

## FACETS OF CHILD RIGHTS' PROTECTION DURING ARMED CONFLICT: FROM RHETORIC TO REALITY

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### Abstract

*International Humanitarian Law (IHL) provides special protection to the children under the coverage of different international instrument including the Geneva Conventions. Under different articles of GC IV and AP I, II, the provisions of child rights protection have been enshrined in purposeful headings i.e. evacuation, assistance and care, family reunification, education, cultural environment, rights of arrested, detained and interned children and exemption from death penalty. Yet the children are being used and recruited in armed conflicts making them vulnerable to the devastating consequences of war. This article finds that many incidents of armed conflicts are the evidences of glaring violation of child rights e.g. the situations of Rwanda, Bosnia Herzegovina, Afghanistan, Central African Republic, Democratic Republic of Congo, Iraq, Libya, Myanmar, Somalia, Yemen, Syrian Arab Republic. These situations reiterated the inherent limitations of IHL for the protection of children during armed conflict. To save the children from the consequences of war, this article offers a number of suggestions to improve the prevailing conditions and to ensure the protection of child rights during armed conflicts.*

### 1. Introduction

Protecting children from the effects of armed conflict is a normal imperative, a legal responsibility and a question of international peace and security. In modern day warfare, children are increasingly becoming the subject of military recruitment, targeted attacks and sexual violence. During armed conflicts many children are forced to witness or to take part in horrifying acts of violence. They suffer from being orphaned, raped, maimed and manipulated. Many have lost their families as well as education opportunities, a chance to enjoy their childhood and to be part of a community.

### 2. The Concept of Armed Conflicts Explained

Under IHL, there are two types of armed conflicts (AC) namely international armed conflict (IAC) and non-international armed conflict (NIAC).<sup>1</sup> IAC refers to a situation 'whenever there is resort to armed force between two or more states'.<sup>2</sup> In such conflicts, Geneva Conventions I<sup>3</sup>, II<sup>4</sup>, III<sup>5</sup>, IV<sup>6</sup>, AP I<sup>7</sup> and

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<sup>1</sup> How is the term 'Armed Conflict' defined in International Humanitarian Law? International Committee of the Red Cross (ICRC), Opinion Paper, March 2008, p1.

<sup>2</sup> ICTY, *The Prosecutor v DuskoTadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A October 1995, para 70.

<sup>3</sup> *Geneva Convention I* for the Amelioration of the Condition of the Wounded and Sick in Armed Conflict in the Field, 12 August 1949 (GC I).

Customary IHL<sup>8</sup> are applicable. On the other hand, NIAC exists, ‘whenever there is [...] protracted armed violence between governmental authorities and organised armed groups or between such groups within a state’.<sup>9</sup> To become NIAC, an AC must satisfy two essential conditions: i) the conflict must reach a minimum level of intensity and ii) the parties involved in the conflict must show a minimum level of organisation.<sup>10</sup>

The level of organisation of non-state armed groups has been assessed based on a series of indicative factors: a) the existence of a command structure and disciplinary rules and mechanisms within the group; b) the existence of a headquarters; c) the fact that the group controls a certain territory; d) the ability of the group to gain access to weapons, other military equipment; e) recruits and military training; f) its ability to plan, coordinate and carry out military operations including troop movements and logistics; g) its ability to define a unified military strategy and use military tactics; h) its ability to speak with tone voice and negotiate and conclude agreements such as cease-fire or peace accords.’<sup>11</sup>

Indicative factors for assessing ‘intensity’ will have the following elements: “a) the number, duration and intensity of individual confrontations; b) the type of weapons and other military equipment used; c) the number and caliber of munitions fired; d) the number of persons and type of forces partaking in the fighting; e) the number of material destruction; g) the number of civilians fleeing combat zones; h) the involvement of UNSC may also be a reflection of the intensity of a conflict.”<sup>12</sup> IN NIAC, applicable laws are: common article 3 of the Geneva Conventions, AP II, customary IHL human rights law and national law. Other situations of violence which do not reach the threshold NIAC are commonly known as internal tensions and disturbances, riots, demonstrations, sporadic acts of violence. These situations are usually governed by national law without triggering IHL.<sup>13</sup>

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<sup>4</sup> *Geneva Convention II* for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August, 1949 (GC II).

