

CHILDREN AND ARMED CONFLICT

A guide to international humanitarian and human rights law

By Rachel Harvey



BUREAU INTERNATIONAL
DES DROITS DES ENFANTS

INTERNATIONAL BUREAU
FOR CHILDREN'S RIGHTS

OFICINA INTERNACIONAL
DE LOS DERECHOS DEL NIÑO

The Children and Armed Conflict Unit

The Children and Armed Conflict Unit was established in 1997 as a joint project of the Children's Legal Centre, an independent charity, and the Human Rights Centre of the University of Essex.

The Children's Legal Centre is the lead body in the project. The Unit, whose patron is Graça Machel, was set up in 1997. The Children and Armed Conflict Unit works around the world to improve the situation for civilian children caught up in armed conflict and civil unrest and for those emerging from years of violence.

International Bureau for Children's Rights

The International Bureau for Children's Rights (IBCR) is an international non-governmental organization created in 1994 to ensure that children's rights are respected, to identify and draw attention to the root causes of violations of children's rights and to seek practical solutions through knowledge, public awareness and international cooperation. It has an active board drawn from international experts in human rights, children's issues and criminal justice.

The IBCR's mission is to contribute to the protection and promotion of children's rights. In pursuing its mission, the IBCR is guided by the principles enshrined in the Convention on the Rights of the Child and other international and regional instruments.

PREFACE

This publication is an outcome of the training sessions organized by the International Bureau for Children's Rights (IBCR) for the members of the International Tribunal for Children's Rights (ITCR) in September 2001 in Sarajevo, Bosnia and Herzegovina. The training materials compiled and presented by Ms. Rachel Harvey from the Children and Armed Conflict Unit (a joint project of the Children's Legal Centre, an independent charity, and the Human Rights Centre of the University of Essex) were updated later on to reflect upon major aspects of international humanitarian and human rights law relating to children affected by armed conflict. This publication does not intend to cover all aspects of the subject. Instead it aims at serving as a quick reference manual for those involved in researching, promoting and protecting the rights of children affected by armed conflict.

The IBCR would like to acknowledge the generous financial support of the Canadian International Development Agency (CIDA), without which the training sessions and, consequently, this publication would not have been possible. The IBCR also wishes to thank all other funders, charitable agencies and individuals who support its work, including this project. Furthermore, the work of the members of the ITCR and in particular their comments and recommendations both during and after the training sessions served as an important input into the overall success of the project. Last but not least, the IBCR appreciates the time, effort and the professional work of the author, Ms. Rachel Harvey, in making this publication a reality. The IBCR values the collaboration with the Children and Armed Conflict Unit and looks forward to its continuation.

This publication will be distributed broadly to those concerned with the rights of children affected by armed conflict, including governments, international and non-governmental organizations, researchers and practitioners worldwide. The author and the IBCR would appreciate any comments or suggestions relating to the issues presented in this publication, which can be sent at the addresses provided on the back cover.

We hope that this publication will be a valuable resource and that it will inspire your work for the benefit of children.

A handwritten signature in black ink, appearing to read 'J. Noël', with a horizontal line underneath.

Jean-François Noël
Director General
International Bureau for Children's Rights

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Overview of International Law and Developments

1. War Affected Children – An Overview

The face of warfare changed towards the latter half of the last century. Interstate wars are now relatively rare and hugely outnumbered by internal conflicts¹. However, while classed as internal, the majority of these conflicts have an international element. Often conflicts spill over into neighbouring States in the form of refugee flows. States also involve themselves through financial, military and political assistance or intervention.

In internal conflicts the battlefield is not clearly marked and people are often caught up in the conflict as victims or participants – a distinction that is sometimes hard to draw (e.g. in the case of child soldiers). Violence against the civilian population by both government and non-state forces is now the rule rather than the exception, with civilians often being deliberately targeted in military campaigns.

It is therefore inevitable that the number of civilian casualties has risen. In World War II, civilian victims made up 50 % of those that died, mostly from bombing raids. However, by 1996, in her report on the Impact of Armed Conflict on Children², Graça Machel estimated that civilians made up 90 % of war casualties and the largest proportion of these victims were women and children. A century earlier this figure had been just 5 %.

1. All but three of the 56 major armed conflicts registered from 1990-2000 were internal. The international conflicts were between Iraq and Kuwait, India and Pakistan and Eritrea and Ethiopia. SIPRI *Yearbook 2001: Armaments, Disarmament and International Security* (Oxford: Oxford University Press, 2001). Also see conflict data, 2001 - EM-DAT: The OFDA/CRED International Disaster Database - www.cred.be/emdat - Université Catholique de Louvain, Brussels, Belgium.

Over the last decade it is estimated that 2 million children have been killed in conflict situations, over 6 million have been seriously injured or permanently disabled, and over 20 million children have been displaced by war within and outside their countries³. In addition, millions of children have suffered sexual violence, grave psychological trauma, malnutrition, disease, and the multiple consequences of being forced to flee their homes. Conflicts have further deprived children of their support system - i.e. family, community, educators, health workers etc – exacerbating these problems.

Of course, children are not affected in the same way in every conflict. Conflicts are characterized by different problems; for example, recruitment of children and all the consequences of their participation in conflict is a severe problem for Sierra Leone, Uganda and Mozambique but was not widespread in the Former Republic of Yugoslavia. It is also recognised that conflicts impact children differently from adults. However, children are not less affected by events because of their supposed resilience or naivety. In fact, age, physical stature and development factors often result in their limited capacity to adapt or respond to the conflict around them and its consequences.

2. Legal Developments and Current International Law

Legal protection of children during armed conflict is contained in two bodies of international law – International Humanitarian Law and International Human Rights Law⁴.

International Humanitarian Law is the body of law that seeks to regulate the methods and means of warfare, and the treatment of people in times of war, who are not, or who are no longer (e.g. prisoners of war, or injured soldiers), participating in the hostilities.

2. "Impact of Armed Conflict on Children: Report of the Expert of the Secretary General", Graça Machel, submitted pursuant to General Assembly Resolution 48/157, UN Doc A/51/306, 26 August 1996.

3. "The Impact of Armed Conflict on Children: A critical review of progress made and obstacles encountered in increasing protection for war-affected children", Graça Machel, presented at the International Conference on War-Affected Children, September 2000, Winnipeg, Canada, pg5

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

International Human Rights Law primarily seeks to regulate the way States treat people who are in their jurisdiction. Although human rights law is not specifically designed to protect persons during times of armed conflict, many of its provisions remain applicable.

INTERNATIONAL HUMANITARIAN LAW

The international community have been attempting to regulate warfare for well over a century. However, the most significant humanitarian law treaties that apply to warfare today are the Geneva Conventions, which were drafted in the aftermath of World War II, and the two Additional Protocols to these conventions that were adopted in 1977.⁵

THE GENEVA CONVENTIONS 1949

The overarching aim of the four Geneva Conventions is the protection of victims of international conflicts.

Geneva Convention I⁶ - relates to the treatment and protection of members of the armed forces who are wounded and sick in the field

Geneva Convention II⁷ - relates to the treatment and protection of members of the armed forces who are shipwrecked or wounded and sick at sea

Geneva Convention III⁸ - relates to the treatment and protection of prisoners of war

Geneva Convention IV⁹ - relates to the treatment and protection of civilian persons in times of war, occupation or internment

Geneva Convention IV was the first treaty that exclusively sought to provide protection for civilians during armed conflict. However, it is mainly concerned with the treatment of civilians who are in the hands of an opposing party or who are victims of war, rather than with regulating the conduct of parties to a conflict in order to protect civilians.

5. The international law and developments relating to the regulation of specific weapons is discussed in the Issue Focus in Section 2.

6. 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

7. 1949 Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

8. 1949 Geneva Convention III Relative to the Treatment of Prisoners of War

9. 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War

Importantly, in its general protection measures for civilians¹⁰, the Convention includes a limited number of obligations on parties to a conflict to provide special protection to children¹¹ e.g. to allow free passage of food, clothing and medicine intended for children¹², and to assist children who are separated or orphaned¹³. State parties are also permitted to establish hospital and safety zones to protect children, among other vulnerable groups¹⁴.

However, the majority of the provisions do not afford protection to all children under 18. This is because the concept that all persons under 18 are children, and are therefore entitled to special protection, did not exist in 1949 and has only been accepted by the international community in recent decades.

Although Geneva Convention IV only provides limited protection for children, its provisions are applicable to every international conflict because, not only are 190 States¹⁵ party to the 1949 Geneva Conventions, but also these conventions are now considered (at least in large part) to be customary international law¹⁶. Therefore, even the small number of States that have not ratified/acceded to the Conventions are bound to uphold the obligations contained therein.

A weakness of the Geneva Conventions, in terms of modern day conflicts, is that they do not apply to conflicts of a non-international character i.e. internal conflicts.

One exception exists. Common Article 3, so called because the article is contained in all four of the Geneva Conventions, obligates parties to an internal conflict to provide a very limited set of fundamental guarantees to non-combatants¹⁷. Although this article applies to State and non-state fighters, it was recognised that this article was insufficient and inadequate to address and regulate the growing number and the nature¹⁸ of internal conflicts.

10. Articles 13-26. These articles are primarily concerned with the provision of medical facilities and supplies.

11. There are also a number of provisions that provide specific protection for pregnant women e.g. "... expectant mothers shall be the object of particular protection and respect" (Article 16).

12. Article 23

13. Article 24

14. Article 14

15. There are 191 Member States of the United Nations.

16. e.g. see the 1993 Report of the Secretary-General (S/25704 and Add.1) on the Establishment of the International Criminal Tribunal for Yugoslavia, pursuant to paragraph 2 of resolution 808 (1993), in which the Secretary-General stated that the law enshrined in the four Geneva Conventions had become part of customary international law.

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

18. E.g. the application of law to guerilla warfare needed to be addressed.

UN GA DECLARATION ON THE PROTECTION OF WOMEN AND CHILDREN IN EMERGENCY AND ARMED CONFLICT

In 1974, the United Nations General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict¹⁹. Although this declaration is not legally binding on parties to a conflict, it succeeded in drawing international attention to the plight of women and children as victims of inhuman acts and to the importance of increasing protection for these vulnerable groups in internal conflicts.

ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS

In 1977, the international community adopted the Additional Protocols to the Geneva Conventions. Additional Protocol I²⁰ extended the protection for those caught up in international conflicts, in particular by up-dating the rules applicable to the conduct of hostilities, while Additional Protocol II²¹ laid down minimum guarantees to be upheld in internal conflicts.

Additional Protocol I

Protocol I also widened the protection afforded to children in international conflicts, stating that they shall be the object of special respect and be protected from any form of indecent assault. Parties to the conflict must also provide them with the care and aid that they require²².

Significantly, Protocol I also set the minimum age for recruitment by armed forces and for the direct participation of children, marking the first time the issue of child soldiers had been addressed in a binding international document. However, 15 years and not 18 years was set as the minimum age for participation and recruitment²³.

Limited juvenile justice guarantees are provided for in Article 77. Children, who commit a crime related to the armed conflict, shall be held separately from adults, unless families are being accommodated together in

19. Res. 3318 (XXIX)

20. 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 160 State Parties as of 31 January 2003

21. 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts. 156 State Parties as of 31 January 2003.

22. Article 77(1)

23. Article 77(2)&(3)

family units and individuals shall not be subjected to the death penalty for a crime they committed when they were under 18 years²⁴.

Article 78 addresses the issue of evacuation of children from war torn countries, providing that children shall not be evacuated unless there are compelling reasons²⁵. This is to avoid the risk of removal for the purposes of ethnic cleansing and unnecessary removal of children, representing a major change in practice from World War II when mass evacuations of children took place. Prior to any evacuation, parental consent shall be sought if the parents can be found²⁶ and everything shall be done to ensure that the children are reunited with the parents when the danger has passed²⁷. In addition, while away a child's education shall continue²⁸.

Additional Protocol II

Protocol II was the first binding international document to solely address the conduct of parties in non-international armed conflicts, developing the basic guarantees enshrined in Common Article 3. However, its provisions are fewer and far less restrictive on conduct of parties to the conflict than those in Additional Protocol I and its application is restricted to conflicts, which fulfill the criteria laid out in Article 1.²⁹

Protocol II contains a similar, if curtailed, version of the child protection provisions contained in Protocol I. Under Protocol II, children are entitled to be provided with the care and aid that they require. Specifically, children are entitled to education³⁰, to be reunited with their families where they have been temporarily separated³¹ and to be removed from conflict zones to safer areas in the country³². Before removal, if possible, consent should be

24. Articles 77(4)&(5) respectively

25. Article 78(1)

26. Article 78(1)

27. Article 78(3)

28. Article 78(2). It must be noted that slightly different rules apply to evacuation carried out by own State and evacuation carried out by the authorities of another State.

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

30. Article 4(3) (a)

31. Article 4(3) (b)

32. Article 4(3) (e)

obtained from their parents or guardians and they should be accompanied by persons who are responsible for their safety and well being. In addition, children who are prosecuted for criminal offences related to the armed conflict must not be subject to the death penalty, if they were under 18 years at the time of their offence³³.

Significantly, Additional Protocol II recognized that children need protection from being recruited by both government and armed opposition groups³⁴. However, as with Additional Protocol I, the minimum age for recruitment and participation in hostilities was set at 15 years.

INTERNATIONAL HUMAN RIGHTS LAW

In response to the atrocities committed in WWII, the international community sought to draw up instruments to regulate the activities of States towards people in their jurisdictions. In 1948, the non-binding Universal Declaration of Human Rights was adopted, closely followed by the binding regional agreement among European States – the European Convention on Human Rights 1950. In 1966, two much more detailed instruments were opened for universal signature that enshrined a wide range of civil and political rights and economic, social and cultural rights³⁵.

UN CONVENTION ON THE RIGHTS OF THE CHILD 1989

While children are entitled to the protection of these international human rights instruments, children's rights have only recently been formally and explicitly recognized by the international community³⁶ with the adoption of the Convention on the Rights of the Child (CRC) in 1989. With 192 ratifications, the CRC has become the most widely ratified international treaty.

The Convention on the Rights of the Child defines children as all human beings under the age of 18 years³⁷. The Convention contains a com-

33. Article 6(4)

34. Article 4(3)(c)

35. International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966. Other significant regional human rights treaties include the American Convention on Human Rights 1969, the African Charter on Human and Peoples' Rights 1981 and the African Charter on the Rights and Welfare of the Child 1990.

36. It must be noted, however, that the League of Nations (the forerunner of the United Nations) endorsed the Geneva Declaration of the Rights of the Child in 1924, and, the United Nations General Assembly unanimously adopted a more detailed Declaration of the Rights of the Child in 1959 (General Assembly resolution 1386(XIV) of 20 November 1959). However, neither of these documents is legally binding.

37. Article 1

prehensive set of economic, social and cultural rights as well as civil and political rights, which are considered to be indivisible and interdependent and consequently there should be no hierarchy in their implementation. However, four general principles underpin the Convention – non-discrimination (Article 2), best interests of the child (Article 3), the right to life, survival and development (Article 6) and the right for children to have their views heard and given due weight in all decisions affecting them (Article 12). These principles should be taken into account in implementing all the provisions of the CRC.

Article 38 specifically addresses the issue of protecting children in times of armed conflict. However, this provision does not impose an absolute duty on States to ensure the care and protection of children during hostilities. Further, Article 38 does not significantly extend the protection contained in the Additional Protocols and in International Humanitarian Law in general, specifically retaining the age of 15 years for recruitment and direct participation in hostilities of children. These are the only provisions of the CRC not to apply to all children under 18 years³⁸.

Article 39 relates to the post conflict care of children, obligating States to assist the physical and psychological recovery and social reintegration of children who have been victims of armed conflict.

