

75TH ANNIVERSARY OF THE GENEVA CONVENTIONS, 1949 AND THE RIGHTS OF THE CHILDREN DURING ARMED CONFLICT: AN ANALYSIS

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2024 marks the 75th anniversary of the four Geneva Conventions of 1949, providing an opportunity to reflect on their fundamental role in protecting people affected by armed conflict. There is a need to limit the means and methods of warfare. The underlying logic is that armed conflicts are triggered between states or among individuals. According to Jean Jacques Rousseau, "War is between the states. It has nothing to do with the individuals." Various international legal instruments have been adopted for the protection of civilians, including children and women. However, the protection guaranteed in these instruments is often violated by the occupying power or enemy combatants/forces. The paper hypothesizes that violations of the Geneva Conventions are frequent during armed conflict and must be addressed strictly. In this paper, an attempt has been made to explain the need to protect the rights of children during both non-international and international armed conflict. Secondly, the research delves into the pertinent question of whether the recruitment of children should be considered a violation of child rights. Thirdly, the paper seeks to hold perpetrators accountable for the violations of children's rights during armed conflict.

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1 Introduction

The Geneva Conventions celebrated the 75th anniversary of the four Geneva Conventions of 1949 in 2024. This is an occasion that provides us with an opportunity to introspect on whether the purpose of the Geneva Conventions has been successfully achieved or not. It is also a time to investigate modern warfare and the role of the Geneva Conventions in the contemporary era in protecting children during armed conflict. Children are the most vulnerable community during wartime, and it must be questioned whether the Geneva Conventions are sufficient to protect them during war.

According to a UNICEF report, more than 105,000 children were recruited and used by parties in conflict.¹ It is further reported by UNICEF that "child soldiers suffer extensive forms of exploitation and abuse. Combatant parties use children not only as fighters but as scouts, cooks, porters, guards, messengers, and more. Many girls are also subjected to gender-based violence".² On 26 February 2020, 15 children associated with armed forces and armed groups were released in South Sudan. However, the boys, ranging from 16 to 18 years of age, had been taken as prisoners of war during clashes in the northern parts of the country in 2019.³ This means children, as civilians, suffer more than armed personnel during war. Both boys and girls are recruited for armed conflict, and grave violations affect them differently.⁴ Due to cultural norms and stigmatization, sexual violence remains vastly underreported. The recruitment of children in armed conflict is a war crime under the International Criminal Court. The use of children during armed conflict is also prohibited under the Geneva Conventions. There is an urgent need to implement these conventions in a practical way to protect the rights of children during conflict. Further, children must be prevented from being abused during war.

Although various conventions and treaties aim to protect children in times of armed conflict—such as the United Nations Convention on the Rights of the Child (CRC), the Optional Protocol on the Involvement of Children in Armed Conflict (2000), the Geneva Conventions (1949) and their Additional Protocols, and the Rome Statute of the International Criminal Court (1998), these conventions are not

¹ UNICEF, 2021.

² UNICEF, 2021.

³ UNICEF, n.d.

⁴ Mansour, 2022.

practically implemented in letter and spirit. Furthermore, these conventions must address new challenges such as the impact of cyber warfare on children, the increasing sophistication of recruitment techniques used by armed groups, and the complex intersections between conflict, climate change, and the forced displacement of civilians and children. In addition, accountability for violations against children in armed conflict must be strictly enforced. Both the international and national justice systems must strengthen their capacities. To answer the first research question, the rights of the child under the Geneva Conventions and the measures required at the state level to protect those rights during internal and international armed conflict are explained as follows.

To understand the rights of children during armed conflict, it is necessary to define the types of armed conflict in which children may be involved. The first type is international armed conflict, in which two or more states are engaged in conflict. On the other hand, non-international armed conflict (hereinafter: NIAC) refers to a prolonged armed confrontation between government forces and one or more armed groups within a state. Moreover, the confrontation must reach a minimum level of intensity, and the parties involved must show a minimum level of organization.⁵ A declaration of war is not necessary in such conflicts. Moreover, the Geneva Conventions shall be applicable even if neither state declares war. In the case of internal or non-international armed conflict, the common Article 3 of the Geneva Conventions shall be applicable to all parties involved.

