

# CAUGHT IN THE MIDDLE OF PERSISTENT CONFLICT: THE RIGHTS OF PALESTINIAN CHILDREN

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## 1. INTRODUCTION

Palestinian children have suffered greatly, whether as a result of numerous conflicts and Israel's continued belligerent occupation of the occupied Palestinian territory, as a result of discrimination, or due to their prolonged exile. Their plight is a tragic illustration of the failure of all parties in the long-standing and intractable conflict or impasse between the State of Israel and the Palestinian people, and of international actors, to extend effective protection. Protection of Palestinian children, and adequate humanitarian assistance, is indispensable until a just and sustainable solution emerges.

In order to contextualise the plight of Palestinian children, this Chapter first explores general trends in multilateral involvement in situations of children affected by armed conflict (Section Two). A close observation of these trends reveals that efforts to protect children affected by armed conflict have been stepped up significantly in recent years. The special problems of children in times of armed conflict have been widely revealed and documented. However, while relevant international legal norms that detail the proper level of protection have been created and international monitoring mechanisms have been set up, the realisation of these (largely paper) commitments remains difficult.

Section Three addresses the situation of Palestinian children. Although well documented, the situation of Palestinian children is not widely known or acknowledged, let alone met with effective responses. According to the UN Committee on the Rights of the Child,<sup>1</sup> Palestinian children are "disproportionately vulnerable" in the conflict. The combination of these factors forms the reason why this contribution highlights the particular need to address the situation of Palestinian children, who are disproportionately affected by conflict as compared with Israeli children. Although the situation of Israeli children is hardly addressed in this contribution, their concerns have been more widely addressed elsewhere, and it is very obvious that they should also be fully protected.<sup>2</sup>

As explained in Section Two of this contribution, the large majority of the provisions of the UN Convention on the Rights of the Child (CRC) still await implementation for Palestinian children. This chapter argues that this problematic situation can be resolved in part through establishing more effective accountability mechanisms. On the one hand, all actors involved in violent conflicts have to be held accountable for the effects of their behaviour, including policies and/or practices, on children. Also, certain actors may be special duty bearers. For example, the CRC requires States Parties that are in the position to do so, to engage in international cooperation and to provide assistance to others who pursue the realization of children's rights. In response to this basis, the European Union, for example, formulated two sets of relevant child rights guidelines that are supposed to direct EU external relations. Besides the actors involved in the many conflicts between Israel and the Palestinians, third party actors should also be held to account for the extent to which they have implemented the CRC's international cooperation obligations, especially where

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<sup>1</sup> UN COMMITTEE ON THE RIGHTS OF THE CHILD, 'Concluding Observations Optional Protocol on the Involvement of Children in Armed Conflict: Israel', *UN Doc. CRC/C/OPAC/ISR/CO/1*, p. 2, par. 10.

<sup>2</sup> Among the extensive scientific literature available on this topic, see for example A. KLINGMAN et al., 'The Effect of War on Israeli Children' in L. LEAVITT and N. FOX (eds.), *The Psychological Effects of War and Violence on Children*, (Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1993), pp. 75–92.

they have prominent cooperation relations with Israel. This must be done much more explicitly than has happened until now.

## **2. CHILDREN AND ARMED CONFLICT: INCREASED INTERNATIONAL ATTENTION TO THE FACTS, LAW AND MONITORING**

The negative effects of armed conflict on children hardly need elaboration. After all, in many parts of the world, large numbers of children are seriously affected by armed conflict and information about this is widely available. According to the United Nations (UN) in 2009:

“Globally, just over 1 billion children under the age of 18 live in countries or territories affected by armed conflict – almost one sixth of the total world population. Of these, approximately 300 million are under the age of five.”<sup>3</sup>

No less than nine of the twenty countries with the highest under-five child mortality rate, and ten of the twenty-four countries that have critical problems of acute malnutrition – including Sudan, Chad, the Democratic Republic of the Congo, Sri Lanka and Nepal – have all been affected by recent conflict.<sup>4</sup> According to the United Nations Children’s Fund (UNICEF), in “a typical five-year war, the under-five mortality rate increases by 13 percent”.<sup>5</sup> And, “of the estimated 101 million children of primary school age not attending primary school, nearly 60 million live in the 33 countries currently affected by armed conflict.”<sup>6</sup> Girls are often among the most seriously affected. For example, during the civil war in south Sudan “only one girl in every 100 has finished basic education”<sup>7</sup>. These sobering figures underscore the very serious and ongoing impact that armed conflicts have on children’s lives and are likely to have on their future.

Despite the above-mentioned figures, it is also a fact that, since the 1990s, a number of important international milestones in addressing situations of children affected by armed conflict came about. The efforts involved focused on exposing the problems of children affected by armed conflict in the first place, on creating normative frameworks for addressing these problems (which in turn is a crucial basis for the creation of policy frameworks) and on monitoring relevant situations on the ground.

### **2.1. Exposing the Facts: The Machel Reports**

The 1996 Graça Machel Report *The Impact of War on Children* did a phenomenal job in exposing the problems that children affected by armed conflict encountered all over the world.<sup>8</sup> In a compelling way, the Report communicated these problems to a relatively large audience of potential decision- and/or policy-makers. At the time, the Machel Report was crucial for mobilizing attention and generating political will to act in response to the dire situation of children affected by armed conflict. According to UNICEF and the Special Representative of the UN Secretary-General for Children and Armed Conflict, the Report

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<sup>3</sup> UNICEF AND THE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (New York: UN, 2009), p. 19, retrieved at <[http://www.un.org/children/conflict/machel/\\_download/msr2\\_en.pdf](http://www.un.org/children/conflict/machel/_download/msr2_en.pdf)> on 11 May 2011. Like this UN Report, this Chapter also defines children as any person below the age of 18, in line with Article 1 of the United Nations Convention on the Rights of the Child.

<sup>4</sup> *Ibid.* pp. 122, 128.

<sup>5</sup> UNICEF, *The State of the World’s Children 2005: Childhood Under Threat*, (New York: UNICEF, 2004), p. 40.

<sup>6</sup> UNICEF, *The State of the World’s Children: Special Edition Celebrating 20 Years of the Convention on the Rights of the Child*, (New York: UNICEF, 2009), p. 63. See also INTERNATIONAL COMMITTEE OF THE RED CROSS, *Children in War*, (Geneva, ICRC, 2009), p. 1.

<sup>7</sup> COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Sudan, Third and Fourth Periodic Reports on the Convention on the Rights of the Child’, *UN Doc. CRC/C.SDN/3-4*, (24 February 2010), p. 69.

