Utrecht University

The Innocence and Danger of Child Soldiers

*Advocacy Efforts of INGOs and TANs to Prevent Children's Recruitment in Armed Forces
and Participation in Armed Conflict through Framing and Non-Discursive Means*

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Abstract

This master thesis explores how international non-governmental organisations (INGOs) and transnational advocacy networks (TANs) sought to persuade the international community between the mid-1940s and 2000 of the urgent need to prevent children's involvement in armed conflict through international humanitarian law (IHL) and international human rights law (IHRL). To address this question, the analysis draws upon John Kingdon's policy streams model and the concept of framing. Three periods are studied, consisting of the decades preceding the adoption of the 1949 Fourth Geneva Convention, its 1977 Additional Protocols and the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC). The analysis of each period is divided into three parts. First, the relevant provisions of the policy document in question are addressed and subsequently related to previously existing provisions. Second, the most important INGOs and TANs are identified, along with the non-discursive means they employed to generate attention for the issue. Lastly, the frame used by these INGOs and TANs is analysed.

The thesis concludes that the frame used by the actors, as well as the employed non-discursive means, remain generally consistent over time. The used frame draws upon an image of innocent and vulnerable children, who constitute a danger to long-term peace if they were to be affected by war. The findings provide a starting point to understand how power relations were constructed and maintained in the field of protecting children from their involvement in armed conflict. In order to deepen this understanding, this thesis calls for more in-depth research into this subject by (1) analysing the role of other (non-state) actors, (2) looking at how the subject was taken on by the UN from 1989 onwards and (3) examining the success of the used frame(s) by non-state actors. Critically assessing how INGOs and TANs use language also lays out how they exert influence in the international policy making community. Understanding the power of language and how it is used by non-state actors is paramount and will become increasingly crucial in the near and distant future given the rising influence of non-state actors in contemporary international politics.

Key words

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List of Abbreviations

AP	Additional Protocol to the 1949 Geneva Conventions
CRC	Convention on the Rights of the Child
DDR	Demobilisation, Disarmament and Reintegration
FWCC	Friends World Committee for Consultation
GC	Geneva Convention
IAC	International armed conflict
ICRC	International Committee of the Red Cross
ICRCRC	International Conference of the Red Cross and Red Crescent
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INGO	International non-governmental organisation
ISCA	International Save the Children Alliance
IUCW	International Union for Child Welfare
NIAC	Non-international armed conflict
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
SCIU	Save the Children International Union
CSUCS	Coalition to Stop the Use of Child Soldiers
UN	United Nations

1. Introduction

Language does not just describe reality. Language creates the reality it describes.

- Archbishop Desmond Tutu

Nineteen years ago, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) was adopted by the United Nations (UN). The Protocol prohibited the recruitment and participation in armed conflict of children younger than eighteen years. Despite the OPAC's current ratification by 170 states, the issue of involving children in armed conflict, also known as the child soldier issue, remains highly debated in the international community. Virginia Gamba, UN Special Representative for Children and Armed Conflict, stipulated the continuing importance of addressing this topic as recently as October 8, 2019: 'The recruitment and use of children continued [in 2018] unabated with more than 7,000 children drawn into frontline fighting and support roles globally.'[1] A child soldier is nowadays defined as:

> *Any person below eighteen years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.*[2]

Despite the relative recent attention for the subject, children younger than eighteen years have been known to participate in armed conflicts for centuries. Not only did approximately 250,000 teenagers fight in the British army in World War I, large numbers of children have fought on both sides in the United States civil war.[3,4] This means that this is not a new phenomenon, but rather that the conception of the phenomenon as problematic is new. Preliminary research found that international non-governmental organisations (INGOs) and transnational advocacy networks (TANs) have been crucial in pursuing international regulations aimed at preventing child recruitment and their participation in hostilities.[5] To understand how these actors aimed to convince the international community that such regulations in international humanitarian law (IHL) and international human rights law (IHRL) were urgently needed, the following research question will be central in this thesis: *How did INGOs and TANs seek to persuade the international community through framing and other non-discursive means into adopting IHL and IHRL provisions*

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[1] Virginia Gamba, "Statement by Ms. Virginia Gamba to the Third Committee of the General Assembly," Office of the Special Representative of the Secretary-General for Children and Armed Conflict, last modified October 8, 2019, https://childrenandarmedconflict.un.org/statement-by-ms-virginia-gamba-to-the-third-committee-of-the-general-assembly/.

[2] "The Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups," UN Children's Fund (UNICEF), last modified February 2007, https://www.unicef.org/protection/57929_58012.html.

[3] "How Did Britain Let 250,000 Underage Soldiers Fight in WW1?," BBC iWonder, accessed January 22, 2019, http://www.bbc.co.uk/guides/zcvdhyc#orb-banner.

[4] Gareth Davies, "Boy Soldiers of the Civil War," Daily Mail Online, June 20, 2017, accessed December 8, 2018, https://www.dailymail.co.uk/news/article-4621018/Eight-year-old-children-fought-American-Civil-War.html.

[5] Claire 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* 25, no. 2 (2003): 481.

prohibiting children's recruitment in armed forces and participation in armed conflict (between 1949 and 2000)?

In pursuing changes in policy, advocacy actors (here limited to INGOs and TANs) employ many means to accomplish their goals, as will be discussed in more detail in Chapter 3. On the one hand, they devote considerable resources like time, energy and money to generating attention for the issue. On the other hand, they use the technique of framing to persuade their audience into perceiving an issue as problematic. In this light, this thesis aims to answer the central research question by resolving the following three sub-questions:

1. What did the new or altered provisions in IHL and IHRL contain regarding the prohibition of children's recruitment in armed forces and children's participation in armed conflict and how did this differ from previously adopted regulations?

2. What INGOs and TANs were most influential and active in their advocacy efforts and what non-discursive means did they employ to soften up the policy community for the desired policy outcome?

3. How was the issue of recruitment and participation of children in armed conflict framed by the most influential and active INGOs and TANs?

1.1 Research Objective and Relevance

The topic of children's involvement in armed conflict has gained an increasing amount of attention in academic literature, e.g. on the effect of war on children and interpretations of relevant policies. How international policy in this field developed, however, has been largely neglected. This thesis aims to fill this gap in literature by analysing the role of INGOs and TANs in this development from the mid-1940s to 2000. Its focus is not the policy as such, but to understand how these actors sought to persuade the policy making community through framing and other non-discursive means. Being aware of multiple existing approaches to international politics, this analysis is rooted in a constructivist approach. By analysing how INGOs and TANs framed the issue of involving children in armed conflict, this thesis aims to deepen the understanding of how actors use language and in this way seek to exert power. Using language to frame one's perception of reality as the truth holds considerable power in constructing and making sense of the world. This power is not a unique trait of state actors, but extends to non-state actors as well. Understanding the use of language by non-state actors will provide insights into how power relations in international affairs were constructed and maintained in the field of the protection of children from their involvement in armed conflict.

Furthermore, policy does not exist in a vacuum, but is embedded in historic events and developments. It is part of a triad: policy is created when an issue is perceived as problematic and needs solving through policy. With respect to its implementation, much debate remains ongoing about failing enforcement and inadequate sustainable actions. This results in continuous advocacy efforts for better implementation and comply mechanisms. The insights of this thesis contribute to understanding how INGOs and TANs influenced IHL and IHRL concerning children's recruitment and participation in armed conflict at crucial historical junctures. The drafting processes, discursive strength of the used frame and encountered obstacles in the period preceding the adoption of policies have their effect on the strength of

prevention, implementation measures and comply mechanisms. Insights into these elements may help to understand why the international community still debates the 'child soldier issue' despite considerable efforts to end children's involvement in armed conflict.

1.2 Sources and Methodology

This thesis draws upon a wide variety of primary sources to analyse the policy development in IHL and IHRL on the topic of child recruitment and participation in armed conflict. It includes conventions, summaries and minutes of conferences and other high level meetings, as well as commentaries, journals and reports issued by INGOs, e.g. the International Committee of the Red Cross[6] and the International Union for Child Welfare. The analysis focuses on key provisions addressing the recruitment and use of children by armed forces in hostilities in the 1949 Fourth Geneva Convention and its 1977 Additional Protocols. These IHL cornerstones contained the first regulations in international law on the subject of children's recruitment in armed forces and children's participation in hostilities and hence are crucial to analyse to discover how policy on the subject developed over time.

Aside from IHL, this thesis also analyses the period leading up to an IHRL instrument, namely the aforementioned 2000 OPAC. Although IHL and IHRL differ in several ways, they work complementary in armed conflict.[7] On the one hand, IHL applies to situations of armed conflict, in which it aims to regulate the conduct of warfare and the protection of war victims (hence it is also known as the laws of war). On the other hand, IHRL seeks to protect individuals from any abuse of power by states both in armed conflict and peacetime.[8] The 2000 OPAC is the only treaty exclusively dealing with children's recruitment and participation in hostilities and thus constitutes an important instrument in international law. Given its importance and close affiliation to the IHL provisions on the issue, this thesis includes the 2000 OPAC in its analysis. To lay out the policy development, each chapter will commence by discussing new provisions in these three international law documents and how they relate to previously existing provisions.

This thesis elaborates on several types of English and French primary sources to identify the most influential advocacy actors (i.e. the most prominent and active INGOs and TANs) and what means they used to accomplish their advocacy goals. Records of relevant conferences in the period prior to the adoption of the convention or protocol in question will reveal the most important advocacy actors. Next, journals, speeches, commentaries and reports by these actors will provide insights into how the issue of children recruited in armed forces and participating in hostilities was discussed by these actors, which is here

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[6] The ICRC's exact structure and function not very well known, hence it is necessary to include here this thesis' understanding of the ICRC as an organisation. Based on definitions provided by the ICRC itself and political scientist David Forsythe, this thesis considers the ICRC to be an impartial, independent and neutral international non-governmental organisation (INGO), set apart from other INGOs because of its unique qualifications. Striving for impartiality, the ICRC tries to avoid political involvement and interference as much as possible, but engage in humanitarian politics, as Forsythe explains (p. 2), 'to implement humanitarian values as official policy in the nations of the world'.

See for this explanation and other considerations David Forsythe, *Humanitarian Politics: The International Committee of the Red Cross* (London, UK, The Johns Hopkins Press Ltd., 1977), and David Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge, UK: Cambridge University Press, 2005).

[7] "IHL and Human Rights Law," International Committee of the Red Cross, accessed October 29, 2010, https://www.icrc.org/en/doc/war-and-law/ihl-other-legal-regmies/ihl-human-rights/overview-ihl-and-human-rights.htm.

[8] Gus Waschefort, *International Law and Child Soldiers* (Oxford, UK: Hart Publishing Ltd., 2015): 75-87.

considered framing. Although speeches often do not have a direct influence on policy, used language and arguments may reveal underlying motives and broader historical international developments.

Although there are various groups of actors that influence international policy making, this thesis focuses on the roles that TANs and INGOs have played in shaping provisions preventing children's involvement in armed conflict. INGOs are often part of TANs and their advocacy efforts oftentimes overlap, which is why both types of actors are included in the analysis. Studying all actors that possibly have had some role in these policy processes is beyond the scope of this thesis. Preliminary research found that INGOs and TANs have been highly influential in policy drafting processes, who produced the majority of available resources.

This thesis proceeds as follows. Chapter 2 demonstrates the state of academic research regarding children's involvement in armed conflict and illustrates how policy development on this particular subject has largely been neglected in academic literature. Subsequently, Chapter 3 discusses the theoretical framework, which draws upon political scientist John Kingdon's policy streams model and the concept of framing. Chapter 4 shows that the ICRC and the IUCW advocated for provisions to protect children from becoming involved in armed conflict in the 1940s. Yet, little protection was granted in the final provisions of the 1949 Geneva Conventions. Subsequently, Chapter 5 demonstrates how the ICRC and the IUCW continued to advocate in the 1970s for new provisions on child participation in hostilities and more elaborate provisions on child recruitment in armed forces. Next, Chapter 6 turns to the 1990s, showcasing how attention for the issue increased to an unprecedented level regarding the number of involved actors and their advocacy efforts (discursive and otherwise). The analysis will conclude that the involved actors maintained the same arguments over time in which children were framed as innocent and vulnerable. Moreover, they would constitute a danger to long-term peace if they were to be affected by war. The conclusion will include possible avenues for further research and further highlight that the matter of and debate on children's involvement in armed conflict is still very much alive today.

