

Children and armed conflict

Master Thesis

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Introduction

Despite many efforts of international community against this issue, children around the world are still often affected by armed conflict. In some countries they are forcefully recruited into armed forces and sometimes they even join '*voluntarily*', although still compelled by the difficult circumstances.

My goal in this research is to discover what has already been done by international community to protect children from the effects of armed conflict, which legal documents have been adopted, how they are implemented and so on, in order to evaluate whether the international efforts have been sufficient and properly directed towards solution, or are there any gaps in the legal framework and organization, which should be improved in the future.

In the first chapter we shall have a general overlook at the situation around the world and the issue of armed conflict itself, to gain a better understanding of the topic and of how changes in economy and technology also influence it. At this point it might be worth considering, how Millennium Development Goals (MDGs) have been affected by armed conflict and how this has had a further impact on children and their rights. But do the children themselves have an impact on the matter as well? As one of the basic principles of the Convention on the Rights of the Child is a participation of children, we shall have a closer look as to how this principle is implemented in practice and whether or not children can in fact have a say in this issue that concerns them so greatly.

In the second chapter we will research the main legal framework regarding children in the armed conflict, from the core binding legal Convention to other instruments of hard and soft law to gain a broad overview of the regulation of this topic. Children are protected by international human rights, humanitarian and criminal law; and therefore we will try to discover whether all areas of their lives have been properly covered by adequate legal documents. An important aspect here will also be the relation between international law and domestic legislations and the implementation of the former into the latter.

Next chapter will serve us as a bridge from the legal framework to the actual work of international organizations by focusing on the Six Grave Violations against children during the armed conflict. They were introduced by the Office of the Special Representative of the Secretary-General (OSRSG) on children and armed conflict to provide a specific legal basis for work of international bodies and point them to the right direction as to which abuses of children during the wartime are most threatening and should be dealt with most urgently.

In the fourth chapter our focus shall be on the work of individual international actors that are dealing with the issue of children in armed conflict, starting with the most important United Nation bodies and proceeding to other relevant institutions in the area. Greatest emphasis will be made on the Security Council, which has the authority of issuing resolutions that are binding upon States Parties and has thus made an enormous contribution to the tackling of our problem. Closely related to the Security Council is also the OSRSG on children and armed conflict, which

is likewise an important body that has widely increased the progress in international efforts, especially since it is a specialized body, established exclusively for children and armed conflict.

Legal framework and efforts of international institutions should then provide us with enough knowledge on the matter to draw conclusions on whether international community has done enough with regard to protection of children during armed conflict, are there gaps in this protection and where should improvements be made in order to secure a better and safer future for the children of the world.

1. General Overview

The field of children in the armed conflict started developing more than a decade ago, when the General Assembly was presented with a groundbreaking report of Ms. Graça Machel, former Minister of Education of The Republic of Mozambique, called “*Impact of armed conflict on children*”.¹ It is a very important document in the field of Child Soldiers, launched in 1996, intended to bring the world’s attention to the issue of children in the armed conflict and of all their rights that are being violated. It has in fact inspired other actors of the international community towards greater involvement and dedication towards the rights of children, especially during armed conflicts. Such actors were the Office of Special Representative of the Secretary-General, UNICEF, other UN bodies, Member States and various NGOs.²

This report was a product of a two year long process of extensive consultations in cooperation with different international actors and research, as well as field visits.³ The reason why a final outcome was so shocking was that it revealed a high level of brutality and abuse that children suffer through during and after the armed conflicts, which international community was mostly unaware of until that moment.

An amazing aspect of this study was its approach towards children in viewing them as part of the solution, as survivors that can participate in action against their abuses in the armed conflict and not only as victims of the circumstances and part of the problem.⁴ We shall deal with the child participation more closely in the following subchapter.

From the beginning of the research till this day, the trend of attacks against civilians has been rising,⁵ having an ever greater influence on the children in the area. They have been increasingly becoming victims of attacks, of forced military recruitment and of sexual violence.⁶ Armed conflicts have been appearing in various different forms and intensities as a consequence of new technology, new weapons and tactics of war, making it difficult to define the term of ‘armed conflict’, which has put an ever greater threat upon children.⁷ Not only forms but also actors have changed. Most of the armed conflicts today are no longer happening between States, but they involve other non-state actors, guerilla, paramilitary groups, etc.⁸ It is evident that most of these groups are not legal entities and therefore do not follow rules of international law, making the division between soldiers and civilians irrelevant for them. They are very problematic, because they are often illegal also within their own States and international actors might have problems even reaching them, not to mention cooperating with them.⁹ Such groups

¹ UN General Assembly, Impact of armed conflict on children, Resolution A/51/306, 26 August 1996.

² UNICEF, Machel Study 10-year Strategic Review: Children and Conflict in a Changing World. 2009.Pp. 3.

³ OSRSG on Children and Armed Conflict, Strategic Framework 2011-2013. June 2011. Pp. 5.

⁴ UNICEF, Machel Study. 2009. Pp. 5.

⁵ Ibid. Pp. 8.

⁶ OSRSG on Children and Armed Conflict, Working Paper n. 3: Children and Justice During and in the Aftermath of Armed Conflict. September 2011. Pp. 9.

⁷ Secretary-General, Report A/67/845–S/2013/245, May 2013. Pp. 2.

⁸ UNICEF, Machel Study. 2009. Pp. 8.

⁹ Tamara Johnson, Report on the Security Council Open Debate on Children in Armed Conflict, Center for UN Reform Education, 2012. Available at: <<http://www.centerforunreform.org/node/491>>.

do not feel threatened by being included to the naming and shaming lists of the UN, since they do not depend on their international reputation. Widespread availability of small arms is also not helpful; illegal trade of these arms made it so easy to equip children with them, since they are light to carry and easy to handle.¹⁰ It led to the recruitment of hundreds of thousands of children, as young as eight years, some of which became combatants; others got various support functions of their commanders.¹¹

A devastating form of conflict that is increasingly threatening lives of children is a ‘resource war’ (also asset war),¹² fuelled by greed and political aspirations. Exploitation of natural resources, governed with violence has tremendous effects on local population, especially children as the most vulnerable group. Supplies of natural goods in the world are limited and the superpowers are struggling to scramble as much as possible for themselves.¹³ One of the most well-known examples is the case of ‘blood diamonds’.¹⁴ Since Africa is full of natural resources such as diamonds, minerals and metals, it is no coincidence that it often hosts these resource wars. Equally non-surprising are the continuous peace disturbances in the Middle East, which possesses half of the world’s oil reserves.¹⁵ In tackling this issue, Security Council has already imposed some sanction measures and the instrument of corporate social responsibility is becoming more and more important.¹⁶ It is essential that children’s rights and their interests play a role when imposing such measures for upholding accountability. At the same time, norms that are in accordance with international standards must be adopted also on the national level to make international measures more effective.¹⁷

Another grave trend has influenced safety of children in the past decade and that is terrorism. Terrorist attacks are normally directed indiscriminately upon civilian population, with no regard to the principle of distinction.¹⁸ They mostly do not target children particularly, but they fall victims among all other civilians as well.¹⁹ They are therefore often killed, orphaned or otherwise affected by such attacks. Exceptions, however, do happen and attacks can also be primarily targeting children; example of such terrorist attack would be 2004 attack on school in Beslan, Russia or more recent gas attacks on girls’ schools in Afghanistan in 2009-2010.²⁰ Other grave scenario is that children are actually used as perpetrators in a terrorist attack (ex. suicide bombers) or as a human shield.²¹ Study showed that children in such instances have often been tricked or given false promises of receiving payment or otherwise forced.²² These children

¹⁰ UNICEF, Machel Study. 2009. Pp. 9.

¹¹ OSRSG on Children and Armed Conflict, Working Paper n. 3. September 2011. Pp. 9.

¹² Stephen Lendman, New Millenium Resource Wars, Global Research, Centre for Research on Globalization, 2013. Available at: <<http://www.globalresearch.ca/new-millennium-resource-wars/5352045>>.

¹³ Ibid.

¹⁴ UNICEF, Machel Study. 2009. Pp. 11.

¹⁵ Stephen Lendman, 2013.

¹⁶ UNICEF, Machel Study. 2009. Pp. 12.

¹⁷ Ibid.

¹⁸ See Chapter 3.

¹⁹ Robert Johnston, Terrorist and criminal attacks targeting children, 2013. Available at: <<http://www.johnstonsarchive.net/terrorism/wrjp39ch.html>>.

²⁰ Ibid.

²¹ UNICEF, Machel Study. 2009. Pp. 13.

²² Ibid.

normally come from poor environment, are uneducated and thus easily persuaded by recruiters into such violent activities.

A conflict in a State has proven to be also a great obstacle in achieving Millennium Development Goals (MDGs), which is especially unfortunate, since many of them are designed to tackle issues on child rights. Such examples are goals of achieving universal primary education, improving maternal health and reducing child mortality.²³ Child rights are also influenced by other Goals, however with a varying degree.

First MDG was to eradicate extreme poverty and hunger;²⁴ this is of course a very important factor in children's development and healthy growth. Analysis showed that there are over 98 million undernourished children, younger than five, living in conflict-affected territories.²⁵ Similar negative results were shown for other MDGs in the conflict-affected areas, as countries have mostly shown insufficient or no progress in achieving them. Even in the States where only a certain region is inflicted by armed conflict (ex. Darfur in the Sudan) such conflict can exhaust resources from the State budget, intended for other purposes which could increase the promotion of child's rights.²⁶ Indicators from case of Rwanda have shown that it can last over a decade since the end of the conflict for the child mortality rate to improve.²⁷ Although conflicts are a global phenomenon, they have taken the greatest toll on Africa and Asia, where the MDGs are still the further away from being achieved.²⁸ However, all the mechanisms for monitoring the real situation of children during armed conflicts are mere estimates and cannot tell for sure in what extent their rights are in fact violated.

As regards the future goals after the 2015, their preparations are ongoing now for a while already and even young people from around the globe have gathered in over 1,000 youth associations in order to participate at the UN forum to help in creation of those new goals.²⁹ This brings us to our next topic: participation of children and youth in political, judicial, administrative and other relevant procedures that influence their lives.

1.1 Child Participation

A great way of tackling issues of children's rights violations is to enable children to participate in the process, to express their opinions and needs, which makes them less marginalized and gives them a feeling of empowerment.³⁰ Providing children an opportunity to be heard is also one of the main principles of child right's law,³¹ which is also why we will devote to it so much attention at this spot.

²³ Millenium Development Goals and Beyond 2015. Available at: <<http://www.un.org/millenniumgoals/>>.

²⁴ Ibid.

²⁵ UNICEF, Machel Study. 2009. Pp. 28.

²⁶ Ibid. Pp. 30.

²⁷ Ibid. Pp. 31.

²⁸ Ibid. Pp. 27.

²⁹ UN News Centre, #Youth2015: young people unite at UN forum to shape future development agenda. 2 June, 2014. Available at: <<http://www.un.org/apps/news/story.asp?NewsID=47939#.U5AnVvk0V8F>>.

³⁰ UNICEF, Machel Study. 2009. Pp. 34.

³¹ UN General Assembly, Convention on the Rights of the Child, (CRC) Article 12. 20 November 1989, entry 2 September 1990.

As mentioned earlier, the Machel study took a very inclusive approach towards children and it was not the first one to establish the importance of their role. A provision of child participation is included in the Convention on the Rights of the Child, in article 12, which imposes an obligation upon States Parties to ensure that children get a chance to express their own views freely.³² In practice this is primarily an obligation of parents, teachers, trainers, advisors and other similar staff members that come in touch with children during their work, but it should also be secured through any necessary judicial and administrative mechanisms.³³ Ironically, the children were not participating in the construction of the Convention of the Rights of the Child and it is therefore not a result of their expression of views and needs, as proscribed by the Convention itself in one of its main principles.³⁴

International Criminal Court and Special Court for Sierra Leone have already made a point of allowing children to participate in judicial procedures as crucial witnesses, especially when case was concerning the matter of child soldiers, recruitment or abduction of children.³⁵ They have taken the necessary steps for making a judicial procedure adequate for participation of children as victims and as witnesses. However, these two courts were not meant to bring justice to children *instead* of national courts, but to complement them; to serve them as an example by prosecuting the worst international criminals out there and prevent impunity where national courts have failed.³⁶

Following the growing involvement of children in judicial processes, especially regarding armed conflicts, some grey areas and legal gaps have been discovered, since children have not previously been expected to participate in a trial as the perpetrators of international crimes. Here we have encountered an interesting controversy, as child right's advocates have had a clash of interests with other human rights fighters, protecting the rights of victims of those crimes, regardless whether these victims were adults or children.³⁷ However, the Convention on the Rights of the Child clearly proscribes that the best interests of the child should be a primary consideration in every procedure that regards them, especially in front of the court of law.³⁸

Since judicial participation is not always an option and statistics have shown³⁹ that most of children involved in armed conflicts either as victims or as perpetrators will never stand before a trial, a need arises for other, non-judicial mechanisms to provide a chance for child participation. Machel study has also made recommendations of methods for giving more power to the children and one of them is to include them into recovery and reconstruction programs.⁴⁰ By such inclusion on social and legal level, especially in the areas of conflict, children regain their self-worth and establish a sense of meaning and purpose.⁴¹ Ever since the Special

³² UN GA, CRC, 1989. Article 12.