<sup>5</sup> *Geneva Convention III* relative to the Treatment of Prisoners of War, 12 August 1949 (GC III).

<sup>6</sup> *Geneva Convention IV* relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (GC IV).

<sup>7</sup> *Additional Protocol to the Geneva Conventions* 1949, and *Additional Protocol relating to the Protection of Victims of International Armed Conflicts* 1977 (AP I).

<sup>8</sup> Customary IHL is made up of rules that come from the general practices of states followed out of a sense of legal obligation.

<sup>9</sup> ICTY, *The Prosecutor v Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para 70.

<sup>10</sup> Office of the Special Representative of the Secretary General for Children and Armed Conflict, Working Paper No. 3, ‘Children and Justice During and in the Aftermath of Armed Conflict’, September 2011, UN, p 29 (Working Paper No. 3).

<sup>11</sup> ICTY, *The Prosecutor v Ramush Haradinaj et al.*, Tribal Chamber I (judgment), case no. IT-04-84-T, 3 April 2008, para 60.

<sup>12</sup> ICTY, *The Prosecutor v Ramush Haradinaj et al.*, et. al. p 49.

<sup>13</sup> Working Paper No. 3, p 29.

Sometimes, pre-existing NIAC subject to foreign intervention are a special form of armed conflict, which poses unusual problems for IHL<sup>14</sup> and referred to as 'internationalised' armed conflict.<sup>15</sup> Hans Peter Gasser identified the legal position of internationalized NIAC in the following ways: a) between the Government and the insurgents, common article 3 and AP II apply; b) between the government and third party state intervening on the side of the insurgents, the law relating to IAC become applicable; c) between the third party state intervening on the government side and the insurgents, common article 3 and AP II apply; d) between states intervening on both sides, the law relating to IAC must be observed.

### 3. Facets of Child Rights' Protection during Armed Conflicts

#### a) Protection of Children from being Recruited or Used in Hostilities

The widely ratified human rights instrument i.e. UNCRC, 1989 defined children as any human being under the age of 18 is a child.<sup>16</sup> This treaty also confers responsibility upon the State parties to ensure respect for rules of IHL applicable in armed conflict which are relevant to the child.<sup>17</sup> The treaty rules further prevents the direct participation in hostilities and recruitment into armed forces. Persons who have not attained the age of 15 years and in recruitment priority will be given to the oldest of those aged between 15 and 18.<sup>18</sup> It is the obligation of the State parties to take all feasible measures to ensure protection and care of children who are affected by an armed conflict. Optional Protocol to the CRC was adopted on 25 May 2000 to strengthen protection for children in armed conflict which also raised the minimum age to 18 years for direct part in hostilities and prohibited compulsory recruitment into the armed forces of persons under the age of 18 years.<sup>19</sup>

The Protocol calls on State parties to raise the minimum age above 15 for voluntary recruitment, the rule does not apply to military academics but states may accept voluntary enrolment into military school.<sup>20</sup> In case of non-state armed groups, the Protocol prohibits both voluntary and compulsory recruitment of persons under 18 for using in hostilities and also urged State parties to take legal measure to criminalise such practices.<sup>21</sup>

The Rome Statute includes in its list of war crimes the active engagement in hostilities of children under 15 or their conscription or enlistment into national

<sup>14</sup> Hans Peter Gasser, *International Humanitarian Law An Introduction*, (Haupt, Henry Dunant Institute, 1993), p 77

<sup>15</sup> Nils Melzer, coordinated by Etienne Kuster, *International Humanitarian Law A Comprehensive Introduction*, Geneva, ICRC, August 2016, p 73.

<sup>16</sup> *Convention on the Rights of the Child* 1989 (UNCRC), article 1.

<sup>17</sup> *Convention on the Rights of the Child* 1989, article 38(1), (3), (4).

<sup>18</sup> *Convention on the Rights of the Child* 1989, article 38(2), (3).

<sup>19</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* 2000 (Optional Protocol), article 2.

<sup>20</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* 2000, article 3.

