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# The Implementation of the Responsibility to Protect when the Protection of Children in Armed Conflicts within the UN System is Concerned – Who is Responsible?

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*The significance of devoting particular attention to the category of people that require special care and protection has been emphasized for decades. Some progress has been made with regards to the international protection of children; however, it cannot be considered enough. Reports coming from the field reveal disturbing and intimidating data. The world is still witnessing too many crimes being committed against children in times of armed conflict: killing and maiming, recruitment or their use as soldiers, sexual violence against children, their abduction, attacks against schools and hospitals, or denial of humanitarian access to children. All these crimes have been recognized as “six grave violations” affecting children. On the other hand, much effort has been made on the international level representing joint action of different actors. All their activities could be observed throughout the prism of actions recognized as the Responsibility to Protect (RtoP) – the responsibility to protect children that lies in the hands of national governments as well as the responsibility of the international community when national protection fails. The focus of this paper lies in discussing what RtoP means when it comes to the protection of children.*

*Keywords: protection of children, armed conflict, RtoP, UN, Special Representative of the Secretary-General for children and armed conflict*

## 1. Introduction

When it comes to children, the world is a united front. Due to their vulnerability and dependence, they must be cherished, treated well and with respect, perceived as our greatest responsibility, and the heirs of our future. In other words, the world of tomorrow depends on the way we raise and educate our children today as well as what values we promote and encourage. The (never-ending) envision of the world of peace, “which invests in its children and in which every child grows up free from violence and exploitation”<sup>1</sup> is one of the goals of the international community put down in the 2030 Agenda for Sustainable Development.

Unfortunately, our reality today is somewhat different. Armed conflicts are constantly taking place around the globe, making a tremendous impact on children. The overall situation in the last couple

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<sup>1</sup> General Assembly Resolution: Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015, para. 8. That document represents a blueprint of measures focused on achieving a more sustainable future for all, in order to no one is left behind.

of years has unfortunately been far from optimistic.<sup>2</sup> According to recent reports, at the end of 2019, around 79,5 million people have been forcibly displaced and uprooted from their homes, including 25 million refugees and 45,7 million internally displaced people; these are the highest numbers ever recorded.<sup>3</sup> Among them, an estimated 30-34 million (between 38% and 43%) of forcibly displaced persons are children under the age of 18!<sup>4</sup> Nowadays, one out of four children – more than 420 million<sup>5</sup> – live in an area affected by disaster or armed conflict. That number is increasing rapidly – at the end of 2016, it was 250 million.<sup>6</sup> That increase is unfortunately followed by a rising number of violations against children during conflicts – over 25,000 grave violations have been verified and confirmed in 2019,<sup>7</sup> more than 24,000 in 2018.<sup>8</sup> Comparing these numbers with those from previous years,<sup>9</sup> one could only conclude that the situation has continued to aggravate each year. What is more, during the 2020 Covid-19 pandemic, this already dire situation has become even more complex. Lockdowns have affected reintegration programs, complicated the delivery of services, disrupted education, and undermined access to monitoring, verification, and response efforts of protection and humanitarian actors, etc.<sup>10</sup>

Facing this reality, the question arises – who is responsible for protecting children from the scourges of armed conflicts? Is it a state/national government on the territory where conflict has taken place or is it the international community and the UN in particular, whose purpose (or even responsibility) is to take effective measures in order to prevent conflicts, maintain international peace and security, and protect human lives?

The issue(s) of protecting children from the impacts of conflicts can hardly be seen as isolated actions of the state on whose territory the conflict has taken place. A clear connection between the necessity to protect children from the scourges of armed conflicts and the shared responsibility of both – not only the state(s) concerned but also the international community – lies at the very core of the Responsibility to Protect concept. In the last fifteen years, the international community has been engaged in resolving the issues of its (non)implementation.<sup>11</sup>

<sup>2</sup> See K. Dupuy, S. Aas Rustad, *Trends in Armed Conflict, 1946–2017*, *Conflict Trend*, 5/2018, Peace Research Institute Oslo, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Dupuy%2C%20Rustad-%20Trends%20in%20Armed%20Conflict%2C%201946%E2%80%932017%2C%20Conflict%20Trends%205-2018.pdf>, p. 1.

<sup>3</sup> As a comparison, in 2010 the number of forcibly displaced persons was 41 million; in 2018, it was around 70 million, including nearly 31 million children. Over 25 million people have left their countries as refugees and more than half of them (13 million) were children. See more at: UNICEF, *Children Under Attack*, available at: <https://www.unicef.org/children-under-attack>; UNHCR Global Trends, *Forced displacement in 2018*, available <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/06/2019-06-07-Global-Trends-2018.pdf>, p. 2.

<sup>4</sup> *Global Trends, Forced Displacement in 2019*, available at: <https://www.unhcr.org/5ee200e37.pdf>, p. 2.

<sup>5</sup> UNICEF Annual Report 2018, *For Every Child, Every Right*, 2019, available at: <https://www.unicef.org/media/55486/file/UNICEF-annual-report-2018%20revised%201.pdf>, p. 43.

<sup>6</sup> *20 Years to Better Protect Children Affected by Conflict*, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UN, 2016, pp. 6, 14.

<sup>7</sup> Secretary-General Report, *Children and Armed Conflict*, A/74/845-S/2020/525, 9 June 2020 (hereinafter: Secretary-General Report 2020), para. 5.

<sup>8</sup> Secretary-General Report, *Children and Armed Conflict*, A/73/907–S/2019/509, 20 June 2019 (hereinafter: Secretary-General Report 2019), para. 5.

<sup>9</sup> While, in 2016, at least 4,000 verified violations by government forces and more than 11,500 verified violations by a range of non-State armed groups were reported, in year 2017, these numbers increased to around 6,000 verified violations by government forces and more than 15,000 by a range of non-State armed groups. C.f., e.g., Secretary-General Report, *Children and Armed Conflict*, A/72/361-S/2017/821, 24 August 2017, para. 5; Secretary-General Report, *Children and Armed Conflict*, A/72/865–S/2018/465, 16 May 2018, para. 5.

<sup>10</sup> Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/75/203, 20 July 2020 (hereinafter: Report of the Special Representative 2020), paras. 8; 10.

<sup>11</sup> For more on the RtoP concept see generally: D. Chandler, *Unravelling the Paradox of “The Responsibility to Pro-*

On the other hand, in the last three decades, the UN and their partners (including states, regional and sub-regional organizations, human rights associations, etc.) have created a system for protecting children in armed conflicts. Their endeavors have led to the establishment of special bodies whose purpose is a more significant contribution and a more effective protection of children in armed conflicts. Coordination, active and constructive dialogue, and elaborated co-operation of all relevant factors are of utmost importance in this field. Their achievements, measures taken, and challenges they all have been facing within the framework of RtoP, when the protection of children from the impacts of armed conflict is concerned, are in the focus of this paper.