Jacques Rousseau aptly explained that "war is not a relationship between individuals, but between states". This means war has nothing to do with individuals, as armed conflicts are triggered between states due to "political, ethnicity or socio-economic reasons," leading to "terrible violence in the territories of such state where the conflicts actually take place". That is why the importance of the Geneva Conventions becomes more relevant during the war. Protected persons and property must be safeguarded. This includes civilians,⁶ prisoners of war,⁷ the wounded and sick,⁸ and medical personnel.⁹

⁵ UNDRR, 2020.

⁶ Who are not nationals of the country that is fighting against them.

⁷ Members of the armed forces or groups who are captured by the enemy.

⁸ People who are injured or ill, including those at sea.

⁹ People who provide medical care, including those who serve in ambulances and military hospitals.

The ultimate effect of war is destruction. The areas affected by conflict are often severely damaged. The entire social network, economic structure, and infrastructure of a state may collapse. This situation leads to unemployment, poverty, scarcity of food, and other necessities. In such conditions, the health sector is hit hardest. Combatants or enemy forces strike hospitals and medical staff, destroy roads and other transportation and communication systems, creating an acute shortage of medical staff, medication, equipment, and emergency services. This is done to lessen resistance among both forces and civilians. Mortality and morbidity remain high even years after the conflict due to its long-lasting effects, such as poverty and unemployment. Furthermore, in developing or least developed countries, the health sector is already under-resourced, and armed conflict further devastates it. Thus, armed conflict—whether internal or international—has a devastating impact on the healthcare system. To reduce the effects of war, various international legal instruments have been adopted for the protection of the life and health of soldiers, combatants, and civilians, including children and women. The four Geneva Conventions are the primary instruments regarding the protection of life and health. These conventions provide for the:

- i) Protection and care of wounded and sick military personnel, prisoners of war, and civilians.
- ii) Children and women have also been provided special protection through various treaties/conventions, such as the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974). However, despite the protection guaranteed in these instruments, the human 'right to life and health' is often violated by the occupying power or enemy combatants/forces. Women are raped, children are maimed, and medical staff are attacked and shot dead. This causes serious health problems and constitutes grave violations of human rights.

International Humanitarian Law (hereinafter: IHL) must be respected to protect and preserve the lives and dignity of people. Seventy-five years after the adoption of the Geneva Conventions, we are reminded of the global agreement that wars must have limits, and that, regardless of the circumstances, respect for human dignity and compassion must always guide our actions.¹⁰

¹⁰ ICRC, n.d.

News channels and media frequently report incidents where IHL is not respected, showing the horrific consequences: loss of life, family separations, and unspeakable suffering. Yet, by focusing on the victims of armed conflict and their needs, IHL does help prevent and mitigate some of war's worst consequences—although much more must be done to improve implementation and compliance. In this paper, the rights of children during armed conflict are explained with special reference to violations of international conventions. War is not an accident; it is a decision. Compliance with the customary international laws of war is mandatory to reduce and limit the effects of war. IHL should not be violated under any circumstances. Numerous conventions, such as the Convention on the Rights of the Child (hereinafter: CRC), have been accepted by most countries and are designed to protect children's rights. These conventions are discussed in detail in later sections of the paper.

1.1 Child Trafficking During Armed Conflict

Child trafficking during wartime is also a matter of concern. Children are displaced during wartime, and the separation from family and community leaves them in a vulnerable position. Children suffer psychological trauma through exposure to violence, loss of family members, and the breakdown of societal structures, leading to lasting mental health effects. The stress of living in war zones can cause depression, anxiety, and post-traumatic stress disorder (hereinafter: PTSD).

2 Protection of Children under the Geneva Conventions

The Geneva Conventions deal with the protection of children during wartime; however, some challenges need to be addressed. Children are more vulnerable during wartime, as they do not understand the intricacies of war. Geneva Convention IV (hereinafter: GC IV) is applicable to children during wartime, as it concerns the protection of civilians. The general protection of children is also required under the provisions of the Geneva Conventions.