<sup>21</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* 2000, article 4.

armed forces during IAC<sup>22</sup> or into national armed forces or other armed groups during a NIAC.<sup>23</sup> Children shall be respected and protected and shall receive adequate care and aid if they require.<sup>24</sup> The basic objective of IHL is to prevent the involvement of children in armed conflict. State parties shall refrain from recruiting children who have not attained the age of 15 years and shall take all feasible measures to prevent their direct participation in hostilities. It further encourages parties to give priority in recruiting among those aged from 15 to 18 to the oldest.<sup>25</sup>

Despite the above-mentioned provisions, children who are above 15 or below 15 are taking direct part in IAC will be recognised as combatants and in the event of their capture are entitled to POW status under GC III.<sup>26</sup> For involvement of children in armed conflict the age threshold is 15 years under AP I and II and art. 38 of CRC but such threshold raises to 18 by Optional Protocol to CRC except state's voluntary enrolment of children under 18 into military school. But this exception is not applicable for non-state armed groups which create an inequality between governmental forces and non-state armed groups.<sup>27</sup>

The Paris Principles on Children Associated with Armed forces or Armed Groups (2007) to protect children from unlawful recruitment suggests states to ensure that armed groups within their territory do not recruit children under the age of 18 and that the states themselves respect the international standards for recruitment.<sup>28</sup> The recruitment and use of children in armed conflict is a war crime under customary international law was affirmed by the Special Court for Sierra Leone (SCSL) in the *Hinga Norma Case, 2004*.<sup>29</sup> For the enlistment and conscription of children under the age of 15 into the Armed Forces, LubangaDyilo was convicted of war crimes by the ICC on March 2012.<sup>30</sup> Charles Taylor was the former President of Liberia was also committed of war crimes against children by the SCSL for the enlistment and use of child aged less than 15 years (26 April 2012).<sup>31</sup>

<sup>22</sup> *Rome Statute of the International Criminal Court* 1998 (*Rome Statute*), article 8 para 2b (xxvi).

<sup>23</sup> *Rome Statute of the International Criminal Court* 1998, article 8 para 2e (vii).

<sup>24</sup> API, article 77(1).

<sup>25</sup> API, article 77(2).

<sup>26</sup> API, article 77(3), ICRC Advisory Service on IHL, Legal Protection of Children in Armed Conflict.

<sup>27</sup> Marco Sassoli, Antoine A Bouvier, Anne Quintin, How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in IHL, vol. 1, 3<sup>rd</sup> ed. ICRC Geneva 2011, p 217.

<sup>28</sup> *Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups* 2007, para 4.

<sup>29</sup> *Statute of the Special Court for Sierra Leone* 2002, article 4(c); *The Prosecutor v Hinga Norma* (Decision on Preliminary Motion), SCSL (May 2004).

<sup>30</sup> *The Prosecutor v Thomas LubangaDyilo*, ICC-01/04-01/06; available at: <http://icc-cpi.int/drc/lubanga> accessed on 22 October 2017.

<sup>31</sup> *The Prosecutor v Charles Ghankay Taylor*, Special Court for Sierra Leone, (SCSL -03-01-A (10766-11114); available at: [www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf](http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf).

### **b) Protection of Children from being Killed, Maimed or Injured**

In all situations of armed conflicts, the most recognised source for the fundamental protection are enshrined in common article 3 which provides persons taking no active part in the hostilities shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion, or faith, sex, birth or wealth, or any other similar criteria.<sup>32</sup> In *Nicaragua Case*, the ICJ stated that common article 3 reflected 'elementary considerations of humanity' constituting a 'minimum yardstick applicable to all armed conflicts'<sup>33</sup> including the 'protection of civilians in NIAC'.<sup>34</sup> Two basic principles of IHL i.e. principle of distinction<sup>35</sup> and principle of proportionality also provides general protection to children as a members of civilian population. The principle of proportionality prohibits 'military attacks if they result in civilian death or injury or damage to civilian objects that is excessive when compared to the concrete and direct military advantage anticipated from the attack'.<sup>36</sup> Besides the principle of distinction demands that parties to the conflict distinguish between civilians and combatants at all times and that attack must not be directed against civilians.<sup>37</sup> In IAC, children not taking part in hostilities are protected by GC IV and AP I. Every child has an inherent right to life<sup>38</sup>, and protected from coercion, corporal punishments and reprisals.<sup>39</sup> During armed conflict, torture, inhuman or degrading treatment also prohibited by CAT<sup>40</sup>. ICTY recognised murder, torture, or injury against children were amounted to 'aggravating circumstances' of war crimes or crimes against humanity<sup>41</sup> whereas ICC statute identified willful killing, or causing serious bodily harm to civilian may amount to war crimes, crimes against humanity or even genocide.<sup>42</sup> In NIAC, children are also covered by the fundamental guarantee as enshrined in common article 3 and article 4 APII as well as part of civilian shall not be the object of attack.<sup>43</sup>

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<sup>32</sup> Common article 3, GC I –GC IV.