2. Literature review

The issue of children's involvement in armed conflict has gained increasing attention in various disciplines, including economics, psychology, anthropology, sociology, law and political science.[9] The next paragraphs illustrate debates on frequently analysed subjects related to children in armed conflict from the legal discipline, political science, psychology and anthropology. The aim here is not to provide an exhaustive overview of all academic debates on children involved in armed conflict, but to highlight a number of important debates and topics. Much has been written about several topics that relate to the issue of children's involvement in hostilities. Yet, as the literature review will demonstrate, academic research into the historical policy development on regulations restricting children's recruitment and participation in armed conflict obtained little attention in the past.

A frequently discussed topic on children's involvement in armed conflict concerns demobilisation, disarmament and reintegration (DDR) programs by international organisations like the UN. The success of DDR programs is highly debatable, despite results of UNICEF and other organisations on the release and reintegration of former 'child soldiers'. According to legal scholar Mark Drumbl, some DDR programs, e.g. in Liberia and Sierra Leone, proved mostly successful.[10] However, this seems to be limited to the demobilisation and disarmament parts of programs. Political scientists Macartan Humphreys and Jeremy Weinstein, for example, concluded after a statistical analysis 'that participation in a DDR program increases the degree to which combatants are accepted by their families and communities. (...) The only significant results work in the "wrong" direction: individuals that have entered DDR programs are less likely to trust governmental structures, and those leaving DDR programs are significantly less likely to be employed'.[11] Nonetheless, Drumbl argues, DDR programs continue to support demobilised persons, including children, adding up to 'quite generous' assistance compared to the local standards.[12] Much research has been conducted on the topic of DDR programs and the evaluation thereof in several disciplines. However, to engage further goes beyond the scope of this thesis as DDR programs concern the implementation of policies and not policy developments.

Another important subject addressed is the culpability of (formerly) recruited and participating children in armed conflict. The debate, however, is part of another related question - how should we see these children? Are they victims or perpetrators? Legal scholar Nienke Grossman argues for the first: 'the hundreds of thousands of children under age eighteen participating in armed conflicts around the globe should be treated primarily as victims, not perpetrators, of human rights violations'.[13] Concluding her analysis on several international legal frameworks, she states: 'although international law arguably requires the prosecution of severe violations of human rights, it also establishes that the best interests of

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[9] Roos van der Haer, "Children and Armed Conflict: Looking at the Future and Learning from the Past," *Third World Quarterly* 40, no. 1 (2019): 75.

[10] Mark A. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (New York, NY: Oxford University Press Inc., 2012), 170.

[11] Macartan Humphreys and Jeremy M. Weinstein, "Demobilization and Reintegration," *Journal of Conflict Resolution* 51, no. 4 (2007): 549.

[12] Drumbl, *Reimagining Child Soldiers in International Law and Policy*, 172.

[13] Nienke Grossman, "Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations," *Georgetown Journal of International Law* 38 (2007): 323.

children are paramount and reflects an emerging trend toward forbidding the use of children under eighteen in direct hostilities'.[14] Drumbl, however, concludes otherwise. He states that the prosecution of any child under eighteen is not prohibited by international criminal law. He criticises its 'reluctance to exercise jurisdiction over minors' by arguing that 'it instrumentalizes, reflects, and contributes to the substantive notion within the international legal imagination that it is unimportant, embarrassing, and unhelpful for child soldiers to answer for their involvement in acts of atrocity in a courtroom'.[15] He further points out that children under age eighteen can be and are prosecuted and punished in national legal systems for various offenses.[16] Thereby, Drumbl makes clear the juxtaposition between the international legal system and national legal systems in their treatment of children.

Children's culpability is not restricted to legal literature, but also a topic of concern in the psychological field. Psychologist Angela Veale explains that in some cases, it can be beneficial for children under age eighteen to face punishment. What is most important, she argues, is that 'any restorative justice initiative has to be situated in local cultural meanings and understandings of children, of recruitment dynamics, of development transitions, of what is developmentally expected, and of cultural mechanisms of acknowledging wrongdoing and means of reparation'.[17] Age as the sole distinctive criterion for possible punishment is problematic, Veale continues, since the meaning of 'the child' depends on cultural interpretations and ultimately 'extremely contested'.[18] The debate about culpability demonstrates the interpretability of law and policy, partially explaining the ongoing efforts in the international community to eradicate the use of children in armed conflict.

Despite increasing academic attention, the development of policy regarding recruitment and participation of children in armed conflict constitutes a neglected area. One scholar, however, has researched the changing image of children as soldiers from heroes to victims extensively. Cultural anthropologist David Rosen argues that the recent efforts to prevent children's involvement in hostilities stems from a transnational 'politics of age' that influences the definition of childhood in international law.[19] He defines these politics of age as 'the use of age categories by different international, regional, and local actors to advance particular political and ideological positions. (...) The representations of childhood by all these groups are political constructs used to support legal and political agenda, and they discount the more varied and complex local understandings of children and childhood found in anthropological research'.[20]

Elaborating on this, Rosen argues that the use and recruitment of children in international criminal law and IHL is prohibited under the age fifteen. However, humanitarian actors disregard this definition in advocating for a ban on 'child soldiers'. From their perspective, 'a child soldier is any person below eighteen years of age who is recruited or used by an armed force or armed group'.[21] This known as the Straight-18

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[14] Ibid., 360.
[15] Drumbl, *Reimagining Child Soldiers in International Law and Policy*, 127.
[16] Ibid., 128.
[17] Angela Veale, "The Criminal Responsibility of Former Child Soldiers: Contributions from Psychology," in *International Criminal Accountability and the Rights of the Child* (The Hague, The Netherlands: Hague Academic Press, 2006): 104.
[18] Veale, "The Criminal Responsibility of Former Child Soldiers," 104.
[19] David M. Rosen, "Child Soldiers, International Humanitarian Law, and the Globalization of Childhood," *American Anthropologist New Series* 109, no. 2 (2007): 296.
[20] Ibid., 296.
[21] David M. Rosen, *Child Soldiers: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, LLC, 2012): 15.

position, which is based on the age of children as defined by the 1989 Convention on the Rights of the Child. This position, however, contains a universal understanding of adulthood defined by age and hence ignores differences in the definition of childhood and adulthood in various cultures across the world. Rosen continues that this position and its attached discourse is no longer reserved for humanitarian and human rights actors, but 'has become the language of political discourse' and serves the political agenda of its users instead of enhancing the situation of children involved in armed conflict.[22] He concludes that the 'child-soldier crisis' that has emerged has nothing to do with the idea that it is a recently emerged phenomenon - which it is not - but that it is rather a modern political crisis, 'consisting of a complex set of interconnections between humanitarian and political drivers'.[23]

In his work, Rosen does not discuss other possible explanations for policy developments regarding children's recruitment and participation in armed conflict. He equally fails to extend his analysis beyond the period that 'the child' was defined as any person below age eighteen. Furthermore, neither Rosen nor any other scholar has analysed the non-state actors that have played a highly significant role in shaping the relevant provisions in IHL and IHRL over time. Historicising the policy developments based on primary documents will demonstrate how involved advocacy actors persuaded states of the importance for adopting regulations addressing children's involvement in armed conflict. The aim here is not to contradict Rosen's argument as such, but rather to analyse the developments of policy on children's recruitment and participation in hostilities from a broader historical perspective.

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[22] Rosen, "Child Soldiers, International Humanitarian Law, and the Globalization of Childhood," 304.
[23] Ibid., 304.

3. Theoretical Framework

This thesis analyses the development of IHL and IHRL regarding children's involvement in armed conflict, focusing on the 1949 Geneva Conventions, its 1977 Additional Protocols and the 2000 OPAC. It studies how the most influential INGOs and TANs initiated advocacy efforts to push for proposed regulations. This process is part of what political scientist John Kingdon calls the 'policy stream'. Since framing and political pressure are often important means to get an issue prominently placed on the (international) agenda and keeping it there, this thesis looks at how the most influential INGOs and TANs advocated for changes in IHL and IHRL through framing and other non-discursive means.

Comprehending the way policy is made and how it can be explained, depends on how international politics are understood. Being aware of a variety of possible interpretations, this thesis takes a constructivist approach in the sense that it considers ideas and language to be the foundations of (perceived) reality. It aims to understand why the issue of children's involvement in armed conflict became perceived as problematic by the international community between the mid-1940s and 2000. In line with this aim and the constructivist approach, the present analysis draws upon Kingdon's policy streams model to understand why policy problems became problems in the first place.

3.1 Policy Streams Model

Kingdon argues that when three policy streams - policies, politics, and problems - converge, serious policy change can occur. However, these streams are subject to rapid change and are 'largely separated from one another'.[24] Only when policy entrepreneurs couple these streams or when they come together naturally, policy change emerges. Then, an issue is perceived as problematic, an appropriate solution is found and political actors are convinced this problem needs solving through policy. This particular moment is what Kingdon calls a 'policy window'. These moments sometimes occur on a predictable schedule, but often arise at unforeseen times. When policy windows occur, policy entrepreneurs have to have their preferred solutions ready for policy makers. These solutions, however, are not created overnight. Instead, entrepreneurs pave the way by discussing their ideas with other stakeholders and hereby soften up the policy community. This preconditioning process, which can take two to six years, is necessary to create the right climate before solutions are seriously considered. Without preconditioning, the targeted audience will not be ready to listen, meaning entrepreneurs would be too late if they start addressing their audience when a policy window opens. These process of paving the way and adapting proposals based on feedback from the policy community constitute the policy stream.[25]

Which issues become problems and which remain conditions that need no solving, is determined in the problem stream. There are several ways to identify a condition as a problem, all of which have to do with how entrepreneurs frame the issue at hand.[26] Entrepreneurs need to seize the moment and have to frame the problem as solvable. The framing of the issue as problematic is a major factor in people's

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[24] John Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (New York City, NY: HarperCollins College Publishers, 1995): 87-88.
[25] Ibid., 130-159.
[26] Ibid., 103-110.

perception of the problem and their sense of urgency to solve it. One way to frame a problem is to use values, with which one stresses 'a mismatch between the observed conditions and one's conception of an ideal state'.[27] The third and final stream, the political stream, consists of 'such things as public mood, pressure group campaigns, election results, [and] partisan or ideological distributions'.[28] In other words, this stream addresses the political context and sentiment in the broader environment. In this stream, persuasion and diffusion are key to gain support for certain policy options. A final proposal will be adopted when it survives all criticism.

Yet, Kingdon's model is based on national agenda setting. Since the policy analysed here is created on and applies to an international level, it is important to bear in mind the increased number of possible involved actors in the decision making process. The policy analysed in this thesis concerns international law, which, as professor of international law Jean d'Aspremont rightly states, is often thought of as 'exclusively delineated by virtue of the actors among which it applies. Yet, nothing is more misleading.'[29] Especially true for matters associated with humanitarianism and human rights like the child recruitment and participation issue, numerous actors are active in the field of policy making. It has been widely recognised that non-state actors play a substantial role in policy making processes, with a special appreciation for the roles of (I)NGOs and TANs.[30] Therefore, this thesis analyses how INGOs and TANs influenced the shaping of international legislation addressing the involvement of children in armed conflict through framing and non-discursive means.

