


Legal Reform of the Penalty for Crime of Recruiting and Involving Children in Armed Conflicts in Light of the Provisions of IHL

Etesam Alabd S. Alwheebe ^a  , Hosameldin H. Ismail ^a 

^a Northern Border University, College of Business Administration,
Arar, Saudi Arabia

 corresponding email: catsam.salem@nbu.edu.sa

Abstract

The study seeks to clarify the extent of the effectiveness of punishment for the crime of recruiting children and their involvement in armed conflicts, and it has been stipulated in the framework of the statute of the International Criminal Court (ICC) that the recruitment of children and their participation in armed conflicts, a war crime that requires individual criminal accountability, but the phenomenon of child soldiers is still continuing and a source of concern for the international community. Although international law criminalizes the recruitment and use of children in military operations, it needs concerted efforts to eliminate it, as the legal framework for this phenomenon does not currently require additional development of its

rules as much as it needs to activate and apply these rules, in addition to activating the punitive policy through Effective and deterrent penalties to curb this crime as a war crime and to prosecute its perpetrators, The problem, then, is not one of legislation, but one of implementation. Children often pay a very high price during armed conflicts, as they suffer the direct and indirect consequences of hostilities. Children's participation in armed conflicts has been a widespread phenomenon since antiquity. Therefore, the international community had to intervene to protect them and prohibit their recruitment. Global efforts have been made to eliminate the phenomenon of recruitment and use of children in military operations by prohibiting the recruitment of children in many international documents.

Keywords *The Crime of Child Recruitment, International Humanitarian Law, International Criminal Responsibility, International Criminal Court, Effectiveness of International Criminal Sanctions*

Introduction

The recruitment of children into armed forces and their involvement in armed conflict has become a critical humanitarian and legal issue, attracting the attention of numerous international organizations and bodies.¹ Such practices are clear violations of International Humanitarian Law (IHL) and are considered war crimes. Specifically, the recruitment of children is listed as a grave offense under the Rome Statute of the International Criminal Court (ICC), as it represents a severe breach of children's fundamental rights, particularly the right to life.² It also exposes children to significant psychological and

¹ Wouter Vandenhoe, Stephan Parmentier, and Ilse Derluyn. "Editorial introduction: international law on children and armed conflict: the interface between various normative frameworks." *Human Rights & International Legal Discourse* 5, no. 1 (2011): 2-13; Jenny Kuper, "Children and armed conflict: some issues of law and policy." In *Revisiting Children's Rights*. Leiden: Brill Nijhoff, 2002, pp. 101-113.

² See David M. Rosen, "Child soldiers, international humanitarian law, and the globalization of childhood." *American Anthropologist* 109, no. 2 (2007): 296-306;

physical harm, arising from their participation in military operations between conflicting parties.

The use of children in armed conflicts has become a disturbing and widespread phenomenon in various parts of the world. Governments and non-state actors alike exploit children by forcing them into combat, training them to kill, using them to transport weapons and equipment, or even utilizing them as spies or informants. In return, these children are often provided with basic necessities such as food, clothing, and shelter—further deepening their vulnerability and exploitation.

Armed conflicts and wars have proliferated in recent decades, accompanied by the advancement of weapons and warfare tactics. As a result, it has become increasingly easier for children to be recruited, armed, and thrust into violent conflict.³ The number of children killed, injured, or forcibly recruited as soldiers has skyrocketed, with hundreds of thousands now being exploited in this way. This alarming trend has prompted international law, including the International Criminal Court (ICC), to grant special protections to children, recognizing their vulnerability as a particularly at-risk group in times of war.⁴

The ICC has classified the recruitment of children, whether voluntary or forced, as a grave war crime. The scope of this criminalization extends to both international and non-international armed conflicts, underscoring the severity of such violations as one of the most serious threats to international peace and security. In response, international legal frameworks have placed strong emphasis on safeguarding children, making their recruitment, use in combat, and exploitation in war crimes punishable offenses under international law.

Naturally, scholars were inclined to pursue research relating to the recruitment and use of children in armed conflicts or under the popular

Howard Mann, "International law and the child soldier." *International & Comparative Law Quarterly* 36, no. 1 (1987): 32-57.

³ See Peter Warren Singer, *Children at war*. University of California Press, 2006; Rosen, David M. *Armies of the young: Child soldiers in war and terrorism*. Rutgers University Press, 2005.

⁴ See Barbora Holá, and Thijs B. Bouwknecht. "Child soldiers in international courtrooms: Unqualified perpetrators, erratic witnesses and irreparable victims?." In *Research Handbook on Child Soldiers*. London: Edward Elgar Publishing, 2019, pp. 350-373.

caption “*child soldiers*”.⁵ The common feature in most of these studies is the inclusion of a detailed analysis of the legal framework. In the process of interpreting the legal provision. Existing legal standards are said to be “*insufficient by themselves and concurrently the international community needs to improve enforcement to meet these insufficient standards*”.⁶

Using the label ‘*child soldier*’ carries with it significant political sensitivities and legal concerns. The recruitment and use of children formed the original basis of the UN Secretary-General’s listing process for ‘*naming and shaming*’ armed forces and groups that commit violations of children’s rights and protections. The recruitment and use of children is considered an international emergency that signals the failure of a state to protect its population, necessitating outside intervention.⁷

Furthermore, many countries in the world are witnessing armed conflicts and thousands of children are subject to grave violations of their basic rights as civilians first and as the protected groups second, where the warring parties from the regular forces of states and armed groups are supposed to respect them. Moreover, these countries and groups resort to recruiting these children into their ranks to carry out various tasks, starting with cleaning and ending with fighting or even repeated rape, as happens with girls among them. Accordingly, this new old phenomenon has never faded, but rather witnesses ups and downs, and it is, unfortunately, that this new old phenomenon is still strongly present in various regions of the world despite the establishment of international legal mechanisms to protect it nearly three decades ago.⁸

⁵ Roufaida Abdel Latif, “The Crime of Recruiting Children into Armed Conflicts”, *Thesis*. (Algeria, 2021); Hala Muhammad Salim Zouda, and Masoud Wissam Hammad, “The role of the International Criminal Court in Examining Recruitment Crimes Children”, *Tishreen University Journal for Research and Scientific Studies: Economic and Legal Sciences Series* 39, no. 9. (2017): 451-470. Janan Tabak, *The child and the world: child-soldiers and the claim for progress*. (Athens, GA: The University of Georgia Press, 2020).

⁶ Sandhya Nair, “Child soldiers and international Criminal Law Is the existing legal framework adequate to prohibit the use of children in armed conflict”. *Perth International Law Journal* 2 (2017): 40-54.

⁷ Janan, *The child and the world: child-soldiers and the claim for progress*.

⁸ The UN Security Council addresses issues involving children and armed conflict, highlighting their vulnerability in war-torn regions. Reports detail instances of

Research on recruitment of child soldiers has demonstrated both that children join armed groups in an attempt to access resources offered by armed groups, and that armed groups take advantage of poverty to entice recruits.⁹ The insecurity that results from an environment that is controlled by gangs can lead children to believe that the only safe options were to either hide in their houses, or voluntarily join a gang. Children may join armed groups for similar reasons, viewing them as a safer alternative.¹⁰

The crime of child recruitment can be defined as the act of integrating a person who does not meet the age requirement into the armed forces or the ranks of armed groups for the purpose of his participation in the war effort. Accordingly, a child soldier can be defined as every person who has not completed eighteen years of age who belongs to an organized or unorganized armed group or forces, regardless of the nature or purpose of this organization¹¹.

The crime of recruiting children also means the actual involvement of one or more persons under fifteen years of age in combat operations during armed conflicts by regular armies and governmental

recruitment by armed groups, sexual violence, and attacks on schools. These cases emphasize the urgent need for protection and support for affected children. The Council aims to hold accountable those responsible for such violations and to implement measures that safeguard children's rights during conflicts. By raising awareness and fostering international cooperation, the Security Council seeks to create a safer environment for children and promote peacebuilding efforts in affected areas. *See* Children and armed conflict Report of the Secretary-General (A/70/836–S/2016/360). *See also* Report of the Secretary-General on children and armed conflict in Somalia (S/2016/1098); Report of the Secretary-General on children and armed conflict in Colombia (S/2016/837); Report of the Secretary-General on children and armed conflict in the Central African Republic (S/2016/133).

