Protecting Children in Armed Conflict and Natural Disaster

A guide to the Convention on the Rights of the Child, International Humanitarian Law and complementary mechanisms, principles and programmatic guidelines
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Introduction

The Convention on the Rights of the Child (CRC) is the foundation for the work of Save the Children Sweden (SCS). In emergency situations such as armed conflicts and natural disasters International Humanitarian Law and International Human Rights Law, internationally agreed Humanitarian Principles as well as regional and national laws and declarations are additional instruments that SCS work with in order to enhance the respect for the rights of the child. In emergencies SCS recognises the humanitarian imperative. Increasingly, humanitarian organizations are compelled to operate in war-torn societies where conflicting parties are often openly contemptuous of fundamental humanitarian norms. In such circumstances, a major challenge is the need to safeguard the fundamental rights of children while providing assistance in a manner consistent with humanitarian principles. Though there exists a comprehensive legal framework to protect boys and girls in all situations, there is still need for developing the understanding of how the principles and standards of International Human Rights Law and International Humanitarian Law could be applied to mutually reinforce the respect, protection and fulfilment of the rights of the child.
Executive Summary

Overview

A primary objective of this study is to improve the knowledge of how the Convention on the
Rights of the Child (CRC) and its two Optional Protocols and the Fourth Geneva
Convention and Additional Protocol I and II, as part of International Humanitarian Law
(IHL), complement each other. The study aims to cover emergencies, armed conflicts or
natural disasters, in situations where these instruments apply and to give an account of when
in a given situation CRC and IHL respectively offer the most comprehensive protection for
children. This is reflected in part one of the study.

A secondary objective is to review important international mechanisms, principles and
programmatic guidelines which complement CRC and IHL. Part two of the study presents
such an overview.

The study offers recommendations on how SCS and partners can better use CRC, the
Fourth Geneva Convention and the complementary mechanisms and principles to protect
children.

Part I: CRC, the Optional Protocols to CRC and IHL

Protection of children/civilians

The CRC (1989) is part of International Human Rights Law. The Convention offers
protection for all children below 18 years and is applied both in peace and wartime. Children
are seen as holders of Human Rights with corresponding obligations on States as duty-
bearers. CRC article 38 obliges ratifying states to apply the protections rules of International
Humanitarian Law to children in armed conflict, prohibiting the use and recruitment of
children below 15 years as soldiers.

The Optional Protocol on Children in Armed Conflict (2000) obliges States to raise the
age limit from 15 (CRC) to 18 years for participation in direct hostilities and for recruitment
into armed forces.

The Optional Protocol on Sale of Children, Child Prostitution and Child Pornography

International Humanitarian Law (IHL): the four Geneva Conventions and their
Additional Protocols I and II apply exclusively in situations of armed conflict.

The Fourth Geneva Convention (1949) and Additional Protocol I and II
(1977) protect civilians, persons not or no longer taking part in hostilities. Children, as
civilians, are entitled to the full protection of the IHL. The use and recruitment of child
soldiers defined as children below 15 years is prohibited.

When does the CRC and the IHL offer the best protection for children?
The CRC offers strong and comprehensive protection for all children below 18 years.
Children in their own capacity have individual rights. The IHL protection rules are primarily
adapted to the protection-needs of adult civilians as a group although children, as civilians,
are entitled to the full protection of the IHL rules. Recognizing their particular needs and
vulnerability IHL grants children special protection respect against “any form of indecent
assault”. The CRC’s Optional Protocol’s on Children in Armed Conflict age limit of 18 years for recruiting and using child soldiers offers a higher degree of protection than the IHL age-limit (15 years).

The IHL protection rules for children provide a short term and needs-based perspective on aid and care. The CRC takes a long-term perspective of a child’s development from the very on-set of the emergency/conflict. This allows for the application of “development rights” such as the right to rehabilitation and social integration and education. But the IHL has on the other hand detailed protection rules, not found in the CRC, for critical emergency situations, such as evacuation and family-reunification.

**Are the CRC and IHL mutually supportive or exclusive?**

IHL and CRC both apply in a conflict situation. The rules providing best protection for children in a given situation should apply. The interaction between CRC and IHL should be mutually supportive, rather than exclusive and should always be for the best protection of the child.

**Part 2: Complementary Mechanisms, Principles and Programmatic Guidelines**

New instruments, such as the International Criminal Court (1998) are in place, where crimes against children can be prosecuted as genocide, crimes against humanity and war crimes.

Important programmatic principles such as the Paris Principles (2007) have been adopted for the prevention and integration of child soldiers with a strong focus on programmatic field response.

**The UN Security Council** has firmly placed children in armed conflict on its political agenda. SR (Security Council Resolution) 1539 (2004) lists six categories of grave violations against children to be monitored. SR 1612 (2005) created a Monitoring and Reporting Mechanism (MRM) linking efforts to protect children on every level from the child in the field to the level of political decision-making at the Security Council. Country Level Task Forces of UN actors have the key monitoring function while NGOs can choose to contribute to such monitoring.

**Humanitarian Principles** for International Save the Children and other humanitarian actors are developed and applied, based on the Code of Conduct for the International Red Cross, Red Crescent and NGOs in Disaster Relief, on SPHERE and on HAP.

The past decade has shown much progress in the development of mechanisms, principles and programmatic guidelines to protect children’s rights in conflict situations. Important protection principles and humanitarian principles now also apply for children in situations of natural disasters. However, their implementation is the constant challenge.
Part I: CRC, The Optional Protocols to CRC and IHL

**CRC** was adopted in 1989 and has been ratified by all States except the USA and Somalia. The CRC is one of the Human Rights Conventions and provides strong and comprehensive protection for all children, applicable both in peace and war time; The Committee on the Rights of the Child in Geneva obliges all States having ratified the Convention to submit regular State reports on how the Convention is implemented. The CRC Committee examines each State report and addresses its concerns and recommendations to the State in the form of Concluding Observations. States are obliged to undertake law reform so that all domestic legislation is compatible with the CRC and to see to that such legislation is implemented. NGO’s can provide the CRC Committee with alternative reports on how a State has fulfilled its obligations under the CRC.

