

# LEGAL PROTECTION OF CHILDREN IN ARMED CONFLICTS

COCOUMARIUS MENSAH

University of Maribor, Faculty of Law, Maribor, Slovenia  
cocou.mensah@um.si

This chapter highlights the mechanisms and means used by international law to protect children in armed conflict situations. Children frequently find themselves as participants in both national and international conflicts and face the dual challenges of victimisation or coercion into taking up arms for the sake of war efforts. International law responds to these challenges by offering legal instruments, notably conventions and protocols, explicitly designed to address the unique vulnerabilities of children living in conflict zones. The author analyses the comprehensive international legal framework engaged in the battle against the infringement of children's rights during times of war and the profound consequences arising from such violations. By highlighting the important role of child protection within the international legal arsenal, this chapter substantially contributes to the ongoing discourse surrounding the fortification of mechanisms designed to safeguard children's rights in the complexities of armed conflict.

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# PРАВNA ZAŠČITA OTROK V OBOROŽENIH KONFLIKTIH

COCOU MARIUS MENSAH

Univerza of Mariboru, Pravna fakulteta, Maribor, Slovenija  
[cocou.mensah@um.si](mailto:cocou.mensah@um.si)

Prispevek poudarja mehanizme in sredstva, ki jih mednarodno pravo uporablja za zaščito otrok v situacijah oboroženih konfliktov. Otroci se pogosto znajdejo kot udeleženci tako v nacionalnih kot mednarodnih konfliktih in se soočajo z dvojnimi izzivi žrtvovanja ali prisiljevanja k nošenju orožja v imenu vojnih prizadevanj. Mednarodno pravo odgovarja na te izzive z nudenjem pravnih instrumentov, zlasti konvencij in protokolov, ki so izrecno zasnovani za obravnavanje edinstvenih ranljivosti otrok, ki živijo v območjih konfliktov. Avtor analizira celovit mednarodni pravni okvir, ki se vključuje v boj proti kršitvam otrokovih pravic v času vojne in globokih posledic, ki izhajajo iz takšnih kršitev. Z osvetlitvijo pomembne vloge varstva otrok v mednarodnem pravnem okolju to poglavje bistveno prispeva k trenutnemu diskurzu o utrjevanju mehanizmov, zasnovanih za varovanje otrokovih pravic v kompleksnostih oboroženih konfliktov.



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## **1 Introduction**

Children are the future of any society; therefore, their protection and safeguarding are of paramount importance. Regrettably, there is a concerning trend where children are increasingly subjected to the harsh realities of life, becoming entangled in the theatres of war, which negatively impact their lives (Kousar & Bhadra, 2022, pp. 269–285). Both adults and children directly exposed to the ravages of armed conflict experience issues with their mental health (Catani, 2018). The consequences are intolerable, as noted by Lee-Koo (2018), with many children ending up being recruited as child soldiers, subsequently experiencing trauma and victimisation. In this sense, Hill and Tisdall (1997, p. 19) mention that their capacities have been underestimated and their views undervalued. Before discussing the protection of children in times of insecurity or armed conflict, we must first agree on the scope of their age. According to article 1 of the United Nations (UN) Convention on the Rights of the Child (CRC), anyone under the age of 18 can be considered a child. It should be noted from the outset that this age choice was deliberate, with the sole aim of extending the protection and rights of children to the broadest possible age range. The UN, during preparations for the International Year of Youth in 1985 and ratified by the General Assembly (see A/36/215 and Resolution 36/28, 1981), defined "youth" as individuals aged 15 to 24, while institutions like the World Bank frequently employs the 0-14 age bracket to denote children (World Bank, 2023). Consequently, it is common to encounter children categorised within the under-fifteen age cohort. In alignment with these definitions, Additional Protocol II to the Geneva Conventions, article 4(3c) stipulates that individuals under 15 years old should not directly participate in hostilities, thereby establishing the minimum age for involvement in armed conflict. However, the CRC takes a broader approach, seeking to safeguard children universally. As part of this effort, the convention extends the age range for children up to 18 years, aiming for comprehensive protection across all nations. Our chapter will be based on article 1 of the CRC, and we will consider a child to be an individual under the age of 18. According to the latest data from UNICEF, by December 2023, the global population of people under 18 will exceed 2.3 billion (UNICEF, 2023). This is a significant percentage of the world's population and deserves all the legal, political, and economic attention necessary to ensure its development. This is why, as early as 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child. This founding document enshrines the fundamental rights of children, including

protection, education, health care, housing, and adequate nutrition. Under international law, countries must incorporate international agreements such as the CRC into their constitutions or create the appropriate legal framework to implement these texts. In this way, we find in every constitution the various rights of children in accordance with international standards. States are, therefore, the guarantors of children's safety and protection. Unfortunately, even with constitutional provisions, laws concerning children, and adherence to international and regional conventions, children remain inadequately protected from various threats. Among the risk situations that affect children, we can note climate change, mass migrations, armed conflicts, and other emergencies. Specialised mechanisms have been designed to safeguard children in conflict zones to address the specific concern of the protection of children during armed conflicts (Malescu, 2019, pp. 192–199). Notably, the United Nations Security Council (UNSC) unanimously adopted Resolution 1612 on July 26, 2005, creating a monitoring and reporting framework to address the use of child soldiers. In 2022, according to the report of the Secretary-General on children and armed conflict, there is an increase in the number of children exposed to warfare (United Nations, 2023). A total of 27,180 serious violations, of which 24,300 occurred in 2022. These violations affected 18,890 children (13,469 boys, 4,638 girls, 783 of unknown sex). The most widespread violations included the killing (2,985) and mutilation (5,655) of 8,631 children, followed by the recruitment and use of 7,622 children and the abduction of 3,985 children (United Nations, 2023).

The escalation of violence against children and the persistent violation of their rights does not stem from a lack of legal mechanisms aimed at safeguarding them (Oberg et al. et al., 2023, pp. 427–430). In contrast to previous conflicts where children were often unintentional victims, today, they are increasingly being targeted as deliberate casualties of warfare (Shenoda et al., 2015, pp. e309–e311). The protection of children, a complex undertaking, relies on a multifaceted approach encompassing national measures (Olusegun & Ogunfolu, 2019, p. 33; Desai & Desai, 2020, pp. 393–415), international conventions, and even sustainable development goals (Olusegun, 2021, p. 155). These frameworks collectively establish a comprehensive foundation, delineating the rights and protections owed to children globally. Although a comprehensive examination of all national existing legal instruments related to the protection of children during warfare is beyond the scope of this chapter, we will concentrate on international elements. Specifically, we will focus on significant conventions and protocols, such as the CRC, that are crucial in shaping

the child protection landscape (Rasakandan & Tehrani, 2022, p. 230). The UN CRC (United Nations, 2023) is at the heart of global child protection efforts, a landmark treaty ratified in 1989. This convention represents the most comprehensive international framework for safeguarding children's rights. Holistically, it defines a spectrum of civil, political, economic, social, and cultural rights for children. Fundamental principles enshrined in the CRC include non-discrimination (article 2), prioritising the child's best interests (article 3), the right to life, survival, and development (article 6), protection from torture, cruel, inhuman or degrading treatment or punishment (article 37), the right to a fair trial and rehabilitation (article 40), and the right to express their views on matters affecting them directly (article 12).

Complementing the CRC, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), adopted in 2000 by the General Assembly, constitutes a crucial legal instrument and “reflects on how child soldiers are portrayed in international law and policy” (Vandenhoe et al., 2019, p. 424). OPAC specifically targets the protection of children from recruitment and use in armed conflicts. It mandates an increase in the minimum age for recruitment into armed forces and categorically prohibits the use of children in hostilities (articles 1-4). In line with the commitment to accountability, article 5 of the OPAC addresses the issue of criminal jurisdiction, emphasising the importance of state parties establishing jurisdiction over offences covered by the protocol, while article 6 mentions the criminal responsibility of those who recruit or use children in hostilities. Article 6 significantly contributes to the deterrence of child recruitment by holding perpetrators accountable for their actions and reinforces the commitment to shielding children from the devastating impacts of armed conflicts. Article 7 underscores the need for collaborative efforts among state parties, international organisations, and civil society to prevent the involvement of children in armed conflicts. It calls for assistance in the physical and psychological recovery, as well as the social reintegration of children affected by armed conflict, emphasising a broader societal commitment to support the healing and reintegration of these vulnerable individuals. This further strengthens the legal framework to combat child recruitment, ensuring states can prosecute individuals within their territory or nationals engaging in such activities.

