



Human rights violations in conflict settings

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Executive Summary

The dramatic reality of contemporary conflicts and related violent crisis is the heavy toll of armed violence on civilians. The changing nature of conflict have brought about strategies and tactics that have made vulnerable groups in society the specific target of attack, as the evidence compiled in databases and reports suggests. In a context of evolving forms of 'war' and other forms of violent conflict, the protection of human rights faces unprecedented challenges and poses essential dilemmas. Against this backdrop, Work Package 10 (WP 10) 'Human Rights Violations in Conflicts', part of the FP7 project 'Fostering Human Rights Among European (External and Internal) Policies' (FRAME) aims at providing a comprehensive assessment of the European Union external policies in response to conflicts and crisis situations, exploring ways to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles. As a first step, this report (Deliverable 10.1) tackles the complex relationship between conflicts and human rights, taking into account the evolving and multifaceted nature of conflicts in the modern world. The report provides a comprehensive survey of the various patterns of human rights violations related to conflict and violent crisis situations with a specific focus on the rights of vulnerable groups, as well as on the role of non-state actors as key players in the context of new forms of violence and war.

After introducing in section I the aims and scope of the report, section II provides an account of the changing character of contemporary violent conflict and related crisis. It addresses theoretical debates, political approaches and law on the changing landscape of contemporary conflict, exploring in particular general trends and evolving forms of violence and 'war' and gives an overview of the relevant data on the basis of existing databases. It presents the transformation of objectives, dynamics, and actors of conflicts: from national armies fighting each other (inter-state wars), to armies fighting for independence, separation or political control (intra-state or civil wars), to various forms of violence, involving non-state actors such as rebels, gangs and organized crime.

Section III lays out the relationship between human rights violations and conflict, establishing the interaction that underpins the analysis in this report. It identifies trends in the current landscape of conflict and violent crisis and examines the interaction between human rights violations and conflict. This interplay is studied from a multidisciplinary perspective: legal and non legal approaches taking into consideration conflict analysis discussion and peace and conflict databases presented in the previous section.

Section IV examines the special role of non-state actors, specifically non-state armed actors and private companies, as perpetrators of conflict-related human rights violations. This section seeks to survey the role of non-State actors as 'perpetrators' of human rights violations in armed conflicts-settings and other situations of violence. In particular two types of non-state actors are addressed in view of the way they affect human rights: non-state armed groups (rebel and opposition groups, and terrorist and other criminal groups); and economic non-state actors (multinational corporations and private military and security companies).

Section V focuses specifically on the nature and types of human rights violations related to conflict and other crisis settings, seeking to identify common patterns in ongoing conflict and crisis situations around the world, as well as cross-cutting issues. Specific patterns such as the 'civilianization' of modern conflict or sexual violence as a method or tactic of warfare are analysed in this context.

Section VI of the report focuses on the impact of conflicts/crisis situations on the rights of selected vulnerable groups, including women; children; refugees and internally displaced persons, and indigenous peoples. It identifies patterns, perpetrators and trends of serious human rights violations committed against them on the basis of the information provided by existing databases and human rights reports. The structural discrimination of vulnerable groups is presented, along with the human rights abuses they suffer.

The last section offers some preliminary conclusions on how prevention of such violations and protection of the selected vulnerable groups might be strengthened and indicates factors to be considered in the analysis of normative and policy frameworks, the next phases of the Frame project. Among the main preliminary findings of the report it has been concluded that there is a need for greater clarity of States obligations under international human rights law in the context of conflicts. In this sense, the applicability of IHRL to non-state armed actors merits further research and analysis. Furthermore, the use of autonomous weapons systems under international humanitarian law and human rights law also needs to be clarified.

This survey study has also led to the conclusion that the analysis of human rights violations as causes of conflict is an imperative aspect of conflict prevention. Furthermore, the changing nature of armed conflict has affected different vulnerable groups and has created new challenges, which requires an assessment of their needs at all stages of conflict and an analysis of the role of all the actors involved in this continuum. Indeed the applicable legal frameworks on vulnerable groups related to conflict-settings must be continuously assessed in light of any new circumstances or challenges that arise in all possible conflict scenarios. The report has identified certain areas where development would be beneficial, such as internal conflicts related to situations of lawlessness and urban violence. Finally, as impunity of perpetrators of human rights violations in conflict settings remain rampant, the report concludes that there is a need of more systematic reporting methods of all serious human rights violations.

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List of abbreviations

ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AFRC	Armed Forces Revolutionary Council (Sierra Leone)
ANSAs	Armed Non-State Actors
AP	Additional Protocol (to the Geneva Conventions)
AOGs	Armed Opposition Groups
ASG	Abu Sayyaf Group
ATCA	Alien Tort Claims Act
AU	African Union
CAAFAGs	Children Associated with Armed Forces or Armed Groups
CAC	Children and Armed Conflict
CAR	Central African Republic
CAT	UN Convention against Torture
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CIA	Central Intelligence Agency
CoW	Correlates of War Project
CRC	Convention on the Rights of the Child
CRISE	Centre for Research on Inequality, Human Security and Ethnicity
CRPD	Convention on the Rights of Persons with Disabilities
CRSR	Convention relating to the Status of Refugees
CSDP	Common Security and Defense Policy
CSP	Centre for Systemic Peace
CSR	Corporate Social Responsibility
DPOs	Disabled People's Organisations
DRC	Democratic Republic of Congo
ECHO	European Commission's Humanitarian Aid and Civil Protection department
ECHR	European Convention on Human Rights
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council (United Nations)
ECP	Escola de Cultura de Pau (Autonomous University of Barcelona)
ECtHR	European Court of Human Rights
FARC	Revolutionary Armed Forces of Colombia
FPLC	Forces Patriotiques pour la Libération du Congo
FSA	Free Syrian Army
GBAV	Global Burden of Armed Violence
GC	Geneva Convention
GPI	Global Peace Index
GTD	Global Terrorism Database
HIK	Heidelberg Institute for International Conflict Research
IAC	International armed conflict
IACCommHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCS	International Criminal Court Statute

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IEDs	Improvised Explosive Devices
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILA	International Law Association
ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour
ISAF	International Security Assistance Force (Afghanistan)
KOSIMO	Conflict Simulation Model (HIK)
LRA	Lord Resistance's Army
M23	March 23 Movement (Democratic Republic of Congo)
MID	Militarised Interstate Dispute
MRM	Monitoring and Reporting Mechanism
MDF	Médecins Sans Frontières
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NIAC	Non-international armed conflict
NSAs	Non-State Actors
NSAGs	Non-State Armed groups
OAS	Organisation of American States
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
OPAC	Optional Protocol to the CRC on the Involvement of Children in Armed Conflict
OSRSG-CAAC	Office of the Special Representative of the Secretary-General for Children and Armed Conflict
PMCs	Private Military Companies
PMSCs	Private Military and Security Companies
PSCs	Private Security Companies
RSCSL	Residual Special Court for Sierra Leone
RUF	Revolutionary Unit Front (Sierra Leone)
SCSL	Special Court for Sierra Leone
SGBV	Sexual and gender-based violence
SLA	Sierra Leona Army
SPLA	Sudan People's Liberation Army
SIPRI	Stockholm International Peace Research Institute
SRSG	Special Representative of the UN Secretary-General
SRSG-CAAC	Special Representative of the Secretary-General for Children and Armed Conflict

TEL	Terrorist Exclusion List
TNCs	Transnational Corporations
UAVs	Unmanned Aerial Vehicles
UCDP	Uppsala Conflict Data Programme
UDHR	Universal Declaration of Human Rights
UNAMA	United Nations Mission in Afghanistan
UNAMI	United Nations Mission in Iraq
UNESCO	United Nations Educational Scientific and Cultural Organisation
UNICEF	United Nations Children's Funds
UNODC	United Nations Office for Drugs and Crime
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nation Human Rights Council
UNJHRO	United Nations Joint Human Rights Office
UNMISS	United Nations Mission in South Sudan
UNRWA	United Nations Relief and Works Agency for Palestine Refugees
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTS	United Nations Treaty Series
WG on CAC	Working Group on Children and Armed Conflict
WGUM	Working Group on the Use of Mercenaries of the United Nations
WHO	World Health Organisation
WPS	Women Peace and Security
WTO	World Trade Organisation

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I. Introduction

A. Aims and scope

In the twenty-first century, violence and conflict continue to be at the heart of some of the worst human rights violations across the globe. Increasingly and devastatingly targeted by the perpetrators of violence, civilian population accounts for the vast majority of the victims of the world's conflicts, a toll which falls heaviest on women and children. In a context of evolving forms of 'war' and other forms of violent conflict, the protection of human rights faces unprecedented challenges and poses essential dilemmas.

Against this backdrop, Work Package 10 (WP 10) 'Human Rights Violations in Conflicts', part of the FP7 project 'Fostering Human Rights Among European (External and Internal) Policies' (FRAME) aims at providing a comprehensive assessment of the European Union external policies in response to conflicts and crisis situations, exploring ways to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/rule of law principles.

As a first step, this report (Deliverable 10.1) tackles the complex relationship between conflicts and human rights, taking into account the evolving and multifaceted nature of conflicts in the modern world. The report provides a comprehensive survey of the various patterns of human rights violations related to conflict and violent crisis situations. This survey study provides specific focus on the rights of vulnerable groups, as well as on the role of non-state actors as key players in the context of new forms of violence and war, and includes an assessment of the link between such violations and the factors (notably, social, cultural, ethnical, and religious) examined in WP 2 'Challenges and Factors' Deliverable 2.1. 'Report on factors that enable or hinder the protection of human rights', addressing in particular how these factors, when coupled with a situation of conflict, interrelate with human rights protection.¹

This empirical survey under D.10.1 of the links between conflicts and human rights violations, which proceeds on the basis of existing databases according to the terms of reference for this report, is complementary to the analysis of the applicable international regulatory framework, which will be provided in a different FRAME Deliverable (D.10.2).

The survey focuses on human rights violations that take place in relation to *conflict and violent crisis situations*. The term 'conflict' is taken in this report in the broad sense of situations of organized collective violence, and thus is not necessarily limited to the legal understanding of the term under international humanitarian law. The notion of 'crisis' has not been uniformly defined in the existing literature, but it is generally understood to include complex humanitarian emergencies, whether derived or not from conflict situations as well as scenarios of socio-political unrest, which includes, by way of illustration, periods of political instability associated with abnormal regime change or social conflicts associated with exploitation of natural resources. This deliberately wide focus will allow for bringing into the discussion the different definitions, connotations and typologies associated to those terms both in the social sciences and in the

¹ See 'Report on factors that enable or hinder the protection of human rights' (D.2.1), forthcoming at <<http://fp7-frame.eu>> 85-144.

legal discourse, taking into consideration the diverging analytical frameworks developed by existing conflict/crisis databases.

Special attention is given to human rights violations of particularly *vulnerable groups in conflict-settings*. To be sure, no universally applicable definition of ‘vulnerable group’ exists, and this is particularly true in conflict settings. The word ‘vulnerable’ is a derivative from the Latin word *vulnus* which means ‘wound’ and vulnerability can be considered as a universal trait that can apply to all people, an inescapable part of our human condition.² Vulnerability is driven by context; a specific context including factors such as geographical location, economic and social resources, and the particularities of the person or group in question may then render certain groups or certain people more vulnerable than others.³ A condition of vulnerability may exist prior to a conflict or crisis, or may be generated by those situations.⁴ The concept which assumes that vulnerabilities exist prior to the conflict, embedded in broader power relations, will determine differently the opportunities of specific groups to counteract the dynamics and impacts of the conflicts.⁵ The discourse from literature, including Frame work-package D.12.1, ‘Report mapping legal and policy instruments of the EU for human rights and democracy support’, warns against creating stigma, further marginalising groups and reinforcing the ‘victim-narrative’, by focusing policies and interventions on labelled vulnerable groups, rather than on the various factors that render certain groups vulnerable.⁶

Therefore, the vulnerable groups in a specific conflict setting will depend on the context of the conflict, on its components, on its actors, its causes and consequences.⁷ Notwithstanding these conceptual difficulties, it is possible to identify at least a minimum list of social groups that are systematically more affected by conflict/crisis situations than other groups within society. This list of vulnerable social groups has come to be reflected in international law and practice. With this international law perspective in mind, this report provides specific focus on the list of vulnerable groups which have been identified in EU conflict/crisis management policies: namely, children, women, refugees and internally displaced persons.

Taking stock of an ever expanding growth in academic literature and institutional practice in this subject area, the report provides a specific focus on the *role of non-state actors* as perpetrators of human rights

² FRAME, Fostering Human Rights Among European Policies, ‘Report mapping legal and policy instruments of the EU for human rights and democracy support, D12.1 <<http://fp7-frame.eu>> 127.

³See, e.g., Martha A. Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ 20 (2008) Yale J. of L. and Feminism 1, 10.

⁴ International Labor Organisation, *In Focus Programme on Crisis Response and Reconstruction* (IFP/CRISIS), 1 January 2003, <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_crisis/documents/presentation/wcms_116758.pdf> accessed on 9 April 2014, 4.

⁵J Kuna Mohammad ‘Social Vulnerability and Conflict Elements of a Regional Conflict Vulnerability Analysis in West Africa’ in Ibrahim et al. (eds) *Effective Strategies for Peacebuilding in West Africa* (CDD & CODESRIA 2009) <http://www.academia.edu/255508/Social_Vulnerability_and_Conflicts_Elements_of_a_Regional_Conflict_Vulnerability_Analysis_RCVA_in_West_Africa> accessed 9 April 2014, 2-3.

⁶FRAME, Fostering Human Rights Among European Policies, ‘Report mapping legal and policy instruments of the EU for human rights and democracy support, D12.1 <http://fp7-frame.eu> (forthcoming) 128.

⁷The United Nations Office for Risk Disaster Reduction, *Issues of Vulnerability with Specific Reference to Gender in the Asia-Pacific: Post - 2015 Framework for Disaster Risk Reduction*, 19 July 2003, <http://www.preventionweb.net/files/34051_backgroundpaperonissuesofvulnerabil.pdf> accessed on 9 April 2014, 3-4.

violations in situations of violence and armed conflict.⁸ Particular attention is given to the following actors: non-state armed groups, and the related category of terrorist groups; private military and security companies, and multinational corporations operating in conflict zones, high risk or low-governance areas. While these groups are diverse in nature, they also share some commonalities. There are often questions as to whether and how human rights and international humanitarian law obligations may apply to them, the nature of their human rights obligations, and what types of international crimes for which either groups or individual members may be considered responsible.

This report is structured in seven sections. After introducing in section I the aims and scope of the report, section II sets the scene of the report by providing an account of the changing character of contemporary violent conflict and related crisis. It addresses theoretical debates, political approaches and law on the changing landscape of contemporary conflict, exploring in particular general trends and evolving forms of violence and 'war' and gives an overview of the relevant data on the basis of existing databases.

Section III lays out the relationship between human rights violations and conflict, establishing the interaction that underpins the analysis in this report. This section aims at providing an overview about the complex interplay between human rights and violent conflict. This interplay is studied from a multidisciplinary perspective: legal and non legal approaches taking into consideration conflict analysis discussion and peace and conflict databases presented in the previous section. Section IV examines the special problem of the role of non-state actors, specifically non-state armed actors and private companies, as perpetrators of conflict-related human rights violations. This section seeks to survey the role of non-State actors as 'perpetrators' of human rights violations in armed conflicts-settings and other situations of violence. In fact, there are other situations, such as post-conflict settings, socio-political crisis or zones controlled by criminal organisations, where human rights suffer the enormous impact of violent acts of non-state actors. In particular two types of non-state actors will be addressed in view of the way they affect human rights: non-state armed groups (rebel and opposition groups, and terrorist and other criminal groups); and economic non-state actors (multinational corporations and private military and security companies). Section V focuses specifically on the nature and types of human rights violations related to conflict and other crisis settings, seeking to identify common patterns in ongoing conflict and crisis situations around the world, as well as cross-cutting issues. Specific patterns such as the 'civilianization' of modern conflict or sexual violence as a method or tactic of warfare are analysed in this context. Section VI of the report focuses on the impact of conflicts/crisis situations of the rights of selected vulnerable groups, including women; children; refugees and internally displaced persons, and indigenous peoples. Finally, the study's principal findings and conclusions complete the report.

B. Methodology

This report relies on desk research to survey human rights violations in conflict-settings. It follows a hybrid approach, mixing disciplinary approaches, policy and legal analyses, and provides data compiled by

⁸ The human rights impacts of non-state actors are analysed in FRAME Work-Package D.7.1 'Report on the positive and negative human rights impacts of non-state actors' (forthcoming) <<http://fp7-frame.eu>> .

existing databases and human rights reports,⁹ following the terms of reference for this survey study. Several illustrations of current data, practice and trends are provided throughout the report.

⁹ Conflict and peace databases are listed in Section II. B. References to human rights reports can be found specially in Sections V and VI.

II. Setting the scene: human rights violations and the changing landscape of contemporary conflict

This section sets the scene of the report by providing an account of the changing character of contemporary armed conflict and related violent crisis. It points to the relevant academic debates and gives an overview of the relevant data on the basis of existing databases.

A. New forms of violence and war: multidimensionality and complex interaction

The nature of violent conflicts has undergone dramatic change in recent decades. After the end of the Cold War, many conflict analysts have agreed on the transformation experienced by warfare, with the rise of new forms of war and violent conflict (the ‘new wars’) in contrast to traditional armed conflicts that had characterised international relations since 1945, which corresponded with the conventional, Clausewitzian model of inter-state war.¹⁰ Research indicates that the predominant form of violent conflict has experienced significant transformation concerning objectives, dynamics, and actors: from national armies fighting each other (inter-state wars), to armies fighting for independence, separation or political control (intra-state or civil wars), to various forms of violence, involving non-state actors such as rebels, gangs and organized crime. In attempting to describe this transformation from inter-state wars to the ‘new wars’, one, perhaps overly simplified account given in the literature, describes the current global scenario as, ‘countless little wars with no front lines, no battlefields, no clear conflict zones, no distinction between combatants and civilians and no ideology’.¹¹

1. Overview of the academic debate on the transformation of war

The deep changes in the character and dynamics of contemporary violent conflicts have stimulated academia, which has witnessed a vivid and refined debate regarding the transformation of war. In this respect, having discarded the alternative of an all-encompassing ‘unified theory of conflict’ proposed by Vasquez¹², at least three major schools of analysis make up the theoretical framework of new types of conflicts, i.e. internal theories (which attempts to explain the sources of conflict from the perspective of their main characters’ nature); relational theories (focused on relations between conflict parties); and contextual theories (looking at conflicts from an external viewpoint focused on the contextual structure).¹³ Nevertheless, most of the approaches covered by these categories err on the side of political

¹⁰A seminal book in which the author postulates that Clausewitz theories on war are obsolete and predicts some of the features of the then future wars is Martin van Creveld, *The Transformation of War* (Free Press 1991). Similarly, on the changing characteristics of modern armed conflict see Steven Haines, ‘The Nature of War and the Character of Contemporary Armed Conflict’ Elizabeth Wilmhurst (ed) *International Law and the Classification of Conflicts* (Oxford University Press 2012) 9-30.

¹¹Jeffrey Gettleman, ‘Africa’s Dirty Wars’ *The New York Review of Books* (8 March 2012) <<http://www.nybooks.com/articles/archives/2012/mar/08/africas-dirty-wars/>> accessed 21 February 2014. This is the author’s review of William Reno’s *Warfare in Independent Africa* (Cambridge University Press 2011).

¹²John Vasquez, ‘Why global conflict resolution is possible : meeting the challenge of the new world order’ in John Vasquez, James Turner Johnson, Sanford Jaffe and Linda Stamato, *Beyond Confrontation : Learning Conflict Resolution in the Post-Cold War Era* (The University of Michigan Press 1995) 131, 137.

¹³Oliver Rambosthan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 94.

involvement in the sense that discrepancy arises between 'third-party' interpretations and 'internal-conflict' interpretations.¹⁴

A neutral alternative is the updating of the late Edward Azar's Theory of Protracted Social Conflict which, albeit resulting from conflict resolution analysis from the late 1970s and 1980s, can be brought up to date by means of contrast with XXI-century conflict theories.¹⁵ In this sense, it is noted that the emphasis had changed by 1996, from issues such as 'foreign policy, security, honour, or status' to 'statehood, governance, and the role of nations and communities within states',¹⁶ in view of the decline in the relative incidence of inter-state conflicts compared to intra-state ones in surveys conducted in the 1990s. This is a tendency probably stemming from the stand-off between western and eastern blocs after the Second World War and the decolonisation movement during the 1950s and 1960s,¹⁷ which led Rice to coin the term 'wars of the third kind',¹⁸ a term later endorsed by Holsti and other authors.

Against this background, Azar's Theory of Protracted Social Conflict takes credit for pleading in favour of a revision of the prevailing Clausewitzian paradigm, twenty years before the Iron Curtain's fall, and prior to it becoming evident to Kaldor and Holsti in their academic works of the late 1990's. Indeed, by the time Azar put forward his thesis, there were still Clausewitzian wars going on, for example, between India and Pakistan, or Israel and its neighbours.¹⁹ Being from Lebanon, he knew first-hand that the substance of Protracted Social Conflict lies in 'the prolonged and often violent struggle by communal groups for such basic needs as security, recognition and acceptance, fair access to political institutions and economic participation'.²⁰

A deeper glimpse into Azar's assertions reveals four sets of preconditions, performing at the internal or even cross-border level, rather than between States, for Protracted Social Conflicts, and which can also cause their intensity to rise:

- Communal content: The most useful unit of analysis in Protracted Social Conflict situations being the identity group, defined in racial, religious, ethnic, cultural, or other terms,²¹ the relationship between them and States, or 'disarticulation between the State and society as a whole',²² is at the crux of the matter. The example by which Azar illustrated his stance is the domination of a single communal group, unresponsive to the needs of the other communities, as the European legacy in postcolonial states, straining the social fabric and eventually breeding fragmentation and Protracted Social

¹⁴Oliver Rambosthan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 95.