## **2. What has been done so far within the UN in Strengthening the Framework on Protection of Children in Armed Conflicts?**

The development of protection of children from the scourges of armed conflicts has started with the adoption of the Convention on the Rights of the Child<sup>12</sup> (hereinafter: CRC) in 1989. It contains only two provisions with regards to the protection of children in armed conflicts – Art. 38 prohibits the recruitment and use of children during armed conflict, while Art. 39 provides that states shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim (among others) of armed conflict. These two provisions were sufficient to draw international attention to the disturbing plight of children affected and could be seen as the starting point for all other actions. In late 1993, the UN General Assembly adopted the resolution 48/157(1993)<sup>13</sup> by which it authorized the UN Secretary-General to appoint an expert who would undertake a study on the protection of children and their participation in armed conflict.<sup>14</sup> The appointed expert, Graça Machel, took intensive research and fieldwork, which resulted in the report named Promotion and Protection of the Rights of Children – Impact of Armed Conflict on Children.<sup>15</sup> This document provided the first comprehensive assessment of the violations of children's rights during armed conflict. It has also drawn more serious attention of the international community and has directed further development of child protection from the impacts of hostilities.

Starting from that particular document, the ongoing efforts of the major UN bodies – the General Assembly, the Security Council, and the Secretary-General – have never ceased. The UN Secretary-General submitted a total of 19 reports on children and armed conflicts between 2000 and 2020,<sup>16</sup> constantly emphasizing and warning about the necessity of paying attention to this issue.

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*tect*," Irish Studies in International Affairs, Vol. 20, 2009, pp. 27-39; J. Ralph, *What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect*, International Organization, Vol. 72 Issue 1, 2018, pp. 173-203; C. Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm*, The American Journal of International Law, Vol. 101, Issue 1, 2007, pp. 99-120; J.M. Welsh, *Norm Robustness and the Responsibility to Protect*, Journal of Global Security Studies, vol. 4, Issue 1, 2019, pp. 53–72.

<sup>12</sup> The Convention was adopted on November 20, 1989, entered into force on 2 September 1990 and, to this day, has remained one of the most ratified international documents with 196 state parties (1577 UNTS 3; 28 ILM 1456 (1989).

<sup>13</sup> General Assembly Resolution: Protection of Children Affected by Armed Conflict, A/RES/48/157, 20 December 1993.

<sup>14</sup> Ibid., para. 7.

<sup>15</sup> General Assembly Resolution, Promotion and Protection of the Rights of Children - Impact of Armed Conflict on Children, A/51/306, August 26, 1996. For more about the impact of that Resolution see, e.g. D.S. Koller & M. Eckenfels-Garcia, *Using Targeted Sanctions to End Violations Against Children in Armed Conflict*, Boston University International Law Journal, Vol. 33, No. 1, 2015, p. 3.

<sup>16</sup> The last one was issued in June 2020, covering the period from January till December 2019. See, Secretary-General Report 2020, *ibid*.

The Security Council has adopted 12 resolutions on children and armed conflicts since 1999<sup>17</sup>, with the situation of children and armed conflict being regularly on the Security Council's agenda as an issue affecting international peace and security.

Furthermore, the interest in the protection of children from the impacts of armed conflicts has resulted in establishing several UN bodies with the exclusive focus on that challenge and their exclusive purpose to protect and promote children's rights in armed conflict.

One of the bodies that have been established exclusively for the protection of children in armed conflict is the Special Representative of the Secretary-General for children and armed conflict (hereinafter: Special Representative). The initiation for its establishment came from Machel's report in 1996.<sup>18</sup> The first Special Representative was appointed a year later.<sup>19</sup> Its mission is to raise awareness about the suffering of children affected by armed conflict. It also encourages development in this field and facilitates the adoption of measures intended to improve the situation of children. The purpose of such measures is to prevent (if possible) or overcome child abuse (when it has already happened) and perform the healing process successfully. This can be achieved by strengthening the normative frameworks and mobilizing public opinion with the purpose of creating a political and social environment that supports and encourages the protection of children in times of peace, or the reintegration of children into normal life after the end of the armed conflict.<sup>20</sup> Some of the efforts taken over the years – as will be shown in this paper – have resulted in concrete achievements and improvements in the field.

The other UN body established by the Security Council<sup>21</sup> as an “absolute innovation”<sup>22</sup> with the exclusive purpose to promote and observe the protection of children in armed conflict is the Security Council Working Group on Children and Armed Conflict (hereinafter: Working Group). Its creation is considered as a milestone that provides a framework to regularly engage the Security Council on the protection of children in armed conflict issues. It also bridges the gap between actions taken on the highest international level and those taken in the field.<sup>23</sup> The Working Group makes recommendations to the Security Council on possible measures to promote the protection of children affected by armed conflict. Furthermore, it reviews progress<sup>24</sup> that has been made under the monitoring and reporting mechanism” (hereinafter: MRM).<sup>25</sup> Its purpose is to provide a “systematic gathering of objective, specific and reliable information on grave violations committed against children in situations of armed conflict, leading to well-informed, concerted and effective responses to ensure

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<sup>17</sup> The last resolution 2427(2018) titled Children and armed conflict was adopted on 9 July 2018.

<sup>18</sup> The recommendation from the Machel's report (see paras. 266-269) has been followed by the one from the UN General Assembly Resolution A/Res/51/77 (20 February 1997, para. 35).

<sup>19</sup> Special Representatives between 1997 and 2019 were Olara Otunnu, Radhika Coomaraswamy and Leila Zerrougui. Currently, this position is in the hands of Virginia Gamba. See A.-C. Nilsson, *Children and Youth in Armed Conflict*, Vol. 1, Martinus Nijhoff Publishers, Leiden-Boston, 2013, pp. 859-868.

<sup>20</sup> I. Bode, *Reflective practices at the Security Council: Children and Armed Conflict and the three United Nations*, *European Journal of International Relations*, Vol. 24. No. 2, 2018, pp. 302-306; 309-311.

<sup>21</sup> Security Council resolution, Children and Armed Conflict, S/Res/1612(2005), 26 July 2005.

<sup>22</sup> A.-C. Nilsson, 2013, p. 906.

<sup>23</sup> Report of the Special Representative of the Secretary-General for Children and Armed Conflict, Children and Armed Conflict, A/HRC/43/38 (hereinafter: Report of the Special Representative 2019), 24 December 2019, para. 8.

<sup>24</sup> See more about its mission and activities at: <https://www.un.org/securitycouncil/subsidiary/wgcaac>. See also D.S. Koller & M. Eckenfels-Garcia, 2015, pp. 12-14; A.-C. Nilsson, 2013, pp. 906-908.

<sup>25</sup> About the MRM system see generally Z. Coursen-Neff, *Attacks on Education: Monitoring and Reporting for Prevention, Early Warning, Rapid Response, and Accountability in: Protecting education from attack: a state-of-the-art review* (Chapter 7), UNESCO, 2010, pp. 111-123; D.S. Koller & M. Eckenfels-Garcia, 2015, pp. 4-5; A.-C. Nilsson, 2013, pp. 886-906.

compliance with international and local children and armed conflict protection norms.”<sup>26</sup> The lack of sufficient information sharing could be seen as “an endemic weakness throughout the conflict”.<sup>27</sup>

In gathering information, the UN framework on the protection of children in armed conflicts relies on cooperation with states and other international actors. It involves activities and correspondence of governments, non-state actors, human rights bodies, specialized agencies, regional and sub-regional organizations, NGOs, and UN organs and bodies, etc.<sup>28</sup>

It seems that this framework is well organized and elaborated. However, having in mind information coming from the field, a question arises as to the actual effectiveness of that system. The answer to this question will be provided through the elaboration of different measures taken and incorporated within the RtoP concept.

