

Legal Protection of the Child During Armed Conflicts

الحماية القانونية للطفل أثناء النزاعات المسلحة

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Date of send:08/11/2025 Date of acceptance:18/12/ 2025 Date of publication:30/12/2025

Abstract

Given the child's particular vulnerability and dependent nature, their rights impose obligations not only on their family and local community but also on the international community as a whole. The child is among the groups protected under the rules of international humanitarian law (*IHL*) and international human rights law (*IHRL*), whether these rules are customary or treaty-based. The child enjoys protection against all forms of violations and benefits from general protection afforded to all civilians, as well as special protection granted specifically to children.

Children are protected from all forms of recruitment, whether voluntary or compulsory, and such acts constitute war crimes under international humanitarian law. This right is also safeguarded by the Rome Statute of the International Criminal Court. Furthermore, the United Nations Security Council, the General Assembly, and numerous international organizations have established mechanisms to ensure the protection of children during armed conflicts.

Keywords : Child Protection, Armed Conflicts, War Crimes,

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Introduction

The provisions of international humanitarian law (*IHL*) have long sought to prohibit attacks on civilians, obliging conflicting parties to take appropriate measures to shield them from the effects of war. The Fourth Geneva Convention of 1949 concerning the protection of civilians during armed conflicts recognizes children as civilians who do not participate in hostilities and grants them special protection in addition to the general protection afforded to all civilians.

In the mid-1970s, the United Nations General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict¹. Later, in 1989, the international community adopted the Convention on the Rights of the Child, which has been ratified by more than 191 states². The following year, in 1990, the World Summit for Children was held in New York, where the World Declaration on the Survival, Protection, and Development of Children was endorsed, accompanied by a Plan of Action for its implementation³.

In 1993, the UN General Assembly mandated experts to examine the impact of armed conflicts on children—not only during conflicts but also in their aftermath⁴. Consequently, alleviating the suffering of children in war zones became a primary international concern, leading to the adoption of a special protocol on the rights of the child on 25 May 2000⁵.

However, reality demonstrates that children are no longer shielded from armed conflicts. They have become both victims and participants, as seen in the widespread phenomenon of child recruitment into combat, espionage, and military deception. Those who survive such conditions often face displacement and forced migration, living through fear and trauma that leave deep psychological scars and hinder their development, giving rise to a lost generation with an uncertain future.

This study seeks to examine the legal status of the child during armed conflicts. While the term “legal status” generally encompasses both rights and obligations, the child, as a legally incapable person, possesses rights without corresponding obligations under both international and national law, since responsibility lies with those charged with their protection.

The study also highlights the mechanisms established to safeguard children’s rights during armed conflicts and evaluates the effectiveness of international efforts aimed at the reintegration and rehabilitation of child victims of war.

This study raises a crucial research question : *What are the rights enjoyed by the child during armed conflicts?*

Firstly :The Child in Law

The international community has devoted considerable attention to the protection of human rights in both peace and wartime through a series of international and regional conventions and charters that states have committed to

uphold. Within this framework, the child has been granted special protection—both at the national and international levels—particularly during armed conflicts, when the logic of law often collapses. In light of the expansion of armed conflicts and their growing impact, children have increasingly become direct participants and victims of these situations. This chapter examines the legal status of the child during armed conflicts within the framework of international humanitarian law and the law of armed conflict. It also outlines the international and regional mechanisms established to safeguard the rights of children during such periods.

I-1- The Concept of the Child in International Humanitarian Law

The definition of the child in law extends beyond linguistic or terminological boundaries. It encompasses a set of responsibilities borne by the child's family, represented primarily by the parents, the state, and ultimately, the international community.

I-1-1- The Linguistic Definition of the Child

Linguistically, the term “child” refers to a newborn or an individual from birth until puberty⁶. This meaning aligns with the Qur'anic verse: “*then bring you forth as infants, so that you may reach your prime.*”⁷. The child is, therefore, a minor who depends on others for care and guidance until the attainment of social and psychological maturity—reaching the age of legal majority—without reliance on a specific minimum or maximum age⁸.

