

An Appraisal of the Use of Child Soldiers as a War Crime Under International Humanitarian Law*

Abstract

International humanitarian law provides comprehensive protection for children. In the event of armed conflict, whether international or non-international armed conflict, children benefit from the general protection provided for civilians not taking part in the hostilities. However, the 21st century pattern of armed conflict has questioned the ability of the International Humanitarian Law to adapt itself and regulate human conduct in the circumstances of modern warfare. This paper identified the use of child soldiers as a major occurrence in contemporary armed conflicts. The paper focused on the fact that in contemporary armed conflict, thousands of girls and boys find themselves fighting adult wars. Some are used as combatants and take direct part in hostilities while others are used in supportive roles and tasks that vary, from cooks and spies, to messengers and even sex slaves. Moreover, the use of children for acts of terror, including suicide bombings, has also emerged as a phenomenon of modern warfare. The paper concluded that notwithstanding the legal prohibition on the involvement of children in armed conflict, the recruitment and use of children by armed forces or armed groups during armed conflict has continued to be on the increase especially in the 21st century armed conflict. It recommended therefore amongst others that state should by all means ensure the implementation of the rules of IHL and proper punishment in any event of violation of the rules of war.

Keywords: *International Humanitarian Law, Armed Conflict, Child, Soldier, War Crime, Contemporary Armed Conflict.*

1. Introduction

International Humanitarian Law or *Jus in Bello*¹ is the law that governs and regulates how warfare is conducted. Today, the political concept of “War” has been replaced by the factual concept of “Armed Conflict.” Armed conflict is a contested incompatibility that concerns government and/or territory that involves the use of armed force between two or more parties². Today, many social, political and economic crises have led to various armed conflicts around the world.³ The most protracted conflicts in the past have continued to weigh down life and hinder recovery, and some of them show signs of further deterioration. Civilian casualties have spiked in Afghanistan despite intensified peace talks. In the Democratic Republic of the Congo and the Central African Republic, armed groups continue to fragment and proliferate as peace and demobilization efforts are slow to advance. Malnutrition has become chronic in South Sudan since the outbreak of conflict in that region.⁴ In Colombia, the concluded peace agreement has resulted in disarmament and political inclusion but it has also activated new splinter groups that disagree with the accord, as well as veteran groups that see an opportunity

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¹ *Jus in Bello* is a Latin term which means ‘the Law of War’ (Jus = Law/ Bello = War).

² *Ibid*

³ K. Amarasinghe, ‘The shape of war in the 21st century; An analysis of the challenges posed by the contemporary armed conflicts with reference to international humanitarian law,’ [2012] (7) (1) *International Journal of Law* (1-6) <www.lawjournals.org> Accessed 18 October 2022

⁴ *Ibid*

to consolidate power.⁵ Today's conflicts are primarily internal, often fought by multiple, semi-autonomous armed groups within existing state boundaries. They are protracted, lasting years if not decades, and they make defenceless civilians especially children and women particularly vulnerable.⁶ A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, (boys and girls) used as fighters, cooks, porters, messengers, spies or for sexual purposes.⁷ It does not only refer to a child who is taking or has taken a direct part in hostilities.⁸ A child also means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁹

The use of children during armed conflict has become one of the features of current armed conflict. Children generally are protected and benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and are covered by the legal provisions on the conduct of hostilities. Thousands of children are recruited and used in armed conflicts across the world. Between 2005 and 2020, more than 93,000 children were verified as recruited and used by parties to conflict, although the actual number of cases is believed to be much higher. Often referred to as “child soldiers,” these boys and girls suffer extensive forms of exploitation and abuse that are not fully captured by that term.¹⁰ Warring parties use children not only as fighters, but as scouts, cooks, porters, guards, messengers and more. Many, especially girls, are also subjected to gender-based violence.¹¹ Their tasks can vary, from combatants to cooks, spies, messengers and even sex slaves. Moreover, the use of children for acts of terror, including as suicide bombers, has emerged as a phenomenon of modern warfare. Each year, the UN receives reports of children as young as 8 or 9 years old associated with armed groups.¹² Girls are also recruited and used by armed forces and groups. They have vulnerabilities unique to their gender and place in society and suffer specific consequences including, but not limited to, rape and sexual violence, pregnancy and pregnancy-related complications, stigma and rejection by families and communities.¹³ Children become part of an armed force or group for various reasons. Some are abducted, threatened, coerced or manipulated by armed actors. Others are driven by poverty,¹⁴ are compelled to generate income for their families. Still others associate themselves for survival or to protect their communities. No matter their involvement, the recruitment and use of children by armed forces is a war crime and a grave violation of child rights.¹⁵ Every child has the right to a normal childhood, and the right to develop his or her human potential. Yet, all

⁵ Ibid

⁶ Ministry of Foreign Affairs of Japan ‘The Impact of Armed Conflict on Children: Filling Knowledge Gaps’ A Proposal by the Special Representative of the Secretary-General for Children and Armed Conflict *Draft Research Agenda* December 2000, Accessed On The 3rd Of October 2022

⁷ Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007

⁸ Ibid.

⁹ Article 1 of the United Nations Convention on The Rights Of The Child 1989.

¹⁰ The United Nations Children’s Emergency Fund. (UNICEF), Children recruited by armed forces or armed groups Thousands of boys and girls are used as soldiers, cooks, spies and more in armed conflicts around the world. December 22nd 2021 accessed on 5th of October 2022

¹¹ Ibid

¹² UNICEF, ‘Child Recruitment and use’, <<http://www.unicef.org.protection>> accessed on 5 February, 2023, ‘Tens of thousands of children are recruited and used as soldiers in armed conflicts around the world’.

¹³ Ibid

¹⁴ International Committee of Red Cross, ‘Child Soldiers and other Children Associated with Armed Conflict and Armed Group’, <www.icrc.org> Accessed 15 Dec. 2022

¹⁵ Ibid

too often in wartime, children are helpless witnesses of atrocities. They may themselves be imprisoned, wounded or killed, or separated from their families in some other way, they are often forced to flee for safety. In spite of the global effort to end recruitment of children and to prevent their participation in hostilities, armed forces or armed groups continue to enlist or conscript children, putting them at great risk and depriving them of some of their most basic rights.¹⁶ Children who are exposed to war and trapped in war zones, whose families are torn apart, can be drawn into the fighting and may have to witness or be forced to perpetrate atrocities, sometimes against their own families. The result can be a shattered childhood and scarring for life. The use of children in armed conflict is a worse form of child labour, a violation of human rights and a war crime.¹⁷

The Statute of the International Criminal Court defines war crimes as, *inter alia*, serious violations of the laws and customs applicable in international armed conflict.¹⁸ International Labour Organisation (ILO) Convention No.182 defines forced or compulsory recruitment of children for use in armed conflict as a worst form of child labour. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prohibits all recruitment - voluntary or compulsory of children under 18 by armed forces and groups. The Rome Statute of the International Criminal Court makes it a war crime, leading to individual prosecution, to conscript or enlist children under the age of 15 years or use them to participate actively in hostilities.¹⁹ Despite the legal prohibition, the use of child soldiers in armed conflict has risen over the past 20 years. The Islamic State, also known as ISIS or ISIL and Boko Haram is perhaps the most notorious of the armed groups, having trained hundreds if not thousands of children for military engagement since the groups came to global prominence in 2014.²⁰ The current prevalence of children in armed conflict is also accompanied by a trend for armed groups to use younger children, a fact reflected in the continuing decline in the overall median age of suicide bombers. Children within the age groups of 12-year-olds (and sometimes children as young as seven) are also used as suicide bombers. By exploiting children, armed groups gain comparative advantages, notably the element of surprise and increased media attention.²¹ In the internal conflicts of recent years, children have featured centrally as both the targets and the perpetrators of violence. The number of children who are being directly affected by armed conflict is enormous and unprecedented, and their rights, well-being and protection merits special attention.²²