### 3. RtoP – the Three Pillars Concept

Looking for effective measures to prevent systematic violations of human rights and to make a stronger responsibility for all, the states and the international community have embraced the RtoP concept.<sup>29</sup> It was affirmed and unanimously accepted at the 2005 UN World Summit by more than 170 state leaders.<sup>30</sup> It represents a political instrument, an emerging norm (or even a new norm)<sup>31</sup> aimed at ending the four atrocity crimes, the “plagues” of humanity<sup>32</sup> – genocide, war crimes, crimes against humanity, and ethnic cleansing. In its core, RtoP is divided between the state(s) and the international community through the three pillars implementation: 1) protection responsibility of the state; 2) international assistance and capacity-building; 3) timely and decisive response.<sup>33</sup> It is a system “narrow in scope, but universal and enduring in its coverage,” applicable everywhere, by any state, all the time<sup>34</sup> and focused on creating an integrated principle for ensuring the protection

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<sup>26</sup> Secretary-General Report, Children and Armed Conflict, A/59/695-S/2005/72, 9 February 2005, para. 65.

<sup>27</sup> Secretary-General Report, The fall of Srebrenica, A/54/549, 15 November 1999, para. 474. See also: Secretary-General Report, Early warning, assessment and the responsibility to protect, A/64/864, 14 July 2010, para. 7.

<sup>28</sup> I. Bode, 2018, pp. 302-306.

<sup>29</sup> The RtoP concept was presented for the first time at the end of 2001, when the International Commission on Intervention and State Sovereignty (ICISS) issued a report “Responsibility to protect.” The Report is available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

<sup>30</sup> World Summit Outcome was adopted as General Assembly Resolution A/Res/60/1 on 24 October 2005. The references to the RtoP were contained in paras. 138 and 139.

<sup>31</sup> G. Evans, *Crimes against Humanity: Does the Responsibility to Protect Have a Future*, Victoria University Law and Justice Journal, Vol. 8, No. 1, 2018, p. 3.

<sup>32</sup> “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?” This was the challenge put forward to the UN member states by the former Secretary-General Kofi Annan in year 2000 in finding the effective steps of international community in dealing with atrocity crimes. See Millennium Report of the Kofi Annan (2000): We the Peoples: The Role of the United Nations in the 21st Century’ presented to General Assembly by Secretary-General, p. 48, available at: [https://www.un.org/en/events/pastevents/we\\_the\\_peoples.shtml](https://www.un.org/en/events/pastevents/we_the_peoples.shtml).

<sup>33</sup> The “three pillars term” was not coined in The Summit Outcome Document; it was mentioned for the first time in the 2009 Secretary-General Report as devised and advocated by his first Special Advisor on the RtoP. It was the first document that clarified its meaning and scope and confirmed a comprehensive strategy for its implementation. Secretary-General Report, Implementing the responsibility to protect, A/63/677, 12 January 2009 (hereinafter: Secretary-General Report, Implementing the RtoP, 2009). See also: A.J. Belamy, *The Three Pillars of the Responsibility to Protect*, Pensamiento Propio, 2015, Vol. 20, No. 41, p. 45.

<sup>34</sup> A.J. Belamy, 2015, p. 43.

of population from atrocity crimes,<sup>35</sup> children included.

Pillar I represents the primary responsibility of the state to protect the population on its territory, “whether nationals, or not”<sup>36</sup> from the four atrocity crimes. Since the commitment to conflict or other human-made catastrophes prevention first and foremost lies in the hands of state leaders, the majority of efforts must be focused on this particular responsibility as its “single most important dimension.”<sup>37</sup> This is a responsibility consistent with state obligations under international law, international humanitarian law, human rights law, etc. It is “an ally of sovereignty, not an adversary.”<sup>38</sup> By taking numerous activities in respecting fundamental human rights on its territory, the state encourages development of a tolerant society and respectively diminishes the possibility of atrocity crimes from occurring.

Pillar II emphasizes collective responsibilities. It represents the commitment of the international community to assist, encourage, and help the state in exercising its obligation arising from RtoP and to support the UN in establishing an early warning capability.<sup>39</sup> Pillar II relies on the cooperation of many factors – the UN member states, regional and sub-regional organizations and arrangements, human rights associations, civil society, institutional and comparative advantage of the UN system, etc. All of them can be used as two-fold instruments. On one hand, they can encourage states to recognize their obligations under relevant international norms and, on the other, they can ensure the flow of information and analysis required and necessary for the RtoP implementation. Therefore, Pillar II is considered crucial in creating a procedural and practical framework that can be efficiently and consistently applied and widely supported. Building both pillars, I and II, could be seen as “a key ingredient for a successful strategy for the RtoP.”<sup>40</sup>

However, the responsibility of the international community does not end with Pillar II. Although the state holds primary responsibility, in situations in which the state is unwilling or unable to engage its own RtoP, the international community has further responsibility to “step in” in accordance with Pillar III. It has the possibility (and responsibility) to employ the broad range of tools available within the UN system (both military and non-military) to respond to the imminent risk or commission of the four atrocity crimes. Pillar III refers to appropriate diplomatic, humanitarian, and other peaceful means in accordance with the UN Charter. If such peaceful means are inadequate and national authorities manifestly fail at their RtoP, the international community is further prepared to react more decisively in order to suppress human rights violations and to take collective action in a timely and decisive manner. All actions must be taken in accordance with the UN Charter, including Chapter VII, on a case-by-case basis, in cooperation with relevant regional organizations and under the authorization of the Security Council.<sup>41</sup>

The significance of the RtoP concept is evident. Such a system comprising a wide array of standards, tools and practices that are flexible and tailored on a case-by-case basis could effectively discourage states from misusing the RtoP and encourage them to accomplish their own capacities in implementing RtoP.<sup>42</sup> On the other hand, the international community has the responsibility to

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<sup>35</sup> H. Breakey, *Protection Norms and Human Rights: A Rights-Based Analysis of the Responsibility to Protect and the Protection of Civilians in Armed Conflict*, Global Responsibility to Protect, Vol. 4, 2012, p. 312.

<sup>36</sup> Secretary-General Report, Implementing the RtoP, 2009, para. 11a), p. 8.

<sup>37</sup> ICISS Responsibility to Protect Report available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, p. XI.

<sup>38</sup> Secretary-General Report, Implementing the RtoP, 2009, para. 10a), p. 7.

<sup>39</sup> Art. 138 of the World Summit Outcome Document.

<sup>40</sup> Secretary-General Report, Implementing the RtoP, 2009, para. 11b).

<sup>41</sup> Art. 139 of the World Summit Outcome.

<sup>42</sup> Secretary-General Report, Implementing the RtoP, 2009, paras. 10c); 11c).

anticipate and mitigate any harmful effect of their actions as far as possible. The final decision must support the tool that is likely to be the most effective in such specific situations.<sup>43</sup> However, choosing the most adequate and the most effective tools in a specific situation is undoubtedly a challenging task, especially when children are concerned.