<sup>8</sup> G. MACHEL, ‘Impact of War on Children’, *General Assembly Resolution 48/157, UN Doc. A/51/306*, (New York: UN, 26 August 1996), retrieved at <[http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf)> on 22 May 2011.

was “unanimously endorsed and has continued to move the world ever since.”<sup>9</sup> It stimulated the creation of international monitoring mechanisms, which will be discussed in more detail below in Section 2.3. In 2001, a review of progress made since 1996 was published in the form of the ‘Machel Review 1996-2000’.<sup>10</sup> In 2006, a 10-year strategic review exercise started. The outcome was first reviewed by the UN General Assembly in 2007. The results of the strategic review were documented in the bulky 2009 United Nations publication *Children and Conflict in a Changing World*, which provides an impressive and up-to-date overview of the state of affairs concerning children affected by armed conflict and policy and practical interventions in this realm.<sup>11</sup> According to this publication:

The impact on children is more brutal than ever. The decade since the original Machel study has seen increased attention to mitigating the direct consequences of conflict, such as unlawful recruitment, gender-based violence, killing and maiming, separation from families, trafficking and illegal detention. But the indirect consequences of war – the severing of basic services, and increased poverty, malnutrition and disease – take a similarly devastating toll on children.<sup>12</sup>

Various surveys conducted in the Democratic Republic of Congo, in (northern) Uganda and elsewhere have shown that children figure disproportionately among the excess deaths that occurred during war and that, indeed, “the majority resulted from preventable infectious diseases, malnutrition and neonatal and pregnancy-related conditions.”<sup>13</sup> In fact:

available data suggest that these common childhood illnesses are responsible for the majority of the childhood deaths in conflict situations, in some instances outnumbering deaths directly linked to conflict by a factor of 10 to 1.<sup>14</sup>

Through sources such as the above, but also through many other United Nations and academic publications, governmental and non-governmental reports on the state of children in armed conflicts in the world, and through work done in the context of transitional justice mechanisms such as truth and reconciliation commissions or international criminal tribunals, many facts about the impact of armed conflict on children and their rights to live and develop have emerged.<sup>15</sup>

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<sup>9</sup> UNICEF AND THE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (New York: UN, 2009), p. 2.

<sup>10</sup> G. MACHEL, *The Impact of War on Children*, (London: Hurst & Company, 2001).

<sup>11</sup> LEAVITT and FOX (eds.), *The Psychological Effects of War and Violence on Children*, pp. 75–92. See also the accompanying document to the 10-Year Strategic Review which contains testimonial information from children and youth affected by armed conflict, UNICEF, *Will You Listen: Young Voices From Conflict Zones*, (New York: UNICEF, 2007), retrieved at <[http://www.un.org/children/conflict/\\_documents/pdf/Will\\_You\\_Listen\\_english.pdf](http://www.un.org/children/conflict/_documents/pdf/Will_You_Listen_english.pdf)> on 11 May 2011.

<sup>12</sup> UNICEF AND THE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (New York: UN, 2009), pp. 4-5, retrieved at <[http://www.un.org/children/\\_conflict/machel/download/msr2\\_en.pdf](http://www.un.org/children/_conflict/machel/download/msr2_en.pdf)> on 11 May 2011.

<sup>13</sup> *Ibid.* p. 20.

<sup>14</sup> *Ibid.* p. 122.

<sup>15</sup> See UNICEF, ‘Will You Listen’, *Humanitarian Action Report 2009*, (New York: UNICEF, 2009), op cit. note 7; UNICEF, *Humanitarian Action Report 2010: Partnering for Children in Emergencies*, (New York: UNICEF, 2010); OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (New York: UN, 2009), pp. 39-65 retrieved at <[http://www.un.org/children/conflict/machel/\\_download/msr2\\_en.pdf](http://www.un.org/children/conflict/machel/_download/msr2_en.pdf)> on 11 May 2011; PHILIPPINES HUMAN RIGHTS INFORMATION CENTRE, *Deadly Playgrounds: The Phenomenon of Child Soldiers in the Philippines*, (Quezon City: PHILRIGHTS, 2005); COALITION TO STOP THE USE OF CHILD SOLDIERS, *Child Soldiers: Global Report 2008*, (London: Bell and Bain, 2008), retrieved at <[http://www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_Report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf)> in 11 May 2011; WARCHILD, *Child Soldiers: The Shadow of Their Existence*, (Amsterdam: 2007), retrieved at <[http://www.warchild.org/news/News\\_archive/2007/projects/ChildSoldierReport/\\_chidsoldierreport\\_.html](http://www.warchild.org/news/News_archive/2007/projects/ChildSoldierReport/_chidsoldierreport_.html)> on 11 May 2011; OCHA and IRIN, *The Shame of War: Sexual Violence Against Women and Girls in Conflict*, (Nairobi: UN, 2007), retrieved at <<http://allafrica.com/download/resource/main/main/idatcs/00011095:cee6f12b43c99e47ab754568c9f57d4e.pdf>> on 11 May 2011; SAVE THE CHILDREN, *Forgotten Casualties of War: Girls in Armed Conflict*, (London, 2005); NO PEACE WITHOUT JUSTICE, UNICEF INNOCENTI RESEARCH CENTRE, *International Criminal Justice and Children*, (Rome: UNICEF, 2002); K. ARTS and V. POPVSKI, *International Criminal Accountability and the Rights of Children*, (The Hague - Cambridge: Hague Academic Press - CUP, 2006); UNICEF, *Truth and Reconciliation Commission Report for the Children of Sierra Leone- Child Friendly Version*, (Sierra Leone: UNICEF, 2004), retrieved at <<http://www.unicef.org/infobycountry/files/TRCCF9SeptFINAL.pdf>> on 11 May 2011; M. HIRST, A. LINNARSSON, *Children and the Commission for Reception, Truth and Reconciliation in Timor-Leste*, (Florence: UNICEF Innocenti Research Centre, 2010).

## 2.2. *Creating a Normative Framework in Relation to Children Affected by Armed Conflict*

A second set of milestones to protect children affected by armed conflict was achieved through the gradual evolution of a specific normative framework in international law. New elements came to complement the rather rudimentary basis for the international legal protection of children affected by armed conflict that was contained in the 1949 Geneva Conventions and the related 1977 Additional Protocols.

The First, Second and Third<sup>16</sup> Geneva Conventions do not make any specific reference to children at all, apparently in the assumption that there would be no child members of the armed forces wounded or sick in the field or at sea, or among the shipwrecked or prisoners of war. The Fourth Geneva Convention, which mainly regulates the treatment and protection of civilian persons during international armed conflict, extends general protection to children who fall in the categories of civilians or “persons taking no active part in the hostilities”.<sup>17</sup> In addition, it contains a range of specifically relevant provisions which mainly focus on certain age groups or on isolated and fairly specialised aspects of the situations of children affected by armed conflict. These provisions address:

- safety zones and localities to protect children under fifteen (and expectant mothers and mothers of children under seven);<sup>18</sup>
- evacuation of children from besieged or encircled areas;<sup>19</sup>
- “the free passage of (...) essential foodstuffs, clothing and tonics intended for children under fifteen”,<sup>20</sup>
- maintenance, exercise of religion, and education of orphans or children who were separated from their families by the war;<sup>21</sup>
- preferential treatment for children under fifteen if in a foreign country that is a party to the conflict, to the same extent as nationals of the state involved;<sup>22</sup>
- the proper working of “all institutions devoted to the care and education of children”, identification and registration of parentage of all children, and maintenance and education of orphans or children separated from their parents in occupied territories;<sup>23</sup>
- a minimum age of eighteen for protected persons to be compelled to work by occupying powers;<sup>24</sup>
- lodging in the same place of child internees and their parents;<sup>25</sup>
- additional food for child internees under fifteen, and education and special playgrounds for interned “children and young people”,<sup>26</sup>
- release of child internees.<sup>27</sup>

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<sup>16</sup> A minor exception is a reference in Annex 1 B(7) of the Third Geneva Convention to the eligibility for accommodation in a neutral country of women prisoners of war who are pregnant or mothers with infants and small children.