2. Conceptual Clarification

2.1 Child Soldier

A child soldier is any girl or boy below the age of 18 who is recruited or used by an armed force or armed group in any capacity.²³ It includes children recruited and trained for military purposes. A child soldier is not just someone who is involved in fighting. They can also be those in other roles such as cooks, porters, messengers, human shields, spies, suicide bombers

¹⁶ Ibid

¹⁷ (n 14)

¹⁸ Article 8 of The Rome Statute of International Criminal Court (ICC) 1998

¹⁹ International Labour Organisation (ILO) Convention No.182

²⁰ M. Bloom, 'Children and Terrorism', forthcoming from Cornell University Press; 'Child Soldiers in Armed Conflict': July [2018] Armed Conflict Survey (36-50) accessed on 6th Nov 2022, Despite the legal prohibition, the use of child soldiers in armed conflict has risen over the past 20 years.

²¹ Ibid

²² (n 6)

²³ <<http://www/child.soldier.meaning.org>> accessed on the 22nd of march 2023

or those used for sexual exploitation. According to the Paris Principles on the Involvement of Children in Armed Conflict 2007, a child associated with an armed force, State military or security forces or armed group (non-State actors with arms engaged in conflict) refers to any person below 18 years of age who is or who has been, recruited or used by an armed force or armed group in any capacity, including, but not limited to children, used as fighters, cooks, porters, spies or for sexual purposes.²⁴ the International Convention on the Rights of the Child fixes 18 as the age of adulthood. Children become soldiers in different ways. Some are forcibly recruited. They may be abducted, threatened or coerced into joining, while others are enticed with money, drugs or in other ways.²⁵ Recruitment of child soldiers can be voluntary; however, forced recruitment is also a common and carefully planned process in which children are abducted and tortured. In cases of forced recruitment, the recruiters typically target places where children are most vulnerable and gathered in large numbers; in particular, children are abducted from schools, orphanages, refugee camps, stadiums, and churches.²⁶ Non-state armed groups are more likely than states to use children in armed conflict. This makes the problem more difficult to tackle as these groups are less visible and harder to negotiate with. Generally, Children are recruited because they are more manageable, more obedient, and more easily manipulated than adults. In many cases, children choose to join as a result of economic or social pressures. Others join armed forces to fight for a cause that they or their family support, often with little clear understanding of the implications of their decision. Being poor, on-going insecurity and displacement, lack of education and employment opportunity, poor sense of belonging or lack of family relation, displaced or separated from their families or living in a combat zone can make children particularly vulnerable to being recruited.

2.2 War

War is a phenomenon of organized collective violence that affects either the relations between two or more societies or the power relations within a society.²⁷ It could also mean a state of usually open and declared armed hostile conflict between states or nation or²⁸ a state of forcible contention. Every connection by force between two nations in external matters, under the authority of their respective governments could also be described as a public war.²⁹ It is also a phenomenon of organized collective violence that affects either the relations between two or more societies or the power relations within a society and it is generally governed by the law of armed conflict, also called international humanitarian law.³⁰ A state of war will usually be open and declared armed hostile conflict between states or nations, such period of armed conflict will result in a struggle or competition between opposing forces for a particular end. It is a transitional phase therefore, it must be conducted in a way that will not make a return to peace impossible, both for society as a whole and for soldiers who must be able to readapt to civilian life, it aims under law of armed conflict or international humanitarian law is to avoid unnecessary suffering and destruction, and it prohibits acts that are disproportionate to the specific military advantage that is sought. It emphasizes the importance of distinguishing between military and civilian objects.

