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**Assessing the Relevance of
International Standards for the
Protection of Children from
Recruitment and Use as Child
Soldiers, with a focus on Non-
State Actors Armed Groups in
Africa**

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“To Late Maître Nangne Jean-Paul”

“At political and practical levels, there are levers of influence that can have significant sway with all parties to conflict. In today’s world, parties to conflict cannot operate as islands unto themselves. The viability and success of their political and military projects depend on networks of cooperation and good will that link them to the outside world, to their immediate neighbourhood as well as to the wider international community. There are, consequently powerful factors that can influence all parties to conflict: the force of international and national public opinion; the desire of the parties for acceptability and legitimacy at national and international level; international accountability as enforced by the International Criminal Court and ad hoc tribunals; restrictions on external provisions of arms, financial flows and illicit trade in natural resources; the growing strength and vigilance of international and national civil societies ;and media exposure.”¹

¹ Report of the UN Secretary General on children and armed conflict, UN Doc .A/59/695-s/2005/72, 9 February 2005, para .77,
<www.un.org/documents/repsc.htm.>

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Summary

It is frustrating for every reasonable human being to observe scenes of exploitation around the world in respect of children, because of their either naivety or vulnerability. It is unacceptable that still in the 21st century, children do not benefit from the protection, attention and love they deserve.

An estimated 300 million children worldwide are subject to violence, exploitation and abuse including the worst forms of child labour in communities, schools and institutions. Harmful practices such as female genital mutilation/cutting and child-forced marriage still have a good place in news headlines nowadays, as millions of children still remains without adequate protection. The frequency of armed conflicts has put in jeopardy the lives of millions of children around the world, thereby preventing them from enjoying a normal life with adequate family love, education and peaceful environment.

To say more about armed conflicts, figures and facts offer a nasty image, especially when dealing with children. Once more Africa seems to be at the centre of global preoccupations. Although international humanitarian law (IHL) and international human rights law (IHRL) provide for an acceptable scope for the protection of children in times of wars or peace there is still a lot to achieve for the protection of children's rights. A feeling of impunity vis-à-vis violators of children's rights during armed conflict always comes to mind when assessing the situation. One is left with an impression that what is done so far is not enough

The recruitment and use of child soldiers are some of the causes of this. Undoubtedly, this constitutes a serious obstacle to the respect of children's rights in the world and mainly in Africa where the practice is even increasing.

This thesis assesses international standards for the prevention of use and recruitment of child soldiers in Africa. It focuses on the impact and effect of these standards on parties to conflicts, especially on non-state actors (NSAs) armed groups. A critical assessment of the relevance of IHL, international human rights law (IHRL), international criminal Law (ICL), international labour standards and the African regional standard in respect of prevention and protection of recruitment of child soldiers is proposed in our study. Furthermore, the thesis elaborate on international mechanisms often assimilated to international standards put in place by the international community through the United Nations (UN), third states actors and non-governmental organizations (NGOs) to aid for the prevention and protection of recruitment of children by NSAs armed groups.

On the other hand, the thesis proceeds on an inclusive way, which give the reader a general understanding of the nature of the problem in the world with a focus on Africa. Therefore, issues like negotiations with armed groups, implementation and funding of Disarmament Demobilization and Reintegration (DDR) programmes are covered.

Finally, the thesis makes recommendations, some of which have previously been raised by legal writers or international agencies working for the protection of the rights of the child.

Abbreviations

ACRWC	The African Charter on the Rights and Welfare of the Child
AI	Amnesty International
CAR	Central African Republic
CRC	The Convention on the Right of the Child
DDR	Disarmament Demobilisation and Reintegration
DPKO	United Nations Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
EU	European Union
ICC	International Criminal Court
ICL	International Criminal Law
ICRC	International Committee for the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
HRW	Human Rights Watch
ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations High Commissioner for Refugee
UNICEF	United Nations Children's Fund
UN IDDRS	United Nations Integrated DDR Standards
UNSC	United Nations Security Council
NGOs	Non-Governmental Organisations
NSAs	Non-states Actors
WB	The World Bank

1 Introduction

On December 21st 2007, The UN Secretary-General Ban Ki-moon submitted to the United Nation Security Council (UNSC) the latest report on children and armed conflict.² From this, the notice is clear; the practice of recruitment and use of children as soldiers continues. If the practice seems global, Africa seems however to be the most concerned. In countries like Burundi, Chad, the Central African Republic (CAR), the Democratic Republic of the Congo (DRC), Somalia, Sudan, and Uganda the use and recruitment of children as soldiers continue, although some positive sides have been recorded from Côte d'Ivoire where parties have stopped the recruitment. The report goes further by pointing out the involvement, more than ever, of non-state actors (NSAs) armed groups. This is not a good news for any human rights defender especially those concerned with the rights of children. It is indeed frustrating to think that in many parts of the world especially in Africa, millions of children cannot benefit from an adequate family life and a friendly environment and that they cannot have effective access to education because they, for one reason or another, are involved in armed conflicts as child soldiers. This troublesome reality may raise the following questions: How is that possible? What is done to prevent and stop this kind of situation?

This thesis seeks to have a look at all international standards and/or mechanisms adopted so far to deal with the use and recruitment of child soldiers in the world, especially in Africa. While assessing this, the thesis focuses on the following aspects and areas of concerns:

- 1) What are the international standards and mechanisms that address the issue of child soldiers?
- 2) Have those standards and mechanisms dealt with the issue of non-state actors (NSA) and if yes, have they contemplated conferring legal binding obligations on them in respect of children's rights? To what extend?
- 3) What could be the approach to adopt to make sure non state actors (NSAs) do have obligations and do not enjoy impunity by hiding behind the principle that they have no legal status under international law, bearing in mind the necessity not to confer them any legal status, this being the concern of the international community?
- 4) Establish if/how DDR programmes have dealt with preventing or putting an end to the recruitment and use of child as soldiers in Africa.

² United Nations, Report of the UN Secretary General on Children and Armed Conflict, UN Doc (A/62/609-S/2007/757). The report is submitted pursuant to the Security Council presidential Statement (S/PRST/2006/48), which request the Secretary General to submit a report on the further Progress in the implementation of resolutions 1615 (2005), 1379 (2001), 1460(2003) 1539 (2004). The report includes information on compliance in ending the recruitment and use of children in armed conflict in violation of applicable international law and other grave violations being committed against children affected by armed conflict It also include information on the progress made in the implementation of the monitoring and reporting mechanism. Information on progress made in the development and implementation on the mainstreaming of the child in the United Nations peacekeeping operations.

1.1 Problem Statement

As steps are taken to prevent the use and recruitment of child soldiers, the international community has been confronted with several barriers. In the first place, the recruitment and use of children as soldiers is not a practice limited only to national armed forces as one may reasonably expect, but NSAs also do it. In reality, it appears it is a widespread and increasing activity in Africa nowadays and it obviously makes the problem more difficult to deal with.

Secondly, IHL that should as matter of concern addresses the practice, must obey the logic of its fundamental principles, some of which are to the effect that, obligations it imposes apply only to states actors who are the only ones left with the responsibility, at national level, to implement them. Therefore, IHL, unlike IHL that confers obligations to all parties to a conflict namely states actors and NSAs, faces important challenges imposed by the nature of its principles when dealing with NSAs, who are left without legal standing under international law. It may be true they enjoy legal standing at the national level – either legally or politically, or through some combination of the two. Indeed while international law does not apply directly to NSAs, it does apply to states who thereby incur obligations internally to enforce against NSAs. Therefore, there could be at least effective staged intervention to ensuring first that all states or state-connected actors, which are subject to IHL, eliminate this practice, and then extend such a ban to NSAs. The issue may be easier when it comes to some paramilitaries, militias or armed groups controlled by the state or that in practice are given license by governments to act, as they wish. Again, the challenge will still be to uphold those internal obligations in a context where states may not have control of its whole territory and NSAs armed groups operating within it.

Lastly, it appears most of the time that children who can successfully be released from armed conflicts, turn out to be re-recruited either by state actors or by NSAs. This seems to suggest there is a problem with ensuring that an effective reintegration of former soldiers into normal lives is done, therefore putting into question the prevention of the use and recruitment of child soldiers. In response to this, international standards setting up a reference point for emergence from conflict situations, and forming a basis for removing children from armed services and re-integrating them have also emerged through either international instruments or international/ regional agencies practices. Some donor countries at a bilateral level have also developed dimension of standards shaping, which need to be outlined as far as their methods of intervention that consider some references to human rights standards. Most of these efforts are, however, done in an incoherent and confusing way that will need a proper re-evaluation and coordination and the problem may be to come up with more coherent and efficient framework for action that not only takes into account children' interest, but that will lead to an effective and smooth reintegration of former child soldiers.

1.2 Aim of our study

The thesis intends to make a critical assessment of international standards and mechanisms put in place by the international community through international instruments, the work and some mechanisms of the United Nations (UN), non-governmental organisations (NGOs), regional organizations and bilateral countries to prevent or stop the use and the recruitment of child soldiers by parties to a conflict. The thesis assesses the content of legal obligations that parties to a conflict have in respect of children affected by armed conflict.

A constructive and critical evaluation of the DDR programmes as implemented so far for the protection or the stop of the use and the recruitment of child soldiers are offered. In addition, the paper tries to point out the gaps in different actions aimed at ensuring a smooth and effective reintegration that leave no room for further re-recruitment into armed conflicts of child soldiers.

1.3 Understanding the main issues of the thesis

1.3.1 Non-states Actors (NSAs) under International law

In certain contexts, NSAs refer to public international law actors like non-governmental organisations (NGOs) or multinational corporations. Nevertheless, in the context of our study, it refers to armed groups or rebel groups, known as “entities exercising de facto control over a particular territory but without international recognition or formal status of a ‘de jure’ state or by a terrorist group or organisation”³, engaged in armed conflicts.

Under IHRL, NSAs are left without direct obligations, which instead are assumed by states actors. This assertion is however not true under IHL where obligations are placed on all parties to a conflict and as such, both states actors through national armed forces and NSAs armed groups⁴. In the same line, ICL, through its principle of individual criminal responsibility leaves room for direct obligation imposed on all human rights and humanitarian law violators irrespective of their status whether belonging to national armed forces or armed groups.⁵

It appears the question of conferring direct legal obligations in respect of NSAs is a controversial issue under international law; may be because of the risk it carries when it comes to granting legal status to NSAs, and this lead to the reluctance of state actors to adopt a flexible position to

³ Prosecutor V. Tadic (Case No.IT-94-1-T), Opinion an judgment, 7 May 1997,para 654

⁴ *Infra* look at the comments on the Additional protocol that we will have hereunder.

⁵ *Infra* look at the comment on international criminal law hereunder.

the issue. Therefore, states will always prefer to qualify rebels and armed groups as terrorists or criminals.⁶

1.3.2 Disarmament Demobilization and Reintegration (DDR) programmes

DDR consist of programmes specifically aimed at child soldiers to acquire new skills and return to their communities. Contrary to what people may think, they are one of the most important points to consider for the prevention and the stop of the use and recruitment of child soldiers. Indeed experience has shown that the likelihood of children returning to armed conflict is very high if the DDR programmes are not implemented in a proper manner that meets all the requirements that can ensure a smooth transition to a normal life.

According to Global Report 2004 - Research Guide⁷ disarmament is the collection of small arms and light and heavy weapons within a conflict zone. It frequently entails the assembly and cantonment of combatants and development of arms management programs, including their safe storage and sometimes, arms destruction. Because many child soldiers do not carry their own weapon, disarmament should not necessarily be a prerequisite for the demobilisation and reintegration of child soldiers. An example here could be girls who do not often hold arms.⁸

On its own demobilisation refers to the formal and controlled discharge of soldiers from the army or from an armed group. In demobilizing children, the objectives of demobilisation should be to verify the child's participation in fighting forces, to collect basic information, which will establish the identity of the child for family tracing, and to assess priority needs, and to provide the child with information about what is likely to happen next.⁹

Lastly, reintegration implies a long-term process that aim at giving children a viable alternative to their involvement in fighting forces and help them resume their life in the community. Elements of reintegration include family reunification (or finding alternative care if reunification is impossible), providing education and training and devising appropriate strategies for economic and livelihood support and in some case providing psychological support.

⁶ ICRC, Andrew Clapham, International Review of the Red Cross Volume 88 Number 863, , Human Rights Obligation of Non state Actors in conflict situations .ICRC, September 2006 page 496 where the author elaborate on the unwillingness of states to confer a legal status to armed groups.

⁷ Coalition to Stop the Use of Child Soldiers, Research Guide for Child Soldiers Global Report 2004, London. United Kingdom June 2003

⁸ See the Global Report 2004 Research Guide at page 7 and see also the DCAF Backgrounder, Geneva Centre for the Democratic Control of Armed Forces, Article on Child Soldiers of the 10/2006, page 5

⁹ *Ibid*

1.3.3 Key definitions

It is important we give a definition of key terms that will often be referred throughout our assessment. This implies we should have an idea of who is a child and a child soldier, what is meant by of armed forces, armed groups and what constitute recruitment of child soldiers. These definitions have been subject to many debates and comments that we cannot afford to elaborate on. We shall limit ourselves to the information and definitions received so far from The Cape Town Principles and Best Practices¹⁰ and The Paris Principles¹¹ on one hand, and on the other, on understandings of legal provisions of various international standards by international organisations and reliable non-governmental organizations.

Child: According to The Paris Principles, a child “refers to any person less than 18 years of age in accordance with the Convention on the Rights of the Child”.¹² Indeed the Convention on the Rights of the Child (CRC) states this in its first article with the qualification that it may be otherwise when majority is attained earlier. In the same line, other international standards have adopted the same content. Hence, articles 2 of the International Labour Organisation (ILO) Convention No 182 on the Worst forms of Child labour and the African Charter on the Rights and Welfare of the Child have referred to a child as someone under the age of 18. Our thesis does engage into the debate about the existence or not of a universal definition of a child but adopts a position which offer more protection to children and that have been reiterated in article 1 of the Optional Protocol on the Involvement of Children in Armed Conflict.

Nevertheless, it may be interesting to mention the difficulty of international actors as well as lawyers in according on a legal binding international definition of a child despite the fact that several international standards, as mentioned above, adopt a similar age approach of “under 18”.¹³ Neither the definition contained in the Paris Principles nor the one contained in the Coalition to Stop the Use of Child Soldiers Research Guide is a legal definition: They are considered as for programmatic purposes as pointed out by the Guide to the Optional Protocol on the Involvement of

¹⁰ The Cape Town Principle was adopted at the Symposium on the prevention of recruitment of children into armed forces and on the demobilization and social reintegration of child soldiers in Africa. This took place from the 27th to the 30th of April 1997 in Cape Town in South Africa.

¹¹ The Paris Principles refers to Principles and Guidelines on Children Associated with Armed Forces or Armed Groups adopted at the International Conference in Paris on Children Involved in Armed Forces and Armed groups. The conference which took place on February 5 and 6 saw the participation of 58 countries and was Co-presided by Mr. Douste-Blazy and Ann M. Veneman, executive director of UNICEF, and in the presence of Radhika Coomaraswamy, the UN secretary-general’s special representative for children in armed conflict

¹² The Paris Principles, Principles and Guidelines on children associated with Armed Forces or Armed Groups, February 2007. page 7

¹³ Rachel Hodgkin and Peter Newell had elaborated on this issue in the Implementation Handbook for the Convention on the Rights of the Child, fully revised edition, UNICEF from page 2 to 6. The striking point is unavoidably the difference for national legislation on the definition of who a child is as well the age question, which renders it very difficult to reach an agreement on a precise definition of who a child is.

Children in Armed Conflict.¹⁴ There is however, a growing recognition and acceptance of the idea that the “Under 18” approach is the best option.

A **child soldier** is any person under 18 years of age who is part of any kind of armed force or armed group in any capacity. This includes but is not limited to cooks, porters, messengers and anyone accompanying such groups as well as girls recruited for sexual purposes and for forced marriage

Armed Groups: Both The Coalition to Stop the Use of Child Soldiers and the Paris Principles define armed groups as “armed entities that are distinct from” the government and the armed forces of a State. The Paris Principle prefers to repeat the words of the Optional Protocol while the Coalition to Stop the Use of Child soldiers, uses “government”. However, it appears there is not a difference in practice since both expressions have the same understanding. It is worth mentioning however that the definition of armed groups has been difficult because of fear to confer them a legal status under international law.

A very important distinction drawn by the Coalition to Stop the Use of Child Soldiers when defining armed groups is the inclusion of armed political groups, militias and paramilitaries bearing in mind that the decisive criteria will be that they are distinct from governmental armed forces.

Armed Forces: They are military forces of a government according to The Coalition to Stop the Use of Child Soldiers. The Paris Principle and the Optional protocol refer to them as armed forces of a state.

Recruitment: Although none of the international standards on the use of child soldiers expressly defines what recruitment is, the Coalition to Stop the Use of Child Soldiers and both Cape Town and Paris Principles have elaborated on this. The term recruitment refers to the three different means by which persons becomes member of armed forces or armed groups. The Cape Town Principles uses the expression “irregular or irregular armed force or armed group”, but the effect is still the same. Means of recruitment include compulsory, forced and voluntary as listed in the Cape Town Principles, the Paris Principles and the Research Guide of the Coalition to Stop the Use of Child Soldiers

To grasp the meaning of these forms of recruitment it may be interesting to look at the Democratic Control of Armed Forces (DCAF) article on child soldiers¹⁵ where a very good definition of these means of recruitment is given. It refers to forced recruitment as enlistment into armed forces or groups by means of abduction and/or the threat or use of violence or others reprisals against an individual or family member.¹⁶ Furthermore,

¹⁴ UNICEF, and Coalition to Stop the Use of Child Soldiers, Guide To the Optional Protocol on the Involvement of Children in Armed Conflict, UNICEF, New York, December 2003 page 14.

¹⁵ Geneva Centre for the Democratic Control of Armed Forces, DCAF Backgrounder, Article on Child Soldiers of the 10/2006, DCAF, Geneva. It is part of Backgrounder series, which provides practitioners with concise introductions to variety of issues in the field of security sector governance and return.

¹⁶ See page 2 of the DCAF Backgrounder

compulsory recruitment, also known, as conscription, is referred to as service required by statute in regular state armed forces.¹⁷ Lastly, voluntary recruitment implies that a choice to join armed forces has been made freely.¹⁸

1.3.4 Selected countries' situations in Africa where children are involved in armed conflicts:

The thesis focuses on Africa as case study and as such most of the information relate to African countries affected by armed conflict where there is or there has been use of and recruitment of child as soldiers. For purpose of convenience here, we refer only to some of them that can be said to constitute sample countries where use and recruitment of child soldiers takes place in Africa.

The selected countries give a very general idea of what the overall situation is in Africa in respect of child soldiering. This part describes the situation in Chad, Côte d'Ivoire, Democratic Republic of Congo (DRC) and Central African Republic (CAR).

Chad¹⁹

The overall security situation remains is volatile in eastern Chad, especially with the continuing fighting between the Government forces and the armed opposition, and the presence of Sudanese rebels of a faction of the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). There are reports of forced recruitment by the SLA of children from the Breidjing, Treguine, Djabal and Goz Amir Refugee camps in eastern Chad. According to UNHCR an estimated 4,700 refugees, some of them children, were forcibly recruited,. All of the 4,700 refugees returned to the camp in weeks subsequent to the recruitment, except for 104, who as of 31 May 2006 were reported by refugee leaders and their families not to have returned to Breidjing and Treguine. According to the leaders, the missing refugees were either with the rebels or in hiding in neighbouring villages for fear of being targeted again by recruiters. Some children are reported to have been recruited in Goz Amir and Djabal camps as well, although many young refugees interviewed by UNHCR indicated that they had joined SLA voluntarily. UNHCR, in coordination with the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations is looking into the possibility of strengthening security arrangements in and around refugee camps in Chad.

Dialogue between UNICEF and the Government of Chad led to the signing in April 2007 of a protocol of agreement on protecting children who are victims of armed conflict and their sustainable reintegration into

¹⁷ See page 2 of the DCAF Backgrounder

¹⁸ See page 4 of the DCAF Backgrounder

¹⁹ Office of the Special Representative of the Secretary General for Children and Armed Conflict, Situation of concern, Development in Chad
<www.un.org/children/conflict/english/chad.html>

communities and families. Under that agreement, the Government of Chad and UNICEF commit to working together and with partners in ensuring protection and services for children associated with armed forces.

Côte d'Ivoire²⁰

Children were associated with armed groups both in the Government-held territories and in areas under the control of the *Forces Nouvelles*. There is currently no evidence of children in the ranks of Government armed forces, *Forces armées nationales de Côte d'Ivoire* (FANCI). Children were however associated with armed militia groups close to the ruling party, *Front populaire ivoirien* (FPI). These militias, which include the *Front de libération du Grand Ouest* (FLGO), the *Mouvement ivoirien de libération ouest de Côte d'Ivoire* (MILOCI), the *Alliance patriotique de l'ethnie Wé* (APWé) and the *Union patriotique de résistance du Grand Ouest* (UPRGO), were active in Government-controlled areas, notably in the West. The *Forces armées des Forces nouvelles* (FAFN) and other associated militia groups recognised that children were incorporated with their fighting forces. FAFN committed to an action plan in November 2005, and has made significant efforts in the implementation of the action plan. The FAFN efforts are acknowledged and its removal from the annex list²¹ will be considered in the next UN report, subject to a full implementation of the action plan.

Approximately 1,200 children have already been released to the UNICEF and its child protection partners on the strength of the action plan agreed in November 2005 by the FAFN with the United Nations to end the association of children with their fighting forces. The momentum of that initial dialogue also led to similar action plan commitments in September 2006 by the four major pro-Government militia groups in western Côte d'Ivoire, which has now resulted in the identification of children in their forces and a process of releasing some 204 children, 84 of whom are girls. Since 2002, 7,194 children affected by the conflict, including 2,813 children ex associated with armed groups have benefited from psychosocial, educational and vocational assistance. Furthermore, since 2002, 1,728 children affected by the conflict have reintegrated into formal school.²²

Democratic Republic of Congo²³

Reports on the presence of children among *Forces armées de la République démocratique du Congo* (FARDC) troops continue, notably in

²⁰ Office of the Special Representative of the Secretary General for Children and Armed Conflict, Situation of concern, Development in Cote d'Ivoire, <www.un.org/children/conflict/english/cotedivoire.html>

²¹ This refers to the list of offending parties that recruit or use children in situations of armed conflict. These information are based on the different reports of the Secretary General to the Security Council on children and armed conflict.

