁵¹⁶ “Targeted Killings” case, Judgment, paragraph 35; see also HPCR Policy Brief, *On the Legal Aspects of “Targeted Killings,” supra*, page 11-12.

⁵¹⁷ “Targeted Killings” case, Judgment, paragraph 37.

⁵¹⁸ HPCR Policy Brief, *On the Legal Aspects of “Targeted Killings,” supra*, pages 13-15.

analysis, general support such as monetary aid, the selling of food or medicines, acting as an involuntary human shield, and distributing propaganda.⁵¹⁹Civilians taking such an “indirect” part in hostilities would not lose their immunity from attack, and could not legally be the subject of a “targeted killing.”

Beyond the qualitative contribution of a civilian to the hostilities, the concept of direct participation also has an important temporal element. This element is linked to the definition of “for such time as.” In other words, the material contributions of a civilian to the hostilities do not by themselves remove the immunity against attack forever, but only for such time as this contribution effectively supports the conduct of hostilities. Hence, a civilian that has ceased to engage in acts of violence is again immune from attacks. Equally, a civilian who no longer provides direct support to the commission of an attack can no longer be targeted.

In its ongoing expert meeting process, the ICRC takes note of a consensus amongst participants that civilians are directly participating in hostilities while they are both preparing for and returning from combat activities.⁵²⁰In the “targeted killings” case, the Israeli High Court ruled that a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them, or is using arms, or is on his way back from such a place, is taking “direct” part in hostilities.⁵²¹

The ICRC Third Expert Meeting discussed four main approaches to targeting civilians “for such time as” they directly participate in hostilities: the specific acts approach, the affirmative disengagement approach,

⁵¹⁹ “Targeted Killings” case, Judgment paragraph 35.

⁵²⁰ Direct Participation in Hostilities, Webpage, ICRC, *available at* <http://www.icrc.org/web/eng/siteeng0.nsf/html/participation-hostilities-ihl-311205?opendocument> (Last visited 10-11-2022). But Orna Ben-Naftali & Keren R Michaeli (in “We Must Not Make a Scarecrow of the Law: A Legal Analysis of the Israeli Policy of Targeted Killings”, in 36 Cornell International Law Journal (2003) 233 at 279) argue that “preparing to” and “returning from” should only be included in direct participation in hostilities on a case-by-case determination of the military necessity and alternative means. See also Marco Sassoli, *Use and Abuse of the Laws of War in the “War on Terrorism,”* 22 LAW & INEQ. 195, 211-12 (2004): “One should not deduce from the fact that combatants may be attacked until they are hors de combat, that civilians who are suspected of planning to participate directly in hostilities, or who could resume a previous participation are legitimate targets”.

⁵²¹ “Targeted Killings” case, Judgment paragraph 34.

the membership approach, and the limited membership approach.⁵²² Each of these have anticipated strengths and weaknesses in practice, as discussed below.

***The specific acts approach** depends upon the scope of acts included in the concept of direct participation. It holds that when a civilian is participating in those acts, he or she can be targeted. Conversely, when he or she stops participating in those acts, he or she cannot be targeted, but must instead face standard law enforcement procedures, such as arrest or detention. Some participants at the ICRC Third Expert Meeting commended the parallel between this approach and the protection given to combatants if or when they alternate between active duty and civilian life.⁵²³ The specific acts approach is alleged to mirror the intention of the drafters of AP I, yet it does not deal with the “revolving door” phenomenon. Supporters of expanding the scope of time for which a civilian may be targeted for taking a direct part in hostilities argue that a specific acts approach offers undue protection for a civilian who frequently takes a direct part in hostilities.

***The affirmative disengagement approach** permits the targeting of a civilian who takes a direct part in hostilities from the moment of his or her first specific act of direct participation until or unless he or she ceases such activity in a way which is objectively recognizable to opposing forces. This approach is alleged to deal with the problem of the “revolving door,” and yet it presents insurmountable intelligence difficulties. Targeting forces would need to monitor militants constantly for any act which constitutes affirmative disengagement. Unless a targeting force had up-to-date and verifiable information on every militant’s every action, they would not know whether or not a given civilian had in fact disengaged from direct participation in hostilities. Therefore, in the absence of conclusive evidence, such a targeting force might well assume that any civilian who participates once in hostilities remains targetable for as long as the hostilities continue. Moreover, a civilian taking a direct part in hostilities may not know how to communicate his or her affirmative disengagement to the forces that might target him, nor to whom he should communicate it.

⁵²² ICRC, Third Expert Meeting, on the Notion of Direct Participation in Hostilities, Summary Report, October 23-25, 2005, *available at* [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/\\$File/Direct_participation_in_hostilities_2005_eng.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/participation-hostilitiesihl-311205/$File/Direct_participation_in_hostilities_2005_eng.pdf). (Last visited 10-12-2022)

⁵²³ ICRC Third Expert Meeting, *supra*, at 60.

There would be a strong disincentive for such a civilian to communicate his or her disengagement from hostilities for fear of reprisals, whether they be targeting, arrest, or detention. Moreover, the notion of “objectively” recognizable disengagement is difficult to define, and as Schmitt points out, the language of the affirmative disengagement approach relates strongly to the intention of the civilian – a subjective criterion.⁵²⁴ If a civilian states his or her intention to cease providing strategic advice to a terrorist group, how would the targeting force know whether this is an objective cessation of participation?

***The membership approach** allows for the targeting of civilians who join armed groups for the duration of their membership in that armed group, using the rationale that such members pose an ongoing threat. The end of membership must be objectively communicated, posing the same intelligence problems as the affirmative disengagement approach above, especially given that many groups may not have official rosters of membership, uniforms, or centralized housing. The membership approach also poses specific problems in the context of the OPT, given the links between the political and social components (schools, hospitals, etc.) of Hamas and its armed wing. If a civilian were to support the political party Hamas through membership or financial contribution, this would not constitute taking a direct part in hostilities. A participant at the ICRC Third Expert Meeting noted that members of armed groups would not be civilians properly so-called, and that they might be targeted on the same terms as members of state armed forces.⁵²⁵ However, the ICTY has ruled that membership of an armed group is not sufficient indication that a civilian is directly participating in hostilities for the purposes of targeting them with lethal force.⁵²⁶

The limited membership approach is narrower than the membership approach as far as it does not permit the targeting of all members of armed groups at all times. It restricts the category of persons who can be

⁵²⁴ Michael D. Schmitt, “Direct Participation in Hostilities and the 21st Century Armed Conflict,” *supra*, at 519-20

⁵²⁵ ICRC Third Expert Meeting, *supra*, at 63.

⁵²⁶ *Prosecutor v. Halilovic*, ICTY, Case No. IT-01-48-T, Judgment, Nov. 16, 2005, at paragraph 34, *available at* <http://www.un.org/icty/halilovic/trialc/judgement/index.htm> (Last visited 10-12-2022). It should be noted that these individuals could perhaps still be prosecuted under the reading of the ICTY for membership in an armed group, but they would not lose their immunity from attack as civilians as a result of this membership alone.

targeted to the fighting members of the armed group. These individuals can be targeted even when they are not engaged in the specific acts of direct participation in hostilities: they are targeted on the basis of their membership and their active participation in combat operations. They only regain protection when they disengage in an objectively recognizable manner. Fighting members are defined functionally as those who can be identified with relative precision as regularly conducting hostilities, matching their function with those of traditional armed forces, i.e., command, warfighting, logistics, and intelligence. Thus, under this approach, those members of organized armed groups that act as support personnel—cooks, secretaries, etc.—cannot be continuously targeted on account of their membership. Like non-members, they are subject to a specific acts approach.⁵²⁷ The limited membership approach therefore limits the capacity to target support personnel who are not taking a direct part in hostilities and narrows the substantive scope of targeting civilians who take a direct part in hostilities. The temporal scope is broader than that of the specific acts approach, but only for those civilians who take the most direct part in hostilities, that is, in organizing, planning, and conducting hostilities. The intelligence-based concerns remain for this approach, as for all four approaches, but the limited membership approach is preferable to the membership approach as it would avoid targeting the members or supporters of a political party such as Hamas who do not participate in armed groups. With reference to non-international armed conflicts, the ICRC Commentary to Article 13(3) AP II notes that a civilian regains his immunity when he “no longer presents any danger for the adversary.”⁵²⁸ This introduces “threat” as one element of the temporal question: “for such time as.” Ben-Naftali and Michaeli argue that “threat” is the rationale for the ability to target civilians and that when the threat is neither imminent nor severe, the civilian is not a legitimate target and alternative means should be used to prevent the threat from materializing.⁵²⁹ This analysis does not use any of the four frameworks discussed above. An analysis based on a subjective criterion such as “threat” is yet more liable than the frameworks above to be expanded or contracted according to military discretion. However, if objective

⁵²⁷ ICRC, Third Expert Meeting, *supra*, at 64-65.

⁵²⁸ ICRC Commentary to Additional Protocol II, at 4789, *available at* <http://www.icrc.org/ihl.nsf/COM/475-760019?OpenDocument> (Last visited 10-11-2022)

⁵²⁹ Ben-Naftali & Michaeli, *supra*, 278-279.

criteria were to be introduced for civilians' direct participation in hostilities, then the concept of "threat" could be given a verifiable objective meaning. Ben-Naftali and Michaeli acknowledge that "threat" should be refined to mean "imminent" or "immediate" threat, which does reduce its scope.⁵³⁰

In the "targeted killings" case, the Israeli Supreme Court noted that there is no international consensus regarding the meanings of the durational components of "takes a direct part in hostilities" and "for such a time as," and therefore such determinations need to be made on a case-by-case basis.⁵³¹ The court explained the two ends of the spectrum of possible situations when laying out its framework for assessing each potential target. At one end of the spectrum, a civilian who directly participates in hostilities once or even sporadically but later detaches himself from that activity, entirely or for an extended period of time, regains protection. Such a civilian cannot be targeted for his or her past activities.⁵³² On the other end of the spectrum, when a civilian joins a terrorist organization (which becomes his "home") and, as part of his role as a member of this organization, engages in a chain of hostile acts with only short periods in between, he or she may be targeted for the entire duration of time it takes to complete that chain of hostile acts. This is because the rest between acts functions as preparation for the next activity. A militant should not be able to use the "revolving door" to find refuge to rest and prepare for his next attack.⁵³³ Between these extreme cases, the court recognized there is considerable gray area, and that as such, each case must be determined individually upon examining the circumstances.

⁵³⁰ Ibid

⁵³¹ ISC, *Targeted Killings, supra*, at paragraph 39.

⁵³² ISC, *Targeted Killings, supra*, 39-40.

⁵³³ Ibid

3.6 Voluntary recruitment

For the purposes of this study, “volunteering” could be defined as not being abducted, not being physically forced, induced or coerced in any manner to join the armed forces or armed groups.

3.7 How voluntary is voluntary?

Under the Optional Protocol, while other provisions raise the minimum age of compulsory recruitment to eighteen, it allows for voluntary recruitment into a state's armed forces at a younger age.⁵³⁴ This provision also establishes that upon ratification of or accession to the Optional Protocol, governments must deposit a binding declaration stating their minimum recruiting age.⁵³⁵

However, to ensure that recruitment is voluntary, the Optional Protocol under article 3 mandates four safeguards. These safeguards require that: (i) the recruitment is genuinely voluntary;(ii) the recruitment is carried out with the informed consent of the potential recruit’s parents or legal guardians; (iii) the potential recruit is fully informed of the duties involved in such military service; and (iv) provides reliable proof of age prior to acceptance.⁵³⁶

The safeguards built in the provision are commendable as they can play a significant role in screening out those children who do not fulfil the requirements. Actually, voluntary recruitment with such safeguards has been tested and worked in countries like the US,⁵³⁷ which is the main driving force behind the inclusion of this provision.⁵³⁸ However, the reality in the context of Africa might prove otherwise.

⁵³⁴Article 3(1) of Optional Protocol.

⁵³⁵ Article 3(2) of Optional Protocol.

⁵³⁶Article 3(3) of Optional Protocol.

⁵³⁷ Other countries that allow voluntary recruitment with safeguards include UK, Australia and France.

⁵³⁸ Throughout the negotiations over the Optional Protocol, the fundamental obstacle to achieving a consensus was US-led opposition to the minimum age requirement for military service. The US currently accepts seventeen-year-old volunteers into its armed forces, contingent upon parental permission. The US refused to compromise on its policy of accepting seventeen-year-olds into the military and of using them in armed conflict.

In Africa, many child soldiers come from poor families or are in fact orphans.⁵³⁹ It comes as no surprise that orphans are the prime at-risk group for recruitment into armed conflict. Having kept this in the background, it sounds impractical to expect these vulnerable groups of children to register voluntarily with the consent of parents or legal guardians who do not exist. In spite of this, government forces may continue to abuse the vulnerability of these children through the leeway opened for them by the Optional Protocol by alleging that these children are in fact volunteers even though they fail to satisfy “...the informed consent of the potential recruit’s parents or legal guardians” safeguard put in place.

With a similar reasoning, the safeguard requiring children to “...provide reliable proof of age prior to acceptance” is not of much practical effect in Africa. It is reported by UNICEF that in sub-Saharan Africa, 55 percent of children (nearly 15 million) are not registered by their fifth birthday, while in industrialized countries the figure stands at 2 per cent.⁵⁴⁰ This clearly shows that it will often be difficult to prove a child’s age when he or she volunteers even though governments might just continue their recruitment in the face of lack of the proof of age.

Additionally, according to article 3(5) of the Optional Protocol, the requirement to raise the age limit for voluntary recruitment above 15 does not apply to schools operated by or under the control of the armed forces of the States Parties in accordance with the rights of education⁵⁴¹ of the child. Incidentally, this is intended and helps to promote the right of education of these children. In the meantime, however, the

⁵³⁹ Orphan usually refers to a child under the age of 18 whose mother (maternal orphan) or father (paternal orphan) or both (double orphan) are dead. In the context of HIV/AIDS, by 2003, 15 million children under 18 had been orphaned worldwide, see UNAIDS/WHO 2004 Report on the global AIDS epidemic; About 12 million of these live in sub-Saharan Africa, and it is expected that this number will have risen to more than 18 million by 2010, see UNAIDS, UNICEF, USAID Children on the Brink (2004) A joint report of new orphan estimates and a framework for action available at www.unicef.org/publications/index_22212.html (Last visited 6-2--2019).

⁵⁴⁰ UNICEF The “rights” start to life: A statistical analysis of birth registration (2005) available at http://www.unicef.org/publications/files/BirthReg10a_rev.pdf (Last visited 10-22-2020)

⁵⁴¹Articles 28 and 29 of CRC: See also General Comment No. 3 of the CROC on the Aims of Education.

possibility that the opposing parties to a conflict would consider these children as part of the armed forces is high, thereby making them targets rather than mere bystanders.

Another potential challenge for the application of this provision is the distinction it attempts to make between national armed forces and other armed groups. It might prove difficult at times to determine who is a government (national-armed force) and who is not.⁵⁴² Some armed groups control territory and population and resemble de facto governments.⁵⁴³ This practical difficulty in making a distinction might act to the detriment of child soldiers.

In the UN study on the Impact of Armed Conflict on Children, Machel, among other commentators, dismisses the idea of “volunteerism,” arguing that when the only options are survival or poverty, the choices of the children can hardly be called free and fair.⁵⁴⁴ It is clear that the degree of real choice varies from situation to situation. For instance, with the words of one self-defined volunteer describing the circumstances in which he joined “one of my friends... was shot in his head because he refused to join them. He was killed straight in front of me.”⁵⁴⁵ Therefore, most “voluntary” recruitment should not be regarded as a genuine expression of the child’s free will. In this regard Vandergrift correctly argues that

⁵⁴² An example could be Sierra Leone during the civil war when the junta by the name AFRC took power from the legitimate government and ran the country for over a year until it was ousted by ECOMOG forces, which put the legitimate government back in power. During the period AFRC was in power, it was difficult to determine whether it was a national armed group or not.

⁵⁴³ The Revolutionary United Front (RUF) of Sierra Leone is a good example.

⁵⁴⁴ G Machel Report to the Secretary General on the impact of armed conflict on children (1996) available at <http://www.unicef.org/graca> (Last visited 05-10-2019))

⁵⁴⁵ R Brett “Adolescent’s volunteering for armed forces or armed groups” (2003) International Review of the Red Cross No 852 available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5WNJFX/\\$File/IRRC_852_Brett.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5WNJFX/$File/IRRC_852_Brett.pdf) (Last visited 10-10-2019); Although this scenario relates to action by armed groups, there are a number of scenarios whereby a similar act has been committed by the Kamajors who formed part of the national armed forces, see generally. African Studies Centre “Sierra Leone: background report on child soldiers” available at http://www.africa.upenn.edu/Newsletters/irinw_71599.html (July 1999) (Last visited 12-10-2019)

*One of the problems is that young people can easily be forced to say they joined voluntarily; we witness this in many places. Is it truly voluntary when there are immense pressures to join armed forces and there are few options for those who do not join?*⁵⁴⁶

Finally, in discussing “volunteerism”, it would not be complete without mentioning the tension created with the right of the child to freedom of association and freedom of expression on the one hand and those that dismiss the concept of volunteering outright.⁵⁴⁷ The former two rights are a reflection of one of the four cardinal principles of the CRC, namely the right to participation as incorporated in article 12 of the CRC. One argument favors the view that safeguards in article 38(2) and (3) of the CRC, and by comparative analysis article 22(2) of the African’s Children Charter, restrict the manifestation of a child’s right to freedom of expression and freedom of association.⁵⁴⁸ This is because it is important to note that children are not always forcibly recruited into the armed forces⁵⁴⁹ and only voluntary enlistment is focused upon here.

However, the counter argument rightly has it that the protection accorded is an appropriate humanitarian gesture although its underlying philosophy may conflict with regard to, for instance, the expression of political views.⁵⁵⁰ It is further submitted that the participation of children in armed conflicts could be equated to a specific forms of exploitation as armed conflicts are inherently brutalizing and their very nature makes it impossible for those under 18 to give free and informed consent.⁵⁵¹

⁵⁴⁶ K Vandergrift “International law barring child soldiers in combat: Problems in enforcement and accountability: Challenges in implementing and enforcing children’s rights” (2004) 37 Cornell International Law Journal 550.

⁵⁴⁷ This is also referred to as the protection versus participation debate.

⁵⁴⁸ Van G Van Bueren: The international law of the rights of the child. P.816, Bueren is of the view that the argument for protection is more convincing than the one forwarded by the position for the right to freedom of association.

⁵⁴⁹ A good example would be wars of national liberation.

⁵⁵⁰ F Olsen “Children’s rights: Some feminist approaches to the United Nations Convention on the Rights of the Child” (1992) 6 International Journal of Law and the Family 214 as cited in C Jesseman “The protection and participation rights of the child soldier: An African and global perspective” (2001) 1 African Human Rights Law Journal 151.

⁵⁵¹ Bueren on P 335

To conclude, it would be difficult to admit that the whole concept of “voluntary recruitment” of children in national armed forces is a step taken in accordance with the guiding principle of the best interest of the child. In particular, in Africa, its potential to do harm to the rights of the child is remarkably high.

3.8 Double standard as no “standard”

Article 3(3) of the Optional Protocol, in stating that “state Parties that permit voluntary recruitment...” does recognize the possibility of voluntary recruitment of children below the age 18 only by government forces. Article 4(1) further explicitly provides that.

*Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.*⁵⁵²

At face value, this is a commendable step. This is because, although not always, the recruitment and use of child soldiers is more rampant among armed groups than within government forces.⁵⁵³ But, in the meantime, this double standard sets a wrong precedent for a number of reasons.

To further emphasize the obvious, international law is important to efforts to ensure armed groups respect human rights. Firstly, it provides criteria, and it has distinct advantages over national law as armed groups will not readily accept the legitimacy of national law.⁵⁵⁴ International law, even though it is developed by

⁵⁵²Article 4(1) of Optional Protocol.

⁵⁵³ For instance, the RUF of Sierra Leone and LRA of Uganda, which are both armed groups, have recruited more child soldiers than their respective government forces. In the LRA it is reported that minors make up 80% of its forces. See for instance the Washington Times “Africa’s forgotten war” by S Brownback and RE Stearns, available at <https://www.washingtontimes.com/news/2005/mar/8/20050308-094129-9853r/> (Last visited 07-09-2019)

⁵⁵⁴For instance, if they are secessionist movements, they are likely to disagree that the state has authority to pass laws that are valid in contested territories. Similarly, revolutionary or insurrectionist groups that seek to overturn the government of a country are likely to challenge the legitimacy of that government’s laws. National law is tainted by its association with the state or government in power.

states, has the advantage of being distinct from any particular state.⁵⁵⁵ More importantly to the discussion at hand, international law provides a common standard and does not have partiality.⁵⁵⁶

The application of the Optional Protocol to armed groups as non-state actors is already challenged as being out of line with the classical conception of a human rights instrument which only binds governments and citizens.⁵⁵⁷ Additionally, including a double standard, with one set of norms which applies for government forces and another for armed groups is similar to adopting no standard.⁵⁵⁸ This derogates from the advantages mentioned above that international law has over national law. The likelihood that armed groups will treat it as a legal obligation is minimal, which in effect might put in question the impartiality of the whole instrument from their perspective.

3.9 Disarmament, demobilization and reintegration

Although at face value the issue of DDR might seem to be strictly a social issue, there is a significant role that the law should play.⁵⁵⁹ Therefore, the Optional Protocol also addresses post-conflict issues, including demobilization of child soldiers. Article 6 of the Optional Protocol provides that persons "recruited or used in hostilities" are to be demobilized and accorded "all appropriate assistance for their physical and psychological recovery and their social reintegration."⁵⁶⁰ Notably, the language makes it clear that children voluntarily or forcibly recruited into armed groups, as well as non-state forces, are to be included in demobilization and reintegration efforts.

⁵⁵⁵In other words, since it is supra-national in character, it provides a degree of legitimacy for armed groups that national law does not.

⁵⁵⁶ International Council on Human Rights Policy "Ends & means: human rights approaches to armed groups" available at <http://www.reliefweb.int/library/documents/2001/EndsandMeans.pdf> (Last visited 10-12-2019)

⁵⁵⁷ Ibid

⁵⁵⁸ It may be observed in this regard that humanitarian law has always been based on the premise of equal obligations on all sides, and that this argument is often put forward when seeking to induce parties to conflict to implement the law.

⁵⁵⁹ Disarmament is the process of handing in arms, demobilization is the formal process of being released from duty and reintegration is a range of processes which helps the person get back to normalcy.

⁵⁶⁰ Article 6(3) of Optional Protocol.

Another area that needs to be emphasized by the law is that DDR must be undertaken swiftly. This helps to minimize the possibility of re-recruitment and continuing exploitation of children within a region.⁵⁶¹ Moreover, the phrasing under article 6 of the Optional Protocol should be taken to include health care, psychosocial counselling, educational programs, vocational training, family reunification, and the basic needs of food and shelter.

At times, because children are not thought to be a “threat” and of not much “importance”, the DDR programs might overlook their involvement in the DDR process.⁵⁶² For instance, the majority of former fighters interviewed who had participated in the 2000- 2003 United Nations-sponsored Sierra Leonean DDR program received only partial benefits, were kept out of the skills training component of the program or failed to receive any benefits at all.⁵⁶³ Of the 21,000 children recruited by both rebel and government forces during the Liberian civil war – some as young as six years old – only 4,300 were demobilized.⁵⁶⁴ Among the child soldiers themselves, the lack of a gender sensitive approach to girl child soldiers is another shortcoming.⁵⁶⁵ To conclude, in accordance with article 7 of the Optional Protocol which obliges “state Parties to cooperate in the implementation of the protocol...”, the issue of DDR for child soldiers is an area whereby a great deal of international cooperation can be sought.⁵⁶⁶

3.10 Girl soldiers

There was a time when the prevailing opinion was that all child soldiers were boys. This is because war has traditionally been considered as a male preserve, and this remains predominantly true. But we now know that child soldiers include boys as well as girls. Women and girls participate in warfare to a far greater

⁵⁶¹ Article 6(3.7) optional protocol

⁵⁶² Governments tend to consider adult soldiers more of a threat than child soldiers and prefer to see the DDR of adult soldiers first.

⁵⁶³ Amnesty International “Côte D’Ivoire: Cross-border child soldiers” available at http://www.amnesty.ca/take_action/actions/cote_divoire_child_soldiers.php (Last visited 11-12-2019)

⁵⁶⁴ Ibid

⁵⁶⁵ Supra note 57.

⁵⁶⁶ Because DDR programs often fail due to financial constraints, states could co-operate to meet the resources required to optimize the effect DDR can have on child soldiers. A severe funding shortage of US \$39 million in the Liberian disarmament program not only left some 40,000 combatants at risk of missing out on job training and education but appeared to make them more vulnerable for re-recruitment to fight in future armed conflicts.

degree than is generally recognized.⁵⁶⁷ In addition to armed combat, girl soldiers are often forced to serve as sexual slaves of armed groups.⁵⁶⁸ Girl soldiers have also been used to augment the number of rebel fighters in supplementary roles, such as cooks, domestics, and porters, and are sometimes given positions of power as spies or commanders.⁵⁶⁹ The experience of girl soldiers defeats the assumption that child soldiers constitute a monolithic category of children who possess the same characteristics and needs.

International laws which prohibit the use of child soldiers do not cater for the specific experiences of girl soldiers. Although Cohen identifies the CRC as all-encompassing given that it protects and promotes the rights of the girl child,⁵⁷⁰ the CRC is criticized for failing to adequately protect the girl child.⁵⁷¹ The absence of targeted provisions addressing the gender specific problems of girl soldiers correctly forms part of this criticism.

The same goes for the Optional Protocol, because in focusing on those child soldiers who take part in "direct hostilities", it further reinforces the male-based definition of a child soldier. The only primary reference to gender in the Optional Protocol is made when it recognizes the "special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender."⁵⁷²

⁵⁶⁷ All numbers and proportions are mythical, but estimates indicate that where girls do join armed forces or armed groups, whether they are forced or not, up to a third of the child soldiers will be girls. See R Brett "Girl soldiers: Challenging the assumptions" available at http://www.geneva.quno.info/pdf/Girl_Soldiers.doc.pdf (Last visited 07-07-2019)

⁵⁶⁸ The Prosecutor of the Special Court for Sierra Leone (SCSL) filed the crime of "bush wives" as a war crime against 6 defendants.

⁵⁶⁹ S McKay, M Burman, M Gonsalves and M Worthen "Known but invisible: Girl mothers returning from fighting forces" (2004) Child Soldiers Newsletter 11.

⁵⁷⁰ CP Cohen and PM Olssen, "Status Report: United Nations Convention on the Rights of the Child" (1991) 8 New York Law School Journal of Human Rights 367; C P Cohen "The United Nations Convention on the Rights of the Child: A feminist landmark" (1997) 3 St. Mary Journal of Women and Law 29.

⁵⁷¹ See for instance on child marriage, L Askari "The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages" (1998) 5 ILSA Journal of International and Comparative Law 123.

⁵⁷² Para. 15 of Preamble of Optional Protocol.

Similarly, although the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography⁵⁷³ addresses specific issues faced by girls, child soldiers do not fit within its mandate. With the words of Leibig

*Child soldiers do not fit into the categories laid out here: in most cases they are not sold but abducted; they are not Prostitutes because they don't receive any material goods in exchange for their sexual servitude; child pornography and sex tourism are not applicable to child soldiers either. This is yet another example of the failure of the international community to create a body of law to protect female child soldiers.*⁵⁷⁴

At the continental level, although the African Children's Charter emphasizes the girl child in general, article 22 which deals with child soldiers does not provide for a way in which the specific concerns of girl soldiers are to be dealt with.⁵⁷⁵ Moreover, as is commonly true with the above-mentioned instruments, whether or not girls who work as sex slaves form part and parcel of the protection accorded to child soldiers is not clear. Therefore, notwithstanding the acknowledgement of and support for the rehabilitation and reintegration of girls, so far girls are lost in the rehabilitation process and are continually marginalized by DDR programs at all levels.⁵⁷⁶

To sum up, it is now uncontested that there are a substantial number of girls serving as soldiers at present. It is once again not debatable that these girl soldiers face a range of gender specific problems. The lack of specific legal provisions catering for their needs has adversely affected the best interests of this group of

⁵⁷³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, (25 May 2000) UN GAOR, 54th Session, UN Document A/RES/54/263

⁵⁷⁴ A Leibig "Girl child soldiers in northern Uganda: Do current legal frameworks offer sufficient protection?" (2005) 3 Northwestern University Journal of International Human Rights 6.

⁵⁷⁵ For instance, female circumcision and early child marriage are not issues directly addressed by the CRC.

⁵⁷⁶ In Angola, 8,500 boys were demobilized; No girls were demobilized despite the fact that the Angolan armed forces forcibly recruited girls and the rebel forces extensively used child soldiers, 30-40 percent of whom were girls. See Coalition to Stop the Use of Child Soldiers Child Soldiers Global Report (2001).

children. If any child rights instrument is to be complete and gender neutral, it should protect the rights of children in a manner that promotes substantive equality.⁵⁷⁷

3.11 Cross-border recruitment

The concept of cross-border recruitment has become peculiar to Africa.⁵⁷⁸ It is a situation whereby whenever there is a conflict occurring in different countries of a region, children are recruited from one territory to fight conflicts in other territories.