Despite the fact that its *specific* protection of children in times of conflict is limited, it is arguable that *all* the provisions of the CRC are applicable to children during all levels of conflict and internal disturbance, as there is no provision that allows derogation in times of national emergency³⁹.

Limitations of the CRC

While being considered to be non-derogable during times of war, the CRC is not suited to the realities of conflict. The monitoring mechanism of the CRC, the Committee on the Rights of the Child, is not able to respond in situations of emergency, cannot make ad hoc recommendations or comment on situations in countries outside its concluding comments on State reports, cannot hear individual complaints, impose sanctions on offenders or order compensation.

In addition, the CRC covers a wide range of rights, which governments struggle to implement in peacetime. Although the CRC is the most ratified

38. This anomaly in protection for children under the Convention is discussed in the section on child soldiers.

39. This differs from other human rights treaties, which, in limited circumstances, can be restricted by Governments in times of public emergency, which threaten the life of a nation. (e.g. International Covenant on Civil and Political Rights 1966, Article 4) However, these treaties do not allow States to suspend fundamental guarantees such as the right not to be tortured.

human rights document, it is also the most violated. During situations of armed conflict while, in theory, the rights are indivisible and interdependent, the right to survival, development and health are prioritised and often other rights are ignored completely in the short term by States and humanitarian agencies. The hierarchy of rights and the interaction between rights and needs of children during and after armed conflicts is the subject of an ongoing debate of aid agencies and the international community.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT 2000

In 2000, the international community adopted the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in an attempt to address the widespread recruitment and use of children by armed forces around the world. This instrument raised the minimum age (from the existing standard of 15 years) for compulsory and voluntary recruitment and deployment for both State and non-state forces. Unfortunately, due to the reluctance of certain States, most notably the USA, a blanket minimum threshold of 18 years for all recruitment and deployment practices was not achieved, allowing States to continue to recruit under-18s⁴⁰.

3. General International Developments to Protect War-Affected Children

Over the last decade, the issue of the protection of children in armed conflicts has attracted growing attention and importance on the international stage.

MACHEL STUDY

Following General Assembly resolution 48/157 of 20 December 1993, Graça Machel was appointed by the Secretary General to write a report on the Impact of Armed Conflict on Children. The report⁴¹, published in August 1996, brought worldwide attention to the issues affecting children living in conflict zones.

40. The Optional Protocol is examined in detail in the chapter on child soldiers. (Section 2, chapter 1)

41. *op. cit.* at fn. 2

The Machel Report was the first comprehensive human rights assessment of war-affected children, using the Convention on the Rights of the Child as a guiding framework of analysis. The appropriateness and adequacy of existing international standards in providing protection was analysed, paying particular attention to child soldiers, refugee and internally displaced children, landmines, sanctions and the psychological, physical and psychosocial consequences of conflict. The report contained “a *comprehensive agenda for action by Member States and the International Community to improve the protection and care of children in situations of conflict*”⁴².

The report made numerous recommendations, which included a proposal for the appointment of a special representative on children and armed conflict which would, among other functions, monitor the situation of children in armed conflicts, raise awareness of their plight, and work with the international community, the Committee on the Rights of the Child and NGOs to promote the protection of children in armed conflicts.

SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT

In 1996, following the recommendation in the Machel Report, the General Assembly adopted Resolution 51/77, which recommended a three-year appointment of a Special Representative of the Secretary General for children and armed conflict⁴³. The office was set up in 1997 and Olara Otunnu was appointed. Mr. Otunnu is still the Special Representative, his term in office having been extended in recognition of the importance and success of his work.

The Special Representative describes his role as:

Advocate - building awareness of the needs of war-affected children;

Catalyst - proposing ideas and approaches to enhance the protection of children in war;

Convenor - bringing together key actors within and outside the UN to promote more concerted and effective responses; and

Facilitator - undertaking humanitarian and diplomatic initiatives to unblock difficult political situations⁴⁴.

42. para 2

43. para 35, Resolution 51/77 Adopted by the General Assembly on 12 December 1996 (A/RES/51/77).

44. Taken from the website of the Office of the Special Representative of the Secretary General for Children and Armed Conflict – ‘Our Mandate’ – www.un.org/special-representative/children-armed-conflict/

Since the inception of the post, the Special Representative has succeeded in placing the issues of children and armed conflict high on the international agenda⁴⁵. Not only are children recognized as being in need of special protection and assistance, but it is now also accepted that children should be more central to peace processes, security issues in general and post conflict reconstruction. He has also secured commitments for child protection from both State and rebel leaders⁴⁶. While securing these commitments was a significant achievement, marking the first time many parties had made human rights and humanitarian undertakings, it must be noted that the majority of these were not upheld.

SECURITY COUNCIL RESOLUTIONS

Prior to 1999, there were no Security Council Resolutions that dealt specifically with children affected by armed conflict. However, since 1999, the Security Council has adopted four significant resolutions on this topic. These resolutions are not confined to the actions of the warring parties but call on all actors that might influence or affect the conflict to take measures to provide protection for children – e.g. the Security Council, other UN bodies, Member States, corporate actors, regional organizations, and international financial institutions.

Security Council Resolution 1261

Security Council resolution 1261 in 1999⁴⁷ was the result of the first Security Council debate on a subject of this kind. Significantly, this resolution formally affirmed that the protection and security of children affected by armed conflict was an international peace and security issue, and therefore, firmly within the remit of the Security Council.

The harmful and widespread impact that conflict had on children and the long-term consequences that this had for durable peace, security and development was highlighted by the resolution. It was further acknowledged that children were being deliberately targeted during armed conflicts, especially in places protected by International Humanitarian Law e.g. schools.

The resolution also contained a list of calls for States to take action on issues such as the proliferation of small arms, the recruitment and use of children, and access of humanitarian and UN personnel.

45. The Special Representative submits annual reports to the General Assembly and the Commission on Human Rights

46. Afghanistan, Burundi, Colombia, Democratic Republic of Congo, Guatemala, Russian Federation, Rwanda, Sierra Leone, Sri Lanka, Sudan. 'Commitments' page on the website of the Special Representative, *supra* fn. 44

47. S/RES/1261 (1999)

Security Council Resolution 1314

Adopted in the following year, Security Council resolution 1314⁴⁸ reiterated and expanded its list of concerns and calls for action. In addition, the resolution stated that situations where there was systematic flagrant and widespread violations of International Humanitarian and Human Rights Law, including that relating to children in situations of armed conflict, may constitute a threat to international peace and security and in this regard the Security Council reaffirmed its readiness to consider such situations and, where necessary, adopt appropriate steps.

Security Council Resolution 1379

In 2001, the Security Council revisited its concerns regarding the impact of armed conflict on children. Security Council resolution 1379 also included areas of concern not previously addressed. Importantly the link between HIV/AIDS and armed conflict was acknowledged and HIV training was recommended for peacekeeping personnel. The resolution also recognised the part that corporate actors play in starting and sustaining armed conflict, urging them to refrain from doing business with parties to a conflict that do not protect children.

Building on previous calls for actions to halt the recruitment and use of children in hostilities, the Security Council asked the Secretary-General to draw up a list of parties that recruit or use children in violation of international law.

Security Council Resolution 1460

The most recent Security Council Resolution on children and armed conflict was adopted on 30 January 2003⁴⁹. While reiterating the other three resolutions, the Security Council also supported the Secretary-General in his call for 'an era of application' of international norms and standards for the protection of children affected by armed conflict.

While not legally binding on States in themselves⁵⁰, these Security Council resolutions do provide a framework of standards for the protection of children in armed conflict against which child protection in country-specific situations and across thematic areas of concern can be assessed by the inter-

48. S/RES/1314 (2000)

49. S/RES/1460 (2003)

50. It must be noted, however, that Security Council Resolutions made under Chapter VII of the Charter of the UN, in response to specific acts of aggression or threats to international peace and security by a State or States, are binding on all members of the UN.

national community⁵¹. The observations and recommendations contained in the resolutions also reflect the growing awareness of the impact of armed conflict on children, the increased importance attached to their protection, and the significant progress that, at least in terms of rhetoric, has been made in this regard.

The now yearly open debate of children and armed conflict in the Security Council, the resolutions and the subsequent reports of the Secretary General on the progress made on implementing their recommendations means that the issue of children and armed conflict, remains high on the agenda of the international community⁵². Further, the inclusion in the resolutions of areas of concern lends legitimacy to campaigning, fundraising and programming on these issues.

CHILD PROTECTION ADVISERS

A concrete follow up to the recommendation in Security Council Resolution 1261, that the welfare of children should be promoted throughout the peace process, was the appointment of the first Child Protection Adviser (CPA) attached to the Peace Keeping Operation in Sierra Leone (UNAMSIL) in 2000 and the assignment of two Child Protection Advisers to the Peace Keeping Operation in the Democratic Republic of Congo (MONUC) later the same year. Recognizing the importance of their role, in October 2002, a CPA was deployed to the UN mission in Angola (UNAMA) and the Child Protection Units in Sierra Leone and DRC were strengthened with additional CPAs being posted.

Child Protection Advisers form part of the central staff of the heads of the UN field missions, serving as their direct advisers on the protection of children⁵³. Having a direct input at this senior level, helps to ensure that the protection of children's rights are priority concerns throughout the peace-

51. Supra 1, pg 44-45. Also see: the Presidential Statement on Children and Armed Conflict (S/PRST/2002/12), the Aide-Memoire on the Protection of Civilians in Armed Conflict (S/PRST/2002/6, annex) and Security Council Resolution 1325 (2000) on women and peace and security (S/RES/1325 (2000)). In addition Security Council was briefed on the plight of girls affected by armed conflict in March 2002, by the Special Rapporteur of the Commission on Human Rights on violence against women. This area of concern was addressed again in October 2002 in the open debate on "Women, Peace and Security".

52. In an unprecedented move, signifying the importance of the issue of war-affected children, a 14-year-old former child soldier addressed the Security Council in November 2001 on the occasion of the Security Council annual debate on children and armed conflict. In May of the following year, three young people from war-affected countries (East Timor, Liberia and Bosnia and Herzegovina) also addressed the Security Council during its session on children and armed conflict held prior to the General Assembly's special session on children.

53. However, the CPA works under the overall guidance of the Special Representative of the Secretary General for the mission.

keeping process, and that children's interests are not marginalized in policy-making, resource-allocation or priority-setting. CPAs coordinate closely with relevant UN agencies, especially UNICEF, the UN refugee and human rights agencies, national authorities and non-governmental organizations.

INTERNATIONAL LAW IN REALITY

There now exists a strong legal framework for the protection of children in armed conflicts against which to judge the actions of States and non-state actors. However, the application of these laws and standards in reality is limited, leaving children vulnerable to abuse.

Where parties to a conflict violate international law, there is little action that can be taken by the international community to enforce compliance while the conflict is on going. Generally, the international community enforces the law by seeking prosecutions following the cessation of hostilities and the signing of a peace agreement⁵⁴. However, this does not always ensure justice is obtained as often the victors avoid prosecutions or amnesties, agreed upon to bring an end to a conflict, allow those culpable to escape punishment.

Recognising the general lack of implementation of international law, the Secretary-General called for 'an era of application' of international norms and standards. At the beginning of 2003, this call was supported by the Security Council specifically in relation to the protection of children affected by armed conflict⁵⁵.

54. The role of the International Tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court in the enforcement of international law is discussed in Section 3.

55. S/RES/1460 (2003), para 1.

GENERAL INTERNATIONAL LAW AND CHILDREN

International Humanitarian Law

1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War⁵⁶

Articles affording protection to children in general:

- States Parties are permitted to establish hospital and safety zones to protect, among others, under-15s from the effects of war (Article 14)
- States are to endeavour to remove children from besieged and encircled areas through local agreements (Article 17)
- States Parties are obliged to permit the free passage of all consignments of essential food stuffs, clothing and tonics intended for children under 15 (Article 23)
- States Parties shall take all necessary measures to ensure that children, under 15, who are orphaned or separated from their families as a result of the war are given appropriate assistance e.g. education. Children shall be accepted into neutral States for the duration of the conflict. In addition, children under 12 should wear identity discs. (Article 24)

Articles affording protection to alien children in the territory of a party to the conflict:

- All children under 15, who are alien in a country are to benefit from any preferential treatment to the same extent as nationals of the State concerned (Article 38(5))

Articles affording protection to children in an occupied territory:

- Occupying Powers are obligated to facilitate the working of all institutions devoted to the care and education of children (Article 50)
- Under 18s cannot be forced to work by the Occupying Power (Article 51)
- The death penalty may not be imposed by the Occupying Power on a person, who was under 18 at the time of the offence (Article 68)
- Proper regard shall be paid to the special treatment of minors, who are accused or convicted of offences (Article 76)

Common Article 3 – applicable to non-international armed conflicts

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

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

⁵⁶ The listed provisions do not include the protection measures for interned children – see Articles 81, 82, 85, 89, 91, 94, 119, 127 and 132.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
2. The wounded and sick shall be collected and cared for.
An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

**1977 Geneva Protocol I Additional
to the Geneva Conventions of 12 August 1949,
and Relating to the Protection of Victims of International Armed Conflicts**

Article 77 – protection of children

- “1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. 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. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.
3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75(3) .
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time of the offence.”

Article 78 – evacuation of children

- “1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.
2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.
3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross...”

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

Article 4(3) – fundamental guarantees

“Children shall be provided with the care and aid they require, and in particular:

- (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
- (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
- (c) 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;
- (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;
- (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being”

Article 6(4) – penal prosecutions

“The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children”

International Human Rights Law

UN Convention on the Rights of the Child 1989

Article 38 – children and armed conflict

- “1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”

Article 39 – rehabilitation of child victims of armed conflict

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”

Mandate of the Special Representative for Children and Armed Conflict

Para 36 ⁵⁷

“Recommends that the Special Representative:

- (a) Assess progress achieved, steps taken and difficulties encountered in strengthening the protection of children in situations of armed conflict;
- (b) Raise awareness and promote the collection of information about the plight of children affected by armed conflict and encourage the development of networking;
- (c) Work closely with the Committee on the Rights of the Child, relevant United Nations bodies, the specialized agencies and other competent bodies, as well as non-governmental organizations;

57. Contained in Resolution 51/77 Adopted by the General Assembly on 12 December 1996 (A/RES/51/77)

- (d) Foster international cooperation to ensure respect for children's rights in these situations and contribute to the coordination of efforts by Governments, relevant United Nations bodies, notably the office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the specialized agencies and the Committee on the Rights of the Child, relevant special rapporteurs and working groups, as well as United Nations field operations, regional and subregional organizations, other competent bodies and non-governmental organizations"

Security Council Resolutions

- Security Council Resolution 1261 (1999) on children and armed conflict, S/RES/1261 (1999)
 - Security Council Resolution 1314 (2000) on children and armed conflict, S/RES/1314 (2000)
 - Security Council Resolution 1379 (2001) on children and armed conflict, S/RES/1379 (2001)
 - Security Council Resolution 1460 (2003) on children and armed conflict, S/RES/1460 (2003)
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Issue Focus

1. Child Soldiers

An oft-quoted statistic is that there are currently 300,000 children being used as soldiers around the world. Although most of those recruited are adolescents, children are being recruited at a younger and younger age, for both indirect⁵⁸ and direct participation in hostilities.

It is accepted that the proliferation of small arms has contributed hugely to the increased recruitment and use of children by armed groups for direct participation in hostilities. Unlike older weapons, which were heavy, cumbersome and difficult to operate, very young children can easily use the small arms currently circulating and therefore contribute effectively to a fighting force.

Therefore, children can make up the frequent shortfall in manpower suffered by both State and non-state forces. However, reportedly some commanders actively seek out children in preference to adults because they view them as obedient, highly motivated, and dedicated. Children are also easier to manipulate as they do not have a fully developed sense of right and wrong, and therefore, can be trained to be brutal soldiers. Children are easier pickings for recruiters than adults, as they are less able and less likely to put up a struggle. It must be noted that some commanders take the opposite view and do not value children because they misbehave, are unruly and require frequent scolding⁵⁹.