²⁴ World vision hope joy and justice for all children child soldiers: what you need to know Friday, February 5, 2021

²⁵ <<https://www.humanium.org/en/child-soldier/>>

²⁶ Ibid

²⁷ <<https://guide-humanitarian-camuswoedlaw.org/content/article>> Accessed 22 March 2023

²⁸ <<https://www.merriam-webster.com/dictionary/war>> Accessed 22 March 2023

²⁹ <<https://thelawdictionary.org/war/>> accessed on 22 March 2023

³⁰ C. Alber The Practical Guide to Humanitarian Law',

2.3 War Crime

The term *war crime* has been difficult to define with precision, and its usage has evolved constantly, particularly since the end of World War I. The first systematic attempt to define a broad range of war crimes was the Instructions for the Government of Armies of the United States in the field also known as the “Lieber Code” after its main author, Francis Lieber which was issued by U.S. Pres. Abraham Lincoln during the American Civil War and distributed among Union military personnel in 1863. For example, the Lieber Code held that it was a “serious breach of the law of war to force the subjects of the enemy into service for the victorious government” and prohibited violence committed against persons in the invaded country,” including rape, maiming, and murder, all of which carried the penalty of death. More recently, definitions of war crimes have been codified in international statutes, such as those creating the International Criminal Court and the war crimes tribunals in Yugoslavia and Rwanda, for use in international war crimes tribunals. In contrast to earlier definitions, modern definitions are more expansive and criminalize certain behaviours committed by civilians as well as by military personnel.³¹ Generally therefore, War crime means the Violations of the laws or customs of war as defined by international customary law and international treaties. They are acts committed during war which are clearly prohibited under the law of armed conflict. They include acts like atrocities or offences against persons or property, constituting violations of the laws or customs of war like murder, ill treatment or deportation to slave labour or for any other purpose of the civilian population in occupied territory. War crimes also include torture, mutilation, corporal punishment, hostage taking and acts of terrorism. This category also covers violations of human dignity such as rape and forced prostitution, looting and execution without trial. War crimes, unlike crimes against humanity, are always committed in times of war, in international law.³²

3. Legal Framework against the Use of Child Solder During Armed Conflict

Generally, alleged practices of using children to take part in hostilities have been condemned by States and international organizations.³³ The participation of children in hostilities is prohibited in many military manuals,³⁴ including those which are applicable in non-international armed conflicts. International armed conflict Protocol 1 additional to the Geneva Conventions (Additional Protocol I), which governs international armed conflict, it provides that *The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.*³⁵ Given the particular vulnerability of children, the Geneva Conventions of 1949 (hereafter GCIII and GCIV) and their Additional Protocols of 1977 (API and APII) lay down a series of rules according them special protection. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols to the Geneva Convention, the 1989 Convention on the rights of the child and its recent Optional Protocol, in particular, also set limits on children's participation in hostilities.³⁶ To strengthen the legal protection of children during armed conflict, the Optional Protocol to the UNCRC was adopted by the United Nations to prevent children younger than

³¹ Ibid

³² <<https://www.britannica.com/topic/war-crime>> Accessed 22 March 2023

³³ United Nations Security Council, Res. 1071

³⁴ Example the military manuals of Argentina, Australia, France and Nigeria

³⁵ Protocol I of 8 June 1977 additional to the Geneva Conventions (Additional Protocol I),

³⁶ International Committee of Red Cross, Legal Protection of Children in Armed Conflict, ‘*Advisory Service On International Humanitarian Law*’ accessed on 5 of Nov. 2022.