⁹ R. Tynes, *Tools of war, tools of state: when children become soldiers*. (Albany: SUNY Press. 2019). pp. 15–17.

¹⁰ Roos Haer, "Children and armed conflict: looking at the future and learning from the past." *Third World Quarterly* 40, no. 1 (2019): 74–91.

¹¹ Badr al-Din Muhammad Shibl, *Objective International Criminal Law, A Study of the Structure of the Objective International Criminal Rule*. (Jordan: House of Culture, 2011).

and non-governmental armed forces¹². It also means the involvement of the child directly or indirectly when armed conflict erupts, whether he is recruited by force or not, he is away from his family environment to be transferred to training centers in order to learn martial arts and the use of weapons¹³.

Children are also more easily brainwashed into committing acts like suicide bombing¹⁴. Hence, child soldiers provide various advantages to armed groups that they might not get from adult soldiers. It should be noted that these children are no longer just victims of these conflicts but have become positive roles in contemporary armed conflicts and actively participate in them.

Upholstering children is giving them the official capacity to fight in regular national forces, so they fight in the name of the state party to the armed conflict, or irregular forces, whatever capacity they take, and it also includes girls who are recruited for sexual purposes and forced on marriage, the character of a recruited child goes beyond a child who is carrying a weapon or was a carrier only¹⁵. In other words, armed forces or armed groups integrate and include a person under fifteen in their ranks for the purpose of their involvement in military operations¹⁶.

Between 2005 and 2022, more than 315,000 grave violations were verified against children, committed by parties to conflict in more than 30 conflict situations across Africa, Asia, the Middle East, and Latin America. The actual number is undoubtedly far higher as access and security constraints, as well as the shame, pain and fear that

¹² Sherif Atlam, *International Criminal Court, Constitutional and Legislative Harmonizations: Draft Model Law*, (International Committee of the Red Cross, 2006)

¹³ Malika Akham, "Protecting Children in Case of Armed Conflict", *Thesis*. (University of Saad Dahlab, Blida, 2010).

¹⁴ Andrew Fraser, "Martyrdom's Children: The Tragedy of Child Suicide Bombers in Afghanistan". *Canadian Military Journal* 17, no. 3 (2017): 40-52.

¹⁵ Ben Turquia Nassira, "Legal Center for Children in Armed Conflict", *Thesis*. (Algeria: University of Mostaganem, 2017).

¹⁶ Ziad Muhammad Salama Jafal, "The Role of the International Criminal Court in Preventing the Phenomenon of Child Combatants", *Strategic Visions Journal University of Science for Technology United Arab Emirates* 4, no. 13 (2017).

survivors suffer often hamper the reporting, documentation and verification of these violations¹⁷.

Essentially, what instigates recruitment is the indifferent attitude of the state leaders or those holding vital positions in the state governance. Driven by the greed for political power, wealth, control over territory and property, these individuals holding key positions in the state hierarchy are prepared to use children as expendable commodities for their selfish gains. Yet, these perpetrators are quick to blame the law as being weak and inconsistent or they blame previous the colonial masters for inequality and poverty and other socio-economic drawback. The accumulative effect is that there is a blatant disregard for the implementation and enforcement of these laws on the ground. Meanwhile, previous studies too have not been of much help as they have overlooked the need for highlighting the critical role of the law in protecting children. Besides there has been very little public pressure, especially from the intellectuals, demanding the immediate implementation and enforcement of the law. If this happens, perhaps, child soldiers would be able to see a glimpse of light at the end of the tunnel. With that in view, this study shall continue to rally support for the instant implementation of the law in all conflict-stricken zones.

When examining the position of international humanitarian law related to child soldiers, it becomes clear to us that the child soldier was not defined in the four Geneva Conventions of 1949 nor in the two Additional Protocols of 1977, and some jurists believe that the matter was deliberate and voluntary by the conferees, given that the term did not gain general acceptance. Among them, they did not want to refer to it in the protocols and before it in the agreements¹⁸. On the other hand, the term child soldiers left room for multiple juristic interpretations, which constituted a real obstacle in providing effective protection for

¹⁷ UNICEF, "Six grave violations against children in times of war: How children have become frontline targets in armed conflicts". *Online Article*, May 30, 2024. Available online at <<https://www.unicef.org/children-under-attack/six-grave-violations-against-children>>

¹⁸ Amer Ghassan Al-Fakhouri, "The Legal System of Child Soldiers: Position of International Humanitarian Law and International Criminal Law", *Journal of Law University of Bahrain* 12, no. 1 (2015). See also David M. Rosen, "Child soldiers, international humanitarian law, and the globalization of childhood." *American anthropologist* 109, no. 2 (2007): 296-306.

the child during the armed conflict, although the jurists put forward definitions of child soldiers that do not differ among themselves in terms of content, even if they differ in the use of terms somewhat. Some definition of child recruitment is (Inclusion of the child in the armed group and turning him into a subordinate to it who commands it and carries out the tasks assigned to it)¹⁹.

Concerning recruitment of kids and use, humanitarian efforts often refer to youngsters as belonging to military organisations and established groups. This is because the term has an expanded meaning, considering the variety of activities children play. This aims to ensure that kids serving in non-combat positions throughout humanitarian missions are not forgotten²⁰.

It is worth noting that the child warrior did not have an express provision in the Geneva Conventions of 1949 that prohibited his recruitment and participation in hostilities. The Fourth Geneva Convention of 1949 relating to the protection of civilians in time of war spoke only about the status of children as civilians who have no role in hostilities or neglected to address the issue of Child warrior.

Despite the significant increase in the recruitment of children in armed conflicts, which is often forcing them to participate in the armed forces as soldiers, and the blatant challenge this participation poses to the rights of the child, we do not find any definition of the child soldier in the relevant international documents, which were limited to specifying the legal age to enlist in military operations only. In order to make up for this shortage, international organizations defined the child soldier as follows:

A child recruited or associated with an armed force or armed group means any person under the age of eighteen who is currently or in the past recruited or used by an armed force or armed group, whatever the tasks he has undertaken, including but not limited to, children Boys and girls who are employed as seamen, cooks, porters, couriers, spies or

¹⁹ Manal Al-Munajjid, "The Child in the crime of recruiting children with the intention of involving them in hostilities, a criminal or a victim?" *Damascus University Journal of Economic and Legal Sciences* 31, no. 1 (2015).

²⁰ Siwnan Rasakandan, and Pardis Moslemzadeh Tehrani. "Protection of Children from Recruitment and Use in Armed Conflict: Role of International Legal Framework." *Journal of Politics and Law* 15, no. 4 (2023): 230-241.

for sexual purposes, and they do not mean only participants, but those who have previously participated directly in hostilities armed.

In 1996, “Graça Machel” prepared a report and submitted it to the United Nations, where the first definition of child soldiers participating in armed conflicts appeared in its report. It defined the child soldier as: “Every child under the age of 18 who is recruited by force or in a way that is contrary to his will or even his desire if the child wanted to be a soldier, it is not about freedom of choice, or his involvement in any way in military actions by armed groups”²¹.

We believe that the definition put forward by the report has settled the matter with regard to childhood and fixed it at eighteen years of age, and this is a good thing, but on the other hand, recruitment is limited to armed groups without the state, and this is something we criticize.

Close to the above definition, some jurists put forward a definition for child soldiers on the occasion of the International Conference on Child Soldiers in Cape Town, South Africa in 1997. With the meaning (Every person under the age of 18 who is recruited or used by an armed force or group, whatever the work he will do with it, whether he is a girl or a boy, who are used as fighters, cooks, porters, postmen, spies or for sexual purposes).

We can define a child soldier as: Every person, regardless of his gender (male or female), under the age of eighteen years, who voluntarily or forcibly participated in military operations alongside regular or irregular armed forces or other armed group, and whatever the nature of the armed conflict (international or non-international).

