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# STRENGTHENING PROTECTION OF CHILDREN THROUGH ACCOUNTABILITY

The role of the UN Security Council in holding to account persistent violators of children's rights and protections in situations of armed conflict

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# Executive Summary

## Introduction and objectives

Since the mid-1990s the issue of children and armed conflict has garnered increasing international attention and there have been significant developments to protect children in conflict situations. Advances have been made in several areas including: the international- and national legal and normative frameworks; 'system-level' and institutional arrangements; and enhanced monitoring and reporting of violations against children.

The UN Security Council (UNSC) has played a critical role in advancing the protection of children in situations of armed conflict.

Notwithstanding these and other positive developments children continue to be killed, injured, displaced, subjected to sexual violence and affected in many other ways by armed conflict. In some instances, while persistent violators have been identified through UN/other reporting mechanisms, these individuals or groups have not been held accountable for their actions.

This report presents the findings and observations from a project undertaken by Conflict Dynamics – funded by Foreign Affairs and International Trade Canada (DFAIT) – the objective of which was to assess measures the UNSC has taken and could take to hold to account persistent violators of children's human rights and protections in situations of armed conflict.

## UN Security Council engagement on Children and Armed Conflict

The UN Security Council's intensified engagement on the issue of children and armed conflict commenced in earnest in 1999 with the adoption of resolution 1261, which (among other actions) requested the Secretary-General to include in his reports to the Council recommendations on providing special attention to the protection, welfare and rights of children, and to report back to the Council on implementation of the resolution.

Between 1999 and 2004 a number of UNSC resolutions reflected the body's evolving interest on the issue of children and armed conflict. In resolution 1539 (2004) the UNSC requested the Secretary-General to develop an action plan for a systematic and comprehensive monitoring and reporting mechanism. The Council subsequently, in resolution 1612 (2005), requested the establishment of such a monitoring and reporting mechanism, and decided to establish a Working Group on Children and Armed Conflict. In resolution 1820 (2008), the Council demanded that all parties to armed conflict take measures to protect women and girls from all forms of sexual violence.

The monitoring and reporting mechanism established by UNSC resolution 1612 ("the MRM") consists of the three activities of monitoring, reporting of- and response to grave violations against children in situations of armed conflict. As of August 2008, the MRM had been accepted in all the situations listed in the annexes to the Secretary-General's December 2007 report on children and armed conflict.

Between early 1999 and December 2007 the UN Secretary-General identified 24 situations of armed conflict in which parties recruited or used child soldiers, and may have committed other violations of children's human rights and protections. Of the 46 parties or groups of parties identified in the 2007 report, 12 were identified for five years since 2002, and 5 were identified for every year during the period 2002-2007. Several situations have featured in the reports for seven years or more.

Data compiled from the Secretary-General's regular reports between 1999 and 2007 point to a *persistence* of (i) specific situations being reported as those in which children are being recruited and used by armed forces/groups; and (ii) parties being listed in the annexes of successive reports on children and armed conflict.

## Cases where the UNSC has imposed targeted sanctions or taken other action against persistent violators

The UN Security Council has employed a number of instruments to take action against parties and individuals for grave violations against children under applicable international humanitarian and human rights law including: (i) threat of- or actual authorization/imposition of targeted sanctions; (ii) specification of tasks concerning children in mandates of UN-authorized peace operations; and (iii) referral of situations to international criminal bodies.

During the period 1999 to 2007 the UNSC authorized targeted sanctions in 3 situations that were identified in the annexes of the Secretary-General's reports on Children and Armed Conflict: Côte d'Ivoire, the Democratic Republic of the Congo (DRC), and the Sudan (Darfur).

In the case of Côte d'Ivoire, the UNSC imposed an arms embargo and authorized targeted financial and travel-related sanctions in 2004. The UNSC subsequently included in the criteria for designating individuals as being subject to the targeted sanctions, "*[any] person responsible for serious violations of human rights and international humanitarian law...*". As of early March 2009 three individuals were designated as being subject to targeted sanctions. One of the individuals identified was designated in part as a result of the individual's command of forces engaged in recruitment of child soldiers.

For the situation of the Democratic Republic of the Congo, the reports of the UN Secretary-General listed parties to the conflict that recruited or used child soldiers in five consecutive reports between 2002 and 2007. A total of fifteen major groups have been listed in the annex to the Secretary-General's report, although only five remained at the time of writing. The UNSC imposed an arms embargo and authorized targeted financial and travel-related sanctions in its resolution 1533 (2004). In subsequent resolutions the UNSC included in the designation criteria, "*Individuals ... committing serious violations of international law involving the targeting of children ... killing and maiming, sexual violence, abduction, and forced displacement;*". As of early March 2009, 22 individuals and entities were designated as being subject to the targeted sanctions. Of these, none were specifically designated based on acts of recruiting, using or targeting children or committing other grave violations against children.

In the case of Darfur, the UN Security Council imposed an arms embargo on all non-governmental entities and individuals operating in Darfur in resolution 1556 (2004). The following year the UNSC adopted resolution 1591 which: (i) established a Sanctions Committee; (ii) established a Panel of Experts; (iii) authorized the imposition of targeted financial- and travel-related sanctions against individuals designated by the Committee; and (iv) expanded the provisions of resolution 1556 to apply to all parties to the conflict in Darfur. The criteria specified in the resolution for designation of individuals included: "*[individuals] who ... commit violations of international humanitarian or human rights law or other atrocities ...*". As of March 2009 four individuals had been designated as being subject to the targeted sanctions. None of the designation criteria for these individuals include grave violations of children's human rights and protections under applicable international law.

In addition to the three cases in which the UNSC has authorized targeted sanctions in response to violations of international humanitarian and human rights (if not in every case specifically in response to grave violations against children), the Council has also taken action in certain situations to (i) specify tasks pertaining to protection of children in mandates of UN peace operations; and (ii) refer a situation to the International Criminal Court.

The United Nations Mission in DR Congo (MONUC) provides an example of a situation where the UNSC included tasks pertaining to protection of children in armed conflict in the Mission's mandate. With regard to referrals to international criminal bodies: In its resolution 1593 (2005) the UNSC referred the situation in Darfur to the International Criminal Court (ICC). Since that referral the Prosecutor of the ICC has presented three cases from that situation to the Court.

In addition to direct UNSC action, the UN Security Council Working Group on Children and Armed Conflict has developed a 'toolkit' of options for possible action in five categories: Assistance; Demarches; Enhanced monitoring; Improvement of mandate; and other measures.

The UNSC has consistently stated its intent to consider imposition of "targeted measures" against listed entities that fail to make progress to ceasing the recruitment and use of child soldiers. However, the

Council has imposed targeted sanctions in only 16 % of situations identified in the body- and annexes of the Secretary-General's reports on Children and Armed Conflict since 1999. For the three cases in which targeted sanctions were imposed, in only one case – the Democratic Republic of the Congo – were some of the six grave violations that define the scope of monitoring under the MRM included explicitly in the criteria for designating individuals/entities as being subject to the targeted sanctions.

Even in the three situations where individuals can be designated as being subject to targeted sanctions as a result of grave violations against children, only 1 (or 3.4 percent) of the 29 designated individuals mentioned some of the grave violations of children's rights and protections as part of the justification for designation.

### **Cases where the UNSC has failed to take action**

Of the 14 situations of armed conflict identified in the annexes of the 2007 Secretary-General's report on Children and Armed Conflict, the UNSC did not impose targeted sanctions or take either of the other two types of action of interest in 12 of those cases. Of the 12 situations: 5 situations (Chad, Colombia, the Philippines, Sri Lanka and Uganda) were not on the agenda of the Security Council (as of Dec 2007); 7 situations (Afghanistan, Burundi, Central African Republic, Myanmar, Nepal, Somalia, Southern Sudan) were on the agenda of the Security Council (as of Dec 2007); In 2 situations, the Prosecutor of the ICC has opened and is conducting investigations, without referral of the situation by the UNSC; As of March 2009, 7 of those situations (Afghanistan, Burundi, Central African Republic, Nepal, Somalia, Southern Sudan, and Chad) had a UN-mandated peace operation or UN political mission in place.

The Security Council's Working Group on Children and Armed Conflict did take action on some of these cases, using some of the tools in its 'toolkit'. Ultimately, the indicator for effectiveness of UNSC and SCWG action is whether situations and parties are de-listed from the annexes of the Secretary-General's reports.

The project highlighted some of the reasons why the UN Security Council and its Working Group has failed to take action in the face of persistent reports of grave violations of children's human rights and protections in situations of armed conflict. Some of the perspectives gathered and reasons deduced include: (a) general reluctance on the part of some UNSC members to authorize targeted sanctions against certain Member States/situations; (b) a feeling by some Member States that the Security Council has limited options at its disposal for taking effective action, especially in cases where the situation was/is not on the agenda of the UNSC; (c) gravitation within the Security Council Working Group, over time, towards discussion of- and authorization of select tools in the 'toolkit' around which is easier to gain consensus; (d) the fact that triggering for 'listing' or 'de-listing' of parties in the annexes of the Secretary-General's reports is based solely on recruitment and use of child soldiers, just one of the six grave violations; (e) the significant workload of the Security Council Working Group; and (f) limited coordination between the SCWG and the work of the Security Council itself and its Sanctions Committees.

### **Options for the UNSC to strengthen accountability**

A number of principles have been identified during the course of the project which may assist in guiding the future approach of the UNSC to taking action in response to grave violations against children in situations of armed conflict. These proposed principles include: (1) Tailor the UNSC action to fit the context and target; (2) Insulate the humanitarian objectives of UNSC action from other political objectives; (3) Focus on entities, not on countries or situations; (4) Pursue a transparent, graduated approach in response to non-compliance; (5) Don't threaten to employ targeted sanctions unless there is the political will to follow through; and (6) Ensure consistency between trigger mechanisms and monitoring requirements.

Within the overall population of situations of armed conflict, four characteristics of the situation/conflict have been identified that are useful to assist in considering options for response and accountability: (I) situation ON / NOT ON Security Council AGENDA; (II) EXISTENCE / ABSENCE of UN Security Council SANCTIONS REGIME; (III) PRESENCE / ABSENCE of UN Security Council-mandated PEACE OPERATION; (IV) Situation WITHIN / OUTSIDE jurisdiction of competent INTERNATIONAL CRIMINAL BODY.

These four characteristics provide a typology of categories of cases. At the highest level, the first categorization is whether the situation is ON or NOT ON the agenda of the Security Council. The purpose of this typology is to assist in identifying what options may be available to the Security Council given the characteristics of the particular case.

Based on the guiding principles and typology above, options for potential UNSC action to strengthen accountability for grave violations of children's human rights and protections include: (1) Assessing options in light of the particular context; (2) A thematic sanctions committee on Children and Armed Conflict; (3) Improving UN institutional coordination; (4) Consideration of new types of targeted sanctions; (5) Increased recourse to the International Criminal Court; (6) Supporting action by national authorities and third-party States; and (7) Regional arrangements.

## **Conclusions**

First, the UNSC has played- and continues to play a critically important role in advancing the body of policy and practice to better protect children in situations of armed conflict. However, there exists an 'accountability gap' in the Security Council's response to grave violations against children.

Second, the UNSC has not fulfilled its stated intent to impose targeted sanctions or take other action in response to grave violations against children in situations of armed conflict. The Security Council Working Group has employed tools from its 'toolkit', however, the type of action taken in many cases does not match the gravity of the violations committed.

Third, the UNSC can do more to apply existing mechanisms and tools more effectively, particularly in situations that are on the Council agenda, or which have an existing UN sanctions regime in place, or in which there is an existing UN-mandated peace operation/political mission.

Fourth, there exist significant opportunities for the UNSC to take protection of children in armed conflict to the next level; This would involve more proactive and concerted effort for situations where the Council has a range of tools at its disposal, and consideration of new approaches to hold to account persistent violators (outlined in Section 5 of this report).

Fifth, The MRM established under Security Council resolution 1612 (2005) is approaching the end of its 'honeymoon' period. If the Security Council cannot close the accountability gap by some of the measures described above or by other means, it risks the MRM being viewed by parties listed in the annexes of the Secretary-General's reports as lacking credibility.

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# 1 Introduction and objectives

## 1.1 Accountability for grave violations of children's human rights and protections<sup>1</sup>

The seminal 1996 report of the expert of the UN Secretary-General, Ms. Graça Machel, painted an alarming picture of the impact of armed conflict on children. In the decade preceding the publication of the report it was estimated that 2 million children had been killed, 6 million children had been seriously injured or permanently disabled, and many other children had been affected through forced participation in conflict, sexual exploitation and by forced displacement.<sup>2</sup>

Since then the issue of children and armed conflict has garnered increasing international attention and there have been significant developments to protect children in situations of armed conflict. Advances have been made in several areas, including in the international- and national level legal and normative frameworks; 'system-level' and institutional developments (especially within the United Nations system); enhanced monitoring and reporting of grave violations against children ... to mention but a few.

These developments have resulted from actions taken by the UN Security Council, the UN Secretary General and his Special Representative for Children and Armed Conflict, national authorities, international organizations, UNICEF and other UN agencies/departments, NGO partners, among others.

The UN Security Council (UNSC) in particular has played a critical role in advancing the protection of children in situations of armed conflict (see Section 2). The adoption in July 2005 of Security Council resolution 1612 marked a particularly important milestone in preventing and responding to grave violations against children in situations of armed conflict. By this resolution the Security Council requested the implementation of a monitoring and reporting mechanism on children and armed conflict, and established the Security Council Working Group on Children and Armed Conflict (SCWG-CAAC, "the Working Group").

Notwithstanding these and other positive developments children continue to be killed, injured, displaced, subjected to sexual violence, separated from their families and affected in many other ways by armed conflict (see Box 1 on this page). This persistence in the most serious violations committed against children in conflict situations points to the significant and prevailing challenges to monitoring, reporting and responding to grave violations against children.

In some instances, while persistent violators have been identified in the reports of the UN Secretary-General, the Representative of the Secretary-General on Children and Armed Conflict or the Security Council Working Group, these individuals or groups have not been held accountable for their actions, neither by national authorities nor by the Security Council.

This deficiency or 'accountability gap' was highlighted in the 2008 report of the Special Representative for Children and Armed Conflict to the UN General Assembly and was also reflected in the recommendations of the UN Secretary-General contained in his 2007 report on children and armed conflict.<sup>4,5</sup>

### **Box 1**

#### **Snapshot of children in situations of armed conflict (2007/2008)**<sup>3</sup>

→ **Children and women account for an estimated 80 % of civilian casualties in situations of armed conflict**

→ **Over the past ten years, an estimated average of 200,000 children were killed each year as a direct result of armed conflict**

→ **an estimated 300,000 children participate directly in armed conflict in 19 countries or territories worldwide**

<sup>1</sup> The term "children's human rights and protections" is used throughout this report to include the human rights of children as specified in the Convention on the Rights of the Child and other international human rights Covenants and treaties, as well as the protections afforded to children (by virtue of the obligations to parties to armed conflict) in situations of armed conflict under applicable treaty-based and customary international humanitarian law.

<sup>2</sup> Graça Machel, *Impact of Armed Conflict on Children* [Report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157] UN document ref. A/51/306 (New York: United Nations, 26 August 1996).