18 years old from being recruited into or participating as combatants in hostilities.³⁷ In the optional protocol which was ratified by the United States Senate in 2002³⁸, 16 years of age is established as the absolute minimum age for voluntary recruitment, and signatories are required to take all feasible measures to ensure that 16- and 17-year-old members of the armed forces do not take part in hostilities. Protocol II of 8 June 1977 additional to the Geneva Conventions (Additional Protocol II), which governs non-international armed conflict, provides also that: “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”³⁹ Customary humanitarian law also provides that children must not be recruited into armed forces or armed groups and must not be allowed to take part in hostilities.⁴⁰ The Convention on Rights of the Child requires States Parties to:

- a. take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities⁴¹
- b. Refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest⁴²

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires States Parties to:

- a. Take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.⁴³
- b. Ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces⁴⁴
- c. Raise the minimum age for the voluntary recruitment of persons into their national armed forces from 15, recognizing that under the Convention persons under the age of 18 years are entitled to special protection.⁴⁵
- d. The Optional Protocol also provides that Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years and

³⁷ UN Human Rights Office of the High Commissioner, ‘Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. 2000’, cited in A. Kadir, S. Shenoda, J. Goldhagen, & S. Pitterman, ‘The Effects of Armed Conflict on Children’ *American Academy Of Pediatrics Technical Report*, [2018] (142)(6) *Pediatrics*,

³⁸ US Senate Committee on Foreign Relations Executive report 107-4. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed Conflict. 2002; <<https://www.congress.gov/congressional-report/107th-congress/executive-report/4>> cited in A. Kadir, S. Shenoda, J. Goldhagen, And S. Pitterman, (n 37)

³⁹ Article 77 (2). also (Article 4 [3 c], Protocol II of 8 June 1977 additional to the Geneva Conventions of 1949

⁴⁰ Rules 136 & 137 of International Committee of Red Cross’s Study On Customary Humanitarian Law 2005

⁴¹ Article 38 (2);

⁴² Article 38(3).

⁴³ Article 1

⁴⁴ Article 2

⁴⁵ Article 3 (1).

- e. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices⁴⁶

Under the Statute of the International Criminal Court, conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities is a war crime, in both international and non-international armed conflicts.⁴⁷ ILO Convention No. 182, also requires States Parties to take immediate and effective measures to secure the prohibition and elimination of such practices as a matter of urgency. For the purposes of the Convention, the worst forms of child labour are “*all forms of slavery or practices similar to slavery,*” such as “*forced or compulsory recruitment of children for use in armed conflict*”⁴⁸ In 2000, the UN General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict to protect children from recruitment and use in hostilities. The Optional protocol is a commitment that:

- a. States will not recruit children under the age of 18 to send them to the battlefield.
- b. States will not conscript soldiers below the age of 18.
- c. States should take all possible measures to prevent such recruitment including legislation to prohibit and criminalize the recruitment of children under 18 and involve them in hostilities.
- d. States will demobilize anyone under 18 conscripted or used in hostilities and will provide physical, psychological recovery services and help their social reintegration.
- e. Armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under 18. The Protocol entered into force in 2002 and has now been ratified by a majority of the world’s countries.

Also in the event of an international armed conflict, children not taking part in the hostilities are protected by Geneva convention GCIV relative to the protection of civilians and by additional protocol API. They are covered by the fundamental guarantees that these treaties provide, in particular the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment and reprisals⁴⁹ and by the rules of API on the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians.⁵⁰ In the event of non-international armed conflict, children are also covered by the fundamental guarantees for persons not taking direct part in the hostilities.⁵¹ They are further protected by the principle that the civilian population as such, as well as individual civilians, shall not be the object of attack.⁵² In a resolution adopted in 1999 on children in armed conflicts, the UN Security Council strongly condemned the use of children in armed conflict in violation of international law.⁵³ Also in another resolution adopted in 1996 on the plight of African children in situations of armed conflict, the

⁴⁶ Article 4(1) and (2)

⁴⁷Article 8

⁴⁸ Article 3 (A)

⁴⁹ Art. 27-34 Geneva Convention IV 1949 and Art. 75 Additional Protocol I 1977

⁵⁰ Art. 48 and 51.

⁵¹ Art. 3 Common to the Geneva Convention 1949 and Art. 4 Additional Protocol II 1977

⁵² International Committee of Red Cross, Legal Protection of Children in Armed Conflict Advisory Service on International Humanitarian Law

⁵³ United Nations Security Council, Res. 1261.