Article (8) of the Statute of the ICC, which includes the “*war crime*” of using, recruiting or including children in the armed forces, stipulates the following to criminalize the recruitment and use of children in military operations:

1. That the perpetrator recruits or joins one or more persons in the national armed forces or uses one or more persons to actively participate in hostilities.
2. This person or persons must be under the age of fifteen.

²¹ See Report of Graça Machel and the Impact of Armed Conflict on Children, available online at <https://childrenandarmedconflict.un.org/about/the-mandate/mandate/the-machel-reports/>

3. The perpetrator knew, or ought to have known, that this person or persons are under the age of fifteen.
4. That the conduct is in the context of and is connected to an international armed conflict.
5. That the perpetrator was aware of the factual circumstances that prove the existence of an armed conflict.

On the other hand, the under 18 age level which is more human rights-oriented standard heightened in the OPAC reflects the current emphasis on human rights. At the same time, it can also destabilise the armed groups that are fighting for self-determination or involved in national liberation wars who are unlikely to find sufficient number of children in this age category to join their ranks. Besides, the stiff standard of achievement can also discourage ratification of treaties as in the case of Rome Statute and OPAC as opposed to the universal ratification of CRC which maintains the minimum cut-off age at 15.²² Setting of high standards is likely to result in the avoidance of the law rather than motivate compliance. Armed groups will be reluctant to engage in peace negotiations or other mediation efforts.²³

In order to keep children under the control of armed forces and groups, these children are forced to kill their family members or people they know in order to cut off their connection with the outside world.²⁴ Or their military leaders force them to become addicted to drugs and drink alcohol to ensure their ferocity and loyalty. For example, there are testimonies that both government and rebel forces during the conflict in Sierra Leone used drugs to achieve this.²⁵

Study in Uganda on the consequences of child soldiering reported that the participation of children has both economic and educational impacts: "schooling falls by nearly a year, skilled employment halves, and earnings drop by a third".²⁶ Child exposed to continuous violence,

²² Rasakandan1, & Tehrani, op. cit. P. 239.

²³ Ibid.

²⁴ United Nations Children's Fund (UNICEF) State of the World's Children 2005: Childhood in Threat, December 2004, p. 44.

²⁵ Happold, Matthew. "Excluding Children from Refugee Status: Child Soldiers and Article 1F of the Refugee Convention." *American University International Law Review* 17, no. 6.2002. pp. 1131-1176.

²⁶ Blattman, Christopher and Annan, Jeannie. 2010. The Consequences of Child soldiering, *The Review of Economics and Statistics*, 92 (4), P.P. 882-898.

as in the case of child soldiering, prevents the optimum growth of an individual child to develop into a productive youth as well as contribute to the development of the society.²⁷ This practice, more specifically in third world countries, further impoverishes society while thwarting progress and development of the nation.²⁸

The Role of International Humanitarian Law in Prohibiting the Recruitment and Participation of Children in Military Operations

The four Geneva Conventions of 1949 were satisfied when talking about children within the protection afforded to civilians who have nothing to do with military operations. The same applies to the declaration issued by the United Nations General Assembly in 1959 on the rights of the child. It did not refer to this category, despite the international and non-international conflicts witnessed during this period in which the participation of children on the side of the conflicting forces and their exploitation in their conflicts were proven. The two Geneva Protocols of 1977 set the minimum age for the participation of children in armed conflicts at fifteen years, as this step in itself is a qualitative addition to IHL, and a clear support for the international efforts that have been made in this regard.

In light of the above analysis of the texts, it becomes clear that when the law uses a phrase such as “*children under fifteen years of age*,” it also means that there may be children over fifteen years of age. With regard to differential treatment of children over this age, the law uses phrases such as “*persons under the age of eighteen*”. This formulation avoids the possibility of inferring that there are children over the age of eighteen but does not, on the other hand, preclude the consideration of persons under that age as being children; In addition, Article (77) of Additional Protocol I provides for the protection of persons under the

²⁷ Akbariavaz, K., & Tehrani, P. 2020. The role of international law in protection against attacks on children's education rights in armed conflict. *Journal of Politics and Law*, 13(3), 90-108. Roos Haer. 2019. Children and armed conflict: looking at the future and learning from the past, *Third World Quarterly*, 40:1, 74-91, DOI: 10.1080/01436597.2018.1552131.

²⁸ Siwnan Rasakandan & Haezreena Begum. Breaking the Risk of Conflict Trap: Way forward for Limiting Child Soldiers' Phenomenon. *Journal of Politics and Law*; Vol. 17, No. 2; 2024. P.P. 16-35.

age of eighteen. Similarly, the Commentary on the Fourth Geneva Convention published by the International Committee of the Red Cross lists the provisions for persons under eighteen years of age among the provisions providing for differential treatment of children²⁹.

Contrary to what was expected from the disappearance of the phenomenon of the involvement of children in armed conflicts, after the signing of the Geneva Protocols of 1977, this phenomenon continued and was known to spread widely in different parts of the world, and this was confirmed by the International Committee of the Red Cross, as the source of the original guardianship in the control of the application of IHL and the principles that protect it.

The UN Convention on the Rights of the Child (CRC), adopted by UN in 1989 is the most widely ratified human rights instrument with 196 State Parties as members.³⁰ Almost the entire world has recognised the rights of children and the duty to protect them, yet it is heartbreaking to see that grave violations against children are prevalent.

The right to life, survival and development, and non-discrimination constitute the guiding principles of the CRC. The agreement included a set of legal rules for the protection and well-being of children, including those related to the protection of children from participation in armed conflicts, which were addressed in Article (38) of this Convention.

Unremitting international efforts were made during the preparation of the draft of this convention in order to determine the age below which children may not participate in armed conflicts from fifteen to eighteen, but Article (38) of the Convention did not record any progress, as it came to repeat the text of Paragraph (2) of Article (77) of Additional Protocol I. This is because some states, during the discussions on Article (38), have raised the same arguments that were

²⁹ Pictet, Jean S (ed.), *Commentary, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, ICRC, Geneva, 1958, 284 ff. (ad Art. 50).

³⁰ World Vision Children's rights and the Convention on the Rights of the Child .May 04, 2021 <https://www.worldvision.ca/stories/child-protection/child-rights-convention-on-the-rights-of-the-child>. On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child by virtue of its resolution No. 44/25, and it was presented on the same date for signature and ratification. and came into force on 2 September 1990 and contains 54 articles.

raised during the Diplomatic Conference on the development of international humanitarian law prior to the signing of the Geneva Protocols, with regard to the question of age and possible measures to be taken in the event of participation in armed conflicts.

Thus, Article (38) emphasized the weakness of the protection afforded to children participating in armed conflicts, and excluded the provisions of the Second Additional Protocol, which granted them greater protection.

The catastrophic situation of childhood—after the adoption of the two additional protocols to the Geneva Convention of 1977 and the Convention on the Rights of the Child of 1989—prompted the international community to move to contain the situation, which resulted in the adoption of an optional protocol issued in 2000.³¹ Given the tragic situation of children affected by armed conflict, and in particular the all-too-common cases in which they are forced or allowed to participate in armed conflict, the adoption of an Additional Protocol to the Convention on the Rights of the Child is a welcome initiative.

It is clear that this protocol, is an important effort and a flagrant victory for the rights of children, and the culmination of the efforts of the ICRC and non-governmental organizations, which throughout the nineties made every effort to raise the minimum age of participation of children in armed conflicts from fifteen to eighteen General.

The protocol included some important provisions, in particular determining the age of compulsory recruitment, and voluntary or voluntary recruitment, and it also addressed the issue of the recruitment of children into armed groups distinct from the armed forces of the state, as follows: “States parties must take all feasible measures to ensure that members of its armed forces who have not attained the age of eighteen years do not take a direct part in hostilities”³². The protocol also obliges states parties that allow volunteering in their armed forces under the age of eighteen to take guarantees that such recruitment is

³¹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (OPAC) was adopted on 25 May 2000 and came into force on 12 February 2002. Available online at: <https://www.ohchr.org/ar/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

³² Ibid.

genuinely voluntary, and that it takes place with the consent of the parents and legal guardians of the children.