<sup>3</sup> Data sources: UNICEF, Coalition to Stop the Use of Child Soldiers.

<sup>4</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, UN document ref. A/63/227 (New York: United Nations,

While it is clear, therefore, that there are known persistent violators who act in some cases with apparent impunity and that there are a range of potential policy instruments available to the UN Security Council, the following issues are less well explored: (a) the impact of UN Security Council action in situations where targeted sanctions have been employed to hold accountable persistent violators; (b) reasons why specific measures have not been implemented in some cases; (c) the instances and impact of actions other than targeted sanctions that the Security Council has taken; and (d) possible actions the Security Council could take in the future.

## 1.2 Project objectives and methodology

In response to the need for more clarity on these issues, Conflict Dynamics undertook a project, funded by Foreign Affairs and International Trade Canada (DFAIT), between January and March 2009, the primary objective of which was to assess measures the UN Security Council has taken and could take to hold to account persistent violators of children's human rights and protections in situations of armed conflict. This report presents the findings and observations emerging from the project.

Four sub-objectives were identified to fulfill this goal:

- I. To assess the extent to which individuals or groups named in reports of the Secretary-General, the SRSG for Children and Armed Conflict; the Security Council Working Group on Children and Armed Conflict have been subject to targeted sanctions imposed by the Security Council; [[Section 3](#) of this Report]
- II. To assess any other measures taken by the Security Council to hold to account violators named in these reports/resolutions; [[Section 3](#)]
- III. To assess the cases where the Security Council has failed to take action against persistent violators named in these reports, including a determination of the reasons for this failure to act; [[Section 4](#)]
- IV. To assess how existing punitive measures and regimes could address the calls for punitive actions against perpetrators of all six grave violations (see Box 2), in particular of sexual violence against girls in conflict. [[Section 5](#)]

### **Box 2**

#### **Six grave violations against children in situations of armed conflict monitored under the Monitoring and Reporting Mechanism (MRM)<sup>6</sup>**

- (a) Killing or maiming of children
- (b) Recruiting or using child soldiers
- (c) Attacks against schools or hospitals
- (d) Rape or other grave sexual violence against children
- (e) Abduction of children
- (f) Denial of humanitarian access for children

With regard to use of terminology, the term “targeted measures”, as used in UN Security Council resolutions and Reports of the Secretary-General on children and armed conflict is defined, for the purposes of this report, as targeted sanctions against particular individuals, groups or States.<sup>7</sup>

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6 August 2008) : paragraph 25, “... it must be recognized that the successes that we have had in engendering compliance thus far have been based on a credible threat of action by international actors, including the Security Council. More must be done to systematize and activate the full range of options available to the international community to ensure more robust action against recalcitrant violators ... The challenge of political will and means for targeted measures must be resolved by Member States if the progress that we have registered ... in addressing impunity is to be sustained ...”

<sup>5</sup> United Nations, *Children and Armed Conflict: Report of the Secretary-General*, UN document ref. A/62/609-S/2007/757 (New York: United Nations Security Council, 21 December 2007) : “I welcome the Security Council’s continuing consideration of effective targeted measures against parties to armed conflict who continue to systematically commit grave violations against children in armed conflict ... The Security Council should consider a range of measures, including a ban on the export or supply of arms, a ban on military assistance, the imposition of travel restrictions on leaders, their exclusion from any governance structures and amnesty provisions, and restriction of the flow of financial resources to the parties concerned.”

<sup>6</sup> These six grave violations were specified in the 2005 report of the Secretary-General on Children and Armed Conflict. United Nations Security Council, *Children and armed conflict, Report of the Secretary-General*, UN document ref. S/2005/72 (New York: United Nations, 9 February 2005).

<sup>7</sup> Hereinafter “targeted sanctions” will be used in this report, except when quoting UN/other documents that refer to “targeted measures.”

The methodology employed to conduct the project consisted of six components: (A) project process design; (B) extensive literature and data review; (C) consultations and interviews; (D) process tracing and causal analysis; (E) case study analyses; and (F) exploration of policy recommendations/options.

The project process design [*Methodology Component A*] included design of a practitioner survey questionnaire (presented in Annex III). The literature and data review [*Methodology Component B*] included documents and articles from international organizations (including UN agencies, non-Governmental organizations and alliances); media reports; academic/journal articles; and datasets generated by, among others, UNICEF, the Coalition to Stop the Use of Child Soldiers, the Internal Displacement Monitoring Center, and the University of Uppsala Conflict Data Program database.<sup>8</sup>

Extensive consultations [*Methodology Component C*] were undertaken with a range of interlocutors in New York, in the two case study locations, and with interlocutors in other locations by telephone. A listing of organizations consulted during the project is included in Annex I. Process tracing and causal analysis techniques [*Methodology Component D*] were used to identify and analyze actions taken by the UNSC and other actors, as well as the impact of those actions. A case study analysis technique [*Methodology Component E*] was used to explore 2 types of situation in which grave violations of children's rights and protections have occurred. The two case study situations chosen were Côte d'Ivoire and Sri Lanka.<sup>9</sup>

[Annex II](#) presents additional information on the project methodology including some of the methodological constraints.

### 1.3 Scope of the project: Addressing a niche area

In recent years, and especially since the establishment of the Monitoring and Reporting Mechanism (MRM) as requested in UNSC resolution 1612 (2005), there has been acute interest in- and research on the issue of children and armed conflict, and on aspects of monitoring, reporting of- and response to grave violations of children's rights and protections in particular.

Some of the recent reports and ongoing work that are relevant to the targeted approach of this project include:

- **Development of Guidelines on the MRM:** Since the establishment of the MRM, UNICEF, OSRSG-CAC and the members of the Steering Committee on Monitoring and Reporting have been working to develop guidelines on implementing the MRM.<sup>10</sup>
- **Analysis of actions taken by the UN Security Council on Children and Armed Conflict:** The Watchlist on Children and Armed Conflict undertook an analysis of actions taken by the UNSC on children and armed conflict covering the period July 2005 to January 2008.<sup>11</sup> The recommendations presented in the study included: according equal prominence to all six grave violations; more proactive use of targeted measures by the UNSC; referral of information about violations against children to the relevant Sanctions Committees etc.
- **The impact of UNSC resolution 1612 and the MRM:** Save the Children (UK) supported research, commissioned by the Overseas Development Institute (ODI), on the impact of the MRM, which was published in September 2008.<sup>12</sup> This study focused on developments in international policy debates and processes; changes in the behavior of duty-bearers and parties to conflict; and changes in children's lives. The study provided recommendations in three areas: (i) ensuring children's participation and improving the coverage and quality of

<sup>8</sup> The dataset from the University of Uppsala was UCDP/PRIO Armed Conflict Dataset Version 4-2007. Uppsala Conflict Data Program (UCDP)/International Peace Research Institute, Oslo (PRIO). Available at: [www.ucdp.uu.se](http://www.ucdp.uu.se) (Accessed 20 March 2009).

<sup>9</sup> It is important to emphasize that the purpose of the case studies was not to provide a deep exploration of the particular situation but to highlight some of the experiences in the relevant case for that category of situation.

<sup>10</sup> The Steering Committee on Monitoring and Reporting (SCMR), based in New York, acts as the main technical, administrative and advisory body for the MRM and is the primary link with the field. It is co-chaired by the OSRSG-CAAC and UNICEF. The SCMR includes representatives from UNHCR, OHCHR, OCHA, UNDP's Bureau of Crisis Prevention and Recovery, ILO, and UNDPKO.

<sup>11</sup> Watchlist on Children and Armed Conflict and Coalition to Stop the Use of Child Soldiers, *The Security Council and Children and Armed Conflict: Next Steps towards Ending Violations Against Children* (New York: January 2008). Available at <http://www.watchlist.org> (accessed 7 March 2009).

<sup>12</sup> Katy Barnett and Anna Jefferys, *Full of Promise: How the UN's Monitoring and Reporting Mechanism can Better Protect Children*, Network Paper # 63 of the Humanitarian Practice Network (HPN), (London: Overseas Development Institute, September 2008).

reporting; (ii) addressing the violations that children and communities identify as being the greatest threat; and (iii) generating consistent and appropriate responses to all violations.

In addition to these studies, in terms of the functioning of the MRM, much attention and advocacy has focused on according equal prominence in monitoring and reporting to all six grave violations (See Box 2) identified by the UN Secretary-General as those to be monitored under the Mechanism. These has also been a focus on the need to expand the 'triggers' for listing/de-listing to look beyond a party's actions solely vis-à-vis recruitment and use of children.

In this context, the project presented in this report targeted a very specific 'niche' area of the issue of children and armed conflict: namely, actions (targeted sanctions and other actions) the UN Security Council has taken and could take to hold to account persistent violators of children's human rights and protection in situations of armed conflict. Two primary foci of the project were: (i) the role of the UNSC; and (ii) actions and options to enforce accountability.

The project and the findings, observations presented in this report are intended to inform the debate on the role of the UN Security Council in advancing protection of children in situations of armed conflict. The main audiences for this project report and observations are: UN Security Council- and other UN member states; international organizations (especially the United Nations) and non-governmental humanitarian, human rights organizations engaged in the protection of children in situations of armed conflict.

## 2 UN Security Council engagement on Children and Armed Conflict

### 2.1 Overview

In order to provide a contextual basis for presenting the project's findings and observations, this section provides a brief overview of UN Security Council engagement and key decisions on the issue of children and armed conflict since the mid-1990s. This section focuses specifically on Security Council decisions and milestones relating to monitoring, reporting of- and response to grave violations of children's rights and protections as well as decisions that pertain to the use of targeted sanctions.

### 2.2 Key decisions of the UNSC on Children and Armed Conflict

The UN Security Council's intensified engagement on the issue of children and armed conflict commenced in earnest in 1999 with the adoption of resolution 1261 which requested the Secretary-General to include in his reports to the Council recommendations on providing special attention to the protection, welfare and rights of children, and to report back to the Council on implementation of the resolution.<sup>13</sup>

Between 1999 and 2004 a number of UNSC resolutions reflected the Council's evolving interest and activity on the issue of children and armed conflict (see Figure 1). In its resolution 1539 of April 2004 the Security Council requested the Secretary-General to develop, as a matter of urgency, an action plan for a systematic and comprehensive monitoring and reporting mechanism. The resolution also conveyed the Council's intent to:<sup>14</sup>

*“consider imposing targeted and graduated measures, through country-specific resolutions, such as ... a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan...”*

The Security Council requested, in its resolution 1612 (2005), the establishment of a comprehensive monitoring and reporting mechanism and decided to establish a Working Group of the Security Council on Children and Armed Conflict. This paved the way for parties to conflict, UNICEF, the Office of the SRSG-CAC, and NGO partners to implement such a comprehensive monitoring and reporting mechanism.

In its resolution 1820 of June 2008 concerning women and peace and security, the Security Council demanded that all parties to armed conflict take measures to protect women and girls from all forms of sexual violence. In that resolution the UNSC again reaffirmed its intent to,<sup>15</sup>

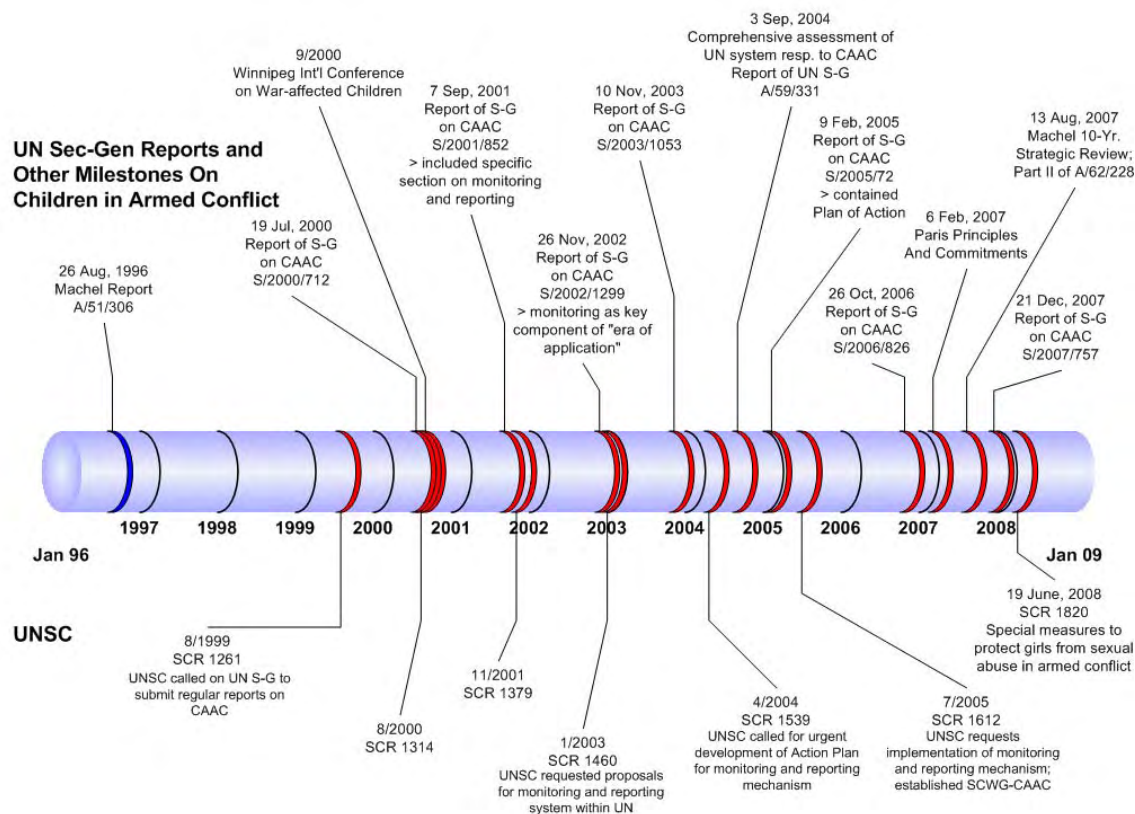
*“[when establishing and renewing state-specific sanctions regimes ...] take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict.”*

At several stages, therefore, the UN Security Council has expressed and re-affirmed its commitment to consider the use of targeted sanctions as a means to hold to account parties to armed conflict that commit or are responsible for grave violations of children's human rights and protections, and to incentivize parties to engage in dialogue on actions to protect children.

<sup>13</sup> United Nations Security Council resolution 1261 (30 August 1999), UN Document re. S/RES/1261. This resolution (paragraph 20) provided the impetus for the Secretary-General's regular reports on Children and Armed Conflict, the first one of which was published in July 2000 (UN document ref. A/55/163-S/2000/712).

<sup>14</sup> United Nations Security Council resolution 1539 (22 April 2004), UN Document ref. S/RES/1539, paragraph 5(c).

<sup>15</sup> United Nations Security Council resolution 1820 (19 June 2008), UN Document ref. S/RES/1820, paragraph 5.



**Figure 1 – Major milestones and key reports/resolutions of the UNSC and Secretary-General on CAC**

### 2.3 Monitoring, reporting and response to grave violations against children

The monitoring and reporting mechanism established pursuant to Security Council resolution 1612 consists of the three activities of monitoring, reporting of- and response to grave violations against children in situations of armed conflict, as well as the institutional structures and arrangements to operationalize the mechanism. The MRM provides a systematic approach for monitoring and reporting of grave violations against children, and provides a framework also for various levels- and forms of response (programmatically, policy etc.) to these violations.