To promote awareness and compliance, articles 9 and 10 stress disseminating information about the protocol and incorporating training on its provisions into the curricula of relevant military and police institutions. This approach aims to ensure that personnel are aware of and understand the rights of children during armed conflict, fostering a proactive stance in preventing child recruitment.

Moreover, articles 11, 12, and 13 contribute to transparency and accountability. While article 11 emphasises the need for state parties to include information on measures taken to implement the protocol in their reports to the Committee on the Rights of the Child, article 12 establishes this committee as the overseeing body responsible for monitoring the implementation of the protocol and article 13 introduces an inquiry procedure to investigate grave or systematic violations of the rights outlined in the protocol. Articles 14 and 15 further promote commitment and adaptability. by encouraging states that have not ratified the protocol to consider doing so, fostering a broader commitment to preventing the involvement of children in armed conflicts. A mechanism for adapting the agreement to evolving circumstances is provided in article 15, allowing state parties to amend the protocol and ensure its continued relevance in the face of new challenges. In this comprehensive manner, the OPAC serves as a robust framework for protecting children from the scourge of armed conflicts, emphasising prevention, accountability, and international cooperation.

Another legal tool protecting children in general and in particular against sexual offences is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution, and child pornography (OPSC), also adopted in 2000. This protocol addresses the alarming issues of sexual exploitation and abuse faced by children. It confronts critical concerns related to child trafficking, child prostitution, and child pornography, emphasising the need for a comprehensive approach to shield children from the scourge of sexual exploitation. In articles 3-4, the OPSC criminalises child prostitution by emphasising the need for legal measures to prevent the sexual exploitation of children through prostitution. Article 5 goes further by mandating the criminalisation of producing, distributing, and possessing child pornography, addressing a critical aspect of protecting children from sexual exploitation. Article 7 is a path toward accountability and international justice because it ensures that state parties establish jurisdiction over offences covered by the protocol when committed by persons within their territory or nationals. By doing

so, the protocol strengthens the legal framework to hold perpetrators accountable. Articles 8, 9, and 10 highlight international cooperation by requiring state parties to include offences covered by the protocol as extraditable offences in any relevant extradition treaties, Mutual Legal Assistance (article 9), Training and Cooperation among state parties (Article 10).

In times of armed conflicts, these provisions within the OPSC remain critically important. By criminalising and prohibiting the sale of children, child prostitution, and child pornography, the protocol serves as a robust legal framework even in challenging wartime conditions. The jurisdiction, extradition, and mutual legal assistance provisions enhance international cooperation, crucial for addressing cross-border crimes. Training initiatives (article 10) ensure that personnel involved in enforcing these provisions are well-equipped, and the emphasis on evidence collection and victim protection (article 11) remains paramount, even in the chaos of conflict. The committee established by article 12 provides ongoing oversight, promoting transparency and accountability in the protection of children against sexual offences both in normal times and during warfare. Overall, the OPSC represents a comprehensive and adaptable instrument for safeguarding children's rights in peace and wartimes.

To comprehensively address the legal dimensions of safeguarding children during times of war, it is imperative to conduct a comprehensive analysis of additional international regulations and mechanisms designed to protect the youngest and most vulnerable members of society. In this chapter, our examination begins by focusing on the foundational legal frameworks that underpin the protection of children. Subsequently, we will focus on the pivotal role played by the International Criminal Court (ICC) in ensuring the welfare of children in conflict zones. The chapter culminates with a nuanced exploration of specific case studies, offering practical insights into the application and effectiveness of these legal provisions during conflicts. We finally conclude by formulating recommendations aimed at enhancing the security and protection of children entrenched in the tumultuous battlefields.

## **2 In-depth analysis of legal regulations protecting children during conflicts**

The legal architecture in protecting children during armed conflicts encompasses Conventions, Protocols, Resolutions, Principles, and Commitments on Children Associated with Armed Forces or Armed Groups. The UNSC is a primordial organ for peace and security in the world. That prerogative is primarily outlined in Chapter V of the United Nations Charter. In the context of protecting children during wartime, the Security Council's authority, as derived from article 24, provides the legal basis for its resolutions and initiatives aimed at addressing the impact of armed conflicts on children, showcasing the collective commitment of the international community to mitigate the impact of armed conflicts on children. As part of that commitment, the UN Security Council Resolution (UNSCR) 1612 exemplifies the importance of safeguarding the rights and well-being of children in conflict zones. Adopted by the UNSC on July 26, 2005, during its 5235th meeting, Resolution 1612 represents a pivotal and comprehensive framework for addressing the critical issue of protecting children affected by armed conflict. This resolution, like any other emanating from the UNCS, is of high priority, calling upon national governments to proactively provide effective protection and relief to all children impacted by armed conflicts. The urgency embedded in Resolution 1612 underscores the heightened responsibility of states to provide immediate protection and relief, prioritise safeguarding children during times of conflict, and actively promote access to justice. Furthermore, states are expected to prosecute individuals responsible for heinous crimes such as genocide, crimes against humanity, war crimes, and other egregious acts perpetrated against children. The implementation of children's rights during armed conflicts is not merely a recommendation but is deemed of paramount importance by the UN, proving that the international community is resolute in its conviction that the protection of children in armed conflict should be considered a cornerstone in conflict resolution and the construction of an equitable society. Recognising the vulnerability of children in situations of armed conflict, the Resolution emphasises the need for robust measures to ensure their safety, well-being, and the restoration of their rights. UNSCR 1612, as mentioned earlier, is also a monitoring and reporting mechanism, a watchdog, meticulously observing and documenting the situations children face in conflict zones. This mechanism facilitates a deeper understanding of the challenges and enables the international community to respond effectively to the evolving needs of children affected by



armed conflict. The periodic reports on the state of children and armed conflict, produced as a result of this resolution, play a crucial role in informing policymakers, organisations, and the global community about the evolving dynamics of the situation. These reports are invaluable tools that shed light on the gravity of the challenges children face and provide insights into potential areas of intervention. By consistently assessing the state of children affected by armed conflict, the UNCS demonstrates its commitment to staying informed and responsive to the changing landscape of crises.

Overall, UNSCR 1612, among others, can be seen as a catalyst for change. It serves as a foundational document that not only outlines the responsibilities of states but also calls for collaborative efforts at the international level. The resolution invites states to work collectively to establish and strengthen mechanisms for the protection of children.

In addition to UNSCR 1612, other resolutions adopted by the UN Security form an integral part of a comprehensive framework, reinforcing the imperative to protect children and hold perpetrators accountable for grave violations. Each resolution contributes a unique perspective and set of mandates to ensure the well-being and rights of children affected by warfare.

UNSCR 1261 (adopted in 1999) (United Nations Security Council, 1999) calls for a halt to the use of children in armed conflict and urges all parties to armed conflicts to ratify or accede to the OPAC. Building upon this foundation, UNSCR 1379 (adopted in 2001) (United Nations Security Council, 2001) expresses grave concern about the recruitment and use of children by armed groups. It calls for swift and effective measures to end this reprehensible practice, marking a significant step towards creating a protective environment for children caught in the throes of conflict. UNSCR 1460 (adopted in 2003) (United Nations Security Council, 2003) marks a pivotal moment by welcoming the establishment of the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict. Recognising the need for its full implementation, this resolution highlights the importance of a systematic approach to monitor and report on violations against children in conflict zones. UNSCR 1539 (adopted in 2004) (United Nations Security Council, 2004) emphasises the imperative of releasing all children associated with armed groups and underscores the need for their successful reintegration into civil society. This

resolution underscores the commitment to not only ending the exploitation of children but also facilitating their rehabilitation into normalcy.

