

**THE CRC
OPTIONAL
PROTOCOL ON THE
INVOLVEMENT OF
CHILDREN IN
ARMED CONFLICTS**

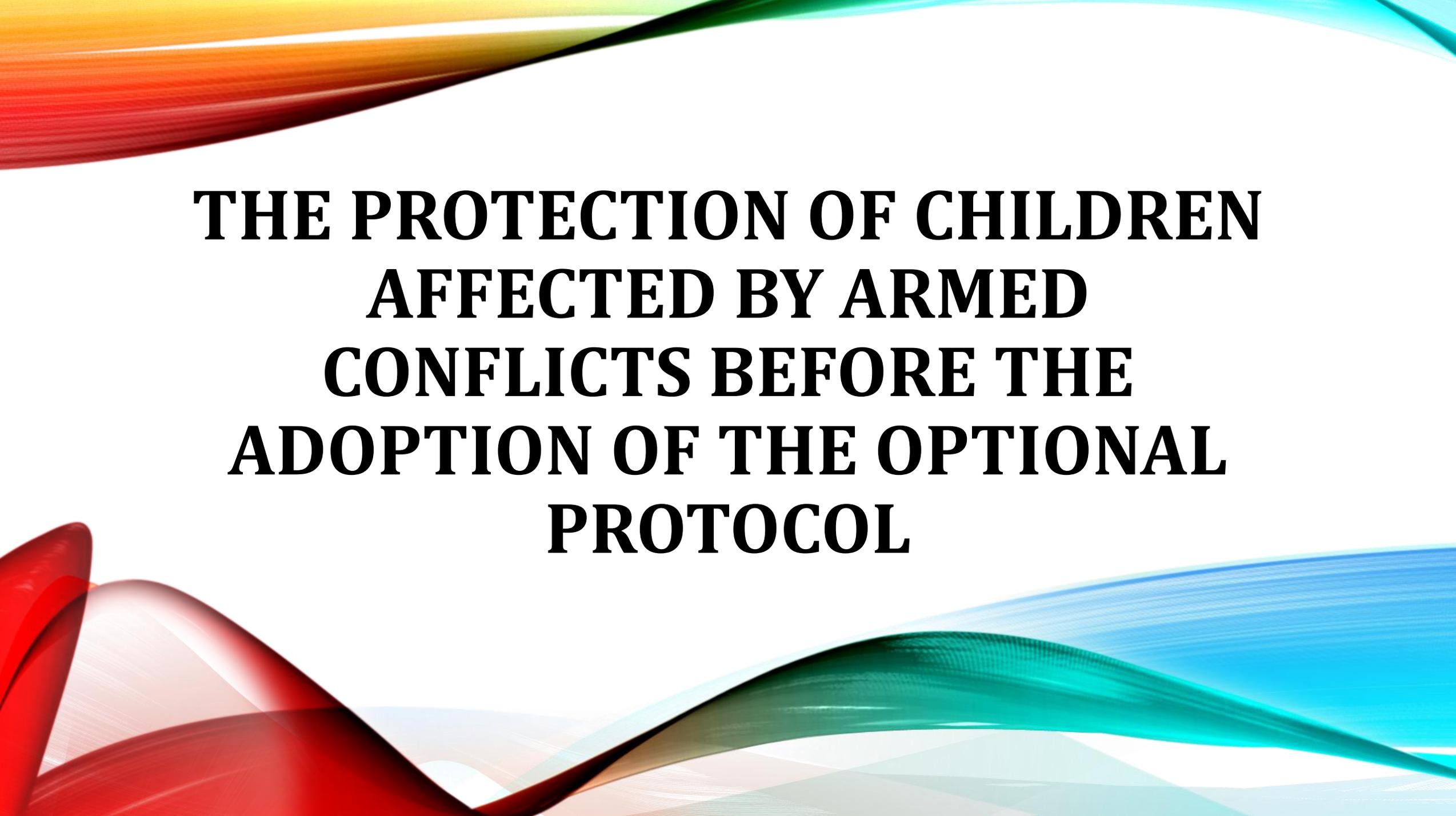
SILVIA SCARPA

**ASSOCIATE PROFESSOR OF
INTERNATIONAL RELATIONS**

JOHN CABOT UNIVERSITY

E-MAIL:

SSCARPA@JOHNCABOT.EDU



**THE PROTECTION OF CHILDREN
AFFECTED BY ARMED
CONFLICTS BEFORE THE
ADOPTION OF THE OPTIONAL
PROTOCOL**

THE CRC AND THE PROTECTION OF CHILDREN AFFECTED BY ARMED CONFLICT

- **Article 38**
- 1. States Parties undertake to respect and to ensure respect for **rules of international humanitarian law** applicable to them in armed conflicts which are relevant to the child.
- 2. States Parties shall take all feasible measures to ensure that **persons who have not attained the age of fifteen years do not take a direct part in hostilities.**
- 3. **States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.** In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
- 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure **protection and care of children who are affected by an armed conflict.**
- **Article 39**
- States Parties shall take all appropriate measures to promote **physical and psychological recovery and social reintegration** of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or **armed conflicts.** Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

IHL ON CHILDREN IN ARMED CONFLICTS

- **Article 77 of the 1977 Protocol I Additional to the Geneva Conventions, applicable in international armed conflicts**

1. Children shall be the object of special respect and shall be **protected against any form of indecent assault**. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. **The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces**. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, **children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article**, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters **separate from the quarters of adults**, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The **death penalty** for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

IHL ON CHILDREN IN ARMED CONFLICTS

- **Article 4.3 of the 1977 Protocol II Additional to the Geneva Conventions, applicable in non-international armed conflicts**
- 3. Children shall be provided with the **care and aid** they require, and in particular:
 - (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
 - (c) **children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;**
 - (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;
 - (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.



