

## 7 FLEEING FORMER CHILD SOLDIERS' RIGHT TO INTEGRATION

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### 7.1 INTRODUCTION

With the mass influx of migrants at the external border of the EU, the so-called '*survival migration*'<sup>1</sup> that drives thousands into crossing borders and undertaking a perilous journey, and the increasing evidence of a link between climate change, armed conflict and migration it is ever so apparent that there is a need for analysing the benefits and difficulties in integrating and protecting minors who have become victims of human rights violations. In addition, it is worth considering the applicability of existing legal frameworks to respond to the urgent question of the cohabitation of diverse communities, the problems of extremism, and the efficiency of international justice. Thousands of children and adolescents arrive from persistent conflict zones to Europe every year, yet hardly any of them know about their rights for recovery following the human rights violation they have suffered in the conflict zones.

The present article is about children's involvement in armed conflict and the interpretation of the sections concerning victims' integration in Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).<sup>2</sup> Children are often put into life threatening situation by armed conflict, and those forced to flee, alone or along with family members, are usually entitled to international protection on the basis of the Geneva Convention (1951)<sup>3</sup> on the status of refugees. The situation of minors in conflict zones may be controversial where they are recruited to become child soldiers, since these are considered to be not only victims but also offenders due to the crimes they committed or were forced to commit, and may for this very reason be excluded from the benefit of international protection. At the same time, since chil-

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1 A. Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, Cornell University Press, Ithaca, 2013.

2 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of the Rights of the Child into force Children in Armed Conflicts, G.A. Res. A/RES/54/263, It was promulgated by Act CLX of 2009 in Hungary.

3 1961 Convention relating to the Status of Refugees Geneva, Treaty Series, vol. 189, p. 13, and 1967 Protocol relating to the Status of Refugees, Treaty Series, vol. 606, p. 267.

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dren's rights are seriously injured in armed conflicts, the state – provided that it is party to the Convention on the Rights of the Child (CRC) (1989)<sup>4</sup> creating a duty to ensure the exercise of children's rights and the right to integration of such victims of violence – is responsible for guaranteeing the physical and psychological recovery of these children, since the human rights violations suffered may also 'migrate' with the victims.

The legal definitions of child and child soldier were laid down before the adoption of CRC and OPAC, namely in the Geneva Conventions (1949) and their Additional Protocols.<sup>5</sup> Further problems include the indirect and active participation in hostilities and the distinction between voluntary and forced recruitment into armed forces and armed groups.

Following a brief overview of the abovementioned international instruments and the relevant Hungarian criminal legislation, the second part of this article presents relevant 'statistical data' and discusses the interpretation of the right to integration.

## 7.2 INTERNATIONAL LAW

### 7.2.1 *International Humanitarian Law*

Geneva Convention IV and the Additional Protocol II determine among the age limit for military service: recruiting a child less than 15 years of age to serve in hostilities amounts to an infringement of international humanitarian law. But determining victim's age is problematic, just as the fact that minors above 15 years of age but still under 18 are not entitled to protection. On the basis of International Red Cross' commentaries, one may arrive at the conclusion that persons falling under the scope of the CRC definition (see below) may also be considered as 'children'.<sup>6</sup> Further, while humanitarian law standards use the expression of 'direct' and 'active' participation of children systematically, yet they fail to define the term 'direct'.<sup>7</sup> Generally, child soldiers do not participate in combat, i.e. do not cause human loss to the enemy during engagement. Studies and reports of Truth Commissions show that children were used in other ways during hostilities, but they are nevertheless regarded as child soldiers, or 'killing machines' by the outside world.

4 1989 Convention on the Rights of the Child, Treaty Series, vol. 1577, p. 3.

5 Article 51 of 1949 Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field and its commentary; Article 140 of 1949 Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea and its commentary; Article 85 of 1949 Protocol Additional to the Geneva Conventions, and 1977 Protocol on Protection of Victims of International Armed Conflicts; and 1949 Protocol Additional to the Geneva Conventions; and 1977 Protection of Victims of Non-International Armed Conflicts (Protocol II).