2.1 General Protection of the Children

The general provision for the protection of children under GC IV applies when they are not taking part in hostilities. Additional Protocol I¹¹ (hereinafter: AP I) also deals with the protection of civilians; however, many states are not parties to AP I, so it does not bind them in the same way as GC IV. Armed forces are prohibited from attacking civilians, including women, children, older adults, and people with disabilities, during wartime. Moreover, "the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment and reprisals" (Articles 27–34 GC IV) are also guaranteed under the treaty. Further, as per AP I, the rules governing "the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians" (Articles 48 and 51) apply. In the case of non-international or internal armed conflict, children as civilians are protected under the common article of the Geneva Conventions I–IV.

2.2 Special Protection for Children

Special protection for children is provided under AP I of 1977, which states: "*Children shall be the object of special respect and shall be protected against any form of indecent assault*". Furthermore, "Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason" (Article 77 of AP I). This principle also applies to non-international armed conflict (Article 4, para. 3 AP II). Children are also granted protection related to evacuation from special war zones, assistance and care, identification, family reunification, etc., under the special protection.¹²

A major issue is the participation of children in hostilities. If children are recruited as combatants by national armed forces or other armed groups, a key question arises: should they be treated as civilians or combatants, and what kind of protection may be available to them? AP I places an obligation on all State Parties not to recruit children below the age of 15. Moreover, AP I explicitly "prohibits their recruitment

¹¹ Protocols additional to the Geneva Conventions of 12 August 1949.

¹² ICRC (2003) Legal Protection of Children during armed conflict. Retrieved from: www.icrc.org/sites/default/files/external/doc/en/assets/files/other/ang03_03_juridique_newlogo.pdf (accessed: 29 July 2025).

into the armed forces and encourages Parties to give priority in recruiting among those aged from 15 to 18 years of age" (Article 77 of AP I).

Meanwhile, Additional Protocol II (hereinafter: AP II) further prohibits both the recruitment and direct or indirect participation of children under the age of 15 in hostilities (Article 4 of AP II). Furthermore, children may not be arrested, detained, or interned under Article 51 of AP II. They are also exempt from the death penalty under Article 68 of GC IV.

3 The Convention on the Rights of the Child (CRC)

The CRC is a significant convention and has been ratified by all UN Member States, except the United States of America. The CRC also recognizes the fundamental rights of the child. These rights apply to children even if they take direct part in hostilities; however, it states that children below the age of 18 should not take part in hostilities (Article 1 of the CRC). Article 38 of the CRC specifically focuses on protecting children in situations of armed conflict. Furthermore, Articles 31 to 33 explain that children have the right to rest, be protected from exploitation, and "*the child has the right to rest and leisure, to play and freely participate in cultural life and the arts*" (Article 31 of the CRC). Article 32 of the CRC states that "*the child shall be protected from economic exploitation and from performing work that is hazardous to his/her life and development,*" while Article 33 of the CRC provides that "*the child shall be protected from illicit use of narcotic drugs.*" Nevertheless, children are sometimes trained as spies or used as soldiers, which constitutes a violation of IHL.

4 Statute of the International Criminal Court (ICC) and Protection of Children

The next issue is the recruitment of children, which constitutes a violation of child rights under international criminal law. The International Criminal Court (hereinafter: ICC) is a permanent court that establishes individual criminal liability when a crime defined under Article 5¹³ of the Rome Statute is committed. The ICC is a critical tool in protecting children during armed conflict, holding perpetrators accountable for crimes such as the use of child soldiers, sexual violence, and other

¹³ Genocide, War Crime, Crime Against Humanity and Aggression.

grave violations of children's rights. The Rome Statute was adopted in 1998 and entered into force in 2002. Its permanent seat is in The Hague, Netherlands. The statute contains specific provisions on the protection of children and is binding only on State Parties.

