



THE PROTECTION OF CHILDREN DURING ARMED CONFLICT

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Abstract:

This study aims to clarify the legal protections provided for children during armed conflicts in accordance with the rules of international humanitarian law and public international law, by determining the legal status of children during armed conflicts, whether in terms of the concept of children covered by protection, as well as the international measures established in this framework, or in terms of the legal mechanisms established to protect children during armed conflicts, whether established under the rules of international humanitarian law or public international law.

Keywords: *Children, Armed conflicts, International humanitarian law, Public international law.*

INTRODUCTION:

The conflict is traditionally understood, and a feature of ancient humans appeared since. Latter is manifested in the conflict that existed between the son of Adam peace be upon him, "Kabil and Habil", and with time conflicts have evolved to be crystallized in the form of wars, where it is no longer possible in Nowadays anyone to ignore this incident, or deny the damage that could result in them and the threat caused by human beings in general, and children in particular, who appear in them qualities of weakness and inability to protect themselves, leaving them vulnerable to many risks during armed conflicts For this reason, the international community agreed on the need to protect this vulnerable group of the society.

This interest began after the end of the First World War, which resulted in the killing unknown numbers of children. That the first initiative of actual to help children was in Brussels, Belgium in 1913, and in 1920 established the International Federation to help the child under the auspices of the International Committee of the Red Cross. Then 1923 issued the Declaration of Geneva, which was approved by the League of Nations at the time in 1924. however, and after World War II, it has been observed deficiency in the rules for the protection of children, prompting the international community to move again and make more of an effort to develop international legal norms for the protection of children in armed conflict ended conclusion of the four Geneva Conventions of 1949, then signed two optional protocols, and it was at a diplomatic conference of the year 1974 to the year 1977, the subject of the First Protocol of international armed conflicts, while the subject of Protocol II is thenon-internationalarmed conflict. The International efforts are also rolled thereafter until the other is crowned in 2000, by issuing a special protocol of recruiting child in armed conflict¹.

From this point we can say that this issue is gaining great importance, especially in light of the current circumstances experienced by the world, because of the large number of armed conflicts, most notably the conflict in Iraq, Palestine and Afghanistan. The catastrophic situation experienced by children in particular every day in these countries, we feel the importance of this study lead us to know the adequacy of mechanisms for the protection of children during armed conflict or not, especially in front of the evolution of the conflicts that have become the means used and internationally prohibited weapons.

1- Jenny Kuper, Military Training and Children in Armed Conflict: Law, Policy and Practice, Martinus Nijhoff Publishers, 2005, p 2-3



The problematic of this study centered on the adequacy of the international protection of assessments for the protection of children during armed conflicts International? And what is the extent effectiveness of the mechanisms of implementation of the provisions of this protection?

To answer this question, we divide this study into two parts:

I- **The legal status of children in armed conflicts:**

II- **II- The International mechanisms for the protection of children during armed conflicts**

I- **The legal status of children in armed conflicts:**

To determine the legal status of children in armed conflicts, we must first define the child protected, then the measures international established for the protection of children in armed conflicts.

1- **Definition of the child protected:**

To define the concept of a child who is covered under the protection of international law in armed conflicts, we must refer to the total and international law in armed conflicts, we must refer to the total and international conventions relating to armed conflicts, the latter has developed a set of criteria on which begins and ends stages of childhood, which shows the legal status of children in armed conflicts.

We find that the provisions of the Geneva Conventions of 1949, and the additional Protocols of 1977, have developed several criteria to determine the concept of child, considering article 38 of the fourth Geneva Convention that a child, who has not attained 15 years, is one of the civilian population who is admitted in hospitals or safe areas² consequently, and according to this text, a person who exceeds the age of 15 do not benefit from the protection provided in this convention, which was confirmed by article 37 paragraph 2 of protocol 1, and article 4 paragraph 3 of protocol 2³, where the latter stipulates that benefit children under 15 years of special protection where they are prisoners of war or not.

While we find other texts have not approved contrary to the age indicated by the above stipulations, as in the case of article 86 paragraph 4, which stipulates the inadmissibility Implementation the death penalty against a protected person who was under eighteen years of age the time for the offence⁴.

It means that each of no more than 18 years, is in the rule of children who are covered by the protection, while other texts in return, has come completely free of reference to the age of the child, just as article 78 of protocol 1, which talked about the absolute evacuation of children without specifying a certain age of the child who has this right.