6 Zs. Csapó, *Fegyverekkel Gyermekkel Szemben, Fegyverekkel Kézbe*, Publikon, Budapest, 2011, p. 50.

7 Csapó, 2011, p. 223.

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## 7.2.2 International Human Rights, the CRC and OPAC

CRC was the first international legal instrument that defined the term 'child' as any person below the age of 18. CRC has already been signed by every state of the world, except for the USA.<sup>8</sup> Determining the age of children involved in armed conflict triggered disagreements among contracting parties already during drafting CRC. Since signatories had to adopt the age limit of 15 in Article 38 by consensus, this controversial provision paved the way for OPAC.<sup>9</sup> The Committee on the Rights of the Child, which monitors the implementation of CRC, considered on the second day of its first meeting the issue of children involved in armed conflicts, and laid down in its procedural rules that it is an issue that requires regular consideration.<sup>10</sup> The role of NGO-s was decisive in the establishment of OPAC, especially the umbrella organisation 'Coalition to Stop the Use of Child Soldiers' (1998), which also had a significant influence on the gradual improvement of the OPAC drafting process.<sup>11</sup> In 1995, upon mandate given by the UN Secretary-General (UN SG), Graca Machel wrote the report 'Impact of Armed Conflict on Children'.<sup>12</sup> The UN SG responded by creating the position of Special Representative of the Secretary-General on Children and Armed Conflict<sup>13</sup> (SRSG CAAC). The SRSG CAAC compiles annual reports on the impact of armed conflicts on children and gives recommendations to OPAC State Parties.<sup>14</sup> While the original object of CRC was fulfilled with OPAC, as a human rights body it seeks to fill gaps that humanitarian law cannot effectively address.<sup>15</sup>

In sum, the recruitment and use of children under the age of 15 in armed conflict is a war crime according to the rules of humanitarian law. The forced or voluntary recruitment and use in armed conflict of persons under the age of 18 is a human rights violation.<sup>16</sup> As the prohibition of military recruitment and use of children under the age of 15 became the part of humanitarian law, the ratification of OPAC meant that the prohibi-

8 <treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\_no=IV-11&chapter=4&clang=\_en>.

9 C. Breen, The Role of NGOs in the Formulation of and Compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict. *Human Rights Quarterly* vol. 2, 2003, p. 460.

10 Breen, 2003, p. 461.

11 R. Coomaraswamy, The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – Towards Universal Ratification In: *The International Journal of Children's Rights* No. 4, 2010.

12 <www.childrenandarmedconflict.un.org/mandate/the-machel-reports>.

13 <www.childrenandarmedconflict.un.org>.

14 OPAC has been ratified by 166 states. <childrenandarmedconflict.un.org/mandate/country-status-2/>.

15 Breen, 2003, p. 463; Csapó, 2011, p. 40. The Committee of the International Red Cross had the same conclusion by interpreting the Article 24 and 89 of IV Geneva Convention in 1948.

16 The age limit of voluntary recruitment during armed fights is 16 year but in several countries raised it over 18 years in their reservation.

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tion of the recruitment and participation of children under the age of 18 in armed conflict is becoming part of customary law.<sup>17</sup>

### 7.2.3 *The Soft Law: Paris Principles and Paris Commitments*

During the drafting the OPAC, the so called Cape Town Principles (1997) were accepted in the framework of a conference organized by UNICEF.<sup>18</sup> The Cape Town Principles have become part of international customary law, known as Paris Principles and Paris Commitments following their updating. Although the instruments contain only normative standards through which they define the subject group in broader sense than humanitarian law does and are widely used by international organisations, they have no binding effect. Children involved in armed conflicts are not only used as combatants, but may also complete passive support tasks, serving for instance as guards, porters, spies, cooks, while girls or boys may also be forced into the role of ‘bush wife’ becoming permanent victims of sexual and physical abuse.<sup>19</sup> As such, this concept integrates the aspects of both ‘active’ and ‘direct’ participation.