4.1 Protection of Children During Armed Conflict

The protection of children in armed conflict is a central concern of international law. The ICC has recognized the recruitment of children below the age of 15 as a war crime under Article 8 of the ICC Statute (Article 8, para. 2(b)(xxvi)). The recruitment of children in internal or international armed conflict is considered a war crime. Furthermore, the ICC has prohibited the use of children as soldiers during armed conflict. Recruitment of children is both a war crime and a violation of their rights. In the case of Thomas Lubanga Dyilo, he was prosecuted and convicted by the ICC in 2012 for recruiting children as soldiers.¹⁴

4.2 Children as Victims of 'Child Soldier'

The ICC has recognized gender-based violence as a war crime. The Court also adopts a child-centered approach, ensuring that children are heard—even if they were recruited as child soldiers or their rights were violated as civilians. Furthermore, "child victims and witnesses have provided testimony, and there are protections in place to ensure their safety and well-being." Reparations and rehabilitation receive due consideration under the ICC for victims, including child victims of war crimes. Reparations may take the form of compensation, rehabilitation, or community-based efforts to help children recover from trauma and reintegrate into society.

4.3 Challenges Before the ICC in Dealing with Child Soldiers

Thirdly, the paper addresses the accountability of perpetrators, which is a major challenge before the ICC. Despite its efforts, the ICC faces jurisdictional limitations when trying to hold perpetrators accountable.

¹⁴ International Criminal Court, 2021.

To ensure accountability, the ICC must obtain universal jurisdiction; otherwise, states not party to the ICC do not fall under its authority. No doubt, some exceptions exist.¹⁵ Secondly, it remains challenging to gather evidence due to ongoing violence and instability. Moreover, several states, including the United States and China, are not party to the ICC and resist its interventions. This complicates the ICC's ability to pursue cases. Additionally, some states refuse to sign or ratify the Rome Statute due to fears of political consequences for their leaders. These factors collectively hinder the ICC's ability to hold perpetrators accountable for crimes against children.

5 Conclusion

After analysing the many legal instruments available for the protection of children, it is clear that children remain the primary victims of war. Although international law prohibits the recruitment of children into hostilities, there is still evidence that children take direct part in conflicts—and suffer immensely as a result. States must take decisive steps to end this situation. Under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict "the States must ratify the treaties protecting children in armed conflict and take national measures adapted to their legal systems to implement these treaties". Whether in legislative or other form, these measures are intended to enable states to respect and ensure respect for the rules laid down by the treaties. It is recommended that priority be given to implementing the following rules.¹⁶

States must become parties to AP I and AP II of 1977 and ensure that no child below the age of 15 is arrested, detained, or interned for conflict-related reasons. Children must receive the special protection provided by international humanitarian law under Article 77 of AP I.

To protect children's rights, the death penalty should be prohibited for any offence committed by a child during an armed conflict (GC IV, Article 68, para. IV). Compliance with international humanitarian law treaties is essential to ensure full respect for children.¹⁷ Moreover, prevention is better than cure. Preventive strategies

¹⁵ Wagner, 2003.

¹⁶ See <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>, General Assembly resolution A/RES/54/263, adopted on May 25, 2000.

¹⁷ States are legally obliged to engage in dissemination activities (Articles 47, 48, 127 and 144 of, respectively, GC I, GC II, GC III and GC IV; Article 83 API; Article 19 AP II; and Article 6 of the Optional Protocol of 2000).

must remain at the forefront of child protection in armed conflict.¹⁸ These should include early warning systems, diplomatic interventions, and targeted programs aimed at addressing the root causes that make children vulnerable to recruitment and exploitation by armed groups.¹⁹ The international justice system must continue strengthening its capacity to investigate and prosecute those responsible for grave violations against children, while also supporting national justice systems in developing their capacities.²⁰ This dual approach to accountability serves not only as a deterrent but also as a powerful statement of international resolve.

Thus, the hypothesis stands confirmed: there is a pressing need to implement the Geneva Conventions in a practical and meaningful way. Otherwise, children will continue to suffer, despite the existence of conventions and the celebration of their 75th anniversary. The international community must remain vigilant in monitoring and responding to violations against children in conflict zones, while also working proactively to prevent future conflicts. The protection of children in armed conflict is not only a moral imperative but a crucial investment in humanity's future, requiring unwavering commitment from all stakeholders. Violence breeds violence. Breaking the vicious cycle of armed conflict is essential for building peaceful and resilient societies. Children have the right to be protected at all times, including during armed conflict.

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¹⁸ International Criminal Court, 2023.

¹⁹ United Nations, n.d.

²⁰ European Commission, 2024.

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