In addition to the efforts that have been made to legalize the prohibition of child recruitment and establish individual criminal responsibility for those who commit crimes of child recruitment in armed conflicts, it is necessary to record supportive positions issued by the Security Council, which adopted a strict approach to the problem of child recruitment and strongly condemned their recruitment in armed conflicts. He differentiates in his conviction between the parties to an armed conflict. Where he condemned the states and armed groups involved in the internal conflict, In August of the year 2000, the Council adapted by a decision that violations against children are general, brutal and systematic, and are inconsistent with humanitarian law and human rights, most notably the rights of the child guaranteed by the 1989 Convention and related conventions.

Where the council considered that violations against children in armed conflicts constitute a threat to international peace and security³³.

Despite all the efforts made by the international community to reduce the phenomenon of child soldiers; It still has not yet lived up to the required level. Even the Optional Protocol of 2000 did not come with the strength that many aspired to, and the most prominent example of this is the widespread exploitation of children in armed conflicts, for which not all international agreements have helped reduce their suffering, and thus remains phenomenon Child soldiers are on the rise.

Where there are more than 300,000 children recruited into the ranks of armed forces and groups, many of them are less than ten years old³⁴. Reports also mentioned that UNICEF counted 19 countries recruiting children under the age of 18 between 2004-2007, their number reached more than a quarter of a million children, as Colombia alone recruited more than 14,000 children. According to the (Siyag) Association for the Protection of Children in Yemen, more than 50,000 Yemeni children have been recruited into the ranks of the Houthis, carrying weapons and participating in a guerrilla war. The Ugandan

³³ Résolution du CS des NU 1314 (2000), UN Doc. S/RES/1314 -2000.

³⁴ Naima, Omimer, *The Child During Armed Conflicts*, Algerian Journal of Legal, Economic and Political Sciences, No. 2, 2010. P, 312.

Lord's Army recruited between 15-30 thousand children who were forced to work with forced labor, murder, rape and looting³⁵.

An international human rights report revealed that the Houthi militia has forcibly recruited about 10,300 children in Yemen since 2014, warning of serious consequences if the UN continues to fail to address this phenomenon. The report, which was launched by the Euro-Mediterranean Human Rights Monitor and SAM Organization for Rights and Freedoms, on the occasion of the International Day Against Child Recruitment, which falls on February 12 of each year, stated that the Houthi group uses complex patterns to forcibly recruit children and engage them in hostilities in various areas under its control. In Yemen, which resulted in killing and wounding hundreds of them³⁶.

Arising from the above, it is clear that IHL prohibits the participation of children in armed conflicts, and the participation of these minors in armed conflicts is a flagrant violation of its rules and principles. In spite of this, some states or armed groups may deliberately recruit children, in this case giving them special protection if they are captured, and we mainly refer here to the strong support provided by the Statute of the ICC regarding this proposition - i.e. the proposition of special protection For children - The Statute of the ICC has described the process of compulsory or voluntary recruitment of children under fifteen or using them to participate in hostilities, as a war crime, whether in international or non-international armed conflicts.

States are under an obligation to reform their criminal judicial systems in a manner that suits the requirements of IHL and the requirements of the Statute of the ICC, given that the realistic respect for the rules of international law in general depends on the extent to which national systems guarantee these tasks³⁷.

The Statute of the ICC is the first international document criminalizing the recruitment and use of children under the age of fifteen to participate in hostilities, and one of the clear violations of the

³⁵ Radwan, Amal Awad, International Day Against Child Recruitment, on the following website, 2011, :<http://www.diwanalarab.com/spip.php?article27252>

³⁶ International report: The Houthi group forcibly recruits more than 10,000 children. 12 February 2021. <https://www.alarabiya.net/arab-and-world/yemen/2021/02/12/>.

³⁷ Al-Daqqaq, Muhammad Saeed, Public International Law, Part One, University Press, Alexandria, Egypt, 1989. p. 44.

laws and customs applicable in international and non-international armed conflicts. Article (8) of the Statute of the ICC, in its second paragraph (b), deals with the recruitment of children under fifteen and their actual participation in military operations as one of the forms of war crimes. Clause (26) of this paragraph includes considering the recruitment of children under fifteen Compulsory or voluntary members of the national armed forces or their use to actively participate in hostilities is one of the forms of war crimes within the jurisdiction of the Court. In addition, Article (8) in its second paragraph (e) clause (1) considers that the compulsory or voluntary recruitment of children under fifteen years of age into the armed forces or armed groups, or their use to actually participate in hostilities, is in turn one of the forms of applicable war crimes. on armed conflicts not of an international character.

It is taken from the text of Article (8) of the Statute of the ICC that it only prohibited the recruitment and registration of children under fifteen years of age in armed forces or groups, or their use for active participation in hostilities. From the protection of children to a large extent, indirect participation often develops into direct participation in hostilities out of necessity or out of will, so it is difficult to draw the line that separates the two types of participation, especially in an emergency situation, so it is important that both types be Sharing is prohibited so that you can maximize the protection of children, Especially since the activities that constitute indirect participation are no less dangerous than the fighting itself, hence the importance of the Statute of the ICC, as it was included for the first time in international criminal law the crime of voluntary or forcible recruitment of children whenever the victim was a child under the age of fifteen to be thus A guarantee that deters violations of the prohibition contained in international and regional instruments that prohibit the recruitment of children³⁸.

It can be said in this regard that the Statute of the ICC has failed to protect children between the ages of fifteen and eighteen years, as well as children who may be used in an indirect, but violent manner (such

³⁸ Al-Mafraji Al-Azi Saleh, Maidan, Salwa Ahmed, Prohibition of Child Recruitment during Armed Conflicts, Electronic Recruitment as a Model, (Journal of the College of Law for Legal and Political Sciences, Volume 7, Issue 25, 2019. P. 291.

as enslavement and sexual violence against girls) by forces or armed groups and did not actually participate in hostilities, and it appears that there is no provision in this system that criminalizes the indirect use of children in armed conflicts.

Despite the guarantees stipulated to ensure the reality of volunteering, the practical reality makes it difficult to ensure that the volunteering of children was real. That the recruitment of children is prohibited on humanitarian grounds and taking into account the interest of this vulnerable group, and the statute of the ICC considered the recruitment of children a war crime, and in turn criminalized all forcing people to participate in military operations against their countries, including child soldiers within the forces of their country, and this behavior was considered a war crime. The court has jurisdiction to consider it.

But this crime is still being committed against children, and this is what was stated in the annual report of the United Nations Secretary-General for Children and Armed Conflict, for the year 2020, in which it sheds light on violations against children, which was published in May 2021, and the report stated that more than 8,400 children were killed or exposed to violence. distorted by the ongoing wars, with Afghanistan, Syria, Yemen, and Somalia showing the highest number of child casualties, and the recruitment and use of children continued, with nearly 7,000 children affected in 2020.³⁹

In order of the above, we are assured that the recruitment of children violates all international norms and conventions regulating war and the rights of the child and human being. Therefore, the recruitment of children and their involvement in armed conflicts is a crime.

The legal framework is driven towards realising the doctrine of protection of children in armed conflicts. Based on age related recruitment process and the risk-based use, a set of rules have been formulated. The sources include international law and customary international law. A constant balance between military necessity and humanity has been aspired with due consideration to the demands of new wars. The legal framework is well placed as the ultimate tool to control and regulate the recruitment and use of children in armed

³⁹ Recruitment, killing and maiming are what children suffered most from in conflicts during (2020). 21 June 2021. <https://news.un.org/ar/story/2021/06/1078332>

conflicts though the nexus between law and recruitment rate remains to be explored satisfactorily.