### 7.2.4 *Decisions of the International Criminal Court*

The most significant judgements regarding the use of child soldiers are those rendered by the International Criminal Court (ICC),<sup>20</sup> because the judgements declaring the responsibility of individuals strengthen the message that involving children in armed conflict will not remain unpunished. Thomas Lubanga Dylo of the Democratic Republic of the Congo was sentenced to 14 years imprisonment in Case No. ICC-01/04-01/06,<sup>21</sup> for the recruitment and use of children under the age of 15 years in armed conflicts. Unfortunately, similar judgements to Lubanga’s case may only be passed in case both political and strategic criteria are met.<sup>22</sup> The gaps in the implementation of international treaties result in a situation that State Parties rarely initiate procedures for war crimes, despite the developing body of international law. Besides problems inherent in monist and dualist

17 J. C. Everett, The battle continues: Fights for a more child-sensitive approach to asylum for child soldiers, *Journal of International Law* No. 21., 2009, p. 298. Coomaraswamy, 2011, p. 539.

18 The Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris principles and guidelines on children associated with armed forces or armed groups were adopted at the international conference ‘Free children from war’ in Paris, February 2007.

19 Paris Principles, 2007, 1.0.-1.1.

20 *Bemba case (The Prosecutor v. Jean-Pierre Bemba Gombo)*, Judgement of 21 March 2016.

21 *Lubanga case (The Prosecutor v. Thomas Lubanga Dyilo)*, Judgment of 1 December 2014.

22 An example for that constellation is the Agreement between Sierra Leone and USA on Article 98. in which Parties requested each other’s consent before they handed over each other’s suspects citizens to the ICC. D. J. Francis, Paper Protection’ Mechanisms: Child Soldiers and the International Protection of Children in Africa’s Conflict Zones, *The Journal of Modern African Studies*, vol. 45, No. 2, 2007, p. 226.

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systems, doubts surrounding interpretation may also prevent parties from referring to the treaty as a legal basis. Beside the reasons mentioned above (which according to Francis are the chief reasons for reluctance to use the relevant treaty legal basis in African states), Cassese identifies as a fourth reason that national authorities seek to interpret jurisdiction in the narrowest possible way to avoid having to apply international standards.<sup>23</sup>

### 7.2.5 *Asylum Procedure as a Melting Pot*

The refugee status determination procedure (RSD) is governed by the Geneva Convention (1951), the *asylum aquis* of the Common European Asylum System (CEAS) and national legislation. The exclusion clauses<sup>24</sup> in RSD contain the reasons for establishing the threat to national security. Analysing the application of this clause in the nations' practice and in European case law sheds light on whether the reason cited for rejection is in line with the aims of the right to international protection. For example, the USA sought to establish a special visa track for former child soldiers,<sup>25</sup> but the possible solutions considered by the EU are also worth examining. The literature is divided on whether these children are perpetrators or victims; nevertheless they are entitled to international protection according to UNHCR Guideline No. 12,<sup>26</sup> since the applicant has to merely substantiate threat to establish a well-founded fear of persecution.

### 7.3 THE QUESTION OF NATIONAL JURISDICTION AND THE QUESTION OF STATUS: VICTIM OR PERPETRATOR?

Since ICC jurisdiction is complementary the implementation of the Rome Statute will not be examined in this article,<sup>27</sup> the following analysis will be restricted to national legislation adopted in relation to the offenses described in OPAC. According to Article 3 (2) ac) of Hungarian Criminal Code Act C of 2012 (hereinafter: CC) the CC shall be applied to foreign citizens who had committed crimes abroad in case the prosecution of such crime is prescribed by an international treaty promulgated by statute. Hungary is a dualist

<sup>23</sup> Francis, 2007, p. 224.

<sup>24</sup> Article 1C of GC . Article 12 of Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>25</sup> E. Rossi, Special Track for Former Child Soldiers: Enacting a "Child Soldier Visa" as an Alternative to Asylum Protection, *Berkeley Journal of International Law*, No. 2. 2013, pp. 392-461.

<sup>26</sup> Guidelines on international protection No. 12, <[www.unhcr.org/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html](http://www.unhcr.org/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html)>.

<sup>27</sup> T. Ádány, A Nemzetközi Büntetőbíróság joghatósága és a magyar jog, *Pázmány Law Working Papers*, No. 2, 2010, p. 4.