<sup>33</sup> *The Nicaragua Case*, ICJ 1986.

<sup>34</sup> *The Prosecutor v Tadic*, International Criminal Tribunal for the Former Yugoslavia, 1999.

<sup>35</sup> ICJ, *Nicaragua Case* identified the principle the distinction between civilian and military targets is one of the 'cardinal principles of IHL' and one of the 'intransgressible principles of international customary law'.

<sup>36</sup> AP I, article 51 & 57 and AP II, article 3.

<sup>37</sup> AP I, article 48, 51 & 52 & AP II, article 4, p.14 Working paper no.1, *The Six Grave Violations Against Children Armed Conflict: The Legal Foundation*, October 2009 (updated Nov. 2013) Office of the Special Representative of the Security General for Children and Armed Conflict.

<sup>38</sup> A UNCRC, article 6.

<sup>39</sup> GC IV, articles 27 & 34 and AP I, article 75.

<sup>40</sup> *Convention Against Torture* 1984, article 2(2).

<sup>41</sup> ICTY, *The Prosecutor v Kunarac, Kovac and Vukovic*, 2001.

<sup>42</sup> articles 6, 7 & 8, *Rome Statute*.

<sup>43</sup> AP II, article 13.

### c) Protection of Children from subjecting to Rape and Other Forms of Sexual Violence

In addition to the special care for children covered by the GC IV, the AP I also provides the principle of special protection which will remain applicable to the children who take direct part in either IAC or NIAC.<sup>44</sup> Article 77(1) lays down ‘children shall be the object of special respect and shall be protected against any form of indecent assault’. Under GCs and APs, state parties are prohibited to commit rape and other forms of sexual violence against children during armed conflict.<sup>45</sup> Moreover, a number of international treaties also prohibited sexual abuse and exploitation of children<sup>46</sup> and must enjoy protection from torture, cruel, inhuman or degrading treatment.<sup>47</sup> The statutes of the SCSL, ICTY and ICTR also cited rape and sexual violence as war crimes and crimes against humanity.<sup>48</sup> A number of accused persons before the ICTY and ICTR were prosecuted and convicted for committing sexual violence.<sup>49</sup> Even at the ICC, a former leader of Congolese Armed groups Jean Pierre Bemba Bomba is facing trial for rape and other abuses.<sup>50</sup> Rape, sexual slavery, enforced prostitution, forced pregnancy, enforce sterilization are recognised by the ICC statute as war crimes and crimes against humanity.<sup>51</sup> So, in both IAC and NIAC children are protected from all forms of sexual exploitation and sexual abuse.

### d) Protection of Children from being Abducted

Abduction<sup>52</sup>, forced displacement, deportation<sup>53</sup> and enforced disappearance of children<sup>54</sup> are prohibited by IHL and IHRL instruments. Unlawful confinement is a grave breach of GC and may amount to a war crime<sup>55</sup> under the ICC Statute. Moreover, hostage taking or enforced disappearance can be prosecuted before

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<sup>44</sup> API, article 77 and AP II, article 4

<sup>45</sup> GC IV, article 27(2) and AP I article 75(2), 76(1), 77(1) and AP II, article 4(2)(e) AP II which specifically add ‘rape’ to the list of forms of indecent assault.

<sup>46</sup> War crimes - article 3(e), SCSL article 4(e) ICTR, article 2 ICTY, Crime against humanity – article 2(g) SCSL, article 3(g) ICTR, article 5(g) ICTY.

<sup>47</sup> CAT, article 1 and *Convention on Suppression of Trafficking and Exploitation* 1949 and *Vienna Declaration of the World Conference on Human Rights* 1993, part 5.

<sup>48</sup> *CRC’s Optional Protocol to the Convention on the Rights of the Child on the Sale of Child, Child Prostitution and Child Pornography* 2000, articles 34, 35, 37 CRC & article 3.

<sup>49</sup> *The Prosecutor v Furundzija*, ICTY, 1998, *Prosecutor v Akayesu*, ICTR, 1998, *Prosecutor v Musema*, ICTR, 2000, *Prosecutor v Kunrac, Kovac and Vukovic*, ICTY, 2000.

