



Protecting Children in Armed Conflict Executive Summary

This document summarises the findings of the report *Protecting Children in Armed Conflict*, led by Shaheed Fatima QC (published in 2018 by Hart/Bloomsbury), and produced for the Inquiry on Protecting Children in Conflict, chaired by Gordon Brown. Theirworld and Save the Children Fund have supported the work of the Inquiry.

Theirworld is a global children's charity dedicated to ending the global education crisis and ensuring every child has the best start in life, a safe place to learn, and skills for the future.

Save the Children exists to help every child reach their full potential. In the UK and around the world, we make sure children keep safe, healthy and learning, and change the future for good.

The Global Health Academy at the University of Edinburgh hosts a new multi-disciplinary Learning Hub dedicated to ensuring that the protection of children in armed conflict becomes a focal point of the global agenda, sharing knowledge and improving access to evidenced-based information. The Learning Hub is open to members from across the globe, and will act as a resource to support communities in engaging with the collective issues outlined in this Report.

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Contents

Introduction	5
The accountability gap	8
Moving to a 'single instrument'	11
Implementation of a single instrument	12
Improvements to existing laws	15
Conclusion	16

Introduction

In conflicts across the world, children are on the frontline.

In towns and cities, they are bombed in their schools and homes, or maimed by improvised explosive devices. Humanitarian blockades deny them access to food, shelter, and life-saving medicines. Some are targeted because of their ethnicity, some because of their faith; young girls are raped or abducted by armed groups. There may never have been a golden age in which respect for human rights protected children from war. But by any measure of suffering experienced by children caught up in conflict, we are living in a truly dark age.

An estimated 420 million children¹ — 1 in 5 — live in conflict zones today, with Syria, Yemen, Myanmar, South Sudan and the Democratic Republic of Congo prominent among them. Wars between states may have declined over the past 15 to 20 years, but conflicts within borders have multiplied, and become more urbanised and improvised, so increasing the dangers to vulnerable members of the population. In 2019, the United Nations Secretary-General's report on children and armed conflict verified 24,000 grave violations of children's rights during the previous year with more than 1,000 attacks on schools and hospitals.² Covid-19 is only likely to have exacerbated the vulnerabilities of children in conflict.

One of the defining features of this dark age is the culture of impunity surrounding those who deliberately harm or fail to protect children. The intensity, scope and impact of the violence inflicted on children points to systematic violations of both civil and criminal international law. Yet the perpetrators of these violations, and the leaders who authorise or simply tolerate their actions, seldom face justice, or even fear prosecution. The only effective antidote to this culture of impunity is the rule of law enforced by effective institutions.

Opposite
In schools in Aleppo, students are taught how to move around safely in the city. They are told, among other things, that they must avoid the alleys and stay in the middle of the road to avoid stepping on something, which can cost them their life.
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Protecting Children in Armed Conflict, the report summarised here, represents a comprehensive legal assessment of the relevant international law. It offers a re-examination of a critical but unresolved problem, and sets out proposals designed to end what has justly been described as ‘the war on children’.³

The report was produced by the Inquiry on Protecting Children in Conflict, established by Gordon Brown, the former UK prime minister, in April 2017 and led by the international lawyer Shaheed Fatima QC, with the support of a dozen distinguished lawyers. The Inquiry was backed by the charities Save the Children and Theirworld.

The report’s principal suggestion is the creation of a single international instrument that combines existing legal protections for children in armed conflict, buttressed by an international institution empowered to monitor and adjudicate the implementation of that instrument. Both initiatives could be incorporated within the existing architecture of the UN Convention on the Rights of the Child (CRC). In addition, the report identifies improvements to current international law, as well as the pressing need for states to ratify existing treaties and protocols.

This is a considerable but vital challenge, and we are certainly not the first generation to grapple with it. Save the Children was founded 100 years ago in response to the impact on children of a post-First World War British humanitarian blockade which compounded famine conditions in Austria and Germany. In 1939, and again in 1946, attempts were made to draft international instruments to protect children in armed conflict. Neither moved beyond preliminary stages.