Considering all the activities undertaken for protecting children from the impacts of armed conflict, the implementation of RtoP can be observed, supported, and encouraged as responsible sovereignty as well as collective responsibility. All three pillars “must be ready to be utilized at any point.”<sup>44</sup>

#### 4. Protection of Children as Responsible Sovereignty

In the background of Pillar I lies the idea of responsible sovereignty that is held primarily by the state and its government. A myriad of national actions should be engaged to ensure a recognition of risk factor(s)<sup>45</sup> and an adequate response to each of the RtoP grave violations (including those against children). Such crimes are more likely to happen during any type of armed conflicts (both international and non-international), mainly as armed conflict becomes a “fruitful soil” for such behaviors. Although conflict-related situations may pose the greatest challenge to the prevention of atrocity crimes, that does not diminish the state’s responsibility whatsoever. On the other hand, even if atrocity crimes are “born” in a non-armed conflict-related environment, they could increase the possibility for initiating the armed conflict.<sup>46</sup> The fact is that an environment permissive to core crimes, intolerance, discrimination, and other breaches of human rights does not develop suddenly or overnight; it is a long-lasting process, which can take years or decades and there is no society that is immune to such risk.<sup>47</sup>

The management of diversity requires national policies and norms that pay respect to differences.<sup>48</sup> Societies that handle well their internal diversities, foster respect and tolerance and have effective mechanisms for handling domestic disputes are unlikely to follow the destructive path of atrocity crimes. However, raising tolerance by embracing diversity is an on-going process that could be reversed at any time. It is dangerous to be too bold and believe that the community is immune from the risk of galloping intolerance.<sup>49</sup>

Regardless of the type of atrocity crimes, numerous entry points for action that can stop the process and prevent such crimes can be recognized, observed, and encouraged.<sup>50</sup> For example, constitutional and legislative protections and the establishment of human rights institutions can contribute

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<sup>43</sup> Security Council Resolution, A vital and enduring commitment: implementing the responsibility to protect, A/69/981–S/2015/500, 13 July 2015, paras. 38–45.

<sup>44</sup> Secretary-General Report, Implementing the RtoP, 2009, para. 11c).

<sup>45</sup> More about risk factors in: A. Dieng, J. Welsh, *Assessing the risk of Atrocity Crimes*, Genocide Studies and Prevention: An International Journal, vol. 9, Issue 3, pp. 4–12.

<sup>46</sup> Secretary-General Report, Responsibility to protect: State responsibility and prevention, A/67/929–S/2013/399, 9 July 2013 (hereinafter: Secretary-General Report, RtoP: State responsibility and prevention, 2013), paras. 12; 28.

<sup>47</sup> Ibid., paras. 29; 30. More about nature and dynamics of atrocity crimes see at: Secretary-General Report, Fulfilling our collective responsibility: international assistance and the responsibility to protect, A/68/947–S/2014/449, 11 July 2014 (hereinafter: Secretary-General Report, Fulfilling our collective responsibility, 2014), paras. 7–11.

<sup>48</sup> Secretary-General Report, Responsibility to protect: lessons learned for prevention, A/73/898–S/2019/463, 10 June 2019 (hereinafter: Secretary-General Report, RtoP: lessons learned for prevention, 2019), para. 16a).

<sup>49</sup> Secretary-General Report, Implementing the RtoP, 2009, paras. 15; 21.

<sup>50</sup> For more structural and operational measures that can contribute to reducing the risk of atrocity crimes see at: Responsibility to protect: Secretary-General Report, RtoP: State responsibility and prevention, 2013, paras. 30–70.



to creating a society based on non-discrimination by recognizing society's diversity and granting explicit protection to different populations, including minorities.<sup>51</sup> The role of human rights institutions, which can contribute to the strengthening the rule of law, ending impunity, advancing early warning mechanisms or supporting the positive role of media, to name a few, are specially emphasized in capacity building. However, capacity building through international assistance can be effective only if the state has an effective, legitimate and inclusive governance that promotes and protects the diversity of its society and minority rights as well as particular capacities, institutions, and actors that help to prevent escalation from risk to imminent crisis.<sup>52</sup>

Furthermore, an effective implementation of relevant international documents and the endorsement of other instruments with regards to the protection of children in armed conflicts<sup>53</sup> could contribute to fulfilling the state's obligation arising from RtoP. When children are concerned, the significance of CRC is clearly emphasized. It is ratified by 196 parties, which makes it the most ratified document ever. Although it contains only two provisions with regards to the protection of children in armed conflicts (Arts. 38 and 39),<sup>54</sup> it is considered as the starting point of the international legal framework for the protection of children in armed conflict and a source of operative principles and standards.<sup>55</sup> Another document important for the protection of children is the Optional Protocol to the CRC on the involvement of children in armed conflict (hereinafter: Optional Protocol).<sup>56</sup> Its implementation can also strongly encourage the fulfilling of the state's obligation arising from RtoP. It aims to protect children under the age of 18 from recruitment and use in hostilities and emphasizes the importance and necessity of education, strengthening international cooperation, physical and psycho-social rehabilitation and social reintegration of children affected by armed conflicts, and expanding information and education programs. At the moment of its 20<sup>th</sup> anniversary of adoption, the Convention has been ratified by 170 states.<sup>57</sup>

Furthermore, a functional and effective judicial system is considered as one of the most important elements in building a society that is resilient to atrocity crimes. It must be able to respond to the request for ensuring accountability for human rights violations and ending the culture of impunity.<sup>58</sup> The punishment of those responsible of atrocity crimes contributes not only to their prevention but also builds the credibility of institutions<sup>59</sup> and contributes to further reconciliations and the recovery of society. When it comes to the crimes committed against children, it is of utmost importance to conduct timely and systematic investigations and prosecutions of the perpetrators.<sup>60</sup> That process can be made at either the national or international level.

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<sup>51</sup> See, e.g., Secretary-General Report, RtoP: State responsibility and prevention, 2013, paras. 35; 36.

<sup>52</sup> Secretary-General Report, Fulfilling our collective responsibility, 2014, paras. 39; 42-58.

<sup>53</sup> For example, the Cape Town principles and best practices on the recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa (1997); the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups and Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces and Armed Groups (2007); the Safe Schools Declaration (2015); the Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers (2017), etc.

<sup>54</sup> However, it is considered as some other provisions are also of particular relevance, such as Art. 6 (the right to life) or Arts. 32-38 (the right to protection against all forms of physical, sexual or other forms of violence, abuse or exploitation).

<sup>55</sup> Report of the Special Representative 2019, paras. 4; 6.

<sup>56</sup> Optional Protocol was adopted by UN General Assembly resolution A/RES/54/263 on 25 May 2000 and entered into force on 12 February 2002. 2173 UNTS 222, 39 ILM 1285 (2000).

<sup>57</sup> In September 2019, Gambia and Myanmar became the 170th State parties [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en)

<sup>58</sup> Z. Coursen-Neff, 2010, pp. 120; D.S. Koller & M. Eckenfels-Garcia, 2015, pp. 8-12.

<sup>59</sup> Secretary-General Report, RtoP: State responsibility and prevention, 2013, para. 40.

<sup>60</sup> See Security Council Resolution, S/RES/2427, 9 July 2018, pp. 6-7.

