

Legal Framework to Protect the Rights of Children in Armed Conflict: @PKO Now! No.114

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Introduction

Children living in conflict-affected countries are deprived of their rights to education and medical care, and their human rights are constantly under threat including being forced to work as soldiers¹. Under what kind of international law should the rights of children be protected? The purpose of this article is to assist readers interested in the legal framework to protect the rights of children in armed conflict, by focusing on international conventions related to the rights of children living in armed conflict, summarizing the conventions that protect children from harm in armed conflict and discussing the age range of children to be protected, based on materials² from the Office of the Special Representative of the Secretary-General on Children and Armed Conflict.

On the Legal Framework to Protect the Rights of Children

In June 2020, the United Nations announced that there had been more than 250,000 reported cases of violations of the rights of children in armed conflict (hereinafter referred to as “conflict”) over the past 15 years³. Also, according to the Peace Research Institute Oslo, almost 426 million children under eighteen years were living in conflict zones as of 2019⁴. Of them, 74 million children have lived in conflict zones more than 10 years⁵. The increase in the number of children in conflict zones is not necessarily owing to an increase in high-intensity conflicts but owing to the impact of low-intensity conflicts⁶(including

political turmoil) that have occurred in countries and areas where no conflicts have existed in the past such as Liberia and Peru⁷. The following is a list of treaties and legal frameworks⁸ that protect the rights of children in a conflict setting, in the order in which they were enacted.

1 International Humanitarian Law: IHL

IHL is known as “the law of armed conflict” or “the law of war”⁹. This law consists of the legal framework that guarantees the rights of non-combatants who do not take part in the fighting such as medical personnel and civilians who are victims of inhumane acts during conflicts, including the Geneva Conventions adopted in 1949 and the Additional Protocols to the Conventions adopted in 1977 as the main documents, as well as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict¹⁰.

2 Geneva Conventions

The Conventions, drafted by the International Committee of the Red Cross (ICRC), were adopted in 1949 and consist of four conventions¹¹ on the field, sea, prisoners of war and the protection of civilian persons. Provisions relating to the protection of children are referred to in the Fourth Convention “Relative to the Protection of Civilian Persons in Time of War of 12 August 1949”, which guarantees children the right to be protected in safety zones established by the Parties to the conflict (Art. 14), the right to maintenance, religion and education when children are orphaned as a result of the war (Art. 24) and the orphaned children’s right to be protected by persons of their same nationality, language and religion (Art. 50), and the right to study, games and sports (Art. 94) and other rights¹².

Although the Convention on the Rights of the Child (CRC), adopted in 1989, defines a child as being under eighteen years, the Geneva Conventions, which existed prior to the adoption of the CRC, often limit the term “child” to those under seven, twelve, or fifteen years¹³. Despite the fact that there is an article that states that the death penalty shall not be pronounced on a protected person who was under eighteen years, the term “child” under

eighteen years is not used, and therefore, persons between fifteen and eighteen years are not considered to be children internationally¹⁴.

The following two Additional Protocols (3, 4) were adopted in 1977 to supplement the Geneva Conventions because of their limited protection of victims due to conflict¹⁵. Protocol I and II are the first international treaties, which disallow the participation of children in national armed forces and other armed groups¹⁶, and provide detailed humanitarian law for internal wars¹⁷, respectively. Protocol I dealt with international conflicts, and Protocol II dealt with non-international conflicts lead to the improvement of the rights of civilians living in conflict zones including children¹⁸.

3 Protocols Additional to the Geneva Conventions of 12 August 1949: Protocol I

Under the Protocol I, which applies for international conflicts, adopted in 1977, children have the right to priority distribution of relief consignments (Art. 70), the right to protection and aid against incident assault from the Parties to the conflict (Art. 77, para. 1), the right to avoid the death penalty if persons who committed crimes related to the armed conflict, had not been eighteen years (Art. 77, para. 5), the right to safe evacuation and to be supervised in their arranged place "by the Protecting Power in agreement with the Parties concerned" (Art. 78, para. 1), the right to continue to take education including their religious and moral education of their parents' desire during their evacuation (Art. 78, para. 2) and other rights¹⁹.

In common with the Geneva Conventions, while Art. 77, para. 2 of Protocol I reminds the Parties to the conflict to avoid recruiting children under fifteen years for taking a part in hostilities, in the same paragraph also states "in recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest"; hence, persons between fifteen and eighteen years are not internationally recognized as children in the Protocol I²⁰.