The idea of a separate instrument to protect children in armed conflict was also considered during the debates that led to the Fourth Geneva Convention (GCIV). But participants ultimately decided to build protection for all civilians into the Convention. Although some provisions specifically refer to children, the Convention does not expressly state that children are entitled to special treatment in war time. This left a gap in international law.

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Since GCIV was adopted in 1949, there have been attempts to fill that gap, in particular with the CRC, agreed in 1989. The CRC provided a much-needed common lens for focussing on children’s rights. But even during its negotiation, there were concerns that it was insufficiently robust to adequately protect children caught up in armed conflict. Following the horrific wars in the former Yugoslavia and the Rwandan genocide, concerns about the adequacy of international law escalated and led, eventually, to the Rome Statute in 1998 and the establishment of the International Criminal Court (ICC) in the Hague.

In 1996 Graça Machel, the former education minister of Mozambique, was commissioned by the UN Secretary-General to produce a report on the issue of children in armed conflict. Her ground-breaking work documented in painstaking — and painful — detail the experiences of children caught up in conflict around the world. Issuing a bold call for action, she said ‘Let us claim children as “zones of peace”’.⁴

A key recommendation was the establishment of a Special Representative of the Secretary-General for Children and Armed Conflict. Since 1997 the Special Representative has reported annually to the UN General Assembly and the Human Rights Council, and raised the challenges faced by children before the Security Council, which has passed several resolutions on the issue since the Machel Report.

For all the progress the Machel Report has produced, the pattern of limited progress through piecemeal legal developments since GCIV has continued. This means that there is still no single comprehensive instrument that directly protects children in armed conflict.

“
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”

Graça Machel, former
education minister of Mozambique

The accountability gap

International laws, developed over many decades, demonstrate that the international community fully appreciates the importance of protecting children in conflict. However, those good intentions are undermined by two underlying weaknesses: the fragmented nature of legal protection in international humanitarian law and international human rights law, and the lack of compliance with, and implementation of, what protection there is.

Derived chiefly from the Geneva Conventions, the Additional Protocols and customary international law, international humanitarian law includes protection for civilians during war or conflict, principally as carried out between states.

Below

A young child looks on as older boys play football next to a camp for internally displaced persons in Somalia
© UN Photo / Tobin Jones



Meanwhile, international human rights law consists of a variety of instruments that apply in peace time as well as in war, and also exists as a matter of customary international law. The instruments — some of which are regional such as the European Convention on Human Rights — address a range of issues, such as the prevention of torture, the elimination of racial discrimination and, in the CRC, the rights of the child.

This patchwork of civil laws and instruments means that identifying and applying the applicable legal framework for protecting children during conflict is a complex task. For example, the international humanitarian law rule that children warrant special protection in armed conflict can be found in three different sources (Additional Protocol I; Additional Protocol II and customary international law) and it is differently expressed in each formulation. This complexity is likely to be particularly difficult for non-state armed groups (some of whom have political aspirations which motivates them to seek legitimacy, including by acting in compliance with international law) and victims — both of which are less likely to benefit from access to expert legal advice and representation than states.

International criminal law is easier to identify since it has been collected in the Rome Statute, which also created a means of prosecuting individuals for war crimes and crimes against humanity — the ICC. For all the challenges faced by the ICC, it is an important source of accountability. But the Rome Statute has not been as widely ratified as it should be and so the accountability it provides is limited. Furthermore, although individual criminal accountability is important, it should be supplemented by the wider, systemic protections provided by international humanitarian law and international human rights law.

In contrast to international criminal law, there is no singular instrument that sets out the legal framework for international humanitarian law or international human rights law and that can be applied to children in armed conflict. As a consequence there is no civil international body with the specific jurisdiction to resolve claims by victims or monitor compliance and provide accountability.

The lack of such a mechanism at the international level makes it extremely challenging for victims to secure accountability. But it also means that domestic implementation and enforcement of the relevant civil international law is less effective and less developed than it should be.



