

Protecting children in armed conflict: from commitment to compliance

Anatole AYISSI

We will work carefully to protect children from the scourge of war ... in order to give children everywhere a peaceful and secure future. ... We are prepared to make available the resources to meet these commitments.

Plan of Action of the World Summit for Children, September 1990

The resources that were promised at the [1990] Summit ... have yet to fully materialize.

Declaration of the Special Session on Children, May 2002

The world has fallen short of achieving most of the goals of the World Summit for Children.

United Nations Secretary-General Kofi Annan

Crisis and commitment

Children are increasingly victims of armed conflicts as 'both the targets and the perpetrators of violence'.¹ Although victimizing children in times of war is not new, the scale and scope of this sad phenomenon today is without precedent. Indeed, historical comparative analyses show that a child living in a war-torn society today runs a higher risk of being maimed, raped or used as a combatant than a child who lived in equally violent circumstances in the past.²

The international community has developed an important set of politically and legally binding instruments that highlight the absolute necessity to guarantee unconditional protection to children in armed hostilities. Unfortunately, these normative endeavours are not adequately backed by political will. Compliance with established norms remains, essentially, a dream. This paper (1) gives a brief overview of the rising hopes and glittering promises from the worldwide efforts aimed at protecting children in armed conflicts, (2) analyses the dwindling expectations from and growing scepticism about these endeavours, and (3) elaborates practical steps towards ending impunity and enforcing compliance with the rule of law.

The analysis takes as its framework primarily what has been happening within the context of the United Nations system since the signing of the Convention on the Rights of the Child in 1989 and the World Summit for Children in 1990.

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Remark on the 'international community'

A significant part of this paper is an analysis of the international community's last decade of mixed discourse on the protection of children in armed conflict. The paper juxtaposes the international community's rhetoric in favour of the protection of children in armed conflict with the (counter) discourse on the lack of concrete commitment from world leaders. A superficial reading may thus generate the strange impression that the international community commits itself to protect children in armed conflicts while simultaneously castigating itself for its lack of commitment. Put another way, 'those who are supposed to do the job are the same claiming that the job is not done'.³ Such a perception is partially due to the ubiquitous nature of the 'international community'. Indeed, one of the fundamental characteristics of this community is that it is generally an anonymous entity (without a face) when it makes promises and pledges commitment; however, when the time comes to fulfil its promises and implement its decisions, the international community suddenly becomes endowed with an institutional face. Hence the curious feeling that the international community is both pledging to give a better future to every child and reproaching itself for falling short of this great promise.

A deeper analysis of the definition issue is beyond the scope of this paper.⁴ What is important to keep in mind is that, in multilateral diplomacy, promises are made and decisions are generally taken by leaders episodically meeting for a few days (and usually eager to conclude the deliberations as soon as possible and return home). But the implementation of these decisions is left to the international community's legitimate institutional representatives (the United Nations system for instance), which are unable to achieve anything unless the authors of these promises and decisions give the implementing institution the appropriate means and resources. Resources might be pledged, but they are rarely made fully available in a timely manner.

Protecting children in armed conflict: a world committed

The universal movement to protect children from the scourge of war emerged right after the First World War. Moved by the fate of millions of children in this great tragedy, the newly created League of Nations established in 1919 a Committee for the Protection of Childhood. The continual degradation of child well-being within the post-war environment obliged an NGO called Save the Children International Union (SCIU) to advocate that the specificity of childhood be explicitly taken into account in reconstruction programmes. On 23 February 1923, SCIU adopted the Declaration of the Rights of the Child—also called the Geneva Declaration. On 26 September 1924, the League of Nations General Assembly endorsed the Geneva Declaration, which solemnly proclaimed in its Preamble that 'mankind owes to the child the best it has to give'.

After the Second World War, concerns over the fate of child safety in times of armed violence once again found a place on the international agenda. In 1946, the United Nations General Assembly created a Special Fund aimed at child welfare: UNICEF. According to its mission statement, 'UNICEF is committed to ensuring special protection for the most disadvantaged children', notably those children who are 'victims of war'.⁵

On 20 November 1959, the General Assembly adopted resolution 1386(XIV), the Declaration of the Rights of the Child, which reiterated that 'mankind owes to the child the best it has to give'.