The **Optional Protocol to the CRC on Children in Armed Conflict** was adopted in 2000 and entered into force on February 12, 2002. It has to date, December 2009, been ratified by 131 States. This protocol obliges States to raise age limit to 18 years for participation in direct hostilities and for recruitment into armed forces.

The **Optional Protocol to the CRC on the Sale of Children, Child prostitution and Child Pornography** was adopted in 2000 and entered into force on January, 18 2002. It has to date, December 2009, been ratified by 135 States.

**International Humanitarian Law** (IHL) covers the four Geneva Conventions (1949) and their Additional protocols I and II (1977). They apply exclusively to situations of armed conflict. Nearly every State in the world has agreed to be bound by the Geneva Conventions. These rules aim to limit the effects of armed conflict, protecting persons not or no longer taking part in hostilities, restricting the methods and means of warfare and are also binding on organised armed groups. They strike a careful balance between humanitarian concerns and the military requirement of States.

The **Fourth Geneva Convention (GC IV), 1949** and its **Additional Protocol I (P I) 1977** protect civilians during international armed conflict between two State Parties. GC IV protects civilians during occupation.

**Additional Protocol II (P II) 1977** protects civilians during internal conflict (civil war). Children as civilians are entitled to the full protection of the rules of international humanitarian law.

**Monitoring**: The high contracting parties (States) to the Geneva Conventions have a duty to respect and to ensure the respect for the conventions. To a result that States who do not take part in a conflict (third Parties) have an obligation to monitor that the parties to a conflict follow the IHL. The International Committee of the Red Cross (ICRC) is a key component of the monitoring system with a specific international mandate to ensure protection and assistance to victims of war and to encourage states to implement the IHL.

Grave breaches of IHL can be tried under international jurisdiction in ad hoc tribunals.
(Rwanda, former Yugoslavia) or by permanent international criminal tribunals such as the international Criminal Court.

The principles of distinction and proportionality are the key principles for the IHL rules of warfare, see Appendix 1. Due to the changing nature of warfare the implementation of these principles has become a matter of difficulty. The use of aerial bombardment and precision bombing, where collateral damage affects many innocent civilians, is a common feature in modern warfare. Civilians and in particular children are the first victims of these actions. In recent conflicts schools, where children study, have been attacked as so have hospitals where children are treated. Such attacks have been launched regardless of the civilian casualties.

What articles in CRC and IHL are most conducive in the realization of the Rights of the Child?

<table>
<thead>
<tr>
<th>CRC</th>
<th>IHL</th>
<th>Most child-friendly</th>
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<tbody>
<tr>
<td><strong>Definition of a child, art.1.</strong></td>
<td>No definition of a child, 15 years most commonly used in IHL, for death penalty IHL applies 18 years age-limit.</td>
<td>CRC offers protection to a wider age group up to 18 years, IHL normally uses a 15 years age limit.</td>
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<tr>
<td>Below 18 years</td>
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<tr>
<td><strong>Non-discrimination, art.2.</strong></td>
<td>Common art. 3.1, internal conflict, prohibits discrimination. GC IV art. 13 and P.I. art. 75 prohibits discrimination of civilians in international conflicts.</td>
<td>Both the CRC and IHL prohibit discrimination. In IHL children are, as part of the broader group of civilians, protected against discrimination.</td>
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<tr>
<td>All rights to be recognised for each and every child under the jurisdiction of a State Party</td>
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<tr>
<td><strong>Best interest of the Child, art.3</strong></td>
<td>P I art. 77.1. “Children shall be the object of special respect”. P I art. 77 and PII art. 4.3 “State parties to provide the care and aid children require”</td>
<td>CRC: the best interest of the Child “a primary concern”, while IHL primarily focuses on civilians although recognising children’s particular needs. CRC focuses on children as rights holders in contrast to more needs based IHL.</td>
</tr>
<tr>
<td><strong>Right to Life, art. 6.1</strong></td>
<td>Common art. 3.1 a) internal conflicts: “violence to life and person” P I art. 75, civilians, human treatment, protection against violence to life, abuses. P I art.77 children “any indecent assault”. PII art. 4.1.2. same as P I art.75;</td>
<td>The Right to Life is a universal human rights principle and crucial for armed conflicts as they pose a threat to children’s life. Both CRC and IHL reflect this principle and have provisions against abuse and violations essential for the protection of the Right to Life.</td>
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<tr>
<td>For capital punishment, see art 37.</td>
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<tr>
<td><strong>Respect for the views of the Child, art. 12</strong></td>
<td>IHL does <strong>not</strong> mention child participation.</td>
<td>No focus in IHL on child participation; CRC is very eloquent. As children’s views are often neglected in situations of armed conflict CRC art. 12 to be applied in these situations</td>
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<tr>
<td><strong>CRC cluster: Civil Rights and Freedoms</strong></td>
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<tr>
<td><strong>Preservation of identity, art. 8, including nationality, name and family relations</strong></td>
<td>PI art. 78.3: Evacuation: children to be provided with identity card with photo to be sent to the Central Tracing Agency of the ICRC. GC I art. 24: all children under 12 years to wear identity discs.</td>
<td>IHL provides a stronger identity protection than CRC: a detailed guidance on identity cards and on other terms of evacuation.</td>
</tr>
<tr>
<td><strong>Freedom of thought and religion, art. 14</strong> Respect for the rights of the parents to provide direction</td>
<td>Religious education: GC IV art. 24 the exercise of religion and education for orphaned and separated children <em>in all circumstances</em> to be facilitated. GC IV art. 50 (occupation) to provide teachers of same religion. PI art. 78.2, religious education provided “as parents desire”. PII art. 4.3 education, including religious education shall be provided in keeping with wishes of parents.</td>
<td>Both CRC and IHL stress the respect for the rights of parents with regard to a child’s exercise of religion. IHL is more detailed than the CRC in this respect. Note P II art. 4.3, provision for religious education in internal conflict.</td>
</tr>
<tr>
<td><strong>Torture and degrading treatment, art. 37</strong></td>
<td>Common art. 3.1 protects against torture etc. PI art. 75 2. and PII art. 4.2 protects civilians against “torture of all kinds” also corporal punishment PI art. 77.1 protects children against “indecent assault”;</td>
<td>IHL has forceful protection provisions for civilians against torture and degrading treatment. Children as civilians are entitled to full protection. As children are often exposed to torture and degrading treatment CRC can help to focus on the child’s situation and special vulnerability and should reinforce the IHL.</td>
</tr>
<tr>
<td><strong>Capital punishment, art. 37</strong> Prohibition for children below 18 at the time of the offence</td>
<td><strong>Capital punishment:</strong> GCIV art 68 and PI art.77.5 stipulate an absolute prohibition against death penalty for children below 18 at the time of the offence</td>
<td><strong>Capital punishment:</strong> CRC and IHL prohibit death penalty for children below 18 years. An exception from the 15 year age limit for children otherwise applied in IHL.</td>
</tr>
</tbody>
</table>
### CRC cluster: Family environment and alternative care

