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*Andelija Stevanović\**

## THE COMPLEX ROLE OF CHILDREN IN ARMED CONFLICTS: INTERNATIONAL LEGAL PROTECTION AND INTERNATIONAL CRIMINAL COURT JURISPRUDENCE

**Abstract.** Armed conflicts represent a deviation from the regular state of affairs in countries and affect every segment of life. The first association with armed conflicts is violence – both mutual violence between members of opposing armies and violence against vulnerable categories of people who do not participate in the armed conflicts. Children belong to one of these vulnerable categories because, due to their age, they are unable to take care of themselves. Although the rules of international humanitarian law, international human rights law and international criminal law provide special protection for children, in practice, such protection is often lacking in reality. Therefore, it was necessary to take certain further steps to ensure more adequate protection of children in armed conflicts, which led to this issue being addressed by the International Criminal Court. In this paper, the author is trying to present the notion of the children in armed conflicts, as to better explain the rules of international law relating to the protection of children in armed conflicts and why is that protection needed. The main focus of the paper is on the problem of conscripting and enlisting children under the age of 15 during armed conflicts, and on the analysis of two judgements of ICC which defined those acts as war crimes – *Lubanga* and *Ongwen* cases.

**Keywords:** children soldiers, international humanitarian law, *Lubanga* case, *Ongwen* case, International Criminal Court.

### 1. INTRODUCTION

Children belong to the vulnerable categories of civilians, who necessarily require special protection – understandably, due to their age and inability to care for themselves. Bearing in mind that armed conflicts constitute a deviation from the normal state of affairs, various situations may arise in which children are endan-

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gered during armed conflicts. Some of these situations may include risks to children's lives during attacks on certain military targets, attacks on schools or hospitals, lack of food, water and medical supplies, as well as dangers posed by the absence of one or both parents due to hostilities, and other situations may reflect on their health, both physical and psychological, as well as dangers that recruiting children soldiers bears with itself.

Often, in recent armed conflicts, children will also find themselves displaced, whether with their parents or alone, and certainly far from their home.<sup>1</sup> According to recent reports, it is estimated that over 473 million children now live in areas affected by armed conflict, with this proportion having nearly doubled since the 1990s.<sup>2</sup> By the end of 2023, approximately 47.2 million children were displaced as a result of violence and conflict. In that year, the United Nations verified a record 32,990 grave violations committed against 22,557 children, marking the highest level since systematic monitoring began.<sup>3</sup> These figures underscore the deep and widespread impact of warfare on children's rights, safety and futures. In such chaotic environment, children can become both actors and objects of conflict – raising fundamental questions for international criminal law and protection approaches, regarding children soldiers.

The aim of this paper is to explore the complex role of children in armed conflicts, by analyzing the legal sources concerning their protection, with pointing out why is there the need to protect children during armed conflicts, and how the rules have developed so far. The author will investigate the phenomenon of children engaged as soldiers in armed conflict and the attendant protection challenges, beginning with the explanation of the notion protection of children in armed conflicts. Followed by the legal framework – international humanitarian law, human rights law and international criminal law, followed by UN documents, which prescribe rules that provide protection of children in armed conflicts. Then, a detailed examination of the landmark cases tried by the International Criminal Court – Thomas

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1 Bojan Milisavljević, *Međunarodno humanitarno pravo*, (Beograd: Pravni fakultet Univerziteta u Beogradu, 2024), 84.

2 Not the new normal' – 2024 'one of the worst years in UNICEF's history' for children in conflict, [https://www.unicef.org/press-releases/not-new-normal-2024-one-worst-years-unicefs-history-children-conflict?utm\\_source=chatgpt.com](https://www.unicef.org/press-releases/not-new-normal-2024-one-worst-years-unicefs-history-children-conflict?utm_source=chatgpt.com) (Accessed: 20. October 2025). A record number of children affected by conflict are having their rights violated, including being killed and injured, out of school, missing life-saving vaccines, and being critically malnourished. The number is only expected to grow. Conflict drives approximately 80 per cent of all humanitarian needs around the world, disrupting access to essentials, including safe water, food and healthcare. A child growing up in a conflict zone is far more likely to be out of school, malnourished, or forced from their home—too often repeatedly—compared to a child living in places of peace. This must not be the new normal. We cannot allow a generation of children to become collateral damage to the world's unchecked wars.

3 More than 300,000 grave violations against children in conflict verified worldwide in past 18 years – UNICEF, [https://www.unicef.org/eca/press-releases/more-300000-grave-violations-against-children-conflict-verified-worldwide-past-18?utm\\_source=chatgpt.com](https://www.unicef.org/eca/press-releases/more-300000-grave-violations-against-children-conflict-verified-worldwide-past-18?utm_source=chatgpt.com), (Accessed: 20. October 2025). More than 120,000 children killed or maimed, and at least 105,000 children recruited or used by armed forces or armed groups following with more than 32,500 children who are abducted, as well as more than 16,000 children who were subjected to sexual violence.

Lubanga and Dominic Ongwen will be included, given the fact that those are the most important cases regarding the problem of child soldiers. The discussion will focus on how the case highlights the tension between victimhood and perpetration and the implications for the protection of children under international humanitarian and criminal law.