Reporting of grave violations against children in situations of armed conflict is provided to the UN Security Council through the regular reports of the Secretary-General on children and armed conflict, and through the Council's Working Group by means of bi-monthly thematic (so-called 'horizontal') reports and occasional country-specific reports.

The recruitment or use of children in armed forces or groups is the violation which serves as the 'trigger' for listing or de-listing of parties in the Annexes of the Secretary-General's regular reports on Children and Armed Conflict. As of August 2008 the monitoring and reporting mechanism requested in resolution 1612 (2005) had been accepted in all the situations listed in the annexes to the Secretary-General's December 2007 report on children and armed conflict.<sup>16</sup>

<sup>16</sup> United Nations, *Children and Armed Conflict: Report of the Secretary-General*, UN document ref. A/62/609-S/2007/757 (New York: United Nations Security Council, 21 December 2007).

## 2.4 Patterns and trends in reported grave violations of children's rights and protections

Between early 1999 and December 2007 the UN Secretary-General identified 24 situations of armed conflict in which parties to the conflict ("the Parties") recruited or used child soldiers, and may have committed other violations of children's human rights and protections, in violation of their obligations under international law.<sup>17</sup>

The December 2007 report of the UN Secretary General on children and armed conflict:<sup>18</sup>

- provided information on compliance and progress concerning children and armed conflict in 13 situations of concern on the agenda of the Security Council;
- listed (in Annex I) 40 parties that recruit or use children and may commit other grave violations in 9 of those situations of armed conflict on the agenda of the Council;
- provided information on compliance and progress in 5 situations not on the agenda of the Security Council or in other situations of concern;
- listed (in Annex II) 16 parties that recruit or use children and may commit other grave violations in the 5 situations not on the agenda of the Security Council or in other situations of concern.

Of the 46 parties or groups of parties identified in this 2007 report, 12 parties/group of parties were identified for the first time; 11 were identified for two years since 2002; 5 were identified for three years since 2002; 1 was identified for four years since 2002; 12 were identified for five years since 2002, and 5 were identified every year during the period 2002-2007 (see Figure 2).<sup>19</sup>

This persistence in the commission of grave violations against children is also reflected in Figure 3. This timeline captures the duration for which each situation of armed conflict, that has either been identified in the original reports of the Secretary-General on CAC (before the reports featured an annex of listed parties) or subsequently identified in one or other annex of the reports, has featured in the reports. Several situations – most notably Burundi, Colombia, the Sudan, the Democratic Republic of the Congo, and Afghanistan – have featured in these reports for seven years or more.

Reports of the UN Secretary General and his Special Representative have identified cross-cutting issues affecting children and armed conflict, including: links between recruitment of children and forced displacement, whether internal displacement or refugee situations; targeting of girls and (less frequently) boys for sexual exploitation; detention, interrogation of children; forced conscription or use of children in armed forces/groups; systematic and deliberate attacks against children, teachers and their schools; and the increased use of indiscriminate weapons of warfare. In addition, the country-specific reports of the Secretary-General capture the nature of grave violations against children in the specific armed conflict.

## 2.5 Observations

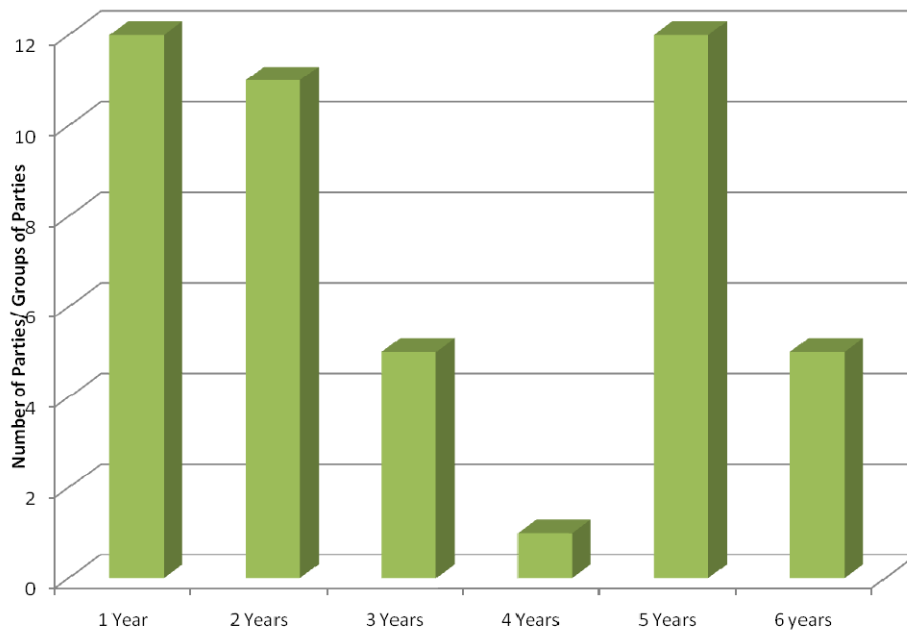
Since the inception, from early 1999, of reporting on the recruitment and use of child soldiers by the UN Secretary-General, 5 (or approximately 26 %) of 19 situations of armed conflict have ceased to feature in the reports. Since the inception of the MRM in 2005, parties in one situation, Côte d'Ivoire, had been 'de-listed' from the relevant annex of the Secretary-General's reports.

Data compiled from the Secretary-General's regular reports between 1999 and December 2007 and presented above point to a persistence of (i) specific situations of armed conflict being reported as those in which children are being recruited and used by armed forces or groups; and (ii) certain parties being listed in the annexes of successive reports on children and armed conflict.

<sup>17</sup> Chechnya and Northern Ireland appeared only once on Annex II of the Secretary General's 2003 report. Sierra Leone, East Timor, Haiti, Iraq, Lebanon, and Israel/OPT appeared as situations of concern, but were never listed in the Annex. Cote d'Ivoire, Afghanistan, Burundi, Central African Republic, Chad, Colombia, Democratic Republic of Congo, Myanmar, Nepal, Philippines, Somalia, Sri Lanka, South Sudan, Uganda, Darfur, and Liberia all appear in Annex I or II of the Secretary General's reports.

<sup>18</sup> This was the most recent report of the Secretary-General on Children and Armed Conflict at the time of writing.

<sup>19</sup> Some of the parties in the Annexes of the Secretary-General's reports are clustered into groups of parties. There were 46 parties OR groups of parties identified in the Annexes to the 2007 Secretary-General's report.



**Figure 2 – Number of years for which parties/entities that were listed in Annex I and Annex II of the Secretary-General’s 2007 report on Children and Armed Conflict have been listed (between 2002 and 2007)**



**Figure 3 – Situations identified in reports of the UN Secretary-General on CAC, 1999 – 2007<sup>20</sup>**

<sup>20</sup> All situations on the timeline are either listed on one or other Annex to the Secretary-General's report covering that period, or were specifically mentioned for featuring parties that recruit or use children in reports prior to the use of Annexes. The only situation of the latter kind was East Timor.

A total of 17 of the 46 parties/groups of parties listed in one or other annex of the Secretary-General's 2007 report had been listed for 5 or 6 years. In addition to this level of persistent, in 2007, twelve parties were newly listed in the 2007 report.

A number of points pertaining to the persistence of listing can be inferred for this data:

- The fact that new parties are being listed in the reports of the Secretary-General may be due to the fact that some parties have fragmented into smaller armed groups (e.g. as in the case of Darfur) and this can increase the number of parties being listed.
- Certain parties may persist in their recruitment and use of child soldiers as they either (a) do not see the MRM or potential Security Council action as sufficiently persuasive to engender a change in this practice, or (b) they have made a decision to continue recruitment/use of children for military purposes, irrespective of the consequences.
- Irrespective of the motivations for some parties to continue recruitment and use of children, the data point to the fact that UNSC actions have not been effective in bringing about a cessation of this violation of children's rights and protections in many situations. However, it must also be noted that the MRM is still very much in its infancy, and that it may take some time for the mechanism and attendant UNSC action to bring about the desired change in parties' behaviors.

## 3 Cases where the UNSC has imposed targeted sanctions or taken other action against persistent violators

### 3.1 Overview

This section presents the project's findings and observations regarding cases where the UN Security Council has imposed targeted sanctions or taken other action to hold accountable persistent violators of children's human rights and protections in situations of armed conflict.

This section also presents the findings from the case study on the situation in Côte d'Ivoire.

### 3.2 Types of action the UN Security Council has taken

The UN Security Council has identified and employed a number of instruments to take action against individuals and entities for serious violations of international humanitarian and human rights law including:

- Threat of- or actual authorization/imposition of targeted sanctions against designated individuals or groups
- Specification of tasks pertaining to protection of children in mandates of United Nations-mandated peace operations
- Referral of situations to international criminal bodies

#### Threat of- or authorization of targeted sanctions

With the increased use of sanctions by the UN Security Council during the 1990s as an instrument in the middle-ground between diplomacy and the use of force came an increased focus on making sanctions more effective, especially by more targeted, so-called "smart", sanctions, and on the need to avoid the potential humanitarian implications of sanctions.

Three international processes undertaken since 2001 – the Interlaken, Bonn-Berlin, and the Stockholm Processes – aimed to, respectively, advance the design and implementation of targeted financial sanctions; advance the design and implementation of arms embargoes and travel- and aviation related sanctions; and to make targeted sanctions more effective.<sup>21</sup>

The types of targeted sanctions that have been considered or imposed by the UNSC for a range of situations, not only related to children and armed conflict, include:

- Targeted financial sanctions, including assets freeze
- Arms embargo, including prohibition on supply of training and technical assistance
- Aviation-related sanctions
- Targeted travel sanctions, including ban on entry into enforcing Member States
- Targeted trade or resource sanctions (e.g. diamond- and timber sanctions)

Of these options the Security Council has frequently chosen to impose arms embargoes on certain situations, regions, parties to conflict or States, while authorizing the imposition of (mostly) targeted financial and travel-related sanctions on designated *individuals or parties* to armed conflict.

When imposing targeted measures against individuals or groups who are responsible for- or commit serious violations of international humanitarian and human rights law the Security Council has tended to use targeted financial- and travel-related sanctions (for example, in Côte d'Ivoire and the Sudan).

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<sup>21</sup> Michael Brzoska Ed., *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the 'Bonn-Berlin Process'* (Bonn: Bonn International Center for Conversion, 2001); The Thomas J. Watson Jr. Institute for International Studies, *Targeted Financial Sanctions: A Manual for Design and Implementation*. Contributions from the Interlaken Process (Providence: The Watson Institute, 2001). Peter Wallensteen, Carina Staibano and Mikael Eriksson, Eds. *Making Targeted Sanctions Effective Guidelines for the Implementation of UN Policy Options: Results from the Stockholm Process on the Implementation of Targeted Sanctions* (Uppsala: Uppsala University, 2003).

## Specification of tasks in mandates of United Nations peace operations

The Security Council can specify measures or tasks concerning protection of children in armed conflict in the mandates of UN peace operations. Such tasks could include, for example: support to disarmament, demobilization and reintegration programs; advising on the situation of children using Child Protection Advisors etc.

In resolution 1612 (2005) the Security Council mandated its Working Group on Children and Armed Conflict to make recommendations on appropriate tasks within the mandates of UN peace operations:<sup>22</sup>

*“Make recommendations to the Council on possible measures to promote the protection of children affected by armed conflict, including through recommendations on appropriate mandates for peacekeeping missions and recommendations with respect to the parties to the conflict;”*

## Referrals of situations to international criminal bodies

The UN Security Council has the option to refer a particular situation to the International Criminal Court (ICC), and has also in the past established international criminal tribunals for specific situations in response to violations of international humanitarian or human rights law in situations of armed conflict.

The Rome Statute of the International Criminal Court includes in the criteria for exercising the Court’s jurisdiction,<sup>23</sup>

*“(b) A situation in which one or more of such crimes [genocide; crimes against humanity; war crimes; etc.] appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;”*

### 3.3 Cases where the UNSC has authorized targeted sanctions

Figure 4 presents the population of all situations of inter- and intra-state conflict worldwide between 1999 and 2007, the number of situations of conflict identified in the combined annexes of the regular reports of the UN Secretary-General on Children and Armed Conflict, and the population of these situations (listed in S-G report annexes) for which the Security Council has imposed targeted sanctions.

During the period 1999 to 2007 the UN Security Council authorized targeted sanctions relating to violations of international humanitarian and human rights law in 3 situations that were identified in the annexes of the Secretary-General’s reports on Children and Armed Conflict during that period: Côte d’Ivoire, the Democratic Republic of the Congo, and the Sudan (Darfur).

A distinction is drawn here between measures authorized by the Security Council and those subsequently imposed or ‘turned on’ against designated individuals or entities, since the latter generally requires additional action by the UN Security Council or the relevant Sanctions Committee.

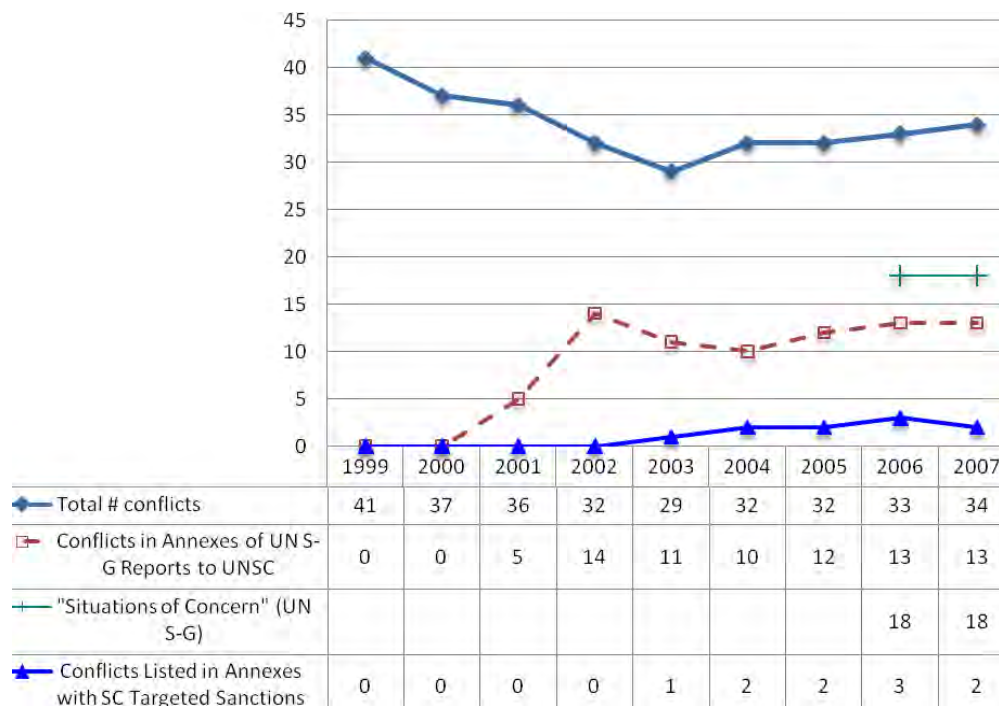
In the cases of Côte d’Ivoire and the Sudan, targeted sanctions were authorized by the Security Council for reasons which included violations of human rights and international humanitarian law in the respective situations; the criteria for designating individuals as being subject to the targeted sanctions did not explicitly include grave violations of *children’s* human rights or protections. The Democratic Republic of the Congo is the sole case for which the UN Security Council explicitly included individuals recruiting, using or targeting children in the criteria for imposing targeted measures against individuals or groups.<sup>24</sup>

Each of the three cases is explored in more detail below.