Meanwhile, other important humanitarian or human rights instruments raised awareness of the necessity to give children the best possible treatment not only in the extraordinary environment of armed violence, but also in ordinary circumstances. For instance, the 1948 Universal Declaration of

Human Rights reads, in article 25 (2), that ‘motherhood and childhood are entitled to special care and assistance’. The same considerations are found in the two 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights.

Efforts aimed at enhancing the protection of children on battlefields intensified by the mid-1970s. The United Nations General Assembly adopted, on 14 December 1974, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.⁶ In this Declaration, the General Assembly emphasized ‘the need to provide special protection of women and children belonging to the civilian population’.

In 1989, the international community finally adopted a Convention on the Rights of the Child (CRC). Currently, the CRC is the multilateral treaty with the highest number of ratifications ever (191). This quasi-universal adhesion is a testament to the great interest that humanity places on child welfare in general, and the ideals embodied in the Convention in particular. The CRC is presently the only legally binding arrangement specifically aimed at children. While previous instruments have mentioned the special needs of children, the CRC cares about the child as a unique human being within the broader human community.

A key moment in this global commitment to child welfare was the World Summit for Children held in September 1990 in New York. The Summit adopted a World Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing this Declaration. Through these two documents, the international community renewed its commitment to the urgent imperative of the protection of children caught in conflict areas.

In order to have sound knowledge of the fate of child victims of armed conflict and to be more effective in combating this tragedy, the United Nations General Assembly requested the Secretary-General to appoint an expert to undertake a comprehensive study on the impact of armed conflict on children. On 8 June 1994, pursuant to General Assembly resolution 48/157 of 20 December 1993, Ms Graça Machel was appointed to this task. Two years later, on 26 August 1996, she delivered her report on ‘The Impact of Armed Conflict on Children’. A key recommendation of the report was that a ‘Special Representative of the Secretary-General should be named to monitor implementation of this report and ensure that issues of children and war are kept high on international human rights, peace, security and development agendas’.⁷ The Secretary-General announced the appointment of Olara Otunnu in September 1999 to this position.

Alleviating the suffering of children in battle areas is considered to be such an eminent concern that it was deemed necessary to establish an optional protocol to the CRC specifically devoted to the issue. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, adopted on 25 May 2000, entered into force on 12 February 2002.

These great diplomatic and legal advances lead one to the conclusion that the world is determined to alleviate and prevent the suffering of children in armed conflicts. The situation on the ground tells another story. There are numerous unfulfilled promises, which generate substantial doubts and widespread scepticism about the real political will of the international community to make their actions speak as loud as their words.

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From commitment to disenchantment

The decade from 1990 to 2000 was supposed to be a decade of restored hope for children affected by armed conflict; it would evolve as an uncertain era of dwindling optimism and vanishing expectations.

1990–2000: A DECADE OF RISING HOPE

The issue of protecting children brought together seventy-one Heads of State and Government on 30 September 1990 in New York. These decision-makers noted that ‘each day, countless children around the world ... suffer immensely as casualties of war and violence’ and they resolved to take action to guarantee child security in circumstances of armed violence. They adopted the World Declaration on the Survival, Protection and Development of Children. Among other important points, these leaders promised to ‘work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future’.⁸

An ambitious (yet realistic) Plan of Action for Implementing the World Declaration in the 1990s was also adopted. The decade-long agenda recognized that ‘children need special protection in situations of armed conflict’ and emphasized the necessity ‘to build the foundation for a peaceful world where violence and war will cease to be acceptable means for settling disputes and conflicts’.⁹

Two years later, in its 1992 *State of the World’s Children*, UNICEF appropriately reminded world leaders of their promise to build ‘a new order for children’ and insisted that ‘the promise of the World Summit for Children should be kept’.¹⁰