I-1-2- The Legal Definition of the Child

Legally, both national and international legislators have paid significant attention to the status of the child, though a uniform definition has not always been codified. For instance, the 1989 Convention on the Rights of the Child (CRC)—adopted by the United Nations General Assembly on 20 November 1989, marking the thirtieth anniversary of the Declaration of the Rights of the Child—entered into force on 2 September 1990 after ratification by twenty states. By 24 January 1997, 189 countries had ratified the Convention⁹.

The CRC constitutes the principal global legal framework ensuring the protection of the best interests of the child. It guarantees the child's right to healthy and natural development—physically, mentally, morally, spiritually, and socially—without discrimination and in full respect of human dignity.

According to Article 1 of the CRC: “A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Hence, an individual is considered a child if they have not reached the age of eighteen, unless their national legislation defines the age of majority at a younger age¹⁰.

Similarly, the African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa in July 1990, defines in Article 2 that: “A child means every human being below the age of eighteen years.” Given that the protection of children represents one of the most fundamental obligations of the

international community, criminal responsibility is recognized for those who violate these protections—including parents, families, states, and the broader global community¹¹.

The Rome Statute of the International Criminal Court (ICC) also reflects this principle. Article 26 stipulates 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 a crime.” This provision exempts minors under eighteen from the Court’s personal jurisdiction, affirming that international criminal responsibility applies only to adults.

At the national level, legislative systems have similarly defined childhood through protective legal frameworks. For example, Article 2 of Algerian Law No. 15-12 on Child Protection defines a child as “*any person who has not reached the full age of eighteen (18) years.*” The law recognizes the child as a vulnerable human being whose physical and psychological integrity must be preserved. Any act of harm, neglect, or violence against the child constitutes a direct threat to their safety and development¹². While the child possesses a distinct legal status, this differs from other protected groups. The child holds rights but no legal obligations, as they lack full discernment and responsibility. Responsibility instead lies with those entrusted with their protection—parents, guardians, or the state.

Although national and international legal systems may vary in terminology or thresholds, they converge on one principle: a child is anyone under the age of eighteen, entitled to full protection and developmental support—both in peacetime and during armed conflict.

I-1-3- The Recruitment of Children in Armed Conflict Law

The phenomenon of child recruitment and involvement in armed conflicts has escalated sharply. Due to violence and armed hostility, refugee camps have housed more than five million children, alongside over twelve million others left homeless. During the 1990s alone, countless children were abducted and subjected to slavery, with many coerced into combat roles¹³.

Despite global progress, humanitarian conscience remains dormant. In 2016, more than 8,000 children were recorded as victims of armed conflicts, according to UN Secretary-General spokesperson Stéphane Dujarric¹⁴.

In international humanitarian law, a child is generally defined as a person under the age of fifteen. The law does not establish a uniform definition but considers this age threshold to delimit child protection in armed conflict. The Fourth Geneva Convention adopts various age classifications to address children’s specific protection needs, ranging from newborns and children under seven or twelve years of age to those under eighteen, especially regarding forced labor or capital punishment. Article 77 of the 1977 Additional Protocol I provides protection for persons under eighteen, recognizing them as children.

Thus, limiting the definition of children to those under fifteen would undermine their broader protection and contradict the spirit of humanitarian law¹⁵.

The law of armed conflict does not explicitly define “child” but instead specifies the legal age for protection during wartime, aligning with human rights law. Initially, the maximum protection age was set at fifteen years. The UN Security Council recommended that states ratify the relevant international humanitarian, human rights, and refugee conventions prohibiting the use of children in hostilities, deeming the recruitment of children under fifteen a war crime¹⁶. Furthermore, Article 8 of the Rome Statute of the International Criminal Court (ICC) classifies the conscription or enlistment of children under fifteen as a war crime within the ICC’s jurisdiction, provided that such acts occur during armed conflict. Crimes outside such contexts do not qualify as war crimes. This interpretation extends child protection up to the age of fifteen¹⁷.

I-2- International and Regional Mechanisms for the Protection of Children’s Rights During Armed Conflicts

International humanitarian law does not distinguish between civilians and non-combatants but acknowledges that children, due to their vulnerability, constitute the most fragile group among civilians. As non-participants in hostilities, they benefit from special guarantees granted by the international community. During international armed conflicts, children are entitled to protection under the Fourth Geneva Convention (1949) and Additional Protocol I (1977).