3.2 Transnational Advocacy Networks

When different interest groups integrate their advocacy efforts on an international level, they form a so-called transnational advocacy network (TAN), i.e. 'networks of activists, distinguishable largely by the centrality of principled ideas or values in motivating their formation'.[31] The phenomenon of TANs is not new – political scientist Margaret Keck and human rights scientist Kathryn Sikkink report on TANs dating back to the nineteenth century.[32] With the rise of internationalism since the 1950s, TANs have become increasingly important in advocacy, especially seizing opportunities from the 1970s onwards.[33] These networks can be key contributors in establishing changes in world politics, trying to take changes further by transforming the nature of the public debate. Non-traditional international actors have the ability to 'mobilize information strategically to help create new issues and categories, and to persuade, pressurize, and gain leverage over much more powerful organizations and governments'.[34] Included in these networks are (I)NGOs, research organisations, media and parts of regional and global intergovernmental

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[27] Ibid., 110.
[28] Ibid., 145.
[29] Jean d'Aspremont, "Introduction," in *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, ed. Jean d'Aspremont (London, UK: Routledge, 2011, pp. 1-21): 1.
[30] For example, see the work of Margaret E. Keck and Kathryn Sikkink on TANs and the role of (I)NGOs in these networks; Jean d'Aspremont on the role of non-state actors in international law; Anton Vedder on the involvement of NGOs in international governance and policy.
[31] Margaret E. Keck and Kathryn Sikkink, "Transnational Advocacy Networks in International and Regional Politics," 51, no. 159 (1999): 89.
[32] Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (New York, NY: Cornell University Press, 1998): 14.
[33] Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley, CA: University of California Press, 2002): 97-98.
[34] Keck and Sikkink, "Transnational Advocacy Networks in International and Regional Politics," 89.

organisations. There are numerous possibilities regarding the composition of TANs and not all of the aforementioned actors have to be present in every network. Yet, (I)NGOs are often central in these networks as they 'introduce new ideas, provide information, and lobby for policy changes'.[35]

TANs emerge when the issues they advocate for meet three criteria: (1) communication channels between domestic parties and their governments are restrained and not effective for resolving a conflict; (2) there is a strong believe that networking helps to achieve campaigns and missions; and (3) the networks are formed and strengthened through arenas created by international contacts like international conferences.[36] The actors participating in a TAN not only share information, but use frames that form the basis of their campaigns. Political scientist Sidney Tarrow argues that 'inscribing grievances in frames that identify an injustice, attribute the responsibility for it to others, and proposing solutions to it' is one of the core activities of TANs.[37] In order for this injustice frame to work, however, it is important that every member of the network adopts this frame.

3.3 Framing

As discussed before, this thesis' understanding of international politics is rooted in a constructivist approach. Therefore, it assumes that when people use language, they define the world they live in by giving meaning to their surroundings and events through words. Language is hence not a descriptive tool, but constructs people's social worlds.[38] Important in this understanding is the concept of framing. Although the exact definition of framing remains debated in various disciplines, selection and salience are central elements in every definition. In this thesis, political communication scholar Robert Entman's definition is adopted to understand the concept of framing. According to him,

> *Framing entails selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution. (…) They use words and images highly salient in the culture, which is to say noticeable, understandable, memorable, and emotionally charged.*[39]

A frame holds a minimum of four places in the communication process, namely that of the communicator, the text, the receiver, and the culture. By this, Entman means that communicators are guided by frames that organise their belief systems when conveying a message, with the actual text containing the frame(s). These frames 'are manifested by the presence or absence of certain keywords, stock phrases, stereotyped images, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgments'.[40]

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[35] Keck and Sikkink, *Activists Beyond Borders*, 9.
[36] Keck and Sikkink, "Transnational Advocacy Networks in International and Regional Politics," 93.
[37] Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics*, 3rd ed. (Cambridge, UK: Cambridge University Press, 2011): 145.
[38] Nicholas Onuf, "Constructivism: A User's Manual," in *International Relations in a Constructed World*, ed. Vendulka Kubálková, Nicholas Onuf and Paul Kowert (New York, NY: Routledge, 1998, pp. 58-78): 59.
[39] Robert M. Entman, "Cascading Activation: Contesting the White House's Frame After 9/11," *Political Communication* 20, no. 4 (2003): 417.
[40] Robert M. Entman, "Framing: Towards Clarification of a Fractured Paradigm," *Journal of Communication* 43, no. 4 (1993): 52.

Turning to the receivers of framing, Entman clarifies that their thinking and conclusions do not necessarily align with the provided frame. Salience and persuasion are products 'of interaction of texts and receivers' and although frames have 'a common effect on large portions of the receiving audience', there is no guarantee of a universal effect.[41] Lastly, culture is 'the empirically demonstrable set of common frames exhibited in the discourse and thinking of most people in a social grouping'.[42]

Frames are an important way to exert political power - when an audience adopts a frame, it can invoke significant action. They meet at least two of four functions in their coverage of political actors, events and issues: (1) defining effects or conditions as problematic, (2) identifying causes, (3) conveying a moral judgment of those involved in the framed issue, and (4) endorsing remedies or improvements to the problematic situation.[43] This thesis aims to identify the frame(s) used by the most influential INGOs and TANs in their advocacy efforts towards prohibiting children's involvement in armed conflict. Given that these organisations constitute the communicators, their used language towards the policy community will be used to analyse the frame according to Entman's identified frame components.

Since this thesis focuses on a matter that is both a humanitarian and a human rights issue, a distinction between the two movements needs to be clarified. What sets humanitarianism apart from human rights, according to sociologist Craig Calhoun, is the focus 'on the immediate ethical imperative of reducing suffering – and especially, saving lives'.[44] Human rights, on the other hand is an agenda 'for improving the human condition, not simply humane responses to immediate suffering'.[45] By extension, this meets the distinction between IHL and IHRL as discussed in Chapter 1.2. Whereas IHL applies to wartime, thus seeking to reduce suffering and save lives, IHRL applies to both wartime and peacetime, fitting the pursuit of improving human condition in general. The two movements both originated humanism in the late eighteenth century and some scholars have argued that the two types of law reunited from the 1990s onwards in a 'humanity's law'.[46] This reunification can also be seen in the fact that human rights organisations usually did not meddle in matters of armed conflict, but this is no longer true.[47] Since this thesis is focused for the better part on developments prior to the 1990s, it is important to be aware of this distinction. Turning now to the analysis of developments in the humanitarian legal field in the 1940s, the next chapter will discuss the first IHL provisions adopted in 1949 to address the recruitment of children by armed forces and analyse how this was advocated for by two leading INGOs.

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[41] Entman, "Framing: Towards Clarification of a Fractured Paradigm," 52-54.
[42] Ibid., 53.
[43] Entman, "Cascading Activation: Contesting the White House's Frame After 9/11," 417.
[44] Craig Calhoun, "The Imperative to Reduce Suffering: Charity, Progress, and Emergencies in the Field of Humanitarian Action," in *Humanitarianism in Question: Politics, Power, Ethics*, ed. Michael Barnett and Thomas G. Weiss (Ithaca, NY: Cornell University Press, 2008, pp. 73-97): 90.
[45] Ibid., 90.
[46] Michael Barnett, "Human Rights, Humanitarianism, and the Practices of Humanity," *International Theory* 10, no. 3 (2018): 315.
[47] Ibid., 315.

4. Taking the First Steps: The 1949 Geneva Conventions

Prior to the 1949 Fourth Geneva Convention (GC), no international legislation regulating the recruitment and use of children in armed conflict existed. What did exist, however, was the 1924 Declaration of the Rights of the Child, or the Declaration of Geneva. This Declaration was drafted by the Save the Children International Union (SCIU) in 1923 in response to the experiences of children in World War I.[48] It contained five articles concerned with children's development, protection, relief, and assistance. With the adoption of the document by the League of Nations in 1924 as the World Child Welfare Charter, signatories recognised 'that mankind owes to the Child the best that it has to give' and accepted that their pledge to children was 'beyond and above all considerations of race, nationality or creed'.[49] Although the Declaration was not legally binding and it lacked any definition of 'the child', the adoption signalled the recognition by signatory states for the need of a special status for children on an international level. In 1934, the League of Nations adopted the World Child Welfare Charter again, vouching to incorporate the principles in their domestic laws.[50] An initiative to write a more extensive international children's rights document emerged in 1939, led by the International Committee of the Red Cross (ICRC) and the SCIU. It did not materialise, however, due to the outbreak of World War II.[51] The 1924 World Child Welfare Charter of the League of Nations hence remained the only internationally adopted children's rights document prior to World War II.

4.1 New Provisions on Child Recruitment

In 1949, four years after the horrors of World War II ended, states came together to review the existing First, Second and Third Geneva Conventions (GCs) that aimed to 'limit the effects of armed conflict'.[52] The conventions did not regulate the right to use force, but rather sought to protect 'persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare'.[53] In addition to the three existing GCs, a fourth convention was adopted in 1949 to protect civilians during armed conflict. The Fourth GC contained the first provisions on child recruitment in international law. It addressed recruitment in two articles in Section III on Occupied Territories and limited the recruitment of children in armed conflict (for the full articles, see Annex 1), but failed to address children's participation in hostilities.

The main change in the Fourth GC constituted that children in occupied territories were not to be enlisted in formations or organisations subordinate to the occupying state. Although not explicitly addressing recruitment, Article 50 protected children in these territories from any form of enforced employment, which included enlistment in the occupying armed forces. Nonetheless, a clear definition of 'the child' lacks in the Fourth GC, constituting a significant constraint to the provision. Although protection was provided to children, it remained unclear who was considered a child. Adding to Article 50, Article 51

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[48] "Geneva Declaration of the Rights of the Child, 1924," Humanium, accessed October 8, 2019, https://www.humanium.org/en/geneva-declaration/.

[49] Shaheed Fatima, *Protecting Children in Armed Conflict* (Oxford, UK: Hart Publishing Ltd., 2018): 10.

[50] Ibid., 10.

[51] Denise Plattner, "Protection of Children in International Humanitarian Law," *International Review of the Red Cross*, no. 240 (1984): 150-151.

[52] "What Is International Humanitarian Law?," International Committee of the Red Cross, last modified July 2004, https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

[53] Ibid.

protected all citizens in occupied territories from serving 'in its armed or auxiliary forces'. Here, no age limit is necessary, for all 'protected persons' were covered by this provision.[54] Despite this provision being the first to explicitly prohibit recruitment of any person in occupied territories, the conduct of not recruiting such people was customary in the conduct of warfare prior to the Fourth GC. Due to grave violations of this principle during the two world wars, however, states insisted on incorporating this in the Fourth GC.[55]

4.2 The Policy Stream and the Role of the ICRC, IUCW and Bolivian Red Cross Society
In the Fourth GC, the ICRC took up the same role as in the other three GCs, namely that of neutral humanitarian organisation responsible for protecting various types of war victims. The ICRC is the only non-state actor explicitly named in IHL provisions, although 'any other impartial humanitarian organisation' may also take up this task alongside the ICRC.[56] The role of the ICRC is equally undeniable in the drafting process of all GCs and specifically in the provisions of the Fourth GC safeguarding the rights of children during armed conflict, as the following section will demonstrate.
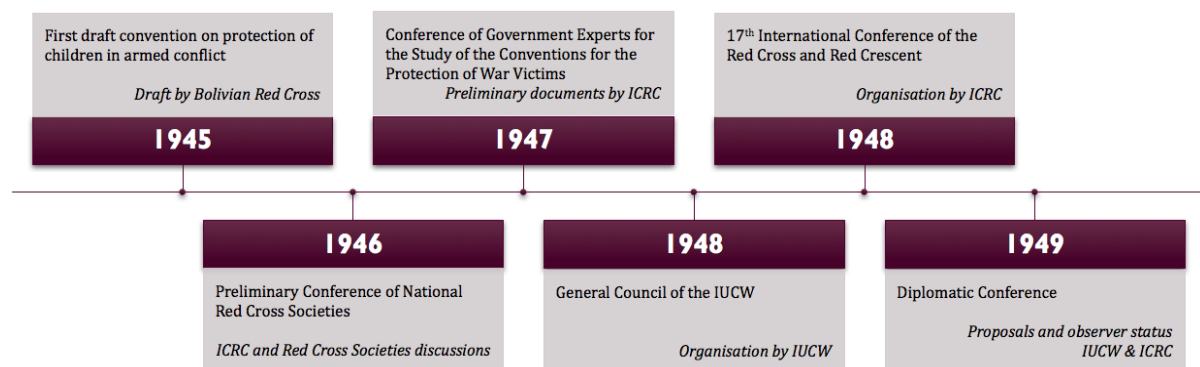

Figure 1. Overview of events included in the analysis.

