

Children and Armed Conflict: Critical reflections on the development of the agenda
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Mikiko Otani, Rotating Honorary Chair in Enforcement of Children's Rights

Introduction

I am honored to be given this precious opportunity to speak at the Professor Jaap Doek master's thesis award ceremony. The topic of my presentation is children and armed conflict, critical reflections on the development of the agenda.

At the outset, I would like to talk why I have been focusing on the issue of children and armed conflict. I started legal practice in 1990 and very soon became interested in human rights, in particular, human rights education, the Convention on the Rights of the Child and the UN work in the area of human rights. I studied human rights and humanitarian affairs at Columbia University and obtained the Mater of International Affairs in NY, United States in 1999. Upon return to Japan, I resumed legal practice, while continuing to study international law at the Master's course for the LL.M degree. Around that time, one of the hot international human rights issues in Japan was the enforcement of the right to reparation of individual victims of gross violation of international humanitarian law during World War II. British and Dutch former prisoners of war sued Japanese government in the Japanese courts seeking remedies for the inhuman treatment violating international humanitarian law and lost. Remedies and justice for women victims of sexual slavery, known as "comfort women", and accountability of perpetrators and the Japanese government emerged as a complex legal and political issue in the national courts in Japan and Korea as well as at the UN human rights mechanisms. Remedies for victims of forced labour and sexual slavery remain unsolved even now. With this background, I chose the topic of the claims of compensation to victims of violation of international humanitarian law during the war in peace treaties for my master's degree thesis. I continued studying the issue of the right to remedies of the victims of violations of international human rights and humanitarian law, more specifically, how international humanitarian law, international human rights law and international criminal law interact and how international and regional human rights mechanisms are playing roles in enforcement of victims' rights to remedies. My doctor's degree thesis is about this topic focusing on child victims of violation of international human rights and humanitarian law. The focus on child victims was motivated by my observation that children's access to justice and the right to remedies had not received sufficient attention.

Children and armed conflict is another area which I observed deserves much higher attention and efforts to address as one of the top most serious child rights issues. While the disproportionate impact of armed conflict on children has been acknowledged, the international community has not done enough. My particular concern is the limited interests and disconnected approaches of the broad child rights community and the specialized community of the children and armed conflict agenda. In the child rights community, children and armed conflict has been treated as a special issue only relevant to the countries in the conflict or post conflict situations and a specialized area for those experts and civil society organizations knowledgeable of international humanitarian law or working in the armed conflict context. When it comes to the specialized children and armed conflict

community, few child rights experts are involved and child rights perspectives are missing or very limited. I wanted to fill this gap.

My current study on this topic children and armed conflict started from these backgrounds and with the purpose of contributing to strengthening the enforcement of child rights including child victim's rights to remedies in children and armed conflict agenda. I am grateful for this opportunity to share some of my preliminary thoughts and recommendations that have so far drawn from my study and receive comments and feedback from distinguished faculty members and students of Leiden University law school, prestigious academic institution in the area of human rights, in particular, children's rights.

Today, I will first provide overview of the development of norms and mechanisms in the area of children and armed conflict. Then I will talk about gaps and challenges, which I already mentioned a few minutes ago, but with more details. Finally I will present my arguments on how to address those gaps and challenges with specific recommendations for further study and work.

Development of norms

The legal norms for the protection of children in armed conflict have developed in international humanitarian law, as part of protection of civilian population as well as in provisions specifically addressing children. It is significant that those norms concerning children and armed conflict are clearly integrated and became part of the international human rights law for children through article 38 of the Convention on the Rights of the Child. Furthermore, as noted by the UN Human Rights Committee in its general comment No. 29 on derogations during a State of Emergency (2001), the Convention does not include a derogation clause. The Human Rights Committee stated, although in the footnote, that as article 38 of the Convention clearly indicates, the Convention is applicable in emergency situations.

The adoption of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) in 2000 was a milestone, elevating the minimum age for compulsory recruitment to 18 years and addressing the recruitment and use by non-State armed groups.