<sup>22</sup> United Nations Security Council 1612 (2005), paragraph 8(a).

<sup>23</sup> Rome Statute of the International Criminal Court (1998), Article 13(b). Text of the Rome Statute circulated as UN document A/CONF.183/9 of 17 July 1998. The Statute entered into force on 1 July 2002.

<sup>24</sup> The initial criteria for designation did not include the criterion of individuals recruiting, using or targeting children. This criterion was added with the renewal of the arms embargo and targeted sanctions in UN Security Council 1698 (2006).



**Figure 4 – Situations of armed conflict; situations of concern; situations identified in annexes of UN Secretary-General’s reports, and subset of listed situations where UNSC has imposed targeted sanctions, 1999 – 2007<sup>25</sup>**

### Côte d’Ivoire

The regular reports of the UN Secretary-General on children and armed conflict listed parties to the conflict in Côte d’Ivoire that recruited or used child soldiers in consecutive reports of 2003, 2005, and 2006.<sup>26</sup> The UNSC imposed an arms embargo on Côte d’Ivoire and authorized targeted financial and travel-related sanctions in its resolution 1572 (2004) in response to the resumption of hostilities in the country and violations of the ceasefire agreement of May 2003.

In this and subsequent resolutions the Security Council:

- Included in the criteria for designating individuals as being subject to the targeted financial and travel-related sanction, “[any] person determined as responsible for serious violations of human rights and international humanitarian law in Côte d’Ivoire on the basis of relevant information,” [UNSC resolution 1572 (2004)]
- Established a Group of Experts to assist in monitoring implementation of the sanctions, and authorized the United Nations Operation in Côte d’Ivoire (UNOCI), in cooperation with the Group of Experts, to monitor the sanctions [UNSC resolution 1584 (2005)]; Specified the mandate for the Group of Experts [UNSC resolutions 1584 (2005) and 1727 (2006)]
- Renewed the sanctions [UNSC resolutions 1643 (2005), 1727 (2006), 1782 (2007), and 1842 (2008)]

As of early March 2009 three individuals were designated as being subject to the targeted sanctions authorized in Security Council resolution 1572 (2004). One of the three individuals identified was

<sup>25</sup> Data on armed conflict from University of Uppsala States in Armed Conflict Datasets; Data on “situations of concern” and situations identified in Annexes of S-G reports compiled from individual reports.

<sup>26</sup> The 2003 report of the Secretary-General (S/2003/1053, Annex I) listed: (i) Forces armées nationales de Côte d’Ivoire (FANCI), (ii) Mouvement pour la paix et la justice (MPJ), (iii) Mouvement populaire ivoirien pour le Grand Ouest (MPIGO), (iv) Mouvement patriotique de Côte d’Ivoire (MPCI); The 2005 report (S/2005/72, Annex I) listed: (i) factions of the Forces armées des forces nouvelles (FAFN), (ii) LIMA force supplétive; The 2006 report (S/2006/826, Annex I) listed: (i) Armed militia groups affiliated with the Presidential camp, (ii) Forces armées des Forces nouvelles (FAFN).

designated in part as a result of the individual's command of forces engaged in "recruitment of child soldiers."<sup>27</sup>

The Security Council, in successive resolutions on Côte d'Ivoire, reiterated its preparedness to impose targeted sanctions against persons designated by the Sanctions Committee who are determined to be, among other things, responsible for serious violations of human rights and international humanitarian law committed in Côte d'Ivoire. Since the mandate of the Group of Experts did not include provision of information on- or monitoring of serious violations of international humanitarian or human rights law in Côte d'Ivoire, it is not clear from which source(s) the Security Council intended that its Sanctions Committee would receive information on this criterion for designation of individuals.

In the one instance where an individual was designated as being subject to targeted measures in part because of recruitment of children in an armed group, it would appear that this was an additional criterion suggested to the Committee since the individual was going to be designated anyway based on other criteria.

### **Box 3**

#### Summary of project case study, Côte d'Ivoire

*The case of Côte d'Ivoire is considered by many to represent a success story in the implementation of the MRM under Security Council resolution 1612 (2005).*

*The situation in Côte d'Ivoire was chosen as a case for this project because it provides an example of a situation: (i) on the agenda of the UNSC during the period when it was listed in the annex of the Secretary-General's report as a situation in which parties were recruiting or using child soldiers; (ii) where the UNSC had established a sanctions regime; and (iii) in which a UN mandated peace operation (UNOCI) was present.*

#### Summary of Case Study background, findings and observations:

- ➔ *Since 2002, conflict and the ensuing political and social crisis have gripped Côte d'Ivoire, which had long been the stable and prosperous financial and political hub of French-speaking West Africa. Over the course of the crisis, there have been numerous reports of grave violations of children's human rights and protections.<sup>28</sup>*
- ➔ *Although the period of actual combat was short-lived (short period in 2002), to this day children continue to lose their lives as a direct consequence of the environment of high insecurity and the breakdown of law and order and of institutions. The most immediate threat to the lives of children remains inter-community tensions and violence.*
- ➔ *From 2002 onwards, the UN and other humanitarian and rights-based bodies documented the recruitment and use of children in armed forces/groups – estimated to number 4,000 children – by a number of actors. It has been estimated that hundreds if not thousands of girls and women were sexually assaulted during the conflict. Rape and other grave sexual violence against girls continue to take place with alarming frequency throughout the country.*
- ➔ *In 2003, international humanitarian agencies – including UNICEF – initiated discussions with the FAFN on the demobilization of children associated with armed forces/groups. In September of that year, the FAFN committed to end the recruitment and use of child soldiers in its forces.*

<sup>27</sup> The list of designated individuals is available at: <http://www.un.org/sc/committees/1572/listtable.html> (accessed 3 March 2009).

<sup>28</sup> See reports such as: Human Rights Watch, *My Heart is Cut* (New York: Human Rights Watch, 2007); Coalition to Stop the Use of Child Soldiers, *Global Report 2008* (London: Coalition to Stop the Use of Child Soldiers, 2008); Ministry of Family, Women and Social Affairs & UNFPA, *Crisis and Gender-Based Violence in Cote d'Ivoire*, 2008.

- *By early 2005, active hostility or concerted warfare had ended, though occasional skirmishes continued. On 9 February, the Secretary-General released his report on CAC, which placed or "listed" FAFN and the 4 main pro-government militias in the west (i.e. MILOCI, FLGO, APWE, and UPRGO) on Annex I. In March, UNOCI's Child Protection Unit discussed the arbitrary detention of juveniles with FAFN. It was not until July that the UNSC adopted resolution 1612 and charged the UN country team in CDI with its implementation. In October, FAFN requested of UNOCI help to complete the action plan on demobilization of children.*
- *In February 2006, the UNSC imposed a travel ban and financial sanctions on three individuals on both sides of the conflict. By April, the FAFN ordered the release of juvenile prisoners, and in July reported on its progress in demobilizing children associated with its forces in three of its 20+ zones. Finally, in September, the 4 listed armed groups committed to the demobilization of all children associated with their forces. The following week, the country MRM Task Force was launched.*
- *In October 2006, UNOCI undertook verification of FAFN demobilization efforts; the results were fed into the Secretary-General's report on CAC in Cote d'Ivoire (October 2006). That report stated that all 5 listed parties continued to play a role in the grave violations of children's rights. At the end of the year, UNOCI met with FAFN who were frustrated with the fact that they were still being listed and having one of their leaders subjected to sanctions, despite their concerted efforts on the Action Plan.*
- *In early 2007, both the FAFN and the group of pro-government militias requested UNOCI assistance to complete their obligations under the child demobilization action plans. In February, the government endorsed the new Paris Principles on children associated with armed forces and armed groups.*
- *In October 2007, the FAFN authorized unannounced verification visits by a joint UN/NGO team. The verification process on child demobilization was undertaken, with teams visiting 3 areas: one military encampment in the West had children present; in areas in the West and centre, several checkpoints were staffed by uniformed and non-uniformed boys; and the team was completely denied access to the barracks in Bouake. Surprisingly, the rest of the process was never completed. Nonetheless, the groups were de-listed from the Secretary-General's December 2007 report on CAC.*
- *The joint verification team has not undertaken any further verification campaign/activities to ensure ongoing compliance on the recruitment and use of children, despite confirmed cases of girls remaining with commanders in certain groups, including some detained involuntarily. In Jan. 2009, both the FAFN and FRGO released action plans on sexual violence that cited UNSC resolutions 1612 and 1820.*
- *It would appear that listing Ivorian actors under the MRM did accelerate the process to demobilize children beyond levels in 2003-05. This may well have been due to the late stage in the conflict at which the mechanism became active, when the armed groups and commanders were seeking political legitimacy. Interestingly, the implementation of 1612 may have given UN agencies an opportunity to increase awareness within the FAFN on the rights of incarcerated children.*
- *During the course of the field research (February 2009), the Special Court in Sierra Leone rendered a guilty judgment on three ex-military commanders for forcibly "marrying" women during the civil war. It is a precedent that could cast a long and forceful shadow across the region and beyond, especially given the number of cases that still exist of girls remaining with commanders against their will.*
- *There is no doubt that the existence and actions of the International Criminal Court (ICC) have had an impact on the conflict in Cote d'Ivoire. Every interviewee*

*maintained that commanders and politicians knew about the court and that virtually every one of them was concerned about its potential reach into Cote d'Ivoire.*

- *Parties listed in the annex to the Secretary-General's report on Children and Armed Conflict were eager to engage with UNICEF and UNOCI to be removed from the list, largely due to (i) desires for enhanced political legitimacy; and (ii) concern regarding possible future action by international criminal bodies.*
- *The criteria used for de-listing parties who had been identified in the reports of the S-G as recruiting and using child soldiers were unclear, and the release of all children associated with both the FAFN and FRGO was never fully verified.*
- *Because 'recruitment and use of child soldiers' is the sole trigger for listing/de-listing of Parties, other, continuing grave violations against children – especially sexual violence – have continued with relative impunity. 'De-listing' because of progress on one violation has, in essence, provided some political cover for continued violations.*
- *The UNSC continues to review the situation of children in Cote d'Ivoire through the Working Group on an "as needed" basis.*

### Democratic Republic of the Congo (DRC)

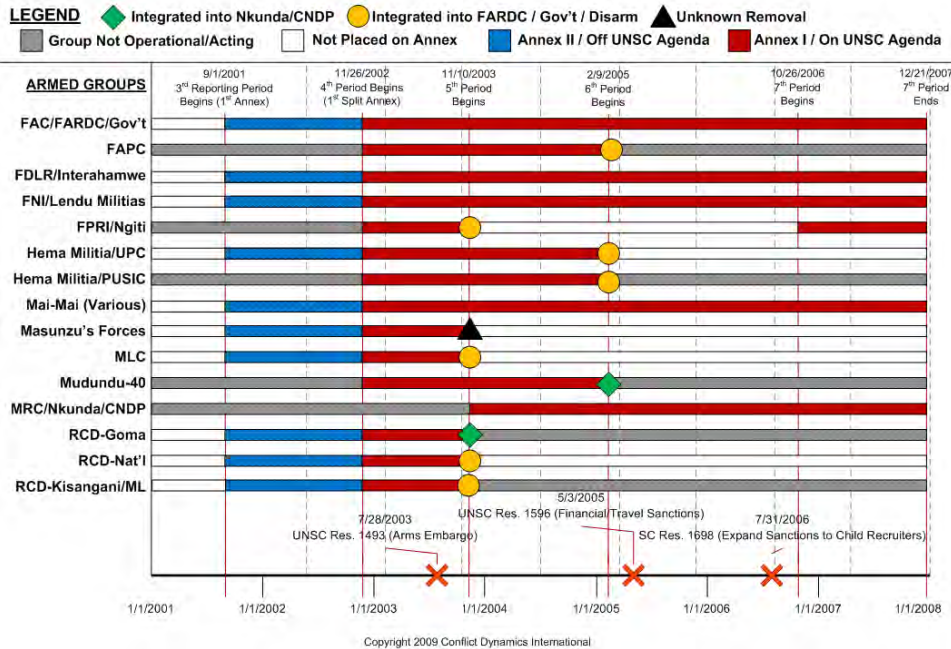
The regular reports of the UN Secretary-General on children and armed conflict listed parties to the conflict in the Democratic Republic of the Congo that recruited or used child soldiers in five consecutive reports between 2002 and 2007. A total of fifteen major groups (including government forces and 14 non-State armed groups) have been listed in the annex to the Secretary-General's report, although five remained at the time of writing. By early 2009, most non-government groups have either:

- Participated in mixage (integration) supported by the UN Mission in the Democratic Republic of Congo (MONUC) and become parts of the Armed Forces of the Democratic Republic of the Congo (FARDC); or
- Integrated into the National Congress for the Defense of the People (CNDP) under Laurent Nkunda.

The integration of various armed factions is illustrated in Figure 5.

The UNSC imposed an arms embargo on the DRC and authorized targeted financial and travel-related sanctions in its resolution 1533 (2004) against all parties actively engaging in disruptive hostilities and undermining the Ceasefire Agreement. In this and subsequent resolutions the Security Council:

- Established a Group of Experts to assist in monitoring implementation of the sanctions, and authorized MONUC, in cooperation with the Group of Experts, to monitor the sanctions [UNSC resolution 1533 (2004)]
- Included in the criteria for designating individuals as being subject to the targeted financial and travel-related sanction, "*Political and military leaders recruiting or using children in armed conflict in violation of applicable international law;*" and also, "*individuals committing serious violations of international law involving the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction, and forced displacement;*" [UNSC Resolution 1698 (2006)]
- Further included in the designation criteria, "*Individuals operating in the Democratic Republic of the Congo and committing serious violations of international law involving the targeting of children or women in situations of armed conflict*" [UNSC Resolution 1807 (2008)]
- Renewed these sanctions [Resolution 1771 (2007), and Resolution 1857 (2008)]



**Figure 5 – Timeline of listings in the reports of the UN Secretary-General of Parties recruiting or using child soldiers in the Democratic Republic of the Congo**

As of early March 2009, 22 individuals and entities were designated as being subject to the targeted sanctions authorized in Security Council resolution 1533 (2004). Of these, none were specifically designated based for recruiting, using or targeting children or for committing other grave violations against children, despite the persistent reports of violations against children being committed by parties to the conflict. For example, the December 2008 report of the Group of Experts identified individuals in two armed groups (CNDP, PARECO) as actively engaged in recruitment and use of children in these groups.<sup>29</sup>

Several former armed groups – some of which recruited/used children – have been integrated into specific brigades of the State armed forces in DRC, and have retained some of the children among their ranks. Furthermore, national (including judicial) mechanisms to enforce accountability for grave violations against children in DRC have in many cases not been effective.

### Darfur, the Sudan<sup>30</sup>

By its resolution 1556 (2004) the UN Security Council imposed sanctions on the sale- or supply of arms and related materiel of all types to all non-governmental entities and individuals operating in Darfur. The resolution also prohibited the provision of technical training or assistance related to the supply, manufacture, maintenance or use of arms and related materiel.