4 Protocols Additional to the Geneva Conventions of 12 August 1949: Protocol II

Under the Protocol II, which applied for non-international conflicts, adopted in 1977, children have the right to receive education (Art. 4, para.3(a)), the right to be facilitated the reunion of separated family members (Art. 4, para. 3(b)) and other rights, and it is possible for children to avoid the death penalty (Art. 6, para. 4)²¹.

Although this Protocol also alerts to avoid recruiting children under fifteen years in the armed forces or groups (Art. 4, para. 3(c)), this does not include persons between fifteen and eighteen years who are defined as the age of children in “the Convention on the Rights of the Child”²². In addition, while the right to receive education is guaranteed, since children can receive the right to education according to the wishes of their parents or those responsible for their care (Art. 4, para. 3(a)), there is a concern that child’s own voice may not be reflected²³.

5 UN Convention on the Rights of the Child (CRC)

In 1989, this Convention was adopted at the 44th session of the United Nations General Assembly with the aim of promoting respect for the fundamental human rights of children under eighteen years²⁴. As of today, all member states except the United States have ratified this Convention²⁵²⁶. In this Convention, which contains the minimum rights for children, including the right to access to education and health care, the protection of children in conflict is addressed in Art. 38; children have the right to protection and care from the effects of conflict (Art. 38, para. 4), and this Article calls on States Parties to refrain from recruiting children under fifteen years (Art. 38, para. 2, 3)²⁷.

As well as the Geneva Conventions and the two Additional Protocols to the Geneva Conventions, the CRC also stipulates when recruiting persons between fifteen and eighteen years into armed forces, efforts shall be given priority to the oldest (Art. 38, para. 3); although this Convention recognizes persons under eighteen years as children, the various conventions in force at the time of its enactment were inadequate to protect persons between fifteen and eighteen years in conflict²⁸.

6 The Mine-Ban Convention/Mine Ban Treaty/Ottawa Treaty

This Convention, signed in Ottawa, Canada in 1997, prohibits all activities related to use, develop, produce, retain and other anti-personnel mines and commits each State Party to destroy the mines (Art. 1)²⁹. Although this Convention does not have articles that protect only children, the preamble points out the fact that civilians, especially children are the victims of anti-personnel mines, and expresses the determination to put an end to the suffering caused by the mines³⁰. As many children lost their lives to anti-personnel mines, UNICEF continues to appeal to countries around the globe to accede to this Convention³¹³².

7 Rome Statute of the International Criminal Court

In 1998, this Statute established the International Criminal Court (ICC), which adjudicate crimes such as war crimes and genocide that violate International Humanitarian Law (Art. 1)³³. Under this Statute, the forcible transfer of “children of the group to another group” (Art. 6(e)) and the enslavement of children (Art.7, para. 2(c)) are categorized as crimes to be judged by the ICC, and conscripting children under fifteen years into the national armed forces and groups, and using them to participate in hostilities (Art. 8, para. 2 (b)(xxvi)(e)(vii)) are categorized as war crimes³⁴.

Although the adoption of this Statute came after the adoption of the CRC, no applicable articles protect children between fifteen and eighteen years.

8 Worst Forms of Child Labour Convention, No. 182

This Convention, adopted unanimously by the International Labour Organization (ILO) in 1999, is one of the few invaluable conventions among the internationally adopted legal frameworks protecting children in conflict that specifies and protects the age of the child as currently defined in Art. 1 of the CRC. For the purpose of this Convention, a child is defined as anyone under eighteen years (Art. 2), and “the worst forms of child labour”(Art. 3) are defined as slavery involving the forced or compulsory participation of children in conflict (Art. 3(a)) and work that is harmful to the health, safety or morals of children (Art. 3(d));

this Convention calls for the prohibition and elimination of relevant forms of child labor³⁵. All 187 ILO member states have ratified this Convention (as of the end of January 2021)³⁶.

9 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The main purpose of this Optional Protocol to the CRC, adopted in 2000 at the United Nations General Assembly, is to eradicate the use and recruitment of children³⁷; and this Protocol imposes on the armed forces and groups of States Parties the obligations to take measures to prevent the forced recruitment of children under eighteen years and their participation in hostilities (Art. 1, 2, 4), to promote the demobilize or release of children recruited in violation of this Protocol, and when necessary, States Parties shall support their physical and psychological recovery and social reintegration (Art. 6, para. 3)³⁸.

Art. 38, para. 3 of the CRC prescribes refraining from conscription of persons under fifteen years, however, with the entry into force of this Protocol, the age has been raised to under eighteen years³⁹.