UNSCR 1882 (adopted in 2009) (United Nations Security Council, 2001) focuses on the devastating impact of sexual violence on children during armed conflict. It urges all parties to take concrete measures to prevent and respond to such crimes, acknowledging the unique vulnerability of children to these egregious violations.

UNSCR 1998 (adopted in 2011) (United Nations Security Council, 2011) calls for a comprehensive end to all violations against children in armed conflict. It encourages the development of national action plans, aligning with a broader strategy to protect children and provide a structured response to their challenges.

UNSCR 2068 (2012) ((United Nations Security Council, 2012) reiterates the significance of the MRM and urges cooperation from all parties involved in armed conflict. This emphasis ensures the sustained effectiveness of the monitoring and reporting mechanism, a critical tool in protecting children.

UNSCR 2143 (2014) (United Nations Security Council, 2014) calls for strengthening the MRM and robust implementation of its recommendations. By focusing on enhancing the mechanism's capabilities, this resolution reinforces the ongoing commitment to evolve and adapt strategies for the protection of children.

UNSCR 2225 (2015) (United Nations Security Council, 2015) underscores the critical importance of protecting children from the use of explosive weapons in populated areas, recognising the unique vulnerabilities and dangers faced by children in conflict zones.

UNSCR 2427 (2018) (United Nations Security Council, 2018) takes a decisive step by calling for the accountability of perpetrators involved in grave violations against children. This resolution stands as a firm declaration that those responsible for atrocities against children will be held answerable for their actions. Finally, UNSCR 2601 (2021) (United Nations Security Council, 2021) reaffirms the importance of the MRM and continues to emphasise the necessity for cooperation from all parties in armed conflict. By reaffirming the commitment to the monitoring and reporting

mechanism, this resolution ensures the continuity of efforts to protect children and address violations against them, highlighting the leading role played by the UNSC.

Another framework worth exploring in terms of children's protection in wartime is the set of regulations provided by International Humanitarian Law (IHL), a crucial legal framework for safeguarding the rights and well-being of civilians, particularly children, during armed conflicts. The cornerstone of IHL is the Geneva Conventions (International Committee of the Red Cross, 1949), supplemented by their Additional Protocols (International Committee of the Red Cross, 1977a; International Committee of the Red Cross, 1977b; International Committee of the Red Cross, 2005), along with the Hague Conventions (International Committee of the Red Cross, n.d.a) and their relevant protocols.

The Geneva Conventions, adopted in the aftermath of World War II, established fundamental principles to protect individuals not actively participating in hostilities, including children. The four Geneva Conventions of 1949 and their Additional Protocols of 1977 address various aspects of the treatment of civilians, prisoners of war, and other non-combatants. Regarding children, common article 3, found in all four Geneva Conventions, addresses the protection of children during armed conflicts that are not of an international character. It requires humane treatment for all persons not taking part in hostilities, emphasising the prohibition of violence to life and person, as well as cruel treatment and torture. Additional Protocol I, article 77, outlines the special protection afforded to children during international armed conflicts. It prohibits the recruitment or use of children under the age of 15 by parties to the conflict and calls for their special protection and care.

Additional Protocol II, article 4(3)(c) for non-international armed conflicts prohibits violence to the life, health, and physical or mental well-being of children. It emphasises that children should not be recruited into armed forces or groups, nor should they take a direct part in hostilities.

The Hague Conventions of 1899 and 1907, complementing the Geneva Conventions, primarily focus on the regulation of the conduct of hostilities. While the Hague Conventions do not explicitly address the protection of children, they are relevant in the measure that, for example, the Hague Convention (IV) calls for the respect of the Laws and Customs of War on Land (1907) (International Committee

of the Red Cross, n.d.b). While not directly addressing the protection of children, this convention provides a general framework for the humane treatment of children and other civilians during warfare on land. The principles of distinction and proportionality contained in the convention indirectly contribute to protecting children as non-combatants.

In summary, the Geneva Conventions, their Additional Protocols, the Hague Conventions, and relevant protocols collectively constitute a comprehensive legal framework under International Humanitarian Law. These instruments provide essential protection for children during armed conflicts, addressing their special vulnerability and emphasising the prohibition of their recruitment and direct participation in hostilities.

The following framework that plays an important role in limiting the role of children and protecting them from the consequences of armed conflicts is the Paris Principles and Commitments on Children Associated with Armed Forces or Armed Groups (UNICEF,2007). However, before addressing those Principles, it is noteworthy to mention their predecessors: The Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa were adopted on April 26, 1997, in Cape Town, South Africa (United Nations, 1997). The Principles highlighted fundamental causes of child soldier recruitment, advocated for the protection of children and also provided extensive support for their rehabilitation and successful reintegration into society (United Nations, 1997). The Key Aspects of the Cape Town Principles were:

**Tailored for Africa:** These principles are specifically crafted to address the unique context of Africa, where the issue of child soldiers is notably widespread due to conflicts in Congo, Uganda, Sierra Leone, Liberia, Rwanda, etc.

**Preventive Focus:** The principles underscore the importance of preventing the initial recruitment of children, addressing the root causes that fuel this alarming practice.

**Holistic Approach:** The framework promotes a comprehensive strategy encompassing legal reforms, disarmament, demobilisation, and reintegration (DDR) programs, along with psycho-social support and active community engagement.

Child-Centric: A central tenet of the principles is a dedicated focus on the rights and well-being of children. Ensuring their protection and support is prioritised throughout the entire DDR and reintegration process.

In addition to the Cape Town Principles, which primarily serve as a regional instrument, it is noteworthy to highlight another impactful African regional initiative. Numerous legal frameworks exist to safeguard the rights of children in armed conflicts, and Africa, attuned to its distinctive challenges, frequently adopts regional tools customised to address its specific needs. A notable illustration of this approach is the African Charter on the Rights and Welfare of the Child (Organization of African Unity, 1990).

Adopted by the Organization of African Unity (now the African Union) on July 11, 1990, the African Charter on the Rights and Welfare of the Child, a regional instrument to protect children, entered into force on November 29, 1999, following ratification by a sufficient number of African Union member states. Noteworthy is the time span it took for the Charter to become effective. This period coincided with a multitude of conflicts, civil wars, and armed struggles across the African continent during the 1990s and late 1990s. The adoption and eventual enforcement of the Charter occurred amidst these challenges, reflecting the pressing need for a comprehensive legal framework to address the complexities of protecting children during conflicts such as:

- Liberian Civil War (1989–1997): The Liberian Civil War, which began in 1989, continued into the 1990s and involved various factions vying for control of the country.
- Sierra Leone Civil War (1991–2002): The Sierra Leone Civil War started in 1991 and continued for more than a decade, marked by widespread human rights abuses, including the recruitment of child soldiers.
- Rwandan Genocide (1994): The genocide in Rwanda occurred in 1994, resulting in a significant loss of life and widespread displacement.
- First Congo War (1996–1997): The First Congo War involved multiple African countries in the mid-1990s.
- Second Congo War (1998–2003): The Second Congo War, often referred to as the Great War of Africa, started in 1998 and involved multiple African nations.

These conflicts, among others, had profound humanitarian consequences, including the displacement of populations, human rights violations, and the involvement of children in armed conflicts. The African Charter on the Rights and Welfare of the Child was adopted in the midst of these challenges, reflecting the regional commitment to addressing the specific rights and protections needed for children affected by armed conflicts in Africa.

From a legal perspective, what mechanisms does the ACRWC possess to function as a vital regional instrument for safeguarding children's rights? Several provisions within the Charter explicitly focus on the protection of children in the context of armed conflicts.