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country from the point of view of international law<sup>28</sup> and since OPAC was promulgated by Act CLX of 2009 whose Article 4 prescribes the statutory age limit for enlistment and voluntary recruitment in 18 years of age, violations of the same shall establish jurisdiction.

Universal jurisdiction as legal institution was created by legal necessity<sup>29</sup> and the application of the same has two conditions: double incrimination and that the General Prosecutor order the commencement of a criminal procedure. The international treaty prescribing prosecution of the offense means a treaty exception from the requirement of double incrimination. According to some authors the fact that only the General Prosecutor may order the commencement of criminal proceedings fulfils the criteria of equity and provides sufficient guarantee that the interest of the perpetrator are duly taken into account regardless whether there is double incrimination or not.<sup>30</sup>

Accepting the Hungarian authorities may<sup>31</sup> apply the principle of universal jurisdiction, they are legally obliged to submit the case to the General Prosecutor when a foreign citizen claims or suggests before state authorities that they were involved in armed conflict before they reached the age of 18, since they fall under the scope of OPAC.

The literature is divided<sup>32</sup> on the topic whether both forms of the offenses i.e. voluntary recruitment and enlistment may be committed, but the OPAC itself contains both offenses, notwithstanding the fact that it is complicated to decide what other sort of coercive circumstances led to the 'voluntary' recruitment.<sup>33</sup>

Victims' right to justice is supported by the opinion of the UN Human Rights Committee under which from the time a foreign citizen gains the right to enter the territory of the State Party he is entitled to enjoy the rights undertaken by the State Party.<sup>34</sup> The war crimes do not lapse therefore the current age of the victim is irrelevant, the only relevant fact is that at the time the offense was committed, the victim was a child, under the age of 18. Although under Article 146(3) CC recruitment is a criminal offense only if it was committed in the territory of Hungary, this is an unnecessary restriction, which goes against the general goals of the OPAC.

28 G. Sulyok, A nemzetközi jog és a belső jog viszonyának alaptörvényi szabályozása, *Jog, Állam, Politika*, vol.IV, 2007. pp. 17-60.

29 R. Varga, *Challenges of Domestic Prosecution of War Crimes with Special Attention to Criminal Justice Guarantees*, Pázmány Press, Budapest, 2014, p. 61.

30 P. Polt, ed. *A Büntető Törvénykönyv Kommentárja*, Nemzeti Közszerkesztési és Tankönyv, Budapest, 2013, p. 54.

31 Even though our understanding is that authorities shall examine the applicability of universal jurisdiction in case of suspicion in parallel with the applicability of more frequently used principles, it is clear this is not the practice. Discovering the possible reasons of this practice is not main topic of this article, but for the sake of the argument we presume that in certain situation they *may* apply it.

32 M. Happold, Child Soldiers in International Law: The Legal Regulation of Children's Participation in Hostilities, *Netherlands International Law Review*, No. 47, 2000, p. 27; Francis, 2007, p. 214.

33 Poverty, famine, need for physical security are named by the literature and these were the reasoning at the time of negotiating OPAC. Commaraswamy, 2010, p. 540.

34 Csapó, 2011, p. 64.

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The other issue is the case of those victims who committed a war crime: do they participate in the criminal procedure as victims or perpetrators?<sup>35</sup> According to humanitarian law, after hostilities have ended, prosecutions for actions against the law of war but during the decision-making and the implementation of the sentence it has to be taken into consideration that these people are victims and survivors of a human rights infringement, and they have right to start fresh, and have a right to integration.<sup>36</sup> The application of an alternative approach and alternative legal instruments in such criminal procedures<sup>37</sup> has been strongly promoted on various fora.<sup>38</sup>

In the majority of cases it is the asylum authority that meets the victims residing outside the country of origin. Enlistment and voluntary recruitment committed against the asylum-seeker are the sort of war crimes that entail the duty of reporting *ex officio* to the investigatory authorities. During the refugee determination procedure the victim is entitled to integration support and services in line with the Reception Conditions Directive<sup>39</sup> in all EU Member States. But those who committed war crimes themselves – even under duress – are excluded from the procedure.<sup>40</sup> The victims of child soldiering may be persecuted<sup>41</sup> in line with Section 88 of General Commentary No. 6. of the Committee of the Right of the Child<sup>42</sup> and the suggestion enshrined in the SR SG CAAC report,<sup>43</sup> providing for compliance with Article 37 of CRC and special guarantees described in the Guidelines of the UN Economic and Social Committee (2005),<sup>44</sup> however it may not interfere with their 'status' as victims.