Not only does child recruitment breach international laws, but recruiting them for military purposes can also have serious consequences for both the children involved and for the entire society.<sup>4</sup> The consequences of armed conflicts are not momentary, concrete and visible damage, however it can be viewed through the prism of much more far-reaching consequences for children and their psychophysical development: from the symptoms of PTSD, depression, anger, to negative consequences on forming child's identity, and forming moral standards.<sup>5</sup> When children are engaged as soldiers, spending their formative years immersed in systems of violence and constructing their values and identities under the guidance of these armed groups, they can become vehicles of violence rather than citizens who can build stable peace.<sup>6</sup> With that being said, it is obvious that the notion of children protection in armed conflicts is multi-layered, and why it is important to approach this problem scientifically.

## 2. THE NOTION OF A CHILD IN ARMED CONFLICTS

A child is a person who has not reached the age of eighteen years unless, under the law applicable to the child, majority is attained earlier, these individuals are in a special psychophysical state which requires different approaches than adults.<sup>7</sup> Their sensitive nature, fragility and malleability are the main reasons why there is the need for the special rules regarding children protection in armed conflicts. In some countries peace has become a rare commodity, with children exposed to extreme violence, giving them no option for normal growth and development.<sup>8</sup> There are examples where the conflicts have existed for many years, with some countries experiencing and sustaining conflicts for up to 30 years, which means that an entire generation has grown up in the midst of war.<sup>9</sup>

The complex position of children in armed conflicts needs to be understood through different perspectives – first of all their lives are directly endangered if they

4 Roos Haer, "Children and armed conflict: looking at the future and learning from the past", *Third World Quarterly*, no 1 (2019): 74.

5 Vladan Jončić, *Međunarodno humanitarno parvo*, (Beograd: Pravni fakultet Univerziteta u Beogradu, 2015), 238.

6 Wessells, Child Soldiers, 3; Haer and Böhmelt, "Child Soldiers as Time Bombs"; Achvarina and Reich, "No Place to Hide," 130, as cited in Haer, "Children and armed conflict: looking at the future and learning from the past", 74.

7 Maja Subotin, "Zaštita dece u međunarodnom humanitarnom pravu", *Vojno delo*, no 4 (2018): 129. According to the United Nations Convention on the Rights of the Child, while domestic criminal laws vary from country to country.

8 Philista Onyango, "The impact of armed conflict on children", *Child Abuse Review*. no 4 (1998): 219.

9 *Ibid*, 427.

live in areas affected by armed conflicts, given the above-mentioned facts. However, not only their lives, but also their quality of living, psychosocial state, regarding the impossibility to have water, food, shelter, appropriate healthcare and education, as well as various forms of sexual delicts against children. Children are increasingly being abused in hostilities, whether through direct engagement in combat, as child soldiers, or they can participate in armed conflicts indirectly through non-combat activities, in “traditional” capacities, such as spies, couriers, porters, servants, or cooks.<sup>10</sup>

Bearing that in mind, the protection of children implies: first of all protecting their wellbeing and their life in general, protection of sexual violence of any kind, not separating them from their families, providing them with the possibility to continue with their education, to have access to food, water and healthcare, as well as relocating them from combat zones and reunification with their families.<sup>11</sup> However, one of the most important aspects of protecting children is prohibiting their participation in armed conflicts of any kind, whether direct or indirect.

Beyond physical injuries, the direct effects on the mental, developmental and behavioral health of children are profound.<sup>12</sup> These include posttraumatic stress disorder, depression, anxiety and behavioral and psycho-somatic conditions that persist long after cessation of hostilities.<sup>13</sup> Children who are involved in hostilities face enormous risk to their physical, social and emotional well-being and may suffer long-lasting psychological damage.<sup>14</sup> Ex child combatants need a great deal of assistance to overcome the harm they have suffered and to reintegrate into society.<sup>15</sup> The reintegration and rehabilitation of these children represents a particular challenge for the international community and it is very important that this issue be given special attention when planning the peace process and concluding a peace agreement.<sup>16</sup> Without addressing these issues, large numbers of children will be forced to endure preventable suffering, children may be drawn into ongoing cycles of violence, and societies may compromise the development of one of their most precious resources – their children.<sup>17</sup>

10 Ann Sheppard, “Child Soldiers: Is the Optional Protocol Evidence of an Emerging ‘Straight 18’ Consensus”, *Internationall Journal of Childen’s Rights*, no 8 (2000): 38, as cited in: Ines Cerović, “Deca u oružanom sukobu i međunarodno pravo”, *Anali Pravnog Fakulteta u Beogradu*, no 1 (2010): 327.

11 Milenko Kreća, *Međunarodno javno pravo*. (Beograd: Pravni fakultet Univerziteta u Beogradu, 2018), 785.

12 Charles Oberg, Jeffrey Goldhagen, Nicholas Spencer, “Renewing our commitment to protect children experiencing armed conflict”, *Journal of Paediatrics and Child Health*, no 3 (2023), 427.

13 Ibid.

14 Rachel Harvey, *A guide to international humanitarian and human rights law, Children and Armed Conflict Unit*, (Essex, 2012): 26.

15 Ibid.

16 Ines Cerović, “Deca u oružanom sukobu i međunarodno pravo”, *Anali Pravnog Fakulteta u Beogradu*, no 1 (2010): 328.

17 Michael G. Wessells, “Children and Armed Conflict: Introduction and Overview”, *Peace and Conflict: Journal of Peace Psychology*, no 3 (2016): 198.