<sup>17</sup> *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, (Geneva: 12 August 1949), retrieved at <<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>> on 11 May 2011. For more extensive analyses of the scope and content of international legal protection of children affected by armed conflict, see D. PLATTNER, ‘Protection of Children in International Humanitarian Law’, *International Review of the Red Cross*, May-June 1984; S. SINGER, ‘The Protection of Children During Armed Conflict Situations’, *International Review of the Red Cross*, May-June 1986; I. COHN, G.S. GOODWIN-GILL, *Child Soldiers: The Role of Children in Armed Conflict*, (Oxford: Clarendon Press, 1994); J. KUPER, *International Law Concerning Child Civilians in Armed Conflict*, (Oxford: Oxford University Press, 1997); R. HARVEY, *Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law*, (United Kingdom: Children and Armed Conflict Unit-International Bureau for Children’s Rights, 2011) retrieved at <[http://www.essex.ac.uk/armedcon/story\\_id/000044.pdf](http://www.essex.ac.uk/armedcon/story_id/000044.pdf)> on 11 May 2011.

<sup>18</sup> *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, (Geneva: 12 August 1949), Article 14, retrieved at <<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>> on 11 May 2011.

<sup>19</sup> *Ibid.* Article 17.

<sup>20</sup> *Ibid.* Article 23.

<sup>21</sup> *Ibid.* Article 24.

<sup>22</sup> *Ibid.* Article 38.

<sup>23</sup> *Ibid.* Article 50.

<sup>24</sup> *Ibid.* Article 51.

<sup>25</sup> *Ibid.* Article 82.

<sup>26</sup> *Ibid.* Articles 89 and 94.

In internal armed conflicts, children who take no active part in the conflict should, at the very least, benefit from the general minimum level of protection extended by Common Article 3 of the 1949 Geneva Conventions, prescribing humane treatment and non-discrimination, and prohibiting:

violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; [and] outrages upon personal dignity, in particular humiliating and degrading treatment.

The same Article provides that sentencing and carrying out executions may only occur when adequate judicial guarantees are in place.

At the time, the 1977 Additional Protocols to the Geneva Conventions significantly enhanced the child-specific content of international humanitarian law. Protocol I, relating to international armed conflict, first and foremost establishes that children “are to be accorded privileged treatment or special protection”. Children are also supposed to be given priority in the distribution of humanitarian relief.<sup>28</sup> The special protection of children is further detailed in Article 77(1), which extends “special respect” and protection against “indecent assault” to children. Parties to a conflict are required to give children “the care and aid they require”. Article 77(2) requires parties to the conflict to “take all feasible measures” for children under fifteen not to take a direct part in hostilities. Also, and at the time for the first time ever in a binding document, it addresses the issue of recruitment of child soldiers.<sup>29</sup> It bans the recruitment into the armed forces of States Parties of children under the age of fifteen. Article 77(3) recognises that despite this ban, there might be children younger than fifteen who take a direct part in hostilities and subsequently fall into the hands of another party to the armed conflict. In those circumstances, the same provision firmly establishes that such children “shall continue to benefit from the special protection accorded by (...) Article [77], whether or not they are prisoners of war.” The remainder of Article 77 clarifies that children who are arrested, detained or interned in relation to the armed conflict, shall be kept separately from adults except for family arrangements. It also bans the execution of the death penalty, for offences related to the armed conflict involved and committed by persons below the age of eighteen.<sup>30</sup> Article 78 regulates evacuations of children.

Additional Protocol II applies to non-international armed conflicts. It stipulates that “the care and aid” that children require include: education; family reunion; non-recruitment in the “armed forces or groups”; unqualified non-participation in hostilities; continued applicability of Additional Protocol II’s protection regime for children who *did* happen to take a direct part in hostilities “and are captured”; temporary and accompanied removal of children from areas of hostilities to safer locations;<sup>31</sup> non-pronouncement of the death penalty for offences related to the armed conflict that were committed below the age of eighteen and non-execution of death sentences on pregnant women or mothers of young children.<sup>32</sup>

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<sup>27</sup> Ibid. Article 132.

<sup>28</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), (Geneva: 8 June 1977), Article 70(1), retrieved at <<http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>> on 11 May 2011.

<sup>29</sup> See R. HARVEY, *Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law*, (United Kingdom: Children and Armed Conflict Unit - International Bureau for Children's Rights, 2011) p. 9, retrieved at <[http://www.essex.ac.uk/armedcon/story\\_id/000044.pdf](http://www.essex.ac.uk/armedcon/story_id/000044.pdf)> on 11 May 2011.

<sup>30</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), (Geneva: 8 June 1977), Article 77(4) and Article 77(5), retrieved at <<http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>> on 11 May 2011.

<sup>31</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (Geneva: 8 June 1977), Article 4(3), retrieved at <<http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>> on 11 May 2011.

<sup>32</sup> Ibid. Article 6(4).

While international humanitarian law only operates in the context of armed conflict, a large part of international human rights law applies both in times of peace and in times of armed conflict. As the International Court of Justice authoritatively determined in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation”.<sup>33</sup> In light of the fact that the UN Convention on the Rights of the Child (CRC) contains no derogation clauses at all, the CRC is especially relevant for the legal protection of children affected by armed conflict. In the course of the 1980s, during the drafting process of the CRC, hopes had arisen for this new and comprehensive child rights instrument to step up the level of international legal protection for children affected by armed conflict. Initially this happened only partially, and mainly through CRC Article 39, which introduced an entirely novel, but very important additional protection clause that obliged States Parties to:

take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.

This provision is a crucial starting point for any form of rehabilitation of children affected by armed conflict. Its prescriptive nature was a major breakthrough. However, in the eyes of many involved at the time, the results of the CRC negotiations on Article 38, dealing with the protection of children during armed conflict, were utterly disappointing. At best, the Article confirmed existing humanitarian law. Possible new obligations were written in rather soft wording. For example, States Parties should only “take all feasible measures to ensure protection and care of children who are affected by an armed conflict”.<sup>34</sup> Despite campaigns to raise the legal age for direct participation in hostilities and recruitment into state armed forces, the age limit set for that purpose remained at fifteen.<sup>35</sup>

A decade later, in 2002, the newly concluded Optional Protocol to the CRC on children in armed conflict entered into force. According to this Optional Protocol, States Parties now have to take “all feasible measures to ensure” that members of their armed forces who are below the age of *eighteen* do not take a direct part in hostilities<sup>36</sup> and cannot be compulsorily recruited into such forces. The minimum age of fifteen for voluntary recruitment into state armed forces shall gradually be raised. Non-state armed groups are not allowed to recruit or use persons below the age of eighteen at all, and States Parties are obliged to prohibit and criminalise such recruitment.

Since the end of 1995, the CRC reached almost universal ratification. In March 2011, it had 193 States Parties. This amounted to all states in the world, except Somalia and the United States of America (US). These two countries both signed, but have not ratified the

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<sup>33</sup> ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *I.C.J. Reports* (2004), p. 106. On this aspect, the ICJ drew on its findings in the 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.

<sup>34</sup> UNCRC, Art. 38(4), text available through <<http://www2.ohchr.org/english/law/crc.htm>>.

<sup>35</sup> For the relevant legislative history, see S. DETRICK, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, (Dordrecht: Martinus Nijhoff Publishers, 1992), pp. 502-517.

<sup>36</sup> UNCRC, *Optional Protocol on the Involvement of Children in Armed Conflict*, Articles 1 and 2, retrieved at <<http://www2.ohchr.org/english/law/crc-conflict.htm>> on 11 May 2011. It is both interesting and telling that states on the continent of Africa did manage to adopt a stricter text on both the nature of measures to be taken and on recruitment. Article 22 of the 1999 African Charter on the Rights and Welfare of the Child calls for taking all “necessary” – instead of “feasible” – measures to avoid direct child participation in armed conflict. It also bans all recruitment by States Parties, i.e. compulsory and voluntary, of all persons below the age of eighteen. However, recruitment by non-state actors is not addressed. Likewise, there are no provisions on rehabilitation and reintegration. See K. ARTS, ‘The International Protection of Children’s Rights in Africa: The 1990 OAU Charter on the Rights and Welfare of the Child’, 5(1) *African Journal of International and Comparative Law*, 1993, pp. 139-162.

Convention. As of March 2011, the Optional Protocol on the Involvement of Children in Armed Conflict had 140 States Parties, including the US.<sup>37</sup>

Three other relevant normative international milestones also deserve to be mentioned. Firstly, the 1998 Rome Statute of the International Criminal Court specifies that, both in international and non-international armed conflicts, “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”, should be regarded as a war crime over which the ICC has jurisdiction.<sup>38</sup> The ICC Statute entered into force in 2002 and had 134 States Parties in March 2011.<sup>39</sup> Secondly, in 1999, ILO Convention 182 on the Worst Forms of Child Labour came into existence. This treaty, with 173 States Parties as in March 2011, requires States Parties to prohibit and eliminate “forced or compulsory recruitment of children for use in armed conflict”.<sup>40</sup> Thirdly, the so-called Paris Commitments and Paris Principles<sup>41</sup> came about in 2007. In total, 76 states committed themselves to sparing “no effort to end the unlawful recruitment or use of children by armed forces or groups in all regions of the world” and to making “every effort to uphold and apply the Paris principles” which contain child rights-based guidelines on the disarmament, demobilisation, and reintegration of children associated with armed groups.

### **2.3. International Monitoring**

Realizing the paper commitments of this normative framework in practice - during and after armed conflicts - has proven to be a dauntingly complex, risky and resource-intensive task. Both international humanitarian law and international human rights law regimes are not well-equipped for responding to emergency or crisis situations. Violations of the Geneva Conventions and Additional Protocols are to be handled through action by States Parties (such as dissemination of international humanitarian law norms or prosecution of offenders) or by the International Committee of the Red Cross. The latter has reported many serious constraints and challenges in field operations.<sup>42</sup> The other potentially relevant formal mechanisms, such as enquiry procedures and an International Humanitarian Fact-Finding Committee, apparently are largely non-functional, because their use requires consent of the parties.<sup>43</sup> The scope of action of the UN Committee on the Rights of the Child is largely confined to making recommendations on the basis of reports submitted to it at regularly scheduled intervals by States Parties to the CRC. While the UN Committee on the Rights of the Child solidly fulfils an important general mandate, the relevance of its role in relation to state and multilateral responses to armed conflict and to the situation of children affected by ongoing armed conflict is limited. In post-conflict situations, the Committee has a more obvious role to play, including as a potential facilitator between post-conflict States Parties interested in increasing the respect for child rights and the bodies that can render relevant advice and/or assistance.

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<sup>37</sup> The latest status of the UNCRC and its Optional Protocols can be retrieved at <<http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>>.

<sup>38</sup> ‘Rome Statute of the International Criminal Court’, *U.N. Doc. A/CONF.183/9*, (1998), Article 8(2b)(XXVI) and 8(2d)(VII), retrieved at <<http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm>> on 11 May 2011.

<sup>39</sup> For the latest status, see UNITED NATIONS, *Multilateral Treaties Deposited with the Secretary-General*, retrieved at <[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en)>.

<sup>40</sup> ILO, ‘ILO Convention 182 on the Worst Forms of Child Labour’, *C182*, (1997), Article 1 and Article 3, retrieved at <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>> on 11 May 2011.

<sup>41</sup> See, *The Paris Commitments to Protect Children From Unlawful Recruitment or Use by Armed Forces or Armed Groups*, (Paris, 5-6 February 2007), and *The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, (Paris, February 2007), both retrieved at <<http://www.un.org/children/conflict/english/parisprinciples.html>> on 7 June 2011.

<sup>42</sup> See M. MAK, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, (Geneva: International Committee of the Red Cross, 2008).

<sup>43</sup> See F. KALSHOVEN, ‘The International Humanitarian Fact-Finding Commission: A Sleeping Beauty?’, (2002) 4 *Humanitäres Völkerrecht - Informationsschriften*, pp. 213-216; J. KELLENBERGER, ‘Ensuring Respect for International Humanitarian Law in a Changing Environment and the Role of the United Nations’, in *60th Anniversary of the Geneva Conventions Ministerial Working Session*, (Geneva: UN, 26 September 2009).

Despite the above-mentioned shortcomings, the monitoring function of the UN Committee on the Rights of the Child in relation to the implementation of CRC Articles 38 and 39, and more recently also in relation to the Optional Protocol on Children in Armed Conflict, certainly is a welcome new element of international accountability, which did not exist in any form before the creation of the CRC. Therefore, the operationalisation of the CRC Committee's work should be seen as part of a third important international milestone in relation to the protection of children affected by armed conflict. At the same time, it is very clear that a more specialised focus on, and mandate for, monitoring the impact of armed conflict on children would allow for a much more in-depth process.