International Recruitment of Children and Violations of International Humanitarian Law

There is no doubt that violating legal rule does not mean its lack of existence, so distinction must be made between the existence of the legal rule and its effectiveness because the violation affects the effectiveness of the legal rule and not its existence, and this applies to all branches of law, including international humanitarian law.⁴⁰

Interestingly, since the end of 90s, the most favourite figure used to denote the number of child soldiers in the world is 300,000.⁴¹ Nevertheless, in recent times, the intensity of participation of children in armed conflicts has emerged as a serious threat to world peace.⁴² The number is said to have risen by 159 % since 2012, with some 30,000 cases verified in 17 countries worldwide.⁴³ The 2018 report provides a

⁴⁰ Alwheebe, Etesam Alabd, S. The role of the international criminal court in the implementation of the international humanitarian law: An applied study. *International Journal of Advanced and Applied Sciences*, 8(10) 2021. P.P 131-150.

⁴¹ It is reported that that the 300,000-figure first appeared in “The Impact of War on Children” by Graca Machel, published in 2001. But when we examined Machel’s footnotes, it turned out that she had relied on another source — the second (1998) edition of a 1996 book titled “Children: The Invisible Soldiers,” by Rachel Brett and Margaret McCallin.

<https://www.washingtonpost.com/news/factchecker/wp/2016/01/22/the-zombie-claim-that-300000-children-are-used-as-child-soldiers/>; McKnight. (2010). “Child Soldiers in Africa, A Global approach to human Rights Protection, Enforcement as Post-Conflict Reintegration,” *Afr. J. Int’l & Comp. L.* 18, 113; Grace, Machel. (1996). *Impact of Armed Conflict on Children*. United Nations. www.un.org/rights/introduce.htm; A/51/1306/(1996)xd .

⁴² Since the 1990s, the ‘child soldier crisis has become a major humanitarian and human rights project, from the United Nations Machel Report in 1996 to the Kony 2012 phenomenon and the #BringBackOurGirls outcry over the 2014 kidnapping of 276 schoolgirls by Boko Haram in Nigeria, just to highlight a few; See also Hynd, S. Trauma, Violence, and Memory in African Child Soldier Memoirs. *Cult. Med. Psychiatry*. 2020. Retrieved from <https://doi.org/10.1007/s11013-020-09668-4>.

⁴³ Child Soldiers International, Child soldier levels doubled since 2012 and girls’ exploitation is rising, 2019, Available online: <https://reliefweb.int/report/world/child-soldier-levels-doubled-2012-and-girls-exploitation-rising>

list of the top ten countries using children as soldiers.⁴⁴ According to the UN report for 2022 on the impact of armed conflict on children, of the 2021 grave violations committed against 22,645 children, 6319 of them were reported to have been recruited and used in armed conflicts.

⁴⁵ The same report also provides statistics on the child victims in each of the ten countries listed in the annex of the report. Though the above statistics cannot reflect the exact intensity of suffering endured by the children and their families, it does generate empathy towards the victims.

Although the phenomenon of the recruitment of children and their involvement in military operations has existed since World War II, international efforts to confront the issue of child soldiers were not defined, except with the beginning of the seventies of the last century, after neglecting the Fourth Geneva Convention on the Protection of Civilians in Wartime of 1949. In addressing this issue, it was necessary to develop a new protection mechanism for the benefit of those children who are directly or indirectly involved in hostilities⁴⁶.

Since 2005, more than 93,000 children who were recruited and used by parties to the conflict have been verified. These represent cases verified by United Nations Country Teams on Monitoring and Reporting or an equivalent entity, but the actual numbers are believed to be much higher. Since 2005, country task forces have been able to verify the recruitment and use of a minimum number of 1,000 children in at least 15 different countries⁴⁷ with the three most affected countries being the Democratic Republic of the Congo, Somalia and South Sudan.

In 2020, cases of recruitment and use were verified in all but one of the settings, as covered in the annual report of the Secretary-General.

⁴⁴ Becker, Jo. A Better US List of Countries using child soldiers. June 29, 2018. Available online: <https://www.hrw.org/news/2018/06/29/better-us-list-countries-using-child-soldiers>

⁴⁵ UN GA SC. Children and armed conflict Report of the Secretary-General A/76/871-S/2022/493 June 23 2022. Available online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/344/71/PDF/N2234471.pdf?OpenElement>

⁴⁶ Abu Khawat Maher Jamil. International Protection of Child Rights, Arab Renaissance House for Publishing and Distribution, Cairo, Egypt, 2008, p, 269.

⁴⁷ 25 Years of Children and Armed Conflict: Taking Action to Protect Children in War. United Nations Children's Fund (UNICEF) June 2022. P. 18.

There have been 9 conflict situations in which the recruitment and use of at least 100 children has been verified, with sharp increases observed in Afghanistan, the Central African Republic and Myanmar⁴⁸. In the past five years, the United Nations verified the recruitment and use of an average of 8,756 children annually (8,521 children in 2020 and more than 80% of those children recruited and used it). Non-state actors, including 86% in 2020, and there are other cases that were attributed to state forces or could not be attributed. In most conflict situations, state forces were responsible for approximately or less than 5% of cases, with the exception of situations in Afghanistan, Somalia, Yemen (about 15% each), South Sudan (36%), and Myanmar (84 percent). And the verified use had a predominantly 13% effect on boys, with girls accounting for around 13–15% in 2020 of all cases since 2016⁴⁹.

Verified cases represent only a small portion of the total number of children, including girls, believed to be associated with armed forces and armed groups globally.

International Responsibility for the Crime of Recruitment and Involvement of Children in Armed Conflict

The international community aims to establish international criminal justice to deter international criminals, and from this standpoint, we find that jurisprudence and law have been concerned with the idea of responsibility, and worked to establish and codify its rules in order to facilitate access to the actual investigation of international criminal justice away from all the obstacles that hinder this, but it is certain that The idea of international criminal responsibility before it reached its current concept had a long path, especially with international jurisprudence.

In light of the rules regarding attribution of internationally wrongful acts to the state - that the state is responsible for a violation of the obligation not to recruit and use children to participate in hostilities if such violation was committed by a member of its armed forces or by one of the armed groups under the control of that state. The state is responsible for the actions of members of its armed forces as one of the

⁴⁸ Ibid.

⁴⁹ 25 Years of Children and Armed Conflict. op. cit. p. 18.

organs of the state and for which the state is responsible for its actions if they constitute a violation of an international obligation. Thus, the state bears the consequences of responsibility for its armed forces' violation of the rules of IHL, including those related to the recruitment and participation of children in hostilities. As it constitutes a violation of one of the important rules for the protection of children in armed conflict, and this is indicated by Article (91) of Additional Protocol I. The use of children for military purposes is prohibited in many international instruments, and this prohibition is directed at armed forces and groups alike, in case the prohibition is not respected. It exposes itself to criminal responsibility⁵⁰.

If the responsibility of a state for violating the international obligation not to recruit and involve children in military operations requires in the first place that this violation be proven and attributed to a specific state, individual criminal responsibility for such violations requires the existence of a text criminalizing this behavior, and the statute of the International Criminal Court is the first document An international criminalization of the recruitment of children under the age of fifteen years into the armed forces and their use for active participation in conflicts, as this behavior constitutes one of the material elements of war crimes, Subsequently, the Statute of the Special Criminal Court for Sierra Leone followed.

The statute of the ICC resolved the problem related to the criminal responsibility of states, and is the state criminally questioned before the court, or is criminal responsibility established only in the right of natural persons? Article (25) of the Basic Law has answered this question, as it affirmed that the jurisdiction of the court is established only in the right of natural persons, and that a person who commits a crime within its jurisdiction is responsible for it in his personal capacity and subject to the imposition of the penalties prescribed in this.

Consequently, the Statute excluded the theory of the international criminal responsibility of states and armed groups, and limited the responsibility for this to the leaders and officials of states and armed groups in the event that they committed an international crime

⁵⁰ Al-Qahwaji, Abdul Qader, International Criminal Law, the Most Important International Crimes, International Criminal Courts, 1st Edition, Al-Halabi Human Rights Publications, Lebanon, 2001, p. 325

within the jurisdiction of the Court, and this is similar to the crime of recruiting children. The Security Council condemned the violation of international rules relating to the prohibition and involvement of children in hostilities, in order to protect the rights of children, as it came up with several decisions related to reducing the impact of armed conflicts on children and protecting them during and after armed conflict.