Another historical event of the normative development for children and armed conflict was the adoption of the Rome Statute of the International Criminal Court in 1998. While the jurisdiction crimes under the Rome Statute are derived from already existing norms in international humanitarian law, the new progressive development is the recognition of the rights of victims to participate in the proceedings and to reparation. This significantly contributed to strengthening the rights of child victims of armed conflict under article 39 of the Convention on the Rights of the Child and article 6 of the OPAC, at least for the child victims of the ICC jurisdiction crimes.

We should also acknowledge identifying six grave violation against children during armed conflict by series of Security Council resolutions starting from 1999 as the normative development. These six grave violations are not new normative standards. As explained in the working paper of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the legal basis for these violations already lies in relevant international law, encompassing international humanitarian law, international human rights law and international criminal law. Six grave violation is not a creation of new or higher legal norms. However, I think that it contributed to enhancing the visibility of violation of child rights in armed conflict in the international community in more simple and understandable terms.

Finally, I would like to mention the various UN and other documents relevant to the normative development in the area of children and armed conflict. These are many including resolutions of Security Council, General Assembly, Human Rights Council, reports of Special Procedures and declarations adopted by initiatives of experts or States. Just to name a few, Human Rights Council resolution on child rights in humanitarian situations (2018) and on realizing the rights of the child and family reunification (2022), and the Security Council resolution 2427 (2018), Paris Principles on children associated with armed forces and armed groups (2007) and Safe Schools Declaration (2015). In particular, it is remarkable that the Security Council resolution 2427 is referred in the CRC Committee's general comment No. 24 (2019) on children's rights in the child justice system because of its normative standard setting value by emphasizing that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law.

Development of the mechanisms

Let me now turn to the development of the mechanisms

The major challenge to the protection of children in armed conflict is the lack of effective enforcement mechanism. This is not specific to children but a general challenge to the whole international humanitarian law. Implementation of international humanitarian law relies on the States through adopting legislation, protocols, manuals and guidelines, providing training to armed forces, and prosecuting and punishing the perpetrators. Implementation of international human rights law also rests on the States. However, a fundamental shortcoming in the enforcement of international humanitarian law is the lack of monitoring mechanisms such as the human rights treaty bodies and enforcement of the rules is often left to post conflict arrangements such as transitional justice process and peace agreements between parties to conflict after the cease of war. This creates serious challenges to justice for victims of violation of international humanitarian law due to the non-international and rather complex and prolonged nature of contemporary armed conflict. It is extremely uncertain when, how and by whom the violations of international humanitarian law will be addressed to bring justice to victims.

Against this backdrop, the establishment of the monitoring mechanisms by the Committee on the Rights of the Child both for the Convention on the Rights of the Child and the OPAC where international humanitarian law concerning children are integrated is significant. The Committee can address the violation of child rights in armed conflict through its mandate of country reviews, individual communications and inquiry.

The creation of the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict by the General Assembly resolution in 1996 is another milestone. Its mandate is now specifically linked to the children and armed conflict agenda of the Security Council and its work through contributing to the Secretary-General's annual report including the list of parties to conflict. Furthermore, the establishment of the Monitoring and Reporting Mechanism on grave violations against children in armed conflict by the Security Council resolution in 2005 is an unprecedented step. Although not necessarily specific for the armed conflict situations, accountability mechanisms created by the Human Rights Council and General Assembly such as the International, Impartial and Independent Mechanisms, Fact Finding Missions and Commissions on Inquires can be recognized as part of the broader picture of enforcement mechanisms for protection of children in armed conflict.

Of course, I cannot fail to mention the International Criminal Court as a remarkable achievement of

the international community to strengthen the enforcement mechanisms with potential to address the crimes against and affecting children in armed conflict, although under the limitation of the jurisdictional scope, principle of complementarity and other constraints.

Gaps and Challenges

So what should we do more. I still see gaps and challenges. I would like to highlight three major areas of gaps and challenges.