¹⁵Ibid. 96.

¹⁶Kalevi J. Holsti, *The State, War and the State of War* (Cambridge University Press 1996) 21.

¹⁷Oliver Rambosthan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 97.

¹⁸Edward E. Rice, *Wars of the Third Kind: Conflict in Underdeveloped Countries* (University of California Press 1988) 1.

¹⁹Oliver Rambosthan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 99.

²⁰Edward Azar, 'The analysis and management of protracted social conflict' in J. Volkan, J. Montville and D. Julius (eds) *The Psychodynamics of International Relationships* (Heath 1991) 93.

²¹Edward Azar, 'Potracted International Conflicts: Ten Propositions', in Edward Azar and John Burton (eds.), *International Conflict Resolution: Theory and Practice* (Wheatsheaf 1986) 31.

²²Edward Azar, *The Management of Potracted Social Conflict*, (Dartmouth 1990) 7.

Conflict. The relevant disciplines which inspired this concept make it dependant on the degree of heterogeneity within a society.²³

- Deprivation of human needs: 'Failure to redress these grievances by the authority cultivates a niche for a protracted social conflict'.²⁴ On the basis of psychology, biology and development studies, Azar views needs as ontological and non-negotiable, and thus entailing a high likelihood of an eventual Protracted Social Conflict being intense. This factor relates to levels of human development, or the extent to which basic rights of security, subsistence and freedom, as well as identity needs, are guaranteed by the State.
- Governance and the State's role: From a political and economic viewpoint, the State capability and authority to regulate society, to protect citizens, and to provide collective goods is likely to reduce the risk of a Protracted Social Conflict. The opposite effect arises from high scales of political repression. In this respect, Azar points out that 'most States which experience protracted social conflict tend to be characterized by incompetent, parochial, fragile, and authoritarian governments that fail to satisfy human needs'.²⁵
- International linkages: On the side of international relations and strategic studies, the formation of domestic social and political institutions and their impact on the role of the State are greatly influenced by 'the patterns of linkage within the international system'.²⁶

Three groups of factors complete the 'process dynamics' determining whether or not the abovementioned preconditions trigger a Protracted Social Conflict in an attempt to 'synthesize the realist and structuralist paradigms into a pluralist framework'.²⁷ In a nutshell, the predominant factors are 'communal actions and strategies', encompassing identity group formation, organisation and mobilisation, leadership, political goals, tactics and externalities; 'State actions and strategies', ranging from 'coercive repression' to 'instrumental co-option'; and 'built-in mechanisms of conflicts', performing once the conflict is prompted.²⁸

Nevertheless, the collapse of the USSR and the disintegration of the bipolar world gave rise to a generation of hypotheses based on facts that Azar could not foresee but in light of which the Theory of Protracted Social Conflict is to be ascertained. Hence, some scholars asserted that Rice's already mentioned 'wars of the third kind' have further evolved into a new conflict pattern, which caused Mary Kaldor to devise a theory on 'New Wars'. Her seminal work holds that the new type of warfare emerging after the end of the Cold War was interlinked with globalisation. Kaldor uses the term 'war' to emphasise its political nature, warning that new wars scenarios make it difficult to distinguish between organized crime, gross human rights violations and war. In this connection, she highlights as defining features of new wars, political goals, ideologies, forms of mobilisation, external support, mode of warfare, and the war

²³Oliver Rambosthan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 101.

²⁴Edward Azar, *The Management of Protracted Social Conflict*, (Dartmouth 1990) 9.

²⁵Ibid. 10.

²⁶Ibid. 11.

²⁷Ibid. 95.

²⁸Ibid. 12-15.

economy.²⁹ Other proponents of the thesis on new wars focus on the erosion of the State monopoly on the use of organised violence, the ‘de-statisation’ or privatisation of military force, the asymmetry of military force, the autonomisation of forms of violence, and the increasing brutality of the new wars.³⁰

Four major strands of ‘global-level’ conflict analysis in the 1990s and early 2000s can be brought about with a view to evaluate and compare the concepts of Protracted Social Conflict and new wars.³¹ The first refers to Huntington’s ‘clash of civilisations’ hypothesis, which places civilisation, in the sense of ‘the broadest level of cultural identity’ defining humankind,³² at the forefront of the analysis rather than Azar’s mobilisation of an ideological apparatus by political interests. Secondly, in line with the Protracted Social Conflict thesis, the ‘environmental conflict’ theory emphasises scarcity and deprivation of resources and population movements as the main reasons for ‘group-identity’ conflicts.³³ A third trend is built upon an international political economy critique holding that liberal governance aims at maintaining the *status quo* by keeping the unruly periphery under control by means of private and public cooperation for development, as well as more obvious, even military, mechanisms of ‘riot control’.³⁴ Finally, in some authors’ view,³⁵ new wars no longer pursue political objectives but seek to perpetuate the economic gain and other benefits resulting from continued violence, upholding Azar’s concept of self-perpetuating Protracted Social Conflict.

When it comes to regional, State and societal levels, another cluster of explanations comes into play. In this regard, stability or large-scale violence are explained by ‘zones of peace and war’,³⁶ ‘regional security complexes’³⁷ with the emphasis on interstate factors, or ‘transnational kin groups’,³⁸ deemed to be a supplement to Azar’s model.³⁹ Compatible with Azar’s hypotheses, especially with the ‘governance and State’s role’ precondition, is the idea of State’s failure to govern and loss of legitimacy in the context of globalisation, already referred to.⁴⁰ Thirdly, a frontal assault on Azar’s theory is the so-called ‘greed versus grievance debate’,⁴¹ which opposes the concept that needs deprivation is the main cause of conflicts, in

²⁹Mary Kaldor and Baskerville (eds), *New Wars* (Pinter 1997) 7-19. For an updated version of Kaldor’s doctrine on new wars see Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Polity Press 2012).

³⁰Herfried Münkler, *The New Wars* (Polity Press 2004).

³¹Oliver Ramboothan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 104-106.

³²Samuel Huntington, *The clash of civilizations and the remaking of the world order* (Simon & Schuster 1996) 43.

³³Thomas Homer-Dixon, *Innovation, environmental scarcity and the ‘ingenuity gap’: reconceiving North-South relations* (Université d’Ottawa 1994).

³⁴Mark Duffield, *Global governance and the new wars: the merging of development and security* (Zed Books 2001) 9.

³⁵Mary Kaldor, *New and old wars: organized violence in a global era* (Stanford University Press 1999); William Reno, *Warlord Politics and African States* (Lynne Rienner Publishers 1999).

³⁶D. A. Lake and D. Rothchild (eds), ‘Containing fear: the origins and management of ethnic conflict’ (1996) 21 *International Security* 41-75.

³⁷Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (Boulder 1991).

³⁸Lars-Erik Cederman, Luc Girardin, Kristian Skrede Gleditsch, ‘Ethnonationalism Triads: Assessing the Influence of Kin Groups on Civil Wars’ (2009) 61 *World Politics* 403-437.

³⁹Oliver Ramboothan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 107.

⁴⁰Herfried Münkler, *The New Wars* (Polity Press 2005) 109.

⁴¹David M. Malone and Mats Berdal (eds), *Greed and Grievance: Economic Agendas in Civil Wars* (2000 Lynne Rienner) 6-13.

favour of the ideology locating it in economic incentives to violence, on the grounds of statistical findings about the influence of economic agendas in armed conflicts.⁴²

Despite differences in their approaches,⁴³ the proponents of the 'new wars' thesis contend that contemporary conflicts could be distinguished by the following traits, which are deemed to qualify as structural characteristics:

- The scope is likely to be internal rather than inter-state.
- Consequently, conflict actors are mainly non-State actors, such as private armies, warlords, criminal gangs, organized communal groups and terrorist or guerrilla organisations instead of governments, professional soldiers or conscripts. This gradual privatization of armed violence leads to a certain degree of asymmetry in warring forces and belligerents.⁴⁴
- As regards methods, the increased use of terror and guerrilla actions, as well as deliberate targeting of civilians,⁴⁵ displaces the combat from conventional battlefields.
- The models of financing tend to be external rather than internal.
- The objectives range from military targets to attacks on civilians and infrastructure, showing a tendency for strong deviation from the codified rules of war, i.e. *jus in bello*, and the laws governing use of force, *jus ad bellum*, in a brutal fashion.
- Regarding the ultimate goals of contemporary conflicts,⁴⁶ some authors assert that 'new wars' are no longer about ideology and nationalism but focused instead on identity and group conflicts,⁴⁷ whereas others make the point that violent conflicts are still fought for economic, political, ideological and geopolitical reasons, insofar as group labels can only resonate if linked to a specific political project. In particular, control over and access to resources is still a prevalent cause, both nationalism and identity-ethnicity coming into play as a mechanism to provide justification for territorial claims implying the exclusion of other groups.
- In many authors' views, contemporary conflicts, albeit not inter-State, have a regional or global dimension. For example, in West Africa and the Great Lakes region, internal conflicts have become interlinked thereby producing regional civil wars and what is called 'system of conflicts'.⁴⁸

The rise of terrorism in recent years is also relevant in the framework of 'new wars'. Terrorism is considered a form of irregular warfare that entails the threat or use of violence against non-combatants, either by State or non-State actors. In political science this phenomenon has been described as

⁴²Lars-Erik Cederman, Kristian Skrede Gleditsch and Harvar Buhaugh, *Inequality, Grievances and Civil War* (Cambridge University Press 2013).

⁴³For a literature review of divergent approaches see Patrick A. Mello, 'In Search of the New Wars: the Debate about the Transformation of War' (2010) 16 *European Journal of International Relations* 297-309.

⁴⁴Herfried Münkler, 'The Wars of the 21 st Century' (2003) No. 849 *International Review of the Red Cross* 7-22.

⁴⁵ See Ekaterina Stepanova, 'Trends in armed conflicts: one-sided violence against civilians' (2009) *Stockholm Peace Research Institute Yearbook* <<http://www.sipri.org/yearbook/2009/files/SIPRIYB0902.pdf>> accessed 16 April 2014.

⁴⁶Whether the objectives of contemporary wars have changed is contested, however.

⁴⁷This concept of new wars as identity-based conflicts is inspired by Azar's *Protracted Social Conflicts*.

⁴⁸See the exploration of this concept in relation to the conflict in Darfur in Amandine Gnanguênon, 'The perpetuation of a system of conflicts in Darfur: caught between local violence and regional disorder' (2013) N° 33 *UNISCI Discussion Papers*, 107.

the use, or threat of use, of violence by an individual or a group, whether acting for or in opposition to established authority, when such an act is designed to create extreme anxiety and/or fear-introducing effects in a target group larger than the immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators.⁴⁹

The threat of international terrorism by rebel groups in Europe and Latin America, as well as nationalist groups across the globe, was acute in the 1960s and 1970s. Manifestations of this form of armed violence can be found during anti-colonial wars, where groups rebelling against the colonial power were identified as terrorists by some, and as liberation fighters by others. In recent decades, a terrorist threat has emerged with members prepared to commit suicide and use weapons of mass destruction to create great mayhem among enemies. The impact of terrorism, particularly within the 'War on Terror' paradigm, is high, even though research shows that civilians worldwide have much more reason to fear direct fighting or the consequences of conflict than terrorism.⁵⁰ After the September 2001 attacks on the USA, the phenomenon of terrorism encompasses global terrorism in the context of a myriad of internal or international conflicts. Furthermore, some contemporary terrorist activities of global reach are characterised by loosely linked networks fighting on many fronts simultaneously and groups crossing borders to intervene in neighbour conflicts, such as the Afghan 'mujahedeen' or the jihadist groups in Syria, Chechnya, and Iraq.

The present report will take into consideration the above mentioned structural characteristics of the 'new wars', especially the use of one-sided violence against all civilians in conflict areas, as well as the participation by non-state actors as perpetrators of this violence directed against those persons who are not armed or in any other way, take part in armed conflict.

The huge range of post-Cold War conflict theories calls for an interpretive framework for conflict analysis, such as the five-level model proposed by Ramsbotham, Miall and Woodhouse,⁵¹ which depicts five sources of contemporary conflicts:

- Global sources: The geopolitical transition ensuing the collapse of the Soviet bloc not only brought conflicts spurred by the rivalry between superpowers, but also prompted others in the periphery of the former USSR, such as the Balkans and the Caucasus. In this new scenario, different factors fall into place, namely the North-South economic divide, environmental constraints, the proliferation of new warfare technologies, and the ideological reaction to transnational hierarchical-imperial structures, resulting in global 'jihadism', rogue States and international terrorism.
- Regional sources: The regional level has gained importance after the Cold War, resulting in geographically limited causes taking centre stage in explaining contemporary conflicts. Therefore, clientage patterns, spill-over or contagion, influence or interference, cross-border social demography, or large-scale population movements have become relevant for the purpose of conflict analysis.

⁴⁹ Grant Wardlaw, *Political Terrorism: Theory, Tactics and Counter-Measures* (Cambridge University Press 1982) 82.

⁵⁰ See section V of this report.

⁵¹ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 75-85.

- The role of the State: besides the abovementioned international-level contextual factors, structural factors that play out at the State level are also to be taken into account by conflict analysis. From this viewpoint, conflicts may be caused by a three-fold affect of weaknesses on society: by means of cultural divisions or social imbalance; economy, given a poor resource base, unfair allocation or other sources of relative deprivation; or polity, entailing the capture of the government by partisans or the illegitimacy of the regime. The fragility of State structures and institutions may also cause conflict and be seriously hampered by conflict.⁵²
- Group mobilisation and interparty dynamics: this level refers to relational sources at conflict party level, on the assumption that non-violent protest of national peoples, regional autonomists, communal contenders, indigenous peoples, militant sects, ethno-classes and other groups tend to unevenly escalate to violent and prolonged rebellion.⁵³
- Elites and individuals: Finally, leadership also plays an important role in conflict, often taken for granted by the literature, as most conflicts are triggered by 'internal, elite-level activities'.⁵⁴

Applying the abovementioned variables to conflict analysis requires the use of conflict mapping, a technique for interpretation of data in the field of conflict resolution since the 1950s. Recently revived in the form of complex conflict system analysis,⁵⁵ the systems are enriched with inputs from the natural sciences to the social sciences, namely sociology, social psychology, organisational theory and other areas influenced by cognate ideas. In this regard, findings show that long-term stability is a common feature of complex conflict systems, insofar as they have an auto-reinforcing pattern protecting its internal inertia against external stimuli.⁵⁶ Therefore, any transformation attempt must be aimed at the complex in its entirety and is expected to be more turbulent and potentially dangerous than the *status quo*.

Conceptual frameworks or cognitive structures, even the linguistic dimensions, are to be mapped in complex or systemic conflict analysis, as they are considered as perpetuating the inertia of this kind of conflict by shaping peoples' tacit knowledge and beliefs and adapting them to conform to prevailing social norms.⁵⁷ Any attempt at building long-term peace must be as comprehensive as contemporary conflicts are very complex, aiming at contextual change at the international and regional levels, structural change at State level, relational change at conflict party level, and cultural change at all levels.⁵⁸

Finally, conflict analysis requires elucidating the notion of crisis. Conflict and crisis are terms often used interchangeably in contemporary debate. International crisis is defined in terms of the nature of relationships between two or more States and whether the relationship dynamic is hostile, including

⁵²For a thorough study on State fragility and weakness see Carlos Jiménez Piernas, 'Estados débiles y Estados fracasados' (2013) 2 *Revista Española de Derecho Internacional* 11-50.

⁵³Ted Robert Gurr, *People versus States: Minorities at Risk in the New Century* (Institute of Peace Press 2000).

⁵⁴Michael Brown, *The International Dimensions of Internal Conflict* (MIT Press 1996) 22-23.

⁵⁵Oliver Ramboathan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 118-119.

⁵⁶Peter Coleman, 'Characteristics of protracted, intractable conflict: towards the development of a meta-framework' (2003) 9 *Journal of Peace Psychology* 22.

⁵⁷George Lakoff and Mark Johnson, *Metaphors We Live By*, (The University of Chicago Press 1980) 3-4.

⁵⁸Oliver Ramboathan, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 122.

taking into account whether the risk of military hostilities is heightened.⁵⁹ The relationship between crisis and conflict is debated in conceptual terms in the literature, with one aim directed at establishing whether it is possible to identify types of situational change linked to crisis that leads to violence or more intense violence and another aimed at identifying crisis management interventions that prevent crises escalating into full scale wars.⁶⁰

While considered to be closely related, differences between international crisis and international conflict are referred to, such as the singular issue factor, typically at focus in a crisis situation, for example, an economic crisis. To illustrate the use of the terms in relation to each other, one operational viewpoint calls for at least three international crises between the same conflicting parties, over one or more recurring issues, occurring over a period of five years or more for it to be considered a protracted conflict.⁶¹ Not all crisis situations involve or escalate to violence, and studies have aimed their attention on what factors are at play to explain why some crisis are more likely to result in violence or to use violence in the management of the crisis. The definitions and distinguishing features of situations such as ‘high intensity emergency crisis situation’ and situations of ‘internal armed conflict’ become extremely relevant when applying systems of international humanitarian law,⁶² while persistent levels of violence and human rights violations are likely to feature in a given situation being considered, regardless of its title.

2. New forms of armed violence and conflict dynamics

The characteristics of acts of violence that are considered under the label of ‘new wars’ have progressively challenged the dividing line between war and peace. In this regard, research findings show that ‘the concepts or definitions of conflict and war are not immutable and static but dynamic, and must be able to adapt to new realities’.⁶³ To this end some theoretical approaches, such as those of Moura and Pureza, point to the existence of ‘ill-defined’ or ‘nameless’ spaces that are usually understood as being contexts of formal peace, but that can include signs of emergence of very new types of conflict situations’.⁶⁴ Other conflict analysts have referred to the fluidity of those acts of armed violence that take place in and out conflict situations.

These propositions and facts cast doubts on the water tight distinctions of formal peace, conflict and post-conflict situations. As it has been pointed out ‘just as it is difficult to distinguish between the political and the economic, the public and the private, the military and civil, [is] also increasingly difficult to distinguish between war and peace’.⁶⁵ In this sense the conditions of war and peace have become very relative since they are not longer considered as absolute contrapositions. The proliferation of small arms, the levels of violence, death and displacement, all contribute to increasingly approaching zones of peace and war.

⁵⁹ Michael Brecher and Jonathan Wilkenfeld, *A Study of Crisis* (University of Michigan Press 1997) 5.

⁶⁰ Khalil Arnous Suleiman ‘A Study on the Interplay Between the Management of International Strategic crises and the structure of the International System’ (2012) Arab Center for Research and Policy Studies (Doha Institute) 2.

⁶¹ Michael Brecher and Jonathan Wilkenfeld, *A Study of Crisis* (University of Michigan Press 1997) 6.

⁶² Oren Gross and Fionnuala Ní Aoláin *Law in Times of Crisis, Emergency Powers in Theory and Practice*, (Cambridge Studies in International and Comparative Law 2006) 342.

⁶³ Tatiana Moura and Jose Manuel Pureza, ‘Viejas, Nuevas Y Novísimas Guerras: La Conflictividad Desafía La Modernidad’ (2007) *Recerca, Universidad Jaume I* 1-23, 1.

⁶⁴ *Ibid.* 7.

⁶⁵ Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Polity Press 2012) 143.

Peace has become a relative condition, revealing the persistence of violent political economies. As it has been noted, the conflicts in the 1990s emerged as an amplification from internal relations and contradictions that were present in a prior period of formal peace that in fact was already a situation of violent peace or of ill-defined zone.⁶⁶

The new forms of violence more relevant for this report concerning the interaction with conflict dynamics are criminal organised violence and urban violence.⁶⁷ The dynamic of physical dissemination of organised armed violence increasingly occurs at micro – and yet globalised – levels in ill-defined zones, where war and peace are often blurred. Even in the context of institutionalised peace, either in societies in post-conflict transition or in societies in transition to democracy after an authoritarian rule, it is possible to identify niches of authority with sufficient power to mobilise transnational networks, which on the one hand allows for the perpetuation of the new wars and, on the other hand, contributes to the reconfiguration of new forms of violence, the ‘newest wars’.⁶⁸ The actors involved, their objectives and patterns of conduct, share commonalities with new wars, for which they can also be distinguished.

One of the new faces of these forms of armed violence, under the label of post-modern wars or the ‘newest wars’ as labeled by Moura,⁶⁹ refer to the spread of armed violence in societies experiencing processes of post-conflict reconstruction and to peak concentrations of violence in the peripheries of large urban centers in developing countries where a *formal* situation of peace reigns. In post-conflict societies, a transfer from former military violence to a disseminated social violence can occur, wherein the array of the culture of violence accumulated during decades, flows in the form of (organised) armed violence. One of the greatest legacies of the ‘new wars’ is the availability of firearms, a phenomenon which is particularly noteworthy in Central America and the Caribbean.⁷⁰

These forms of armed violence are branded new because they deepen and reinforce the phenomenon of the privatisation of war, as announced by the ‘new wars’ theorists. Not only is their novelty explained by the fact that they radicalize the territorial space of their theaters of violence, but also because the urban spaces on which they unfold (from San Pedro Sula to Ciudad Juárez to Guatemala City, to Maceló, Durban or Rio de Janeiro) are micro-territorial ‘wars’ in countries at institutional peace. These spaces are closely linked to organized crime, although to describe them in sole terms of crime, does not take into account other explanatory/contributory factors. The social structure that gives support to these new forms of armed violence and the mortality rates of the dominant practices of armed violence, are well above those of many territories formally considered at conflict. These ‘newest wars’ encompass all the ingredients that

⁶⁶Mark Duffield, *Global Governance and the New Wars* (Zed Books 2001) 188-189.

⁶⁷For an outline of the key ideas on this phenomenon that have emerged in the recent literature see Alisa Winton, ‘Urban violence: a guide to the literature’ (2004) 16 *Environment and Urbanization* 165-184 <<http://eau.sagepub.com/content/16/2/165.refs>> accessed 17 May 2014; and Caroline Moser, ‘Urban Violence and Insecurity: an Introductory Roadmap’ (2004) 16 *Environment and Urbanization* <<http://eau.sagepub.com/content/16/2/3.refs>> accessed 17 May 2014 3-16.