On 25 August 1999, the fate of children in armed conflict was the order of the day at the Security Council, which, for the first time ever, adopted a thematic resolution entirely devoted to the protection of children in armed conflict (resolution 1261). Through this resolution, the Security Council condemned ‘... the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and calls on all parties concerned to put an end to such practices’. Commenting on the adoption of this resolution, UNICEF Executive Director Carol Bellamy declared ‘This remarkable achievement is a major boost to efforts to protect the rights of millions of children who are killed, maimed, orphaned and driven from their homes by conflicts around the globe’.¹¹

In the view of the rich legal framework that has been set up in the last decade aimed at protecting children in armed conflicts, one might understandably assume that the international community has kept its promises to children. While it is true that a lot has been accomplished in terms of building norms and raising awareness, from the standpoint of practical action, too much remains undone. Graça Machel summarizes the last decade thusly: ‘collectively, we can be encouraged by the progress made But we still have very far to go before we can say that our promises to children are fulfilled’.¹²

1990–2000: A DECADE OF DWINDLING EXPECTATIONS

Indeed, more than a decade after the promises of the World Summit for Children and the expectations of the Convention on the Rights of the Child, the worsening reality for child victims of armed conflicts compels us to conclude that the great opportunities offered by these extraordinary achievements were not seized. The international community sowed doubts about its capacity to abide by its own word, thus engendering frustration and bitterness. In his report entitled *We the Children: End-decade review of the follow-up to the World Summit for Children*, the United Nations Secretary-General observed that although ‘significant progress in a number of areas’¹³ has been made in the

implementation of the 1990 Plan of Action, this progress, as compared to the challenges we face, is 'not enough'.¹⁴ He observed that it would be honest to recognize that 'the world has fallen short of achieving most of the goals of the World Summit for Children'¹⁵ since 'many of the survival and development goals set by the Summit ... remain unfulfilled'.¹⁶ UNICEF agreed, noting that most of the 1990 promises to children are 'broken' and 'largely unfulfilled'.¹⁷

The most alarming sign of the world's lack of commitment is that the failure to translate promises into action was not because the goals were 'too ambitious or were technically beyond reach'; promises were not achieved simply 'because of insufficient investment'.¹⁸ The 1990 Declaration stated that 'there can be no task nobler than giving every child a better future' and world leaders offered great promise to children with this powerful and unequivocal statement: 'we are prepared to make available the resources to meet these commitments'.¹⁹ Despite the fact that the world contains a \$30 trillion global economy, 'the resources needed to achieve goals for all children have not been forthcoming in the necessary amounts and in the places where they are most needed'.²⁰

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Today, at the very moment the world community is repeatedly proclaiming its faith in the absolute and unconditional necessity to protect growing generations from the scourge of war, we are paradoxically confronted with the reality that 'perhaps more children have suffered from armed conflicts and violence since the [1990] Summit than at any comparable period in history'.²¹ In addition, the task to promote and build a viable world for children might have been more easily achieved ten years ago. The world is 'more unstable and more violent than it was in 1990 when leaders at the World Summit pledged to reach 27 goals for children and women by the year 2000'.²² Achieving the promises made to children a decade ago has 'become more daunting over the years, presenting us with an increasing number of new challenges'.²³

1990–2000: A DECADE OF GROWING DESPAIR

The scope of the enormous challenges the world faces with the plight of child victims of armed conflicts is hinted at in the following few statistics. Today, at least:

- 300,000 children are used as combatants on battlefields around the world,
- 2 million are deliberately murdered,
- 20 million are refugees or internally displaced persons,
- 5 million are handicapped,
- 12 million are abandoned,
- 1 million are orphans, and
- 10 million are severely traumatized due to violent conflict.²⁴

In Africa for instance, one of the regions where children are most affected by armed conflict, never before has the condition of children caught in battle areas been so desperate. To torture, maim, or kill children (or turn them into killers) is becoming an ordinary occurrence in most African conflict zones. Thanks to United Nations investigation teams, researchers and NGO personnel in the field, we