³³ Suzanne Bischoff, The UN Convention on the Rights of the Child, A comparative Study, dissertation, 1999. Pp. 160.

³⁴ Philip Alston, Stephen Parker, and John Seymour, Children, rights, and the law. Oxford: Clarendon Press. 1992. Pp. 69.

³⁵ Karin Arts, International Criminal Accountability and the Rights of Children, Hague Academic Press, 2005. Pp.6.

³⁶ OSRSG, Working Paper n. 3. 2011. Pp. 15.

³⁷ Ibid. Pp. 5.

³⁸ UN GA, CRC, 1989. Article 3(1).

³⁹ OSRSG, Working Paper n. 3. 2011. Pp. 20.

⁴⁰ UNICEF, Machel Study. 2009. Pp. 34.

⁴¹ Ibid. Pp. 34.

Representative on children and armed conflict has become involved in peace talks, many agreements with parties to the conflict resulted in having concerns of children and their own views included in some provisions.⁴²

Truth and Reconciliation Commissions have been a great advancement in this area for the past 20 years and they have become quite common, as there were already more than 25 of them around the world.⁴³ Their main purpose is letting the victims have a voice and for the truth to be heard and become a part of history. It is also a means for preventing impunity and bringing the community back together. The staff of the Commission can be either national or mixed with international experts and there is normally also a special unit created for the support of victims and witnesses.⁴⁴

A great step forward was done by the Truth and Reconciliation Commission of Sierra Leone, which was the first one to enable a wide participation of children and gave quite an emphasis on their needs and interests in the reconciliation process.⁴⁵ However, the children have mostly not given direct evidence in front of the Commission, since a variety of problems impedes this process: limited time and a capacity to hear only so many victims, location of victims and of the Commission, the issue of secondary victimization of children, which should be avoided where possible and children's fear against giving direct evidence.⁴⁶ Other less intimidating ways for children to participate might be group workshops, special sessions, thematic hearings and special hearings for children.⁴⁷ They are designed to make sure children feel safe in the process and that their best interests are being taken into account. Another problem is that even when they do finally participate with the Commission, not all of their problems of human rights breaches will be considered and given proper weight, since the Commission is limited to its mandate of the worst international crimes and the Six Grave Violations⁴⁸ against children.⁴⁹ Problem might be also a composition of the Commission because often due to a small budget and time restraints it is not build up of experts with sufficient child-rights knowledge.

In either case, peace-building programs that enable participation to the children are making it more likely for children to resist being recruited into armed forces,⁵⁰ since they are raising awareness and empowering children to feel safe and protected by their community and that they make their voices matter. As Machel Study has shown there is a great need for more sustainable child participation programs at all levels and a need for greater investments into this issue.

A couple of important international events are worth mentioning at this point, since they have promoted the involvement of children in implementation of legal documents. Those events are the UN General Assembly Special Session on Children in 2002 and the 2006 World Report

⁴² UN General Assembly & Security Council, Report of the Secretary-General, A/67/845-S/2013/245, May 2013. Pp. 4-5.

⁴³ OSRSG, Working Paper n. 3. 2011. Pp. 20.

⁴⁴ Ibid. Pp. 20.

⁴⁵ Ibid. Pp. 21.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ See chapter 3.

⁴⁹ OSRSG, Working Paper n. 3. 2011. Pp. 22.

⁵⁰ UNICEF, Machel Study. 2009. Pp. 38.

on Violence against Children.⁵¹ They have urged for participation on every level of decision-making, from international to regional and local. Over 7,000 people had participated at UN Special Session in 2002, committing themselves to a variety of goals in order to achieve a better living situation for children and youth around the world.⁵² It was a first such session to include children as official delegates.⁵³ Aim of the session was to review current situations and improvements made since previous one, 1990 World Summit for Children.⁵⁴ Participants were children, 187 state representatives, UN bodies and agencies, NGOs, international organizations and civil society; therefore many different views were properly represented and finally summarized into the outcome document 'A World Fit for Children'.⁵⁵

The UN Study on Violence against Children from 2006 is also an important document, which provided a current overview on the situation of violence against children, especially nature, extent and causes of it.⁵⁶ It is essential to understand the roots and causes of a problem in order to be able to solve it. Novelty of this document was the mapping out of specific situations and what actions were taken to prevent violence, plus various future recommendations.⁵⁷ Aside from the main Report resulting from this Study, additional material was issued for children, which was also created in cooperation with children.⁵⁸

Great step towards child participation was taken this year, when Optional Protocol to the Convention on the Rights of the Child on a communications procedure⁵⁹ came into force after being ratified by necessary 10 Member States. It is already a third Optional Protocol to the Convention, after the Optional Protocol on the sale of children, child prostitution and child pornography, which entered into force on 18 January 2002;⁶⁰ and Optional Protocol on the involvement of children in armed conflict, which entered into force on 12 February 2002.⁶¹ We shall talk about the latter in more detail in the next chapter. Great advantage of the Third Optional Protocol is that it provides for an individual complaint procedure before the Committee on the Rights of the Child (CRC).⁶² Applicants can be children, groups of children or their representatives, if they have exhausted all domestic remedies and their rights were still not protected.⁶³ Complaints must refer to the rights, provided for in the Convention or either one of

⁵¹ Ibid. Pp. 35.

⁵² UNICEF, World leaders 'Say Yes' for children, 2002. Available at: <<http://www.unicef.org/specialsession/>>.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ UN Secretary General's Study: Violence against Children, 2006.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Resolution A/RES/66/138, 19 December 2011, entry 14 April 2014.

⁶⁰ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Resolution A/RES/54/263. 25 May 2000, entry 18 January 2002.

⁶¹ UN General Assembly, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Resolution A/RES/54/263. 25 May 2000, entry 12 February 2002.

⁶² UN OHCHR, Children's rights boosted as UN body now able to hear individual complaints. 14 January 2014. Available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14166&LangID=E>>.

⁶³ Katherine, Update on the Third Optional Protocol to the Convention on the Rights of the Child, NGO Committee on Unicef, 2013. Available at: <<https://www.ngocomunicef.org/2013/05/05/update-on-the-third-optional-protocol-to-the-convention-on-the-rights-of-the-child/>>.

the previous Optional Protocols, if a violating State is a party to that document.⁶⁴ Third Optional Protocol also reinstates principles of the Convention and subjects States Parties to the competence of the Committee.⁶⁵ It imposes obligation upon States to protect those involved in a complaint procedure and to refrain from publicly revealing their identity.⁶⁶

Apart from the Optional Protocol, children's participation has also been included on the field level into monitoring mechanisms of national institutions in cooperation with UN bodies, UNICEF and various NGOs (ex. Women's Commission for Refugee Women and Children), with a purpose of evaluating and adjusting humanitarian responses in times of crisis.⁶⁷ For example, peace talks in Uganda, supervised and coordinated by three NGOs and UNICEF, have resulted in agreement between the government of Uganda and the Lord's Resistance Army in which over 200 children from local regions have participated and influenced articles of the agreement so that it pays greater attention to their interests and rights.⁶⁸ During crisis in Kosovo in 1999, about 20.000 young boys and girls formed Youth Councils, connecting refugee camps and actively improving living conditions and organizing events to entertain the youth.⁶⁹

Such programs and others which are promoting child's rights are a primary duty of Member States, but since the matter is of such importance, it is also a duty of the whole international community. UN Security Council and General Assembly have both already adopted a wide range of resolutions on this topic⁷⁰ and such political engagement is already receiving its results on the field.

1.2 Children as perpetrators

Although giving the youth a voice to express their free will is a significant and an adequate step towards achieving a better life for them, we must still refrain from treating them as adults, when it comes to their involvement in violent actions and criminal activity, especially in the case of child soldiers. It is hard to view enlistment of children to army as voluntary, since they were most likely exposed to some sort of coercion: whether political, cultural, economic or social.⁷¹ There are many members of armed groups spread across cities in search of vulnerable children, which they prey upon and either abduct them or spread propaganda of false promises, to which these children are susceptible to.⁷² A situation in Sierra Leone⁷³ has proven that most of children's recruitment begins with their abduction, after which they are forced to commit atrocities against their loved ones and community, so that they would not be able to return home. In this situation, most children would decide to stay with the armed groups/rebels, since as

⁶⁴ Ibid.

⁶⁵ UN GA, OP-CRC on a communications procedure, 2011.

⁶⁶ UN General Assembly, Resolution A/66/457, article 4, 2011.

⁶⁷ UNICEF, Machel Study. 2009. Pp. 35.

⁶⁸ Ibid. Pp. 36.

⁶⁹ Ibid. Pp. 37.

⁷⁰ See chapter 2.

⁷¹ UNICEF, Machel Study. 2009. Pp. 37.

⁷² OSRSG, Working Paper n. 3. 2011. Pp. 9.

⁷³ William A Schabas, International Criminal Accountability and the Rights of Children, Hague Academic Press, 2005. Pp. 30.

outcasts of their own home communities those rebel groups are their only way of receiving any protection. Legally speaking a situation is even more complicated, when they join some political violent movements voluntarily and identify themselves with them and their principles, since that makes it difficult to view them as innocent victims of violent pressures. There were also cases when parents volunteered their children and even paid for their initiation, since they were convinced that this would give their children mystical powers that would make them resilient to bullets and thus protected.⁷⁴ But even when a child joins armed groups voluntarily, he still lacks mental capacity of comprehending his actions or the ability of making mature judgement.⁷⁵ Even more so when during commission of the atrocities they are often under influence of alcohol or some other drugs and under the pressure of their superior commanders who have most likely played with their minds sufficiently to make them commit violent acts.⁷⁶

It is due to this lack of mental maturity that such child perpetrators should not be prosecuted, but in some other form sanctioned and rehabilitated; they should get proper assistance to come to terms with their acts, accept them and overcome them.⁷⁷

2. International legal documents

In this chapter we shall have an overview of the international legal framework on children in armed conflict with regard to the field of international humanitarian, human rights and criminal law. Documents regarding this issue originate from various bodies and organizations and impose a different level of obligation upon states; some are binding and some non-binding, sometimes serving purely as an explanatory document in addition to the other ones.

2.1 The Convention on the Rights of the Child and the Optional Protocol on children in armed conflict

The main documents regarding children in the armed conflict are the UN GA Convention on the Rights of the Child (1989)⁷⁸ and its Optional Protocol on the involvement of children in armed conflict (2002).⁷⁹ The Convention is a general document that provides a ground for a child-rights based approach to any kind of action or intervention in the field. Most important part of the Convention consists of its general principles, which should be followed and respected in any kind of humanitarian, peace-building or other action which affects children. Its main substantive objective is to ensure ‘the survival and development’⁸⁰ of children, while its basic principles for achieving this objective are the principle of non-discrimination,⁸¹ the above

⁷⁴ Ibid.

⁷⁵ OSRSG, Working Paper n. 3. 2011. Pp. 10.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ UN GA, CRC, 1989, Article 12.

⁷⁹ UN GA, OP-CRC on the involvement of children in armed conflict, 2000.

⁸⁰ Karin Arts, 2005. Pp. 10.