The following year the UN Security Council adopted resolution 1591 (2005) which: (i) established a Sanctions Committee; (ii) requested the UN Secretary-General to establish a Panel of Experts; (iii) authorized the imposition of targeted financial- and travel-related sanctions against individuals to be designated by the Committee; and (iv) expanded the existing provisions of resolution 1556 to apply to all

<sup>29</sup> United Nations Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo* [Annex to Letter dated 10 December 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2008/773], (New York: United Nations, 12 December 2008) : paragraphs 167 – 171.

<sup>30</sup> The attention of the reader is drawn to the fact that the Principal Investigator for this project served three terms as Coordinator of the United Nations Security Council Panel of Experts concerning the Sudan between July 2005 and September 2007.

parties to the conflict in Darfur. The criteria specified in the resolution for designation of individuals included.<sup>31</sup>

*“who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the [arms embargo] ... or are responsible for offensive military overflights.”*

As in the case of Côte d'Ivoire, although the criteria for designating individuals did not explicitly mention grave violations against children, this is clearly included in the aforementioned criterion of *“violations of international humanitarian and human rights law.”* The targeted sanctions authorized by the Security Council pertain specifically to Darfur, and not to other regions within the Sudan.

As of March 2009 four individuals had been designated as being subject to the measures initially imposed in Security Council resolution 1591 (2005). None of the designation criteria for the four individuals include grave violations of children's human rights and protections under applicable international law, despite reports from several UN/other sources (UN Panel of Experts, UN Office of the High Commissioner for Human Rights, UNICEF etc.) on grave violations against children in Darfur.

### 3.4 Cases where the UNSC has taken action other than targeted sanctions

In addition to the three case between 1999 and 2007 in which the UN Security Council has authorized targeted sanctions in response to violations of international humanitarian and human rights (if not in every case specifically in response to grave violations against children), the Council has also taken action in certain situations to (i) specify tasks pertaining to protection of children in mandates of UN peace operations; and (ii) refer a situation to the International Criminal Court.

#### Specification of tasks in mandates of UN peace operations

MONUC, the United Nations Mission in DR Congo provides an example of a situation where the UN Security Council included tasks pertaining to protection of children in armed conflict in the Mission's mandate.

MONUC was established pursuant to UNSC Resolution 1291 (2000) and received a number of expansions to its mandate. Currently, it is operating broadly under Phase III (DDR) and Phase IV (electoral oversight) of its mission. Under Phase III, MONUC's is to:

- *“facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers;”* [SC Resolution 1291 (2000)]
- *“assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put an end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice...”* [SC Resolution 1565 (2004)]
- *“[Lead] Disarming [of] the recalcitrant local armed groups in order to ensure their participation in the disarmament, demobilization and reintegration process and the release of children associated with those armed groups;”* [SC Resolution 1565 (2004)]
- *“[Lead] Disarming [of] the foreign armed groups in order to ensure their participation in the disarmament, demobilization, repatriation, resettlement and reintegration process (DDRRR) and the release of children associated with those armed groups;”* [SC Resolution 1565 (2004)]
- *“Provide military training, including in the area of human rights, international humanitarian law, child protection and the prevention of gender-based violence, to various members and units of the FARDC integrated brigades ...”* [SC Resolution 1565 (2004)]

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<sup>31</sup> United Nations Security Council resolution 1591 (2005), paragraph 3(c)

## Referral of situations to international criminal bodies

### *Referral to the International Criminal Court*

In its resolution 1593 (2005), the Security Council referred the situation in Darfur (since 1 July 2002) to the International Criminal Court (ICC). Since that referral the Prosecutor of the ICC has presented three cases to the Court:

- On 27 February 2007, the Office of the Prosecutor presented evidence concerning those individuals who bear greatest responsibility for the most serious crimes committed in Darfur. On 27 April 2007, the Judges issued arrest warrants against Ahmad Harun and Ali Kushayb.
- On 14 July 2008, the Prosecutor presented a case against President Omar Al Bashir to the Court's Pre-Trial Chamber. On 4 March 2009 the Pre-Trial chamber issued an arrest warrant for President Omar Al Bashir.
- On 20 November 2008, the Prosecutor presented a case against three rebel commanders allegedly responsible for the Haskanita attack to the Pre-Trial Chamber.

### *Establishment of International Criminal Tribunals*

Prior to the establishment of the International Criminal Court the UN Security Council set up international criminal tribunals for specific situations, notably Rwanda and the former Yugoslavia.

In the case of Rwanda the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) by its resolution 955 of 8 November 1994. The purpose of the Tribunal is to,

*"[prosecute] persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994"*

The Statute of the ICTR was included as an annex to the resolution of the Council which established the body. As of March 2009 there were a total of 16 individuals serving sentences following convictions, 48 detainees on trial, awaiting trial/transfer, and a total of 79 arrests had been made.<sup>32</sup>

### *Action by international criminal bodies not related to UNSC referral(s)*

Separate from referrals of situations to international criminal bodies by the UNSC, some of these international criminal bodies – notably the ICC and the Special (Hybrid) Court for Sierra Leone – have taken action to hold to account violators of children's rights and protections in situations of armed conflict. Examples of such action include:

- In a landmark case, the ICC commenced a trial in January 2009 against Thomas Lubanga Dyilo – alleged founder of Union des Patriotes Congolais (UPC) and the Forces patriotiques pour la libération du Congo (FPLC); alleged former Commander-in-Chief of the FPLC – for war crimes allegedly committed in the DRC including enlisting and conscripting of children.
- The ICC is reportedly pursuing a number of other investigations/cases pertaining to grave violations against children in some of the situations of armed conflict under its jurisdiction: DRC, Darfur, Central African Republic and Uganda.
- In February 2009 the Special Court for Sierra Leone (SCSL) convicted three former commanders of the Revolutionary United Front (RUF) of war crimes and crimes against humanity including conscription and enlistment of children under the age of fifteen into fighting forces.<sup>33</sup>

<sup>32</sup> Data from International Criminal Tribunal for Rwanda. See: <http://69.94.11.53/default.htm> (Accessed 20 March 2009).

<sup>33</sup> See UNICEF Press Release, "UNICEF Applauds the Special Court for Sierra Leone's Verdict on RUF's Child Rights Violations during the War," (Freetown: UNICEF, 26 February 2009).

### 3.5 Actions taken by the Working Group on Children and Armed Conflict

The UN Security Council Working Group on Children and Armed Conflict has developed a 'toolkit' of options for possible action by the Working Group. The toolkit proposes indicative options in five categories:

- Assistance
- Demarches
- Enhanced monitoring
- Improvement of mandate
- Other measures

The toolkit does not explicitly mention "targeted measures" in any category of possible recommendation to the UNSC. The toolkit does, however, under "Other measures", provide an option for provision of information to the various UNSC Sanctions Committees.<sup>34</sup>

*"Consider and forward to the existing Sanctions Committees, bearing in mind their respective mandates and paragraphs 9 of resolution 1612 (2005) and 5 (c) of resolution 1539 (2004), relevant information received by the Working Group and its conclusions thereon, in particular on issues of concern, including the views requested from the Working Group upon request of the existing Sanctions Committees."*

Table 1 presents a summary of actions taken by the UN Security Council and its Working Group for all of the situations listed in the annexes of the Secretary-General's reports on Children and Armed Conflict since the establishment of the Working Group in July 2005.

### 3.6 Observations

- The UNSC has consistently stated its intent to consider imposition of "targeted measures" against listed entities that fail to make progress to ceasing the recruitment and use of child soldiers. However, the UN Security Council has authorized targeted sanctions in only 16 % of situations identified in the body- and annexes of the Secretary-General's report on Children and Armed Conflict since 1999.
- For the three cases in which targeted sanctions were authorized, in only one case – the Democratic Republic of the Congo – were some of the six grave violations that define the scope of monitoring under the MRM included explicitly in the criteria for designating individuals/entities as being subject to the targeted sanctions.
- Even in the three situations where individuals can be designated as being subject to targeted sanctions as a result of grave violations against children, only 1 (or 3.4 percent) of the 29 designated individuals mentioned some of the grave violations of children's rights and protections as part of the justification for designation.
- While the Working Group has employed various tools from its 'toolkit' (see Table 1 and Figure 6), for several of the situations that have been identified consistently in the reports of the Secretary-General on CAC – including Afghanistan and Colombia – the Working Group has failed to effectively employ tools from the toolkit. Moreover, the fact that in other cases many of the Working Group's tools have been invoked and yet parties in these situations continue to recruit and use child soldiers and commit other violations against children may point to: (1) the fact that it may be too early to assess the effectiveness of the Working Group's actions given that tools are invoked in a graduated manner; OR (2) the Security Council Working Group's tools are ineffective in achieving the desired outcomes; OR (3) the types of tools being employed are not being effectively matched to the objective, or effectively combined with other actions.

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<sup>34</sup> United Nations Security Council, *Options for Possible Action by the CAAC Working Group of the Security Council ("toolkit")*, non-paper in Addendum to, *Letter dated 8 September 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council*, UN document ref. S/2006/724 (New York: United Nations, 11 September 2006).

	Action by UNSC			Action by SCWG				
	Targeted sanctions	Adjustment to mandate	Referral to ICC	Assistance	Demarches	Enhanced monitoring	Improvement of mandate	Recommendation to UNSC
Afghanistan								
Burundi				X	X	X		
CAR		2007						
Chad		2007		X	X	X	X	X
Colombia								
Côte d'Ivoire	2004	2007		X	X	X	X	
Darfur	2005	2005	2005	X	X	X		
DRC	2006	2004		X	X	X	X	X
Myanmar					X	X		
Nepal				X	X	X	X	
Philippines				X	X	X		
Somalia				X	X	X		
Southern Sudan <sup>35</sup>		2005						
Sri Lanka				X	X	X		
Uganda				X	X	X	X	

Table 1 – Summary of actions taken by UNSC and its Working Group CAAC<sup>36</sup>

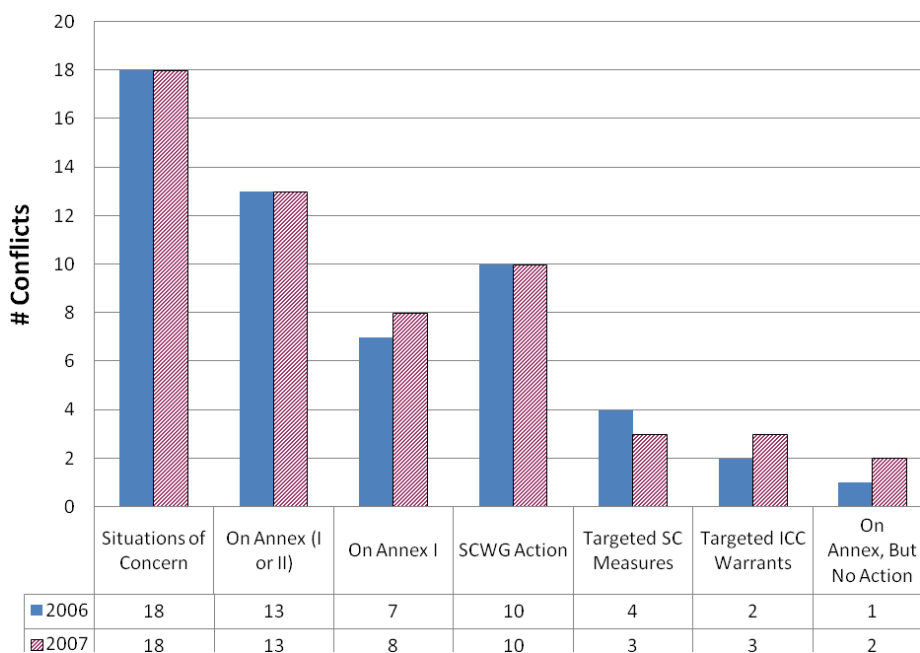


Figure 6 – Analysis of UNSC Working Group and other actions on all situations identified in S-G reports published in 2006 and 2007

<sup>35</sup> While the situations of Southern Sudan and Darfur are listed separately in the S-G reports, the SCWG considers reports on the situation in the Sudan overall.

<sup>36</sup> SCWG Actions are listed without a date due to the ambiguous timespans associated with many of the possible toolkit actions.

## 4 Cases where the UNSC has failed to take action

### 4.1 Overview

This section presents the findings and observations of the project on cases where the UN Security Council has failed to authorize or impose targeted sanctions, or to take other specific actions, for the purpose of holding to account persistent violators of children's human rights and protections in situations of armed conflict.

This section also presents some of the reasons – garnered from project consultations and feedback received via the Survey Questionnaire (Annex III) – as to why this has been the case. A summary of the findings from the case study on the situation in Sri Lanka is presented in this section also.

### 4.2 Cases where the UNSC has failed to take action

Section 3 of this report presented the project's findings concerning situations where the UN Security Council has taken action to hold accountable persistent violators of children's human rights and protections in situations of armed conflict. The types of action considered were: authorization of targeted sanctions; referral of situation to international criminal bodies; and substantive adjustment to mandate of UN peace operation.

Of the 14 situations of armed conflict identified in the annexes of the 2007 Secretary-General's report on Children and Armed Conflict, the Security Council did not impose targeted sanctions or take either of the other two types of action in 12 of those cases.<sup>37</sup>

Of the 12 situations where the Security Council did not take action of the types mentioned above:

- 5 situations (Chad, Colombia, the Philippines, Sri Lanka and Uganda) were not on the agenda of the Security Council (as of Dec 2007);
- 7 situations (Afghanistan, Burundi, Central African Republic, Myanmar, Nepal, Somalia, Southern Sudan) were on the agenda of the Council (as of Dec 2007);
- In 2 situations (Central African Republic and Uganda), the Prosecutor of the International Criminal Court has opened and is conducting investigations, without referral of the situation by the Security Council;
- As of March 2009, 7 of those situations (Afghanistan, Burundi, Central African Republic, Nepal, Somalia, Southern Sudan, and Chad) had an UN-mandated peace operation or UN political mission in place.

In several of these situations the parties concerned are engaging with the MRM process with a view to developing and implementing Action Plans and that may explain why the Security Council has not acted in some of those cases.

The Security Council's Working Group on Children and Armed Conflict did take action on some of these cases (see Section 3.5 above). The range of actions taken by the Security Council Working Group is presented in Table 1. Ultimately, the indicator for effectiveness of UNSC and SCWG action is whether situations and parties are de-listed from the annexes of the Secretary-General's reports. Therefore the *effectiveness* of UNSC and/or SCWG action needs to be evaluated, rather than just the action itself.

#### Case study findings: Sri Lanka

The findings of the case study on Sri Lanka are presented in Box 4. It is important to note that the findings are intended to illuminate key aspects of this type of situation, rather than providing a detailed exploration of the particular situation in Sri Lanka.

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<sup>37</sup> The cases for which the Security Council failed to take direct action vis-à-vis imposition of targeted sanctions, substantive adjustments to peace operation or referral to international criminal bodies were: Afghanistan, Burundi, Central African Republic, Myanmar, Nepal, Somalia, Southern Sudan, Chad, Colombia, Philippines, Sri Lanka, Uganda.