now know that in Liberia for instance, around 20% of the 60,000 combatants who fought in its civil war (1989–1997) were children. Thousands of ‘lost boys’ are currently wandering, starving, killing and dying in southern Sudan’s fighting zones. In Sierra Leone, the Revolutionary United Front and other fighting factions used children as combatants and human sacrifices. Maiming and raping children became a widespread ‘ritual of war’ in that country (as well as in Liberia).²⁵ They were at least 10,000 kids participating in fighting in Mozambique, including hundreds of little girls used as sex slaves.²⁶ A survey on children and war in Mozambique shows that throughout the sixteen years of armed violence, more than 90% of Mozambican children ‘were forcibly separated from their families; 77 per cent witnessed killings, usually in large numbers; 88 per cent witnessed physical abuse and/or torture; 51 per cent were physically abused or tortured; 63 per cent witnessed kidnapping and sexual abuse; 64 per cent were kidnapped from their families; 75 per cent of the kidnapped children were forced to work as porters; 28 per cent of the kidnapped children (all boys) were trained as combatants’.²⁷ In Uganda, ‘the LRA [Lord Resistance Army] ... has abducted nearly 10,000 children to be used as soldiers, porters and sex slaves. Many thousands are thought to have died while in LRA captivity’. As of this writing, more than 5,000 of these children are still missing.²⁸ Angola has ‘an estimated 3,000 child soldiers, a significant number of whom have been forcibly recruited from neighbouring countries’.²⁹ They are thousands in the Democratic Republic of the Congo fighting for a ‘good cause’ they don’t—or no longer—understand.³⁰

Although Africa is currently the most visible symbol of the crisis of children in armed conflict, in other regions of the world, notably Asia and Latin America, thousands of kids are suffering the same fate. In Sri Lanka for instance, ‘after 18 years of continuous strife, a generation of young people across the country has been robbed of a normal childhood’.³¹ Also in this country, ‘some adults have used young people’s immaturity to their own advantage, recruiting and training adolescents for suicide bombings’.³² In 1999, ‘a UN report asserted that Taliban commanders in Afghanistan were enlisting child warriors younger than 14’. In Myanmar, ‘the army has been known to surround schools and forcibly recruit groups of children from 15 to 17 years of age’,³³ etc.

These are profoundly disturbing numbers. And yet the extreme difficulty of gathering data in conflict zones means that most of these figures are rough estimates, very often underestimates. Regardless, the most important thing is not accurate statistics—we must never lose sight of the fact that ‘each number and each statistic represents a child’s life’, that is, ‘someone’s son, daughter, sister or brother’.³⁴

The challenge of children victimized in armed conflicts is more than a legal failure or a political breakdown. We are not dealing here with a banal breach of law or a one-off humanitarian emergency. We are facing an unprecedented tragedy that challenges us as *human* (i.e. ‘civilized’) communities and questions our credibility as decision-makers.

Behind the political incapacity of the international community to keep its promises to children is evolving a great moral crisis, a crisis with significant consequences for the world’s future. ‘As today’s children are the citizens of tomorrow’s world, their survival, protection and development is the prerequisite for the future development of humanity’ and ‘there is no cause which merits a higher priority than the protection and development of children, on whom the survival, stability and advancement of all nations—and, indeed, of human civilization—depends’.³⁵

From commitment to compliance

The analyses above might give the impression of a deep cynicism about the capacity of the international community to protect children in armed conflicts. Understandably, the record shows

that, compared to the challenges faced on the one hand and promises made on the other, there might be reasonable doubt about the international community's commitment to children. Thankfully there seems to be the beginning of a real change in behaviours and attitudes.

The first positive change is about the *self-perception* and *self-evaluation* of the international community's performance. There is a growing shared feeling that not enough is being done. There is also a sustained effort to answer, in an objective and non-complacent way, the question 'what is going wrong and why?'³⁶ Appropriate action must follow, without delay, this new awareness since 'a child in danger is a child who cannot wait'.³⁷

The second constructive move is reflected in the great normative work realized in the last ten years. In addition, for the very first time in the history of the United Nations, the tragedy of child victims of armed conflicts is gradually emerging as a central concern and a top priority on the Security Council agenda.

But concrete deeds must follow this 'diplomatically correct' awareness. Compliance must follow commitment.