Of the six events projected in Figure 1, the ICRC played a direct or indirect role in four - the 1946 preliminary conference of Red Cross societies, the 1947 conference of government experts, the 17th International Conference of the Red Cross and Red Crescent (ICRCRC) in 1948, and the 1949 Diplomatic Conference. As mentioned before, efforts to establish an international declaration specifically for children's rights did not materialise due to the outbreak of hostilities in 1939. Although the ICRC and the SCIU pushed for child protection measures prior to World War II, the origins of advocacy efforts to prevent child recruitment and their participation in hostilities can be traced back to 1945. Prior to the 1946 preliminary conference, the Bolivian Red Cross society prepared a draft convention for child protection during armed conflict. In this draft convention, it was proposed that children under the age of 14 years 'are not to be employed or used, even provisionary, in no industry or activity of war, be it a primary or auxiliary industry

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[54] Protected persons are, according to Article 4 of the Fourth GC, 'those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals'.
[55] Oscar M. Uhler et al., *Geneva Convention IV: Commentary* (Geneva, Switzerland: International Committee of the Red Cross, 1958): 292-293.
[56] "Volume I," in *Final Record of the Diplomatic Conference of Geneva of 1949*, 1949: 206, 226, 245, 299.

or activity'.[57] The organisation hereby followed its tradition of efforts to limit the effects of war 'to the most precious part of society: children' with this draft submittal.[58]

By means of the 1946 preliminary conference, the ICRC aimed at gathering information regarding the national Red Cross societies' beliefs as to what was necessary to include in the GCs. From the results of the conference, the ICRC composed a number of documents that incorporated the beliefs of the ICRC and the national societies and subsequently sent them to the delegations attending the 1947 conference of government experts. In these preliminary documents, the ICRC distinguished several categories of the population that 'are most worthy of consideration, namely those who are exposed to the blindly destructive effects of modern mass warfare'.[59] One of these categories encompassed children and held specific children-tailored recommendations. The ICRC's next step to keep the issue of the protection of civilians, and children in particular, prominently on the international agenda, was the dedication of the seventeenth ICRCRC to discussions on the draft GCs. These four-yearly conferences bring together the ICRC, national Red Cross societies and representatives from state parties to the GCs and 'provides a non-political forum for dialogue on humanitarian issues'.[60] The final draft version for the Fourth GC, as well as the revision of the First, Second and Third GC, was debated and prepared during the seventeenth ICRCRC among the participants.

Besides the ICRC and the Bolivian Red Cross society, the IUCW was important in the advocacy for better child protection in armed conflict. As mentioned earlier, the ICRC and the SCIU conjointly pushed for an international children's rights document in 1939, which failed to materialise due to World War II. In the aftermath of World War II, the SCIU merged with two other international organisations working on children's wellbeing to become the IUCW in 1946. The close cooperation of the IUCW and the ICRC in their advocacy efforts manifested itself in multiple ways. For one, the ICRC's commentary on the Fourth GC reads in a footnote on child protection measures: 'All these provisions were considered in cooperation with the International Union for Child Welfare'.[61] Furthermore, the IUCW hosted their General Council on child protection in times of war with national and international organisations only days before the seventeenth ICRCRC. The attendees were given a background report and introductory speech by Captain L.H. Green, president of the Executive Committee of the Save the Children Fund UK. At the end of their discussions, the IUCW stipulated the positive outcomes of consultations between the IUCW and the ICRC and expressed in a resolution their gratitude for 'the close cooperation established' between the organisations and encouraged states to adopt the draft for the Fourth GC as presented.[62] This resolution demonstrates the joint advocacy relationship between two highly influential INGOs. Having identified the ICRC, the IUCW and the Bolivian Red Cross society as the most important INGOs that advocated for provisions on child

[57] "Documentation Fournie par la Croix-Rouge Bolivienne: Document H" in *Conférence Préliminaire des Sociétés de la Croix-Rouge pour l'Étude des Conventions et de Divers Problème ayant Trait à la Croix-Rouge*, 1946: 8.
[58] Ibid., 1.
[59] "Volume III: Condition and Protection of Civilians in Time of War," in *Commission of Government Experts for the Study of Conventions for the Protection of War Victims: Preliminary Documents Submitted by the International Committee of the Red Cross*, 1947: IV.
[60] "International Conferences of the Red Cross and Red Crescent – Reports Available Online," International Committee of the Red Cross, last modified June 5, 2019, https://blogs.icrc.org/cross-files/international-conferences/.
[61] Uhler et al., "Geneva Convention IV: Commentary," 185.
[62] International Union for Child Welfare, "Sommaire: Le Conseil Général De L'Union Internationale De Protection De L'Enfance," *Revue Internationale De L'Enfant* XII, no. 4-5 (1948): 218-219.

recruitment in the Fourth GC, the next section turns to the frame used by these INGOs to advocate for these provisions during the 1940s.

4.3 Paving the Way: Framing the Issue of Child Recruitment

The idea of a new convention for the protection of civilians in armed conflict did not emerge in the immediate aftermath of World War II, but was already advocated for three years prior to the outbreak of World War II. At the 1947 General Council of the IUCW, Captain L.H. Green addressed how his organisation had pushed for this in cooperation with the ICRC and the SCIU (later to become the IUCW). He explained that states were hesitant to even address this convention publicly: 'the public opinion demanded the organisation of the world for peace and not for war, and it was feared, by taking measures for possible hostilities, to risk being accused of pushing for war'.[63] With the tragic events of World War II fresh in mind, however, advocacy efforts addressed the horrors endured by children during the conflict. Preliminary documents submitted by the ICRC to the 1947 conference of government experts reveal:

> *The tragic experience of war has emphasised the need of treaty stipulations for the protection of children. (…) Tens of thousands of children were separated from their parents, or were deported, forced to do compulsory work, enrolled in armed forces, and taken prisoners of war. This state of affairs is particularly distressing, for a child is not a responsible being and clearly "neutral", owing to its years.*[64]

The frame employed here thus points to the child as a victim, too young to (fully) realise what is happening and what it does. The argument developed with claims regarding the physical and psychological effects on children: 'teenagers were compelled into forced labour and suffered all kinds of degradations and moral cruelties, which proved to have far worse and more lasting effects on their physical and mental health than the bombings'.[65] The ICRC complemented this by stating that 'the child is the adult of tomorrow, who may have to suffer the physical and moral consequences of a youth blasted by the horrors of war'.[66] The frame here contains emotionally charged words like 'compelled into forced labour', 'suffered', 'cruelties', and 'horrors of war', to stress the innocence of children and the damaging effects of war on their health. It thereby serves the purpose of defining the effects and conditions as problematic as well as conveying a moral judgment of those involved in the frame, which are two of the purposes of frames according to Entman.

The frame not only highlighted that children are subjected to the circumstances of war and thus lack agency in their decisions, it also points out a long-term impact of war. War-affected children will become the leaders of their countries in the near or distant future, hence their morals should not be compromised by war. Captain L.H. Green elaborated in the 1947 IUCW's General Council: 'Modern war is a revolution and a civil war, and one of the essential features of resistance movements is the use of children

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[63] Ibid., 206.
[64] "Volume III: Condition and Protection of Civilians in Time of War," 45.
[65] International Union for Child Welfare, "Sommaire," 208.
[66] "Volume III: Condition and Protection of Civilians in Time of War," 45.

(...) They teach them the moral of the war, which is diametrically opposed to that of peace.'[67] The statement's essence constituted a second approach to the frame used by the ICRC and IUCW. By referring to war morals as opposed to peace morals taught to children, the involvement of children in hostilities was framed as problematic to the long-term development of society. Given the recent ending of World War II that brought along 'physical and moral consequences (...) blasted by the horrors of war', the frame identified the cause of the problem and subsequently put responsibility to these negative consequences with resistance movements who use children. Opposing morals of war and morals of peace served to condemn the practices of these movements and thus again serves the purpose of transferring moral judgments to involved parties. On top of this, the argument contained a securitisation of children's mental health - war-affected children perceive the world from a framework of hostilities and will act accordingly, endangering lasting peace in the long run.

As noted before, states were unwilling to discuss a convention regulating the protection of civilians during armed conflict prior to the outbreak of World War II. After the war concluded, however, the need for such protection was felt by states. The ICRC and the IUCW used the deplorable events and consequences of the war to showcase the necessity of a convention designed to protect civilians during armed conflict. The fresh memory of war helped them push the subject of child protection higher on the international political agenda by generating a sense of urgency. The issue of children suffering long-term effects from warfare constituted a mismatch between reality and the pictured ideal world by the ICRC and IUCW. This value-based frame activated leaders to undertake action in the form of adopting the 1949 GCs. Tarrow's notion of a set of rules for framing in advocacy to be successful seems particularly true in the employed discourse leading up to the Fourth GC. The injustice at hand is the suffering children endured during World War II that impacted them negatively, while the responsibility to solve this was assigned to the contracting state parties. In doing this while simultaneously proposing draft solutions to the problem, the ICRC and the IUCW use non-specific, overarching frames addressing universal values that should be applied to all children in occupied territories.

4.4 Conclusion

The 1949 Fourth GC contained the first international regulations ever adopted regarding the issue of child recruitment in armed forces. These articles, however, are part of the provisions for civilians in occupied territories and hence do not apply to recruiting children from a state's own civilians. These provisions merely protected children in occupied territories from compulsory employment in general. The 1949 Fourth GC thus contains no focus on the total abolishment of child recruitment in armed forces, but constituted an important first step in this process as the international law treaties in the following chapters draw upon the 1949 Fourth GC. This observation answers the first sub-question of this thesis, which sought to determine what new or altered provisions in IHL addressed the recruitment and use of children in armed conflict. The second aim was to identify the most important INGOs and TANs advocating for the established changes and the means by which they sought to accomplish this. The ICRC and the IUCW proved to be the most influential actors in this regard. It is important, however, to bear in mind the important interference

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[67] International Union for Child Welfare, "Sommaire," 211.

of the Bolivian Red Cross. The instruments employed by these actors to pave the way for the IHL provisions on child recruitment consist of draft proposals, organising and attending multiple conferences, as well as submitting preliminary studies and behind-the-scenes lobbying. Lastly, the frame used by these actors on child recruitment was analysed. The ICRC and IUCW drew upon a frame portraying children as innocent people subjected to the consequences of war, which they deemed a danger to long-term peace. The provisions incorporated in the 1949 Fourth GC to prohibit child recruitment proved to be a first step in IHL, since 1977 saw the adoption of the Additional Protocols to the GCs. Why did states and other non-state actors deem it necessary to add new provisions to prohibit the recruitment and use of children in armed conflict and what strategies (discursive and otherwise) did they employ to this end? The next chapter will seek to address this question.