²² See <http://www.unicef.org/cotedivoire/protection.html>

²³ Office of the Special Representative of the Secretary General for Children and Armed Conflict, Situation of concern, Development in Democratic Republic of Congo, <www.un.org/children/conflict/english/drc.html>

North Kivu. In April 2006, the presence of children among the 84th and the 85th non-integrated Brigades (former Mai-Mai) was registered. Reports of re-recruitment by FARDC also continue.

Child protection actors in North and South Kivu Provinces continue to register a number of abductions and recruitments of children by FDLR.

Allegations of re-recruitment and use of children by the *Front nationaliste et intégrationnaliste* (FNI) continued in 2005. On 20 November, MONUC received allegations that young people, including children, were recruited by FNI commander Peter Karim Udaga, to reinforce his militia who were in conflict with FARDC in Mahagi.

The Mai-Mai groups are mostly present in North and South Kivu, Maniema and Katanga provinces. Most of them have now joined FARDC. In the course of 2005, a large presence of children in former Mai-Mai groups continued to be observed in North Kivu. In South Kivu the presence of children among former Mai-Mai groups also continued. On 12 May 2006, however, an important breakthrough was made when Kyungu Mutanga, a Mai-Mai leader known as Gédéon, operating in Katanga Province, surrendered in Mitwaba. More than 150 combatants, 76 of whom were children, accompanied him. It is estimated that between 2,000 and 4,000 of his followers remain at large, a significant number of them thought to be children.

The current operational framework for children's disarmament, demobilisation and reintegration was launched by the *Commission Nationale de Désarmement, Démobilisation et Réinsertion* in cooperation with UNICEF, ILO and non-governmental organization partners in July 2004. As at 30 May 2006, 18,524 children had been released from the armed forces and groups through the official process; of that number, 16 per cent were girls. Thousands more, the majority of whom are girls, have escaped from fighting forces on their own and are returning to civilian life.

Parties to the conflict include *Forces armées de la République démocratique du Congo* (FARDC), *Forces démocratiques de libération du Rwanda* (FDLR), *Front nationaliste et intégrationnaliste* (FNI), Mai-Mai groups in North and South Kivu, Maniema and Katanga who have not integrated into FARDC and non integrated FARDC elements loyal to rebel leader Laurent Nkunda

Central African Republic (CAR)²⁴

The unlawful recruitment and use of child soldiers in the ranks of armed groups is an alarming reality for the children of the Central African Republic. According to UNICEF's Representative for the country, Mahimbo Mdoe, only 14 per cent of children attend school in the most conflict-ridden zones, and less than 50 per cent are in school nation-wide. Additionally, malnutrition affects 40 per cent of children, and basic services are rarely available outside of the capital city. This leaves young people

²⁴ UNICEF, Child Soldiers Demobilized in Central African Republic, <www.unicef.org/infobycountry/car_39740.html>

with very few options. Often idle, and without any real hope for the future, hundreds of young people joined the rebellion.

According to the Report of the Secretary General of the UN on children and armed conflict 2007,²⁵ there has been recruitment of children by *Union des Forces Democratiques pour le Rassemblement* (UFDR) rebel group

A tripartite action plan between UFDR, the Government of the Central African Republic and the UNICEF, for the reduction and elimination of the recruitment and utilisation of child soldiers and their demobilisation and reintegration was signed. It was followed by a group of 200 symbolically being released. By April and May 2007, 75 percent of the children detained by the UFDR were demobilised. However, many children are still to be released by parties to the conflict.²⁶

UNICEF has undertaken an ambitious programme to rebuild infrastructure in the places where these demobilised child soldiers live. Some 20 villages will be supported and social services rehabilitated to welcome the released children, and to facilitate in reintegrating them back into their families, thus working towards rebuilding a 'normal' life. The programme will also extend to children in the north-east of the country, not currently associated with the armed groups, but who are also in need of a scale up in health care, education, protection, security and recreation activities.

1.4 Methodology

Most of this research is based on available literature on child soldiers. It consists of United Nations agencies and programmes 'articles and publications. NGOs publications, guidelines, as well as individuals' articles and books on the NSAs and child soldiers, are also part of source of information. Case Law together with Internet sources have also been of key help for this essay.

The study may however face several limitations when it comes for instance to available and recent development stories concerning some armed conflicts in Africa, as well as some recent commitment by international organisations and donors Countries at a bilateral level.

1.5 Structure of the Thesis

The thesis is divided into five chapters

Chapter 1 is the General introduction and its states the research problem, the aim of the study as well as comprehensive definitions of key terms to be used through out the thesis.

Chapter 2 operates a critical assessment of international standards ranging from the instruments under IHL, IHRL, ILO, ICL and regional

²⁵ *Supra*, footnote number 3

²⁶ United Nations, Report of the UN Secretary General on Children and armed conflict, UN Doc (A/62/609-S/2007/757). Page 7-8

standard namely that of Africa, that address the practice of use and recruitment of children as soldiers.

Chapter 3 deals with United Nation's responses and contributions to prevent the use and recruitment of children as soldiers. It focuses on the United Nations departments and offices as well as, UNSC's role in dealing with NSAs. It further more reviews the contribution of the United Nations agencies and programmes, such as the UNICEF, UNHCR and it mentions the contribution of inter-governmental organisations like the World Bank (WB). An evaluation of their contribution in respect of the implementation of DDR programmes is given full consideration.

Chapter 4 explores the role of NGOs and international community through bilateral cooperation of third states and donor countries while implementing international obligations on national armed forces and armed groups about children's rights. It also elaborates on their contribution and approaches when dealing with NSAs especially for implementing DDR programmes that can ensure effective rehabilitation of former child soldiers. Mention is also made on the role civil societies or other national entities can play in order to end the practice.

Chapter 5 consists of conclusion and recommendations

2 Assessing international standards for the protection of Children from recruitment and use in armed conflict

This chapter assesses international standards that deal with the use of child soldiers. These range from standards adopted under IHRL, IHL to ICL. Our main concern is to elaborate on what extent it addresses the issue of child soldiers, before assessing specifically how far those standards have gone in preventing the use and recruitment of child soldiers by NSAs and in incorporating the issue of DDR of children in their content.

The question is whether international instruments adopted so far constitute an efficient tool in preventing NSAs from using and recruiting children and whether the standards provide for DDR programmes in post conflict situation that can prevent further re-recruitment and ensure smooth rehabilitation of former child combatants. As such, we comment respectively on the two Additional Protocols to the Geneva Conventions of 12 August 1949²⁷, the Convention on the Rights of the Child²⁸ and its Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict²⁹, the ILO Worst Forms of Child Labour Convention, 1999 (No 182)³⁰ and the Rome Statute of the International Criminal Court³¹.

The assessment of these instruments relevance shall take into account the nature of the legal language and its legally binding nature on parties to an armed conflict. Issues such as the minimum age participation of children and the place given to DDR programmes in post conflict situations are the bulk of our analysis. A critical comment will allow the reader to draw some conclusions on the relevance of the standards.

²⁷ See respectively Additional Protocol I to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflict of 8 June 1977 and Protocol II, to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non International Armed conflict of 8 June 1977

²⁸ Adopted and opened for signature, ratification and accession by the General Assembly Resolution 44/25 of 20 of November 1989; entry into force on the 2nd of September 1990 in accordance with its article 49

²⁹ Adopted and opened for signature, ratification and accession by the General Assembly Resolution A/RES/54/263 of 25 May 2000. Entered into force: on the 12th of February 2002

³⁰ Adopted on the 17 of June 1999 by the General conference of the International Labour Organization at its eighty-seventh session. Entry into Force: 19 November 2000, in accordance with its article 10

³¹ Adopted by the United Nations Diplomatic Conference of plenipotentiaries on the establishment of an International Criminal Court on the 17th of July 1998. Entry in to force: 1 July 2002, in accordance with its article 126.

2.1 International Humanitarian Law (IHL)

A look at all the standards relevant to our assessment shows that IHL, which deals with the laws of war, i.e. rules to be observed by parties to a conflict, was the first to address the issue of child soldiers and to provide the scope for an international obligations that fall on parties to a conflict. From the very beginning of its development, IHL through the four Geneva Conventions, with their Common article 3, imposed basic rules and principles to be observed by parties to armed conflicts³². Although not directly linked to the issue of child soldiers, it could be argued it was at least a good start. Interestingly, the issue was given full consideration under the two Additional Protocols to the Geneva Conventions where the bulk of IHL provisions dealing with the prevention and stop of the use and recruitment of child soldiers are to be found

2.1.1 The two Additional Protocols to the Geneva Convention of 12 of August 1949:

With one of its basic goals being to provide protection to those who do not take part in hostilities (civilians including children, wounded, sick and prisoners of war), IHL through the Geneva Conventions showed its commitment toward the prohibition of the recruitment or use of children as soldiers.³³ The two Additional Protocols constitute at the international level the earliest manifestation of international law to stop and prevent the participation of children in armed conflict. It came as a complement to the four Geneva Conventions of August 12, 1949 namely, Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Convention III Relative to the Treatment of Prisoners of War and Convention IV Relative to the Protection of Civilian Persons in Time of War. There was an obvious need to set out a minimum age for the participation of children in armed conflicts. The need to regulate both international and non-international armed conflicts was also given consideration as it was clear that the recruitment and use of child soldiers was not limited to international but also internal armed conflicts .The protection afforded in this regard by the Additional Protocols is offered in Additional Protocol I, under Measures in Favour of Women and Children,

³² See the full text of common article 3 of the Geneva Conventions for more details

³³ See HUMANITARIAN POLICY GROUP, Kate Mackintosh, The Principle of Humanitarian Action in International Humanitarian Law, Study 4 in: The Politics of Principle: The Principle of Humanitarian Action in Practice, HUMANITARIAN POLICY GROUP Report 5 March 2000

See ICRC, Frits Kalshoven and Liesbeth Zegveld, Constraints on the Waging of War An Introduction to International Humanitarian Law, ICRC publication Geneva.2001

See also ICRC, Hans-Peter Gasser, International Humanitarian Law, An introduction, ICRC publication Geneva.1993

under Part IV devoted to Civilian Populations (section III chapter II) and under Fundamental Guarantees within Part II, of Additional Protocol II dealing with humane treatment . In this line Article 77³⁴ of the first Additional Protocol, applicable to international armed conflict provides for the obligations that fall on parties to an armed conflict in respect of child soldiering activities.

On the other hand Article 4 paragraph 3 (c) of the Additional Protocol II applicable to non-international armed conflicts deals with parties' obligations in respect of internal armed conflicts.³⁵

2.1.2 The Additional Protocols binding on parties to an armed conflict, good point from IHL?

Article 77 of the Additional Protocol I requires that parties a conflict do not allow direct participation of children under the age of 15 in armed conflict.

The first thing to point out is the legal implication of the words and language used. Indeed the “shall” confers to this provisions a binding nature on those to whom it is addressed. It means parties to a conflict have to comply fully with the above requirement whether they agree or not.

Furthermore, the content of article 77 refers to parties to a conflict and as such, addresses itself to both governmental armed forces and NSAs armed groups. This is a key point that makes IHL different from IHRL standards who provides for direct obligations on state actors only and not NSAs; this points out the uniqueness of IHL that imposes direct obligations on NSAs armed groups.

The Commentary to the Additional Protocol I and II of June 1977³⁶ refers to the participation of adolescent in combat as an inhumane practice,

³⁴ Article 77 of the first Additional protocol, applicable to international armed conflict stipulates that: “[...] The parties to the conflict shall take all feasible measure 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 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.

If, in exceptional cases, despite the provisions of paragraph 2, 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. [...]”

³⁵ Article 4 Para 3 (c) of the second Additional Protocol applicable to non-international armed conflicts reads as follow:

“[...] Children who have not yet attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. [...]”

³⁶ See International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Commentaries, Part IV: Civilian Population, Section III Treatment of persons in the power of a party to the conflict Chapter II Measures in favour of Women and Children, paragraph 3183 to 3191, International Committee of the Red Cross (ICRC), page 898-901, 2005, <www.icrc.org/ihl.nsf/COM/470-750099?OpenDocument>

which should end.³⁷ As a result, the article sets 15 as the minimum age for recruitment or use of children in armed conflict. We need to go back to the Introduction of the Commentaries on Additional Protocols I and II of June 1977 to understand that the age of 15 was retained despite the proposition to raise it to 18. Actually, an amendment proposed by one delegation saw the opposition of the majority of others. It is argued it was because of the great divergences of national legislations on the question at the time.³⁸ The Convention on the Right of Child was not yet adopted and still no formal definition of a child was agreed on under international law. The Protocol however provides as a way of compromise that parties to a conflict shall in recruiting among persons who have attained the age of 15 years but not yet the age of 18, endeavour to give priority to those who are oldest.

The question now is what does this imply for parties to a conflict who may act contrary to IHL provisions? A brief explanation of how IHL implementation works may be illustrative. It is important at this stage to point out different means by which IHL can be enforced. In a book on international law, Malcolm D. Evans highlights the role played by the UNSC and ICL in making sure all parties to a conflict respect the obligations placed on them and answer for their acts should they go against laws of conflict.³⁹

2.1.3 Areas of concerns

The main area of concern under IHL centres on the absence of provisions regarding DDR programmes for the reintegration of child soldiers. It appears obvious that the issue has not been contemplated by IHL, although the International Committee for the Red Cross (ICRC), playing a key role in the implementation of IHL, deals with the issue.⁴⁰ This could be justified by the fact that IHL deals only with the law of war and therefore applies in times of conflicts. Yet, it may still be argued that the release and reintegration of child soldiers sometimes does take place during armed conflicts and that the respect of obligations regarding civilians under the Geneva conventions and protocols would be relevant.

Similarly, a concern may be expressed on a requirement of article 77 of Additional Protocol I, which seems to prohibit only compulsory recruitment and not voluntary enrolment. This may undermine the effects of the Protocol in protecting children from use and recruitment as soldiers. As pointed out above, recruitment is both compulsory and voluntary and has to be prohibited. The Rapporteur of Committee III, commenting on this, noted that it was sometimes not realistic to prohibit voluntary participation of children in armed conflict⁴¹. He mentioned the Middle East conflict in Palestinians territories where children take part in conflict on a voluntarily

³⁷ See Paragraph 3183

³⁸ See Paragraph 4556

³⁹ Malcolm D. Evans, *International Law*, First Edition, Oxford University Press, New York 2003

⁴⁰ *Infra* see chapter four

⁴¹ See Paragraph 3184

basis and thought this could be the excuse for not prohibiting voluntary enrolment.

Another weakness can be traced from the provision that asks parties to an armed conflict to prevent children from taking a “direct part in hostilities”. The questions may be asked about what constitute “direct participation”? Why was this adopted despite the fact that the ICRC did not include it on the draft they proposed to the delegations? Moreover, what indirect participation can imply? It may be argued that even though the intention of the drafters was to avoid children’s participation in armed conflicts they have failed to ensure it fully by inserting the qualification “direct” which in practice limit the scope of article 77. Indirect participation has to be taken into account when with dealing the prevention and stop of use and recruitment of child soldiers. Children are often used as spies, cooks or guards but still, they are regarded as child soldiers. It would have been less problematic to forbid children participation in hostilities whether indirect or indirect.

The phrase “feasible measures”, qualifies steps to be taken by parties to an armed conflict, and can be argued to limit the scope of the provision. The requirement to take “All feasible measures” to avoid use and recruitment of child soldiers shows that governments were not ready to “undertake unconditional obligations”⁴² despite the proposal of the ICRC that the text refers to “all necessary measures”. To grasp the meaning of “feasible measures”, we need to go back to commentary of article 76 Paragraph 3, which deals with protection of women under Additional Protocol I⁴³; it suggests this should be understood to mean “capable of being done, accomplished or carried out, possible, or practicable”.⁴⁴ It is interesting to note that English-speaking countries insisted in using the word “feasible” though the corresponding French and Spanish texts version are different as it illustrated by the different translations of article 58 of the same Protocol.⁴⁵

⁴² See Paragraph 3184

⁴³ See Paragraph 3170-3171:

3170 The terms used require some explanation: "to the maximum extent feasible" corresponds to the French "dans toute la mesure du possible", and in Spanish to "en toda la medida de lo posible". Article 58 (Precautions against the effects of attacks) ' uses the same wording in the English text, though the corresponding french and spanish texts are different: respectively, "dans toute la mesure de ce qui est pratiquement possible" and "hasta donde sea factible". It is rather strange that an expression, which is the same in English in these two articles, should appear with different wording in the French and Spanish texts. Here again, the Drafting Committee did not correct this error through lack of time.

3171 The expression was discussed at length with regard to other articles, and the English-speaking contingent insisted on using the word "feasible" and on a corresponding translation in other languages; that should serve as a guide in the interpretation of that expression. Thus it should be understood as meaning "capable of being done, accomplished or carried out, possible or practicable".

⁴⁴ See Paragraph 3170

⁴⁵ See the French and Spanish version of the Protocol and their commentaries.

2.1.4 Greater protection with Additional Protocol II?

The majority of drafters of the Additional Protocol II shared the idea that some basic provisions contained in the Geneva Conventions should be designed in such a way that would protect victims of non-international armed conflicts. On this basis a comprehensive sum up of some provisions, laying down fundamental guarantees under IHL, was elaborated in the Additional Protocol II.

Apart from reiterating obligations contained in common article 3 of the Geneva Conventions,⁴⁶ article 4 paragraph 3 (c) goes further by dealing with the issue of children's participation in armed conflicts at domestic levels. In line with the content of Additional Protocol I, a requirement that children who "have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities", is imposed. This gives the way to the same obligations as those contained under Article 77 of the Additional Protocol I, but it is submitted it confers more protection for victims of internal armed conflict than those of international armed conflicts. In fact, despite the fact that the minimum age requirement is still the same i.e. 15 years old, the wording of article 4 paragraph 3 (c) is very different from that of article 77. It refers neither to "direct" participation of children as seen above nor to "feasible measures". The obligation is simple: no participation of children in hostilities. Drafters here did not distinguish whether the participation is direct or not or whether the measures taken by parties to the conflict should be feasible or not. It appears the obligations are stricter even though the same concern is expressed in respect of minimum age of participation.

⁴⁶ These articles lay down basic obligations on parties to conflicts not of an international character. Common article 3 of the Geneva conventions is to the effect that:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Additional Protocol II confers more protection than Additional Protocol I and this might be a very important point, given that most of conflicts nowadays in Africa are internal. NSAs and states actors that are more likely to be engaged in non-international armed conflicts have to observe stricter obligations under IHL.

2.1.5 Conclusion

Three major understandings may flow from the assessment of IHL provisions in respect of child soldiers.

The first is that the law imposes obligation on all parties to the conflict including NSAs armed groups.

The second is that the issue of DDR programmes is not given consideration under IHL and recourse has to be made to the work of the ICRC to see an involvement in this respect.

The third is that although the legal nature of the obligation is clear, it still has some areas of concerns, namely the need to upgrade the minimum age of protection to a realistic and reasonable age that afford greater protection to children and meet recent international instruments.

There is also the need to remove from IHL provisions some qualifications that undermine the scope of the Protocols.

2.2 International Human Rights Law (IHRL)

Child soldiering activities are at the center of human rights concerns although this came after IHL dealt with the issue. IHRL provides for significant instruments that address the prevention and stop of use and recruitment of child soldiers in the world. The first binding international human rights instrument that dealt with the issue was the Convention of the Rights of the Child (CRC), followed by its Optional Protocol on the Involvement of Children in Armed Conflict. But by then, the ILO came in with an originality and a not less important contribution, which tried to tackle the practice from the angle of worst form of child labour. Indeed ILO Worst Form of Child Labour Convention 182 (1999) and Recommendation No 190 illustrated international labour standards adopted in respect to children's rights. The prevention and the stop of the use and recruitment of child soldiers were part of the agenda.

The CRC that came first addressed the problem from the perspective of protecting children's right in general while the Optional Protocol came in with the main concern of protecting children from getting involved in armed conflicts.

This part offers an assessment of these instruments that constitutes so far IHRL in respect of child soldiering activities. It evaluates how far IHRL has gone to protect children from participating in wars and how it has addressed the challenge of imposing obligations on NSAs. It looks also at the importance these instruments have given to the DDR programmes in the

process of preventing re-recruitment and ensuring rehabilitation of former child soldiers.

2.2.1 The Convention on the Rights of the Child (CRC)

The CRC is the main international convention that deals with basic civil, political, economic, social and cultural rights of children. It brings together the children's rights contained in other international instruments. It articulates those rights more completely and provides a set of guiding principles that fundamentally shape the way in which we view children. The main principles of the Convention include non-discrimination; adherence to the best interests of the child; the right to life, survival and development, and the right to participate and they represent underlying requirements for all children's rights to be achieved.⁴⁷ The Convention has the merit of dealing with all children's rights and as such addresses the issue of child soldiers, although inadequately.

Article 38, which is devoted to the protection of children affected by armed conflict, does not limit itself to the question of use and recruitment of child soldiers, but goes ahead to contemplate the effects armed conflicts may have on children. It states as follows:

“State parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen do not take a direct part into hostilities.

States parties shall refrain from recruiting any person who has attained the age of fifteen years into their armed forces. In recruiting among those persons who have the age of fifteen years but who have not attained the age of eighteen years; states shall endeavour to give priority to those who are oldest.

In accordance with their obligation, under international humanitarian law to protect the civilian population in armed conflicts, states parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

It is important first to mention that the Committee on the Rights of the Child during its General Discussion on “children in armed conflict” emphasised that the effects of armed conflicts on children should be considered in the framework of all the articles of the Convention on the Rights of the Child.⁴⁸ This reaffirmed the idea contained in the Guiding

⁴⁷ UNICEF, The Convention on the Rights of the Child, Guiding Principles: general requirement for all rights UNICEF, http://www.unicef.org/crc/files/Guiding_Principles.pdf.

⁴⁸ CRC, Report of the Second Session, September /October 1992, CRC/C/10 pages 20 and 21

Principles of the Convention. Indeed, it stipulates that article 38 should not be understood as standing alone but rather conceived as “the need to ensure an effective protection of children in a period of armed conflict, in the overall framework of the realisation of all the rights of the child, inherent to his or her dignity and essential to the full and harmonious development of his or her personality”.⁴⁹ In the same spirit, the Committee reiterated that the principles of the convention cannot be subject to derogation in times of armed conflict and therefore had to be respected in all the circumstances.

Article 38 in its first paragraph requires states parties to respect and ensure that rules of IHL applicable in time of armed conflict are observed. It may be submitted this looks good, given that IHL has provided for an acceptable scope of protection for children in this regard. Still the obligations are directly placed only on states parties to the Convention, the requirement flowing from IHRL principles.