Crime and accountability: enforcing compliance

The lack of trustworthy promises and credible commitment makes the suffering of children on battlefields look like an endless and hopeless tragedy—but it need not be. We know what needs to be done; in fact, the international community has agreed to it several times over. What is lacking is a 'commitment to act, and the resources to go with it'.³⁸

Action is crucial because 'words on paper' do not save those in danger. It is urgent to shift energies 'from the juridical project of elaborating norms to the political project of ensuring their application and respect on the ground'. This objective would be reached 'if the international community was prepared to employ its considerable collective influence to that end'.³⁹

Holding perpetrators of war-time crimes against children accountable and punishing them in a systematic and just manner will be both curative and preventive: it will contribute to the alleviation of the current suffering of children in armed conflicts and it will spare emerging generations the same fate, thus ultimately fulfilling the great promise enshrined in the United Nations Charter—the very *raison d'être* of the Organization—to *save succeeding generations from the scourge of war*.

One of the main conclusions of the Special Session on Children (May 2002) was that the promotion of the well-being of children remains an 'unfinished agenda' and, as a matter of consequence, there must be 'further progress in the coming decade to complete the unfinished agenda of the [1990] Summit for Children and to tackle some emerging issues that imperil the well-being of children in the twenty-first century'.⁴⁰ A first-order priority could be monitoring and enforcing compliance with legal norms aimed at the protection of children in armed conflicts.

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As previously noted, the legal basis for such action is already in place. In addition to the sources of international law defined in the Statute of the International Court of Justice (article 38), Security Council resolutions as well as certain resolutions of a specific nature of the United Nations General Assembly are legally binding upon Member States.⁴¹ Additionally, article 38 of the Convention on the Rights of the Child, the Optional Protocol to this Convention, article 8 of the Statute of the International Criminal Court, article 24 of the Geneva Convention relative to the Protection of Civilian Persons in

Time of War, as well as many other legal regimes strongly condemn the brutalization and the killing of children on battlefields. Under certain circumstances, even declaratory statements like those made at diplomatic gatherings can become legally binding, since the results of such meetings 'may constitute cogent evidence of the state of the customary law on the subject concerned'.⁴² Taken together, this is a powerful legal arsenal that only needs to be applied—to hold accountable and bring to justice those terrorizing innocents.

More precisely, the 1999 Security Council resolution on children strongly condemns the victimization of children in armed conflict and 'calls upon all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conventions of 12 August 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and the United Nations Convention on the Rights of the Child of 1989'. Significantly, the Council, in a clear and uncompromising way 'stresses the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949'.

In resolution 1379 of 20 November 2001, the Security Council again urged '... Member States to put an end to impunity, prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against children and exclude, where feasible, these crimes from amnesty provisions and relevant legislation, and ensure that post-conflict truth-and-reconciliation processes address serious abuses involving children'.

Protecting children from conflict: practical steps

Given the nature of both the international community and international law, experience shows that one of the most efficient ways to make international law work is to endow treaties with a *robust monitoring and enforcement mechanism*, which would work as a force multiplier for appropriate implementation of commonly agreed norms.⁴³ International law protecting child rights still has to draw all the consequences from this important lesson. As recognized a few years ago by the Special

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Representative for Children and Armed Conflict, perhaps 'the most important single challenge in addressing the plight of children in armed conflict' remains 'how to translate international instruments and local values into practice on the ground'.⁴⁴

For the last few years, a series of agendas for the protection of children in armed conflicts has been elaborated both by governmental and non-governmental institutions. Among others, there are UNICEF's 'Anti-War Agenda',⁴⁵ the United Nations Secretary-General's 'Ten Recommendations',⁴⁶ and Graça Machel's recent 'agenda for peace and security'.⁴⁷ One can also mention important contributions from other institutions like the OSCE⁴⁸ and the ICRC.⁴⁹ However, as long as compliance with legal norms is not made effective, most of these agendas will continue to be just what they are now: simple words on paper. This is not to say that defining agendas and plans of action is unimportant. As mentioned by Ambassador Patricia Durrant (of Jamaica), Chairperson of the Preparatory Committee for the Special Session on Children, 'setting goals is a crucial step' towards effective action: 'with goals, we have something to strive for. Without them, we have no way of measuring our success and failures'.⁵⁰

Here are four concrete, realistic and easily implemented steps (supposing there is good will and genuine good faith) aimed at monitoring and enforcing compliance with legal norms and basic moral principles.