<sup>50</sup> *Prosecutor v Jean-Pierre Bemba Bomba*, ICC, 12-15 Rome Statute.

<sup>51</sup> *Rome Statute*, articles 7(1)(c), 7 (1)(g), 8(2)(b), 8(2)(c), 8(2)(e).

<sup>52</sup> Com. article 3 – Requirement of human treatment for civilians implicitly prohibits abduction, Customary Rule 99 of ICRC.

<sup>53</sup> GC IV, article 49, 147, AP I, article 85(4) AP I and AP II, article 17.

<sup>54</sup> GC IV, article 147, article 2, *International Convention for the Protection of all Persons from Enforced Disappearance* 2006, article 25; and *UN Declaration on Enforced Disappearance* 1992, article 1.

<sup>55</sup> *Rome Statute*, article 8(2).

the ICC.<sup>56</sup> The ICTY identified enforced disappearance of persons was an inhuman act which also amounted to a crime against humanity.<sup>57</sup>

#### **e) Protection of Children from Denying Humanitarian Access**

State parties to the armed conflict must ensure humanitarian access for children and 'they shall in all circumstances receive appropriate protection and humanitarian assistance.'<sup>58</sup> In distribution of relief consignment priority shall be given to the children.<sup>59</sup> The Parties to the conflict either in peace time or after the outbreak of hostilities may establish safety zones for children to protect them from the effects of war in their own territory or occupied areas.<sup>60</sup> They shall endeavour to conclude local agreements for the removal of children from besieged or encircled areas.<sup>61</sup> Where there are compelling reasons of the health or medical treatment or safety of the children, they shall be evacuated.<sup>62</sup> Whenever an evacuation occurs, child's education, religious and moral education shall be provided with the greatest possible continuity.<sup>63</sup> The parties shall allow free passage of all consignment of essential foodstuffs, clothing and tonics intended for children.<sup>64</sup> They shall take necessary measures to ensure that children orphaned children or separated from their family receive maintenance and exercise their religion and education.<sup>65</sup> Even the occupying power shall facilitate the proper working of educational and child care institutions.<sup>66</sup> The Detaining power shall ensure the education of children and young people.<sup>67</sup>

Humanitarian personnel have adequate access to the children require relief. They as a person, their equipment, and establishment shall receive special protection under GC and AP.<sup>68</sup> In 1994 Convention was enacted to ensure the protection of relief personnel under the auspices of UN.<sup>69</sup> The SCSL also recognised the deliberate attacks against humanitarian worker as war crime in 2009.<sup>70</sup>

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<sup>56</sup> *Rome Statute*, article 7(1)(c)-(e), 7(1)(i), 8(2)(a), 8(2)(c).

<sup>57</sup> *Prosecutor v Kupreskic et. al.* ICTY 2000, *Prosecutory v Kunarac, Kovac and Vukovic*, ICTY 2001.

<sup>58</sup> UNCRC, article 22(1).

<sup>59</sup> AP I, article 70(1).

<sup>60</sup> GC IV, article 14.

<sup>61</sup> GC IV, article 17.

<sup>62</sup> AP I, article 78.

<sup>63</sup> AP I, article 78, para 2.

<sup>64</sup> GC IV, article 23.

<sup>65</sup> GC IV, article 24.

<sup>66</sup> GC IV, article 50.

<sup>67</sup> GC IV, article 94.

<sup>68</sup> AP I, articles 70(4), 71(2) & AP II, article 18(2).

<sup>69</sup> *Convention on the Safety of UN and Associated Personnel* 1994.

<sup>70</sup> *Statute of the SCSL*, article 4(5), *Prosecutor v Sesay, Kallon and Gbao* (RUF Case) February 2009.

#### **f) Protection of Schools and Hospitals from being Attacked**

The schools or hospitals shall not be the deliberate targets of attack unless being used for military purposes.<sup>71</sup> The deliberate attack or destruction of schools or hospitals may amount to grave breaches of the law of armed conflict.<sup>72</sup> In Nuclear Weapon Case, the ICJ pointed out that under IHL, protection of civilian and civilian objects shall receive of paramount importance. So, the necessity to protect schools and hospitals from attack also reiterated by the ICTY in *Kupreskic* (2000) and *Kopdic and Cerkez* (2001) cases.