### 3. INTERNATIONAL HUMANITARIAN LAW RULES REGARDING CHILDREN'S PROTECTION IN ARMED CONFLICT

The principal sources of law for the protection of children and child soldiers in armed conflicts are customary international humanitarian law, the Fourth Geneva Convention of 1949, the Additional Protocols, the Convention on the Rights of the Child of 1989, the Optional Protocol on the involvement of children in armed conflict of 2000, as well as numerous UN resolutions, UNICEF acts, and acts of the International Committee of the Red Cross.<sup>18</sup> Indirect protection of children in conflicts that do not have an international character may derive from the common Article 3 of all the Geneva Conventions, which protects persons who are not taking part in hostilities.<sup>19</sup> In order to understand the rules that provide protection to children which exist and are implemented today, we need to examine the development of these rules.

Before the Geneva Conventions regime, the subject of protection of civilians was governed by the laws of war as developed from time to time culminating in The Hague Conventions and in particular The Hague Convention concerning the laws and customs of war and the regulations annexed to it.<sup>20</sup> However, there were no rules regarding protection of children in specific. The general idea of necessity protection of children first experienced international recognition in 1924. with its adoption of Geneva Declaration on the Rights of the Child<sup>21</sup>, but, in relation to the protection of children in dangerous situations and circumstances, the Declaration contained only a short provision that in those cases it is necessary to provide help to the children first.<sup>22</sup> It was not enough for providing an adequate protection, and Second World War showed that it was urgent to develop new mechanisms for protecting civilians, and children as group of civilians that are definitely the most endangered in the times of armed conflicts.

The protection of children is not covered in detail in the Fourth Geneva Convention, it contains more general provisions that protect the civilian population. Article 50 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 covers the care and upbringing of children, primarily through the emphasized obligation of the Occupying Power to facilitate, in cooperation with domestic and local authorities, the proper functioning of insti-

18 Miloš Jončić, "Zaštita posebnih kategorija lica u oružanim sukobima", *Međunarodni problemi*, no 3 (2014), 310.

19 Sandra Fabijanić Gagro, Lorena Poropat, "Uloga i aktivnosti tijela Ujedinjenih naroda u zaštiti djece u oružanim sukobima", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, no 2 (2015): 762.

20 R. K. Dixit, "Special Protection of Children During Armed Conflicts under the Geneva Conventions Regime", *ISIL Year Book of International Humanitarian and Refugee Law*, no 1 (2001): 12.

21 Geneva Declaration of the Rights of the Child, UN Documents, <http://www.un-documents.net/gdrc1924.htm>.

22 Fabijanić Gagro, Poropat, "Uloga i aktivnosti tijela Ujedinjenih naroda u zaštiti djece u oružanim sukobima", 761.

tutions intended for the care and upbringing of children.<sup>23</sup> The Occupying Power is obliged to take all necessary measures to identify and protect children, ensure their upbringing and education, especially those who have lost or been separated from their parents—and may not alter their personal status or include them in its organizations. It must also preserve family life among internees, provide joint accommodation for family members, and maintain all preferential measures for the protection of children, pregnant women, and mothers of young children.<sup>24</sup>

However, these rules do not provide protection for children soldiers, and do not prescribe the age limit for children who would participate in armed conflict. The first instrument that provides slightly broader protection is Protocol additional to the Geneva Conventions of 12 August 1949, regarding the protection of victims of international armed conflicts (In the following text: Protocol I) therefore, it dedicates its Chapter 2 to provisions on the protection of women and children. In its article 77 Protocol I prescribes that children shall be treated with special consideration and shall be protected against all forms of indecent assault.<sup>25</sup> It established that the minimal age to be recruited is 15 years and the States Parties shall endeavour to give priority to those who are oldest, nor can they put these persons to participate directly in the acts of war.<sup>26</sup> Which is maybe the most important rule, and there was definitely the necessity for it.

23 Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention) of 1949, Sources of International Humanitarian Law, Yugoslav Red Cross, Belgrade, 1999.

24 In addition, it is obliged to take all necessary measures to facilitate the identification of children and the registration of their parents' names in the protocol, but it may not under any circumstances change their personal status, nor take them into formations or organizations subordinate to it. The Occupying Power is obliged to take all measures in order to ensure the maintenance and education of children who, by reason of the war, have lost their parents or have been separated from them, if the domestic institutions are not able to do so – and this, as far as possible, by persons of their own nationality, language and religion, if such children have no near relative or friend who could look after them. Within the same article, the responsibility of a special section of the Bureau for Information is further emphasized: it must take all necessary measures to establish the identity of children whose identity is in doubt, and in that respect this section shall record all data eventually obtained concerning their father or mother or another near relative. Then it is stated that the Occupying Power shall not prevent the application of any preferential measures adopted prior to the occupation in favour of children under fifteen years of age, pregnant women, and mothers of children under seven years, with respect to food, medical care and protection against the effects of war. Protection of children is also regulated, in a certain sense, through Article 82 which concerns family life, and provides that for the duration of the intervention members of the same family, and especially parents and children, must be interned in the same place of internment, except in cases where for purposes of labour, health reasons or other reasons indicated in the Convention a temporary separation is necessary. Interned persons may request that their children who remained at liberty without parental supervision be interned together with them, and interned members of the same family are to be accommodated as far as possible in the same premises and separately from other internees; likewise, they must be granted all necessary facilities for the conduct of family life.