As a mere suspicion of victimhood suffices for taking steps to trigger victim protection measures in the case of a Hungarian citizen, it impermissible to set the bar higher if the victim is a foreign citizen.<sup>45</sup>

35 D.M. Rosen, The Dilemma of Child Soldiers How Should International Law Treat Children Engaged in Armed Conflicts?, *Insights on Law & Society American Bar Association*, No. 3, 2010, p. 8.; Everett, 2009, p. 289.

36 CRC Article 37.

37 'I call upon Member States to treat children associated with armed groups, including those engaged in violent extremism, as victims entitled to full protection of their human rights and to urgently put in place alternatives to detention and prosecution of children.' SRSR report 2016, <[https://childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739\\_Children-in-Conflict\\_FINAL-WEB.pdf](https://childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739_Children-in-Conflict_FINAL-WEB.pdf)>.

38 M.A. Drumbl, Child Pirates: Rehabilitation, Reintegration, and Accountability, *Case Western Reserve Journal of International Law*, No. 46, 2011, p. 256.

39 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

40 Á. Szép, A menedékjog mint a büntetőjogi felelősségre vonás akadály, *Büntetőjogi Szemle*, No. 1-2, 2013, pp. 48-58.

41 Csapó, 2011, p. 228.

42 <[www2.ohchr.org/english/bodies/crc/docs/GC6.pdf](http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf)>.

43 <[childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739\\_Children-in-Conflict\\_FINAL-WEB.pdf](https://childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739_Children-in-Conflict_FINAL-WEB.pdf)>.

44 UN Guideline on justice for child victims and witnesses of crime, ECOSOC Res. 2005/20 of 22 July 2005.

45 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

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The interpretation of the General Commentary No. 6. of the Committee of the Right of the Child requires that signatories of the CRC provide a residence permit to former child soldiers which may not only be received in case of refugee status – or through subsidiary protection granted by an EU Member State – but also on the basis of any other humanitarian legal title. “The obligation of the state to integrate victims shall also cover those who were perpetrators and cannot be expelled from the territory of Hungary besides those who received international protection.”

#### 7.4 STATISTIC

The UN working group of children involved in armed conflict publishes its report and conclusions annually.<sup>46</sup> The last report concerns the following countries: Afghanistan, Central African Republic, Chad, Columbia, Democratic Republic of Congo, Iraq, Mali, Myanmar, Somalia, South-Sudan, Sudan, Syria and Jemen. This report A/70/836-S/2016/360 highlights the damaging effects of extremism on children and considers it to be the obstacle of integration if the state regards these children as perpetrators.<sup>47</sup> Point 219 draws attention to the constant dilemma, that suitable financial funds must be provided for reintegration programs.

The SR SG CAC latest report<sup>48</sup> states that children involved in armed conflicts of 7 governmental armies and 34 armed groups, 3 governmental security forces and 15 armed groups killed or maimed children, 2 governmental and 12 armed groups’ members committed rape or other form of violence on children and 1 governmental and 8 armed groups committed attacks on schools and hospitals. The Disarmament, Demobilization, Reinsertion, Reintegration (hereinafter: DDR) program is part of UN peacekeeping missions. Although these events happen in distant countries, the current European migration crisis showed that due to the permeability of borders these conflicts may happen far but they have a direct effect on Hungary.

Unfortunately no detailed data is available about how many underage asylum-seekers were involved in armed conflict.<sup>49</sup> It is those children that appear in the asylum statistics who have lodged an application for international protection as unaccompanied minors. As far as the investigation of their countries of origin is concerned, those cases were selected which reportedly concerned children involved in armed conflict in 2015. Cer-

46 <<https://www.un.org/sc/suborg/en/subsidiary/wgcaac/sgreports>>.