And in addition to the four Geneva conventions and the additional protocols, we find that the convention on the right of the child 1989⁵, as identified in the first article the concept of the child as (a person under 18, unless national laws recognize an earlier age of majority)⁶.

2- Décret présidentiel n° 89-68 du 16 mai 1989 pour l'adhésion aux protocoles additionnels aux conventions de Genève du 12 Aout 1949 relatifs à la protection des victimes des conflits armés internationaux (protocole 1) et non internationaux (protocole 2), adopté à Genève le 8 Aout 1977

3- Article 38/5 of the convention 4 relative to the protection of civilian persons in time of war, Geneva, 12 August 1949, provides that : (Which the exception of special measures authorized by the present convention, in particular by articles 27 and 41 thereof, the situation of protected person shall continue to be regulated, in Principle, by the following rights shall be granted to them :

- Children under fifteen years...shall benefit by any preferential treatment to the same extent as the nationals of the state concerned)

4- Article 68 paragraph of the convention 4 relative to the protection of civilian person in time of war, Geneva, 12 August 1949

5- Adopted and opened for signature, ratification and accession by General Assembly resolution to the united to the United Nations No 44/25 dated November 20, 1989, and entered into force on September 3, 1990 in accordance with article 49 of them



Through this article, then it is clear to us, which even the protected children who have rights under this convention, requires the availability of two conditions, the first condition lies in the phrase "did not exceed 18 years". This requirement includes two things, first of all those who have not attained the age 18 years old is a child, and the second thing is not to be considered a child every person over the age of 18. And the second condition is in the phrase "unless majority is attained earlier under the law applicable to the child", which is considered a child every person under the age of majority according to the applicable law in the country.

Through what has been described above, we can say that in the absence of age in the text of the convention, the logic of things says that it is imperative that the child benefit from higher rights given by the age limit in the convention on the child under 18 years old.

As in the case of a text, the logic here requires that we take age set by the text of the convention.

2- The measures international established for the protection of children in armed conflicts

The international law of armed conflict gives the general protection for children, because they are civilians not involved in hostilities. It also gives them special protection, because they are weak individuals. According to determine the adequacy and effectiveness of international protection prescribed for children, we will analyze the provisions contained in the articles of the four Geneva conventions, and the convention on the rights of the child in particular, in addition to international conventions and declarations relevant to the protection of children in armed conflicts in general, by standing on two basic elements comes in first, measures of assessments for the protection of children in armed conflicts, and the second element includes assessments for the special measures to protect children in armed conflict.

A- The general measures of assessments for the protection of children in armed conflict

These primary objective of which is approved for him these general measures is the need to respect fundamental human rights, which apply to all protected persons during international armed conflicts. And as the children part of this system, it was logical that these measures apply to them.

In order to enjoy the basic right of children must be protected, against the excesses of the adverse party of power, enabling them to take advantage of the general provisions that apply to the territory of the parties to the conflicts and occupied territories.

The manifestations of protection against the excesses, of the warring parties appear in the 13 elements, provided for in article 27 of the fourth Geneva Convention, relative to the protection of civilian persons in time of war. By respecting children and their honor and their religious beliefs, customs, traditions, and human treatment at all times and shall be protected especially against all acts of violence or threat. From this standpoint, we find that the latter is intended primarily to ensure the physical and moral integrity of the child, which is the most important right at all⁷.

It includes the right to physical integrity ban compromising the lives of the child or his health, then it shall be treated humanely make him immune from any risk of extermination, murder, torture, on the grounds that the latter is and the agreement of the jurists breach of the duty of treatment humanity, in spite of the lack of a uniform definition and specific to the latter⁸.