Two such specialised monitoring efforts exist. In 1997, as one of the follow-ups to the 1996 Machel Report, the UN Secretary-General appointed a Special Representative for Children and Armed Conflict. This functionary has the mandate:

to promote the protection, rights and well-being of children at every phase of conflict. The Special Representative functions as a public advocate for war-affected children. The role of the Special Representative has centred on building greater awareness, mobilizing action, promoting the application of international standards that provide for the protection of children in armed conflict, proposing initiatives that engage parties to conflict to make specific commitments to protect children, and making children's protection a priority in peace processes and peace operations.<sup>44</sup>

Olara Otunu from Uganda served as the first UN Secretary-General's Special Representative for Children and Armed Conflict in the period 1998-2005. After a short interim arrangement, Radhika Coomaraswamy from Sri Lanka was then appointed in April 2006. In March 2011 she still held the post. Field visits have been a core activity of Ms. Coomaraswamy, so as to "bring high-level visibility to the situation and rights of children affected by armed conflict".<sup>45</sup> Between June 2006 and February 2010, she visited the following impressive list of countries, all locations of armed conflicts with serious impacts on children: Burundi, Central African Republic, Chad, Democratic Republic of Congo, Ivory Coast, Uganda, Sudan, Lebanon, Israel and the occupied Palestinian territory, Iraq, Afghanistan, Myanmar, Nepal and the Philippines. A Special Adviser also visited Sri Lanka.

Higher profile monitoring action was taken up by the UN Security Council (UNSC), which since 2002, in accordance with article 99 of the UN Charter, records a list of:

parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council's agenda or that may be brought to the attention of the Security Council by the Secretary-General.<sup>46</sup>

In July 2005, the UN Security Council Working Group on Children and Armed Conflict was established. It was charged with the task of reviewing the outcomes of the (simultaneously established) UNSC reporting and monitoring mechanism on children affected by armed conflict and of relevant action plans, and with making recommendations to the UNSC on relevant actions to be taken.<sup>47</sup> This Working Group has focused in particular on six so-called 'grave violations': killing or maiming of children; recruitment or use of child soldiers; rape, other grave sexual abuse of children; abduction of children; attacks against schools or

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<sup>44</sup> COALITION TO STOP THE USE OF CHILD SOLDIERS, UNICEF, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*, (New York: UNICEF, 2003), p. 8, retrieved at <[http://www.unicef.org/emerg/files/option\\_protocol\\_conflict.pdf](http://www.unicef.org/emerg/files/option_protocol_conflict.pdf)> on 11 May 2011.

<sup>45</sup> SEE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT, <<http://www.un.org/children/conflict/english/countryvisits.html>>.

<sup>46</sup> UN SECURITY COUNCIL, *UNSC Resolution 1379*, (20 November 2001), retrieved at <<http://daccess-ods.un.org/TMP/7732434.27276611.html>> on 11 May 2011.

<sup>47</sup> For the exact mandate, see UN SECURITY COUNCIL, *UNSC Resolution 1612*, (26 July 2005) retrieved at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement>> on 11 May 2011.

hospitals; and denial of humanitarian access to children.<sup>48</sup> While by no means complete,<sup>49</sup> this focus represents a reasonable balance between considering the most direct effects of involvement in hostilities or direct exposure to violence and the more indirect consequences of hostilities, such as lack of access to education or health care. As such, the establishment of this Working Group indicated a move away from the previously dominant focus on the direct involvement of children in war only (i.e. child soldiers). The UNSC also seems to have paid some attention to the gender-based differences in the impact of armed conflict on boys and girls. In the past, these differences were often neglected. For example, many disarmament, demobilisation and reintegration (DDR) programmes had previously overlooked the particularities of the situations and needs of girls affected by armed conflict.<sup>50</sup>

Despite these efforts, the serious and ongoing impact of conflict on children pointed out in this Section makes urgent action necessary.

### 3. PALESTINIAN CHILDREN: IN THE MIDDLE OF PERSISTENT CONFLICT

The day-to-day situation of Palestinian children dramatically illustrates the fact that, despite the previously-sketched increase in international attention to the plight of children during and immediately after armed conflicts, in actual practice, far too little is and can be done to extend *real* protection and support. As will be substantiated below, the living conditions of Palestinian children in the occupied territories of the West Bank, Gaza and Golan,<sup>51</sup> in Israel, or in refugee camps in the region, are far below what is required by international standards.

There is a well-documented and shocking record of continuous and gross violations of many basic rights of Palestinian children. For example, during the 2008-2009 attacks by Israel in the occupied territory of Gaza, referred to by the Israeli military as *Operation Cast Lead*, of the nearly 1000 civilians reportedly killed during the conflict, up to one third were children.<sup>52</sup> Furthermore, just as in the other conflicts mentioned earlier, the socio-economic impact of war has disproportionately affected Palestinian children. As the Goldstone Report concluded, in relation to *Operation Cast Lead*:

Levels of stunting and thinness in children and of anemia prevalence in children and pregnant women were worrying already before the military operations. The hardship caused by the extensive destruction of shelter (UNDP reported 3,354 houses completely destroyed and 11,112 partially damaged) and resulting displacement particularly affects children and women. In the water and sanitation sector, the destruction of infrastructure (such as the destruction of the Namar wells and the attack against the water treatment plant described in Chapter XIII), aggravated the preexisting situation. Already before the military operations, 80 percent of the water supplied in Gaza did not meet the WHO's standards for drinking water. The discharge of untreated or partially treated waste water into the sea is a further health hazard worsened by the military operations.<sup>53</sup>

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<sup>48</sup> See OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT, *Reporting and Monitoring*, (2010), retrieved at <<http://www.un.org/children/conflict/english/monitoringreporting.html>> on 11 May 2011; OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL FOR CHILDREN AND ARMED CONFLICT, *The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation*, (New York: UN, 2009).

<sup>49</sup> For example, issues relating to illegal detention, forced displacement or sexual exploitation are not prioritised.

<sup>50</sup> This is widely documented. See e.g. INTERNATIONAL COMMITTEE OF THE RED CROSS, *Children in War*, (Geneva: ICRC 2009), p. 11, retrieved at <[http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_4015.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_4015.pdf)> on 11 May 2011.

<sup>51</sup> INTERNATIONAL COMMITTEE OF THE RED CROSS, 'West Bank: No Respite from Hardship for Palestinians', (17 February 2010) *News Release 10/17*, retrieved at <<http://www.icrc.org/eng/resources/documents/news-release/palestine-news-170210.htm>> on 11 May 2011; INTERNATIONAL COMMITTEE OF THE RED CROSS, 'Gaza: One Year After War, Still No Prospect of Decent Life', (22 December 2009) *Operational Update*, retrieved at <<http://www.icrc.org/eng/resources/documents/update/palestine-gaza-update-211209.htm>> on 11 May 2011.

<sup>52</sup> UN HUMAN RIGHTS COUNCIL, 'Report of the United Nations Fact Finding Mission on the Gaza Conflict (The Goldstone Report)', (15 September 2009) *UN Doc. A/HRC/12/48*, pp. 106-109, pars. 350-361.

<sup>53</sup> *Ibid.* pp. 22-23, par. 67.