⁸¹ UN GA, CRC, 1989. Article 2.

discussed participation of children⁸² and the best interest of children.⁸³ A well-balanced combination of those three principles is the most efficient recipe for a quality intervention.⁸⁴ It provides guidance on how children were supposed to be treated in different fields of their lives and development.⁸⁵

Even though this Convention is nowadays the most important document on the rights of the child, it is not the first one. Expression ‘rights of the child’ has already been in use since its first codification in the Declaration of the Rights of the Child,⁸⁶ which was issued and adopted by the League of Nations in 1924.⁸⁷ There are also some provisions relating to the protection of children included in the Universal Declaration of Human Rights (1948),⁸⁸ the Fourth Geneva Convention (1949) and the Declaration of the Rights of the Child (1959).⁸⁹ Fourth Geneva Convention provides for ‘*measures relating to child welfare*’,⁹⁰ imposing an obligation upon States to take care of children below the age of fifteen, that are orphaned or separated from their families, in a neutral country/territory for the time of the armed conflict; and a duty for the Occupying Power to cooperate with local authorities in order to maintain proper working of the institutions in charge of care and education of children and make sure they are properly identified.⁹¹ Also its Additional Protocol I and II contain special provisions relating to protection of children in armed conflict, first one in international and second one in non-international armed conflict. They refer to obligation of parties to combat to refrain from recruiting children, younger than the age of fifteen.⁹²

However, it was only with the present day Convention that rights of children became a separate body of law, when slowly also norms relating to children were becoming a part of international customary law.⁹³ It was a product of long and difficult deliberation of UN Member States, as it took about 10 years to finalize it.⁹⁴

Monitoring body for its implementation is the Committee on the Rights of the Child, which adopts its General Comments for more comprehensive interpretation of the Convention’s articles. This Committee, together with the Convention and its Optional Protocols, provides for fundamental, comprehensive and rather detailed international legal standards in the field of children’s rights.⁹⁵ It also cooperates with other UN Committees, in charge of monitoring

⁸² UN GA, CRC, 1989, Article 12.

⁸³ UN GA, CRC, 1989, Article 3.

⁸⁴ Karin Arts, 2005. Pp. 16.

⁸⁵ James R. Himes, *Implementing the convention on the rights of the child: resource mobilization in low-income countries*. The Hague: Nijhoff Publishers. 1995. Pp. v.

⁸⁶ League of Nations, *Geneva Declaration of the Rights of the Child*, 26 September, 1924.

⁸⁷ William A Schabas, 2005. Pp. 19.

⁸⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948. Particularly articles 25 and 26.

⁸⁹ William A Schabas, 2005. Pp. 20.

⁹⁰ ICRC, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, entry into force 21.10.1950. (GC IV). Article 24.

⁹¹ *Ibid.* Article 50.

⁹² Vesselin Popovski, *International Criminal Accountability and the Rights of Children*, Hague Academic Press, 2005. Pp. 38.

⁹³ William A Schabas, 2005. Pp. 20.

⁹⁴ James R. Himes. 1995. Pp. v.

⁹⁵ Jane Connors, *Council of Europe, International justice for children*. Strasbourg: Council of Europe Publishing, 2008. Pp. 46.

specific UN treaties on human rights, since they often run across issues, which concern children's rights as well.⁹⁶

States are obligated to submit regular reports, through which Committee can supervise and evaluate the implementation in each given country and then together with State representatives reaches recommendations, which should guide the State in its future actions.⁹⁷ It has been striving to ensure that articles of the Convention are being respected even in the times of armed conflict, with a consideration of how much armed conflicts can affect rights of children. These provisions cannot be a subject to derogation at any time.⁹⁸

As the Committee has discovered already in the first years of its existence, the main achievement of the Convention was that national governments have finally given more thought to the issue of children's rights and placed it higher on their agendas, by amending their legislations or even creating a special body for children's rights, such as an ombudsman.⁹⁹ Even national courts have reacted to the adoption of Convention; they have been overruling legislation which was inconsistent with the Convention's principles and creating verdicts that would promote those principles, thus bridging the gap between national and international legal systems.¹⁰⁰

However, it were not only the national mechanisms that were affected by the Convention; also international institutions and NGOs have started to pay greater attention to problems of child laborers, child pornography and prostitution as well as children in armed conflict.¹⁰¹ Important attribute towards this end is the fact that the Convention is legally binding upon States Parties. Obligations of States are rather those of conduct than those of result; meaning that they must strive towards achieving better lives for children with the maximum of their available resources, but there is no ending limit to this struggle.¹⁰² In practice this means that it is not enough to implement measures into the legislation, but there must be steps taken also in the field, trainings of staff, which is dealing with children, such as teachers, psychologists and other health care personnel, police, social workers and so on.¹⁰³ Such all-encompassing changes need time to be implemented and therefore Convention requires a 'progressive' method of achieving its goals. They are also limited by the resources that are available and thus they should be implemented to the maximum of resource availability, having in mind that not all goals can immediately be accomplished in all the different States Parties.¹⁰⁴

Very important provision is proscribed in article 38, which prohibits the children under age of fifteen to take a direct part in hostilities and thus obliges parties to refrain from recruiting

⁹⁶ Ibid. Pp. 46-47.

⁹⁷ Ibid. Pp. 44.

⁹⁸ UNICEF, Machel Study. 2009. Pp. 59.

⁹⁹ James R. Himes. 1995. Pp. vi.

¹⁰⁰ Marta Santos Pais, Council of Europe, International justice for children. Strasbourg: Council of Europe Publishing, 2008. Pp. 53.

¹⁰¹ James R. Himes. 1995. Pp. vi.

¹⁰² Ibid. Pp. vii.

¹⁰³ Ibid. Pp. viii.

¹⁰⁴ Ibid.

them into armed forces.¹⁰⁵ This age was negotiated after a long political debate and was a result of a compromise, even though this age seemed too low for many of participants; for comparison, African Charter that was adopted only a few months later, had decided for the appropriate age to be eighteen.¹⁰⁶

The Optional Protocol has been promoted by the original Machel Study in 1996, designed to strengthen provisions of the Convention. Main duties of States, according to this Protocol, are to ensure that members of armed forces, who are younger than 18 years, ‘*do not take a direct part in hostilities*’¹⁰⁷ and that persons younger than 18 years are also not forcibly recruited.¹⁰⁸ It lifts the minimum age limit of voluntary recruitment from the Convention, which is set to 15. This guarantees a higher protection for the children and it is in my opinion a step in the right direction, since persons in the age between 15 and 18 are still only children and should not participate in hostilities or be otherwise exposed to the dangers of the armed conflict.

The Protocol goes even further and imposes some even stricter provisions for the non-state armed groups, which are not supposed to recruit, enlist or in any way use persons under the age of 18.¹⁰⁹ States are required to file reports to the Committee on the Rights of the Child, which have to be done according to the special guidelines that were adopted to provide states with further instructions on the reports.¹¹⁰ In these reports, as far as regards the prohibition of forced recruitment, States must provide information that explains the basis on which volunteers have applied to armed forces (for example financial incentives, scholarships, etc.). Such reports must be submitted within first two years and later on every five years. States must also take care that all persons recruited contrary to the above mentioned provisions are demobilized and that victims are properly rehabilitated and socially reintegrated.¹¹¹

2.2 International Labour Organization’s Convention 182

Machel Study has also inspired the International Labor Organization (ILO) which adopted Convention 182 in 1999, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.¹¹² It contains also provisions on forced recruitment and use of children in armed conflict.¹¹³ The allowed age for child recruitment was raised to eighteen years, which was also one of the reasons for this age to be accepted later on in the Optional Protocol to CRC. It defined compulsory child recruitment to armed forces as ‘one of the worst forms of child labor’¹¹⁴ and thus States Parties should ban it as a matter of urgency.¹¹⁵

¹⁰⁵ UN GA, CRC, 1989. Article 38.

¹⁰⁶ Vesselin Popovski, 2005. Pp. 38.

¹⁰⁷ UN GA, OP-CRC on the involvement of children in armed conflict, 2000. Article 1.

¹⁰⁸ Ibid. Article 2.

¹⁰⁹ Ibid. Article 4(1).

¹¹⁰ UNICEF, Machel Study. 2009. Pp. 60.

¹¹¹ UN GA, OP-CRC on the involvement of children in armed conflict, 2000. Articles 6 and 7.

¹¹² ILO, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), 17 June 1999, entry into force 19 November 2000, Geneva. (C182).

¹¹³ UNICEF, Machel Study. 2009. Pp. 60.

¹¹⁴ Vesselin Popovski, 2005. Pp. 39.

¹¹⁵ ILO, C182, 1999.

While implementing these prohibitions, they should also include articles for penal sanctions and all necessary measures to ensure prevention of child labour, ensure removal of children from worst forms of labour, their rehabilitation and reintegration by, among other things, providing them with education or vocational trainings and while implementing all these measures paying special attention to the girls.¹¹⁶

2.3 African Union documents

Finally international efforts have paid off also on the regional level, when African Union had adopted African Charter on the Rights and Welfare of the Child.¹¹⁷ On the Fourth Forum of experts on children's rights they have pledged to make sure that children will participate in the next Forums and to involve children further in the work of the African Committee of Experts on the Rights and Welfare of Children (ACERWC).¹¹⁸ This Forum has recommended to the Committee to issue guidelines on how exactly should children participate.¹¹⁹ They have also addressed the problem of forced displacement of children during armed conflicts and pushed State Parties to ratify and enforce the African Union Convention for the Protection and Assistance of Internally-Displaced Persons in Africa (also known as the Kampala Convention) and thus grant protection to those who were displaced, especially women and children.¹²⁰ We will speak more about the regional organizations in the scope of the fourth chapter.

2.4 The Paris Principles and the Paris Commitments

Other important documents are also the Paris Commitments and the Paris Principles, adopted by UNICEF in 2007. They serve as non-binding guidelines on protection from recruitment of children or use in armed conflict, especially with regard to more fragile and vulnerable groups, such as girls or the displaced;¹²¹ while main principles being non-discrimination and best interest of the child, which are most likely the results of following the Convention on the Rights of the Child. Even though they are non-binding, they are a valuable document, because they contribute to international law by providing explanation and guidance on how binding documents should be used.

They were a product of review of Cape Town Principles, adopted by the UNICEF and an NGO Working Group on the Convention of the Rights of the Child in 1997 with a purpose of creating a plan for prevention of recruitment and demobilization of children and their reintegration into society.¹²² They were widely accepted and became the main tool for pointing

¹¹⁶ ILO, C182, 1999. Article 7.

¹¹⁷ UNICEF, Machel Study, 2009. Pp. 60.

¹¹⁸ Fourth Forum of the ACERWC, Summary Report, 18-20 March 2011, Ethiopia. Pp. 3.

¹¹⁹ Ibid. Pp. 5.

¹²⁰ Ibid. Pp. 4.

¹²¹ UNICEF, Machel Study, 2009. Pp. 60.

¹²² The Paris Principles: principles and guidelines on children associated with armed forces or armed groups, February 2007. Pp. 4.

the direction of further development of norms in this area. In the decade following the Cape Town Principles, many experiences and practices were gained in this field and so formation of the Paris Principles was much more knowledge-based and inclusive of many different actors. As the UNICEF and its partner organizations conducted reviews in the years prior to the Paris Principles, they found a need for further comprehensive documents; one of a shorter and concentrated nature, which later on became the Paris Commitments to Protect Children Unlawfully Recruited or Used by Armed Forces or Armed Groups; and the second one to complement it in a greater detail in order to ensure guidance for those implementing the first document, and therefore the Paris Principles were adopted.¹²³

Paris Commitments are a short pledge that was adopted by ministers and representatives of countries, devoted to upholding the Cape Town Principles and its renewed version of the Paris Principles while engaging in all their future actions in political, humanitarian, diplomatic or other action in accordance with their international obligations.¹²⁴

The creation of the Principles began with meetings at which child rights actors were sharing experience and lessons on how children familiarize themselves and become involved with armed groups and forces; and about how they eventually leave. It was based on informal ways, learned in practice, and not so much on legal aspects that can be often distant from situation in reality. They have pursued the goal of releasing children from being recruited, regardless of whether it was during the actual combat or afterwards.¹²⁵

As has been also recognized by the Paris Principles, States have the primary obligation, together with armed groups, to ensure protection to civilians and children in particular; therefore they should at least ensure humanitarian assistance to them, when they are unable to provide it themselves. What Paris Principles are mostly striving for are sustainable solutions for child safety that should be achieved through cooperation of civil society, humanitarian actors, peace-keeping operations and development and reconstruction actors and it should be done so by the earliest stage possible, immediately after the child recruitment is identified as a possibility.¹²⁶ The Paris Principles are thus intended to give guidance to all the different actors that should be cooperating in the field and use those principles as a baseline in all their actions and operations that affect children, especially humanitarian interventions and peace-building missions.

2.5 Statute of the International Criminal Court

International norms derive also from the Rome Statute,¹²⁷ establishing the International Criminal Court. The Court has placed a great attention on children, which are often main victims and witnesses of war. Such considerations were included in the Statute with joint efforts of its

¹²³ Ibid. Pp. 5.

¹²⁴ The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups, February 2007. Paras 1 and 2.

¹²⁵ The Paris Principles. 2007. Pp. 5.

¹²⁶ The Paris Principles. 2007. Pp. 6.