58. e.g. messengers, porters, servants and sexual slaves

59. "Children: The Invisible Soldiers", Rachel Brett and Margaret McCallin, Radda Barnen, Save the Children Sweden, 1998 at pg 153-156

Children from particular racial, religious or ethnic groups, who are deemed to be a threat, are also recruited as a means of intimidation, repression and disruption of those groups.

Many children who are abducted and forcibly recruited by armed groups are girls. Although a proportion of these girls fight in the ranks, some even commanding their own units, most are abducted to provide 'wives' for the soldiers. They are frequently sexually assaulted and raped and many fall prematurely pregnant by their captors. Many contract HIV/AIDS from their 'husbands' and the other soldiers that rape them. This exploitation often continues after their release or escape. These girls find it very difficult to reintegrate into their communities, leading many of them to turn to prostitution to obtain an income.

Children also 'voluntarily' join up seeking to avenge the death of a family member or contribute actively to a cause. Other children believe that the armed groups offer a semblance of protection and can provide them with food, clothing and money, or at least provide them with a gun with which they can obtain such 'necessities' themselves⁶⁰.

Those that choose to recruit children can often do so with impunity, because although the recruitment of under-15s⁶¹ is not lawful under international law, commanders are at little risk of being caught. Monitoring recruitment practices during a conflict is notoriously difficult, hampered further by the fact that a child soldier is a transitory phenomenon (because he gets older). This is compounded by poor or non-existent birth registration and malnutrition, which affects the growth of a child, making it difficult to determine his age.

Children who are involved in hostilities face enormous risk to their physical, social and emotional well-being and may suffer long lasting psychological damage. Ex child combatants need a great deal of assistance to overcome the harm they have suffered and to reintegrate into society.

LEGAL DEVELOPMENTS FOR THE PROTECTION OF CHILDREN FROM RECRUITMENT AND USE IN HOSTILITIES

Additional Protocols to the Geneva Conventions 1977

The age limit of 15 years for the recruitment and deployment of children was first enshrined in the 1977 Additional Protocols to the Geneva

60. pg 57-68, *ibid*.

61. see the section on child soldiers for the higher recruitment and deployment standard set by the Optional Protocol on the Involvement of Children in Armed Conflict.

Conventions⁶². This was the first time that the issue of the recruitment and deployment of children had been specifically addressed in a binding international instrument.

UN Convention on the Rights of the Child 1989

This standard – the age of 15 – was reaffirmed 12 years later by Article 38 of the Convention on the Rights of the Child. The Convention did not extend protection for children and did not address the issue of recruitment by non-state forces. Article 38 also throws up the anomaly that although under the Convention children are defined as all those under 18, children aged 15 years and over are not protected by its deployment and recruitment provisions⁶³. This anomaly can be explained by the resistance of States, most notably the USA, to change their practice of recruiting and deploying under-18s.

However, the Convention did extend the application of the standard of recruitment. Unlike the Additional Protocols, which apply to specific levels of conflict, the CRC also applies in peacetime (as well as to all levels of internal conflict and international conflicts).

Rome Statute of the International Criminal Court 1998

The age of 15 was once again used as the threshold for recruitment and deployment in the Rome Statute of the International Criminal Court (ICC) (1998), which lists the recruitment of under-15s to participate directly in international conflicts, and in conflicts not of an international character, as a war crime⁶⁴.

ILO Convention 182, 1999

The protection of children from recruitment was strengthened by ILO (International Labour Organisation) Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour 1999, which applies to all children under 18 and includes in its list of the worst forms of child labour the forced or compulsory recruitment of children for use in armed conflict⁶⁵.

Recommendation 190, which accompanies this Convention, provides that Member States should make such recruitment practices a criminal offence⁶⁶.

62. Article 77(2), Additional Protocol I and Article 4(3)(c) Additional Protocol II

63. Articles 38(2) & 38(3)

64. Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) respectively. Conscription and enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities was also included in the Statute for the Special Court for Sierra Leone 2000 as a serious violation of international humanitarian law. (Article 4(c))

65. Article 2, ILO Convention 182

66. para 12(a), R190 Worst Forms of Child Labour Recommendation, 1999

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000

In May 2000, after many years of negotiation, the General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP). The Optional Protocol came into force on 12 February 2002, a month after the requisite ten ratifications.

The Optional Protocol is an important development in the protection of children against recruitment and deployment by government and non-state forces.

States

The Optional Protocol raised the minimum age for direct participation to 18 for State forces⁶⁷ and prohibited the compulsory recruitment of under-18s into national armed forces⁶⁸.

However, the OP did not prevent voluntary recruitment by States of under-18s. This disappointing omission can be largely attributed, once again, to the resistance of the USA⁶⁹ (which allows voluntary enlistment at the age of 17) to raise the recruitment standard to 18 years. Under the Optional Protocol, States are only obliged to raise their age of voluntary recruitment above the age of 15 (the standard in the CRC, Article 38(3)) and put in place the appropriate safeguards to ensure that recruitment is voluntary and that proof of age has been sought and verified⁷⁰.

Non-State Armed Groups

Predictably, States have bound potential opponents with stronger obligations than they are prepared to accept for themselves, agreeing to stricter recruitment and deployment standards for rebel groups. The Optional Protocol explicitly prohibits non-state armed groups from both recruiting and using persons under 18⁷¹. State Parties are also obliged to criminalize such activities⁷².

While, like the CRC, the Optional Protocol is not confined to specific levels of conflict, the instrument contains a number of weaknesses that undermine the protection it seeks to provide. Article 1, which prohibits the

67. Article 1

68. Article 2

69. The UK, which recruits at 16 years, also raised objections to setting the age of recruitment at 18 years. It must be noted that the USA ratified the Optional Protocol on 23 December 2002, therefore agreeing to take all feasible measures not to deploy under-18s in combat situations. The UK is currently reviewing its deployment and recruitment practices in preparation for ratification of the OP.

70. Article 3

71. Article 4

72. Article 4(2)

deployment of children (under-18s) to take a direct part in hostilities, only requires States to take “*all feasible measures*” to fulfill this obligation. The question of what is and is not ‘feasible’ in a particular context is likely to be controversial. This vague wording has allowed States to enter declarations interpreting the word ‘feasible’, so as to weaken their obligation to ensure children are not deployed⁷³.

The Committee on the Rights of the Child is responsible for monitoring the implementation of the OP through the examination of periodic State reports. There is no opportunity for individual complaints to be heard or acted upon. The experience of reporting mechanisms to date has demonstrated that such an obligation does not guarantee full implementation of children’s rights.

SIGNIFICANT DEVELOPMENTS TO PREVENT THE RECRUITMENT AND USE OF CHILDREN IN HOSTILITIES

Age of Deployment for UN Peacekeepers

The UN Secretary-General recommended, in 1998⁷⁴, that all UN Peacekeepers be at least 18 but preferably 21, due to the nature of the missions and the special maturity needed to successfully carry out peacekeeping missions. This policy was supposed to serve as an example for police and military forces worldwide and to “*ensure that the UN benefit from experienced and mature uniformed personnel able to perform their duties according to the highest standards of the organisation*”. Further, it was recommended that civilian police and military observers be at least 25 years.

‘1379 List’

Significantly, Security Council Resolution 1379⁷⁵ called on the Secretary-General to produce “*a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council’s agenda or that may be brought to the attention of the Security Council by the Secretary-General in accordance with article 99 of the Charter of the UN, which in his opinion may threaten the maintenance of international peace and security*”⁷⁶. In response to this request, the third report of the Secretary-General on Children and Armed Conflict⁷⁷ contained a list of 23

73. E.g. UK (UN Doc CRC/C/16 Annex IV)

74. The Secretary-General established this new policy in his role as Commander-in-Chief of the UN peacekeeping operations.

75. S/RES/1379 (2001)

76. para 16

77. Report of the Secretary General on children and armed conflict, S/2002/1299 (26 November 2002)

parties, including both governments and insurgents, in five conflict situations - Afghanistan, Burundi, the Democratic Republic of Congo, Liberia and Somalia - that recruit and use children. Although the list itself is confined to situations currently on the agenda of the Security Council, the report of the Secretary-General does highlight other countries, not on the agenda, in which children are recruited and used in hostilities.

The Special Representative for Children and Armed Conflict heralded the publication of this list as ground breaking - "*This is the beginning of a systematic effort in a new era of monitoring and reporting on the conduct of parties and how they treat children during conflict*"⁷⁸. Further, it is hoped that naming and shaming warring parties engaged in such practices, will induce compliance with their international child protection obligations.

In the most recent Security Council Resolution, the States and armed groups named in the '1379 list' were called upon to report on steps that they have taken to halt recruitment and use of children in violation of their international obligations⁷⁹. The Security Council expressed its intention to consider taking appropriate steps to further address this issue, if it is deemed that insufficient progress has been made by these warring parties upon the review of the next Secretary-General's report on children and armed conflict⁸⁰.

Regional Developments

At a regional level, the African Charter on the Rights and Welfare of the Child 1990⁸¹, which defines children as all those under 18⁸², obligates States to "*take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child*"⁸³. Further, in 1999, an African conference held to discuss the issue of child soldiers adopted the Maputo Declaration on the Use of Children as Soldiers. This declaration called for the end to the recruitment and use of children under 18 years.

The Organisation of American States resolution on children and armed conflict, adopted in May 2000, also encouraged its Member States to respect international law regarding child soldiers especially the Optional Protocol on the Involvement of Children in Armed Conflict and ILO Convention 182.

The Council of Europe has also expressed its concern about the recruitment of children into armed forces and the treatment of child soldiers by national forces.

78. Press Release of the Office of the SRSG for Children and Armed Conflict, 16th December 2002

79. para 5, S/RES/1460 (2003)

80. para 6, *ibid*

81. Entered into force on 29th November 1999 after the requisite 15 ratifications.

82. Article 2

83. Article 22

These regional developments are a powerful argument against those who suggest the recruitment and use of child soldiers is a matter of cultural relativism and, so being, should be regulated solely by national standards.

POST CONFLICT – ADDRESSING THE NEEDS OF FORMER CHILD SOLDIERS

Once the conflict is over, a State can be left with hundreds or even thousands of former child soldiers, whose physical and psychosocial needs must be met. Their rehabilitation and reintegration demands significant human and financial resources over a long period of time.

Disarmament, Demobilisation, and Reintegration (DDR) programmes, which have been established in a number of countries to assist the reintegration of armed forces back into the community, have often excluded child soldiers because, “*among other reasons, the armed groups refuse to acknowledge their presence*”⁸⁴. While children remain outside these processes they cannot be monitored and tracing programmes cannot begin.

Where programmes are inclusive of children, reintegration is sometimes hampered by community hostility and violence towards ex-child soldiers. However, where such hostility does not exist or can be overcome, communities can play a huge role in their rehabilitation and reintegration. Finding places for children to live is also difficult as often their families have been killed, displaced or cannot be found. Where families can be located, they may be reluctant to accept the child, especially where the child has committed atrocities against their own community or family. Where the conflict is ongoing it might be impractical for a child to be reunited with their family, as they would not be able to protect them from re-abduction.

Programmes have been most successful where children have been slowly reintegrated through programmes that allow short term mixing – e.g. schools, sporting activities, training placements, and supported activities such as assisted living. The Special Representative for Children and Armed Conflict has highlighted the need for programmes of rehabilitation and reintegration to be culturally sensitive.

Where the needs of ex child combatants are not addressed, society is left with long-term problems. Juvenile delinquency and juvenile crime naturally rise at the end of a conflict as young people find that they have been left without education and skills and that there are limited job opportunities available

84. “The Role of the United Nations Peacekeeping in Disarmament, Demobilization and Reintegration”, S/2000/101, 11 February 2000, para 53

for them. However, ex combatants pose an added risk. These children have been trained to use a gun, have often been brutalised and many have carried out extreme acts of violence. It is inevitable that children who are demobilized and given no further assistance will use the skills they have learnt as a soldier to support themselves – i.e. by turning to criminal activity.

INTERNATIONAL LAW ON THE REHABILITATION OF CHILD SOLDIERS

The need to reintegrate and rehabilitate children has only recently been recognised in international law. While the Convention on the Rights of the Child obligated States to take measures to rehabilitate all children who have been victims of exploitation or abuse during armed conflicts⁸⁵, it was not until 2000, with the adoption of the Optional Protocol, that a binding international agreement specifically obliged States to demobilise, rehabilitate and reintegrate children who have been recruited or used in hostilities⁸⁶. To address the lack of resources available for this work, the Optional Protocol obligates States to cooperate through technical and financial assistance⁸⁷.

In February 2000, the Secretary General submitted a report entitled “The Role of the United Nations Peacekeeping in Disarmament, Demobilization and Reintegration”⁸⁸, which stated “[w]here relevant, the role of children in armed conflict should be acknowledged from the onset of peace negotiations and children’s rights should be identified as an explicit priority in... disarmament, demobilization and reintegration plans”⁸⁹. While the bulk of DDR work takes place nearing the end of a conflict, and to facilitate the end of the conflict, the report recognized the need for targeted and tailored assistance to under-18 ex combatants to prevent re-abduction and recruitment.

Most recently, Security Council Resolution 1460 called upon Member States and international organisations to ensure that former child soldiers are involved in all DDR processes, which should be of sufficient duration to ensure successful reintegration. The resolution also highlighted the importance of taking into account the specific needs of girls⁹⁰.

85. Article 39, CRC

86. Article 6, OP

87. Article 7(1)

88. S/2000/101, 11 February 2000

89. para 18

90. para 13, S/RES/1460 (2003)

INTERNATIONAL LAW AND CHILD SOLDIERS

Recruitment and Use

1977 Additional Protocols to the Geneva Conventions

Standard - 15 years for recruitment and use

Additional Protocol I – international conflicts

Article 77(2)

“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. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest”

Additional Protocol II – internal conflicts

Article 4(3)(c)

“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”

UN Convention on the Rights of the Child 1989

Standard – 15 years for recruitment and use

Article 38

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

NB all children under 18 benefit from all other provisions in the CRC except Articles 38(2) & (3)

Rome Statute of the International Criminal Court 1998

Standard – 15 years for recruitment and active participation

Recruitment and using children to actively participate is a war crime under:

Article 8(2)(b)(xxvi) – international conflicts

“Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities”

And Article 8(2)(e)(vii) – conflicts not of an international character

“Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities”

**ILO (International Labour Organisation) Convention 182
concerning the prohibition and immediate action for the elimination
of the worst forms of child labour 1999**

Standard – 18 years for forced and compulsory recruitment

Article 2

Forced or compulsory recruitment of children for use in armed conflict is included in the list of the worst forms of child labour.

**Optional Protocol to the Convention on the Rights of the Child
on the Involvement of Children in Armed Conflict 2000**

Recruitment and use by States

Direct participation

Standard – 18 years

Article 1 – “States parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”

Compulsory recruitment

Standard – 18 years

Article 2 – “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces”

Voluntary recruitment

Standard – above 15 years

Article 3(1) – “States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in Article 38, paragraph 3 [15 years], of the Convention on the Rights of the Child...”

Article 3(3) – In recruiting under 18s, minimum safeguards must be in place to ensure:

- a) recruitment is genuinely voluntary
- b) recruitment is carried out with the informed consent of the person’s parents or legal guardians
- c) such persons are fully informed of the duties involved in such military service
- d) such persons provide reliable proof of age prior to acceptance into national military service”

Recruitment and use by non-state armed forces

Standard – 18 years

Article 4(1) – “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”

Regional agreement
African Charter on the Rights and Welfare of the Child 1990
Standard – 18 years
(Article 2 defines children as every human being below 18 years)

Article 22

"2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child"

Rehabilitation and reintegration

UN Convention on the Rights of the Child 1989

Article 39

"States Parties shall take appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recover and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child"

**Optional Protocol to the Convention on the Rights of the Child
on the Involvement of Children in Armed Conflict**

Article 6(3)

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

Article 7

- "1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly"

2. Refugees and Internally Displaced Persons

In 2000, the office of the United Nations High Commissioner for Refugees (UNHCR) estimated that there were 50 million refugees and internally displaced persons (IDPs) worldwide⁹¹.