⁶⁸Tatiana Moura, ‘Novíssimas guerras, novíssimas pazes. Desafios conceituais e políticos’, (2005) 71 *Revista Critica de Ciências Sociais* 77-96.

⁶⁹Ibid. 77-78; Tatiana Moura and Jose Manuel Pureza, ‘Viejas, Nuevas Y Novísimas Guerras: La Conflictividad Desafía La Modernidad’ (2007) *Recerca, Universidad Jaume I* 12-14.

⁷⁰For instance in 2002 in El Salvador it was estimated that 1,5 million weapons were in private ownership and only one third was legally registered. See World Vision, *Faces of Violence in Latin America and the Caribbean* (2002 Vision International).

contribute to shape the culture of war, from the rigid hierarchy of the actors involved, to the disputes for territory and resources. These new forms of armed violence may constitute the prelude of unrest even more disseminated and escalated into armed conflicts in the future.

Thus, there are new forms of violence that merit consideration as they can be considered the new conflict scenarios where a prolongation of the traits of the 'new wars' takes place. Armed conflicts, authoritarian regimes and State weakness and situations of fragility have a decisive influence on the (re) configuration of these new forms of violence. As Winton has pointed out, the State has a central role in the cultural constructions of violence.⁷¹ In countries emerging from authoritarian regimes where reform of the police and of the judicial system was not performed correctly, or did not even come to fruition, a dismantling of the structures of institutional oppression of the past did not take place. Given the absence of the State institutional resources for democratic conflict resolution, the consequence is the perpetuation of old fears and insecurities in an 'postauthoritarian violence' era.⁷²

One of the major consequences of State inefficiency-aggravated by corruption of State actors and patronage- is the fight to fill the emerging institutional power vacuums rather than a fight to control the existing State power. One of the most significant aspects of the 'newest wars' is the variety of actors involved in these forms of violence, and the collusion and conflicts between these different groups.⁷³ Several State, private, civic and criminal groups, and institutions are involved in the struggle for social, economic and political power within communities, in what are called parallel-power systems, giving rise to forms of violence in which politically motivated conflicts are increasingly merged with other types of crimes and violence.⁷⁴

In this context, it is argued that two opposed dynamics cross each other in this new type of conflict scenario: on one hand, a descending dynamic translated into the spread of armed violence in the domestic terrain; on the other hand, an upward dynamic embodied in the intensification of traditional forms of urban violence.

This form of violence, which according to this viewpoint, requires new spaces and has new players who adopt new behaviors in the realization of its objectives. Is this distinguishable from the new wars? The increasingly blurred line between the domestic and the international sphere of the 'newest war' scenarios makes the definition or characterization of this new form of violence depend on the lenses applied to analyze these contexts. If the focus is put solely on the internal dimension, one would not see more than a hyper-concentrated crime scenario devoid of political objectives. However, if the linkages between these local phenomena and the international context are understood, it is contended that we would face an emerging new type of conflict disseminated at a global level.⁷⁵ Even from a humanitarian

⁷¹Alisa Winton, 'Urban violence: a guide to the literature' (2004) 16 *Environment and Urbanization*, 167.

⁷²Ibid. 168.

⁷³Caroline Moser and Cathy McIlwaine, *Encounters with violence in Latin America: Urban Poor Perceptions from Colombia and Guatemala* (Routledge 2004) 53.

⁷⁴Alisa Winton, 'Urban violence: a guide to the literature' (2004) 16 *Environment and Urbanization* 169.

⁷⁵Tatiana Moura and Jose Manuel Pureza, 'Viejas, Nuevas Y Novísimas Guerras: La Conflictividad Desafía La Modernidad' (2007) *Recerca*, Universidad Jaume I 14-15.

approach, considering the level and impact of violence on vulnerable people, it is contended that urban violence makes 'daily life in some places almost like living in a war zone'.⁷⁶

These forms of violence are frequently associated with countries that recently underwent a political transformation, or that are currently living in a period of transition.⁷⁷ Latin America, a region historically marked by violence, civil conflicts, repressive dictatorships, revolution, demilitarization processes and democratisation in recent years, is one of the most expressive examples of violent spaces of peace, and of cluster of war economies, that continue to fuel armed violence. In those settings, formal peace has not meant a decrease in the level of violence but,⁷⁸ as Rodgers has noted, a 'democratisation of violence'.⁷⁹

B. Typologies of armed conflict and other forms of violence

Within the different perceptions of war, armed conflict and other situations of violence, this section seeks to present the diverse manifestations of armed conflict and other forms of violence according to typologies responding to legal and non-legal frameworks, and different approaches and variables.

1. Categories of armed conflict in the international legal framework

The law of armed conflict, also known as the *jus in bello* or international humanitarian law (IHL hereinafter) is the legal framework that governs the limitation of the effects of 'armed conflict' (a term of art in international law). The law of armed conflict is replete with rules, often divided into two branches, so-called 'Hague' law, that finds its origins in the Hague Conventions of 1899 and 1907, concerned with the regulation of the conduct of hostilities, tactics and usage of weapons; and 'Geneva' law following the Geneva Conventions of 1949 and the two 1977 Additional Protocols to those Conventions,⁸⁰ concerned with the protection of the victims of armed conflicts.⁸¹

Due to the inherent limitations of the legal regulation of the state of 'war', in particular because of those deficits arising from the formalist regulation of such legal status in providing protection to the victims of

⁷⁶ICRC, 'Editorial', (2010) No. 878 International Review of the Red Cross <<http://www.icrc.org/eng/resources/documents/article/review/review-878-p309.htm>> accessed 20 May 2014. This issue of the IRCR Review is devoted to the theme of 'urban violence'.

⁷⁷Alisa Winton, 'Urban violence: a guide to the literature' (2004) 16 (2) Environment and Urbanization 166.

⁷⁸The death figures in peacetime exceed death tolls during past armed conflicts. See Briceño-León, 'La nueva violencia urbana de América Latina' in J. Tavares Dos Santos y M. Baugmarten (eds), *Sociologías: Violencias, América Latina* (UFRGS 2002) 13.

⁷⁹Rodgers 'Youth gangs in Colombia and Nicaragua: New Forms of Violence, New Theoretical Directions?' in A. Rudqvist (ed), *Breeding Inequality – Reaping Violence, Exploring Linkages and Causality in Colombia and Beyond*, (2003 Outlook on Development Series, Collegium for Development Studies) <<http://www.kus.uu.se/Poverty&violence/PovertyViolence.pdf>> accessed 17 May 2014 111–141.

⁸⁰ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva 12 August 1949; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949; Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 8 June 1977. See texts online at <<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/>> accessed 15 May 2014.

⁸¹On these two sources of IHL see Elizabeth Salmón Gárate, *Introducción al Derecho Internacional Humanitario* (Pontificia Universidad del Perú-CICR 2004) 94-104; for an historical introduction to IHL see Nigel White, *Advanced Introduction to Conflict and Security Law* (Elgar Publishing 2014) 79-81; for an evolution of warfare and concomitant evolution of IHL norms see Luc Reydmans, 'A la guerre comme à la guerre' in Jan Wouters and Philip De Man (eds) *Armed Conflicts and the Law* (KUL 2007) 1-24.

war, this legal concept gave way to a factual test threshold ('armed conflict') and caused the collapse of the classical distinction between law of war and law of peace.⁸² Currently these legal regimes overlap, with it being recognized that international human rights law continues to apply with certain limitations during armed conflict.⁸³ Hence 'human rights law complements and reinforces the protection afforded by IHL',⁸⁴ although the precise relationship between the law of armed conflict (*lex specialis*) and the general legal framework (*lex generalis*) applicable during time of armed conflict and peace is evolving and poses several challenges.⁸⁵

From a legal point of view, in order to determine whether international humanitarian law applies to situations of violence, it is necessary to determine as a precondition whether the situation amounts to an 'armed conflict'. IHL, as it has been generally contented by scholarly doctrine,⁸⁶ 'does not recognize a unitary concept of armed conflict but, rather, recognizes two types of armed conflicts':⁸⁷ international armed conflict (IAC) and non-international armed conflict (NIAC).⁸⁸ There is no definition of 'armed conflict' in the Geneva Conventions or the Protocols, hence recourse is often made to the definition given by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Tadic* case:

An armed conflict exists whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.⁸⁹

The ICTY suggests that for an armed conflict to exist between States, any use of force between them would trigger the law of armed conflict – an interpretation which seems to be in conformity with Article 2 of the Geneva Conventions.⁹⁰ In conformity with this approach, an international armed conflict would comprise of situations of violence which involve the use of armed force between States without the requirement

⁸²Nigel White, *Advanced Introduction to Conflict and Security Law* (Elgar Publishing 2014) 79.

⁸³States party to an armed conflict, or other emergencies (crisis) may have the right to derogate from some human rights obligations enshrined in international human rights treaties.

⁸⁴ICRC, 'IHL and human rights law' <<http://www.icrc.org/eng/war-and-law/ihl-other-legal-regimes/ihl-human-rights/overview-ihl-and-human-rights.htm>> accessed 20 May 2014.

⁸⁵ These will be the object of the next report (Deliverable 10.2) within Work Package 10.

⁸⁶See Dietrich Schindler, 'The Different Types of Armed Conflict According to the Geneva Conventions and Protocols' (1979) vol. 163 II *Recueil des Cours de l'Academy de Droit International* 147.

⁸⁷Dapo Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts' in Elizabeth Wilmhurst (ed) *International Law and the Classification of Conflicts* (Oxford University Press 2012) 32-79. Marko Milanovic and Vidan Haadzi-Vidanovic, 'A Taxonomy of armed conflict' in Nigel D. White and Christian Henderson (eds) *Research Handbook on International Conflict and Security Law* (Edward Elgar 2013) 256-314.

⁸⁸ICRC, 'Opinion paper: definition of 'international' and 'non-international armed conflict' in International Humanitarian Law' (March 2008) <<http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> accessed 20 May 2014.

⁸⁹ICTY, *Prosecutor v Tadic* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

⁹⁰Common Article 2 of the 1949 Geneva Conventions provides

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

of a minimum threshold for intensity or amount of force,⁹¹ no minimum number of casualties, and no time limit⁹² necessary to qualify a situation as an international armed conflict.⁹³ This position is questioned in some scientific circles such as the International Law Association (ILA).⁹⁴

Although the use of force between States is generally considered an international armed conflict, it is not always clear that a State is using force against another State when it acts 'by proxy' through a non-state armed group.

Aside from regular armed inter-state conflicts, Additional Protocol I of 1977 extends the scope of international armed conflicts to the so-called 'wars of national liberation'⁹⁵ and also includes situations of belligerent occupation, where the armed forces of one State have effective total or partial control over the territory of another.⁹⁶ The IV Geneva Convention imposes particular obligations with regard to occupation and occupied territory concerning the status and treatment of protected persons, as well as the treatment of internees.

It is the category of non-international armed conflicts that, while arguably the most important in the current conflict scenarios, is the most difficult and problematic. This category of NIAC is governed by Common Article 3 of the 1949 Geneva Conventions, the provisions of Additional Protocol II of 1977 and Article 8 (2) (c) and (e) of the Statute of the International Criminal Court (ICC), as well as the corresponding standards identified in international customary law. The generally accepted interpretation of this framework is that two sub-types of NIACs can be distinguished: first, a non-international armed conflict between a State and a non-state group, or alternatively, a conflict arising between non-state groups (governed by Common Article 3); and secondly, a non-international armed conflict between the armed forces of a State party to the Protocol II, in whose territory it takes place, and dissident armed forces or other organised armed groups.

According to the ICTY pronouncement in the *Tadic* case, for an armed conflict to exist within a State or between a State and a non-state actor, there must be 'protracted armed violence'.⁹⁷ It is paradoxical that

⁹¹Jean Pictet (ed) *Commentary on the Geneva Conventions of 12 August 1949* (ICRC 1952-1960) volume 1, 32.

⁹²See for example the case of *Abella v Argentina* (1997) Report No 55/97, Case 11.137, 18 November 1997 which involved a 30-hour armed conflict to which the Inter American Commission of Human Rights held that international humanitarian law was applicable.

⁹³This broad definition of international armed conflict was confirmed by the ICTY in *Prosecutor v Mucic et al* Judgment (1998) (Trial Chamber) No IT-96-21-T Judgment 16 November 1998, para.184.

⁹⁴International Law Association (Study Group on the Use of Force) *Final Report on the Meaning of Armed Conflict in International Law* (Hague Conference 2010) 3, contends that 'all armed conflict involves, at a minimum, intense fighting among organized armed groups'. See <<http://www.ila-hq.org/en/committees/index.cfm/cid/1022>> accessed 20 May 2014.

⁹⁵Additional Protocol I, Art. 1 para. 4: 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations'.

⁹⁶The Geneva Conventions do not themselves define occupation, it is defined under customary international law which is expressed in Article 42 of the Hague Regulations.

⁹⁷Nigel White, *Advanced Introduction to Conflict and Security Law* (Elgar Publishing 2014) 96. In the Syrian conflict, the International Committee of the Red Cross only declared that an 'armed conflict' existed between the government and armed groups in July 2012, when violence had started in March 2011.

Additional Protocol II of 1977 establishes a threshold for conflict that is higher than that stated in the *Tadic* case, since it requires the existence of an armed conflict taking place

[I]n the territory of a High Contracting Party between its armed forces and dissident armed forces or other groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.⁹⁸

Looking at practice and facts, the category of Common Article 3 NIAC can be sub-divided in several types of conflicts that have taken place in the last decade, as proposed by Pejic, under the following classification:⁹⁹

-the 'classical' Common Article 3 NIACs: government armed forces are fighting against one or more organized armed groups within the territory of a single State.

-the sub-set of classical NIAC: an armed conflict that sets two or more organized armed groups against each other when it takes place within the territory of a single State (for example situations with no State authority such as 'failed' State scenario, and situations where there is the parallel occurrence of a non-international armed conflict between two or more organized armed groups alongside an international armed conflict within the territory of a single State.

-the 'spill-over' NIAC: certain NIACs originating within the territory of a State between government armed forces and one or more organized armed groups that 'spill over' into the territory of neighbouring States, on the assumption that the cross-border effects do not absolve the parties of their IHL obligations.

-the 'multinational NIACs': these are armed conflicts in which multinational armed forces are fighting alongside the armed forces of a 'host' State in its territory against one or more organized armed groups. As the armed conflict does not oppose two or more States, the conflict must be classified as non-international, regardless of the international component, which can at times be significant.

-one sub-set of multinational NIACs are armed conflicts where multinational forces intervene, be it UN forces, or forces under the aegis of a regional organization such as the African Union, or the European Union, with the goal to help stabilize a 'host' government involved in hostilities against

⁹⁸ Article 1(1) Additional Protocol II of 1977.

⁹⁹ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) vol. 93 no. 881 *International Review of the Red Cross* 1, 5-7. The author contends that these armed conflicts are governed by Common Article 3, as well as by rules of customary international humanitarian law.

one or more organized armed groups in its territory. In some cases it may be argued that the international force has become a party to the non-international armed conflict.¹⁰⁰

- the 'cross border' NIAC: it is contended that a non-international armed conflict exists when the forces of a State are engaged in hostilities with a non-state party operating from the territory of a neighbouring host State without that State's control or support.

-the 'transnational' armed conflict: the United States Bush Administration 'global war on terror' characterise the hostilities between 'Al Qaeda and its affiliates' and the US, arguing that it was neither an international nor internal conflict but a 'transnational' armed conflict. This position has been contradicted by the US Supreme Court applying the category of NIAC to conflicts between States and non-state actors (such as international terrorists groups).¹⁰¹

Thus there is a lack of clarity as international humanitarian law struggles to keep pace with current contemporary conflicts. Although it is submitted that customary international humanitarian law provides a greater level of protection than conventional rules, it does not, for instance, provide for prisoner of war status, and although civilians should be safeguarded, issues such as collateral damage are much more opaque in internal conflicts where rebel factions will often not distinguish themselves sufficiently from the civilian population.

Other situations of armed violence do not have a meaning fixed by any source of positive international law. The 1977 Additional Protocol II refers to 'situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature', as not amounting to 'armed conflicts'.¹⁰² These situations would include, for instance, large-scale arrests of people for their activities or opinions, suspension of fundamental judicial guarantees, or ill-treatment.¹⁰³ Although international humanitarian law does not apply, human rights law and aspects of international criminal law, and of refugee law remain applicable.¹⁰⁴ It is rightly observed that it is common practice that a 'government will

¹⁰⁰This scenario raises a range of legal issues, among which is the legal regime governing multinational force conduct and the applicability of the 1994 Convention on the Safety of UN Personnel.

¹⁰¹*Hamdam v Rumsfeld* US Supreme Court, 548 US (2006) S. CT. 2749 available at <<http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>> accessed 20 May 2014.

In one State's pronouncement, it has been declared that the transnational nature of such terrorist conflicts means that they should be viewed as international for the purposes of international humanitarian law. See *The Public Committee against Torture in Israel et al. v. The Government of Israel et al.*, Supreme Court of Israel sitting as the High Court of Justice, Judgment, 11 December 2006, HCJ 769/02, <http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.HTM> accessed 20 May 2014.

¹⁰² Additional Protocol II, Article 1(2). This is equally valid for Common Article 3.

¹⁰³Claude Pilloud et al. (eds.) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC Geneva 1987, 4474). On the one hand, internal disturbance involves situations when the State uses armed force to maintain order within its territory and where violence has not degenerated into an 'open struggle' between the authorities in power and 'more or less' organised groups. On the other hand, internal tensions are said to include political, religious, racial, social, and economic tensions that may require force as a preventive measure to maintain respect for law and order. They are characterised, by large-scale arrests, suspension of fundamental judicial guarantees, ill-treatment, and disappearances. Ibid 4473–8.

¹⁰⁴Nigel White, *Advanced Introduction to Conflict and Security Law* (Elgar Publishing 2014) 96.

categorise extensive internal violence as something less than an armed conflict in order to avoid admitting it has lost control or give credence to a rebellion'.¹⁰⁵

The complexity of classification of armed conflict is also present in relation to hostilities that will actually involve a mixture of conflicts. Such 'mixed conflicts' were recognized in the *Tadic* case:

It is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in a case of an internal conflict breaking out on the territory of a State, it may become international (or depending upon the circumstances, be international in character alongside an internal armed conflict) if, i) another State intervenes in that conflict through its troops or alternatively if, ii) some of the participants in the internal armed conflict act on behalf of that other State.¹⁰⁶

It follows that the initial conflict in Afghanistan in 2001 was mixed – an internal conflict between the Taliban government and Northern Alliance rebels, and an international conflict between the USA/UK forces and the Taliban, and a further conflict, arguably non-international, between the USA and al-Qaeda. With the defeat of the Taliban, the conflict between ISAF (a NATO-led force acting under the authority of the Security Council) and the Taliban Forces, becomes non-international, as the Taliban are the insurgents and ISAF forces are there with the agreement of the government in a supporting role. The conflict in Libya in 2011 was also mixed, internal between the rebels and the government of Gaddafi, and international, between the government and NATO. While seemingly unduly complex, the central problem remains not one in terms of which set of rules apply, but compliance (or lack of such) by a least one of the parties in modern conflicts.¹⁰⁷

The distinction between international and non-international armed conflicts is still relevant for the purposes of the application of international humanitarian law because of the differences in the content of the applicable law to the different types of armed conflict. Notwithstanding, 'the distinction between international and non-international armed conflict is being eroded such that there is now greater, though by no means complete, unity in the law applicable to these two forms of conflict'.¹⁰⁸

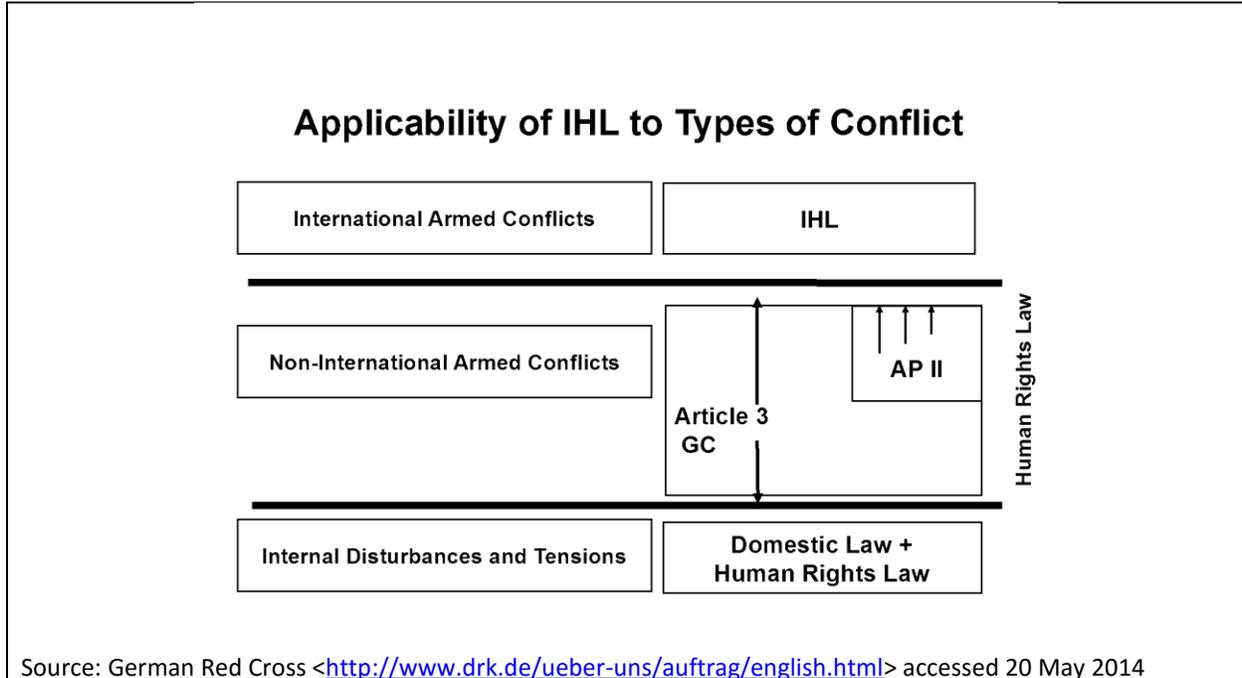
¹⁰⁵ Ibid. 96.