1. Article 22(2) emphasises the right of children to be protected against any exploitation or use in armed conflicts, underscoring the African Union's commitment to preventing the recruitment and abuse of children in conflict zones.
2. Article 38 of the ACRWC further reinforces the right of children to protection in times of armed conflict. It states that state parties shall take all feasible measures to ensure the protection and care of children who are affected by armed conflict, with a specific focus on the prevention of their recruitment and use in hostilities.
3. Article 39 underscores the commitment to the physical and psychological recovery and social reintegration of child victims of armed conflicts. It highlights the importance of providing necessary support systems and rehabilitation measures for children who have been subjected to the traumas of armed conflict.

To implement the provisions of the ACRWC Regional courts, such as the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights, serve as important institutions for ensuring justice and accountability for crimes committed against children in armed conflicts.

4. The African Court on Human and Peoples' Rights has jurisdiction over cases related to the interpretation and application of the ACRWC. It provides a platform for individuals and non-governmental organisations to bring cases before the court, seeking justice for children who have been victims of abuse in armed conflicts.

5. African Commission on Human and Peoples' Rights: The African Commission also plays a vital role in promoting and protecting the rights of children. It monitors state compliance with the ACRWC and can receive complaints from individuals and organisations concerning violations of children's rights in armed conflicts. The Commission works towards ensuring that member states adhere to their obligations under the Charter.

6. Other African Mechanisms: Additionally, various regional initiatives and mechanisms, such as national human rights institutions and civil society organisations, contribute to the protection of children in armed conflicts. These entities work to raise awareness, provide support to affected children, and advocate for stronger legal frameworks and enforcement mechanisms.

Shifting back our focus to universal frameworks, we can now examine The Paris Principles on Children Associated with Armed Forces or Armed Groups. This set of principles represents a substantial advancement in tackling the problem of children unlawfully recruited or used in conflict situations, not only within the African context but on a global scale. Initiated nearly a decade after the Cape Town Principles, UNICEF conducted a comprehensive global review that underscored the necessity for two distinct documents. The first is a concise overview called "The Paris Commitments to Protect Children Unlawfully Recruited or Used by Armed Forces or Armed Groups," and the second is a more detailed and complementary document known as "The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups" (the Paris Principles). This dual-document approach aims to provide comprehensive guidance for those involved in implementing programs to protect children affected by armed conflicts. The Paris Principles, rooted in international law and standards, build upon the foundation laid by the Cape Town Principles. This document incorporates the accumulated knowledge and lessons learned and emphasises the informal ways boys and girls become associated with and leave armed forces or armed groups. Adopting a child rights-based approach, the Principles highlight the humanitarian imperative to secure the unconditional release of children from armed forces or armed groups, regardless of the ongoing conflict and for the entire duration of the conflict. Similar to the CRC, the Paris Principles define children as individuals under the age of 18, reflecting a commitment to protecting a broad spectrum of young individuals by not limiting the age threshold to 14, for example. Moreover, the Principles align with

fundamental CRC principles such as non-discrimination, the best interests of the child, and children's rights to justice. Unlike the Cape Town Principles, which were regionally focused on Africa, the Paris Principles extend their reach worldwide and endorsed local initiatives, educational programs, the promotion of family unity, and the specific consideration of the situation of girls in armed conflicts. By acknowledging the importance of prevention, the Paris Principles contributed to breaking the cycle of recruitment and use of children in armed conflicts. They introduced innovative and groundbreaking measures in the areas of release and reintegration. The process is designed to be inclusive, addressing the multifaceted needs of children returning to or integrating into their communities after being associated with armed forces or armed groups. The inclusive approach to reintegration acknowledges that the process is not a one-size-fits-all solution and must consider each child's unique circumstances and needs.

Material assistance is identified as a critical component of the release and reintegration process. This involves providing necessary resources, support, and services to facilitate the child's transition from a life associated with armed forces or armed groups to a more stable and secure environment. It recognises that children may face various challenges, including psychological trauma, lack of education, and disrupted family ties, and aims to address these issues comprehensively.

Family tracing is another essential element of the release and reintegration process outlined in the Paris Principles. This involves efforts to locate and reunite children with their families, acknowledging the importance of family ties in the well-being and stability of the child. Reconnecting children with their families helps provide a supportive environment for their reintegration and contributes to their overall social and emotional well-being.

Support for families and communities to which children return or integrate is a crucial aspect emphasised by the Paris Principles. Recognising that successful reintegration extends beyond the individual child, the document highlights the importance of community-based support systems. This includes reducing stigma, promoting understanding, and creating a conducive environment for the child's acceptance and reintegration within the community.



Overall, the Paris Principles on Children Associated with Armed Forces or Armed Groups represent a comprehensive, universally applicable framework for addressing the complex challenges faced by children affected by armed conflicts.

Before concluding this part of the chapter about legal regulations, it is important to highlight once again the role of the CRC, even if it was partly examined earlier. Talking about children and their rights to be protected during armed conflicts and other life-defying situations. One cannot ignore article 6 of the CRC - Right to Life, as in the context of armed conflict, this right becomes of paramount importance and state parties to the CRC are obligated to take all necessary measures to ensure the survival and development of the child, with specific attention to situations of armed conflict. Another provision lies in article 19, highlighting the right of every child to be protected from all forms of physical or mental violence, injury, abuse, neglect, or negligent treatment. This right must be implemented not only in times of peace but also in the context of armed conflict, as protecting children becomes even more critical when they are direct or indirect victims of violence, including recruitment into armed forces, displacement, and exposure to various forms of abuse. The CRC supports state parties in proactive measures such as taking legislative, administrative, social, and educational measures to ensure the protection of children from all forms of violence during armed conflicts. In the same framework, article 22 can be tagged as a special one in the context of this chapter as it deals with the problem of refugee children, which is particularly pertinent in situations of armed conflict where displacement is common. In this case, regardless of their status, children must receive appropriate protection and humanitarian assistance, including respect for their basic rights, such as access to education, healthcare, and measures for social integration. Article 37 of the CRC also provides an interesting insight when it comes to the protection of children in armed conflicts as it tackles Torture and Cruel Treatment. The prohibition of torture and cruel, inhuman, or degrading treatment or punishment in peacetime or in conflict situations must be guaranteed for everybody, including children who are particularly vulnerable to various forms of abuse. Additionally, it explicitly prohibits the imposition of the death penalty or life imprisonment without the possibility of release for offences committed by persons below 18 years of age. This safeguards children from severe punitive measures, even in conflict-related contexts.

Article 38 recognises the right of children affected by armed conflict to receive special protection and assistance. States are mandated to respect and ensure respect for international humanitarian law rules relevant to the child's age and the nature of armed conflict. This article underscores the importance of providing appropriate care for children who have suffered due to armed conflict, including physical and psychological recovery. Efforts are to be directed toward reintegration into society, ensuring that children have access to education, vocational training, and other necessary support to rebuild their lives. Finally, article 39, about Rehabilitation and Reintegration, builds upon article 38, emphasising the right to physical and psychological recovery and social reintegration. Though the Paris Principles greatly cover this provision, it shows that children who have been victims of armed conflict should receive appropriate support for rehabilitation and reintegration into society. This involves measures to address trauma, restore a sense of normalcy, and facilitate the child's return to a community. As recommended by most UN institutions and mostly the UNSC, nations are called upon to collaborate with international organisations to ensure the provision of necessary resources and expertise to effectively implement all the legal existing arsenal available to prevent, protect and reintegrate children affected by armed conflict.

### **3 The role of the ICC and other courts in protecting children in armed conflicts**

In the preceding sections, we underscored the paramount significance of legal frameworks in safeguarding children during armed conflicts. The synergy of the Cape Town Principles and the Paris Principles, coupled with the CRC, UN Security Council Resolutions, and additional legal instruments, form a robust and comprehensive framework dedicated to the protection of children amidst the dangers of armed conflicts. These foundational documents thoroughly outline explicit obligations and measures designed to prevent and address children's challenges in conflict zones. The breach of the aforementioned regulations and other treaties intended to protect children invests the ICC with institutional authority to demand accountability and justice. In instances where crimes against children occur—ranging from recruitment and abduction to the egregious use of child soldiers, sexual violence, and the denial of humanitarian access—the ICC emerges as the paramount institution for dispensing justice. It becomes the fulcrum of justice, wielding the power to hold perpetrators accountable for their actions and ensuring

that grave violations against children during armed conflicts do not go unpunished. By holding individuals accountable for their actions, the ICC contributes to breaking the cycle of violence and impunity, fostering a global environment where the protection of children is not negotiable. Its role extends beyond the courtroom; it is an integral part of the larger effort to create a world where children are shielded from the horrors of war, where their innocence is preserved, and their rights are upheld.