<table>
<thead>
<tr>
<th>Parental guidance art. 5</th>
<th>Parents have the primary responsibility</th>
<th>CRC and IHL hold the family as the most important entity for protecting a child.</th>
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</thead>
<tbody>
<tr>
<td><strong>Parents</strong></td>
<td>Parents/ the family have the prime responsibility for children,</td>
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<tr>
<td><strong>State party</strong></td>
<td>GC IV, art. 24 and art. 50: care of children who are separated or orphaned: responsibility of the parties to the conflict. GC IV art. 49: avoid separation of families during evacuation and deportation (during occupation). PI art. 78 evacuation to another country; “only temporary and for compelling reasons”, written consent of parents is required. PII 4. e) parents consent, whenever possible, for removing children to safe areas within the country.</td>
<td>CRC and IHL share the principle of non-separation from parents and the keeping together of families. PI, international conflicts has clear and detailed terms for evacuation including the requirement of the consent of parents. IHL provides stronger protection against non-separation for situations of evacuation and can supplement the CRC in this respect.</td>
</tr>
<tr>
<td><strong>Evacuation</strong></td>
<td>GC IV art. 26 dispersed families, each party facilitate enquiries in order to renew contacts between members of families. PI art. 74, the parties must in every possible way facilitate family reunification and encourage work of humanitarian organizations engaged in this task. PII art.4.3.b) reunification in internal conflict. GC IV art 25. all persons to receive and give personal news to family members; Parties to establish an Official Information Bureau and (GC IV art 140) ICRC to assist in setting up a Central Information Agency in a neutral country.</td>
<td>A strong priority for both CRC and IHL. IHL provides strong and detailed guidance for family reunification in situations of armed conflict while CRC is not as specific. The provisions for giving and receiving family news during conflict are more specific and detailed in IHL, providing for functioning and viable institutions specialised in the reunion of dispersed families.</td>
</tr>
<tr>
<td>Prevention of All forms of Abuse and Neglect, art. 19</td>
<td>Common art. 3 in the Geneva Conventions and GC IV art 27, PI art. 75 and PII art. 4.1.2: protection against abuse of civilians (in a non-exhaustive list of prohibited acts) including corporal punishment. PI art. 77.1 “children the object of special respect, protected against any indecent assault.”</td>
<td>CRC art. 19 have more far-reaching obligations on States than IHL and covers a broader range of situations of abuse. Corporal punishment is mentioned in the non-exhaustive list of acts prohibited by IHL.</td>
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<tr>
<td>CRC cluster Basic Health and Welfare</td>
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<tr>
<td>Survival and Development, art 6.2</td>
<td>Common art. 3 and GC IV art 27, PI art. 75 and PII art. 4.1.2 affords protection against abuse for civilians (prohibited acts). PI art. 77.1 children “shall be the object of special respect protected against any indecent assault.” PI art. 4.3 “State parties to provide the care and aid children require”.</td>
<td>CRC has a broad long term perspective on a child’s development including post conflict situations and further development. In contrast the IHL focus is on short-term emergency support measures. The CRS takes a long term perspective for the best interest of the child.</td>
</tr>
<tr>
<td>Health and Health services, art. 24</td>
<td>IHL GC IV art14, Establishment of hospitals and safety zones for protection of vulnerable groups e.g. children under 15. GC IV, art 23 provides for free passage of essential foodstuffs, medical and hospital stores + food clothing and tonics e.g. for children under 15.</td>
<td>IHL has a war-time focus providing for hospitals and safe zones to protect children below 15 from effects of war; free passage of essentials in emergencies. CRC’s more long-term perspective (post-conflict and development) on health and health services complements the IHL.</td>
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<tr>
<td><strong>CRC cluster Education Leisure and Cultural Activities</strong></td>
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<td><strong>Education:</strong></td>
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<td>Access to Education, art. 28.</td>
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<tr>
<td>Quality of Education, art. 29.</td>
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<tr>
<td>GC IV art. 24 facilitate education for separated and orphaned children; art. 50 same target groups (occupation) must make arrangements, art. 94 internment: education must be ensured for children and young people. PII art.4.3 children shall receive an education in keeping with the wishes of the parents</td>
<td>CRC stipulates education as a basic right: access for all children and promotion of quality education. IHL focus is only on access. In IHL education is one of several emergency measures for children (possibly with protective functions). For international conflicts, IHL has a restrictive obligation: “facilitate” for separated and orphaned children only. PII internal conflict, stronger education obligation “children shall receive”. CRC takes a long-term view on education also applicable in emergencies.</td>
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<tr>
<th><strong>CRC Cluster for special protection measures</strong></th>
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<tbody>
<tr>
<td><strong>a) children in emergency</strong></td>
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<tr>
<td><strong>Refugee children, art 22</strong></td>
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<tr>
<td>Asylum seekers and children with refugee status. (IDP children enjoy the full protection of the CRC and national law). For non-separation of families, see art. 9.</td>
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</tbody>
</table>
**Children in Armed Conflict, art 38. 1 and 4.**