#### **g) Protection of Children in times of Detention**

During IAC, if a child participates in hostilities and subsequently captured then entitled to receive POW status.<sup>73</sup> The detained children as POWs must stay in separate quarter from adult detainees.<sup>74</sup> Which shall be ensured by the detaining power. In NIAC there is no existence of the status of POW so children will either undergo release or reintegration programmes.<sup>75</sup> Children in detention must be given the following legal safeguards under IHRL instruments:<sup>76</sup>

- i) the right to be informed of the reasons for detention;
- ii) the right to be brought promptly before a judge and to a judicial review of the legality of the detention;
- iii) the right to periodic review of the legality of the detention;
- iv) the right to release or to a trial within a 'reasonable time' where child is accused of crime;
- v) the right to have the detention acknowledged by the authorities and to communicate with relatives and friends;
- vi) the right to have legal assistance.

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<sup>71</sup> GC IV, article 147 & AP I, article 85 AP I, article 52.

<sup>72</sup> Working Paper No. 1, p 19.

<sup>73</sup> AP I, article 77(3).

<sup>74</sup> GC III, article 77(4).

<sup>75</sup> Working Paper No. 3, p 32.

<sup>76</sup> Ibid, p 32.



#### **h) Protection of Children from Capital Punishment**

The states should take legislative measures under penal and military law to prohibit the pronouncement or execution of a death sentence against anyone aged less than 18 years at the time of the offence, when the offence is related to an armed conflict.<sup>77</sup>

#### **4. Instances of Child Rights Violations in recent Armed Conflict Situations**

Children have been significantly affected by violent extremism in recent years and were often the direct targets of armed conflicts. The report of the Secretary General pursuant to Security Council resolution no. 2225 (2015) 'recent global trends regarding the impact of armed conflict on children and provides information on grave violations committed against children in 2015'. The annexes to the report include a list of parties that engage in the recruitment and use of children, attacks on schools and/or hospitals and attacks or threats of attack against protected personnel and the abduction of children.<sup>78</sup>

The increased intensity of grave violations in the situations of armed conflicts clearly outlines in the Report of 2015. The Secretary General identified six grave violations<sup>79</sup> against children during armed conflicts based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children.<sup>80</sup> Children were disproportionately affected by the intensifying conflict in different countries i.e. Afghanistan, Central African Republic, Democratic Republic of Congo, Iraq, Libya, Myanmar, Somalia, Yemen, Syrian Arab Republic.

In Afghanistan in 2015, a total of 116 cases of recruitment and use of children were documented of which 48 were verified. The UN verified 1306 incidents resulting in 2829 child casualties (733 killed and 2096 injured). They also received 11 reports of sexual violence. There were 132 verified incidents of attacks on schools and protected personnel. A total of 92 children were abducted in 23 incidents. The UN verified 75 incidents of denial of humanitarian access.<sup>81</sup>

In African Central Republic, the UN documented 40 cases of child recruitment

<sup>77</sup> GC IV, article 68, article 77 para 5 AP I and AP II, article 4.

<sup>78</sup> Report of the Secretary General of the United Nations on Children and Armed Conflict, 20 April 2016, A/70/836, S/2016/360 (Report on Children).

<sup>79</sup> The six grave violations against children during armed are: a) Recruitment and use of children (UNSC Resolution 1379 of 2001), b) Killing and maiming of children (UNSC resolution 1882 of 2009), c) Sexual violence against children (UNSC Resolution 1882 of 2009), d) Attacks against schools or hospitals (UNSC Resolution 1998 of 2011), e) Abduction of children (UNSC Resolution 2225 of 2015), f) Denial of humanitarian access (Not trigger for list in the annual report of Secretary General on Children and Armed Conflict).

<sup>80</sup> Working Paper No. 1, p 9.