25 Article 77, Paragraph 1 of Protocol I (Protocol additional to the Geneva Conventions of 12 August 1949, regarding the protection of victims of international armed conflicts).

26 Luiz Guilherme Arcaro Conci and Konstantin Gerber, "Conventionality Standards for Children in Conflict Zones: Colombian Case study", *Opinión Jurídica*, no 35 (2018): 173–174.

This rule was confirmed in Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (In the following text: Protocol II), which guarantees that children under the age of 15 shall not be recruited into armed forces or groups, nor shall they be allowed to take part in hostilities.<sup>27</sup> Protocol I does not forbid the indirect participation, though, such as transmitting information or carrying guns in the international armed conflicts. On the other side, regarding the non-international armed conflicts, both the direct and the indirect participation of young under 15, such as gathering information, transmitting orders, carrying ammunition, supplies and practicing acts of sabotage, are forbidden.<sup>28</sup> Even though these Protocols do not mention children soldiers as such, but these provisions are the first to recognize and regulate that problem of children taking part in armed conflicts.

Protocol I also prescribes that the death penalty for a crime committed in connection with an armed conflict shall not be carried out on persons who were not 18 years of age at the time the crime was committed.<sup>29</sup> Which is also confirmed by Protocol II, in its article 4, which widens the protection and prescribes that death penalty will not be carried out on pregnant women or mothers with small children.<sup>30</sup> The intention of these rules was clear – another way to protect children, by forbidding the death penalty to be executed, if they were younger than 18 years in the time when they committed crimes – even though the limit for recruiting children is 15 years.

While Geneva law is primarily focused on prescribing norms for the humane treatment of children, the Additional Protocols of 1977, in addition to this aspect, also introduce provisions on the participation of children in armed conflicts, and contemporary international law focuses its normative activity on confronting and protecting child combatants.<sup>31</sup> Although the International humanitarian law is a part of the international law and applicable to armed conflicts, it is not the only international instrument that aims to protect children and their rights during armed conflicts – an example in this case is the United Nation Convention on the Rights of the Child (1989).<sup>32</sup>

27 Section 2, article 4, paragraph 3, clause c of Protocol II (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts).

28 Luiz Guilherme Arcaro Conci and Konstantin Gerber, “Conventionality Standards for Children in Conflict Zones: Colombian Case study”, 174.

29 Article 77, paragraph 5 of Protocol II.

30 Article 4, paragraph 4. of Protocol II.

31 Astrid J. M. Delissen, *Legal Protection of Child-Combatant after the Protocols: Reaffirmation, Development or a Step Backwards*, u: Dellisen, A. J. M., Tanja, G. J., (eds.), *Humanitarian Law of Armed Conflict-Challenges Ahead: Essays in Honour of Frits Kalshoven*, Martinus Nijhoff Publishers, (1991), 153-164. as cited in: Tijana Šurlan, “Pravni status i zaštita dece u oružanim sukobima – nove tendencije”, *Bezbednost*, no 3 (2012): 125.

32 Abdalfatah Mohammed Asqool, Shahrul Mizan Ismail and Rohaida Nordin, “The protection of children during armed conflicts: Israeli violations of international Humanitarian Law in three wars in Gaza”, *UUM Journal of Legal Studies*, no 2, (2023): 536–537.

## 4. UN DOCUMENTS CONCERNING THE RECRUITMENT AND THE USE OF CHILDREN

### *4.1. Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

The development of protection of children from the scourges of armed conflicts, on the human rights plan, has started with the adoption of the Convention on the Rights of the Child (hereinafter: CRC) in 1989. It contains only two provisions with regards to the protection of children in armed conflicts – article 38, which prohibits the recruitment and use of children during armed conflict, while article 39 provides that states shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim (among others) of armed conflict.<sup>33</sup> It is noticeable that this provision is very similar to provisions from Protocol 2 and that it does not provide wider protection than it was established before. The CRC also established a monitoring mechanism for the implementation of the Convention – the Committee on the Rights of the Child.<sup>34</sup> The Committee has guided the interpretation of individual provisions of the Convention through thirteen General Comments. Although the General Comments are not legally binding on states, they are used by states, experts, but also parents and the children can be better informed, that is, fully understand the established rights and the ways to realize those rights.<sup>35</sup>

Then, in 2000, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>36</sup> (In the following text: Optional Protocol) was adopted, due to the particular concern of States about the harmful and widespread impact of armed conflict on children and the long-term consequences such conflict has on lasting peace, security, and development. As well as noting the adoption of the Rome Statute of the International Criminal Court, which specifically qualifies the conscription or enlistment of children under the age of 15, or their use for active participation in hostilities in international and non-international armed conflicts, as a war crime.<sup>37</sup> It strongly condemns the participation of children under the age of eighteen in armed conflicts, as well as deliberate attacks against children or places where children are present, and this represents one of the most important provisions of the Protocol – raising the minimum age for participa-

33 Sandra Fabijanić Gagro, “The Implementation of the Responsibility to Protect when the Protection of Children in Armed Conflicts within the UN System is Concerned – Who is Responsible?” *Pécs Journal of International and European Law*, no 2, (2020): 33.