Nevertheless, provisions of the Additional Protocols influence the Convention as paragraph two of Article 38 illustrates. It adopts the same legal language offered under Article 77 of Additional Protocol I. The requirement is clear and unequivocal: no use of children below the age of 15. However the main difference at this level is on whom the provisions are legally binding. The obligation is placed only on state parties to the Convention and does not leave any room for NSAs to have direct obligations in relation to the Committee on the Rights of the Child. Of course it may still be pointed out that states are left with the implementation of the Convention at national levels and they have the obligation to make sure national armed forces, as well as NSAs armed groups comply with provisions of the Convention and IHRL. It is, however, important once more to point out the difficulty of achieving this since the reality shows that in period of armed conflicts, whether international or non-international, states do not necessarily have control of some parts of their territories that are rather controlled by NSA armed groups. The question is how can states implement the Convention and ensure that armed groups do no use and recruit child soldiers?

This is a dilemma under IHRL when addressing the issue of child soldiers. IHRL fails to impose direct obligations on NSAs unlike IHL. However it expects states to make sure human rights are respected by all within their borders no matter who is in material control of the territory. This seems to be the main problem under IHRL. In Africa for instance the question will be how can the Government of Democratic Republic of Congo ensure that rebels groups operating in Goma⁵⁰ do neither use nor recruit child soldiers, when it is obvious they have no control over them?

Some explanations have been given to this strict approach adopted under IHRL; although some may appear pertinent, they still lack some legitimacy and good sense. To discuss on how this principle hereunder may be overcome or changed will suppose a shift from existing IRHL principles

⁴⁹ See page 20-21 of the Report.

⁵⁰ Goma is a city of 160,000 in the eastern Democratic Republic of the Congo, on the northern shore of Lake Kivu, next to the Rwandan city of Gisenyi. It has for a long time been under the control of rebel groups and part of it is still reported under rebel's control

and a move towards the IHL approach that confer direct obligations to all parties to armed conflicts.

On the other hand, the content of Article 38 shows that there was a clear concern by delegations, while drafting the Convention, not to undermine the bulk IHL provisions. Some doubts have, however, emerged on whether this has been the case. The issue of minimum age for instance, created a problem when several representatives in the working group indicated that they could not join and approve the final version, which appeared to be a compromise of contradictory views. They claimed that while Article 38 was consistent with Additional Protocol I, it failed to extend to situation of children in internal armed conflict as contemplated under Additional Protocol II that, as we saw earlier, confers more protection than Additional Protocol I. Their point was that this would undermine existing international standards and so would clearly go against United Nations General Assembly (UNGA) Resolution 41/20.⁵¹

It may be submitted with due respect to the working group at the time of drafting that the argument is well founded and that the need to reach a compromise lead somehow to put in question a UNGA Resolution that constitutes a principle under international law.

2.2.1.1 Implementing the CRC

For purpose of convenience, the thesis focuses on how the implementation of Article 38 is done despite the fact that the Convention is implemented as a whole due to the inter-relation between its articles.

The Implementation Handbook for the Convention on the Rights of the Child provides for a very good resume of what the Committee's work is, while implementing the CRC and what are the requirements states parties have to follow.⁵²

At first, the Handbook elaborates on general measures of implementation common to all the provisions of the Convention. These include an identification and coordination of responsible departments and agencies at all levels of government, an identification of relevant non-governmental organisation/civil society partners, a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, a budgetary analysis and allocation of necessary resources, a development of mechanisms for the monitoring and evaluation and finally the development of appropriate training and awareness-raising in relation to Article 38.

Secondly, there is what is referred to as specific issues in implementing article 38, which consists basically in the following question: has the state ratified or acceded to the four Geneva Conventions of 1949, Additional Protocol I and II, or others international instruments relevant to the protection of children affected by armed conflict? Has the

⁵¹ See the resolution, which requires that no new international standards should undermine existing or previous ones. And See also page 20-21 of the Report.

⁵² UNICEF, Implementation Handbook for the Convention on the Rights of the Child, Fully Revised Edition, UNICEF, New York, June 2002

state taken appropriate steps to ensure that children under the age of 15 do not take direct or indirect part in hostilities? Has the state ensured no child under 18 is conscripted into armed forces? Has the state adopted legislation and appropriate measures to prevent the recruitment of children, who have not attained 15 into the armed forces, or have they given priority to the oldest in recruiting any child under 18? Have they prevented the recruitment of any child under 18 into the armed forces? Has the state taken measures to prohibit and prevent recruitment of any child under 18 by non-governmental forces? What about military school, do they recruit below 18 and if so is there any supervision by the Ministry of Education rather than the defence of the process? And do they guarantee respect of the aims of education set out in article 29? Has the state ratified the Optional Protocol on the Involvement of Children in Armed Conflict?⁵³

The sticking point from the implementation checklist is the inclusion of the requirement that states take steps to prohibit and prevent recruitment of children under 18 by non-government forces i.e. NSAs armed groups. As suggested above the state has an obligation to make sure all within its territory respected this. Even though this may not be easy in reality, states can at least take steps to enforce it in respect to its armed forces before extending the practice to all parties to armed conflicts including NSAs. The implementation checklist refers in this regard to non-government forces, but does not impose any direct obligations on them. It appears that although the implementation checklist provides for good scope of implementation of Article 38, it still remain unsatisfactory when it comes to addressing NSAs. Our comments is motivated by the need to assess the scope of implementation offered under the work of the Committee (CRC), to see if it can help to influence the conduct of NSAs armed groups at national level. From the above it seems that it would be difficult to expect such a result given that armed groups are very difficult to control and monitor by both states and international community.

In response to this, a solution may be envisaged at the level of how national system of implementation is conceived. This passes through a strong national human rights commission or institution which, in harmony with the requirements of the Convention may impose legal binding obligations on armed groups and as such set criminal liabilities for those who use and recruit child soldiers, though it will still be difficult to see how armed groups will have to face sanctions. No doubt, this will be important for deterrence and for ending feeling of impunity that some leaders of armed groups or armed forces have.

2.2.1.2 DDR under CRC

The first point to mention here is that the CRC refers to rehabilitation and social integration programmes and as such does not use directly the term DDR. In practice, however, they are all the same.

⁵³ For a comprehensive listing of all the question including those not related strictly speaking to our main topic see the Implementation Handbook at page 577to 578.

Article 39 of the convention is to the effect that states parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

It appears that the provision deals with the rehabilitation of child victims from a general point of view and that it addresses issues like rehabilitation from violence, abuse, sexual violence, torture, sale, trafficking and armed conflict, which is our area of concern. During the discussion of the Committee on the Right of the Child (the day of General Discussion on children and armed conflict) it was noted that there was a need to consider a coherent plan for recovery and reintegration of child victims of armed conflict and that this had to be done in close collaborations with UN agencies and NGOs.⁵⁴ The Committee has since then said that attention should be paid to the implementation and monitoring of adequate strategies in this regard.⁵⁵ Article 39, therefore provides for a canvas of DDR programmes, which are very important aspects of the challenges faced when dealing with child soldiering activities. By adopting this approach, the CRC and the Committee make rehabilitation an indispensable tool to prevent re-recruitment which itself cannot be efficiently achieved if there are not effective way of reintegrating child soldiers in normal lives after their release and demobilisation. The question now is what measures can be judged “appropriate” when it comes to implement rehabilitation programmes?

Once more, a look at the Implementation Handbook for the Convention on the Rights of the Child is necessary on this point. The implementation checklist of Article 39 refers at first to general measures of implementation common to all the provisions of the convention that we already listed above⁵⁶ and secondly to specific issues to be addressed while implementing Article 39. The concerns of the Committee relate among others to how states ensure that appropriate rehabilitative measures, consistent with article 39 are taken to promote physical and psychological recovery and social reintegration of all children within its jurisdiction. Who are victims of armed conflict? How do states ensure appropriate recovery and social reintegration for children involved in the juvenile justice system? What compensation is available for child victims? Are health, respect and dignity of the child respected? It is also worth mentioning what the Committee considers as articles closely related to Article 39 and that has in consequence to be given consideration when implementing this provision since the Convention is indivisible and its articles interdependent; articles 32 on child labour and 38 on armed conflict are therefore referred to⁵⁷.

⁵⁴ See the Report on the second session, September /October 1992, CRC/10,para .74

⁵⁵ *Ibid*

⁵⁶ UNICEF Implementation Handbook for the CRC Fully revised edition page 577

⁵⁷ To see the full list of closely related articles see The implementation Handbook at page 588

It is good to acknowledge that CRC has the merit of dealing with the rehabilitation and reintegration of children affected by armed conflict and as such, addresses DDR programmes. It provides for a reliable scope of work in order to reintegrate child soldiers to normal lives. Education, health, child dignity as well as collaboration with other international entities are given full consideration under Article 39. But, still the challenge remain to apply this at a national level and meet a smooth transition to normal lives for former child soldiers, ensure their effective release, demobilisation, disintegration and rehabilitation that meets the concern of governmental entities, NSAs, international organizations, international community and NGOs and that can afford the very high cost of reintegration process. It may be submitted therefore that suggestions and recommendations formulated by the Committee in respect of this provision have to be strictly complied with.⁵⁸

2.2.2 The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

The Optional Protocol on the involvement of children in armed conflict came as a need to address the challenges that the participation of children in armed conflicts constituted. This took place in a contest where the issue, although addressed under the CRC, needed to be reevaluated in order to meet the challenges that child soldiering activities implied. The Protocol manifested a clear signal from the international community. Indeed the CRC did not cover efficiently all areas of concern in respect of children's right and simply provided for what could be called fundamental principles in regard to issues like child prostitution, pornography and child soldiering, taken to represent the most flagrant violations of children's rights. There was an obvious need either to reinforce the CRC in that line, or simply to adopt protocols specifically devoted to those issues. Therefore, the need to come up with specific instruments addressing these issues saw a rapid adhesion and resulted in the adoption of an Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, an Optional Protocol to the Convention on the Rights of the Child on Child Prostitution and Child Pornography, and of an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict is an effort to strengthen the implementation of the children's rights and increase the protection of children during armed conflicts. It is a "leap forward in international law to protect children from harmful effects of recruitment and use in hostilities."

For the purpose of time and due to limited space this part only takes a look at substantive provisions regulating the participation and recruitment of children in armed conflict and how they are implemented. It

⁵⁸ Look at Sierra Leone, Chad, Comoros, Lebanon, Guatemala IRCO add in order to have an idea.

assess the obligations it imposed on NSAs and evaluate what place has been left to DDR programmes.

Primarily article 1 is to the effect that states parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. This is so far, one of the most important advancements in regard to children's rights. It sets the basis for what could be now a new universally accepted and recognised definition of who is a child.⁵⁹ Unlike previous instruments commented on so far, the Protocol expressly places the age limit for participation in hostilities at 18.

The legal nature of the language adopted is strict and irrevocable. It is binding on states that have ratified the Optional Protocol. A concern may still be expressed that those left with the direct obligation to implement the Protocol are states parties only. This article suggests that the Optional Protocol has once again failed where earlier instruments under IHRL failed, namely by being unable to adopt a bold approach that could have resulted in imposing direct obligations on NSAs armed groups. This implies again that we are still left with the bitter impression that IHRL principles as shaped nowadays do not meet up the reality of the challenge faced when implementing human rights law in respect of NSAs, and that there is a need to operate a revolution on this.

Furthermore, the argumentation we already had before in respect of the qualification "direct" still applies to this provision and as such need not be commented again.⁶⁰

2.2.2.1 Voluntary and Compulsory Recruitment

Under this heading, it is interesting to see how the Protocol tackles the issue namely by adopting a double standard approach in respect to states actors and armed groups.

States actors

The Optional Protocol seems to have failed again to provide for a solution to problems experienced by previous instruments when it comes to imposing a straight ban to all forms of recruitment whether voluntary or forced. It can be pointed out however that it has nonetheless improved the standard, as proposed so far, by prohibiting henceforth any form of compulsory recruitment and use under the age of 18 and by raising the age of voluntary recruitment at least to the age of 15 only if done by governmental armed forces.

It has also raised to the age of 18 all forms of recruitment by armed groups. It appears therefore the Protocol clearly makes a distinction between armed forces and armed groups in term of the standards they are expected to observe.

⁵⁹ See the controversy over the definition of who a child is under the Implementation Handbook at page 676

⁶⁰ *Supra* the Two Additional Protocols, Chapter two

Articles 2 and 3 expressly refer to states' armed forces and provides respectively as follow:

“States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces”

“1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary,

(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians,

(c) Such persons are fully informed of the duties involved in such military service,

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date from which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.”

As stated above, this confirms a double standard approach that the Protocol adopts in relation to armed forces and armed groups. On this point, we may express the same concern raised by Graca Machel in her book *The Impact of War on Children*.⁶¹ The fact of imposing double standards to state parties and armed groups may undermine the effect of the Protocol in that states armed forces have to comply with provisions just listed above and NSAs armed groups will have to comply with different ones (to be discussed below).

For the moment it is important to elaborate on the number of safeguards that article 3(3) has set in respect of voluntary recruitment given

⁶¹ Machel Graca, *The Impact of War on Children: A review of progress since 1996 United Nations report on the impact of armed conflict on children*, Hurst & Co, 2001, London. Page 20

that obligations of states differ in case of voluntary and compulsory recruitment.

The Guide to the Optional Protocol on the Involvement of Children in Armed Conflict argues that those safeguards include the consent of person's parents or legal guardian, provision of information on duties involved in military services and reliable proof of age.⁶² In addition, a binding declaration must be made at the time of ratification or accession on safeguards taken by states parties on the minimum age at which they intend to permit voluntary recruitment into national armed forces⁶³. In practice, these safeguards may not be easy to apply. It is, for instance, very difficult in some areas of Africa to determine the exact age of some children who may raise it in order to get into the army. It is furthermore difficult to know sometimes the age some child soldiers due to a lack of effective birth registration policies or poverty. Similarly, it is very difficult to assess whether a due consent has been given in some situations either by the parents or by children themselves at the time of their enrolment. However, it may be submitted that an independent mechanism for the evaluation of these requirements may be the only way to ensure the faithful observance of the law.

Armed groups

Article 4 deals with NSAs and states as follows:

“1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.”

Article 4 paragraph 1 prohibits all forms of recruitment by armed groups if the person is less than 18 years. It has also therefore raised to the age of 18 all forms of recruitment by armed groups contrary to the Additional Protocols and the CRC previously discussed.

Apart from raising the minimum age to 18, it also has the merit of making a direct reference to armed groups although this does not create any direct obligations on NSAs except a moral one. This is nevertheless a good step forward under IHRL, which had so far been reluctant to address the issue this way. Although there is still a concern not to confer any direct legal status to armed groups as sub-paragraph 3 illustrates, requiring at least a moral commitment from them under paragraph one, is to be outlined as it may be the starting point for a shift of position in respect of IHRL principles.

⁶² UNICEF and Coalition to Stop the Use of Child Soldiers, Guide to the Optional Protocol on the Involvement of Children in Armed Conflict, December 2003, UNICEF New York

⁶³ See page 16 of the Guide.

It is also worth mentioning also that these articles adopt a practical point of view by prescribing no recruitment under the age of 18 by NSAs both in times of wars and peace.⁶⁴

Lastly, the Protocol offers greater protection to children in armed conflict in article 5.⁶⁵ In practice, it supposes that if there is any existing domestic legislation conferring a greater protection than the Protocol to children affected by armed conflict, the existing will prevail and shall not be put in question. This is in straight line with an IHRL principle that is to the effect that states shall always follow but the greater protection afforded to individuals under human rights law

However many concerns remain. At first, the legal language used at this level does not adopt the same legally binding nature it has in respect of state parties. Indeed the “should” rather than the “shall” leaves a bitter impression if someone is to think of the legal consequences it implies on armed groups.

Furthermore the legal obligation to implement this provision is still left to state parties given that sub-paragraph 2 requires them to take all feasible measures to prevent such recruitment by armed groups. The Guide elaborates on this and suggests that such measures could be a regulation of the behaviour of armed groups by prohibiting and criminalising the recruitment and use of children as soldiers through domestic legislation for instance.⁶⁶ The adoption of national legislation that criminalises such conduct can at least end the feeling of impunity enjoyed by armed groups leaders in some cases or could be an effective stage action taken by states actors, to implement IHRL at domestic levels.

2.2.2.2 DDR Programmes under the Optional Protocol

The Protocol, consistent with the CRC, also provides for a scope in respect to DDR programmes. Aware of the key role it plays in preventing re-recruitment and therefore the overall prevention and stop of use of child soldiers, the Protocol covers it. Reference to DDR is consequently found under article 7 (3) which states as follow:

“States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.”

Article 7 goes further by saying that states parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration

⁶⁴ UNICEF, Guide to the Optional Protocol page 17.

⁶⁵ Article 5 is to the effect that nothing in the Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

⁶⁶ *ibid*

of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the states parties concerned and the relevant international organisations.

These two provisions constitute the bulk of the place given to DDR programmes under the Protocol. States have the obligation to release demobilise and reintegrate children from armed groups and armed forces. The Protocol accords importance to the psychological and physical aspect of the disintegration that constitutes according to the Protocol, a key factor for a proper reintegration of former child soldiers. These programmes therefore presuppose psychological counselling, educational and recreational activities while tracing family ties for purpose of reunification. It appears the Protocol has adopted a recommendation made by the Committee while implementing the CRC by requiring states parties to cooperate among themselves and with international organisations for the implementation of the Protocol and achievement of DDR programmes.

2.2.2.3 Implementing the Optional protocol

By virtue of article 8 of the Protocol, states parties are required to report regularly to the Committee on the Rights of the Child, which has 18 independent experts.⁶⁷ They have the obligation to tell the Committee all the measures they have taken to bring their legislation and practices in line with the requirements of the Protocol. These requirements may sometimes prove to be more than what is actually stipulated in the Protocol. In fact, the implementation of the Protocol by the Committee in practice has revealed that they often go above express requirements made under the Protocol to ask further measures aimed at ensuring an effective compliance with the requirement not to recruit child soldiers. Obligations we comment here, ranges from those in respect of the application of article 4 dealing with NSAs armed groups to those in respect of implementation of DDR programmes under article 7.

⁶⁷ Article 8 reads as follow: “1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.”

2.2.2.3.1 Obligations in respect of article 4, which deals with NSAs armed groups

According to the Implementation Handbook, states have an obligation to provide information inter alia on armed groups operating in their territory.⁶⁸ They have to provide an update on the status of negotiations engaged with armed groups, provide disaggregated data on children who have been used or recruited (these include age, gender, region, ethnic origin and time spent into hostilities and armed groups). In addition, they have to report on any written or oral commitment made by armed groups not to recruit children below 18. Furthermore, states parties are to report on legal measures and judicial decisions, which are aimed at prohibiting and criminalising the recruitment and use of children by armed groups and provide information on programmes they took to protect children who are at high risk of being recruited or used as soldiers.⁶⁹

These above-mentioned obligations illustrate the argument that sometimes the Committee has widened the scope of obligations imposed on states while reporting on measures taken to implement the Protocol. They have indeed asked for more information from states parties when producing the reports to the Committee. The Implementation Handbook refers for instance to an update of the status of negotiations engaged with armed groups, a disaggregated data on children who have been used or recruited and information on armed groups operating in their territory.

This may result in practice in a greater commitment on behalf of states parties when implementing their obligations. In this regard the requirement for instance to update information on negotiations they have undertaken with armed groups or the requirement to provide if any, a written or oral engagements of armed groups not to use or recruit children under eighteen goes in favour of our suggestion. Those requirements may indeed be decisive in pushing states to establish for instance some form of formal or informal contacts with NSAs in order to resolve through negotiation a conflict or release children used or recruited as child soldiers. Although very improbable and difficult to achieve, this task can be crucial in preventing further use and recruitment of child soldiers in conflict situations. Facilitative roles played by third states, NGOs and international community could be called into play at this level.

On the other hand, our concern is still to make sure NSAs do comply with the protocol, if there is no climate of trust that allow for negotiations or contacts with the states they are fighting against. As such it may be submitted that the above information be requested directly to armed groups without necessarily conferring them a legal status. However, this will have to meet the challenge of how to confer legal obligations on NSAs under IHRL without granting them any legal status at all. Actually, it appears legitimate to envisage a possibility in which armed groups are internationally accountable in respect of their conducts bearing in mind states actors argument that no legitimacy should be conferred to them.

⁶⁸ See the Implementation Handbook at page 690

⁶⁹ *Ibid*

2.2.2.3.2 Obligations in respect of DDR

The Implementation Handbook provides the reader with a comprehensive summary of all obligations states parties have in respect of implementation of DDR programmes prescribed under article 7 of the Optional Protocol. Their obligations include providing relevant information on measures adopted about DDR and provision for appropriate assistance for physical recovery and social reintegration.

There is need to mention the introduction of a very important requirement, which is that due account shall be taken to the situation of girls. This brings in a new element often neglected by the law. States are also requested to submit detail information or data on children involved in armed conflict, the budget allocated to these programmes, personnel concerned with, and participation of civil society. Furthermore, states have to provide information on various measures adopted to ensure the social reintegration of children; taking into account interim care, access to education and vocational training and reintegration in the family or the community.

A very good aspect that also needs special attention here is the criteria of confidentiality on which states are supposed to be very diligent. In fact, they have to adopt measures to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation. This requirement is vital to facilitate a smooth transition from military activities to normal lives for children so that they do not rejoin military activities. The other requirements have already been mentioned under the article since they are interlinked.⁷⁰

It appears the Committee while implementing the Protocol, provides a strong basis for DDR programmes. Education, health and psychological take over and international cooperation aspects have all been given consideration and it seems the most serious challenge will just be how to establish good contacts with NSAs in view of negotiation for the release of child soldiers.

2.3 International Labour Standards

The ILO works for the realisation of social justice.⁷¹ It strongly believes this will be achieved if a decent work agenda taking into account promotion of social dialogue, social protection and employment protection as well as respect for international labour rights, is implemented. ILO conventions and recommendations cover broad range of subjects concerning work, employment, social security, social policy and human rights. On the latter, ILO deals with a growing number of needs and challenges faced by labour rights. Ensuring freedom of association and collective bargaining, equality of treatment and opportunity, abolition of forced and child labour and social security are therefore part of its agenda.

⁷⁰ *Ibid*

⁷¹ See the Preamble of ILO Constitution

It appears children's rights are part of the ILO's concerns. The need to eliminate child labour and to protect children and young persons from forced labour illustrates this. Number of international standards aimed at protecting children's rights have consequently materialised the ILO's commitment in this respect. The ones that draws our attention is the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour known as Worst Forms of Child Labour Convention, 1999 (No 182) and Recommendation 190 that accompanies it and provides for guidance on how to implement it.