Furthermore, not only was the education of Palestinian children interrupted by *Operation Cast Lead* in ways that are typical of war, but schools were subject to direct attacks by the Israeli military as well:

The military operations destroyed or damaged at least 280 schools and kindergartens. Six of them were located in northern Gaza, affecting some 9,000 pupils, who had to be relocated. According to the Ministry of Education and Higher Education, 164 pupils and 12 teachers were killed during the military operations. Another 454 pupils and five teachers were injured. At UNRWA schools, 86 children and three teachers were killed, and 402 children and 14 teachers injured. During the military operations, 44 UNRWA schools were used as emergency shelters to cope with the more than 50,000 displaced individuals.<sup>54</sup>

Apart from armed conflicts, some of the day-to-day human rights violations experienced by Palestinian children can ultimately be traced back to policies surrounding birth registration. In the occupied Palestinian territories, Israel strongly controls the mobility of Palestinians on the basis of identity cards. The terms and scope of these identity cards for Palestinians, adults and children alike, depend on whether the persons involved were born in the West Bank, Jerusalem or Gaza. According to UNICEF:

[I]dentity cards establish categories of the population subject to additional controls, which often leads to discrimination. For example, distinct identity cards were issued to all Palestinian residents in East Jerusalem. But if Jerusalem Palestinians leave the city or go away to work or study, their identity cards may be revoked, which cancels their right to return, as well as their property rights, access to social welfare and other benefits.<sup>55</sup>

In practice, many obstacles exist for Palestinian children to become registered in an appropriate manner.<sup>56</sup> Palestinian children born outside the occupied Palestinian territory may be able to register by the normal procedures in their location of residence, or as refugees with the UN Relief and Works Agency for Palestinian Refugees (UNWRA). In these circumstances, however, “they cannot obtain the identity card that would allow them to return to the occupied Palestinian territory, or even obtain a visa to visit their homeland.”<sup>57</sup> Of the more than 4 million Palestinian refugees that are registered with UNWRA, approximately 40% live in occupied Palestinian territory, another 40% in Jordan, 10% in Lebanon and another 10% in Syria. Many of the Palestinian refugees throughout the Middle East live in refugee camps. In Lebanon, for example, half of the Palestinian refugee population lives in dire circumstances in refugee camps in the south of the country.<sup>58</sup>

In relation to the daily situation of Palestinian children in the occupied Palestinian territories, the UN Committee on the Rights of the Child noted a wide range of quite serious violations of Palestinian children’s rights. According to the Committee, these violations were all brought about in the context of:

the illegal occupation of Palestinian territory, the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the Israel Defense Forces, the demolition of homes, the destruction of infrastructure, the construction of the wall and mobility restrictions

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<sup>54</sup> Ibid. pp. 353-353, par. 1267.

<sup>55</sup> S. SIEGRIST and M. O’FLAHERTY (eds.), *Birth Registration and Armed Conflict*, (Florence: UNICEF Innocenti Research Centre, 2007), p. 10.

<sup>56</sup> See OCHA OCCUPIED PALESTINIAN TERRITORY, ‘Registration of Children Refused’, in *East Jerusalem: Key Humanitarian Concerns*, (East Jerusalem: United Nations, 2011), p. 24.

<sup>57</sup> See *ibid.* p. 14.

<sup>58</sup> See *ibid.* pp. 10, 31. See also ‘Right to Work for Palestinians in Lebanon’ [in Dutch], *NRC Handelsblad*, Wednesday 18 August 2010, p. 5 which refers to a historic decision taken by the Lebanese Parliament, granting Palestinian refugees in the country the right to work in the private sector. However, Palestinian refugees remain excluded from work in, among other places, the public sector and the health care sector. They also cannot purchase land and they lack property rights. In these circumstances, until August 2010, Palestinian refugees in Lebanon largely depended on support by UNRWA and on income generated through illegal work. More information on the economic and social exclusion of Palestinian refugees in Lebanon is documented in J. CHAABAN, et al., *Socio-Economic Survey of Palestinian Refugees in Lebanon*, (Lebanon: The American University of Beirut - UNRWA, 2010).

resulting in the denial of access to education, health care, clean water and employment, *all of which have a severe impact on Palestinian children.*<sup>59</sup>

There is further evidence of Israeli government involvement in a wide range of other serious child rights violations, including discrimination resulting from the application of different legal definitions of childhood for Israeli children as compared to Palestinian children in occupied Palestinian territory, established respectively at 18 and 16 years.<sup>60</sup> The following child rights violations were also established repeatedly and in considerable numbers: Israeli practices of using Palestinian children “as human shields and informants for intelligence purposes”; charging Palestinian children with security offences, holding them without charge and prosecuting them by military courts; transferring Palestinian children charged with security offences from occupied Palestinian territory to Israel, keeping them in solitary confinement and without providing for legal assistance and family visits.<sup>61</sup>

Another serious daily problem faced by Palestinian children is the Israeli government and military’s practice of house demolitions. According to the Israeli Committee Against House Demolitions, from the beginning of 2000 up until April 2009, over 10,000 Palestinian homes were demolished across the occupied Palestinian territories. This translates to an average of over 1,000 homes destroyed per year. The economic, physical and psychological impact of such demolitions, on both children and adults, is very serious and long-lasting. In addition to the very serious violations detailed earlier, the 2008-2009 Gaza war *Operation Cast Lead* displaced an estimated 200,000 people from their homes, including 112,000 children. In 2011, many of the families concerned remained homeless, as they could not rebuild their homes due to the lack of building materials caused by the blockade.<sup>62</sup>

Despite repeated Israeli claims that the Gaza blockade would be eased, at the time of writing, the blockade is still in place.<sup>63</sup> As a result, many civilian and humanitarian goods have not been able to enter the occupied Palestinian territory of Gaza. Thus, meeting the humanitarian needs of the Gaza population has been largely dependent on the good will of Israel, the occupying power. Obviously, this is a highly problematic and undesirable

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<sup>59</sup> Emphasis added. UN COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Concluding Observations in Response to Israel’s First Report on the Implementation of the Optional Protocol on the Involvement of Children in Armed Conflict’, (2001) *UN Doc. CRC/C/OPAC/ISR/CO/1*, p. 2 par. 5. See also the periodic monitoring reports on grave violations against children in Israel and occupied Palestinian territory, prepared by a UNICEF-led working group under the title UNICEF, *CAAC Bulletin, Children Affected by Armed Conflict: Israel and the Occupied Palestinian Territory (oPt)*, (2010), retrieved at <[http://www.unicef.org/oPt/CAAC\\_2010\\_annual\\_bulletin.pdf](http://www.unicef.org/oPt/CAAC_2010_annual_bulletin.pdf)> on 11 May 2011.

<sup>60</sup> UN COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Concluding Observations in Response to Israel’s First Report on the Implementation of the Optional Protocol on the Involvement of Children in Armed Conflict’, (2001) *UN Doc. CRC/C/OPAC/ISR/CO/1*, p. 2 par. 8. See also UN COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Consideration of Initial Report of Israel on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Summary Record of the 1475<sup>th</sup> meeting’, (2010) *UN Doc. CRC/C/SR.1475*, p. 2.