47 SC GA A/70/836-S/2016/360, <[www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2016\\_360.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_360.pdf)>.

48 <[childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739\\_Children-in-Conflict\\_FINAL-WEB.pdf](http://childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739_Children-in-Conflict_FINAL-WEB.pdf)>.

49 Section 13 of report A/70/836-S/2016/360, <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fHUN%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fHUN%2fCO%2f1&Lang=en)>.



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tainly, this does not mean that all asylum-seeker children who arrived from countries reported in SC SG CAC were child soldiers, but some may have been among them.

<b>Number of asylum-seeker children (2015)</b>			
<b>Countries listed in the report of SR SG CAC (2015)</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>
Afghanistan	4575 (2568)	4358 (2248)	372 (320)
Chad	0	0	0
Columbia	0	0	0
Democratic Republic of Congo	4 (3)	1	3 (3)
Congo Republic	3 (3)	3 (3)	0
Central African Republic	0	0	0
Iraq	310 (187)	246 (137)	58 (50)
Yemen	2 (2)	1 (1)	1 (1)
Mali	2 (1)	2 (1)	0
Myanmar	2 (1)	2 (1)	0
Nigeria	7 (5)	3 (2)	4 (3)
Syria	2238 (1552)	1666 (1069)	556 (483)
Somalia	16 (8)	14 (6)	2 (2)
<b>Total</b>	<b>7159 (4330)</b>	<b>6296 (3468)</b>	<b>996 (862)</b>

The number of those under the age of 15 in bracelet in column sorted by sex.

From those who applied for international protection in Hungary in 2015 two males aged between 14-18 and two females aged 14-18 received international protection.<sup>50</sup>

## 7.5 RIGHT TO INTEGRATION

### 7.5.1 *The Measures of Integration in CRC and in OPAC*

The aim of an international treaty is to ensure that contracting parties follow not only the agreed provisions of the treaty, but that signatories observe the general codified principles and relevant customary international law constituting the ethical and moral fundamental of the international community. The obligation of protection appears in CRC primarily

<sup>50</sup> Data originates from Office of Immigration and Nationality in 2015.

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as a duty of the state as signatory, but also as a right from the perspective of the children concerned.

Article 39 of the CRC contains the criteria that signatories help the integration of children.<sup>51</sup> Originally, the signatories intended to agree upon a stronger wording such as ‘ensure’.<sup>52</sup> The provisions governing the reintegration of children involved in armed conflict are laid down in Articles 6(3) and 7(1) of OPAC.

Article 6(3) OPAC states that:

“States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.”

Article 7(1) OPAC states that:

“States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.”

The Paris Commitments – and also the UN report of peacekeeping missions – promote victims’ reintegration into their original communities where possible.<sup>53</sup> But point 7.4 and 7.5 which are recommendations<sup>54</sup> regarding the possible a framework of integration, may serve as reference point to those countries that are unaffected by armed conflict on how to organise their integration activities.

Reports of civil organisations shed light on the issues of voluntary recruitment. Deprived of protection and possibility to grow up in family pushed children into militant groups.<sup>55</sup> Apart from these, several other factors must also be considered as reasons

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51 Article 39 of CRC ‘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.’

52 Csapó, 2011, p. 59.

53 Th. S. Betancourt et al. High Hopes, Grim Reality: Reintegration and the Education of Former Child Soldiers in Sierra Leone Background and Context, *Comparative Education Review*, No. 4, 2008, pp. 565-587.

54 <[https://childrenandarmedconflict.un.org/publications/ParisPrinciples\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf)>.

55 Breen, 2003, p. 470.

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leading to enrolment.<sup>56</sup> Physical duress,<sup>57</sup> poverty, existential marginalisation, physical security, avoiding hunger may all be causes of voluntary enrolment. There are children who did not choose to enrol and there are those who 'chose' enrolment out of family traditions or expectations. Chon and Goodwill-Gill used "societal ecology" to describe this phenomenon; how families interpret conflict, adapt it into their own life has an effect on children and indirectly contributes to the decision-making process and to enrolment itself.<sup>58</sup> Several interview were conducted with children and according to them, the reason behind voluntary enrolment is not the so-called Rambo complex<sup>59</sup> but the search for a way out of their specific situation.