First, **normative gaps** and complexity due to different standards, concepts and terminologies used in international humanitarian law, international human rights law including the CRC, OPAC and ILO Conventions, and the Security Council resolutions such as six grave violations against children. Most prominent normative gap is the age of voluntary recruitment of children and I think that this is high time to build argument for prohibition of all recruitment of children under 18 including voluntary recruitment. I think it is possible to make such argument based on the existing legal instruments The right to remedies of child victims in armed conflict needs to be further clarified under the CRC and OPAC, such as who are child victims of armed conflicts under article 39 and what should be effective and appropriate reparation for child victims of armed conflict. Integration of child rights perspectives and view and needs of child victims in transitional justice and post conflict arrangements is another issue. One complicated challenge is the engagement of CAAC agenda with counter-terrorism and national security agenda, which is more and more prominent in the issue of detention of children in armed conflict situation or under the security related legislation or policy.

Second, **monitoring gap** among various mechanisms such as the CRC, SRSR CAAC, Security Council's MRM, Special Procedures and accountability mechanisms. Obviously the whole range of child rights under the Convention on the Rights of the Child are violated and affected in armed conflict beyond recruitment and use under the OPAC and six grave violations monitored by Security Council. The monitoring role of the CRC for broader child rights violations in armed conflict and coordination with the SRSR CAAC mandate needs to be pursued. Civil society organizations who are working on the ground and UNICEF need to feed in the information for monitoring of broader scope of child rights violations and implementation of recommendations including on recovery and reintegration of all child victims in the longer term.

Third, **implementation gap**. Responsibility of countries not in armed conflict situations has clear legal basis in the CRC, OPAC and UN documents including Security Council resolutions but has not been implemented. Recruitment and use of children by non-States armed groups is prohibited. The norm is clear but how it is actually implemented. Another example is the norm such as that children who are associated with armed groups and committed crimes should be preliminary treated as victims. How can this norm actually operationalized, particularly in the countries where child justice system does not exist or is not functioning. Concerning the accountability of crimes against children in violation of international humanitarian law during armed conflict, how can this be achieved other than by the International Criminal Court. Is the tool of universal jurisdiction of national courts just an aspiration or an academic concept in the textbook or be actually utilized to achieve accountability for victims as the responsibility of all countries?

Recommendations

How should we overcome these gaps? I would like to make two overarching suggestions to move our path forward.

First, **child rights base approach to CAAC agenda**, which recognizes children as rights holders, applies the holistic approach to the CAAC agenda based on the Convention on the Rights of the Child, and mainstreams the child rights perspectives in the three pillars of the work of the UN, namely human rights, development and peace and security. For example, in the discussion on children and armed conflict, the need of humanitarian-development-peace nexus is emphasized. But nowhere is child rights, which should be the core of all these stages. Children in the CAAC agenda are still mainly perceived as vulnerable victims but not important stakeholders and actors in peace building. This failure creates a serious challenge. Think about reintegration of child victims of armed conflict. Where should children be returned if the whole community was destroyed by armed conflict? Children need to be recognized as active partners to re-build a sustainable peaceful community. Secretary-General's Guidance Note on Child Rights Mainstreaming issued in August 2023 supports this direction by requesting all the whole UN system including in the area of peace and security to integrate child rights perspective.

Second, the key is **more coordination** of existing mandates and actors. There is no need to establish a new mechanism or mandate to fill the gaps. What is needed is rather to revitalize her mandate to bridge the gap of existing monitoring gaps and work of relevant bodies such as the CRC, Special Procedures, UNICEF and civil society. Who should coordinate? I think that the mandate of the SRSG CAAC given by the original GA resolution in 1996 is broad enough to play an active role in coordination. In addition, I would like to emphasize the critical importance of the CRC Committee, in filling the normative gap and clarifying the complicated different concepts concerning children and armed conflict. For this purpose, the Convention on the Rights of the Child should be the common and comprehensive legal framework.

Today I briefly sketched the development of norms and mechanism of children and armed conflict agenda, roughly described gaps and challenges, and made general suggestions. I am going to elaborate in more detail, in particular gaps and challenges with more specific recommendations in writing I am planning now. To reflect further and sharpen the recommendations, any questions, comments and feedback from you will be very much appreciated.

Thank you for your listening.

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