Constant encouragement in sharpening the tools for ending impunity, training of those responsible for law enforcement, and supporting the independence and plurality of the media are some of the crucial factors in building society resilient to atrocity crimes. With regards to the protection of children, UNICEF has been working with a number of governments to address how their judicial systems deal with child recruitment and demobilization. Over the years, a number of comprehensive training programs on children's rights and protection before, during, and after the armed conflict have been conducted.<sup>61</sup>

When children are concerned, quality education could be perceived as “key” for atrocity prevention and building a resilient society, and “one of the best investments States can make”.<sup>62</sup> Education should reflect and respect the ethnic, national, cultural, or any other diversity of society. The way we raise and educate our children determines our future. If we agree that it all comes down to the education of our future leaders, then the significance of prevention is more than clear.<sup>63</sup> The surroundings children grow up in influence their values and perspective. A peaceful environment permits the education of children on the importance of human rights and encourages the growth of tolerance. A tolerant society embraces and respects differences and eliminates the risks of conflict. Education curricula should include information on past violations, memorials, and remembrance days to past atrocities, their causes, dynamics, and consequences. Focus on young people, in order to change their behavior, attitudes, and perceptions, can significantly contribute to creating a society resilient to atrocity crimes.<sup>64</sup> Education could be the key for a prosperous future. However, reports coming from the field with regards to the attacks on schools or the demands for the implementation of strict religious ideology have revealed disheartening and intimidating data. Despite some progress recorded in recent years, it cannot be regarded as enough; many children are still being left behind and deprived of the right to education.

## 5. Protection of Children in Armed Conflict as a Collective Responsibility

When the protection of children is concerned, the role and support of the international community is crucial, both before and during armed conflicts. Such support may include development assistance to help address the root cause of the conflict, support for local initiatives to advance human rights, good offices missions, mediation efforts, efforts to promote dialogue or reconciliation, etc.<sup>65</sup> The 2005 Outcome document asserts that the “international community should, as appropriate, encourage and help States to exercise” their responsibility.<sup>66</sup> It also emphasizes the intention of the international community “to commit itself, as necessary and appropriate, to helping States build capacity to protect their population from the four atrocity crimes and to assisting those which are

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<sup>61</sup> For example, in 2019, in order to strengthen children protection in armed conflict, a joint technical committee composed of key ministries and departments of Yemen was established and their education and training were conducted by the UN. Report of the Special Representative 2019, para. 45.

<sup>62</sup> M. Tavassoli-Naini, *Education Right of Children During War and Armed Conflicts*, *Procedia Social and Behavioral Sciences*, Vol. 15, 2011, p. 305.

<sup>63</sup> See generally Z. Coursen-Neff, 2010, pp. 117-118; A.C. Nilsson, 2013, pp. 177-179.

<sup>64</sup> Secretary-General Report, RtoP: State responsibility and prevention, 2013, para. 63.

<sup>65</sup> ICISS Responsibility to Protect Report, para. 3.3, p. 19.

<sup>66</sup> 2005 World Summit Outcome Document, para. 138.

under stress before crises and conflicts break out.”<sup>67</sup> Provisions of Pillars II and III imply mutual commitment, cooperation, and partnership between state(s) in question and the international community. The RtoP concept is not a mere reaction of the international community; states have been committed to assist one another to succeed in fulfilling their RtoP, while sharing the same goal – to protect the population from atrocity crimes. One might argue that RtoP is a concept for reinforcing sovereignty.

When it comes to encouraging states to meet their own responsibilities arising from Pillar II, this may take different forms and entail various actions and initiatives that – if properly guided and executed – can reinforce the efforts given by state(s) and reduce the likelihood of a collective response of the international community under Pillar III.<sup>68</sup> Such activities can be encouraged by many international actors, but a central role in maintaining and supporting Pillars II and III belongs to the UN’s organs and bodies. Regarding the protection of children from the scourges of conflicts, it will be shown that, in the last three decades, many instances within the UN system have been helping and encouraging states to adequately meet and fulfill their responsibilities before, during, and after armed conflicts. Their mission is to encourage confidential dialogue or various forms of public exchange for reminding national actors of their RtoP. The international community can also offer advice on courses of action that can mitigate the risks of atrocity crimes.<sup>69</sup>

Furthermore, international actors can encourage legislative reforms and an effective implementation of domestic and international documents. Recommendations given by international bodies have been instrumental in advancing the children and armed conflict agenda.<sup>70</sup> According to the latest Report of the Special Representative, in 2019 alone, important progress to end and prevent violations was recorded in several countries.<sup>71</sup>

The international community can also assist and encourage the developing and implementation of national action plans and programs on protecting children.<sup>72</sup> Action plans aimed at the reintegration of former child soldiers have been signed and implemented in many countries. These are agreements between the UN and each conflicting party individually so that the objectives of the action plans can be adapted to the specificities of individual conflicts.<sup>73</sup> From the RtoP perspective, assis-

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<sup>67</sup> Ibid., para. 139.

<sup>68</sup> Secretary-General Report, Fulfilling our collective responsibility, 2014, para. 6.

<sup>69</sup> Ibid., para. 36.

<sup>70</sup> For example, the Committee on the Rights of the Child evaluates the progress made in the implementation of the CRC and 2000 Optional Protocol on the involvement of children in armed conflict. Report of the Special Representative 2019, para. 10.

<sup>71</sup> For example, Afghanistan’s Child Act provides specific protection measures, including the establishment of the national commission on the protection of child rights with the task to oversee and evaluate its implementation. The new Law on children’s rights adopted in Myanmar contains a chapter on children and armed conflict, which criminalizes all six grave violations. The Philippines’ Law on children in situations of armed conflict contains provisions aimed to improve the protection of children, including those towards accountability for grave violations against children. See more at the Report of the Special Representative 2019, paras. 35; 39; 41.

<sup>72</sup> For example, in January 2016, the UN Secretary-General presented the Plan of Action to Prevent Violent Extremism. It includes a number of strategies generally applicable to preventing armed violence, among others, through paying particular attention to the development and protection of children. The Plan emphasizes the necessity of investing in early childhood education in order to ensure access to inclusive, high-quality and diversity-oriented education and to promote civic education, soft skills, critical thinking, digital literacy, tolerance and the culture of non-violence. It also encourages states to introduce rehabilitation programmes to facilitate reintegration into society of children who have been involved in violence. See more: Secretary-General Report, Plan of Action to Prevent Violent Extremism, A/70/674, 24 December 2015, para. 50g).

<sup>73</sup> Altogether, till September 2020, 32 action plans have been signed between 12 Government forces and 20 non-State armed groups. Of those, 12 parties have fully complied with their Action plan and were subsequently delisted from the

tance programs focused on specific challenges and aimed at building specific capacities, such as action plans, are especially encouraged. They are the direct result of campaign(s) led by UN bodies, such as “Children, not soldiers” and “Act to protect.” As a result of the Special Representative’s campaign “Children, not soldiers,” many children have been released and reintegrated into a peaceful life. This campaign aimed to create a stronger international influence on conflicting sides that recruit, use, and abuse children as soldiers. It was established following the proposal of the Security Council addressed to its Working Group and the Special Representative and performed with the assistance of the UNICEF, peacekeeping and political missions, and other UN and NGO partners. The campaign was launched in 2014 and completed in 2016.<sup>74</sup> As the result of Action Plans, over 155,000 boys and girls have been released and reintegrated.<sup>75</sup>