“State Parties to respect and apply the IHL rules of protection for civilians, which are relevant to the child.”

See also art. 39.

<table>
<thead>
<tr>
<th>IHL Protection Rules</th>
<th>CRC Obliges States</th>
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<tbody>
<tr>
<td>Common art. 3.1 a): “violence to life and person” internal conflicts.</td>
<td>States to apply the IHL protection rules for civilians relevant to the child.</td>
</tr>
<tr>
<td>GC IV art. 17 and 23 evacuation of children from besieged and encircled areas; free passage of relief for under 15. (non-exhaustive list);</td>
<td>In addition to the articles protecting civilians IHL offers a detailed protection for children under 15 adapted to emergency situations, e.g. evacuation, occupation, free passage of food medical items, family-reunification, care and aid. The IHL can give more detailed guidance than the CRC for such situations.</td>
</tr>
<tr>
<td>P I art. 75, human treatment of civilians, protection against violence to life e.g. murder torture, etc. (non-exhaustive list); PI art. 77 children be object of special respect and be protected against any indecent assault, care and aid; PI art. 78, evacuation;</td>
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<tr>
<td>PII art. 4.1.2. see PI art. 75; PII art. 4.3.c) and e) children be provided with care and aid;</td>
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<tr>
<td>CRC obliges States to apply the IHL protection rules for civilians relevant to the child.</td>
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**Child Soldiers CRC, art 38. 2.3.**

Children under 15 not to take direct part in hostilities or not to be recruited into the armed forces. When recruiting 15-18 give priority to the oldest.

For rehabilitation see art. 39.

<table>
<thead>
<tr>
<th>IHL Protection Rules</th>
<th>CRC Obliges States</th>
</tr>
</thead>
<tbody>
<tr>
<td>PI art. 77 8 international conflict) same as CRC.</td>
<td>Both CRC and IHL have the same provisions with regard to child soldiers. The age-limit is 15 years for both</td>
</tr>
<tr>
<td>PII art. 4.3.c) (internal conflict) same as CRC</td>
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</tbody>
</table>

 CRC, art 38. 2.3. Children under 15 not to take direct part in hostilities or not to be recruited into the armed forces. When recruiting 15-18 give priority to the oldest.

For rehabilitation see art. 39.
**Optional Protocol on the involvement of children in Armed Conflict 2002:**
Covers States and non-state actors. OP raises from 15 to 18 the age for direct participation in hostilities; a ban on compulsory recruitment for under 18. For State parties voluntary enlistment for over 15 years can be considered, but for non-state actors a total ban. Rehab. and social integration of ex-child soldiers. Technical co-operation and assistance.