10 Convention on Cluster Munitions (Oslo Convention)

Since the first use of cluster munitions in the 1940s, civilians have been the greatest victims⁴⁰. To pledge to eradicate such harm, this Oslo Convention, signed in Oslo in 2008, which prohibits the use, production, development, stockpile and transfer of cluster munitions by each State Party (Art. 1, para. 1(a)(b)); as well as the Ottawa Convention, it recognizes that children are the victims of the threat posed by mines and cluster munitions in its preamble and resolves to eradicate the killing and wounding of innocent civilians, especially children⁴¹.

Chronological List of Legal Frameworks for Protecting Children from Armed Conflict (as of December 2020)

Legal Frameworks and the total number of articles	Adoption(Entry into force)	Depositary	Number of Parties ^[42]	Main applicable Articles and paragraphs
Geneva Conventions (Fourth Convention : 159 articles)	1949 (1950)	Swiss Federal Council (SFC)	196	Art. 14, Art. 17, Art. 23, Art. 24, Art. 38, para. 5, Art. 50, Art. 82, Art. 89, Art. 94, Art. 132
Protocol I : 102 articles	1977 (1978)	SFC	174	Art. 70, Art. 77, Art. 78
Protocol II : 28 articles	1977 (1978)	SFC	169	Art. 4, para. 3, Art. 6, para. 4
CRC : 54 articles	1989 (1990)	UN Secretary General (UNSG)	196	Art. 38
The Mine-Ban Convention/ Ottawa Treaty : 22 articles	1997 (1999)	UNSG	164	
Rome Statute of the ICC : 128 articles	1998 (2002)	UNSG	123	Art. 6(e), Art. 7, para. 2(c), Art. 8, para. 2(b)(xxvi); (e)(vii), Art. 68, para. 2
Worst Forms of Child Labour Convention : 8 articles	1999 (2000)	ILO	187 (all ILO member states)	Art. 3(a)
Optional Protocol to the CRC(Armed Conflict) : 13 articles	2000 (2002)	UNSG	170	
Convention on Cluster Munitions : 23 articles	2008 (2010)	UNSG	110	

[42]⁴²

Effects of COVID-19

The impact of COVID-19, which has been shaking the world, is threatening the lives of children living in conflict. As the economies of countries in protracted conflicts are unstable, it is not uncommon for children to become the breadwinners for their families and migrate across borders to work⁴³. For example, according to Global Protection Cluster, due to the spread of COVID-19 in Iran, Afghan children who were working as migrant workers in the country

have been forced or voluntarily returned to their home country; however, the communities and families where the children returned are refusing to accept them for fear of infection, so those children have been facing the fact that they do not have places to go⁴⁴.

While it is obviously important to work for the protection of the rights of children on a constant basis, in unpredictable situations, it is even more important to create legal, political and social pressures on countries around the globe to provide them a sense of crisis, and for the international community as a whole to respond promptly by streamlining legal frameworks for the protection of children that are appropriate to each situation.

In Closing

This article has introduced the international legal frameworks for the rights of children in conflict situations. The rights of children, which should be protected by all legal frameworks, continue to be violated everyday due to their vulnerable position, especially in conflict situations. I believe that if each one of us becomes aware of and concerned about the existence of international conventions such as those listed in this article, it will result in national concern and eventually global concern, which will lead to the improvement of the human rights situation of children.

End Notes

¹ Kiyomi Takano, “No. 110 Towards Eliminating Child Labor in Armed Conflict: Relevance to UN PKO@PKO Now!,” Secretariat of the International Peace Cooperation Headquarters, 16 September 2020, (https://www.cao.go.jp/pko/pko_e/organization/researcher/atpkonow/article110.html).

² “Children and Armed Conflict: International Standards for Action,” The Human Security Network and UN Special Representative of the Secretary General for Children and Armed Conflict, 2003.

³ “Grave Violations against Children Still Unacceptably High Despite Unprecedented Number of Action Plans for Better Protection, Experts Tells Security Council,” UN, June 23, 2020, (https://www.un.org/press/en/2020/sc14223.doc.htm#_ftnref1)

⁴ Gudrun Ostby, Siri A. Rustad and Andreas F. Tollefsen, “Children Affected by Armed Conflict, 1990-2019,” Peace Research Institute Oslo (PRIO), June 2020.

⁵ Ibid.

⁶ Low-intensity conflict is defined, “when armed force is used by an organised actor against another organised actor or against civilians, resulting in at least 25 battle-related deaths in one calendar year”, medium intensity defined as 25 to 999 battle deaths, and high intensity defined as 1,000 or more battle-related deaths in a year. (Source: “Stop the war on children, killed and maimed: a generation of violations against children in conflict,” Save the Children, November 2020.)