As far as voluntary enrolment is concerned, the *Ongwen* case<sup>60</sup> is bound to shape the debate. One important question of the ICC-02/04-01/15 case is whether the children have the possibility to choose between permissible and forbidden behaviour under duress.

## 7.5.2 Grammatical Interpretation of the Right to Integration

The definition of integration used in several scholarly contributions, however, the present article restricts itself to the legal-sociological meaning of the term. The UN DDR program defines reintegration as

"the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time-frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility, and often necessitates long-term external assistance."<sup>61</sup>

The goal of UN missions is to implement peacekeeping agreements. In the course of the development<sup>62</sup> of DDR programs social and psycho-social integration has been emphasized alongside economic integration and political and security dimensions. The programs' role is mainly that of a catalyst but there are cases when these are the preconditions of successful reintegration.<sup>63</sup>

56 K. Gallagher, Towards a gender-inclusive definition of child-soldiers: *The Prosecutor v. Thomas Lubanga, Eyes on the ICC*, No. 1, 2010, p. 129.

57 B. Ruesch, Open the golden door: Practical solution for child-soldiers seeking asylum in the United States, *University of La Verne Law Review*, No. 29, 2008, p. 195.

58 Francis, 2007, p. 213.

59 Francis, 2007, p. 211.

60 *Ongwen* case (*The Prosecutor v. Dominic Ongwen*) (not yet published).

61 <[www.unddr.org](http://www.unddr.org)>.

62 M. Iacono, The child soldiers of Sierra Leone: Are they accountable for their actions in war?, *Suffolk Transnational Law Review*, No. 21, 2002-2003, p. 450.

63 <[http://unddr.org/what-is-ddr/how-has-ddr-evolved\\_3.aspx](http://unddr.org/what-is-ddr/how-has-ddr-evolved_3.aspx)>.

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Another soft law source, the UNHCR and UNICEF guidelines supporting grammatical interpretation efforts lies in the meaning of migrant integration in the EU. The joint approach followed by UNICEF and UNHCR is that children who flee abroad from armed conflict must receive international protection.<sup>64</sup> In line with its mandate, the UNHCR supports as one durable solution the integration in the host country as long as repatriation is not an option.

Article 79 (4) of the Treaty on the Function of the European Union (hereinafter: TFEU) states third country nationals are subject to the integration policy of the Union.<sup>65</sup> Article 74 – and the Commission recommendation on Common Basic Principles<sup>66</sup> – states that integration is a two-way process between the host society and the immigrant, entailing mutual efforts from both sides. Migrant integration falls under the competency of the Member States.<sup>67</sup> Member States may provide access to integration programs to a subgroup of third country nationals, to the beneficiaries of international protection according to Article 34 of the so-called Qualification Directive.<sup>68</sup> The other legal instrument of Common European Asylum System (hereinafter: CEAS), the so called Reception Condition Directive in its Articles 7, 10-19 sets out a list of rights of asylum seekers in order to facilitate their integration into society. These include the right to employment, education, basic health services, housing and vocational training. These obligations of the Member States are fulfilled either through the national social-educational-employment structure or through a separate integration system created for migrants.<sup>69</sup>

### 7.5.3 *The Teleological Interpretation of the Right to Integration*

Teleological interpretation means cross-referencing preamble recitals with the main text of the treaty.<sup>70</sup> The preamble of OPAC states in relation to integration:

64 Committee of the the Right of the Child General Comment No. 6. (2005) Treatment of unaccompanied and separated children outside their country of origin. Section 59. <[www2.ohchr.org/english/bodies/crc/docs/GC6.pdf](http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf)>.

65 Although the personal scope seems clear, nevertheless, from time to time the need emerges on the side of certain Member States for expansion to include Eastern European citizens because of the lack of language skills or general education.

66 <[www.eesc.europa.eu/resources/docs/common-basic-principles\\_en.pdf](http://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf)>.

67 The EU Action Plan toward the Member States is a recommendation about employment education, vocational trainings, cultural orientation trainings and access to basic services. COM(2016) 377 final.