Resolution 1261 of 1999 is the first in which the Security Council recognized the general and negative impact of armed conflicts on children, and their long-term effects on peace, security, and sustainable development, and strongly condemned the recruitment and use of children in international and non-international armed conflicts. international law, and considered this a violation of the law, and also urged the parties to the conflict to abide by the specific obligations of all child protection during armed conflict, in particular to cease fire for the purposes of vaccination and distribution of relief materials and not to attack schools and hospitals⁵¹.

Also issued Resolution No. 1379 of (2001), where he referred to respecting the provisions of international law related to the rights and protection of children in armed conflicts, It also stipulated putting an end to the issue of impunity and prosecuting those responsible for atrocity crimes committed against children, excluding these crimes from amnesty provisions and related laws, and ensuring that post-conflict truth-seeking and reconciliation processes address the forms of harm suffered by children⁵².

By this resolution, the Security Council called on all parties to armed conflicts to abide by the obligation to respect all provisions of international law related to the rights of children and to protect them from recruitment, especially the Geneva Conventions of 1949, and the obligations stipulated under the 1977 Protocols and the 1989 Convention on the Rights of the Child, as well as providing protection for children in accordance with the standards and Implemented international systems⁵³. In addition, he affirmed his condemnation of

⁵¹ S/RES 1261, 1999.

⁵² Resolution 1379 (2001) / adopted by the Security Council at its 4423rd meeting, on 20 November 2001.

⁵³ Shabati, Juma'a Shahoud, Protection of Civilians and Civilian Objects in Time of War, thesis for obtaining a Ph.D., Faculty of Law, University, Cairo, 2003. P. 35.

the resorting of the parties to armed conflicts to the recruitment and involvement of children in armed conflicts, and for their failure to abide by the provisions of international law prohibiting that.

We note through this resolution that the recruitment or enlistment of children under the age of 15 years or their use to participate in hostilities during international and non-international armed conflicts has been classified by the statute of the International Criminal Court as a war crime, which was confirmed in the Paragraph seven of the aforementioned resolution⁵⁴.

Accordingly, in the resolution, the Council also affirmed its determination to ensure that its resolutions and others respect the rules of international law and international standards for the protection of children affected by armed conflict and urged that all necessary measures be taken to prevent the occurrence of recruitment.

It also adopted Resolution 1612 2005, in which it insisted on the responsibility of the President to maintain international peace and security and his commitment to addressing the wide-ranging effects of armed conflict on children, and also stipulated the need to integrate children into society and peacekeeping operations⁵⁵. The resolution also refers to the responsibilities of states with regard to putting an end to impunity and prosecuting those responsible for crimes committed against children during armed conflict.

We conclude by reviewing all Security Council resolutions and reports submitted regarding children's rights that the Council has demonstrated its intention to take positive and tangible measures to protect children who are victims of armed conflicts, however, this role is hampered by several legal and practical obstacles related to the voting system for decisions within it and the will of its member states.

Finally, it can be said that the Security Council did not fulfill its duties in maintaining international peace and security and protecting civilians, especially children, during armed conflicts, as it did not take any decisions in many cases that would threaten international peace and security, and did not refer crimes against children to The ICC to

⁵⁴ Resolution 1539 (2004) / adopted by the Security Council at its 4948th meeting, on 22 April 2004.

⁵⁵ Resolution 1612 (2005) / adopted by the Security Council at its 5235th meeting, on 26 July 2005.

consider it, due to the permanent states exercising the right of veto in it, which resulted in an increase in the number of children recruited in armed conflicts.

Individual International Criminal Responsibility for the Crime of Recruitment and Involvement of Children in Armed Conflict

The individual criminal responsibility of persons who have actually recruited children and involved them in hostilities, and have not reached the age of 15 years, they bear the responsibility arising from the actions committed by the children under their authority, which calls for the prosecution of the responsible president before international criminal courts and national courts. This responsibility was emphasized in accordance with the provisions of Article (28) of the Statute of the ICC, when the President does not respect his obligation to take all necessary measures to prevent the recruitment of children under 15 into the military ranks, he bears responsibility for the actions and violations committed by these children.

In order for this crime to take place and its consequent entry into the jurisdiction of the ICC, it is required that the offender recruit one or more persons under the age of fifteen years into the national armed forces or join them therein or use them to actively participate in hostilities while knowing that they are of that age. In addition, these acts take place in the context of an armed conflict of an international character and are related to it, with the need for the offender to be aware of the nature of the circumstances that prove the existence of this type.

The establishment of the international criminal responsibility of the individual leads to the offender being subject to the penalty prescribed in international criminal law, and the countries imposing it on the offender by an ICC ruling. The availability of criminal capacity, which is the basis for criminal responsibility and means discrimination and freedom of choice. As the prevailing opinion in jurisprudence, the judiciary and man-made laws, is that the human being alone is subject to criminal responsibility⁵⁶.

⁵⁶ Al-Aishawy Abdel Aziz, Genocide crimes against the Palestinian people in the occupied territories in 1967, Ph.D. thesis, Faculty of Law, University of Algiers, Algeria, 1995 P, 2.

Therefore, the jurists consider that the military commander-in-chief is questioned about the violations committed by individuals under his military authority by recruiting and using children under fifteen years of age, whether he knew and did not take any action to stop it, or he had to know what was happening and he fell short, and his responsibility here individual criminal. The matter is not limited to recruitment and use, but extends to the responsibility of the Commander in Chief for the grave violations committed by these child soldiers themselves when these children are criminally held accountable in limited cases, with regard to the responsibility of those who recruited or used, we say that their recruitment or use in armed conflicts, especially for those under fifteen years of age, constitutes a serious war crime as stipulated in the statutes of some international and international criminal courts as well, which consequently entails individual criminal responsibility against those who contributed or Instigated, participated in, recruited or used them in armed conflict, and did not differentiate here between international or internal armed conflict⁵⁷.

In view of the above, it can be said that the Statute of the International Criminal Court criminalized for the first time the compulsory or voluntary recruitment of children under fifteen years of age or their use for active participation in military operations, and this was considered one of the forms of war crimes within the jurisdiction of the Court, whether this behavior was committed within the framework of an international armed conflict or a non-international armed conflict. The ICC system has adopted a clearer and more precise punitive policy, which is considered a fundamental shift in international criminal law and leads to a convergence between it and national criminal law.

Because most of the international conventions were only defining the criminal nature of the behavior without defining the punishment in a firm manner, as is the case in national laws, provided that determining the type and quantity of punishment is left to either the concerned

⁵⁷ Pierre Huybrechts, *Quel regles et mecanismes internationaux pour proteger les enfants dans la guerre*, 81, Et aussi lire: Rapport du Secrétaire général sur l'établissement d'un Tribunal spécial pour la Sierra Leone, UN Doc. S/2000/915, 4 Octobre, 2000, p. 17.

countries that enact the provisions in their laws or to the international criminal justice.

Immunity before the ICC is not considered, as any person is responsible for committing the crime of forced conscription, whether he is the head of state or the ruler, and the official capacity does not constitute a reason to reduce the penalty, and this was confirmed by the second paragraph of Article (27) of the Statute of the Court, Which stipulated that: “The immunities or special procedural rules that may be related to the official capacity of a person, whether within the framework of national or international law, do not preclude the court from exercising its jurisdiction over that person”⁵⁸.

The military commander or the person actually acting as a military commander shall be questioned about the crimes that fall within the jurisdiction of the ICC, especially the crime of recruiting children into armed conflicts committed by forces under his effective command and control, provided the following two conditions are met: First: The military commander or the one who is actually in charge of his actions knows that the forces under his effective emirate and control are committing, or are about to commit, a crime within the jurisdiction of the court.

Second: The failure or failure of the military commander or actually acting on his behalf to take all necessary and reasonable measures within his authority to prevent, repress, or commit a crime within the jurisdiction of the court or to submit the matter to the competent authorities for investigation and prosecution⁵⁹.