34 Zakon o ratifikaciji Konvencije Ujedinjenih nacija o pravima deteta, Sl. list SFRJ – međunarodni ugovori br 15/90 i Sl list SRJ – Međunarodni ugovori, br. 4/96 i 2/97, čl. 38.

35 Subotin, “Zaštita dece u međunarodnom humanitarnom pravu”, 134.

36 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Zakon o potvrđivanju Fakultativnog protokola o učešću dece u oružanim sukobima uz Konvenciju o pravima deteta, Sl. list SRJ – Međunarodni ugovori”, br. 7/2002.)

37 Preamble of the Optional Protocol.

tion in hostilities.<sup>38</sup> It allows the recruitment of persons under the age of eighteen only if such recruitment is voluntary, carried out with the informed consent of the person's parents or legal guardians, if the individuals are fully aware of the obligations arising from such service, and if reliable proof of age is provided before their acceptance into the national armed forces.<sup>39</sup> This change is significant because it marks a shift in international opinion regarding the age at which it is acceptable to conscript children.

One of the critical aspects of children's protection was the importance of establishing the age limit as such, regarding recruiting children in armies, given the fact that many children around the world were forced to take part in armed conflicts. That is the reason why United Nations expressed concern "at the serious deterioration in the situation of children in many parts of the world as a result of armed conflicts", after recommendations of the Committee on the Rights of the Child.<sup>40</sup>

#### *4.2. Special Representative of the Secretary-General for Children and Armed Conflict*

The General Assembly requested the Secretary-General to appoint an expert to conduct a thorough study on the impact of conflict on children, including their participation in wars as child soldiers. Therefore, by General Assembly Resolution, Graça Machel, the first Minister of Education of Mozambique after independence and a strong advocate for children's rights, was appointed to that expert position.<sup>41</sup> In December 1996 General Assembly supported Machel's idea and appointed Special Representative of the Secretary-General for Children and Armed Conflict.<sup>42</sup>

Through years of working, Special Representative tried to identify the main problems with children protection and to address the urgent needs for improvement. The last report, from July 2025 emphasize that the violations verified at the highest levels were the killing (4,676) and maiming (7,291) of 11,967 children, denial of humanitarian access (7,906), the recruitment and use of children (7,402) and abduction (4,573).<sup>43</sup> The Special Representative remains deeply alarmed by

38 Article 1 of the Optional Protocol.

39 Article 3, paragraph 3 of the Optional Protocol.

40 Graça Machel and the Impact of Armed Conflict on Children, <https://childrenandarmedconflict.un.org/about/the-mandate/mandate/the-machel-reports/>, (Accessed: 26. October 2025).

41 General Assembly Resolution: Protection of Children Affected by Armed Conflict, A/RES/48/157, 20 December 1993. She submitted the report "The Impact of Armed Conflict on Children," which was presented to the General Assembly in 1996, describing the brutality faced by millions of children affected by conflicts and demonstrating the central importance of this issue for international programs on human rights, development, peace, and security. It was a call for urgent action. She identified children as the primary victims of armed conflict and included a series of recommendations, including the appointment of a Special Representative of the Secretary-General for Children and Armed Conflict, in order to ensure that the protection of children would remain at a high level within international human rights, peace, security, and development agendas.

42 United Nations General Assembly Resolution A/Res/51/77, The rights of the child, 20 February 1997.

43 United Nations General Assembly Resolution. A/80/266, Report of the Special Representative of the Secretary-General for Children and Armed Conflict. 25 July 2025.

the scale and severity of the grave violations committed against children, including killing and maiming, the denial of humanitarian access, recruitment and use, and abduction as the violations with the greatest number of verified cases during the reporting period. She urges all parties to immediately prevent their occurrence and reoccurrence.<sup>44</sup>

### 4.3. *The Cape Town Principles and The Paris Principles*

When it comes to defining the notion of child soldiers, these two instruments of soft law are the most significant, and have to be mentioned. The first instrument, the Cape Town Principles was generated at a conference on the demobilization and reintegration of child soldiers held at Cape Town in 1997, and it defines a child soldier as ‘any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members;’ and explicitly including girls recruited for sexual purposes and forced marriage; and affirming that the definition ‘does not, therefore, only refer to a child who is carrying or has carried arms.’<sup>45</sup> By defining it in this way, it portrays the need to cover a wide range of activities in which children can be included during the armed conflict. The Paris Principles do not use the term child soldiers, as it was used in Cape Town Principles, but try to widen the notion even more by using the term children associated with armed forces or armed groups, and defining it as ‘any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.’<sup>46</sup> The main goal was to include all children exploited in any way in conflict, directly, or indirectly. Paris principles provided concrete guidance to countries and organizations on how to help child soldiers and prevent their re-engagement in conflict.

However, it is not enough to set the rules, if they are not being followed in practice, and if the ones who are responsible for breaching those rules are being prosecuted, it is sending the message to states and armed groups that the use of children in conflict that they will not go unpunished. That was one of the main ideas on which International Criminal Court was founded – to establish individual criminal responsibility for international crimes. A key aspect of international crimes’ definition is reflected in its protective object – it portrays values and interests of significance to the entire international community.<sup>47</sup>

44 United Nations General Assembly Resolution. A/80/266, Report of the Special Representative of the Secretary-General for Children and Armed Conflict. 25 July 2025.