For instance, Human Rights Watch reports that Liberian commanders interviewed have admitted that they were actively involved in recruiting other Liberians, including children, most of whom had fought in the Liberian civil war (1999-2003), for the conflict in Côte d'Ivoire.⁵⁷⁹ They said numerous Liberian children who had not previously fought in any war had also been recruited and recently crossed into Côte d'Ivoire to fight.⁵⁸⁰ Gliding back and forth across the borders of Guinea, Burkina Faso and Sierra Leone as well is a migrant population of young fighters – regional warriors – who view war mainly as an economic opportunity.⁵⁸¹ Moreover, in the case of the rebel-held territories in the Eastern portion of the Congo, cross-border forced child soldier recruitment is all too common.⁵⁸² In a situation whereby the economic activity in parts of the Great Lakes region of Africa virtually ceases, more and more youngsters are becoming prey to the only viable employer in the region: war.⁵⁸³

The Optional Protocol is of limited use to cross-border recruitment if any at all. In paragraph 11 of its Preamble, it is provided that “[c]ondemning with the gravest concern the recruitment, training and use

⁵⁷⁷ For a detailed discussion on substantive equality, see JD Waal, I Currie and G Erasmus *The Bill of Rights handbook* (4th ed) (2001) 200.

⁵⁷⁸ It is becoming a rampant activity in particular in West Africa among Liberia, Sierra Leone, Guinea and Cote d'Ivoire.

⁵⁷⁹ HRW *Recruitment of ex-child soldiers in Cote d'Ivoire* available at <http://hrw.org/english/docs/2005/03/30/cotedi10402.htm> (Last visited 11/11/2019)

⁵⁸⁰ *Ibid*

⁵⁸¹ HRW *Youth, poverty and blood: The lethal legacy of West Africa's regional warriors* available at <http://hrw.org/reports/2005/westafrica0405/westafrica0405text.pdf> (Last visited 10-10-2019)

⁵⁸² Refugee International *Child soldiers: Promising commitments in the Congo* available at <http://www.refugeesinternational.org/content/article/detail/1322/> (Last visited 11-28-2020)

⁵⁸³ *Ibid*

within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State...” (emphasis added). However, the Optional Protocol fails to explicitly follow this lead in its substantive provisions. Cross-border recruitment also frustrates DDR programs and makes the applicability of the present provisions of the Optional Protocol difficult. Therefore, the concept of cross-border recruitment of child soldiers has not been clearly addressed by the Optional Protocol.

3.12 Enforcement

After setting out the substantive legal framework, a central challenge is to ensure its application. In the words of Otunnu, the Special Representative of the Secretary General of the UN for Children and Armed Conflict, “words on paper cannot save children in peril.”⁵⁸⁴ Political willingness to adhere to already existing obligations, as well as readiness to think along new lines, are both necessary prerequisites for improved enforcement.

The words of Cohn capture the bigger enforcement failure of the CRC:

*The main problem in enforcement, however, is that the enforcement mechanisms of the Convention on the Rights of the Child are incredibly weak. Consider that the main mechanism for accountability is reporting to the Committee on the Rights of the Child once every five years. In reality, it is more than five years because of procedural delays. Five years is a long time in the life of a child caught up in war. And a report may or may not be taken seriously as an enforcement vehicle by the receiving government.*⁵⁸⁵

Unfortunately, the Optional Protocol, as an “amendment” to the mother document, the CRC, is vulnerable to the same problems concerning the procedure of reporting.⁵⁸⁶

Partly motivated by the need to address the enforcement gap, there are five SC resolutions to date devoted to the protection and rehabilitation of children affected by armed conflict. Resolution 1261 (1999) affirms that the protection and well-being of war affected children constitutes a fundamental peace and security

⁵⁸⁴ Office of the Special Representative for the Secretary General for Children and Armed Conflict available at <http://www.un.org/special-rep/children-armed-conflict/> (Last visited 08-12-2020)

⁵⁸⁵ Cohn “Progress and hurdles on the road to preventing the use of child soldiers and ensuring their rehabilitation and reintegration” (2004) 37 Cornell International Law Journal 531.

⁵⁸⁶ Article 8 of Optional Protocol.

concern that belongs on the agenda of the SC. Resolution 1314 (2000) sets out specific action-oriented measures such as tackling the illicit trade in conflict diamonds and ending impunity for war crimes against children, and the release of abducted children. Resolution 1379 (2001) strengthens the measures provided for in resolution 1314 (2000) and makes them more targeted. Resolution 1460 (2003) broadens the scope for monitoring and reporting, stipulating that all country-specific reports should include ⁵⁸⁷sections on children, and endorses the call for an era of application.⁵⁸⁸

Resolution 1612 (2005), was voted on unanimously by all 15 members of the SC.⁵⁸⁹ It calls for a series of measures to be taken, including the establishment of a mechanism for monitoring and reporting violations⁵⁹⁰, a SC Working Group to monitor progress and oversee implementation of these measures,⁵⁹¹ and a demand to offending parties to prepare and implement concrete action plans for ending violations against children.⁵⁹²The proposed new mechanism plans to monitor violations by all parties, both governments and insurgents, including: killing and maiming of children, recruiting or using child soldiers, rape or other sexual violence against children, abduction of children, denial of humanitarian access for children and attacks against schools or hospitals.⁵⁹³ Under the new mechanism, UN-led task forces will be established in phases, to monitor the conduct of all parties and transmit regular reports to a central task force in New York.⁵⁹⁴

As noted in chapter two, the ILO provided further protection to child soldiers with Convention 182 by affirmatively stating that no one under eighteen years of age should take direct part in hostilities. Despite the bold efforts of the ILO, it has no authority to force compliance or punish violations. It can only refuse or remove assistance it offers.⁵⁹⁵

⁵⁸⁷ Ibid

⁵⁸⁸ Supra note 80.

⁵⁸⁹ UN SC Resolutions S/Res/1612/2005 available at http://www.un.org/Docs/sc/unsc_resolutions05.htm> (Last visited 12/12/2020)

⁵⁹⁰ Articles 2 and 3 of Resolution 1612.

⁵⁹¹ Article 8 of Resolution 1612.

Article 7 of Resolution 1612. ⁵⁹²

⁵⁹³ Ibid

⁵⁹⁴ Ibid

⁵⁹⁵ MG Davidson "The International Labour Organization's latest campaign to end child labor: Will it

There are some indications that the issue of child soldiers could be better enforced at the regional level. The African Children's Charter entrusts the functions of promotion and protection of its provisions to the African Committee.⁵⁹⁶ This Committee has wider powers than that of the CROC. The Committee is not only tasked with examining state reports but is also able to make recommendations arising from individual or interstate communications,⁵⁹⁷ and to conduct investigations.⁵⁹⁸ In fact, acceptance of this complaint's mechanism is part and parcel of ratifying the African Children's Charter.⁵⁹⁹ Secondly, the Charter is very wide in relation to persons who can bring communications before it. Any person, group or non-governmental organization recognized by OAU (AU) or member states or the UN may bring communications before the Committee.⁶⁰⁰ Although the African Committee is still at its initial stages,⁶⁰¹ with the necessary financial and technical support, it can prove itself to be a major tool for alleviating the problem of child soldiers in Africa.

Still within the continent, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) entered into force on 25 January 2004.⁶⁰² The Protocol under article 5(1)(e) explicitly provides that the African Committee has a standing and can bring a case before the Court. Bringing a case before the Court would be advantageous as the decisions of the African Court are binding and final.⁶⁰³

succeed where others have failed?" (2001) 11 *Transnational and Contemporary Problems* 209

⁵⁹⁶Article 32 of African Children's Charter.

⁵⁹⁷ Article 44 of African Children's Charter.

⁵⁹⁸ Article 45 of African Children's Charter.

⁵⁹⁹ Article 44(1) of African Children's Charter.

⁶⁰⁰ Ibid

⁶⁰¹ For the work of the African Committee, see A Lloyd "How to guarantee credence? Recommendations and proposals for the African Committee of Experts on the Rights and Welfare of the Child" (2004) 12 *The International Journal of Children's Rights* 21.

⁶⁰² Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998 (entered into force 25 January 2004, available at <http://0-www.africaunion.org.innopac.up.ac.za:80/home/welcome.htm>) (Last visited 11-10-2020)

⁶⁰³ Article 28 (2) of African Court Protocol. As per article 28 (3), the only exception to finality is that the Court may review its own decision in the light of new evidence.

In the absence of robust UN action, stronger efforts by regional organizations like the AU and individual governments are critical. In this regard the AU could be able to curb some of the problems the UNSC has failed to address.⁶⁰⁴ This includes developing resolutions which have tangible repercussions for those who keep on violating the rights of these children.

Apart from the AU, an opportunity that could be explored is through the New Partnership for Africa's Development (NEPAD). Although the main concerns of NEPAD are economic issues,⁶⁰⁵ the African Peer Review Mechanism (APRM) could address issues of human rights⁶⁰⁶ under its "democracy and political stability" focus.⁶⁰⁷ This is because, democratic governance should necessarily incorporate human rights and hence the issue of child soldiers.

Children's issues have been incorporated into peace negotiations and peace accords, such as the 1999 Lomé Peace Accord on Sierra Leone; the 2000 Arusha Accords on Burundi; and the Accra Peace Agreement on Liberia. The Accra Peace Agreement of 18 August 2003 provides for the protection and rehabilitation of war-affected children and calls upon the Special Representative and UNICEF to assist in mobilizing resources for the DDR of child soldiers.

As depicted above, quite a sizable number of institutional frameworks have been put in place which may be used directly or indirectly to address the issues of child soldiers in Africa. If utilized properly and innovatively, they can be a weapon for enforcement of human rights standards. To conclude, further progress towards the era of application will depend on strong and consistent international condemnation,

⁶⁰⁴ The SC resolutions are a repetition of an already existing resolution under which enforcement was tried and failed. "Naming" and "shaming" of the "shameless" has proved a failure for enforcement purposes.

⁶⁰⁵ African Peer Review Mechanism Base Document, AHG/235(XXXVII) Annex II.

⁶⁰⁶ The APRM is an instrument voluntarily acceded to by Member States of the African Union as an African self-monitoring mechanism. It is a mutually agreed instrument for self-monitoring by participating Member States.

⁶⁰⁷ The other three are Economic Governance and Management [EGM]; Corporate Governance [CG] and Socio-Economic Development [SED].

on political will, and on ensuring that violators pay a price should they continue to recruit and deploy children as soldiers.

3.13 International criminal law

Undoubtedly, ending the culture of impunity can contribute a great deal towards alleviating the problem of “child soldiers.” Under international law, the culture of impunity is a debilitating factor in the struggle for the rights of the child. Towards this end, as already pointed out in the previous chapter, one of the major successes of the Rome Statute has been the inclusion, as a crime, of the recruitment of children under the age of 15 as soldiers.⁶⁰⁸ Accordingly, article 8(3)(b) provides that “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” is a war crime. Therefore, individual accountability is set in place for the crime of using “child soldiers.”⁶⁰⁹

A contribution in the area of international criminal law pertains to the decision of the SCSL in the Norman Case.⁶¹⁰ In this case, the SCSL held that the recruitment of child soldiers below the age of 15 had become a crime under customary international law by 1996.⁶¹¹

There were referrals under investigation by the Prosecutor of the ICC relate to Sudan, DRC and Uganda, conflicts that have engaged the use of child soldiers.⁶¹² For instance, in the Ituri region of the DRC, some estimate that more than half of the estimated 15,000 fighters who make up the rebel forces are under 18 years, some as young as eight.⁶¹³

⁶⁰⁸ Article 8 (3)(b) of Rome Statute.

⁶⁰⁹ Although international criminal prosecution is one way of accountability, impunity could also be challenged through national courts, ad hoc tribunals, and other justice mechanisms.

⁶¹⁰ See SCSL. It is important to note that all the 13 indictments of the SCSL include the use of child soldiers by defendants accused of abuses during the civil war.

⁶¹¹ SCSL available at <http://www.sc-sl.org/summary-childsoldiers.html> (Last visited 1-28-2020)

⁶¹² The focus of the Prosecutor on the DRC gives one great hope that an important precedent will be set with respect to the criminality of the use of children as soldiers. Just as issues relating to war crimes against women have received increasing attention through the efforts of the ICTY and ICTR, it is key that the ICC brings attention to war crimes that affect children.

⁶¹³ BBC News, “DR Congo ‘awash’ with child soldiers,” available at www.news.bbc.co.uk/2/hi/africa/2772575.stm 17 February 2003 (Last visited 10-10-2019)

In the recent case in the International criminal court (ICC) one Mr. Bosco Ntaganda of the Democratic Republic of Congo (D R C) was handed a conviction on appeal by the ICC on March 30th, 2021, after initial Judgement on July 8th 2019 and initial sentencing on November 7th, 2019.⁶¹⁴

Mr. Ntaganda was found guilty of crimes against humanity (murder and attempted murder, rape, sexual slavery, persecution, forcible transfer and deportation) and war crimes (murder and attempted murder, intentionally directing attacks against civilians, rape, sexual slavery, ordering the displacement of the civilian population, conscripting and enlisting children under the age of 15 years into an armed group and using them to participate actively in hostilities, intentionally directing attacks against protected objects, and destroying the adversary's property). While the evidence did not sustain all incidents indicated by the Prosecutor, it did demonstrate that in relation to each of the 18 counts at least part of the charges were proven beyond any reasonable doubt.⁶¹⁵

The other relevance of the Rome Statute pertains to the role it creates for national courts to play. Because of the principle of complementarity,⁶¹⁶ the ICC will come into picture only when national courts are “unable” or “unwilling” to prosecute the crimes listed in the Statute.⁶¹⁷ To use the words of Schabas, the ICC “requires that the State’s own courts get the first bite at the apple.”⁶¹⁸ It is this concept that the ICC partly refers to as “admissibility”.⁶¹⁹ Therefore, as a way of implementing the provisions of the Statute, it would be advisable for a State Party to incorporate the crimes listed in the Statute in its national law for its criminalization in the national courts. This in effect creates an immediate avenue to criminally prosecute those who commit the crime. Moreover, the jurisprudence that will develop from the ICC will help guide national courts in adjudicating cases pertaining to the crime of recruiting or using child soldiers.

⁶¹⁴ <https://www.icc-cpi.int/CasInformationSheets/ntagandaEng.pdf> Last visited 5-4-2021)

⁶¹⁵ Ibid

⁶¹⁶ Preamble para. 10 and article 1 of the Rome Statute.

⁶¹⁷ Article 17 of the Rome Statute.

⁶¹⁸ WA Schabas An introduction to the International Criminal Court (2nd ed) (2003) 68.

⁶¹⁹ See generally RB Philips “The International Criminal Court Statute: Jurisdiction and admissibility” (1999) 10 Criminal Law Forum 61.

On another note, the Rome Statute allows the ICC to address the issue of reparations to victims, establishing general rules for “restitution, compensation and rehabilitation.”⁶²⁰ As much as the ICC is entitled to “make an order directly against a convicted person specifying reparations” such reparations could be used for reintegrating child soldiers back to normal life.

However, the major flaw created by the Rome Statute is the age threshold which it set out in its definition of the crime, which is the recruitment or use of children below the age of 15. This is a key drawback because the development of international law pertaining to the child in general, and child soldiers in particular, is adopting the “straight 18” position.⁶²¹ It also sends the wrong message that the recruitment and use of children between 15 and 18 is acceptable and not a crime. Rectifying this drawback in line with current international legal standards could optimize the role the ICC could play. Nevertheless, however, the protection of child soldiers in Africa can be promoted through international criminal law and it would not be a misplaced optimism to look towards the ICC for such delivery.

3.14 Conclusion

The adequate legal protection of child soldiers is one of the multi-faceted approaches to addressing the problem. This chapter has critically analyzed and indicated that although there are standards that already exist, a full response to the problem calls for bolstering these standards. This is more so for the peculiar situation the African child soldier finds himself or herself in such as the more vulnerable situation of girl soldiers and the concept of cross-border recruitment. With some innovation and political will, it is possible and necessary to rectify the gaps.

⁶²⁰ M Christopher Reparation to victims in Lattanzi and Schabas, *Essays on the Rome Statute* (2003) 303-310.

⁶²¹ International legal documents that followed in 1999 (ILO Convention 182) and 2000 (Optional Protocol) have risen the minimum age from 15 to 18.

CHAPTER FOUR

4.0 FAILURE OF THE PROTECTION OF CHILDREN INVOLVED IN ARMED CONFLICTS INSPITE OF INTERNATIONAL CO-OPERATION.

4.1 Children as “Child soldiers”: The challenge of enforcing international standards.

Various reports have documented the extent to which children are devastated by the experience of participating in armed conflict.⁶²² Approximately 200,000-300,000 children are involved in armed conflict.⁶²³ They are victimized in ways that are almost incomprehensible; they are said to be drugged, socialized not to distinguish right from wrong, and sent on suicide missions.⁶²⁴ Although children have been involved in armed conflict for some time, their participation was not on the same scale.⁶²⁵ Furthermore, because most conflicts are internal to states, this has made the application of international standards more difficult.

⁶²² United Nations General Assembly Security Council report, available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf (last visited 5-24-2021)

Human Rights Watch has published *Easy Prey: Child Soldiers in Liberia* (1984), *Children of Sudan: Slaves, Street Children and Child Soldiers* (1995), and *The Scars of Death: Children Abducted by the Lord's Resistance Army in Uganda* (1997).

⁶²³ The literature of the United States Campaign to Stop the Use of Child Soldiers states that more than 300,000 children are engaged in conflicts across the globe. Kalashnikovs Kids, *The Economist*, July 10, 1999, at 19-21. Judith Miller & Paul Lewis, U.N. is Fighting to Save Children from Scars of Battle, *N.Y. Times*, Aug. 8, 1999. The organization Radda Barnen (Swedish Save the Children) also has compiled statistics on child soldiers and estimates there are a quarter million of them. Mike Wessells, Child Soldiers, *Bull. Atom. Scientists*, Nov. 1997, at 32; Barbara Crossette, U.N. Council Looks at Rise in Number of Children in Combat, *N.Y. Times Int'l*, June 30, 1998. Though children play various roles, including cooks, messengers, and sex slaves, they are increasingly being conscripted as soldiers. Graça Machel, Study of the Impact of Armed Conflict on Children, U.N. Doc. A/51/306 at 13-14 (1986).

⁶²⁴ Chen Reis, Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict, 28 *Colum. Hum. Rts. L. Rev.* 629, 644 (1997); see also Human Rights Watch Report/Afr., *Liberia: Human Rights Abuses by the Liberian Peace Council and the Need for International Oversight*, at 4 (1994).

⁶²⁵ See Maggie Black, *Children First: The Story of UNICEF, Past and Present* 258 (1996). Black mentions the half million Iranian boys aged 12-18 recruited into the armed forces, thousands of whom lost their lives as “human mine detectors.” *Id.* at 259. A. Glenn Mower, Jr., *The Convention on the Rights of the Child: International Law Support for Children* 42, 162-63 (1997).

The international community has mobilized to try to stop the phenomenon of the “child soldier.”⁶²⁶ While this is certainly a worthy cause, as no one could be in favor of children participating in armed conflict, the campaign has focused too much on the age limit to the exclusion of other important considerations. In this dissertation I will consider what protections exist under international law for children in armed conflict, current standard-setting efforts, and problems of implementation. After providing an overview of established norms, I will discuss what I regard as the factors responsible for the failure of the international community to ameliorate the condition of the child soldier. It is my view that instead of documenting the extent of the problem, the international community should concentrate on identifying practical solutions.

Realistic strategies will have to consider the socio-cultural context of children who are increasingly drawn into armed conflicts.

4.1 Existing legal protections

Humanitarian law has afforded some degree of protection to children, but initially treated them only as civilians.⁶²⁷ Humanitarian law first protected children, though indirectly, by promoting family life under Hague Convention No. 4, Respecting the Laws and Customs of War on Land (1907).⁶²⁸ The International Committee of the Red Cross and the International Union for Child Welfare sought to draft a separate Convention for the Protection of Children in Emergency and Armed Conflict, but this was not possible because of World War II. After World *193 War II the adoption of the Fourth Geneva Convention of 1949⁶²⁹ gave general protection to children as

⁶²⁶ Though some girls are “soldiers,” for the most part we are speaking of boys.

⁶²⁷ See Jenny Kuper, *International Law Concerning Child Civilians in Armed Conflict*, especially Chapter 4: *Treaty Law of Armed Conflict and Related Instruments Specifically Regarding Child Civilians* (1997).

⁶²⁸ *Convention Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, *Hague Convention IV*, reprinted in *Documents on the Laws of War* 44-59 (Adam Roberts & Richard Guelff eds., 2d ed. (1989))

⁶²⁹ *Convention Relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, No. 973, 6 U.S.T. 3516, 75 U.N.T.S. 287 (hereinafter *Geneva Convention IV*).

civilians in unoccupied and occupied territories.⁶³⁰In 1974, the Declaration of the Protection of Women and Children in Emergency and Armed Conflict⁶³¹reinforced the need to safeguard the civilian population. With regard to non-international armed conflicts.

Article 3 of the four Geneva Conventions⁶³² affords some protection but only extends fundamental humanitarian protections to non-combatants.⁶³³ International law did not address the question of children participating in war.

The two 1977 Protocols to the Geneva Conventions⁶³⁴ finally dealt directly with the role of children in armed conflict, regulating this phenomenon for the first time.⁶³⁵Article 77 of Protocol I prohibit all types of child involvement in armed conflict in the territories of the states in conflict.⁶³⁶

Protocol II to the Geneva Convention,⁶³⁷Article 4(3)(c) says that, in non-international armed conflicts, “Children who have not attained the age of fifteen years shall neither be recruited in the

⁶³⁰See *id.* The Geneva Convention has been ratified by 186 states. Machel, *supra* note 2, at 61. Since its adoption, it has become widely accepted that children should be protected in interstate armed conflicts. Richard Bilder & Frits Kalshoven, Book Review, 89 *Am. J. Int'l L.* 849 (1995) (reviewing Ilene Cohn & Guy S. Goodwin-gill, *Child Soldiers: The Role of Children in Armed Conflicts* (1994)).

⁶³¹ Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. Res. 3318, U.N. GAOR, 29th Sess. (1974).

⁶³²See Geneva Convention IV, *supra* note 8, art. 3.

⁶³³ Common Article 3 does not specify law of war for non-international conflict and does not contain a “grave breaches” provision mandating criminal punishment.

⁶³⁴ Geneva Protocol I, Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, reprinted in 16 *I.L.M.* 1391, 1425 (1977) (hereinafter Protocol I).

⁶³⁵ See U.N. Convention on the Rts. of the Child, adopted Nov. 20, 1989, U.N. Doc. A/44/736, 28 *I.L.M.* 1448, corrected at 29 *I.L.M.* 1340 (entered into force Sept. 2, 1990). (hereinafter Convention). See generally Geraldine Van Bueren, *The International Law on the Rights of the Child* (Dordrecht: Kluwer 1995). Two articles guarantee special protection for children, Articles 77 and 78. Protocol I has been ratified by 144 states. Machel, *supra* note 2, at 62.

⁶³⁶ See Protocol I, *supra* note 13, art. 77.

⁶³⁷ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of NonInternational Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 609 (hereinafter Protocol II). Only 136 states have ratified Protocol II. Machel, *supra* note 2, at 62.

armed forces or groups nor allowed to take part in hostilities.”⁶³⁸ It is an innovative provision because it contains a total prohibition of participation, including even voluntary enlistment.⁶³⁹ Children are not to be involved in any military operations including transporting ammunition and foodstuffs, or acts of sabotage.⁶⁴⁰ The language of the Protocol ascribes responsibility to those who allow children to participate rather than to the children.⁶⁴¹ It is noteworthy that Protocol II is binding on states parties as well as armed opposition groups.⁶⁴²

Protocol II was intended to expand the scope of protection for victims in internal armed conflicts, but many states have not ratified it.⁶⁴³ Unfortunately, many states also deny that it applies to the conflicts in which they are involved because they claim that the conflicts are merely internal disturbances.⁶⁴⁴ At present there is no international body that can determine which non-international armed conflicts meet the conditions necessary for the application of Protocol II and which do not.

Both protocols have been criticized for requiring that states use “all feasible means” to protect children from warfare. Such a low standard makes it easier to claim that it was not feasible to avoid involving children in conflict.

⁶³⁸ Protocol II, *supra* note 16, art. 4(3)(c). See also Human rights in Burundi report-November 1998 and March 1999, *Afr. News Service*, Aug. 16, 1999, available in 1999 WL22791268.

⁶³⁹ Protocol II, *supra* note 16, art. 4(3)(c).

⁶⁴⁰ *Id.* See Reis, *supra* note 3, at 641; cf. M2 Press wire, U.N.: Security Council Considers Involvement of Children in Armed Conflict, Jun. 30, 1998, available in 1998 WL14093901.

⁶⁴¹ Protocol II, *supra* note 16, art. 4(3)(c). See Reis, *supra* note 3, at 64.

⁶⁴² *supra* note 17.

⁶⁴³ Unlike Article 3, whose provisions are considered part of customary international law, the provisions of Protocol II are not. See Reis, *supra* note 3, at 639.

⁶⁴⁴ Because Protocol II uses a high threshold of application it enables states to deny that their internal conflicts are covered. They assert that their conflicts are merely riots or sporadic acts of violence. Guy Goodwin-Gill & Ilene Cohn, *Child Soldiers: The Role of Children in Armed Conflicts* 58 (1994).

The four Geneva Conventions and the two Protocols afford protection to children in armed conflict in part by specifying age limits. They prohibit participation by those under fifteen ⁶⁴⁵and, with regard to fifteen-to eighteen-year-olds, mandate enlisting older children first.⁶⁴⁶ Evidently the first established age limit was fifteen: “International usage has now settled on an age limit of fifteen as defining what is meant by ‘children’ when no further description is given.”⁶⁴⁷ These rules, though widely supported, have not achieved the status of customary international law. The consensus is not sufficient for purposes of *opinio juris*.

As most of the conflicts involving children are internal armed conflicts, as many states have failed to ratify the Second Protocol, and as the relevant norms are not considered part of customary international law, existing standards fail to protect many children. The shortcomings of international humanitarian law, especially with reference to internal conflicts, have been acknowledged in the international community.⁶⁴⁸ This has provided the impetus to develop global standards in other arenas.

The Convention on the Rights of the Child (CRC),⁶⁴⁹ adopted in 1989, and more widely ratified than any other human rights treaty,⁶⁵⁰ includes a provision on the child soldier, namely Article 38

⁶⁴⁵ Protocol I, *supra* note 13; Protocol II, *supra* note 16. The protocols specify that those under 15 should not take a direct part in hostilities or be recruited. Existing standards differ on whether there should be prohibition of any participation in hostilities by children or whether they should proscribe only taking a direct part in hostilities. For instance, Protocol II, Article 4(3) (c) prohibits any participation. See *supra* note 17. By contrast, Protocol I, Article 77(2) and CRC Article 38(2) forbid only taking a direct part in hostilities.

⁶⁴⁶ Protocol I, *supra* note 13; Protocol II, *supra* note 16. See Bilder & Kalshoven, *supra* note 9, at 849.

⁶⁴⁷ Jean Pictet, *Commentary on the IV Geneva Convention* 395 (1958).

⁶⁴⁸ See Machel, *supra* note 2, at 62 (these articles cannot be considered adequate to ensure the safety and survival of children trapped in internal conflicts.)

⁶⁴⁹ Geneva Convention, *supra* note 14.

⁶⁵⁰ As of August 1999, the CRC has been ratified by 183 UN member states and eight nonmembers. Miller & Lewis, *supra* note 2.

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.⁶⁵¹

Article 38 was the most controversial provision, causing the most friction during the drafting of the instrument largely because of the age limit question.⁶⁵² During the negotiations, the minimum age limit was contentious; the U.S., the U.K., and France made vociferous objections to establishing eighteen as a minimum age. This is apparently because some states recruit volunteers under the age of eighteen. This includes the U.S.,⁶⁵³ the Netherlands, New Zealand, and the U.K.

⁶⁵¹Geneva Convention, *supra* note 14, art. 44(1). In addition, Article 39 of the Convention on the Rights of the Child mandates that governments ease the transition of child victims of armed conflicts back into society. See *supra* note 14.

⁶⁵²Geneva Convention, *supra* note 14, art. 38. Jenny Kuper, Reservations, Declarations, and Objections to the 1989 Convention on the Rights of the Child: Human Rights As General Norms and a State's Right to opt Out 104-13 (1996); see also Lawrence LeBlanc, The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights 150 (1995); Black, *supra* note 4, at 142; Colleen C. Maher, The Protection of Children in Armed Conflict: A Human Rights Analysis of the Protection Afforded to Children in Warfare, 9 B.C. Third World L. J. 297 (1989).

⁶⁵³ The U.S. played a key role in lobbying to lower the age for participation in armed conflict to fifteen. See Cynthia Price-Cohen, Children's Rights: An American Perspective: The Handbook of Children's Rights: Comparative Policy and Practice 171 (1995).

Interestingly, when the lower age of fifteen was chosen, several states objected, preferring instead the higher minimum age of eighteen.⁶⁵⁴ When they ratified the CRC, they attached declarations indicating they would undertake obligations not to allow children to participate in armed conflict until eighteen.⁶⁵⁵ This is an interesting example of states using reservations, understandings, and declarations to expand rather than limit their obligations under a treaty regime.

Almost immediately after the CRC entered into force, the CRC Committee began to consider an Optional Protocol to try to raise the age to eighteen.⁶⁵⁶ Raising the minimum age will not be enough to solve the problem because most child soldiers are not in government armed forces, most are volunteers, and many groups continue to use children even below the minimum age of fifteen.⁶⁵⁷ The age issue has become less divisive.⁶⁵⁸

Article 38 was considered an “innovation”⁶⁵⁹ because it based human rights law on humanitarian law. Article 38(1) is said to apply a “double standard” because it makes the requirements applicable to the conduct of states parties and to the conduct of others.⁶⁶⁰ The U.S. objected in principle to putting humanitarian law into the human rights instrument.⁶⁶¹

⁶⁵⁴ Seven countries expressed disapproval of the low minimum age. They were Argentina, Austria, Columbia, German, the Netherlands, Spain, and Uruguay. Rachel Brett, *Child Soldiers: Law, Politics, and Practice*, 4 *Int'l J. of Children's Rts.* 117 (1996).