5. Extending the Recruitment Prohibition: The 1977 Additional Protocols

In the decades after the adoption of the 1949 GCs, states employed new methods of warfare. Aerial bombings became more frequent, states' proliferation intensified and decolonisation processes demanded different approaches of states in a rising number of armed conflicts. New methods of warfare led several newly formed states and a number of organisations to push for a revision of the provisions in the 1949 GCs in the late 1960s. This did not, however, result in a renegotiation of these conventions, but in the adoption of new protocols to the 1949 GCs. Yves Sandoz, the ICRC's lawyer during the drafting process, explained that 'people were afraid that, in a very tense political climate, some important achievements in 1949 Geneva Conventions would be weakened by a new negotiation'.[68] After four years of on and off negotiations, Additional Protocols (AP) I and II were eventually adopted in 1977. Whereas AP I addressed the conduct of war in international armed conflicts (IAC), AP II related to non-international armed conflicts (NIAC). Together with the GCs, the APs constitute the cornerstones of today's IHL.

5.1 New Provisions on Child Recruitment and Participation

The widely perceived need for new regulations on the conduct of modern warfare provided advocacy actors in the field of child protection with a golden opportunity to address the issue of the recruitment and use of children in hostilities again. Both AP I and AP II incorporated one provision on the matter, which both saw a minimum age of fifteen years adopted for participation in armed conflict and recruitment in armed forces, thereby providing an age-based definition to 'the child'. Furthermore, AP I saw a number of changes in Article 77(2), including an extension of child protection during IAC on recruitment and participation in armed conflict (for full text, see Annex 2). Whereas the 1949 Fourth GC only provided protection to children in occupied territories, now all children under age fifteen in states involved in IAC were protected. Another significant change comprised that signatory states 'shall take all feasible measures in order that children who have not attained the age of fifteen do not take a direct part in hostilities'. This part of Article 77(2) addressed, for the first time in IHL, the participation of children by a state's armed forces in hostilities. However, the fact that states had to take 'feasible measures' instead of earlier proposed 'necessary measures', meant that the provision was prone to subjectivity and conditionality. Feasible, as opposed to necessary, held that states could interpret the situation and 'is an obligation of means, not of results'.[69] Additionally, the provision's notion of 'a direct part' left room for states to use children younger than fifteen years in an indirect manner during hostilities, thus not providing protection under age fifteen under all circumstances in times of war.

The second part of Article 77(2) saw a raise in the minimum recruitment age to fifteen years by armed forces and an addition in the form of 'endeavour to give priority to those who are the oldest' when the children were older than fifteen years, but younger than eighteen years. This was the result of proposals

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[68] "The 1977 Additional Protocols to Geneva Conventions: A Historical Perspective," International Committee of the Red Cross, last modified August 22, 2017, https://www.icrc.org/en/document/china-Yves-Sandoz-additional-protocols-40-years.

[69] Matthew Happold, "The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," in *Yearbook of International Humanitarian Law*, ed. Horst Fischer and Avril McDonald, vol. 3 (The Hague, The Netherlands: T.M.C. Asser Press, 2002, pp. 226-244): 236.

by several state parties to raise the minimum recruitment age to eighteen years. Moreover, the term 'recruitment' was not defined or specified, resulting in continuing debates on what types of recruitment were and were not allowed.[70] On the one hand, it is argued that recruitment 'implies some active soliciting of "recruits", i.e. to pressure or induce them to enlist'.[71] This argument entails the conception that voluntary enlistment does not fall under the notion of recruitment. On the other hand, however, it is argued that recruitment does include voluntary enlistment, for 'a person who has voluntarily enlisted for service can still be said to have been recruited into the armed forces'.[72] It is possible that the latter argument better fits the spirit of AP I, as legal scholar Shaheed Fatima points out, but since the interpretation of this phrasing is highly debated, it is not possible to determine the exact extent to which this provision is an alteration of previous IHL policy.

Turning to AP II, the first significant change constituted the first IHL provisions to address the conduct of warfare during NIAC. Despite fewer articles regulating this, Article 4(3) on child recruitment and participation in armed conflict are stronger formulated compared to AP I (for full text, see Annex 1). All parties to the conflict were not required to take 'feasible measures' as was the case in AP I, but were obligated to ensure that children 'shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities'. It is possible that this difference between AP I and AP II comes from a wish for measures to gain control of a state's population. In case of IAC, children could be more easily recruited and/or used by armed forces to gain the upper hand because of the subjectivity and conditionality of Article 77(2). On the other hand, it could be argued that states did not want armed groups to recruit children and hence let these groups grow in numbers in order to overthrow the government and thus wanted to contain this risk by setting these stricter measures. Additionally, a certain amount of subjectivity and conditionality was incorporated in the final version of Article 77(2), 'as on this point governments did not wish to undertake unconditional obligations'.[73]

5.2 The Policy Stream and the Role of the ICRC and IUCW

In the drafting process of the 1977 APs, some similarities emerged compared to the drafting process of the 1949 Fourth GC. Most importantly, the ICRC and the IUCW proved again to be the most influential and active advocacy actors in the pursuit of provisions on child recruitment and participation in armed conflict. Similar to the four GCs, the ICRC pursued the role of a neutral, humanitarian organisation that should not be hindered in their work during armed conflict. Interestingly, the ICRC started lobbying in the mid-1950s for new rules on methods of warfare. At the nineteenth ICRCRC in New Delhi in 1957, the ICRC tried to convince states to adopt a new set of rules on the conduct of warfare. Historian François Bugnion explained that the Korean war and other politically charged events produced high international tensions.[74] This halted the ICRC's efforts to negotiate new provisions in IHL, resulting in a total abandonment by states of

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[70] Fatima, *Protecting Children in Armed Conflict*, 182-183.
[71] Ibid., 183.
[72] Ibid., 183.
[73] Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Leiden, The Netherlands: Martinus Nijhoff Publishers, 1987): 900.
[74] "Drafting History of the 1977 Additional Protocols," International Committee of the Red Cross, accessed October 16, 2019, https://blogs.icrc.org/cross-files/drafting-history-1977-additional-protocols/.

the drafted set of rules that were presented at the nineteenth ICRCRC. Newly formed states, however, felt the GCs did not cover the kind of wars they fought to become independent and called for new rules of the conduct of war. They addressed this issue in 1968 at the UN Conference on Human Rights in Tehran and adopted a resolution on human rights in armed conflicts that encouraged the ICRC to reopen the issue and come up with a draft for the APs.[75]
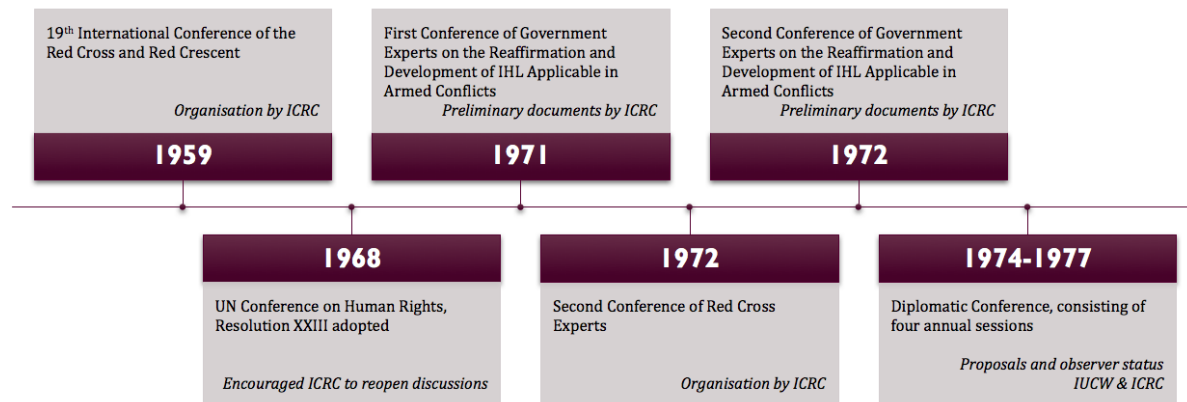

Figure 2. Overview of events included in the analysis.

Although the ICRC and the IUCW proved again to be most influential in their child-related advocacy efforts, their approach slightly differed from that of the 1940s. Whereas the ICRC hosted a preliminary conference for the national Red Cross societies in 1946, they did not do so prior to the adoption of the 1977 APs. Instead, they organised two Red Cross expert meetings in 1971 and 1972, as can be seen in Figure 2, and sent a questionnaire to INGOs, including the IUCW, to incorporate the opinions of both the experts and the INGOs in the ICRC's draft proposal for the APs. The IUCW distributed this questionnaire among its member organisations and concluded that, concerning a draft provision on the child recruitment and participation issue, 'it is the overwhelming opinion (…) that an article of this type should be included in any development of the international humanitarian law of armed conflict'.[76] Subsequently, the IUCW wrote an elaborate commentary on the ICRC's proposed provisions, which was discussed by the government experts in 1971 and 1972 and fully incorporated in the annexes of the reports on these meeting. From this moment onwards, the issue of child recruitment and use was integrated in the draft provisions for the APs.

Despite the ICRC and the IUCW being the two most influential INGOs for child-specific provisions in the 1977 APs, it was not until later in the drafting process that the topic of child recruitment and participation in armed conflict surfaced. In the ICRC's 1957 draft rules for the conduct of warfare, no reference was made to this issue. In fact, in these draft rules, children are referred to only four times. As for the IUCW, they did not discuss the subject in their journal *International Child Welfare Review* until 1972. It was not until the first conference of government experts in 1971 that reference is made to the issue of the recruitment and use of children in armed conflict. In their submitted preliminary documents to this 1971

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[75] The mentioned resolution adopted at the Conference on Human Rights in Tehran is Resolution XXIII, which concerns compliance and becoming a party to the GCs by states.

[76] International Union for Child Welfare, "The Protection of Children in Times of Armed Conflict," *International Child Welfare Review* XXIX, no. 1 (1973): 70.

conference, the ICRC, however, did discuss 'the problem of their [children's] use in military operations' and that this 'has not even been studied up to now, yet it is the most important one'.[77] It could be argued here that the interest taken in the subject during the 1971 government experts conference induced both the ICRC and the IUCW to become more active and lobby for the development of restrictions on child recruitment and participation in armed conflict. Although lobby activities are typically not publically available, the IUCW elaborated on their contacts with several government experts prior to the 1972 government expert conference in one of their journals. Herein, they state that there had been 'excellent contact with the experts on this matter, and this proved extremely important. The Swedish experts (...) played an important role in Commission III and strongly supported the IUCW Commentary'.[78] Sweden held the position of vice-chairman in this commission, which was concerned with the draft articles of AP I. From the records, it becomes clear that there was a general consensus concerning draft Article 58 (later to become Article 77(2)), in the sense that the government experts agreed on the need for better child protection in armed conflicts through IHL regulation.

    With regard to the meetings of Commission II, concerned with drafting AP II, the IUCW observed little attention for their commentary. It seemed the goal of this commission was 'to keep the provisions as brief as possible'.[79] The proposals made by the ICRC for AP II, however, were all accepted by the government experts, containing that states were obliged 'to take care that children under fifteen years of age do not take any direct part in hostilities' in draft Article 6(2), later becoming Article 4(3).[80] It is not true, however, that this provision was not given any attention. Among other discussions, an exchange of thoughts took place on whether the age limit of fifteen years should not be enhanced to eighteen, since one government expert was surprised 'that the ICRC should have set the age-limit at fifteen years, which was much too low'.[81] After the discussions on both AP I and II, the ICRC rewrote its draft protocols and subsequently put them up for debate during the twenty-second ICRCRC in 1973, after which the Diplomatic Conference held four sessions on the draft protocols between 1974 and 1977.