Opposite
In Bangladesh, Mohammed Yasin, 8, is amongst the newly arrived Rohingyas living in shelters at the Kutupalong makeshift camp in Cox's Bazar
© UNICEF / Brown

Moving to a 'single instrument'

There are five main reasons why a single civil instrument with its own accountability mechanism (such as a court or tribunal) would help address the systemic problems hindering the protection of children in conflict:

- 1 Accountability**
One instrument would make it easier (i) for states to implement the necessary domestic laws and to facilitate the enforcement of those laws before domestic courts and (ii) for an international institution to monitor and assess the adequacy and effectiveness of that domestic implementation.
- 2 Easy identification**
The new instrument would collect currently scattered legal provisions in one place and codify existing rules in customary international law. That contrasts with the present situation where the multiplicity of instruments and associated bodies creates greater risk of confusion, omission or inaction.
- 3 Simplification**
One instrument would reduce the present need (i) to work out what the various sources of law provide; (ii) to work out when they apply; (iii) to ascertain whether one source is more protective than another and (iv) to consider the relationship between treaty provisions and customary international law.
- 4 Clarification**
The new instrument would clarify the law by defining important, but presently vague, concepts or terms and identifying more precisely the scope of unclear protections.
- 5 Develop standards**
The new instrument would also provide an opportunity to develop the law.

The new instrument would not require the invention of a new architecture. Even if this were desirable, the political obstacles to the collective action required would be considerable. Building on the foundations of the current CRC system is likely to be more practical and more effective.



- **Given the experience and knowledge already residing in the CRC Committee and its 18 experts, it would be fitting to expand its functions to include those relating to the new instrument.** The CRC could, therefore, be endowed with the power to monitor domestic implementation of the instrument, receive complaints from victims and conduct inquiries regarding violations of the rights contained therein.
- **The role of the Special Representative for Children and Armed Conflict would enlarge, in order to assist the CRC Committee in its expanded role.**
- **The instrument would bind both states and non-state armed groups.** States would be required to ratify and implement the relevant parts of the Optional Protocol into their domestic laws. Non-state armed groups would be encouraged to pledge to uphold the standards in it and to accept the related competence of the CRC Committee.
- **Unlike the ICC, the CRC Committee would be able to receive complaints directly from victims and their families.** The CRC Committee already has that competence in relation to the CRC in general (and where States have ratified the third Optional Protocol), as do other UN treaty bodies (for example those that exist under the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination Against Women). Those complaints would be made and determined on paper, i.e. without hearings. The CRC Committee would also have the jurisdiction to conduct inquiries and to hear evidence, where necessary.

We recognise that there may be reservations about our suggestion of one new instrument. It could be argued that it would further fragment international law and undermine what coherence there is. We would contend that the new instrument would only be fragmentary if it was treated as yet another source of law. It should not be. It should be regarded and used as a comprehensive coherent source of international humanitarian and human rights law, offering the best opportunity, especially in the long term, of providing clear and enforceable protection for children in armed conflicts.

Implementation of a single instrument

- **The instrument could be created as an Optional Protocol to the CRC, a commonly used device in treaties and conventions.** The CRC already has three: the Optional Protocol on the involvement of children in armed conflict, which raised the age for participation in armed conflict to 18; the Optional Protocol on the sale of children, child prostitution and child pornography, and another on a communications (i.e. accountability) procedure.
- **It would, at the very least, cover the 'six grave violations' of children's rights during armed conflict already monitored by the Special Representative,** namely: (i) recruitment or use of children; (ii) killing or maiming of children; (iii) sexual violence against children; (iv) attacks against schools or hospitals; (v) abduction of children; and (vi) denial of humanitarian access to children.



Opposite

In Afghanistan 3.7 million children are out of school, girls comprise 60 % of out-of-school children and only 54 % of enrolled children complete primary school.
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Improvements to existing laws

In addition to the single instrument and accompanying civil accountability mechanism, the report also calls for improvements to be made to the substance of existing law.