2.3.1 ILO Worst form of Child Labour Convention 182 (1999) and Recommendation No 190

Convention 182 defines a "child" as a person under 18 years of age.⁷² It requires ratifying states to eliminate the worst forms of child labour, These include according to article 3(a) " All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and selfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict".

The article refers to forced or compulsory recruitment of children for use in armed conflict. It deals with child soldiering activities, which fall under the ambit of our essay. Nonetheless, in order to understand the meaning of this provision, some clarifications need to be done.

At first, one may wonder what is meant by "forced or compulsory labour"? We have to go back to ILO Convention on Forced or Compulsory labour, 1930 No 29⁷³ to find an explanation. In fact, article 2 of that Convention refers to all work or service, which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily. We may infer from this that ILO does not address any other forms of recruitments than the forced or compulsory. It therefore leaves the question of voluntary recruitment open. It may also be submitted that this approach finds a justification in the context in which the provision was drafted; the delegations were mainly worried about the protection of worker's rights and found it simple not to address the issue on a wider dimension. It appears the issue might have then been more or less contemplated from the perspective of labour rights and the relationship that exist between employers and employees.

Secondly, it is important that we assess the legal understanding and implications of the provisions of the Convention together with its accompanying recommendation. They both suggest that forced recruitment of boys and girls under 18 for use in armed conflict is one the worst form of child labour and must be prohibited and eliminated. The language used

⁷² See article 2 of the Worst Form of Child Labour Convention, 1999 No 182.

⁷³ Convention Concerning Forced or Compulsory Labour, Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its fourteenth session; entry into force 1 May 1932, in accordance with article 28

under the Convention leaves no doubt about its binding nature on those who ratified it. Article 1 clearly states that each member that ratifies it shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Recommendation 190 particularly encourages states to make recruitment a criminal offence at the national level. The criminalising of the forced recruitment of child soldiers is a step towards ending the feeling of impunity that prevail in times of internal or international armed conflicts. Both governmental armed forces and NSAs armed groups will have to abstain from forced recruitment of children.

On the other hand, the Convention is the first to use a straight 18-year minimum age limit in relation to child soldiering activities under international law. It is also the first express legal recognition of child soldiering activities as a worst form of child labour. This brings in originality in the prevention and stop of use and recruitment of child soldiers. Indeed, it is interesting that the ILO addresses this from a different perspective from what had been the case so far.

2.3.2 Implementing Convention No 182

By virtue of article 4 of the Convention, ILO leaves to states parties through national competent authorities the duty to determine, after consultation with associations of workers and employers, what should be included under this provision and as such, be prohibited as worst form of child labour.⁷⁴ It must, however, be pointed out that the determining role in respect of worst forms of child labour played by employers and workers is valid only in respect to other worst forms dealt with under Article 3(d)⁷⁵ of the Convention. Recruitment of child soldiers falls on the other hand under what is known as “absolute worst form” – i.e. predefined and not subject to further determination by tripartite parties. It appears that at the exception of article 3(d), other worst are unconditionally prohibited at the national level and national authorities do not need to consult association of workers and employers on this.

Another aspect that needs to be highlighted is the requirement contained in article 5, which is to the effect that states members shall after consultation with association workers and employers establish or designate appropriate mechanism to implement or monitor the provisions giving effect to the Convention. It means that the ILO is faithful to the IHRL Principle, which confers legal obligations only on states members to a Convention. Therefore, the responsibility lies with states, which in reality need only consult - and we hope, involve - the tripartite partners.

⁷⁴ This is known as the tripartite mechanism, which is a peculiarity to ILO that gives non-governmental organizations a word to say in the implementation of ILO standards. This mechanism is at the heart of a major difference between ILO and UN system that leaves no room for non-state actors in the implementation process.

⁷⁵ This refers to work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children

Accordingly, it may be submitted that these mechanisms shall take into account the necessity to set a basis for release of children engaged in armed forces and armed groups and provide for a scope of negotiation with parties to a conflict in order to obtain their commitment to international standards in respect of use and recruitment of child soldiers. The work of the ILO may therefore be crucial in respect of the prevention of recruitment of child soldiers.

On the other hand states have the obligation, in addressing reports to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to report regularly on measures it has taken to implement the Convention, submit reports detailing the steps they have taken in law and practice to apply the convention. Governments are required to submit copies of their reports to employers and workers' organizations. These organisations may comment on the governments' reports; they may also send comments on the application of Conventions directly to the ILO. State parties in their reports will have to address points like account taken, for education in eliminating child labour, the prevention of engagement of children in child labour, to identify and reach out to children at special risk. Special account of situation of girls and appropriate direct assistance for the removal of children from the worst form of child labour and for their rehabilitation and social integration has to be included⁷⁶. This brings us to the issue of DDR as addressed by the ILO.

2.3.3 DDR under ILO

ILO does a significant and substantial job with the aim of preventing and stopping the use and recruitment of children in armed conflict. It provides necessary and appropriate assistance for the removal of children from the worst form of child labour and ensures rehabilitation and social reintegration of child soldiers.

The ILO works on the understanding that reintegrating young soldiers is a highly complicated task and that it in some cases the most difficult problem relates to family tracing while keeping in mind that conflict may have destroyed communities and family ties and that in response to this there should be consideration of sustainability of reunification in order to avoid an eventual return to soldiering activities. The ILO gives significant attention to girls' status and also to implications their status in the society may imply. Furthermore a clear need to address the specific needs of young soldiers, the reason why they became involved, their scars from military life, their ambitions as well the creation of training and employment opportunities in war torn economy, is given.⁷⁷

It is worth making clear that DDR programmes are done under the ILO through a technical cooperation programme, and that while this is based on a concern for implementing standards, it is not in direct application of those standards. It thus goes somewhat beyond the implementation of

⁷⁶ See article 7 of the ILO Worst Form of Child Labour Convention, 1999 (No.182)

⁷⁷ International Labour Office, Reintegrating Child Soldiers, In Focus Programme on Crisis Response and Reconstruction Recovery and Reconstruction Department May 2003

human rights law, and into the realm of practical realization of human rights. The ILO “In Focus Programme on Crisis Response and Recommendation (IFP/CRISIS)”⁷⁸ and its International Programme for the Elimination of Child Labour (IPEC)⁷⁹ are those left with the responsibility to implement this urge technical cooperation programme for the release and reintegration of child soldiers. While doing so, they concentrate on two complementary axes:

- Appealing and viable alternative for 14 to 18 year old soldiers relinquishing their arms

- Income-generating support to receiving families and communities Assistance includes vocational training on the job training, apprenticeship, and short-term employment. Labour-intensive construction works business start up and micro finance programmes and are done in close collaboration with UNICEF who provides generally income generating support to families and communities where children are placed.

This strategy has permitted the ILO to record some success in preventing and reintegrating child soldiers in Central Africa for instance, i.e. in the Great lakes Region. In October 2001 for example, the International Labour Organisation/International Programme on the Elimination of Child Labour (ILO/IPEC) launched a “Sub regional programme for the Reintegration of Child Soldiers and the Prevention of the Use of Children in Armed Conflict in Central Africa”.⁸⁰

2.3.4 Conclusion

From the above, it appears IHRL deals with the issue of preventing the use and recruitment of child soldiers. However, areas of satisfactions may be noted as well as serious concerns

⁷⁸ The ILO Crisis Response and Reconstruction programme is involved in four types of crises: Armed conflicts Natural disasters Economic and financial downturns, difficult social and political transitions. With the collaboration and expertise of headquarters technical units and field offices, the ILO offers policy advice, publications and tools, and other support to countries affected. Crisis responses are orchestrated by ILO/CRISIS the central coordinating unit for ILO crisis response. This small, headquarters-based unit works to implement “Whole of ILO” mobilizations when a crisis strikes. ILO/CRISIS forms partnerships and produces publications aimed specifically at addressing decent work concerns in crises. It also undertakes some direct country interventions in the two most numerous kinds of emergencies, armed conflicts and natural disasters. <<http://www.ilo.org/public/english/employment/crisis/about/which.htm>>

⁷⁹ The ILO’s International Programme on the Elimination of Child Labour (IPEC) was created in 1992 with the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour. IPEC currently has operations in 88 countries, with an annual expenditure on technical cooperation projects that reached over US\$74 million in 2006. It is the largest programme of its kind globally and the biggest single operational programme of the ILO. <<http://www.ilo.org/ipec/programme/lang--en/index.htm>>

⁸⁰ ILO/IPEC, Wounded Childhood: The use of children in armed conflict in Central Africa, ILO, 2003 Geneva. <www.ilo.org/english/standards/ipec/publ/childsoldiers/woundedchild.htm>

The positive point in respect of IHRL is the place it gives to rehabilitation and reintegration of child soldiers namely through sound and efficient DDR programmes. From what has been discussed about the monitoring work of the Committee on the Rights of the Child, there is a good feeling that prevention of use and recruitment of child soldiers via technical assistance is on the good track. ILO's achievements from its technical cooperation programmes are also illustrative.

On the other hand, it is good to recall that ILO's Worst Form of Child Labour Convention 182 (1999) and Recommendation No 190 provides for an effective legal tool for the prevention and stop of recruitment and use of child soldiers.

From the concerns raised above, it appears that by denying direct obligations on NSAs, IHRL to an extent, put in jeopardy its own implementation.

It appears also very important that DDR programmes be accompanied by economic revival efforts and employment creation programmes. Assistance to receiving families needs to be more acute and flexibility should be given more importance in adapting to the needs of individual soldiers. In the same line, vulnerable groups among child soldiers like girls and children with disabilities should receive special attention and that considerable resources and coordination should be obtained from Governments, NGOs and international Community.⁸¹

2.4 International Criminal Law (ICL)

So far, we have been dealing with international standards that either impose obligations on parties to a conflict or confer direct legal binding obligation only on states actors. ICL allows us to move to an area of international law where obligations are placed directly on individuals be they from national armed forces or NSAs armed groups. ICL actually brings in a new concept under international law. It advocates for individual criminal responsibility regardless of an individual status or belonging. ICL is not concerned with the debate of who should be conferred direct legal obligations under international law between states and NSAs. ICL, however, draws from both IHRL and IHL on one hand and national criminal law principles to build up an international set of rules that punishes individuals for their criminal misconducts.

⁸¹ International Labour Office, Reintegrating Child Soldiers, In Focus Programme on Crisis Response and Reconstruction Recovery and Reconstruction Department, ILO, May 2003. Geneva

2.4.1 Rome Statue of International Criminal Court (ICC)

The idea of establishing a permanent court to try persons charged with international crimes can be traced respectively from the post First World War original attempts to set for international tribunal, the establishment after the second World War of the Nuremberg Tribunal and the Tokyo War Crimes Tribunal (1945-1949), the recent development of ad hoc tribunals namely in former Yugoslavia and Rwanda to the drafting of the ICC Statute that lead to the creation of the ICC. Behind all this, was the clear and manifest intention to bring individuals, irrespective of their status, to justice so that they face trial for their alleged responsibilities for international crimes and end the feeling of impunity.

In response to a suggestion made by Trinidad and Tobago to create an international criminal court dealing with drug trafficking, the UNGA who had already expressed concerns about the importance of an international court,⁸² requested the International Law Commission (ILC) to address the issue, which resulted in a report going further than drug trafficking sphere and which suggested the creation of an international criminal court with a broader jurisdiction which should include among others war crimes, genocide and crimes against humanity. Furthermore, the establishment respectively of the International Criminal Tribunal for former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) revived later on the idea that a permanent tribunal would respond more efficiently to international crimes. The UNGA established as a result a Preparatory Committee on the Establishment of an International Criminal Court (PrepCom), which gave way to a Draft Statute and Draft Final Act being produced.

The Rome Statute is mainly to the effect that there shall be individual criminal responsibility over international crimes. In this regard the jurisdiction of the ICC covers “the most serious crimes of concern to the international community as a whole”⁸³ and these crimes are listed under article 5(1) of the statute as genocide, crimes against humanity, war crimes and the crimes of aggression.

The use and recruitment of child soldiers fall under the category of war crimes. The Tadic Case⁸⁴ at this point may be relevant to understand what war crimes are. The Court deliberated on this during the trial. It was held it consists among other to serious infringement or breach of an international rule protecting important value, that the breach must involve grave consequences for the victim, that the rule violated must either belong to the corpus of customary law or be part of applicable treaty and that the violation must entail under customary law or conventional law the individual criminal responsibility of the person breaching the rule.⁸⁵ War crimes are therefore “serious violations of customary or, when applicable,

⁸² This was through a resolution adopted in the 9th of December 1948 (A/RES/260(III))

⁸³ Preamble of the Rome Statute, paragraph 4

⁸⁴ The Prosecutor V. Dusko Tadic. Case No. IT-94-1

⁸⁵ The Prosecutor V. Dusko Tadic; Case No.IT-94-1; ICTY Appeals Chamber. Decision on the Defence Motion for Interlocutory appeal on Jurisdiction, 2 October 1995 Para

treaty rules concerning the international humanitarian law of armed conflict”.⁸⁶

On its own the International Law Commission (ILC) Draft Statute in its Article 20(c) adopts a similar definition when they refer to war crimes as “serious violations of the laws or customs applicable in armed conflict” including grave breaches of the 1949 Geneva Conventions and of Additional Protocol I as mentioned in Article 20(e).

Article 8(1) is to the effect that the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of large-scale commission of such crimes. In listing what constitutes war crimes under the Statute⁸⁷, Article 8(2) (b) (xxvi) which has to do with international armed conflicts includes:

“Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”

On the other hand article 8(2) (e) (vii) regarding armed conflict not of international character refers to:

“Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities”

It appears that both article 8(2) (b) (xxvi) and article 8(2) (e) (vii) are greatly influenced by Additional Protocols I and II and article 38 of the Convention on the Rights of the Child. Therefore, it may be submitted that criticisms made in respect of these instruments about the same issue, can apply here.⁸⁸ The minimum age and the requirement to respect rules of IHL in times of armed conflict illustrate this.

2.4.2 Areas of concerns

There are some areas of concerns that will need special attention here.

It is interesting at first to find out how the Court understands and applies the term “national armed forces” which literally suggests that armed groups are not included. To have a proper look at this issue we rely on an example of application in a case law. The Thomas Lubanga Pre Trial judgment⁸⁹ dealt significantly with this problem when the Court had to decide whether the use of the phrase “national armed forces” limited the scope of the convention to governmental armed forces. Through out the judgment, the Court had to provide a meaning to “national armed forces”. It

⁸⁶ Malcolm D. Evans, International, First Edition, Oxford University Press, 2003, New York

⁸⁷ For the entire list see the full Article 8 of the Rome Statute.

⁸⁸ *Supra*. See respectively the part dealing with the IHL and IHRL above.

⁸⁹ The Prosecutor V Thomas Lubanga Dyilo, ICC, Case No. ICC-01/04-01/06, Pre-trial Chamber I’s, 29th January 2007 “Decision sur la confirmation des charges”.

departed from article 43 of Additional protocol I which defines armed forces as consisting of all organised armed forces, groups and units which are under a command of a responsible to that party for the conduct or its subordinates, even if that party is represented by a government or an authority not recognized by an adverse party; an additional requirement was that such armed forces shall be subject to an internal disciplinary system which shall be recognised by an adverse party. Furthermore, the Court relied on commentaries of the Additional Protocol I which stipulates that by referring to “parties to the conflict”, the Protocol has extended its scope of application to non-states entities so long as they satisfy the above mentioned requirements.⁹⁰ Another reasoning used by the Court in deciding that the phrase included both governmental armed forces and armed groups was a decision of the ICTY, back up by an interpretation of article 31 of the Vienna Convention on the Law of the Treaties⁹¹, which states:

“1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose...

4. A special meaning shall be given to a term if it is established that the parties so intended.”

In fact, the Court pointed out that the ICTY in some of their Appeal Chamber decisions⁹² have expressed the view that Article 4 (1) of the fourth Geneva Convention is to be understood in the sense that the Convention does not only make reference to the nationality in itself but also to belonging to an enemy parties to the conflict. One of the main rationale suggested was that the preparatory works as well as the object and the purpose of the Convention which suggests that the decisive factors here ranges from allegiance to one of the parties to the conflict to the degree of the control exercised by the said party on persons found on a given territory⁹³. The Court then had no difficulty in justifying their decision. It may be argued this is in reality very important when assessing individual criminal liability from both national armed forces and armed groups who are at the origin of use and recruitment of child soldiers.

Another concern we may deliberate on is the fact that both articles listed above refer to “enlisting and conscripting” despite a proposition of the Preparatory Commission to refer but to “recruitment”. If we take a look at *The International Criminal Court, The making of the Rome Statute Issues Negotiations, Results*⁹⁴, we find out for instance that the words ‘

⁹⁰ ICRC, Commentaries on Additional Protocol I of the Geneva Conventions of 12 of August 1949 and relating to the protection of victims of international armed conflict. 8 June 1977. Page 515 Para 1664 to page 519 Para 1674.

⁹¹ Adopted on the 22nd of May 1969 and opened for signature on the 23 of May 1969 by the United Nations Conference on the law of treaties.

⁹² The Prosecutor V. Dusko Tadic. Case No. IT-94-1-A, 15 July 1999. Para 164 to 166 or The Prosecutor V Tihomir Blaskic Case No IT -95-14-A, 29 July 1999 Para 170 to 175.

⁹³ The Prosecutor V Dusko Tadic. Case No. IT-94-1-A, 15 July 1999. Para 166.

⁹⁴ UNITAR, Roy S. Lee, in cooperation with the Project on International Courts and Tribunals, *The International Criminal Court, The making of the Rome Statute Issues Negotiations, Results*. 1999, The Hague.

recruitment' was replaced by the phrase "conscripting and enlisting" to meet primarily the concern of the United States who thought the words recruiting was "understood to imply an active policy of the government to have persons join the armed forces" whereas "conscripting or enlisting" has according to them a more "passive connotation and relates primarily to the administrative act of putting the name of a person on a list". It may be submitted it would have been simple and better just to refer to "recruitment" so that all different means by which persons become members of armed forces or armed groups be contemplated. However, the effect and result may not really differ when applying these provisions in Court, as stressed by the Pre Trial Chamber in the Thomas Lubanga case,⁹⁵ both conscription and enlistment constitutes forms of recruitment and are as such an aspect of what recruitment is. While conscription will refer to compulsory recruitment, enlistment on its own is a form of voluntary recruitment, but none of them is permitted.⁹⁶

2.4.3 Positive aspects

From all the positive aspects noticeable on both articles of the Statute, it may be submitted that the first one is the use of the words "using" and "participate" which actually do not only imply the prohibition of children's direct participation in combat but also their active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. The use of children in a direct support functions such as carrying supplies to the front line is also considered within the meaning of "using" and "participate". It seems therefore the provisions actually went further than what was originally contemplated to punish both direct and indirect participation of children in armed conflict⁹⁷. This is a good point under the Rome Statute if compared with Additional Protocols and the CRC where the qualification "direct" in respect to children participation in armed conflict could be detrimental for the application of the law.

Another good point comes from article 8(2) (e) (vii), which refers to "armed forces or group". This formulation differs slightly with that of article 8(2) (b) (xxvi) which refers to "national armed forces". We remember the same approach is adopted under additional protocols where greater protection is conferred under Protocol II. It could be suggested this reflects the fact that the article deals only with a conflict of an internal character and as such the qualification "national" needed not to be added. However, it is interesting to see that the phrase "armed groups" was

⁹⁵ The Prosecutor V Thomas Lubanga Dyilo, ICC, Case No. ICC-01/04-01/06, Pre-trial Chamber I's, 29th January 2007 "Decision sur la confirmation des charges". Page 71 Para 246.

⁹⁶ See also the Commentaries of Protocol II in pages 1391 to 1393 Para 3184 which is to the effect that non-recruitment into armed forces includes also voluntary enlistment of children even though travaux preparatoires to the additional protocols only considered forced recruitment.

⁹⁷ PrepCom Draft Statute, at 21

included and therefore widen the scope of application of the Statute, although the result on their application in practice would not have really differed as Thomas Lubanga case illustrates. A question may still be raised on why there is such double standards approach when drafting international instruments regulating internal and international armed conflicts?

2.4.4 Relevance of International Criminal Law for Africa

There is no doubt that in the goal of stopping and preventing of the use and recruitment of child soldiers in the world and especially in Africa, ICL plays a key role. The fact that it deals with members from both governmental armed forces and NSAs armed groups that recruit child soldiers gives the way to standards that punish and deal directly with perpetrators of child soldiering activities. The development of ICL in Africa through ad hoc tribunals, special tribunals and finally ICC is already in itself a serious deterrence and a clear signal to the end of impunity era for persons tempted to engage in the criminal conducts of involving children into armed conflicts.

2.4.4.1 Special Court for Sierra Leone

On the 31st May 2004, the Special court for Sierra Leone in *The Prosecutor V Sam Hinga Norman*⁹⁸ rendered its first judgment on the recruitment of child soldiers. This judgment in itself was full of symbol for a country destroyed by several years of wars. It was also full of significance for a whole continent when it comes to the punishment of use and recruitment of child soldiers. It was indeed a clear message that the court was sending to all those who recruit child soldiers.

The court was established as a result of agreement between the UN and Sierra Leone after the President of Sierra Leone Ahmad Tejan Kabbah wrote to the then UN Secretary General Koffi Annan to ask for the help of the international community in trying those responsible for crimes during the war in his country. This resulted in UNSC Resolution 1315 requesting the Secretary General to engage negotiations with the government in Sierra Leone for the creation of the Court. On 16 of January 2002, an agreement was therefore signed between both parties for the establishment of the Special Court.

It is important to mention that that the accused of the above-mentioned case was a former Deputy Defense Minister and later on Minister of Internal Affairs, which in reality was more than a symbol for a country where impunity had so far prevailed.

Article 4 of the Statute for the Special Court provides that the Court has the power to prosecute persons who commits serious violations of IHL,

⁹⁸ The Prosecutor V Sam Hinga Norma, Case No, SCSL-2004-14-AR72 (E), *Decision on Preliminary Motion Based on lack of jurisdiction (child recruitment)* 31 May 2004

including “conscripting or enlisting children under the age of fifteen into armed forces or groups using them to participate actively in hostilities”.

The Court has so far, on several occasions made the use of this provision as records show. We can mention *The Trial of the Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (the AFRC Accused)⁹⁹ where the accused were respectively sentenced to 50, 45 and 50 years of imprisonment and *The Prosecutor vs Allieu Kondewa*¹⁰⁰ where the accused was sentenced to 8 years of imprisonment on the 9th of October 2007. It is also good to know that right now there is the trial of the former Liberian president Charles Taylor and one of the charges includes conscripting and enlisting children under 15.

2.4.4.2 ICC Judgments

ICC judges individuals or groups that have committed breaches of international law as provided under the Rome Statute. Therefore, the punishment of the use and recruitment of child soldiers falls within its mandate.