¹²⁷ International Criminal Court, the Rome Statute, 17 July 1998, entry into force 1 July 2002.

creators in cooperation with UNICEF and similar child-rights promoting partners.¹²⁸ It criminalizes as a war crime the enlistment or use of children under the age of 15,¹²⁹ as well as rape and other acts of sexual violence committed against children¹³⁰ and it refers to situations which happen in both international and non-international armed conflicts.¹³¹ I find it rather unfortunate that the Court decided to put the age limit of recruitment and enlisting of children to fifteen, as this decreases the level of protection of youth between the ages of fifteen and eighteen.

It also contains prohibition on international attacks directed towards protected objects,¹³² which also means schools.¹³³ ICC established an independent judicial mechanism for controlling individual criminal responsibility for the above mentioned crimes and for providing accountability for crimes against children; even its first trial has addressed exactly that: under-age recruitment of child soldiers.¹³⁴ It was a case of Thomas Lubanga,¹³⁵ who was in fact convicted solely on charges of unlawful conscription and enlistment of children.¹³⁶ However, Special Court for Sierra Leone had stated in a case of *Prosecutor v. Norman*¹³⁷ that prohibition of crime of recruitment was already a part of international customary law long before the Rome Statute and it was therefore itself capable of prosecuting crimes committed since 1996.¹³⁸ Even so, trials against perpetrators of six grave violations against children are still quite a rarity and until this has been changed, the State compliance is not very likely to be imposed.¹³⁹

2.6 The Geneva Conventions

Of course issues of child protection are also closely related to international humanitarian law. General protection is granted to them as civilians by the Fourth Geneva Convention¹⁴⁰ and special protection as children in additional 20 provisions, together with Additional Protocols I and II.¹⁴¹ Additional Protocol I prohibits recruitment of children younger than the age of 15 and their direct participation in hostilities,¹⁴² whereas the second Protocol prohibits also their indirect participation.¹⁴³

¹²⁸ Marta Santos Pais, 2008. Pp. 55.

¹²⁹ ICC, the Rome Statute, 1998. Article 8(b)(xxvi).

¹³⁰ Ibid. Article 8(b)(xxii).

¹³¹ Vesselin Popovski, 2005. Pp. 39.

¹³² ICC, the Rome Statute, 1998. Article 8(b)(ii).

¹³³ Marta Santos Pais, 2008. Pp. 55.

¹³⁴ Ibid. Pp. 56.

¹³⁵ The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, 14 March 2012.

¹³⁶ OSRSG, Working Paper n. 3, 2011. Pp. 9.

¹³⁷ Prosecutor v. Norman, SCSL:-2004-14-AR72(E), 31 May 2004.

¹³⁸ Vesselin Popovski, 2005. Pp. 39.

¹³⁹ UN GA & SC, Report of the Secretary-General, 2013. Pp. 4.

¹⁴⁰ ICRC, GC IV. 1949.

¹⁴¹ UNICEF, Machel Study, 2009. Pp. 61.

¹⁴² ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 08.06.1977, entry into force 07.12.1978. Article 77.

¹⁴³ ICRC, Treaties and States Parties to such Treaties. Available at: <<http://www.icrc.org/ihl/INTRO/595?OpenDocument>>.

Some other international legal acts provide protection on different grounds, but also cover children which have been affected by armed conflict. Such examples are Convention Relating to the Status of Refugees and its Protocol and the Mine Ban Treaty of 1999.¹⁴⁴

But at the end of the day it does not matter how great and comprehensive the international documents and norms on child protection are, as long as they are not properly implemented and enforced on the national level.

2.7 Domestic legislation

There still remains a great gap between international and domestic law and it is a heavy challenge translating those norms from former to the latter. This is why monitoring mechanisms such as the Committee on the Rights of the Child are so important, even though with a lack of political will of States they might prove to be insufficient in many cases.¹⁴⁵ States have obligations to report to such bodies and they are a subject to ‘naming and shaming’ or peer pressure mechanisms when they fail to do so; however, not all States are equally affected or threatened by these consequences and in the absence of will or capacity to comply with their obligations, there are no sufficiently convincing sanctions to force them.¹⁴⁶

When States struggle to implement international norms, they also get a lot of guidance from non-binding international documents, designed to help them in proper interpretation of legal documents and rules. We shall see a good example of such helpful tool in the next subchapter.

2.8 The UN Approach on Justice for Children

As far as the impunity is concerned, there has been quite some progress made in the past decades with establishment of international tribunals and the ICC. But in order for the transitional justice to be able to affectively deal with the abuses and violations of the past, children must be taken into a consideration and their rights must be properly represented in any kind of a peace building and reconciliation process.¹⁴⁷ With this in mind, the UN adopted the Approach on Justice for Children in September 2008,¹⁴⁸ providing guidance for all national bodies to implement standards and rights of children in their work, especially when law related. Justice for children in armed conflict means that child victims of international crimes are guaranteed an access to judicial, non-judicial and traditional justice mechanisms during and after the course of armed conflict or commission of international crimes and that they can obtain a remedy through those mechanisms.¹⁴⁹

¹⁴⁴ UNICEF, Machel Study, 2009. Pp. 62-63.

¹⁴⁵ Jane Connors, 2008. Pp. 46.

¹⁴⁶ Ibid.

¹⁴⁷ UNICEF, Machel Study, 2009. Pp. 66.

¹⁴⁸ UN Guidance Note of the Secretary-General: UN Approach to Justice for Children. September 2008.

¹⁴⁹ OSRSG, Working Paper n. 3. 2011. Pp. 11.

UN Approach contains principles that have to be applied in all situations, including during armed conflict (or even more so then).¹⁵⁰ First principle follows the Convention and proscribes that in all situations, child's interest should be given priority.¹⁵¹ Second principle guarantees equal treatment to all children, which is in line with second principle from the Convention; non-discrimination; and so is the third general principle, providing for child participation and ensuring children to express their views freely and be heard.¹⁵² With regard to the third principle it is worth mentioning that children who participated with the Truth and Reconciliation Commission¹⁵³ have expressed the wish that perpetrators of crimes during armed conflict would not go unpunished, but be held accountable for their acts; even more so when perpetrators lived in their region and personally caused harm to the child or their family.¹⁵⁴ They have also expressed the wish of having their rights and living situations restored. Seeking justice is therefore an important wish and interest of children.

Other principles refer to freedom from abuse, exploitation or violence in general; the right to be treated with dignity and compassion (meaning also their special needs and interests should be approached with respect); right to a fair trial and to have all legal rights and guarantees in the due process respected.¹⁵⁵

The UN Approach emphasizes the need for coordinated national planning, to provide proper safeguards for children's rights already at the earliest stage possible in order to facilitate environment in which human rights can be realized and Millennium Development Goals can be reached.¹⁵⁶ Main goal is to ensure protection by justice systems for all children and thus UN Approach makes recommendations on strengthening the justice and social service systems with regard to particularities of special groups of children (girls or immigrants).¹⁵⁷ A result of such justice should be reparations to the victims, which serve as a recognition of injustice done to them, recognizes their loss and suffering and restitutes them to the previous state as much as possible.¹⁵⁸ They can come in a form of restitution (such as release from custody or restoration of property), financial compensation for bodily or emotional harm, rehabilitation services, satisfaction (such as public acknowledgement of truth for example) or guarantees of non-repetition, which can be done through better legislation.¹⁵⁹

Protection has to be granted within the procedures of justice systems, when children are encountered in roles of victims, witnesses or even as perpetrators of the crimes.¹⁶⁰ When children testify in a case regarding armed conflict, their interests must be ensured even more than usually, as such testimony might be dangerous for them in spite of securing their right to be heard; they

¹⁵⁰ UN Guidance Note of the SG. 2008. Pp. 1.

¹⁵¹ Ibid. Pp.2.

¹⁵² Ibid. Pp. 2.

¹⁵³ OSRSG, Working Paper n. 3, 2011. Pp. 12.

¹⁵⁴ Ibid. Pp. 12.

¹⁵⁵ UN Guidance Note of the Secretary-General, 2008. Pp. 3.

¹⁵⁶ Ibid. Pp.1.

¹⁵⁷ UNICEF, Machel Study, 2009. Pp. 67.

¹⁵⁸ OSRSG, Working Paper n. 3, 2011. Pp. 24.

¹⁵⁹ Ibid.

¹⁶⁰ UN Guidance Note of the Secretary-General, 2008. Pp.1.

could become victims to reprisals or be re-traumatized after having to re-live the situation again.¹⁶¹

One of the principles also refers to implementing children's issues in all of the rule of law efforts;¹⁶² which means that such issues should be encompassed in national strategies and action plans in all possible areas of development, be included in the national budget and international aid programs. It is essential that States provide all necessary resources to make sure that children have access to justice.¹⁶³

Implementation of children issues should begin at the highest level of domestic law – the Constitution, with basic general principles and spread from there on to national laws and other legal acts. As already mentioned above, all staff that deals with children should be properly trained, but even more; there should be appropriate Codes of Conducts for each specific profession, which should include interests and considerations of children.¹⁶⁴ Among such professions are especially judiciary personnel, staff of detention facilities, lawyers, social workers, paralegals, etc.

Another area important for the UN Approach is a matter of reintegrating children back into society after a deprivation of liberty, which should in any case be only a measure of last resort and should not take longer than absolutely necessary to reach its purpose. It is therefore vital to promote restorative justice.¹⁶⁵ However, recent Secretary-General's report¹⁶⁶ has disclosed that this principle is severely violated in practice and that parties to the conflict are increasingly depriving children of liberty, often even without criminal charges, under grounds of national security, when they are suspected of being affiliated with armed groups.

3. The Six Grave Violations

The Six Grave Violations were adopted by a working paper of the Special Representative, in order to give international actors, working on the field of children and armed conflict, a strong focus, as to which issues are the most important ones and what should be their primary concerns when assisting children. They are not an official legal document, but they have a strong legal basis to support them, deriving from the Geneva Conventions and the CRC, as well as some other documents which we have seen in the previous chapter. This gives them a strong legal value, despite of their non-binding character.

Those six violations were selected on the basis of them being relatively easy to monitor and verify, but also due to their severe nature and consequences they cause in the lives of the affected children. Their legal basis lies in international humanitarian, human rights and criminal law, observed and created mostly by the United Nations. Secretary-General's annual report, listing of parties responsible for four out of six grave violations, the creation of MRM, the

¹⁶¹ OSRSG, Working Paper n. 3, 2011. Pp. 16.

¹⁶² UN Guidance Note of the Secretary-General, 2008. Pp. 3.

¹⁶³ OSRSG, Working Paper n. 3, 2011. Pp. 12.

¹⁶⁴ UN Guidance Note of the Secretary-General, 2008. Pp. 4.

¹⁶⁵ UNICEF, Machel Study, 2009. Pp. 67.

¹⁶⁶ UN GA & SC, Report of the Secretary-General, 2013. Pp. 3.

Working Group of Security Council and the dialogue with parties that have been listed all provide for helpful and effective tools in combating the problem of children in armed conflict.¹⁶⁷ We will discuss these tools closely in the next chapter.

First grave violation is the recruitment and use of the children in armed forces from which derive two duties on States: they must not recruit or use children and they must also prevent children from taking a direct part in hostilities. However, as we have seen in the previous chapter, there are differences of opinion as to which age should be used as the maximum for considering young person a ‘child’; some documents have set the limit on 15 and others on 18. Setting the limit to 18 provides a greater protection to children, as it encompasses also those who are in between these limits and can most certainly not be treated as adults yet. Unfortunately, as the jurisprudence of the SCSL¹⁶⁸ and the ICC¹⁶⁹ has shown, individual criminal responsibility has been invoked in cases of recruiting children younger than the age of 15.

Parties are bound by these provisions also when during a combat they capture children of the opposite party; international protection should be granted to them in all circumstances. As required by the Optional Protocol¹⁷⁰ and the Paris Principles,¹⁷¹ special care must be taken also during process of demobilization and reintegration, when children should receive a treatment for ‘psychological recovery and social integration’.¹⁷²

To the category of this first Grave Violation falls also a detention of children that are associated with armed groups. It can only be used in conformity with domestic law as a last resort measure and only for the minimum amount of time necessary. They have to be granted special protection and all safeguards of a fair trial procedure, although States should use all other non-judicial methods for their rehabilitation.¹⁷³

Second grave violation is killing and maiming of children, which invokes a State obligation to protect them from such violations. Right to life is inherent to every human being and States should make sure it is respected, protected and fulfilled. Children’s right to survival and healthy development¹⁷⁴ is also one of the basic rights enshrined in the Convention of the Rights of the Child.¹⁷⁵

Every person who is not taking active part in hostilities is granted international protection and should therefore be treated humanely in all circumstances. This is a basic principle of customary international law and should apply to children even more than anyone else. It is codified in common article 3 of the Geneva Conventions,¹⁷⁶ applies in all situations of armed conflict and allows no derogations.¹⁷⁷

¹⁶⁷ Office of Special Representative of the Secretary-General, *The Six Grave Violations Against Children During Armed Conflict*: The Legal Foundation. 2013. Pp. 9.