In the context of armed conflict:

Refugees are persons who have been forced to flee their homes, as a result of an armed conflict, internal strife or systematic violations of human rights and have crossed a national frontier or border to seek refuge.

Internally Displaced Persons (IDPs) are those that have fled the same dangers but have remained in the territory of their own country for whatever reason.

Due to the nature of modern conflicts, with internal conflicts far outnumbering international conflicts, the number of IDPs has risen significantly over recent decades.

IDPs often face a far more insecure future than refugees because the domestic government retains ultimate control over their fate. They are also trapped in an ongoing conflict, and finding a place of safety is difficult.

Despite the immense problems facing IDPs, the international community has largely failed to address their plight directly. The mandates of the UN agencies are limited and there was a reluctance, until very recently, to intervene in internal conflicts to assist IDPs.

Both refugee and IDP children are highly vulnerable. During flight, many children become separated from their families. Without the protection and security of their community and family, children are more vulnerable to the dangers facing all children in conflict situations - recruitment by armed forces, sexual assault and exploitation, malnutrition, and disease. In addition, groups often flee to areas that are beyond the reach of UN and NGO assistance. Where IDP and refugee camps are established, they are frequently insufficiently resourced or equipped and conditions are sometimes appalling. Children living in these camps are prone to deteriorating health and disease, which easily spreads in camp conditions, they face overcrowding, inadequate sanitation, lack of food, and unclean water, and are vulnerable to abduction by armed groups. Education is at best limited and at worst non-existent. Unaccompanied and separated children, in particular, need urgent identification and attention to ensure their protection and survival⁹².

91. UNHCR website - The world of children at a glance, <http://www.unhcr.ch/children/glance.html>

92. pg 14, Machel 2000, op. cit. at fn. 3

INTERNATIONAL LAW AND DEVELOPMENTS

REFUGEES

Refugees are protected by a well-defined separate body of international laws, as well as under international humanitarian and human rights law.

DEFINITION OF A REFUGEE

The term 'refugee' is often used very loosely to describe people fleeing situations, especially armed conflict, when in fact such people do not necessarily fall into the legal definition of the term 'refugee'.

Convention relating to the status of refugees 1951

The 1951 Convention relating to the Status of Refugees is the main international instrument that governs who is to be considered a refugee, the rights flowing from this status and the legal obligations of receiving States.

Adopted in response to the mass displacement of people in WWII, the Convention was designed to deal with those people who had become refugees due to events occurring before 1951. However, recognising the continuing need to provide protection for displaced people, the Protocol relating to the Status of Refugees 1967 removed this time bar, so that the Convention applied to anyone who fulfilled the relevant criteria regardless of when he became a refugee.

To acquire the status of a refugee, strict criteria must be fulfilled. The 1951 Refugee Convention defines a refugee as a person who:

- is outside their country of origin;
- is unable or unwilling to avail themselves of protection of that country, or to return there;
- and such an inability or unwillingness is attributable to a well-founded fear of being persecuted; and
- the persecution feared is based on reasons of race, religion, nationality, membership of a particular social group, or political group⁹³.

This definition does not distinguish between children and adults.

The definition of a refugee does not include flight from international or internal conflicts and often people escaping hostilities do not fulfil the above criteria. However, where a conflict or occupation involves persecution of cer-

93. Article 1(A)(2)

tain groups of people, who are consequently unable or unwilling to avail themselves of the protection of the government (or protecting power in the case of occupation), they may be considered Convention refugees.

On occasion, entire groups of people are displaced due to circumstances that indicate that the members of that group could be considered refugees. In urgent situations of this kind, practical obstacles make it impossible for an individual determination of the status of each person of the group. To enable assistance to be provided, a 'group determination' is made, whereby each member of the group is regarded *prima facie* as a refugee.

Regional agreements

Convention Governing the Specific Aspects of Refugee Problems in Africa 1969

While the first part of the definition of a refugee under the Convention Governing the Specific Aspects of Refugee Problems in 1969 is identical to the 1951 Convention, the second part significantly expands the definition of a refugee to include: "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"⁹⁴. This is the only binding international agreement that includes flight from armed conflict in its definition of a refugee.

Cartagena Declaration on Refugees 1984

This Latin American declaration also expanded the definition of refugees to include those fleeing conflict as well as generalized violence and massive violations of human rights⁹⁵. Although not binding, many States in the region apply it.

International Humanitarian Law

Unlike the 1951 Convention, international humanitarian law does not define the term 'refugee'. Whether people fleeing armed conflict (or for any other reason) are entitled to protection depends on the situation in the country that they fled to rather than on the situation in the country that they left:

- During international conflicts, international humanitarian law provides protection for nationals who flee hostilities in their own State

94. Article 1(2)

95. Article 3

and enter the jurisdiction of another State, who is a party to the conflict. As such people do not enjoy the protection of their own government, they are entitled to be treated as ‘aliens in the territory of a party to the conflict’, rather than as enemy aliens⁹⁶, and consequently, to be accorded protection under Geneva Convention IV by the receiving State⁹⁷;

- Refugees, fleeing from a country that is not involved in the conflict, to a country that is at war with another State, are also entitled to the protection of Geneva Convention IV, where diplomatic relations do not exist between the warring State and their own State. However, Protocol I extended this protection, making the existence of diplomatic ties irrelevant⁹⁸.
- If the recipient State is not involved in an international conflict but is contending with an internal conflict of its own, refugees are entitled to the protection of Common Article 3 and, where applicable, Additional Protocol II;
- International Humanitarian Law does not apply to persons who flee to a country, which is not involved in any international or internal conflict.

TREATMENT OF REFUGEE CHILDREN

Convention Relating to the Status of Refugees 1951

States are obliged to ensure certain standards of treatment to anyone in their jurisdiction fulfilling the definition of a refugee. In addition, the 1951 Convention provides very limited specific protection for children. States shall provide:

- as much freedom for parents with regards to the religious education of their children as accorded to their nationals⁹⁹;
- the same treatment with respect to elementary education as afforded to nationals¹⁰⁰; and
- treatment not less favourable than that accorded to aliens with respect to non-elementary education¹⁰¹.

96. Article 44, Geneva Convention IV. Refugees from an enemy State must not be automatically treated as enemy aliens (who are only entitled to more limited protection) because of their nationality.

97. Articles 35-46, Part III, Section II, Geneva Convention IV

98. Article 73

99. Article 4

100. Article 22(1)

101. Article 22(2)

International Humanitarian Law

International humanitarian law provides limited specific protection to refugee children.

During international armed conflicts, in addition to the protection afforded to all persons who are alien in the territory of a party to the conflict, under Geneva Convention IV, children under 15 are specifically entitled to benefit from any preferential treatment to the same extent as nationals of the State concerned¹⁰².

Under Protocol I, Article 78 provides protection for children being evacuated to another country, specifying that evacuated children shall be provided with continuing education, including religious and moral education¹⁰³.

UN Convention on the Rights of the Child 1989

Under Article 22 of the CRC, States are obliged to ensure that a child who is seeking refugee status or who is considered a refugee under international or domestic law (regardless of whether he is accompanied by his parents or by any other person) receives appropriate protection, humanitarian assistance and the enjoyment of all the rights in the CRC.

Recognising the importance of reuniting children with their families, the Convention also obligates States to co-operate with the United Nations to trace and reunite families.

THE UN HIGH COMMISSIONER FOR REFUGEES

The UN High Commissioner for Refugees began work on 1st January 1951¹⁰⁴ for a three-year period, originally to resettle the 1.2 million European refugees left homeless because of WWII. UNHCR was mandated to provide “*international protection*”, and to seek “*permanent solutions for the problem of refugees*”¹⁰⁵.

However, in response to the growing problem of refugees, this mandate was extended and UNHCR is now the lead agency in co-ordinating international action to protect refugees, currently assisting approximately 22.3 million people¹⁰⁶.

102. Article 38(5)

103. Article 78(2)

104. more than 6 months before the adoption of the 1951 Refugee Convention

105. Article 1, Statute of the Office of the United Nations High Commissioner for Refugees adopted by General Assembly Resolution 428 (v) of 14 December 1950, Annex. The definition of a ‘refugee’ in Article 6(A) (ii) is slightly different from the definition in the 1951 Refugee Convention. Further, it must be noted that even if the person in question is not in one of the States that is a party to the 1951 Refugee Convention and 1967 Protocol, he may still fall under the Commissioner’s mandate.

106. UNHCR website – “The world of children at a glance”

www.unhcr.ch/children/glance.html

Over the last decade, UNHCR has begun to address the specific needs of refugee children. In 1993, UNHCR adopted its Policy on Refugee Children¹⁰⁷, which includes, as one of its guiding principles, that in all actions concerning refugee children, their best interests are to be given primary consideration¹⁰⁸. The following year, UNHCR published the Guidelines on the Protection and Care of Children¹⁰⁹, which recognised that children need special care and assistance. The guidelines seek to combine the protection of children's rights with addressing the needs of refugee children. They are still being used today by agencies working in the field.

An independent report on the work of UNHCR in relation to children, carried out in 2002, concluded that while the policies and guidelines of UNHCR (as well as some pockets of work with children) were commendable, often children were being sidelined in matters of core protection and assistance¹¹⁰.

INTERNALLY DISPLACED PERSONS

Legally, internally displaced persons fall under the sovereignty of their own government, and are therefore entitled to the protection of the international human rights and humanitarian treaties¹¹¹ that apply to all other persons in the State's jurisdiction¹¹². However, often their government is unable or unwilling to provide them with this protection.

Further, IDPs fall outside the general mandate of UNHCR because its competency only extends to persons who are outside their country of nationality and therefore excludes IDPs, who by definition are still within their own country.

However, Article 9 of the Statute of the Office of the United Nations High Commissioner for Refugees states that the High Commissioner may, in addition to the work carried out with refugees, "*engage in such activities... as the General Assembly may determine, within the limits of the resources placed at his disposal*"¹¹³. Based on this article and over a period of several decades, a series of UN General Assembly resolutions have acknowledged UNHCR's

107. Document EC/SCP/82

108. para 26(a)

109 "Refugee Children: Guidelines on Protection and Care", UNHCR, Geneva 1994 (updated from 1988)

110. "Meeting the Rights and Needs of Refugee Children", Evaluation and Policy Analysis Unit, UNHCR, Geneva, May 2002, EPAU/2002/02

111. Common Article 3 and Additional Protocol II.

112. e.g. IDP children are entitled to protection under the Convention on the Rights of the Child.

113. The UN Secretary General can also request the agency to assist or protect certain groups.

particular humanitarian expertise and consequently encouraged its involvement in situations of internal displacement.

However, UNHCR is restricted in its work with IDPs because, to provide assistance, the agency needs:

- a request or authorisation from the General Assembly, Secretary-General or a competent principal organ of the UN;
- consent of the State concerned, and where applicable, other entities in a conflict;
- access to the affected population; and
- adequate security for staff of UNHCR and implementing partners.

These restrictions, coupled with the resource limitations of the agency, which also needs to provide protection to its originally mandated group – refugees – has meant that IDPs receive very limited assistance and protection. In fact, it is estimated that UNHCR only provides assistance to 5.3 million¹¹⁴ of the estimated 25 million IDPs¹¹⁵.

Representative of the Secretary-General on Internally Displaced Persons

Recognizing the huge and growing problem of internally displaced persons and the lack of international action and specific legal protection for them¹¹⁶, the Representative of the Secretary-General on Internally Displaced Persons was appointed in July 1992 at the request of the UN Commission on Human Rights.

In response to his mandate, the Representative developed the Guiding Principles on Internal Displacement¹¹⁷, which have been widely disseminated to States and international agencies. The guidelines contain a number of specific provisions relating to the protection of IDP children e.g. children shall be entitled to protection and assistance which takes into account their special needs¹¹⁸, they shall be protected against forced labour¹¹⁹ and recruitment and use in hostilities¹²⁰, separated children shall be united with their

114. "Basic Information about UNHCR: Refugees by Numbers" 2002, www.unhcr.ch

115. "Internally Displaced People: A Global Survey", The Global IDP Project, 2002, Earthscan Publications Limited

116. e.g. there is no express right not to be arbitrarily displaced and no right to have access to protection and assistance during displacement.

117. Document No. E/CN.4/1998/53/Add.2 (1998)

118. Principle 4(2)

119. Principle 11(2)(b)

120. Principle 13(1)

families as quickly as possible¹²¹, and free and compulsory education at the primary level shall be provided¹²². Despite the Guiding Principles not being legally binding¹²³, the recommendations are increasingly being accepted and implemented by States.

Security Council resolution 1314 on children and armed conflict

Importantly, the Security Council formally recognized the problems facing IDPs and in 2000, Security Council resolution 1314 on children and armed conflict¹²⁴ specifically called for protection and assistance to internally displaced children, as well as refugee children, and reaffirmed the need for unhindered access to children affected by armed conflict for humanitarian purposes¹²⁵.

Internal Displacement Unit

To address the lack of a coordinated response by UN and humanitarian agencies and the limited capacities of individual organisations to meet the needs of IDPs, the Internal Displacement Unit was established in 2002 as an entity of the UN Office for the Coordination of Humanitarian Affairs. The role of this non-operational unit is to bring together experts from the various humanitarian organisations to advise and provide support on internal displacement issues and to coordinate an effective response to the needs of IDPs worldwide.

121. Principle 17(3)

122. Principle 23(2)

123. However, as many of the guidelines are based on the rules of international human rights and humanitarian law, a State will be bound to certain provisions, if it is a party to the treaty on which the guideline is based.

124. S/RES/1314 (2000)

125. In the following year, Security Council resolution 1379 called on parties to armed conflicts to provide protection for internally displaced persons, recognizing that the majority of IDPs are women and children. Security Council resolution 1379, S/RES/1379 (2001) (para 8(b)).

INTERNATIONAL LAW AND REFUGEES and IDPs

Refugees**Convention relating to the Status of Refugees 1951****Definition of a refugee****Article 1(A)(2)**

The term 'refugee' shall apply to any person who:

"...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"

Treatment of refugee children**Article 4 – religion**

"The Contracting State shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to, freedom as regards the religious education of their children"

Article 22 – education

- "1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education
2. The Contracting States shall accord to refugees treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships"

UN Convention on the Rights of the Child 1989**Article 22 – refugee children**

- "1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties
- "2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to pro-

tect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention”

Internally Displaced Persons

Representative of the Secretary-General on Internally Displaced Persons

Appointed in July 1992 at the request of the UN Commission on Human Rights.

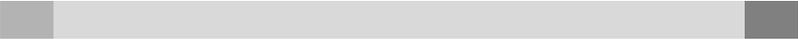
- developed the Guiding Principles on Internal Displacement 1998

United Nations High Commissioner for Refugees

Established by the Statute of the Office of the United Nations High Commissioner for Refugees 1950. Began work in 1951.

Article 9

“The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal”



3. Sexual Exploitation, Abuse and Trafficking for Sexual Purposes

It is well documented that during conflicts children are vulnerable to sexual abuse, campaigns of sexual violence, where rape is used as a tool of ethnic cleansing and terror, and trafficking to other countries in order to be sold as commodities in the sex trade. While both boys and girls are victims of these crimes, girls tend to be disproportionately affected. Girls are also at risk of being forcibly recruited into armed groups to serve as 'wives' (sexual slaves) for combatants.