**Box 4**

Summary of project case study, Sri Lanka

*The case was chosen as an example of a situation not on the agenda of the Security Council, where no sanctions regime is in place, where no UN-mandated peace operation exists, and which does not fall within the jurisdiction of the ICC. The situation in Sri Lanka has been identified consistently in Annex II of the Secretary-General regular reports on children and armed conflict since 2003.*

*The 2007 report of the Secretary-General on Children and Armed Conflict listed in Annex II two parties – Karuna faction and Liberation Tigers of Tamil Eelam (LTTE) – that recruit or use child soldiers and that (during the previous reporting period) were responsible for killing and maiming and abductions of children.*

Summary of Case Study background, findings and observations:

- ➔ *Towards the end of 2006 the conflict in Sri Lanka between the Government of Sri Lanka and the LTTE – which had dampened over the previous years – re-ignited and intensified thereafter, resulting in a serious deterioration in the security and political situation over the following 15 months. In January 2008 the Government of Sri Lanka withdrew from the ceasefire agreement with the LTTE.*
- ➔ *UNICEF and other UN agencies have consistently advocated with all parties to the conflict to ensure protection of children, especially those most directly affected by hostilities. UNICEF in particular had engaged with the LTTE for many years with a view to demobilizing- and preventing future recruitment of children, some of whom were extremely young (10 – 12 years old).*
- ➔ *In 1998 the LTTE committed (to the SRSG-CAC) not to recruit children below the age of 17 and in 2003 revised this age upwards to 18. In 2002, the LTTE agree that UNICEF would serve as the repository and ‘custodian’ of a database on all cases of children recruited into armed forces/groups. During the first half of 2003 the Government of Sri Lanka (GoSL), LTTE and UNICEF developed an Action Plan on children associated with armed forces and groups, which was signed by both parties to the conflict. The LTTE subsequently re-adjusted (down to 17 and again back up to 18) its accepted age for recruitment and use of individuals in its forces.*
- ➔ *This engagement was relatively successful: Of the 6,221 children registered in the UNICEF database as of December 2007, 1,469 cases remained outstanding (at that time).*
- ➔ *In addition to recruitment and use of children, reports of the Secretary-General on children and armed conflict in Sri Lanka have reported incidents of abduction (then-TMVP/Karuna faction, LTTE), killing and maiming of children (all parties), attacks on schools and hospitals (GoSL and LTTE) and denial of humanitarian access.*
- ➔ *During 2008 the security situation deteriorated remarkably and towards the end of the year the GoSL forces had regained control of much of the territory in the East and North of the country that had previously been under the control or influence of the LTTE. At the time the case study was conducted (March 2009) the LTTE had been confined militarily to a narrow coastal strip of land in Mullaitivu District in the north-east of the country. An estimated 200,000 civilians were caught up in the conflict, with reports that civilians were being forced to remain on the coastal strip by the LTTE, and that civilians, including children, were being killed and injured as a result of hostilities and military actions of both parties. Humanitarian access to civilians was severely constrained as a result of the ongoing hostilities.*

- *It is clear that the parties to the conflict had made significant progress on demobilization of children associated with armed forces or groups well before the establishment of the MRM. The changing nature of the conflict and the deteriorating security situation have in recent months resulted in grave violations against children including killing and maiming of children, attacks on schools and hospitals, abductions, and denial of humanitarian access. As of March 2009, there were reports that the LTTE was again forcibly recruiting children to bolster its military forces in the face of the GoSL offensive.*
- *The identification or listing of parties to the conflict as recruiting or using child soldiers or committing other grave violations against children appears to have provided an important and credible incentive, to all parties, over a number of years to induce compliance with Actions Plans etc.*
- *In the case of the LTTE, it would appear that those interests have been overtaken by military necessity, although there are several examples during January – March 2009 which illustrate the LTTE, as well as the GoSL, remain extremely sensitive and responsive to UN and media reports concerning violations of international humanitarian and human rights law.*
- *In April 2007 the Government of Sri Lanka established a multi-disciplinary task force on children and armed conflict; It would appear that the task force deals with a broad range of issues relating to children affected by conflict (including rehabilitation programs etc.), although it is unclear what role the task force plays in preventing- and responding to grave violations against children as a direct result of the conflict.*
- *The fluctuating political alliances in Sri Lanka have also influenced actions to prevent violations against children: Alliances between the GoSL and the TMVP have assisted in securing agreement from the TMVP to enter into an Action Plan on recruitment/use of children, while the relationship between the governing SLFP and the Karuna faction (which split from TMVP) may also provide more incentive and support for the Karuna group to ensure that children are released from their affiliated forces. Emerging political forces may also need to be engaged with a view to preventing violations of children's rights and protections as these groups (in some cases) assert their influence over previously LTTE controlled areas.*
- *The focus on 'recruitment and use of children' as the sole 'trigger' for listing/de-listing has contributed to a situation where other violations committed by parties to the conflict in Sri Lanka – including killing of children and attacks on schools and hospitals – have not been effectively addressed, and those who committed the violations have not been held accountable.*

### 4.3 Possible reasons for failure to take effective action

The consultations and interviews undertaken throughout the project highlighted some of the reasons why the UN Security Council and its Working Group have – in some situations of armed conflict – failed to take effective action in the face of persistent reports of grave violations of children's human rights and protections.

It is important to emphasize again that in some situations the listed parties (in S-G report annexes) are engaging with the MRM and therefore the Security Council may not yet be required to take additional action. However, the analysis presented above and in previous sections points to a lack of action even in those situations that present an image of persistent violations (by the same parties over several years).

Some of the perspectives gathered and reasons deduced for failure to take action in such cases of persistent violations include:

- General reluctance on the part of some UNSC members to authorize targeted sanctions against certain Member States or in certain situations due to a number of factors, including the national political- and/or security interests of these objecting Security Council members.
- Reluctance on the part of certain Member States to consider types of action such as targeted sanctions for situations listed in Annex II of the Secretary-General's report on Children and Armed Conflict.
- Notwithstanding the resolutions and statements of the UN Security Council on Children and Armed Conflict, a feeling on the part of some Member States, including some Security Council members, that children and armed conflict remains a 'soft' issue in the domain of the Security Council; while targeted sanctions and their authorization generally pertain to what are perceived as 'hard' or 'realpolitik' issues such as conduct of hostilities, exploitation of natural resources etc.
- A feeling by some Member States that the Security Council has limited options at its disposal for taking effective action, especially in cases where the situation was/is not on the agenda of the Security Council.
- Gravitation within the Security Council Working Group, over time, towards discussion of- and recommendation/use of select tools in the 'toolkit' around which is easier to gain consensus ('lowest common denominator'), largely as a result of the 'no objection' procedure used in Committee proceedings.
- Occasional delays within the Working Group with consideration of certain situations due to focus (for specific situations under consideration) on procedural or process-related issues.
- The fact that triggering of 'listing' or 'de-listing' of parties in the annexes of the Secretary-General's reports is based on recruitment and use of child soldiers, just one of the six grave violations identified under the MRM.
- The significant workload of the Security Council Working Group which makes it difficult to pursue all activities and avenues that may lead to more effective response in terms of enforcing accountability.
- Limited coordination between the Security Council Working Group and the work of the Security Council itself in terms of synchronizing the reporting to the Working Group (on a specific situation) with the work of the Council to renew sanctions or the mandate of a UN peace operation when either applies to the situation.
- Limited coordination between the Security Council Working Group and the Sanctions Committees of the Council. The good experience in communication between the Working Group and the Sanctions Committee for the Democratic Republic of the Congo has been the rare exception rather than the rule.
- Lack of political willingness on the part of UN Security Council members at the levels of the Council itself and the various Sanctions Committees to designate individuals as subject to targeted sanctions even when "violations of international humanitarian and human rights law" (Sudan and Côte d'Ivoire) or "recruitment, use or targeting of children" (DRC) as explicitly identified among the criteria for designation.
- Limited coherence within the Security Council on the various, inter-related thematic agenda items such as Children and Armed Conflict and Protection of Civilians in Armed Conflict.

#### 4.4 Observations

The situations identified in the 2007 report of the Secretary-General in which the Security Council has not taken effective action – in any of the three categories of imposing targeted sanctions, substantive adjustment to an UN-mandated peace operation, or referral to an international criminal body – includes, among others, Afghanistan, Burundi and Colombia. Each of these situations has been identified in successive reports of the Secretary-General spanning a period of seven years or more.

While it is the case that the MRM established under UNSC resolution 1612 (2005) and the attendant institutional arrangements require(d) some time to commence their work and to identify procedures etc., it is clear that listing in the annexes of the S-G's reports has not dissuaded certain groups from recruiting or using child soldiers. The failure of the Security Council to take effective action, even in situations where the Council has the tools at its disposal to do so (e.g. in situations where a sanctions regime is already in place) has undoubtedly contributed to this sense of impunity within some parties.

Many of the reasons why the Security Council has failed to take effective action gathered in the course of this project relate to issues of institutional coordination, national interests over-riding the best interests of the child, and poor institutional follow-up.

## 5 Options for the UNSC to strengthen accountability

### 5.1 Overview

This section presents observations based on the project findings and highlights opportunities for the UN Security Council to strengthen and enforce accountability for persistent violations of children's human rights and protections.

The focus of this section is on the application of new or existing regimes and measures, and consideration of new approaches drawn from precedents of UNSC- or broader UN action.

Observations and options are presented here in the context of the range of recommendations which have been put forward by the UN Secretary General and the SRSG Children and Armed Conflict in recent reports, a selection of which are summarized in Annex IV.

### 5.2 Looking forward: Considerations to guide approach to enhancing accountability

A number of principles have been identified during the course of the project which could assist in guiding the future approach of the UN Security Council to taking action in response to grave violations against children in situations of armed conflict.

These proposed principles and the underlying rationale for each principle include:

#### **1. Tailor the Security Council action to fit the context and target**

Rationale: The UN Security Council has in the past authorized or imposed targeted sanctions without due consideration of the reason why the individual/entity is being designated. Essentially it has been a 'one size fits all' approach. Targeted measures should be developed and imposed such that have the greatest likelihood of achieving the desired outcome in the specific context and for the intended target. This may require the development and use of new types of targeted measures (see below). Furthermore, this enhanced targeting and more effective implementation can draw on the outcomes of the three international processes on making targeted sanctions more effective (the Bonn-Berlin, Interlaken and Stockholm Processes), as well as on the report of the Security Council Informal Working Group on General Issues of Sanctions (2006).<sup>38</sup>

#### **2. Insulate the humanitarian objectives of UNSC action from other political objectives**

Rationale: If progress on humanitarian issues is conflated or 'tied in' with desired progress on political objectives, then parties listed in the annexes of the Secretary-General's reports – and particularly non-State armed groups – may have less motivation to take action to cease violations against children (e.g. recruitment and use of child soldiers). This is because progress on cessation of violations against children would may be sufficient to 'de-list' the individual/group from the Annex of a Secretary-General's report, but not from a Sanctions Committee consolidated list, if that group were also engaged in other activities for which they could be designated. In essence, the humanitarian objectives should be kept separate, and pursued through separate measures, than the political objectives.

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<sup>38</sup> United Nations, *Best practices and recommendations for improving the effectiveness of United Nations sanctions* [Based on the report of the Security Council Informal Working Group on General Issues of Sanctions (2006)] (New York: United Nations, 2007).

### 3. Focus on entities, not on countries or situations

Rationale: In many cases where the political will to impose targeted sanctions simply does not exist because that may entail placing a country/situation on the agenda of the Security Council and possibly establishing a sanctions committee, it may help to get past these political constraints by focusing on entities (individuals/groups) rather than countries. This could still include the armed forces of Member States as well as non-State armed groups.

### 4. Pursue a transparent, graduated approach in response to non-compliance

Rationale: The Security Council's stated intent to pursue a 'graduated' approach and the range of tools being employed by the Security Council Working Group may not elevate the level or response sufficiently, and in a sufficiently short time, to bring about the desired result. Standardized 'benchmarks' for augmenting the level of response at various stages may assist in de-politicizing decisions on whether to take-or recommend stronger action to enforce accountability.

### 5. Don't threaten to employ targeted sanctions unless there is the political will to follow through and to effectively implement the measures

Rationale: The MRM established on the basis of the request in Security Council resolution 1612 (2005) is still very much enjoying a 'honeymoon' phase; Those parties listed in the annexes of the Secretary-General's regular reports, unsure of the actions the Security Council may take, may be eager to engage in dialogue to ensure that they are 'delisted' from the Annex. If listed parties come to realize over time that the Security Council will not follow through on its stated intent to employ targeted sanctions, these parties may in some cases be less willing to cooperate.

### 6. Ensure consistency between trigger mechanisms and monitoring requirements

Rationale: The current status of 'recruitment and use of child soldiers' as the main triggering mechanisms for listing/de-listing in the reports of the Secretary-general is inconsistent with the six grave violations identified as those to be monitored under the MRM. The primary focus on parties that recruit and use children means that situations characterized by other grave violations are not accorded the same prominence in the decision making of the Security Council and its Working Group.

These six guiding principles are applied in the following sections to assist in identifying options the UN Security Council may consider in enforcing accountability.

#### 5.3 A typology of situations for generating options

In considering options for taking action against persistent violators of children's rights and protections, it is essential to consider the characteristics of the case/situation, such that the options can best fit the situation.

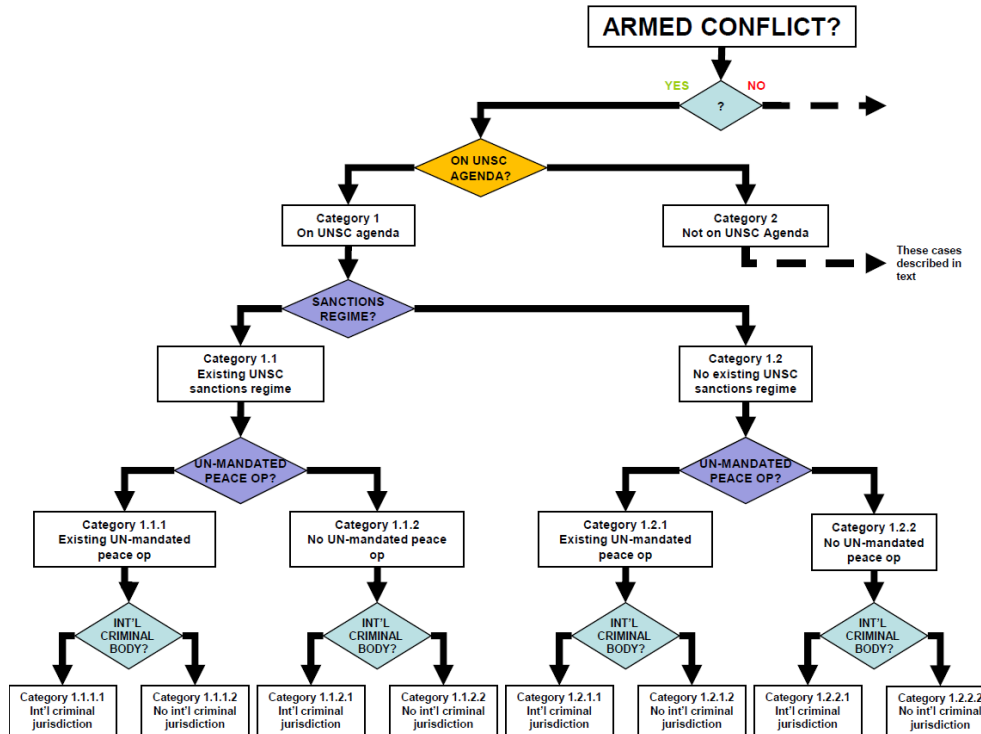
Within the overall population of situations of armed conflict, four characteristics of the situation/conflict have been identified that are useful to assist in considering options for response and accountability:

- situation ON / NOT ON Security Council **AGENDA**;
- EXISTENCE / ABSENCE of UN Security Council **SANCTIONS REGIME**;
- PRESENCE / ABSENCE of UN Security Council-mandated **PEACE OPERATION**;

- Situation WITHIN / OUTSIDE jurisdiction of competent **INTERNATIONAL CRIMINAL BODY** (not including referral from UNSC)

These four characteristics provide a typology of 10 different categories of cases. At the highest level, the first categorization is whether the situation is ON or NOT ON the agenda of the Security Council. The further eight sub-categories for the category of ON the Security Council agenda (Category 1) are presented in Figure 7.