In Africa, the work to be done is immense especially in countries affected by wars, and which do not have either their ad hoc or special tribunals to deal with the issue. It seems the highest proportion of cases to be dealt with by ICC in Africa in respect to war crimes involves use and recruitment of child soldiers. It appears from situations before the court that most of the charges against suspects include recruitment of child soldiers. Although steps are taken to end impunity in regard to this, there is still a lot to be done. Statistics shows that high, if not the highest number of child soldiers used and recruited in armed conflicts throughout the world, is in Africa.

In Democratic Republic of Congo for instance the Thomas Lubanga Case¹⁰¹ is illustrative. The accused charges include enlisting and conscripting children under the age of 15 under the articles 8 of the Rome Statute. He was the founder and leader of the Union of Congolese Patriots (UPC), an armed militia in Ituri, north-eastern DRC. He was implicated in numerous human rights violations against civilians and the murder of UN peacekeepers; he was arrested on authority of an arrest warrant issued by the ICC and is the first person put on trial by the ICC. Thomas Lubanga was the focus of the ICC's first hearing on 9 November 2006 to decide if he will stand trial for recruiting child soldiers. The hearing ended on 29 January 2007 with a decision that there is enough evidence to launch the ICC's first trial.

Also, the International Criminal Court issued in October 2007 a successful arrest warrant against a major war crimes suspect in the

⁹⁹The Trial of the Prosecutor V Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, Case No SCSL-2004-16 –PT

It is possible to find a full facts and summary of the case at the following link:

<<http://www.sc-sl.org/afrc.html>>

¹⁰⁰ The Prosecutor V Allieu Kondewa, Case No. SCSL-03-12-I.

For a full summary of the case look at the following link:

<<http://www.sc-sl.org/cdf.html>>

¹⁰¹ *Ibid*

Democratic Republic of Congo, in the name of General Germain Katanga, the former chief of staff of the Patriotic Force of Resistance in Ituri (FRPI), the military wing of the Front for National Integration (FNI) militia. The Lendu-based group is suspected to be responsible for war crimes and crimes against humanity in the Ituri district of north-eastern Congo. General Katanga is charged with three counts of crimes against humanity and six counts of war crimes for his involvement in killings, pillaging, using child soldiers, and sexual enslavement during an attack on the town of Bogoro.

Uganda has also been on the track of the ICC through the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*.¹⁰² Joseph Kony who is the main accused, is the head of the Lord's Resistance Army (LRA), a guerrilla group that is engaged in a violent campaign to establish an alternative theocratic government in Uganda based on the Christian Bible and the Ten Commandments. The LRA, which earned a terrifying reputation for its brutality against the people of northern Uganda, has abducted an estimated 20,000 children some of which have been used as soldier, since its rebellion began in 1987. There are thirty-three charges; twelve counts are crimes against humanity, which include murder, enslavement, sexual enslavement and rape. There are another twenty-one counts of war crimes, which include murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape, and forced enlisting of children into the rebel ranks.

Although these examples reflect a start of a new era in Africa for the punishment of recruiters of children in armed conflicts, a concern may be raised about the speed of process which seems very slow when compared to the long way to go for ensuring justice and end impunity. There have been serious worries about the timing for indictment for instance. The ICC procedure as contained in the Rome Statute and the Court's rule of procedure leaves room for a very long period and process before confirmation of charges. It may be submitted the problems start from the conditions of issuing an arrest warrant, ground for jurisdiction to admissibility of a case before the Court. By the time all this process is gone through thousands of children may be recruited and risk their lives and can be taken by armed groups leaders to disseminate incriminating evidences or get into power that will grant them immunity.

It may also be argued from information obtained on situations before the Court so far, that there is a feeling of impunity in respect of thousands of criminals who are still left unworried and free. This may be difficult to accept when a close look at what the reality on the field is. There is no doubt many persons continue to either hide from the justice or enjoy some kind of immunity that renders the matter more complicated.

It appears steps taken so far need to be continued, encouraged and accelerated. Situations concerning child recruitment in Cote d'Ivoire, Chad, Central African Republic, Sudan, and Burundi have to be addressed by the court and more criminals should be brought to court in respect of countries already under investigations. The fact that some of these countries may not yet have ratified nor acceded to the Rome Statute cannot be used as an

¹⁰² The Prosecutor V Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, ICC -02/04-01/05

excuse since a solution may come from the Prosecutor of the ICC who may instigate proceedings against alleged recruiters or the UNSC in collaboration with local government or through international pressure to punish those criminally responsible.¹⁰³

2.4.5 Conclusion

The major conclusions we may draw from the assessment of the contribution of the ICL in preventing and stopping the use and recruitment of child soldiers are the following:

ICL has the merit of setting the basis for individual criminal responsibility of those who commit the crime of use and recruitment of child soldiers.

ICL does not make any distinction between states actors and NSAs. Therefore, criminal liability applies to any individual, irrespective of his position or rank, from governmental armed forces or armed groups that engage in a criminal conduct punishable by the Statute.

Although there have been considerable achievements by the ICC, there still needs to be an effort to give the Court the universal dimension it deserves to end impunity still enjoyed by some persons who recruit and use child soldiers.

Lastly, it is a pity that no consideration for reintegration and rehabilitation via DDR is given under the jurisdiction of the ICC or within ICL, the main reason being it is not per se within the sphere of criminal conduct and responsibility.

2.5 Regional standard in Africa

So far at the regional level, only Africa has properly addressed the issue of use and recruitment of child soldier by adopting a regional binding Charter that deals with the overall protection of children. Of course this may be justified by the poor situation in respect of children's right in the continent; it shows the importance Africa gives to child welfare and therefore issues like use and recruitment of child soldiers which has spread throughout the whole continent as examples can show in East Africa with Uganda, West Africa with Cote d'Ivoire, Liberia and Sierra Leone, North Africa with Sudan and Somalia and Central Africa with Chad, DRC, Burundi and Central African Republic. In response to this the need to set a regional instrument was unavoidable. However it is important to find out if all the criteria that are necessary for strict respect and compliance with international norms in respect of child soldiering activities have been met, or if the Charter has been able to overcome shortcoming of previous standards. How far has the problem of NSAs been given consideration under the instrument? And finally what place for DDR programmes?

¹⁰³ See the Rome Statute. Article 15 and article 13(b)

2.5.1 The African Charter on the rights and welfare of the child (ACRWC)¹⁰⁴

The Charter defines a child as any one below 18 years of age without exception.¹⁰⁵ This is a leap forward, like part of a trend, concerning the definition of who a child is under international law from the perspective of the “under 18 years old” approach. Indeed the decisive point is whether the person is below 18, and if so, he shall not participate in armed conflict.

The Charter recognises the child's unique and privileged place in African society and expresses the concern that African children should enjoy protection and special care. In some respects, its articles are modeled on the provisions of the Convention on the Rights of the Child and its Optional Protocols. The Charter's objectives include the protection of children from all forms of abuses and exploitation, including their participation in armed conflicts. It therefore adopts a very strict approach, the direct implication being that, there is no or less flexibility in the way the Convention is shaped and on the obligations, it imposes on states parties. To illustrate this for instance, article 22 of the Charter states:

“1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child”

As we mentioned above, the influence of the CRC is perceptible from the legal nature of the language and its implications. We shall not have detailed comments, as it appears that most of them have already been mentioned previously under IHRL standards. Nevertheless, it may be submitted with regret that the IHRL principle has been scrupulously adhered to and as such, the direct obligations under the instrument are still left to states for their implementation at national level.

It is also good to note with dissatisfaction that although the Charter is of recent origin, there is no express reference to an eventual rehabilitation and reintegration of children who may be victims of violence or armed conflicts like in the CRC and its Optional Protocol. DDR programmes are therefore not given consideration under the Charter and we shall therefore assess the implementation mechanism to see whether this is contemplated.

¹⁰⁴ The African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity (OAU now the African Union) at the Twenty-sixth Ordinary Session of the Assembly of Heads of State and Government, Addis Ababa, Ethiopia - July 1990. It came into force in November 1999.

¹⁰⁵ See article 2 of the ACRWC

2.5.2 Implementing the Charter

It is worth mentioning that the African Committee of Experts on the Rights and Welfare of the Child is at the regional level in Africa what the Committee on the Rights of the child is at the international level. As such, they are responsible for the implementation of the Charter in Africa by virtue of the mandate it has received from articles 36 to 42. Its 11 members have, among others, the duty to monitor the implementation and ensure protection of the rights enshrined in the Charter, interpret the provisions of the Charter at the request of a state party, an institution of the African Union (AU) or any other person or institution recognized by the AU. They also perform such other tasks as may be entrusted to it by the Assembly of Heads of State and Government to promote and protect the rights enshrined in the Charter particularly by formulating and laying down principles and rules aimed at protecting the rights and welfare of children in Africa and cooperating with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child.¹⁰⁶

On their own states are requested inter alia, under general measures of implementation¹⁰⁷ and its Part IX relating to special measures, to provide relevant information including principal legislative measures such as projects and programmes, factors and difficulties encountered as well as progress achieved in implementing article 22 of the Charter which deals with children and armed conflict.¹⁰⁸

Although this is a good approach in the process of implementing children's rights in Africa and thereby in monitoring the prevention of use and recruitment child soldiers, it may not be difficult to find out several shortcomings of the Committee's work while having a look at their guidelines. No mention or directives for instance is actually made in respect of specific measures that could deal with NSAs armed groups through the implementation of the Charter. It is submitted that African states are very

¹⁰⁶ See respectively article 37 to 42 of the ACRWC

¹⁰⁷ See the Guidelines for Submission of Initial Reports, Cmttee/ACRWC/2 II .Rev 2

¹⁰⁸ See also reporting procedure in which article 23 which is to the effect that " Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

(a) Within two years of the entry into force of the Charter for the State Party concerned: and
(b) And thereafter, *every three years*.

2. Every report made under this Article shall:

(a) Contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and

(b) Shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided."

reluctant to the idea of addressing this issue since they fear it may confer to NSAs a legal status under international law.

Nevertheless, we have to acknowledge that the establishment of the African Committee of Experts on the Rights and Welfare of the Child is quite recent and that it may need more time before good steps can actually be taken in this regard. As a result, it may be suggested that the bulk of the work of the Committee on the Rights of the Child may serve as a future basis and reference for the African Committee of Experts on the Rights and Welfare of the Child.

2.5.3 Meeting the Challenge of DDR while Implementing the Charter

The ACRWC has not addressed DDR programmes like the CRC and its Optional Protocol on the Involvement of Children in Armed conflict, but should this be an excuse for the 11 members of the Committee while implementing the protocol not to deal with it, or should state members while implementing their obligation under the Charter close their eyes on this aspect of the prevention and stop of child soldiering activities?

As experience has shown in several countries in Africa, the likelihood of re-recruitment of child soldiers previously involved in armed conflicts is very high, especially in cases where there has not been a proper rehabilitation and reintegration process. Whether under protective camps of the UNHCR or under the protection of UNICEF, there is still a high risk to see children rejoining conflicts. Therefore the challenge for the African Committee of Experts on the Rights and Welfare of the Child will be to lay emphasis on preventive mechanisms and action without which child recruitment or re-recruitment will be easy for recruiters. It can rely at this level on provisions of the Charter, as well as the Guidelines for submission of reports that ask the Committee to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa and cooperating with other African, international and regional institutions or organisations concerned with the promotion and protection of the rights and welfare of the child. UNICEF, ILO and UNHCR at this stage may be of vital importance

On their own, states are requested to report on projects and programmes as well as factors and difficulties encountered and progress achieved in implementing article 22. It may be submitted this covers preventive actions as well as rehabilitation and reintegration of child soldiers. Furthermore, the question is not only to set down the basis for a DDR programme, but also to make sure they meet some basic and acceptable criteria that can efficiently guarantee a definitive and smooth rehabilitation and reintegration of children in normal lives.

The African Committee of Experts on the Rights and Welfare of the Child at this level has reliable tools and experience they can rely on from the Committee on the Rights of the Child. It can therefore be submitted that it would be in the interest of the African Committee of Experts on the Rights and Welfare of the Child to adopt the same or part of the approach

that the Committee on the Rights of the Child has taken so far and extend in some instances the scope of obligations for states parties when it comes to engage in rehabilitation processes as both the Optional Protocol Guide and the Implementation Handbook of the Rights of the Child have illustrated. The African Committee of Experts on the Rights and Welfare of the Child will have to set down guidelines for the implementation of the Charter that expressly call on State members to reports on measures taken in respect of DDR programmes they have achieved while trying to release, rehabilitate and reintegrate child soldiers to normal lives. Similarly, effective collaboration with international organisations will be a decisive criterion for the success of this goal and as such shall be given full consideration by the African Committee of Experts on the Rights and Welfare of the Child. Education, health, psychological take over, family reunification, as well as vocational training or job training, apprenticeship, and short-term employment, business start up and micro finance programmes, will have to be considered and implemented in close collaboration with UNICEF, The WB and the ILO for instance. It may also be submitted that the African Committee of Experts on the Rights and Welfare of the Child should as a matter of effectiveness, develop its own jurisprudence that includes good examples of how effective implementation of DDR programmes have given way to prevention and stop of child recruitment into armed forces in African countries.

2.5.4 Conclusion

Although the African Charter constitutes the first materialisation on the issue of child soldiers in a regional standard it has not been able to address efficiently the challenges that poses the problem in Africa. Indeed, NSAs have not been given the attention they deserve under the Charter in a continent where they are the most likely to breach international obligations in respect of armed conflict. Similarly, DDR programmes that are vital for rehabilitation and reintegration of child soldiers are left aside and are not expressly required under the Charter. However, a good note comes from the adoption of a strict definition of a child that leaves no room for exception like in previous IHRL standards.

3 United Nations contribution to prevent and stop use and recruitment of child soldiers

The United Nations (UN) interest to stop the use and recruitment of child soldiers is quite recent, but has been significant so far. Indeed, the organisation plays a crucial and important role for the protection of children's rights and therefore use and recruitment of child soldiers. Although it may be pointed out that there are some confusions and lack of coherence, understanding and collaboration between UN main bodies, UN programmes and agencies, it is important to acknowledge that they all work under the same umbrella for the same goal i.e. the elimination of the use and recruitment of child soldiers in the world. This chapter offers a comprehensive overview of the UN work from the general point of view. It elaborates on different actions undertaken respectively by the UNSC and some of the UN departments and agencies. It insists on the leading role played by the UNSC and the contribution of the Office of the Special Representative on Children and Armed Conflict. However, the chapter may be silent on some aspects of the UN work, which obviously require a longer discussion that we cannot afford for lack of time and space. Finally, warning should be given that this part of our thesis does not deal with monitoring and reporting mechanisms as provided under UN treaties in respect of children's rights since this has already been addressed in the previous chapter.¹⁰⁹

3.1 UN Structure

UN main bodies include the UNGA and its subsidiaries organs, the UNSC, the Economic and Social Council (ECOSOC), the Trusteeship Council (T.C), the Secretariat, and the International Court of Justice (ICJ). If it can be argued that the UNGA, and the Secretariat have key role to play in the prevention and stop of the use of child soldiers it is however clear that the UNSC has taken the lead so far as the UN's actions is concerned¹¹⁰.

¹⁰⁹ *Supra* Chapter Two, CRC

¹¹⁰ It is important to mention that the UNGA has on several occasions dealt with the issue of child soldiers during its public debates and has examined in 1996, a report submitted by Ms. Graça Machel, an Independent Expert appointed by the Secretary General, entitled Impact of Armed Conflict on Children (A/51/306). The report led to the adoption by the General Assembly of resolution 51/77 of 12 December 1996, establishing the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict for a period of three years. The Assembly has since extended this mandate three times and most recently by its resolution 60/231 of 23 December 2005. The GA also has a word to say when the Secretary General has to submit a report on further progress in the implementation of UNSC resolutions 1612,1379,1460.1539 Children and Armed conflict.

3.2 United Nations Security Council

The interest that the UNSC has devoted to children and armed conflict and therefore child soldiers is quite recent. Since 1999, the UNSC has held many annual debates and adopted several resolutions on child soldiers. In addition it has requested the Secretary General to submit annual reports on children and armed Conflict that should include a list of parties to conflicts whether from the governmental forces or armed groups. UNSC has established in 2005 a working group to review the reports submitted by the UN country task forces and make recommendations for action in this respect by national government and relevant UN bodies.¹¹¹ It is interesting to point out that this has resulted in an establishment by mid-2007 of Country-level task forces composed of relevant UN entities and limited representations of NGOs who have considered country reports from Burundi, Cote d'Ivoire, Somalia, Sudan, Uganda, Chad and DRC.

3.2.1 Security Council Resolutions

There have been some controversies over the legal nature of UNSC resolutions as to whether or not they are binding. Although resolutions adopted under Chapter VII are universally accepted as binding those adopted outside the scope of that Chapter are still subject to debates.¹¹² The outcome of this debate may be of prime importance for our thesis, given that the UN has adopted several resolutions that touch the issue of children and armed conflicts since 1999; it may be important to know under which

On its own the Secretariat who has a coordinative action is by its function more than involved also. The numerous reports submitted to this effect on the children and conflicts are illustrative.

¹¹¹ Jo Becker, *Security Council Action on Child Recruitment*, Appendix I

¹¹² ICJ, *Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971 at para. 87-116 where it said at para 113 that "It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to "the decisions of the Security Council" adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter, which deals with the functions, and powers of the Security Council. If Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter." and Marko Divac Öberg (2005). "The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ". *European Journal of International Law* 16 (5): 879–906. doi:10.1093/ejil/chi151. Then see Andre De Hoogh, *Obligations Erga Omnes and International Crimes*, Martinus Nijhoff Publishers, Jan 1 1996 p. 371 who claim resolutions are non binding if not made under chapter VII

category these resolution where taken. Furthermore, the legal nature of these resolutions will also depend on the language that the UNSC uses.

It appears so far that all resolutions adopted in respect of children and armed conflicts were done under Chapter VII of the UN Charter. It follows therefore that they are binding on those who are directly targeted.¹¹³ Actually, these resolutions provide for useful tools of influence on the conduct of parties to an armed conflict, including armed groups. The UNSC itself represents already an influential and respected body of the UN. Its aura alone may constitute a serious deterrence and threat to those who engage in recruitment and use of child soldiers.

The UNSC's approach consists of dealing with the issue of children and armed conflicts with a more realistic approach that includes both national armed forces and armed groups who violate IHL and IHRL. Undoubtedly, it works for the respect of international law by parties to an armed conflict.

Resolutions adopted by the UNSC on Children and armed conflicts include Resolutions 1261 (1999)¹¹⁴, Resolution 1314 (2000)¹¹⁵ (that we will not comment for lack of space) and Resolutions 1379, 1460, 1539 and 1612 (on which we elaborate more hereunder as matter of example). It must be pointed out that these resolutions follow a chronological order and the latest are adopted as complement or follow up of the previous.

Resolution 1379, November 2001¹¹⁶

Briefly, Resolution 1379 urges governments to consider “legal, political, diplomatic, financial and material measures” to ensure parties to armed conflict respect international norms regarding children. It calls upon all parties to armed conflict, who are recruiting or using children in violation of the international obligations applicable to them, to immediately halt such a conduct.¹¹⁷

Furthermore it request in its paragraph 16 the Secretary General to submit a report, attaching a list of parties to armed conflict that recruit or use children in violations of international norms, and calls upon all concerned parties to ensure that the protection, rights and well-being of children are integrated into the peace processes, peace agreements and the post-conflict recovery and reconstruction phases.¹¹⁸

Lastly, it calls upon Member States and international organisations to ensure that children affected by armed conflict are involved in all disarmament, demobilisation and reintegration processes, taking into account the specific needs and capacities of girls, and that the duration of these processes is sufficient for a successful transition to normal life, with a

¹¹³ *Infra* Chapter three

¹¹⁴ United Nations Security Council Resolution S/RES/1261, adopted by the Security Council at its 4037th meeting on, 25 August 1999

¹¹⁵ United Nations Security Council Resolution S/RES/1314, adopted by the Security Council at its 4185th meeting on 11 August 2000

¹¹⁶ United Nations Security Council *Resolution S/RES/1379*, adopted by the Security Council at its 4423rd meeting on 20 November 2001

¹¹⁷ Para 3

¹¹⁸ para 12

particular emphasis on education, including the monitoring, through, inter alia, schools, of children demobilised in order to prevent re-recruitment.¹¹⁹

Resolution 1460, January 2003¹²⁰

In this resolution the UNSC, apart from requesting the stop of use and recruitment of child soldiers (this is done under all its resolution in this regard), commits under paragraph 4 to enter into dialogue, as appropriate, or to support the Secretary General in entering into dialogue with parties to armed conflict in violation of the international obligations applicable to them on the recruitment or use of children in armed conflict, in order to develop clear and time bound action plans to end the practice.

The UNSC calls on parties listed in the report of the Secretary General, to provide information on what steps they have taken and says it will consider appropriate steps in cases with “insufficient progress”.¹²¹

Lastly, the Resolution in its paragraph 16 requests the Secretary General to submit a report on progress achieved by parties listed in his previous reports.

Resolution 1539, April 2004¹²²

Resolution 1539 requests the Secretary General to devise within three months an action plan for systematic and comprehensive monitoring and reporting on children in armed conflict; it calls on parties in Annex 1 to prepare concrete, time bound action plans within three months to end child recruitment.

Furthermore, it requests the Secretary General to appoint focal point in each country to engage in dialogue and report by July 31 of the same year.

Lastly, the UNSC once more expresses intention to consider imposing targeted and graduated measures, through country-specific resolutions, such as, inter alia, a ban on the export or supply of small arms and light weapons and of other military equipments and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan, bearing in mind the Secretary General’s report.¹²³

Resolution 1612, July 2005¹²⁴

The Resolution “strongly condemns the recruitment and use of child soldiers by parties to armed conflict in violation of international

¹¹⁹ para 13

¹²⁰ United Nations Security Council Resolution S/RES/1460, adopted unanimously by the Security Council at its 4695th meeting, on 30 January 2003

¹²¹ Para 6

¹²² United Nations Security Council Resolution S/RES/1539, adopted unanimously by the Security Council at its 4948th meeting, on 22 April 2004

¹²³ Para 5(c)

¹²⁴ United Nations Security Council *Resolution* S-RES-1612 (2005) Adopted by the Security Council at its 5235th meeting on July 26 2005

obligations applicable to them and all other violations and abuses committed against children in situations of armed conflict...”

