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## **RECRUITMENT OF CHILD SOLDIERS AS A SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**

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For thousands of years, the world has been filled with bloody armed conflicts. Millions of children around the world are victims of armed conflict. Often children are not just spectators but become a direct participant in this bloody theater. Children are associated with armed forces and groups for various reasons: in some cases, armed elements recruit them forcibly or kidnap them, in other cases, children are forced to join them through intimidation. Child recruitment also occurs in the context of poverty, discrimination, revenge, and loyalty to an ethnic, religious, or tribal group. Often, insecurity and displacement encourage children, especially those separated from their families, to join an armed group to ensure their protection and survival [1]. The problem is currently most acute in armed conflicts in Afghanistan, as well as in Africa and the Middle East. The involvement of children in armed activities varies from assisting combatants to recruiting children as combatants in the national armed forces and recruiting them to other armed groups.

By the Convention on the rights of the child of 1989, "every human being is a child until the age of 18, if, according to the law applicable to this child, he does not reach the age of majority earlier" (Article 1) [2]. For the first time in the text of an international legal act, the concept of children participating in hostilities appears only in 1977 when drafting Additional protocols to the Geneva conventions on the protection of victims of war in 1949 [3]. Additional Protocol I, which is applicable during international armed conflicts, obliges States to take "all practicable measures to ensure that children under the age of 15 do not take direct part in hostilities, and in particular...", to refrain "from recruiting them into their armed forces", and it is strongly recommended that States parties, when recruiting from among persons who have reached the age of 15 but who have not yet reached the age of 18, give preference to older persons (Article 77 (2)) [4]. The rules of Additional Protocol II applied during armed conflicts of a non-international character are more unconditional than those of Additional Protocol I. According to Additional Protocol II, "children under the age of 15 are not subject to recruitment into armed forces or groups and are not allowed to take part in military operations" (Article 4 (3) (C)) [5]. Children directly involved in international armed conflicts are recognized as combatants and, if captured, as prisoners of war.

The main international legal document defining the regime of military captivity is the Geneva Convention on the treatment of prisoners of war of 1949. Within the meaning of the 3rd Geneva Convention, prisoners of war are those who have fallen into the power of the enemy, belonging to both the category of combatants and non-combatants [6].

The Convention on the rights of the child of 1989 and the Optional Protocol to the Convention on the rights of the child also contains rules relating to the protection of children during armed conflict. Article 38 of the Convention requiring state parties to take all possible measures to ensure that persons under the age of 15 do not take a direct part in hostilities [2]. On 12 February 2002, the Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict entered into force. This optional Protocol was adopted by a resolution of the General Assembly to promote more effective implementation of the rights recognized in the Convention on the rights of the child by strengthening the protection of children from participation in armed conflict. Article 1 of the Optional Protocol states that "States parties shall take all possible measures to ensure that members of their armed forces who are under the age of 18 do not take a direct part in hostilities" [7].

It is also necessary to note the provisions of the African Charter on the rights and welfare of the child that States-parties to the Charter undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflict relating to the rights of the child, and take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child and under obligations of States parties under international humanitarian law to protect civilians in armed conflicts and take all feasible measures to ensure protection and care of children, who suffer from armed conflicts. Such rules should also apply to children in situations of internal armed conflict, tension, and unrest (Article 22) [8].

The recruitment of children under the age of 15 into national armed forces or their use for active participation in hostilities during international armed conflicts or in national armed forces or other armed groups during non-international armed conflict also falls under the jurisdiction of the International Criminal Court (ICC). According to Article 8 (2) (b) (xxvi) of the ICC Statute, a serious violation of the laws and customs applicable in international armed conflicts within the established framework of international law is considered a war crime, in particular, "the recruitment of children under the age of 15 into the national armed forces or their use for active participation in hostilities" . For non-international armed conflicts, applicable Article 8 (2) (e) (vii) of the ICC Statute, which defines: "the recruitment of children under the age of 15 into armed forces or groups or their use for active participation in hostilities" [9].

The Statute of the Special Court for Sierra Leone recognizes as a serious violation of international humanitarian law the recruitment or recruitment of children under the age of 15 into armed forces or groups or their use for active participation in hostilities (Article 4 (C)) [10].

In 2012, a landmark decision by the International criminal court and the Special Court for Sierra Leone expanded the scope of responsibility for violations against children committed during armed conflicts and laid the Foundation for judicial practice concerning the war crime of recruiting and using children [1]. On 26 April 2006, the ICC headquarters in the Hague, the trial chamber issued a decision in the case of the Prosecutor vs. Charles Ghankay Taylor. The special court for Sierra Leone found former Liberian President Charles Ghankai Taylor guilty of aiding and abetting war crimes on eleven counts committed by the Revolutionary United Front (RUF) during the Sierra Leone civil war from 1991 to 2002. The prosecution charged Charles Taylor with individual criminal responsibility for planning offenses under articles 2, 3 and 4 of the Statute of the special court for Sierra Leone. One of the charges is: "recruitment of children under the age of 15 into armed forces or groups and their use for active participation in military operations..." [11]. According to article 4 (c) of the Statute of the Special Court for Sierra Leone, this crime is classified as a serious violation of international humanitarian law [10]. The court sentenced Charles Taylor to 50 years in prison. The decision of the Special Court for Sierra Leone in the case of Charles Taylor is the first precedent in which a former head of state has been found guilty of war crimes against children committed by an armed group that the Court found was not under his direct control, but the material assistance, moral support, and encouragement that Charles Taylor, as President of Liberia, provided to RUF members is sufficient reason for him to be criminally responsible for war crimes, committed by RUF members during the Sierra Leone civil war [11]. These decisions have created very important international judicial precedents. They should be a

signal to those who have committed, are committing or intend to commit a war crime in the form of recruiting children into the armed forces, a signal that their crimes will not go unpunished.

The atrocities that are being committed against children today in so many conflict areas around the world are largely due to the crisis of existing norms at both the international and local levels. Traditional ideas about the limits of what is permissible in armed conflict, based on international treaties, as well as local regulations and, are discarded. The development and codification of relevant General and local norms is only the first step [3]. The enormous effort spent on developing international instruments and norms is nullified if their adoption is not followed by their application.

The international community should not remain aloof from reports of violations of children's rights and their involvement in armed forces, whether forced or voluntary. States need to adopt appropriate national legislation that prohibits the recruitment of children. The governments of the States on whose territory the armed conflict takes place should pay special attention to the prevention of recruitment of children into various armed forces and groups.

### Literature

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