5.3 Paving the Way: Framing the Issue of Child Recruitment and Participation
Although some provisions were already in place in the Fourth GC, child recruitment remained neglected in international law. With respect to the use of children in armed conflict, the ICRC considered the matter 'the most important one since children are becoming increasingly involved in war, being either used to assist irregular forces, or made the subject of military operations'. The IUCW echoes this argument in their commentary on the ICRC's draft provisions on the prohibition of the recruitment and use of children in hostilities in AP I, stating that children 'tend to be participants in armed conflicts where one of the parties

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[77] "Volume III: Protection of the Civilian Population against Dangers of Hostilities," in *Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict: Preliminary Documents Submitted by the International Committee of the Red Cross*, 1972: 46.
[78] International Union for Child Welfare, "The IUCW and the Protection of Children in Times of Armed Conflict," *International Child Welfare Review* XXXVIII, no. 2 (1972): 45.
[79] Ibid., 45.
[80] International Committee of the Red Cross, *Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts: Report on the Work of the Conference* (Geneva, Switzerland: International Committee of the Red Cross, 1972): 76.
[81] Ibid., 76.

is in a situation of military inferiority, particularly in what are considered by the parties to be wars of liberation or self-defence guerrilla type fighting is prevalent'.[82] The IUCW continued that 'recent armed conflicts of an internal character have resulted in great suffering to large numbers of children'.[83] Adding to this line of thought, the ICRC argued during the 1976 Diplomatic Conference:

> *Children, like the rest of the civilian population, paid a heavy price in international conflicts, but (...) their situation was even more tragic because of their defencelessness. They could not try to face events by themselves as adults could. Furthermore, the psychological traumas caused by war often left indelible impressions on them. Hence every effort should be made to protect children from the evils of war. (...) Only too happy to make themselves useful, and feeling that by doing so they were behaving like adults, children asked for nothing better. To take advantage of that feeling was particularly odious, for although children taking such action ran precisely the same risks as adult combatants, unlike adults they did not always understand very clearly what awaited them for participating directly or indirectly in hostilities.*[84]

Moreover, in their 1987 Commentary of the 1977 APs, the frame used by the ICRC - and implicitly the IUCW, given that the two organisations worked together - also entailed that:

> *Participation of children and adolescents in combat is an inhumane practice and the ICRC considered that it should come to an end. It entails mortal danger for the children themselves, but also for the many people who are exposed to their erratic. (...) The authorities employing and commanding them (...) should remember that they are dealing with persons who are not yet sufficiently mature, or even have the necessary discernment of discrimination.*[85]

The frame used during the 1970s again indicated that children are innocent human beings who are subjected to decisions made by adults. By using words like 'great suffering', 'defencelessness', 'their erratic', 'not yet sufficiently mature', and the notion that children do not possess 'the necessary discernment of discrimination', the image of an innocent and unknowing child was strengthened. Adding emotionally charged words such as 'evils of war', 'mortal danger', and 'risks', the audience was persuaded into perceiving these children as being defenceless against the consequences they suffer, which is implicitly considered unfair and worthy of creating provisions for the prevention of these situations. Not only should children younger than fifteen years not be held accountable for their actions since they 'are all too often ready to follow adults without weighing up the consequences of their acts', they should not even be placed in this

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[82] International Union for Child Welfare, "The Protection of Children in Times of Armed Conflict," 72.
[83] Ibid., 72.
[84] "Volume XV," in *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts: Geneva (1974-1977)*, 1978: 63-64.
[85] Sandoz, Swinarski, and Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949,* 900-901.

position.[86] The frame not only served the purpose of defining the problem, it hereby also identified a cause and simultaneously morally judged the involved actors by putting the blame on authorities and other adults who took advantage of the defencelessness and obedience of children by involving them in armed conflict.

Although the 1940s' frame contained some reference to children's mental wellbeing, the 1970s' frame incorporated elaborate references to the consequences of war on a child's psyche. This fitted a broader frame of the ICRC as to why children should be granted special protection in IHL. The ICRC explained that 'the protection of children and young people closely follows the social and economic evolution of States'.[87] This argument is not new, as the 1940s' frame followed the same line of argument: children are vulnerable persons and in need of adult protection, so that both the world's and a state's long-term peace will not fall victim to people who suffer from childhood war traumas. Again, the discourse is based on a discrepancy between reality and the ideal world pictured by the ICRC and IUCW as a world where children can develop physically and mentally to their fullest potential, thus contributing to a society's long-term development and world peace.

Interestingly, the IUCW's cautiousness in pursuing provisions to protect children from being involved in hostilities held that:

> *In view of what might unfortunately be considered the military necessity of children in such types of conflicts it is important not to put the age limit on their use at an unreasonably high level lest we invite wholesale disregard for the provision.*[88]

Based on this statement, it could be argued that the IUCW would have preferred a higher age limit than fifteen years, but feared abandonment of the entire provision in case the ICRC and IUCW would pursue a higher standard. This complies with Kingdon's argument that policy entrepreneurs are willing to settle for less than their extreme positions when there is a serious possibility that their views might transform into policy.[89] Although the policy stream revolves around persuading the policy community, bargaining is important in the political stream in order to reach consensus. When one sticks to their rigid positions, there is a high risk in being disregarded when a serious opportunity of passage for policy making passes by. This, in turn, would lead to a loss of ability in shaping the final version of policies. The IUCW was thus careful to argue for too extreme standards when the possibility of adopting new child recruitment and participation provisions became real, deeming the involvement of children merely an unfortunate military necessity.

5.4 Conclusion

The 1977 APs addressed both the recruitment and the use of children during armed conflict and contain provisions on this matter regarding IAC and NIAC. Regarding NIAC, AP II is the first international law treaty addressing the conduct of warfare in conflicts of a non-international character. With that, the provisions

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[86] Ibid., 1379.
[87] International Committee of the Red Cross, "Orientation De La Politique En Faveur De l'Enfance," *Revue Internationale De La Croix-Rouge*, no. 664 (1974): 233.
[88] International Union for Child Welfare, "The Protection of Children in Times of Armed Conflict," 70.
[89] Kingdon, *Agendas, Alternatives, and Public Policies*, 167-168.

prohibiting the recruitment and participation of children under fifteen years in hostilities were the first of its kind. With respect to IAC, recruiting children in occupied territories was already prohibited in the 1949 Fourth GC, but now an age limit was tied to the prohibition. Additionally, Article 77(2) of AP I did not only apply to children in occupied territories, but to all children, regardless of their nationality. Turning to the use of children in hostilities, the restrictions are not as rigid as in AP II. The conditionality and subjectivity of the provision could theoretically allow a child younger than fifteen years to be part of direct hostilities without violating IHL provisions. Whereas this answers the first sub-question of the analysis, the second question aimed at identifying the most important advocacy actors in this timeframe and the means by which they addressed the policy community. Once more, the ICRC and IUCW proved to be the most influential organisations advocating for child protection measures. Only after the first government experts conference of 1971, the organisations actively engaged in advocacy for provisions on child recruitment and participation during hostilities. They did so through organising meetings, preliminary contributions to the two government expert conferences of 1971 and 1972, as well as private lobbying. Thus, the organisations mostly continued the way they advocated for IHL provisions compared to the 1940s. Regarding the third sub-question, the most important conclusion is that the main discourse overall contained the same arguments as in the 1940s, stressing the innocence of children and the negative effects of war on long-term peace. How international law developed after the adoption of the 1977 APs in IHRL will be discussed in the next chapter, examining the 1990s advocacy efforts that resulted in the 2000 OPAC.

6. Raising the Age Limit: The 2000 Optional Protocol to the CRC

After the 1977 APs were adopted and prior to the adoption of the OPAC in 2000, the Convention on the Rights of the Child (CRC) was adopted in 1989. This convention redefined the notion of 'the child' by raising the age limit to eighteen years. Nonetheless, the minimum age for children's recruitment and participation in hostilities was not raised due to - at the time - insurmountable objections by a few states. Article 38 of the CRC merely repeated the provisions of Article 77(2) in AP I and obliged states to respect existing IHL provisions relevant to child protection. For this reason, the CRC is not part of this analysis, although it is necessary to mention the CRC and its failure to raise the minimum age in Article 38 to understand the advocacy efforts prior to the 2000 OPAC's adoption and because the OPAC concerns an addition to the 1989 CRC.

6.1 Extended Provisions on Child Recruitment and Participation
Given the exclusive attention of the OPAC for the matter of children's involvement in armed conflict, this chapter focuses solely on the relevant provisions (Articles 1 to 3: for full text, see Annex 1 and 2) pertaining to the recruitment in armed forces and participation of children in hostilities. Since the OPAC is a IHRL document, it is also important to note that the provisions in the protocol addressed state obligations and did not impose any legal commitments on non-state armed groups. Although Article 4 of the OPAC deals with non-state armed groups, these provisions concern the measures a state should take in order to prevent these groups from recruiting and using children.[90] Since this thesis does not focus on child recruitment in non-state armed groups, this provision will be left out of the analysis.

Owing to a discontent with the CRC's failure to raise the age limit in Article 38, the OPAC held a number of significant changes for international law. For one, it separated provisions on children's participation in hostilities on the one hand and provisions on child recruitment in armed forces on the other hand. Concerning children's participation, Article 1 of the protocol repeated for the most part the language of Article 77(2) of the 1977 AP I, except for a raise in minimum age, allowing state parties to only use children in their armed forces in armed conflict when they are over eighteen years old. Apart from this change, Article 1 again stipulated that states 'shall take all *feasible* measures'[91] to avoid 'members of their armed forces' under age eighteen to partake in armed conflict in a direct manner. The subjectivity and conditionality of the 1977 AP I hence was not altered with the adoption of the 2000 OPAC. This observation is also supported by the fact that states published their interpretations of Article 1, explaining under what circumstances they would not breach the provision when they would use a child under the age of eighteen years in direct hostilities.

Turning to provisions on child recruitment in armed forces, the 2000 OPAC held two articles addressing different types of recruitment. Whereas Article 2 focused on compulsory recruitment, which was not allowed for children under age eighteen, Article 3 elaborated on different aspects of voluntary recruitment. Different from AP I's phrasing 'shall refrain from', Article 2 held 'shall ensure' to address the

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[90] Fatima, *Protecting Children in Armed Conflict*, 209.
[91] Emphasis added.

obligations for state parties. This meant that signatory states were required to prevent compulsory recruitment among minors in a proactive manner, whereas AP I concerns a passive prohibition.[92] With respect to Article 3, the minimum age for voluntary recruitment is not raised to eighteen years, but sixteen years.[93] This is the result of a lobby from some states unwilling to raise the minimum recruitment age for all forms of recruitment any higher than sixteen years.

6.2 The Policy Stream and the Role of the NGO Group for the CRC, FWCC, Rädda Barnen/ISCA, ICRC and CSUCS
The drafting and advocacy process of the OPAC took a decade to materialise and drew an unprecedented number of actors to the table to discuss the issue of children's involvement in armed conflict. It is not possible to discuss all involved INGOs and analyse their role in softening up the policy community. The way the involved actors tried to establish the OPAC differed significantly from the 1940s and 1970s. One important reason for this is the forum where the draft was negotiated. Since the OPAC concerns a protocol to the CRC, a UN convention, advocacy efforts had to be tailored to the relevant UN structures and bodies. This limited the extent to which the actors could influence the drafts, although this did not limit the amount of work and energy put into their efforts. The structure of the UN is diffuse at times, with the same topic discussed in different bodies from various perspectives. For the draft of the 2000 OPAC, however, a special Working Group was created in 1994 by the UN Commission on Human Rights to come up with a draft protocol.[94] This thesis therefore focuses on events and advocacy efforts (1) that are related to this Working Group when considering the UN and (2) that took place outside the UN. A selection of the most important events can be found in Figure 3.
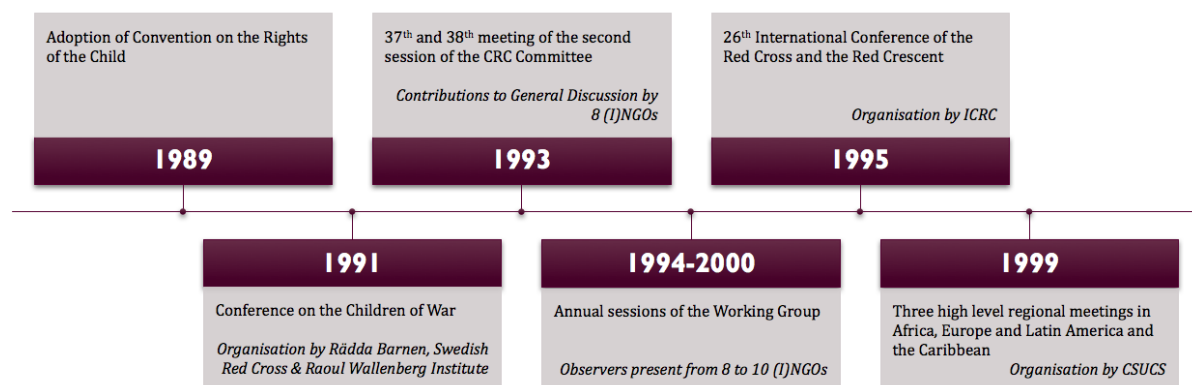

Figure 3. Overview of events included in the analysis.