With regard to the responsibility of civilian leaders and chiefs for crimes committed by subordinates, they are subject to his effective authority and control, the following conditions must be met:

1. The civil superior has already known that his subordinates under his effective authority and control are committing or about to commit a crime within the jurisdiction of the ICC, or the civil superior has intentionally disregarded any information reached to him that clearly indicates and indicates that his subordinates are

⁵⁸ ICRC (2021b), International criminal court (ICC) statute 1998. Available online at : <https://www.icrc.org/ar/doc/resources/documents/misc/6e7ec5.htm>

⁵⁹ Nerlich Volker, Superior Responsibility Under Article 28 ICC Statute, Journal of International Criminal Justice, Vol 5, N0 03, July. 2007. PP.665-682.

committing or about to commit That they commit an offense within the jurisdiction of the Court.

2. That the crime within the jurisdiction of the Court relates to activities that fall under the effective responsibility and control of the civil superior.
3. The civil superior's failure to take all necessary and reasonable measures within his authority to prevent or repress the commission of a crime within the jurisdiction of the court, or to submit the matter to the competent authorities for investigation and prosecution.

Article (28) also referred to criminal responsibility for omission as an element of the material pillar. It recognized the responsibility of the commander and the supreme leader for the actions of their subordinates under some circumstances, even if they did not directly order the commission of the crimes based on the fact that whoever has the authority to prevent the crime and does not Thus, he is, to some extent, responsible for committing them, especially that his condoning of these crimes is the benefit of authorizing his subordinates to continue their crimes without fear of punishment as he exercises effective control over him, and the importance of the responsibility contained in Article (28) lies in covering cases in which crimes are committed by subordinates without it being possible to establish the criminal responsibility of commanders and superiors on the basis of issuing orders In practice, Article 28, whether with regard to the supreme military commander or the highest civilian chief, raises difficulties related to the moral pillar, and in relation to Article (30), which requires the criminal intent represented by knowledge and will, while the responsibility of the commander and supreme commander is based on mere negligence.

With regard to the international criminal responsibility resulting from obeying the orders of the Supreme Commander, Article (33) of ICC affirmed that in the event that any person commits one of the crimes within the jurisdiction of the Court, especially the crime of forced conscription, the person is not exempted from criminal responsibility if his commission was that crime was committed in compliance with the order of his government or a military or civilian chief, unless the person has a legal obligation to obey the orders of the government or the president concerned, or if the person is not aware

that the order is unlawful, or if the lawfulness of the order is not apparent.

The Effectiveness of The International Criminal Court's Sanctions to Reduce the Crime of Recruiting Children and Involving them in Armed Conflicts

The judicial practice of the ICC indicates that it has actually undertaken the consideration of the war crime of recruiting children, which confirms that the approach outlined by the Geneva Conventions and their Additional Protocols. The care should be taken during international trials to properly classify conflicts as either international or non-international armed conflicts, to ensure a proper application of international humanitarian law, and to prevent negative impact on this body of law as a result. The rights of the accused under international criminal law similarly demand that the classification exercise to be conducted with the requisite scrutiny.⁶⁰

After the Prosecutor completes the investigation and the charges are approved by the Pre-Trial Chamber, the trial phase begins. As for the Pre-Trial Chamber, as it enters into conducting trials and issuing judgments, in accordance with Articles (64–87) in accordance with the Court's statute. The Pre-Trial Chamber shall hear within reasonable time after the person has been brought before or voluntarily before the Court, and by holding a hearing to confirm the charges against him, in the presence of the Prosecutor and the accused's counsel. The charges, in the event that the accused waived his attendance, or fled and was not found here the accused is represented by a lawyer.

Before holding the charges confirmation hearing, the Pre-Trial Chamber shall provide the summoning person with a copy of the document containing the charges that the Prosecutor is proud to present at the hearing, as well as the evidence that will be relied upon during it. Which were made regarding this evidence, and during the hearing, the person has the right to object to the charges, and to challenge the evidence of the public prosecutor by providing evidence on his part according to article 61/6 of the ICC.

⁶⁰ Bartels, Rogier. *The Classification of Armed Conflicts by International Criminal Courts and Tribunals* international criminal law review 20 2020. P. 668.

According to article 61/7 of the ICC On the basis of its decision, the Pre-Trial Chamber may adopt the charges on which it has determined that there is sufficient evidence and refer the person to a Trial Chamber for trial on the charges it has relied upon, refuse to confirm the charges for lack of evidence or postpone the hearing and request the Prosecutor to provide further evidence or to conduct further investigations, It may also amend a particular charge because the evidence presented therein appears to establish a different crime within the jurisdiction of the court.

Once the charges are approved, the Presidency of the Court will form a Trial Chamber, which will be responsible for the conduct of subsequent measures in accordance with Article 64, paragraphs IX and IV of its Statute, and it may exercise any function of the Pre-Trial Chamber that is related to its work, or if it has a role in Those measures according to article 61/11 of the ICC.

During the beginning of the trial, the Trial Chamber must present the charges to the accused that had previously been approved by the Pre-Trial Chamber, and ensure that the accused understands the nature of the charges, while giving him the opportunity to plead guilty or deny his guilt, in accordance with Article 65 of the Statute Once the charges are approved, the Presidency of the Court will form a Trial Chamber, which will be responsible for the conduct of subsequent measures in accordance with Article 64, paragraphs IX and IV of its Statute, and it may exercise any function of the Pre-Trial Chamber that is related to its work, or if it has a role in Those measures according to article 64/8 of the ICC. The presiding judge may, during the trial, issue directives regarding the conduct of the proceedings, seeming to ensure the fair and impartial conduct of these proceedings Once the charges are approved, the Presidency of the Court will form a Trial Chamber, which will be responsible for the conduct of subsequent measures in accordance with Article 64, paragraphs IX and IV of its Statute, and it may exercise any function of the Pre-Trial Chamber that is related to its work, or if it has a role in Those measures according to article 64/8(b) of the ICC. and the Trial Chamber may, on its own or at the request of one of the parties, decide on the Acceptance of evidence and maintaining order for the hearing according to article 64/9 of the ICC.

At the end of the matter, the final judgment taken by the court, based on Article (74) of its statute, is issued in writing and includes a complete and reasoned statement of the reasons decided by the Preliminary Chamber based on the evidence presented to it and the conclusions it concludes. Where there is no consensus, the decision includes opinions. The majority and minority opinions, and it is pronounced in a public session, and before it is issued, the judges try to reach a unanimous adoption, and in all cases its deliberations remain secret⁶¹.

As in the case of conviction, the Trial Chamber considers signing the appropriate judgment, and takes into account the evidence and defenses presented during the trial that are relevant to the judgment, and the judgment is issued in public, in the presence of the accused whenever possible according to article 76 of the ICC. And the penalties prescribed in accordance with Chapter VII of its statute are imposed on him, which are imprisonment for a maximum period of 30 years or life imprisonment, the imposition of a fine under the procedural rules and rules of evidence, or the confiscation of proceeds, property and assets for that crime, while preserving the rights of bona fide third parties according to article 77 of the ICC.

Sanctions imposed by the International Criminal Court on perpetrators of child recruitment and their effectiveness

Punishment is the typical picture of the international criminal penalty, and it is a measure of pain inflicted by the international community on those who are proven guilty of committing an international crime, and it is the effect of violating the provisions of international criminal law⁶². International criminal penalties are defined as the penalties that an international judge or an international court sentence individual to.

⁶¹ Abdul-Wahab Sheter, The Role of the International Criminal Court in Combating the Crime of Child Recruitment during Armed Conflicts, Proceedings of the Sixth International Conference, Protection Children International, Tripoli, November 2014. P. 54.

⁶² Abu Attia Al-Sayed, International Sanctions between Theory and Practice, University Culture Foundation, Egypt, 2013. P. 36.

The ICC system has adopted a clearer and more precise punitive policy, which is considered a radical shift in international criminal law and leads to a convergence between it and the national criminal law because most international conventions only determine the criminal nature of the behavior without defining punishment in a firm manner, as is the case. In national laws, the determination of punishment in terms of quality and quantity is left to the concerned countries that implement the legislation, the provisions in their laws, or to the international criminal justice.