It requests implementation of the Monitoring and Reporting system on children and armed conflict, as called for in paragraph 2 of its resolution 1539 (2004), with the aim of collecting and providing timely, objective, accurate and reliable information on the recruitment and use of child soldiers in violation of applicable international law.¹²⁵ It furthermore requests the Secretary General of the UN to implement the above mentioned.¹²⁶

The Resolution in its paragraph 8 establishes a working group to, review reports from the monitoring and reporting mechanism, review the development of action plans and make recommendations to the SC regarding further measures.

Lastly, the Resolution reaffirms the intention to consider targeted and graduated measures on violators, including bans on weapons.¹²⁷

This Resolution requires special attention as it set a monitoring and reporting mechanism.

3.2.2 Monitoring and reporting mechanism under Resolution 1612

Monitoring and reporting mechanism include several stages or levels of implementation namely the Country-level Task Force, made up of UN agencies and some key NGOs, which collect information on violations against children including recruitment and use of child soldiers. In practice this consists of the UN Department of Peacekeeping Operations (DPKO), UNICEF, UNHCR and the ICRC or others reliable NGOS, who investigate and report on violation of children’s rights in armed conflict situations including child soldiering activities.

Then come the UN Headquarters Task Force, which review reports submitted by the Country-level Task Force and submit it to the Secretary General.

Later on, the Secretary General, who had previously received the report from the UN Headquarters Task Force, makes recommendation for action to what is known as the Security Council Working Group on children and armed conflicts.

Finally, the Security Council Working Group after an examination forwards its conclusions to the UNSC with its own recommendation for actions to be undertaken.

It is on this basis that the UNSC passes resolutions targeting violators of IHRL and IHL. It is worth mentioning the role, played at this stage by the UN Office of the Special Representative for Children and Armed Conflicts.¹²⁸

¹²⁵ Para 2

¹²⁶ Para 3

¹²⁷ Para 9

¹²⁸ *Infra* Chapter three

3.2.3 UNSC tools and impacts

It is interesting, when looking at resolutions adopted by the UNSC, to see how they deal with the challenges faced by international standards for the protection of children from use and recruitment as child soldiers; the main concern being to address problems that child soldiering activities imply for the peace and security in the world. It must be pointed out that all is done within the framework of the IHL and IHRL, although the approach may be different. We offer an overview of UNSC tools that deal with the recruitment of child soldiers and the impacts they have on parties to an armed conflict. An evaluation of the UNSC vision in regard to DDR programmes is also done.

3.2.3.1 UNSC's resolutions and NSAs non-state actors

UNSC resolutions have the merit to refer directly to parties to a conflict. They are made in a clear language that makes express and unequivocal requests to those who violate IHL and IHRL. The resolutions for instance expressly request parties to a conflict to comply with IHL and IHRL. The UN Secretary General is to name in his Report on Children and Armed Conflict, alleged parties that use or recruit child soldiers. No distinction is therefore allowed whether the recruiters are from governmental armed forces or NSAs armed groups. The resolutions impose direct obligations and the same standard of application to those it deals with. On the basis of the UN Secretary General reports, resolutions have been adopted to deal specifically with NSAs previously mentioned in the report. They therefore provide the UNSC with a variety of tools that can efficiently impact parties to an armed conflict that use and recruit child soldiers.

A key, if not the most important UNSC's action in respect to parties to a conflict is the use of sanction tools. Under Chapter VII of the UN Charter, the UNSC has the power to the impose sanctions on parties to a conflict.¹²⁹ Although the obligations will still be on Members States to ensure those sanctions are observed. UNSC's sanctions have an important impact on armed groups generally; it is also adequate to deal specifically

¹²⁹ Under article 39, The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. Furthermore article 40 says that in order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures, as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures. Lastly article 41 The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

with some of their members who engage in violations of IHL and IHRL. Examples of sanctions include travel bans, arms embargoes, freezing of assets and exclusion from governance bodies. When applied strictly, they constitute in reality a significant blow to those they target and can actually affect their future conduct. Nobody in the world would want to be named or sanctioned by the UNSC.

It must be pointed out however that although the use of these sanctions has most often proven very dissuasive they have unfortunately been used rarely. The UNSC on February 7, 2006 adopted for instance resolutions imposing sanctions on travel ban, and attachment of financial assets against Martin Kouakou Fofie of the *Forces Nouvelles* in Ivory Coast. He was involved in recruitment of child soldiers, abduction and sexual violence. Despite the flagrant catastrophic situation in respect of child soldiering activities this example is the only one recorded so far.

Mention must also be made of the place the UNSC gives to technical assistance via UN agencies for instance. The aim is to provide all UN agencies with relevant cooperation and collaboration necessary to protect children from recruitment, use as child soldiers, and ensure respect of the rules of IHL and IHRL. In practice, this can be seen in countries affected by armed conflicts where the DPKO, UNICEF, UNHRC or the Office of the Special Representative will work for together for the prevention of recruitment and the release of child soldiers in order to achieve their reintegration. Therefore, the resolutions generally outline impact that technical assistance and collaboration between UN agencies can have when working in the field.

In the same line, resolutions advocate the strengthening of peacekeeping mandates in respect of child protection and prevention of child soldiering activities. The UNSC believes that the work of DPKO at this level is essential and can actually help protecting children from armed groups or get their release and reintegration if already part of them. The neutrality of peacekeeping missions is seen as decisive in attaining this goal. Special missions are often assigned in this regard to peacekeeping missions, working in close collaboration with the office of the UN Special Representative, in countries affected by war. The UNSC has also deployed in the field Child Protection Advisors, guided in their mandate and work by CRC and UNSC resolutions, some of them including those relevant to particular missions. Resolutions 1261 and 1265 (1999), 1314 (2000) and 1379 (2001) for instance call upon all parties to armed conflicts to ensure the protection of children's rights throughout peace negotiations and the consolidation of peace and highlight the importance of including special provisions for the protection of children and women in the mandates of peace operations. The work of the Child Protection Advisors is complementary to that of UNICEF country's offices and its programmes of cooperation, the mandate and purpose of which is to ensure the well being and protection of children and the full realisation of their rights.

On the other hand UNSC resolutions make strong appeals to donor's countries in regard to child soldiering activities. It seems to appreciate the role that donors countries can play in the process of putting pressure on both states and NSAs to respect IHRL and IHL, and in

financing programmes aimed at preventing recruitment and ensuring rehabilitation and reintegration of former child soldiers. The impact sought is clearly the need to raise enough money that will finance UN work in respect of child soldiers.

Another tool, non less important, is the dialogue that UNSC engage with armed groups. Indeed some indirect or direct contacts through meeting with parties concerned with alleged violations of ILH and IHRL in armed conflicts are organized by the UNSC. The dialogues are mainly aimed at promoting respect of IHL, IHRL and release and reintegration of child soldiers. The impact so far has been more or less perceptible. As an example, a dialogue was established by the UNSC with *Forces Nouvelles*¹³⁰ of Cote d'Ivoire that resulted in the submission by the rebel group of an action plan to prevent child recruitment and their release. The same process engaged with the Government of Uganda saw an agreement regarding non-recruitment into Local Defense Units and UPDF.

Lastly, it will not be fair, if we fail to mention the role that the UNSC plays in bringing to the attention of the international community and mostly to the ICC all potential criminal misconducts of parties engaged in armed conflict.¹³¹ This is undoubtedly a key tool that can help to bring alleged perpetrators of child soldiering activities to court regardless of their state of origin. This has been illustrated by the UNSC's action in respect of some human rights violators in Sudan who is not part of the Rome Statute.¹³²

3.2.3.2 UNSC Resolutions and DDR

A look at the resolutions of the UNSC shows also their interest to ensure an environment where protection of rights and well being of children are integrated into peace processes, peace agreements and post-conflict recovery and reconstruction phases. In this line, all the resolutions adopted so far on children and armed conflict place Member States and international organisations under the obligation to ensure that children affected are involved in all disarmament, demobilisation and reintegration processes, taking into account the specific needs and capacities of girls, and that the duration of these processes is sufficient for a successful transition to normal life, with a particular emphasis on education, including the monitoring, through, inter alia, schools, of children demobilised in order to prevent re-recruitment. It is submitted therefore the scope of the UNSC's work is done in this direction and negotiations or commitments, sought from national

¹³⁰ The *Forces Nouvelles* de Côte d'Ivoire (New Forces: FNCI or FN) is a political coalition was formed in December 2002, in the wake of the first peace accords of the Ivorian Civil War

¹³¹ According to article 13 of the Rome Statute, the court can exercise jurisdiction over crimes falling within the scope of State only when a situation has been referred to the prosecutor by

a) A state party to the Statute
b) The Security Council acting under Chapter VII of the UN Charter or
c) Where the prosecutor him/herself initiates an investigation

¹³² The International Criminal Court, Situation in Darfur, Sudan
< <http://www.icc-cpi.int/cases.html>>

armed forces and armed groups to release child soldiers, ensure their rehabilitation and reintegration through effective DDR programmes.

Finally it must also be mentioned that UNSC in collaboration with UNICEF and the Special Representative Office are in practice engaged in several DDR programmes in favour of former child soldiers and that the work of the Child Protection Advisors in peacekeeping missions is also in this spirit.

3.2.4 Conclusion

The uniqueness of the UNSC's resolutions allows it to deal with the recruitment of child soldier with flexibility and efficiency. It deals directly with parties to a conflict and imposes direct obligation they have to comply with. The UNSC's action under Chapter VII of the UN Charter is the strongest tool it possesses to impose sanctions on individuals, groups and entities who disregard IHL and IHRL. The approach of the UNSC seems more pragmatic when dealing with recruitment of child soldiers since it offers more solutions to the problem than does the implementation of international standards.

However, it should be pointed out that the UNSC should act more against child recruiters. The Secretary General Ban Ki-moon has for instance identified 58 parties from governments and armed groups who recruit and use child soldiers in violation of international law and 14 of them repeat violations that have been named in five consecutive reports from the Secretary General between 2002 and 2007, but still, there are so far only limited actions. "The Security Council can't afford to keep making empty threats" and "military commanders must know that if they continue recruiting children into their ranks, they will face sanctions or an arms embargo".¹³³

3.3 The UN Special Representative of Children and armed conflict

The idea for the establishment of a UN Office of the Special Representative for Children and armed conflict came up after a report, *Impact of Armed Conflict on Children (A/51/30)* was submitted to the UNGA in 1996 by Ms. Graça Machel, an independent expert appointed by the Secretary-General. The report led to the adoption of a UNGA Resolution 51/77 of 12 December 1996,¹³⁴ establishing the mandate of the Special

¹³³ Jo Becker, children's rights advocate for Human Rights Watch.

¹³⁴ The Resolution, recommends that the Secretary General appoint for a period of three years a Special Representative on the impact of armed conflict on children and ensure that the necessary support is made available to the Special Representative for the effective performance of his/her mandate, encourages the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees and the office of the United

Representative of the Secretary General for Children and Armed Conflict for a period of three years. The Assembly has since then extended this mandate three times respectively through its Resolutions 54/149 of 17 Dec 1999, 57/190 of 19 Feb 2003 and most recently resolution 60/231 of 23 December 2005.

The main mission of the Office of the Special Representative is to “promote and protect the rights of all children affected by armed conflict”. Although it does not have any field presence, it supports efforts of all partners working in the same direction with the same area of concern. The role of the Representative includes acting as a moral voice and independent advocate for the protection and well-being of boys and girls affected by armed conflict, working with partners to propose ideas and approaches to enhance the protection of children and armed conflict and to promote a more concerted protection response, building awareness and give prominence to the rights and protection of children and armed conflict, and acting as facilitator, undertaking humanitarian and diplomatic initiatives to facilitate the work of operational actors on the ground with regard to children and

Nations High Commissioner for Human Rights/Centre for Human Rights to provide support to the Special Representative, and calls upon States and institutions concerned to provide voluntary contributions for that purpose;

. Recommends that the Special Representative:

(a) Assess progress achieved, steps taken and difficulties encountered in strengthening the protection of children in situations of armed conflict;

(b) Raise awareness and promote the collection of information about the plight of children affected by armed conflict and encourage the development of networking;

(c) Work closely with the Committee on the Rights of the Child, relevant United Nations bodies, the specialized agencies and other competent bodies, as well as non-governmental organizations;

(d) Foster international cooperation to ensure respect for children's rights in these situations and contribute to the coordination of efforts by Governments, relevant United Nations bodies, notably the office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the specialized agencies and the Committee on the Rights of the Child, relevant special rapporteurs and working groups, as well as United Nations field operations, regional and sub regional organizations, other competent bodies and non-governmental organizations;

. Requests the Special Representative to submit to the General Assembly and the Commission on Human Rights an annual report containing relevant information on the situation of children affected by armed conflict, bearing in mind existing mandates and reports of relevant bodies;

. Requests Governments, the specialized agencies, relevant United Nations organs and regional, intergovernmental and non-governmental organizations, as well as the Committee on the Rights of the Child, other relevant human rights treaty bodies and human rights mechanisms, to cooperate with the Special Representative and to provide information on the measures adopted to ensure and respect the rights of children affected by armed conflict;

. Calls upon Member States and relevant United Nations bodies and non-governmental organizations to consider how the impact of armed conflict on children can best be integrated into events designed to commemorate the tenth anniversary of the World Summit for Children and the entry into force of the Convention;

armed conflict¹³⁵. The Office has a monitoring and reporting role that needs to be discussed as well as its contribution in respect to DDR programmes.

3.3.1 The Office of the Special Representative monitoring and reporting role¹³⁶

It is important at first to point out the link that exists between the work of the UNSC and the work of the office, as it receives its mandates from the UNSC resolutions. Following the adoption of Resolution 1612 (2005), the office of the Special Representative has been tasked with the coordination of reports submitted by the Secretary General to the Working Group of the Security Council on Children and Armed Conflict. The same reports are therefore transmitted to the UNSC for action to be taken. It is intended that reports to the Working Group should serve as “triggers for action” by the UNSC and other relevant policy level actors, resulting in pressure upon parties to conflict to halt violations against children¹³⁷.

Furthermore it must be recalled that the monitoring and reporting role of the office is done in respect to children affected by armed conflict and as such addresses six grave violations among which is the recruitment or use of children as soldiers.¹³⁸ It is also good to note that there are five situations of concern for children, which are at the same time on the country-specific agenda of the UNSC. These countries are Burundi, Côte d’Ivoire, the Democratic Republic of the Congo, Somalia, and the Sudan (these situations are listed in Annex I to the report of the Secretary-General to the Security Council on children and armed conflict).

3.3.2 The Office of the Special Representative and armed groups

Apart from placing war-affected children on the international political agenda, the Office has succeeded in integrating the protection and rights of children into peace processes and peace operations. Consequently, great achievements have been done in addressing the challenge that NSAs may represent. With the Office’s impulsion and work, there has been incorporation into peace agreements of children rights and protection that involve commitments and engagements from armed groups. In fact The Special Representative, acting as facilitator and undertaking humanitarian and diplomatic initiatives to facilitate the work of operational actors on the

¹³⁵ Office of the Special Representative of the Secretary General for Children and Armed Conflict,

<www.un.org/children/conflict/english/theoffice.html>

¹³⁶ *Ibid*

¹³⁷ *Supra* Chapter three, Section two

¹³⁸ The others grave violations are killing or maiming of children; rape and other grave sexual abuse of children, abduction of children, attacks against schools or hospitals and denial of humanitarian access for children

ground, has permitted to record several successes with armed groups. With regard to child soldiers for instance, peace agreements in Sierra Leone (1999) and Burundi (2000) that depended on the collaboration of both armed groups and armed forces have illustrated the weight that the Special Representative can have in negotiations with armed groups. In addition, governments and insurgent groups in Sudan, and the Democratic Republic of Congo have also committed to placing the rights and protection of children on the agenda of their on-going peace processes in response to continuing efforts from the Office.

The Office can also be attributed the merits to be at the origin of an established feature for regular reports to the UNSC on specific conflict situations as well as on thematic concerns.

Through its country visits, the Special Representative has served as an effective advocacy tool, in helping to draw significant attention to the situation of children and armed conflicts, ensuring commitments from parties to armed conflict, namely armed groups, on respect of IHL and IHRL, and an increase of donor resources for the benefit of children and armed conflict. Direct engagement and important commitments for the protection of children from recruitment and use as child soldiers have therefore been secured from states and NSAs.

The Office of the Special Representative has also made it a priority to strengthen standards and norms to protect war-affected children and has worked for more engagements and collaboration with NGOs.

3.3.3 The Office of the Special Representative and DDR

Making children a central concern in post-conflict responses is one the mandate of the Office. Based on the Integrated Disarmament, Demobilization and Reintegration Standards (2006) and Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007), the Office has contributed significantly in incorporating best practices in disarmament, demobilization and reintegration. In 2007, the Special Representative visits to the Sudan (January 2007), the Democratic Republic of the Congo, Burundi (March 2007) and Côte d'Ivoire (September 2007) had among other matters of concern the proper implementation of DDR programmes that ensure effective reintegration of former child soldiers.

3.3.4 Conclusion

The contribution of the Office of the Special Representative on Children and Armed Conflict is perceptible. The Special Representative is required more that often to use some diplomat skills to obtain commitments

and engagements from both parties to a conflict in respect of rights of children.

However, a serious concern may be expressed if a look at the website of the Office is made. It appears that there is a so-called “situation of concern” list that creates a sort of surprise. It may be asked for instance why it does not include a country like CAR where as there is an ongoing recruitment of child soldiers as reports from NGOs and the UN Secretary General show?¹³⁹ When questioned about this, an Officer of the UN Special Representative Office raised the very slow nature of UN mechanisms in respect of child soldiers¹⁴⁰. Actually, before there is an additional country named on the list there are several stages to be follow by the UNSC in close collaboration with the Office. No immediate steps are therefore taken while recruitment continues in such a country.

3.4 UN Departments, Programmes and inter-governmental organisations

As pointed out earlier, although the work in respect of children and armed conflict is lead by the UN in collaboration with the Special Representative Office, there has been a significant involvement of the several UN departments, programmes and Inter-governmental organizations that cooperate with the UN. As the main goal has been to combine and coordinate these forces for a more effective protection of children rights in armed conflict, others UN entities have been able to bring their own vision and their own approach to end the practice. Although it may be argued that their actions centre mainly on prevention and reintegration, it also clear they share common values and principles and therefore have more or less the same way of dealing with the protection of children from recruitment and use as child soldiers. UN departments (e.g. DPKO), UN programmes (e.g. UNICEF and UNHCR), and inter-governmental organisations like the WB are all against the recruitment of child soldiers. Their actions, based on prevention and rehabilitation, include steps taken to prevent recruitment both from national armed forces and NSAs, negotiations for the release of children, and implementation of DDR programmes in favour of former child soldiers.

3.4.1 Protecting and preventing children from recruitment and use as child soldiers

Protection and prevention of recruitment of child soldiers by parties to a conflict is very important to face the challenge that the practice

¹³⁹ *Supra* footnote 2

¹⁴⁰ This is based on my private interviews held with Officers at the Office of the Special Representative.

represents. A key role in this regard is played in one hand by UN agencies and programmes like UNICEF and UNHCR and by DPKO on the other.

UNICEF has among its priorities working to build a protective environment for children. This passes through the creation of child-friendly spaces in situation of displacement and peer to peer counseling approach. UNICEF's work consist of bolstering the capacities of families and communities to create effective resource for a wide range of activities that will enable them to prevent separation with their children in case of armed conflict. The Child Protection Information Sheet reveals that nearly 1.6 million children were protected from recruitment by armed forces and groups in DRC for instance by this approach.¹⁴¹ Assistance to the most vulnerable people (while recognizing the fact that displaced children have the right to receive the same level of public services like other children), and obtaining commitment from states and NSAs to end the use and recruitment of child soldiers are also part of it agenda. UNICEF works for the promotion of codes of conduct on children's rights, the training for all military and civilian peacekeeping personnel to ensure elimination of maltreatment and use of children in armed groups. It believes children must be involved in this process by contributing to their own protection.

UNICEF encourages also armed groups to uphold the Optional Protocol and governments to reform national law; by improving the legal protection given to children and end impunity enjoyed by armed groups.

On its own, UNHCR who deals with refugees and as such children refugees emphasises from the idea that they are vulnerable for recruitment and are victims. "Regardless of how they were recruited", UNHCR action insists on the personal liberty and security of the child refugee, so that he is protected from recruitment and use as child soldiers.

The Secretary General in his latest report to the UNSC points out the close link between child recruitment and internal displacement, noting that the lack of security around refugee and internally displaced person (IDP) camps and the "convenient concentration of vulnerable children" make these camps "prime recruiting grounds".¹⁴² UNHCR work therefore, to avoid this even though it is very difficult to ensure the physical protection of children. It tries each time there are means to do so, to strengthen its presence in locations where the physical integrity of children is at risk; given that this action is also meant to enable authorities, NGOs and the international community to be alerted on situation of serious concern such as recruitment of child soldiers.

The UNHCR engages in, each time there is a need to do so, investigations on alleged violations of refugee children's rights among which is recruitment of child soldiers. It advocates for collaboration and the contribution from government and NGOs to achieve its goals. Similarly it arranges for training of refugee leaders, other UN programmes and agencies,

¹⁴¹ UNICEF, United for Children, Child Protection Information Sheets. [www.unicef.org/protection/files/Child_Protection_Information_Sheets_\(Booklet\).pdf](http://www.unicef.org/protection/files/Child_Protection_Information_Sheets_(Booklet).pdf) pages 7 to 8

¹⁴² *Supra* foot note 1

NGOs personnel and government personnel in matters relating to protection of refugee children where their security is at risk.

Another issue given serious consideration by the UNHCR is that of getting safe locations and accommodation in areas where the likelihood of attack is less obvious, evacuation when there is need to do so, so as to guarantee the security of children at risk and building strong family units.¹⁴³

Lastly, the role of DPKO cannot be underestimated at this level. Indeed their mandate requires them to monitor and observe peace processes in post-conflict situations and assist ex-combatants in implementing peace agreements they may have signed. This mandate is sometimes strengthened with more power received from the UNSC, and an effective collaboration with other UN programmes working in the field with the aim of not only making sure that peace reigns, but IHRL and IHL principles are respected. In this respect they are generally of good help to UNICEF and UNHCR to prevent the recruitment and use of child soldiers.