The sub-categories under Category 2 (NOT ON the Security Council agenda) are less numerous, consisting of 'International criminal jurisdiction' (Category 2.1) and 'No international criminal jurisdiction' (Category 2.2), and are not shown in Figure 7.



**Figure 7 – Categories of situations that constitute a typology of cases to be used when considering UN Security Council action**

The purpose of this typology is to assist in identifying what options may be available to the Security Council given the characteristics of the particular case. Examples of the type of situation in various categories include:

- Côte d'Ivoire: ON agenda of the Security Council; EXISTING UN sanctions regime; UN peace operation; no ICC jurisdiction [CATEGORY 1.1.1.2];
- DR Congo: ON agenda of the Security Council; EXISTING UN sanctions regime; UN peace operation; ICC jurisdiction [CATEGORY 1.1.1.1]
- Sri Lanka: NOT ON agenda of Security Council; no ICC/other international criminal jurisdiction [CATEGORY 2.2]

This typology is used in the following sections to assist in identifying options for the UN Security Council in a particular situation/context.

## 5.4 Options for strengthening accountability

Several options are presented here for possible UNSC action to strengthen accountability for grave violations of children's human rights and protections. The options are presented here under seven thematic headings:

1. Assessing options in light of the particular context
2. A thematic sanctions committee on Children and Armed Conflict
3. Improving UN institutional coordination
4. Consideration of new types of targeted sanctions
5. Increased recourse to the International Criminal Court
6. Supporting action by national authorities and third-party States
7. Regional arrangements

### Assessing options in light of the particular context

The typology of situations identified in Section 5.3 above can be used as a framework for identifying the range of options available in a given situation. Table 2 presents some of the options available to the UN Security Council for situations on the agenda of the Council (CATEGORY 1).

It is clear that for situations where an existing UN sanctions regime is in place AND/OR an existing UN-mandated peace operation is in place AND/OR an international criminal body can exercise jurisdiction in the situation, the Security Council has most options to consider.

The more difficult situations, for which the UN Security Council has limited options under existing 'tools', are those in which some of the three characteristics mentioned above are not at play. The situation becomes even more difficult for situations not on the agenda of the Security Council (e.g. Colombia and Sri Lanka). In these types of situation the Security Council is faced with the choice of bringing the situation on the agenda of the Security Council (with a view to pursuing some of the other options, such as authorizing a sanctions regime) or, alternatively, relying on the tools in the toolkit of the SCWG.

For situations on the agenda of the Security Council that have an existing sanctions regime or that have an existing UN-mandated peace operation, the UNSC can do much by using existing instruments and tools more effectively and more proactively.

Existing Sanctions Regime?	UN-mandated Peace Op?	Int'l Criminal Jurisdiction?	Options
Existing UNSC sanctions regime	Existing UN-mandated peace operation	Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ aggressively target individuals who violate children's human rights and protections for designation as subject to targeted sanctions</li> <li>+ customize the targeted sanctions to have maximum effect and consider imposing new types of targeted sanctions</li> <li>+ consider adjusting the mandate of peace operation to include monitoring and/or enforcement role to improve effectiveness of implementation of targeted sanctions</li> <li>+ consider adjusting mandate of peace operation to include protection of children and other civilians who may be at risk for serious violations of international humanitarian and human rights law</li> <li>+ consider requesting ICC to initiate investigation(s) in the situation (e.g. by request from SCW/G)</li> </ul>
		NO Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ aggressively target individuals who violate children's human rights and protections for designation as subject to targeted sanctions</li> <li>+ customize the targeted sanctions to have maximum effect and consider imposing new types of targeted sanctions</li> <li>+ consider requesting ICC to initiate investigation(s) in the situation (e.g. by request from SCW/G)</li> <li>+ aggressively target individuals who violate children's human rights and protections for designation as subject to targeted sanctions</li> <li>+ customize the targeted sanctions to have maximum effect and consider imposing new types of targeted sanctions</li> </ul>
		Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ consider referring situation to the International Criminal Court</li> <li>+ consider adjusting mandate of peace operation to include protection of children and other civilians who may be at risk for serious violations of international humanitarian and human rights law</li> <li>+ consider establishing UN sanctions regime to enforce accountability</li> <li>+ consider requesting ICC to initiate investigation(s) in the situation (e.g. by request from SCW/G)</li> </ul>
NO existing UNSC sanctions regime	Existing UN-mandated peace operation	NO Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ consider adjusting mandate of peace operation to include protection of children and other civilians who may be at risk for serious violations of international humanitarian and human rights law</li> <li>+ consider establishing UN sanctions regime to enforce accountability</li> <li>+ consider referring situation to the International Criminal Court</li> </ul>
		Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ consider establishing UN sanctions regime to enforce accountability</li> <li>+ consider requesting ICC to initiate investigation(s) in the situation (e.g. by request from SCW/G)</li> <li>+ consider referring situation to the International Criminal Court by UN Security Council resolution</li> </ul>
ON UNSC AGENDA	NO existing UN-mandated peace operation	NO Int'l criminal jurisdiction	<ul style="list-style-type: none"> <li>+ consider referring situation to the International Criminal Court by UN Security Council resolution</li> </ul>

**Table 2 – Options for UN Security Council action to enforce accountability for grave violations of children's rights in situations ON the agenda of the Security Council**

## A thematic sanctions committee on Children and Armed Conflict

As mentioned above, in situations not on its agenda, the Security Council has a limited range of options at its disposal to hold to account persistent violators of children's rights and protections. The range of options decreases further if the situation does not fall within the jurisdiction of the International Criminal Court or other international criminal tribunals or bodies.

To enhance accountability for these and other situations the Security Council may wish to consider the option of establishing a 'thematic' sanctions committee or adjusting the mandate of the Security Council Working Group to (among other tasks) monitor implementation of targeted sanctions imposed as a result of grave violations against children.

The UN Security Council has in the past established a Committee with a thematic focus: the Counter-Terrorism Committee (CTC) established under Council resolution 1373 (2001). This is one of three Committees established by the Security Council focusing on the issue of counter-terrorism (see Box 5).

### **Box 5**

#### Experiences of the UN Security Council in establishing Subsidiary Organs focusing on counter-terrorism

*The UN Security Council has established three Committees that relate to the Council's work to prevent- and counter terrorist activities. The three Committees are:*

*→ Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities*

*→ Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism*

*→ Security Council Committee established pursuant to resolution 1540 (2004) concerning access by non-State actors to nuclear, chemical and biological weapons and their delivery systems*

*Some of the characteristics and modus operandi of these Committees that are relevant to the potential use of targeted sanctions against persistent violators of children's rights and protections in situations of armed conflict include:*

▶ *Measures pertaining to individuals/groups: [Since January 2002] the measures imposed by the Council and monitored by the 1267 Committee pertain to individuals and entities, and do not pertain to any particular territory/State (i.e. the focus is on entities).*

▶ *Use of targeted sanctions: The measures imposed by Security Council resolution 1267 (1999) and subsequent resolutions include: Freezing of funds and other financial assets; travel restrictions; arms embargo*

▶ *Institutional arrangements for Committee support: The 1267 Committee and 1540 Committee are assisted in their work by Monitoring Teams and experts; The Security Council established a Counter-Terrorism Committee Executive Directorate to assist the CTC in monitoring implementation of resolution 1373 (2001)*

▶ *Thematic focus, global scope: The work of this triad of Committees (and the 1267- and 1373 Committees in particular) focus on a thematic issue and has global scope.*

The case of the CTC and associated Committees provides a useful example and precedent for a thematic Sanctions Committee. A thematic Committee of the Security Council on Children and Armed Conflict – referred to here as the Children and Armed Conflict Committee – could:

- Focus primarily on entities (for example, parties listing in the annexes of the Secretary-General's reports and individuals) rather than on situations of armed conflict or specific Member States,

thereby getting past the political obstacles of adding new countries/situations to the agenda of the Security Council and of imposing a state-specific sanctions regime solely on the issue of children and armed conflict.

- Adopt a global, trans-boundary approach to address situations where parties identified as violating children human rights and protections operate across borders.
- Be assisted in its work by an independent Group of Experts which would provide the Committee with information – based on their own investigations and on reports from the relevant Country Task Forces on Monitoring and Reporting, the Office of the High Commissioner for Human Rights and other sources – on implementation of targeted sanctions against those individuals designated by the Security Council (not the Committee) on the basis of the Secretary-General's reports.<sup>39</sup>
- Be supported by a Children and Armed Conflict Executive Directorate which would assist the Committee in its work, especially in the areas of planning its programme of work, coordination with Sanctions Committees, planning of field missions to situations of concern, preparation of conclusions and recommendations on specific situations etc.
- Use a set of clear benchmarks for graduated action of increasing intensity to ensure compliance of persistent violators. Such benchmarks could include, for example, set time periods within which parties should (i) enter into dialogue with UNICEF/OSRSG-CAAC on development of Action Plans; (ii) adopt and implement Action Plans etc. Deviation from the agreed benchmarks would then result in commensurate action from the Committee.
- Liaise with Interpol with a view to extending the scope of use of Interpol-United Nations Special Notices (established in 2005) to include individuals who commit or are responsible for grave violations of children's human rights and protections in situations of armed conflict.

### Improving UN institutional coordination

The project findings have identified a clear need for improved institutional coordination within the UN system to strengthen accountability for grave violations of children's human rights and protections.

Some of the ways in which institutional coordination could be improved with a view to strengthening accountability include:

- Improved communication and sharing of information between the Security Council Working Group and the relevant Sanctions Committees. Specifically, in situations where the criteria for designating individuals as being subject to targeted sanctions include, "*serious violations of international humanitarian and human rights law*", the Security Council Working Group should request that the Committee designate specific individuals on the basis of information provided to the Working Group in the Secretary-General's country-specific reports.
- In situations where a UN sanctions regime and attendant Sanctions Committee are in place, the Chair of the Security Council Working Group and the Chair of the Sanctions Committee should plan/coordinate joint missions to the affected region.
- The UN Security Council and the Security Council Working Group should work to coordinate the timing of peace operation- or sanctions regime mandate renewals with the country reporting cycle of the Working Group. In this way, new information provided in the Secretary-General's country-specific reports on children and armed conflict could feed in to the decision making of the Security Council on the mandates of peace operations, Sanctions Committees or monitoring groups.

### Consideration of new types of targeted sanctions

The range of existing targeted sanctions which have been employed by the Security Council was presented in Section 3.2 of this report.

The reports of the UN Secretary-General and the SRSG for Children and Armed Conflict have recommended a range of options which the Security Council may consider imposing, including: ban on the export or supply of arms, a ban on military assistance, the imposition of travel restrictions on leaders, their exclusion from any

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<sup>39</sup> It is important to note that the Security Council itself should be the entity charged with designating individuals as being subject to targeted measures, as the 'no objection' procedure in Security Council Sanctions Committees has resulted in obstructions to effective action vis-à-vis designation of individuals.

governance structures and amnesty provisions, and restriction of the flow of financial resources to the parties concerned.

Additional types of targeted measures which the Security Council could consider include:

- A ban on provision of United Nations technical support, assistance or funding (with appropriate humanitarian exemptions) to any Government department in which a designated individual deemed responsible for grave violations of children's rights and protections holds a position.
- Imposition of secondary targeted sanctions on Government Ministries/agencies of third-party States that provide support- or safe haven to individuals or groups who commit or are responsible for grave violations of children's rights and protections.
- A mandatory ban on travel of individuals affiliated with any non-State armed group or a particular section of State armed forces that commit or are responsible for grave violations of children's rights and protections.
- A prohibition on the sending of financial support or remittances from the territories of third party States to groups and individuals who have been identified in the reports of the Secretary-General on children and armed conflict.
- A ban on trade in specific natural resources (with appropriate humanitarian exemptions and based on a pre-assessment of the likely humanitarian and socio-economic consequences of such a ban) where such resources have been identified as providing support (financial/other) to parties that violate children's human rights and protections in situations of armed conflict.

### Increased recourse to the International Criminal Court

Qualitative information gathered from practitioner surveys and findings from the case study in Côte d'Ivoire, combined with previous experiences from the Sudan, point to the significant deterrent effect which the International Criminal Court has on persistent violators of children's rights and protections. In some cases, individuals and groups that were listed in the annexes of the Secretary-General's reports were most concerned with having their names removed from the list because of concerns that this could in the future trigger investigation or action by the International Criminal Court.

Notwithstanding the challenging situation (as of March 2009) presented by the issuance of an arrest warrant for Sudanese President Omar Al-Bashir, the UNSC may wish to consider referring other situations to the International Criminal Court, especially in situations in which the Council has limited options. Furthermore, the Security Council Working Group could, based on the information received through the MRM process, request that the Prosecutor of the International Criminal Court initiate an investigation if the situation falls within the jurisdiction of the Court.

### Supporting action by national authorities and third-party States

The UNSC should support action by national authorities and third-party states to implement the relevant resolutions pertaining to children in armed conflict – especially resolution 1612 (2005) – as well as to implement, reflect in national legislation, and abide by provisions of relevant international humanitarian and human rights law, such as the Four Geneva Conventions of 1949 and the Convention on the Rights of the Child (1989).

In its resolution 1261 (1999) the Security Council reaffirmed the role of third-party States to end impunity under international and human rights law,

*“[The UNSC] Calls upon all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conventions of 12 August 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and the United Nations Convention on the Rights of the Child of 1989, and stresses the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949;”*

In light of the now universal ratification of the Four Geneva Conventions and the near-universal ratification of the Convention on the Rights of the Child, UN Member States could be encouraged to play an increasingly active role in enforcing accountability for violations against children.

## Regional arrangements

In situations where the Security Council or its Working Group and Sanctions Committees may not be in a position to gain consensus on action in response to grave violations of children human rights and protections in a particular situation, Security Council Member States may wish to consider working with- or through regional bodies to take action against persistent violators. The European Union, the African Union, the League of Arab States among other organizations may be in a position to exert influence or take action where the Security Council may not be able to do so.

## 5.5 Other considerations

### The debate on 'triggering'

Much debate since the inception of the MRM has focused on the so-called 'trigger' for listing or de-listing of parties in the annexes of the Secretary-General's reports. While some engaged in this debate advocate for an incremental approach, by adding 'Rape or other grave sexual violence against children' as a second trigger, others advocate for equal prominence of all six grave violations as triggers for listing/de-listing.