⁶⁵⁵ See LeBlanc, *supra* note 31, at 153-54.

⁶⁵⁶ See Brett, *supra* note 33, at 199 (reporting that the CRC Committee considered “Children in Armed Conflicts” the first day of its general discussion of an issue); see also LeBlanc, *supra* note 31, at 155-56 (discussing the Draft Optional Protocol on Involvement of Children in Armed Conflicts and noting that no reservations would be permitted to the Protocol). The text of the Draft Optional Protocol to the CRC on Involvement of Children in Armed Conflict can be found at United Nations High Commissioner for Human Rights available at <http://www.unhchr.ch> (last visited 10-25-2019)

⁶⁵⁷ See Brett, *supra* note 33, at 123. See also Reis, *supra* note 3 (listing numerous conflicts in which children under 15 participated).

⁶⁵⁸ There is now agreement on the age of 18 except for three states that prefer 17.

⁶⁵⁹ See Brett, *supra* note 33, at 116. See also Reis, *supra* note 3, at 642; Van Bueren, *supra* note 14, at 349.

⁶⁶⁰ Convention, *supra* note 14, at art. 38(1).

⁶⁶¹ See Brett, *supra* note 33, at 118.

Because the CRC has a serious limitation in that it limits only the conduct of states, critics have called for non-state actors to adhere to the standards.⁶⁶² Crucial to the success of the CRC will be pressuring opposition and rebel groups to respect the provisions concerning the child soldier.

Furthermore, the failure of the U.S. to ratify the Convention, when virtually all the other countries in the world have done so, undermines its efficacy.⁶⁶³ If the U.S. were to ratify the instrument, it would be entitled to appoint an expert to the Committee, which monitors compliance with the CRC. This would enable it to influence the CRC's jurisprudence as the Committee issues general comments that are policy statements interpreting the treaty's various articles.

Another international standard on the child soldier was promulgated just a year after the completion of the CRC. The African Charter on the Rights and Welfare of the Child⁶⁶⁴ contains Article 22(2), which forbids the child soldier: "States Parties to the present Charter shall take all necessary steps to ensure that no child shall take a direct part in hostilities and (shall) refrain in particular from recruiting any child."⁶⁶⁵

In Article 2 the Charter defines a child as eighteen and below.⁶⁶⁶ It is striking that the African Charter has stronger language ("take all necessary steps")⁶⁶⁷ than that of the CRC, which merely asks states to "take feasible steps."⁶⁶⁸

⁶⁶² See Wessells, *supra* note 2.

⁶⁶³ Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 *ILSA J. Int'l & Comp. L.Q.* 629-640 (1997)

⁶⁶⁴ *Charter on the Rights and Welfare of the African Child*, July 11, 1990, art. 22(2), O.A.U. Doc. CAB/LEG/24.9/49 (1990) (hereinafter *African Charter*); Geraldine Van Buren, *International Documents on Children* 33 (1993).

⁶⁶⁵ *Id.*

⁶⁶⁶ *African Charter*, *supra* note 43, art. 2.

⁶⁶⁷ *African Charter*, *supra* note 43.

⁶⁶⁸ *Convention*, *supra* note 14.

In Africa there continues to be work on standard-setting. An African Conference on the Use of Children as Soldiers was held in Maputo in April 1999, and focused on the African Charter on the Rights and Welfare of the Child.⁶⁶⁹ Hosted by the Mozambican government, more than 250 representatives of governments and international and non-governmental organizations met to discuss the problem in the African context. At the end of the conference those assembled adopted the Maputo Declaration on the Use of Children as Soldiers⁶⁷⁰ and the Declaration was expected to be presented to the Organization of African Unity for adoption as a formal resolution.⁶⁷¹

United Nations specialized agencies have also addressed the issue. In June 1999 the International Labor Organization adopted a Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor.⁶⁷² Though some states sought an absolute ban on the child soldier, the United States blocked efforts to include explicit language prohibiting the recruitment of children into the military.⁶⁷³ Reference to the child soldier appears in Article 3(a) as part of the

⁶⁶⁹ The African Charter on the Rights and Welfare of the Child was only two ratifications short of entering into force. Jo Becker, Update on Child Soldiers, June 8, 1999 (personal communication from Human Rights Watch).

⁶⁷⁰ See Conference on Child Soldiers Ends, Afr. News Serv., Apr. 23, 1999, available in 1999 WL 17310525 (indicating that the Maputo conference ended with a declaration that “the use of any child under 18 years of age by any armed force or armed group is wholly unacceptable, even where that child claims to be a volunteer”).

⁶⁷¹ See Becker, *supra* note 48.

⁶⁷² See Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor, I.L.O. 87th Sess., reprinted, available at <http://www.ilolex.ilo.ch:1567/scripts/convde.pl? C182>>. Group Acts to Curb (last visited 6-23-2019)

Child Labor Abuses, L.A. Times, June 18, 1999, at A22. The text of the ILO Convention is available at International Labour Conference, 10. 25, 1999) available at <http://www.ilo.org/public/english/10ilc/ilc87/com-chil.htm>>(last visited 10-25-2019).

⁶⁷³ Electronic Press Release, U.S. Blocks Efforts to Ban the Use of Child Soldiers, Human Rights Watch (June 15, 1999).

definition of “the worst forms of child labor.”⁶⁷⁴ Despite the U.S. maneuver, the treaty, when it enters into force, is expected to be a useful tool for the campaign against the child soldier.⁶⁷⁵

There are a few articles in the Statute of the International Criminal Court (ICC)⁶⁷⁶ that pertain to the child soldier's legal status. Article 26 of the Statute of the ICC says no one under the age of eighteen will be tried in the tribunal.⁶⁷⁷ Article 2 makes it a war crime to recruit children fifteen and under to participate in armed conflict, including conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.⁶⁷⁸ The age limit, once again, was highly controversial as many favored a higher minimum age.

Since, for the time being, children do fight in armed conflicts, the international community has had to grapple with the question of whether or not child soldiers should be held responsible for their actions. Some argue that there is no basis in international law or humanitarian or human rights to prosecute children.⁶⁷⁹ This position takes as its premise the fact that children could not have formed the requisite intent to commit crimes of genocide, for instance.⁶⁸⁰ Another argument is that international law requires treating juvenile offenders differently than adults. Instead of a

⁶⁷⁴ The Article 3(a) definition includes “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.” African Charter on the Rights and Welfare of the Child, art. 3(a) (emphasis added)

⁶⁷⁵ Amnesty International, *Child Soldiers: One of the Worst Abuses of Child Labour*. AI Index A: IOR 42/01/99 (Jan. 1999). See Virginia Leary, *Lessons from the Experience of the International Labour Organization* (1992) (for insights into the capacity of the ILO to promote human rights).

⁶⁷⁶ U.N., Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, 37 I.L.M. 999 (hereinafter ICC).

⁶⁷⁷ *Id.* art. 26. Article 26 contains an exclusion for jurisdiction over persons under 18 which states, “(t)he Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.” *Id.*

⁶⁷⁸ CC, *supra* note 55, art. 2.

⁶⁷⁹ See Reis, *supra* note 3, at 633.

⁶⁸⁰ *Id.* at 644

punitive approach, the international community prefers rehabilitation as a way of handling the child soldier.⁶⁸¹

If international law prefers rehabilitative jurisprudence, this may at times run counter to a more retributive domestic sentiment. For instance, in Rwanda, public opinion seemed to favor holding children responsible. A Save the Children Federation study found support for this attitude.⁶⁸² Some Rwandans think that if a child was mature enough to distinguish between a Tutsi and a Hutu and to commit murder, then the child was old enough to be punished.⁶⁸³

A major problem with international standards is the scope of their application. Humanitarian law, in principle, applies to all parties to a conflict,⁶⁸⁴ but it can be awkward to impose higher standards on non-governmental armed forces than on governmental armed forces.⁶⁸⁵ Sometimes it can be unclear which side is the government and which side is the opposition. Most of the human rights standards apply only to states parties (except for the Genocide Convention⁶⁸⁶ which constrains non-state actors as well). To what extent non-state actors can be held responsible is part of an on-going debate.

⁶⁸¹ For example, Article 5 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 1985 specifies that rehabilitation should be emphasized, with a focus on the juvenile's well-being; legal sanctions should take the juvenile's circumstances into account. U.N. Standard Minimum Rules for the Administration of Juvenile Justice, Nov. 29, 1985, res. 40/33, reprinted in Human Rights: A Compilation of International Instruments, U.N. Sales No. E.93, XIV.1, 356-81.

⁶⁸² See Reis, *supra* note 3, at 635.

⁶⁸³ See Reis, *supra* note 3, at 634-35 ("You will hear Rwandans say that if a child was able to kill, if a child was able to discriminate between two ethnic groups, to decide who was a Hutu moderate and who wasn't, and was able to carry out murder in that way, why should that child be considered differently from an adult? And therefore, the punishment should be the same.").

⁶⁸⁴ This is in contrast with human rights law, which limits only state actors, with a few exceptions.

⁶⁸⁵ Governments do not appear to object.

⁶⁸⁶ Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A (111) 78 U.N.T.S. 277 (1948).

4.2 Implementation

To combat the practice of child soldiers, we need empirical data to determine what institutional arrangements would have to be established to shield children from warfare. Serious efforts have been undertaken to document the experience of children fighting as soldiers, so that international institutions can formulate effective policies. One of the most substantial research projects on the scope of the child soldier crisis has been the set of case studies by Radda Barnen (the Swedish Save the Child organization).⁶⁸⁷

The United Nations has also sponsored comprehensive research projects on this subject. On the advice of the Committee on the Rights of Child, the General Assembly recommended that the Secretary General appoint an independent expert to study the impact of armed conflict on children.⁶⁸⁸ Consequently, the U.N. appointed Graça Machel, former Minister of Education of Mozambique and widow of the former President of Mozambique, to complete a series of studies of children affected by armed conflict. Her comprehensive study was presented to the General Assembly at its fifty-first session in August 1996.⁶⁸⁹ In response to her superb study, the General Assembly recommended the appointment of a Special Representative on the impact of armed conflict on children.⁶⁹⁰ Mr. Olara A. Otunnu was appointed in September 1997.⁶⁹¹

Simultaneously, parallel developments have occurred. For instance, humanitarian non-governmental organizations have held conferences on the subject of children of war. One

⁶⁸⁷See Radda Barnen, *Children: The Invisible Soldiers?* (1996); see also Radda Barnen, *Children of War* available at <http://www.rb.se/chilwar> (last visited 9/23/2019). Radda Barnen's home page available at <http://www.rb.se>. See Child War database Radda Barnen, Radda Barren's Documentation on Child Soldier available at <http://www.rb.se/childwardatabase/> (last visited 9/23/2019)

⁶⁸⁸The Committee did so under its Article 45(c) power. Convention, *supra* note 14, art. 45(c).

⁶⁸⁹ Provisional Agenda Item 108, U.N. Doc. A/51/306/Add.1 (Aug. 26, 1996) (prepared by Graça Machel).

⁶⁹⁰ See Harvetta M. Asamoah et al., *International Human Rights*, 33 *Int'l Law* 555, 559-60 (1999).

⁶⁹¹ Anthony Goodman, *up to 300,000 Children Serving in Armed Conflicts*, *Houston. Chron.*, Oct. 21, 1998, at 25.

important book, *Child Soldiers: The Role of Children in Armed Conflicts*, by Guy Goodwin-Gill and Ilene Cohn (Oxford: Clarendon Press, 1994), was the result of one of the conferences. The Henry Dunant Institute developed a “Plan of Action concerning Children in Armed Conflict.”⁶⁹²

What practical knowledge have we gained to solve the problem? Studies have identified some of the myriad causes of the child soldier phenomenon.⁶⁹³ Various explanations have been put forward: The child soldier may be a widespread phenomenon because participation in warfare is a rite of passage in many societies. Children become adults earlier, and boys show their prowess in order to become men.⁶⁹⁴ Another major factor is poverty, as many of the children forcibly recruited are those working on the streets.⁶⁹⁵

For children in some parts of the world, the army serves as a substitute family. They are drawn to gangs or the military because the social structure has collapsed. In some instances, joining the military is crucial for their survival, as many of them have had their relatives killed in armed conflicts.

Sometimes, there is also a religious motivation: children are told that fighting in a holy war will guarantee them access to heaven. Tens of thousands of children died in the eight-year Iran-Iraq

⁶⁹² See Brett, *supra* note 33, at 122. The plan contains the following objectives: 1. promote national and international legal standards prohibiting the military recruitment and use in hostilities of persons younger than 18 years of age, and also the recognition and enforcement of such standards by all armed groups; 2. prevent children from joining armed forces or groups by offering them alternatives to enlistment; and 3. raise awareness in society of the need not to allow children to join armed forces or groups. *Id.*

⁶⁹³ The Children and Armed Conflict Unit has been established at the Children's Legal Centre of University of Essex to collect data on children in armed conflict. available at <http://www2.essex.ac.uk/c&acu> (last visited 10-25-2019)

⁶⁹⁴ Some children join the armed forces to “prove their manhood.” This factor is mentioned by the Coalition to Stop the Use of Child Soldiers. See Miller & Lewis, *supra* note 2.

⁶⁹⁵ Recruiters may also receive financial incentives for the conscription of children. This may contribute to forced recruitment. See Raymond J. Toney and Shazia N. Anwar, *International Human Rights Law and Military Personnel: A Look Behind the Barrack Walls*, 14 *Am. U. Int'l L. Rev.* 523 (1998).

War,⁶⁹⁶ some having fought as front-line combatants. One analysis of Islamic law finds that the use of children in armed conflict “is in direct contravention of the fundamental sources of Islamic law.”

697

One reason the “child soldier” is pervasive is cultural differences in the conceptualization of childhood. A key problem with implementation is that the distinction between childhood and adulthood is not clear cut in many societies.⁶⁹⁸ In many countries, individuals marry much younger, and are expected to work to contribute to the survival of the family from early ages. The notion that it is “barbaric” to let young person’s fight could be considered by some to be ethnocentric.⁶⁹⁹ Some argue that Human rights law provides for a right to work and a right to food; forbidding children to work when their families depend on the income in the name of protecting children’s rights could violate other human rights, if alternatives are not provided. Moreover, it seems unrealistic to expect children not to try to defend their families if they are under attack.

Many critics of the “child soldier” object to the practice because children cannot be said to make a voluntary choice to join the military. Indeed, from a Western viewpoint, according to which children presumptively lack the capacity to consent, they simply cannot join “voluntarily.” Although there is a distinction to be drawn between forcible conscription and voluntary joining,

⁶⁹⁶ Maryam Elahi, *The Rights of the Child Under Islamic Law: Prohibition of the Child Soldier*, 19 Colum. Hum. Rts. L. Rev. 259 (1998); see id. at 277 (“A 1984 Anti-Slavery Society Report based on International Red Cross estimates announced that over 50,000 Iranian children had been killed in the war and approximately 2000 were being held as prisoners of war in camps in Iraq.”). Elahi declines to analyze whether Iran was fighting a holy war (jihad) as claimed. Id. at 265 n.19.

⁶⁹⁷Id. at 265

⁶⁹⁸ See Philippe Aries, *Centuries of Childhood: A Social History of Family Life* (1960) (analyzing the emergence of childhood); see also Philip E. Veerman, *The Rights of the Child and the Changing Image of Childhood* (1992).

⁶⁹⁹For a book that wrestles with cultural relativity and universal children’s rights, see Philip Alston, *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994); see also Abdullahi An’Na’im, *Cultural Transformation and Normative Consensus on the Best Interests of the Child*, in *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994) for an extremely persuasive essay.

most child advocates prefer an absolute prohibition of any involvement of children in armed conflict.

Governments may be inclined to recruit children particularly when there is a dearth of adult soldiers. Those who permit children to enroll as students in military schools often justify this because they claim child soldiers learn leadership skills. Where the schools are considered to be part of the armed forces, as, for example, in Nigeria, would children in the schools be considered “child soldiers” in violation of international law?⁷⁰⁰ Some argue that, there might be some advantage to having children attend such schools if, in fact, military training required instruction in humanitarian law and international human rights, and provided educational opportunities. Under those circumstances, it is not obvious that such schools would violate international legal standards. Verification of children's ages, when formal, written birth certificates are unavailable,⁷⁰¹ is problematic. In the absence of a functioning system of birth registration, the falsification of documents may be a simple matter. To stop the use of child soldiers, governments must have effective systems for registering births and documenting the children's ages.⁷⁰²

Another problem with the enforcement of proposed standards is the possibility of conflict among human rights norms. To protect children from armed conflict, evacuation of children from war zones may be necessary. The Fourth Geneva Convention supports the proposition that the damage done to a child through separation from the family is less important than the child's physical safety.⁷⁰³ A UNESCO report, however, concluded that it is not in the child's best interest to separate

⁷⁰⁰ In Nigeria, for instance, children are eligible to enroll in military schools at age 12. See Brett, *supra* note 33, at 126 n.20 (describing the UN condemnation of the use of children in armed conflict). However, currently, 18 years old is the minimum age of recruitment on paper.

⁷⁰¹ See Machel, *supra* note 2, at 14.

⁷⁰² *Id.* at 18-19.

⁷⁰³ Geneva Convention IV, *supra* note 8.

him or her from his or her family.⁷⁰⁴ There is a conflict in international interpretations of which policy would ensure the child's best interests.

4.3 Interventions

There have been various interventions by The United Nations Security Council working group to provide interventions for Children involved in Armed conflicts and ensure that the six grave violations specified in Security Council resolution 1612, and reinforced in resolution 1882, receive consistent and ongoing attention from the Security Council, a resolution established the Security Council Working Group on Children and Armed Conflict in 2005.⁷⁰⁵ The Working Group is an official subsidiary body of the Security Council, which consists of all 15 members of the Security Council.

It meets in closed sessions to: Review the reports of the monitoring and reporting mechanism referred to in paragraph 3 of resolution 1612 (2005); Review progress in the development and implementation of the action plans mentioned in paragraph 5 (a) of resolution 1539 (2004) and paragraph 7 of resolution 1612 (2005); Consider other relevant information presented to it; Issue statements and letters to parties to armed conflict regarding their obligations under international law; Make recommendations to the Council on measures to promote the protection of children affected by armed conflict, such as appropriate mandates for peacekeeping missions, the creation of child protection advisors or the possible imposition of targeted measures on parties to the conflict; and Address requests, as appropriate, to other bodies within the United Nations' system for specific action to support implementation of Security Council resolution 1612 (2005) and 1882 (2009), in accordance with their respective mandates.

⁷⁰⁴ See Van Bueren, *supra* note 14, at 343 (discussing a UNESCO report on children evacuated during the Greek Civil War of 1945-46).

⁷⁰⁵ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, available at <http://www.un.org/children/conflict/english/theoffice.html>(last visited 10-12-2022)

Many countries that are not on the Security Council are keen to ensure the full implementation of Security Council resolution 1612. They work together as a network to urge the Security Council to act against violators of children's rights during times of conflict and to advocate for effective implementation of resolution 1612.

The United Nations Children's Fund (UNICEF) the lead UN agency on children, UNICEF's primary role is to support governments in the fulfillment of their duties towards children and only enters a country by invitation from that government. The agency plays several roles in protecting children and ensuring their well-being in armed conflicts. Operational in every conflict zone, the agency plays a key role, either directly or through nongovernmental organization (NGO) partners, in providing health services, nutrition and education to children, as well as creating and strengthening child protection systems. In armed conflict situations, it co-chairs the monitoring and reporting task force (set up under Security Council resolution 1612) and collects information from other task force members, including NGOs and civil society, regarding violations against children for submission to the UN Security Council. It also engages with both government armed forces and non-State armed groups to negotiate action plans to end the recruitment and use of child soldiers or other violations against children, as well as securing humanitarian access to civilian populations. UNICEF works with national governments to develop and review national legislation related to the promotion and protection of children's rights.⁷⁰⁶

The Office of the UN High Commissioner for Refugees (UNHCR) a UN agency, is mandated to protect refugees, asylum seekers, stateless people and, in specific cases, internally displaced

⁷⁰⁶ For further information, see "UNICEF in emergencies," available on-line at (Last visited 09-02-2022)

persons.⁷⁰⁷ In so doing, it works with approximately 17 million children who have been forcibly displaced.⁷⁰⁸ Working at both an operational and an advocacy level, the UN refugee agency has access to a range of government actors (for example, host countries and countries of origin, donors, resettlement destinations, regional structures and neighboring governments). It produces a number of analytical reports and programming guidance tools every year, some of which focus on children. It also reviews legislation with national governments and monitors its implementation.⁷⁰⁹

UN Department of Peacekeeping Operations (DPKO) a body created by the UN in keeping with the recommendations from Graça Machel's Report and in partial response to allegations of peacekeeper misconduct towards children, the Department has significantly expanded the incorporation of children's issues in its peacekeeping operations, including child rights and protection in the training of its peacekeepers and the deployment of child protection expertise on peacekeeping missions. Its staff members often have broad access to all parties to a conflict, and are well placed to try to prevent and end the recruitment of children, as well as to monitor all aspects of Security Council resolution 1612. See below for a discussion of Child Protection Advisers.⁷¹⁰ On 1 June 2009, DPKO adopted a child protection policy that outlines the key priorities of peacekeeping operations in child protection: training of peacekeepers, monitoring and reporting, dialogue with parties who commit violations towards implementation of action plans and mainstreaming children's considerations in all aspects of peacekeeping operations.⁷¹¹

⁷⁰⁷ When UNHCR does not work with internally displaced people, the task usually falls to the International Organisation for Migration (IOM). For more information on the work of IOM, see www.iom.int. (Last visited 07-08-2022)

⁷⁰⁸ UNHCR, "Who we help," available on-line at <http://www.unhcr.org/pages/49c3646c1e8.html> (Last visited 10-12-2022)

⁷⁰⁹ For further information on the UNHCR, available at <http://www.unhcr.org>. (Last visited 05-03-2022)

⁷¹⁰ For further information, see <http://www.un.org/Depts/dpko/dpko> (last visited 10-23-2022)

⁷¹¹ For further information, see https://www.un.org/News/briefings/docs/2009/090804_1882.doc.htm (Last visited 07-06-2022)

The UN Department of Political Affairs (DPA) plays a central role in peacemaking by monitoring and assessing global political developments, advising the Secretary-General on actions that could advance the cause of peace and prevent conflict, providing support to UN peace envoys and political missions and providing electoral assistance.⁷¹² While its direct contact with children is minimal, it is a potential partner in peacemaking efforts and can involve children in its work as delegates in peace talks or youth election observers.

The UN Office for the Coordination of Humanitarian Affairs (OCHA) was created with the aims to improve the effectiveness of humanitarian assistance, with a strong emphasis on coordination.⁷¹³ As such, it ensures the smooth functioning of sector ‘clusters,’ including the child protection sub-cluster that is usually headed by UNICEF. The Office for the Coordination of Humanitarian Affairs also coordinates financial appeals and contributes to public information through the media. It is an important voice for humanitarian access to children and other civilians.

The World Health Organization (WHO) is the lead UN agency on physical and mental health. It plays a significant role in times of armed conflict with its child vaccination campaigns, advocacy on access to quality, basic health services and developing and monitoring standards of practice. Of note are its partnerships in gender-based violence and mental health.⁷¹⁴

⁷¹² For more information, see <http://www.un.org/Depts/dpa/> (Last visited 09-03-2022)

⁷¹³ For more information, see OCHA, “Children and War,” available on-line at <http://ochaonline.un.org/HumanitarianIssues/ProtectionofCiviliansinArmedConflict/Whataretheissues/ChildrenandWar/tabid/1131/language/en-US/Default.aspx> (Last visited 10-10-2022)

⁷¹⁴ . For further general information on the World Health Organisation, see www.who.int or on specific issues, see WHO, “Rapid Assessment of Mental Health Needs of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict Situations”, 2001, available on-line at http://www.who.int/mental_health/media/en/645.pdf and Inter-Agency Standing Committee, “IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings”, 2007, available on-line at <http://www.wpro.who.int/internet/files/eha/toolkit/web/Health%20Cluster%20Approach/Implementing%20the%20Health%20Cluster%20Approach/IASC%20Guidelines%20on%20MHPSS%20in%20emergency%20settings%2007.pdf> and Inter-Agency Standing Committee, “Guidelines for Gender-based Violence Interventions in

The World Food Programme (WFP) a UN agency leads UN efforts on food security during an emergency. Their food distribution operations are at the center of many humanitarian responses. It has school feeding programs, as well as special distributions for separated and unaccompanied children, and intervenes in child demobilization and reintegration programmes.⁷¹⁵

In-country Task Force established pursuant to Security Council resolution 1612, When a country is subject to the monitoring and reporting mechanism as per Security Council resolution 1612 (either after having been listed in the Secretary-General's Report on Children and Armed Conflict, or through voluntary acceptance of the mechanism), the UN country team operating in the country is charged with establishing this mechanism to monitor and report on grave violations of children's rights. The Task Force, typically co-chaired by UNICEF and the highest-ranking UN representative in the country (often the UN resident coordinator), is given the responsibility to report confidentially to the Special Representative for Children and Armed Conflict on a bi-monthly basis. The Task Force is composed of other UN agencies and representatives (such as the International Labour Organization, UNHCR, child protection advisers, Office of the High Commissioner for Human Rights, OCHA), as well as national and international NGOs. The host government does not usually participate in the Task Force.⁷¹⁶ Under resolution 1612, these Task Forces are set up in countries where the Secretary General has identified that recruitment and use of child soldiers is occurring. Once established, the Task Force is mandated to report on all grave

Humanitarian Settings", 2005, available on-line at

<http://www.who.int/hac/techguidance/pht/GBVGuidelines08.28.05.pdf>(Last visited 12-28-2022)

⁷¹⁵ For further details on the World Food Programme, see <https://www.wfp.org>(Last visited 06-09-2022)

⁷¹⁶ As of November 2009, there are Taskforces active or underway in Afghanistan, Burundi, Central African Republic, Chad, Colombia, Darfur, Democratic Republic of the Congo, Myanmar, Nepal, Philippines, Somalia, Southern Sudan, Sri Lanka and Uganda. For detailed information on violations against children, please consult United Nations, "Children and Armed Conflict: Report of the Secretary-General," A/63/785-S/2009/158, UN, 2009, pg. 47, available on-line at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%202009158.pdf> (Last visited 11-23-2022)

violations against children. Under resolution 1882, task forces can also be set up in situations of armed conflict where children are subject to killing, maiming or sexual violence, regardless of whether children are also being recruited for use as child soldiers.

Child Protection Advisers (CPA) with Peacekeeping or Political Missions a product of The Security Council Resolution, the idea of Child Protection Advisers was first articulated in Security Council resolution 1261 on children and armed conflict. Later, a specific provision flowing from this was drafted into Security Council resolution 1270 on Sierra Leone. As of November 2009, there were over 60 Child Protection Advisers in seven peacekeeping and two political missions.⁷¹⁷ They report directly to the UN Deputy Head of Mission, usually the Special Representative of the Secretary-General. The Child Protection Adviser may also report to the Head of Mission, through the Deputy Special Representative to the Secretary-General (DSRSG). In any case, the Head of Mission's support to the CPA is essential to the protection of children affected by armed conflict. The Child Protection Adviser conducts systematic training of peacekeepers and, in many locations, is instrumental in the implementation of Resolution 1612's monitoring and reporting mechanism, through documenting child rights violations, engaging in dialogue with parties to conflict and conducting advocacy on politically sensitive issues. The CPA's role is to support operational partners who may be unable to undertake these tasks at the risk of jeopardizing their programs on the ground.

UN Committee on the Rights of the Child a body created by the UN made up of independent experts oversees the implementation of the Convention on the Rights of the Child and its two Optional Protocols, the Optional Protocol on the Involvement of Children in Armed Conflict

⁷¹⁷ For further information on Child Protection Advisers, see <http://www.un.org/children/conflict/english/childprotectionadvisors.html>(Last visited 08-09-2022)

(2000) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000). Every five years, each State must report on its laws, policies and practices with respect to the standards set by the Convention and its Protocols. Since the Optional Protocol on the Involvement of Children in Armed Conflict entered into force in 2002, the Committee has reviewed scores of State's reports and regularly questions governments regarding issues such as rehabilitation programs for children affected by armed conflict, treatment of refugee and asylum-seeking children, military recruitment and deployment practices and the treatment of children involved in armed conflict, including detention policies.

The UN created The International Committee of the Red Cross (ICRC). The mission of the International Committee of the Red Cross is to protect and assist the civilian and military victims of international and non-international armed conflict. It acts on the mandate dictated by the States who are party to the Geneva Conventions of 1949 and their Additional Protocols of 1977. The ICRC is tasked with monitoring the application of international humanitarian law and interceding when these laws are violated by national and local authorities, militias, rebel groups and other arms bearers, on a bilateral and confidential basis. It monitors prison conditions and exchanges of prisoners of war, as well as tracking situations of armed conflict. This organization is also active in family tracing and reunification. Under its humanitarian principles of independence, neutrality and impartiality, it is often in a position to access vulnerable populations. It rarely engages in public statements and does not undertake advocacy, as this runs counter to its fundamental principles.⁷¹⁸

⁷¹⁸ For further information on the International Committee of the Red Cross, see <https://www.icrc.org> (Last visited 10-12-2022)

There are several international nongovernmental organizations (NGOs) that conduct advocacy on behalf of children in situations of armed conflict. Among the best known are the Watchlist on Children and Armed Conflict, the Coalition to Stop the Use of Child Soldiers, Human Rights Watch, Amnesty International, and the Women’s Refugee Commission.⁷¹⁹ These NGOs document violations against children in armed conflict and frequently work with field level practitioners and observers to produce situational analyses that are either theme or country specific. In addition to conducting research and publishing reports, they organize public awareness raising campaigns, lobby Security Council members, donors and other key actors, and ‘name and shame’ and pressure influential countries to take action to protect children. Humanitarian organizations, such as Save the Children and World Vision, also engage in advocacy activities on behalf of children.