45 Mark Drumbl, “The Effects of the *Lubanga* Case On Understanding and Preventing Child Soldiering”, *Yearbook of International Humanitarian Law*, no 5, (2013): 3.

46 The Paris Principles /2007/ UNICEF, 7.

47 Zoran Stojanović, *Međunarodno krivično pravo*, (Beograd: Pravni fakultet Univerziteta u Beogradu, 2012), 69.

## 5. INTERNATIONAL CRIMINAL COURT AND CHILDREN PROTECTION

The International Criminal Court (here and after: ICC) has a key role in protecting children in armed conflicts, especially through the prosecution and punishment of the individuals who recruit, use, or abuse children in hostilities – thereby contributing to the fight against impunity and the prevention of future crimes. The ICC is a permanent judicial body with jurisdiction over international crimes – the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. It was established by the Statute of the International Criminal Court (Rome Statute), which entered into force on 1 July 2002.<sup>48</sup> Rome Statute clearly and unequivocally prescribes protection for children and in its article 8 forbids conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities – applicable in armed conflicts not of an international character, and ones that have international character.<sup>49</sup>

However, in its 26 article Rome Statute prescribe that ICC does not have jurisdiction over persons who were under the age of 18 at the time the crime was committed.<sup>50</sup> It follows that a state, a national liberation movement, or insurgents may lawfully enlist children of sixteen or seventeen –but if these children engage in criminal conduct, they are not amenable to judicial process before the ICC<sup>51</sup> because of their age.<sup>52</sup> With regard to child soldiers, the ICC can be considered a great step forward, as it has declared the recruitment and use of children as a crime, which makes those who violate these provisions punishable by the state parties.<sup>53</sup> Thus, for the first time in international law, it is clearly established that the use of children as soldiers is a criminal, punishable act. Thereby contributing to prevention, justice and recognition of the status of children as victims of international crimes.

48 Ibid, 130.

49 Milan Škulić, *Međunarodno krivično pravo*. (Beograd: Pravni fakultet Univerziteta u Beogradu, 2020), 277–279. Stojanović, *Međunarodno krivično pravo*, 108.

50 Škulić, *Međunarodno krivično pravo*, 333.

51 Antonio Cassese, *International Criminal Law*, (Oxford, 2008), 267.

52 In contrast to national legal systems, which contain rules regarding the criminal responsibility of juveniles, the Rome Statute does not contain such rules. For example, Serbian national legislation prescribes that juveniles, i.e. persons between 14 and 18 years old, could bear criminal responsibility, albeit in somewhat reduced form. More on this see: Milan Škulić, “Starosna granica sposobnosti za snošenje krivice u krivičnopravnom smislu”, *Crimen*. no 2, (2010): 207–221; Vanja Bajović, “Kriminalitet maloletnika – o spuštanju starosne granice krivične odgovornosti”, in: *Raskršća međunarodnog krivičnog i krivičnog prava – reforma pravosudnih zakona Republike Srbije*, (Beograd, 2023): 521–527. However, the article 26 of the Rome Statute does not deal with criminal responsibility of persons younger than 18 years old – it just stipulates that the ICC shall not have jurisdiction in such cases. Therefore, this norm does not exclude eventual criminal responsibility and, therefore, criminal proceedings against such persons before national criminal courts.

53 Mohammad Hazyar Arumbing, Yordan Gunawan, Agus Andi Salim, “Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse”, *Journal Media Hukum*, no 1, (2023): 27.

In order to understand better the aim of this war crime, it is necessary to comprehend the key elements of using, conscripting and enlisting children. War crime exists if the perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.<sup>54</sup> Such person or persons were under the age of 15 years and the perpetrator knew or should have known that such person or persons were under the age of 15 years.<sup>55</sup> The conduct took place in the context of and was associated with an international or non-international armed conflict, while the perpetrator was aware of factual circumstances that established the existence of an armed conflict.<sup>56</sup>

Within the proceedings before the ICC, children who have been victims or were forcibly involved in hostilities are recognized as victims, and are granted the right to participate in the proceedings through legal representatives, as well as to seek reparations and compensation. With its judgements ICC shields and promotes children's rights in armed conflict, and creates international standards and practices that bind states around the world and helps to end the culture of impunity. The most significant cases before ICC regarding protecting children and children soldiers are *Lubanga* case and *Ongwen* case, which will be discussed below.

### 5.1. *The Prosecutor v. Thomas Lubanga Dyilo*

Thomas Lubanga was one of the founding members and the leader of the Union des Patriotes Congolais (UPC), as well as the commander of its armed group called Force Patriotique pour la Libération du Congo (FPLC).<sup>57</sup> The UPC/FPLC, as an organized armed group, was involved in an internal armed conflict against the Armée Populaire Congolaise (APC) and other Lendu militias, including the Force de Résistance Patriotique en Ituri (FRPI), between September 2002 and 13 August 2003.<sup>58</sup> He was the first person ever tried and convicted by the ICC, marking a historic milestone in international criminal justice on few levels, which implies how important children protection was, and how serious the problem with child soldiers actually was.