Concerning the attention for the issue of involving children in armed conflict, the number of involved (I)NGOs and coalitions increased gradually from the mid-1980s onwards, as did the amount of studies and books published on the issue. The NGO Group for the CRC (henceforth NGO Group), an ad hoc advocacy group established in 1983 to influence the drafting process of the CRC, provided (I)NGOs with a platform

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[92] Fatima, *Protecting Children in Armed Conflict*, 206.
[93] Gus Waschefort, *International Law and Child Soldiers* (Oxford, UK: Hart Publishing Ltd., 2015): 94.
[94] UN Commission on Human Rights, *Implementation of the Convention on the Rights of the Child*, E/CN.4/RES/1994/91 (March 9, 1994), https://www.refworld.org/docid/3b00f0cf38.html.

where they could coordinate their advocacy efforts in an efficient and unified way. Although the NGO Group was meant to be dissolved after the adoption of the 1989 CRC, they remained in place and still exist anno 2019 under the name Child Rights Connect. The reason for keeping the NGO Group alive, was that the UN's CRC Committee 'may invite (...) other competent bodies (...) to provide expert advice on the implementation of the Convention [CRC]'.[95] The NGO Group's Sub-Group on Refugee Children and Children in Armed Conflict was reactivated in 1993 during the NGO Group's biannual meeting in Geneva and made responsible for 'the exchange of information and, when relevant, to plan jointly and to facilitate NGO action'.[96]

Prior to this revival, however, two (I)NGOs already proved unwilling to let go of the age limit for child recruitment and participation in armed conflict as set in Article 38 of the 1989 CRC. These were the Friends World Committee for Consultation (FWCC), in particular its Quaker UN Office in Geneva, and the International Save the Children Alliance (ISCA). With respect to the latter, however, it is important to explicitly name Rädda Barnen, the Swedish Save the Children Federation. This NGO, although not international, proved together with the FWCC a driving force in pursuing a raise of the age limit for children's recruitment and participation in hostilities.[97] The FWCC was present at all six meetings of the UN Working Group, whereas Rädda Barnen and the ISCA observed nearly all meetings. They also participated in the thirty-eight and thirty-ninth meetings of the second session of the CRC Committee in 1992, which recommended the UN Commission for Human Rights to create the Working Group. Also, it concluded with a call for attention for the issue towards the UN General Assembly and the UN Secretary General.[98] Furthermore, the FWCC and Rädda Barnen issued several newsletters and updates on the status and experiences of children who were recruited and participated in hostilities from the mid-1980s onwards.[99] From 1995 onwards, the FWCC took over the role of convenor from the NGO Group, reaffirming its position as a driving force behind the advocacy efforts for the OPAC.[100]

Additionally, Rädda Barnen hosted an important conference in 1991 on protecting children from recruitment and participation in armed conflict in collaboration with the Swedish Red Cross and the Raoul Wallenberg Institute. The conference sought 'to analyze the consequences of using children as soldiers and to find ways to prevent that use'.[101] Several recommendations, e.g. a thorough study on the subject and raising the age limit from fifteen to eighteen years, were taken on by the international community and carried out. In the years after the conference, several important studies were carried out by or with contributions from INGOs. One example is a research conducting case studies on child recruitment, published in the book *Children: The Invisible Soldiers*.[102] This research was carried out under the aegis of the NGO Group and was important in contributing to the highly influential 1996 study by Graça Machel *The*

[95] Convention on the Rights of the Child, New York, November 20, 1989, *United Nations Treaty Series*, vol. 1577, No. 27531, p. 3, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en.
[96] Helena Gezelius, "International NGOs Collaborate to Promote the Rights of Children Affected by Armed Conflict," *The International Journal of Children's Rights* 4 (1996): 161-162.
[97] Rachel Brett, "Child Soldiers: Law, Politics and Practice," *The International Journal of Children's Rights* 4 (1996): 118-119.
[98] UN Committee on the Rights of the Child, *CRC/C/16: Report on the Third Session*, Geneva, January 20, 1993: 36.
[99] UN Committee on the Rights of the Child, *CRC/C/SR.38: Summary Record of the 38th Meeting*, Geneva, October 4, 1992: 4-5.
[100] Gezelius, "International NGOs Collaborate to Promote the Rights of Children Affected by Armed Conflict," 164.
[101] "Children of War: Report from the Conference on Children of War, Stockholm 31 May – 2 June 1991," *Conference on Children of War* (1991): 9.
[102] Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers* (Växjö, Sweden: Grafiska Punkten, 1996).

Impact of Armed Conflict on Children. This latter report provided the UN Working Group with important recommendations for their discussions and writing of the draft OPAC.[103]

Although the ICRC's role in the policy stream of the OPAC is not as present as those of the NGO Group, the FWCC and Rädda Barnen, for the purpose of comparison given the ICRC's role in the 1949 Fourth GC and the 1977 APs, the ICRC's efforts are considered here. Given that the IUWC was disbanded in the 1980s, this will not be done for the IUCW. In the early 1980s, when the initial idea to include an article in the 1989 CRC concerning children in armed conflict arose, the ICRC was one among a number of critics, trying 'to swat the NGO Group into abandoning the project, asserting that cherry-picking clauses from humanitarian law to a human rights treaty might lead to the creation of double standards'.[104] In the late 1980s, however, this changed, when the ICRC lobbied with the FWCC and the ISCA/Rädda Barnen to get states to support a proposal to raise the minimum military participation age from fifteen to eighteen years.[105] Besides attending the 1991 Conference on Children of War, the ICRC addressed the issue at the twenty-sixth ICRCRC and issued the Henry Dunant Institute, founded by the ICRC in 1965, 'to undertake a study (...) on the recruitment and participation of children as soldiers in armed conflicts'.[106] The resulting book, *Child Soldiers: The Role of Children in Armed Conflict*, formed the basis for a Plan of Action that was adopted by consensus during the twenty-sixth ICRCRC. Given the ICRC's reputation on humanitarian issues and their actions to advocate for raising the age limit, the ICRC again proved fairly active despite their previous hesitance. They did not, however, ascertain the leading role they played during the drafting processes of the 1949 Fourth GC and the 1977 APs.

When the UN Working Group experienced an impasse in 1997, six leading INGOs formed the Coalition to Stop the Use of Child Soldiers (CSUCS) in 1998.[107] An 'extremely active campaign' commenced that possibly helped spur the negotiations surrounding the OPAC.[108] CSUCS organised three high level regional conferences in 1999 in Latin America and the Caribbean, Africa and Europe to get states to condemn the involvement of children in armed conflicts and to spark the discussion on the topic on several levels. Besides these conferences, the CSUCS published new research in 1998 on child soldiers, sought 'partnerships with sympathetic governments' and actively engaged with the media.[109]

In this increased attention for the subject of children's involvement in armed conflict and a raised number of involved actors, the 1990s saw the emergence of a TAN. The criteria for a TAN's creation were discussed in Chapter 3.1 and can be observed here.[110] Since the issue of children involved in armed conflict

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[103] Brett, "Child Soldiers," 120.
[104] Linde Lindkvist, "Rights for the World's Children: Rädda Barnen and the Making of the UN Convention on the Rights of the Child," *Nordic Journal of Human Rights* 36, no. 3 (2018): 298.
[105] Ibid., 299.
[106] Brett, "Child Soldiers," 121.
[107] The Coalition comprised of Amnesty International, Human Rights Watch, International Federation Terre des Hommes, the International Save the Children Alliance, the Jesuit Refugee Service (Geneva) and the Quaker UN Office.
[108] Happold, "The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," 232.
[109] "Child Soldiers," Human Rights Watch, accessed November 26, 2019, https://www.hrw.org/legacy/wr2k/Issues-02.htm.
[110] A TAN emerges when the issue they advocate for meet the following three criteria: (1) communication channels between domestic parties and their governments are restrained and not effective for resolving a conflict; (2) there is a strong believe that networking helps to achieve campaigns and missions; and (3) the networks are formed and strengthened through arenas created by international contacts like international conferences.

concerned children who were regarded as innocent victims subjected to the abuse of state and non-state actors, as will be demonstrated in the next section, the advocacy actors took responsibility to advocate on these children's behalf since they were in no position to communicate or negotiate with their governments. Furthermore, the strong belief that networking helps to achieve desired outcomes was already present with the creation of the NGO Group, which served as a platform for (I)NGOs to collaborate in their advocacy efforts. Lastly, the 1991 Conference on Children of War is an evident arena of international contact, with not only (I)NGOs attending, but also researchers and other non-state actors. Having discussed the non-discursive means employed by the aforementioned INGOs and the TAN, the analysis now turns to the frame they used in persuading the international community for the necessity of the OPAC.

6.3 Paving the Way: Framing the Issue of Child Recruitment and Participation
Due to the dissatisfaction with Article 38 of the CRC, the ISCA/Rädda Barnen, the FWCC, the NGO Group and the ICRC continued their advocacy work conjointly to establish better protection measures for children's military participation. With the gradually growing attention for the issue, a lot of material has been produced on the subject since the mid-1980s. The analysis in this section therefore aims at laying out the main frame that was in place during the 1990s, rather than discussing all variations of claims stressing the same arguments.

With respect as to why the age limit needed to be raised according to the involved actors, it is important to bear in mind that 'after substantial lobbying by some NGOs, this proposal [of raising the CRC's minimum recruitment age from fifteen to eighteen years] was endorsed by almost all countries in the Working Group on the Rights of the Child'.[111] The United States, however, was opposed to this to the extent that the proposal eventually did not make it into the CRC. Dissatisfied by this, INGOs and other experts discussed why children should not be soldiers during the 1991 Conference on Children of War. Before delving into presented arguments, it is important to note here that for the first time, children involved in armed conflict were named 'soldiers' and 'child soldiers' in virtually all advocacy communications.[112] However, without an accompanying frame, the stereotyped image of a child soldier would not contain the connotations it held in the 1990s and last until today.