The newest campaign of the Special Representative was launched in April 2019 under the name “Act to protect.” The campaign is aimed at widening the impact of the previous, “Children not Soldiers” campaign. Till 2022, it will seek to strengthen the collaboration between all actors involved in the circle of protection in order to undertake additional, more efficient steps, e.g., UNICEF, WHO, Human Rights Council, Committee on the Rights of the Child, OHCHR, UN Office of the High Commissioner for Refugees, Special Representative of the Secretary-General on Sexual Violence in Conflict, Special Advisers to the Secretary-General on the Prevention of Genocide and on RtoP, Envoy of the Secretary-General on Youth, etc.<sup>76</sup> The Secretary-General and the Security Council Regional are also encouraging and sub-regional organizations, neighboring states and their arrangements to undertake different measures in order to prevent violations and abuses against children affected by armed conflict.<sup>77</sup>

In some cases, states may seek assistance from regional or international military forces. It is common practice nowadays, and is encouraged by the Security Council, to include specific provisions aimed at the protection of children in documents by which the peacekeeping or observer missions are established, as well as in peace negotiations, ceasefire monitoring, peace agreements, etc.<sup>78</sup> Such arrangements that strive to mitigate and end conflicts and enable the establishment of a peaceful life for children are an important instrument in setting the foundations for their future. They can perform as a “confidence-building measure between opposing parties.”<sup>79</sup> Particular attention is devoted to the training of the peacekeeping staff in dealing with children affected by armed conflicts, especially through the large number of professional training and programs supported and undertaken by the UN.<sup>80</sup>

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Secretary-General Annexes. Currently, 16 Action Plans are under implementation. The last comprehensive Action plan covering all grave violations replaces previous Plans in South Sudan as of February 2020. More information available at: <https://childrenandarmedconflict.un.org/tools-for-action/action-plans/>.

<sup>74</sup> <https://childrenandarmedconflict.un.org/children-not-soldiers/>.

<sup>75</sup> Report of the Special Representative 2020, para. 3.

<sup>76</sup> See more at: Report of the Special Representative 2019, paras. 11; 59; 74-98. For the latest cooperation see Report of the Special Representative 2020, paras. 62-81.

<sup>77</sup> I. Bode, 2018, pp. 302-306.

<sup>78</sup> The protection of children from the impacts of armed conflict “should be an important aspect of any comprehensive strategy to resolve conflict and sustain peace.” Security Council Resolution, S/RES/2427, 9 July 2018, paras. 1; 22.

<sup>79</sup> Virginia Gamba’s statement, available at: <https://news.un.org/en/story/2019/08/1043671>.

<sup>80</sup> For example, Practical Guidance for mediators to protect children in situations of armed conflict was launched in February 2020, as a result of consultative process between the Office of the Special Representative, Department of Political and Peacebuilding Affairs, Department of Peace Operations, UNICEF and other relevant child protection and mediation actors. The Guidance focus is on providing mediators with specific measures for consideration in peace agreements and possible confidence-building. See more in: Practical Guidance for mediators to protect children in situations of armed conflict, Office of the Special Representative of the Secretary-General for Children in Armed Conflict, 2020, p. 12-13.

The influence of international community is of utmost importance. With regards to the situations when children are involved, the creation of a secure environment with a functional educational and judicial system, encouragement of economic growth and an overall development of the society, demobilization of child soldiers, and reintegration of children into “normal” life are some of the steps that have to be taken.

## 6. The MRM System as a Result of a Shared Responsibility

It is crucial to recognize that atrocity crimes do not affect all people equally and that children are exceptionally vulnerable. Unfortunately, the overall reality of RtoP is quite troubling. A number of states have considered Pillar I and the concept of RtoP “as a foreign policy issue rather than as a domestic.”<sup>81</sup> This has resulted in undermining the first pillar, which is particularly dangerous when children are concerned. When national prevention fails, the engagement and support of the international community in some cases may even be indispensable.<sup>82</sup> What is more, the necessity to prevent grave violations against children affected by armed conflict must not be neglected by the international community if the state in question is unwilling or unable to fulfil its responsibility. On the contrary, it becomes a shared responsibility and authorizes the international community to engage. The prevention of grave violations is considered not only a moral and legal obligation and responsibility but also an essential factor in building and maintaining sustainable peace.<sup>83</sup> Within this framework, child protection contributes to the promotion of peace.

The collective responsibility is strongly manifested through the implementation of the MRM system that was established in 2005 by the Security Council Resolution 1612(2005).<sup>84</sup> However, it also strongly supports the idea that the RtoP concept should not be sequenced when children are concerned. Not only can the international community’s efforts effectively contribute to the idea and realization of RtoP but also the states’ responsibility to cooperate and implement plans and programs born on the international level. The MRM “circle” encompasses engagement and communication between states and international community throughout transferring reports from the field to the Security Council Working Group, and back to the field through various programs of preventing detected and dismantling further abuses of children’s rights. The MRM manifests publicly through the annexes of the Secretary-General’s Annual reports, which contain perpetrator lists (so-called ‘naming and shaming’ lists)<sup>85</sup> who committed some of the six grave violations. The six grave violations refer to the following crimes: 1) killing and maiming of children, 2) recruitment of children or their use as soldiers, 3) sexual violence against children, 4) their abduction, 5) attacks against schools and hospitals, and 6) denial of humanitarian access to children.<sup>86</sup> These lists are mainly considered as the most controversial aspect of the Secretary-General’s reports nowadays, but their creation is perceived as a considerable step forward in strengthening cooperation, and raising awareness of the necessity to protect children in armed conflicts.<sup>87</sup> Once a party has been listed in

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<sup>81</sup> Secretary-General Report, RtoP: lessons learned for prevention, 2019, para. 6.

<sup>82</sup> As being noted in the last Security Council resolution on children and armed conflict, “actions undertaken within the framework of conflict prevention by the UN should support and complement, as appropriate, the conflict prevention roles of national governments.” Security Council Resolution, S/RES/2427, 9 July 2018, para. 9.

<sup>83</sup> Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the UN General Assembly, A/73/278, 30 July 2018, para. 15.

<sup>84</sup> Security Council Resolution, Children and Armed Conflict, S/Res/1612(2005), 26 July 2005.

<sup>85</sup> D.S. Koller & M. Eckenfels-Garcia, 2015, p. 4.

<sup>86</sup> See Six Grave Violations Against Children During Armed Conflict, The Legal Foundation, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations, New York: 2013.