The use of an the former, incremental approach would appear to run counter to the intent of the MRM, which was to monitor, report and respond to six types of grave violation against children, not solely 'recruitment and use of child soldiers' or 'rape or other grave sexual violence.'

The issue of 'triggering' has been viewed through various lenses: institutional and methodological (how could all types of violations be verified?), political (some countries insisting on grave violations to be monitored to further- or not constrain their national interests) and logistical (could the current institutional arrangements manage an MRM system in which all six grave violations were potential triggers?).

A transformative view of the issue would adopt a legal and normative lens: All UN Member States have now ratified the Four Geneva Conventions of 1949, and all but two Member States have ratified the Convention on the Rights of the Child (1989). Since practically all states have ratified these treaties, they have obligations to safeguard and fulfill children's human rights (CRC) and to protect children from the effects of warfare in situations of armed conflict. The treaties also oblige Member States to take action to end impunity. Based on this approach, extending the 'triggers' for listing/de-listing to all six grave violations would naturally reflect the commitments and obligations of Member States under international humanitarian and human rights law which underpin the MRM.

### Finalizing Guidelines for implementing the MRM

There exists an urgent need for Guidelines on the implementation of the MRM to be finalized and disseminated to those tasked with implementing the MRM such that a standardized approach will be used for issues such as standards of verification (of violations); criteria for verifying compliance with Action Plans etc.

## 6 Conclusions

### 6.1 Project conclusions

The five main conclusions of this project on actions which the UN Security Council has taken and could take to hold to account persistent violators of children's human rights and protections in situations of armed conflict are:

1. The UN Security Council has played- and continues to play a critically important role in advancing the body of policy and practice to better protect children in situations of armed conflict. Of the three dimensions of the Monitoring and Reporting Mechanism (MRM) which the UNSC mandated to be established in UNSC resolution 1612 (2005) the Security Council has focused more on 'Monitoring' and 'Reporting' ... with much less focus on 'Response', and specifically on enforcing accountability as part of the Security Council's response; In short, there exists an 'accountability gap' in the Security Council's actions. Despite the intensity of Security Council activity on the issue of children in armed conflict, the issue is still viewed by many Council members as a 'soft' issue, and this has affected the Council's will to act aggressively to hold to account persistent violators of children's rights and protections.
2. The UN Security Council has not fulfilled its stated intent, expressed in many of its resolutions on children and armed conflict, to impose targeted measures in response to grave violations against children in situations of armed conflict. The Council and its Sanctions Committees has only done so in one instance. The Security Council has taken action to make adjustments to the mandates of UN peace operations – the case of DR Congo being a notable example – and has referred one situation to the ICC (Darfur). The Security Council Working Group has employed tools from its 'toolkit' in many situations. While it may be too early to draw conclusions on the effects of these actions, it is clear that the type of action taken in many cases (demarches etc.) does not match the gravity of the violations committed.
3. The Security Council can do more to apply existing mechanisms and tools more effectively, particularly in situations that are on the Security Council agenda, or have an existing UN sanctions regime in place, or in which there is an existing UN-mandated peace operation or political mission. For any situation, the Security Council has the option to refer the situation to the International Criminal Court.
4. There exist significant opportunities for the Security Council to take protection of children in armed conflict to the next level; This would involve more proactive and concerted effort for situations where the Council has a range of tools at its disposal (discussed above), and consideration of new approaches to hold to account persistent violators of children's human rights and protections in situations of armed conflict. One potentially promising option is to establish a thematic Committee on Children and Armed Conflict.
5. The MRM established under Security Council resolution 1612 (2005) is approaching the end of its 'honeymoon' period. If the Security Council cannot close the accountability gap by some of the measures described above or by other means, it risks the MRM being seen by parties listed in the annexes of the Secretary-General's reports as lacking credibility. This may further embolden those recalcitrant parties that already appear immune to the actions of the UNSC and its Working Group and have demonstrated their willingness to continue to commit violations against children.

### 6.2 Areas for further research

Drawing on the findings and observations presented in this report, the following areas for further research and policy development have been identified:

- A thorough analysis of the legal foundations underpinning the six grave violations specified in the reports of the UN Secretary General as those most egregious violations committed against children to explicitly relate the grave violations to the pertinent legal obligations in specific situations;
- Further research (using process tracing and causal analysis) on the effectiveness of specific types of UNSC and SCWG action;
- Further field case studies to better inform future action.

## Annex I – List of organizations consulted

The following is a partial listing of organizations consulted during this project. The list does not include individuals and organizations consulted in each of the case study locations, nor does it include certain organizations that requested they not be identified in the report.

Coalition to Stop the Use of Child Soldiers  
Foreign Affairs and International Trade Canada  
Fourth Freedom Forum  
Human Rights Watch  
International Bureau for Children's Rights  
International Committee of the Red Cross (ICRC)  
Save the Children (UK)  
Security Council Report  
*[select]* Permanent Missions of Member States to the United Nations, New York  
UNICEF Office of Emergency Programmes (NY Headquarters)  
UNICEF Protection Section (NY Headquarters)  
United Nations Department of Political Affairs  
United Nations Department of Peacekeeping Operations  
United Nations Office for the Coordination of Humanitarian Affairs (OCHA)  
United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict  
United Nations Security Council Working Group on Children and Armed Conflict  
Watchlist on Children and Armed Conflict

## Annex II – Notes on project methodology

### Project schedule and timing

The project was undertaken within a very short timeframe of three months (January to March 2009), which constrained opportunities for multiple rounds of consultations with key interlocutors.

Furthermore, the project was undertaken with a view to making the findings and observations available during early April 2009. At the time of writing it is anticipated that the next regular report of the UN Secretary-General on Children and Armed Conflict will be published in mid-April. This timing therefore required that the present report use data and information from the last publicly-available report of the Secretary-General, issued in December 2007.

### Selection and conduct of case studies

Two case studies of Côte d'Ivoire and Sri Lanka were chosen from an initial pool of seven candidate cases using criteria including: (i) status of case with regard to UN Security Council agenda (ON/OFF agenda); (ii) geographical location; (iii) status of armed conflict (halted/ongoing) etc. Some methodological points to note concerning the case studies include:

- Two case studies was considered the absolute minimum number of cases from a methodological standpoint to provide inputs to the four main objectives of the project. Ideally the project scope and timeframe would have provided an opportunity for additional (3 – 4) case studies.
- It is important to note that the case studies are not intended to provide a deep exploration of the situation in Sri Lanka or Côte d'Ivoire, but rather serve to highlight attributes of these types of situation.
- The duration of time spent by the project personnel in both cases was also limited to 8 – 9 days, thereby constraining the scope of consultations and in-country travel.

### Design and use of survey questionnaire

The practitioner-orientated Survey Questionnaire was used to solicit quantitative and qualitative information, which was then reflected in various sections of the report and its observations. Due to a low response rate (< 50 %) and the technical nature of some of the questions it was not possible to present the responses from the Survey Questionnaire in a quantitative format.

## Annex III – Survey questionnaire

### Section I – Effectiveness of UN Security Council/other action

Question:		Scale:	1	2	3	4	5	
A	How effective do you believe the UN Security Council (UNSC) has been in holding to account violators of children's rights in situations of armed conflict?	Very effective	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ineffective
B	How much of a deterrent effect does UNSC action- or threat of action have (or has had) on entities that persistently violate children's rights?	Very high deterrent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Minimal deterrent
C	How much of a deterrent effect does action, or potential for action, by international criminal bodies (specifically against violators of children's rights) have on entities that persistently violate children's rights?	Very high deterrent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Minimal deterrent
D	Do the existing six grave violations specified in the reports of the Secretary-General and incorporated into the UN monitoring and reporting mechanism (MRM) effectively capture/cover the most serious violations against children? <sup>40</sup>	Capture well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Capture poorly
E	Should UN monitoring and reporting focus predominantly on recruitment and use of children in armed forces/groups, or should it accord equal prominence to all six grave violations?	Equal prominence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Narrow focus (children associated with armed forces/groups)
F	Do the situations identified in the Annexes of the reports of the Secretary-General on Children and Armed Conflict fully encompass the situations of concern (regarding grave violations against children) worldwide?	Cover well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do not cover well
G	In general, how well have targeted measures imposed by the UNSC against violators been implemented?	Very well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Poorly

### Section II – Your views on UN Security Council/other action

In situations where the Security Council has imposed targeted measures against entities (individuals/groups) identified as committing grave violations of children's rights and protections in situations of armed conflict, what effect have these measures (e.g. travel ban, assets freeze) had on the target individual/entity? [Please give specific examples where possible] Do opportunities exist to improve the effectiveness of these measures? If so, describe.

<sup>40</sup> The six grave violations are: (a) Killing or maiming of children; (b) Recruiting or using child soldiers; (c) Attacks against schools or hospitals; (d) Rape or other grave sexual violence against children; (e) Abduction of children; (f) Denial of humanitarian access for children.

In some situations of armed conflict, UN Offices/bodies/agencies have reported on grave violations of children's rights and protections, yet the UNSC has failed to take action on certain conflicts/situations. Why do you believe this is the case? ... in general, or in the context of a particular conflict? [Please give specific examples where possible]

What institutional mechanisms within the UN system dealing with the issue of children and armed conflict have worked well or could be improved? Please provide details on the institutional mechanism (e.g. the Monitoring and Reporting Mechanism under UNSC resolution 1612 (2005)) and what you believe has worked well or could be improved.

In situations where the UN Security Council has authorized targeted measures (targeted sanctions etc.) but perhaps has not designated certain individuals/groups as being subject to the measures – even though they may have been identified in UN reports as violating children's rights and protections – what are the reasons why these individuals/groups have not been designated? [Please provide specific examples where possible]

What new or existing punitive measures/regimes or actions could the UNSC and/or its Working Group on Children and Armed Conflict and/or its other subsidiary organs take in the future to hold to account violators of children's human rights and protections in situations of armed conflict?

In situations where third parties – including international criminal courts/tribunals – have taken action to hold to account persistent violators of children's rights and protections, how effective have those actions been? What have been the implications (neutral, positive, negative) of these actions for (i) UN monitoring, reporting of- and response to grave violations, and (ii) efforts to engage these entities in a dialogue to take action (e.g. implementation of Action Plans) to stop, and prevent further, violations against children?

## Annex IV – Select recommendations concerning Children and Armed Conflict

### **Select recommendations by the UN Secretary General; Report on Children and Armed Conflict (A/62/609; S/2007/757)**

- *“... the Security Council consider giving equal care and attention to children affected by armed conflict in all situations of concern listed in the annexes to my report.”*
- *“the Security Council give equal weight to all categories of grave violations, including not only the recruitment and use of children, but also the killing and maiming of children, rape and other grave sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access to children.”*
- *“The Security Council is encouraged to empower its Working Group on Children and Armed Conflict to recommend to the Council the imposition of targeted measures, and to monitor the implementation of such measures.”*
- *“Member States are urged to address immediately the grave humanitarian, human rights and development consequences of cluster munitions.”*

### **Select recommendations by the UN Security Council Working Group (Various, 2007-2008)**

- The Secretary-General should coordinate child protection operations between states in which interstate conflict is occurring.
- Regional security groups should include Child Protection Advisors in their deployment mandates
- National governments should train army and police in child protection.

### **Select recommendations by the SRSG on Children and Armed Conflict (A/63/227; 2008)**

- *“Current treaties related to landmines and explosive remnants of war, as well as other measures to regulate the use of conventional weapons that are indiscriminate or disproportionate in their effects, should be applied. Global standards should also be established for arms transfers, preventing those likely to be used to violate human rights.”*
- *“Member States are urged to give equal priority and attention to all categories of grave violations against children, as well as all relevant situations of concern for children.”*
- *“child protection advisers [should be] in peacekeeping and political missions as key implementers of Security Council resolutions on children and armed conflict.”*
- *“Member States should continue to include specific child protection provisions in the mandates of United Nations peacekeeping and political missions.”*
- *“Member States, United Nations entities and regional organizations and other relevant stakeholders are urged to develop preventive approaches based on early warning systems and analysis of root causes. Approaches should include focus on such issues as livelihood support and employment opportunities and investment in educational infrastructure for longer-term sustainable development, as well as awareness-raising and sensitization at the community level around conflict resolution and promotion of culture of peace.”*
- *“senior-level child protection focal points should be designated within all relevant agencies, departments and offices and in field-based operations and periodic assessments should be undertaken to gauge the progress in mainstreaming against specific criteria.”*
- *“Regional organizations should ensure that children affected by armed conflict concerns are adequately reflected in their policies, priorities and programmes, including through the*

*incorporation of child protection expertise in their secretariats and development of child protection action plans.”*

- *“Increased focus is needed on livelihood support, including youth-oriented employment strategies, secondary and tertiary education and leadership opportunities, investment in youth organizations, centres and activities, as well as market analyses over a period of several years, in recognition of the links between reintegration and local economies.”*

**Select recommendations in Reports on Protection of Civilians in Armed Conflict (S/2007/740; and S/2007/643)**

- *“systematic provision of comprehensive information on sexual violence as a specific annex to all reports to the Security Council ”*
- *“supporting the establishment of ad hoc judicial arrangements to address sexual violence; ”*
- *“Ensuring that United Nations peacekeeping and other relevant missions are mandated to contribute, as may be requested and within capabilities, to the creation of security conditions that enable the provision of humanitarian assistance; ”*
- *“Establishing... a dedicated, expert-level working group to facilitate the systematic and sustained consideration and analysis of protection concerns, and ensuring consistent application of the aide- memoire for the consideration of issues pertaining to the protection of civilians ”*
- *“I ... urge the regional and other intergovernmental organizations to take up the protection agenda and address cross-border issues and regional protection concerns through regional mechanisms. ”*
- *“future reports on the protection of civilians, will include systematic analysis of the major trends affecting the protection of civilians with a greater emphasis on empirical information reflecting the effect of conflict on the quality of life and the well-being of civilian populations in areas of conflict. ”*
- *“So that the Security Council can receive an overview of the main issues of concern and an appreciation of the trends affecting civilian populations, the Office for the Coordination of Humanitarian Affairs will collate baseline information”*

## **ABOUT CONFLICT DYNAMICS INTERNATIONAL**

Conflict Dynamics International is an independent, not-for-profit organization which works to prevent and resolve violent conflict, and to alleviate human suffering resulting from conflicts and other crises around the world.

Founded in 2004, Conflict Dynamics develops and implements innovative strategies for conflict prevention and resolution, and for humanitarian policy relevant to conflict and other crises. Conflict Dynamics' activities span three intersecting program areas which the organization has identified to fulfill its mission: (I) New Frontiers in Humanitarian Policy, (II) Pressure Points for Conflict Prevention and Resolution, and (III) Peacebuilding in Transition States.

Conflict Dynamics stands apart from other organizations engaged in conflict resolution and humanitarian policy through its use of innovative, proactive and outcomes-oriented approaches to identifying specific points at which substantive and process-related inputs can have the highest impact. In this way, Conflict Dynamics seeks to achieve results that are high quality, timely and effective.

Conflict Dynamics works closely with several departments and agencies within the United Nations system as well as with academic institutions, NGOs and national governments.

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