Turning back to the 1991 Conference on Children of War, arguments were presented as to why additional and stricter provisions were necessary. In the preface of its report, the organisers state that 'governments as well as armed non-governmental entities use children and often coerce children to participate as soldiers'.[113] Archbishop Desmond Tutu added that 'no matter what the child is guilty of, the main responsibility lies with us, the adults. Children are easily coerced into doing things they would never have done in a normal situation.'[114] Furthermore, 'a person under the age of eighteen is not mature enough to understand the consequences of his behaviour and might, therefore, not be fully capable of complying

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[111] "Children of War," 23.
[112] Other examples of this are books by the advocacy actors, e.g. *Child Soldiers: The Role of Children in Armed Conflict* by Ilene Cohn, Guy Goodwin-Gill, 1994, *Children: The Invisible Soldiers* by Rachel Brett and Margaret McCallin, 1996, and *Stop Using Child Soldiers!* by the Coalition to Stop the Use of Child Soldiers, 1998.
[113] "Children of War," Preface.
[114] Brett and McCallin, *Children*, 7.

with the laws of war, which apply to all combatants'.[115] Since children were the innocent victims in hostilities, an ICRC representative argued in the thirty-eight meeting of the CRC Committee that the age limit should gradually be raised to eighteen years. Lennart Lindgren and Carl von Essen, representing Rädda Barnen, elaborated:

> *Children are press-ganged by both governments and armed opposition groups. Many children also volunteer in search of physical or economic security, or for cultural or ideological reasons. But the single major cause of children volunteering armed opposition groups is their own experience of ill-treatment (...) Overwhelmingly, the children are from the poorest and most marginalised sectors of society (...) Once recruited, the children are brutalised, indoctrinated into violence, supplied with drugs and alcohol, and used for hazardous activities such as clearing mines and spying.*[116]

Framing children as the subject of abuse and other traumatic situations through passive use of language, demonstrates that this frame denied children's agency. Words like 'coerced', 'not mature (enough)', 'not fully capable', and 'innocent' contributed to the idea of children in need of adult protection. Furthermore, the actors connect the notion of a 'child soldier' with photos of young children holding weapons, where children look into the camera, resting their weapons next to them or holding them loosely in their arms. The photos, depicting children as harmless, often do not show any adults. All these elements contribute to the notion of the 'child soldier' as an innocent victim in need of protection. Although reasons are given for children's voluntary involvement in armed conflict, this is attributed to their socio-economic situation and/or previous experiences with abuse. The argument further elaborated that if recruited, children are likely to fall victim to agonising events. The 'severe emotional disturbances' would lead to a 'distortion of moral values and a risk of becoming involved in criminal activities or drug abuse'.[117] Child psychologist Magne Raundalen argued during the 1991 Conference on Children of War that children who actively participated in armed conflict learned 'to accept violent behaviour at an early age' and

> *Are continuously exposed to a climate of hate and violence. (...) If aggressive behaviour in children is encouraged, this could be a source of destabilization after periods of war. The peace process must therefore include a process of reducing such aggression.*[118]

The negative long-term and short-term effects of war traumas on children participating in armed conflict were not confined to effects on children, but extended to the entire society. Linking nurtured violent behaviour, hate and war traumas to destabilising effects on long-term peace, the frame made explicit that the international community would be subjected to the consequences of involving children in armed conflict, given the hostile attitude they would cherish during and after war. Using words like 'violence',

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[115] "Children of War," 37.
[116] Brett and McCallin, *Children,* 10.
[117] "Children of War," 33.
[118] "Children of War," 19.

'aggressive behaviour' and 'destabilization' as opposed to 'peace' support this observation, which also underscores how the frame stipulated, again, a mismatch between an ideal state by the INGOs and TAN and reality. In the frame, responsibility for both causing and resolving this issue was assigned to 'both governments and armed opposition groups', hence the frame served multiple aims as identified by Entman. For one, it made the effects and conditions of children's involvement in armed conflict problematic, then continued to identify the causes of the issue, which mainly stemmed from war waged by adults. By assigning the responsibility to government and non-state armed groups and subsequently deeming the practice of involving children in hostilities as a morally reprehensible practice, the frame also conveyed a moral judgment of those deemed responsible for the situation.

6.4 Conclusion

The 2000 OPAC constituted the first treaty to exclusively address the involvement of children in armed conflict in any type of international law. The first significant change was the raise of the minimum recruitment and participation age of children in hostilities from fifteen to eighteen years. The only exception to this observation is incorporated in Article 3 on voluntary recruitment, which raised the age limit from fifteen to sixteen years. With regard to the participation of children in armed conflict, little changed in the OPAC compared to Article 77(2) of the 1977 AP I and Article 38 of the CRC, apart from the raise in minimum participation age. Furthermore, it sets explicit rules for voluntary and compulsory recruitment in two separate articles, making the minimum standards for states to uphold less ambiguous. The exclusive attention for forms of child involvement in hostilities signalled the increased attention for the issue in the 1990s. Although more actors were involved, the INGOs most influential were the NGO Group for the CRC, the FWCC, Rädda Barnen/the ISCA, the ICRC and the CSUCS (the latter from 1998 onwards). These actors advocated for the OPAC within the emerged TAN in a number of ways, including writing newsletters and updates, organising conferences, conducting studies and attending UN Working Group meetings. Additionally, CSUCS not only actively engaged with media, but also sought partnerships with sympathetic governments. Turning to the third section, the arguments presented by the aforementioned INGOs and TAN for the necessity of the OPAC, several observations were made. Continuing the line of argument in place since the 1949 Fourth GC, children were considered not yet fully mature and were hence not fully conscious of the consequences to their actions. Furthermore, it was 'immoral for adults to have children to fight their wars', given the willingness of children to do what adults asked of them. Concluding the analysis of the 1990s and the OPAC, the next chapter will return to the main research question posed in this thesis' introduction by discussing how the findings of Chapters 4, 5 and 6 relate to each other.

7. Conclusion

Initially, the question was posed how INGOs and TANs sought to persuade the international community into adopting IHL and IHRL provisions to restrict children's involvement in armed conflict. As the literature review demonstrated, this constituted a neglected research area. The aim of this thesis to fill this gap was twofold. On the one hand, it sought to uncover how INGOs and TANs used language by means of framing, providing a starting point to understand how power relations were constructed and maintained in the field of protecting children from their involvement in armed conflict. On the other hand, insights into the role of non-state actors in policy making processes could provide explanations as to why discussions on the topic of children's involvement in armed conflict remain very much alive today.

7.1 Policy Development

Policy aimed at preventing children's involvement in armed conflict came into existence with the creation of provisions on child recruitment in the 1949 Fourth GC. Since these provisions only addressed the recruitment of children in occupied territories and contained no definition of 'the child', the issue was again subject of debate during the drafting process of the 1977 APs I and II. Regulations in AP I on IAC and AP II on NIAC differed in terms of rigidness. Whereas AP I left room for subjectivity and conditionality, AP II saw a stricter prohibition of children's involvement in armed conflict. Additionally, AP I and II provided an age-based definition of 'the child', set at fifteen years. Lastly, the APs addressed for the first time in international law the participation of children in hostilities, whereas provisions on their recruitment in armed forces were expanded to protect all children of all states involved in IAC. When 1989 saw the adoption of the CRC, both state parties and (I)NGOs were left dissatisfied with Article 38 that failed to raise the age limit of fifteen to eighteen years. This discontent led to the adoption of the OPAC in 2000, which raised the minimum age of children's involvement in armed conflict to eighteen years. Regarding children's participation in hostilities, the OPAC did not provide stricter provisions beyond the raised age limit, thus leaving the subjectivity and conditionality of the 1977 APs intact. The OPAC also differentiated voluntary from compulsory recruitment, the first being allowed from age sixteen.

7.2 INGOs, TANs and Frames

Comparing the 1940s to the 1970s, two main similarities can be observed. First, the most influential INGOs were the ICRC and the IUCW. Furthermore, their means to pave the way for their IHL proposals were quite similar, although not identical. The non-discursive means contained of organising and attending important conferences, writing documents aimed at persuading their audience, contributing to draft provisions and lobbying behind closed doors. This was different, however, compared to the 1990s. In the first place, attention for the subject of child recruitment and participation in hostilities had gradually increased from the mid-1980s onwards and was taken up by the human rights movement. A high number of (I)NGOs and other non-state actors were involved, with a leading role for the NGO Group, the FWCC, Rädda Barnen/the ISCA, the CSUCS and the ICRC (although to a lesser extent compared to the 1940s and 1970s). Understandably, some employed non-discursive means were similar compared to the non-discursive

means employed by the ICRC and the IUCW, namely organising several conferences, attending relevant meetings such as the sessions of the UN Working Group and private lobbying.

The 1990s, however, saw some other non-discursive means employed by the actors. On the one hand, a number of extensive studies were conducted to make informed decisions and to support the claims of the (I)NGOs. On the other hand, the media was engaged through an active campaign of the CSUCS from 1998 onwards. Although identified as important in advocacy efforts from the 1970s onwards, a TAN only emerged in the drafting process for the 2000 OPAC. In the 1990s, several actors involved themselves in the issue of children's involvement in armed conflict, working together to push for the OPAC. Most evident in this regard was the 1991 Conference on Children of War, where researchers, (I)NGOs and other non-state actors gathered to exchange knowledge and views on the subject.

Turning to the frames these actors used, it is interesting to see that the overall frame did not change significantly over the course of five decades. The frame drew upon two arguments. First, actors relied on an image of children as vulnerable persons not capable of overseeing the consequences to their actions, endangering themselves and others in the process. For this, the frame contained keywords such as defencelessness and innocent and opposed it to phrases such as the evils or horrors of war. The second argument concerned dangers to long-term peace. Children who were trained for war suffered from traumas that put them at risk of drug abuse or criminal activities, but also taught them to perceive the world based on hate and aggression. In order to preserve long-lasting peace, the advocacy actors deemed it crucial to nurture and cherish peaceful attitudes, which would be achieved by preventing children's recruitment and participation in hostilities through IHL and IHRL provisions.

7.3 Final remarks

This thesis is a first step to fill the gap that exists in academic literature on how non-state actors sought to persuade the international community that children participating in armed conflict was, and still is, problematic. Although the analysis uncovered the contents of the frame used by the various involved INGOs and the 1990s TAN, the findings provide a starting point to understand how power relations were constructed and maintained in the field of protecting children from their involvement in armed conflict. In order to deepen this understanding, it is imperative to look at other actors in the drafting processes and how they sought to influence the outcome. Drawing upon this, it would also be useful to explore how policy and advocacy efforts on this subject developed in the UN, since they took up the issue with the 1989 CRC and the 2000 OPAC. This could be done with a focus on preventative measures, similar to this thesis, but it would be equally interesting to look more closely to policy development on compliance and reintegration policy. More in-depth research is necessary since the subject of children's involvement remains very much debated today.

Furthermore, analysing the success and transferability of the used human rights frame would be valuable in determining the extent to which the actors managed to persuade the policy community into adopting their perception of the world. Although it went beyond the scope of this thesis, it can be argued that the frame and advocacy efforts of the INGOs and the 1990s TAN were successful to some extent. For one, child recruitment and participation provisions were adopted in the 1949 Fourth GC, the 1977 APs and the 2000 OPAC. Second, reading through the minutes and summaries of debates on the draft proposals

prior to their adoption, one can see how some words and arguments were adopted by the policy community to support to creation of the provisions. Despite the limitations of this thesis, it demonstrated how INGOs and TANs use frames to exert influence in the international policy making community. Understanding the power of language and how it is used by non-state actors is paramount and will become increasingly crucial in the near and distant future given the rising influence of non-state actors in contemporary international politics.

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Annex 1 - Provisions on Child Recruitment 1949-2000

1949 Geneva Conventions	**Article 50(2)** The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it. **Article 51(1-2)** The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.
1977 Additional Protocols to the 1949 Geneva Conventions	**Additional Protocol I, Article 77(2-3)** 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 priorities to those who are oldest. 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. **Additional Protocol II, Article 4(3)** Children shall be provided with the care and aid they require, and in particular: (...) *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. (...)
2000 Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict	**Article 2** States Parties shall ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into their armed forces. **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 the age of eighteen years are entitled to special protection.

	2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present 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 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 eighteen years shall maintain safeguards to ensure, as a minimum, that: (a) Such recruitment is genuinely voluntary; (b) Such recruitment is carried out 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.

Annex 2 - Provisions on Child Participation in Hostilities 1949-2000

1949 Geneva Conventions	*No articles.*
1977 Additional Protocols to the 1949 Geneva Conventions	**Additional Protocol I, Article 77(2-3)** 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 priorities to those who are oldest. 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. **Additional Protocol II, Article 4(3)** Children shall be provided with the care and aid they require, and in particular: (...) *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. (...)
2000 Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict	**Article 1** States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities.