

PROTECTION OF CHILDREN DURING INTERNATIONAL ARMED CONFLICTS

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Abstract

Since its inception, the United Nations has consistently prioritized the care and protection of children during armed conflicts. To this end, it has codified a number of conventions aimed at addressing the prevention of violations committed against children in times of war, recognizing them as among the most vulnerable groups on the battlefield—subject to family separation, being targeted by weapons, and involvement in hostilities. Even when children participate in combat, they are entitled to preferential treatment with respect to conditions of detention and the sentences imposed upon them. Accordingly, the protection of children has received considerable attention and care during periods of armed conflict.

Keywords

Children, war, international humanitarian law.

Introduction

The international arena today is witnessing wars that are considered more brutal than their predecessors, given the grave consequences they have caused—ranging from the killing and displacement of civilian populations to the destruction of civilian objects essential to their survival. These armed conflicts have disregarded the humanitarian principles that must be observed during combat, including the distinction between civilians and combatants, between civilian and military targets, and the restriction of methods and means of warfare.

It is evident in these wars that children are the most affected segment of society by such brutality. As a result, the phenomenon of assaults against children has intensified, rendering them targets of aggressive acts. Those who did not perish were left disabled; those who survived were deprived of education, healthcare, food, and medicine. Many were recruited into combat ranks, only to carry out suicide operations that led to their deaths. Numerous examples illustrate this reality—what is happening today in Gaza is but one.

It is well known that international efforts have sought—and continue to seek—to alleviate the suffering endured by children during wars. The provisions of international humanitarian law have served as a remedy for this suffering and a sincere expression of genuine and persistent international efforts, through rules that confer protection upon this fragile, vulnerable, and delicate group in armed conflicts.

Significance of the Research

The significance of this research lies in its relevance to an era marked by the proliferation of both international and non-international armed conflicts. The latter, in particular, have proven to be more ferocious and bloodier, inevitably worsening the suffering of millions of children on both sides of these conflicts. It is therefore essential to shed light on a vital aspect of international humanitarian law that has demonstrated its humanistic character by including specific provisions dedicated to the protection of children.

Research Problem

To what extent have the rules of international humanitarian law contributed to the protection of children, and is there any inconsistency among the legal provisions governing their protection?

Research Questions

1. Where can the provisions defining the age of childhood be found?
2. Are there contradictions among these provisions regarding the age of childhood?
3. Where can the provisions protecting children during the conduct of hostilities be found?
4. Have the provisions safeguarding children during hostilities been applied or enforced before international courts?

Research Objective

To identify the legal rules that guarantee the protection of children during armed conflicts, examine how these protections are implemented, analyze the mechanisms ensuring their enforcement, determine whether there are deterrent measures against violators, and assess the effectiveness of these measures in achieving the intended protection for children wherever they may be.

The Research is Divided into a Preliminary Section and Two Sections:

- **Section One:** Protection of children during the outbreak of hostilities.
- **Section Two:** Protection of children despite their participation in hostilities.

Preliminary Section

Children are among the most severely affected segments in society during times of war. To mitigate the suffering caused by armed conflicts, international law—through its specialized branch applicable during warfare, namely international humanitarian law—intervenes to provide them with protection. Before defining the concepts of child and war, it is necessary to clarify what is meant by international humanitarian law.

First: Definition of International Humanitarian Law

The jurist Jean Pictet defines international humanitarian law as “that considerable portion of public international law which is inspired by the feeling of humanity and which is centered on the protection of the person in the event of war.”¹

Thus, this body of law seeks to protect persons affected by armed conflict while also restricting the right of parties to the conflict to choose the means and methods of warfare.

Second: Definition of the Child

International humanitarian law grants protection to children during armed conflicts; however, it does not provide a specific definition of the child entitled to such protection.²

The Convention on the Rights of the Child (1989)³, on the other hand, defines a child in Article 1 as follows:

“A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

From this definition, it can be inferred that a person is considered a child if they have not yet reached the age of eighteen—an international standard aimed at ensuring the longest possible duration of protection. Alternatively, the national standard of majority age is respected to accommodate the legal and cultural particularities of each state.