**THE CRC OPTIONAL
PROTOCOL ON THE
INVOLVEMENT OF CHILDREN
IN ARMED CONFLICT**

THE CRC OPTIONAL PROTOCOL

- The Protocol was adopted on 25 May 2000 and **entered into force on 12 February 2002.**
- **Country Status**
 - States Parties: 172
 - Signatories: 8 - Haiti, Iran, Lebanon, Liberia, Nauru, Solomon Islands, Somalia and Zambia.
 - No Action: 17 – Antigua and Barbuda, Barbados, Comoros, Cook Islands, Democratic People's Republic of Korea, Equatorial Guinea, Marshall Islands, Mauritania, Niue, Palau, Papua New Guinea, Saint Kitts and Nevis, Sao Tome and Principe, Tonga, Trinidad and Tobago, Tuvalu, United Arab Emirates.
- **13 articles**

THE PROVISIONS OF THE CRC OPTIONAL PROTOCOL

- “Article 1
- **States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.”**
 - Critiques:
 - ‘all feasible measures’
 - ‘a direct part in hostilities’
- “Article 2
- States Parties shall ensure that persons who have not attained the age of 18 years are not **compulsorily** recruited into their armed forces.”

THE PROVISIONS OF THE CRC OPTIONAL PROTOCOL

- **“Article 3**
- 1. **States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces** from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
- 2. Each State Party shall deposit a **binding declaration** upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced
- 3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
 - (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is done with the informed consent of the person’s parents or legal guardians;
 - (c) Such persons are fully informed of the duties involved in such military service;
 - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
- 4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
- 5. **The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties**, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.”
- **Critiques:**
 - The minimum age is, therefore, set at 16 years of age.
 - What about ‘voluntariness’ in the recruitment?
 - **Exception:** military schools.

THE PROVISIONS OF THE CRC OPTIONAL PROTOCOL

- “Article 4
- 1. **Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.**
- 2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
- 3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.”
- **Critiques:**
 - ‘Should not’ *versus* ‘shall not’
 - IHRL versus IHL in dealing with non-State armed groups

THE PROVISIONS OF THE CRC OPTIONAL PROTOCOL

- **Article 5**
- States Parties **remain free** to adopt more favorable provisions.
- **Article 6**
- 1. enforcement of the Protocol.
- 2. promotion of knowledge on the Protocol.
- 3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are **demobilized or otherwise released from service**. States Parties shall, when necessary, accord to these persons **all appropriate assistance for their physical and psychological recovery and their social reintegration**.
- **Article 7**
- Promotes the cooperation among States Parties, in particular in respect of prevention and in the rehabilitation and social reintegration of child soldiers.
- **Article 8**
- Initial reporting after 2 years and subsequently every 5 years.
- **Articles 9, 10 and 11**
- Depository body, entry into force, denunciation.

THE PROVISIONS OF THE CRC OPTIONAL PROTOCOL

- **Article 12**
- 1. Any State Party may propose **an amendment** and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
- 2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties. 3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted



**CHILDHOOD, THE AGE OF
MAJORITY AND OTHER
'MINIMUM AGES'**

CHILDHOOD, THE AGE OF MAJORITY AND OTHER 'MINIMUM AGES'

- Article **1 of the CRC** states that:
- '...a child means every human being below the age of **eighteen years** unless under the law applicable to the child, majority is attained earlier.'
- However, the **ILO Convention n. 182 on the worst forms of child labor** and the **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, in particular Women and Children**, define a 'child' as any person under the age of 18.

'YOUTH' AND 'YOUNG PEOPLE'

- “There is no consistent definition of the term “**youth**”.
- The **UN** considers ‘youth’ and ‘young people’ as including those in the age range from 15 to 24 years, but mostly for statistical purposes.
- In its General Comment No. 20 (2016), the **Committee on the Rights of the Child** used “adolescents” on the implementation of the rights of the child during adolescence; however, it doesn’t define adolescence but instead focuses on the period of childhood between 10 and 18 years of age.
- The **Committee on Economic, Social and Cultural Rights** refers to youth and young people interchangeably, but without referring to a specific age range.
- The **Security Council** in its Resolution 2250 (2015) and the progress study on youth and peace and security define “youth” as 18 to 29 years of age.

OTHER 'MINIMUM AGES'

- The **minimum age(s) for admission at work**, the ILO Convention n. 138 and the distinction between child labor and child work.
- The **minimum age(s) for marriage** in the context of child, early and forced marriages.
- The **minimum age(s) for criminal responsibility**.

CHILDREN AND YOUTH AND INTERNATIONAL CRIMINAL LAW

- Children and youth as victims and as perpetrators
- **Article 26 ICC Statute** states that the ICC shall have no jurisdiction over those who were 'under the age of 18 at the time of the alleged commission of the crime'.
- The **Special Court for Sierra Leone** (SCSL) enunciated the customary international law status of the ban on child-soldiering and imprisoned a former head of State for violating that rule (*Prosecutor v. Sam Hinga Norman, 2004*).
- The ICC's first case – *Prosecutor v. Lubanga* - was centered entirely on a militia commander's culpability for the war crimes of conscripting, enlisting and using in hostilities children under the age of 15.
- In 2021, The ICC Trial Chamber however also found guilty **Dominique Ongwen**, former child soldiers and LRA commander on 61 counts of war crimes and crimes against humanity.

QUESTIONS?