¹⁰⁶ ICTY, *Prosecutor v Tadic*, Judgment IT-94-1-A 15 July 1999.

¹⁰⁷ Nigel White, *Advanced Introduction to Conflict and Security Law* (Elgar Publishing 2014) 98.

¹⁰⁸ Dapo Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts' in Elizabeth Wilmhurst (ed) *International Law and the Classification of Conflicts* (Oxford University Press 2012) 35.

Table II.1. Typologies of armed conflict and applicable laws under IHL



2. Categories of armed violence in peace and conflict studies

A working composite typology of conflict in peace and conflict studies is that proposed by Ramsbotham, Miall and Woodhouse,¹⁰⁹ based on the premise that attention is to be paid to historical and geographical roots of conflict generations, that conventional labels leading to simplistic interpretations must be mistrusted thus, remaining as 'atheoretical' as possible,¹¹⁰ and that a third category of 'factional conflict' is to be distinguished from revolution/ideology and identity/secession ones within non-interstate conflicts. On these grounds, any conflict may fall into one of the following four types:

- Interstate conflict: classic war between two States.
- Non-interstate conflict: any internal war falling outside the scope of the abovementioned category, regardless of the overt or covert State involvement and cross-border spillover. Hence, distinctions must be made between three types of non-interstate conflict:¹¹¹
 - i) Revolution/ideology conflicts: This type covers the 'aim of changing the nature of government in a state - for example by (a) changing the system from capitalist to socialist, (b) changing the form of government from dictatorship to democracy, or (c) changing the religious orientation of the State from secular to Islamic'.¹¹²

¹⁰⁹ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011).

¹¹⁰ John Singer, 'Armed conflict in the former colonial regions: from classification to explanation' in L. Van de Goor et al., *Between Development and Destruction: An Inquiry into the Cases of Conflicts in Postcolonial States* (MacMillan Press 1996) 40.

¹¹¹ Oliver Ramsbotham, Tom Woodhouse and Hugh Miall, *Contemporary Conflict Resolution* (Polity Press 2011) 82.

¹¹² Ibid. 80-82

- ii) Identity/secession conflicts: This concept refers to the struggles for access to, autonomy in, secession from or control of a State depending upon 'the relative status of communities or "communal groups", however defined, in relation to the State'.¹¹³
- ii) Factional conflicts: This category includes '*coups d'état*, intra-elite power struggles, brigandage, criminality and warlordism, where the aim is to usurp, seize or retain State power merely to further economic and other interests'.¹¹⁴

Nevertheless, the authors warn against excessively rigid categorisation, insofar as features from different types may characterise actual conflicts. For instance, the Afghan conflict during the 1990s may be accounted as a revolution/ideology one, in the sense that the Taliban community intended to establish an Islamic state, whereas the struggle between Taliban, Uzbeks and Tajiks to impose their interests on the others may be seen as factional.

In the domain of terrorism, as it is the other field of conflict analysis, four types of terrorism may be distinguished according to how close they are to the notion of armed conflict and hence, how well they match the categories of conflicts:¹¹⁵

- Terrorism aimed at producing the same sort of terror that characterises armed conflicts and subject to political settlement.
- Terrorist acts that support the influence of a group in asymmetric conflicts and are also suitable for negotiation and agreement, i.e. Hezbollah in Lebanon.
- Terrorism that constitutes the main instrument of a group to defend their interests and may aim at economic goals rather than political objectives, being therefore, ineligible for peace process, i.e. the Lord's Resistance Army in Uganda.
- Terrorist groups that operate internationally and have the power to mobilise large populations to wage conflict in different parts of the world, not being amenable to peace conversations, i.e. Al Qaida.

Finally, Ramsbotham, Miall and Woodhouse came up with an alternative typology of terrorism correlating to the types of conflicts that are already analysed in this section:¹¹⁶

- State terrorism: This type comprises internal repression by totalitarian governments, named by Walter Laqueur 'terrorism from above' (1999) and external acts sponsored by States. It has been connected by the 2001 edition of the USA Department's Patterns of Global Terrorism reports with the so-called 'rogue states', such as Cuba, Iran, North Korea, Sudan, Syria, and formerly Iraq and Libya. Western countries have also been accused of State terrorism in the Arabic-Islamic world.
- Insurgent terrorism: It is characterised by a political effort specifically pursuing to challenge the existing government for control of all or a portion of its territory, or to force political concessions in sharing political power.

¹¹³ Ibid. 80-82.

¹¹⁴ Ibid. 80-82.

¹¹⁵ Ibid. 80-81.

¹¹⁶ Ibid. 82-85.

- Ideological: This kind of terrorism is aimed at those considered 'guilty of having transgressed the tenets of the terrorists' ideologically-based moral framework are considered to be legitimate targets which the terrorists feel justified in attacking'.¹¹⁷It includes several subtypes:

- Social revolutionary.
- Right wing/survivalist.
- Radical religious.

- Nationalist-separatist: This category has the goal of separation from existing entities through independence, political autonomy, or religious freedom or domination, seeking social justice or equity, anti-imperialism, or resistance to foreign conquest or occupation.

- Economic/factional: This sort of terrorism attempts to usurp, seize or retain state power merely to pursue economic and other group interests.

- International terrorism: This class relates to the groups of 'professional' terrorists from different nationalities which operate internationally without roots in national organisations whatsoever.

Besides the typologies proposed by Rambosthan, Miall and Woodhouse, different categories of armed conflict and other forms of violence have also been identified by the main databases and research projects on peace and conflict.

-The Correlates of War Project

The Correlates of War Project (CoW)¹¹⁸ distinguishes between non-state war, intra-state war, inter-state war and extra-state war depending on a) the involvement of the government and/or other non-state entities and b) whether the conflict takes place within a State, among States or outside the borders of a State.

Box II. 1. The CoW typologies of war

- **Non-state wars** are defined as 'wars between or among non-state entities. Such entities include governments of other types of geopolitical units (GPUs), such as dependencies or non-state autonomous entities that do not meet the criteria of system membership. They also might involve non-territorial entities (NTEs) or non-state armed groups (NSAs) that have no defined territorial base'.
- **Intra-state wars** refer to 'wars that predominantly take place within the recognised territory of a State'.
- **Inter-state wars** are those 'wars that take place between or among the recognised States'.
- **Extra-state wars** are defined as 'wars that take place between a State(s) and a non-state entity outside the borders of the State'.

Source: Meredith Reid Sarkees, 'The CoW Typology of War: Defining and Categorizing Wars [Version 4 of the Data]', *Correlates of War Project*

¹¹⁷C. J. M. Drake, 'The Role of Ideology in Terrorists' Target Selection, (1998) vol. 10 no. 2 *Terrorism and Political Violence* 53-85.

¹¹⁸The CoW was one of the first projects which worked on the systematic accumulation of scientific knowledge about war. Founded in 1963 by J. David Singer, a political scientist at the University of Michigan, and joined by historian Melvin Small, the project began its work by assembling a more accurate data set on the incidence and extent of inter-state and extra-systemic war in the post-Napoleonic period. The CoW is available at <<http://www.correlatesofwar.org>> accessed 20 April 2014.

<http://www.correlatesofwar.org/COW2%20Data/WarData_NEW/COW%20Website%20-%20Typology%20of%20war.pdf> accessed 30 April 2014

-The Uppsala Conflict Data Programme

The Uppsala Conflict dataset¹¹⁹ maps organised violence around the world on an annual basis (calendar year) according to three categories of violent action: State-based conflict, non-state conflict and one-sided violence.

Box II. 2. UCDP categories of violent action

- **State-based conflict** is defined as ‘a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year’. The program’s definition differs somewhat from the CoW, which only counts conflicts where at least 1,000 deaths have been recorded during one calendar year. In UCDP data such an armed conflict is labelled as having the intensity level of ‘war’, whilst armed conflicts that reap between 25 and 999 battle-related deaths are qualified as ‘minor’ armed conflicts.
 - **Non-state conflicts** are those conflicts involving ‘the use of armed force between two organised armed groups, neither of which is the government of a State, which results in at least 25 battle-related deaths in a year’.
 - **One-sided violence** is defined as: ‘The use of armed force by the government of a State or by a formally organized group against civilians which results in at least 25 deaths in a year’. The focus of this definition is the use of force against civilians caused by government or by non-state actors.
- Source: UCDP, available at <<http://www.pcr.uu.se/research/ucdp/definitions>> accessed 20 April 2014.

-The Heidelberg Institute for International Conflict Research

The Heidelberg Institute for International Conflict Research (HIIK) analyses conflicts according to levels of escalation and de-escalation and violent and non-violent phases,¹²⁰ including crisis situations as part of the escalation of violence to conflict. The HIIK defines a political conflict as ‘a positional difference, regarding values relevant to a society – the conflict items – between at least two decisive and directly involved actors, which is being carried out using observable and interrelated conflict measures that lie outside established regulatory procedures and threaten core State functions, the international order or hold out the prospect to do so.’¹²¹ Since 2003, the HIIK has been using a model of conflict intensity. Under

¹¹⁹The Uppsala Conflict Data Programme (UCDP) is managed at the Department of Peace and Conflict Research at the University of Uppsala was established in 1971 to conduct peace research and offer courses in peace and conflict studies. UCDP is available at <<http://www.pcr.uu.se/research/UCDP>> accessed 20 April 2014.

¹²⁰The HIIK is located in the Department of Political Science at the University of Heidelberg and it gathers documentation and conducts research and analysis of national and international political conflicts. It was founded in 1991 to continue the work of the research project KOSIMO (Conflict Simulation Model). The HIIK is available at <<http://www.hiik.de/en/>> accessed 29 April 2014. KOSIMO records information on political conflicts since 1945 and currently holds information on more than 500 conflicts. Research results are published in an annual Conflict Barometer.

¹²¹Heidelberg Institute for International Conflict Research (HIIK), *Conflict Barometer 2013* (2014), HIIK Heidelberg, <http://hiik.de/de/downloads/data/downloads_2013/ConflictBarometer2013.pdf>, accessed 30 May 2014, 8.

its revised methodology, the intensity levels are now known as dispute, non-violent crisis, violent crisis, limited war and war.¹²²

Table II. 2. Conflict Barometer – Model of conflict intensity			
intensity Level	terminology	level of violence	intensity class
1	dispute	non-violent conflicts	low intensity
2	non-violent crisis		
3	violent crisis	violent conflicts	medium intensity
4	limited war		high intensity
5	war		

Source: Heidelberg Institute for International Conflict Research (HIIK), Conflict Barometer 2013 (2014), HIIK Heidelberg, <http://hiik.de/de/downloads/data/downloads_2013/ConflictBarometer2013.pdf>, accessed 30 May 2014, 9

The last three levels constitute the category of violent conflicts, in contrast to the non-violent conflicts (dispute and non-violent crisis). Whereas a dispute is a political conflict carried out completely without resorting to violence, in a non-violent crisis one of the actors is threatened with violence.¹²³ Regarding violent conflicts, the HIIK also distinguishes between violent conflicts on national levels and violent conflicts on subnational level according to the territorial extend of the conflict.¹²⁴

-Center for Systemic Peace

The Center for Systemic Peace (CSP) analyses major episodes of political violence that involve at least 500 'directly-related' fatalities and reach a level of intensity in which political violence is both systematic and sustained (a base rate of 100 'directly-related deaths per annum').¹²⁵ Episodes may be of any general type: inter-state, intra-state, or communal; and they include all episodes of international, civil, ethnic, communal, and genocidal violence and warfare.

¹²² Ibid. 8-9.

¹²³ Ibid. 9.

¹²⁴ Ibid. 9.

¹²⁵ Monty G. Marshall and Benjamin R. Colle, *Global Report 2011. Conflict, Governance and State Fragility* (2011) <<http://www.systemicpeace.org/vlibrary/GlobalReport2011.pdf>> accessed 30 April 2014, preface.

Box II. 3. CSP types of violent conflicts

Episode types are listed according to two character codes:

- The first character denotes either a **(C)**ivil-intrastate involving rival political groups; **(E)**thnic-intrastate involving the State agent and a distinct ethnic group; or **(I)**nternational event-interstate, usually two or more States, but may denote a distinct polity resisting foreign domination (colonialism).
- The second character connotes either an episode of **(V)**iolence-the use of instrumental violence without necessarily exclusive goals; **(W)**ar-violence between distinct, exclusive groups with the intent to impose a unilateral result to the contention; or **i(N)**dependence-an attempt to forcibly remove an existing foreign domination.

Source: Monty G. Marshall, 'Major episodes of political violence (MEPV) and conflict regions, 1946-2008', (2010) Center for Systemic Peace
<<https://casi.sas.upenn.edu/sites/casi.sas.upenn.edu/files/iit/Major%20Episodes%20-%20Monty%20G.%20Marshall.pdf>> accessed 30 April 2014.

For example, the conflict in Syria, which started in 2011, was defined with the episode type EW meaning: Ethnic-intrastate involving the State agent and a distinct ethnic group + War-violence between distinct, exclusive groups with the intent to impose a unilateral result to the contention. While the conflict in Mali, which started in 2012, was defined with code CV meaning: Civil-intrastate involving rival political groups + Violence-the use of instrumental violence without necessarily exclusive goals.¹²⁶

-*Escola de Cultura de Pau (Programme on Conflict and Peacebuilding)*¹²⁷

The *Escola de Cultura de Pau* dataset on conflict and peacebuilding aims to 'incorporate the counting, recording and tracking of peacebuilding and humanitarian activity such as the status of demobilization, disarmament and reintegration processes, and the presence of UN and other military and civilian peace missions'.¹²⁸In its annual reports entitled 'Alert' the ECP distinguishes between two categories of political violence: armed conflicts and socio-political crisis.

Box II. 4. ECP categories of political violence

- **Armed conflict** is defined as 'any confrontation between regular or irregular armed groups with objectives that are perceived as incompatible and where the continuous and organised use of violence: a) causes a minimum of 100 battle-related deaths in a year and/or has a serious impact on the territory (e.g. destruction of infrastructures or natural resources) and the human security (e.g. injury or displacement of civilians, sexual violence, food insecurity, effect on mental health and the social fabric or interruption of basic services); b) pursues goals that can be differentiated from common crime and are normally linked to: demands for self-determination and self-government, or

¹²⁶See the whole list available at<<http://www.systemicpeace.org/warlist/warlist.htm>> accessed 30 April 2014.

¹²⁷The Escola de Cultura de Pau (ECP) is based at the Autonomous University of Barcelona and it was created in 1999 with the aim to work on culture of peace related issues, such as human rights, analysis of conflicts and peace processes, education for peace, disarmament and the prevention of armed conflicts. The ECP Programme on Conflict and Peacebuilding can be consulted at <<http://escolapau.uab.cat/english/conflictandpeacebuilding/index.php>>accessed 29 April 2014.

¹²⁸Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 92.

identity issues; opposition to the political, economic, social or ideological system of a State or the internal or international policies of a government, which in both cases produces a struggle to take or erode power; or control over the resources or the territory’.

- **Socio-political crisis** qualified as ‘a situation where the pursuit of specific objectives or a failure to satisfy certain demands by different parties leads to high levels of political and social mobilization and/or the use of violence that does not reach the level of armed conflict and may include fighting, repression, coups d’état, bombings or attacks. If escalated, these situations could degenerate into an armed conflict under certain circumstances. Socio-political crises are normally linked to: a) demands for self-determination and self-government, or identity issues; b) opposition to the political, economic, social or ideological system of a State, or the internal or international policies of a government, which in both cases produces a struggle to take or erode power; or c) control over the resources or the territory’.

- Armed conflicts and socio-political crises are classified as international, internal or internationalised

Source: Escola de Cultura de Pau (ECP), ‘Alerta 2013! Report on conflict, human rights and peacebuilding’, (2013), Icaria Editorial, <<http://escolapau.uab.es/img/programas/alerta/alerta/13/alerta13i.pdf>> accessed 30 May 2014.

-Global Peace Index

The Global Peace Index (GPI) aims at providing data for estimating the value of peace to the world economy, and uncovering the social structures and social attitudes that are at the core of peaceful societies.¹²⁹ The GPI is elaborated by the Institute of Economics and Peace which is a non-profit organization aiming at developing new conceptual frameworks to define peacefulness, through a process of providing metrics for measurement; uncovering the relationship between peace, business and prosperity, and by promoting a better understanding of the cultural, economic and political factors that drive peacefulness. Using a combination of 22 quantitative and qualitative indicators, the GPI produces a peace index or ranking of 162 countries.¹³⁰ The GPI has linked the measurement of peace and the statistics of conflict, thereby connecting the positive and negative dimensions of peace. In this case, the GPI uses the term ‘organised conflict’ as it is formulated by UCDP, that is, ‘a contested incompatibility that concerns government and/or territory, where the use of armed force between two parties, of which at least one is the government of a State, results in at least 25 battle-related deaths in a year’.¹³¹

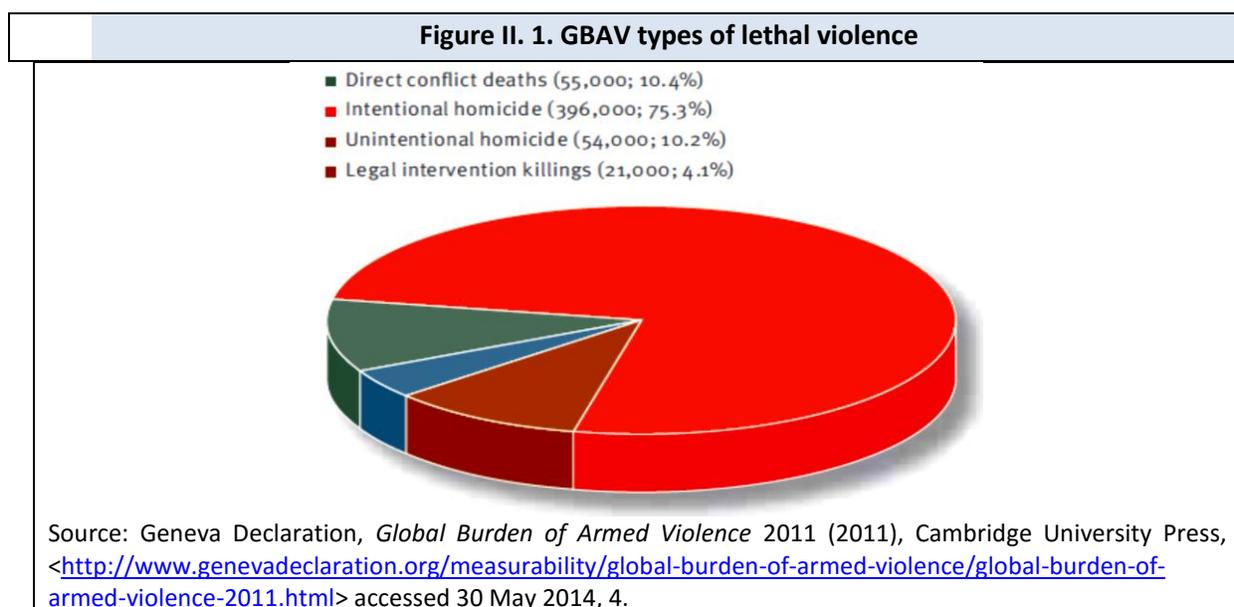
¹²⁹The interactive map of the GPI is available at <<http://www.visionofhumanity.org/#/page/indexes/global-peace-index>> accessed 29 April 2014. The Institute for Economics and Peace can be consulted at <<http://economicsandpeace.org>> accessed 24 April 2014. More information on the GPI will be provided in the next sub-section.

¹³⁰Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 66-67.

¹³¹UCDP definitions are available at <<http://www.pcr.uu.se/research/ucdp/definitions>> accessed 30 April 2014.

-Global Burden of Armed Violence

The Global Burden of Armed Violence (GBAV)¹³² is a report produced by the Geneva Declaration on Armed Violence and Development¹³³ whose objective is to introduce a unified framework for understanding patterns and characteristics of lethal violence across all settings, from armed conflicts to economically motivated crime and interpersonal violence. The report, released for the first time in 2008, tries to overcome the blurred lines between categories of violence (organised, political, and criminally or economically motivated violence). It provides an overview of cases and arguments for *a unified approach to armed violence*.¹³⁴ It uses comparable national level estimates of violent deaths and analyses available data from multiple sources to present the first aggregate overview of violent deaths.



¹³²The GBAV is available at <<http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence.html>> accessed 29 April 2014.

¹³³The Geneva Declaration on Armed Violence and Development is a diplomatic initiative aimed at addressing the interrelations between armed violence and development. It is available at <<http://www.genevadeclaration.org/the-geneva-declaration/what-is-the-declaration.html>> accessed 29 April 2014.

¹³⁴Geneva Declaration, *Global Burden of Armed Violence 2011* (2011), Cambridge University Press, <<http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2011.html>> accessed 30 May 2014, 11.

C. Global statistics and trends on armed conflict and other forms of violence

This sub-section aims at indicating the figures and global trends on armed conflict and other forms of violence on the basis of existing databases.