<sup>61</sup> UN COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Concluding Observations in Response to Israel’s First Report on the Implementation of the Optional Protocol on the Involvement of Children in Armed Conflict’, (2001) *UN Doc. CRC/C/OPAC/ISR/CO/1*, p. 4 par. 24 and p. 6 par. 34. See also UN COMMITTEE ON THE RIGHTS OF THE CHILD, ‘Consideration of Initial Report of Israel on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Summary Record of the 1475<sup>th</sup> meeting’, (2010) *UN Doc. CRC/C/SR.1475*; UNICEF, *CAAC Bulletin, Children Affected by Armed Conflict: Israel and the Occupied Palestinian Territory (oPt)*, (2010), retrieved at <[http://www.unicef.org/oPt/CAAC\\_2010\\_annual\\_bulletin.pdf](http://www.unicef.org/oPt/CAAC_2010_annual_bulletin.pdf)> on 11 May 2011; DEFENCE FOR CHILDREN INTERNATIONAL – PALESTINIAN SECTOR, *In Their Own Words: A Report on the Situation Facing Palestinian Children Detained in the Israeli Military Court System*, (2010), retrieved at <<http://www.dci-pal.org/English/Doc/Press/JANUARY2011.pdf>> on 11 May 2011.

<sup>62</sup> See ISRAELI COMMITTEE AGAINST HOUSE DEMOLITIONS, <[www.icahd.org](http://www.icahd.org)>; SAVE THE CHILDREN UK, *Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High Risk Areas of the Occupied Palestinian Territory*, (2009), retrieved at <[http://www.savethechildren.org.uk/en/docs/English\\_Summary\\_of\\_Research\\_Findings\\_low\\_res.pdf](http://www.savethechildren.org.uk/en/docs/English_Summary_of_Research_Findings_low_res.pdf)> in 11 May 2011; PALESTINIAN COUNSELLING CENTRE, SAVE THE CHILDREN UK, WELFARE ASSOCIATION, *Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children and Families*, (2009), retrieved at <[http://www.savethechildren.org.uk/en/54\\_8431.htm](http://www.savethechildren.org.uk/en/54_8431.htm)>; OCHA OCCUPIED PALESTINIAN TERRITORY, *Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip*, (East Jerusalem: United Nations, 2009), p. 2, retrieved at <[http://www.ochaopt.org/documents/Ocha\\_opt\\_Gaza\\_impact\\_of\\_two\\_years\\_of\\_blockade\\_August\\_2009\\_english.pdf](http://www.ochaopt.org/documents/Ocha_opt_Gaza_impact_of_two_years_of_blockade_August_2009_english.pdf)> on 11 May 2011.

<sup>63</sup> OCHA OCCUPIED PALESTINIAN TERRITORY, *Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip*, (East Jerusalem: United Nations, 2009), retrieved at <[http://www.ochaopt.org/documents/Ocha\\_opt\\_Gaza\\_impact\\_of\\_two\\_years\\_of\\_blockade\\_August\\_2009\\_english.pdf](http://www.ochaopt.org/documents/Ocha_opt_Gaza_impact_of_two_years_of_blockade_August_2009_english.pdf)> on 11 May 2011.

situation. According to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA):

The blockade has 'locked in' 1.5 million people in what is one of the most densely populated areas on earth, triggering a protracted human dignity crisis with negative humanitarian consequences. At the heart of this crisis is the degradation in the living conditions of the population, caused by the erosion of livelihoods and the gradual decline in the state of infrastructure, and the quality of vital services in the areas of health, water and sanitation, and education.<sup>64</sup>

While slightly lower than in 2008, in 2009 the unemployment rate in Gaza was still close to 44%.<sup>65</sup> Lifting the blockade of Gaza is an essential precondition for tackling this problem, which in turn is essential for improving the living conditions of many children.

Settler violence against Palestinian children in the West Bank, including east Jerusalem, is another major and daily source of concern. The Palestinian Section of Defence for Children International reported that, between March 2008 and July 2010, 42 Palestinian children were injured and 3 were killed as a result of targeted settler violence.<sup>66</sup>

In relation to the situation of Palestinian children in Israel ('Israeli Arab' children), the CRC Committee registered serious concerns about their vulnerability and discrimination.<sup>67</sup> The latter results in gaps between services provided to Jewish and Israeli Arab children with disabilities,<sup>68</sup> a "persistent and significant gap in health indicators between Israeli Jews and Arabs",<sup>69</sup> high poverty rates among Arab families, and relatively low investments in and quality of education for Israeli Arab children.<sup>70</sup>

It is also important to note that, besides the numerous Israeli violations of Palestinian children's rights, that could only be summarised in this contribution, Palestinian actors have at times shown great disrespect for the rights and dignity of children as well. UNICEF has documented Gaza's Hamas authorities closing down "a youth organization providing psychosocial and vocational support for more than 60,000 Gaza children and youth" and attacks at UNRWA summer schools by "unknown" Palestinian gunmen.<sup>71</sup> According to the same source, Hamas authorities have not actively pursued efforts to bring an end to acts of violence by armed groups in the Gaza Strip, including indiscriminate attacks on Israeli civilians (which of course include children). In relation to the Palestinian Authority in the West Bank, concerns have arisen about undue restrictions on freedom of expression, a dysfunctional justice system, allegations of police brutality and torture, and corruption. These have also affected children and/or youth.<sup>72</sup> Despite the fact that in this contribution the practices of Israel and the fate of Palestinian children receive the most attention, for the reasons stated at the beginning of this chapter, in the end, there is no doubt that a complete child rights perspective demands that all actors who are responsible for serious violations of

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<sup>64</sup> Ibid. On the effects of the blockade on water and sanitation, see *CAAC Bulletin, Children Affected by Armed Conflict: Israel and the Occupied Palestinian Territory (oPt)*, (2010), pp. 6-7, retrieved at <[http://www.unicef.org/oPt/CAAC\\_2010\\_annual\\_bulletin.pdf](http://www.unicef.org/oPt/CAAC_2010_annual_bulletin.pdf)> on 11 May 2011; AMNESTY INTERNATIONAL UK, et al., *Dashed Hopes: Continuation of the Gaza Blockade*, (2011), retrieved at <<http://www.amnestyusa.org/pdf/gazareport2011.pdf>> on 11 May 2011.

<sup>65</sup> UNRWA, *Socio-Economic Developments in the oPt 2009*, (October 2010), pp. 4-5, retrieved at <<http://www.unrwa.org/userfiles/201102223510.pdf>> on 11 May 2011

<sup>66</sup> DEFENCE FOR CHILDREN INTERNATIONAL – PALESTINIAN SECTOR, *Under Attack: Settler Violence Against Palestinian Children in the Occupied Palestinian Territory*, (Jerusalem: Creative/ad Design + Print, July 2010), retrieved at <[http://www.dci-pal.org/english/publ/research/Settler\\_violence\\_2010\\_report.pdf](http://www.dci-pal.org/english/publ/research/Settler_violence_2010_report.pdf)> on 11 May 2011.

<sup>67</sup> UN COMMITTEE ON THE RIGHTS OF THE CHILD, 'Concluding Observations: Israel', (October 2002) *UN Doc. CRC/C/15/Add.195*, pars. 18-19, 26.