As for the moral right, it means respect for all components of the moral values of human heritage, as children should be protected from defamation, and all sorts of offense against honor, as should also respect the religious beliefs of children and their traditions, on the grounds that

6- It is the same position adopted by the African charter on the rights of the child and welfare for the years 1990 who knew the child (every human being below 18 years). Gerlaine Van Bueren, *The international law on the rights of the child*, Martinus nijhoff publishers, 1989, Netherlands, page 38

7- Yves Sandoz, *Commentaire sur la convention de Genève relative à la protection des personnes civiles en temps de guerres*, 1 août 1949, op.cit, traitement, article 27, page 214

8- On This basis, Henri Cousier says : (Qui dit humanitaire se réfère à l'humanité dans la double acception ce terme, à savoir d'une part la généralité complète et indiscriminée du genre humain, d'autre part un comportement conforme à la dignité de l'homme, une bienveillance, une attitude fraternelle d'homme à homme que l'on considère comme le produit et la marque de la civilisation). Henri Cousier, *Définition du droit humanitaire*, annuaire français de droit international, 1995, volume 1, p 223



article 82 of the fourth Geneva convention states that:(The detaining power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particularly parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health, or for the purposes of enforcement of the provisions of chapter 4 of the present section. Internees many request that their children who are left at liberty without parental care shall be interned with them).

As well as article 49 of the same convention states that in the event of a partial evacuation of the occupying state to a certain area, it must not differential between family members⁹.

In this context, we note that these measures result in the foundation to the severity of the suffering that may be caused by the violation of such rights, and leave in the psyche of the child cruelty and fear.

It confirms to say the finding of the study conducted by UNICEF on children and war in 2009 that (The impact on children is more brutal than ever. The decade since the original Machel study has seen increased attention to mitigating the direct consequence of conflict, such as unlawful recruitment, gender based violence, killing and maiming, separation from families, trafficking and illegal detention. But the indirect consequences of war-the severing of basic services, and increased poverty, malnutrition and disease-take a similarly devastating toll on children)¹⁰.

And as well as the general measures designed to protect children against the excesses of parties to Armed conflicts referred to above. Children also enjoy because they are civilians protection during military operations, which mainly lies in the need to respect the rules of war, where should the distinction between civilians and combatants, and the prohibition of attacks on civilians, On the one hand, and to take precautions during the attack, on the other hand¹¹. Which was confirmed by article 51 of protocol 1, where stressed the need take into account a set of rules while conducting military operations including:

- Civilians shall enjoy the protection affords by this section, unless and for such time as they take, direct part in hostilities.
- Attacks against the civilian population or civilian by way of reprisals are prohibited.
- The presence or movements of the civilian population, or individual civilians shall not be used to render certain points, or areas immune from military operations¹².

B- The special measures of assessments for the protection of children in armed conflicts

In addition to general measures of assessments for the protection of children in armed conflict, we find that international law has given this category special protection because of the vulnerability associated with their age¹³. These special measures is the need to grant preliminary relief for

9- Article 49/3 of the fourth Geneva convention states that (The occupying power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation on is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated)

10- Machel study 10-year strategic review, children and conflict in a changing world, united nations children's fund UNICEF, April 2009, p 4-5

11- Article 48 of protocol 1 additional to the Geneva convention 1977 states that (In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflicts shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall their operations only against military objectives)

-Article 49 of protocol 1 additional to the Geneva convention 1977 12

13- The children fear was the most dominant sentiment and the most significant message from the children themselves the study team found, as on five years old girl, sheima, stated to the interviewers," they come from above, from the air, and will kill us and destroy, I can't explain to you that we fear this every day and every night". ANN Charlotte Nilson, children and youth in armed conflict, Martinus Nijhoff publishers, 2013, p 583

children at the civilian population, and prevent the evacuation of children by any party to the conflict, as stated in paragraph of article 18 of the first protocol.

Also article 23 of the fourth Geneva Convention stipulates the need to allow the free passage of all consignments of medical supplies sent to civilians, even if they were enemies, and also the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15 years, parties to a conflict must also ensure, in all cases, the children under 15 years, who are orphaned or separated from their families to practice their religion and to continue their education¹⁴. For this reason, article 50 of the fourth Geneva Convention stipulates the need for the occupying power to facilitate good management of all facilities dedicated to the education of children.

Also with regard to children who are in detention, he pointed to article 76 of the fourth Geneva Convention to the need to give the due diligence for the young detainees in the occupied state, and by giving them additional food, and the allocation of play grounds for children in all prisons¹⁵.

As well as article 77 of the protocol additional to the Geneva Convention of 12 august 1949, and relating to the protocol of victims of international armed conflict (protocol 1), 8 June 1977, stipulates that the parties to the conflicts shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age fifteen years but who have not attained the age of eighteen years, the parties to the conflicts shall endeavor to give priority to those who oldest.

If in exceptional cases, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this article, whether or not they are prisoners of war.

If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adult, except where families are accommodated as family units as provided in article 75 paragraph 5.

Based on the above, and in the March 4, 2012, in the case of conscripting of child soldiers, the ICC issued its ruling in the case, " Thomas Lubango Dyilo", where convicted of committing a war crime, because of the conscripting of children under five years, mandatory or voluntary in the national forces for the liberation of Congo, and using them effectively in hostilities¹⁶.

But despite these efforts made in order to reduce the phenomenon of the conscripting of children armed conflict, many children remain in a lot of children are conscripted to fight¹⁷.

II- The International mechanisms for the protection of children during armed conflicts

The status of the measures referred to above, to ensure the legal protection of children during armed conflicts, does not promise to be the first step, so it has to be put in place mechanisms to ensure respect for and implementation of these measures, we refer in this context that there are mechanisms established under the Conventions of international humanitarian law, and the other established under general international law, we will explain these mechanisms as follows.

14- Kevin Watkins ,Irina Bokova, The hidden crisis , armed conflicts and education, EFA Global Monitoring report, 2011, p 171

15- Article 89 and 94 of the fourth Geneva Convention

16- ICC-01/04-01/06 , 14 March 2012, Situation in the Democratic republic of the Congo in the case of the Prosecutor Thomas Lubango Dyilo, Summary of the judgment pursuant to article 74 of the statute paragraph 49, the text of the rule of the international criminal court ,as follows (The chamber concludes that the prosecution has proved beyond reasonable doubt that Mr Thomas Lubango Dyilo is guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the FOLC and using them to participate actively in hostilities...)

17- The number of children under the age of 18 who have been coerced on induced, either by the state or by non-state military groups, to take up arms as child slaves is generally thought to in the range of 300.000 with 120.000 of those in Africa alone. United Nation, Report of the secretary General to the security council on the implementation of resolution assembly, 55th session, New York, 2000



1-The protection of children during armed conflicts under mechanisms of international humanitarian law

There is at the level of international humanitarian law governing armed conflict regarding the implementation of planned measures to protect children in armed conflict, is three international mechanisms:

Is the international Committee of the cross, Garrison state, and the international Fact-Finding Commission.

With regard to the international committee of the Red Cross, although it work for the benefit of all victims of armed conflict, according to their needs and without discrimination¹⁸. On this basis the Commission is working well for the benefit of children's issues, because their needs differ materially from those special categories of the other victims, they perform their work on the protection of children before the outbreak of armed conflict and beyond, prominent among the resolutions adopted by the international committee of the Red Cross in this area.

Those recently adopted at the international conference 26 of the Red Cross, and Red Crescent in 1995. Where he developed a program aimed at protecting children in armed conflict in 1995, which stressed the need to respect the principal of non-recruitment and non-participation in armed conflict of children under the age of 18. In order that the commission committed states to take concrete measures to protect children and help victims of armed conflict, which meet the physical and psychological needs of children¹⁹.

As for the fact-finding committee, has established under article 90 of additional protocol 1 to the Geneva conventions of 1949, to ensure that children and the civilians victims of armed conflict and guaranteed to them under international humanitarian law, and have this committee officially in 1991²⁰.

Whose mission is to investigation in any business is described as a gross violation or breach under international humanitarian law, they are in principle, take the conduct of investigations by the chamber achieves composed of 7 members²¹.

But noticeable, here is that stumbled committee's work lies in the text of its establishment, article 90, paragraph (b) of the first protocol stipulates that are not eligible for the commission to conduct in investigations without the approval of the other party or other party concerned. Namely that the commission can not started the investigation, but after the approval of the party violator of international humanitarian law, and this is difficult to achieve, if not impossible to apply.

As it is not permissible for the commission to publish publicly findings, unless requested to do so by all parties to the conflict, and this also is difficult to accept by the party violator²².