Established in 2002, the ICC stands as a permanent international Court vested with the authority to investigate and prosecute individuals accused of the most serious international crimes, including genocide, crimes against humanity, war crimes, and crimes of aggression.

The Rome Statute (United Nations, 1998), the foundational legal framework for the ICC, stands as a cornerstone in the global endeavour to address and prosecute crimes against humanity. Its particular significance lies in establishing a robust legal foundation, empowering the ICC to hold perpetrators accountable for acts committed against children in conflict zones (KC, 2018).

A legal analysis of the Rome Statute enables us to highlight articles 7 (Crimes against Humanity) and 8 (War Crimes), which collectively contribute to addressing the unique vulnerabilities of children in times of war. Article 7 of the Rome Statute delineates crimes against humanity, encompassing a spectrum of acts causing severe suffering affecting both adults and children. This provision assumes paramount importance when considering the special plight of children in armed conflicts. The specified acts within article 7 related to children include torture, rape, sexual slavery, forced prostitution, forced pregnancy, and forced sterilisation. The intentional infliction of severe physical or mental suffering upon a child, coercive engagement in sexual intercourse without consent, and subjecting a child to sexual exploitation are explicitly recognised as crimes against humanity. Moreover, deliberately causing a child to become pregnant against her will and forcibly preventing a child from having children constitute offences that underscore the ICC's commitment to addressing the unique vulnerabilities of children during armed conflicts. By explicitly acknowledging and criminalising such acts, the Rome Statute establishes a robust legal framework to hold perpetrators accountable for crimes committed against children in the context of armed conflicts. The provisions within article 7 of the Rome Statute recognise the distinctive vulnerabilities of children and affirm the

ICC's commitment to providing them with specialised protection during armed conflicts. The gravity of these crimes against children is underscored by the stringent legal standards set forth in the statute. Through these provisions, the ICC aims not only to punish perpetrators but also to deter such heinous acts, sending a clear message that crimes against children in armed conflicts will be met with legal consequences.

Moving on to article 8 of the Rome Statute, this section addresses war crimes, a category of offences that significantly impact children during armed conflicts. The conscription or enlistment of children under the age of 15 into armed forces or groups, as well as their use in active hostilities, is explicitly prohibited under article 8. This provision is applicable to both international and non-international armed conflicts, reflecting the international community's commitment to safeguarding children from the adverse effects of war.

The prohibition against conscripting or enlisting children involves forcibly involving children under the age of 15 in armed forces or groups, recognising the inherent vulnerability and incapacity of children to engage in armed conflicts knowingly. Similarly, the prohibition against using children in hostilities addresses the active engagement of children in armed conflict, exposing them to violence and harm. These provisions within article 8 recognise the need for special protection for children during armed conflicts and align with the broader international legal framework, including the CRC.

There are no additional specific articles in the Rome Statute that explicitly address the protection of children in armed conflicts beyond articles 7 and 8; however, it's worth noting that the Rome Statute provides a comprehensive legal framework that indirectly supports the protection of children through established legal Principles.

### **3.1 Complementary principle (article 17)**

The principle of complementarity ensures that the ICC is a Court of last resort, stepping in only when national legal systems are unwilling or unable to prosecute crimes within its jurisdiction. This principle indirectly contributes to the protection of children by encouraging and recognising the role of domestic legal systems in holding perpetrators accountable for crimes against children in armed conflicts.

Should domestic Courts lack the capacity or, for any reason, be unable to ensure the protection of children by bringing the accused to justice, the ICC will assume jurisdiction.

### **3.2 Universal jurisdiction**

While not explicitly stated in the Rome Statute, the principle of universal jurisdiction allows states to prosecute individuals for crimes against humanity and war crimes, irrespective of where the crimes occurred. This principle reinforces the idea that perpetrators of crimes against children can be held accountable beyond the jurisdiction of the ICC, providing an additional layer of protection. In this context, the significance of national institutions cannot be overstated. Nevertheless, the ICC serves as a universal watchdog uniquely positioned to address crimes that undoubtedly impact children, particularly war crimes and crimes against humanity.

### **3.3 Principle of non-discrimination**

The Principle of Non-Discrimination underscores the Court's commitment to treating all individuals, including children, as equals entitled to impartial protection under the law. This foundational principle guarantees that the ICC's proceedings meticulously address the distinct vulnerabilities and rights of children, fostering a system where anyone committing crimes against children is subject to prosecution without regard to their wealth, social status, or connections. It thereby promotes a fair approach to cases involving crimes against children, ensuring accountability for all, irrespective of their background or influence.

### **3.4 Best interests of the child principle**

Though this Principle is best described in CRC or in the Paris Principles, the Rome Statute, when interpreted in conjunction with those legal instruments, upholds the child's best interests as a primary consideration. This principle guides the ICC in making decisions that impact children, ensuring their well-being is a central focus.

### **3.5 Principle of individual criminal responsibility (article 25)**

Article 25 of the Rome Statute establishes individual criminal responsibility, emphasising that individuals are responsible for their actions. This principle ensures that those who commit crimes against children in armed conflicts cannot evade accountability, reinforcing the protection of children by attributing responsibility to the perpetrators.

### **3.6 Principle of gender sensitivity**

While not explicitly outlined in the Rome Statute, the ICC has recognised the importance of a gender-sensitive approach, just like in the Paris Principles (Women's initiatives for gender justice, 2012). This principle acknowledges that children, particularly girls, may experience conflicts differently, emphasising the need for the ICC to consider gender-specific vulnerabilities in its proceedings related to crimes against children. This chapter will propose Case studies later (see The Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06).

### **3.7 Principle of gradual recognition of the age of criminal responsibility**

The Rome Statute does not specify a minimum age of criminal responsibility, but it implicitly acknowledges the progressive recognition of the age of criminal responsibility. This principle aligns with international standards that advocate for setting a reasonable minimum age, ensuring that children are not held criminally responsible at an age incompatible with their mental and emotional development. In this context, The Paris Principles and the CRC play a pivotal role in protecting children and advancing justice accountability, considering their mental and emotional development. As highlighted earlier, these principles are dedicated to safeguarding the rights and well-being of children, particularly within juvenile justice systems. Their focal point is a child-sensitive approach, emphasising that legal proceedings and accountability measures must account for children's distinct vulnerabilities and developmental stages. In alignment with this framework, the United Nations Economic and Social Council (ECOSOC) Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provide essential guidance (United Nations Economic and Social Council, 2005). These guidelines ensure that children engaged in legal proceedings are treated with utmost sensitivity,

acknowledging their age, development, and potential impact on their well-being. Similarly, the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment) (UN Office of the High Commissioner for Human Rights, 2022) aligns with the shared cause. While not exclusively tailored for children, the Istanbul Protocol offers guidelines for documenting evidence of torture. In cases where children might be victims, these guidelines contribute significantly to the protection of their mental and emotional well-being during investigative processes.

Notably, the Omar Khadr case (Supreme Court of Canada, 2016) further exemplifies the critical importance of these principles. It illustrates the necessity to consider children's mental and emotional well-being in matters of justice accountability, echoing the principles set forth by the Paris Principles, CRC, ECOSOC Guidelines, and the Istanbul Protocol. This collective framework underscores a shared commitment to upholding the rights and ensuring the holistic well-being of children within legal systems worldwide.