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<tr>
<th><strong>Rome Statute on International Criminal Court ICC (1998) art 8 on child soldiers. ILO Convention 182 (1999);</strong> (See also the African charter on the Rights and Welfare of the Child)</th>
<th>The recruitment of <strong>under 15</strong> and using them in hostilities is defined as a war-crime</th>
<th><strong>Optional protocol:</strong> A significant higher level of protection than CRC and IHL. OP an obligation of the ratifying States. 18 years age limit. Rehab and social integration of ex-child soldiers. Technical cooperation and financial assistance Non-state actors (armed groups) are bound and to respect an absolute 18 years limit (problem of enforcement as these actors cannot ratify to OP). By empowering the ICC and opening up for the prosecution as a war crime the prohibition against recruiting and using child soldiers under 15 can for the first time be enforced. <strong>ILO convention:</strong> forced or compulsory recruitment of children are the” worst form of child labour”.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical and psychological recovery and social reintegration of child victims, art. 39.</td>
<td>For relevant IHL articles see below under sexual exploitation IHL protects against abuses and violations of civilians, but no provisions for recovery and integration, only care and aid for children.</td>
<td>CRC art. 39: both conflict and post-conflict situations advocating for all appropriate measures for recovery of victims; so does OP for ex-child soldiers; IHL does not stipulate any recovery or integration measures so CRC supplements this gap in IHL.</td>
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<tr>
<td>b) children in conflict with the law</td>
<td>For relevant IHL articles see below under sexual exploitation IHL protects against abuses and violations of civilians, but no provisions for recovery and integration, only care and aid for children.</td>
<td>CRC art. 39: both conflict and post-conflict situations advocating for all appropriate measures for recovery of victims; so does OP for ex-child soldiers; IHL does not stipulate any recovery or integration measures so CRC supplements this gap in IHL.</td>
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<tr>
<td><strong>CRC, administration of Juvenile Justice, art. 40;</strong> Children deprived of liberty art. 37, b,c,d; Sentencing of Juveniles art. 37 a; Recovery and integration art. 39.</td>
<td>Common art 3 stipulates human treatment for civilians. GC IV art. 27, human treatment of civilians. P I art. 75, human treatment of civilians,(any indecent assault), PI art. 77: children be object of special respect and be protected against any indecent assault, care and aid because of age or other circumstances; if arrested detained or interned children to be held in separate quarters from adults. PII art. 4.1.2. civilians protection against cruel treatment, corporal punishment. PII art. 4.3.children be provided with care and aid; GC IV art. 76, special treatment of minors when detained or convicted during occupation; GC IV art.119, internation.</td>
<td>CRC offers a more focused and detailed protection for children in conflict with the law. IHL focus primarily on protection of adult civilians against assaults and abuse during arrest or detention. Although these rules apply to children they are not adapted to the special protection needs of children in these situations. So here CRC offers better protection. The core principle of non-separation of children from adults if arrested or detained is included in both CRC and IHL.</td>
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<tr>
<td><strong>c) children in situations of exploitation, including recovery and social integration</strong></td>
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<td><strong>Economic exploitation, including child labour, art. 32</strong></td>
<td>GC IV art. 51, occupation, civilians under 18 should not be compelled to work only under specific conditions. PII art. 4.r c) prohibition of slavery For child soldiers see ILO convention 182 on worst forms of child labour. IHL prohibition against slavery also includes child labour.</td>
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<tr>
<td><strong>Sexual exploitation and sexual abuse, art 34; See Torture and degrading treatment, art. 37</strong></td>
<td>Common art. 3 protection against abuses “cruel and degrading treatment.” GC IV art. 27 “respect for persons, honour…” PI art. 75: non-exhaustive list of prohibited acts torture, enforced prostitution. PI art. 77.1 Children protected against any indecent assault. PII art. 4.2 (internal conflict) civilians: non-exhaustive list: torture, rape, enforced prostitution and slavery. PII art. 4.3 Children: care and aid. CRC offers more child focused and comprehensive protection with the right to recovery and integration for exploited children. The obligations for State parties are more far-reaching. IHL offers short-term protection for civilians, including children, against a broad range of grave abuses related to sexual violence and prostitution. IHL child focus: “indecent assault, care and aid”.</td>
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<tr>
<td><strong>Optional Protocol to the CRC on sale of children, child prostitution and child pornography, 2002. Rome Statute of the International Criminal Court, art. 7. Rape, sexual slavery enforced prostitution and other grave forms of sexual violence are defined as crimes against humanity.</strong></td>
<td>The Optional Protocol offers a up-dated and improved protection against sale of children, prostitution, child pornography and sex-tourism, all abuses frequent in emergencies. Rome Statute of ICC. By for the first time opening up for the prosecution of these violations as crimes against humanity the Rome statute strongly reinforces the prohibition against grave forms of sexual violence.</td>
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<tr>
<td><strong>Sale, trafficking and abduction, art. 35</strong></td>
<td>PI art. 78 strict rules and terms for evacuation of children to a foreign country CRC and OP offer far better protection against sale and trafficking, being more updated and relevant. Evacuation rules in IHL are supportive to CRC and OP on sale of children as they can contribute to the prevention of sale trafficking and abduction</td>
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</table>
Conclusions

**CRC and Protection of children**

The CRC of 1989 is more recent than IHL of 1949 and 1977. It is applicable in both peace and war-time for children up to 18 years. It promotes four core principles: the best interest of the child, the respect for the views of the child, non-discrimination and survival and development. Children are seen as holders of Human Rights with corresponding obligations on States as duty-bearers. CRC article 38 is a key article. It obliges States to apply the IHL protection rules to children in armed conflict and prohibits the use and recruitment of child soldiers below the age of 15. The OP on Children in Armed Conflict, 2002, offers a significantly higher level of protection than both CRC and IHL, e.g. 18 years limit, rehabilitation and integration of ex-child soldiers and technical cooperation. The Rome Statute for the International Criminal Court opens up for the prosecution of the recruitment and use of child soldiers under 15 as a war crime.

**IHL and Protection of children**

Most of the IHL protection rules are primarily adapted to the protection of adult civilians, but children are entitled to the full protection of the rules of IHL. Recognizing their particular needs and vulnerability IHL grants children respect and special protection against any form of indecent assault and sets a minimum age (15 years) for participating in armed conflict. IHL avoids a formal definition of a child but uses an age limit of 15 years. IHL focuses on protection of civilians against abuse and violations, torture, rape, prostitution etc. For children IHL offers a short term and needs-based perspective on aid and care. The CRC core principal on the right to child-participation is not mentioned in IHL. IHL have protection provisions for particular emergency situations which do benefit children. These are: detailed rules and terms for evacuation, detailed rules for family reunification and tracing of families (also institutions for news on families), establishment of hospitals and safe zones, the free passage of food medical and hospital stores and detailed rules for the protection for civilians during occupation and internation.

**CRC and IHL, mutually supportive or exclusive in times of armed conflict?**

The IHL and CRC both apply in times of conflict. If IHL provides more detailed and appropriate provisions for children in a given conflict situation it overrides the norms of CRC. Similarly more comprehensive and child focused CRC standards will override the IHL to complement less child-focused rules of IHL. As has been detailed above the interaction between IHL and CRC is often mutually supportive and should in most cases not be seen as mutually exclusive or contradictory.

*Save the Children Sweden’s (SCS) Strategic Framework 2009 -2012, Emergencies*

In SCS Strategic Framework for Emergencies 2009-2012, the right to protection and education are a priority.