¹⁶⁸ Prosecutor v. Norman, SCSL:-2004-14-AR72(E), 31 May 2004.

¹⁶⁹ ICC, the Rome Statute, 1998, Article 8(b)(xxvi).

¹⁷⁰ UN GA, OP-CRC on the involvement of children in armed conflict. 2002. Article 6(3).

¹⁷¹ The Paris Principles 2007. Paras. 3.11-3.13.

¹⁷² OSRSG, *The Six Grave Violations*. 2013. Pp. 12.

¹⁷³ *Ibid.* Pp. 13.

¹⁷⁴ UN GA, CRC, 1989, Article 6.

¹⁷⁵ David Parker, Claudio Sepulveda, *Implementing the convention on the rights of the child: resource mobilization in low-income countries*. The Hague: Nijhoff Publishers. 1995. Pp. 69.

¹⁷⁶ ICRC, GC IV., 1949, article 3.

¹⁷⁷ OSRSG, *The Six Grave Violations*. 2013. Pp. 14.

It is underlined by two basic principles of humanitarian law, also enshrined in the Geneva Conventions¹⁷⁸ and its Additional Protocols,¹⁷⁹ namely the principle of distinctions and the principle of proportionality. First one refers to the distinction between civilian and military objectives; second ones are the legitimate targets. It prohibits indiscriminate attacks that would be indifferent to civilian damages, for example use of landmines or chemical weapons. The principle of proportionality refers to attacks that would cause a civilian damage, which is excessive in comparison to military gain.¹⁸⁰

This grave violation of children's rights was added to the listing of parties in breach of their international violations as monitored by Secretary-General's annual report in 2009.¹⁸¹ If violations such as killing and maiming are done against children, it has been recognized as an aggravating circumstance against perpetrator, as decided by the jurisprudence of ICTY.¹⁸²

An alarming data with regard to this violation refers to the use of armed drones or unmanned aerial vehicles, which have caused a lot of child casualties during the past years. They have almost no regard for the principle of proportionality or distinction and cases of child damages are often not even investigated afterwards.¹⁸³ Such drones bring a lot of fear and terror among civilian population, resulting in more than just physical harm; sometimes children were so afraid of them, that they would stop going to school.¹⁸⁴ This is prejudicial to their right to education, which we will say more about under the fourth grave violation.

Third grave violation is a sexual violence against children. Acts of sexual violence can be categorized as a war crime, crime against humanity or even genocide, when committed with a specific genocidal intent. Like violation of killing and maiming children, it was also added as a trigger for listing parties by the Secretary-General in his Annual Report.¹⁸⁵ Article 27 of the Geneva Convention prohibits sexual offences against women with no regard to age, therefore applicable also to girls.¹⁸⁶ International courts and tribunals, especially ICTY,¹⁸⁷ have established a jurisprudence by which a rape can amount to torture and is thus prohibited without any exceptions or derogations.¹⁸⁸ Security Council has stated in its Resolution 1820¹⁸⁹ and confirmed it with several further resolutions that sexual violence can endanger international peace and security, when it is committed as a strategy or war or a part of a widespread attack against civilian population.¹⁹⁰

Grave Violation number four, and the last violation that serves as a trigger for the listing of the Secretary-General, are the attacks against schools and hospitals. These are civilian institutions with a specific value, as it has been shown that children often find refuge and shelter during armed conflict in them. Trend of attacking these facilities has not decreased in the past

¹⁷⁸ ICRC, GC IV, 1949. Article 3.

¹⁷⁹ ICRC, Protocol I, 1977. Article 48.

¹⁸⁰ OSRSG, The Six Grave Violations. 2013. Pp. 14.

¹⁸¹ Ibid. Pp. 15.

¹⁸² Prosecutor v. Kunarac, Kovac̃ and Vukovic, ICTY, IT-96-23 & IT-96-23/1-A, 12 June 2002. Para. 355.

¹⁸³ UN GA & SC, Report of the Secretary-General, 2013. Pp. 3.

¹⁸⁴ Ibid. Pp. 3.

¹⁸⁵ OSRSG, The Six Grave Violations. 2013. Pp. 16.

¹⁸⁶ ICRC, GC IV., 1949. Article 27.

¹⁸⁷ Prosecutor v. Anto Furundzija, ICTY, IT-95-17/1-A, 21 July 2000.

¹⁸⁸ OSRSG, The Six Grave Violations. 2013. Pp. 16.

¹⁸⁹ UN Security Council, Resolution S/RES/1820, 19 June 2008.

¹⁹⁰ OSRSG, The Six Grave Violations. 2013. Pp. 17.

years and Security Council has been increasingly raising awareness and concern on the topic, particularly in its resolution 1998 (2011).¹⁹¹ Such attacks are a direct violation of the before discussed principle of distinction, since schools and hospitals can never serve as a legitimate military target and the damage such attacks cause will unlikely be estimated to anything else than excessive, unless they were being used for military purposes at the time of attack.¹⁹² Military use of them is another problem, since it is prejudicial to children's right to education and it puts them at risk of attack.¹⁹³

Those attacks therefore amount to grave breaches of the laws of war and of the international humanitarian law, as enshrined in the Geneva Conventions. First codification of the prohibition against the attacks on hospitals and medical personnel goes way back, to the first Geneva Convention (1864)¹⁹⁴ and the Hague Conventions of 1899¹⁹⁵ and 1907.¹⁹⁶ Similar prohibitions are contained also in other international documents, such as the Convention on Certain Conventional Weapons,¹⁹⁷ Amended Protocol II and Protocol III, which are prohibiting use of mines or similar weapons to be used against schools or hospitals.¹⁹⁸

Despite the high importance of the right to education, this right was one of the last human rights to gain international attention.¹⁹⁹ Today it is codified in many international documents. The Convention on the Rights of the Child²⁰⁰ guarantees the rights to health and to education and it can also be found in the Universal Declaration of Human Rights²⁰¹ and the International Covenant on Economic, Social and Cultural Rights.²⁰² Every State has their own laws on obligatory education, which mostly refer to children between the ages of 6-16 years old, to ensure that right to education is properly implemented.²⁰³ Attacks towards hospitals and school are a clear prejudice for fulfilling those rights.²⁰⁴

It was made a trigger for Secretary-General's listing in 2011 with a Security Council's Resolution 1998,²⁰⁵ which pressed parties to stop any conduct that could endanger children's right to education and it recommended to the Secretary-General to further monitor use of schools for military means.²⁰⁶

¹⁹¹ UN Security Council, Resolution S/RES/1998, 12 July 2011.

¹⁹² OSRSG, *The Six Grave Violations*. 2013. Pp. 18.

¹⁹³ UN GA & SC. Report of the Secretary-General, 2013. Pp. 3.

¹⁹⁴ ICRC, *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*, article 1 and 2. Geneva, 22 August 1864, entry into force 22 June 1865.

¹⁹⁵ ICRC, *Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. The Hague, 29 July 1899, entry into force 4 September 1900.

¹⁹⁶ ICRC, *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. The Hague, 18 October 1907, entry into force 26 January 1910.

¹⁹⁷ *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*, Geneva, 10 October 1980, entry into force 2 December 1983.

¹⁹⁸ OSRSG, *The Six Grave Violations*. 2013. Pp. 19.

¹⁹⁹ James R. Himes, 1995. Pp. v.

²⁰⁰ UN GA, CRC, 1989. Articles 24, 25, 27, 28.

²⁰¹ UN GA, UDHR, 1948, article 26.

²⁰² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, entry into force 3 January 1976. Article 13,

²⁰³ Suzanne Bischoff, 1999. Pp. 163.

²⁰⁴ OSRSG, *The Six Grave Violations*. 2013. Pp. 19.

²⁰⁵ UN SC Resolution S/RES/1998, 2011.

²⁰⁶ OSRSG, *The Six Grave Violations*. 2013. Pp. 20.

Important step towards preventing this violation was taken in 2012, when various actors cooperating in the field, representing States, regional organizations, child rights protectors and international law advocates, called the Global Coalition to Protect Education from Attack, adopted the Lucens Guidelines on the military use of schools²⁰⁷ that provide basic principles which should be followed by governments, when adopting legislation on the topic.²⁰⁸

The fifth Grave Violation refers to the obligation of the parties to not abduct children. Such a breach can in some cases constitute a war crime or a crime against humanity. It is prohibited by the Geneva Conventions in forms of forced displacement, deportation or enforced disappearances,²⁰⁹ which all may include child abduction. When child abduction happens in a form of hostage-taking, it is also prohibited by the International Convention Against Taking of Hostages.²¹⁰

Severity of the crime of abduction depends also on its consequences, although it is by itself already a grave violation; it can become much worse if it results in human trafficking, enslavement or any other form of Grave Violations.²¹¹

Last one on the list of the Grave Violations is a denial of humanitarian access. It can be found in the 4th Geneva Convention²¹² and its Additional Protocols²¹³ and alike other Grave Violation can amount to a war crime or a crime against humanity. A principle of customary international law demands that a party to a conflict allows or provides assistance to any civilian population that is under its control without any discrimination.²¹⁴ When a party refuses access of humanitarian aid to children, it is violating their basic human rights, such as the right to survival, to food and to shelter.

This prohibition is especially relevant in the case of refugees or internally displaced persons (IDPs). There is an important document, adopted by the Office for the Coordination of Humanitarian Affairs (OCHA) in 1998, named Guiding Principles on Internal Displacement,²¹⁵ which is not legally binding but nonetheless provides a good basis for national legislations. They lay upon States the duty to protect their IDPs and provide a free passage to any kind of humanitarian assistance trying to reach the internally displaced, especially to children and maternity cases.²¹⁶ Another obligation that derives from this Grave Violation is the protection of humanitarian personnel and their equipment, which is already granted to them since the Geneva Conventions and their Additional Protocols.²¹⁷

²⁰⁷ Global Coalition to Protect Education from Attack, Draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014.

²⁰⁸ OSRSG, The Six Grave Violations. 2013. Pp. 20.

²⁰⁹ ICRC, GC IV., 1949. Article 49.

²¹⁰ UN General Assembly, International Convention Against Taking of Hostages, 17 December 1979, entry into force 3 June 1983.

²¹¹ OSRSG, The Six Grave Violations. 2013. Pp. 22.

²¹² ICRC, GC IV., 1949. Articles 23, 142.

²¹³ ICRC, Protocol I, 1977. Articles 54, 70, 77. And: ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, entry into force 7 December 1978. Articles 14, 18.

²¹⁴ OSRSG, The Six Grave Violations. 2013. Pp. 23.

²¹⁵ UN Office for the Coordination of Humanitarian Affairs, Guiding Principles on Internal Displacement, 1998.

²¹⁶ OSRSG, The Six Grave Violations. 2013. Pp. 24.

²¹⁷ Ibid. Pp. 24.

4. Work of the international institutions

Today we have a comprehensive system of international law norms for promotion and protection of human rights, including particular child rights legislation. The greatest credit for this advancement can be attributed to the creation of United Nations, which secures fundamental nature of human rights already in its Charter²¹⁸ as one of its original purposes.²¹⁹ We will therefore first inspect the work of UN's main bodies and then proceed to other institutions.

4.1 General Assembly

Most important and influential bodies of the United Nations are General Assembly and Security Council. Since General Assembly has a very broad mandate when it comes to the field of human rights, it had the power to greatly influence the policy on children in the armed conflict. Its documents consist of resolutions, declarations, action plans and pledges.²²⁰ One of the most important ones in the area were already mentioned MDGs, designed in the 2000 Millennium Declaration, which regards important rights of children that are heavily affected by armed conflicts.²²¹

Its efforts began in 1959 with the adoption of the Declaration of the Rights of the Child²²² which consisted of some basic principles and provisions on child protection, based on its vulnerable position.²²³ It had already included the principle of child's best interest, which is also a basic principle in today's Convention. Though this Declaration did not explicitly refer to recruitment of children, it had prohibited any kind of child employment which could potentially endanger their physical or mental well-being, health or education, which can be seen as an early expression of modern provisions on child recruitment.²²⁴

Next was the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,²²⁵ adopted in 1974, prohibiting 'all forms of repression and cruel and inhuman treatment of women and children [...] committed by belligerents in the course of military operations or in occupied territories'.²²⁶

In 1990s, UN World Summit on Children issued a World Declaration on the Survival, Protection and Development of Children²²⁷ and also a Plan of Action. They did not, however, include any specific provisions relating to the situation of armed conflict, as their concerns were

²¹⁸ UN, Charter of the United Nations, Preamble, 26 June 1945, entry into force 24 October 1945.