### **3.8 Principle of reparations (article 75)**

The Principle of Reparations, as articulated in article 75 of the Rome Statute, serves as a crucial instrument for the ICC to address the specific needs and vulnerabilities of children who have endured harm in the context of armed conflicts. This article empowers the ICC to order reparations for child victims, ensuring that they receive redress for the suffering they have endured due to crimes falling within the court's jurisdiction. By providing avenues for reparations, this principle becomes a cornerstone in the ICC's commitment to the rehabilitation and well-being of children affected by armed conflict, recognising their unique rights and the imperative to restore their lives in the aftermath of violence, as suggested in the Paris Principles, for example.

### **3.9 Principle of humanitarian assistance**

While not explicitly outlined in the Rome Statute, the ICC, through its work, indirectly supports the principle of humanitarian assistance. This underscores the importance of assisting and supporting children affected by armed conflicts, aligning with broader international humanitarian principles.

### 3.10 Principle of international cooperation (article 86)

Article 86 of the Rome Statute emphasises the principle of international cooperation. This principle supports collaborative efforts between the ICC and other entities, including international organisations and non-governmental organisations, to enhance the protection of children in armed conflicts through joint initiatives, sharing of information, and coordinated actions. These principles represent critical aspects and considerations that, when applied in conjunction with the existing articles of the statute, contribute to the overarching protection of children in armed conflicts within the legal framework provided by the ICC.

Overall, in executing its mandate, the Court cares about the impact of armed conflicts on the lives of children around the world, and the UNSC can seize it to bring Justice. The unique vulnerability of children in armed conflicts is obvious; therefore, their rights must be actively protected, and accountability must be brought to criminals throughout the investigative and judicial processes. Beyond prosecutions, the ICC assumes a preventive role by actively contributing to the development of international law and standards pertaining to the protection of children in armed conflicts. Through its decisions and case law, the Court sends a clear signal. It provides guidelines that elucidate the scope of international criminal law, thereby bolstering the protection of children's rights within the context of armed conflicts. The Court approach not only seeks justice for past transgressions but also actively works towards preventing future atrocities and fostering a global environment where the rights of children are prioritised and safeguarded.

Developing further the idea of Courts that have sentenced individuals for crimes against children in armed conflict, except the ICC, which is relatively young and actually the newest in the international legal arsenal when it comes to international accountability to war crimes, crime against humanity, etc., we can also mention the results achieved by the predecessors of the ICC and other Courts that have parallelly worked according to the Principle of complementarity and the Principle of International Cooperation. Here, the message is still the same: the International Justice system and the international community will not tolerate the use of child soldiers or other violations against children in armed conflict. We can mention the 'International Criminal Tribunal for the Former Yugoslavia' (ICTY).



The UNSC mandated the establishment of the ICTY through UN Security Council Resolution 827 adopted unanimously on 25 May 1993 (United Nations Security Council, 1993). This resolution officially created the ICTY to address serious violations of international humanitarian law committed during the conflicts in the former Yugoslavia. The resolution granted the tribunal the authority to prosecute individuals responsible for war crimes, crimes against humanity, and other offences. The ICTY holds jurisdiction over crimes committed on the territory of the former Yugoslavia between 1991 and 2001. The ramifications of the conflict were profound, with over 100,000 lives lost and more than two million people—over half the population—forced to flee their homes during the war that unfolded from April 1992 to November 1995, when a peace deal was brokered in Dayton (United Nations, 2023). The conflict also saw the systematic rape of thousands of Bosnian women, highlighting the gravity and scale of the atrocities committed.

### **3.11 The Special Court for Sierra Leone**

The Special Court for Sierra Leone (SCSL) (Residual Special Court for Sierra Leone, n.d.), established through an agreement between the UN and the government of Sierra Leone in 2002, played a significant role in addressing impunity for serious crimes committed during the Sierra Leone Civil War (1991–2002) (Jalloh, 2013). While the SCSL primarily focused on prosecuting individuals responsible for war crimes, crimes against humanity, and other grave violations of international law, its impact on the protection of children in armed conflict was notable. It contributed to the broader international justice and accountability framework, aligning with the principles outlined in documents like the Paris Principles on Children Associated with Armed Forces or Armed Groups. These principles emphasise the need to prevent the recruitment and use of child soldiers, ensure the demobilisation and rehabilitation of child soldiers, and hold accountable those responsible for violations against children in armed conflicts. The Paris Principles, along with international humanitarian law and human rights conventions, provided a foundation for the SCSL to address the recruitment and use of child soldiers during the Sierra Leone Civil War. The court, through its prosecutions, sent a strong message about the criminal responsibility of individuals who exploited and abused children in the context of armed conflict.

### **3.12 The Special Court for Cambodia**

During the Khmer Rouge regime, children in Cambodia were subjected to horrific abuses, including forced labour, separation from families, and exposure to violence and trauma. The Special Court for Cambodia's(SCC) role in investigating and prosecuting crimes committed during the Khmer Rouge regime underscores its significant impact on the protection of children in armed conflict (Extraordinary Chambers in the Courts of Cambodia, n.d.). Through legal accountability, restorative justice measures, documentation of crimes, and international collaboration, the SCC has contributed to advancing the well-being and rights of children affected by historical atrocities. The SCC, established in 2006, played a crucial role in addressing the atrocities committed during the Khmer Rouge regime from 1975 to 1979. Focused on investigating and prosecuting individuals responsible for crimes against humanity and grave breaches of the Geneva Conventions, the SCC's impact on the protection of children in armed conflict is significant. The SCC's mandate provided an avenue for justice and accountability, contributing to the broader international effort to protect children affected by armed conflict. While there is a perception that the Pre-Trial Chamber (PTC) of the Extraordinary Chambers in the Courts of Cambodia (ECCC) has become non-functional in Cases 003 and 004 (Vasiliev, 2020, p. 730), the outcomes of the SCC's proceedings directly affected the protection of adults and their children. By holding individuals accountable for crimes committed during the Khmer Rouge era, the SCC not only delivered justice but also sent a powerful message about the consequences of perpetrating violence against civilians, including children. The trials and prosecutions served as a deterrent, discouraging future atrocities and contributing to the prevention of similar crimes against children in armed conflicts.

## **4 Case studies**

### **4.1 AFRC: The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu**

In the context of the legal case "AFRC: The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (Residual Special Court for Sierra Leone, n.d.)," "AFRC" stands for "Armed Forces Revolutionary Council". The AFRC was a military junta that ruled Sierra Leone from May 1997 to February 1998.

The three defendants in the case were all members of the AFRC and were accused of committing crimes against humanity and war crimes during the country's civil war. The AFRC was notorious for its **use of child soldiers** and its brutal tactics. The SCSL initiated the trial in Freetown on March 7, 2005, focusing on former commanders within the Sierra Leonean military. Subsequently, on June 20, 2006, three defendants were pronounced guilty on 11 out of the 14 counts outlined in the indictment. The SCSL was established to prosecute individuals accountable for the egregious violation of international humanitarian law and Sierra Leonean statutes during the civil war. Operating as an independent hybrid court, the Special Court was brought into existence through a collaborative agreement between the UN and the Government of Sierra Leone, sanctioned by UN Security Council Resolution 1315 (2000). Governed by its statutory framework and guided by its Rules of Procedure and Evidence, the court assumes jurisdiction over a spectrum of offences (Residual Special Court for Sierra Leone, n.d.).

The prosecutorial focus of the Special Court encompasses crimes against humanity, including particular serious violations delineated in article 3 Common to the 1949 Geneva Conventions on the Protection of War Victims and those articulated in the 1977 Additional Protocol II. In addition to these international humanitarian law breaches, the court addresses other severe transgressions and specific offences under Sierra Leonean law.

The Court approved indictments against the accused individuals, namely Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu—former commanders within the Sierra Leonean military who face indictments for crimes against humanity, notably the recruitment and use of child soldiers. The comprehensive indictment comprises a total of 14 counts, encompassing crimes against humanity and violations of international humanitarian law. The accused individuals confront seven counts of crimes against humanity, ranging from murder, extermination, rape, sexual slavery, other forms of sexual violence, and other inhumane acts (including physical violence) to enslavement (Counts 3, 4, 6, 7, 8, 11, and 13, respectively).