Lubanga was charged with war crimes Article 8(2)(e)(vii) of the Rome Statute for conscripting, enlisting, and using children under the age of 15 to participate actively in hostilities, with charges focused on the recruitment and use of child soldiers in the armed conflict in Ituri.<sup>59</sup> It was explained in the judgement that

54 Elements of Crime, Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, (2002): 21, 27.

55 Ibid.

56 Ibid.

57 Case Information Sheet: Situation in the Democratic Republic of the Congo. The Prosecutor v. Thomas Lubanga Dyilo. ICC-01/04-01/06 <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf>

58 Ibid.

59 International Criminal Court, Trial Chamber I, Situation in the Democratic Republic of Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo, Judgement from 14 March 2012, ICC. No-01/04-01/06.

conscripting and enlisting are two different notions – conscripting defines as forced recruitment, and enlisting more or less as voluntary recruitment, but the fact that it was voluntary is not a valid defense for accused<sup>60</sup> given the fact that Rome Statute clarified that children under 15 cannot give valid consent in such circumstances. With the enlisting-conduct, any – even non-compulsory (‘voluntary’) – recruitment may amount to a war crime, i.e., the autonomous decision of a child (if possible at all) to join an armed group is part of the conduct definition and thus of the *actus reus* of the offence.<sup>61</sup> Thus, the interplay between (voluntary) enlistment and (compulsory) conscription prevents a punishability gap since any form of child recruitment (voluntary or not) is covered by the offence.<sup>62</sup>

Another problematic aspect of this judgements was what was considered as active participation in hostilities. The ICC interpreted ‘active’ in the Statute’s child protection provisions more broadly than ‘active’ in the civilian protection provisions.<sup>63</sup> This approach best gives voice to the protective purpose of the child protection provisions by criminalizing a wider range of conduct that children could perform, deterring individuals and groups from using them in hostilities.<sup>64</sup> According to the Lubanga judgement active participation is not related to the previous recruitment of the child, which derives from the legal definition itself – where the acts of commission are connected by the conjunction “or”, which indicates that the acts are defined alternatively; therefore, the commission of any one of them constitutes the commission of the criminal offense.<sup>65</sup>

The judgment in the *Lubanga* case represents a turning point in international criminal law because it established individual responsibility for the recruitment of child soldiers for the first time, expanded the concept of a child soldier, confirmed command responsibility and laid the basis for the development of the practice of reparations for victims, thereby significantly strengthening the international framework for the protection of children in armed conflicts.

## 5.2. *The Prosecutor v. Dominic Ongwen*

The case of Dominic Ongwen represents another case before ICC regarding child soldiers, however this case is even more complex than *Lubanga* case because Ongwen was a child soldier himself, who later proceeded to become the perpetrator of crimes against children. This case is a representation of the complexity of the status of child soldiers – they can be victims and perpetrators at the same time, which opens up new ethical and legal questions about their responsibility. Ongwen

60 Višnja Randelović, *Položaj maloletnih lica u međunarodnom krivičnom pravu*, (Kragujevac, 2023), 136.

61 Kai Ambos, “The First Judgment of the International Criminal Court (Prosecutor v. Lubanga): A Comprehensive Analysis of the Legal Issues”, *International Criminal Law Review*, no 12, (2012): 134.

62 Ibid.

63 Joshua Yuvaraj, “When Does a Child ‘Participate Actively in Hostilities’ under the Rome Statute? Protecting Children from Use in Hostilities after Lubanga”, *Utrecht Journal of International and European Law*, no 83, (2016): 87.

64 Ibid.

65 Randelović, *Položaj maloletnih lica u međunarodnom krivičnom pravu*, 139.

was kidnapped when he was a child and forced to join Lord Resistance Army in Uganda, but later on he became a commander and was charged with war crimes and crimes against humanity (such as: murder, torture, cruel treatment, attacks on civilians, sexual slavery, rape, using child soldiers, destruction of property; enslavement, torture, persecution, forced marriage, sexual violence) committed in Uganda between 1 July 2002 and 31 December 2005.<sup>66</sup> For individuals who were associated with armed groups as children, a structure-centered approach focuses on the circumstances that placed the child in the position to become a child soldier and commit violent actions, thereby leading to a “victim” label.<sup>67</sup>

Crimes that Ongwen was being charged with are crimes, committed or attempted directly, alone as well as jointly with other co-perpetrators in the LRA, that is, direct individual criminal responsibility, as seen under Article 25(3)(a) of the Rome Statute as read with Article 25 (3) (b) and (d) of the Rome Statute.<sup>68</sup>

Ongwen was the first person to be charged for the war crimes also committed against him<sup>69</sup> making him both the victim and the perpetrator of a crime. However, the prosecution noted in the sentencing that Ongwen’s role as a child soldier is relevant to the sentencing determination, but does not directly diminish his responsibility.<sup>70</sup> On the other hand, the defence argued that Ongwen would not have committed the crimes for which he has been convicted had it not been for his individual circumstances of being abducted at a developmental age.<sup>71</sup> The ICC found him guilty on 61 charges, but the judges noted that he committed the relevant crimes when he was an adult and, importantly, that, in any case, the fact of having been (or being) a victim of a crime does not constitute, in and of itself, a justification of any sort for the commission of similar or other crimes – beyond the potential relevance of the underlying facts to the grounds excluding criminal responsibility expressly regulated under the Statute – they rejected the arguments of the defence as ‘legally unspecified submissions’ on the basis that prior victimization could not itself constitute a justification for commission of international crimes.<sup>72</sup>

In conclusion, the case of Dominic Ongwen showed that International Criminal Law can no longer view child soldiers exclusively through the prism of victim or perpetrator, but it ought to recognize the complex human reality in which trauma,

66 Case Information Sheet. Situation in Uganda The Prosecutor v. Dominic Ongwen. ICC-02/04-01/15. The Ongwen case was also of great importance for some other issues of International Criminal Law, such as forced pregnancy as a crime against humanity and war crime, see more in: Aleksa Škundrić, “Prinudna trudnoća u Međunarodnom krivičnom pravu”, *Arhiv za pravne i društvene nauke*, no 1, (2024): 75–77.