1. Statistics according to peace and conflict databases

The first important question posed when envisaging the measurement of peace, either in its positive dimension of ‘peacefulness’ or in its negative dimension of ‘absence of war’, is the definition of the conflict domain. In this respect, even though Ramsbotham, Miall and Woodhouse focus on actual or potentially violent conflicts, ranging from social conflicts to full-scale interstate war,¹³⁵ contemporary datasets, such as the Escola de Cultura de Pau, in Barcelona, or the Conflict Simulation Model, in Heidelberg, measure not only conflicts that are already broken out but also, levels of political tension. Hence, the ECP annual report of 2014 identified 99 situations of tension in 2013, in which the high levels of political and social mobilisation and/or use of violence, did not reach the level of an armed conflict.¹³⁶ In turn, the Heidelberg Institute for International Conflict Research identified 176 cases of violent crisis marked by sporadic use of violence in 2013.¹³⁷

To shed light on this great variety of databases applying different criteria for defining a relevant conflict, Kristine Eck elaborated a guide to the sixty major databases available by 2005,¹³⁸ commenting on their usefulness for peace and conflict research.¹³⁹ Indeed, the different datasets undertake the gathering of conflict information from diverse starting points. For example, whereas the criterion for inclusion of the Hamburg University Project pays attention to ‘the new forms of production, monetarization of the economy and the resulting dissolution of traditional forms of social integration’,¹⁴⁰ the Uppsala Conflict Data Project builds its analysis on the concept of ‘armed conflict’ and ‘requires that the conflict should have an issue, an incompatibility’,¹⁴¹ beside identified actors and actions. According to Eck’s findings, the different sets of data, albeit using a variety of methodologies, confirm the trend that the number of wars is in decline since the 1990s.

Additionally, one of the major breakthroughs in conflict data collection and analysis is the measurement of peace from a positive standpoint, which implies, as mentioned before, devising indicators for gauging ‘peacefulness’ in order to guide peacemaking and peacebuilding.¹⁴² To achieve this, the KOSIMO database, for instance, is linked to a Conflict Barometer allowing discrimination between data on violent conflicts and that related to non-violently conducted conflicts. In turn, the ECP attempts to monitor and annually

¹³⁵Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 63.

¹³⁶Escola de Cultura de Pau (ECP), *Alerta 2014! Informe sobre conflictos, derechos humanos y construcción de paz*, (2014), Icaria Editorial, <<http://escolapau.uab.es/img/programas/alerta/alerta/14/alerta14e.pdf>> accessed 30 May 2014, 15.

¹³⁷Heidelberg Institute for International Conflict Research (HIK), *Conflict Barometer2013* (2014), HIK Heidelberg, <http://hiik.de/de/downloads/data/downloads_2013/ConflictBarometer2013.pdf> accessed 30 May 2014, 15.

¹³⁸Kristine Eck, *A Beginner’s Guide to Conflict Data: Finding and Using the Right Dataset* (2005), UCDP Research Paper Series.

¹³⁹Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 65.

¹⁴⁰Peter Wallensteen, *Understanding Conflict Resolution: War, Peace and the Global System* (SAGE Publications Ltd, 2002) 22.

¹⁴¹Ibid., 24.

¹⁴²Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 66.

report peacebuilding and humanitarian activity, while the Global Peace Index, developed by the Institute for Economics and Peace, aims to estimate the value of peace in terms of world economy, by elaborating a ranking of 162 countries using twenty-two quantitative and qualitative indicators. It should also be noted that there is an emergence of real-time conflict tracking, by systems using information and communication technologies, with the intension of gathering and analysing conflict data, as illustrated by the Ushahidi Mapping Platform.¹⁴³ Created to report violent incidents and peace efforts on the Internet during the Kenyan post-election turmoil in 2008, and now intended for people and organisations to bring attention to crisis situations as an open source platform.¹⁴⁴

The evolution which has taken place regarding the measurement of armed conflicts by peace and conflicts databases is worthy of analysis. Early research on conflict was focused on reporting a list of wars, with their start and end dates, and their participating or affected countries. This traditional conflict research used the wars themselves or episodes of violence as the unit of analysis, without explicit comparisons to periods without wars.¹⁴⁵ Consequently, many researchers started comparing wars and 'no-conflict' episodes at the level of either individual countries or dyads (pairs of countries).¹⁴⁶

In a second phase, conflict research was accompanied by a broader scope in the study of interstate conflict, beyond the largest and most destructive wars. Interstate wars were becoming relatively rare events, and there were many serious crises between states that could give rise to war. In this regard, the Interstate Crisis Behaviour Data Project has tried to identify crises, defined as 'a situation [...] which gives rise to decision makers' perceptions of threat to basic values, finite time for response, and the likelihood of involvement in military hostilities'¹⁴⁷. A similar development to identify conflict short of war was also developed in the CoW project through the Militarized Interstate Dispute (MID) data. The MID data has focused most recent research on dyadic interstate conflict tending to look at MIDs rather than wars because while wars are rare events, MIDs are much more frequent.¹⁴⁸

In a third phase, there was a need to study smaller intrastate conflicts in the early 1990s as the increase in internationalised post-Cold War civil conflicts did not sit well with the CoW project's typology, where wars must be either international or intrastate. Many have highlighted the need to distinguish between the specific incompatibilities of civil wars, as some countries may experience multiple conflicts at the same time that may have completely different attributes such as the separatist conflicts in Assam and Kashmir in India.¹⁴⁹

¹⁴³ The Ushahidi Mapping Platform is available at <<http://www.ushahidi.com/product/crisisnet/>> accessed 17 September 2014

¹⁴⁴ Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 70.

¹⁴⁵ Kristian Skrede Gleditsch, Nils W Metternich and Andrea Ruggeri, 'Data and progress in peace and conflict research', (2014) 51(301) *Journal of Peace Research* 3-6.

¹⁴⁶ *Ibid.* 3-6.

¹⁴⁷ Michael Brecher & Jonathan Wilkenfeld, 'Crisis in World Politics' (1982) vol. 34 no. 3 *World Politics* 380, 383.

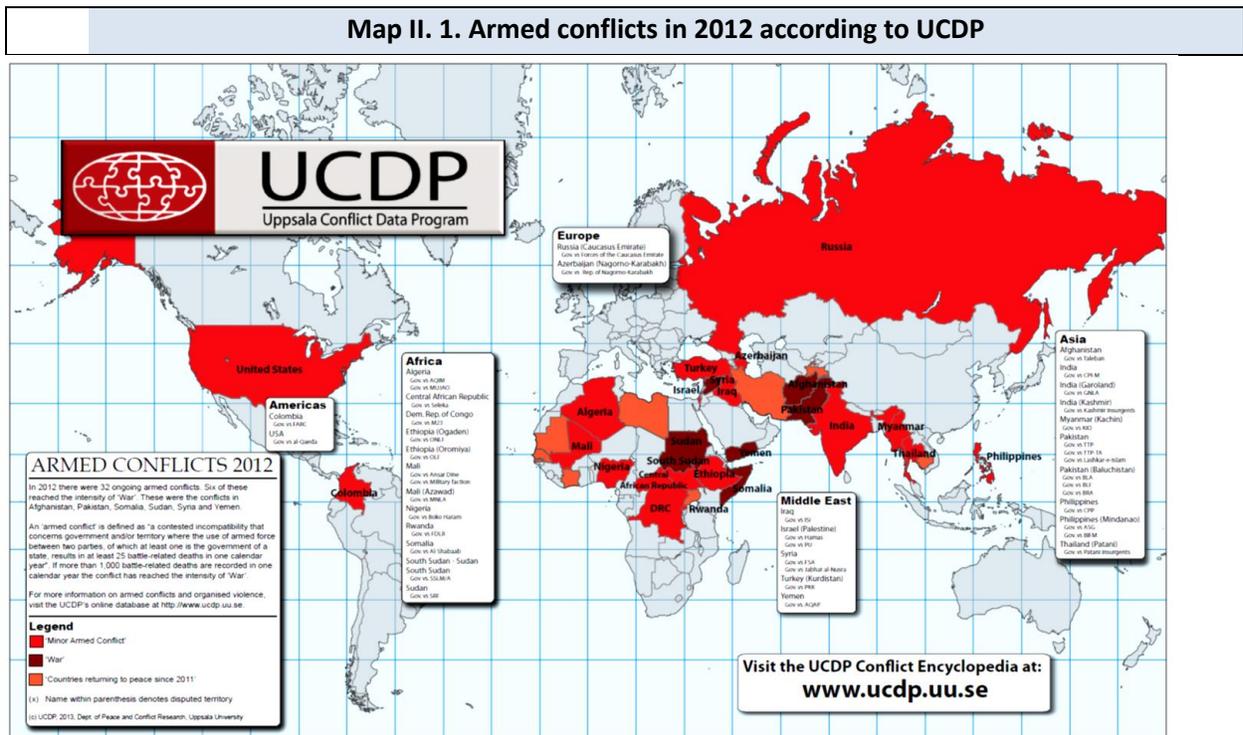
¹⁴⁸ Kristian Skrede Gleditsch, Nils W Metternich and Andrea Ruggeri, 'Data and progress in peace and conflict research' (2014) 51(301) *Journal of Peace Research* 3-6.

¹⁴⁹ *Ibid.* 3-6.

At present, one of the major recent innovations in the methodology of conflict data collection has been the design of datasets whose purpose is to measure indicators of peace and peacefulness.¹⁵⁰ Datasets are now being developed which measure peacefulness as well as violence and conflict. In line with this present trend, we will proceed to compare major findings in armed conflicts, peace, and other forms of violence according to selected databases and research projects: UCDP, HIIK, ECP, GPI and GBAV.

In 2012, the UCDP reported 32 active armed conflicts located in: Africa (13), Asia & Pacific (10), Middle East (5), the Americas (2) and Europe and Central Asia (2). Out of these 32 armed conflicts a total of 6 (Afghanistan, Pakistan, Somalia, Sudan, Syria and Yemen) reached the intensity level of 'war', meaning that more than 1,000 battle-related deaths were recorded in 2012.¹⁵¹ In 2013, there were 33 active conflicts in the world, causing at least 25 battle-related deaths. Of the 33 armed conflicts, 24 were defined as intrastate conflicts and 9 as internationalized intrastate, and there were no interstate conflicts recorded by UCDP in 2013. According to UCDP,

[...] the number of active conflicts in the world has remained relatively stable over the past ten years, fluctuating between 31 and 37. Compared to the period right after the end of the Cold War, where more than 50 conflicts were active, armed conflicts have declined by almost 40 percent. Conflicts claiming more than 1,000 lives, defined as wars, have declined by more than 50 percent, from 15 in the early 1990s to seven in 2013.¹⁵²



¹⁵⁰Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, Contemporary Conflict Resolution (Polity Press 2011) 66.

¹⁵¹UCDP Armed Conflicts 2012 <http://www.pcr.uu.se/digitalAssets/66/66314_3armedconflicts_2012.pdf> accessed 24 June 2014.

¹⁵²LottaThemné and Peter Wallensteen, 'Armed conflicts 1946-2012' (2013) 50 (509) Journal of Peace Research.

Source: UCDP, 'Armed Conflicts 2012' <http://www.pcr.uu.se/digitalAssets/66/66314_1armedconflicts_2012.pdf> accessed 10 May 2014.

As this map shows, armed conflicts in 2012 were located in: Europe (2): Russia (territory: Caucasus Emirate); Azerbaijan (territory: Nagorno-Karabakh). Middle East (5): Iraq (Gov. vs. ISI); Israel (territory: Palestine); Syria (Gov. vs. FSA; Gov. vs. Jabhat al-Nusra); Turkey (territory: Kurdistan); Yemen (Gov. vs. AQAP). Asia (10): Afghanistan (Gov. vs. Taleban); India (Gov. vs. CPI-M); India (territory: Garoland); India (territory: Kashmir); Myanmar (territory: Kachin); Pakistan (territory: Baluchistan); Pakistan (Gov. vs TTP; Gov. vs. TTP-TA; Gov. vs. Lashkar-e-Islam); Philippines (territory: Mindanao); Philippines (Gov. vs. CPP); Thailand (territory: Patani). Africa (13): Algeria (Gov. vs. AQIM; Gov. vs. MUJAO); Central African Republic (Gov. vs. Seleka); Democratic Republic of Congo (Gov. vs. M23); Ethiopia (territory: Ogaden); Ethiopia (territory: Oromiya); Mali (Gov. vs. Ansar Dine; Gov. vs. Military faction); Mali (territory: Azawad); Nigeria (Gov. vs. Boko Haram); Rwanda (Gov. vs. FDLR); Somalia (Gov. vs. Al-Shabaab); South Sudan – Sudan; South Sudan (Gov. vs. SSLM/A); Sudan (Gov. vs. SRF). Americas (2): Colombia (Gov. vs. FARC); USA (Gov. vs. al-Qaeda).

According to HIIK, in 2012 a total of 396 conflicts were counted,¹⁵³ while in 2013 the global number of conflicts was 414. Of these, 221 saw the use of violence and, for the second time since 2011, the number of wars amounted to twenty throughout the five world regions. Together with the recurrence of 25 limited wars, the year therefore witnessed a record total of 45 highly violent conflicts. An additional 176 conflicts constituted violent crises whereas the number of non-violent conflicts increased to 193, subdivided into 75 non-violent crises and 118 disputes.¹⁵⁴

Table II. 3. Violent conflicts in 2013 according to Conflict Barometer		
LIMITED WARS (25)	SUB-SAHARAN AFRICA	DR Congo (FDLR) DR Congo (inter-militant violence) DR Congo (Iturimilitias) DR Congo (Mayi-Mayi) Kenya (inter-ethnic violence) Nigeria (Eggon groups / Nasarawa State) Uganda (ADF-NALU)
	THE MIDDLE EAST AND MAGHREB	Algeria (AQIM et al.) Egypt (Islamist groups / Sinai Peninsula) Libya (opposition groups) Tunisia (AQIM et al.) Turkey (PKK / Kurdish areas) Yemen (al-Houthi rebels – Sunni tribal forces)
		India (JeM et al. / Kashmir) Myanmar (KIA, KIO / Kachin State)

¹⁵³Heidelberg Institute for International Conflict Research (HIIK), Conflict Barometer 2012, HIIK Heidelberg, <http://hiik.de/en/konfliktbarometer/pdf/ConflictBarometer_2012.pdf> accessed 30 May 2014, 2.

¹⁵⁴ Ibid. 15.

	ASIA AND OCEANIA	Pakistan (inter-ethnic violence / Sindh) Pakistan (inter-Islamist violence) Pakistan (TTP et al. – religious groups) Philippines (BIFM, BIFF – MILF, government)
	THE AMERICAS	Brazil (drug trafficking organizations) Colombia (FARC) Colombia (inter-cartel violence, neo-paramilitary groups) Colombia (neo-paramilitary groups, drug cartels) Mexico (inter-cartel violence, neo-paramilitary groups)
	EUROPE	Russia (Islamist militant groups / Northern Caucasus)
WARS (20)	SUB-SAHARAN AFRICA	Central African Republic (rebel groups) DR Congo (M23) Mali (Islamist groups) Nigeria (Boko Haram) Nigeria (farmers – pastoralists) Somalia (Islamist groups) South Sudan (inter-ethnic violence) South Sudan (SPLA defectors) Sudan (Darfur) Sudan (inter-ethnic violence) Sudan (SPLM/A-North / Southern Kordofan, Blue Nile)
	THE MIDDLE EAST AND MAGHREB	Afghanistan (Taliban et al.) Egypt (opposition groups) Iraq (Sunni militant groups) Syria (NC, Islamist groups – KSC / Kurdish regions) Syria (opposition groups) Yemen (AQAP, Ansar al-Sharia)
	ASIA AND OCEANIA	Pakistan (Islamist militant groups) Philippines (MNLF)
	THE AMERICAS	Mexico (drug cartels)
	EUROPE	--

Source: Heidelberg Institute for International Conflict Research (HIK), Conflict Barometer 2013 (2014), HIK Heidelberg, <http://hiik.de/de/downloads/data/downloads_2013/ConflictBarometer2013.pdf> accessed 30 May 2014, 14.

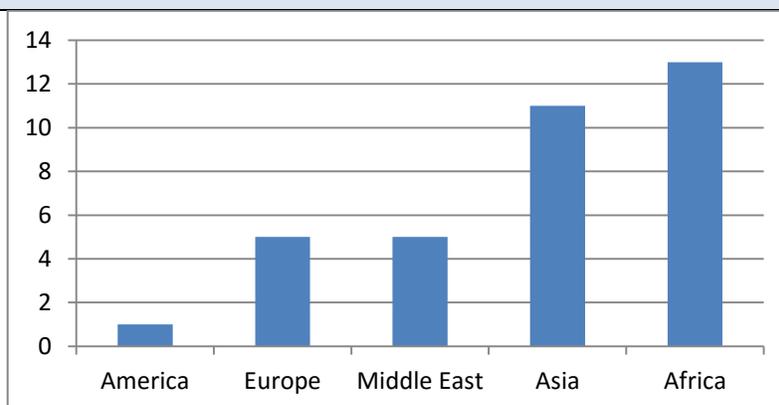
In their annual reports, the ECP identified 38 armed conflicts and 91 socio-political crises in 2012,¹⁵⁵ while in 2013 the number of armed conflicts decreased to 35 and socio-political crises increased to 99.¹⁵⁶ In

¹⁵⁵Escola de Cultura de Pau (ECP), 'Alerta 2013! Report on conflict, human rights and peacebuilding', (2013), Icaria Editorial, <<http://escolapau.uab.es/img/programas/alerta/alerta/13/alerta13i.pdf>> accessed 30 May 2014, 13.

¹⁵⁶ Ibid. 16.

2013 more than a quarter of those armed conflicts (10 cases) had very high levels of violence, beating a thousand victims annual deaths - Nigeria (Boko Haram), Central African Republic, DR Congo (east), Somalia, South Sudan, Afghanistan, Pakistan, Pakistan (Balochistan), Iraq and Syria.¹⁵⁷ Two thirds of armed conflicts were linked to the opposition to a particular Government or a State system and demands on identity and self-government. The struggle for control of resources or territory was a factor fueling and/or aggravating most conflicts.¹⁵⁸

Figure II. 2. Regional distribution of armed conflicts in 2013 (ECP)



Source: Escola de Cultura de Pau (ECP), *Alerta 2014! Informe sobre conflictos, derechos humanos y construcción de paz* (2014), Icaria Editorial, <<http://escolapau.uab.es/img/programas/alerta/alerta/14/alerta14e.pdf>>, accessed 30 May 2014, 18.

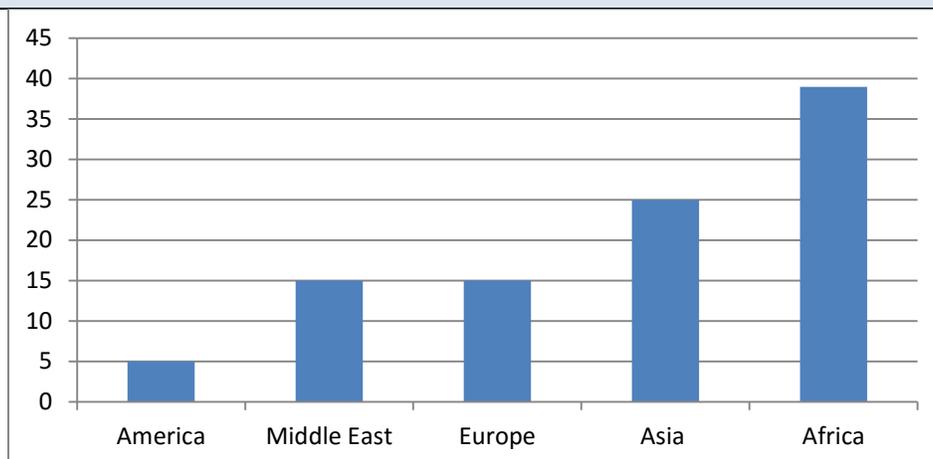
The most serious socio-political crises in 2013 took place in Kenya, Madagascar, RD Congo (east-ADF), DR Congo, Rwanda, Bangladesh, China (East Turkestan), Philippines (Mindanao-MNLF), Philippines (Mindanao-MILF), India-Pakistan, Indonesia (West Papua), Pakistan, Thailand, Armenia, Azerbaijan (Nagorno-Karabakh), Egypt, Egypt (Sinai), Israel-Syria-Lebanon, Lebanon, Syria-Turkey and Yemen (South).¹⁵⁹ Most of the crises (75%) were linked to the opposition to domestic or international policies implemented by the respective governments, which led to a struggle for access or erosion of the power, or the opposition to political, social or ideological system of a State. Other prevalent causes were the demands on identity and / or self-government, which formed a key element in 69% of tensions in 2013.¹⁶⁰ Similarly to armed conflicts, socio-political crisis were mostly located in Africa and Asia as indicated in Figure II.3.

¹⁵⁷ Ibid, 16.

¹⁵⁸ Ibid. 16.

¹⁵⁹ Ibid. 16.

¹⁶⁰ Ibid. 16.

Figure II. 3. Regional distribution of socio-political crises in 2013 (ECP)

Source: Escola de Cultura de Pau (ECP), *Alerta 2014! Informe sobre conflictos, derechos humanos y construcción de paz* (2014), Icaria Editorial, <<http://escolapau.uab.es/img/programas/alerta/alerta/14/alerta14e.pdf>>, accessed 30 May 2014, 22.

Comparing these three databases, there are significant differences among the total figures of violent conflicts during 2012 and 2013 according to UCDP, HIIK and ECP, as it is shown in the next table (Table II.4).

Table II. 4. Comparative data on armed conflicts, crises and other tensions in 2013

DATASET	NUMBER OF ARMED CONFLICTS IN 2013	NUMBER OF CRISES AND OTHER TENSIONS IN 2013
UCDP	33 ¹⁶¹	Not defined
HIIK	45 ¹⁶²	369 ¹⁶³
ECP	35 ¹⁶⁴	99 ¹⁶⁵

It is clear that the information contained in these datasets, while scrupulously collected and checked, is not the product of an exact science. Armed conflicts and their impact are notoriously difficult to measure, and all datasets are contested in one way or another. Moreover, there is no agreed universal standard for defining the thresholds for inclusion such as 25 battle-related deaths, 500 battle-related deaths, or 1000 battle related deaths. Even if there were, counting fatalities in conflict is deeply contested and controversial. It is also very difficult to identify clear starting points and termination points of conflicts, as

¹⁶¹This figure includes war and minor conflicts, non-state conflicts, and one-sided violence.