Based on the principle of legality of crimes and penalties, the Statute of the ICC specifies exclusively the penalties applicable to perpetrators of international crimes, especially the crime of child recruitment.

A. Original Penalties

The original penalties in the internal criminal laws are considered freedom-depriving penalties as they deprive the convict of his right of movement and freedom. The freedom-depriving penalties in the permanent international criminal court system are divided according to the first paragraph of Article (77) of the ICC into: Temporary imprisonment: It is a prison for a specified number of years, and these years should not exceed 30 years.

Life imprisonment: that is, imprisonment for life. For the application of the permanent ICC, the penalty of life imprisonment is required to be justified by the extreme gravity of the crime committed and justified by the special circumstances of the convicted person⁶³.

The ICC ruled out the death penalty, and perhaps this is due to the influential role played by humanitarian organizations and human rights associations. In the continuous call for the abolition of this cruel punishment, especially the role it played through the Rome Conference on the establishment of the ICC which led to it not being included among the penalties included. Although we believe that excluding the death penalty from the system of the ICC is considered this is a major concern and the subject of severe criticism compared to the brutality of

⁶³ Abdel Moneim, Fouad. The concept of punishment and its types in comparative systems, legality, horizons of legality 2011. Available online at : <https://www.alukah.net/sharia/0/35474/>

the crimes committed and stipulated in the Statute of the Court, which would undermine the security and stability of the international community, thus paving the way for criminals to escape fair and deterrent punishment, which hinders the achievement of international criminal justice. There is no doubt that the inclusion of the death penalty in the Statute of the ICC, as a deterrent punishment, will limit the increase in international crimes, and even be proportionate the punishment and gravity of crimes that fall within the jurisdiction of the court.

B. Supplementary penalties

These are additional financial penalties that affect the financial liability of the convict, such as a fine and confiscation⁶⁴, and the ICC system, in addition to the penalties of temporary imprisonment and life imprisonment, imposes two financial penalties represented in confiscation and a fine, and this is what was indicated in the second paragraph of Article (77) of the ICC. When imposing a fine and determining its value in accordance with Rule 146 of the International Criminal Court's Rules of Procedure and Evidence, the court shall take into account the following:

1. Whether or not the prison sentence is adequate and takes into account the financial capacity of the convicted person including any forfeiture orders, and any orders for compensation as appropriate and the court will consider whether and to what extent the motive for a crime was personal financial gain.
2. The damage and injuries resulting from the crime as well as the relative gains accruing to the offender who committed it, and the total value in any case does not exceed 75% of the value of what can be determined of liquid or exchangeable assets and money owned by the convict, after deducting an appropriate amount It meets the financial needs of the convicted person and their dependents.
3. The court gives the convicted person a reasonable period during which he pays the fine and may allow him to pay it in a lump sum in one payment or in installments during that period, the court has

⁶⁴ Ibrahim Hisham Mustafa, investigation and trial before the Permanent International Criminal Court, University Press, Alexandria, Egypt, 2015. P. 610.

the option to calculate it according to the daily fines system. In this case, the period shall not be less than 30 days as a minimum and not exceed five years as a maximum, it determines the value of the daily payments according to the personal circumstances of the convicted person, including the financial needs of his dependents.

In the event of non-payment of the fine by the convicted person, the term of imprisonment shall be extended for a period not exceeding a quarter of that period or five years, whichever is less. Nor may the extension lead to a total prison term exceeding 30 years.

Effectiveness of sanctions to reduce the crime of recruitment and involvement of children in armed conflict

Disincentivizing and deterring armed groups from recruiting children in the first place is the most important, albeit most difficult, goal. The international community has used judicial means to hold recruiters accountable. Thomas Lubanga Dyilo, the first person convicted by the International Criminal Court (ICC), was found guilty of the forcible recruitment of children in the DRC, among other actions. While the conviction was an important step, it is difficult to quantify the degree to which criminal accountability truly deters. Nonetheless, the ICC, along with domestic legal institutions, should continue to prosecute those who recruit child soldiers as a credible warning.⁶⁵

On March 14, 2012, the ICC issued its ruling to punish Lubanga for the crimes he was convicted of committing in the armed conflict that took place between July 2002 and December 2003 in the Ituri region, with thirteen years imprisonment for the crime of recruiting children under fifteen years of age into the armed forces that he was leading, and twelve years for the crime of enlisting children under the age of fifteen in active and active participation in hostilities in those forces, and fourteen years for the use of children under the age of fifteen. Despite the prison sentences ranging between 84 and 89 years old; The majority of the court's judges agreed to sentence Thomas Lubanga

⁶⁵ Christopher M. Faulkner. Why Child Soldiering Persists in Africa. February 25, 2024. P. 21.

Dylio to a sentence of fourteen years in total, of which he had spent six years in detention⁶⁶.

The ICC is considered an international person, as it enjoys the international personality in the performance of its function, and it cannot implement its rulings without the assistance of states⁶⁷, and in the absence of special prisons for the ICC, the implementation of prison sentences issued by the ICC is Through the prisons and penal institutions of countries, countries that wish to receive convicted persons are registered in the court's list under bilateral agreements concluded for the same purpose, and many countries have initiated their willingness to host convicts in their national prisons, including, for example, Britain, Austria, Mali, Belgium. And the country of implementation is appointed from that list, if there is no country for the appointment, then the implementation will be in the country hosting the court, which is the Netherlands⁶⁸.

Although this ruling is a precedent in the history of international criminal justice, because it strengthened the status of children and included them in protection from recruitment during armed conflicts, it did not rise to the degree of seriousness and gravity of the crimes committed by Thomas Lubanga Dylio against children, which raises many questions about the system The punishment used in the Statute of the ICC and the necessity of amending it in line with the court's policy in combating impunity and emphasizing it in order to serve the purpose of the penal policy as a whole, which is to prevent the commission of crime and not only deter it.

Conclusion

Is a conflict between the relevant international agreements in specifying a specific age to prohibit the recruitment of children. Most international humanitarian law treaties prohibit the recruitment of children under the age of fifteen, including the Statute of the

⁶⁶ Jafal, op, cit. p, 21.

⁶⁷ Freijeh, Muhammad Hisham. The Role of the International Criminal Judiciary in Combating International Crime, Ph. D. Thesis, University of Muhammad Khider, Biskra, Algeria, 2014, p, 325.

⁶⁸ Ghazi Farouk, International Cooperation in the Repressive Function of the International Criminal Court, Journal of Communication in Economics, Administration and Law, No. 38, 2014. P. 186.

International Criminal Court, while the 1989 Convention on the Recruitment of Children prohibits the recruitment of children. Rights of the Child and later the Voluntary Choice Protocol of 2000 made him 18 years old. In addition to a clear weakness in the performance of international criminal courts in prosecuting perpetrators of the crime of child recruitment, which allowed them to escape punishment and still encourages others to continue committing the crime of child recruitment. Although the United Nations has announced special protection rules for dealing with child soldiers after their arrest on battlefields, achieving this remains difficult to this day. It is necessary to try the perpetrators of international crimes objectively, away from any political influences. And to establish effective enforcement mechanisms to achieve the principle of extradition of perpetrators of international crimes, to avoid impunity, achieve international criminal justice, and ensure the rule of international criminal law.

At the conclusion of this study, we present a set of recommendations that we consider important to confirm the effectiveness of punishment to reduce the crime of child recruitment and involvement in armed conflicts, namely:

1. Amending some texts related to child protection to remove the contradiction between them, especially between the Statute of the ICC, which considers the recruitment of children under the age of fifteen as a war crime, while not considering it as such over this age or under the age of eighteen; As well as the Optional Protocol to the Convention on the Child, states are allowed to enlist under the age of eighteen with conditions.
2. Concluding an international convention for the protection of children in armed conflict, since the Convention on the Rights of the Child dealt with this issue only in one article, according to which protection was deferred to the rules and principles of IHL.
3. The necessity of amending the punishment system adopted in the Statute of the ICC, to conform to the court's policy in combating impunity and stressing it in order to serve the purpose of the penal policy as a whole, which is to prevent the commission of crime and not only deter it.

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