²¹⁹ Jane Connors, 2008. Pp. 41.

²²⁰ UNICEF, Machel Study, 2009. Pp. 45.

²²¹ See chapter 1.

²²² UN General Assembly, Declaration of the Rights of the Child, Resolution 1386 (XIV), 10 December 1959.

²²³ Vesselin Popovski, 2005. Pp. 40.

²²⁴ Ibid. Pp. 40.

²²⁵ UN General Assembly, Declaration on the Protection of Women and Children in Emergency and Armed Conflict, resolution 1861 (LVI), 16 May 1974.

²²⁶ Vesselin Popovski, 2005. Pp. 40.

²²⁷ UN World Summit on Children, World Declaration on the Survival, Protection and Development of Children, 30 September 1990.

quite broad and general. More important step for the area of armed conflict was taken in 1994, when General Assembly adopted a Resolution A/48/157,²²⁸ which initiated a comprehensive study on the matter of impact of armed conflict on children. Result was the original 1996 Machel Study²²⁹ that revealed some shocking information on child recruitment, abduction, sexual and other exploitation in various countries throughout the world.

Another important document adopted by General Assembly was the 2002 A World Fit for Children, a summary of achievements accomplished in the past decade,²³⁰ which we have already discussed under the subchapter 1.1 (Child Participation). Work of the General Assembly has brought a unique contribution to the protection of children, although this contribution remains on a very abstract level of principles and guidelines, which later have to be concretized by the other United Nation bodies. We will now have a look at these more concrete measures.

4.2 Special Representative of the Secretary-General

As one of the recommendations following the Machel Study, the General Assembly in September 1997 adopted a Resolution A/RES/51/77²³¹ to establish the Office of the Special Representative of the Secretary-General for Children and Armed Conflict,²³² which is today at the heart of the whole reporting process of the UN in this field. First appointment of the Special Representative was done for three years, right after the Machel Report's disclosure on a great need of such a position; its mandate has been extended five times ever since, last time in 2012, when Ms. Leila Zerrougui, human rights expert of Algerian origin, began with her mandate.²³³ Prior to this position, she has worked for the UN as a Deputy Special Representative of the Secretary-General and Deputy Head of the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).²³⁴

Special Representative's job is to draw attention to the crucial sensitive situations, which can be better addressed by her than through other actors working in the humanitarian help field. The Office tries to function as a voice of children, advocating their interests and rights while taking steps to prevent their violations and reduce abuses in armed conflicts.²³⁵

In 2011, the Office of the Special Representative has renewed its mission statement, to fight for ending impunity for grave offences against children, to function as a leading body, providing guidance for all the other UN bodies and to cooperate with various partners for enhancement of their common struggle, to consult with them and share ideas and visions in order to extend their outreach.²³⁶

²²⁸ UN General Assembly, Resolution A/RES/48/157, Protection of children affected by armed conflicts, 20 December 1993.

²²⁹ UN General Assembly, Impact of armed conflict on children, 26 August 1996.

²³⁰ Vesselin Popovski, 2005. Pp. 42.

²³¹ UN General Assembly, Resolution A/RES/51/77, 1997.

²³² UNICEF, Machel Study, 2009. Pp. 45.

²³³ Office of the SR of the SG. Available at: <<http://childrenandarmedconflict.un.org/about-us/leila-zerrougui/>>.

²³⁴ Ibid.

²³⁵ Vesselin Popovski, 2005. Pp. 42.

²³⁶ Office of the SR of the SG, Strategic Framework 2011-2013. June 2011. Pp. 7.

Its cooperation with the Security Council is particularly tight, as the report system to the SC consists of an annual report, more than 12 country reports and six Global Horizontal Notes, which ensure that SC is always up to date with the current events in this area.²³⁷

One of the main tasks of the Special Representative is to maintain a constructive dialogue with governments or non-state parties to armed conflicts, which have been listed as perpetrators of child recruitment or other grave violations against children (listing of parties is discussed in greater detail in the Security Council subparagraph) and to make sure that such dialogues lead to a completion of time bound action plans.²³⁸ Special Representative also has to work towards a better enforcement of international legal framework, which is mostly done by the strengthening of the monitoring and reporting mechanism (MRM).²³⁹ It also represents children's interest in front of the International Criminal Court as *amicus curiae*, as it did already in the first case in front of this court (Lubanga trial),²⁴⁰ when Special Representative testified as an expert witness.²⁴¹

In relation to other bodies of the UN, Special Representative serves as a political guidance, showing them the right directions in solving issues regarding children in armed conflict. Such guidance is particularly important in situations like peacemaking/peacebuilding. The Office has been therefore making huge efforts to enhance the cooperation with peace mediators and peacekeeping missions to then be able to influence them into including child-friendly provisions into any sort of political settlement or peace treaty that might occur in the process of their work with parties to the conflict.²⁴²

When it comes to a situation *during* armed conflict, the Office is striving to ensure that all different categories of children are protected from various issues threatening them and that such issues were being considered by local actors or international partners. Particular category that is very vulnerable is that of the internally displaced children. They are perhaps in even worse situation than refugees, since they are still in their own country and can therefore not seek asylum and international protection, plus they might still be exposed to the control of their own government, which is often the one responsible for the displacement in the first place.

In 2010 the Office created a working paper called *The Rights and Guarantees of Internally Displaced Children in Armed Conflict*.²⁴³ The same issue was brought by the Special Representative to the attention of the Human Rights Council and to the General Assembly in order to emphasize their vulnerability; they are often exposed to discrimination, child recruitment, sexual assaults or other similar abuse, in most sickening scenarios even by the humanitarian personnel or peacekeepers, whose main obligation was to protect them.²⁴⁴ Another problem worth mentioning is also that most of internally displaced children cannot exercise their

²³⁷ Ibid. Pp. 8.

²³⁸ Ibid. Pp. 9.

²³⁹ UN GA & SC, Report of the Secretary-General, 2013. Pp. 1.

²⁴⁰ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, 14 March 2012.

²⁴¹ Office of the SR of the SG, Strategic Framework 2011-2013. June 2011. Pp. 9.

²⁴² Ibid. Pp. 9.

²⁴³ Office of the SR of the SG, Working paper no. 2: *The Rights and Guarantees of Internally Displaced Children in Armed Conflict*, September 2010.

²⁴⁴ Ibid. Pp. 5.

right to education, which is not only a current problem, but it endangers their personal and professional development and decreases their future potential.²⁴⁵

Working paper on internally displaced children reinstates the three basic principles, promoted by the Convention (non-discrimination, participation and best interests of the child)²⁴⁶ and also adds other principles, developed for this specific situation, which should be respected by all actors in contact with these children. The main such principle is that displaced children should be guaranteed the same rights and freedoms as every other child in their country.²⁴⁷ However appealing this principle sounds, pursuing it in real life is a completely different story.

In support of these principles, States should make sure that their laws are not in any way discriminating against the displaced and that they use all the measures within their power to raise awareness of this problem in public in order to make everybody more sensitive to the topic, especially professionals who might deal with the displaced in the course of their work.²⁴⁸

The Office also tries to ensure resources and funding for tackling these issues and support other actors in the field. It advocates for children's rights through press conferences and other media, speeches, working papers and other events organized with a purpose of bringing attention to a specific theme.²⁴⁹

As an example of the situations that this Office deals with, we can also take small arms, which we have already mentioned in the first chapter. Small arms are the most convenient weapon to equip children with and their trade is also easy and widespread. Therefore an important international effort was done by the Secretary General's report on the devastating effects of small weapons and their facilitations of a wide variety of crimes committed, urging a prohibition of such arms.²⁵⁰ It has resulted in various Security Council's presidential statements and finally also a Resolution on small arms in September 2013.²⁵¹ This resolution contains a special provision, which stresses the importance of previous Resolution (1325)²⁵² on women, peace and security and emphasizes that needs of children must be also taken into account.

As already indicated, the Office works closely related to other UN bodies, whose work touches upon same topics²⁵³ and it is therefore difficult to overview separately the work of every individual UN body. This is why we will see even more closely the importance of the Special Representative in the connection to the work of the Security Council.

²⁴⁵ Ibid. Pp. 11.

²⁴⁶ See chapter 2.1.

²⁴⁷ OSRSG, Working paper no. 2, 2010. Pp. 18.

²⁴⁸ Ibid. Pp. 19.

²⁴⁹ OSRSG, Strategic Framework 2011-2013. June 2011. Pp. 10.

²⁵⁰ UN General Assembly, Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them, Report of the Secretary General, A/68/171, 22 July 2013.

²⁵¹ UN Security Council, Resolution S/RES/2117, 26 September 2013.

²⁵² UN Security Council, Resolution S/RES/1325 (2000), on Women and peace and security, 31 October 2000.

²⁵³ Report by Ambassador Jean-Marc de la Sabliere, Security Council Engagement on the Protection of Children in Armed Conflict. Pp. 16.

4.3 Security Council

Important milestones have also been achieved in the Security Council, which has the power of adopting decisions that are binding on all Member States of the UN. Its first action, however not directly linked to children's rights, began already in 1993-1994 with the establishment of International Criminal Tribunals for Yugoslavia and Rwanda to prosecute perpetrators of international crimes, which were committed also against children and where this was the case, it served as an aggravating circumstance.²⁵⁴ Security Council has also adopted a Resolution 1314,²⁵⁵ which has determined that violations of children's rights in armed conflict can be a possible threat to the international peace and security.²⁵⁶ This determination means that in such situations Security Council is entitled under Chapter VII of the UN Charter²⁵⁷ to take any kind of measures that it deems necessary, including military operations, in order to restore international peace and security.²⁵⁸ One of such measures is also a possibility of referral to the Prosecutor of International Criminal Court, which resulted in a case against Sudan (Darfur) in 2005.²⁵⁹ It has created a pressure on the States to establish accountability mechanisms for breaches of children's rights and to promote their rights with a comprehensive system or actors dealing with protection and assistance to children in armed conflict.

Its direct involvement in the children in armed conflict issue began in 1999 with a Resolution 1261,²⁶⁰ which was an important step, because it challenged the parties of conflicts to obey by international law norms and raised the point of separating children from armed groups and reintegrating them. It has also urged parties to the conflict to take into consideration concerns of children, when negotiating for peace agreements and throughout the whole peace process; and to minimize the harm done to children by all possible measures.²⁶¹ Special provisions referred also to measures to protect them from sexual violence (girls in particular)²⁶² and ensure them access to humanitarian assistance.²⁶³ However, this was only the first Resolution, which was still just on the abstract level of principles; work of the Security Council later on became much more action-oriented. Further resolutions or statements were adopted almost every year.²⁶⁴

Secretary General has been submitting regular reports, which have finally influenced Security Council towards greater action against child recruitment in Sierra Leone, where two accountability mechanisms were created: the Special Court for Sierra Leone and the Truth and

²⁵⁴ Kunarac, Kovac̄ and Vukovic, ICTY, 2002. Para. 355.

²⁵⁵ UN Security Council, Resolution S/RES/1314 (2000), 11 August 2000.

²⁵⁶ Ibid. Para. 9.

²⁵⁷ UN Charter, Preamble, 1945.

²⁵⁸ Karin Arts, 2005. Pp. 4.

²⁵⁹ The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09.

²⁶⁰ UN Security Council, Resolution S/RES/1261 (1999), 30 August 1999.

²⁶¹ Ibid. Paras. 7 & 8.

²⁶² Ibid. Para. 10.

²⁶³ Ibid. Para. 11.

²⁶⁴ Report by Ambassador Jean-Marc de la Sabliere, Pp. 5.

Reconciliation Commission.²⁶⁵ Their development was completely child-centered, taking their best interest into account on every step.²⁶⁶

Now let us look closer at the listing of parties, which we have already encountered several times during the course of this research. By its recommendation in Resolution 1379²⁶⁷ in 2001, the Secretary General has been annually creating a list of parties that have been using child soldiers in situations that were a threat to international peace and security and bringing it to the Council's attention in a 'naming and shaming' manner.²⁶⁸ It has been a significant step forward in establishing pressure and accountability by Security Council on all parties, reported to have been enlisting children or otherwise violating their rights. All actions taken on the field by international community were based on those lists²⁶⁹ and they provided a negotiating angle for actors dealing with child protection during their attempts for a release of children and a basis for challenging the parties to submit appropriate action plans for tackling the issue of recruiting and using children.²⁷⁰ When such action plans have proven to be effective and properly implemented, parties have been 'delisted', which was also a good motivation for them to comply with their international obligations.²⁷¹ However, those lists were focusing only on the recruitment and use of children, which is just one of the six grave violations of child's rights as we know them today, which are also being monitored by the Security Council. Besides from parties that were listed or delisted, these reports included also situations where armed conflict has already been over for some time, but continued some sort of legacy of child soldiers.²⁷²

The same resolution also extended the scope of child protection as it decided to ensure that all Security Council's peace processes contain provisions that are child-friendly and take into consideration children's interests and that all parties of the conflict must respect 'days of immunization'²⁷³ for providing all necessary services to children in danger. Following this Resolution, two documents that are important for development in this area entered into force in the next year, namely the Rome Statute and the Optional Protocol on the involvement of children in armed conflict. We have already discussed both of them in the chapter 2.

Monitoring mechanisms began with the Resolution 1539,²⁷⁴ where Security Council called out to States to end impunity and to prosecute perpetrators of international crimes (genocide, crimes against humanity and war crimes) which were directed towards children.²⁷⁵ Secretary General, on proposal of the Security Council, created a comprehensive system, divided into already discussed six grave offences: killing and maiming of children, recruitment or use of children as soldiers, sexual violence against children, attacks against schools or hospitals, denial

²⁶⁵ Vesselin Popovski, 2005. Pp. 46.

²⁶⁶ Ibid. Pp. 46.

²⁶⁷ UN Security Council, Resolution S/RES/1379 (2001), 20 November 2001. Para. 16.

²⁶⁸ UNICEF, Machel Study, 2009. Pp. 46.

²⁶⁹ Report by Ambassador Jean-Marc de la Sabliere. Pp. 7.

²⁷⁰ Unicef, Machel Study, 2009. Pp. 46.

²⁷¹ Ibid. Pp. 47.

²⁷² Vesselin Popovski, 2005. Pp. 47.

²⁷³ UN Security Council, Resolution S/RES/1379 (2001), 20 November 2001. Para. 4.

²⁷⁴ UN Security Council, Resolution S/RES/1539 (2004), 22 April 2004. Para. 2.

²⁷⁵ Karin Arts, 2005. Pp. 5.

of humanitarian access for children and abduction of children.²⁷⁶ As we have seen in the third chapter, those particular offences were chosen not only because they are so grave, but also because it is possible to monitor them. Parties were given deadlines to prepare concrete action plans on how they will cease with their illegal activities of child recruitment.²⁷⁷ This is how ‘Monitoring and Reporting Mechanisms’ (MRM)²⁷⁸ came into action, finally starting the era of implementation.

Information gathered through this mechanism was to be further reported by the Secretary-General to the Security Council and to General Assembly,²⁷⁹ although reporting mechanism included also cooperation with national authorities, International Criminal Court, regional organizations, NGOs, civil society and so on. The negative side still remained that monitoring on this basis was triggered by the above discussed listing, which was done only for parties that were using and recruiting children, not other five offences.²⁸⁰

It took quite some time for the Security Council to come up with an effective and all-encompassing system. It happened with the historical landmark Resolution 1612,²⁸¹ which is still one of the main tools of the whole operation.²⁸² It established a special Working Group²⁸³ that is in charge of reviewing monitoring reports and action plans on release of children and reviewing information on other offences. It then recommends the SC or other adequate bodies in the area on measures that should be adopted for better promotion of children’s rights. Although it has achieved a great progress in monitoring and highlighting the crucial breaches detected, they were further transferred to sanctions committee of the SC, whose sanctions have not seen any follow up. It is in the area of enforcement, where the biggest gap occurs.²⁸⁴ It has been recommended that Security Council establishes a special committee which would be in charge for grave breaches of children’s rights during armed conflicts.²⁸⁵

When MRM was already functioning for some years, the Security Council decided to extend its scope to the parties who were in breach of their obligations by killing and maiming of children and/or sexual violence against children. In 2011, it even furthered this extension to encompass also offences of attacks against hospitals and schools as triggers to put a party on the list, following the adoption of the SC resolution 1998.²⁸⁶ Within this resolution, the Council again states that governments have the primary role of protecting children and that mechanisms such as MRM should be viewed only as secondary means; as support and supplement to the national institutions.²⁸⁷ States are thus encouraged to submit recommendations and suggestions

²⁷⁶ UN. The Six Grave Violations. Available at: <<http://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/>>.

²⁷⁷ Vesselin Popovski, 2005. Pp. 49.

²⁷⁸ Report by Ambassador Jean-Marc de la Sabliere, Pp. 7.

²⁷⁹ Karin Arts, 2005. Pp. 6.

²⁸⁰ UNICEF, Machel Study, 2009. Pp. 47.

²⁸¹ UN Security Council, Resolution S/RES/1612 (2005), 26 July 2005.

²⁸² Report by Ambassador Jean-Marc de la Sabliere, Pp. 6.

²⁸³ UN Security Council, Resolution S/RES/1612 (2005), 26 July 2005. Para. 2(a).

²⁸⁴ UNICEF, Machel Study, 2009. Pp. 49.

²⁸⁵ Ibid. Pp. 49.

²⁸⁶ UN Security Council, Resolution S/RES/1998 (2011), 12 July 2011. Para. 3(a).

²⁸⁷ Ibid.

on how time-bound action plans should best be implemented and executed in their particular situation within the MRM.

The Resolution drew attention to the rising concern of the attacks on schools and subsequent closures of schools during armed conflicts, which have a negative effect on children and their right to education, protected by the Convention, and it therefore called upon States Parties to end such attacks immediately. In addition to the attacks against schools or hospitals, Security Council also added attacks or threats of attack against protected persons, who are somehow related to schools or hospitals.²⁸⁸ By protected persons they meant teachers and medical personnel and by attacks against them they meant also a kidnapping of such personnel.²⁸⁹

In addressing the issues which constituted a breach of the six grave violations, Council was not limited to the situations on its agenda, but also other situations that were presented to it by the Secretary-General, if he believed they might be a threat to international peace and security.²⁹⁰ This led to a dispute in the Security Council in 2012, which we shall discuss later on in this chapter.

Now operations of the Security Council lie on three basis: *monitoring and reporting mechanism (MRM)*, *action plans* and the establishment of *the working group*.

MRM is implemented in the countries of concern in cooperation with all relevant UN entities, the local authorities, regional organizations and the NGOs working in the field, as well as the parties to the conflict. Joint effort of all these actors is called ‘Country Task Force on Monitoring and Reporting’ (CTFMR)²⁹¹ and it meets regularly at least twice a year, ensuring that information gathered through MRM always remains objective, accurate and timely.²⁹² There are several report channels arriving to the Council, however most important one of those is still the annual report of the Secretary-General, which is a result of lengthy consultations and thorough analysis by joint UN Task Force.²⁹³

Action plans are designed to target specific countries of those non-state actors, which are in breach of their international obligations and have been listed. They aim to make such a party stop engaging in their criminal activity, which is a difficult task, especially since such plans rely greatly on a dialogue with parties that are often rebel movements, unwilling to participate.²⁹⁴

The *working group* is an assistant body to the Council, designed to review reports on various situations, evaluate developments and achievements of the action plans and make recommendations about further measures that Security Council should take in a specific situation and recommendations regarding the protection of children in armed conflict or in peace-building operations.²⁹⁵ It set out in the first years as a body created to stop the recruitment of children,

²⁸⁸ Ibid. Para 3(b).

²⁸⁹ Ibid. Para 4.

²⁹⁰ As granted to him by article 99 of the UN Charter.

²⁹¹ Report by Ambassador Jean-Marc de la Sabliere, Pp. 15.

²⁹² Ibid. Pp. 10.

²⁹³ Ibid. Pp. 16.

²⁹⁴ Ibid. Pp. 7.

²⁹⁵ Ibid.

laying down the foundations for future operations and dealing mostly with procedural questions and working methods. First situation (the Democratic Republic of Congo) was reviewed only next year, June 2006, after the appointment of the new Special Representative of the Secretary-General.²⁹⁶ Afterwards, in some situations, such as the DRC and Uganda, the Working Group also drew attention to cooperation with the International Criminal Court.²⁹⁷ Other than formal meetings, group engaged in informal contact through emails and conducted country visits, to obtain a better understanding of the issues at hand, which also resulted in far more elaborate reports and recommendations.²⁹⁸

Another important step was taken by the Resolution 2068, adopted in 2012.²⁹⁹ As with all the previous resolutions, 2068 also expresses concern over situations regarding children in armed conflict, which has still not been sufficiently taken care of and calls for action to national bodies in their struggle to end impunity. Within this Resolution, Security Council has emphasized its readiness to use international mechanisms in order to bring persistent perpetrators of international crimes to justice by targeted and graduated measures.³⁰⁰ It also authorized the Working Group to come up with suggestions on how to create a greater pressure on the violating parties.

The Resolution 2068 was the first resolution on this topic, which has not been adopted unanimously, but had four countries abstain in the vote, due to a thematic dispute on a question of Security Council's scope of mandate, which I have mentioned earlier: this Resolution, as well as some other ones, includes a disclaimer that it does not serve as a determination of whether or not situations in the report of the Secretary-General are in fact situations of an armed conflict as defined by the Geneva Conventions. As already mentioned above, Report has included situations that are on Council's agenda, as well as some that are not. Some Member States have felt that this is an extension of Security Council's mandate in the protection of children, which is not appropriate. It has been widely discussed at an Open Debate on Children in Armed Conflict³⁰¹ and opposing parties have expressed their opinion that Council should limit itself to the items on its agenda, which have been clearly defined as an armed conflict within the legal framework of the relevant Conventions and Protocols, or to situations that are in the opinion of Secretary-General an imminent threat to the international peace and security.³⁰² They found it very disturbing that Secretary-General has been repeatedly including to his report situations, which are neither defined as an armed conflict, nor of such gravity as to be considered a threat to peace and security. In those situations, however unfortunate the suffering of children might be, other international or non-international institutions should intervene.

²⁹⁶ Ibid. Pp. 12-13.

²⁹⁷ Ibid. Pp. 14.

²⁹⁸ Ibid.

²⁹⁹ UN Security Council, Resolution S/RES/2068 (2012), 19 September 2012.

³⁰⁰ Ibid. Para 3(b).

³⁰¹ Tamara Johnson, 2012.

³⁰² Ibid.

I suppose that even if it might sound heartless, they had a point. Security Council does not have the capacity to focus on every situation of violation of child's rights and if it plans to properly address those that require his assistance the most, it has to focus on them exclusively.

Besides from that point, only a violation of child's rights cannot be a reason enough to prejudice the state sovereignty and meddle with their internal affairs. At this point another issue arose whether the UN bodies can enter in a dialogue with non-state parties to the conflict, without consent of the government; however this is a separate problem, which does not fall into the scope of this research.

The latest Resolution of the Security Council was adopted with a unanimous vote this year, Resolution 2143 (2014).³⁰³ It has once again condemned a use of schools or hospitals for military purposes, but the main reason for the importance of this resolution is that it has included concrete recommendations for the future actions to end impunity and protect children. A big sign of progress was especially done by the recommendation that Member States should include issues of child protection in their military trainings and operating procedures; and that the UN peace-keepers and other countries, which are contributing their troops, engage in targeted and operational trainings, which will lead to a highly prepared peace operations with a fully trained personnel in terms of recognizing, reporting and addressing the issues of child right's abuses and violations.³⁰⁴ Such preparedness of the field personnel can greatly contribute to a successful assistance to children in need of protection.

4.4 Human Rights Council

Another important UN body for protection of child rights is the Human Rights Council, which is adopting resolutions on the topic every four years.³⁰⁵ Its main contribution is Universal Periodic Review (UPR), which supervises implementation of all human rights standards adopted by international community and also particularly impacts of armed conflicts on children.³⁰⁶ Supervision and evaluation is done by other Member States, which exposes the scrutinized state to a certain peer pressure instead of leaning upon naming and shaming mechanism.

4.5 Other bodies

Progress made through the UN mechanism to tackle violations of children's rights in the armed conflict has been made especially in two spheres: by defining responsibilities of individual actors that are part of this system and through creating components of progress that can and are regularly being measured.³⁰⁷

³⁰³ UN Security Council, Resolution S/RES/2143 (2014), 7 March 2014.

³⁰⁴ Ibid. Para. 20.

³⁰⁵ UNICEF, Machel Study, 2009. Pp. 51.

³⁰⁶ Ibid. Pp. 52.

³⁰⁷ Report by Ambassador Jean-Marc de la Sabliere, Pp. 17.

System is now well-defined and all the bodies in it have their clear role. It is an interesting mechanism also because it connects different UN departments, funds, agencies and so on, on the level of Headquarters as well as on the field level. A major area of improvement in the past decade was the inclusion of concerns of children's rights into political and peace-building operations. There is now a reference to child protection in almost all of the peacekeeping operations established in the previous decade.³⁰⁸ Extremely valuable are especially provisions that are regulating the release and reintegration of children who were recruited into armed groups and have occurred as a consequence of successful dialogue among parties to the conflict and international or other child-rights fighters.³⁰⁹ Other provisions of unique importance are also determination of minimum age for recruitment as 18, family tracing and reunification provisions for situations after children's release, provisions regarding sexual violence against children, measures for protection against landmines and other risks that children might be exposed to, prohibition of amnesty for adult perpetrators of grave violations against children and a principle providing that children who committed atrocities as child soldiers should be considered as victims of armed conflict and not perpetrators.³¹⁰

However, peace agreements and rebuilding procedures often happen without involvement of the UN bodies, which makes it less likely that international obligations towards safety of children will be properly taken care of. This calls for a greater cooperation among parties, regional organizations and child protection actors with UN experts.³¹¹ It was urged with a Security Council Resolution 1314 that regional organizations should establish child protection units within their secretariats and States were encouraged to achieve release of abducted children and to return them to their homes and families and make sure they are properly reintegrated.³¹²

Luckily, there is a growing trend of other international actors engaging in the process. It might be especially important in the instance of other grave violations, which are not so well covered by the main UN system. Such actors are ILO, which is particularly useful in the area of reintegration of children, the Office of the High Commissioner for Human Rights (OHCHR), which deals more with identification and verification of violations, High Commissioner for Refugees, dealing with refugees and internally displaced persons, many among which are also children, UNESCO and the WHO, who are mostly engaging in the area of attacks on schools and hospitals, and last but not least, UN-Women, dealing with sexual assaults also against children.³¹³ Working Group and Special Representative have also received a lot of help from Member States, participating in the Group of Friends.³¹⁴

The Security Council also relies on other UN bodies to provide support and contributions in the matter of child protection in armed conflicts. Especially UNICEF has had a great role to play in the separation of children from armed forces and groups and its presence was of

³⁰⁸ UNICEF, Machel Study, 2009. Pp. 50.

³⁰⁹ UN GA & SC, Report of the Secretary-General, 2013. Pp. 5.

³¹⁰ Ibid. Pp. 5.

³¹¹ UNICEF, Machel Study, 2009. Pp. 51.

³¹² Vesselin Popovski, 2005. Pp. 44.

³¹³ Report by Ambassador Jean-Marc de la Sabliere, Pp. 18.

³¹⁴ Ibid. Pp. 18.

significant importance in other situations as well.³¹⁵ For example, it had organized trainings and workshops on the topic of child rights procedures and legal guarantees for the International Criminal Court and the Truth and Reconciliation Commission.³¹⁶ The Truth Commission has done an amazing job in promoting children participation in judicial procedures by following principles of their best interests and avoiding risk of harm to children at any given stage.³¹⁷ Such Commission has also made a great progress in the Sierra Leone Court, where children were involved in making statements, participated in hearings and prepared their own version of reports submitted by the Commission.³¹⁸

An important organization working on a prevention of child soldiers is also the Roméo Dallaire Child Soldiers Initiative,³¹⁹ which was founded by the General Roméo Dallaire, one of the main peaceful characters during the Rwandan genocide, in his rank of a force commander of the UN Peacekeeping Mission. His Initiative has had a huge influence on the process of adopting the latest Security Council Resolution (2143) and they also cooperated with the UN Institute for Training and Research (UNITAR) to begin trainings on “Child soldiers and Security Forces”,³²⁰ which are even available in an online form (e-learning).³²¹ They are a leading institution for preventative training to end child recruitment, aimed for security sector personnel.³²² Their services are highly valuable, because when it comes to the release of child soldiers, those trained forces are usually the first contact with children, before they are handed over to the appropriate institutions, medical personnel or their own community.³²³

International bodies are receiving help also from the regional organizations; however their actions are not sufficiently structured and lack a proper follow-up.³²⁴ The most successful has so far been the European Union, which has infiltrated issue of children and armed conflict in its policy in the most progressive way. In cooperation with Special Representative in 2003 it has adopted guidelines³²⁵ with further instructions on how to also influence States non-parties to tackle this issue, according to the European policies.³²⁶

More recently, in 2012, it has also included promotion and protection of children’s rights as one of the main objectives in its Strategic Framework and Action Plan on Human Rights and Democracy.³²⁷ This objective was divided into 4 goals: first, to create a campaign on children’s rights, with a specific focus on violence against children; secondly, proper implementation of Revised Implementation Strategy of the EU Guidelines on Children and Armed Conflict and

³¹⁵ Ibid. Pp. 11.

³¹⁶ Marta Santos Pais, 2008. Pp. 56.

³¹⁷ Ibid. Pp. 56.

³¹⁸ Ibid. Pp. 56.

³¹⁹ The Dalaire Initiative. Available at: <<http://www.childsoldiers.org/>>.

³²⁰ UN ITAR, UN Security Council adopts the historical Resolution 2143(2014) to condemn child recruitment in armed conflict. Available at: <<http://www.unitar.org/un-security-council-adopts-historical-resolution-21432014-condemn-child-recruitment-armed-conflict>>.

³²¹ The Dalaire Initiative. Available at: <<http://www.childsoldiers.org/training-2/>>.

³²² The Dalaire Initiative. Available at: <<http://www.childsoldiers.org/unsc-resolution-2143-press-release/>>.

³²³ Ibid.

³²⁴ UNICEF, Machel Study, 2009. Pp. 52.

³²⁵ European Union, EU Guidelines on Children and Armed Conflict, 9 December 2003.

³²⁶ UN GA & SC, Report of the Secretary-General, 2013. Pp. 6.

³²⁷ Council of the EU, EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012.

carry on in their partnership with the Office of the Special Representative on children and armed conflict, as well as with UNICEF; thirdly, to make sure EU brings a contribution to the World Conference against Child Labour; and the fourth goal, to promote the establishment of the up-to-date hazardous work lists.³²⁸ The last goal is still ongoing, but the first three have been scheduled for 2013 and 2014, although efforts such as international cooperation do not have limited ending. Recommendation on the part of the Secretary-General has suggested a great consideration of the parties listed by the Special Representative in their field implementation of the policies.³²⁹

African Union is also increasingly contributing to the peace and security efforts in the region. It has taken a step in the right direction with its ‘Call for Accelerated Action’ in 2007³³⁰ and as we have already seen in the chapter on the International documents, with African Charter on the Rights and Welfare of the Child and the Kampala Convention. Hope for a stronger cooperation with the UN has been supported by the Security Council’s resolution 2033 in 2012, which urges for an effective partnership with the regional organizations with regard to the peace and security area.³³¹ So far, steps have been taken in shaping procedures for released or found children during military missions.³³² Another important, but rather demanding step, planned in the future is to harmonize national legislations in accordance with the international law in the matters regarding child rights, trainings of troops, which cooperate in the peace missions on behalf of the AU or UN, and other similar areas that affect children in the armed conflict.³³³

Child rights issues have also been taken into consideration by the North Atlantic Treaty Organization (NATO), which is incorporating them in a troop training and mission planning. Even more, after some influence of the Special Representative, NATO has appointed an Assistant Secretary General, who is responsible for mainstreaming child rights into NATO’s training and its missions.³³⁴ Its Military Committee has also taken a remarkable step by adopting guidelines for integration of Security Council’s resolutions (most importantly resolution 1612) into NATO military doctrine.³³⁵

4.6 Recommendations

We can conclude the chapter with a couple of recommendations made by the Machel Study and by the Secretary General with regard to the future actions of the UN bodies and other actors in the field. Machel study has recommended greater involvement of regional bodies through implementing their previous commitments and through peer review instruments, as well as creating a special expertise on the matter of child rights within their existing frameworks. Other recommendations refer to better follow-up on Security Council’s actions, inclusion of children’s

³²⁸ Ibid.

³²⁹ UN GA & SC, Report of the Secretary-General, 2013. Pp. 6.

³³⁰ African Union, Call for Accelerated Action on the implementation of the plan of action towards Africa fit for children (2008-2012). 20 Oct- 2 Nov 2007.

³³¹ UN GA & SC, Report of the Secretary-General, 2013. Pp. 6-7.

³³² Ibid. Pp. 7.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid.

concerns into a post-conflict rebuilding process and granting them appropriate provisions in peace agreements, establishment of necessary sanction mechanisms and cooperation with relevant non-state actors.³³⁶

Further recommendations refer to the NGOs and national human rights organizations. They should have a bigger say in the matter, through better cooperation and encouragements to make those organizations submit regular reports on the matter to the appropriate treaty bodies. Monitoring Committees rely heavily on the information they gather from these organizations, since the report from State is only one-sided and not necessarily portraying the realistic picture of the situation; they need submissions from NGOs and national human rights organizations, as well as other UN bodies.³³⁷ Afterwards, NGOs should also receive proper support for a follow-up after a feedback from treaty bodies in order to push for an adequate implementation of norms.

Important step is also dissemination of information concerning rights of children and their proper implementation. Therefore, civil society, together with state actors and UN agencies has to take care that all the necessary information reaches entities that are in any way involved with children, such as the police, military, justice system, medical and immigration authorities. Therefore, a State should first ensure that all legal standards and norms have been adequately implemented into domestic legislation; and secondly, appropriate trainings should be provided for experts –among others- in charge with judicial or monitoring procedures that relate to child rights; they should be well aware of legal standards and safeguards that need to be assured for children in the process. The minimum of such standards should also be already included in the basic legal education obtained at faculties and law schools.³³⁸

NGOs are also important in respect of representing child victims of violations in front of appropriate organs and achieving remedy for children through complaint procedures.³³⁹

Recommendation by the Secretary General was for the national governments to assist and allow access to the UN bodies, so that they can monitor and report about the grave violations and establish a constructive dialogue with parties to the conflict, regardless whether they are state or non-state actors. Such dialogues should then lead to the time bound action plans and their follow-up in order to terminate those grave violations.³⁴⁰

Many more recommendations were calling upon Member States to enhance their level of cooperation with the UN, child right's fighters, peace-keepers and other actors on the field; and to effectively implement international rules and norms regarding children; especially those States who were also listed on Special Representative's annex to the Annual Report.³⁴¹

³³⁶ UNICEF, Machel Study, 2009. Pp. 54-55.

³³⁷ Jane Connors, 2008. Pp. 47.

³³⁸ Marta Santos Pais, 2008. Pp. 62.

³³⁹ Jane Connors, 2008. Pp. 42.

³⁴⁰ UN GA & SC, Report of the Secretary-General, 2013. Pp. 45.

³⁴¹ Ibid. Pp. 45.

Conclusion

Through this research we have discovered how the international community is facing the problem of child rights violations during the armed conflict. We have seen the extended legal framework that was designed around this global issue and the roles of individual bodies that are operating in this field.

Children's rights are properly covered with binding international conventions, which are then further developed and interpreted through various non-binding documents. Despite of their non-binding nature, they contribute greatly towards a more comprehensive legal framework, because they interpret the binding law in a way that offers assistance and guidance for a harmonized implementation by the national legislations. After a thorough research on the entire international legal framework we have seen that there is a strong legal basis for the protection of children during the armed conflict, even though this framework might be inconsistent on some specific topics. Example of such inconsistency is the minimum age of children that can be recruited into armed forces; in such situations it is important that the States comply with the stricter provisions and thus contribute towards a greater coherence of international law.

But obviously, a comprehensive framework by itself is not sufficient, when it is not properly implemented and enforced. In chapter four we have seen more closely what specific efforts the individual bodies of the international community have been making towards the proper implementation of the framework. The United Nations bodies have created an effective and thorough system, based on six main offences against children, which are easily monitored and regularly reported on. There are many various actors cooperating in this system, from local actors, to regional and international ones, as well as the NGOs and national human rights organizations. Despite of their best intentions, there are still many gaps that should be filled and we have seen the recommendations towards this end in the previous chapter.

However, even with this comprehensive legal framework and the greatest efforts by the international actors and child rights fighters, the number of children affected by armed conflict has not decreased, but is constantly rising. In my opinion, the international community should focus more on finding persuasive ways of forcing the States into compliance, since the sole *condemnation* of their acts by the Security Council is obviously not enough. There should be a stronger follow-up on the reports of the violations and the Security Council should use its powers granted to it by the chapter VII of the UN Charter more frequently.

Here we also encounter the issue of insufficient staff and resources necessary to intervene in all of the situations that would require international assistance, which also leads me back to enforcing the State compliance into cooperation, assistance and contribution of personnel and funds. In my opinion, it all comes down to the sovereign States. They carry the primary duty of protecting children and they should be the ones who help the international community to achieve its goals, when they have failed to do so. Comprehensive framework has been provided and monitoring mechanisms are established. Now the focus should switch to the implementation, enforcement and sanctions.

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