However, a report released in 2002 by United Nations High Commissioner for Human Rights and Save the Children¹²⁶ highlighted the vulnerability of children to sexual exploitation by the very people who have been recruited to assist the war torn communities.

The report detailed evidence that personnel employed by a range of agencies, responsible for the care and protection of refugees and internally displaced persons, use their position to sexually exploit children. It was asserted that humanitarian aid workers bargain with food and aid, which is intended to benefit the community, to obtain sex from girls, primarily in the 13-18 years category. Both international and local staff were implicated, including workers of respected and established agencies, such as UNHCR. Poverty, the lack of other opportunities, insufficient supplies and the bad management of aid delivery were cited as the underlying causes for this problem¹²⁷.

The report also drew attention to the sexual exploitation of children by peacekeepers, who are said to be the highest paying customers for sex with children. It is known that where peacekeepers have been sent, the number of children involved in the local child sex industry has risen responding to the increased demand.

INTERNATIONAL LAW AND DEVELOPMENTS

International legislation seeking to specifically protect children from sexual exploitation, abuse and trafficking is generally concerned with preventing

126. "Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission, 22 October – 30 November 2001", UNHCR and Save the Children-UK (February 2002)

127. taken from "Fewer words and more action: Evaluating the progress made in ending the commercial sexual exploitation of children", Rachel Harvey, ChildRIGHT, March 2002, issue 184. Reproduced in International Family Law, May [2002] IFL

these practices in peacetime¹²⁸. In times of both international and internal conflicts, children are protected from rape, sexual violence and outrages on personal dignity by the general provisions protecting the civilian population¹²⁹. However, Additional Protocol I specifically provides that children shall be protected from any form of indecent assault¹³⁰ in international conflicts.

The Statute of the International Criminal Tribunal for the Former Yugoslavia¹³¹ gave an international tribunal the *explicit* jurisdiction to prosecute rape for the first time, listing rape as a crime against humanity¹³². The Statute of the International Criminal for Rwanda echoed this provision and provided that rape was also a serious violation of Common Article 3¹³³. Rape has been successfully prosecuted as a crime against humanity in both tribunals¹³⁴. Rape has also been held to constitute genocide¹³⁵ and torture¹³⁶, although not specifically defined as such in the Statutes.

128. Articles 34 & 35 Convention on the Rights of the Child, ILO Convention 182 on the Worst Forms of Child Labour 1999, Optional Protocol to the CRC on the sale of child, child prostitution and child pornography 2000 and the United Nations Convention against Transnational Organised Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000.

129. Article 27 Geneva Convention IV 1949, Articles 75(2)(b) & 76(1) Additional Protocol I 1977, Article 4(2)(e) Additional Protocol II 1977. It must be noted that rape during conflict is considered to be a violation of customary international law.

130. Article 77(1)

131. Established in 1993 to prosecute war crimes committed in the Former Yugoslavia from 1991. Discussed in section 3.

132. Article 5(g). Although rape has been prohibited in war for over a century, the crime has not always been prosecuted. Where tribunals have heard cases of rape, prosecutions have been brought under other offences e.g. the Tokyo trials (set up to prosecute Japanese officials who had overseen that nation's military aggression throughout Asia in World War II) prosecuted rape under offences against family honour. The London Charter creating the International Military Tribunal for Nuremberg (prosecuting crimes committed in WWII) made no mention of the offence of rape.

133. Article 3(g), Statute of the International Criminal Tribunal for Rwanda. The ICTR was established in 1994 to prosecute crimes committed during the genocide in Rwanda. Discussed in section 3.

134. *Akayesu*, judgment of the ICTR, 2 September 1998, ICTR-96-4-T and *Kunarac, Kovac, and Vukovic* ('Foca'), judgment of ICTY, 22 February 2001, IT-96-23 and IT-96-23/1. Kunac and Kovac were also found guilty of enslavement as a crime against humanity (Article 5(c) Statute of the ICTY). During 1992 and 1993, in the town of Foca, Bosnian Serb soldiers held a large number of Muslim women captive, whom they raped and forced to carry out domestic chores.

135. *Akayesu*. Jean-Paul Akayesu witnessed and encouraged the rape of Tutsi women while he was the Mayor of Taba during the conflict in Rwanda. It was held that that sexual violence and rape could amount to genocide where such acts are carried out with the intent to physically or psychologically destroy a group. Akayesu was therefore found guilty of genocide as the rapes were carried as part of a genocidal campaign against the Tutsi population. For the first time, the judges in the *Akayesu* case also defined rape and sexual violence. This definition was not restricted to acts against female victims.

136. *Delalic et al.* ('Celebici Camp'), IT-96-21-T, judgment of ICTY, 16 November 1998. The case related to the treatment of prisoners at the Celebici Camp. Among other crimes, Hazim Delic, the Bosnian Muslim deputy camp commander, was accused of raping a number of Bosnian Serb female prisoners. It was held that the rapes amounted to torture and therefore found Hazim Delic guilty of war crimes and a grave breach of the Geneva Conventions. The judges used and endorsed the definition of rape from the *Akayesu* judgment of the ICTR.

The Rome Statute of the International Criminal Court provides that “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of comparable gravity” amount to crimes against humanity when committed as part of a widespread or systematic attack directed at the civilian population¹³⁷. When committed singularly, in the course of both international and non-international armed conflict, these acts of sexual violence also amount to war crimes¹³⁸.

The trafficking of children is expressly included in the definition of “enslavement”, which is a crime against humanity¹³⁹. This is an important clause recognising the widespread practice of trafficking of children for sexual and other purposes both in times of conflict and peace.

In 2002, in response to the report, which highlighted the sexual exploitation of children by humanitarian workers and peacekeepers, the Inter-Agency Standing Committee (IASC)¹⁴⁰ established the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crisis to strengthen and enhance the protection and care of women and children in situations of humanitarian crisis and conflict. The Task Force is also mandated to make recommendations, which specifically aim to eliminate sexual exploitation and abuse by humanitarian personnel and the misuse of humanitarian assistance for sexual purposes¹⁴¹. The Task Force produced a Plan of Action¹⁴², which called for six core principles to be incorporated into all IASC codes of conduct. These core principles include the prohibition of sexual activity of humanitarian workers with persons under the age of 18, regardless of the age or majority or consent locally. The Task Force has also called for complaint mechanisms to be set up for children and women threatened with abuse.

137. Article 7(1)(g), Rome Statute of the International Criminal Court 1998

138. Article 8(2)(b)(xxii) and Article 8(2)(e)(vi), respectively

139. Article 7(2)(c). Under the Statute of the ICC, ‘crimes against humanity’ can be committed in both times of peace and conflict.

140. The IASC was set up in 1992 to coordinate the humanitarian responses of relevant UN bodies to complex and major emergencies.

141. “Report of the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crisis”, Inter-Agency Standing Committee, 13 June 2002.

142. *ibid.*

INTERNATIONAL LAW AND SEXUAL CRIMES AGAINST CHILDREN

Geneva Convention IV 1949

Article 27

"Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights... Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault"

Additional Protocol I 1977 – international conflicts

Article 75 (2)(b) – fundamental guarantees

"The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or military agents:

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault"

Article 76(1) – protection of women

"(1) Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault"

Article 77(1) – protection of children

"(1) Children shall be the object of special respect and shall be protected against any form of indecent assault"

Additional Protocol II 1977 – internal conflicts

Article 4(2)(e)

"...the following acts... shall remain prohibited at any time and in any place whatsoever:

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault"

Statute of the International Criminal Tribunal for the former Yugoslavia 1993

Article 5(g) – crimes against humanity – rape

"The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

(g) Rape"

Statute of the International Criminal Tribunal for Rwanda 1994

Article 3(g) – crimes against humanity – rape

"The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(g) Rape"

Article 4(e) – violation of Common Article 3 – rape and indecent assault

“The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”

Rome Statute of the International Criminal Court 1998**Articles 7(1)(c) & 7(2)(c) – crimes against humanity – trafficking of children**

“1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (c) Enslavement;
- 2. (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”

Article 7(1)(g) – crimes against humanity – sexual violence

“1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity..”

Article 8(2)(b)(xxii) – international conflicts – war crimes – sexual violence

“War crimes” include

“Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions”

Article 8(2)(e)(vi) – conflicts of a non-international character – war crimes – sexual violence

“War crimes” include

“Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions”

4. Landmines and Cluster Bombs

LANDMINES

There are two types of landmines – anti-personnel mines, which are person activated and anti-vehicle mines, which take a much larger weight to activate them. Both types of landmines are used widely and remain a threat for years, if not decades, after a conflict has ended. A landmine, unlike a bullet or a bomb, is not aimed at a specific ‘enemy’ soldier or territory. Instead, it kills and maims indiscriminately - those unlucky enough to stumble upon it. The mine cannot distinguish a soldier from a child and does not abide by a ceasefire. Despite the long-term human cost of landmines, it is still considered by armed forces as a weapon of high military value.

Over 90 countries are affected to some degree by landmines and/or unexploded ordnance (UXO)¹⁴³. Although mines are sold worldwide, the greatest concentrations of mines are in Asia and Africa and the most heavily mined countries in the world include Afghanistan and Angola.

Children are particularly vulnerable to being killed or injured by anti-personnel landmines because:

- they are closer to the centre of the blast and because their chances of surviving massive loss of blood are minimal;
- they are often the victims of their own curiosity and love of play, something they are eager to do following the cessation of hostilities. Mines, which come in different shapes, sizes and colours, can be enticing to children;
- children are required to perform jobs that are crucial to the economic survival of the family, such as tending livestock, scavenging, gathering firewood and collecting water. These tasks are often carried out in heavily mined areas; and
- it has become common practice in some areas for children to be paid a small amount of money to retrieve landmines for re-sale.

Children’s lives can be devastated in the short and long term by sustaining the horrific injuries caused by landmines. Children’s employment and consequently their economic prospects suffer hugely because of their disabilities. Opportunities for education also become limited, as they are unable to

¹⁴³. “Landmine Report 2002: Towards a Mine-Free World”, International Campaign to Ban Landmines, 2002

get to school or learn in a normal school environment. For many children, especially girls, their prospects for marriage and therefore stability in adult life, are severely diminished. These practical difficulties compound the deep emotional trauma suffered, for which adequate counselling is rarely available.

Many children do not receive the long-term medical care that they require. Few clinics exist outside the main cities and therefore, often children are unable to attend the check-ups that they need. Rehabilitation and medical care are costly, especially prostheses, which require regular fittings in the case of children whose bones are growing quickly.

In addition to the devastating impact on individual lives, mines also have severe social and economic consequences for a country attempting to rebuild after the end of an armed conflict, rendering farmland unworkable, and roads and railways impassable, therefore hampering development and post conflict reconstruction. Landmine injuries also deplete the workforce, and create more people who are dependant on the State or aid agencies for survival.

Despite their enormous human cost and clear up costs¹⁴⁴, landmines continue to be used by government and non-governmental armed groups alike.

INTERNATIONAL LAW

Neither customary international law nor international humanitarian law, until recently, explicitly banned landmines. However, it can be argued that the inherent characteristics of landmines – that they cause horrific and permanent injury (e.g. loss of limbs), they cannot be targeted at soldiers, they cannot distinguish between combatants and civilians, and that the risk of injury and death from landmines continues after the cessation of hostilities – makes their use incompatible with the general laws of war, which limit the methods and means of warfare.

Customary International Law

Under customary international law, it is prohibited to use weapons 'of a nature to cause superfluous injury or unnecessary suffering'¹⁴⁵. This means that any weapon designed to cause more injury than required to take a soldier

144. While a landmine costs as little as \$3-30 to purchase, it costs anywhere from \$300 to \$1,000 to locate and clear.

145. See the International Committee of the Red Cross web site - <http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JNFZ!Open>

'out of action' (i.e. one intended to inflict gratuitous suffering), even when directed solely against combatants, is unlawful and must not be used.

It is also prohibited to use weapons that are inherently indiscriminate, i.e. those that do not/cannot discriminate between a soldier and a civilian.

International Humanitarian Law

Additional Protocol I and II to the Geneva Conventions 1977

Additional Protocol I provides that parties to a conflict cannot use any method of warfare that they choose¹⁴⁶, and explicitly prohibits the use of weapons that cause superfluous injury or unnecessary suffering¹⁴⁷. Parties to a conflict must also distinguish between civilians and combatants at all times¹⁴⁸.

Further, Article 51(4) prohibits indiscriminate attacks, which includes in its definition the use of methods and means of combat, the effects of which cannot be limited.

Civilians are not entitled to the same protection from the use of landmines during non-international armed conflicts under Additional Protocol II, which only explicitly protects civilians from being the object of attack¹⁴⁹.

Convention on Conventional Weapons 1980

In 1980, the 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 was adopted. Protocol II of the Convention (Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices)¹⁵⁰ specifically regulates the transfer and use in international armed conflicts of all landmines, including anti-personnel mines, and also includes rules for marking and mapping minefields and the removal of mines at the end of wars. Importantly, Protocol II was amended in May 1996 to extend its application to non-international armed conflicts¹⁵¹ and to strengthen the rules relating to the use and transfer of mines.

This Convention and Amended Protocol II however fell far short of a worldwide ban on landmines and in reality made little impact on their transfer and use.

146. Article 35(1)

147. Article 35(2)

148. Article 48

149. Article 13(2)

150. Protocol on Non-Detectable Fragments (1980 Protocol I), Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (1980 Protocol III), Protocol on Blinding Laser Weapons (1995 Protocol IV)

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

Ottawa Treaty 1997¹⁵²

An intergovernmental conference, spearheaded by the Canadians, was held in 1996 in Ottawa, to bring States dissatisfied with the 1980 Convention on Conventional Weapons together to draft and enact a true international ban of anti-personnel mines with no exceptions, exemptions, or loopholes. The conference resulted in the Ottawa Declaration, which called for their global ban.

During the following year, the International Campaign to Ban Landmines¹⁵³ worked with governmental agencies and local, national, and international organizations on the text and recommendations that came out of the intergovernmental conference to move the global landmine ban legislation forward. The Campaign's efforts were so successful that in one year, the Ottawa Treaty was finalized, with ninety countries endorsing the text of the treaty¹⁵⁴.

One particular criticism of the Convention on Conventional Weapons, Protocol II, concerned the definition of an anti-personnel mine: "*Anti-personnel mine*' means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons"¹⁵⁵. The inclusion of the word 'primarily' allowed States to escape their obligations by arguing that the landmines they were using had a different primary purpose. Importantly, the Ottawa Treaty removed the word 'primarily', so strengthening the prohibition on the use of landmines.

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

It is reported that so far more than 34 million antipersonnel mines have been destroyed by 61 states. However, this is just the tip of the iceberg. A further 230 million anti-personnel mines are stockpiled in 94 countries around the world¹⁵⁶.

152. Common name for the Convention on the Prohibition of the Use, Stockpiling, Production and the Transfer of Anti-Personnel Landmines and on their Destruction 1997. Entered into force 1 March 1999

153. A coalition of relevant organizations working all over the world to bring about a ban on the production, transfer and use of anti-personnel mines. www.icbl.org

154. As of February 5th 2003, 133 States were party to the treaty

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

156. 'Landmine Report 2002', op. cit. at fn. 143

CLUSTER BOMBS

Another weapon that has a devastating impact on the civilian population is the cluster bomb. Cluster bombs are large weapons that release hundreds of smaller submunitions or bomblets. They are launched from aircraft, rocket launchers and artillery projectiles. Cluster bombs have high military value because they can be used to destroy broad and moving targets.

Cluster bombs are different from landmines because they are destined to explode on impact or shortly before or after impact. However, cluster bombs are an imprecise weapon, prone to wander off their target and there is a high rate of bomblets that fail to explode when dropped (5-30 %¹⁵⁷). These unexploded ordinance have the same, if not a greater¹⁵⁸, devastating impact on the civilian population as anti-personnel mines, injuring, maiming and killing and rendering land dangerous, and therefore economically useless, until the bombs are cleared. Children are particularly vulnerable to death and injury from these submunitions.