The International Criminal Court (ICC) is the first permanent, treaty based, international court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. Its establishment was a tremendous step forward in addressing impunity and accountability for violations against children in armed conflicts. The court deals with the “most serious crimes of international concern”, namely genocide, crimes against humanity, war crimes and crimes of aggression.⁷²⁰ War crimes include acts such as murder, torture and inhumane treatment, the taking of hostages, recruitment and use of children under the age of 15 years, rape and other forms of sexual violence, as well as intentional attacks against civilians, humanitarian personnel or protected buildings, such as schools. Furthermore, the Rome Statute, which set up the ICC, applies individual responsibility to those who commit violations.

⁷¹⁹ For further information on these agencies, see www.watchlist.org, www.child-soldiers.org, www.hrw.org and www.womenscommission.org(Last visited 12-25-2022)

⁷²⁰For definitions and further details on the International Criminal Court, see <http://www.icc-cpi.int/Menus/ICC/Home> (Last visited 09-12-2022)

While children can be victims of any of the crimes within the jurisdiction of the International Criminal Court, the Rome Statute enumerates some ‘child-specific’ crimes, such as the act of genocide through transferring children from one group to another and the recruitment of children under 15 into armed forces or groups. The Statute sets out other crimes, not exclusively committed against children, but that are of particular relevance to children, such as crimes of sexual violence, the act of genocide through preventing births, the use of starvation as a method of warfare and attacking humanitarian staff or objects.

The ICC is founded on the principle of complementarity, which recognizes that States have the primary responsibility to prosecute crimes under international law. As such, the ICC exercises its jurisdiction only if States have chosen not to proceed, are inactive or are clearly unable or unwilling to pursue a case. It may exercise jurisdiction in cases against a national of a State that is party to the Rome Statute, in cases where the alleged offences took place in the territory of a State that is party to the Statute (or a State that has accepted the jurisdiction of the Court), or when a situation has been referred to it for investigation by the UN Security Council. As the UN Secretary-General’s Special Representative for Children and Armed Conflict stated: “Action at the international level must however also be underpinned by accountability at the national level. That includes rigorous investigation and prosecution of those responsible for grave violations against children as well as reforms of national legislation for the protection of children in order to ensure compliance with international norms and standards.”⁷²¹

⁷²¹ Radhika Coomaraswamy, “Annual Report to UN Human Rights Council”, A/64/254, 2009, available on-line at <http://www.un.org/children/conflict/english/reports.htm>(Last visited 05-07-2022)

4.4 Definition of Terms and Concepts under International Law

For the purpose of this dissertation, the following definition of terms and concepts are necessary.

4.5 Acceptance and Approval

The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and express the consent of a State to be bound by a treaty. In the practice of certain States, acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require that the treaty be ratified by the head of state.⁷²²

4.6 Accession

“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a

⁷²² Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg 331, entry into force 27 January 1980, Articles 2(1)(b) and 14 (2), available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf(Last visited 10-12-2022)

provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.⁷²³

4.7 Adoption

“Adoption” is the formal act by which the form and content of a proposed treaty text are established. As a rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the state’s present and voting, unless, by the same majority, they have decided to apply a different rule.⁷²⁴

4.8 Armed conflict

The International Committee of the Red Cross defines an armed conflict as any difference between two States leading to the intervention of the members of the

⁷²³ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg. 331, entry into force 27 January 1980, Articles 2(1)(b) and 15, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf(Last visited 11-09-2022)

⁷²⁴ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg. 331, entry into force 27 January 1980, Article 9, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf(Last visited 09-09-2022)

armed forces.⁷²⁵ According to the Uppsala Conflict Data Programme, an “armed conflict” refers to the use of armed forces between two or more parties in an intra-state or inter-state conflict, due to a governmental or territorial incompatibility, with more than 25 battle-related deaths in a given year.⁷²⁶ More concretely, the term “armed conflict” is used to refer to both international and non-international conflicts of high and low intensity.⁷²⁷

4.9 Armed forces

“Armed forces” refers to the armed forces of a State.⁷²⁸

4.10 Armed groups

“Armed groups or armed political groups” generally refer to armed entities that are distinct from the government, including armed political groups, militias and paramilitaries. They include opposition forces, factional or tribal groups, armed groups belonging to ethnic or religious minorities and a range of other militia groups. These terms are also sometimes used to refer to armed groups (often paramilitaries and militias), that are backed by or allied to government forces, but are not officially

⁷²⁵ International Committee of the Red Cross, “Commentary to the Geneva Convention. Chapter 1: General Provisions. Article 2”, available on-line at <http://www.icrc.org/ihl.nsf/COM/365-570005?OpenDocument> (Last visited 11-11-2022)

⁷²⁶ . For the explanation of the definition, see Uppsala Conflict Data Programme, “Definition of Armed Conflict”, 2008, available on-line at http://www.pcr.uu.se/research/UCDP/data_and_publications/definition_of_armed_conflict.htm. (Last visited 06-04-2022)

⁷²⁷ The Coalition to Stop the Use of Child Soldiers, “Child Soldiers: Global Report 2004”, The Coalition to Stop the Use of Child Soldiers, London, United Kingdom, 2004, pg. 354

⁷²⁸ UNICEF, “The Paris Principles: the principles and guidelines on children associated with armed forces and armed groups,” February 2007, pg. 7

part of them.⁷²⁹ It is important to note that some agencies use the terms “groups” and “forces” interchangeably.

4.11 Cape Town Principles

As part of the effort to deal with the growing problem of children serving in armed forces, UNICEF convened a symposium in April 1997, called the “Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of “Child Soldiers” in Africa.” The Cape Town Principles emerged from this symposium⁷³⁰ and focused on ending the recruitment and use of under 18-year-olds in armed conflict and demobilizing under 18-year-olds who form part of armed groups, ensuring that demobilization of children is part of the peace process and reintegrating ex – “child soldiers.”

4.12 Child

Article 1 of the United Nations Convention on the Rights of the Child states that a child is a person below the age of 18, unless the age of majority is attained earlier under the national law applicable to the child.

4.13 “Child soldier “

The Paris Principles define a “child soldier” as any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any

⁷²⁹ The Coalition to Stop the Use of Child Soldiers, “Child Soldiers: Global Report 2004”, The Coalition to Stop the Use of Child Soldiers, London, United Kingdom, 2004, pg. 354

⁷³⁰ Human Rights Education Associates, “Crimes of War – Educator’s Guide: Glossary of Terms”, available on-line at http://www.hrea.org/index.php?doc_id=251#(Last visited 09-05-2022)

capacity, including, but not limited to children, boys and girls, used as fighters, cooks, porters, messengers and spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.⁷³¹ “Child soldiers” are also oftentimes referred to by child protection agencies as “children associated with armed groups and forces.”

4.14 Children affected by armed conflicts.

The term “children affected by armed conflicts” refers to boys and girls suffering direct and indirect consequences of the war. Direct consequences of an armed conflict include unlawful recruitment, gender-based violence, killing and maiming, separation from families, trafficking, illegal detention and disability resulting from the war. Indirect consequences of war refer to the severing of basic services, increased poverty, malnutrition, disease and stigma within families and communities (for example, “child soldiers” who came back to live with their families or girls who have had babies, as a result of rape). The impacts of armed conflict on children can be substantial and have long term repercussions on their physical, emotional and mental well-being.

4.14.1 Child victim or witness of a crime

⁷³¹ UNICEF, “The Paris Principles: the principles and guidelines on children associated with armed forces and armed groups,” February 2007, pg. 7

“Child victim or witness” means a person under the age of 18 who is a victim of or witness to a crime, regardless of his or her role in the offence or in the prosecution of the alleged offender or groups of offenders.⁷³²

Child in conflict with the law A child conflicts with the law when he or she has committed or has been accused of having committed an offence. Depending upon the local context, children may also be in conflict with the law when they are dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behavior or the environment in which they live.⁷³³

4.15 Child protection

The term ‘child protection’ refers to preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking, child labor and harmful traditional practices, such as female genital mutilation or cutting and child marriage.⁷³⁴ In its simplest form, child protection addresses every child’s right not to be subjected to harm. It complements other rights that, together, ensure that children receive what they need in order to survive,

⁷³² 7. UNODC, “Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary”, New York, 2009, available on-line at http://www.unodc.org/documents/justice-and-prisonreform/UNODC_UNICEF_Model_Law_on_Children.pdf(Last visited 05-07-2022)

⁷³³ UNODC, “Manual for the Measurement of Juvenile Justice Indicators”, New York, 2006, available on-line at http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf(Last visited 03-02-2022)

⁷³⁴ UNICEF, “What is Child Protection?”, May 2006, available on-line at http://www.unicef.org/protection/files/What_is_Child_Protection.pdf.(Last visited 10-10-2022)

develop and thrive.⁷³⁵ Child protection is a special concern in situations of emergency and humanitarian crisis. Many of the defining features of emergencies – displacement, lack of humanitarian access, breakdown in family and social structures, erosion of traditional value systems, a culture of violence, weak governance, absence of accountability and lack of access to basic social services – create serious child protection problems. Emergencies may result in large numbers of children becoming orphaned, displaced or separated from their families. Children may become refugees or be internally displaced; abducted or forced to work for armed groups; disabled as a result of combat, landmines and unexploded ordnance; sexually exploited during and after conflict; or trafficked for military purposes. They may become soldiers or be witnesses to war crimes and come before justice mechanisms. Armed conflict and periods of repression increase the risk that children will be tortured. For money or protection, children may turn to 'survival sex,' which is usually unprotected and carries an elevated risk of transmission of disease, including HIV/AIDS. Ensuring accurate legislation that offers the best possible protection for children from violence, abuse and exploitation is of utmost importance. A child's right to protection has been recognized in the following international instruments: UN Convention on the Rights of the Child The African

⁷³⁵ Inter-Parliamentary Union and UNICEF, "Child protection: A Handbook for Parliamentarians", 2004, available online at http://www.unicef.org/publications/files/Guide_Enfants_OK.pdf(Last visited 03-09-2022)

Charter on the Rights and Welfare of the Child of the Organisation for African Unity (now African Union) The Geneva Conventions on International Humanitarian Law (1949) and their Additional Protocols, International Labour Organization Convention No. 182, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention on Transnational Organized Crime

4.16 Child Protection Adviser

The appointment of Child Protection Advisers attached to the Peacekeeping Operation in Sierra Leone (UNAMSIL) in 2000 and the assignment of two Child Protection Advisers to the Peacekeeping Operation in the Democratic Republic of Congo (MONUC), later the same year, resulted from the recommendation contained in Security Council resolution 1261, which aimed to promote the welfare of the child throughout the peace process. The priorities of the Child Protection Advisers were to“(1) advise senior mission leadership to ensure that child rights concerns are raised in all political and peace-building fora; (2) advise colleagues in other mission components to ensure that their relevant initiatives are ‘child-sensitive’; (3) advocate on behalf of children’s rights in collaboration with child protection partners on the ground; and (4) collaborate with mission and child protection personnel to monitor

and report on child rights violations and issues”.⁷³⁶ Child protection advisers have been given an essential role in peacekeeping operations, in so far as they ensure that children are given a special priority in policies, activities and programmes throughout the different phases of peacekeeping and peace consolidation. This includes the provision of training for all mission personnel on child rights and protection, as explicitly requested by the Security Council, as well as systematic reporting on children’s concerns in all country-specific reports to the Council. The Child Protection Adviser serves also as a contact point and interlocutor on issues related to children between peacekeeping operations and United Nations country teams, nongovernmental organizations working to protect children, national Governments and civil society groups, supporting and complementing work, in particular the work of UNICEF, on the ground.⁷³⁷

4.17 Child labor

Not all work done by children should be classified as child labor to be targeted for elimination. Children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling, is regarded as being something positive. This includes activities such as helping their parents

⁷³⁶ . Peacekeeping Best Practices Sections, “Lessons Learned Study: Child Protection. Impact of Child Protection Advisers in UN Peacekeeping Operations,” May 2007. The fourth priority has developed since the adoption of the United Nations Security Council resolution 1612 (2005), which established the Monitoring and Reporting Mechanism

⁷³⁷ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Deployment of child protection advisers to United Nations peacekeeping operations”, available on-line at <http://www.un.org/children/conflict/english/child-protection-advisors.html>(Last visited 07-02-2022)

around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families. They provide them with skills and experience and help to prepare them to be productive members of society during their adult life. The term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities, often at an exceedingly early age. Whether or not particular forms of "work" can be called "child labour" depends on the child's age, the type and hours of work performed, the conditions under which it is performed, and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries.⁷³⁸

⁷³⁸ International Labour Organization, "About Child Labour. Defining child labour," available on-line at <http://www.ilo.org/ipecc/facts/lang--en/index.htm>(Last visited 10-12-2022)

4.18 Cluster bomb or munition

Cluster bombs or munitions consist of cargo containers filled with submunitions or bomblets. Fired, launched or dropped by aircraft or land-based artillery, the container opens in the air and disperses bomblets or submunitions over a wide area - often resulting in very dense contamination. They were originally designed as a means to quickly block off a large area of land in a battlefield to prevent tanks and soldiers from coming closer. As such, the bomblets were designed to pierce armor and can kill anyone within a range of 50 meters with its explosive lethal charge. A single cluster bomb strike can spread hundreds to thousands of bomblets over as much as one square kilometer - with no distinction between military or civilian targets during the time of use or afterwards. “Cluster munition” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms. The definition encompasses those explosive submunitions.⁷³⁹

⁷³⁹ . Convention on Cluster Munitions, 30 May 2008, available on-line at http://www.clusterconvention.org/pages/pages_ii/ia_textenglish.html(Last visited 10-09-2022)

4.19 Committee on the Rights of the Child

Consisting of eighteen experts, the Committee on the Rights of the Child is mandated with examining the progress made by State Parties in achieving the realization of the obligations undertaken in the Convention on the Rights of the Child (CRC), as well as in the Optional Protocol to the CRC on the involvement of children in armed conflict and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. The Committee convenes three times a year for sessions of three weeks' duration, normally in January, May and September, at the United Nations Office in Geneva.

Disarmament, Demobilization and Reintegration (DDR) programmes

This is the series of processes that lead a combatant (adult or child, male or female) to leave the armed forces or armed groups and return to civilian life. It includes the disarmament, demobilization and reintegration phases. The three phases are interconnected, and the successful conclusion of each phase is essential to the success of the others. Child-centered DDR programmes, also sometimes called PDR for prevention, demobilization and reintegration, allow children to exit from armed forces and groups.⁷⁴⁰

⁷⁴⁰ United Nations Disarmament, Demobilization and Reintegration Resource Centre, "Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS). Section: 5.30: Children and DDR.", 2006, pg. 8-9, available on-line at <http://www.unddr.org/iddrs/05/30.php>(Last visited 09-12-2022)

4.20 Demobilization

“Demobilization” is the second step of a DDR programme. It refers to the controlled discharge of soldiers from the fighting forces. The Center for Global Development explains that the demobilization phase “represents the formal disbanding of military organizations – a process that strips combatants of the prestige, comradeship, and economic opportunities that may have been channeled through their participation in the fighting.”⁷⁴¹ Because children cannot be legally enrolled in armed groups, some child protection agencies prefer to speak of the “release” of “child soldiers”, rather than their “demobilization”. In demobilizing children, the objectives are to corroborate the child’s participation in an armed group or force, “to collect basic information which will establish the identity of the child for family tracing and to assess priority needs, and to provide the child with information about what is likely to happen next.”⁷⁴²

4.21 Disarmament

Disarmament – the first step in DDR programmes – corresponds to the collection, documentation, control and disposal of small arms, ammunition, explosives and light

⁷⁴¹ . Jeremy Weinstein and Macartan Humphreys. “Disentangling the Determinants of Successful Demobilization and Reintegration.” Center for Global Development, Washington D.C., United States, Working Paper Number 69, September 2005, pg. 3

⁷⁴² The Coalition to Stop the Use of Child Soldiers, “Child Soldiers: Global Report 2004”, The Coalition to Stop the Use of Child Soldiers, London, United Kingdom, 2004, pg. 355

and heavy weapons of combatants and often the civilian population as well. Disarmament also includes the development of responsible arms' management programmes,⁷⁴³ including arms' safe storage and, sometimes, their destruction. Because many "child soldiers" do not carry their own weapons, disarmament should not be a prerequisite for the demobilization and reintegration of "child soldiers."⁷⁴⁴

4.22 Domestic law

Domestic law refers to the national legislation of a particular State.

4.23 Explosive remnants of war (ERW)

This includes all abandoned and/or unexploded weapons and ordnance left behind after a conflict has ended. These weapons are thus no longer effectively controlled. Explosive remnants of war are explosive ordnance that has been primed, fused, armed or otherwise prepared for use. It includes Unexploded Ordnance (UXO) and Abandoned Explosive Ordnance (AXO) and may have been fired, dropped, launched or projected, yet remains unexploded either through malfunction, design or any other reason.⁷⁴⁵

⁷⁴³ UNICEF, "The Paris Principles: the principles and guidelines on children associated with armed forces and armed groups," February 2007, pg. 7

⁷⁴⁴ The Coalition to Stop the Use of Child Soldiers, "Child Soldiers: Global Report 2008. Methodology, Terms and Definitions," available on-line at <http://www.childsoldiersglobalreport.org/appendices/methodology-terms-anddefinitions>(Last visited 06-09-2022)

⁷⁴⁵ United Nations Mine Action Service (UNMAS), Glossary of Mine Action Terms, Definitions and Abbreviations, 1 January 2003, http://www.mineactionstandards.org/IMAS_archive/archived/Final/IMAS_0410.pdf. See also the website of the International Campaign to Ban Landmines, at

4.24 General Assembly of the United Nations

The United Nations General Assembly is the main decision-making organ of the United Nations. Established in 1945 under the Charter of the United Nations, the General Assembly occupies a central position as the chief deliberative, policymaking and representative organ of the United Nations. Comprising all 192 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.⁷⁴⁶The Assembly meets in regular session intensively from September to December each year, and thereafter, as required. Each Member State in the Assembly has one vote. Votes taken on designated critical issues, such as recommendations on peace and security and the election of Security Council members, require a two-thirds majority of Member States, but other questions are decided by simple majority.

4.25 Geneva Conventions

The Geneva Conventions consist of four treaties formulated in Geneva, Switzerland, which set the standards for international law on humanitarian issues. They chiefly concern the treatment of noncombatants and prisoners of war. The adoption of the first Convention followed the foundation of the International Committee of the Red

http://lm.icbl.org/index.php/publications/display?act=submit&pqs_year=2007&pqs_type=lm&pqs_report=lebanon&pqs_section (Last visited 10-07-2022)

⁷⁴⁶ . UN, Functions and Powers of the General Assembly, <http://www.un.org/ga/about/background.shtml>(Last visited 10-10-2022)

Cross in 1863. As of August 2006, the conventions had been ratified by 194 countries.⁷⁴⁷

4.26 Internally displaced children

Internally displaced children are children who have been forced to flee their homes for reasons such as armed conflict, generalized violence, human rights abuses or other disasters and who have sought safety elsewhere in the same country. Internally displaced children count among the most vulnerable categories of children affected by armed conflict. In addition to the dangers to their physical safety and security during flight, these children are vulnerable to a host of other threats, including separation from family, trafficking, abduction by armed groups, lack of food and basic services, detention against their will, exploitation, and abuse.⁷⁴⁸

4.27 International Customary law

Although not signed into law, international customary law includes those practices which many states adhere to, under a sense of obligation, and few states reject.⁷⁴⁹

⁷⁴⁷ Human Rights Education Associates, “Crimes of War – Educator’s Guide: Glossary of Terms”, available on-line at http://www.hrea.org/index.php?doc_id=251#(Last visited 09-03-2022)

⁷⁴⁸ “Report of the Special Representative of the Secretary-General for Children and Armed Conflict,” 6/08/2009, A/64/254, available on-line at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N09/446/07/PDF/N0944607.pdf?OpenElement> (Last visited 02-05-2022)

⁷⁴⁹ International Committee of the Red Cross, “What is international humanitarian law?”, 31 July 2004, available on-line at <http://www.icrc.org/web/eng/siteeng0.nsf/html/humanitarian-law-factsheet>(Last visited 09-03-2022)

2.28 International humanitarian law

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. This law protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.⁷⁵⁰The principal sources for international humanitarian law are: the four Geneva Conventions of 1949; the two Additional Protocols of 1977; a number of treaties prohibiting or restricting the use of specific weapons, for example the 1980 Convention on Certain Conventional Weapons and its Protocols; the 1954 Convention on the Protection of Cultural Property in the Event of War; and a body of customary law.⁷⁵¹International humanitarian law applies to armed conflicts; however, it does not regulate whether a State may actually use force, as this is governed by an important, but distinct, part of international law, set out in the United Nations Charter.

2.29 International human rights law

International human rights law lays down rules that regulate the way that States treat people who are in their jurisdiction. These rules are enshrined in numerous international human rights treaties. While international humanitarian law only

⁷⁵⁰Ibid

⁷⁵¹ International Committee of the Red Cross, “Humanitarian Law, Human Rights and Refugee Law – Three Pillars”, 23 April 2004, available on-line at <http://www.icrc.org/web/eng/siteeng0.nsf/html/6T7G86>(Last visited 09-23-2022)

applies in times of armed conflict, human rights law applies at all times, in times of peace and in times of armed conflict. This said, some human rights treaties permit States to derogate from certain rights in times of public emergency. Certain key rights may never be suspended, including the right to life and the prohibition of torture or cruel, inhuman or degrading treatment or punishment. Moreover, unless and until States have issued derogations in accordance with relevant procedures, they are bound by the entirety of their conventional obligations, even in times of armed conflict.⁷⁵²

4.30 International law

International law is the body of law that governs the legal relations between or among States or nations.

4.31 Landmine

There are two types of landmines: (1) an “anti-personnel” mine, which is designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons;⁷⁵³ and (2) a “mine” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

⁷⁵² International Committee of the Red Cross, “Humanitarian Law, Human Rights and Refugee Law – Three Pillars”, 23 April 2004, available on-line at <http://www.icrc.org/web/eng/siteeng0.nsf/html/6T7G8>(Last visited 07-08-2022)

⁷⁵³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 3 January 1999, available on-line at <http://www.mineaction.org/downloads/APMBC.pdf>(Last visited 12-15-2022)

4.32 Orphans

Orphans are children, both of whose parents are known to be dead. In some countries, however, a child who has lost one parent is considered an orphan.⁷⁵⁴

4.33 Ratification

Ratification defines the international act whereby a State indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties, the usual procedure is for the depositary to collect the ratifications of all States, keeping all parties informed of the situation. The institution of ratification grants States the necessary timeframe to seek the required approval for the treaty at the domestic level and to enact the necessary legislation to give domestic effect to that treaty.⁷⁵⁵

4.34 Refugee

A refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail him or herself of the protection of that country;

⁷⁵⁴United Nations High Commissioner for Refugees, “Inter-Agency Guiding Principles on Unaccompanied and Separated Children,” 1 January 2004, available on-line at <http://www.unhcr.org/4098b3172.html> (Last visited 10-24-2022)

⁷⁵⁵ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg. 331, entry into force 27 January 1980, Articles 2(1)(b), 14(1), 16, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (Last visited 07-09-2022)

or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.⁷⁵⁶

4.35.1 Reintegration

“Reintegration” – the third step of a DDR programme – is a long-term process through which children transition into civil society and adopt meaningful roles and identities as civilians who are accepted by their families and communities in a context of local and national reconciliation. Sustainable reintegration is achieved when the political, legal, economic and social conditions needed for children to maintain life, livelihood and dignity have been secured. This process aims to ensure that children can access their rights, including formal and non-formal education, family unity, dignified livelihoods and safety from harm.⁷⁵⁷

4.36 Reservation

A reservation is a declaration made by a State by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by reserving the possibility that it does not apply certain provisions. Reservations can

⁷⁵⁶

⁷⁵⁷ UNICEF, “The Paris Principles: the Principles and guidelines on children associated with armed forces and armed groups”, February 2007, pg. 8, available on-line at http://www.un.org/children/conflict/_documents/parisprinciples/ParisPrinciples_EN.pdf(Last visited 10-12-2022)

be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.⁷⁵⁸

4.37 Security Council

The Security Council of the United Nations has primary responsibility, under the Charter, for the maintenance of international peace and security. The Council is composed of five permanent members — China, France, the Russian Federation, the United Kingdom and the United States — and ten non-permanent members who are elected by the General Assembly for two-year terms and not eligible for immediate re-election. Each Council member has one vote. Decisions on procedural matters are made by an affirmative vote of at least nine of the 15 members. Decisions on substantive matters require nine votes, including the concurring votes of all five permanent members. This is the rule of “great Power unanimity,” often referred to as the “veto” power. Under the United Nations Charter, the functions and powers of the Security Council are: to maintain international peace and security in accordance with the principles and purposes of the United Nations; to investigate any dispute or situation which might lead to international friction; to recommend methods of

⁷⁵⁸ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg 331, entry into force 27 January 1980, Articles 2(1)(d)-19-23, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf(Last visited 09-01-2022)

adjusting such disputes or the terms of settlement; to formulate plans for the establishment of a system to regulate armaments; to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken; to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;

to take military action against an aggressor; to recommend the admission of new Members; to exercise the trusteeship functions of the United Nations in “strategic areas;” and to recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.

4.38 Separated children. ⁷⁵⁹

Separated children are those separated from both parents or from their previous legal or customary primary caregivers, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

Sexual violence the term “sexual violence” refers to many different crimes including rape, sexual mutilation, sexual humiliation, forced prostitution and forced pregnancy.⁷⁶⁰

⁷⁵⁹ United Nations High Commissioner for Refugees, “Inter-Agency Guiding Principles on Unaccompanied and Separated Children”, 1 January 2004, available on-line at <http://www.unhcr.org/4098b3172.html>(Last visited 10-12-2022)

⁷⁶⁰ UN Department of Economic and Social Affairs (UN DESA), “Sexual Violence and Armed Conflict: United Nations Response”, available on-line at <http://www.un.org/womenwatch/daw/public/cover.pdf>(Last visited 07-05-2022)

4.39 Sexual abuse

Sexual abuse of a child can be defined as contact or interaction between a child and an older or more knowledgeable child or adult, such as a stranger, sibling or parent, when the child is being used as an object of gratification for the abuser's sexual needs. These actions are carried out using force, threats, bribes, trickery or pressure. Sexually abusive activities do not necessarily involve bodily contact between abuser and child. Abusive activities could include exhibitionism or voyeurism, such as an adult watching a child undress or encouraging or forcing children to engage in sexual activities with one another, while the abuser observes or films such activities. Abusers are often people who have a responsibility in some capacity for the child's safety and well-being, thus a relationship of trust has been developed and at the same time, one of power.⁷⁶¹

4.40 Sexual exploitation

Commercial sexual exploitation of children is the adult exploitation of a child or an adolescent – female or male – under 18 years old, accompanied by a payment in money or in kind to the child or adolescent or to one or more third parties.⁷⁶² The commercial sexual exploitation of children is a fundamental violation of children's

⁷⁶¹ ECPAT International, "Questions & Answers about the Commercial Sexual Exploitation of Children", 2008, available on-line at http://www.ecpat.net/EI/publications/About_CSEC/FAQ_ENG_2008.pdf (Last visited 06-02-2022)

⁷⁶² International Labour Organization, "What is meant by commercial sexual exploitation of children?", available on-line at <http://www.ilo.org/ipecc/areas/CSEC/lang--En/index.htm> (Last visited 05-09-2022)

rights. It is defined by sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as both a sexual object and a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children and amounts to forced labour and a contemporary form of slavery.⁷⁶³ The term “commercial sexual exploitation” is also sometimes used to refer to child prostitution or child pornography.⁷⁶⁴

4.41 Signature subject to ratification, acceptance or approval

When a signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. It is, however, a means of authentication and expresses the willingness of the signatory State to continue the treaty making process. The signature qualifies the signatory State to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the objective and the purpose of the treaty.⁷⁶⁵

4.42 Small arms and light weapons

Small arms include revolvers, self-loading pistols, rifles, sub-machine guns, assault rifles and light machine guns. Light weapons include heavy machine guns, mortars,

⁷⁶³ Declaration and Agenda for Action, 1st World Congress against Commercial Sexual Exploitation of Children, Stockholm, 27 - 31 August 1996, available on-line at www.UNICEF.at/fileadmin/medien/pdf/Stockholm_Declaration_1996.pdf(Last visited 10-24-2022)

⁷⁶⁴ Inter-Parliamentary Union & UNICEF, “Child protection: A Handbook for Parliamentarians”, 2004, available on-line at http://www.unicef.org/publications/files/Guide_Enfants_OK.pdf(Last visited 02-08-2022)

⁷⁶⁵ . Vienna Convention on the Law of Treaties, 23 May 1969, United Nations Treaty Series, vol. 1155, pg 331, entry into force 27 January 1980, Articles 10 and 18, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf(Last visited 07-04-2022)

grenade launchers, portable anti-aircraft and anti-tank guns and portable missile launchers.⁷⁶⁶ Small arms are the weapons of choice in most internal conflicts, because they are readily available, inexpensive, easy to transport, construct, maintain and use.

4.43 Succession

Participation in treaties not in force at the date of the succession of States: a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty that is not in force if, at the date of the State's succession, the predecessor State was a contracting State in the territory to which that succession relates.⁷⁶⁷

4.44 Truth and reconciliation commission

Set up in a country emerging from internal conflict or authoritarian rule during the immediate post-conflict period, a truth and reconciliation commission is a commission of inquiry mandated “to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation”.⁷⁶⁸ Regarded as a mechanism of transitional justice, a truth

⁷⁶⁶ “Report of the Panel of Governmental Experts on Small Arms,” 27/08/1997, A/52/298, available on-line at <http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.htm> (Last visited 10-10-2022)

⁷⁶⁷ Vienna Convention on Succession of States in respect of Treaties, 23 August 1978, United Nations Treaty Series, Volume 1946, pg. 3, entry into force 6 November 1996, Articles 17-18, available on-line at http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf (Last visited 09-08-2022)

⁷⁶⁸ Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999, available on-line at <http://www.sierra-leone.org/lomeaccord.htm> (Last visited 09-08-2022)

commission is often an official State body that makes recommendations to remedy the human rights violations that occurred and to prevent their recurrence. While truth commissions do not replace the need for prosecutions, they do offer some form of accounting for the past and have thus been of particular interest in situations where prosecutions for massive crimes are impossible or unlikely to occur, owing to either a lack of capacity of the judicial system or a de facto or de jure amnesty.⁷⁶⁹

4.45 Unaccompanied child

An unaccompanied child (also known as unaccompanied minor) is a person who is under the age of 18, unless, under the law applicable to the child, majority is attained earlier, and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so”.⁷⁷⁰

4.46 United Nations

The United Nations is an international organization founded in 1945, after the Second World War, by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to its unique international character, and the powers vested in its founding Charter, the organization can act on

⁷⁶⁹ Office of the High Commissioner for Human Rights, “Rule-of-law Tools for Post-Conflict States: Truth Commissions”, New York and Geneva, 2006, available on-line at <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>(Last visited 07-04-2022)

⁷⁷⁰ United Nations High Commissioner for Refugees, “Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum,” February 1997, available on-line at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d4f91cf4&query=unaccompanied%20child>(Last visited 06-07-2022)

a wide range of issues and provide a forum for its 192 Member States to express their views through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees.

The work of the United Nations reaches every corner of the globe. Although best known for peacekeeping, peacebuilding, conflict prevention and humanitarian assistance, there are many other ways the United Nations and its system (of specialized agencies, funds and programmes) affect our lives and make the world a better place. The United Nations works on a broad range of fundamental issues, from sustainable development, environment and refugee protection, disaster relief, counter terrorism, disarmament and non-proliferation, to promoting democracy, human rights, governance, economic and social development and international health, clearing landmines, expanding food production, and more, in order to achieve its goals and coordinate efforts for a safer world for this and future generations.

4.47 Conclusion

Finally, the only way to protect the child soldier is to stop armed conflict altogether. The international campaign to halt the practice of child soldiers, in effect, serves as a form of anti-war propaganda. It is a subtle means of criticizing war in general. As far as parent's child will always be his or her child soldier, the

campaign to stop the child soldier is really using the child as a metaphor to challenge the legitimacy of war.⁷⁷¹

⁷⁷¹Others have commented that the child is a metaphor often employed to dramatize a social problem such as the environment. See, e.g., Black, *supra* note 4, at 6 (The child in distress is often used as a visual symbol of far larger issues: war, famine, pestilence, catastrophe, poverty, and economic crisis.).

CHAPTER FIVE

5.0 Children in Armed Conflicts: The difference between Legalism, realism, facts and fiction.

5.1 Introduction

In quest of evaluating the difference between theory and practice on the effect of Armed conflict on the overall development of Children, it becomes imperative to reference current situations as espoused by the United Nation General Assembly security report.

The United Nations verified over 25,000 grave violations⁷⁷² against children in 19 situations, more than half committed by non-State actors, and a third by government and international forces. Overall, 24,422 violations were committed or continued to be during the reporting period, and 1,241 were committed previously and verified in 2019.

Some 7,747 children, some as young as 6, were verified as having been recruited and used. Among those, 90 per cent were used by non-State actors. Some action plans led to increased access for the United Nations and its partners to verify violations and release children. In Nigeria and Mali, the late verification of cases attributed to the Civilian Joint Task Force (CJTF) and Coordination des mouvements de l'Azawad (CMA) respectively reflect their willingness to implement action plans. In the Democratic Republic of the Congo or the Central African Republic, the increase in numbers is due to the high numbers of previous recruitments verified upon separation in 2019, following engagement on actions plans or other commitments. Notable decreases in the recruitment and use

⁷⁷² The use of the term “grave violations” or “violations” refer to each individual child affected by recruitment and use, killing and maiming, sexual violence and abductions, while the number of incidents is used for attacks on schools and hospitals and the denial of humanitarian access.

of children occurred in Colombia and Iraq, although monitoring was challenged by security conditions.⁷⁷³

Some 10,173 children were verified as having been killed (4,019) and maimed (6,154). While a general decrease in the number of verified child casualties was observed, the number of incidents of the killing and maiming of children remains the highest verified violation, which underlines the serious concerns about the violations of international humanitarian law and international human rights law about the lack of capacity and of measures to mitigate harm and about warfare in densely populated areas. Causes of casualties include crossfire, small arms and light weapons⁷⁷⁴, ground engagement between parties, the use of explosive weapons in populated areas and the excessive use of force by State actors. Afghanistan remained the deadliest conflict for children, with a 67 per cent increase in suicide and complex attacks⁷⁷⁵ affecting children, outweighing the decrease in casualties from aerial attacks. In Mali, an unprecedented number of child casualties was verified, 91 per cent of which were in Mopti region. In Myanmar, intensified fighting in Rakhine State caused a threefold increase of child casualties. Among the casualties, 25 per cent were caused by explosive remnants of war, improvised explosive devices and anti-personnel mines. Iraq and the Philippines had the highest prevalence of such casualties.⁷⁷⁶

The United Nations verified 927 attacks on schools (494) and hospitals (433), including on protected persons. The highest numbers were verified in the Syrian Arab Republic, the Occupied Palestinian Territory, Afghanistan and Somalia. Globally, attacks on schools and hospitals

⁷⁷³ United Nations general assembly Security Council Report Document (A/74/845 S/2020/525) P2

⁷⁷⁴ Ibid P3

⁷⁷⁵ A deliberate and coordinated attack that includes all of the three following elements: a suicide device, more than one attacker and more than one type of device, as defined in the annual report of the United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the protection of civilians in armed conflict.

⁷⁷⁶ Ibid

committed by State actors (503) nearly doubled. In Gaza and Israel, conflict escalation, notably air strikes by Israeli forces and rocket fire by Palestinian armed groups, continued to significantly disrupt children's education. Schools continued to be used for military purposes, eroding their sanctity as safe spaces and exposing schools, teachers and students to attack. When they were not cancelled indefinitely, classes have been suspended for weeks or longer.⁷⁷⁷

Some 4,400 incidents of the denial of humanitarian access to children⁷⁷⁸ were verified, the highest increase in the number of incidents verified for any violation, compared with 2018. Overwhelmingly, non-State actors were responsible for such incidents, notably in Yemen, Mali, the Central African Republic and the Syrian Arab Republic. Some 2,127 children were delayed and/or denied access to specialized medical care outside of Gaza. Violence against humanitarian workers and assets, including killings, assaults and arbitrary detention, and the military use of humanitarian premises, attacks on essential civilian infrastructure, bureaucratic impediments and restrictions on movements, seriously disrupted humanitarian activities. In some contexts, humanitarian operations were also constrained by groups designated as terrorist by the United Nations and by counterterrorism measures.

Rape and other forms of sexual violence continued to be vastly underreported, with 735 verified cases. Cases were prevalent in the Democratic Republic of the Congo, Somalia, the Central African Republic, the Sudan and South Sudan. Cases attributed to State actors nearly doubled, reinforcing the fear of retaliations and of stigma for children and families willing to report sexual violence.

Sexual violence, including rape, gang rape, sexual slavery and forced marriage, remains a tactic of

⁷⁷⁷ Ibid

⁷⁷⁸ Information related to the denial of humanitarian access to children is presented pursuant to Security Council resolution 1612 (2005) and follows guidelines of the monitoring and reporting mechanism on children and armed conflict. The information presented herein does not necessarily give an exhaustive view of the full humanitarian access situation in the countries concerned.

war and a taboo subject, disproportionately affecting girls. The adoption of strong legislation is essential to ending such practices. The lack of protection, of holistic services for survivors and of accountability mechanisms disincentivize survivors, their families and witnesses from reporting violations, namely by reinforcing the stigmatization of survivors and their families and by discouraging male survivors from disclosing violations and accessing assistance and justice.⁷⁷⁹

The United Nations verified the abduction of 1,683 children, with over 95 per cent of cases perpetrated by non-State actors, in Somalia, the Democratic Republic of the Congo and Nigeria. Often combined with other violations, the abduction of children, although a feature of other violations, is underreported. Children were abducted for recruitment and use and sexual violence or ransom.⁷⁸⁰

In conclusion, it is abundantly clear from the United Nation General Assembly security council report that Children are the worst hits in every conflict. Also, there is under reportage of the trauma children go through in their developmental stage.

A realistic and not a makeshift or a hypocritic approach is the only panacea to curb the continued decadence of humanity.

5.1 Difference Between Theory and practice

In the academic literature that studies international relations, many experts have written about the importance of beliefs about right and wrong in shaping policy. They claim that beliefs shape actions, even when they conflict with one's interests.⁷⁸¹ Such socially directed behavior is

⁷⁷⁹ UNSC (S/2020/487)

⁷⁸⁰ Ibid

⁷⁸¹ See generally Jeffrey Legro, *Cooperation Under Fire: Anglo-German Restraint during World War 11* (1995); Richard Price, *The Chemical Weapons Taboo* (1997); Ward Thomas, *Embedded Ethics in International Relations*:

described as being guided by a "norm," or what anthropologist Paul Bohannon described as "a rule, more or less overt, which expresses 'ought' aspects of relationships between human beings."⁷⁸²

This research about the power of beliefs extends into the military realm. Many have argued that "norms" about what is proper and improper behavior on the battlefield still matter today. They argue, for instance, that norms have limited the use of certain weapons that, while advantageous, are horrific. For example, chemical and biological attacks might have been quite useful in recent wars but were considered so horrible in World War I that the vast majority of nations have since refrained.⁷⁸³ Activists in time past have tried to harness this type of thinking by advocating the outlaw of weapons like the antipersonnel landmine.⁷⁸⁴

However, the word "norm" can have two meanings. It can describe ethical beliefs about proper behavior, but it can also describe the most common practices of behavior, irrespective of ethics.⁷⁸⁵ Thus, while people writing about norms in international relations have focused on the positives of how ethics can lead to good behavior in warfare, they have ignored the second aspect. Experts have written little about the darker side of social behavior in warfare—the buildup of new, but malevolent, beliefs and common practices. These new standards prescribe malicious behavior.

Norms as Constraints on The Use of Force (2002); Nina Tannenwald, *The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use*, 53 INT'L ORG. 433 (1999)

⁷⁸² 38. Paul Bohannon, *Law and Warfare: Studies in the Anthropology of Conflict* 45 (1967)

⁷⁸³ PRICE, *supra* note 10.

⁷⁸⁴ See Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 52 INT'L ORG. 613, 617-19 (1998).

⁷⁸⁵ For example, in the IT world, a norm is defined as "(from norma, Latin for car-penter's level) ... a model of what should exist or be followed, or an average of what currently does exist in some context, such as an average salary among members of a large group," available at http://whatis.techtarget.com/definition/O,,sid9_gci2147,O.html (last visited 7/11/2020)

Past decades of warfare have seen the breakdown of moral codes that guided behavior in war. This has increased the savagery toward innocent civilians and to children, in particular⁷⁸⁶ Yet little of the new literature on norms confronts the issue of a proper response. Likewise, most analysts have incorrectly assumed that non-state actors play a purely positive role in developing the norms that direct widespread practice.⁷⁸⁷ Being separate from the state does not guarantee good behavior. It is true that some non-state actors positively affect policy, such as the actors behind the global campaign to eliminate landmines. However, immoral non-state actors also exist, such as the Lord's Resistance Army in Uganda, whose existence relies on the abduction and enslavement of children.⁷⁸⁸

As the doctrine justifying the use of child soldiers has spread, the most basic ethical injunctions against using children in war have rapidly collapsed. Their failure was influenced primarily by technological and geopolitical changes, with the result that children are now regular actors on the battlefield. This indicates that the durability of ethical norms in the face of external forces is far less powerful than believed. If ethical norms are not sustainable, then their power is limited. Their failure also reinforces the argument that while common behavioral practices are often grounded in

⁷⁸⁶See Singer, *Children at War*, at Ch. 1; Michael Ignatieff, *The Warrior's Honor: Ethnic War and The Modern Conscience*, Henry Holt and Co. (1998)

⁷⁸⁷ See, e.g., Price, *supra* note 13; Martha Fennimore, *National Interests in International Society*, 134 (1996).

⁷⁸⁸ *The Scars of Death*, Human Rights Watch Report (1997), available at <http://www.hrw.org/reports97/Uganda/2001> (last visited 7/11/2020); Peter Strandberg, *End of a Long Nightmare*, *Mail & Guardian*, July 26, 2002; Amnesty International, *Breaking God's Commands*, available at <http://web.amnesty.org/library/index/ENGAFR590011997> (last visited 8/12/2020); Stavros Stavou & Robert Stewart, *The Reintegration of Child Soldiers and Abducted Children: A Case Study of Palaro and Pabbo Gulu District*, in *Act against Child Soldiers in Africa: A Reader* (2002), available at <http://www.iss.co.za/Pubs/BOOKS/ACTblurb.html> (last visited 9/12/2020); *Against All Odds: Surviving the War on Adolescents*, in *Women's Commission for Refugee Women and Children report*, July 2001, at 6 available at <http://www.womenscommission.org/pdf/ug.pdf> (last visited 10/1/2020)

moral principles, their strength is influenced by very contextual factors, such as the environment.⁷⁸⁹

This weakening of constraints may be particularly strong for non-state armed groups, who are less influenced by moral norms. This conjecture is similar to the theory of "realist" international relations scholars, who feel that beliefs have no significant role in politics. Instead, realists believe that power and interests can best explain actions.⁷⁹⁰

However, there is one important caveat to the realist argument. While the rise of norms may be due to the power and interests of the strongest actors in the system (who receive most of the realists' focus), with the issue of child soldiers, the normative breakdown was caused by the innovations of some of the weakest actors in the international system. In fact, it was because of their weakness that such groups chose to violate the old norms against using children. Just as terrorist groups have revived fears of chemical and biological weapons use, the weaker parties have facilitated a new standard of behavior for using child soldiers in contemporary warfare.

Regardless of where one falls in the debate over the influence of norms, the practice of using child soldiers indisputably violates widely accepted international beliefs about proper behavior. The human rights abuses involved, which range from abduction and rape to torture and murder, shock the conscience. Moreover, this practice violates the most elementary principles of international humanitarian law. Hence, the challenge is to convert the international consensus against the use of

⁷⁸⁹See Michael Desch, *Culture Clash: Assessing the Importance of Ideas in Security Studies*, 23 *Int'l Security* 141-70 (1998).

⁷⁹⁰. See Kenneth Waltz, *Man, The State and War: A Theoretical analysis* (1959); *The Use of Force: Military Power and International Politics*, Robert J. Art & Kenneth N. Waltz eds., 4th ed. (1993); Barry Buzan Et Al., *The Logic of Anarchy: Neorealism to Structural Realism* (1993); *The Perils of Anarchy: Contemporary Realism and International Security*, Michael E. Brown et al. eds., (1995)

children as soldiers into action that revives the failing norm that children do not belong on the battlefield.

The practice of the last four millennia of warfare, in itself, makes a compelling case for customary international law's proscription against child soldiers. Furthermore, the twentieth century featured the signing of numerous treaties that codified international law's norm against the use of children in combat. These treaties include:

- * 1924 League of Nations Declaration on the Rights of the Child,
- * 1948 UN Universal Declaration of Human Rights,
- * 1949 Geneva Conventions,
- * 1950 European Convention on Human Rights,
- * 1951 Convention and 1967 Protocol Relating to the Status of Refugees,
- * 1966 UN Covenants on Civil and Political Rights and Economic, Social and Cultural Rights,
- * 1969 American Convention on Human Rights,
- * 1977 Additional Protocols to the 1949 Geneva Conventions,
- * 1981 African Charter on Human and Peoples' Rights,
- * 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- * 1989 UN Convention on the Rights of the Child, and

* 1990 Organization of African Unity (OAU) African Charter on the Rights and Welfare of the Child

Of these, the 1989 Convention on the Rights of the Child was the most notable and the most representative of global consensus. Indeed, it was the most quickly and widely ratified international treaty ever, with over 190 state signatories. Article 38 pressured governments to take all feasible measures to ensure that children do not directly participate in hostilities. Despite international law's strong opposition to the practice, the child soldier doctrine spread widely in the 1990s⁷⁹¹ The international community's response, however, was to condemn the practice and codify the use of child soldiers as a specific violation of the law. The United Nations even created an office of the Special Representative of the UN Secretary-General for Children and Armed Conflict to investigate and lobby for children's rights in warfare. Former Ugandan diplomat Olara Otunnu was at the helm of this position.⁷⁹²

The major impetus behind these efforts was a group of geographically diverse NGOs, united under the umbrella of the Coalition to Stop the Use of Child Soldiers. The Coalition was formed in May 1998 by several leading nongovernmental organizations (NGOs): Amnesty International, Human Rights Watch, Defense for Children International, International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office in Geneva, International Federation Terre des Hommes, and World Vision International. Over the next few years, it built up a global network of

⁷⁹¹ Singer, *supra* note 15, at 2.

⁷⁹² For more information, see www.un.org/special-rep/children-armed-conflict (last visited 7/11/2020)

interested NGOs, aid agencies, research institutes, and other linked coalitions willing to stand against the use of child soldiers.⁷⁹³

A major part of the Coalition's strategy was to generate consensus and enact treaties against the practice of child soldiering beginning at the state and regional levels. This endeavor was quite successful and eventually led to the mobilization of campaigns in over forty different countries. These efforts resulted in a series of regional agreements that currently encompass much of the globe, including:

- * 1996 OAU Resolution on the Plight of African Children in Situation of Armed Conflicts,
- * 1997 The Cape town Principles,
- * 1998 European Parliament Resolution on Child Soldiers,
- * 1999 Declaration by the Nordic Foreign Ministers Against the Use of Child Soldiers,
- * 1999 Berlin Declaration on the Use of Children as Soldiers,
- * 1999 Montevideo Declaration on the Use of Children as Soldiers,
- * 1999 Maputo Declaration on the Use of Children as Soldiers,
- * 2000 Organization of American States (OAS) Resolution on Children and Armed Conflict, and
- * 2001 Amman Declaration on the Use of Children as Soldiers

The group successfully pushed for international condemnation of the practice. In 1999, the UN Security Council adopted Resolution 1261, which condemned the targeting of children in armed

⁷⁹³ See generally <http://www.childsoldiers.org>(Last visited 12[10[2020) (discussing the founding of the Coalition).

conflict, including their recruitment and use as soldiers.⁷⁹⁴In 2000, the UN General Assembly adopted an "Optional Protocol to the Convention on the Rights of the Child."⁷⁹⁵This protocol significantly amended the 1989 treaty in order to confront the issue of child soldiers. Principally, it raised the age at which direct participation in conflict is legally permitted from fifteen to eighteen years old.⁷⁹⁶ It also banned compulsory recruitment of any child younger than eighteen years old, and explicitly included non-state actors within its coverage.⁷⁹⁷ With intense lobbying, the treaty was quickly adopted and entered into force on February 12, 2002. As of 15 June 2021, the treaty had been signed by 196 parties (With some stated interpretations or reservation).⁷⁹⁸

Thus, as a result of the Coalition to Stop the Use of Child Soldiers and other international actors, a series of international regimes have buttressed the ethical norms against child soldiering. The then UN Special Representative, Olara Otunnu, directly attempted to convince conflict groups to stop using children. He personally met with rebel group leaders in over twenty countries to negotiate the end of the practice. In January 2003, the treaty was followed up by UN Resolution 1460, which called on a list of specific child soldier groups in five countries (Afghanistan, D.R.C., Burundi, Liberia, and Somalia) to halt the practice and provide the Security Council with a report of the steps they have taken.⁷⁹⁹

Ethical norms are clearly important in providing the standards that are intended to guide behavior. Proponents of the legal effort against child soldiering point to five key strengths of this activism:

⁷⁹⁴S.C. Res. 1261, U.N. SCOR, 4037th mtg., U.N. Doc. S/RES/1261 (1999).

⁷⁹⁵ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, May 25, 2000, U.N. GAOR, 54th sess., U.N. Doc A/RES/54/263 (2000), available at [http://www.unhcr.ch/html/menu2/6/protocol child.htm](http://www.unhcr.ch/html/menu2/6/protocol%20child.htm). (Last visited 8/9/2020)

⁷⁹⁶ Id

⁷⁹⁷ Id

⁷⁹⁸ See UNICEF, Convention on the Rights of the Child, at <http://www.unicef.org/crc/crc.htm> (last visited 6/15/2021).

⁷⁹⁹S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003).

(1) it established an international standard on the employment of child soldiers; (2) codified legal norms; (3) set minimum age requirements that are more difficult to fabricate; (4) encouraged states to implement the laws; and (5) raised public awareness, both in the West and in areas where the child soldier groups were active-potentially empowering greater activism.⁸⁰⁰

One should not, however, confuse ethical norms with actual behavior or enforcement. Unfortunately, all of the international attention and condemnation of child soldiers has not translated into an end to the practice. Throughout the process, the use of child soldiers on an international scale did not diminish, but instead spread further still. Indeed, many of the same countries that signed the various treaties continue to flout their obligations. This is evidenced by the fact that while there are over 100 signatories, child soldiers still exist in roughly 85 countries.⁸⁰¹ Indeed, some of the largest known users of child soldiers, such as the various child soldier groups fighting in Myanmar, Colombia, and Uganda, were not even on the specific Resolution 1460 list released by the UN in early 2003.⁸⁰²

Moreover, the new protocol and the meetings with the then Mr. Otunnu failed to sway the rebel groups from using child soldiers. Typically, after a period of public denial, these groups would pledge to stop using children as soldiers, in an effort to garner international goodwill and aid. However, they would not change their actual practices. For example, despite multiple meetings with the United Nations, a ceasefire process, and multiple public pledges to stop, the Liberation Tigers of Tamil Eelam (LTTE) continued to conscript children younger than seventeen years

⁸⁰⁰ . Rachel Stohl, *Children in Conflict: Assessing the Optional Protocol*, 2 J. Conflict, Security & Dev. 137 (2002), available at <http://www.cdi.org/document/attachment/Stohl.pdf> (Last visited 10/10/2020)

⁸⁰¹ Singer, *Children at War*, supra note 15, at ch. 2.

⁸⁰² S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003).

old.⁸⁰³ Similar discrepancies between pledges and practices occurred with Unido Nacional para a Independencia Total de Angola (UNITA) in Angola, the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army (ELN) in Colombia, the Kamajors in Sierra Leone, Lal Sena in Nepal, the D.R.C. government and its rebel opponents in the Congo, and the Taliban in Afghanistan.⁸⁰⁴ For instance, one rebel group in the D.R.C. pledged not to use child soldiers in February 2001. Just a few weeks later, it celebrated its recent military training graduates and over 1,800 of the new graduates were between the ages of twelve and eighteen.⁸⁰⁵ In fact, over the next two years then, the reported rate of child soldier recruitment actually accelerated in some provinces of the D.R.C.⁸⁰⁶

Indeed, the only change for some groups resulting from this lobbying effort against child soldiers was simply to try to better hide the practice. For example, when they first entered the Afghan civil war in 1994, the fundamentalist Taliban primarily recruited young Afghan refugees attending Pakistani madrassahs. Following international pressure, the leader of the Taliban, Mullah Omar, made a public decree in 1998 that any of his followers who had not yet grown a beard were too young and should leave the force. Omar declared that he would punish any commander who used child soldiers. Just one year later, the UN reported that Taliban offensives were using between 2,000 and 5,000 children bused over from the religious schools, many preadolescents.⁸⁰⁷ Likewise,

⁸⁰³ Amy Waldman, Sri Lanka Young Still Forced to Join in Endless Rebellion, N.Y. TIMES, Jan. 6, 2003, at A1; Amnesty Slams Sri Lanka Rebels on Child Soldiers, Reuters, Feb. 15, 2002, available at <http://global.factiva.com/en/arch>; S. Lankan Tamil Rebels Abduct More Children to Be Soldiers: Truce Monitors, XINHUA, Oct. 12, 2003, available at <http://global.factiva.com/en/arch>; Sri Lanka: Child Recruitment Continues Despite Ceasefire, Child Soldier Newsletter, Mar. 2002 (Last visited 10/12/2020)

⁸⁰⁴ Singer, Children at War, supra note 15, at ch. 8.

⁸⁰⁵ Interview with human rights expert from D.R.C. (June 2002)

⁸⁰⁶ Rory Carroll, Sham Demobilization Hides Rise in Congo's Child Armies, THE OBSERVER, Sept. 9, 2003, at 15

⁸⁰⁷ International Rescue Committee, Watchlist on Children and Armed Conflict Newsletter, Nov. 2001, available at www.theirc.org. (Last visited 09-10-2020)

Renamo in Mozambique steadfastly denied its use of children throughout its war with the government. At the war's end, though, many of its marchers in demobilization parades were children, including one sixteen-year-old who had been fighting since he was eight.⁸⁰⁸

Other groups carry out token child soldier demobilizations for public relations purposes. For example, in 2001 the Congolese Rally for Democracy (RCD) Goma group in the Eastern Congo set up a "commission" on the demobilization and reintegration of child soldiers: However, only the most sickly or difficult recruits were released.⁸⁰⁹ In 2003, it again promised the UN that it would release its estimated 2,600 child soldiers. However, when it came time to demobilize, only 104 child soldiers (less than 5 percent) were actually released.⁸¹⁰ After a while, the group moved its training camps to less accessible regions to minimize even the token interference from outside observers. Similarly, the Sudan People's Liberation Army (SPLA) had a large public ceremony in 2001, releasing 3,500 claimed child soldiers to great fanfare before the UN and international media. Of course, most of the children were later reported to have not been child soldiers (the underage fighters were elsewhere) and the organization soon admitted having close to another 10,000 still within its ranks.⁸¹¹ Perhaps the most bizarre example of this denial strategy is the Lord's Resistance Army in Uganda (LRA). A quasi-religious cult group, the LRA is fighting to revive respect for the biblical Ten Commandments, and whose practices includes the torture, rape, and killing of children, the use of sex slaves, and the prohibition of bicycles.⁸¹² With a core of 200

⁸⁰⁸ Jacky Mamou, *Soldier Boys and Girls*, *Le Monde Diplomatique*, Sept. 2001, available at www.monde-diplomatique.fr/2001/09/13soldiers. (Last visited 8/8/2019)

⁸⁰⁹ . *Child Soldiers in the Congo: Business as Usual*, Refugees International, Apr. 1, 2001; *Child Soldiers in Eastern Congo*, Refugees International, Apr. 30, 2001.

⁸¹⁰ Interview with human rights expert (June 2003).

⁸¹¹ Interview with human rights expert (June 2002).

⁸¹² *Breaking God's Commands*, *supra* note 17.

believers, but fielding a force of up to 12,000 abducted children, the LRA almost singlehandedly exists through its use of child soldiers, but now has a website that denies the practice.⁸¹³

Consequently, while most groups no longer publicly extol their recruitment of children, the doctrine behind the use of child soldiers has continued to spread. Counterefforts have meant that the recruitment of children is no longer a source of pride (for example, the now defunct Farabundo Marti National Liberation (FMLN) in El Salvador once complained that it was excluded from an article in Time magazine about child soldier groups).⁸¹⁴ All the same, however, groups continue to use children as soldier.

5.2 Problems of Armed Conflict

Around the world, thousands of children are being detained or otherwise having their rights violated because they are regarded as security threats for their – or their family’s alleged association with armed groups. Cases have been documented of children being tortured or abused, kept with adult prisoners, not being provided proper legal support or living in conditions that are against international standards for juvenile justice. Adolescent boys over the age of ten years are particularly vulnerable. For example, in Somalia, 67 boys were captured from Al Shabaab and detained in 2016, having recently been forcibly recruited by the group. Several were given sentences of 20–30 years and ten were sentenced to death, though these sentences were commuted

⁸¹³ See www.spacegroove.com/jospehkony (last visited 7/11/2018). It has a message of greeting from Kony and also a page on "Why democracy will trump under Maj. Gen. Joseph Kony's powerful leadership of LRA and it's powerful Political System."

⁸¹⁴ Jon Lee Anderson, *Guerrillas* 56 (1992).

in 2016 following advocacy on their behalf. In Iraq at least 1,036 children were held in juvenile detention facilities on national security-related charges in 2017, mostly for their alleged association with ISIS, with many not even being charged.⁸¹⁵ Palestinian children continue to be arrested in large numbers by Israeli forces – sometimes in their homes by night – to be held in the Israeli military detention system and prosecuted in military courts; throughout 2018, a monthly average of 312 Palestinian children were held in detention.⁸¹⁶ The practice is also prevalent in other areas of conflict, such as the DRC and Sudan.

Children who are accused of being associated with armed forces or armed groups should be considered primarily as victims and not only as perpetrators.⁸¹⁷ They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation and, wherever possible, alternatives to detention must be sought. The detention of children is always harmful and never in their best interests – under the UNCRC, the arrest, detention or imprisonment of a child must only be used as a measure of last resort and for the shortest appropriate period of time.

More broadly, the purported association of parents and family members with armed groups means tens of thousands of children and their families face collective punishment⁸¹⁸, and as a result may

⁸¹⁵ United Nations, General Assembly, Annual Report of the Secretary General on Children and Armed Conflict (CAAC). S/2018/465 (16 May 2018). Available at <http://undocs.org/s/2018/465> (last visited 01/12/2021)

⁸¹⁶ Ibid

⁸¹⁷ See Article 38 on the UN Convention on the Rights of the Child, available at https://www.ohchr.org/en/professional_interest/pages/crc.aspx (last visited 9/10/2020); The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, available at <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (last visited 9/12/2020)

⁸¹⁸ Collective punishment is a form of sanction imposed on persons or a group of persons in response to a crime committed by one of them or a member of the group. (See Rabbat, P and Mehring, S (2015) 'Collective punishment', Oxford Public International Law, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/aw-9780199231690-e269> (last visited 6-8-2020) State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. This prohibition is an application, in part, of Rule 102 that no one may be convicted of an offence except on the basis of individual criminal responsibility. However, the prohibition of collective punishments is wider in scope because it does not only apply to criminal sanctions but also to 'sanctions and harassment of any sort, administrative, by police action or otherwise.'

be deprived of their liberty or are living in camps without freedom of movement. In 2017, a total of 2,199 children were reported to have been deprived of their liberty for their or their parents alleged association with Boko Haram in Nigeria, Niger and Cameroon, though many were subsequently released by the Nigerian authorities.⁸¹⁹ In Syria and Iraq, thousands of children are living in limbo in camps, without freedom of movement, due to family members' alleged links to ISIS.⁸²⁰

As highlighted in chapter one above, the problem of Armed Conflict would now be discussed in detail, viz.

5.3 DENIAL OF HUMANITARIAN ACCESS

The denial of humanitarian access to children in conflict areas is often a great concern, as demonstrated in recent years in Sri Lanka and Sudan. When denied humanitarian assistance, children are deprived of their right to survival and development, food, water and medication.

Whether sudden or chronic, warfare leads to violations of children's rights. Physical survival becomes a daily challenge, creating difficulty accessing clean water, an adequate food supply or appropriate shelter, just to mention a few of the violations. Access to adequate healthcare and securing appropriate drugs (both preventative and curative) and vaccines is a major problem for both children and mothers, including pregnant and breastfeeding women. In many conflicts, most child deaths occur away from the battles, bombings and terrorist attacks.⁸²¹

⁸¹⁹ Supra note 44.

⁸²⁰ Wille (2018), 'Iraq's so-called "ISIS families": rounded up, vilified, forgotten', Just Security available at, <https://www.justsecurity.org/61437/iraqs-so-called-isis-familiesrounded-up-vilified-forgotten/> (last visited 10/10/2020)

⁸²¹ The International Rescue Committee (IRC), "Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey", 2003, available on-line at <http://www.reliefweb.int/library/documents/2003/irc-drc-8apr.pdf>. (last visited 10/12/202) The IRC estimated that 86% of deaths in DRC's war-affected provinces were the

5.4 TARGETING OF EDUCATIONAL FACILITIES

Conflict-related targeting of educational facilities (staff and infrastructure) has increased significantly since 2004, resulting in closures of schools and even the collapse of education systems.⁸²² Over 50% of all primary school-aged children who are not in school live in a ‘fragile state’.⁸²³ Fighting disrupts a child’s education, sometimes forever, as children struggle to find a way to attend the limited schooling options available during a crisis or to return to school at an appropriate level when it reopens. The inability to attend school, resulting from curfews, sieges or destruction of facilities, and the absence of a regular daily schedule can contribute to instability and make children more vulnerable to military recruitment and other forms of exploitation. More importantly, schools often offer a sense of normality, a pattern of safety to children, where they can return to cope with the psychosocial stress inflicted on them by an emergency. Ensuring that children return to school or creating an educational and play corner as soon as possible after a crisis, contributes to their psychosocial well-being and development.

5.5 QUESTION OF IDENTITY

Armed conflict affects children at all levels, as individuals and as members of both a family and a community. By its very nature, it fragments a society, generating questions of identity and

indirect consequences of the conflict and affected children disproportionately. For a discussion on the indirect consequences on children of terrorist attacks, see Human Security Centre, “Human Security Report 2005”, pg. 44, available on-line at

<http://www.humansecurityreport.info/index.php?option=content&task=view&id=28&Itemid=63>(last visited 10/12/2020)

⁸²² Brendan O’Malley, “Education Under Attack”, UNESCO, 2007, available at

<http://www.unesco.org/education/attack/educationunderattack.pdf>(last visited 9/11/2020)

⁸²³ Save the Children Alliance, “Rewrite the Future – Three Years On”, 2009, pg. 1, available at

http://www.savethechildren.org/publications/reports/Rewrite_the_Future_Three_Years_On_lowres-pdf-(last visited 5/5/2021) The OECD defines a ‘fragile State’ as a country that is “unable to provide physical security, legitimate political institutions, sound economic management and social services for the benefit of its population”. See <http://www.crisisgroup.org/home/index.cfm?id=4672&l=1>(last visited 5/5/2021)

allegiance and magnifying suspicions for many people. Children are not immune to these sentiments. In fact, children can be most vulnerable to them, as they may lack the maturity to make reasoned, independent judgements. Girls and boys may witness death, destruction and other tragedies and, in some cases, they may be the very agents of those acts. War and displacement can destroy a child's connection to his or her past and impose a frightening and uncertain future. To compound matters, there may be no trusted adults who have the time to explain issues and reinforce a child's resilience.⁸²⁴

5.6 PREVALENCE OF EMERGENCIES

Emergencies disrupt daily routines, weakening the related social ties they provide, as people are torn from their social support and displaced from their homes. In addition to losing loved ones, homes and clothing, children lose geographical references (such as a favorite tree or route to school) and symbolic personal items (such as photographs or an inherited stamp collection), which serve as important reminders of their life, identity and culture.⁸²⁵

5.7 LACK OF PERSONAL SAFETY AND SECURITY

Children often rely on adults for their protection. As conflict unfolds, protective structures often break down and the social norms that regulate behavior are affected, making children even more vulnerable to abuse and exploitation. Alcohol and substance abuse are often used as coping mechanisms, contributing to an increase in domestic violence. It goes without saying that armed conflict puts children at great risk of physical harm, whether as a combatant or by playing a support

⁸²⁴ Ibid

⁸²⁵ . Terre des hommes, "Child Protection: Manual for intervention in humanitarian crisis," 2006, pg. 14, available on-line at [http://www.tdh.ch/website/doc_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/aa38138679a23d33c12571760041dd5d/\\$FILE/manuel_protection_en_2006.pdf](http://www.tdh.ch/website/doc_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/aa38138679a23d33c12571760041dd5d/$FILE/manuel_protection_en_2006.pdf) (last visited 9[7/2020)

role to armed actors, whether playing near explosive remnants of war or being caught up in communal violence, whether caught in crossfire or targeted by snipers, but also suffering from decreased access to basic services, such as healthcare and protection from exploitation and abuse.⁸²⁶

5.8 LACK OF FAMILY’S EMOTIONAL, FINANCIAL AND EDUCATIONAL WELL-BEING

Armed conflict can have long term effects on a family’s emotional and financial well-being and ability to support all of its dependents, especially when it causes displacement. There is often increased poverty resulting from loss of land and assets, depletion of savings, as people barter what they have for safety or basic needs, less access to education, including secondary and professional schooling and disruption in earnings, as family members are imprisoned or killed. The prospect of hunger or inadequate household resources pushes many children, some with the encouragement of their parents, into exploitative work (for example, artisanal or small-scale mining, assisting soldiers, sexual exploitation or transactional sex).

Children who are separated from their traditional caregivers or who are orphaned during times of conflict, are frequently left to be absorbed into other families or institutions, or to fend for themselves and/or their siblings. Children with a pre-existing vulnerability, such as orphans and children with disabilities, are particularly at risk in times of crisis. Family separation is a good example of the cascade effect of vulnerabilities. It leaves a child at higher risk of recruitment into armed services and gangs, subsequent conflict with the law

⁸²⁶ Ah-Jung Lee, “Understanding and Addressing the Phenomenon of ‘Child Soldiers’”, Refugee Studies Centre, 2009, pg. 25, available on-line at <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper52.pdf>(last visited 4/5/2021)

(or other armed groups), neglect, physical, sexual and emotional abuse or exploitation, discrimination within the household or wider community, being denied the right to education, increased effects of mental and physical illness and reduced access to healthcare, drug addiction and increased need to work, coupled with the resultant loss of time for leisure and cultural activities.⁸²⁷

5.9 FAMILY SEPARATION

Children who are separated from their traditional caregivers or who are orphaned during times of conflict, are frequently left to be absorbed into other families or institutions, or to fend for themselves and/or their siblings. Children with a pre-existing vulnerability, such as orphans and children with disabilities, are particularly at risk in times of crisis. Family separation is a good example of the cascade effect of vulnerabilities. It leaves a child at higher risk of recruitment into armed services and gangs, subsequent conflict with the law (or other armed groups), neglect, physical, sexual and emotional abuse or exploitation, discrimination within the household or wider community, being denied the right to education, increased effects of mental and physical illness and reduced access to healthcare, drug addiction and increased need to work, coupled with the resultant loss of time for leisure and cultural activities.⁸²⁸

Boys and girls associated with armed forces or armed groups are most often separated from their families and risk being exposed to a number of dangers, such as death, physical injury, psychological damage and sexual abuse. These potentially devastating impacts stem from witnessing or participating in horrific levels of violence and exploitation, torture, sexual violence

⁸²⁷ . United Nations, "Children and Armed Conflict: Report of the Secretary-General," A/61/529-S/2006/826, 2006.

⁸²⁸Machel, Graça. "Impact Of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graça Machel, Submitted Pursuant to General Assembly Resolution 48/157." 26/08/1996, A/51/306, available at http://www.UNICEF.org/Graça/a51-306_en.pdf (last visited 07/07/2021)

and other atrocities. Additionally, children may be exposed to landmines, unexploded ordnance, HIV/AIDS and other sexually transmitted diseases. These physical and emotional wounds manifest themselves in diverse ways and can last a lifetime. They inevitably mark children and pose challenges when girls and boys attempt to reintegrate into their communities, if they manage to escape, or at the end of a conflict⁸²⁹

5.10 SEXUAL ASSAULT

Sexual violence is one of the hallmarks of the changing nature of conflict with the most devastating consequences for children. More can be said about the stigmatization of victims, cultural sensitivity and taboos which make it exceedingly difficult to address these issues directly or even have a sense of the scope of the problem, blame cast on victims and children who bear their own children.⁸³⁰

When girls and boys are sexually assaulted, they often lose trust in their caregivers. In addition to physical health concerns such as injury, early pregnancy and infections, this intensely personal violation can lead to depression, social isolation, stigmatization, abandonment and attempts at self-harm or suicide. Victims are often blamed for the assault, while girls who bear children as a result of the abuse suffer even more from stigmatization and isolation, not to mention the treatment of their own children. Some children find it helpful to have formal and/or informal counselling from either professionals or people who have experienced something

⁸²⁹ Ibid

⁸³⁰ Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict, 22/06/1998, E/CN.4/Sub.2/1998/13, available on-line at [http://www.unhcr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument\(last visited 06/07/2021\)](http://www.unhcr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument(last%20visited%2006/07/2021))

similar. Some families are eager to pursue justice against the perpetrator in cases where he or she is known, while others are reluctant to do so out of shame or fear of retribution⁸³¹

5.11 PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS

It is noteworthy that children pay a heavy price for the prevalence and availability of small arms and light weapons in societies that are in or emerging from a crisis. Beyond death and injury as a result of accidents (for example, picking up a grenade, stepping on a landmine), there is the emotionally numbing acceptance of mass violence or the threat of violence in one's childhood. Hundreds of thousands of boys and girls across the world live in daily dread of an armed attack that will lead to them or a loved one being killed, abducted, raped or wounded.⁸³²

5.12 CONFLICTS WITH THE LAW

During a time of crisis, children can come into conflict with the law in a few ways. Those who are attempting to flee across a border may be intercepted by immigration or security forces and they may be beaten or detained indefinitely. In addition, the breakdown in children's protective environments can lead them into anti-social and violent behavior. They can drift into gang life as a means of "belonging" and for protection. Boys, in particular, can turn to looting and drug trafficking and/or consumption. Sometimes, their actions put them in confrontation with police who beat or harass them.⁸³³

⁸³¹ Alexandra Stiglmeier, Ed., "Mass Rape: The War Against Women In Bosnia-Herzegovina," Lincoln, University Of Nebraska Press, 1994 and Cyndy S Snyder et al., "On The Battle Ground Of Women's Bodies: Mass Rape In Bosnia-Herzegovina", *Affilia*, 2006, vol. 21, pg. 184-195

⁸³² Human Rights Watch, "What Future? Street Children in the Democratic Republic of Congo", 2006, available online at <http://www.hrw.org/reports/2006/drc0406/5.htm>(last visited 02/03/2021

⁸³³ Krisjan Rae Olson, "Children in the Grey Spaces Between War and Peace: The Uncertain Truth of Memory Acts," in Jo Boyden and Joanna de Berry, eds, "Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement," Berghahn Books, New York & Oxford, 2004, pg. 145-166

5.13 DENIAL OF RIGHT TO PLAY

Finally, children's right to play is usually severely curtailed during a conflict, as caregivers restrict their movements and stress that they are to be nearby, obedient and helpful in all the survival tasks the family must perform. While this may not seem important to a child, given the gravity of the situation, the lack of play time is significant, as it is a developmentally appropriate means to process what one is experiencing and to interact and learn from one's peers. Furthermore, for children to be able to play during a crisis has proven to contribute to their psychosocial recovery and to help them cope with their experiences. The right to play has a distinct added value in the context of crisis.⁸³⁴

In conclusion, the problem of Armed conflicts on the overall development of a children could have adverse development on society because children are certainly the future of tomorrow.

5.14 Solutions to the involvement of Children in Armed conflict

Art 1 of the Convention of the Rights of the Child provides:” For the purposes of the present Convention, a child means every human being below the age of 18 years” unless under the law applicable to the child, majority is attained earlier.”

To my mind, this definition gives room for manipulations, subversion and exploitation of the Child under the 21st century. It is replete with loopholes for unscrupulous persons and states to exploit, since the attainment of majority could vary from State to State due to the discretion given to states to determine their age of majority. The definition should take into cognizance, of all the additional

⁸³⁴ . Inter-Parliamentary Union & UNICEF, “Child protection: A Handbook for Parliamentarians”, 2004, available online at http://www.unicef.org/publications/files/Guide_Enfants_OK.pdf(last visited 01/09/2021)

protocols, international instruments, retool and reinvent them to streamline the definition to a definite requirement of below 18 years threshold globally as the age of majority.

For international humanitarian law to be meaningful for the protection of children involved in Armed conflicts, it should be able to reflect the conditions of modern armed conflicts. Dated distinctions between persons involved in hostilities and persons needing protection from the effects of hostilities should not be used for the detriment of the most vulnerable in wartime, namely “child soldiers.” The minimum age for recruitment should also be raised to 18 as emphasized earlier.

Under the Optional Protocol, the nature of the state obligation should be strengthened. A “straight 18” position should be adopted. the concept of “voluntary” recruitment should be done away with. Protection should be afforded to all who take part in hostilities, both directly and indirectly. DDR obligations and efforts of states should be comprehensive and the practice of including DDR provisions for “child soldiers” in peace agreements should be promoted. Moreover, provisions that consider the gender specific needs of girl soldiers and prescribe cross-border recruitments should also be made.

For the purpose of enforcement, the UN should continue pressurizing governments and armed groups that continue to recruit and use “child soldiers.” Because the “naming and shaming” approach has been tried and failed, the UN should be able to move one step ahead and produce resolutions that have profound consequences on violators. The establishment of the international criminal court, trial and conviction of Bosco Ntaganda of The Democratic republic of Congo (DRC) for using Children as “soldiers” amongst others was a step in the right direction, but efforts must be intensively intensified with no drop of guard.

The African Children's Charter is a powerful instrument for the protection of child soldiers in the continent. Adopting an additional protocol which elaborates on the African Children's Charter and considers the specific challenges the African child soldier faces could be ideal. The appropriate mandate the African Committee is tasked with, if coupled with financial back up and political will to ratify and implement the African Children's Charter, could give meaning to the lives of these children.

To increase the role international criminal law has for alleviating the problem of the children involved in Armed conflicts, the age threshold which it sets out in its definition of the crime of the recruitment and use of "child soldiers" should be raised to 18. Through its jurisprudence, the ICC should also confirm that "active participation" does not only mean combatant position but also other supporting roles in armed conflict.

In disarmament, demobilization and re integration (DDR) restorative justice should be the heart of the entire process. Because the key principle concerning child perpetrators in the CRC is to promote their reintegration and return to a constructive role in society and restore the child's respect for the human rights of others, any form of accountability should not lose sight of these crucial point.

It is further suggested that the underlisted should be vigorously pursued, monitored, enforced and implemented.

5.15 Prevention

I. Stop the use of "child soldiers" through ratification and effective implementation of the Optional Protocol for universal acceptance of age 18 as the minimum age for participation in any kind of military force.

- ii. Implement the call of the Security Council to nations involved in the manufacture and sale of small arms to “restrict arms transfers which could aggravate existing tensions . . . and collaborate in combating illegal arms flows.”
- iii. Include detailed information about trade in small arms in the report on implementation of Resolution 1261, being prepared by the UN Secretary General. Specifics in the formation on transfers from individual countries should include members of the Security Council themselves.
- iv. Actively support practical strategies being developed by the International Network on Small Arms. Member states of the Security Council could focus on implementation in their own countries and spheres of influence.
- v. Give developmental needs of children, in the context of family and community, greater priority in country assistance strategies developed by the World Bank, the IMF, and donor countries. Child-protection networks and education are essential.
- vi. Give higher priority to needs of adolescents, especially in situations where they constitute a sizable portion of the population and are at risk of becoming involved in armed conflict.
- vii. Allocate more attention and resources to reduce root causes of armed conflict.
- viii. Increase support for long-term international development programs to break the cycle of poverty and injustice that can lead to armed conflict. Governments of developed countries are urged to renew their commitment by meeting the UN goal of 0.7 percent of GNP to ODA. (Gross National products: Overseas development administration)
- viii. Ask the IMF to present public child-impact assessments of fiscal policy prescriptions for conflict-prone countries to demonstrate how it is helping to achieve international commitments to children in the CRC.

xi. Invest more resources in preventive peace building initiatives in the context of community-development programs and with the active participation of children.

5.16 Protection

I. Strengthen early-warning systems, monitor the situation of children at risk, and pay attention to violations of rights of children through diplomatic initiatives. Promote and implement strategies such as child-focused humanitarian cease-fires to provide for the needs of children, based on the concept of children as “zones of peace,” even in times of conflict.

ii. Establish a child-focused early-intervention team to monitor aggressively and report appropriately systemic violations of the rights of children.

iii. Establish a sub-committee of the Committee on the Rights of the Child to investigate immediately complaints of violations that threaten the survival of or do permanent damage to children during armed conflict and pursue appropriate action through other UN channels, such as the Security Council.

iv. Prosecute serious violations of the rights of children under other existing conventions which have stronger enforcement measures.

v. Follow up the work of the Special Representative of the Security General for Children and Armed Conflict with development of country-specific strategies and frequent monitoring. Consider preventive missions to conflict-prone countries and follow-up visits.

vi. Enforce Geneva Convention prohibitions against attacks on schools, hospitals and places where children congregate. More actively protect children’s right of access to humanitarian assistance.

vii. Allocate more resources to the needs of children in displaced-person camps. Particular attention should be paid to nutrition, health care, family reunification, non-formal education, and support for especially vulnerable children.

viii. Strengthen efforts to make young people aware of the risks and consequences of involvement in armed conflict. Include active participation by young people themselves in awareness programs and utilize local media.

ix. Add a special focus on child-protection in current training programs for peacekeepers through the UN and member countries. Include mechanisms for disciplining soldiers who violate the rights of children themselves.

5.17 Reintegration

I. Give high priority to children's issues early in the peace process, including civil society advocates for children to help draft specific, practical provisions for inclusion in peace agreements.

ii. Implement without delay child-specific components of demobilization and reintegration to provide a clear departure from "military life." Allow a sufficient time frame for successful reintegration, promote active participation of the young people themselves and their communities.

iii. Avoid the stigmatizing of "child soldiers" by providing help in the context of assistance for all children impacted by war.

iv. Establish education as the fourth component of emergency assistance.

v. Pay special attention to the needs of girls, including reproductive health services, and work with communities to accept them, especially when sexual abuse by enemy forces results in shame and rejection by the child's home community.

vi. Replace the economic incentives for participating in conflict with other means of economic livelihood and survival for young people.

vii. Use community-based approaches to deal with psycho-socio impacts of conflict, respecting children's cultural context.

5.18 Monitoring and reporting violations of child rights

Children in armed-conflict situations must be treated as a distinct and high-priority concern in all monitoring and reporting activities.

5.19 Health, psycho-social well-being and education

These are the pillars of humanitarian assistance. Psycho-social well-being can best be assured through a community approach. Education should be maintained during emergencies.

5.20 Adolescents

Their needs require a high priority in order to prevent their participation in armed conflict, prostitution, and drug abuse. Participation of youth is essential. Child headed households need special focus.

5.21 Gender-based violence

All incidents of war-time rape and other sexual torture must be prosecuted as war crimes. Special training should be in place for the military, peacekeeping troops, and humanitarian personnel.

5.22 Internally displaced children

One organization should lead in each situation. UNICEF should provide leadership, with particular reference to family tracing and preventing family separation.

5.23 Child soldiers

Calls for a global campaign to stop the recruitment into armed forces of children under the age of 18, to ensure demobilization, and to include them in peace agreements. Early adoption of the draft Optional Protocol raising the age of recruitment and participation to 18 years.

5.24 Landmines

Launch an international campaign to ban landmines, promote landmine clearance and rehabilitation.

5.25 Prevention

Monitor arms transfers and impose a total ban on arms shipments to conflict zones. Address the root socio-economic causes of conflict and support social infrastructure that protects children.

5.26 Special Representative

Appoint a Special Representative of the Secretary General to monitor implementation and keep these issues high on the international agenda.

5.27 A livable income

More than 3 billion people subsist on less than US\$2 a day⁸³⁵. Small business development, access to credit and investment in education and training increase income.

⁸³⁵ Poverty statistics-FINCA International-world poverty facts available at <http://www.finca.org/worldpoverty>(last visited 8/30/2021)

5.28 Food for everyone

In poor nations, malnutrition stunts. Four out of every 10 children.⁸³⁶ Increased production of food-crops, investment in rural infrastructure, better food distribution and land reform are proven measures to reduce hunger.

5.29 Primary education for all children

More than 120 million children grow up unschooled; another 150 million drop out before Grade 4. Money invested in children's education today is reaped tomorrow in jobs, development, and economic growth.⁸³⁷

5.30 Clean water

Contaminated water causes 80 percent of all disease and claims the lives of five million children a year.⁸³⁸ Investment in wells, tanks, water-purifying systems, and reduction of wasted water will secure safe water for everyone.

5.31 Debt relief for poor nations

Thirty African nations now spend more on debt payments than on education. Cancelling sustainable debt frees money for basic social services.

⁸³⁶ Available at <https://www.unicef.org/pacificislands/press-releases/four-out-every-10-children-pacific-islands-are-not-enrolled-pre-primary-education>(Last visited 10-12-2020)

⁸³⁷ How do schoolers turn out, available at <https://www.kqed.org/mindshift/37091/how-do-unschoolers-turn-out>(last visited 8/30/2021)

⁸³⁸ Water borne diseases-information and statistics available at <https://www.h2oforliveschools.org>(last visited 8/30/2021)

5.32 Peacebuilding.

War victimizes everyone. Programs that promote co-operation within and between communities are a cost-effective means to prevent social and cultural differences from escalating into violent conflict.

5.33 Equal opportunity for girls

Around the world, boys are likely to be more nurtured and educated less than girls. Yet the evidence is clear: communities are richer and healthier when girls are valued and treated as well as boys.

5.34 A sustainable environment

Poverty intensifies environmental destruction by forcing the poor to clear forests and use marginal lands. Sound and proven policies can reverse pollution, soil erosion, deforestation, global warming, and depletion of natural resources.

5.35 An end to child exploitation

More than 250 million children work as prostitutes, drug traffickers, and indentured laborers.⁸³⁹ Enforcement of laws against child exploitation, a livable family income and consumer education can end this disgrace.

5.36 Freedom to believe.

The right of all people to believe and act on their beliefs through full participation in society is fundamental to human well-being.

⁸³⁹ Child labor and trafficking available at <https://globalmarch.org/about-us/our-focus-areas/child-labour-slavery/> (last visited 8/30/2021)

5.37 Recommendation

The following recommendations, based on the evidence and analysis aim to mobilize all concerned stakeholders, particularly parties to conflict, States, the UN Security Council and its Working Group on children and armed conflict, members of the diplomatic community, United Nations entities including Country Task Forces on Monitoring and Reporting (CTFMRs), nongovernmental organizations, civil society organizations and the donor community, to act.

Prioritize explosive ordnance risk education strategies and programs so that children, families, and communities can learn how to protect themselves. Respond appropriately to avoid the use of explosive weapons, particularly in populated areas and those with wide area effect, including by adopting political declarations that recognize that a failure to limit their use is a failure to protect children living in armed conflicts.

Protecting children from grave violations during armed conflict: Killing and maiming of children.

Since 2016, an average of 10,300 children have been killed or maimed annually.⁸⁴⁰ The use of explosive weapons, particularly in populated areas, continues to have a devastating impact on children. For instance, in 2020, at least 47% of the 8,422 child casualties resulted from the use of explosive weapons and explosive remnants of war.⁸⁴¹

Parties to conflicts must Abide by their obligations under international human rights and humanitarian law, including but not limited to, the principles of distinction and proportionality and to take all necessary precautions required to protect the civilian population and civilian objects.

Avoid using explosive weapons, particularly in populated areas and those with wide area effects

⁸⁴⁰ 25 Years of Children in Armed conflicts available online at <https://www.unicef.org/media/123021/file/25%20Years%20Children%20in%20Armed%20Conflict.pdf>(Last visited 02-07-2-23)

⁸⁴¹ Ibid

and develop military doctrine based on a presumption against such use, as recommended by the Secretary-General.

Immediately, unconditionally, and safely release all children, including girls, within their ranks, including children recruited and used by armed groups designated as “terrorist” organizations, and ensure that all released children are handed over to child protection actors.

Endorse and fully implement the Paris Principles and Guidelines on children associated with armed forces and armed groups and the Vancouver Principles on Peacekeeping and the Prevention of the recruitment and Use of “Child Soldiers,” as well as to ratify the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

Take all necessary measures to support community-based reintegration programs for all children formerly associated with armed forces and armed groups ensuring that children are treated primarily as victims of grave violations and are provided with age-appropriate, gender-sensitive, non-discriminatory and holistic child centered services.

Prioritize explosive ordnance risk education strategies and programs so that children, families, and communities can learn how to protect themselves. • Take appropriate measures to avoid the use of explosive weapons, particularly in populated areas and those with wide area effect, including by adopting political declarations that recognize that a failure to limit their use is a failure to protect children living in armed conflicts.

Recruitment and use of children. With over 8,500 verified cases in 2020, children continue to be recruited and used by parties to conflict at alarming rates. In 2021, globally, over 40% of States are yet to endorse the Paris Principles and Guidelines on children associated with armed forces and armed groups.⁸⁴²

⁸⁴² Ibid

All parties must take all necessary measures in line with their obligations under international law to prevent and prohibit the recruitment and use of children, including within domestic criminal law.

The Security Council Working Group on Children and Armed Conflict is called on to continue advocating for the endorsement of the Paris Principles and Vancouver Principles and the ratification of OPAC in its dialogue with Member States and to include recommendations for such endorsement and ratification in their country report conclusions.

Detention of children

The increasing counterterrorism efforts by states in the context of armed conflict is having an alarming impact on children including by undermining their rights and the special protections to which they are entitled under international humanitarian and human rights law. A growing number of children are being arrested and detained for security reasons or for their actual or alleged association with parties to conflict, while concurrently UN entities face mounting constraints to access places where children are deprived of their liberty. Handover protocols – which are essential and effective tools to divert children from detention and other harm – have only been adopted in one third of the countries mentioned in the Secretary-General’s annual report, and in only 2 of the 10 situations with the highest numbers of conflict-related detention of children⁸⁴³.

Parties to conflict must be called to Provide United Nations entities with full and unimpeded access to all facilities where children are deprived of their liberty, to allow for children to be identified and provided with the appropriate care and services. Develop and implement protocols and/or

⁸⁴³ Handover protocols have been developed in 2 of the 10 countries with the highest number of verified cases of detention of children for alleged or actual association with parties to conflict or on national security charges since 2005: One protocol was signed with the Government in Somalia, and the other protocol was signed with the Houthis (who call themselves Ansar Allah) in Yemen

procedures jointly with the United Nations for the systematic and swift handover of children in their custody to child protection actors, so as to ensure children's protection and reintegration.