Articles 27–39 of the Fourth Geneva Convention and Articles 48, 51, and 75 of Additional Protocol I outline general child protection measures during armed conflict¹⁸:

- Humane treatment of children.
- Respect for their physical and mental integrity.
- Prohibition of coercion and sexual violence.
- Ban on torture, collective punishment, and reprisals.
- Prohibition of hostage-taking.
- Protection against direct attacks targeting civilians, including children.

In cases of non-international armed conflict, Article 3 common to the four Geneva Conventions provides essential guarantees for persons not participating in hostilities. These include humane treatment without discrimination based on color, religion, or race, and a prohibition on hostage-taking. Children also benefit from the principle of civilian immunity and the prohibition of acts intended to spread terror among civilians, as stipulated in Article 13 of Additional Protocol II (1977)¹⁹.

Despite these conventions, existing legal frameworks proved insufficient, prompting the establishment of specific mechanisms under international humanitarian law to ensure effective child protection. When perpetrators of

violations disregard these safeguards, judicial and punitive mechanisms become necessary to enforce international criminal responsibility.

I-2-1- The Role of the Security Council in Protecting Children's Rights During Armed Conflicts

Although the United Nations has often failed to prevent wars, it remains committed to protecting vulnerable civilian groups, especially children. The UN Charter's preamble expresses the organization's dedication to saving future generations from the scourge of war. The Security Council, endowed with primary responsibility for maintaining international peace and security²⁰, has issued several resolutions addressing children affected by armed conflict.

On 25 August 1999, Resolution 1261 strongly condemned the targeting of children, sexual violence, abductions, forced displacement, and child recruitment, as well as attacks on locations sheltering children²¹. In 2001, Resolution 1379 called for enhanced protection, guidance, and support for children in peacebuilding, peacekeeping, and conflict resolution processes.

Recognizing the persistence of child suffering, Resolution 1882 (2009) reaffirmed the responsibility of all states to end impunity and prosecute those responsible for genocide, crimes against humanity, war crimes, and other grave offenses against children²².

However, the Security Council's efforts have been insufficient to halt the escalation of human rights violations, particularly those against children. Its limited capacity has rendered it largely reactive. In parallel, the UN General Assembly has addressed child protection through instruments such as the *1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict*²³.

This declaration urges member states to prohibit chemical weapons due to their harmful effects on children and to implement guarantees consistent with the 1924 Geneva Protocol and the 1949 Geneva Conventions. It also prohibits bombing civilian populations and mandates states to take measures preventing persecution, torture, and punitive acts—especially against children.

I-2-2- The Role of the General Assembly in Protecting Children During Armed Conflicts

The UN General Assembly has issued several resolutions to strengthen child protection in armed conflict and reinforce adherence to international humanitarian principles. Notably, Resolution 51/77 urged states to respect the Geneva Conventions and their 1977 Additional Protocols. It also called upon UN agencies and programs to take practical measures ensuring child protection during armed conflicts and to prevent acts of persecution, torture, and punitive measures against them²⁴.

Child protection during armed conflict has since become a permanent agenda item for the General Assembly, often addressed through specialized committees. A special session devoted exclusively to children was held in May

2002, marking the first of its kind, which called for ending child exploitation and impunity. An earlier special session, Resolution 94 (1999), followed up on the *World Summit for Children*²⁵.

A major limitation of international conventions, such as the 1989 *Convention on the Rights of the Child*, is that they do not empower committees to receive individual complaints or specify enforcement procedures for violations²⁶.

Beyond the UN, other mechanisms also play key roles in protecting children's rights, including the *Committee on the Rights of the Child*, the *International Committee of the Red Cross (ICRC)*, *UNICEF*, and *Protecting Powers*²⁷. Additional international bodies are likewise engaged in promoting and enforcing child protection.

These mechanisms collectively affirm international criminal responsibility for violations of children's rights, both at national and international levels. National courts act as the primary guarantee for implementing international humanitarian law and reaffirming state obligations to uphold it²⁸.

I- The Impact of Armed Conflicts on the Child and the Effectiveness of His Rehabilitation and Reintegration into Society

Armed conflicts refer to wars that arise either within a state or between two or more states. When they occur between states, they are classified as *international armed conflicts*, to which an extended set of rules applies, including the provisions of the Hague Conventions of 1889–1907, the Four Geneva Conventions of 1949, and the First Additional Protocol²⁹.

Non-international armed conflicts, on the other hand, are those that occur within the territory of a single state, usually between regular armed forces and an organized armed group that has rebelled against the government, or between rival armed groups fighting each other. According to international humanitarian law, children are entitled to protection in both international and non-international conflicts, as they are considered civilians not taking part in hostilities³⁰. Regardless of whether these conflicts are international or non-international, they have the same devastating effects on children. The psychological, educational, cognitive, and moral foundations of children are severely affected, as they represent the most fragile victims of violence³¹. Exposure to scenes of brutality and killing alters their behavior, leading them to adopt violence as a means of self-defense³².

This chapter explores the repercussions and consequences of armed conflicts on children.

II-1-The Effects of Armed Conflicts on the Child

Children are no longer merely victims in armed conflicts. Developments in modern warfare have introduced new forms of child exploitation—both *direct*, through recruitment and forced participation in combat, and *indirect*, through

their use as spies, messengers, or informants. The most significant impacts they face include:

- **Killing and denial of basic rights:** According to the most recent statement by the Special Representative of the UN Secretary-General for Children and Armed Conflict, more than two million children have been killed in armed conflicts, while over six million others have been permanently disabled³³. Added to this is the phenomenon of *sexual violence*, which leaves profound scars not only on the child but on the entire community. Even after conflicts end, reintegrating victims of such trauma into society becomes extremely difficult, if not impossible³⁴.

- **Recruitment and forced participation in hostilities:** The participation of children in armed conflicts has become widespread. Warring parties often compel children to engage in hostilities, train them to kill, or use them to transport equipment and weapons. The proliferation of automatic weapons has made it easier for children to handle them, further facilitating their illegal use in warfare. A report by Amnesty International noted that since 2000, children under the age of eighteen of both genders have taken part in armed combat—some within armed groups, others within government forces. They have been found among the front-line fighters in *Burundi, the Democratic Republic of Congo, Myanmar (Burma)*, and in other countries such as *Indonesia and Nepal*. In some cases, they have been used as informants, spies, or collaborators³⁵.

Secondly : The Role of International and Regional Efforts in the Child's Rehabilitation and Reintegration

Article 40 of the *Convention on the Rights of the Child* encourages the development of appropriate and effective means of dealing with children who are victims of armed conflict³⁶. These programs rely on the principles of *truth* and *reconciliation*. They aim to assist those affected by such conflicts by providing reparations to victims and helping them reintegrate into society through participation in restorative activities—especially in the case of child soldiers³⁷.

Such programs require the release of recruited children, followed by care and rehabilitation. These mechanisms are considered the most suitable for ensuring the child's contribution to security and stability, enabling recovery and reintegration. The child, as previously mentioned, holds a distinct legal status—he is a vulnerable subject with rights but without legal obligations. Therefore, instead of prosecuting him, efforts must focus on reintegrating him into society, restoring his psychological stability, and achieving social reconciliation through family and community acceptance³⁸.

Conclusion

Reports submitted to the United Nations have revealed that children are no longer mere victims of killing, mutilation, or psychological trauma. The child—once a witness to war—has become an instrument serving armed conflict itself.

This reality, described as “*innocence under suspension*”, reflects the phenomenon of child recruitment during armed conflicts and its long-term consequences.

Surviving children often face displacement, exile, and the resulting tragedies, sometimes even leading to death. Since the future of nations depends on the condition of their children, societies affected by armed conflicts are left with an entire generation lost to years of devastation—both in conflict zones and in refugee camps.

The following recommendations are proposed to mitigate these phenomena and restore the child’s psychological well-being after armed conflicts:

1. Establish specialized centers and associations composed of psychologists, educators, and social scientists to support the child’s rehabilitation and help families reintegrate them³⁹.
2. Release all recruited children, raise their awareness about the dangers of violence, and guide them toward participating in community reconstruction and rehabilitation efforts⁴⁰.
3. Ensure that specialized committees and civil society organizations prevent contact between children and warring parties⁴¹.
4. Enhance educational and recreational programs in coordination with national legislation to promote reintegration⁴².
5. Create safe zones for children and their families, away from combat areas, to minimize exposure to conflict and prevent further trauma⁴³.

Margins

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