In December 2002, Human Rights Watch published a report¹⁵⁹ detailing the use and effects of cluster bombs in Afghanistan, which illustrated the devastating effect that the use of these weapons can have on the civilian population. Over 1,200 cluster bombs were dropped, releasing close to 250,000 bomblets, of which it is estimated that 12,400 did not explode. These unexploded ordinance have caused high numbers of casualties, 70 % of whom, the report claims, are children.

INTERNATIONAL LAW

There is no international treaty that specifically regulates the transfer and use of cluster bombs. However, the same customary law and international humanitarian law principles that apply to landmines are relevant to cluster bombs.

In its analysis of whether the use of cluster bombs violates international humanitarian law, Human Rights Watch put forward a number of arguments¹⁶⁰. Under Additional Protocol I (1977), a distinction must be made at

157. "Drop Today, Kill Tomorrow: Cluster munitions as inhumane and indiscriminate weapons", Virgil Wiebe and Titus Peachey, Mennonite Central Committee, 1996

158. The submunitions of cluster bombs cause more upper-body injuries and death than anti-personnel mines because they have a higher explosive charge and because of the fragmentation pattern of the heavy outer shell.

159. "Fatally Flawed: Cluster bombs and their use by the United States in Afghanistan", Human Rights Watch, December 2002, Vol.14 No.7(G).

160. *ibid*

all times between civilian and military targets¹⁶¹. Attacks that do not make this distinction are considered indiscriminate and are prohibited.

Indiscriminate attacks specifically include attacks:

- which are not directed at a specific military objective¹⁶²;
- or which employ a method or means of combat, which cannot be directed at a specific military objective, or the effects of which can not be limited¹⁶³;
- which treat separate military objectives as one target in a populated area¹⁶⁴;
- and which are expected to cause incidental loss to civilian life that is excessive to the military advantage anticipated (the proportionality test)¹⁶⁵.

While cluster bombs are not inherently indiscriminate¹⁶⁶, the way that they are used in attacks can be. Cluster bombs cannot be precisely targeted. In fact, their military advantage is that they can attack dispersed and moving targets. While this does not pose a risk to civilian life in non-populated areas, the immediate risk to civilian life is high when used in attacks in or near populated areas.

Consequently, using cluster bombs in more densely populated areas i.e. towns, cities and villages, would fail the proportionality test, which obligates armed forces to balance the military advantage that would be achieved by employing a certain method or means of attack with the incidental loss of civilian life.

In addition, due to the high failure rate of cluster bombs, which effectively become landmines if they do not detonate on impact, it is argued that the effects of using cluster bombs cannot be limited because while immediate civilian casualties might be minimal, the risk to civilians remains high for long periods of time. Further, it is asserted that the continued threat to the civilian population should be part of the proportionality determination.

161. Article 48

162. Article 51(4)(a)

163. Article 51(4)(b) & Article 51(4)(c) respectively

164. Article 51(5)(a)

165. Article 51(5)(b). Article 57, Additional Protocol I, obligates parties to a conflict to take precautionary measures to ensure that civilian loss is not excessive in relation to the concrete and direct military advantage anticipated.

166. It must be noted that there are schools of thought that argue that cluster bombs are inherently indiscriminate because the nature of discharge (dropping hundreds of bomblets over large areas) prevents individual targeting. "Drop Today, Kill Tomorrow: Cluster munitions as inhumane and indiscriminate weapons". Virgil Wiebe and Titus Peachey, Mennonite Central Committee, 1996

As with landmines, Additional Protocol II to the Geneva Conventions (1977) does not offer protection from the use of cluster bombs in non-international armed conflicts.

The progress on banning landmines has not been matched in addressing the devastating impact of cluster bombs. The most significant step has been the agreement by States¹⁶⁷ to negotiate an instrument relating to generic post conflict action on explosive remnants such as responsibility for clearance, risk education and information sharing. The instrument may include provisions on preventive measures to improve reliability. Both international and non-international armed conflicts will fall under its scope. It is expected that this instrument will be finalized by the end of 2003, however it is unlikely to have any impact on the use of cluster bombs.

167. This agreement was the result of a meeting of State Parties to the Convention on Conventional Weapons 1980 in December 2002 to discuss unexploded ordinance.

INTERNATIONAL LAW AND LANDMINES AND CLUSTER BOMBS

Landmines and clusterbombs**Customary International Law**

Under customary international law it is prohibited to use weapons:

- of a nature to cause superfluous injury or unnecessary suffering
- that are inherently indiscriminate – those that do not/cannot distinguish between a soldier and a civilian

International Humanitarian Law – limiting the methods and means of warfare**Additional Protocol I 1977 – International armed conflicts****Article 35 – methods and means of warfare**

- “1) In any armed conflict, the right of Parties to the conflict to choose methods or means of warfare is not unlimited
- 2) It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”

Article 48 – need to distinguish between combatant and civilian

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants...”

Article 51(4) – indiscriminate attacks

“Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- a) those which are not directed at a specific military objective;
- b) those which employ and method or means of combat which cannot be directed at a specific military objective; or
- c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction”.

Article 51(5) – indiscriminate attacks

“Among others, the following types of attacks are to be considered as indiscriminate:

- a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or similar area containing a similar concentration of civilians or civilian objects; and
- b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians... which would be excessive in relation to the concrete and direct military advantage anticipated”

Additional Protocol II 1977 – Non-international armed conflicts

Protocol II does not provide protection against the use of landmines or cluster bombs.

Landmines

**Amended Protocol on Prohibitions or restrictions on the Use of Mines,
Booby-Traps and Other Devices (1996 Amended Protocol II)
to the 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 1980**

Article 2(3) – definition of an anti-personnel mine

“Anti-personnel mine’ means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons”

This Convention:

- specifically regulates, but does not prohibit, the use and transfer of all landmines, including anti-personnel mines; and
- includes rules for marking and mapping minefields and the removal of mines at the end of wars.

**Convention on the Prohibition of the Use, Stockpiling,
Production and the Transfer of Anti-Personnel Landmines
and on their Destruction 1997 (Ottawa Treaty)**

Article 2 – definition of an anti-personnel mine

“Anti-personnel mine’ means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure, or kill one or more persons”

Article 1 – general obligations

1. Each State Party undertakes never under any circumstances:
 - a) To use anti-personnel mines;
 - b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines...
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention”

State Parties are also required to:

- destroy stockpiles within four years (Article 4);
- clear minefields within ten years (Article 5; and
- assist landmine victims (Article 6).

5. Small Arms and Light Weapons

Small arms include revolvers, self-loading pistols, rifles, sub-machine guns, assault rifles and light machine-guns.

Light weapons include heavy machine-guns, mortars, grenade launchers, portable anti-aircraft and anti-tank guns and portable missile launchers¹⁶⁸.

Small arms are the weapons of choice in most internal conflicts because they are readily available, inexpensive, easy to transport, construct, maintain and use, and consequently the trade in small arms and light weapons is booming with more companies than ever before involved in their manufacture¹⁶⁹.

In 2000, the legal trade was estimated to be worth at least US\$ 4-6 billion. Illegal trade has been estimated at up to US \$1 billion¹⁷⁰. This illicit trade plays a disproportionate role in fuelling armed conflicts around the world. However, most illicitly traded weapons have been manufactured legally but end up for sale on the black market because States are often irresponsible in their trade in small arms, doing little or nothing to ensure that weapons end up in the hands of those they were intended for.

Proliferation of small arms and light weapons sustains conflicts, exacerbates violence, contributes to the displacement of civilians, hampers searches for food, fuel and water, and impedes humanitarian assistance. The widespread availability of small arms is directly correlated with the dramatic rise in victimization of women and children as well as the increase in the number of child soldiers. Weapons, which are not relinquished, leave their legacy after a conflict in the form of violent crime and gangland violence.

INTERNATIONAL LAW AND DEVELOPMENTS

International law regulating small arms is very limited and unlike for chemical, biological and nuclear weapons, there is still no global non-proliferation regime to limit their spread. However, recognizing that constraining small arms proliferation is one of the key challenges in preventing conflict, there have been a number of initiatives.

168. 1997 Report of the Panel of Governmental Experts on Small Arms (UN Doc. A/52/298, 27 Aug 97)

169. Over 600 companies worldwide legally produce small arms. Excluding privately and illegally owned weapons, it is estimated that there are more than 550 million small arms and light weapons in circulation around the world. "Small Arms Survey 2001: Profiling the problem", Graduate Institute of International Studies in Geneva, Oxford University Press, 2001

170. *ibid.*

Since the mid-1990s, the United Nations General Assembly has placed the issue of small arms and light weapons on the international agenda with a view to breaking the cycle of misery caused by illicit small arms trafficking. In the field, the United Nations has been asked to collect and destroy weapons of ex-combatants in a number of its peacekeeping operations.

In July 2001, the problem of small arms was debated in United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. The participating States adopted a programme of action¹⁷¹ which included a wide range of political undertakings at national, regional and global levels to prevent, combat and eradicate the illicit trade in small arms and light weapons including enhanced co-operation among States and the provision of assistance to affected States. Another conference is scheduled to take place before 2006 to follow up the recommendations of the conference and to evaluate progress.

More progress has been made to curb the trade in small arms through efforts to address transnational organized crime. In 2001, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention on Transnational Organized Crime¹⁷² was adopted. Once it has entered into force, the Protocol will provide an international law enforcement mechanism for crime prevention and the prosecution of traffickers. Among other things, the Protocol makes provision for establishing internationally recognized standards and provisions regarding marking, record-keeping and import/export control of firearms.

REGIONAL DEVELOPMENTS

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

171. United Nations Programme of Action on Small Arms and Light Weapons to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons

172. The UN Convention on Transnational Organized Crime was adopted in 2000

Steps to curb the transfer of small arms and light weapons have focused on the illicit trade. This ignores the exacerbation of conflicts through the legal supply of weapons to unstable States and regions and the lack of accountability for the final destination of these weapons. This lack of progress is hardly surprising considering that the main dozen or so suppliers of arms on the international market include the U.S., Russia, China, the U.K. and France (the five permanent members of the Security Council). To reduce the flow of arms to unstable countries a common system of restraints should be established. Although some weapons would still flow through clandestine channels, most large-scale transactions would be subject to international monitoring¹⁷³.

173. Recommended in "The Scourge of Small Arms", Jeffrey Boutwell and Michael T. Klare, *Scientific American*, 2000

INTERNATIONAL LAW AND SMALL ARMS AND LIGHT WEAPONS

International Law

**Protocol against the Illicit Manufacturing of and Trafficking in Firearms,
Their Parts and Components and Ammunition, supplementing
the United Nations Convention on Transnational Organized Crime 2000**

Once in force, the Protocol will provide an international law enforcement mechanism for crime prevention and the prosecution of traffickers. The Protocol also makes provision for establishing internationally recognized standards and provisions regarding marking, record-keeping and import/export control of firearms.

Regional Developments

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

This Protocol was the first international treaty designed to prevent, combat, and eradicate illegal transnational trafficking in firearms, ammunition, and explosives.

International conference

**United Nations Conference on the Illicit Trade in Small Arms
and Light Weapons in All Its Aspects 2001**

A programme of action was adopted which included undertakings to prevent, combat and eradicate the illicit trade in small arms and light weapons.

Children and Post Conflict Processes

1. Changing Role of Children in Peace Processes

Historically, the processes of securing peace, reconciliation and reconstructing a country have neglected the specific needs and rights of children and have not encouraged their involvement in the peace process itself. However, the approach to the role of children in post conflict societies is slowly changing. To ensure the long-term peace, security and development of a country, it has become accepted that children, having played a significant role in the conflict as victims, witnesses and perpetrators of violence and war crimes, must not be ignored or marginalized in the peace process.

It has also been accepted that children have rights as well as needs during and after conflict, which are not guaranteed when the rights and needs of their community are addressed - children require specific attention and specific assistance. Humanitarian and development programmes, peace processes, peace agreements and peacekeeping forces¹⁷⁴ have all become more child focused and more child rights driven, with the Convention on the Rights of the Child being used as a guiding tool for work with children.

Importantly, in recent years, it has been recognised that children need to and have the right to be part of the peace process not just the beneficiaries of

174. As well as including child protection advisers in peacekeeping missions, the Security Council recommended that UN staff and peacekeepers receive training in children's rights and child protection. See para 9 S/RES/1460 (2003), para 10(b) & 13(b) S/RES/1379 (2001), para 16(b) S/RES/1314 (2000), para 19 S/RES/1261. In addition, draft guidelines on the integration of child protection in peacemaking, peacekeeping and peace-building were developed by an inter-agency Working Group convened by the Office of the Special Representative on Children and Armed Conflict, UNICEF, the Department of Peacekeeping Operations and the Department of Political Affairs

it. The Security Council has emphasised the need not only for the welfare and rights of children to be taken into account during peace negotiations and throughout the process of consolidating peace¹⁷⁵ but also the need to involve children and consider their views in these processes¹⁷⁶. This reflects Article 12 of the Convention on the Rights of the Child, which states that children have the right to have their views heard and given due weight in any decisions affecting them.

The importance of addressing the specific needs and rights of children and involving them in the peace process has been recognised in a number of international developments.

2. Peace Agreements

Peace agreements rarely mention children let alone include child specific obligations for the parties to a conflict.

The first specific and unambiguous obligation was contained in the Lomé Peace Accord 1999, signed by the warring parties in Sierra Leone. Article XXX obligates the Government to accord particular attention to the issue of child soldiers and “mobilize resources... to address the special needs of these children in the existing disarmament, demobilization and reintegration processes”. Further, Article XXXI obligates the Government to provide free compulsory education for the first nine years of schooling and to endeavour to provide free schooling for a further three years after that. The Government shall also endeavour to provide affordable health care throughout the country.

In the following year, the Arusha Peace and Reconciliation Agreement 2000 for Burundi, was signed. This agreement contains numerous specific references and obligations to children in its five protocols, including, among others, the incorporation of the CRC and the African Charter on the Rights and Welfare of the Child 1990 into the Constitution of the Republic of Burundi¹⁷⁷, protection from use in armed conflict¹⁷⁸, protection from abuse and exploitation¹⁷⁹, and an obligation to assist¹⁸⁰, protect¹⁸¹ and educate¹⁸² returnee children.

175. para 7 S/RES/1261 (1999), para 12 S/RES/1460 (2003)

176. paras 11 and 19 S/RES/1314 (2000), para 8(e) S/RES/1379 (2001)

177. Article 3 (1), Protocol II: Democracy and Good Governance

178. Article 3(27), Protocol II: Democracy and Good Governance

179. Article 3(26), Protocol II: Democracy and Good Governance

180. Article 4(b), Protocol IV: Reconstruction and Development

181. Article 2, Protocol IV: Reconstruction and Development

182. Article 4(j), Protocol IV: Reconstruction and Development

Further, Article 10 (Protocol IV) states: “*The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, ... juvenile delinquents, ... etc.*”

In addition to these peace agreements, governments and insurgent groups in Sudan, Colombia and the Democratic Republic of Congo have also committed to placing the rights and protection of children on the agendas of their on-going peace processes.

3. Peace Processes

One of the most important parts of the peace process is obtaining justice against the wrong doers and recognition for the victims. It is considered that such processes contribute to national reconciliation and the process of restoring and maintaining peace. This can take a number of forms but the most obvious are through international and national courts and tribunals where the perpetrators of war crimes are tried and punished, and through truth and reconciliation commissions where the details of what took place during the conflict are established and recorded, and if appropriate, blame attributed.

a) TRUTH AND RECONCILIATION COMMISSIONS

Over the past 25 years, more than 20 truth and reconciliation commissions, or similar bodies, have been established around the world. Although these bodies have been diverse in form and procedure their main aim was to establish what happened during a set period – normally a period of conflict or dictatorship – and by doing so help to reconcile divided societies and to sustain peace¹⁸³.

Children and truth and reconciliation processes

The Security Council has emphasized the need for serious abuses involving children to be addressed in post conflict truth and reconciliation processes¹⁸⁴. However, this process not only enables abuses to be documented, but also provides an ideal opportunity for children to tell their story and participate in the process of reconciliation. By allowing this participation, society acknowledges the huge impact the conflict has had on its children and reinforces the importance of their role in their communities.

183. see “Unspeakable Truths, Confronting State Terror and Atrocity” Priscilla Hayner, New York, Routledge, (2001)

184. para 9.(a) S/RES/1379 (2001)

However, in truth and reconciliation processes around the world, the involvement of children has been limited, ranging from a passing comment on the impact of the conflict on children (El Salvador), to analysis of violence against children and recommendations about the future (Guatemala, although no particular effort was made to interview children or adults who had been abused as children). Most commissions have not invited children to testify. However, it must be noted that many of these truth commissions are set up years or decades after the end of a conflict or dictatorship and many of the children affected at the time have become adults.

Children played a huge part as victims and perpetrators of violence in the struggle against apartheid in South Africa. Reflecting their significant role in the conflict, children were specifically involved in the truth and reconciliation process. However, ultimately they were not involved in the mainstream proceedings. Instead, children gave their testimonies in special hearings and workshops, which were then incorporated into the final report, by way of a chapter dedicated to children and youth¹⁸⁵.

Truth and Reconciliation Commission – Sierra Leone

Provision for the establishment of a Truth and Reconciliation Commission was made in Article XXVI of the Lomé Peace Accord, which was signed by the Sierra Leone Government and the Revolutionary United Front (the main rebel group) in 1999, in an attempt to bring an end to the brutal eight year civil war¹⁸⁶.

The purpose of the Commission is “to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation”¹⁸⁷. In accordance with this Article, the Commission was established by the Truth and Reconciliation Act in February 2000¹⁸⁸.

The Truth and Reconciliation Act is the first document to impose a legal obligation to integrate children into the peace process, specifying that in hearing testimony special attention be given to the experiences of children

185. “The text of the TRC Report Officially presented by President Nelson Mandela on 29 October 1998”, Government of South Africa, Volume 4, Chapter 9, Special Hearings: Children and Youth. Also see “The Protection of Children in Peacemaking and Peacekeeping Processes” – Ilene Cohn, 12 Harv. Hum. Rts. J. 129 at Para C(1)(a) (1999)

186. “Peace Agreement Between the Government of Sierra Leone and The Revolutionary United front of Sierra Leone”, Lomé Accord 7 July 1999. Fighting broke out again in 2000, but since November 2000, when a ceasefire agreement between the Government and RUF was signed, the peace has held.

187. Article XXVI

188. The Commission was inaugurated on 5th July 2002

within the armed conflict by the Commission¹⁸⁹. The attention given to children in the peace process reflects and recognises the huge part that children played in the conflict as perpetrators of atrocities, victims and witnesses. It also reflects the growing international awareness that to ensure lasting peace, children need to be part of the peace process.

The TRC Act envisages the need to provide protection to children involved in the process bestowing on the Commission the authority to “*implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations*”¹⁹⁰. However, the Truth and Reconciliation Act does not provide guidelines on how to involve children. The process of involving children in hearing and investigations has been left to the discretion of the Commission.

With limited precedents to draw from, in 2001, UNICEF organised a meeting bringing together international and national experts in Freetown to discuss the involvement of children in the TRC. Among many other specific recommendations, the expert meeting recommended that the work of the TRC be guided by the Convention on the Rights of the Child, the African Convention on the Rights and Welfare of the Child 1990 and other relevant international standards, and that the best interests of the child shall be the primary consideration in all work with children¹⁹¹. The recommendations of the experts meeting are forming the basis for the development of work with children for the TRC¹⁹².

b) INTERNATIONAL COURTS AND TRIBUNALS

In the aftermath of the human devastation of World War II, for the first time in modern history, the international community established a system of international criminal justice¹⁹³. The Nuremberg and Tokyo Tribunals were military tribunals set up to prosecute individuals irrespective of rank or position for “crimes against peace”, “war crimes” and “crimes against humanity” committed during World War II¹⁹⁴.

189. Article 6(2)(b)

190. Article 7(4)

191. Article 3, CRC

192. “Children and the Truth and Reconciliation Commission for Sierra Leone: Recommendations for policies and procedures for addressing and involving children in the Truth and Reconciliation Commission”, UNICEF, National Forum for Human Rights, UNAMSIL/Human Rights, Report compiled by Natalie Man and Bert Theuermann, 2001

193. London Agreement – 8 August 1945, 4 major Allies signed it and later the Charter of the International Military Tribunal (IMT) was annexed

194. Subsequent proceedings prosecuted persons in zones occupied by the Allies for other crimes in the Charter of the IMT.

In 1948, the General Assembly suggested that the International Law Commission (ILC) “*study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide...*” under the Convention on the Prevention and Punishment of the Crime of Genocide¹⁹⁵. The ILC came to the conclusion that a permanent international court could and should be established to prosecute not only cases of genocide, but also cases of similar gravity¹⁹⁶. However, despite the setting up of a committee to work on this issue, the question of the establishment of an international criminal court was not resolved, proving to be highly complex and contentious¹⁹⁷.

It was not until 50 years later that the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, convened by the General Assembly, adopted the Rome Statute on the International Criminal Court (1998).

Ad hoc Tribunals

While the Statute of the ICC was being drafted and considered by the international community, two ad hoc tribunals - the International Criminal Tribunal for Yugoslavia (ICTY) in 1993¹⁹⁸ and the International Criminal Tribunal for Rwanda (ICTR) in 1994¹⁹⁹ - were established by the Security Council, in response to the extensive human rights abuses committed during the two conflicts.

Located in The Hague, the Netherlands, the ICTY was set up to prosecute war crimes, genocide and crimes against humanity committed in the former Yugoslavia from 1991. It has prosecuted a large number of significant actors in the conflict. The most notable of the defendants is Slobodan Milosevic, the ex-President of Yugoslavia, who is currently standing trial for the atrocities committed during the conflict.

The ICTR is situated in Arusha, Tanzania. The tribunal was established to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda (and neighbouring States) between 1 January 1994 and 31 December 1994. Of the 70 suspects who have been indicted, nine trials have finished resulting in eight convic-

195. GA res 260 of 9 December 1948 Article VI provides that persons charged with genocide “*shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction . . .*”

196. Report of the International Law Commission 1950

197. Information on the International Criminal Court taken from the ICC website, Overview page - <http://www.un.org/law/icc/general/overview.htm>

198. Established by Security Council Resolution 827, S/RES/827 (1993)

199. Established by Security Council Resolution 955, S/RES/955 (1994)

tions and one acquittal²⁰⁰. In a landmark decision, the ICTR was the first international tribunal to indict and subsequently secure the conviction of a head of State for genocide - the Prime Minister of Rwanda, Jean Kambanda.

While these Tribunals have been relatively successful in securing convictions and combating impunity, they suffer from a number of inherent deficiencies that reinforced the need for a permanent international criminal court:

- Ad hoc tribunals are dependent on Security Council action to establish them and have been set up on a case by case basis giving rise to the accusation of selective justice;
- Ad hoc tribunals also suffer from large start up costs, borne by the international community, further deterring the setting up of tribunals for every conflict in which crimes have been committed; and
- Tribunals are subject to limits of time or place and are unable to deal with subsequent or related crimes. For example, the ICTR was only mandated to cover crimes that occurred in 1994 and does not have the jurisdiction to prosecute crimes committed subsequently against thousands of refugees who fled the Rwandan conflict.

International Criminal Court (ICC)

The Rome Statute on the International Criminal Court came into force on 1 July 2002, after receiving the requisite 60 State ratifications. Work has begun on setting up the Court.

Jurisdiction

The ICC has jurisdiction over the most serious crimes of concern to the international law: genocide, crimes against humanity, war crimes and aggression²⁰¹.

However, the ICC is limited in bringing prosecutions for these crimes. The ICC only has jurisdiction:

- for crimes committed after 1 July 2002 (when the Statute came into force)²⁰²;

200. As of January 2003

201. Article 5, Rome Statute of the International Criminal Court. See summary of International Law and Developments and Peace Processes at the end of this chapter for the definition of genocide, crimes against humanity and war crimes.

202. Article 11 (1). Where a State becomes a party to the Statute after 1 July 2002, the Court will only have jurisdiction for crimes committed after the date of ratification, unless the State specifically declares otherwise (Article 11(2))

- either where the individual is a national of a State Party²⁰³;
- or where the crime was committed on the territory of a State Party²⁰⁴;
- or where a non-State party agrees to the jurisdiction of the Court to prosecute a specific individual²⁰⁵.

The ICC also only has the jurisdiction to prosecute if a State is unable or unwilling to investigate and prosecute that person for one of the crimes within the ICC's jurisdiction²⁰⁶ or has investigated the crime and decided not to prosecute²⁰⁷. This principle of 'complementarity', where the ICC does not usurp national courts, does not exist for the two ad hoc tribunals, which have primacy over national courts.

CHILDREN AND THE JURISDICTION OF THE INTERNATIONAL TRIBUNALS

Crimes against children

Although crimes against children are covered by the general list of crimes in the Statutes of the ICTY, ICTR and ICC, there has been a growing recognition, reflected in these Statutes, that children are specifically targeted in armed conflicts.

ICTY and ICTR

In both Statutes, the only specific reference to children appears in the list of crimes that constitute genocide, which includes "*forcibly transferring children of the group to another group committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*"²⁰⁸.

ICC

Importantly, the Statute of the International Criminal Court expands the number of crimes for which the victims are specifically children:

- the definition of genocide includes the forcible transfer of children of one group to another²⁰⁹;

203. Article 12(2)(b)

204. Article 12(2)(a)

205. Article 12(3)

206. Article 17(1)(a)

207. Article 17(1)(b)

208. Article 4(2)(e) Statute of the ICTY, Article 2(2)(e) Statute of the ICTR.

209. Article 6(e)

- the trafficking of children is expressly included in the definition of “enslavement”, which is a crime against humanity²¹⁰. This is an important clause recognising the widespread practice of trafficking of children for sexual and other purposes in times of both conflict and peace.

In its list of ‘war crimes’ the Statute includes:

- the intentional directing of attacks against buildings dedicated to education during international conflicts and conflicts of a non-international character²¹¹. The inclusion of these articles recognises that children and their schools are often deliberately targeted to terrorise a community, and acknowledges the long term adverse consequences for children and their communities where they are deprived of education; and
- the conscription or enlistment of children under the age of 15 into national armed forces (and armed forces or groups in conflicts of a non-international character) or using them to participate actively in both international and non-international armed conflicts²¹². The inclusion of this provision indicates the seriousness with which the international community considers recruiting and using children and its preparedness to hold both State and non-state actors accountable for such practices.

Children as victims and witnesses – legal protection

A large number of war crimes, crimes against humanity and acts of genocide are committed against children. Countless other children witness such crimes. In the prosecution of those who carried out these crimes, children’s testimonies are important and can even be crucial in obtaining a conviction.

It has been recognized that children giving testimony as witnesses or victims have special needs because of their age and vulnerability. During the course of testifying, children are particularly vulnerable to renewed or secondary traumatization, to manipulation and intimidation, and fear in the face of their former oppressors. Additionally, they are particularly susceptible to stigmatisation from public exposure, especially in the cases of children who are victims of sexual violence, or who were recruited into armed groups. Testifying may exacerbate the problems that these children face in reintegrating in their communities.

210. Article 7(c)

211. Article 8(2)(b)(ix) and Article 8(2)(e)(iv) respectively

212. Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) respectively

However, while children can only rely on the protection afforded to all victims and witnesses²¹³, when taking part in investigations or testifying for the ICTY or ICTR e.g. safeguards for security, privacy and during testimony²¹⁴, the Statute of the ICC and its Rules of Procedure and Evidence²¹⁵ have provided that the Court shall take appropriate measures specifically to protect the safety, physical and psychological well being, dignity and privacy of child victims and witnesses during investigation and prosecution²¹⁶. The Rules of Procedure and Evidence include provisions to assist traumatized children give their testimony²¹⁷ (e.g. the presence of a psychologist or a family member²¹⁸), and the provision that applications for victims to participate in proceedings can be made on a child's behalf²¹⁹. Procedures are also available to ensure that the questioning of a child is carried out in a way that reduces the chances of further traumatizing the child²²⁰.

The Statute of the ICC also recognizes the need for the Court to hire staff – both judges²²¹ and staff working with the prosecutor²²² - who have expertise in dealing with children who have suffered violence.

Both the Statute of the ICTR and the Statute of the ICTY made provision for the establishment of Victims and Witnesses Units to provide support to those testifying before the Tribunals²²³. The Statute of the ICC, reflecting and endorsing their achievements, included the provision that the Registrar should set up a Victims and Witnesses Unit to provide “*protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses*”²²⁴.

213. One exception exists – where a child is unable to fully comprehend the oath or solemn declaration that needs to be sworn at the beginning of their testimony, he may be able to testify without swearing an oath, if he is considered mature enough to give a testimony. However, the judgment cannot be based solely on this testimony. Rule 90, Rules of Procedure and Evidence International Criminal Tribunal for Yugoslavia and Rule 90, Rules of Procedure and Evidence International Criminal Tribunal for Rwanda.

214. Rules 69, 75 and 90 respectively of both the Rules of Procedure and Evidence for the International Criminal Tribunal for Yugoslavia and for the International Criminal Tribunal for Rwanda. Article 22 of the Statute of the ICTY and Article 21 of the ICTR provide for such rules to be drawn up.

215. Rules of Procedure and Evidence Adopted by the Preparatory Commission for the International Criminal Court, at its 23rd meeting on 30 June 2000. These rules guarantee that international standards for a fair trial are adhered to and witnesses receive appropriate protection.

216. Article 68(1)

217. Rule 88 – Special Measures

218. Rule 88(2)

219. Rule 89(3)

220. Rule 112(4)

221. Article 36(8)(b)

222. Article 42(9)

223. Rule 34, Rules of Procedure and Evidence ICTY set up a Victims and Witnesses Unit, Rule 34, Rules of Procedure and Evidence ICTR set up a Victims and Witnesses Support Unit

224. Article 43(6)

If appropriate, the Unit for the ICC is able to appoint child experts and in particular experts in traumatized children²²⁵. In addition “*[i]n order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings*”²²⁶.

Prosecuting children

Neither the Statutes nor the Rules of Procedure and Evidence of the International Criminal Tribunals for Yugoslavia or Rwanda explicitly limit their jurisdiction to over 18 year olds. Therefore, in theory the ad hoc tribunals could seek prosecutions of those who were under 18 at the time of their crime. However, neither tribunals have sought to prosecute children.

ICTY

Although not provided for in the Statute, the Office for the Prosecutor tends to pursue those who have carried out notorious and horrendous crimes. The Tribunal, however, has prosecuted some lesser criminals and has been criticised for wasting resources on the ‘small fish’. Child soldiers did not play a large part in the conflicts in the Former Yugoslavia. It is unlikely, therefore, that individuals who were under 18 at the time of their crimes would face the ICTY.

ICTR

In post conflict Rwanda, the issue of prosecuting children was much more pertinent as many children had taken part in the genocide. It was decided that under-14s – 14 years being the national age of criminal responsibility - would not be prosecuted but those aged 14 and over would. However, it was decided that children aged 14-18 would be prosecuted in local national courts, rather than in the International Tribunal²²⁷.