Step 1: Ostracize rogue fighters and pariah stakeholders. In circumstances of armed conflict and with respect to the objective of unconditional protection of children, a 'rogue fighter' or a 'pariah stakeholder' should be defined as anyone (group or individual) who victimizes children in violation of internationally accepted legal or moral norms. Such culprits must be ostracized from peace negotiations as well as post-conflict power-sharing. Indeed, a fundamental frustration in some post-war situations is to see former users of child combatants sharing power in governments of national reconciliation and parading as ministers or even heads of state, while the children they transformed into human rags are abandoned, hopeless and helpless in moral and material misery.⁵¹

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Step 2: Promote punitive justice and individual responsibility. Most of the conflicts in which children are currently brutalized and killed are internal or civil wars. Until the end of the Second World War and the Nuremberg Trials, 'the international agreements governing the laws of war applied only to armed conflicts between states and had no formal bearing on non-international armed conflicts'.⁵² In terms of accountability of crimes committed on battlefields, this meant that non-state actors, notably insurgent groups and individuals, could not be directly held accountable for crimes they committed during hostilities. Fortunately, this is no longer the case.

A major evolution in international law makes it easier to punish non-state actors found guilty of abusing the rights of the child. Particularly, the last half-century has witnessed 'the development of the law [of armed conflicts] from a legal regime principally dealing with armed conflicts between states to one also dealing directly with internal armed conflict'.⁵³ A major innovation in the process is that criminals can now be held individually accountable for their war crimes. Today, 'there are acts or omissions for which international law imposes criminal responsibility on individuals and for which punishment may be imposed, either by properly empowered international tribunals or by national courts and military tribunals'.⁵⁴ Wherever and whenever 'the laws of war are applicable in a particular armed conflict, they are binding not only upon states as such but also upon individuals, and, in particular, the individual members of armed forces'. Besides, 'individual responsibility relates not only to the commission of crime, but also ordering, inducing, or facilitating it'.⁵⁵ Accordingly, article 6 of the Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (8 August 1945) mentioned that war crimes, crimes against humanity and crimes against peace are considered as crimes 'for which there shall be individual responsibility'. The International Military Tribunal emphasized that 'crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced'.⁵⁶

In the current international environment, the responsibility of individuals under international law has become a legal, self-evident truth, as shown by the work of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (established in 1993) or the International Tribunal for Rwanda (established in 1994): the statutes of these tribunals contain articles addressing 'individual criminal responsibility'.⁵⁷ More precisely for the case in point, article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict condemns 'with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State' and recognizes in its Preamble 'the responsibility of those who recruit, train and use children in this regard'. Article 8 of the Statute of the International Criminal Court classifies as a war crime 'conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities'.

Step 3: Make the crimes imprescriptible. One way to adequately punish crimes against children in armed conflicts would be to put such crimes in the category of the gravest breaches of moral and legal order in our societies, and make them not subject to prescription.

'Prescription' is legally defined as 'the effect of the lapse of time in creating and destroying rights'. In civil and criminal laws, 'liberative prescription' is 'a bar to a lawsuit resulting from its untimely filing'.⁵⁸ According to certain legal systems (the French one for instance), a crime is legally imprescriptible when it cannot be subject to extinction or amnesty by claims founded on prescription. In this case, whatever and no matter how long it takes, the accused, as long as he/she is still alive, is absolutely and unconditionally bound to face justice.⁵⁹

In international law, at least three broad types of crimes are generally considered to be imprescriptible: crimes of war, crimes against humanity and crimes against peace. An additional category, increasingly mentioned in international tribunals prosecuting war criminals is crimes related to 'massive human rights tragedies'.⁶⁰ It is obvious that crimes against children in fighting fields fall in these categories. Security Council resolution 1379 recommends that crimes against children on battlefields be excluded, 'where feasible ... from amnesty provisions'.