These improvements could be made even if the suggestion of the single instrument is not pursued; if the instrument is pursued then these improvements could be made to the law as contained in that instrument. There are three broad categories of improvements:

- **Some laws are vague or ambiguous and need to be clarified.** One example is that the position (under the Geneva Conventions and the Rome Statute) of 'child soldiers' abused by their own group is currently unclear.
- **Some protections are under-developed or even absent and need to be strengthened.** For example, schools and hospitals are protected by general humanitarian protections regarding civilian objects. But there is no specific prohibition on targeting schools, whereas there is one for hospitals, even though they, like hospitals, contain a vulnerable category of people – children – who warrant special, express protection. Consideration should be given to changing the law to establish a specific prohibition on targeting schools. Another example is that parties to conflicts do not have an obligation to agree measures such as temporary ceasefires and humanitarian pauses to ensure humanitarian access to children in conflict areas. The law should be developed so that parties to conflicts are obliged to try to agree such measures.
- **Some instruments would benefit from greater ratification,** which would demonstrate political will and commitment to upholding the norms and mechanisms in these instruments. For example, Additional Protocol I and Additional Protocol II to the Geneva Conventions, the three Optional Protocols to the CRC listed above, and the Rome Statute.

All these steps would enhance the substance of available protections as well as international accountability.

Conclusion

The protection of children in armed conflict demands to be at the centre of the global agenda for two powerful reasons. First, the laws, rights and norms governing the protection of civilians in conflict were drafted in response to 20th century wars that illustrate the worst of humanity. But they also enshrine the values, rights and obligations that define us a global community. We allow the erosion of these assets at our collective peril.

Secondly, even though we are falling short in our moral duty of protecting children adequately, in an increasingly fractured world children can serve as a unifying force. Their rights and their claim on our protection transcend national borders, cultures and faiths. As Eglantyne Jebb, the founder of Save the Children, once put it: 'Every generation of children offers mankind the possibility of rebuilding his ruin of a world.'

If humanity cannot come together to protect children from the horror of war, what hope is there for international cooperation in other areas?

Perhaps the unifying force of the young explains why global awareness of conflicts and their consequences for individuals is often driven by images of suffering children, such as that of a naked Phan Thi Kim Phuc, the 'napalm girl' fleeing a bombing in the Vietnam War, or the photo of the body of three-year-old Syrian refugee Alan Kurdi, washed up on a Turkish beach in 2015.

Our emotional response to the pain and tragedy endured by our most vulnerable should provide that elusive factor — common ground — and, therefore, an opportunity for inspiring collective action to shield our children from what Graça Machel called 'unregulated violence and deliberate victimisation'.

The problem requires a holistic and multi-disciplinary approach. Political will is essential to achieving legal reform and enforcing the law, while caring for the physical and psychological well-being of children, and proper consideration of educational, economic and socio-cultural issues, are also crucial.

We recognise that advancing the proposals in this report entails considerable challenges. Regard for justice and human rights frequently takes a backseat in times of war, and conflict habitually erodes already weak institutions responsible for executing justice and accountability.

Yet we firmly believe that, fundamentally, there is sufficient underlying agreement and political desire in the international community to make progress. We sincerely hope that our suggestions will provoke a debate that ultimately leads to meaningful and lasting reform.



References

1 — Page 9: <https://www.savethechildren.org/content/dam/usa/reports/ed-cp/stop-the-war-on-children-2019.pdf>

2 — Report of the UN Secretary-General to the General Assembly Security Council, Children and armed conflict, A/73/907-S/2019/509, 20 June 2019.

3 — Page 7: <https://www.savethechildren.org/content/dam/usa/reports/ed-cp/stop-the-war-on-children-2019.pdf>

4 — Para 318: https://www.un.org/ga/search/view_doc.asp?symbol=A/51/306

Opposite

Before the war Aleppo had 4,225 schools. Now, the number has fallen to 1,250. A lot of them are not even suitable for schooling; one in three schools cannot be used because it is either damaged, destroyed, sheltering displaced families or used for military purposes
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Above

Children use drawings as a way of depicting events in Myanmar

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Front cover

Basel, 7, was displaced with his family from Sinjar in eastern rural Idlib to Batbu camp, in western rural Aleppo. Basel does not go to school as the nearest one is 6 kilometers away; a long and tiring walk for children

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Theirworld

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