<sup>87</sup> The first of such reports with the relevant list was submitted to the Security Council in 2002 (Secretary-General

the Secretary-General's Annual Report on Children and Armed Conflict, the mechanism involves joint enterprise of different partners on the field. It requires the UN, through the establishment of a UN Country Task Force on Monitoring and Reporting (CTFMR), to conduct regular monitoring to collect information on six grave violations in order to share the information with the UN Security Council and to develop appropriate responses to respond to children's needs.<sup>88</sup> As an example of good practice, a series of regional workshops have been launched, bringing together members of different UN country task forces on the MRM.<sup>89</sup> Today, the MRM is active in 14 countries.<sup>90</sup>

However, monitoring reports also reveal a frightening and alarming reality. The last Secretary-General Report has shown that the number of verified cases of killing and maiming children has reached record levels ever since the MRM system was created. As many as 10,173 children were verified as having been killed (4,019) and maimed (6,154) in 2019. These numbers underline the most serious concerns about the violations of existing international norms and emphasize the lack of necessary capacities and measures.<sup>91</sup> However, despite being intimidating, they are "only the tip of the iceberg."<sup>92</sup>

For many children, access to education and health services is denied due to a large number of attacks on schools and hospitals. In 2017, 262 million children and young people were not involved in the education system due to unsafe environments and humanitarian crises.<sup>93</sup> In 2018, access to education was deprived from many children due to a large number of attacks.<sup>94</sup> Unfortunately, even the latest reports for year 2019 indicate that schools continued to be used for military purposes. The proximity of the "battlefield" to school environments have also left children vulnerable to other grave violations. The highest numbers in 2019 were verified in Afghanistan, Libya, Mali, the Occupied Palestinian Territory, Somalia, and the Syrian Arab Republic.<sup>95</sup> A total of 927 attacks on schools (494) and hospitals (433), including on protected persons, were verified in 2019.<sup>96</sup>

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Report, Children and Armed Conflict, S/2002/1299, 26 November 2002). The last Report from June 2020 contains more than 60 groups divided into the Annexes I and II and further into the two groups (those that have not put in place measures for improving the protection of children during the reporting period and those who have accomplished some progress).

<sup>88</sup> Monitoring and Reporting Mechanism (MRM) on grave violations of children's rights in situations of armed conflict, available at: [https://www.unicef.org/protection/57929\\_57997.html](https://www.unicef.org/protection/57929_57997.html). For the responsibility of Government(s) in implementing the MRM system see Z. Coursen-Neff, 2010, pp. 112-113.

<sup>89</sup> Only in 2019 several meeting and workshops have been organized between national governments and UN in order to raise awareness on children's rights (in Mali, South Sudan and Yemen). See more in: Children and Armed Conflict, Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the Human Rights Council, A/HRC/40/49, 26 December 2018 (Report of the Special Representative 2018), para. 39. See also Report of the Special Representative 2019, paras. 38; 43; 45; 57; 67; 76; 82.

<sup>90</sup> According to the latest Secretary-General Annual Report on Children and Armed Conflict that covers period from January to December 2019, those countries are: Afghanistan, Central African Republic, Colombia, the Democratic Republic of the Congo, Iraq, Mali, Myanmar, Somalia, South Sudan, Syrian Arab Republic, Yemen (parties that commit grave violations affecting children in situations of armed conflict on the agenda of the Security Council), Nigeria and the Philippines (parties that commit grave violations affecting children in situations of armed conflict not on the agenda of the Security Council, or in other situations). The Report contains both lists of parties that have and those that have not put in place measures during the reporting period to improve the protection of children. Secretary-General Report 2020, Annexes I and II, pp. 34-37.

<sup>91</sup> Secretary-General Report 2020, para. 7. See also Report of the Special Representative 2019, para. 25.

<sup>92</sup> Report of the Special Representative 2020, para. 4.

<sup>93</sup> UNICEF Annual Report 2018, p. 21.

<sup>94</sup> Secretary-General Report 2019, para. 8.

<sup>95</sup> Report of the Special Representative 2019, paras. 29-30.

<sup>96</sup> Secretary-General Report 2020, para. 8.

With regards to sexual violence against children, in 2018, the highest verified figures for such violations were documented in two countries, Somalia and the Democratic Republic of the Congo, with the total number of child victims of sexual violence reaching 933 cases.<sup>97</sup> In 2019, 735 cases of sexual violence were verified.<sup>98</sup> Unfortunately, many cases of sexual violence often remain underreported, in particular, when they are perpetrated against boys,<sup>99</sup> due to stigma, a lack of services, fear, intimidation, and access restrictions to verify sexual incidents, widespread immunity for perpetrators, etc.<sup>100</sup> Impunity for sexual violence against children remains endemic<sup>101</sup>, a tactic of war, and a taboo subject that requires the adoption of strong(er) legislation in order to ending such practice worldwide.<sup>102</sup>

In 2018, some improvement was recorded with regards to the denial of humanitarian access.<sup>103</sup> However, as concluded by the Secretary-General, it “could be explained by restricted access to information, rather than an improvement of the situation.”<sup>104</sup> Unfortunately, compared with 2018, in 2019, some 4,400 incidents of denied humanitarian access to children were verified, which represents the highest increase in the number of incidents.<sup>105</sup>

A huge number of children are exploited as child soldiers. One could even say that children are the “perfect” and desirable soldiers. Children are obedient and vulnerable to influence, and, in many cases, fearless and enthusiastic during the combat. Even if they do not understand what they are fighting for, they do not reconsider orders. It is much easier to manipulate a child than an adult soldier. Recruitments and abductions are the two grave violations against children with the most pronounced cross-border implication.<sup>106</sup> Many children remain recruited, forced to take an active part in hostilities, and are exposed to a number of other grave violations, such as killing, maiming, or sexual violence. According to the latest Secretary-General Report on children and armed conflict, more than 7,700 children were recruited and used in 2019 and 90% of them were used by non-state actors.<sup>107</sup> In 2019, the highest verified numbers were confirmed in Somalia, the Democratic Republic of the Congo, and Yemen. Although numbers of recruited children have slightly decreased in the last few years, there is no place for huge optimism – the decrease may be the result of difficulties to verify information from the field.<sup>108</sup>

The number of parties that engage in the abduction of children, whose names are listed on the naming and shaming lists, have increased during the years. In 2016, six parties to the conflict were listed for that violation, while in 2018, the number more than doubled with 14 parties listed.<sup>109</sup> In

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<sup>97</sup> Secretary-General Report 2019, para. 9

<sup>98</sup> Report of the Special Representative 2020, para. 15.

<sup>99</sup> The lack of information on boy victims of sexual violence continued to reinforce the perception that sexual violence has been committed only against girls. Boys are often discouraged from disclosing their experiences and therefore prevented from receiving adequate assistance and demanding justice. See more at: Report of the Special Representative 2019, para. 27.

<sup>100</sup> *Ibid.*, para. 26.

<sup>101</sup> Secretary-General Report 2019, para. 9

<sup>102</sup> Secretary-General Report 2020, para. 10.

<sup>103</sup> Compared with 1213 verified cases in 2017, only 795 incidents were confirmed in 2018. Secretary-General Report 2019, para. 11.

<sup>104</sup> Secretary-General Report 2019, para. 11.

<sup>105</sup> Secretary-General Report 2020, para. 9.

<sup>106</sup> See more in: Report of the Special Representative 2018, paras. 6; 10.

<sup>107</sup> Secretary-General Report 2020, para. 6

<sup>108</sup> Report of the Special Representative 2019, paras. 17-18.

<sup>109</sup> Secretary-General Report 2019, para. 10.