However, this definition is not entirely precise, as it may lead to inconsistencies in the classification of individuals of the same age. For example:

Omar, aged 16, lives in a country where the age of majority is set at 15. According to the Convention, he is not a child.

Zaid, also 16, lives in a country where the age of majority is 17. Under the same Convention, he is considered a child.

¹ Jean Pictet, *Développement et principes du droit international humanitaire*, Institut Henry-Dunant / A. Pedone, Geneva / Paris, 1983, p. 7.

² Abdul Ghani Mahmoud, *International Humanitarian Law: A Comparative Study with Islamic Law*, Dar Al Nahda Al Arabiya, Egypt, 1st ed., 1991, p. 131.

³ The Convention on the Rights of the Child was adopted by United Nations General Assembly Resolution No. 44/25 of 20/11/1989 and entered into force on 2/9/1990.

Similarly, if a state sets the age of majority at 21, a person aged 19 would not be regarded as a child under the Convention but would be considered a child under domestic law. This reveals a contradiction that appears to stem from the drafters' intent to attract the largest possible number of states to ratify the Convention while avoiding direct conflict between its provisions and national legislation.

Third: Definition of War

War is defined as “any armed conflict between states pursued for the purpose of achieving self-interested objectives, once the parties have expressed their intent to enter into a state of war and to apply the law of armed conflict,” namely, international humanitarian law.⁴

This definition has become traditional and somewhat outdated, as it limits the application of the laws of war to conflicts between states only. Civil wars, which occur within the territory of a single state, were historically excluded from the scope of the law of war unless the insurgents are recognized as combatants.

Modern legal doctrine, however, tends to broaden the concept of war by replacing it with the term armed conflict. Under this modern approach, all forms of armed conflict are subject to the rules of war⁵ - that is, international humanitarian law—particularly in light of Common Article 3 of the four Geneva Conventions.

Section One: Protection of Children During the Outbreak of hostilities

International humanitarian law (IHL) has paid particular attention to the protection of children during times of war. This protection is embodied in the Four Geneva Conventions of 1949, the Two Additional Protocols of 1977, and other international treaties that safeguard children in armed conflicts. The most important rules providing such protection can be summarized as follows:

Subsection One: Prohibition of the Participation of Children in Armed Conflicts

IHL prohibits the recruitment of children below a certain age, as exposing them to the dangers of war contradicts humanitarian principles. Children are often unaware of the consequences of direct or indirect participation in hostilities⁶.

⁴ Hazem Muhammad Atlam, *The Law of International Armed Conflicts*, Dar Al Nahda Al Arabiya, Cairo, 2nd ed., 2002, p. 18.

⁵ Saeed Salem Al-Juwaili, *Introduction to the Study of International Humanitarian Law*, Dar Al-Nahda Al-Arabiya, Egypt, 2001, p. 89.

⁶ Sandra Singer, *The protection of children during armed conflict situations*, Dar Al-Mustaqbal Al-Arabi, Cairo, 1st ed., 2000, p. 154.

Article 77(2) of Additional Protocol I (1977) ⁷provides:

“The Parties to the conflict shall take all feasible measures to ensure that children who have not attained the age of fifteen years do not take a direct part in hostilities.”

Article 4(3)(c) of Additional Protocol II (1977) ⁸ states:

“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.”

The Convention on the Rights of the Child (1989), in Article 38(1)–(2), reiterates the same provision as Article 77(2) of Additional Protocol I. This creates an explicit contradiction within the Convention itself - between its Article 1, which defines a child as any human being under the age of eighteen, and its call for States Parties to refrain from recruiting children under the age of fifteen into their armed forces. This implies that children between the ages of fifteen and eighteen may lawfully be recruited by States Parties, despite still being considered children under the Convention.

The Rome Statute of the International Criminal Court (1998) ⁹ explicitly criminalizes such acts. Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) classify as war crimes:

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

On 14 March 2012, the ICC delivered its first verdict on the recruitment of child soldiers in the case Prosecutor v. Thomas Lubanga Dyilo. The Court convicted Lubanga of war crimes for conscripting and enlisting children under fifteen, both forcibly and voluntarily, into the *Forces Patriotiques pour la Libération du Congo*. This judgment was the first international precedent concerning child recruitment and remains a cornerstone for future cases.¹⁰

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000) ¹¹ raised the recruitment age from 15 to 18 years. Article 1 stipulates:

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted 8 June 1977, entered into force on 07.12. 1978.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted on 8 June 1977, entered into force on 7 December 1978.

⁹ The Rome Statute of the International Criminal Court was adopted by the *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court* in Rome on 17 July 1998, and entered into force on 1 July 2002.

¹⁰ Annual Report of the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, under the United Nations Human Rights Council, document 38/21/HRC/A dated 28 June 2012.

¹¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by United Nations General Assembly resolution 54/263 of 25 May 2000, entered into force on 12 February 2002.

“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities.”

This amendment strengthened international law by reinforcing the prohibition on child recruitment and participation in warfare.

Subsection Two: Care and Respect for Children

Additional Protocol I (1977) provides special protection for children in armed conflicts¹². Article 77(1) states:

“Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”

Similarly, Additional Protocol II (Article 4(3)) obliges parties to provide children with the care and assistance they need.

Article 24 of the Fourth Geneva Convention (1949)¹³ requires all necessary measures to be taken to ensure that children under fifteen who are orphaned or separated from their families due to war receive proper care, are allowed to practice their religion, and continue their education whenever possible. Their education should, as far as feasible, be entrusted to persons sharing the same cultural traditions.

Subsection Three: Family Reunification of Children

Wars cause the dispersal of families. In response to this situation, Article 26 of the Fourth Geneva Convention provides for the facilitation of inquiries carried out by members of families separated by war in order to renew contact with one another and, where possible, to reunite them. It also requires that the work of organizations dedicated to this purpose be facilitated. Every person is permitted to send and receive news of a strictly family nature to and from their relatives wherever they may be.

Furthermore, Article 32 of Additional Protocol I emphasizes:

“The right of families to know the fate of their relatives is a fundamental principle motivating the activities of the High Contracting Parties, the Parties to the conflict, and international humanitarian organizations.”

¹² Hassanein Al-Muhammadi Bawadi, *Children’s Rights between Islamic Sharia and International Law*, Dar Al-Fikr Al-Jami’i, Egypt, 1st ed., 2005, p. 99.

¹³ The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War was adopted on 12 August 1949 and entered into force on 21 October 1950.

Subsection Four: Protection of Children from Evacuation and Deportation

Article 78 of Additional Protocol I (1977) addresses the evacuation and deportation of children, establishing the following safeguards:

- 1- No Party to the conflict shall arrange for the evacuation of children to a foreign country, except temporarily and only when compelling reasons related to the health, medical treatment, or safety of the children in an occupied territory so require. Such evacuation must have the written consent of the parents or legal guardians.
- 2- During evacuation, every effort must be made to continue the child's education, including religious and moral instruction consistent with the wishes of the parents.
- 3- A record card must be prepared for each evacuated child, including a photograph, and transmitted to the Central Tracing Agency of the International Committee of the Red Cross to facilitate the child's eventual return to their family and homeland.

Section Two: Protection of Children Despite Their Participation in Hostilities

The importance of protecting children who take part in hostilities lies in the fact that parties to conflicts often fail to comply with the prohibition on involving them in combat. This has led to the emergence of the “**child soldier**” phenomenon. International humanitarian law has not overlooked these situations and provides protection for such children—particularly regarding conditions of detention and judicial proceedings.

Subsection One: Protection of Child Soldiers Upon Capture

Children may be drawn into wars and participate in hostilities, which constitutes a violation of the prohibition established by international humanitarian law against involving children in armed conflicts. Nevertheless, they assume the status of combatants, and the rules applicable to combatants apply to them. If they fall into the hands of the adversary, they are fully entitled to enjoy the legal status of prisoners of war, as provided by the Third Geneva Convention of 1949.¹⁴

They enjoy special protection guaranteed to them by Article 77(3) of Additional Protocol I, which provides:

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

Accordingly, child prisoners of war must be treated humanely at all times. The detaining power is strictly prohibited from committing or permitting any unlawful act or

¹⁴ The Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War, adopted on 12 August 1949 and entered into force on 21 October 1950.

omission that could cause the death of a prisoner under its custody. It may not subject prisoners to physical mutilation, medical or scientific experiments, or any form of violence, intimidation, or reprisal.

Child prisoners are entitled to respect for their person and honor, and the detaining power bears full responsibility for their food, shelter, and medical care, all of which must be provided free of charge.¹⁵

Subsection Two: Protection of Children Despite Their Participation in Hostilities

Article 77(4) of Additional Protocol I (1977) states:

“If children are arrested, detained, or interned for reasons related to the armed conflict, they shall be held in quarters separate from those of adults.”

Furthermore, Article 77(5) of the same Protocol, along with Article 68 of the Fourth Geneva Convention (1949), explicitly prohibits the execution of the death penalty for offenses related to armed conflict committed by persons who were under eighteen years of age at the time of the offense.

Conclusion

After highlighting the conditions for protecting children during the conduct of hostilities, as well as during their participation in such operations—meaning that a child remains protected even after joining the ranks of combatants—the rules aimed at safeguarding children in times of armed conflict under international humanitarian law have been presented, leading to the following conclusions:

1. The definition of a child in the 1989 Convention on the Rights of the Child is neither comprehensive nor definitive, and it did not provide a stable standard for determining childhood. If the justification for this was to encourage states to ratify the Convention, then, after the passage of time, it has become appropriate to establish an international standard that all states would adhere to in determining the age of majority, rather than leaving it to fluctuate between eighteen years and the national legal age of majority.
2. International humanitarian law keeps pace with developments on the international stage regarding children during armed conflicts. Raising the recruitment age to eighteen, as established by the 2000 Optional Protocol to the Convention on the Rights of the Child, and the earlier issuance of the first ICC judgment against those who recruited children under fifteen, classifying it as a war crime, stands as a landmark achievement for the protection of childhood and for humanity as a whole.

¹⁵ See Articles 12, 13 and 14 of the Third Geneva Convention of 1949.

Recommendations

1. Remove the ambiguity in the definition of a child in the 1989 Convention on the Rights of the Child and limit it to those who have reached eighteen years of age only, in accordance with the provisions of the 2000 Optional Protocol to the Convention on the Rights of the Child.
2. The provisions of international conventions that provide protection for children under fifteen during armed conflicts must be observed, even after the recruitment age was raised to eighteen, because children aged fifteen to eighteen do not automatically enjoy this protection.
3. Strengthen penalties against those who recruit children under eighteen, classify such acts as war crimes, and activate the mechanisms of the International Criminal Court to address them.
4. Activate international will through the available mechanisms of its bodies and institutions, instead of relying on appeals for compliance with international provisions that safeguard and protect children during armed conflicts. While encouragement and incentives may serve as a form of moral deterrence for warring and conflicting states, this approach achieves better and more effective protection for the child, since relying solely on the conscience of military and political leaders does not protect even a stone or a human being, and therefore not a child.

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12. The Convention on the Rights of the Child was adopted by United Nations General Assembly Resolution No. 44/25 of 20/11/1989.
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