**The right to protection** in the SCS Strategic Framework covers protection from family separation, recruitment into armed forces, sexual exploitation and gender based violence, physical harm and right to psychosocial support. CRC (art. 9, 10) and IHL share the principle of non-separation of families and family reunification, IHL providing a more detailed protective guidance including for evacuations and family tracing. The CRC, OP and
IHL protection rules against recruitment and use of child soldiers have been detailed under CRC and protection of children. The CRC (art. 19, 34, 37, 35) and the Optional Protocol on Sale of Children, Child Prostitution and Child Prostitution (2002) offer a child focused and comprehensive protection against abuse, sexual exploitation and gender based violence and human trafficking. The CRC and the OP’s on children in armed conflict and on sale of children include the right to recovery and social integration of children, not found in IHL, and offer better long-term protection and prospects for post-conflict development. Both IHL and CRC have forceful protection provisions against physical harm amounting to torture but here CRC can re-enforce the IHL by focusing on the child’s situation and special vulnerability.

**The right to education** (art. 28, 29) as defined in SCS’s strategic framework 2009-2012 focuses on child protection, access and quality. CRC stipulates access for all children while IHL has more restrictive obligation for international conflicts “facilitate for separated and orphaned children” only. CRC takes a more inclusive and long-term view of education linking it to post-conflict and development work. IHL sees education as a short term measure during on-going conflict.

**SCS and the long-term development perspective**

In SCS emergency work it is imperative to take a long-term perspective already at the onset of an emergency. The CRC, the OP’s and the IHL offer the rights-based framework for SCS’s emergency work. Here CRC would be most supportive as the Convention takes a broad long-term perspective on a child’s development including for post conflict situations and development work. IHL limits its scope to conflict situations focusing on imminent threats and needs of civilians, providing short-term emergency support for children.
Part 2: Complementary Mechanisms Principles and Programmatic Guidelines

The 1951 UN Convention on the Status of Refugees

The Refugee Convention and its 1967 Protocol is the key international legal instrument in defining who is a refugee, their rights and the legal obligations of ratifying States. The same standards apply for children as for adults.

A refugee is: a person who crosses a national border and flees from his country because of “a well founded fear of being persecuted “for reasons of “race, religion, nationality, membership of a particular social group or political opinion”.

Signatory States, now 147, are obliged to give international protection/refugee status under these circumstances. States shall grant children access to asylum processes and other complementary protections irrespective of their age. In particular the refugee definition in the Convention must be interpreted in a age and gender sensitive manner, taking into account particular motives for, and forms and manifestations of persecution experienced by children.

Unlawful recruitment and use of children as soldiers is one child specific form of persecution which might grant refugee status. Key provisions are:

- A person/child who holds refugee status has the right to work, to receive education, to movement and to freedom of religion.
- A person/child who holds refugee status cannot be returned to a country where he fears persecution (the principle of non-refoulement).
- Children should have the same access as adults to social welfare and legal rights. Refugees must receive the “ same treatment” as nationals in primary education.


Internally displaced children and their families may have fled for the same reason as refugee children, but they remain inside their own country and are still subject to national laws. They, like anyone else, benefit from the legal protection of international human rights law and, in situations of armed conflict, international humanitarian law. However, IDPs do not benefit from the specialised protection of international refugee law because they have not crossed an international border. The fact of being displaced from their homes but still within national borders makes IDPs particularly vulnerable to human rights abuses and neglect.

The Guiding Principles, presented to the UN in 1998, are consistent with and based on international humanitarian law and human rights law. They should apply to all programmes for internally displaced children and their families. They apply to armed conflict situations and to emergencies due to natural disasters e.g. climatic change. A number of UN agencies, e.g. UNICEF and UNHCR have incorporated the Guiding Principles into their policies. Regional organisation such as the African Union, ECOWAS, OAS use these principles. According to the guiding principles IDPs children should receive special protection, in particular unaccompanied minors, and have a right to education, free and compulsory on the primary level.
**Humanitarian Principles guiding NGOs emergency work**

These are a set of principles related to emergency response, natural disaster and armed conflict. They govern the way humanitarian response is carried out.

The **Humanitarian Principles for Save the Children Alliance** reflect 3 sets of standards:

1. **Code of Conduct for the International Red Cross, Red Crescent and NGOs in Disaster Relief based on the guiding principles of:**
   - **Humanity**: all humans should be treated humanely in all circumstances by saving lives and alleviating human suffering;
   - **Impartiality**: humanitarian assistance must be impartial and non-discriminatory, based on needs alone;
   - **Independence**: humanitarian agencies must formulate and implement their policies independently of government policies or actions;

   adding that:
   - Humanitarian response should attempt to build disaster response on local capacities;
   - Ways should be found to involve programme beneficiaries in management of relief;
   - Information activities should recognise victims as dignified human beings, not as powerless objects;
   - Relief aid must strive to reduce future vulnerabilities to disaster and meet basic needs;
   - Culture and custom must be respected;
   - Accountability must include both beneficiaries of disaster relief and donors;

2. **SPHERE, Humanitarian Charter and Minimum Standards in Disaster Response**

   The aim of Sphere is to improve the quality of assistance to people affected by disaster, to improve the accountability of states and humanitarian agencies to their constituencies, to donors and to the affected population. The Sphere initiative includes humanitarian actors such as international and national NGOs, ICRC, UN agencies, host governments and affected populations. The Sphere Minimum Standards include:

   active participation of the disaster affected population; initial assessment whether an external response is required; assessment and analysis of the need for external humanitarian response; humanitarian assistance is provided equitable and impartially; principles for effective monitoring and evaluation, aid workers have appropriate competencies and responsibilities and receive appropriate supervision, management and support.

3. **Humanitarian Accountability Partnership (HAP)**

   Principles for Humanitarian Action include principles for humanity, impartiality, informed consent, duty of care, witness, transparency, independence, neutrality, complementarity. HAP has developed benchmarks for its standards.