¹⁶²Conflicts are divided into 20 wars and 25 limited wars.

¹⁶³This figure includes 176 violent and 193 non-violent crises.

¹⁶⁴They are classified as international, internal and internationalised internal armed conflicts.

¹⁶⁵ They are classified as international, internal and internationalised internal socio-political crises or tensions.

they go into periods of calm and de-escalation. However, despite these limitations, the evolution of capacity and of methodologies to develop datasets which record and track patterns and intensities has been a remarkable achievement of the conflict research field.¹⁶⁶ In addition, it can be highlighted that there is considerable agreement amongst the major existing databases, about the major armed conflicts currently in progress and the regions that are most affected by conflicts.

As highlighted above, contemporary research on conflicts has focused during the last decades, not only on the measurement of conflict and violence but on peace and peacefulness indicators. In this regard, it is important to mention the work of the Global Peace Index (GPI). The GPI has ranked 162 countries according to their level of peace, using 22 indicators such as number of homicides, access to weapons, number of deaths from conflict, number of displaced people, terrorist activity, etc. The index gauges global peace using three broad themes; the level of safety and security in society; the extent of domestic or international conflict; and the degree of militarisation. According to the last report 'Global Peace Index 2014',

the last year was marked by heightened tensions in the Ukraine, the ongoing conflict in Syria, civil war in South Sudan and a broadening and increased intensity of terrorist activity in many countries including Afghanistan, Iraq, the Philippines and Libya. The most peaceful region continues to be Europe while the least peaceful region is South Asia. Afghanistan has been replaced at the bottom of the Index by Syria due to a slight improvement in its peace, combined with further deterioration of the situation in Syria. South Sudan experienced the largest drop in the Index this year falling from 145th to 160th and ranking as the third least peaceful country. Major deteriorations also occurred in Egypt, Ukraine and Central African Republic.¹⁶⁷

In this regard, it is interesting to observe the list of countries at least peace in the Global Peace Index ranking, as it is shown in the figure below (Table II.5.).

# Ranking	Country	Score
162	SYRIA	3.650
161	AFGHANISTAN	3.416
160	SOUTH SUDAN	3.397
159	IRAQ	3.377
158	SOMALIA	3.368
157	SUDAN	3.362

¹⁶⁶Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, Contemporary Conflict Resolution (Polity Press 2011) 69.

¹⁶⁷Institute for Economics and Peace (IEP), 'Global Peace Index 2014. Measuring peace and assessing country risk' (2014) <<http://www.visionofhumanity.org/sites/default/files/2014%20Global%20Peace%20Index%20REPORT.pdf>> accessed 30 May 2014, 1.

¹⁶⁸Source: Institute for Economics and Peace (IEP) 'Global Peace Index 2014. Measuring peace and assessing country risk' (2014) <<http://www.visionofhumanity.org/sites/default/files/2014%20Global%20Peace%20Index%20REPORT.pdf>> accessed 30 May.

156	CENTRAL AFRICAN REPUBLIC	3.331
155	DR CONGO	3.213
154	PAKISTAN	3.107
153	NORTH KOREA	3.071
152	RUSSIA	3.039

Finally, the GBAV conjectures on the blurred lines between the different existing categories of violence, proposing an integrated approach to armed violence. Its findings for 2011 are shown in Box II.5.

Box II. 5. GBAV figures on lethal violence

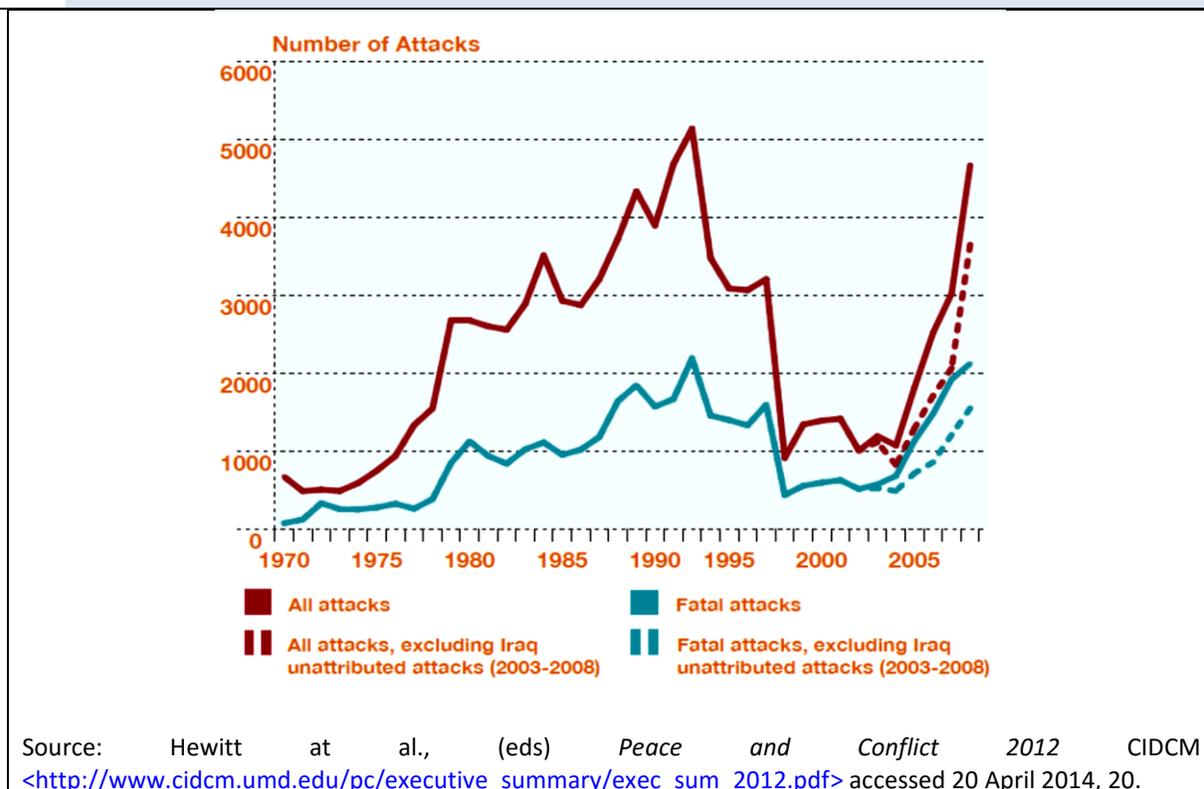
- More than **526,000 people are killed each year as a result of lethal violence**. One in every ten of all reported violent deaths around the world occur in so-called conflict settings or during terrorist activities, while 396,000 intentional homicides occur every year.
- **Fifty-eight countries exhibit violent death rates above 10.0 per 100,000**. These countries account for almost two-thirds of all violent deaths. El Salvador was the country most affected by lethal violence during the period 2004 to 2009, followed by Iraq and Jamaica.
- The proportion of homicides related to gangs or organized crime is significantly higher in Central and South America than in Asia or Europe. Homicide rates related to robbery or theft tend to be higher in countries with greater income inequality.
- The proportion of homicides related to intimate partners or family members, represents a significant proportion of homicides in some countries in Europe and Asia.
- **Roughly 66,000 women are violently killed around the world each year**, accounting for approximately 17 per cent of total intentional homicides.
- Lethal violence is strongly associated with negative development outcomes in various ways and is accompanied by low levels of overall achievement of the Millennium Development Goals.

Source: Global Burden of Armed Violence. Lethal Encounters, 2011, Geneva Declaration <www.genevadeclaration.org/.../Global-Burden-of-Armed-Violence-full-report.pdf> accessed 10 May 2014, 1-2

In the domain of terrorism, as it is the other field of conflict analysis, databases for recording and tracking terrorist attacks have been profoundly developed after the events of 11 September 2001 especially in the sense of merging separate datasets. Thus, by combining data from the Global Terrorism Database (GTD, hereinafter), the RAND-St Andrews Terrorism Chronology, and the RAND-MIPT Terrorism Incident Data Base, LaFree and Dugan found that terrorist attacks rose from the 1970s to a peak in the 1990s, and from the 2000s, especially sharply after the invasion of Iraq.¹⁶⁹

¹⁶⁹Hewitt et al., (eds) *Peace and Conflict 2012* Centre International Development and Conflict Management <http://www.cidcm.umd.edu/pc/executive_summary/exec_sum_2012.pdf> accessed 20 April 2014, 20.

Figure II. 4. Total and fatal terrorist attacks, 1970-2008



2. Global trends on armed conflict and other forms of violence

Regarding conflict trends,¹⁷⁰ the vast majority of conflict datasets confirm that the incidence of major armed conflicts is on the decline, in line with the steady decrease in the number of interstate wars annually over the past hundred years.¹⁷¹ The total absence of interstate wars in 1993 and 1994, only interrupted by a border altercation between Peru and Ecuador in 1995 and a new outbreak in the Kashmir dispute between India and Pakistan, provides proof of this phenomenon.¹⁷²

Furthermore, between the invasion of Iraq in 2003 and the flare-up of hostilities between Djibouti and Eritrea in 2008, the longest period without interstate conflicts was recorded. The other side of the coin is the appearance of a new pattern of conflict characterised by non-State armed groups questioning the State authority or the central control, threatening territorial integrity or leading to fragmentation.¹⁷³ In this context, Uppsala's annual report of 2013 recorded the historically low figure of only seven of the thirty-three conflicts reaching the threshold of 1,000 battle casualties in the year.¹⁷⁴ However, findings

¹⁷⁰Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 70-73.

¹⁷¹Kalevi J Holsti, *The State, War and the State of War* (Cambridge University Press 1996) 24.

¹⁷²Peter Wallensteen and Margareta Sollenberg, 'Armed Conflicts, Conflict Termination and Peace Agreements, 1989-96', (1997) 34(3) *Journal of Peace Research* 71.

¹⁷³Peter Wallensteen and Karin Axell, 'Conflict Resolution and the End of the Cold War 1989-1993' (1994) 31 (3) *Journal of Peace Research* 345.

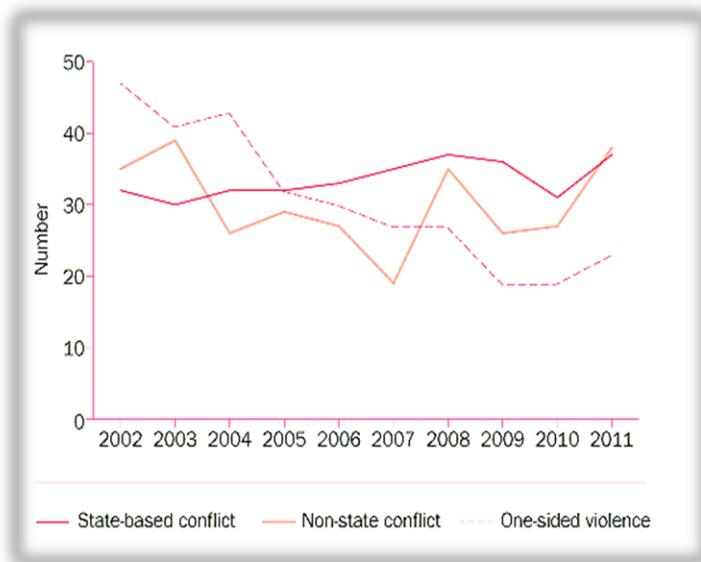
¹⁷⁴Lotta Harbom and Peter Wallensteen, 'Armed Conflicts 1946-2008' (2009) 46(4) *Journal of Peace Research*.

from the Centre for International Development and Conflict Management at the University of Maryland show an upturn in armed conflicts since 2007, explained by the resurgence of long-term wars that were dormant for at least one year, thus evincing also the relevance of post-conflict reconstruction and peace-building.¹⁷⁵

This trend is shared in the analysis by the Stockholm International Peace Research Institute (SIPRI, hereinafter) indicating that ‘deaths resulting from major organized violence worldwide remained at historically low levels’. For SIPRI, the factor that explains the global decline in the number of conflicts and in casualty rates is the ‘dramatic reduction in major powers engaging in proxy conflicts’. However, in recent years there has been an increase in the number of intrastate conflicts that are internationalised - that is, that have another State supporting one side or another. Such involvement often has the effect of increasing casualty rates and prolonging conflicts’.¹⁷⁶

From an empirical standpoint, the Uppsala Conflict database reported only one interstate conflict in 2012, between Sudan and South Sudan, while the Conflict Barometer reported that over 80% of the conflicts (314 out of 396) were of an intrastate nature the same year. At the same time, with the relapse of earlier internal conflicts making up approximately 80% of all conflict outbreaks, and the recurrence of violence within ten years in approximately 40% of all post-conflict societies, the need for more robust conflict prevention is further underscored.

Figure II. 5. Number of incidents of organised violence 2002–2011



Source: SIPRI, *SIPRI Yearbook 2013* (Oxford University Press 2013) <<http://www.sipri.org/yearbook/2013/01>> accessed 20 May 2014.

¹⁷⁵Hewitt et al., (eds) *Peace and Conflict 2012* Centre International Development and Conflict Management <http://www.cidcm.umd.edu/pc/executive_summary/exec_sum_2012.pdf> accessed 20 April 2014 20.

¹⁷⁶SIPRI, *SIPRI*¹⁷⁶SIPRI *SIPRI Yearbook 2013* (Oxford University Press 2013).

According to UCDP, 'the overall number of incidents of organised violence resulting in the deaths of at least 25 people in a particular year (the threshold for counting by UCDP) was slightly lower in 2011, at 98, than in 2012, when it stood at 114'. The UCDP has documented a decrease in incidences of one-sided violence, and indicates that both State-based and non-state conflicts were more prevalent in 2011 than in 2012. For the 10-year period 2002–2011, the UCDP reports that 'there were 73 active State-based conflicts, including 37 that were active in 2011; 223 non-state conflicts, including 38 that were active in 2011; and 130 actors recorded as carrying out one-sided violence, including 23 in 2011'.¹⁷⁷ It is then recorded that development in one-sided violence falls between the two other patterns of violence; notwithstanding one-sided violence against civilians was more acute in 2012. In any case, data for 2002–2011 'illustrate the difficulty of drawing direct links between patterns in the three categories of organized violence. The different categories can certainly influence each other, as shown by the examples of the Arab Spring and East and South East Asia'. However, the mechanisms are complex, and understanding them, let alone how to manage them, requires in-depth, case-based study.¹⁷⁸

When it comes to conflict distribution, most authors agree that regional patterns must be taken into account for the purpose of analysis, advocating for the importance of distinguishing between 'zones of peace' (the Caribbean or the South Pacific) and 'zones of war'¹⁷⁹ (Africa, ex-Soviet republics, the Middle East, Central America, South Asia or the Balkans), as well as 'pluralistic security communities' (North America, Western Europe, Australia or New Zealand) and 'no-war-zones' (East Asia).¹⁸⁰ In effect, the most conflict-affected areas are the Middle East, Western Asia and Africa, whereas East Asia is characterized by high levels of interstate tensions. Moreover, an accurate analysis requires taking heed of local variations by geo-referencing events in temporal and geographical terms.¹⁸¹

Making a comparison of the various database figures collated from the last two decades, according to UCDP, in 2006, Asia showed the highest figure over the previous ten years (seven major armed conflicts with more than 1,000 battle-related deaths in the calendar year), followed by Africa, America and the Middle East (three major armed conflicts recorded for each), and Europe (one). Applying Ramsbotham, Miall and Woodhouse's classification, identity/secession conflicts predominate in Asia, Europe and the Middle East, whereas conflicts in Africa and America were more of a revolution/ideology nature. In turn, in 2008 ECP recorded thirty-one conflicts, nine of them considered major armed conflicts according to UCDP criteria, four in Africa, three in Asia, and two in the Middle East.¹⁸² For the period 2011–2013 the main conclusion drawn from the databases is the decline in major violent conflict—although there is a pick

¹⁷⁷SIPRI Yearbook 2013 indicates that 'The three categories show markedly different patterns over time. The annual number of non-state conflicts can rise and fall sharply, displaying no obvious trends. In contrast, major changes in the number of state-based conflicts tend to happen slowly. Developments in the incidence of one-sided violence fall somewhere between these two extremes'. SIPRI, *SIPRI Yearbook 2013* (Oxford University Press 2013).

¹⁷⁸Lotta Themner and Peter Wallensteen, 'Patterns of organized-violence', *SIPRI Yearbook 2013* (Oxford University Press 2013) see at <<http://www.sipri.org/yearbook/2013/01>> accessed 20 May 2014.

¹⁷⁹Arie M Kacowicz, 'Explaining Zones of Peace: Democracies as Satisfied Powers?' (1995) 33(3) *Journal of Peace Research*, 265–276.

¹⁸⁰Kalevi Holsti, *The State, War and the State of War* (Cambridge University Press 1996) chapter 7.

¹⁸¹See Halvard Buhaug, and Scott Gates, 'The Geography of Civil War' (2002) 39(4) *Journal of Peace Research* 417–433; Stathis N. Kalyvas, *The Logic of Violence in Civil War* (Cambridge University Press 2006)

¹⁸²Oliver Ramsbotham, Hugh Miall, Tom Woodhouse, *Contemporary Conflict Resolution* (Polity Press 2011) 77–78.

of resurgence in 2012 - whereas intrastate conflicts, low-intensity including those involving non-state actors and most of them constituting high-intensity conflicts, have increased dramatically. Figures confirmed this trend.

Considering the countries where highly violent conflict and high-levels of violence against civilians is commonly identified by these databases, the following countries coincide: Nigeria, Mali, Central African Republic, DR Congo (East), Somalia, South Sudan, Sudan, Afghanistan, Pakistan, Iraq and Syria. Eight of them are ranked as less at peace by the GPI report, and nine of them also feature in the highest ranking of the State fragility index.

III. The interconnectedness between human rights violations and conflict

This section aims at providing an overview about the complex interplay between human rights and violent conflict. This interplay is studied from a multidisciplinary perspective: legal and non-legal approaches taking into consideration conflict analysis discussion and peace and conflict databases presented in the previous section.

As it has been acknowledged in the seminal work edited by Mertus and Helsing, ‘human rights considerations are important factors throughout the course of a violent conflict’, the relationship between violations of human rights and conflict is commonly associated with the different stages in which a conflict can be or is usually depicted.¹⁸³ This work shows that there are diverse viewpoints on the relationship between human rights and conflict that correspond to three schools of thought: the ‘human rights approach’, the ‘conflict resolution perspective’ and the ‘humanitarian law’ approach.¹⁸⁴ They obey to different origins and have different favored mechanisms and agendas. Despite these differences, in the last decade these three schools of thought have increasingly converged and have been able to complement each other’s work. Nonetheless the great challenge still remains: ‘how to integrate these perspectives in a manner that best responds to the nature of conflict in today’s world.’¹⁸⁵

A. Human rights violations as causes, symptoms and consequences or transformers of violent conflict

The relationship between human rights violations and violent conflict is characterised as complex, dynamic and multi-dimensional.¹⁸⁶ Complexity refers to the diversity of ‘interplay between human rights violations and conflict and the role of human rights violations as causes, consequences, or transformers of ongoing conflict dynamics’.¹⁸⁷ In this respect recent studies indicate that human rights violations and human rights protection are intimately linked to the patterns of contemporary conflict in a number of

¹⁸³Julie A. Mertus and Jeffrey W. Helsing (eds), *Human Rights and Conflict: Exploring the Links Between Rights, Law and Peacebuilding* (Institute of Peace Press 2006) 10. In particular, for analytical purposes, these authors refer to:

1. ‘The conflict intensification stage: Communal conflicts turn violent; human rights violations are often a root cause of conflict, and the ability of perpetrators to act with impunity contributes to the intensification of conflict; the failure to address human rights issues hinders conflict prevention efforts.
2. The armed conflict stage: Violent conflict intensifies as competing factions take up arms; human rights abuses are both a common by-product of the violence and a component of wartime strategy; international human rights norms inform standards for international intervention in conflicts, evaluation of the conduct of armed forces, and wartime protection of civilians.
3. The post-conflict/post-crisis stage: Violent conflict ceases, and efforts at rebuilding begin; human rights considerations play a role in peace agreements, the treatment of refugees, civil society-building efforts, human rights education campaigns, and the creation of truth commissions and other efforts to hold perpetrators of human rights abuses accountable; if patterns of destructive relationships are not transformed into healthier patterns of interaction, this third stage can lead to a new round of intensified conflict’.

¹⁸⁴Julie A. Mertus and Jeffrey W. Helsing (eds), *Human Rights and Conflict: Exploring the Links Between Rights, Law and Peacebuilding* (Institute of Peace Press 2006) 5-8

¹⁸⁵ *Ibid.*, 19.

¹⁸⁶Georg E. Frerks, ‘Human Rights Violations and Contemporary Violent Conflict: an Inquiry into Causes and Remedies’ in Ineke Boerefijn (ed) *Human Rights and Conflict: Essays in Honour of Bas de Gaay Fortman* (Intersentia 2012) 67, 68.

¹⁸⁷Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 3.

ways, which imposes the need to deal with human rights and humanitarian law obligations by international efforts aimed at conflict resolution.¹⁸⁸

There are connections stemming from the legal frameworks perspective, since human rights violations and violations of international humanitarian law and conflict lie at the intersection of different normative bodies of international law (international human rights law, international humanitarian law, international refugee law, international criminal law). All of them are relevant in addressing human rights violations related to conflict.¹⁸⁹

1. Human rights violations as causes and symptoms of violent conflict

Contemporary conflicts usually emerge in a diversity of contexts, and are characterised by multiple causes, dynamics, levels and actors that have been traditionally discussed in the field of conflict analysis. As it was evidenced in the previous section, the theoretical debate indicates that there is no prototypical root cause leading to violence.¹⁹⁰ Nonetheless, a crucial dimension of the factors leading to violence is the lack of satisfaction of human needs, and of the protection and fulfillment of human rights, which analysts have connected to causes of violent conflict.