<sup>68</sup> Ibid. par. 42.

<sup>69</sup> Ibid. par. 46.

<sup>70</sup> Ibid. pars. 48, 54-55.

<sup>71</sup> UNICEF, *CAAC Bulletin, Children Affected by Armed Conflict: Israel and the Occupied Palestinian Territory*, (2010), pp. 1, 6, retrieved at <[http://www.unicef.org/oPt/CAAC\\_2010\\_annual\\_bulletin.pdf](http://www.unicef.org/oPt/CAAC_2010_annual_bulletin.pdf)> on 11 May 2011.

<sup>72</sup> AMNESTY INTERNATIONAL, 'Annual Amnesty International Reports on Human Rights and the Palestinian Authority', retrieved at <<http://www.amnesty.org>>, or <<http://www.amnesty.org/en/region/palestinian-authority>> on 11 May 2011.

the rights of children in both Israel and Palestine should be made aware of the errors and shortcomings in their policies and practices, be directed toward better practices in the future, and be held to account for their behaviour. All actors involved should also play their part in monitoring and, where appropriate and possible within their means, in remedying abuses committed and wrongs done.

#### **4. ACTION URGENTLY NEEDED: HOLD RELEVANT ACTORS TO ACCOUNT AND DEVELOP A CHILD-RIGHTS BASED APPROACH TO RELATIONS WITH ISRAEL**

The dire situation of Palestinian children as presented in Section 3 above is well documented in a wide range of resource materials produced by UN agencies as well as human rights and humanitarian organisations. Nevertheless, the general public and many leading governments and politicians remain unaware of, or are simply unwilling to publicly acknowledge, the plight of Palestinian children.

The normative framework that lays out the substance of the rights of Palestinian children is clear, in the form of the UN Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict, both of which have been ratified by Israel, as well as various other relevant international law instruments. This framework identifies key obligations to realise these rights, especially for Israel as the occupying power of – and thus holder of formal jurisdiction in – Palestinian territory. However, Israel has consistently denied that its human rights and humanitarian law obligations extend to occupied Palestinian territory. As a consequence, Israel routinely refuses to provide information on the situation in occupied Palestinian territory to UN human rights monitoring bodies, including the CRC Committee in the context of the state reporting procedure.<sup>73</sup> Various authoritative international bodies, including the International Court of Justice,<sup>74</sup> have rejected Israel's position in this regard. Meanwhile, there is no doubt that both sets of legal obligations (formulated in human rights law and international humanitarian law) apply to all situations, acts, and persons that are under Israel's jurisdiction, *de jure* or *de facto*, respectively in Israel and in occupied Palestinian territory.

Various actors have attempted to address some of the problems sketched above, each in accordance with their own mandates and competences. Various UN bodies, such as the UN Committee on the Rights of the Child and the UN Secretary-General's Special Representative for Children in Armed Conflict, as well as various international and national civil society actors have spoken out against the Israeli position on Palestinian children's rights and its record of violations thereof. However, in the end, these actors can merely document and – potentially – shame Israel. These institutions have no tools for the more forceful intervention that is needed to bring an end to the tragic circumstances of the large majority of Palestinian children.

In the current constellation in the UN, it is highly unlikely that more forceful action, for example under the guise of the *Responsibility to Protect* as used by the UN Security Council in March 2011 as part of the reasoning to justify armed intervention in Libya,<sup>75</sup> will ever be applied to Israel. The deeply tragic history of the Jewish people and the corresponding, highly ideological ties between the state of Israel and the United States of America and other close allies (including the Netherlands) have brought about a climate of impunity in which Israel can be, and is, hardly criticised. Due to the harsh stance of Israel, for example on the

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<sup>73</sup> See UN COMMITTEE ON THE RIGHTS OF THE CHILD, 'Concluding Observations: Israel', *UN Doc. CRC/C/15/Add.195*, (October 2002), p. 3 par. 16; COMMITTEE ON THE RIGHTS OF THE CHILD, 'Summary Record of the 1475th (Chamber A) Meeting', *UN Doc. CRC/C/SR.1475*, (February, 2010) p. 2, par. 6.

<sup>74</sup> For details, see ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports, 2004; see also UN COMMITTEE ON THE RIGHTS OF THE CHILD, 'Concluding Observations Optional Protocol on the Involvement of Children in Armed Conflict: Israel', *UN Doc. CRC/C/OPAC/ISR/CO/1*, p. 1 par. 4.

<sup>75</sup> UN Security Council Resolution 1973, UN Doc. S/RES 1973 (2011), 17 March 2011, preamble para. 4.

blockade of Gaza and on the control of the mobility of Palestinians (but also of humanitarian organisations and UN staff), action on the ground in occupied Palestinian territory is largely confined to relief and social support services, and those efforts are often constrained by the conditions imposed by the Israeli authorities.

In 2009, in its assessment of children and armed conflict in a changing world, the Machel Strategic Review concluded<sup>76</sup>:

[A] great deal remains to be done. There are still gaps in implementation and obstacles to monitoring the steps already taken. More needs to be done to ensure that the fight against impunity is effective and that those who violate children are held accountable. Moreover, the changing nature of contemporary armed conflict cries out for a different approach, one that no longer focuses on particular countries or themes but on the totality of issues affecting children caught in armed conflict.

This is strikingly applicable to the situation of Palestinian children, as set out in this contribution. Except for the US and Somalia, all states in the world are parties to the UN Convention on the Rights of the Child and thus should work for the realisation of children's rights, not only in their own territories, but also elsewhere, where appropriate and possible. Accordingly, global, regional, national and local stakeholders, whether of a governmental or non-governmental nature, should advocate more forcefully in favour of ending the violations of Palestinian children's rights and for an end to the Israel-Palestine conflict in a just and international law-based manner. In the meantime, stakeholders should insist on the immediate lifting of the blockade of Gaza, speak out about and try to hold to account those responsible for the gross child rights violations that occur on a daily basis, and make funding available for local humanitarian relief and support programmes.

Actors who are particularly well equipped to take the lead in this renewed line of action are those governments or governmental organisations that either have strong economic (including trade) and/or political relations with Israel or have particularly well developed child rights-based foreign or development policies. The European Union is an actor that has both of these features and is thus particularly well placed to take up this challenge. If handled well, the European Union (especially if backed by all the EU Member States) could wield enormous economic and political clout with Israel, for example through the terms of the EU-Israel Association Agreement. The terms of trade and other relations between the EU and Israel could easily be made dependent upon a just, and international law-based, settlement of the Palestinian question. Even the prospect of EU membership could then potentially enter the scene. All of this would be very much in line with the content and spirit expressed in the EU Guidelines on Children's Rights and the EU Guidelines on Children in Armed Conflict.

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<sup>76</sup> UNICEF AND THE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (New York: UN, 2009), p. 19, retrieved at <[http://www.un.org/children/conflict/machel/\\_download/msr2\\_en.pdf](http://www.un.org/children/conflict/machel/_download/msr2_en.pdf)> on 11 May 2011, p. 3.