Step 4: Harmonize national legislation. Security Council resolution 1261 (1999) 'stresses the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949'.⁶¹ This means that 'the prime [but not exclusive] responsibility for the prosecution of violations rests with national authorities of the state within which the violations occurred'. Accordingly, it is necessary that governments harmonize their respective national legislation. Article 4 of the Convention on the Rights of the Child therefore urges States Parties to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'.

Acting firmly and 'talking tough'

The recent history of efforts aimed at protecting children in armed conflict shows that conciliatory discourses and good intentions are not enough. Actions must speak as loud as words. However words, when used, must be compatible with circumstances. Given the context, 'tough talk' is essential. As shown by the experience in Sierra Leone or Sri Lanka (among others), those killing and brutalizing

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children on battlefields are not innocents themselves. They are especially savage and rough individuals with whom it is vital to deal with in an unequivocal manner if one is to be listened to and understood. A clear and strong message must be sent to actual and potential child victimizers that the world will no longer remain immobilized when faced with gross violation of children's rights in times of armed violence. Strong and meaningful indications have to be sent—and followed up with action when necessary—that there be no justification of the deliberate brutalization or

killing of a child on the battlefield. As repeatedly mentioned by the United Nations Secretary-General, the victimization of children in armed conflict must cease to be considered as something 'merely regrettable'. It is absolutely imperative we ensure that 'it is recognized as intolerable' and 'those who practice this form of child abuse must be held accountable'.⁶²

Notes

1. *Children and armed conflict: Report of the Secretary-General*, United Nations document A/55/163-S/2000/712 of 19 July 2000, para. 2.
2. See for instance Ahlström Christer, 1991, *Casualties for Conflict: Report for the World Campaign for the Protection of Victims of War*, Uppsala, Uppsala University (Department of Peace and Conflict Research). In her report on children and war, Graça Machel notes, 'throughout history, war has exacted a horrific toll on children. But modern warfare kills, maims and exploits children more callously and more systematically than ever before'. Graça Machel, 2001, *The Impact of War on Children*, London, Hurst and Company, p. 1.
3. The author thanks those of his colleagues and friends who drew his attention on this contradiction in the United Nations rhetoric on children and armed conflicts.
4. For a deeper discussion on this topic, see for instance René-Jean Dupuy, 1986, *La communauté internationale entre le mythe et l'histoire*, Paris, Economica/UNESCO; Philippe Moreau Defarges, 2000, *La communauté internationale*, Paris, Presse Universitaire de France (coll. 'Que sais-je ?').
5. See < <http://www.unicef.org/mission.htm> > .
6. United Nations General Assembly resolution 3318(XXIX).
7. See the report of Graça Machel, *Impact of Armed Conflict on Children*, document A/51/306 of 26 August 1996, at < <http://www.unicef.org/graca/> > . On 20 February 1997, Ambassador Olara Otunnu was appointed the Special Representative of the Secretary-General for Children and Armed Conflict.
8. See *World Declaration on the Survival, Protection and Development of Children*, New York, 30 September 1990, at < <http://www.unicef.org/wsc/declare.htm> > .
9. *Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s*, at < <http://www.unicef.org/wsc/plan.htm> > .
10. UNICEF, 1992, *State of the World's Children*, Oxford, Oxford University Press, pp. 2 and 5.
11. *UNICEF Newline*, 'Plight of child war victims takes centre stage', 27 August 1999, at < <http://www.unicef.org/newline/99pr34.htm> > .
12. Machel, 2001, *op. cit.*, p. xi.
13. *We the Children: End-decade review of the follow-up to the World Summit for Children. Report of the Secretary General*, document A/S-27/3 of 4 May 2001, para. 16, at < <http://www.unicef.org/specialsession/documentation/documents/a-s-27-3e.pdf> > .
14. *We the Children ...*, 2001, *ibid.*, para. 44.
15. *We the Children ...*, 2001, *ibid.*, para. 33.
16. *We the Children ...*, 2001, *ibid.*, para. 26.
17. UNICEF, 2001, *The State of the World's Children 2002*, New York, UNICEF, pp. 9 and 11.
18. *We the Children ...*, 2001, *op. cit.*, para. 33.
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51. Due to lack of resources or vision, post-war reintegration programmes are unable to take in charge, in an appropriate manner, all of these children.
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