**Internal codes of conduct**

Organizations, including Save the Children Sweden, have developed internal codes of conduct for their humanitarian workers in order to prevent abuse of the beneficiaries in particular sexual abuse of women and children.
The International Criminal Court (ICC) 1998

The International Criminal Court (ICC) is the first independent and permanent international court established, prosecuting individuals accused of the most grave breaches of international law: genocide, crimes against humanity and war crimes. The Rome Statute, which established the ICC, was signed in 1998 and came into force on 1 July 2002. The court is not allowed to prosecute any crimes committed before 2002. To date 108 States are members of the court having ratified the Rome Statute. They agree to prosecute crimes listed in the Statute where these crimes are committed on their territory or where they are perpetrated by one of their nationals. The ICC does not replace national courts but is complementary to national criminal jurisdiction.

All crimes under the ICC’s jurisdiction affect children. Three crimes are of particular concern:

- **Genocide** includes the forcible transfer of children from one group to another with the intention of destroying a particular national, racial, ethnic or religious group.
- **Crimes against humanity** include trafficking of children, rape, sexual slavery, enforced prostitution any other form of sexual violence.
- **War crimes** include recruiting and using children under 15 in armed conflict, attacking schools or hospitals and wilfully starving a population as a method of warfare.

One of the most significant achievements of the Rome Statute is making the enlistment and use of child soldiers a crime under international law. To date there are on-going procedures against for example against DRC warlord Thomas Lubanga, the first person to be charged for recruiting children as a war crime.

Only States can bring cases to the court. NGOs may give testimonies, although this can present challenges to the impartial position of NGOs, as the ICC is seen as a political body by some State actors.

The Graca Machel Reports


The Graca Machel report of 1996 made the foundation for the children and armed conflict agenda. One important finding was that adults were increasingly recruiting children as soldiers. The study provided detailed proposals on how to end recruitment of child soldiers. The Graca Machel study + 10, “Children and conflict in a changing world” (2007) had as an aim to provide a visionary and forward looking platform to address issues of children and armed conflict for the next 10 years. The report found that since the release of the first Machel study in 1996, the context of conflict had changed dramatically. Diverse forms of political and armed violence presented new threats to the protection of children. The indirect consequences of war, loss of education, health, sanitation, rise of poverty had, according to the report, been overlooked and needed a future focus and a programmatic response.

The Special Representative for Children and Armed Conflict

As a result of the first Machel report a Special Representative for Children and Armed Conflict was appointed in 1997 by the UN Secretary General. The present UN Special Representative fulfils a respected international function, high-lighting and addressing a number of current concerns affecting children in armed conflict and in emergencies.

A extensive global review of the “Cape Town Principles of 1997” undertaken by UNICEF in 2005-2006 resulted in a high-level conference in Paris in 2007. Here 58 States, including a number of conflict-affected countries, 70 intergovernmental organizations and 30 NGOs gave a broad endorsement to “the Paris Commitments” and to “the Paris Principles.” These provide comprehensive guidelines for all and every category of children associated with armed groups (child soldiers). The Paris Principles have a strong focus on programmatic response, providing detailed guidance to practitioners implementing programmes in the field, in particular for the process of reintegration of child soldiers.

The objectives of the Paris Principles are:

- To prevent unlawful recruitment or use of children,
- To facilitate the release and demobilization of children associated with armed forces and armed groups,
- To facilitate the reintegration of these children,
- To ensure the most protective environment for children and to prevent discrimination of girls used as child soldiers.

The principles are based on lessons learned from global experiences in implementing programmatic interventions. Such interventions have proved that reintegration programmes must be inclusive, be family and community based and directed to all children in the community.

The UN Security Council and Resolution 1612

In the last decade the UN Security Council began to pay sustained attention to the issue of children in armed conflict as it realised that the use of children in armed conflict had serious consequences for peace and stability and that conflict creates refugee flows and displaced families contributing to regional and international instability. As a result the Security Council has gradually become very proactive. The Council has since 1999 adopted a sequence of resolutions on children in armed conflict: SR 1261 (1999); 1314 (2000); 1379 (2001); 1460 (2003); 1539 (2004); 1612 (2005); 1882 (2009).

In SR 1539 (2004) the Council listed six categories of grave violations against children to be monitored: killing and maiming of children; recruiting or using child soldiers; attacks on schools and hospitals; rape or other grave sexual violence against children; abduction of children; denial of humanitarian access for children.


The Security Council Working Group is mandated to:

- Review the reports of the Council’s Monitoring and Reporting Mechanism,
- Look at progress made by groups in the Secretary Generals list to stop recruitment and use of children in armed conflict,
- Make recommendations on how to promote protections measures,
- Review and make recommendations on country reports concerning countries listed in the “name and shame” lists (Annex I and II lists).
The Security Council and the WG uses two lists for “name and shame” of governments or armed groups who recruit or use children as child soldiers, and, since 2009 (SR 1882) who are responsible for the maiming and killing of children and/or perpetrate grave sexual violence against children in wartime. These lists are attached to the Report on Children in Armed Conflict (Appendix 1 and II) which the UN Secretary General presents annually to the Security Council. The lists have proved to be an effective tool for naming and shaming those responsible.

The Monitoring and Reporting Mechanism (MRM) is a new procedure to collect organise and verify information to be channelled through the UN system. In each listed country, where children in armed conflict is an issue, the Secretary General has designated a country level task force of UN actors. It is charged with the key monitoring function and cooperates with government. Only in a few cases the task force includes international and local NGOs. The task force gathers field information and reports on the six violations. Its reporting goes to the Special Representative for Children in Armed Conflict, the Secretary General, the Working Group and the Council. The MRM is implemented in a number of the countries listed in Annex I and II: Afghanistan, Burundi, Central African Republic, DRC, Myanmar, Nepal, Somalia, Southern Sudan and Darfur, Chad, Colombia, the Philippines, Sri Lanka and Uganda. Due to the listing criteria UN actors on the ground can now enter into dialogue with armed forces and groups on action plans to halt listed violations and bring perpetrators to account. This has resulted in release of children recently in the Philippines and the Central African Republic.