States must ensure that counterterrorism laws, policies, and practices are human and child rights compliant, and that the best interest of affected children are a primary consideration. Refrain from detaining children for their actual or alleged association with an armed group, including groups designated as "terrorists," or holding children accountable based on the conduct or affiliation of their family members. Ensure that children are treated primarily as victims of grave violations and that detention is used as a measure of last resort and for the shortest possible period of time. Administrative detention is never in the best interest of the child. Children should not be deprived of liberty for protective purposes.

Rape and other sexual violence against children

The number of verified cases of rape and other forms of sexual violence against children is not reflective of the true scale of the violation. The absence or lack of access to holistic and specialized services for survivors, trauma, stigmatization, and marginalization they may experience, and widespread impunity are some of the key factors contributing to the underreporting of conflict-related sexual violence.

Parties to conflict are urged to immediately cease all forms of gender-based violence against children, including sexual violence. Reaffirm the prohibition of this grave violation and integrate it into domestic legislation, military codes and in training manuals, in line with their obligations under international law.

States are called on to take all appropriate measures to support all survivors of gender-based violence with age-appropriate, gender-sensitive, holistic, and specialized child-centered services, including through the allocation of adequate resources.

Abduction of children

The abduction of children, which often leads to or occurs in conjunction with other violations, remains one of the most pervasive violations against children. In the past five years alone, more than 2,300 children were abducted on average annually. In 2020, abductions rose by 70% from the previous year.

Parties to conflict must ensure unconditionally release all abducted children in their custody and put in place effective, sustainable measures to prohibit and end this practice.

States should urgently address the significant increase in this grave violation by responding appropriately to prevent and protect children from abduction and strengthen accountability measures, Support affected communities in establishing and/ or reinforcing community-based prevention and protection mechanisms, with the support of the United Nations and partner organizations.

The Security Council Working Group on Children and Armed Conflict should advocate for the endorsement of the Safe Schools Declaration and continue including this recommendation in their country report conclusions.

Attacks against schools and hospitals

Schools and hospitals continue to be attacked and used at alarming rates. In 2021, more than one-third of countries included in the Secretary-General's report had yet to endorse the Safe Schools Declaration.

Parties to conflict must cease all attacks on schools, hospitals and respect and protect civilians such as healthcare and education personnel. Immediately vacate any schools and hospitals that they currently occupy and use, and refrain from using educational and health facilities for military purposes.

States are called to endorse, and advocate for other States to endorse, the Safe Schools Declaration and put in place the necessary measures to ensure its full and effective implementation, including by using the Guidelines for protecting schools and universities from military use.

UNICEF should call on the donor community to allocate the necessary long-term, predictable funding to United Nations entities and partners working to protect children in situations of armed conflict to enable robust prevention and protection interventions, including the timely delivery of age-appropriate, gender-sensitive, holistic, and specialized child-centered services.

Denial of humanitarian access for children

The denial of humanitarian access for children, including incidences of violence against humanitarian personnel, is of serious and growing concern. In the past two years alone, the United Nations verified over 8,500 incidents. Parties to conflict must immediately cease attacks against humanitarian personnel, facilities, and assets, and systematically allow and facilitate safe, rapid, and unimpeded access for the delivery of humanitarian assistance.

States should ensure they use their influence on warring parties to comply with international humanitarian law in order to enable safe, rapid, and unimpeded humanitarian access. The Security Council, including its Working Group on Children and Armed Conflict, is called on to:

- Ensure that humanitarian safeguards to allow for safe, rapid, and unimpeded delivery of humanitarian assistance are included in all relevant resolutions, agreements, and other documents.

Improving data disaggregation and analysis for better response and prevention

The increased availability of sex-disaggregated data has reinforced our understanding of how conflicts impact girls and boys differently. Information relating to the specific impact and/ or

targeting of groups of children of specific status or characteristic⁸⁴⁴ is not systematically captured by CTFMRs and thus not reflected in the reports of the Secretary-General.

CTFMRs, or their equivalent, are encouraged to systematically capture and report sex disaggregated data and information relating to children affected by more than one violation to further inform and support advocacy, and programmatic response, capture information relating to groups of children of specific status and characteristics, provided that specific safeguards are in place so as to not further put children or their families at risk.

The Secretary-General and his Special Representative for Children and Armed Conflict should: • Systematically include sex-disaggregated data and relevant gender-specific issues and/or trends in their reports, further highlight the number of children affected by more than one violation and related trends, and consider including information and/or trends on how grave violations specifically affect groups of children of specific status or characteristics.

Providing adequate care and response services to children in situations of armed conflict.

In 2020 alone, 19,379 children were verified as having been killed, maimed, recruited and use, abducted and/or sexually abused. Today more than ever, United Nations entities and partners need support to provide child victims of grave violations and other children affected by armed conflict with timely, adequate care and response services, to uphold their rights, and to prevent further violations.

Supporting Country Task Forces on Monitoring and Reporting to accelerate action.

⁸⁴⁴ The term “groups of children of specific status or characteristics” includes but is not limited to children with disabilities, refugee and internally displaced children, children from minority religious or ethnic groups, children who do not identify along binary gender identity and children of diverse sexual orientation, among others.

CTFMRs, or their equivalent, and their NGO partners are the backbone of the CAAC agenda implementation on the ground and remain under constant pressure⁸³ to deliver on their mandate, including due to limited availability of regular, long-term, and predictable funding.

Member States and the donor community should support CTFMRs, or their equivalent, by allocating the necessary long-term, predictable funding to United Nations entities and partners working to protect children in situations of armed conflict. UNICEF, UN Country Teams and Humanitarian Teams, UN Peacekeeping and Special Political missions and other relevant UN entities and partner organizations must be equipped with adequate human and financial resources to fully implement the CAAC mandate.

The Office of the Special Representative of the Secretary-General on Children and Armed Conflict should continue to use its global advocacy to support CTFMRs by promoting the allocation of adequate resources to UN and NGO field actors, whether in mission or non-mission settings, denouncing egregious violations of children's rights, and advocating for compliance with international human rights and humanitarian law.

The Security Council Working Group on Children and Armed Conflict should continue engaging closely and regularly with CTFMR co-chairs, including through virtual meetings and field visits, so as to further support CTFMRs in implementing their mandate.

Members of the diplomatic community at country level should:

- Closely and regularly engage with CTFMR co-chairs and consider joining, leading, or establishing Groups of Friends of Children and Armed Conflict to support the work of CTFMRs.

Engaging with all parties to conflict to develop Action Plans and sustainably protect Children.

Grave violations against children continue to be committed by all parties to conflict, State and non-state actors alike at alarming rates. Children. The United Nations should continue engaging in dialogue with all parties to conflict, including non-State actors, to end and prevent grave violations against children. States should make sure, CTFMRs, or their equivalent, to engage with non-State actors operating in their territories, to prevent and end grave violations against children, irrespective of any designation under sanctions or counter-terrorism measures. The Security Council and its Working Group on Children and Armed Conflict should advocate with Governments to enable the CTFMRs or their equivalent to engage with all parties to conflict.

Members of the diplomatic community at country level should facilitate CTFMRs, or their equivalent, dialogue with parties to conflict, by creating opportunities for engagement, space for negotiations and using their influence where possible to prevent and end grave violations against children. Action Plans signed with parties remain one of the most effective ways to protect children sustainably and effectively. In 2021, more than 75% of the 61 parties to conflict listed in the Secretary-General's annual report have yet to sign an Action Plan or even engage with the United Nations.

Parties to conflict should engage in dialogue with the United Nations and develop and implement Action Plans and other joint commitments to effectively end and prevent all grave violations against children. When developing Action Plans, parties to conflict are encouraged to include measures addressing all six grave violations against children, even if they are not listed for all, and related issues of concerns to prevent the occurrence of all grave violations. Members of the diplomatic community at country level should Support the development, signing and

implementation of Action Plans and other joint commitments between parties to conflict and the United Nations, complement the CTFMRs, or their equivalents, engagement by sustaining advocacy for the protection of children affected by armed conflict through bilateral and multilateral dialogue with national authorities.

Supporting CTFMRs engagement efforts with Governments

CTFMRs, or their equivalent, dialogue and engagement with Governments has resulted in significant national legislative advances that have improved the protection for children, and bolstered accountability for grave violations. CTFMRs, or their equivalent, should: Continue using all opportunities for dialogue with the national authorities to identify and develop legislative measures that will enable accountability for grave violations during and long after the end of armed conflicts, and identify and use all existing entry points to improve legislative, judicial, policy conflicts, and identify and use all existing entry points to improve legislative, judicial and policy frameworks to do so.

5.38 Conclusion

International law frowns at children being called soldiers. That is why the additional protocol and optional protocol omitted the word “Child Soldier.” Instead, the optional protocol reads: “Optional Protocols to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict” (2000) The drafters knew that children were used and are being used in conflicts around the world but refuse to use the word “Child Soldier “Children were and are involved in Armed conflicts around the world, but they are not soldiers and they can never be.

Over the past twenty-three years, the international child rights movement has undertaken the development of international law, policies, and programs for the protection of children. Since 1979, the UN, ICRC, and NGOs have successfully documented and raised the level of international

concern about the recruitment and use of children in armed conflict. The entry into force of the Optional Protocol and of other international and regional standards, such as the ILO Convention 182, the African Children's Charter and the Rome Statute raised hopes that substantial changes on the ground will follow.

However, notwithstanding these efforts, children still play an increasingly significant role within armed forces and groups in today's conflicts in modern armed conflicts. In Africa, the recruitment and use of children as soldiers is often a rule rather than an exception.⁸⁴⁵ At present, an estimated 300,000 children, almost half of which are in Africa, serve as "child soldiers" in conflicts around the world.⁸⁴⁶ International humanitarian laws, from the perspective of many children caught in the midst of hostilities around the world, and Africa in particular, is ill-equipped to fully and accurately address the experiences of those among the most vulnerable participants in today's hostilities and fails to adequately reflect the conditions of modern armed conflicts. Therefore, as children join the ranks of combatants and other roles in armed conflicts, there may be cause, to extend certain humanitarian protections guaranteed under international humanitarian law beyond traditionally defined categories of protected persons.⁸⁴⁷

International human rights law, in particular the Optional Protocol, although important, is inadequate for protecting "child soldiers" in Africa. Among other things, the Optional Protocol does not adopt a "straight 18" position by allowing voluntary recruitment, neglects the girl soldier

⁸⁴⁵ Children and Armed Conflict: A guide to international humanitarian and Human Rights law available at <https://www.files.ethz.ch/isn/22638/children%20and%20armed%20conflict.pdf>(last visited 12/10/2020)

⁸⁴⁶Fact checker, available at <https://www.washingtonpost.com/news/2016/01/22/>(last visited 07/08/2021)

⁸⁴⁷UNICEF *The State of the World Children* (2005) 55

and cross-border recruitment. The nature of states obligation and its enforcement mechanism are also weak.

From the standpoint of criminal law, through the ICC (and also national courts), perpetrators must be aggressively pursued and effectively punished. Ending the culture of impunity contributes to deterrence. The decision of the SCSL that the prohibition of the recruitment and use of child soldiers constitutes customary international law⁸⁴⁸ is commendable as it bolsters the role international criminal law can play in alleviating the problem.

Finally, the study does not lose sight of the problem of lack of political will which makes the application of the normative framework in existence difficult. It also rightly accepts that the problem of children involved in Armed conflicts is a challenge that calls for multi-faceted responses. Rather, what is outlined above by the study is how the law can and should be used to contribute its utmost share towards protecting the most vulnerable group of the vulnerable – ‘child soldiers.’ With the words of Bernard Shaw “some people see things the way they are and ask why, I dream of things that are not and ask why not?” To deliver these children who are denied their childhood, we all need to dream together. The conviction of the Congolese warlord Thomas Lubanga, Charles Taylor and Bosco Ntaganda by the international criminal court is a warning signal to those criminals who are found of recruiting children around the world including the evasive Mr. Joseph Kony, leader of the lord’s resistance army of Uganda whose game is up. He can run but cannot hide forever. Every act of commission and omission has an expiry date.

⁸⁴⁸ Former Liberian President Charles Taylor guilty of war crime, available at <https://www.history.com/this-day-in-history/former-liberian-president-charles-taylor-found-guilty-of-war-crimes>(last visited 08/30/2021)

5.39 Bibliography

STATUTES/TREATIES/CHARTERS/CONVENTIONS

U.N., Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, 37 I.L.M. 999 (hereinafter ICC).

Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 A (111) 78 U.N.T.S. 277 (1948)

African Charter on the Rights and Welfare of the Child. OAU Doc. CAB/LEG/24.9/49 (1990)

Convention on the Rights of the Child, G.A. Res 44/25, UN GA OR 4th Sess, Supp. NO

Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907

Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, No. 973, 6 U.S.T. 3516, 75 U.N.T.S. 287 (hereinafter Geneva Convention IV).

Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. Res. 3318, U.N. GAOR, 29th Sess. (1974)

Geneva Protocol I, Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, reprinted in 16 I.L.M. 1391, 1425 (1977) (hereinafter Protocol I).

U.N. Convention on the Rts. of the Child, adopted Nov. 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1448, corrected at 29 I.L.M. 1340 (entered into force Sept. 2, 1990). (Hereinafter Convention).

Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 609 (hereinafter Protocol II)

African Charter on the Rights and Welfare of the Child of 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999)

European Convention on the Exercise of Children's Rights of 26 January 1996 (entered into force in 1998)

Declaration on the Rights of the Child, General Assembly resolution 1386 (XIV) of 20 November 1959

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 September 1949, 75 UNTS 31 (entered into force 21 October 1950) Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea of 12 September 1949, 75 UNTS 85 (entered into force 21 October 1950)

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 September 1949, 75 UNTS 135 (entered into force 21 October 1950)

Geneva Convention for the Protection of Prisoners of War of 12 September 1949, 75 UNTS 287 (entered into force 21 October 1950)

ILO Convention on the Worst Forms of Child Labour of 17 June 1999 (entered into force 19 November 2000)

International Covenant on Civil and Political Rights of 16 December 1966 GA Resolution 2200 (XXI), UN Doc A/6316 (1966) 999 UNTS 171 (entered into force 23 March 1976)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict GA Resolution A/RES/54/263 of 25 May 2000 (entered into force 12 February 2002)

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography of 25 May 2000, GA Resolution UN Doc A/RES/54/263 (entered into force 18 January 2002)

Protocol Additional to the Geneva Conventions, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 12 August 1949, 1125, UNTS 3 (entered into force 7 December 1978)

Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609 (entered into force 7 December 1978) Protocol to the African Charter Establishing the African Court on Human and People's Rights of 1998 (entered into force January 2004)

Rome Statute on the International Criminal Court of 17 July 98 (entered into force 1 July 2002) United Nations Convention on the Rights of the Child of 20 November 89, GA Resolution 44/25, 44 UN GA Resolution Supp. No. 49, UN Doc A/44/736 (entered into force 2 September 1990) United Nations Convention Relating to the Status of Refugees of 28 July 1951 (entered into force 22 April 1954)

UN Convention on the Rights of the Child 1989

Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000

Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977

Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts 1977

International Labour Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999

Rome Statute of the International Criminal Court 1998

Convention on the Elimination of Discrimination Against Women 1979

Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000

Convention relating to the Status of Refugees 1951

Beijing Rules 1985

UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990
UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990
Vienna Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) 1997
Statute of the Special Court for Sierra Leone 2002
UN Convention on the Rights of Persons with Disabilities 2006
Statute of the International Criminal Tribunal for the former Yugoslavia 1993
Statute of the International Criminal Tribunal for Rwanda 1994
Convention on the Prohibition of the Use, Stockpiling, Production and the Transfer of Anti-Personnel Landmines and on their Destruction (Ottawa Treaty) 1997
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention on Transnational Organized Crime 2001
United Nations General Assembly Declarations on the Protection of Women and Children in Emergency and Armed Conflict 1974
Conventions on Conventional Weapons 1980
Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials 1997
Protocols against the Illicit Manufacturing of and Trafficking in Firearms 2001
Conventions on Cluster Munitions 2008
Optional Protocols to the Convention on the Elimination of Discrimination Against Women 1999
Conventions Governing the Specific Aspects of the Refugee Problem in Africa 1969
African Charter on the Rights and Welfare of the Child (1990)
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009
The Slavery Convention 1926

Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 1949

Slavery Convention of 1926

UN DOCUMENTS

United Nations general assembly Security Council Report Document (A/74/845 S/2020/525

S.C. Res. 1261, U.N. SCOR, 4037th mtg., U.N. Doc. S/RES/1261 (1999

S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003

S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003).

UNSC Document (S/2020/487)

BOOKS

Levy BS, Sidel VW, Levy B, Sidel V, eds. War and Public Health: An Overview. 2nd ed. Oxford, United Kingdom: Oxford University Press; (2008)

Garfield R. The epidemiology of war. In: Levy BS, Sidel VW, eds. War and Public Health. 2nd ed. Oxford, United Kingdom: Oxford University Press (2008)

Smith D. Trends and causes of armed conflict. In: Austin A, Fischer M, Ropers N, eds. Transforming Ethnopolitical Conflict: The Berghof Handbook. New York, NY: Springer (2004)

Yoram Dinstein, “War, Aggression and Self-Defense,” Cambridge: Cambridge University Press, 3rd Edition, (2001)

Hamilton C, Anderson K, Barnes R, Dorling K. Administrative Detention of Children: A Global Report. New York, NY: UNICEF; 2011

Krug E, Dahlberg L, Mercy J, Zwi A, Lozano R, eds. Collective violence. In: World Report on Violence and Health. Geneva, Switzerland: World Health Organization; 2002.

The International Institute for Strategic Studies, “The Military Balance 2002–2003”, Oxford University Press, (2002)

Norman Davies, Warsaw, Archived 6 February 2016 at the Wayback Machine Pan Books (2004)

Cowan, Ross. Roman Legionary AD 69–161. Oxford: Osprey Publishing (2013)

Michael Ignatieff, The Warrior's Honor: Ethnic War and The Modern Conscience, Henry Holt and Co. (1998) The Use of Force: Military Power and International Politics, Robert J. Art & Kenneth N. Waltz eds., 4th ed. (1993)

The Perils of Anarchy: Contemporary Realism and International Security, Michael E. Brown et al. eds., (1995)

Barry Buzan Et Al., The Logic of Anarchy: Neorealism to Structural Realism (1993)

Rory Carroll, Sham Demobilization Hides Rise in Congo's Child Armies, THE OBSERVER, Sept. 9, 2003, at 15

Alexandra Stiglmayer, Ed., “Mass Rape: The War Against Women in Bosnia-Herzegovina,” Lincoln, University of Nebraska Press, 1994

Schabas, WA An introduction to the International Criminal Court (2nd ed) Cambridge University Press (2004)

London Than, C and Shorts, E International criminal law and human rights Sweet & Maxwell London (2003)

UNICEF, Implementation handbook for the Convention on the Rights of the Child (fully revised edition) United Nations Publications (2002)

New York Waal, JD, Currie, I and Erasmus, G. The Bill of Rights handbook (4th ed) Juta and Company: South Africa (2001)

Barnitz, LA Child Soldiers: Youth Who Participate in Armed Conflict Martinus Nijhoff Publishers: Netherlands (1997)

Bueren GV. The international law on the rights of the child Martinus Nijhoff Publishers Netherlands Christopher (1995)

Reparation to victims in Lattanzi and Schabas, Essays on the Rome Statute West Publishing Co: St. Paul, Minn (2003)

Detrick S. A Commentary on the United Convention of the Rights of the Child Martinus Nijhoff Publishers: Netherlands (1999)

Dormann K. Elements of War Crimes under the Rome Statute of the International Criminal Court; Sources and Commentary Cambridge University Press: Cambridge (2003)

Chicago and London Goodwin-Gill.GS Child Soldiers: A Study on Behalf of the Henry Dunant Institute Henry Dunant Institute Geneva (1994)

Gose M. The African Charter on the Rights and Welfare of the Child: As assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child Community Law Centre (2002)

Bellville Musalo M et al. Refugee and Policy: Cases and Materials Carolina Academic Press Durham, North Carolina (1998)

Sassoli M and Bouvier A. How does law protect in war? Cambridge University Press Cambridge (2003)

Cynthia Price-Cohen, Children's Rights: An American Perspective: The Handbook of Children's Rights: Comparative Policy and Practice 171 (1995).

Hague Convention IV, reprinted in Documents on the Laws of War 44-59, Adam Roberts & Richard Guelff eds., 2d ed. (1989)

Graça Machel, Study of the Impact of Armed Conflict on Children, U.N. Doc. A/51/306 at 13-14 (1986).

Human rights in Burundi report-November 1998 and March 1999, Afr. News Service, Aug. 16, 1999, available in 1999 WL22791268.

Geraldine Van Bueren, The International Law on the Rights of the Child. Dordrecht: Kluwer (1995)

Guy Goodwin-Gill & Ilene Cohn, Child Soldiers: The Role of Children in Armed Conflicts 58 (1994).

Jenny Kuper, Reservations, Declarations, and Objections to the 1989 Convention on the Rights of the Child: Human Rights As General Norms and a State's Right to opt Out 104-13 (1996)

ARTICLES/JOURNALS/LAW REVIEW/ARTICLES

Chen Reis, Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict, 28 Colum. Hum. Rts. L. Rev. 629, 644 (1997)

Judith Miller & Paul Lewis, U.N. is Fighting to Save Children from Scars of Battle, N.Y. Times, Aug. 8, 19

Barbara Crossette, U.N. Council Looks at Rise in Number of Children in Combat, N.Y. Times Int'l, June 30, 1998.

Human Rights Watch Report/Afr., Liberia: Human Rights Abuses by the Liberian Peace Council and the Need for International Oversight, at 4 (1994)

Glenn Mower, Jr., The Convention on the Rights of the Child: International Law Support for Children 42, 162-63 (1997)

Treaty Law of Armed Conflict and Related Instruments Specifically Regarding Child Civilians (1997).

Lawrence LeBlanc, The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights 150 (1995)

Colleen C. Maher, The Protection of Children in Armed Conflict: A Human Rights Analysis of the Protection Afforded to Children in Warfare, 9 B.C. Third World L. J. 297 (1989)

Rachel Brett, Child Soldiers: Law, Politics, and Practice, 4 Int'l J. of Children's Rts. 117 (1996)

Alison Dundes Renteln, Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child, 3 ILSA J. Int'l & Comp. L.Q. 629-640 (1997)

Electronic Press Release, U.S. Blocks Efforts to Ban the Use of Child Soldiers, Human Rights Watch June 15, (1999)

Virginia Leary, Lessons from the Experience of the International Labour Organization (1992)

Harvetta M. Asamoah et al., *International Human Rights*, 33 *Int'l Law*. 555, 559-60 (1999).

Toney and Shazia N. Anwar, *International Human Rights Law and Military Personnel: A Look Behind the Barrack Walls*, 14 *Am. U. Int'l L. Rev.* 523 (1998).

Philip Alston, *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994)

o Abdullahi An'Na'im, *Cultural Transformation and Normative Consensus on the Best Interests of the Child*, in *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994)

e Ilene Cohn, *The Protection of Children in Peacemaking and Peacekeeping Processes*, 12 *Harv. Hum. Rts. J.* 129 (1999)

Raymond J. Toney and Shazia N. Anwar, *International Human Rights Law and Military Personnel: A Look Behind the Barrack Walls*, 14 *Am. U. Int'l L. Rev.* 523 (1998).

Mike Wessels, *Child Soldiers*, *Bull. Atom. Scientists*, Nov. 1997, at 32

Kalashnikov Kids, *The Economist*, July 10, 1999, at 19-2

Bald SH. "Searching for a lost childhood: Will the Special Court of Sierra Leone find justice for its children?" (2002) 18 *American University International Law Review* 537

Bassiouni MC. "Searching for peace and achieving justice: The need for accountability."

(2002) 59 *Law and Contemporary Problems*

Boe R "An Evaluation of the legality and efficacy of lustration as a tool of transitional justice" (1999) 37 *Columbia Journal of Transitional Law* 357

Chirwa D. "The merits and demerits of the African Charter on the Rights and Welfare of the Child" (2002) 10(2)

International Journal of Children's Rights 157 Cohn, I "The protection of children in peacemaking and peacekeeping processes" (1999) 12 *Harvard Human Rights Journal* 129

Cohn I. "Progress and hurdles on the road preventing the use of children as soldiers and ensuring their rehabilitation and reintegration" (2004) 37 *Cornell International Law Journal* 531

Cohn I. "UN efforts to promote child-conscious peacemaking and peacekeeping: A step towards improving the lives of war-affected children" (2005) 20 *Ohio Journal on Dispute Resolution* 99 Corriero MA. "The involvement and protection of children in truth and justice-seeking processes: The Special Court for Sierra Leone" (2002) 18 *New York Law School Journal of Human Rights* 337 Crocker, DA "Reckoning with past wrongs: A normative framework" (1999) 13 *Ethics and International Affairs* 43

Abbott, AB "Child soldiers: The use of children as instrument of war" (2000) 23 *Suffolk Transnational Law Review* 499

Abraham S. "Child soldiers and the capacity of the Optional Protocol to protect children in conflict" (2003) 10 *Human Rights Spring: American Bar Association* 15

P Alston "The legal framework of the Convention on the Rights of the Child" (1992) 91 *UN Bulletin of Human Rights*.

S L Wells "Crimes against child soldiers in armed conflict situations: Applications and limits of international humanitarian law" (2004) 12 *Tulane Journal of International and Comparative Law* 292.

S. Ramcharan "The role of international bodies in the implementation and enforcement of humanitarian law and human rights law in non-international armed conflicts" (1983) 33 *American University Law Review* 99

Daly E. "Between punitive and reconstructive justice: The Gacaca courts in Rwanda" (2002) 34 *New York University Journal of International Law and Politics* 355

Davidson MG. "The International Labour Organization's latest campaign to end child labour: Will it succeed where others have failed?" (2001) 11 *Transnational and Contemporary Problems* 209

Dennis, M 'The ILO Convention on the Worst Forms of Child Labour' (1999) 93 *American Journal of International Law* 944

Elster J. "Coming to terms with the past: A framework for the study of justice in the transition to democracy" 39 *European Journal of Social Sciences* 7

Escobar, V "Reclaiming the "little bees" and the "little bells": Colombia's failure to adhere to and enforce international and domestic laws in preventing recruitment of child soldiers" (2003) 26 *Fordham International Law Journal* 785

Gardam, J and Jarvis, M "Women and armed conflict: The international response to the Beijing Platform for Action" (2000) 32 *Columbia Human Rights Law Review* 1

Goldstein-Bolocan, M “Rwandan Gacaca: An experiment in transitional justice” (2005) 2004 Journal of Dispute Resolution 355

Hackenberg, ML “Can the Optional Protocol for the Convention on the Rights of the Child protect the Ugandan child soldier?” (2000) 10 Indiana International & Comparative Law Review 417

Hager DA. “Does the Texas juvenile waiver statute comport with the requirements of due process? (1995) 26 Texas Technical Law Review 813

Happold, M “Excluding children from refugee status: Child soldiers and article 1F of the Refugee Convention” (2002) 17 American University International Law Review 1131

Hayner, PB “Fifteen truth commissions--1974 to 1994: A comparative study” (1994) 16 Human Rights Quarterly 597

Iacono, M “The child soldiers of Sierra Leone: Are they accountable for their actions in war?” (2003) 26 Suffolk Transnational Law Review 445

ICRC “Optional Protocol to the Convention on the Rights of the Child concerning involvement of children in armed conflicts: Position of the International Committee of the Red Cross” (1998) 322 International Review of the Red Cross 113

Insko, JB “Defense of superior orders before military commissions” (2003) 13 Duke Journal of Comparative and International Law 389

Jallow, HB “Prosecutorial discretion and international criminal law” (2005) 3 Journal of International Criminal Justice 145

Jesseman, C “The protection and participation rights of the child soldier: An African and global perspective” (2001) 1 African Human Rights Law Journal 151

Kargbo, B “International peacekeeping and child soldiers: Problems of security and rebuilding” (2004) 37 Cornell International Law Journal 485

Kritz, NJ “Coming to terms with atrocities: A review of accountability mechanisms for mass violations of human rights” (1996) 59 Law and Contemporary Problems 127

Laflin, ME “Gacaca courts: The hope for reconciliation in the aftermath of the Rwandan genocide” (2003) 46-MAY Advocate (Idaho) 19

Landsman, S “Alternative responses to serious human rights abuses: Of prosecution and Truth Commissions” (1996) 59 Law and Contemporary Problems 84

Leibig, A “Girl child soldiers in Northern Uganda: Do current legal frameworks offer sufficient protection?” (2005) 3 Northwestern University Journal of International Human Rights 6

Lippman, MR “Humanitarian law: The development and scope of the superior orders defense” (2001) 20 Penn State International Law Review 153

Jeffrey Legro, *Cooperation Under Fire: Anglo-German Restraint during World War 11* (1995).

Richard Price, *The Chemical Weapons Taboo* (1997)

Ward Thomas, *Embedded Ethics in International Relations: Norms as Constraints on The Use of Force* (2002)

End of a Long Nightmare, *Mail & Guardian*, July 26, 2002

Greenfeld C, Flaws JA. Renewed debate over postnatal oogenesis in the mammalian ovary. *Bio Essays*. 2004

UNICEF. *State of the World’s Children: Childhood Under Threat*. New York, NY: UNICEF; 2005,

Nina Tannenwald, *The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use*, 53 *INT’L ORG.* 433 (1999)

Paul Bohannon, *Law and Warfare: Studies in the Anthropology of Conflict* 45 (1967)

Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 52 *INT’L ORG.* 613, 617-19 (1998)

Martha Fennimore, *National Interests in International Society*, 134 (1996)

Michael Desch, *Culture Clash: Assessing the Importance of Ideas in Security Studies*, 23 *Int’l Security* 141-70 (1998).