68 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

69 I. Barcza & A. Nádasi, One Stop Shop, Single delivery System in Portugal, in: *A nyelvtanulástól a politikai részvételig. Bevándorlók integrációját támogató programok az Európai Unióban* edited by B. A. Bodalai and A. Kováts, ICCR, Budapest, 2013. pp. 85-106.

70 P. Kovács, *Nemzetközi Közjog*, Osiris, Budapest, 2006, p. 117.

## 7 FLEEING FORMER CHILD SOLDIERS' RIGHT TO INTEGRATION

“Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict”

General international cooperation cannot substitute the transformation and implementation of OPAC, but switches the focus to the actions. It shows that joint international measures promoting long term solutions are needed instead of national measures. Article 6(3) and Article 7(1) also provide for joint international efforts in order to facilitate reintegration, meaning that this not the task of a single state. All signatories shall integrate victims of offenses described in OPAC.

#### 7.5.4 Systematic Interpretation of the Right to Integration

Systematic interpretation entails the assessment of other legal norms, sources of legal custom related to OPAC, in particular, those that govern rehabilitation and integration. UN Security Council Resolutions have a special status in international law.<sup>71</sup> From among the resolutions<sup>72</sup> regarding the children involved in armed conflict, the UN Res. 1265 (2005) plays a chief role, because this is the first resolution that states adopted with the aim of helping the reintegration of surviving children, starting with their families and communities, to break the vicious circle of recruitment. A survey of other relevant resolutions shows that the right to integration became broader in scope and more detailed with time, as regards the obligations of the state, the right of girls, the right to education and the embeddedness of these rights in other human rights instruments.

Generally, the state involved in armed conflict is responsible for ensuring the enjoyment of the right to integration and it is this state that should first try and reintegrate victims into their own society, providing access to education to commence or restart schooling. Yet as regards those who do not live as internally displaced persons,<sup>73</sup> but leave their country of origin and migrate to the territory of another signatory of the CRC, the question arises whether they are entitled to integration without or in parallel with a submission of application for international protection on the sole basis that they are victims of offenses set out in the OPAC?

In point 88 of the General Comment of the Committee of the Right of the Child states that local integration is a durable solution:

71 According to Article 25 of the Charter of UN and the opinion of International Court of Justice the resolutions do not have binding effect.

72 SC. Res. 1325 (2000), SC. Res. 1314 (2000), SC. Res. 1379 (2001), SC. Res. 1460 (2003), SC. Res. 1539 (2004), SC. Res. 1612 (2005), SC. Res. 1882 (2009), SC. Res. 1988 (2011), SC. Res. 2068 (2012), SC. Res. 2143 (2014), SC. Res. 2225 (2015).

73 Breen, 2003, p. 462.

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“Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the Convention rights which are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or, whether the best interests-based balancing test has decided against return.”

Regarding former child soldiers mentioned in point 56-57; integration can be set aside in case the child above the age of 15 constitutes a serious threat to security. According to point 60, each state party shall develop age and gender based psychological services to children involved in armed conflict.

## 7.6 SUMMARY AND CONCLUSIONS

A general flaw in transformation and implementation of international treaties results in the situation when states are reluctant to start procedures for prosecuting war crimes. However, this failure of the states cannot hinder the enjoyment of the rights of those entitled to them as different interpretations show it.

Historical interpretation of international law sources shows that the right to integration is a state action aiming the reintegration of victims, requiring a complex approach. Grammatical interpretation indicates that the right to integration covers a complex system of conditions both in Europe and in the country of conflict, containing different rights and obligations but at the same time, offering the chance to start a new life. Systematic interpretation leads to the conclusion that it is mainly those countries that are responsible for reintegration, where the conflict erupted. However, since many victims are forced to flee, all signatories are obliged to offer integration. Finally, teleological interpretation reflects the joint responsibility of the international community.

*The CRC and the OPAC provide sufficient legal basis to speak of a right of children involved in armed conflict to integration.*

The interpretation of national criminal law shows that the enjoyment of such a right cannot depend on that the criminal procedure. *Hungary as signatory state shall provide integration services and support to victims regardless their actual age.*