67 Izabela Stefija, Jessica Trisco Darden, Amanda Wintersick, “Breaking Through the Legal Binary: Media Labelling of Dominic Ongwen as a Victim–Perpetrator”, *Social and Legal Studies*, no 3, (2024): 447.

68 Jael Jennifer Mareresh, *When the prey becomes the predator: Does justice equal a conviction? An analysis of the Dominic Ongwen case*, Unpublished dissertation, (Nairobi 2021), 5.

69 Erin K. Baines, “Complex Political Perpetrators: Reflections on Dominic Ongwen”, *The Journal of Modern African Studies*, no 2, (2009): 163–164.

70 The Prosecutor v Dominic Ongwen. ICC-02/04-01/15-1819-Red 6 May 2021, para 66.

71 Ibid, para 67.

72 Ibid, para. 2672.

coercion and responsibility often coexist. Even though the *Ongwen* case did not change the formal rules on child soldiers, it revolutionized the way those rules are interpreted, applied, and ethically understood—it introduced a more humane, contextual dimension to international criminal law.

## 6. CONCLUDING REMARKS

It is evident that the international community is aware of the need to provide protection to children during armed conflicts and in this paper, it has been pointed out that there are special rules, as well as certain mechanisms that attempt to provide this protection. It was shown that rules about protecting the vulnerable persons such as children existed even before the adoption of the Hague and Geneva Conventions. This protection was formalized in the Geneva Conventions, but before the adoption of the Protocols to the Geneva Conventions, there were no individual, specialized rules that established protection of children in armed conflicts, and forbidding their participation in armed conflicts.

However, despite the adoption of all these rules, massive violations of them continue to occur, therefore it was evident that it was necessary to establish certain monitoring mechanisms. The United Nations, as the world's largest international organization, has contributed significantly to the progress and development of legislation and mechanisms of monitoring that would ensure a higher level of protection for child soldiers. Resolutions have been adopted by both the Security Council and the General Assembly, and special bodies have been established, such as the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, which has the task of monitoring the implementation of resolutions related to these problems, as well as Committee on the Rights of Child regarding the CRC and Optional Protocol.

The cruelty and malevolence of recruiting children in military has impact on children on many levels, therefore it is justified to prescribe those actions as war crimes. We have processed two cases before ICC, which have shown the complexity of the state in which child soldiers are, and also the complexity of the trials themselves. The author of the paper does not believe that there will come a time in the future when all the rules of children protection in armed conflicts will be respected – such a utopia can, unfortunately, only exist in theory. There is no law or rule that has never been violated, and this cannot be expected from the rules regarding children's protection. What remains for us, therefore, is to continue to strive to minimize such violations and prevent them as much as possible and we can strive to do this by raising awareness of the importance of these rules (prevention). Then, individuals and states that violate these rules should be adequately punished, so that we can show potential future perpetrators that these acts are punishable and that if they attempt to commit such acts, they will not go unpunished.

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SLOŽENA ULOGA DECE U ORUŽANIM SUKOBIMA:  
MEĐUNARODNOPRAVNA ZAŠTITA I  
SUDSKA PRAKSA MEĐUNARODNOG KRIVIČNOG SUDA

REZIME

Oružani sukobi predstavljaju odstupanje od uobičajenog stanja u državama i utiču na svaki segment života. Prva asocijacija na oružane sukobe je nasilje – kako međusobno nasilje između članova zaraćenih strana, tako i nasilje nad ranjivim kategorijama ljudi koje ne učestvuju u oružanim sukobima. Deca spadaju u jednu od ovih ranjivih kategorija jer, zbog svog uzrasta, nisu u stanju da se brinu o sebi. Iako pravila međunarodnog humanitarnog prava, međunarodnog prava ljudskih prava i međunarodnog krivičnog prava pružaju posebnu zaštitu deci, u praksi takva zaštita je često nedovoljna ili izostaje. Zbog toga je bilo neophodno preduzeti određene dodatne korake kako bi se obezbedila adekvatnija zaštita dece u oružanim sukobima, što je dovelo do toga da se ovo pitanje razmatra pred Međunarodnim krivičnim sudom. U ovom radu, autorka nastoji da predstavi pojam dece u oružanim sukobima, kako bi bolje objasnila pravila međunarodnog prava koja se odnose na zaštitu dece u sukobima i zašto je ta zaštita neophodna. Glavni fokus rada je na problemu regrutovanja i uključivanja dece mlađe od 15 godina u oružane sukobe, kao i na analizi dve presude Međunarodnog krivičnog suda koje su ove radnje definisale kao ratne zločine – slučajevi Lubanga i Ongwen.

**Ključne reči:** deca vojnici, međunarodno humanitarno pravo, slučaj Lubanga, slučaj Ongwen, Međunarodni krivični sud.

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