⁷ Ostby et al, “Children Affected by Armed Conflict, 1990-2019”.

⁸ Only international conventions/legal frameworks are listed, which refer to “children”.

⁹ “What is International Humanitarian Law?” ICRC, July 2004.

¹⁰ Ibid.

¹¹ Geneva Conventions consist of the first Geneva Convention “for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949”, the second Geneva Convention “for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949”, the third Geneva Convention “Relative to the Treatment of Prisoners of War of 12 August 1949”, and the forth Geneva Convention “Relative to the Protection of Civilian Persons in Time of War of 12 August 1949”. (Source : “The Geneva Conventions of 12 August 1949,” ICRC.)

¹² Ibid.

¹³ The phrase “children under seven” appears three times (Art. 14, Art.38, para. 5, Art. 50),

“children under twelve” once (Art. 24), “children under fifteen” six times (Art. 14, Art. 23, Art. 24, Art. 38, para. 5, Art. 50, Art. 89).

¹⁴ “Convention on the Rights of the Child,” OHCHR; “The Geneva Conventions of 12 August 1949,” ICRC.

¹⁵ “Protocols I and II additional to the Geneva Conventions,” ICRC, 1 January 2009, (<https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm>).

¹⁶ “Legal Protection of Children in Armed Conflict,” ICRC, February 2003.

¹⁷ “Protocols I and II additional to the Geneva Conventions,” ICRC, 1 January 2009, (<https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm>); “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977,” last updated on 6 April 2021, (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>).

¹⁸ Ibid.

¹⁹ “Protocols Additional to the Geneva Conventions of 12 August 1949,” ICRC.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ “11. Convention on the Rights of the Child,” United Nations Treaty Collection, 7 April 2021, (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en).

²⁵ Ibid.

²⁶ The United States has not yet ratified the CRC because of concerns about restrictions on US action on the rights of American children. (Source : Jonathan Todres, Mark E. Wojcik and Cris Revaz, *The United Nations Convention on the Rights of the Child: An Analysis of Treaty Provisions and Implications of U.S. Ratification* (NY: Transnational Publishers, 2006), p.27.)

²⁷ “Convention on the Rights of the Child,” OHCHR.

²⁸ Ibid.

²⁹ “Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction,” United Nations Office at Geneva.

³⁰ Ibid.

³¹ 164 member states have currently ratified the Mine-Ban Convention. (Source : “5. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction,” United Nations Treaty Collection, last updated 20

January 2021, (https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-5&chapter=26&clang=_en))

³² “A personal plea for a mine-free world,” UNICEF, 6 December 2004, (https://www.unicef.org/about/structure/57929_24454.html); “20 years on from landmark Mine Ban Treaty, dangers on the rise to life and limb,” United Nations, 1 March 2019, (<https://news.un.org/en/story/2019/03/1033922>).

³³ “Rome Statute of the International Criminal Court,” International Criminal Court, 2011.

³⁴ Ibid.

³⁵ “Worst forms of child labour convention, 1999 (No. 182),” International Labour Organization, 1999.; “ILO worst forms of child labour Convention comes into force,” ILO, 17 November 2000, (https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007917/lang--en/index.htm).

³⁶ “Ratifications of C182 - Worst Forms of Child Labour Convention,” 1999 (No. 182), ILO, last updated 5 January 2021, (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327).

³⁷ “Guide to the Optional Protocol on the Involvement of Children in Armed Conflict,” UNICEF, 2003.

³⁸ “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,” OHCHR.

³⁹ Ibid.

⁴⁰ “Convention on Cluster Munitions,” ICRC, 2008.

⁴¹ Ibid.

⁴² A Party is a country that has ratified, accepted/approved and accessed/succeeded the Convention. (“5. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction,” United Nations Treaty Collection, last updated 20 January 2021, (https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-5&chapter=26&clang=_en); “11. Convention on the Rights of the Child,” United Nations Treaty Collection, 7 April 2021, (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en).

⁴³ Kiyomi Takano, “No. 110 Towards Eliminating Child Labor in Armed Conflict: Relevance to UN PKO@PKO Now!,” Secretariat of the International Peace Cooperation Headquarters, 16

September 2020,

(https://www.cao.go.jp/pko/pko_e/organization/researcher/atpkonow/article110.html).

⁴⁴ "COVID 19 PROTECTION RISKS & RESPONSES SITUATION REPORT No.7 As of 24 AUGUST 2020," Global Protection Cluster, 2020.