<sup>81</sup> Report on Children, p 5.

who were used as combatants, messengers, informants, cooks and sex slaves (girl children). There were 62 children killed and 185 maimed. The UN documented 70 cases of sexual violence. They also verified 19 attacks on schools and 12 on hospitals. A total 52 children were verified as having been abducted. In 140 incidents verified by the UN where humanitarian access was denied.<sup>82</sup>

The UN verified 488 children were recruited in Congo. They also received information about 80 killing and 56 maiming. The incidents of sexual violence were 254 in number. Attack on 22 schools and 4 hospitals were recorded. Total 195 children were abducted. The UN identified 2 cases of denial of humanitarian access.<sup>83</sup> In Iraq, the UN verified 37 incidents of child recruitment. The also received the information of 338 killing and 471 injured. Sexual violence against Yezidi community was also reported. There were 90 attacks on schools and education personnel. In Mosul district 1000 children were abducted.<sup>84</sup>

The UN received 217 cases of recruitment of children of which 95 were verified. 25 children were killed and 50 children were injured in Myanmar.<sup>85</sup> The reported 3 incidents of sexual violence. There were 11 attacks on schools and 5 incidents of abduction. There were 2 reports of humanitarian personnel were the victims of crossfire. In Somalia, the UN received 903 incidents of child recruitment. 474 were killed and maimed.<sup>86</sup> The number of sexual violence was 164. There were attacks on 24 schools. 458 children were abducted. 12 incidents of denial of humanitarian access. In Syrian Arab Republic, as per UN report 362 children were recruited, 591 were killed and 555 were injured, 21 cases of abduction and 8 schools were used by the government forces.<sup>87</sup> In Yemen, 762 incidents of recruitment of children were taken place, 785 were killed and 1168 were injured, 101 attacks were taken place on schools, 11 incidents of abduction were recorded.<sup>88</sup>

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<sup>82</sup> Ibid, p 8.

<sup>83</sup> Ibid, p 9.

<sup>84</sup> Ibid, p 11.

<sup>85</sup> Ibid, p 17.

<sup>86</sup> Ibid, p 19.

<sup>87</sup> Ibid, p 24.

<sup>88</sup> Ibid, p 27.

## 5. Suggestions

After considering the above-mentioned situations, the following recommendations can be given to improve the existing conditions and to ensure the protection of children during armed conflicts:

- a) By implementing the 'Children, not soldiers' campaign, the main objective shall be the reduction of the number of child recruitment in the armed groups.<sup>89</sup> For the continuous progress of the action plan of the campaign, the national, regional and international organisations should render their support and cooperation.
- b) In accordance with international obligations as enshrined in the IHL and IHRL, the best interests of the child shall be ensured. Initiatives should be taken to reintegrate them with their family and to provide psychological support specially for the girls who are the victims of sexual violence.
- c) Following the complementarity principle, the State must investigate and prosecute perpetrators who committed offences against children during armed conflict. The donor agencies and international organisations should provide necessary technical supports to enhance the national judicial system in the post-conflict situations.
- d) For the protection of displaced children, the UN Security Council shall adopt a resolution to ensure the rights of the displaced children so that the country of origin, the country of transit and the country of destination are complying with the obligations imposed by the resolution.
- e) The UN peace keeping operations shall incorporate child dedicated protection policy and the forces will be trained properly to look after the best interests of the child in the conflict affected zones.
- f) It is the common responsibility of the State parties to identify the root causes of armed conflicts and to eliminate them such as political grievances, lack of good governance, lack of educational facility, poverty and socio-economic disparities.
- g) States who have not ratified the Additional Protocols I and II should be actively encouraged to ratify them, so that they shall be bound by the obligations of these protocols concerning child rights.

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<sup>89</sup> In 2014, the Special Representative of Secretary General for Children and Armed Conflict Leila Zerrougui launched the campaign with UNICEF to bring about a global consensus that child soldiers should not be used in conflict.

h) The Security Council Working group on Children and Armed Conflict can play a pro-active role for protection of child rights during armed conflict.

i) The State parties must issue military command orders prohibiting recruitment of children and integrating age verification mechanism in recruitment procedure in the armed forces. Moreover, steps shall be taken to release the child soldiers who have already been recruited.

## **6. Conclusion**

State parties must show utmost sincerity to implement IHL provisions relating to the protection of child rights. Necessary amendments of GC can be initiated to ensure the protection of child's physical, mental and educational facilities. Moreover, to create awareness regarding the importance of ratification of IHL conventions and protocols by non-ratifying states should receive paramount consideration. The International courts ie ICJ, ICC can play pro-active role by upholding child rights and convicting the breaches of child rights provisions. State parties must strictly observe the recruiting age of children so as to comply with the Optional protocol to UNCRC and also to prevent the practice of recruiting child soldiers in the armed forces.