Even if human rights violations are not the only factor propelling violent conflict, research suggests that human rights violations and human rights protection are intimately linked to the patterns of contemporary conflict in a number of ways, which compels the need to deal with human rights and humanitarian law obligations by the international efforts aimed at conflict resolution.¹⁹¹

Some analyses of the causes of violent conflict are based on the theory of basic human needs, or directly apply a human rights-based approach to examine their links. From the former perspective it has been argued that 'unsatisfied human needs are the root cause of many of the most violent conflicts. Human rights abuses, like unmet human needs threaten the security of individuals and social groups, and in so doing create cycles of dehumanization and fear'.¹⁹² Other complementary analysis point to the role played by exclusion and inequalities. With this connection, explanations of the causes of conflict have focused on

¹⁸⁸ Ibid. 5.

¹⁸⁹ This intersection will be studied as part of the content of Deliverable 10.2.

¹⁹⁰ Georg E. Frerks, 'Human Rights Violations and Contemporary Violent Conflict: an Inquiry into Causes and Remedies' in Ineke Boerefijn (ed) *Human Rights and Conflict: Essays in Honour of Bas de Gaay Fortman* (Intersentia 2012) 67, 68.

¹⁹¹ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

¹⁹² Julie A. Mertus and Jeffrey W. Helsing (eds), *Human Rights and Conflict: Exploring the Links Between Rights, Law and Peacebuilding* (Institute of Peace Press 2006) 3.

the theory of vertical and horizontal inequalities as significant contribution to the eruption of conflict.¹⁹³ Others have focused on the role of 'greed versus grievance'.¹⁹⁴

In the last decade, phenomena of violent conflict, understood as collective violence, and discrimination, have been studied in the field of political science, mostly by multiculturalism studies,¹⁹⁵ and by anti-discrimination studies - particularly in relation to gender¹⁹⁶ and race¹⁹⁷ but increasingly from the point of view of other inequalities (ethnic, religious, and other). In current globalised societies, complex inequalities are structural conditions underpinning violence among and within States, between communities (along ethnic, religious or linguistic divides), and within communities (i.e., along gender divides). As research has shown, there is a strong interdependence between human rights violations and protracted social conflict.¹⁹⁸

The so-called horizontal inequalities can be understood as directly and indirectly related to human rights as causes of violent conflict. The study conducted by the Centre for Research on Inequality, Human Security and Ethnicity (CRISE) reveals that 'probability - not certainty- of conflict rises as socio-economic horizontal inequalities increase' and that 'horizontal inequalities make conflict more likely, where horizontal inequalities are inequalities among culturally perceived groups'.¹⁹⁹

From a human rights perspective the role of grievances over the real or perceived denial of rights as a driver of conflict has been stressed. When considering internationally recognized human rights, some studies have highlighted that 'violations of civil and political rights are more obviously linked to conflict than abuses of economic and social rights. Discrimination and violations of social and economic rights function as underlying causes, creating grievances and group identities that may lead to violence. In

¹⁹³Some scholars and practitioners, like Colleta and Cullen, have advanced the idea that low social capital and social cohesion will contribute to local-level conflict, which may escalate into national conflict. These authors suggest that 'the greater the degree of social cohesiveness, the greater the possibility of mediating conflict before it turns violent', in (2000: 4). 'Without social cohesion, mechanisms for socially reinforcing non-violence are weakened, and societies can become fragmented and exclusionary which can lead to violent conflict. Both vertical and horizontal inequalities are important in this conception – either can lead to conflict'. The Community Driven Development/Reconstruction approach reviewed in King (2013) is premised on the idea that conflict at least in part develops from local factors, specifically exclusion, inequity and marginalisation. Frances Stewart (2006) argues that inequalities between groups – and therefore fragmentation of society and lack of social capital and social cohesion – are a root cause of conflict. According to this author horizontal inequalities can lead to violence when: they are durable (long-lasting); widen over time; groups have impermeable boundaries; are consistent across economic, social, political dimensions; aggregate incomes are slow; groups are sufficiently cohesive; they have leaders; and the government does not respond (2006: 5-6). Horizontal inequalities are not the only driving factor of conflict, but they contribute significantly'. Evie Browne, *State fragility and social cohesion* (2013) GSDRC Helpdesk Research Report 1027 <<http://www.gsdrc.org/docs/open/HDQ1027.pdf>> accessed 30 May 2014, 4

¹⁹⁴ See Paul Collier and Anke Hoeffler, 'Greed and Grievance in civil war' (2004) 56 Oxford Economic Papers, 563 – 595.

¹⁹⁵ See Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press 1995); Charles Taylor and Amy Gutman (ed) *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1994); B Saunders and Mari-Claire Foblets, *Changing genders in intercultural perspective* (Leuven University Press 2002); Francisco Javier de Lucas Martín, 'La sociedad(es) multicultural(es) y los conflictos políticos y jurídicos' (2001) no. 6 Cuadernos de Derecho Judicial 59-102.

¹⁹⁶ See Catherine MacKinnon, *Toward a feminist theory of the state* (Harvard University Press 1989).

¹⁹⁷ Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Colour' (1991) vol. 43 no. 6 Stanford Law Review 1241.

¹⁹⁸ See Section II of this report.

¹⁹⁹ See <<http://www.usip.org/sites/default/files/Stewart%20Presentation.pdf>> accessed 20 April 2014, 18. The main findings of the CRISE Programme are summarized in Frances Stewart (ed) *Horizontal Inequalities and Conflict: Understanding Violent conflict in Multiethnic Societies* (Palgrave MacMillan 2008).

contrast, violations of civil and political rights are more clearly identifiable as direct conflict triggers. When populations are unsettled by long-standing inequalities in access to basic needs and political participation, government repression may trigger violent conflict'.²⁰⁰

Social, economic or political exclusion of certain groups is therefore a central way of analysing the impact of rights denials'.²⁰¹ Research suggests that violent conflicts have grown out of the existence of systematic discriminations, different access to education or health care, limited freedom of expression or religion, language, gender, etc.²⁰² Therefore an effective strategy for conflict prevention and resolution in those cases would be to give adequate consideration to the rights of minorities. Research argues in favour of this strategy as a 'particularly useful way of assessing potential conflict in areas where there are high vertical or horizontal inequalities, such as in Sudan, Rwanda, and Sierra Leone'.²⁰³

Even if those human rights abuses are considered minor, particularly in comparison with international crimes, 'this kind of violations can still generate real grievances and social unrest'.²⁰⁴ For example the phenomenon of social conflictivity is widespread in certain countries of Latin America, especially in Peru, Bolivia and Paraguay. Although social conflictivity might have particular characteristics in each country, common characteristics present in all three are: platforms of exclusion and chronic inequality that operate together with demands for increased efficacy and institutional efficiency,²⁰⁵ as with cultural conflicts based on the management of territory and resources. At the same time they are States with weaknesses, with strong demands for economic policies related to the extractive, mining or hydrocarbon industry, and/or extensive agriculture.²⁰⁶

In Peru, the Ombudsman's office has pointed out that in 2012, socio-environmental conflicts accounted for 65.2% of the total registered number of conflicts (148 cases), with 70.9% of these conflicts (105) being related to mining. This statistic is followed by conflicts related to hydrocarbons, which account for 16.2% (24).²⁰⁷ In this context of conflict, acts of violence such as arbitrary detentions, excessive use of force and torture and other ill treatment from security forces, especially during protests related to the extractive

²⁰⁰Oskar N. Thoms and Jon Ron, 'Do Human Rights Violations Cause Internal Conflict?' (2007) vol. 29 (3) Human Rights Quarterly 674, 701.

²⁰¹Research conducted by the Global and Social Development Research Center (GSDRC) on Rights, Conflict and Fragile States can be consulted at <<http://www.gsdrc.org/go/topic-guides/human-rights/rights-conflict-and-fragile-states#frag>> accessed 20 April 2014.

²⁰²Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

²⁰³GSDRC, Rights, Conflict and Fragile States <<http://www.gsdrc.org/go/topic-guides/human-rights/rights-conflict-and-fragile-states>> accessed 20 April 2014.

²⁰⁴Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

²⁰⁵Fernando Calderón, (ed) *La protesta social en America Latina* (Buenos Aires: Siglo Veintiuno Editores 2012) 1.

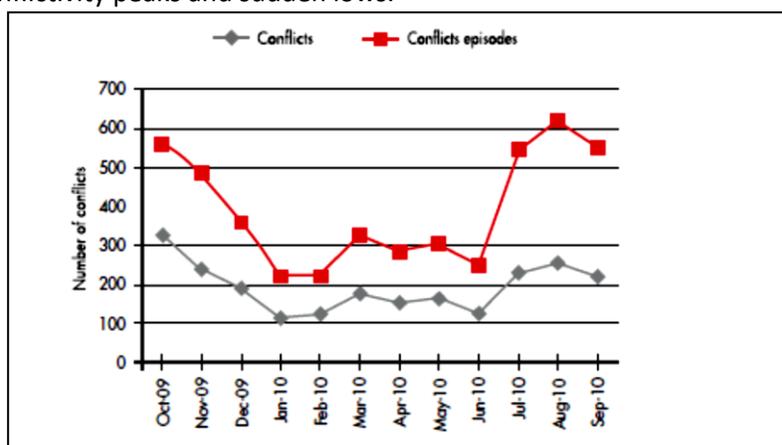
²⁰⁶Close to 24% of conflicts are generated by problems related to the use of natural resources and the deterioration of the environment due to specific actions carried out by public or private entities, or by both. These demands, depending on the case, are more closely associated with ecological referents, or with an instrumentalist perspective of control over natural resources. Fernando Calderón, (ed) *La protesta social en America Latina* (Buenos Aires: Siglo Veintiuno Editores 2012) 7.

²⁰⁷Defensoría del Pueblo, *Décimo sexto informe anual al Congreso de la República* (2012) <<http://www.defensoria.gob.pe/modules/Downloads/informes/anuales/Decimosexto-Informe-Anual.pdf>> accessed 10 May 2014: 71.

sector occur.²⁰⁸ In Bolivia, between January 1970 and 2008, a total of twelve thousand social conflictivity related incidents were registered. The most frequent types of actions were marches and protests (33.5%), and hunger strikes (19.7%). There were also road blockades in rural areas (12.7%), takeover of institutions and mutinies (10.4%), road blockades in urban areas (7.6%) and labour strikes during specific time periods (6.5%).²⁰⁹ In Paraguay, the majority of protests are related to land ownership and property titles. Indigenous and peasant organizations have been involved in violent clashes with the police and among themselves, in many cases resulting in hundreds of wounded and dead people.²¹⁰

Figure III. 1. Social Conflict Dimensions in Latin America: Bolivia, Peru and Paraguay

In these three Latin American countries, regional social conflict dynamics are highly variable, at times reaching high conflictivity peaks and sudden lows.



Source: Fernando Calderón (ed), *Understanding Social Conflict in Latin America* (United Nations Development Programme. La Paz. Fundación UNIR Bolivia 2013) 24.

The role of the State in addressing these kinds of violations is of paramount importance. In functional States, such grievances may be handled through legal and institutional means. However in fragile, weak, corrupt or collapsed and collapsing States such conflict is more likely to become violent.²¹¹ Recent reports from the Organisation for Economic Co-operation and Development (OECD) acknowledge the tendency to recognize the 'multidimensional aspects of fragility' and the 'overarching importance of the social contract between citizens and the State', as shown in the OECD definition (Box III.1).

Box III. 1. OECD definition of fragility

A fragile region or state has weak capacity to carry out basic governance functions, and lacks the ability to develop mutually constructive relations with society. Fragile states are also more vulnerable to internal or external shocks such as economic crises or natural disasters. More resilient states exhibit

²⁰⁸Amnesty International, *Annual Report* (2013) <<http://www.amnesty.org/es/region/peru/report-2013#section-127-3>> accessed 21 March 2014.

²⁰⁹Roberto Laserna, 38 años de conflicto social en Bolivia(2008) <http://ciudadaniabolivia.org/tl_files/Publicaciones/conflictos38.pdf> accessed 21 March 2014 52.

²¹⁰Fernando Calderón, (ed) *La protesta social en America Latina* (Buenos Aires: Siglo Veintiuno Editores 2012) 160.

²¹¹Chandra LekhaSriram, Olga Martin-Ortega and Johanna Herman, War, *Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

the capacity and legitimacy of governing a population and its territory. They can manage and adapt to changing social needs and expectations, shifts in elite and other political agreements, and growing institutional complexity. Fragility and resilience should be seen as shifting points along a spectrum.

Source: OECD, Improving International Support to Peace: The Missing Peace, Conflict and Fragility (OECD Publishing 2012)

State's fragility tends to involve multiple failures to fulfill the State's international obligations to promote and protect human rights. Many States experiencing violent conflict are ranked among the most fragile States as we can see in Figure III.2, according to the Fragile States Index.

Figure III. 2. 2014 Fragile States Index

	<i>Very High Alert</i>	<i>Total</i>
1	 South Sudan	112.9
2	 Somalia	112.6
3	 Central African Republic	110.6
4	 Congo (D. R.)	110.2
5	 Sudan	110.1
	<i>High Alert</i>	
6	 Chad	108.7
7	 Afghanistan	106.5
8	 Yemen	105.4
9	 Haiti	104.3
10	 Pakistan	103.0
11	 Zimbabwe	102.8
12	 Guinea	102.7
13	 Iraq	102.2
14	 Cote d'Ivoire	101.7
15	 Syria	101.6
16	 Guinea Bissau	100.6

Source: Fund for Peace *Fragile State Index*(2014) <<http://ffp.statesindex.org/rankings-2014>> accessed 22 May 2014

Violent conflict may also emerge where there are more violent and serious human rights abuses like illegal detention, extrajudicial executions, disappearances, torture, widespread killing or even attempts at genocide. Where civilians have already been targeted by such violence, whether committed by State or non-state actors, it is unlikely that peaceful resistance will have much effect, resulting in the likelihood

that individuals and groups will take up arms and defend themselves. In such situations human rights violations are an important underlying cause of conflict, although seldom the only one.²¹²

Box III. 2. Human rights violations as causes of conflict: the case of Sierra Leone

Aside from human rights violations such as economic and social deprivation that were among the underlying causes of the conflict in Sierra Leone, other more violent and serious human rights violations acted to fuel the conflict and were also committed during the conflict.

- As underlying causes of conflict: there were two dimensions of human rights violations that fueled the civil war. Human rights abuses were used to strengthen the Revolutionary Unit Front (RUF), which engaged in forced recruitment and abduction, particularly of child soldiers and terrorized the civilian population into joining the hostilities. In addition, combatants fleeing accountability for human rights violations in neighboring countries joined the RUF. These fighters traveled across West Africa as mercenaries, fueling conflict in Liberia, Sierra Leone and Cote d'Ivoire.
- During the conflict, major human rights violations were perpetrated by all parties to the conflict (armed groups, national armies, regional missions and civilians), especially indiscriminate attacks on civilians. RUF and Armed Forces Revolutionary Council (AFRC) committed most of the abuses, at various points and at varying levels of intensity, such as mutilations of children and adults, abductions, rapes and other forms of sexual violence. The Sierra Leone Army (SLA) also carried out serious abuses. Significant numbers of SLA soldiers colluded with the RUF rebels and were financed by 'blood diamond'. Forces of the Economic Community of West African States Monitoring Group (ECOMOG) and government troops also committed abuses throughout the conflict and even some civilians engaged in extrajudicial killing.

Source: Truth and Reconciliation Commission of Sierra Leone, *The Final Report of the Truth Commission of Sierra Leone*, (2004) Vol 2 Ch 2 <<http://www.sierraleonetr.com/index.php/view-report-text-vol-2/item/volume-two-chapter-two>> accessed 20 May 2014.

Given that symptoms are often the visible component of the phenomena,²¹³ human rights violations can also be considered as symptom of conflict. The diminishing respect for human rights in a given situation is an early warning sign of rising conflict and could be taken as an opportunity for conflict prevention. Human rights violations may lead to violent conflict whilst armed conflict will lead to greater human rights violations, even to the commission of international crimes.²¹⁴ Gaining an understanding of conflict drivers

²¹²Chandra LekhaSriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

²¹³Jolle Demmers, 'Structures of Violence' in Ineke Boerefijn, Laura Henderson, Ronald Janse, Robert Weaver (eds.) *Human Rights and Conflict: Essays in Honour of Bas de Gaay Fortman* (Intersentia 2012) 29-44.

²¹⁴ Fred Grundfeld, in Ineke Boerefijn (ed) *Human Rights and Conflict: Essays in Honour of Bas de Gaay Fortman* (Intersentia 2012) 133.

and dynamics, and in this respect an understanding of the relevance of human rights violations, and then being prepared to act on this understanding, are necessary conditions to anticipate conflict and to identify opportunities to settle differences.

2. Human rights violations as consequences of violent conflict

Human rights violations emerge primarily as a result of violent conflict. Conflicts that have grown out of concern to promote a political or ideological agenda, or to promote the welfare of one or more identity groups, or over access to resources have commonly resulted not only in great loss of human life on the battlefield, but also in wide-scale killing and displacement of civilians, and gross and systematic human rights violations.²¹⁵ Contemporary conflicts are characterized by a growing trend of ‘one-side violence’ which is inflicted on civilians. In the majority of occasions it involves a conscious choice to harm civilians, although it can have other objectives beyond just injuring or killing civilians because it may be intended to terrorise the population. Human rights violations may include torture and disappearances, but also frequently include war crimes, crimes against humanity, and even genocide’.²¹⁶

Human rights violations are usually both causes and consequences of conflict, intertwined among other factors. Parlevliet uses the metaphor of an iceberg pertinently to illustrate the notion that human rights violations can be both causes and consequences of violent conflict.²¹⁷ The top of the iceberg represents human rights violations as symptoms of violent conflict. These tend to be violations of civil and political rights like excessive use of force by the police, intimidation of political opponents, rape, summary executions, disappearances, torture and censorship. Manifestations of violent conflict might affect civil and political rights; the destruction of infrastructure such as schools and health clinics and the displacement of civilian populations. This represents the middle of the iceberg both seen and not seen. The bottom of the iceberg symbolizes violations of human rights as causes of conflict: exclusion of minorities, uneven access to resources, discrimination and non-participation in public affairs. They represent ‘situations where denial of human rights are embedded in the structures of society and governance, in terms of how the State is organised, how institutions operate and how society functions’.²¹⁸

²¹⁵Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 5.

²¹⁶*Ibid.*, 6.

²¹⁷Michelle Parlevliet, ‘Rethinking Conflict Transformation from a Human Rights Perspective’ (Berghof research Centre 2009) <http://www.berghof-handbook.net/documents/publications/parlevliet_handbook.pdf> accessed 22 March 2014, 6.

²¹⁸ *Ibid.*, 5.

Box III. 3. Human rights violations as causes and consequences of conflict: the case of the Democratic Republic of Congo (DRC)

Resources constitute one of the primary causes of conflict in the DRC. Many actors, including foreign countries, non-state armed groups, and multinational corporations, have sought to exploit the country's vast resources, including gold, oil, timber, and coltan, which have been a source of competition and violence. In Ituri and Haut Uele districts, gold mines have been the site of significant conflict and human rights abuses, driven in part by plunder by forces from neighboring Uganda. In 2005, Human rights Watch claimed that more than 60,000 people had died due to direct violence in the northeastern region of the Congo. Human rights abuses connected with the exploitation of gold, particularly from 1998 to 2003, when Ugandan soldiers controlled the area, included coerced labor, beatings, and arbitrary arrest of resistant gold-miners, and several massacres of civilian populations in the area.

The 2010 UN Office of the High Commissioner for Human Rights mapping report confirmed hundreds of incidents of sexual violence during and after the fighting in DRC. The report stated that

The acts of violence listed in the previous section clearly show that women and girls paid a particularly heavy price over the course of the decade. The widespread violence that took hold in Zaire, later the DRC, between 1993 and 2003 had particularly serious consequences for women because of their socio-economic and cultural vulnerability. It was also reflected in specific forms of violence, such as sexual violence, the main victims of which were women and it is widely accepted that Congolese women and girls have been the target of widespread acts of violence since 1993.

In addition, the report claimed that 'the unequal place of women in society and the family also encouraged sexual violence in wartime'.

Source: United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003* (2010) <http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf> accessed 12 May 2014.

3. Human rights violations as transformers of conflict dynamics

Human rights violations are not only causes and consequences of violent conflict, they are also 'potentially transformers of conflicts and may make their already difficult resolution an even greater challenge'.²¹⁹ Thus, conflicts that may begin over resources, religion, or ethnic or territorial claims, may, as they progress, create new grievances through the real and perceived violation of human rights by one or more parties such. Furthermore, such violations may reinforce divisions in society making it easier for leaders to mobilize people—civilian and armed—to violent action. For instance, human rights violations transformed the conflict in Sudan fuelling resentment in the population (see Box III. 4).

²¹⁹Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 6.

Box III. 4. Human rights violations emerging and transforming the conflict in Sudan

The consequences of the conflict in the south have been catastrophic. An estimated two million people lost their lives, and the conflict has generated an estimated four million internally displaced persons out of a total national population of 38 million. In addition to the many civilian deaths resulting from the conflict, severe human rights abuses have been committed. The government's forces and their associates have conducted the great majority of these abuses, but the Sudan People's Liberation Army (SPLA) has also been responsible for killing and injuring civilians.

The serious violations of human rights and humanitarian law have themselves further fuelled resentment and conflict. Security forces and associated militias have carried out extrajudicial killings and disappearances, and regularly beat, harass, arbitrarily arrest, and detain incommunicado, opponents and suspected opponents of the government; there have been reports of torture as well. Both security forces and associated militias have beaten refugees, raped women abducted during raids, and harassed and detained internally displaced persons, acting with complete impunity. The government has also manipulated humanitarian aid in some areas and prevented the delivery of food, using famine as a weapon in the war. Antigovernment insurgent groups, too, have committed numerous, serious abuses. The particularly cruel and bloody tactics used in attacking civilians in Darfur have attracted international outrage, with many arguing that they amount to genocide.

Source: Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 147.