It can be submitted the above-mentioned UN agencies, programmes and departments have the same goal i.e. the protection of children from armed conflicts, and their approaches and priorities are basically the same while building a safe environment to guarantee security of children and ensure strong family and community ties. However this may not be enough in some cases if the states parties do not meet up to their basic obligations in respect of protection of vulnerable children. Aware of these shortcomings, the Paris Principles recommend for instance states to provide physical protection to persons in refugee camps, locate refugee's camps at reasonable distance from the border, and make individual registration and documentation of displaced children especially if unaccompanied.¹⁴⁴

3.4.2 Negotiations with NSAs for their Commitment to international standards and release of child soldiers

Both the Paris Principles and the Guide to the Optional Protocol advocate for negotiations so long as it is possible with armed forces for the release of child soldiers. This should in fact be the first step in the process of protecting children's rights. The Guide to the Optional Protocol for instance stipulates that the Protocol and other international standards should be used as tools to engage NSAs in dialogues with purpose of obtaining from them, commitments to respect IHRL and IHL. In response to this, UNICEF and UNHCR have adopted the practice of engaging in such useful dialogues with parties to armed conflicts. Although the final aim is to guarantee a smooth DDR programmes, it is clear that this can only be achieved if

¹⁴³ UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1 Jan 1994
www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf

pages 33-36

¹⁴⁴ See the Paris Principle, page 18

international law has previously been complied with and effective release of child soldiers is secured from parties to armed conflicts.

UNICEF and UNHCR approaches consist of establishing direct contacts with armed groups to tell them their obligations in respect of IHL/IHRL and later on to obtain the release of children participating in an armed conflict. UNICEF is more implicated in negotiations for the release of children. Its main mission is to protect children justifies this. In doing so, it usually engages in very delicate and risk action, done with a lot diligence to face NSAs. Indeed, the challenge is to deal with entities that do not in the strict sense of IHRL hold any obligations but who by virtue of IHL obligations and the principle of universality of IHRL have to respect and observe some human rights. It is also difficult to deal with a party to an armed conflict that is objectively engaged in illegal and criminal activities. On a practical level this supposes meetings and direct negotiations with representatives from UNICEF or UNHCR on the one hand and those of armed groups on the other bearing in mind all the risks that may follow.

UNICEF and UNHCR are guided *inter alia* by the Guidelines on Humanitarian Negotiations with Armed Groups,¹⁴⁵ which are intended to provide concise rules and guidance to humanitarian practitioners on how to prepare for and conduct humanitarian negotiations with NSAs. As pointed out in the Guidelines one of the main criteria is to ensure protection of civilians since refugee children or children associated with armed groups by their nature are to be considered civilians. The Guidelines therefore advocates for a clear separation of humanitarian and political issues when negotiating with parties to a conflicts and a clear definition of boundaries and framing to be respected during negotiations.

Although this may not be the case all times, commitments from armed groups to observe and respect IHL and IHRL principles have been gained. In Africa for instance, UNICEF has been able to obtain commitments from The Sudan People's Liberation Army (SPLA) in the south of Sudan, which lead to the demobilisation of at least 3,500 child soldiers. In Democratic Republic of Congo (DRC) dialogues engaged with parties to the conflict have rendered possible the release of at least 5,000 children survivors of sexual violence, and child soldering activities. On the 18 May 2007, UNICEF announced that negotiations have started with NSAs armed groups for hundreds of child soldiers enrolled in the north-east of the Central African Republic (CAR) to be released and returned to their families. As a result of this General Damane Zakaria, head and founder of the Assembly of the Union of Democratic Forces (UFDR), a rebel group that controls parts of north-eastern CAR (close to Sudan's Darfur region), agreed to release some 400 children. A first list of 220 child soldiers has already been given to UNICEF. In the same line, on the 1st May 2007 UNICEF and the Government of Chad signed an accord to demobilise child soldiers throughout the country. Under the accord, UNICEF will help the government prevent further recruitment of children into armed forces and

¹⁴⁵ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in collaboration with members of the Inter-Agency Standing Committee (IASC), Gerard Mc Hugh and Manuel Bessler, United Nations ,January 2006 New York

groups. The demobilisation initiative will repatriate Sudanese refugee children who have been recruited into conflict in Chad.¹⁴⁶

3.4.3 DDR Programmes

As suggested above, DDR is given due consideration at the UN level. So is the case under UN programmes, agencies and inter-governmental organisations. There is actually an understanding by the UN system that prevention of re-recruitment should be given significant attention. As the Paris Principles points out, prevention of re-recruitment is of particular importance when children have been released from armed forces and armed groups; and this may require appropriate programmes that will make sure effective demobilisation, disintegration and reinsertion is achieved for former child soldiers.

3.4.3.1 UNICEF and DDR

UNICEF believes that DDR programmes and others activities in support of former child soldiers are crucial to their development, health and well-being and also that of their families. In this regard, it works with some partners to create a protective and healthy environment to prepare and ensure a smooth transition for child soldiers. UNICEF adopts a human rights based approach to end the use of child soldiers. It plays a coordinating role in the removal and reintegration of child soldiers.

UNICEF has endorsed The Paris Principles and the UN Integrated Disarmament, Demobilisation and Reintegration Standards,¹⁴⁷ which is a set of policy and guidelines for carrying out DDR programmes in post-conflict situations around the world and which advocates for a common UN approach to DDR. The new standards, together with a diverse range of tools for programme's staff on the ground, help to ensure that comprehensive, coordinated and consistent programmes are available to address the needs of children for their transition from military groups to their communities and families.

In response to fragmented approaches adopted by then, six UN agencies, departments, funds and programmes came together in 2004 to draft a series of Integrated DDR Standards (IDDRS), i.e., a set of policies, guidelines and procedures for UN-supported DDR programmes in a peacekeeping context. Following workshop discussions and extensive consultations with country-level practitioners from the UN, member states, regional organisations, NGOs and the World Bank, the IDDRS were further developed and a second draft was tested in 2005. The IDDRS have been drafted on the basis of lessons and best practices drawn from the experience of all the departments, agencies, funds and programmes involved to provide the UN system with a set of policies, guidelines and procedures for the

¹⁴⁶ See UNICEF website for more information on this
<www.unicef.org>

¹⁴⁷ United Nations, Integrated Disarmament and Reintegration Standards,
< www.unddr.org/iddrs/01/download/IDDRS_110.pdf >

planning, implementation and monitoring of DDR programmes in a peacekeeping context. While the IDDRS were designed from peacekeeping contexts in mind, much of the guidance contained within these standards will also be applicable to non-peacekeeping contexts. IDDRS consists of 26 modules divided into 5 levels, intended to serve both as part of the overall IDDRS framework and as a freestanding document. In the published version of the IDDRS, all modules are therefore collected in a ring binder so that they can easily be taken out and used separately.¹⁴⁸

UNICEF's actions focus on education and skills training by ensuring an effective access to these for children released from armed conflicts. It concentrates on family tracing in order to get as much as possible family unity and reunification; support for families and communities to which children return or integrate and provide an important support to children in finding a role in the community.

Some concrete results have been seen in Cote d'Ivoire where nearly 1,000 former child soldiers have been demobilized and are being reintegrated into mainstream society; in DRC where at least 5,400 children have reintegrated into their families and communities; currently in Liberia and Chad where UNICEF is working to provide skills training courses to respectively 5,000 and at least 2,000 demobilized children associated with armed forces.

3.4.3.2 UNHCR and DDR

UNHCR deals with refugee children either fleeing from conflicts or just released from armed forces or armed groups. It therefore has a crucial role to play in an eventual implementation of DDR process. In a nutshell, its role is at this level basically similar to that of UNICEF, as they both have recourse to the same methods and practice. They actually work in very close collaboration when it comes not only to prevent children participation in armed conflict, but also to protect them from re-recruitment by armed groups and armed forces. In consequence an effective implementation of DDR programmes passes through an effective implication of the UNHCR.

Lastly, it is good to point out that the UN IDDRS also serves as a reference and guide for the work of UNHCR.

3.4.3.3 World Bank (WB)

The WB plays an important role in the implementation of DDR programmes. It cooperates a lot with the UN on this. It provides the UN agencies and programmes with finance for the implementation of DDR programmes that, in reality are very costly. There cannot be an effective implementation of a DDR programmes without financial means, as examples from the practice of UN programmes, departments and agencies show. Although some of them like UNICEF may get private independent

¹⁴⁸ See the UN IDDRS for more information

funding they still face financial difficulties. Its engagement has to be achieved in an elaborated manner that will guarantee the success of DDR. It appears deep collaboration and cooperation with others UN agencies and programmes are vital.¹⁴⁹

World Bank's work.

The WB focuses on providing financial capital and rebuilding physical infrastructure. But a comprehensive approach including initiatives to support the demobilisation and reintegration of ex-combatants has recently emerged. In cooperation with the UN, donors, client countries and other stakeholders, the Bank has developed a regional strategy for the demobilisation and reintegration of child soldiers. In this respect the Multi-Country Demobilisation and Reintegration Program (MDRP), partly financed by the WB, provides for a reliable framework for national and international efforts that assist ex-combatants to return to peaceful sustainable livelihoods. This has been materialized in countries like, Burundi, the Central African Republic, the Democratic Republic of Congo, the Republic of Congo, Rwanda and Uganda.

The role of the WB is to manage the MDRP Secretariat, administer the Multi-donor Trust Fund, and co-finance DDR programs within its support to countries where they are taking place. Similarly, it provides financial, technical and capacity building support to government engaged in a DDR processes. In practice this means helping former fighters to launch independent or joint projects of their own design.

Further, as suggested by the article "lessons learned on Prevention, Demobilization and Reintegration"¹⁵⁰, the WB also stresses on other aspects like prevention, education and skills training, similar to UNICEF and UNHCR. In response to the some recommendations of the ILO for instance, it has adopted new approaches in regard to child labour (given that recruitment of child soldiers fall under the worst form of child labour). Indeed until recently, the WB would only accept to avoid harmful child labour, leaving the door open to accepting child labour in their projects if they thought it was not harmful. There has been some changes, illustrated for example by the recent Performance Standards adopted by the International Finance Corporation¹⁵¹ and it appears that the WB is no more ready to accept any form of child labour as a way of reintegrating child soldiers. It can be argued this is a significant shift in regard to policies previously applied by the WB in respect to DDR programmes.

In Sierra Leone, community based recovery efforts in relation to DDR are being promoted by the WB .The government has received financial support from the MDRP with up to US \$31 million. Similarly, the

¹⁴⁹ *Infra*

¹⁵⁰ The Worl Bank lessons learned on Prevention, Demobilization and Reintegration, The WB, May 2002

<www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/10/18/000094946_02100304012678/Rendered/PDF/multi0page.pdf>

¹⁵¹ The International Finance Corporation,
www.ifc.org

WB in collaboration with NGOs and civil society has given technical advice and support for the realisation of DDR programmes. In DRC the WB has contributed up to \$350,000 for the reintegration of former fighters since 2000. The funds helped in pursuing field investigations, awareness seminars, training sessions and micro projects proposed by the former fighters.

3.4.4 Conclusion

UN departments, programmes and inter-governmental organisations all together, work for the prevention of children from recruitment and use as child soldiers. Their work focuses on prevention of recruitment as well on implanting DDR programmes that can permit smooth transition to normal lives.

It appears that the main challenge they face is pecuniary. In fact their work requires a lot of money and funding indispensable for DDR programmes. A significant proportion of children engage in armed groups because of poverty.

Lastly, it may be submitted that the UN work in respect of child soldiers needs more coherence and coordination.

4 International Community and NGOs' Contribution

Although their engagements may differ at some instances, international community and NGOs share similarities on various approaches that include monitoring-reporting-denunciating and lobbying child soldiering activities, dialogue, advocacy, education and negotiation with different parties to a conflict. Their main concerns range from advocating for respect of IHRL and IHL, ensuring humanitarian access for the release of children, and promoting and contributing for effective DDR programmes after children's release or in post conflict settings. Consequently both the international community (limited to this purpose to third states or donors' countries, regional or sub regional organisations)¹⁵² and the NGOs do have a responsibility in preventing the use of child soldiers. This chapter offers a comprehensive overview of ways and methods used by the international community and NGOs in dealing with child soldiering activities operated by armed groups. It gives an overall understanding of what has been their recent contribution and scope of action. It focuses on their role in monitoring-reporting and denunciation, advocating for respect and commitment to international standards, negotiating for the stop of recruitment and release of child soldiers and finally on their implications in post conflict solutions that gives place to DDR programmes.

4.1 Monitoring-reporting and denunciation

The responsibility of monitoring-reporting and denunciation of human rights abuses is a corner stone of the work of NGOs and the international community. Efforts to influence the attitudes and conduct of armed groups are made by local and international NGOs, third states, regional and sub- regional organisations. Although NGOs' commitment at this level has proven more acute in some instances, third states contribution is not less important as they engage in reporting and denunciating child soldiering activities committed by parties to a conflict. The practice consists of reporting all forms of breach of IHL and IHRL and international obligations in regard to children involved in armed conflict by naming and denunciating parties to that recruit and use child soldiers; it also supposes an assessment with clear and reliable evidences of child soldiering activities being perpetrated so as to raise global awareness.

¹⁵² International community will normally include UN entities and agencies but since we already elaborated on this, it will be limited to other members like third states countries, donor's countries, regional and sub regional organizations, which role are crucial in preventing and stopping the use of child soldiers.

4.1.1 NGOs' monitoring- reporting and denunciation

Monitoring and reporting activities from non-governmental sources like NGOs are of prime importance for having useful and reliable information about a situation of concern in countries where child soldiering activities are perpetrated. NGOs do provide parallel or 'shadow' reports on armed conflict situations all over the world. States sometimes cannot produce a very descriptive report of activities going on within their country during a conflict and may lie sometimes when reporting under a UN treaty body for instance. Similarly, international peacekeeping missions as well as UN agencies may not always be on area of conflicts to assess human rights abuses, as it may sometimes be difficult to get access or take time to deploy peacekeeping troops. In response to this, NGOs reports produce an opportunity to raise issues that they believe have not been adequately addressed by states.¹⁵³ Their reports provide opportunities for advocacy, public debate, and awareness raising and media attention on children participation in armed conflict. Those reports centre on monitoring conflict situation and are based on international legal standards that prescribe for no recruitment of children in armed conflicts; they constitute reliable information sources for international organisation on what may actually be going on in an armed conflict

NGOs regularly denounce the recruitment of child soldiers by parties to armed conflict in their reports and campaigns. They usually refer expressly and directly to alleged perpetrators of child recruitment with all evidences that may be needed to prove beyond reasonable doubt their statement. NGOs are aware of the publicity that the denunciation of child recruitment can generate. They use this as a tool for enlisting influential governments and institutions to exert diplomatic and economic pressure on different parties to conflicts so as to improve their conduct in regard to the IHRL and IHL obligations. Given the very complex and risky task that denunciation may suppose sometimes, they have together with humanitarian agencies working on the field; develop methods and techniques to preserve the anonymity of those who provide them with information. This is not only good for ensuring their neutrality but also in getting access to reliable information from witnesses without fear of any consequence on their security.

It appears a central element of the NGOs strategy is that of attracting public attention as the Background Document of the Coalition to Stop the Use of Child Soldiers points out.¹⁵⁴

¹⁵³ See the Guide to the Optional Protocol page 39-40

¹⁵⁴ Coalition to Stop the Use of Child Soldiers, Background Document of the Forum on Armed Groups and the Involvement of Children in Armed Conflict Chateau de Bossey Switzerland 4 to 7 July 2006. Geneva. Page 10

4.1.1.1 Coalition to Stop the Use of Child Soldiers

The Coalition consists of eight leading international humanitarian and human rights NGOs.¹⁵⁵ It provides useful information in regard to conflict situations that involve child soldiers in the world and therefore in Africa where it has regional representatives. Its monitoring-reporting and denunciation role is well known worldwide.

It publishes child soldiers Global Report every three years and this provides a reliable source of information on recruitment of child soldiers around the world. The report is a concrete example of how the monitoring-reporting and denunciation mechanism works with NGOs. It provides an assessment of country legislation, international standards that have been ratified, background information of the country situation and parties to the conflicts that recruit child soldiers. To have an idea of what has been the practice recently in Africa it may be interesting to take a look at the Child Soldiers Global Report 2004 which is the latest report produced by the Coalition so far.¹⁵⁶

The coalition also produces regular briefings on practices of the Committee on the Rights of the Child, the UNSC, the European Union and the African Union on child soldiering activities.

4.1.1.2 Amnesty International and Human Rights Watch

Their work is based on international standards that prevent children from recruitment and use as soldiers. They monitor and report on all states where a conflict involves children and denounce the practice of recruiting of child soldiers. The naming and shaming is therefore often used by these NGOs in attracting international awareness of child recruitment and therefore take steps to stop it. As experience shows, their reports have on several occasions been at the source of action by UN entities and agencies that may not have access to all areas of conflicts.

Human Rights Watch (HRW) has interviewed child soldiers in countries like Burundi, DRC, Sierra Leone and Uganda. They have produced several reports on child soldiers in Chad,¹⁵⁷ Burundi,¹⁵⁸ West Africa,¹⁵⁹ and DRC¹⁶⁰. HRW's role in denouncing human rights abuses is

¹⁵⁵ Amnesty International, Defence for Children International, Human Rights Watch, Jesuit Refugee Service, Quaker UN Office Geneva, Save the Children Alliance, International Federation Terre des Hommes and World vision International.

¹⁵⁶ The Coalition to Stop the Use of Child Soldiers, Global Report 2004

¹⁵⁷ Human Rights Watch, Early to War Child Soldiers in the Chad Conflict, July 2007, < <http://hrw.org/reports/2007/chad0707/>>

Human Rights Watch, "They Came Here to Kill Us" Militia Attacks and Ethnic Targeting of Civilians in Eastern Chad, January 2007, < <http://hrw.org/reports/2007/chad0107/>>

¹⁵⁸ Human Rights Watch, A Long Way from Home FNL Child Soldiers in Burundi, June 2006 < <http://hrw.org/backgrounders/africa/burundi0606/>>

¹⁵⁹ Human Rights Watch, Youth, Poverty and Blood The Lethal Legacy of West Africa's Regional Warriors, March 2005, < <http://hrw.org/reports/2005/westafrika0405/>>

¹⁶⁰ Human Rights Watch, Democratic Republic of Congo Reluctant Recruits: Children and Adults Forcibly Recruited for Military Service in North Kivu Report. May 2001,

well known worldwide, they benefit from an established international reputation. Their reports are often used by third states and UN agencies for their evaluation of child recruitment to take action.

Amnesty International (AI) on its own has a long-standing campaign against child recruitment and use by armed groups. They also have a letter writing campaign on child soldiers that deals with specific and urgent cases of abuses. Furthermore they produce reports on countries situations asking members of the international community to pressure parties to an armed conflict not to engage in recruitment and use of child soldier or to engage in DDR after their release. As an example we may refer to the “Act Now Campaign” on child soldiers in Cote d, Ivoire that asked *Forces Nouvelles* armed group to “genuinely engage with disarmament, demobilisation, rehabilitation and reintegration of child soldiers”.¹⁶¹

4.1.2 International Community Reporting-monitoring and denunciation

The international community is also concerned with human rights abuses although it may be submitted that their reporting-monitoring and denunciation’s role is less strict than that of NGOs.¹⁶² Several third states or super powers, developed countries and regional organisations have made the issue of children and armed conflict an important point in the agenda. They do also monitor the implementation of international standards in this respect by relying either on UN and NGOs reports on one hand, and on their own finding they may produce trough their own reports. We shall focus here on European Union (EU) monitoring and reporting role as the practice shows that their role is crucial in reporting-monitoring and denunciation recruitment of child soldiers by NSAs armed groups.

4.1.2.1 EU Monitoring and reporting

The EU is highly concerned with bringing global attention to human rights abuses so as to seek and generate pressures that may influence those who engage in this. In 2003, following extensive deliberations involving input from the UNICEF, NGOs and the UN's Special Representative on Children and Armed Conflict, the EU adopted a set of EU Guidelines on Children and Armed Conflict.¹⁶³ Through these Guidelines,

< <http://www.hrw.org/reports/2001/drc3/>>

¹⁶¹ Amnesty International, Cote d,Ivoire :Let the children live in peace,27 April (AFR 31/004/2005-WA 08/05),

<www.web.amnesty.org/pages/civ-270405-action-eng>

¹⁶² This may be justified by the fact that preservations of peaceful and friendly international relations between states may prevent third states, regional and sub regional organizations from adopting a very strict and harsh position against another state.

¹⁶³ See The European Union, EU Guidelines on children and armed conflict (2003) that commit the EU to address the impact of war on children, especially through: monitoring

the duty to report is conferred to the EU Heads of Mission, Heads of Mission of civilian operations, EU Commanders (through the chain of commands) as well as EU Special Representatives. The report deals with children and armed conflict but focuses on child soldiering activities carried on by parties to armed conflicts.

The report denounces all recruitment of children by naming openly alleged recruiters from governmental armed forces and NSAs. It also reports on different mechanism put in place to ensure release and reintegration of child soldiers. The report is also crucial in drawing the attention of donor's countries to contribute for the realisation of DDR programmes.

In Africa for instance these reports have permitted to raise global awareness on recruitment going on in Cote d, Ivoire, DRC and Chad.

Third States

Third states report, monitor and denounce child soldiering activities either through their local diplomatic missions or some of their agencies. The United States of America (USA) and the United Kingdom (UK) for instance often produce reports, through the website of their local country representations. They provide information on child recruitment as well as on alleged perpetrators within parties to a conflict. These reports have shown their importance in situations where it is very difficult for UN entities, agencies and NGOs to get access to specific country where child-soldering activities are going on. The country diplomatic representation in this case acts, as a real 'liaison officer' with UN and international organisations to provide them with information about activities going on in the country and make sure the international community knows the situation for further action.

4.2 Advocacy for respect and Commitment to International Standards

The prevention of children from recruitment and use as child soldiers is possible only if parties to a conflict respect international standards and sometimes if they respond to international pressure. As it can be seen so far, those standards are treaties and protocols that require, accession and ratification by states before it takes effect. This implies that the most important challenge is to make sure that there is accession and ratification of all international standards and that states and armed groups do commit to respect obligations they impose. Henceforth the contribution of third states, regional and sub-regional organisations and NGOs is crucial in the process of advocating respect and commitment to international obligations. If the task in respect of states actors may simply be that of

and reporting by its heads of mission, military commanders and special representatives, diplomatic initiatives, political dialogue, multilateral cooperation, crisis management.

promoting the accession and ratification of international standards and then implement them, the one in regard to NSAs armed group may prove more difficult as it appears to be a very sensitive task that will require to ensure their observance of law which, most of the times do not impose any direct obligations on them at the international level.

This part describes the way in which advocacy for respect of international standards is done when dealing with armed groups that recruit and use children as soldiers. It describes the role of international community through third state parties or regional organisations in ensuring their commitment to IHRL and IHL.

4.2.1 NGOs advocating for respect and commitment to International standards

NGOs do not only report and monitor the implementation of international standards for the prevention and of use and recruitment of child soldiers but they also advocate and encourage parties to a conflict to respect and commit to international standards. This is done through formal meetings, trainings and workshop with armed groups to commit them to international law.