Furthermore, the charges extend to six counts of violations of article 3 Common to the Geneva Conventions and Additional Protocol II. These encompass acts of terrorism, collective punishments, violence against life, health, and the physical or

mental well-being of persons (including murder and mutilation of civilians), outrages upon personal dignity, and pillage (Counts 1, 2, 5, 10, 9, and 14, respectively).

Additionally, the accused individuals face charges for another serious violation of international humanitarian law, specifically related to the conscription or enlistment of children under the age of 15 years into armed forces or groups or their active participation in hostilities (Count 12). The gravity and complexity of these charges underscore the Special Court's dedication to addressing severe violations and ensuring accountability for heinous acts committed during the conflict, including enlisting children under the age of 15 years into armed forces or groups or using them to participate in hostilities (Count 12) actively. On June 20, 2006, all three defendants were convicted on 11 out of the 14 counts specified in the indictment. Alex Tamba Brima and Santigie Borbor Kanu were individually handed down sentences of 50 years of imprisonment, while Brima Bazy Kamara received a 45-year sentence.

## **4.2 The Thomas Lubanga Dyilo case**

### **4.2.1 General**

An examination of justice and accountability concerning the infringement of children's rights in armed conflicts provides valuable insights into the capabilities and realisation of international justice mechanisms post-warfare. A pivotal illustration of this is the ICC Thomas Lubanga Dyilo case (International Criminal Court, 2012), which has played a transformative role in addressing the critical issue of child soldier recruitment. Beyond the borders of the Democratic Republic of Congo (DRC), a nation marked by multiple wars and pervasive political instabilities that have repeatedly violated the universal rights of its children, this case serves as a beacon illuminating the potential scope of international justice mechanisms. The case's impact extends beyond the specific circumstances of the DRC, a country that has been through multiple wars and whose children have seen their universal rights infringed countless times due to political instabilities. The case has contributed to shaping international norms and standards regarding the protection of children in armed conflicts. Efforts to prevent the use of child soldiers, rehabilitate former child soldiers, and prosecute those responsible have gained momentum in various regions, partially due to the precedents set by cases like Lubanga's who, On 14 March 2012,

was convicted of committing, as co-perpetrator, war crimes consisting of enlisting and conscripting of children under the age of 15 years into the Force patriotique pour la libération du Congo [Patriotic Force for the Liberation of Congo] (FPLC) and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 1 September 2002 to 13 August 2003 (punishable under article 8(2)(e)(vii) of the Rome Statute).

The case's background revolves around criminal activities in the Ituri region of the DRC between 2002 and 2003. The conflict in Ituri involved ethnic rivalries, control over resources, and political power struggles. Lubanga was accused of recruiting and conscripting child soldiers, who were subsequently used in hostilities, committing war crimes in the process.

#### **4.2.2 Legal frameworks infringed**

Rome Statute (ICC): Lubanga was charged under the Rome Statute with war crimes, specifically for conscripting and enlisting children under the age of 15 into armed groups and using them to participate actively in hostilities. Additional Protocols to the Geneva Conventions (IHL Databases, 2023): the recruitment and use of child soldiers constitute violations of international humanitarian law (article 77 of Additional Protocol I of the Geneva Conventions and article 4(3)(c) of Additional Protocol II).

#### **4.2.3 Relevance to the protection of children in armed conflicts**

The Lubanga case is highly relevant to the protection of children in armed conflicts as it acknowledges the vulnerability of children in conflict zones and emphasises the need to hold accountable those who exploit and victimise children in armed conflicts.

#### **4.2.4 Deterrence and impact**

The conviction of Thomas Lubanga at the ICC serves as a significant deterrent against the use of child soldiers. It sends a clear message that individuals responsible for recruiting and using children in armed conflicts will be held accountable before

the international community. The case has contributed to establishing a precedent that such actions are morally reprehensible and punishable under international law.

#### **4.2.5 Conviction**

Thomas Lubanga Dyilo, a key figure in the Democratic Republic of Congo, was found guilty on 14 March 2012 of enlisting and conscripting children under the age of 15, using them as child soldiers. The Trial Chamber sentenced him to 14 years of imprisonment on 10 July 2012, a verdict and sentence later confirmed by the Appeals Chamber on 1 December 2014.

### **4.3 The Hadzihasanovic and Kubura case**

The next case analysis in the matter of protecting children in armed conflicts can be exemplified through the Hadzihasanovic and Kubura Case (International Criminal Tribunal for the former Yugoslavia, 2008), a pivotal episode before the ICTY. The case happened within the complex dynamics of the Bosnian conflict, where children were victims of wartime atrocities. In 2004, Enver Hadzihasanovic and Amir Kubura, former Bosnian Muslim military commanders, faced conviction for their failure to take all necessary measures to prevent the recruitment and use of child soldiers by their troops. This case provides a noteworthy lens through which to assess the responsiveness and application of international justice mechanisms in addressing crimes against children in times of armed conflict.

The ICTY's verdict against Hadzihasanovic and Kubura underscores the gravity of their oversight in failing to prevent the recruitment and utilisation of child soldiers by forces under their command. The charges levied against them highlight a breach of duty in protecting the most vulnerable during a tumultuous period marked by conflict. The sentencing of both commanders to five years in prison reflects the seriousness with which the international community regards the failure to shield children from the horrors of armed conflicts.

While distinct in its particulars, the Hadzihasanovic and Kubura Case resonates with the broader global discourse on the protection of children in armed conflicts. It emphasizes the legal imperative for military commanders to proactively prevent the

involvement of children in hostilities, recognizing their unique vulnerability and the need for concerted efforts to shield them from the direct impact of war.

The conviction of Hadzihasanovic and Kubura is a stark reminder that military commanders bear a responsibility not only for the strategic aspects of warfare but also for safeguarding the rights and well-being of the children.

#### **4.4 The Dominic Ongwen case**

A profound examination of justice and accountability concerning protecting children in armed conflicts is exemplified through the Dominic Ongwen case (International Criminal Court, 2015), a landmark proceeding before the ICC. Dominic Ongwen, a former commander of the Lord's Resistance Army (LRA) in Uganda, faced 61 counts of crimes against humanity and war crimes allegedly committed between 1 July 2002 and 31 December 2005. Trial Chamber IX, in a historic judgment on 6 May 2021, sentenced Ongwen to 25 years of imprisonment. The background of this case presents a complex life story that intertwines the experiences of victimisation and perpetration, shedding light on the profound impact of early trauma on individuals. Ongwen, as a child, himself endured the harrowing experience of abduction by the (LRA), an armed group notorious for recruiting child soldiers. Subsequently, as an adult, Ongwen rose to a leadership position within the LRA and became implicated in crimes against humanity and war crimes, including the recruitment and use of child soldiers. The correlation between Ongwen's traumatic past and his later actions underscores the intricate interplay between victimhood and perpetration. As a young boy, Ongwen suffered the trauma of abduction, separation from his family, and exposure to violence. These experiences left an indelible mark on his psyche, shaping the trajectory of his life. It is crucial to recognize that individuals who undergo severe trauma during their formative years may grapple with a range of psychological and emotional challenges, potentially influencing their behaviour in adulthood. Ongwen's transformation from a victim of child abduction to a perpetrator within the LRA is a tragic manifestation of the cycle of violence perpetuated by armed groups. The deep scars of his own victimisation may have played a role in shaping his worldview, impacting his capacity for empathy, and contributing to the perpetration of similar atrocities against others. This does not absolve him of responsibility for his actions, but it underscores the complexities of the psychological and emotional consequences of being a child

soldier. Understanding Ongwen's dual role as both victim and perpetrator raises important questions about the cycles of violence, the long-term consequences of child soldier recruitment, and the urgent need for comprehensive efforts in the aftermath of armed conflicts. It underscores the importance of addressing the root causes of recruitment, providing psychological support and rehabilitation for former child soldiers, and breaking the cycle of violence that perpetuates itself across generations.