2019, the abduction of 1,683 children was verified, mostly (over 95%) perpetrated by non-state actors.<sup>110</sup> The international community may be of significant assistance while the state is engaged in building a society capable of dealing with and responding to threats posed by non-stated armed groups. Abductions are often connected with other violations, but are primarily conducted for specific purposes (bolstering the number of soldiers or members of non-state armed groups, for labor or sexual slavery, pressuring families and communities to pay ransoms or return to the armed group they deserted earlier, etc.) and remain possibly underreported.<sup>111</sup>

Another challenge relates to children deprived of liberty for their alleged association with armed groups in conflict situations. In many cases, such children are survivors of heavy fighting, witnesses of horrifying crimes and atrocities, and are considered as highly vulnerable.<sup>112</sup> It is the task of the Special Representative to call upon states to review the possibility of establishing or strengthening the existing child-friendly justice mechanisms, including juvenile justice mechanisms. That requires application of a minimum age of criminal responsibility without exception and regardless of the gravity of the crime.<sup>113</sup>

To facilitate the regaining of one's childhood, multidimensional actions are required, which take into account various aspects of the child's wellbeing, including their mental health and psycho-social support. Children must be perceived as victims that need help and educated support.<sup>114</sup> An important role lies in the hands of the Global Coalition for the Reintegration of Former Child Soldiers. It was established and is co-led by the Special Representative and the UNICEF with the purpose to further explore and address the existing gaps and needs for the reintegration of all children affected by armed conflict<sup>115</sup> and to "innovate new ideas to sustainably address support for child reintegration programs."<sup>116</sup> The reintegration of former child soldiers is considered as one that takes the longest to achieve.<sup>117</sup> These children, even after demobilization and in the process of reintegration, sometimes speak positively of their war-related experiences. While in the role of soldiers and carrying guns, children felt like adults. They also felt that someone cared about them, especially if they were orphans. In such situations, children sometimes identify with their group, commanders, or ideology. The "magic" of ideology is particularly strong during early adolescence when a young person is developing their identity. In such situations, war can be even glorified, while the child loses the perception of good and evil. These are the challenges for the process of reintegration.

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<sup>110</sup> Secretary-General Report 2020, para. 11.

<sup>111</sup> Ibid.

<sup>112</sup> For example, the latest report of the Independent International Commission of Inquiry on the Syrian Arab Republic from the beginning of 2020 indicates that detained children have been subjected to a number of violations, including perpetrating sexual violence, torture, beatings, denying access to psychological support or medical care, etc. See more, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, "They have erased the dreams of my children": children's rights in the Syrian Arab Republic," A/HRC/43/CRP.6, 13 January 2020, paras. 50; 52.

<sup>113</sup> The Committee on the Rights of the Child, in its General Comment No. 24 (2019) on children's rights in the child justice system, have encouraged States parties to increase the minimum age of criminal responsibility to at least 14. See more at: Report of the Special Representative 2019, para. 23.

<sup>114</sup> Around 3,6 million children from 59 countries affected by conflict and other emergencies received psychosocial support provided by UNICEF during 2018. UNICEF Annual Report 2018, *supra* note 7, p. 28. See also J.A. Robinson, *The Right of Child Victims of Armed Conflict to Reintegration and Recovery*, Potchefstroomse Elektroniese Regsblad/Potchefstroom Electronic Law Journal (PER/PELJ), Vol. 15, No. 1, 2012, pp. 62-64.

<sup>115</sup> General Assembly Resolution, A/RES/72/245, 23 January 2018, para. 16.

<sup>116</sup> <https://childrenandarmedconflict.un.org/global-coalition-for-reintegration-of-former-child-soldiers/>

<sup>117</sup> ICISS Responsibility to Protect Report, para. 5.9, p. 41. See also U. Khound, S. Kumar, *Norm vs Deviation: The Problem of Child Soldiering*, Jindal Journal of International Affairs, Vol. 3, No. 1, 2013, p. 156.



One could agree that it is easy to recognize physical scars when children grow up in a conflict-stricken area. However, their psychological scars are hidden, and the recovery period lasts longer. Stressful experiences that affect a child who is surrounded by conflict may result in devastating impacts on her/his perspective, learning abilities, behavior, and emotional and social development.<sup>118</sup> It is very difficult for a child who has experienced near death, abuse, rape, or murder<sup>119</sup> to be easily re-integrated into a way of life that is no longer familiar to them.<sup>120</sup> Even the simple steps, such as the return to school or the very beginning of schooling can be accompanied by great difficulties.

## 7. Conclusion

Children have always been victims of armed conflicts. Every hostile surrounding, especially when it results in deaths, fear, despair, or any other bequest of conflicts, undoubtedly creates a serious and substantial impact on children. That impact is stronger the longer the armed conflict lasts. On the other hand, the importance of devoting particular attention to children has been accentuated for decades and recognized as one of the most important challenges of the international community. Its development has been characterized by the joint action of different international actors.

It also clearly corresponds with the development, implementation, and aim of the RtoP concept.

The primary responsibility for the respect, promotion, and protection of human rights and fundamental freedoms of all, children included, lies on states and their national governments. They have to ensure an adequate response to each of the six grave violations against children through various national actions (e.g., supporting humanitarian assistance, implementing legislative or policy reforms, etc.) as well as through a close(r) cooperation with international actors. RtoP does not establish any new or additional legal obligation for the state. Its obligation to protect population on its territory from atrocity crimes arises from its previously undertaken obligations under international law and its own sovereignty. One may easily say that the RtoP concept seeks to narrow the gap between pre-existing obligations of states and the disturbing and shocking reality that the four atrocity crimes continue to exist. Unfortunately, the question arises on how effective RtoP is on the field. Embracing the concept as a foreign policy, rather than as a domestic challenge by number of countries, undermines the responsibilities of the state(s) concerned. Without a doubt, stronger political will is crucial in making RtoP real and effective.

On the other hand, the obligation of the international community does not represent anything new either. Among other goals, in order to create conditions of stability and well-being necessary for peaceful and friendly relations among nations, the UN promotes universal respect for human rights and fundamental freedoms for all without any distinction, pledging UN member states to take joint and separate action in co-operation with the UN.<sup>121</sup> When the protection of children in armed conflicts is concerned, some efforts and progress have been made. However, the gap between the words of commitment and the implementation of RtoP is visible and frightening. Any progress achieved must not be considered enough; the activities should be more effectively endorsed and encouraged. A more effective implementation and positive results of RtoP require stronger international cooperation. However, the mechanism aimed at the prevention or reduction of grave violations of human rights in times of conflict can only be as powerful and effective as its implementation on

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<sup>118</sup> UNICEF Humanitarian Action for Children 2019 Overview, *supra* note 16, p. 2.

<sup>119</sup> J.A. Robinson, 2012, p. 63.

<sup>120</sup> R, Haer, *Children and armed conflict: looking at the future and learning from the past*, Third World Quarterly, Vol. 40, No. 1, 2019, pp. 74; 77-79.

<sup>121</sup> UN Charter, Arts. 55, 56.

the ground.

It is important to continue the efforts on the implementation of the RtoP concept in its every component. Responsible sovereignty is the most important one; however, as we are living in an imperfect world, activities of promoting collective responsibility become significant and even necessary. Particular attention should be paid to the strengthening of the MRM system. Ending the impunity for those responsible is another challenge. However, perhaps the most important efforts must be devoted to enabling continuing education and promoting tolerance. Raising tolerance and educating for tolerance by embracing and respecting the diversity of others might be the key to a sustainable future. Every further achievement must be guided by the fact that current endeavors encourage further progress. By maintaining and securing the peace for our children today, the world is preventing the conflicts of tomorrow. By observing the situation and the challenges in the long run, one could, however, agree that humanity has taken a path that one day might be considered an effective one.

Focus on some of these elements might be seen as a successful method of atrocity prevention and manifestation of states' responsible sovereignty. However, RtoP does not recognize the 'one-size-fits-all' approach – every case is different and deserves special attention and consideration.