Practice has revealed that meetings are sometimes organised with armed groups to promote compliance with international norms and secure a commitment to respect them. The aim is to engage in a discussion with armed groups to obtain their commitment and respect of international standards. These meetings are some times formalised by Deed of Commitments being signed by armed groups. These deeds that materialise their engagement to respect international law represent a unique process, based on inclusive approaches towards NSAs, that have so far been adopted for example by an NGO known as Geneva Call.¹⁶⁴ Indeed the commitment materialised trough the signing of a Deed of Commitment is obtained after intense negotiations and dialogue with armed groups. Although this has been the case only in view of the end of the use of landmines by parties to armed conflict, it can be a good example and precedent for further actions that will help to formalise armed groups' commitment to non-recruitment of child soldiers.

Trainings and workshops also constitute part of NGOs strategy in advocating respect and commitment with IHL and IHRL principles. NGOs directly engage with armed groups by conducting training and workshops on how to implement IHL and IHRL. This action aimed at promoting observance of international law by armed groups has been undertaken for

¹⁶⁴ Geneva Call is a Swiss-based NGO working to encourage non-state actors in international conflicts (such as guerrilla groups, liberation movements, and militias) to understand and respect international law, which is generally designed only to encompass states and state armies. They are presently focusing their efforts on landmines and are attempting to get armed non-state actors to voluntarily renounce the use of these weapons.

instances by the ICRC.¹⁶⁵ In 2004, for instance, it provided such training to armed groups in the DRC and Sudan (The Sudan People's Liberation Movement/Army (SPLM/A). Furthermore ICRC has adopted a Plan of Action on children affected by armed conflicts,¹⁶⁶ which promotes the principle of non-recruitment and non-participation in armed conflict of children under 18 years old. Save the Children UK gained, through their advocacy work, an agreement with the RCD-Goma commanders to hold a series of workshops for military officers on international law related to child soldiers and DDR programmes. They also published a set of Guidelines for policy maker and field based program staff on working with children associated with fighting forces, setting out a policy framework and some recommendations.¹⁶⁷

Human rights education therefore provides a potentially fruitful way for direct engagement with armed groups and can result in institutionalising and understanding of children's rights by armed groups that can lead to the creation of a climate of confidence necessary to engage in dialogues for the release of child soldiers.

4.2.2 International community

Third states, regional and sub regional organisations play a key role in encouraging parties to an armed conflict to observe rules of IHL and IHRL. This is done through their political engagement, which is indeed, an effective tool they possess contrary to NGOs that cannot sanctions nor engage politically. Their action consist of exerting external pressures on armed groups so as to obtain commitment to observe international law; it can also consists of targeted sanctions directed against individuals from armed groups that are involved in recruitment of child soldiers. This practice, although of recent origin, has been increasingly used by the EU for instance and needs to be stressed.

Third states like Norway, Sweden, Iceland and Finland do engage in mediation between parties to armed conflict for the respect of IHL and IHRL. They also organise training and workshops on IHL and IHRL, where they invite armed group's leaders.

Similarly, the EU regularly raises the issue of the recruitment and the use of children by armed forces or groups in its political dialogues with governments. It conducts political démarches (specific actions towards

¹⁶⁵ The International Committee for the Red Cross (ICRC), www.icrc.org, (ICRC activities, promoting IHL). See also the International Committee for the Red Cross Annual Report 2006: ICRC Africa.

<[http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/738bkh/\\$file/icrc_ar_06_africa.pdf?OpenElement](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/738bkh/$file/icrc_ar_06_africa.pdf?OpenElement)>

¹⁶⁶ 26th International Conference of the Red Cross and the Red Crescent –Resolution (and Annexes), International Review of the Red Cross No.310, 1996,pp 55-130,

<www.icrc.org/eng/review. >

¹⁶⁷ International Save the Children Alliance, A Fighting Chance: Guidelines and Implications for Programmes Involving Children Associated with Armed Groups and Armed Forces, Save the Children UK.9 November 2004,

<www.savethechildren.org.uk>

governments expressing the EU's view on a particular topic) to ensure children's rights are respected. In this respect, in May-June 2007 it conducted a campaign of political demarches promoting the implementation of the Paris Principles on the recruitment and the use of children in armed forces and groups.

4.3 Negotiation for the Stop of recruitment of Child soldiers and their release

It is probably very difficult to prevent an armed conflict, but as shown above, it is possible and more realistic to advocate for respect of IHRL and IHL by parties to a conflict. This can be done before, during and after armed conflicts. However, there may be a problem in case a conflict has already started, that breaches of IHRL and IHL are taking place and there is a need to bring the situation to an end. This may be the case for instance when the need to ensure that recruitment of child soldiers is stopped and child soldiers are released. Tactful negotiations therefore have to be envisaged with parties to a conflict. Once more the task may prove more complicated when dealing with armed groups than states armed forces. may be because of their status or the criminal nature of their conduct. Both the international community and the NGOs may have a role to play at this stage. NGOs on their own represent not only apolitical but also neutral partners for efficient and reliable negotiations with armed groups. From the experience so far, negotiations for the release of child soldiers denotes two aspects namely a humanitarian engagement and a political engagement. Although at the level of the former, NGOs (with a greater commitment) and international community can both contribute, it appears the latter is more likely to be used by international community through third states, regional and sub-regional organisations.

4.3.1 Humanitarian engagement

This consists of two complementary actions namely that of assistance and protection for victims of armed conflicts. Whereas assistance deals with providing food and services to vulnerable civilians, protection focuses on ensuring that government and armed groups respect civilian's rights in accordance with IHRL and IHL.¹⁶⁸ The later therefore includes negotiations for ensuring humanitarian access to civilian population affected by armed conflict and make sure inter alia, that access is given to child soldiers to ensure their release. This is an important part of operational activities engaged by humanitarian agencies on the field to gain access to vulnerable populations. In this regard, it must however be pointed out that negotiations with armed groups do not in any way confer them legitimacy or

¹⁶⁸ See the Coalition Backgrounder. Page 12

legal recognition since their sole purpose is to ensure protection of civilians rights and the release of child soldiers.

Several NGOs, have engaged in dialogues and negotiations with armed groups so that they commit to respect IHL and IHRL principles and the stop of recruitment of child soldiers or involvement in armed conflicts. The action is a very sensitive and risky one as it takes place in a context where armed groups may deny sometimes children's participation in combat or simply refuse access for their release. Furthermore, it may also be interesting to see the way humanitarian NGOs, deal with armed groups without going against primary concerns of states governments involved in the conflict and finally understand how they work to keep their neutrality that appears vital to establish a climate of trust with armed groups.

4.3.1.1 The ICRC

The ICRC is dedicated to maintaining its role as a neutral and independent intermediary, engaging in dialogue with all actors involved in armed conflict. It engages directly with armed groups for humanitarian purposes. In respect to children's rights, it may have to deal with child soldiers used by armed groups by facilitating their release and restoration either to their relatives or through DDR programmes. In so doing, they have a good record of proven experience made of tactful and skillful negotiations with armed groups that breach IHL. ICRC is well known for its neutrality when dealing with parties to an armed conflict. Through direct dialogues they engage with armed groups, they are usually able to engage into substantive negotiations for the release of child soldiers and end of recruitment of child soldiers. The fact of working in the field confers on them an understanding of the realities and the ways and methods to deal with each party's sensitivity. They can actually face the challenge of working in hostile environment and create contacts with alleged dangerous armed groups. In Sierra Leone for instance the action of ICRC allowed informal negotiations with rebel groups for the release of child soldiers.

A look at the at both the article *Le CICR en Afirque: Contexte et Defits*¹⁶⁹ and the ICRC Annual Report 2006¹⁷⁰ provides the reader with a more elaborated description of the ICRC's work in this respect.

4.3.1.2 Combining local and international initiatives

We have seen so far that some crucial requirements for succeeding in negotiating with armed groups included how to get or set direct contacts with them and also making use of a pre-established and well know reputation of an NGOs or third states. However, several difficulties may actually be encountered during armed conflicts in establishing direct contacts for negotiation with armed groups and obtaining release of child soldiers. In response to this, experience has revealed that there is more and

¹⁶⁹CICR, Christopher Harnish, *Le CICR en Afirque: contexte et defits*, ICRC December 2003 Vol 85 No 852

< [http://icrc.org/Web/fre/sitefre0.nsf/htmlall/5WNJVW/\\$File/IRRC_852_Harnich.pdf](http://icrc.org/Web/fre/sitefre0.nsf/htmlall/5WNJVW/$File/IRRC_852_Harnich.pdf)>

¹⁷⁰ ICRC, Annual Report 2006, ICRC May 2007.

more the practice of joining both international initiatives with local initiatives. This presupposes direct or indirect implication of local NGOs, civil society and of church's leader in some instances in order to convince armed groups to engage in a dialogue for the release of children.

4.3.1.2.1 Combining International Community and NGO's efforts with local NGOs initiatives

Establishing direct contact with armed groups for further negotiations may prove very difficult in some countries namely where access to certain areas control by NSAs may be risky or difficult. Local NGOs therefore may come into play. They may make use of their familiarity with risks and difficulties encountered in the field, better than any one else. As experience has shown, they may master not only the country but also sometimes know the rebel movement involved in human rights abuses. Furthermore, the fact of dealing with people from the same country or same area may be decisive in creating that feeling of mutual trust that need to exist before any dialogues is engaged. The international community and NGOs until recently had not realised this approach, which indeed may prove more realistic and beneficial than expected.

Similarly, the monitoring and reporting role of local NGOs may end up being crucial in areas where international NGOs and organisations may not get access or where they are still to come. Therefore, it may be submitted that local and national NGOs can actually initiate programmes that are aimed at preventing child recruitment, getting release of child soldiers and ensuring that they benefit from DDR programmes. They are also more that ever very useful in contributing to training programmes at local levels with parties to a conflict. This aspect seems to not have been given the importance it deserves and has to be stressed and encouraged.

4.3.1.2.2 Civil society and churches

Civil societies through local authorities and churches through religion leaders are getting more and more involved in negotiating with armed groups for commitment to IHL and IHRL principles and getting child soldiers released. Efforts are being undertaken by the international community and international NGOs to involve communities' leaders, civil societies' leader and churches in reflection on how to protect child from recruitment during armed conflict and what steps are to be undertaken to ensure their release by armed groups.¹⁷¹

In the DRC, groups composed of local leaders, religious leaders (Christian and Muslim leaders) and civil society have been able to visit commanders of armed groups to negotiate for the release of child soldiers

¹⁷¹ Background Document. Page 30

and obtain from them commitment to IHL and IHRL principles and to engage with further talk with UNICEF.¹⁷²

In Sierra Leone, religious or inter-confessional groups have had some success in engaging armed groups, like the Revolutionary United Front (RUF), for the release of child soldiers.¹⁷³

4.3.2 Political engagement

This term is used to describe efforts by third states, regional and sub-regional organisations to persuade armed groups to negotiate for the end of recruitment, release of child soldiers and peaceful resolution of an armed conflict. It has to do with the way in which they have facilitated and supported peace negotiations between parties to a conflict and the end of child recruitment.

The legal basis of this can be traced from Article 7 of the Optional Protocol on the Involvement of Children in Armed Conflict, which request states to cooperate for the implementation of the protocol.¹⁷⁴ It appears third states, sub-regional and regional organisations should actually be involved in mediations, and facilitating peace talks between parties to conflicts and advocating for respect of IHL and IHRL principles. In this regard, third states and regional organisations have the duty to engage politically for the prevention of child recruitment and their release. The practice so far has been to send representatives of foreign ministries for mediations, make use of international pressure and bilateral sanctions and develop some paralegal mechanisms that can help negotiate with armed groups what may be referred to as memorandums of understanding that advocates for respect of IHL and IHRL instruments (specifically, the stop of child recruitment, release of child soldiers and cease-fire).

4.3.2.1 Third states

Third states involvement in peaceful negotiation is perceptible in several conflict situations in Africa. Many states are often involved in mediating and facilitating peace talk between parties to conflicts. In so doing they have developed, through practice with negotiating,

¹⁷² See International Forum on Armed Groups. Page 14

¹⁷³ See International Forum on armed Group. Page 11

¹⁷⁴ Article 7 reads as follow:

“1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly”

memorandums of understanding and cease-fire until the end of a conflict.¹⁷⁵ These memorandums stress the commitment from armed groups to observe IHL and IHRL and therefore release child soldiers.

Norway has in this respect facilitated an important number of peace talks as well as reconciliation process. In Sudan, for instance they are part of a troika supporting the peace process together with the USA and UK. Humanitarian assistance to affected area of armed conflict is one of the priorities of the government of Norway. In so doing they always advocate for the respect of IHL and IHRL principles and protection for children rights.¹⁷⁶

Norway has shown admirable flexibility in its ability to draw on the expertise of actors outside the foreign ministry (e.g. Norwegian Church Aid in Sudan) to develop official engagement; in its readiness to partner with non-governmental peacemakers such as the Centre for Humanitarian Dialogue; and its ability to respond quickly and effectively to well-founded requests for support from the United Nations in conflict situations. Its emergence as a peacemaker and security exporting state has been a significant element in reaching peace agreements in Africa.¹⁷⁷

It can be submitted that countries like Finland, Sweden, Denmark and Iceland have all worked in the same direction.

4.3.2.2 EU guidelines

The EU guidelines elaborate on tools for action in relation with third states countries affected by armed conflict. The tools deal with the concern of how to negotiate with parties to an armed conflict. They also cover areas like monitoring and reporting and crisis management. The points that may draw our attention at this level are political dialogues, demarches and multilateral cooperation.

The EU regularly raises the issue of the recruitment and the use of children in armed forces or groups in its political dialogues with governments. In addition, the EU conducts political *démarches* (specific actions towards governments expressing the EU's view on a particular topic). In May-June 2007, it conducted in this respect, a campaign of political demarches promoting the implementation of the Paris Principles - on the recruitment and the use of children in armed forces and groups.

¹⁷⁵ See the Backgrounder Document. Page 17

¹⁷⁶ See the Norwegian Ministry of Foreign Affairs,
<www.norway.lk>

¹⁷⁷ See <www.regjeringen.no/nb/dep/ud/kampanjer/refleks/innspill/engasjement/whitfield.html?id=493364>

5 Conclusion

We have come to the end of our study aimed at assessing the relevance of international standards for the prevention of the recruitment and use of children as child soldiers in Africa. We focused on their impact on NSAs armed groups as well as the place they give to DDR programmes. An assessment of others mechanisms was also referred to. The work consisted at first in a critical assessment of international standards adopted under IHL, IHRL, ICL and the regional organisation in Africa. Secondly, it dealt with an evaluation of the UN contribution to prevent children from recruitment and use as child soldiers and finally, it looked at the contribution of international community through third states, regional and sub regional organisations as well as NGOs in this respect.

From the assessment of international standards, it followed that IHL (through the Two Additional Protocols to the Geneva Conventions of 12 August 1949) imposed direct obligations on parties to an armed conflict and therefore on NSAs, not to recruit child soldiers. We found however that the main concerns were that in respect to the minimum age (15) for participation in armed conflict and the lack of adequate provisions addressing DDR issues.

IHRL on its own offered the highest number of international standards addressing the issue. We found that the CRC expresses the need to halt the participation of children in armed conflict and its Optional Protocol on the Involvement of Children in Armed Conflict deals specifically with the problem with more or less success. Another instruments completed the list notably the ILO Worst Forms of Child Labour Convention, 1999 (.the ILO convention 182). It appeared that common elements from IHRL instruments were the prohibition of the recruitment of child soldiers and inclusion of provisions dealing with DDR programmes in respect of former child soldiers. Some differences could however be noticed. It was seen for instance that The CRC was influenced by the Two Additional Protocols and adopted the same minimum age approach. On the other hand, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict raised the minimum age to 18 and also referred directly to NSAs although it limited itself to confer them a moral obligation not to recruit child soldiers. ILO convention 182 addressed the issue from the labour rights perspective by prohibiting all form of forced or compulsory recruitment of person below 18 as soldiers.

ICL offered a different approach than what proposed under both IHL and IHRL. From its principle, we found its main concern was to establish individual criminal responsibility of those who commit serious crimes within the jurisdiction of the ad hoc tribunals, special tribunals and the ICC. We furthermore elaborated on the implementation of ICL in Africa through the ICC and the Special tribunal in Sierra Leone. Some examples referred to were illustrative about Africa and the problem it constitutes there. It appeared that the individual criminal responsibility does not

distinguish between the belonging of a party to an armed conflict. They are subject to justice and punishment whether from government armed forces or NSAs armed groups.

The ACRWC showed the willingness of Africa Union (AU) to put forward the welfare of children in their agenda. We found that the African Charter had adopted so far the strictest approach in the definition of a child as well as on the obligations imposed on its Member States in respect of recruitment and use of child soldiers. It appeared however that some important issues such as DDR programmes were not given consideration and that the implementing mechanism of the Charter had some weaknesses.

From the evaluation of the UN contribution, it emerged that the UNSC, the Office of the United Nations Special Representative of Children and Armed Conflict as well as other UN departments, programmes and agencies had a role to play in preventing children from recruitment and use as child soldiers.

The study elaborated on the different tools used by the UNSC to deal with NSAs out of which was the use of sanctions and direct requests of implementation of DDR programmes that take into account full the interest of children.

We also highlighted the diplomatic role played by the Office of the UN Special Representative of Children and Armed Conflict to prevent recruitment or ensure the release and disintegration of child soldiers. We mentioned its diplomatic skills to obtain commitments and engagements from both parties to a conflict in respect of rights of children.

Additionally, we looked at the crucial role played by UN agencies such as the UNICEF and the UNHCR in preventing recruitment and ensuring the application of DDR programmes. The same process in respect to the WB (intergovernmental organisation) was done.

Lastly, we dealt with the contribution of the international community through third states, regional and sub regional organisations and NGOs to prevent children from recruitment and use as child soldiers. From this angle we touched another aspect of the problem that revealed the importance of advocating for the respect of international standards, negotiation for the release, disintegration of child soldiers and having enough funding (pecuniary) for the proper implementation of DDR programmes. It appeared that national and international NGOs played a key role in this regard even though the involvement of third states, regional and sub-regional organisations was not less significant.

After this resume, it is important that we deal with some questions we asked ourselves at the beginning of our discussion.

1) The main international standards that address the issue of child soldiers are respectively the Two Additional Protocols to the Geneva Conventions of 12 August 1949, the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict, the ILO Worst Forms of Child Labour Convention, 1999, the Rome Statute of the International Criminal Court and the African Charter on the Rights and Welfare of the Child.

To these standards can be added UNSC Resolutions 1261, 1314, 1379, 1460, 1539 and 1612 as well as some regional mechanisms or para

standards tools implemented such as the EU Guidelines on Children and Armed Conflict.

2) The issue of NSAs is given consideration in these standards although in different ways. If under IHL, obligations are conferred directly on parties to an armed conflict, the case seems different under IHRL where the direct obligations rest only with states actors who are required to take steps at the national level to implement international law. NSAs actors in this context are left only with moral obligation to respect international law and only have direct obligation at the internal level. The reality is the same under the African Charter on the Rights and Welfare of the Child. However, ICL that deals with individual criminal responsibility punishes everyone that recruits child soldiers whether from governmental forces or NSAs armed groups.

3) An analysis of the standards has also revealed that DDR programmes are not per se the main concern of IHL and ICL. Indeed, only IHRL instruments and other international mechanisms and par standards seem to give this issue the place it deserves for preventing children from recruitment and use as child soldiers.

Departing from these lessons learnt through out our discussion, the following recommendations might be justified:

There is a need to review and improve international standards adopted so far so that they can actually face efficiently the challenge of preventing the recruitment and use of child soldiers.

At first, the review of IHRL principles in order to confer direct obligations on NSAs should be the priority of the international community. Safeguards should at the same time be put in place to avoid a situation that will confer them legitimacy under international law.

Secondly, it may be argued that the need to reconcile contradictory provisions, and adopt uniform standards under international law should be envisaged. Indeed, great divergences notably in term of minimum age or qualifications in respect of children participation in armed conflict give the feeling that international standards so far are not consistent in what they advocate. Provisions should not only reflect the best protection afforded to children in situation of armed conflict, but they should be corroborating each other.

Thirdly, it may be submitted that the implementation process of ICL should be accelerated. In fact, from the reality in Africa where millions of children are recruited or used as child soldiers and the number of individuals facing charges or trials so far, there is a great disparity. More criminals need to answer for their criminal acts. Actions should be taken to end the feeling of impunity or the practice of hiding behind immunities when responsible for international crimes. At this level, the collaboration of states is indispensable as pointed out under the Paris Principles.

Fourthly, there is also the need to upgrade some international standards namely the African Charter on the rights and welfare of the child so that they give the issue of DDR significant attention. Efforts of the Committee on the Rights of the Child in this regard have to be praised and encouraged. They should serve as an example to other instruments and mechanism that deal with child soldiering activities.

In relation to the work of the UN, it may be suggested that the UNSC should focus more on imposing effective sanctions on individuals that recruit child soldiers in accordance with the UN Secretary General's annual reports. More situations should also be referred to the International Criminal Court for investigation and trial of those who engage in recruitment and use of child soldiers. Again, more power should also be given to DPKO in some cases to provide assistance to UN agencies or programmes that work for the prevention of children from recruitment and use as soldiers in conflict areas.

It is worth mentioning that the work of all UN entities in this direction should be implemented in close collaborations. Although some steps have been taken so far in this line, there is still a need to come up with more unified and a more organised way for preventing the recruitment and use of child soldiers. Strong collaboration with NGOs should also be given the significance it deserves.

Concerning the efforts of third states, regional and sub-regional organisations it may be suggested that they should commit themselves to upgrade international standards and mechanism adopted so far to meet the challenge of the practice. There should also be more efforts and involvement from them to make sure parties to an armed conflict observe IHL and IHRL and release children engaged in armed conflict. Furthermore they should provide international and national organisations dealing with the implementation of DDR with more funding since this has been one the main problem so far. Actions taken in this respect by the ILO, the UNICEF and the UNHCR need more back up from third states, regional and sub-regional organisations and inter governmental institution such as the WB

Finally at the national level there should be at least some steps to strengthen national human rights institutions in accordance with the Guidelines from the Committee on the Rights of the Child. This should result in reliable mechanisms put in place to favour the prosecution and punishment at the national level of those who engage in child soldiering activities. Similarly, good example of practice and respect of international standards need to be recorded from governmental armed forces or their militia who often bypass international law in respect of children's rights in wars times. It is clear that governmental armed forces should show the example and therefore avoid any involvement in use and recruitment of child soldiers.

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