Organisation of Africa Unity (African Union) Council of Ministers reaffirmed that “*the use of children in armed conflicts constitutes a violation of their rights and should be considered as war crimes*”.⁵⁴ The International Conferences of the Red Cross and Red Crescent also in 1986 and 1995 adopted resolutions stressing on the prohibition of the participation of children in hostilities.⁵⁵ The Plan of Action for the years 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999, requires that all parties to an armed conflict ensure that “*all measures, including penal measures, are taken to stop the participation of children in armed hostilities*”.⁵⁶

4. Impact of Armed Conflict on Children

International Humanitarian Law is a body of laws and rules applicable when armed violence reaches the level of armed conflict, and is confined only to armed conflicts, whether international or non-international.⁵⁷ In describing armed conflict in international humanitarian law, it includes all kinds of hostilities between two or more States or among States and other contenders, such as belligerent, insurgents and rebel.⁵⁸ The rules of war in the 21st century armed conflict has drastically changed, More than 1 in 10 children worldwide are affected by armed conflict.⁵⁹ The effects are both direct and indirect and are associated with immediate and long-term harm. The direct effects of conflict include death, physical and psychological trauma, and displacement. Indirect effects are related to a large number of factors, including inadequate and unsafe living conditions, environmental hazards, caregiver mental health, separation from family, displacement-related health risks, and the destruction of health, public health, education, and economic infrastructure.⁶⁰ Children are targeted by combatants during attacks, they are recruited or forced to take part in combat in a variety of ways.⁶¹ Schools, market and other public areas which have been traditionally safe places, are targeted on purpose during armed conflict,⁶² Schooling is often disrupted with the onset of violence. The breakdown of family and community controls, as well as separation from homeland and culture, may often lead to risky behaviour such as increased unprotected sexual activity, drug abuse and violence.⁶³ Children are recruited into armed conflict and are forced to participate in many different ways, including as soldiers, cooks, domestic workers, porters, human shields, mine sweepers, gang members, and sex slaves.⁶⁴ Child soldiers, deprived of a normal childhood, stand little chance of assimilation into society later in life. Girls are liable to be subjected to sexual violence, particularly in ethnic conflict; rape of women and girls may be a deliberate policy. Sexual violence, inequitable food distribution and health services that ignore the special needs of

⁵⁴ OAU (Africa Union) Council of Ministers, Res. 1659

⁵⁵ 25th International Conference of the Red Cross and 26th International Conference of the Red Cross and Red Crescent

⁵⁶ 27th International Conference of Red Cross and Red Crescent, Res. I (adopted by Consensus) (*Ibid.*, § 589)

⁵⁷ International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, Documents Prepared by the International Committee of the Red Cross for the 30th International Conference of the Red Cross and Red Crescent, Geneva, Switzerland

⁵⁸ I. Ogunniran, ‘Protection of the Rights of Children Victims of Armed Conflicts in North -Eastern Nigeria Under International Humanitarian Law’ [2021] 12 NAUJILJ

⁵⁹ S Shenoda, Kadir A, Pitterman S, And Goldhagen J, ‘The Effects of Armed Conflict on Children’ [2018] (142) (6) Section on International Child Health Paediatrics

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² Global Coalition to Protect Education from Attack, <www.protectingeducation.org/education-under-attack-2014> cited in A. Kadir, S. Shenoda, J. Goldhagen, And S. Pitterman, (n 37)