C- The protection of children during armed conflicts under mechanisms of public international law

In addition mechanisms of international humanitarian law established for the protection of children during armed conflict, there are also mechanisms of public international law that deal with task of that protection of children during armed conflict, and are many and varied, among them the united nations conflict, and specialized organizations affiliated such as united nations children's fund UNICEF, and united nations high commissioner for refugees, and the world health organization, and non-international preoccupied with the protection of human rights in general,

18- 31 st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November-1 December 2011, Strengthening legal protection for victims of armed conflicts. Draft resolution & Report, Document prepared by the international committee of Red Cross, Geneva, October 2011, 31/IC/11/5.1.1

19- Nwanolue B.O.G, FRHD, and Victo Chidubem Iwroha, Legal protection of war victims in international and non-international armed Hostilities: A Scholarly exposition protocols of 1977. Journal of law, policy and globalization, vol 3, 2012

20- For more information on the origins of the fact-finding committees see, ICRC, The international Humanitarian fact-finding commission, p 1-2

www.icrc.org/assets/files/other/fact-finding-commission.pdf

21- Article 90 of additional protocol 1 to the Geneva Conventions of 1949

22- Article 90 paragraph 1 of additional protocol 1 to the Geneva Conventions of 1949



such as human right watch, and organizer amnesty international, and the international organization against torture, contribute to each and every one of these organizations by their ability to protect children during armed conflicts.

However, due to the multiplicity of those mechanisms and the impossibility of exposure to the contribution of each one of which is in this regard, confine ourselves to consider the mechanisms of the United Nations as a global organization²³, established for the purpose of maintaining international peace and security²⁴.

In this regard, we will look at each of UN Security Council and the General assembly, as mechanisms important for the protection of children in armed conflict.

With regard to the UN Security Council, has condemned and stressed at the same time on the Principle of the protection of children in armed conflicts in more than one occasion, among them resolution NO 1460 of 2003²⁵. In which it urged states of adhere to the provisions of international humanitarian law related to the rights of children, and protection during armed conflicts, especially the four Geneva conventions of 1949, including in particular the convention on the protection of civilians in time of war, and called on all parties to armed conflict to respect the specific commitments, undertaken by the special representative of the secretary general on children and armed conflict, and to cooperate fully with United Nations regarding the implementation of their commitments.

In addition to the above, we can refer as well to the security council resolution 1612 of 2005²⁶, with stressed the need to consider the protection of children in armed conflicts, is an important aspect in any strategy to resolution conflicts, as expressed at the same time fear extreme of the growing phenomenon of recruiter parties to armed conflicts to children, and the use of children as a means of violating international obligations applicable to them, and all other violations, and acts of mischief other committed against children in situations of armed conflict, which stimulated the security council to adopt a plan of action by the secretary general, aimed at the establishment of a mechanism for monitoring and reporting mechanism is to collect and provide objective information and minutes from the recruitment of child soldiers, and the use of children in violation of the provisions of the applicable international law, and also stressed on the necessity that this mechanism works in the context of sharing and cooperation with national governments, and united nations and civil society actions relevant.

As for the role of the General Assembly to protect the children, could refer to resolution NO 3318 of 1974²⁷, which led to the issuance of the declaration on the protection of women and children in emergency and armed conflict, where the offence the latter all acts that effect the safety, security, health and honor of children during armed conflicts, including the repression and inhuman for children, and imprisonment, torture, executions and the destruction of homes, committed by combatants during military operations or in occupied territory.

CONCLUSION:

Through our study on the subject of the protection of children during armed conflict, it can be concluded that the legal texts provide protection for children during international armed conflict exist and sufficient, but the problem still poses on the implementation of legal texts as the answer to it is essential to activate these rules but it remains linked to the international practice, which is

23- The number of its member states amounted to 192 countries so far, for more on the list of member states of United Nations, see the official website of the United Nations.

www.un.org/eg/members/

24- Article 1 of the charter of the United Nations

24- Resolution 1460 (2003), Adopted by the security council at its 4695 meeting, on 30 January 2003, S/RES/1460 (2003)

25- Résolution 1612 (2005), Adaptée par le conseil de sécurité à sa 5235 séance le 26 Juillet 2005. S/RES/1612 (2003)

26- Resolution 3318 (1974), Declaration on the protection of women and children in emergency and armed conflict, A/RES/29/3318



the most important factor in testing the ability of the provisions of protection in response to the effects of armed conflicts.

However, despite the efforts under taken by various organizations, especially the United Nations, its role remain limited in the field of protection of children in armed conflicts, and is not worthy of the reputation of the organization in the field of peace-keeping and security, but could return this matter to international disputes about this thread, where it says France (is a permanent member of the security council), towards greater attention to the protection of children in armed conflict, showed the four countries other fears of the possibility of becoming the cause of protecting children in armed conflict in international issue.

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