The ICC judging Dominic Ongwen was a testament to its dedication to prosecuting crimes against children in armed conflicts, establishing a robust framework for accountability. The legal proceedings against Ongwen contribute significantly to deterring future acts of recruiting and using child soldiers. Similarly, the convictions in the case of Khieu Samphan and Nuon Chea demonstrate the global resolve to hold high-ranking officials accountable for heinous crimes. These cases collectively shape international norms and standards, fostering a commitment to protecting children from the ravages of war and ensuring accountability for those who perpetrate such crimes.

#### **4.5 The Omar Khadr case**

Omar Ahmed Said Khadr, born in 1986 in Toronto, Ontario, Canada, became a prominent figure in the discussion surrounding the protection of children during warfare. At age 15, he was taken to Afghanistan by his father and found himself entangled in a conflict between U.S. soldiers and Taliban fighters in Ayub Kheyl. Severely injured, Khadr was accused of throwing a grenade, resulting in the death of U.S. Army Sergeant 1st Class Christopher Speer. Captured and transferred to Guantanamo Bay, he underwent interrogations by both Canadian and U.S. intelligence officers.

Charged under the Military Commissions Act of 2006, particularly with "murder in violation of the laws of war," signed by President George W. Bush on October 17, 2006, the Omar Ahmed Said Khadr case raised significant concerns among media outlets and Human Rights associations, prompting scholars and authors to criticise the act's infringement of Human Rights (Ralph, 2010; Shephard, 2013; CBC, 2013; Heller, 2008; Macklin, 2008; Rona, 2008; Beard, 2007; Dorf, 2007). Additionally, (Bradley, 2007), in his article 'Military Commissions Act, Habeas Corpus, and the



Geneva Conventions<sup>1</sup>, provides a comprehensive analysis of the legal implications of infringing basic human rights.

International Humanitarian Law, on the other side (IHL), as reflected in the Protocol Additional to the Geneva Conventions (Protocol I), article 77(1), explicitly states, "Children shall be the object of special protection and shall be afforded special care and aid." The CRC, article 37(c), further emphasises that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" and that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. Moreover, the Rome Statute of the ICC, article 26, titled "Exclusion of jurisdiction over persons under eighteen," declares that the Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of the crime.

These regulations collectively advocate for the better care, assistance, and protection of children during warfare. They not only prohibit the recruitment and use of children as soldiers but also emphasise the rehabilitation and reintegration of children into society. The Paris Principles, addressing the protection of children during warfare, go beyond encouraging the release of children from armed forces or armed groups and providing support for their reintegration into society.

Even the United States, through the Child Soldiers Prevention Act (CSPA) (U.S. Department of State, 2009), has taken legislative steps to criminalise leading a military force that recruits child soldiers, aligning with international regulations that define child soldiers as individuals under 18 years of age participating directly in hostilities. The U.S. implemented the Paris Principles by passing the CSPA in 2008, prohibiting the recruitment and use of child soldiers by U.S. military forces and contractors and taking preventive measures against foreign governments and armed groups.

Despite Canada being a signatory to the Paris Principles, the Omar Ahmed Said Khadr case exposes room for improvement. Children, whether at the national or international level, must not be subjected to inhumane treatment and should be granted the due process protections to which they are entitled. The case underscores the importance of ensuring that children are shielded from the devastating impacts

of war and highlights the necessity for ongoing efforts to strengthen protective measures for children involved in armed conflicts.

## 5 Conclusion

Children are often victims of warfare, necessitating comprehensive and robust national and international legal frameworks to ensure their protection during armed conflicts (Rasakandan & Tehrani, 2022, p. 230). As elucidated through various legal regulations, including the CRC, the Optional Protocols (OPAC and OPSC), the UN Security Council Resolutions, The Hague Conventions of 1899 and 1907, the Cape Town and Paris Principles and Commitments, and notable case studies such as The Omar Khadr case, The Dominic Ongwen case, and AFRC: The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara, and Santigie Borbor Kanu, it is evident that there is a wealth of legal tools aimed at safeguarding children caught in the midst of armed conflicts.

The UNSC plays a pivotal role through its Resolutions by establishing a crucial mechanism for monitoring and reporting on violations against children in armed conflicts, providing a platform for accountability and intervention. Meanwhile, The Hague Conventions and Geneva Conventions, complemented by subsequent protocols, delineate rules governing the conduct of hostilities and the treatment of civilians, including children, during armed conflicts.

Some authors have suggested the potential for children to voluntarily enlist in the military following armed conflicts (Ndongo & Derivois, 2022, p. 145). However, it is crucial to emphasize that compelling children to serve as combatants overwhelmingly constitutes a clear breach of both national and international legal norms. This is underscored by various conventions and statutes, notably article 38 of the CRC, which explicitly emphasizes the imperative to ensure the protection and well-being of children during armed conflicts. Further reinforcing this commitment, the OPAC raises the minimum age for direct participation in hostilities to 18 and emphasizes the importance of preventing the recruitment and use of children in armed conflicts. This protocol complements the CRC, fortifying the global stance against the exploitation of children in times of war.

In the context of the Rome Statute, which established the ICC, the engagement of children in armed conflicts is categorized as a war crime. Article 8(2)(b)(xxvi) of the Rome Statute explicitly defines the conscription, enlistment, or use of children under the age of 15 in hostilities as a grave breach of the Geneva Conventions and their Additional Protocols. This legal framework thus not only prohibits the recruitment of children but also underscores the gravity of such actions as criminal offences that warrant international accountability and prosecution. In essence, these conventions and articles collectively form a robust legal foundation, unequivocally condemning the enlistment of children into armed forces and demanding global adherence to these protective measures.

The Paris Principles and Commitments underscore the imperative of preventing the recruitment and use of children in armed forces and groups, emphasizing their release and rehabilitation. Case studies, such as The Omar Khadr case, bring to light the complexities and challenges in implementing these legal safeguards, showcasing the necessity for ongoing vigilance and improvement.

While the legal framework is extensive, there is room for enhancement and more effective implementation. It is essential to bolster international cooperation and coordination among states, international organizations, and non-governmental entities to ensure the consistent application of these legal instruments. Strengthening national legislation and enforcement mechanisms is paramount, with a focus on addressing impunity and holding perpetrators accountable for crimes against children.

Education and awareness campaigns play a pivotal role in preventing the recruitment of children by armed groups, while rehabilitation and reintegration programs are instrumental in facilitating the recovery of those already affected. The international community should foster dialogue and knowledge exchange to share best practices and lessons learned in the realm of child protection during armed conflicts.

Overall, the legal protection of children in armed conflicts has reached a commendable level of development, but persistent challenges demand continued efforts. The world possesses the legal texts necessary to shield children from the horrors of war; now, the global community must unite in its commitment to

implement better and reinforce these protections, ensuring a safer and more secure future for children affected by armed conflicts worldwide.

### List of Abbreviations

ACRWC- African Charter on the Rights and Welfare of the Child  
 AFRC- Armed Forces Revolutionary Council  
 CRC- United Nations Convention on the Rights of the Child  
 DDR - Disarmament, Demobilisation and Reintegration  
 DRC - Democratic Republic of Congo  
 ECCC - Extraordinary Chambers in the Courts of Cambodia  
 ECOSOC - The United Nations Economic and Social Council  
 ICC- International Criminal Court  
 ICTY - International Criminal Tribunal for the Former Yugoslavia  
 IHL - International Humanitarian Law  
 LRA - Lord's Resistance Army  
 MRM - Monitoring and Reporting Mechanism  
 OPAC- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict  
 OPSC- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography  
 SCC - The Special Court for Cambodia  
 SCSL - The Special Court for Sierra Leone  
 UN- United Nations  
 UNICEF- United Nations Children's Fund  
 UNSC - The United Nations Security Council  
 UNSCR - The United Nations Security Council Resolution

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