⁶³ *Ibid*

⁶⁴ *Ibid*

women and girls all reduce their chances of survival.⁶⁵ This phenomenon has a disproportionate impact on girls, who constitute up to 40% of children associated with armed groups.⁶⁶ Children are maimed and killed, and uprooted from home and community, they are made orphans, separated from their parents and subjected to sexual abuse and exploitation, and they are used as combatants, made to suffer from trauma and deprived of education and healthcare.⁶⁷ The number of children associated with armed forces and armed groups worldwide is unknown but is thought to run into the hundreds of thousands,⁶⁸ suggesting a pervasive violation of the United Nation Convention on the Right of a Child (UNCRC) optional protocol on the involvement of children in armed conflict. While living among armed actors, children also experience unconscionable forms of violence. They may be required to participate in harrowing training or initiation ceremonies, to undergo hazardous labour or to engage in combat – with great risk of death, chronic injury and disability. They may also witness, suffer or be forced to take part in torture and killings. Girls, especially, can be subjected to gender-based violence. Warring parties also deprive children of nutrition and healthy living conditions, or subject them to substance abuse, with significant consequences for their physical and mental well-being.⁶⁹ Deaths are also difficult to verify, and this may lead to underestimation. For example, in a report by the United Nation special rapporteur on children and armed conflict, it was estimated that thousands of children had died in the Syrian conflict in 2015.⁷⁰ However, only 591 child deaths were verified by the UN, which accounts for barely 0.01% of the 50 000 deaths that other analysts had estimated to have occurred during that year.⁷¹ Other problems in estimating the child health impact of armed conflict include the near absence of population-level data on morbidity and the tendency to aggregate child and adult data. As a result, there are no pooled estimates for the total number of children killed, injured, orphaned, handicapped, and/or psychologically traumatized by exposure to armed conflicts.

Armed conflict also separates children from their families, as evidenced by the increasing numbers of children fleeing conflict between state and non-state actors without parents or guardians. The number of children who are unaccompanied and separated who applied for asylum worldwide nearly tripled in 2015, these children often do not possess official documents, making it challenging for authorities to identify their age, risks, needs, and rights to protection.⁷² When war drives families from their homes, during the early stages of displacement, death rates among children under five years of age are far higher than among older children and adults. The risk of communicable diseases, already the major cause of death among children in peacetime, is greatly increased in wartime due to displacement, malnutrition, and direct involvement of children in armed conflict.⁷³ According to testimonies received by the Office of the High Commissioner for Human Right. (OHCHR), Boko Haram has recruited and used boys and girls for active hostilities. Some boys were forced to attack their own families to demonstrate their loyalty to Boko Haram, while girls were forced to marry, clean, cook and carry equipment and weapons. Office of the High Commissioner For Human Right, (OHCHR) received consistent reports that some boys and girls were increasingly used as human shields to

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ (n 6)

⁶⁸ Ibid

⁶⁹ Ibid.

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

detonate bombs, a pattern that has intensified since 2014⁷⁴. In May 2015, for example, a 12-year-old girl was used to detonate a bomb at a bus station in Damaturu of Nigeria, State of Yobe, killing seven people.⁷⁵ Similar incidents were reported in Cameroon and the Niger. During attacks by Boko Haram, abducted boys were used to identify those who refused to join the group, as well as unmarried women and girls.⁷⁶ In Nigeria, children aged between 6 and 15 years who had been abducted described having been surrounded by “*many guns, and armoured vehicles*”, and how Boko Haram members had beaten them with cables for not praying or for saying their prayers late. In April 2015, in Yola, State of Adamawa, Office of The High Commissioner for Human Right, (OHCHR) spoke with four children, aged between 12 and 14 years, who had formerly been abducted by Boko Haram and reunited with their families after escaping. They were deeply traumatized, having experienced sexual violence and exploitation.⁷⁷ There are several legal declarations and treaties protect the health of children and preserve access to health care during armed conflict. The most important of these include the Geneva Conventions (1949), the United Nations (UN) Refugee Convention (1951) and its 1967 Protocol, and the United Nations Convention on the Rights of the Child (UNCRC) 1989 with its accompanying Optional Protocol on the Involvement of Children in Armed Conflict. According to international law, the involvement of children in armed conflict and the targeting of health facilities by combatants are human rights violations. Of particular relevance is the United Nations Convention on the Rights of the Child UNCRC, a legally binding treaty in which 40 substantive rights for children are outlined and grouped into 3 categories: protection, promotion, and participation. Specific child rights include protection from violence and sexual exploitation, freedom of thought, education, health services, welfare services, and specific rights of children who are refugees, separated, and unaccompanied.⁷⁸ The UN has identified 6 categories of human rights violations against children, known as the 6 grave violations. These violations include