Save the Children has mandated each country office to decide at country level to what extent they should contribute to the MRM.

Children in armed conflict are now included in the Council’s fact-finding missions and in many country-specific reports addressing the Council. Child protection advisers have become part of peace-keeping missions and peace-keeping personnel are trained to be sensitive to the needs of children in situations of armed conflict.

The European Union’s Guidelines on Children in Armed Conflict

The EU Guidelines on Children in Armed Conflict were adopted in 2003 and revised in 2008. The objective is to take effective measures to protect children from the effects of armed conflict and to influence non-EU countries and non state actors to implement protective international human rights norms and IHL. The guidelines address in particular violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence, abduction of children and the measures to combat them taken by the parties. The EU is committed to act through monitoring and reporting by heads of EU missions, military commanders and special representatives, diplomatic initiatives, multilateral cooperation and crisis management.

The EU regularly assess how the guidelines are being implemented. In 2006 an implementation strategy was adopted and guidance and instructions on protecting children from war were issued to EU missions in the EU priority countries, currently Afghanistan, Burma, Burundi, Colombia, Ivory Coast, DRC, Liberia, Nepal, Philippines, Somalia, Sri Lanka, Sudan and Uganda, and its special representatives in conflict areas. The EU will address the recruitment and use of child soldiers in its recurrent political dialogues with governments.
Conclusions

The past decade has shown much progress in the development of mechanisms, principles and programmatic guidelines to protect children’s rights. New instruments such as the International Criminal Court are in place, important programmatic principles such as the Paris Principles have been adopted, and States and UN and regional bodies have committed themselves to monitor violations against children in armed conflict. Important protection principles and humanitarian principles now also apply for children in situations of natural disasters. However, one main problem is their slow implementation.

The International Criminal Court is a milestone in international justice for children crimes committed against children can now be prosecuted as genocide, crimes against humanity and war crimes. NGOs role is limited to giving testimonies.

The Paris Principles is one of the most comprehensive documents on the prevention and integration of children associated with armed groups. They are ground-breaking as they seek to ensure that the broad international commitment is translated into real on-going protection programmes on the ground for children.

UN Security Council has placed children in armed conflict on its political agenda. The potential of the recently established Monitoring and Reporting structure is major as it links efforts to protect children in conflict on every level, from the child in the field to the political decisions of the Security Council. A major gap is a lack of child participation in the reporting mechanism, children are only heard as witnesses or victims. To date there has been a strong emphasis on the reporting of recruitment of child soldiers so the reporting on the other five categories of grave violations has been limited. As of 2009 the maiming and killing of children and grave sexual violations have been added the “name and shame” list. This expansion may in due time result in effective measures to stop these grave violations. As the mechanism has been operating only since 2005 it still remains to be fully implemented.

NGO’s role. There remain many gaps and challenges in the implementation and monitoring of these recent positive developments for children. For the full use and implementation of these mechanism and principles NGOs, international and national, have an important role to play constantly reminding states and UN bodies of their international and national commitments and contributing to the full coverage and reporting of violations against children.
Recommendations

1. Child participation should be of a primary concern in emergencies

Recommendation:
- NGOs to facilitate and advocate for the meaningful and ethical participation of children in emergencies.

2. IHL and CRC. The main problem is the lack of respect for and non-implementation of these rules in war-affected countries

Recommendation:
- NGOs to take on the task of reporting on violations to the Committee on the Rights of the Child, to the State parties to the Geneva conventions, to the relevant complementary mechanisms, and, if feasible, advocate towards national governments for the respect of IHL and CRS and the OP’s.

3. The 1951 Refugee Convention

Recommendation:
- NGOs to consider advocating that unlawful recruitment and use of children as soldiers could be one child specific form of persecution which may grant refugee status.

4. The International Criminal Court

Recommendation:
- NGOs to give testimonies to the ICC provided they don’t challenge the impartial position of NGOs;
- NGOs to advocate for ratification of the Rome Statute towards States not yet having ratified and for the implementation of the Rome Statute into national law.

5. The Paris Commitments and Principles

Recommendation:
- NGOs to use and to spread the guidelines of the Paris principles to practitioners in the field.
- NGOs to encourage States committed to the Paris Principles to follow up on national implementation of the principles,
- NGOs to encourage States to advocate for the implementation of the principles in relevant fora.
6. The UN Security Council and SR 1612

Recommendation:
NGOs in the war affected countries.

- To link up with the UN country level task forces in respective countries to contribute to full the coverage and reporting of violations, to ensure child participation in the monitoring and reporting mechanism, to report fully on all six listed categories of grave violations.
- To report to the UN Security Council fact finding missions.
- To liaise with child protection advisers in peace-keeping missions.

7. EU Guidelines on Children in Armed Conflict

Recommendation:
- NGOs to call on EU member governments and EU institutions to fulfil their commitment to address the violations and abuses against children as detailed in the Guidelines on Children in Armed Conflict.
Appendix

Appendix 1

Basic principles of International Humanitarian Law
The principle of distinction requires that attacks can only be launched against military targets. The parties must at all times distinguish between civilians, who are protected persons, and combatants and between civilian objects and military objects. Today this is more complicated as civilians might take part informally in hostilities, guerilla warfare etc. Civilian targets are often claimed by the parties to store weapons or being used for military purposes. Still effective compliance remains as urgent as ever.

The principle of proportionality requires that the military gain of a particular operation be proportional to the likely or actual civilian losses incurred in carrying it out. For a military target to be legal it must make an effective contribution to military action and offer a definite military advantage. Indiscriminate attacks are always prohibited as for example attacks which are not directed at a specific military target.
Appendix II

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