225. Rule 19(f)

226. Rule 17(3)

227. Children, who are detained and prosecuted, are entitled to the protection of the international juvenile justice guarantees, which govern detention, trial, sentencing and rehabilitation: Articles 37, 39 and 40 CRC; the UN Standard Minimum Rules for the Administration of Juvenile Justice (UN Res 40/33-Beijing Rules 1985, Annex 2); the UN Rules for the Protection of Juveniles Deprived of their Liberty (UN Res 45/113 -JDLs 1990 Annex 4); the UN Guidelines for the Prevention of Juvenile Delinquency (UN Res 45/112- Riyadh Guidelines 1990 Annex 3); Administration of Juvenile Justice (Ecosoc Res 1997/30). The CRC is now considered to be the umbrella under which these documents exist, even though the Beijing Rules pre-date and provide the basis for the CRC juvenile justice provisions. These guidelines supplement, expand and fill in the detail of the CRC.

The process in Rwanda was slow and a number of years went by before the prosecutions started. By late 2001, only 5,800 of the 100,000 being held in detention had been tried²²⁸. Children were certainly not a priority in the prosecutions. Due to the insurmountable problems in prosecuting all those being held in prison (including children, who had now become adults because of the passage of time), Gacacas were established in 2001, to speed up prosecutions²²⁹. Gacacas are traditional local courts and thousands of judges were elected and trained to preside over these courts to hear cases involving 'less serious' crimes, i.e. those who participated in, rather than led, ordered or orchestrated, the genocide.

ICC

The Statute of the ICC, however, specifically limits its jurisdiction to individuals who were over 18 at the time of alleged commission of the crime²³⁰. International juvenile justice standards state that the purpose of the justice system should be rehabilitation and reintegration and not punishment²³¹. The concept of an international court is to bring perpetrators of the most serious crimes to justice. Ultimately, therefore, it was felt that national courts were more appropriate to try child offenders where the focus could remain on rehabilitation rather than punishment.

SPECIAL COURT FOR SIERRA LEONE

In 2000, Security Council Resolution 1315²³² requested the Secretary-General to negotiate with the Sierra Leone Government to establish a Special Court to prosecute those who had committed crimes against humanity, war crimes and other serious violations of international humanitarian law during the civil war.

The Special Court was established in 2002, *"to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996"*²³³. An amnesty was in place that precluded prosecutions for crimes committed before the date (the civil war began in 1991).

228. "Grass Roots Genocide Courts In Rwanda", Radio Netherlands, 5 October 2001

229. "Gacaca to establish truth about genocide", President Kagame, Press Release Rwandan Government, October 4 2001

230. Article 26

231. Article 40(1) CRC, also see Rule 17, Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), (Adopted by General Assembly Resolution 40/33 of 29 November 1985)

232. S/RES/1315(2000)

233. Article 1, Agreement Between The United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 2002

The Special Court is neither a UN body, like the ICTY and the ICTR, nor a national tribunal or court, rather it is a hybrid of the two. While the ICTY and ICTR were established by the Security Council under Chapter VII of the UN Charter, which gives the UN power to intervene in the affairs of sovereign states to secure international peace and security, the Special Court has been established through a treaty between the UN and the Sierra Leone Government. The Court is jointly administered by the UN and the Sierra Leone Government, is made up of international and national judges and prosecutors, and is located in Freetown, the capital of Sierra Leone, rather than a neutral State.

The Security Council did not want to establish yet another ad hoc tribunal because of the cost involved. However, the establishment of a national court was rejected because there was concerns that it would be a 'victor's court'. By establishing a joint body a certain level of independence and credibility was ensured. The Special Court is therefore an entirely new international model for bringing perpetrators to justice.

However the Court suffers from a number of weaknesses:

- the Court will not have the power to demand the surrender of suspects from third countries, as it was not established by the Security Council directly;
- the Court will only have jurisdiction over crimes committed in Sierra Leone and not those atrocities on going in West Africa; and
- while not costing as much as the International Tribunals to set up, it is estimated that the court will need £70 million for 3 years, which needs to be raised from voluntary contributions of the international community.

Crimes against children

Reflecting the atrocities committed against children, the Statute of the Special Court for Sierra Leone 2002 provides for the prosecution of crimes where children are the victims:

- Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities is considered a serious violation of international humanitarian law ²³⁴

234. Article 4(c)

- The Court has jurisdiction to prosecute crimes under Sierra Leone Law, including the abuse of girls²³⁵

A large number of children were subjected to sexual violence and rape during the civil war. Reflecting the Statute of the ICC, the Statute of the Special Court for Sierra Leone includes rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence in its list of crimes against humanity²³⁶.

Children as victims and witnesses – Legal protection

The rules governing investigations and proceedings are based on the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda²³⁷. However, the rules applying to proceedings before the ICTR have been amended to apply to the specific situation in Sierra Leone. Significantly, unlike the rules applying to the ICTR, the Rules of Procedure and Evidence of the Special Court for Sierra Leone include limited special protection measures for children, in addition to the general measures for protection of witnesses and victims.

The Registry is charged with establishing a Victims and Witnesses Unit, which shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children²³⁸. The Rules of Procedure and Evidence provide that this Unit shall ensure that witnesses or victims who appear before the Special Court or who are placed at risk on account of the testimony given by such witnesses, shall receive support, counselling and other appropriate assistance including medical, physical and psychological rehabilitation, especially in cases of crimes against children, rape and sexual assault²³⁹.

Rule 90(C) provides that a child “*shall be permitted to testify if the Chamber is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, that he understands the duty to tell the truth, and is not subject to undue influence. However, he shall not be compelled to testify by solemn declaration*”.

235. Article 5(a)

236. Article 2(g)

237. In accordance with Article 14 of the Statute of the Special Court for Sierra Leone, the Rules of Procedure and Evidence for Rwanda are applicable to the proceedings before the Special Court but may be amended or added to where they do not adequately provide for the specific situation in Sierra Leone.

238. Article 16(4) of the Statute of the Special Court for Sierra Leone and Rule 34(B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

239. Rule 34(A)(iii)

In addition, where a child is involved in the proceedings, the Trial Chamber may hold a closed session, excluding the press and the public, if it is necessary to protect the privacy of the minor²⁴⁰.

Prosecuting children

The Special Court in Sierra Leone will be the first court, which has international involvement, that has explicit jurisdiction to prosecute children aged 15-18 years²⁴¹.

Many children were forcibly abducted and took part in the worst atrocities during the conflict. The Sierra Leone Government was adamant that those responsible were to be held accountable regardless of their age, but the UN were not convinced that children should be prosecuted in the court. However in keeping with Additional Protocol II, of the Geneva Conventions, which states that under-15s should not be recruited and used in armed conflict, it was agreed that the Special Court would be permitted to try suspects aged 15 years and older. Ultimately, the Special Representative for Children and Armed Conflict and the Secretary-General came out in support of the prosecution of children of this age who had committed the worst atrocities, so that a lacuna would not exist whereby children could be recruited at 15 but could not be prosecuted for the crimes they committed between the age of 15 and 18 years. It was believed that allowing such a lacuna would set a dangerous precedent and encourage the recruitment and use of children in this age bracket.

The Statute of the Special Court does not specify the grounds for deciding whether a particular child should be prosecuted. However, Article 15(5) states that "*[i]n the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk, and that where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability*".

The Statute also reflects international juvenile justice guarantees²⁴², which seek to protect juveniles who come into conflict with the law: a juvenile shall be tried in accordance with international human rights standards, in particular children's rights standards; he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and

240. Rule 79(A)(ii)

241. Article 7

242. see fn.227

assumption of a constructive role in society²⁴³; a convicted child shall not be sentenced to prison²⁴⁴, but rather to appropriate care and rehabilitation programmes²⁴⁵; and a number of judges and staff of the prosecutor should have knowledge of juvenile justice law²⁴⁶.

However, the Sierra Leone Special Court is intended for the worst offenders and the Prosecutor, David Crane, has stated that he will not be seeking prosecutions for children aged below 18 years, instead he will be seeking the prosecution of persons “*who forced thousands of children to commit unspeakable crimes*”²⁴⁷.

243. Article 7(1)

244. Article 19

245. Article 17(2)

246. Article 13(2)

247. “Sierra Leone: Special Court will not indict children – prosecutor”, UN OCHA Integrated Regional Information Network, 4 November 2002

INTERNATIONAL LAW AND DEVELOPMENTS AND PEACE PROCESSES

Peace Agreements

Specific obligation towards children contained in:

Lomé Peace Accord 1999 (Sierra Leone)

Article XXX: disarmament, demobilization and reintegration of child soldiers

Article XXXI: free compulsory education

Arusha Peace and Reconciliation Agreement 2000 (Burundi)

Among others

Article 10 (Protocol IV: Reconstruction and Development) states: “The Government shall ensure, through special assistance, the protection, rehabilitation and advancement of vulnerable groups, namely child heads of families, orphans, street children, unaccompanied minors, traumatized children, widows, women heads of families, juvenile delinquents, the physically and mentally disabled, etc”

Truth and Reconciliation Commission**Truth and Reconciliation Commission Sierra Leone**

Provided for in the Lomé Peace Accord 1999 Article XXVI

Truth and Reconciliation Act 2000 – Established the TRC**Article 6(1) – purpose of the Commission**

“... to create an impartial and official historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered”.

Article 6(2)(b) – function of the Commission

It shall be the function of the Commission –

“to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, ... giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict”

Article 7(4) – special procedures for victims

“The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, ... and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations”

International Courts and Tribunals

Statute of the International Criminal Tribunal for the former Yugoslavia 1993

- Tribunal located in The Hague, the Netherlands
- Established to prosecute serious violations of international humanitarian law committed in the former Yugoslavia from 1991

Statute of the International Tribunal for Rwanda 1994

- Tribunal located in Arusha, Tanzania
- Established to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994

Neither Statute specifies the minimum age for prosecution

Rome Statute of the International Criminal Court 1998

- Unlike the other tribunals and the court in Sierra Leone, which were established by the Security Council, the ICC was established by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court
- Court located in The Hague, the Netherlands
- Established to prosecute persons for the most serious crimes of international concern.

Article 11 – jurisdiction

- "1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3"

Article 12 – exercise of jurisdiction

- "1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9”

Article 17 – issues of admissibility

1. ... the Court shall determine that a case is inadmissible where:
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute...”

Article 26 – exclusion of jurisdiction over persons under eighteen

“The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime”

Crimes under the Statute of the International Criminal Court

Article 6 – "Genocide" refers to a list of specified acts, including killing and causing serious bodily or mental harm, that are committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

Article 7 – "Crimes against humanity" are serious crimes committed as part of a widespread or systematic attack directed at the civilian, including murder, torture, sexual violence and other specified inhumane acts.

Genocide and crimes against humanity can be committed in both peacetime and times of conflict.

Article 8 – "War crimes" as the name suggests, are crimes committed during armed conflicts. The long list of war crimes include, among others, intentionally directing attacks against the civilian population, willful killing, torture, sexual violence, rape, and intentionally starving civilians. Unlike "crimes against humanity," a single isolated act, as well as acts committed on a large scale or as part of a plan, amount to "war crimes" if committed during an armed conflict.

Statute of the Special Court for Sierra Leone 2002

- Court located in Freetown, Sierra Leone
- Established to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996
- The court is jointly administered by the UN and the Government of Sierra Leone

Article 7 – jurisdiction over persons of 15 years of age

- “1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.
2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.”

Specific Crimes against Children**International Criminal Tribunals for Yugoslavia and Rwanda****Article 4(2)(e) ICTY, Article 2(2)(e) ICTR – genocide – forcibly transferring children**

“Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
Forcibly transferring children of the group to another group”

International Criminal Court**Article 6(e) – genocide – forcibly transferring children**

“For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
Forcibly transferring children of the group to another group.”

Articles 7(1)(c) and 7(2)(c) – crimes against humanity – trafficking of children

“For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- Enslavement

“Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”

Article 8(2)(b)(ix) (international conflicts) & Article 8(2)(e)(iv) (non international conflicts) – war crimes – attacking schools

“War crimes” include:

“Other serious violations of the laws and customs applicable in international armed conflict [or in armed conflicts not of an international character], within the established framework of international law, namely, any of the following acts:

Intentionally directing attacks against buildings dedicated to religion, education”

Article 8(2)(b)(xxvi) (international conflicts) – war crimes – recruiting and using under-15s

“War crimes also” include:

“Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”

Article 8(2)(e)(vii) (non international armed conflicts) – war crimes – recruiting and using under-15s

“War crimes also” include:

“Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities”

Special Court for Sierra Leone

Article 4(c) – violation of international humanitarian law – recruiting and using under-15s

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

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

Article 5(a) – crime under Sierra Leonean Law – abuse of girls

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

- a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):
 - i) Abusing a girl under 13 years of age, contrary to section 6;
 - ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;
 - iii) Abduction of a girl for immoral purposes, contrary to section 12”

USEFUL WEBSITES

United Nations

- United Nations - **www.un.org**
- Security Council - **www.un.org/Docs/scinfo.htm**
- Office of the High Commissioner for Human Rights - **www.unhchr.ch**
- UN High Commissioner for Refugees - **www.unhcr.ch**
- UNICEF - **www.unicef.org**
- Office of the Special Representative of the Secretary General for Children and Armed Conflict - **www.un.org/special-rep/children-armed-conflict/**
- International Labour Organisation - **www.ilo.org**
- UN Office for the Coordination of Humanitarian Affairs - **www.reliefweb.int/ocha_ol/**

Regional Organisations

- African Union (formerly the Organisation of African Unity) - **www.africa-union.org**
- Association of South East Asian States - **www.aseansec.org**
- Council of Europe - **www.coe.int**
- Organisation of American States - **www.oas.org**

**International Courts, Tribunals
and Truth and Reconciliation Commissions**

- International Tribunal for the former Yugoslavia - **www.icty.org**
- International Tribunal for Rwanda - **www.ict.rg**
- International Criminal Court - **www.un.org/icc**
- Special Court for Sierra Leone - **www.sierra-leone.org/documents-specialcourt.html**
- Sierra Leone Truth and Reconciliation Commission - **<http://www.sierra-leone.org/trc-documents.html>**
- South African Truth and Reconciliation Commission - **<http://www.doj.gov.za/trc/>**

Other

- Children and Armed Conflict Unit - www.essex.ac.uk/armedcon
- International Bureau for Children's Rights - www.ibcr.org
- Amnesty International UK - <http://www.amnesty.org.uk>
- Human Rights Watch - www.hrw.org
- International Action Network on Small Arms - www.iansa.org
- International Campaign to Ban Landmines - www.icbl.org
- International Committee of the Red Cross
(for international humanitarian law) - www.icrc.org
- Save the Children Alliance - www.savethechildren.net
- Small Arms Survey - www.smallarmssurvey.org
- War Affected Children - www.waraffectedchildren.gc.ca/
- War Child - www.warchild.org
- Working Group on Children and Armed Conflict -
www.cpcc.ottawa.on.ca/wgchild-e.htm

Contact details

Rachel Harvey, LLB LLM

International Children's Rights
and Armed Conflict Programme Manager
Children and Armed Conflict Unit
Children's Legal Centre
University of Essex
Wivenhoe Park
Essex CO4 3SQ
UK
Tel: 0044 1206 873483
Fax: 0044 1206 874026
Email: armedcon@essex.ac.uk
Website: www.essex.ac.uk/armedcon

Vrej Atabekian

Programme Manager
International Bureau
for Children's Rights
1185 Saint-Mathieu
Montreal
H3H 2P7
Quebec
Canada
Tel: 1 514 932 7656
Fax: 1 514 932 9453
Email: v.atabekian@ibcr.org
Website: www.ibcr.org

Acknowledgments

The author would like to thank Professor Carolyn Hamilton for her support for this project, Professor Françoise Hampson for her invaluable advice and IBCR, especially Vrej Atabekian, for their commitment to developing and publishing this guide.