- a. The killing and maiming of children,
- b. The abduction of children,
- c. The recruitment or use of children as soldiers,
- d. Sexual violence against children, attacks against schools or hospitals, and
- e. The denial of humanitarian access.⁷⁹

While it is generally accepted that the number of children currently affected by armed conflict is extremely high and perhaps unprecedented, there are still no accurate figure of the number of children affected by armed conflict. It is therefore of fundamental importance that efforts be

⁷⁴ Human Rights Council Thirtieth session, Agenda item 2 Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General on violations and abuses committed by Boko Haram and the impact on human rights in the countries affected Report of the UN High Commissioner for Human Rights 9th December 2015

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ UN Human Rights Office of the High Commissioner, Convention on the Rights of the Child, 1989, <www.ohchr.org/en/professionalinterest/pages/crc.aspx> cited in A. Kadir, S. Shenoda, J. Goldhagen, and S. Pitterman, (n 37)

⁷⁹ UN Office of the Special Representatives of the Secretary General for Children and Armed Conflict, Working paper no 1: the six grave violations against children during armed conflict, <https://childrenandarmedconflict.un.org/publications/WorkingPaper_SixGraveViolationsLegalFoundatio>

made at State level to find out points of intersection between local and international norms in order to enhance the protection of children from armed conflict.⁸⁰

5. Conclusion

Lately, armed conflicts have become more complicated, the rise of transnational conflicts between states and non-state actors has created numerous problems in today's contemporary armed conflict. The acute and chronic effects of armed conflict on child health and wellbeing are among the greatest child rights violations of the 21st century. Particularly damaging for future generations is the impact of war on girls. Disadvantaged even in peacetime, girls undergo sexual abuse, rape, enslavement and other tribulations during war. The rules laid down by international law notwithstanding, thousands of children are nevertheless taking an active part in hostilities and are themselves the innocent victims of those events. Despite the extraordinary number of children living in areas affected by conflict, our understanding of the scale of conflict's effects on children, the nuances of these effects and ways to mitigate and treat them remain limited. States have the primary responsibility to put an end to this situation. They are therefore urged to ratify the treaties protecting children in armed conflict and to take national measures adapted to their legal systems in order to implement these treaties whether in legislative or other form, these measures are intended to enable States to respect and to ensure respect for the rules laid down by the treaties.

6. Recommendation

The duty to implement IHL is primarily that of States, which have an unambiguous obligation to adopt a number of legal and practical measures for ensuring full compliance with this body of law. These measures may need to be taken by one or more government ministries, the legislature, the courts, the armed forces, or other State agencies. There may also be a role for professional and educational bodies. International criminal tribunals and other special courts have been set up to deal with serious violations committed in specific contexts of armed conflict. A permanent international criminal court, with jurisdiction over the most serious crimes, was created by the 1998 Rome Statute. However, it is States that continue to bear primary responsibility for fully implementing the law; they must also adopt pertinent measures at a national level, including means to prosecute and punish perpetrators of serious violations of IHL. Communities need support to care for their returning children just as the thousands of boys and girls who exit armed forces each year need it to rebuild their futures. School-based programs should also be implemented to help children overcome difficulties that are associated with forced migration and positively affect self-esteem, motivation, and self-efficacy. Providing mental health services in a school setting may be more socially and culturally acceptable. In addition to addressing psychological trauma and promoting mental health in children who are affected by armed conflict, psychosocial and mental health programs are a means to promote resilience in children. There is also a widespread need for more systematic identification and analysis of trends in the conduct of organized violence that have led to the disproportionate victimization of children.

⁸⁰ Ibid