Cyndy S Snyder et al., “On the Battle Ground of Women’s Bodies: Mass Rape In Bosnia-Herzegovina”, *Affilia*, 2006, vol. 21, pg. 184–195

Betancourt TS, Khan KT. The mental health of children affected by armed conflict: protective processes and pathways to resilience. *Int Rev Psychiatry*. 2008

Bukovsky A, Caudle MR, Svetlikova M, Wimalasena J, Ayala ME, Dominguez R. Oogenesis in adult mammals, including humans: a review. *Endocrine*. 2005

Wells JC. Maternal capital and the metabolic ghetto: an evolutionary perspective on the transgenerational basis of health inequalities. *Am J Hum Biol*. 2010

Horta BL, Gigante DP, Osmond C, Barros FC, Victoria CG. Intergenerational effect of weight gain in childhood on offspring birthweight. *Int J Epidemiol*. 2009

Clarkin PF. Adiposity and height of adult Hmong refugees: relationship with war-related early malnutrition and later migration. *Am J Hum Biol*. 2008

Gudmundsson S, Henningson AC, Lindqvist P. Correlation of birth injury with maternal height and birthweight. *BJOG*. 2005

Victoria CG, Adair L, Fall C, Hallal PC, Martorell R, Richter L, Sachdev HS. Maternal and child undernutrition: consequences for adult health and human capital. *Lancet*. 2008

Hogue CJ, Buehler JW, Strauss LT, Smith JC. Overview of the national infant mortality surveillance (NIMS) project—design, methods, results. *Public Health Rep*. 1987

Brialic I, Rodin U, Vrdoljak J, Plavec D, Capkun V. Secular birth weight changes in liveborn infants before, during, and after 1991–1995 homeland war in Croatia. *Croat Med J*. 2006

Lumey LH. Decreased birthweights in infants after maternal in utero exposure to the Dutch famine of 1944–1945. *Paediatr Perinat Epidemiol*. 1992

Oxford JS, Sefton A, Jackson R, Innes W, Daniels RS, Johnson NP. World War I may have allowed the emergence of “Spanish” influenza. *Lancet Infect Dis*. 2002

Erkoreka A. Origins of the Spanish Influenza pandemic (1918–1920) and its relation to the First World War. *J Mol Genet Med*. 2009

Kellerman NP. Psychopathology in children of Holocaust survivors: a review of the research literature. *Isr J Psychiatry Relat Sci*. 2001

Falceto OG, Giugliani ER, Fernandes CL. Influence of parental mental health on early termination of breast-feeding: a case–control study. *J Am Board Fam Pract*. 2004

Scharf M. Long-term effects of trauma: psychosocial functioning of the second and third generation of Holocaust survivors. *Dev Psychopathol*. 2007

Summerfield D. The psychological legacy of war and atrocity: the question of long-term and transgenerational effects and the need for a broad view. *J Nerv Ment Dis*. 1996

Pfefferbaum B, Seale TW, Brandt EN Jr, Pfefferbaum RL, Doughty DE, Rainwater SM. Media exposure in children one hundred miles from a terrorist bombing. *Ann Clin Psychiatry*. 2003

CASES

Hinga Norman Case (the child recruitment case) (2004) The Special Court for Sierra Leone

The Prosecutor v. Bosco Ntaganda ICC-0-04/06

WEBSITES

Amnesty International Report “Democratic Republic of Congo: Children at war” (2003) available at <http://web.amnesty.org/library/index/engaf620342003> (Last visited 09-13-2019)

Amnesty International Côte D’Ivoire: Cross-border child soldiers available at.

http://www.amnesty.ca/take_action/actions/cote_divoire_child_soldiers.php (Last visited 10-19-2020)

BBC News, “DR Congo ‘awash’ with child soldiers,” available at

<http://www.news.bbc.co.uk/2/hi/africa/2772575.stm>(Last visited 12/10/2020)

Brett, R “Adolescent’s volunteering for armed forces” (2003) International Review of the Red Cross No 852 available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5WNJFX/\\$File/IRRC_852_Brett.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5WNJFX/$File/IRRC_852_Brett.pdf) (Last visited 09-12-2019))

Brett, R “Girl soldiers: Challenging the assumptions” (2002) available at

http://www.geneva.quino.info/pdf/Girl_Soldiers.doc.pdf (Last visited 07-23-2010))

Danso, A “The co-option of childhood: Africa’s young soldiers” available at

<http://www.iss.co.za/Pubs/monographs/no82/intro.html> (2003) (Last visited 06-24-2019)

Human Rights Watch U.S. Blocks Efforts to Ban the Use of Child Soldiers: Clinton Urged

to Back Stronger Measures in Geneva (June 15, 1999), available at <http://www.hrw.org/press/1999/jun/labor699.htm>(Last visited 11-26-2020)

Human Rights Watch Congo: Don't execute child soldiers: Four children to be put to death available at <http://www.hrw.org/press/2001/05/congo0502.htm>(2001) (Last visited 09-29-2020)

Human Rights Watch Recruitment of ex-child soldiers in Cote d' Ivoire (2005) available at <http://hrw.org/english/docs/2005/03/30/cotedi10402.htm> (Last visited 12-23-2020)

<http://www.ohchr.org/english/bodies/crc/index.htm>(last visited 10/12/2019)

Amnesty International Child soldiers: Criminals or victims (2000) available at <http://web.amnesty.org/library/Index/ENGIOR500022000?open&of=ENG-364>(Last visited 20/26/2020)

Human Rights Watch Youth, poverty and blood: The lethal legacy of West Africa's regional warriors (2005) available at <http://hrw.org/reports/2005/westafrica0405/westafrica0405text.pdf> (Last visited 10-12-2020))

Human Rights Watch Facts about child soldiers (2004) available at <http://www.humanrightswatch.org/campaigns/crp/facts.htm> (Last visited 12-10-2020)

Institute for Security Studies “Child soldiers and international law” (1997) available at <http://www.iss.co.za/Pubs/ASR/6No3/Fontana.html> (Last visited 11-23-2019)

International Council on Human Rights Policy “Ends & means: human rights approaches to armed groups” available at <http://www.reliefweb.int/library/documents/2001/EndsandMeans.pdf> (2001) (Last visited 04-24-2019)

Inter Press Service “Child Labour Convention Means Little, Critics Say” (12 August 2000)

available at <http://www.tips.org/ips.human.N./1d3ele76909c9847c22568020035e2bl?OpenDocume> (Last visited 03-12-2020)

Machel, G Report to the Secretary General on the impact of armed conflict on children (1996) available at <http://www.unicef.org/graca> (Last visited 09-21-2020)

MSNBC Child soldiers add to Liberian tragedy (1999) available at <http://www.msnbc.com/news/945577.asp> (Last visited 06-12-2020)

Office of the High Commissioner for Human Rights available at <http://www.ohchr.org/english/bodies/crc/index.htm> (Last visited 12-27-2020)

Office of the Special Representative for the Secretary General for Children and Armed Conflict available at <http://www.un.org/special-rep/children-armed-conflict/> (Last visited 10-29-2019)

Recommendation Concerning the Prohibition and Immediate Action for the Elimination of

the Worst Forms of Child Labour (17 June 1999) available at

<http://ilolex.ilo.ch:1567/scripts/convde.pl?R190> (Last visited 12-10-2019)

Refugee International “Child Soldiers: Promising Commitments in the Congo” (2004) available

<http://www.refugeesinternational.org/content/article/detail/1322/> (Last visited 09-12-2019)

Special Court for Sierra Leone available at <http://www.sc-sl.org/summary-childsoldiers.html> (Last visited 11-23-2020)

UN Security Council Resolutions S/Res/1612/2005 available at http://www.un.org/Docs/sc/unsc_resolutions05.htm (Last visited 10-10-2020)

UNAIDS, UNICEF, USAID “Children on the Brink (2004) A joint report of new orphan. Estimates and a framework for action” available at http://www.unicef.org/publications/index_22212.html (Last visited 12-10-2019)

UNICEF “The ‘rights’ start to life: A statistical analysis of birth registration” (2005) available at http://www.unicef.org/publications/files/BirthReg10a_rev.pdf (Last visited 10-19-2020)

International Humanitarian Law and International Human Rights Law, Similarities and Differences, available at:

http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf (last visited 10/10/2020)

“Report of the Secretary-General pursuant to paragraph 2 of the Security Council resolution 808 on the Establishment of the International Criminal Tribunal for Yugoslavia”, S/25704, 1993, available on-line at http://www.un.org/ga/search/view_doc.asp?symbol=S/25704 (Last visited 11/9/2020) The Secretary-General stated that the law enshrined in the four Geneva Conventions had become part of customary international law.

1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, available at: <http://www2.ohchr.org/english/law/protocol1.htm>. According to the ICRC website, available at [http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.pdf](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (Last visited 5/6/2020) as of 10 November 2009, there were 168 States party to this instrument.

1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, available at <http://www2.ohchr.org/english/law/protocol2.htm>. According to the ICRC website, available at [http://www.icrc.org/IHL.nsf/\(SPF\)/party_main_treaties/\\$File/IHL_and_other_related_Treaties.pdf](http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (Last visited 8/8/2020) as of 10 November 2009, there were 164 States party to this instrument.

United Nations General Assembly, “Resolution 3318 (XXIX): Declaration on the Protection of Women and Children in Emergency and Armed Conflict”, A/RES/29/3318, 1974, available on-line at <http://www.un-documents.net/a29r3318.htm> (Last visited 10/12/2020)

United Nations, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001), 10 October 1980. According to the United Nations Treaty Collection website, available at <http://treaties.un.org> (Last visited 3/8/2020) as of 18 November 2009, there were 50 Signatories and 110 Parties to this instrument.

Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention), 1980; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 1980; Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 1980; Protocol on Blinding Laser Weapons (Protocol IV), 1995; Protocol on Explosive Remnants of War (Protocol V), 2003; available on-line at

<http://www.icrc.org/ihl.nsf/TOPICS?OpenView#Methods%20and%20Means%20of%20Warfare>(Last visited 10/10/2019)

The Mine Ban Treaty is the common name for the Convention on the Prohibition of the Use, Stockpiling, Production and the Transfer of Anti-Personnel Landmines and on their Destruction 1997 (entered into force 1 March 1999). For full text of the Convention, see http://www.un.org/Depts/mine/UNDocs/ban_trty.htm(Last visited 10/15/2019)

The International Campaign to Ban Landmines is a coalition of relevant organizations working all over the world to bring about a ban on the production, transfer and use of anti-personnel mines. For more information, see the website of the International Campaign to Ban Landmines: www.icbl.org(Last visited 4/5/2020)

As of 22 October 2009, 156 States were party to the treaty. 157. Article 2(3) Protocol II, Article 2, Ottawa Treaty 158. Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials was adopted 14 November 1997 and entered into force 1 July 1998.

Article 2(3) Protocol II, Article 2, Ottawa Treaty Established in 1889, the Organization of American States is the world's oldest regional inter-governmental organization. For more information, see the OAS's website available at <http://www.oas.org/en/about/default.asp>(Last visited 10/10/2019)

U.S. Department of State, Fact Sheet, The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, available at http://www.fas.org/asmp/campaigns/smallarms/Cifta_FactSheet_DoS.htm(Last visited 10/9/2019)

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (2001) (entered into force 3 July 2005), available on-line at http://www.unodc.org/pdf/crime/a_res_55/255e.pdf(Last visited 7/9/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 52 Signatories and 79 Parties to this instrument, The UN Convention on Transnational Organized Crime was adopted in 2000

Full text of the Convention on Cluster Munitions is available at <http://www.clusterconvention.org>. According to the United Nations Treaty Collection website, available at <http://treaties.un.org>(Last visited 6/8/2020) as of 18

November 2009, there were 103 Signatories and 24 Parties to this instrument. The Convention will enter into force six months after it receives 30 ratifications, See the explanation of the Mine Ban Treaty (1997) for the specific impact that landmines have on children. Cluster munitions leave the same legacy for children.

It must be noted, however, that the League of Nations (the forerunner to the United Nations) endorsed the Geneva Declaration of the Rights of the Child in 1924 and the United Nations General Assembly unanimously adopted a more detailed Declaration of the Rights of the Child in 1959. However, neither of these documents is legally binding. League of Nations, Geneva Declaration of the Rights of the Child, available on-line at <http://www1.umn.edu/humanrts/instree/childrights.html> (Last visited 7/8/2020) and UN General Assembly, Declaration of the Rights of the Child, available on-line at <http://www1.umn.edu/humanrts/instree/k1drc.htm> (last visited 10/8/2020)

The Committee on the Rights of the Child is composed of 18 independent experts on child rights and monitors States' implementation of the Convention on the Rights of the Child through regular reporting sessions. For more information, please see the Committee's website at <http://www2.ohchr.org/english/bodies/crc/index.htm> (Last visited 10/8/2020)

There is a proposal to establish a complaints mechanism through an Optional Protocol to the Convention. For more information, see the Campaign for a Complaints Mechanism website available at http://www.crin.org/law/CRC_complaints/ (Last visited 6/7/2020)

In 1996, the importance of education was highlighted in Graça Machel's report to the UN Security Council on the Impact of Armed Conflict on Children (paras 184-203), A/51/306, 1996, available on-line at <http://www.un.org/children/conflict/english/reports.html> (Last visited 10/10/2020).

Machel set out the mitigating impact that education can have on the effects of armed conflict on children and called for educational activity to be established as a priority for humanitarian assistance. A decade after Machel's report, the provision of education, whether formal or informal, is not only seen as important in and of itself, but is also seen by some as the fourth pillar of humanitarian assistance (for example, see UNESCO, "Educating in Emergencies, available on-line at <http://portal.unesco.org/education/en/ev.php> URL_ID=37748&URL_DO=DO_TOPIC&URL_SECTION=201.html (Last visited 6/6/2020) and Peter Buckland, "Reshaping the future: Education in post conflict reconstruction", 2004, available on-line at

[http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/\\$file/Reshaping_the_Future.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/$file/Reshaping_the_Future.pdf?openelement)(Last visited 9/9/2020)

African Charter on the Rights and Welfare of the Child, adopted on 27 June 1981(entered into force on 21 Oct.1986), available on-line at http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf. (Last visited 10/10/2019)

According to the African Union, as of September 2018,55 Member States were party to this instrument. For an analysis of the two instruments, see Mzikenge Chirwa, D., “The Merits and Demerits of the African Charter on the Rights and Welfare of the Child”, first appeared in “The International Journal of Children's Rights”, Volume 10, Number 2, 2002, pg. 157-177, available on-line at http://www.crin.org/docs/acrwc_merits_demerits.pdf(Last visited 9/11/2020)

Article 2, African Charter on the Rights and Welfare of the Child.

Rome Statute of the International Criminal Court (ICC), (entered into force 1 July 2002), available on-line at <http://untreaty.un.org/cod/icc/index.html>.(Last visited 10/9/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 139 Signatories and 110 Parties to this instrument.

These terms are not further defined within the Rome Statute and should, therefore, be read according to the plain and ordinary meaning of the terms. The United Nations Special Representative of the Secretary-General on Children and Armed Conflict in the Amicus Curiae brief for the case in the International Criminal Court “Situation in the Democratic Republic of the Congo in the case of Prosecutor v. Thomas Lubanga Dyilo,” endorsed the definition that: “Conscription refers to the compulsory entry into the armed forces. Enlistment...refers to the generally voluntary act of joining armed forces by enrolment, typically on the 'list' of a military body or by engagement indicating membership and incorporation in the forces.”; Otto Triffterer ed., “Commentary on the Rome Statute of the International Criminal Court 261”,1999, in ICC, Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo, Written Submissions of the United Nations Special Representative of the Secretary-General on Children and Armed Conflict Submitted in application of Rule 103 of the Rules of Procedure and Evidence,available athttp://www.un.org/children/conflict/_documents/AmicuscuriaeICCLubanga.pdf(Last visited 7/8/2019)

Rules of Procedure and Evidence adopted by the Preparatory Commission for the International Criminal Court, at its 23rd meeting on 30 June 2000

(PCNICC/2000/1/Add.1), [available on-line at http://untreaty.un.org/cod/icc/prepcomm/report/reportdocuments.htm](#). (Last visited 2/6/2020) These rules guarantee that international standards for a fair trial are adhered to and witnesses receive appropriate protection.

Article 26, Rome Statute of the International Criminal Court

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention no. 182), 1999 (entered into force 19 Nov 2000). According to the ILO website available online at <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182>. (Last visited 10/9/2020) As of 17 November 2009, 171 States had ratified this instrument, Article 2, ILO Convention no.182.

United Nations Optional Protocol to the Convention on the Elimination of Discrimination Against Women, 2000 (entered into force on 22 Dec. 2000), available on-line at <http://www2.ohchr.org/english/law/cedaw-one.htm>. (Last visited 9/6/2019) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, (Last visited 9/6/2019) as of 18 November 2009, there were 79 Signatories and 99 Parties to this instrument, The Committee on the Elimination of Discrimination Against Women is an expert body established in 1982, whose mandate is to monitor progress for women in States party to the Convention on the Elimination of Discrimination Against Women. The Committee consists of 23 experts on the rights of women and reviews national reports on the status of women, publishes recommendations on issues affecting women and, under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, can consider individual complaints against Parties to the Protocol and issue decisions and views in consideration of these. More information can be found on the Committee's website at <http://www.un.org/womenwatch/daw/cedaw/committee.htm> (Last visited 12/10/2019)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000 (entered into force 12 February 2002), available on-line at <http://www2.ohchr.org/english/law/crcconflict.htm>. (Last visited 6/9/2020) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>, as of 18 November 2009, there were 125 Signatories and 130 Parties to this instrument.

For example, the declaration of the United Kingdom, available on-line at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en#EndDec (Last visited 10/10/2020)

Article 4, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Article 4(2), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

UN Security Council, Statute of the Special Court for Sierra Leone, 16 January 2002, [available on-line at](#)

<http://www.unhcr.org/refworld/type,INTINSTRUMENT,,,3dda29f94,0.html>(Last visited 10/10/2019), United Nations Security Council resolution 1315 (2000) on the situation in Sierra Leone, S/RES/1315(2000)

Article 1, Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 2002, available on-line at <http://www.specialcourt.org/documents/Agreement.htm>(Last visited 8/9/2019)

Of these 13 indictments, three were withdrawn when the accused died. One of the accused from the Armed Forces Revolutionary Council has never been located; “About the Special Court of Sierra Leone”, available on-line at <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx>(Last visited 10/12/2020)

For more information on all judgements, see <http://www.sc-sl.org/CASES/tabid/71/Default.aspx>(Last visited 12/10/2019)

UN Convention on the Rights of Persons with Disabilities, 2006 (entered into force 3 May 2008), available on-line at <http://www2.ohchr.org/english/law/disabilities-convention.htm>(Last visited 11/10/2020) According to the United Nations Treaty Collection website, available at <http://treaties.un.org>(Last visited 4/7/2020) as of 18 November 2009, there were 143 Signatories and 73 Parties to this instrument, Article 7, Convention on the Rights of Persons with Disabilities.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted by the Special Summit of the Union held in Kampala, Uganda, 22-23 October 2009 (not yet in force: 18 signatories, no States Parties), available on-line at <http://www.africaunion.org/root/AR/index/Convention%20on%20IDPs%20Eng%20-%20Final.pdf>(Last visited 12.10/2020), See the website of the Internal Displacement Monitoring Centre (Norwegian Refugee Council), available at www.internaldisplacement.org(Last visited 9/10/2020)

United Nations Treaty Collection, “Convention Relating to the Status of Refugees”, Status as of 13 November 2009, available on-line at http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en(Last visited 10/10/2020)

Children who are detained and prosecuted are entitled to the protection of the international juvenile justice guarantees, which govern detention, trial, sentencing and rehabilitation: Convention on the Rights of the Child, 20 November 1989, United Nations Treaty Series, vol. 1577, pg. 3, Article 37, 39, 40, available on-line at <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>(Last visited 10/12/2019) and United Nations, “Standard Minimum Rules for the Administration of Juvenile Justice”, UN Res 40/33-Beijing Rules, 1985, Annex 2,; United Nations, “Rules for the Protection of Juveniles Deprived of their Liberty”, UN Res 45/113-JDLs, 1990, Annex 4; United Nations, “Guidelines for the Prevention of Juvenile Delinquency”, UN Res 45/112-Riyadh Guidelines, 1990, Annex 3.

Statute of the International Criminal Tribunal for Yugoslavia, 25/05/1993, S/R/827, Article 4(2)(e), available on-line at <http://www1.umn.edu/humanrts/icty/statute.html>(Last visited 10/12/2020) and Statute of the International Criminal Tribunal for Rwanda, 8/11/1994, S/R/955, Article 2(2)(e), available on-line at <http://www2.ohchr.org/english/law/itr.htm>(Last visited 9/10/2020)

Slavery Convention, 25 September 1926, entry into force 9 March 1927, available on-line at <http://www2.ohchr.org/english/law/pdf/slavery.pdf>(Last visited 10/11/2019)

African Union, Convention Governing the Specific Aspects of Refugee Problems in Africa, article 1(2), available on-line at http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf (Last visited 10/10/2020)

African Union, “List of Countries that Have Signed, Ratified/Accepted the Convention Governing the Specific Aspects of Refugee Problems in Africa,”

available on-line at

<http://www.africaunion.org/root/AU/Documents/Treaties/treaties.htm>(Last visited 11-11-2020)

United Nations Security Council resolution 1261 (1999) on Children and armed conflict, 30/07/1999, S/RES/1261, available on-line at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/248/59/PDF/N9924859.pdf?OpenElement>(Last visited 7-9-2020)

United Nations Security Council resolution 1314 (2000) on Children and armed conflict, 11/07/ 2000, S/RES/1314, available on-line at <http://www.unhcr.org/refworld/docid/3b00f2740.html>(Last visited 12-8-2019)

United Nations Security Council resolution 1379 (2001) on Children and armed conflict, 20/11/2001, S/RES/1379, available on-line at <http://www.unhcr.org/refworld/docid/3c4e94561c.html>(Last visited 10/12/2020)

United Nations Security Council resolution 1460 (2003) on Children and armed conflict, 30/01/2003, S/RES/1460, available on-line at <http://www.unhcr.org/refworld/docid/3f45dbdd0.html>(Last visited 12-18-2019)

United Nations Security Council resolution 1612 (2005) on Children and armed conflict, 26/07/2005, S/RES/1612, available on-line at <http://www.unhcr.org/refworld/docid/43f308d6c.html>(Last visited 10-11-2020)

Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Security Council Working Group”, available on-line at <http://www.un.org/children/conflict/english/securitycouncilwg.html>(Last visited 9-1—2020)

Children and armed conflict, Report of the Secretary-General”, 26 March 2009, A/63/785–S/2009/158, available on-line at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/282/45/PDF/N0928245.pdf?OpenElement>(Last visited 10-10-2020)

United Nations Security Council resolution 1882 (2009) on Children and armed conflict, 4/07/2009, S/RES/1882 (2009), s. 19, available at <http://www.unhcr.org/refworld/docid/4a7bdb432.htm>(Last visited 10-12-2019)

In 1996, the importance of education was highlighted in Graça Machel’s report to the UN Security Council on the Impact of Armed Conflict on Children (paras 184-203), A/51/306, 1996, available on-line at <http://www.un.org/children/conflict/english/reports.html>(Last visited 12-12-2020) Machel set out the mitigating impact that education can have on the effects of armed conflict on children and called for educational activity to be established as a priority for humanitarian assistance. A decade after Machel’s report, the provision of education, whether formal or informal, is not only seen as important in and of itself, but is also seen by some as the fourth pillar of humanitarian assistance (for example, see UNESCO, “Educating in Emergencies, available on

linehttp://portal.unesco.org/education/en/ev.php-URL_ID=37748&URL_DO=DO_TOPIC&URL_SECTION=201.html(Last visited 10-12-2020), and Peter Buckland, “Reshaping the future: Education in post conflict

reconstruction”, 2004, available on-line at [http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/\\$file/Reshaping_the_Future.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SODA-6C57V8/$file/Reshaping_the_Future.pdf?openelement)(Last visited 9/8/2020)

<https://www.unicef.org/somalia/press-releases/fifth-anniversary-somalias-ratification-convention-rights-child-approaches>(Last visited 3/9/2021) Human Rights Watch: Child soldier in Liberia available at <http://www.hrw.org/reports/19994/Liberia2/>(last visited 10-10-2020)

Human Rights Watch: Children in Sudan; Slaves, Street Children and Child Soldiers available at [http://www. https://www.hrw.org/reports/1995/Sudan.htm](http://www.https://www.hrw.org/reports/1995/Sudan.htm)(last visited 12-10-2020)

Children of War available at <http://www.rb.se/chilwar>> (last visited 9/23/2019).

Radda Barnen, Radda Barren's Documentation on Child Soldier available at <http://www.rb.se/childwardatabase/>>.(last visited 9/23/2019)

Child Labor Abuses, L.A. Times, June 18, 1999, at A22. The text of the ILO Convention is available at International Labour Conference, 10. 25, 1999) available at <http://www.ilo.org/public/english/10ilc/ilc87/com-chil.htm>>(last visited 10-25-2019).

The Children and Armed Conflict Unit has been established at the Children's Legal Centre of University of Essex to collect data on children in armed conflict. available at <http://www2.essex.ac.uk/c&acu>>(last visited 10-25-2019)

United Nations General Assembly Security Council report, available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf(last visited 5-24-2021)Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, I.L.O. 87th Sess., reprinted, available at <http://www.ilolex.ilo.ch:1567/scripts/convde.pl?C182>>. Group Acts to Curb (last visited 6-23-2019)

The Scars of Death, Human Rights Watch Report (1997), available at <http://www.hrw.org/reports97/Uganda/2001> (last visited 7/11/2020)

Amnesty International, Breaking God's Commands, available at <http://web.amnesty.org/library/index/ENGAFR590011997> (last visited 8/12/2020)

Stavros Stavou & Robert Stewart, The Reintegration of Child Soldiers and Abducted Children: A Case Study of Palaro and Pabbo Gulu District, in Act against Child Soldiers in Africa: A Reader (2002), available at <http://www.iss.co.za/Pubs/BOOKS/ACTblurb.html> (last visited 9/12/2020)

Against All Odds: Surviving the War on Adolescents, in Women's Commission for Refugee Women and Children report, July 2001, at 6 available, at <http://www.womenscommission.org/pdf/ug.pdf> (last visited 10/1/2020)

Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict, 22/06/1998, E/CN.4/Sub.2/1998/13, available on-line at <http://www.unhchr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument>(last visited 06-07-2021

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, May 25,2000, U.N, GAOR, 54th sess., U.N. Doc A/RES/54/263 (2000), available at <http://www.unhchr.ch/html/menu2/6/protocolchild.htm>. (Last visited 8-9-2020)

UNICEF, Convention on the Rights of the Child, at <http://www.unicef.org/crc/crc.htm> (last visited 06-15-2021).

Rachel Stohl, Children in Conflict: Assessing the Optional Protocol, 2 J. Conflict, Security & Dev. 137 (2002), available at <http://www.cdi.org/document/attachment/Stohl.pdf> (Last visited 10-10-2020)

For further information on this military event, see, <http://www.atomicarchive.com/Docs/Hiroshima/index.shtml>(last visited 100802019) and <http://www.saint-petersburg.com/history/siege.asp>(last visited 10/7/2019)

War Child. Key facts and statistics about child soldiers. Available at: [https:// www.warchild.org.uk/ issues/ child- soldiers](https://www.warchild.org.uk/issues/child-soldiers) (last visited 6/9/2018)

UNICEF Regional Office for West and Central Africa. Beyond Chibok. 2016. Available at: [https:// www.UNICEF.org/infobycountry/ files/ Beyond_Chibok.Pdf](https://www.UNICEF.org/infobycountry/files/Beyond_Chibok.Pdf) (last visited 9/14/2018)

UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict. Working paper no. 3, children and justice during and in the aftermath of armed conflict. 2011. Available at: [www.refworld.org/ docid/ 4e6f2f132. Html](http://www.refworld.org/docid/4e6f2f132.html) (last visited 5/14/2018)

United Nations Human Rights Office of the High Commissioner. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. 2000. Available at: [www.ohchr.org/ EN/ ProfessionalInterest/Pages/ OPACCRCA.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRCA.aspx) (last visited 5/14/2018)

Art. 1 of the United Nations Convention on the Right of the Child: UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577: available at <http://www.refworld.org/docid/3ae6b38f0.html>, (last visited 5/10/2018).

Lankan Tamil Rebels Abduct More Children to Be Soldiers: Truce Monitors, XINHUA, Oct. 12, 2003, available at <http://global.factiva.com/en/arch; Sri Lanka: Child Recruitment Continues Despite Ceasefire, Child Soldier Newsletter, Mar. 2002>(Last visited 10/12/2020)

International Rescue Committee, Watchlist on Children and Armed Conflict Newsletter, Nov. 2001, available at <http://www.theirc.org>.(Last visited 09-10-2020)

Jacky Mamou, Soldier Boys and Girls, Le Monde Diplomatique, Sept. 2001, available at <http://www.monde-diplomatique.fr/2001/09/13soldiers>. (Last visited 08-8-2019)

United Nations, General Assembly, Annual Report of the Secretary General on Children and Armed Conflict (CAAC). S/2018/465 (16 May 2018). Available at <http://www.undocs.org/s/2018/465>(last visited 01-12-2021)

Article 38 on the UN Convention on the Rights of the Child, available at http://www.ohchr.org/en/professional_interest/pages/crc.aspx (last visited 9/10/2020)

The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, available at [http://www.unicef.org/emerg/files/ ParisPrinciples310107English.pdf](http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf) (last visited 9/12/2020)

OTHER SOURCES
BIBLE-NEW INTERNATIONAL VERSION (NIV)
1Samuel 16:16-21