In the case of Sudan, it is not considered that the conflict has transformed into one primarily based on grievances and recrimination resulting from conflict, taking into account the complex history of civil wars going back to 1955, previous historical factors, religious and ethnic tensions and a State lead policy of ethnic cleansing of certain ethnic groups. Considering the violations of human rights experienced by civilians in Sudan, the transformative nature could be constituted as conflict escalators, as well as direct and indirect symptoms of conflict, as defined by Mertus.

It can be the case, although not always, that the initial causes that may have been present as the instigators of conflict are overwhelmed by other drivers of violence based on grievances and recriminations resulting from the conflict and human rights violations conducted by parties to it, be they rebel groups or State actors. The importance given to this perspective, is the resultant resentment and built up mistrust, based on the layers of conflict drivers, making negotiations for resolution and peacebuilding more difficult, particularly in finding initial points of peace breaking deals amongst groups that have experienced this transformative form of conflict. Resistance towards redress of past abuses can be high in the changed landscape that presides during and following this transformed and often prolonged conflict.

To conclude, the various ways in which violations of, and demands for, human rights can be symptoms as well as causes of conflict and transformative of conflict dynamics could be represented according to the following Box III.5.

Box III. 5 The relationship between human rights and conflict

1. Demands for human rights as a cause of conflict

-Description: Demands – for self-determination, fair access to resources, an end to forced acculturation and discrimination – involve violent conflict between groups.

-Example: Tiananmen Square protests in China, 1989.

2. State's inability or unwillingness to protect rights as cause of conflict

-Description: Domestic policies (especially in ethnically divided societies) that ignore minority rights increase social and political tensions until conflict erupts. Even in stable polities, structural oppression increases the danger of future confrontation and violence.

-Example: Ogoni in Nigeria; Tutsis in Zaire (1996).

3. Instrumental use of human rights violations by politicians

-Description: Politicians manipulate collective memories of human rights abuses to create a sense of entitlement for revenge.

-Example: Rwanda (1994), Yugoslavia (1992-1995).

4. Human rights violations as a conflict escalator

-Description: The sustained denial of human rights causes repressed/oppressed groups to react and may prompt intervention, intensifying the conflict.

-Example: South Africa, Northern Ireland.

5.- Human rights violations as direct symptoms of violent conflict

-Description: Warring parties torture, rape, mutilate, and summarily execute both combatants and noncombatants.

-Example: Liberia (1989-1996), Guatemala (1966-1996), Sri Lanka (1983-2009)

6.- Human rights violations as a direct or indirect consequence of violent conflict

-Description: War adversely affects such things as the environment and the ability of people to work, thereby affecting related human rights. Cease-fires and peace agreements that ignore human rights often perpetuate inequities and denial of human rights, leading to greater suffering and violence. Sustainable peace depends on the assurance of human rights.

-Example: Sierra Leone (1991-2002), Israel-Palestine, Kosovo (1998-1999).

Source: Julie A. Mertus and Jeffrey W. Helsing (eds), Human Rights and Conflict: Exploring the Links Between Rights, Law and Peacebuilding (Institute of Peace Press 2006) 6-7.

B. Human rights violations in situations of violent conflict and demands for accountability

1. Human rights violations and demands for accountability in peace negotiations

Human rights protection and accountability are important demands that parties to violent conflict make during peace negotiations. Human rights may emerge as a central concern in negotiations in a number of ways highlighting antagonist positions on the negotiation table and even becoming serious obstacles to peace negotiations. In particular, it is common to see that perpetrators of serious human rights violations and international crimes, whether part of armed groups or the government, press for blanket amnesties or at least for their own protection raising problems of impunity.²²⁰ In these setting there remain important tensions between the pursuit of accountability and the pursuit of peace agreements. One may refer to recent peace agreements to confirm that either they set accountability to one side, or explicitly grant amnesties for one or more parties. In this regard the Comprehensive Peace Agreement concluded in 2005 to resolve the conflict in Sudan between the Northern government and the Sudanese People's Liberation Army (SPLA) should be noted. In the South that excluded accountability completely.²²¹ Other examples are the Lomé Agreement in Sierra Leone in 1999 (see Box III. 6), or the 2006-2008 Juba Peace Talks between the Government of Uganda and the Lord Resistance's Army (LRA) seeking to put an end to the conflict in Northern Uganda. During this negotiation the Ugandan Government made frequent calls for the withdrawal of the arrest warrants issued by the International Criminal Court (ICC) after the referral of the situation.²²² As the ICC refused to withdraw the arrest warrants the LRA returned to the battlefield and the peace talks collapsed.

²²⁰ Tensions in this area are represented by the arguments of the European Court of Justice (Grand Chamber) in the recent judgment on *Marguš v. Croatia* (no. 4455/10) delivered on 27 May 2014, concerning the conviction, in 2007, of a former commander of the Croatian army of war crimes against the civilian population committed in 1991. He complains in particular that the criminal offences of which he was convicted were the same as those which had been the subject of proceedings against him terminated in 1997 in application of the General Amnesty Act. The Court decided that the State did not breach the prohibition of double jeopardy to convict a former beneficiary of amnesties for serious violations of international law. On the question of amnesties, the European Court of Human Rights stated that there are case law, normative and practice developments that oppose amnesties for serious violations of human rights and behaviors that constitute international crimes under the following terms (para. 130)

[g]ranting amnesty in respect of 'international crimes' – which include crimes against humanity, war crimes and genocide – is increasingly considered to be prohibited by international law and that[t]his understanding is drawn from customary rules of international humanitarian law, human rights treaties, as well as the decisions of international and regional courts and developing State practice, as there has been a growing tendency for international, regional and national courts to overturn general amnesties enacted by Governments.

²²¹For a critical comment on the agreement see Denis M. Tull, 'Sudan after the Naivasha Peace Agreement. No Champagne yet' (2005) SWP Comments German Institute for International and Security Affairs <http://www.swp-berlin.org/fileadmin/contents/products/comments/comments2005_03_tll_ks.pdf> accessed 26 February 2014. An assessment of the CPA on the basis of prospects after the 2011 referendum in South Sudan see Cheri Baker, *Sudan since the 2005 Comprehensive Peace Agreement: Prospects for Peace, Lessons Learnt* (2011) <<https://www.du.edu/korbel/criic/humanitarianbriefs/CheriBaker.pdf>> accessed 27 February 2014.

²²²Arrest warrants were issued for LRA leader Joseph Kony and four others. See the warrant of arrest of Joseph Kony at the website of the ICC <<http://www.icc-cpi.int/iccdocs/doc/doc97185.pdf>> accessed 10 June 2014.

A variety of provisions for accountability and transition to peace may be built into a peace agreement, or the issue may be held in abeyance to be dealt with subsequently.²²³

Box III. 6. Pardon and Amnesty Peace Agreement Sierra Leone

Article IX of the Lomé Peace Agreement provides:

1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh absolute and free pardon.
2. After the signing of the present Agreement, the Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.
3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations since March 1991, up to the signing of the present Agreement. In addition, legislative and other measures necessary to guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict shall be adopted ensuring the full exercise of their civil and political rights, with a view to their reintegration within a framework of full legality.

Source: Peace Accords Matrix, *Lomé Peace Agreement* (1999)
<<https://peaceaccords.nd.edu/matrix/status/15/amnesty>> accessed 14 May 2014.

2. Human rights violations and demands for accountability in peace implementation

An alternative perspective on the relationship between human rights and conflict is the central role that human rights protection can play in transition through negotiation processes towards peace and democracy. From this angle, ‘human rights protections and accountability for past abuses are also often claimed to be essential to peacemaking and peace-building’.²²⁴ This position has received wide support from analysts and advocates that contend that ‘addressing human rights violations is essential for restoring the peace and building rule of law and in particular for demonstrating that a society is now on a different nonviolent path’.²²⁵

It is contended also that the absence of accountability often does not result in the hoped-for benefits and may hamper long-term peacebuilding. Examples of amnesties that may have effectively pardoned the commission of grave crimes without bringing peace are cited in the cases of Sierra Leone, Angola and Sudan to show that peace based on impunity is often not sustainable and may even encourage future abuses because some former victims may seek vengeance, or the population more broadly may place

²²³International Council on Human Rights Policy, *Negotiating Justice? Human Rights and Peace Agreements* (International Council on Human Rights 2006) <http://www.ichrp.org/files/reports/22/128_report_en.pdf> accessed 20 May 2014, 75-99.

²²⁴Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 7.

²²⁵Ibid.

little faith in post-conflict institutions that have not addressed human rights abuses.²²⁶ Along this line, it is argued that incorporating suspected war criminals into governments in order to consolidate peace carries a high price. Afghanistan and the Democratic Republic of Congo are examples where this option has led to further abuses and continued lawlessness.

The position of addressing human rights violations and reconciling peace and justice, as common joint objectives of negotiations aimed at ending a conflict, where the most serious crimes under international law have been committed, is supported by strong beneficial effects:

- Tolerance of impunity can contribute to renewed cycles of violence by creating an atmosphere of distrust and revenge that can be manipulated to foment violence. Violence in the former Yugoslavia, Burundi, Rwanda and Kenya provides evidence of this.
- Fair trials help to create a historical record that protects against revisionism.
- International justice can have a positive impact on domestic enforcement. Ad hoc tribunals, the ICC and universal jurisdiction have furthered the development of means to address serious international crimes in national courts.
- Although evidence of the deterrent effect of international criminal justice is not yet to be expected, there is already increased awareness of what constitutes criminal behaviour as a result of ICC prosecutions.²²⁷

Conversely, 'the pursuit of accountability may hamper not only peace negotiations, but also peace implementation, where those who face accountability return to violence'.²²⁸

Box III. 7. Consequences of amnesties post-conflict: the case of Uganda

The United Nations (UN) Security Council Resolution 1325 calls on all actors involved to address the special needs of women and girls during rehabilitation, reintegration and post-conflict reconstruction. In post-conflict Uganda the recruitment of combatants by the Lord's Resistance Army (LRA) has been characterised by the forcible abduction of young boys and girls, and the eventual deployment of child soldiers. The government of Uganda, in its attempt to defeat the LRA and in recognition of the fact that the LRA forcibly conscripted children to wage their cause, offered amnesties to all individuals who returned or were rescued from the LRA. With the return of ex-combatants to communities, the consequences of moral depravity continue to characterise the lives of many in northern Uganda, especially women.

Source: Grace Maina, *The Case of Northern Uganda* (ACCORD Issue 1 Occasional Paper Series 2011)

http://www.accord.org.za/images/downloads/op/op_2011_1.pdf accessed 10 May 2014

²²⁶ Ibid. 8.

²²⁷ Human Rights Watch, *Selling Justice Short: Why Accountability Matters for Peace*, (Human Rights Watch 2009), http://www.hrw.org/sites/default/files/reports/ij0709webwcover_1.pdf accessed 22 May 2014.

²²⁸ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 8.

Concerns about past human rights violations play a complex range of roles and have a complicated relationship to peace negotiations, peace processes and peace implementation.²²⁹

IV. The role of non-State actors as perpetrators of human rights violations in conflict settings

Most of contemporary violent conflicts are internal in scope (although often include an international or transnational element) and pose the challenge of regulating the activities of the non-state actors (NSAs), including non-state armed groups (NSAGs), groups designated as rebels or opposition groups, terrorist, private military companies (PMCs) and private security companies (PSCs), and transnational corporations (TNCs), in particular in view of their impact on human rights and their role as perpetrators of human rights violations in armed conflict and other violent settings. As noted, ‘the challenge is made all the more complex by the diversity of actors which might broadly be characterized as non-state actors and of the patchwork of domestic and international law which may apply to them’,²³⁰ especially the possibility of imposing human rights obligations on them.

Current conflict trends are associated with extreme suffering of the civilian population caused by non-State actors.²³¹ While in practical terms, non-State actors can be considered responsible for or perpetrators of such civilian harm, the applicable international legal frameworks pose distinct questions in terms of their potential legal responsibility for violations of human rights and humanitarian law.

The category of ‘non-state actors’ has not been subjected to legal definition. In practice, and depending on contexts, as indicated by Clapham, ‘the term is used to refer to benign civil society groups working for human rights [...]. In other contexts, however, the term is understood to refer to some very ‘uncivil’ groups determined to acquire weapons of mass destruction and target them against a civilian population. [...] Depending on the context, international law provides that States are either obliged to punish non-state actors or, alternatively, obliged to cooperate with them’.²³² Therefore different categories of non-state actors stand out with different purposes and characteristics (non-governmental organizations, religious groups, civil organizations, armed groups, terrorist and criminal groups, transnational corporations, private military and security companies, etc.). While the groups are diverse, they also share some formal commonalities than can be summarized according to the following traits:

- they are organised entities; they usually have a certain internal structure as well as certain generally known and accepted rules of behaviour. These entities may pursue a common goal and/or they may adhere to the same values – be they religious, ideological, or other.
- They need to operate for a certain period of time.

²²⁹ Ibid. 8.

²³⁰Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 65.

²³¹See in section II of this report the figures of the UCDP Dataset on non-State conflicts and one-sided violence.

²³² Andrew Clapham, ‘Non-state actors’ in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, & David Harris (eds) *International Human Rights Law* 2nd ed (Oxford University Press 2010) 561-582.

- They are independent of States; although they may maintain relations with States, they need to have autonomy in determining their internal structure and deciding on their goals and principles.²³³

This section seeks to survey the role of non-State actors as ‘perpetrators’ of human rights violations in armed conflicts-settings and other situations of violence. In fact, there are other situations, such as post-conflict settings, socio-political crisis or zones controlled by criminal organisations, where human rights suffer the enormous impact of violent acts of NSAs. In particular two types of non-state actors will be addressed in view of the way they affect human rights: non-state armed groups (rebel and opposition groups, and terrorist and other criminal groups); and economic non-state actors (multinational corporations and private military companies and private security companies).

A. Non-state armed groups

1. Overview

While non-State armed groups are known as part of the history of armed conflicts and of international law and relations, there has been little consensus about a clear definition or description. Armed groups beyond the control of the State take many different forms and have become the most important actors in most of contemporary violent conflicts, from Iraq²³⁴ and Afghanistan²³⁵ to Syria²³⁶ and Somalia,²³⁷ posing several challenges to the international legal framework.²³⁸ Several terms are used to refer to *armed groups*: armed non-State actors, armed opposition groups, rebel groups, non-state entities, non-governmental entities; they can also be described as terrorists, para-militarists, warlords or bandits, or some of them describe themselves as freedom fighters or revolutionaries. They differ considerably, ranging from mafieuse militias, religious movements to private armies, which renders delineating a common denominator a difficult task.

²³³Cedric Ryngaert and Math Noortmann (eds) *Human Security and International Law: the Challenge of Non-State Actors* (Intersentia 2013) 42.

²³⁴ ‘Al Qaeda in Iraq and other insurgent groups emboldened by the Syrian conflict and Iraq’s political crisis carried out nearly daily attacks against civilians, making 2013 the bloodiest of the last five years’. Human Rights Watch, *Annual Report 2014*, Iraq. See also Report on Human Rights in Iraq: July-December 2012, UNAMI Human Rights Office/OHCHR, June 2013 <http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf> accessed 20 May 2014.

²³⁵ ‘Seventy-five per cent of all civilian casualties during 2013 were attributed to AGEs, which includes a range of armed opposition groups (...). In many cases, the Taliban claimed responsibility for the killings on their website’. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013 (10 January 2014), A/HRC/25/41, page 6.

²³⁶ ‘As the conflict intensified, non-State armed groups, encompassing all non-government aligned armed groups, engaged in sequential realignments and infighting (...) Non-State armed groups can be classified into four broad, non-exclusive umbrellas: Syrian moderate nationalists (...); Syrian Islamic armed groups (...); Radical Jihadist groups, including the two major Al-Qaeda affiliates, Jabhat Al-Nusra, and the Islamic State of Iraq and Al-Sham (ISIS) (...); Kurdish armed groups, mainly the Popular Protection Units (YPG) (...)’. Report of the independent international commission of inquiry on the Syrian Arab Republic (12 February 2014), A/HRC/25/65, 5-6.

²³⁷ In Somalia, the UN Independent Expert has indicated that in 2012 the United Nations verified that the majority of the killings of children and cases of sexual violence were perpetrated by unknown armed groups and by Al-Shabaab. See Report of the Independent Expert on the situation of human rights in Somalia (A/HRC/24/40) 12.

²³⁸See George Andreopoulos, ‘The International Legal Framework and Armed Groups’, (2010) vol. 11 Human Rights Review 223-246.

Among the wide range of existing definitions, the legal formulation is contained in Article 1 of the Additional Protocol II of 1977 to the 1949 Geneva Conventions which refers to 'dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol'.²³⁹ On the basis of this statutory provision, academic literature generally makes indication of the following characteristics: a) existence of a responsible command; b) control over a part of the territory; c) use of force to pursue political objectives; d) independence from the State.

Although widely used, this formulation calls for some criticism. In the first instance, many armed groups may be excluded from the definition because they lack 'clearly defined policy objectives, have a diffuse command structure, and can be autonomous but not totally beyond State control. Secondly, armed groups are defined dichotomously, drawing a rigid line between the groups that pursue political objectives and those groups that use force for other purposes (economic, criminal, etc), and that are consequently excluded thereof. However, it is increasingly difficult in practice to maintain this line of separation, as the International Committee of the Red Cross has highlighted.²⁴⁰

Thirdly, the criteria regarding the action outside the control of the State is problematic for the non-state armed actors that do not have a clear status. For example, paramilitary forces generally operate in collusion with a State, although they will deny any State involvement. The case of Colombian paramilitary forces (*Autodefensas Unidas de Colombia*) is illustrative in this regard. Moreover, when the reference is made to the 'control of a State' it is understood to refer to the 'State' on which the fight takes place. However, it is a fact that these groups are sustained by other (third) States, who exercise a form of control over them.

Broader definitions of non-state armed groups have been proposed in other instances.²⁴¹ The more general and neutral characterization is made by the International Council on Human Rights Policy (ICHRP), which highlights two clear definitional elements: they are groups that are *armed* and *are not under State control*, and *use force to achieve their objectives*.²⁴²

While a comprehensive and updated mapping of non-state armed actors still does not exist, recent research in different fields (conflict studies,²⁴³ international humanitarian law,²⁴⁴ humanitarian activists

²³⁹Additional Protocol II of 1977, Article 1 para. 1.

²⁴⁰ICRC, 'International humanitarian law and the challenges of contemporary armed conflicts' (2007) vol. 89 no. 867 International Review of the Red Cross 732.

²⁴¹United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Guidelines on Humanitarian Negotiations with Armed Groups* (United Nations 2006) <http://www.unicef.org/emerg/files/guidelines_negotiations_armed_groups.pdf> (accessed 20 May 2014) 1.

²⁴²International Council on Human Rights Policy (ICHRP), *Ends and means: human rights approaches to armed groups* <http://www.ichrp.org/files/reports/6/105_report_en.pdf> (accessed 21 May 2014) 5.

²⁴³For instance according to an analysis only of the category of rebels fighting government (opposition armed groups) from researchers from the UCDP the main finding is that 'in 2002 and 2003 over 30% of active conflicts involved more than one rebel group'. See Harbomet al., 'Dyadic Dimensions of Armed Conflict, 1946-2007' (2011) vol. 45 no. 5 Journal of Peace Research 697-710.

²⁴⁴Such as the Rule of Law in Armed Conflicts (RULAC) Project which is an initiative of the Geneva Academy of International Humanitarian Law and Human Rights to support the application and implementation of international law in armed conflict. In particular, they have focused on the application of international law to non-state actors (the website need to be updated). See <<http://www.geneva-academy.ch/RULAC/>> accessed 20 May 2014.

organisations)²⁴⁵ is attempting to fill in this knowledge gap.²⁴⁶ From the databases on conflict, and data compiled by international organisations missions,²⁴⁷ it is possible to infer that ‘major internal violent conflicts may be less frequent, but it is increasingly easy for armed groups of all types to keep conflicts going as low intensity contests whether primarily political or primarily economic in nature’.²⁴⁸ In this fashion, non-state armed groups contribute to convert current conflicts in to prolonged/protracted crises, where no military victory is foreseen. Another important inference from empirical studies is that ‘social violence appears to be on the rise outside from what is conventionally defined as conflict zones, and the line between different sorts of armed groups, and different forms of armed violence is increasingly blurred’.²⁴⁹ The interaction between the different forms of violence is such that it could be asserted that we are witnessing new types of conflicts or violent crisis as indicated in section II of this study. Armed groups with political objectives and criminal organisations increasingly resemble each other. The International Committee of the Red Cross (ICRC) has acknowledged this phenomenon

Amongst armed groups, the distinction between politically-motivated action and organised crime is fading away. All too often, the political objectives are unclear, if not subsidiary to the crimes perpetrated while allegedly waging one’s struggle [...]. Are we dealing with a liberation army resorting to terrorist acts, or with a criminal ring that tries to give itself political credibility? Are we dealing with a clan-oriented self-defense militia relying heavily on criminal funding, or with a Mafia-like gang whose constituency is strongly intertwined with ethnic communities?²⁵⁰

Research and databases, from the University of Uppsala among others, indicate that the majority of widespread human rights violations that characterise current violent conflicts are committed by non-State armed groups.²⁵¹ Actually, the emergence of these non-State armed actors, participates in the transformation of contemporary conflicts and their impact on human rights in several ways. First, the asymmetry of forces resulting from the confrontation between States and non-State armed actors, typically brings the disadvantaged party to seek advantage through the means and methods of combat in

²⁴⁵ For instance the initiative of the NGO Geneva Call with its Ban mines campaign. Geneva Call engages ANSAs to reduce the impact of AP mines on the civilian population by promoting the ban and encouraging cooperation in mine action. See <<http://www.genevacall.org/what-we-do/landmine-ban/>> accessed 20 May 2014.

²⁴⁶ The Geneva Call has developed a database on humanitarian commitments by NSAGs see <<http://armedgroups-internationalallaw.org/2012/11/09/geneva-call-launches-their-words-a-database-of-humanitarian-commitments/>> accessed 16 May 2014.

²⁴⁷ For instance the UN Assistance Mission in Afganistan (UNAMA) reports since 2010 indicate causes of civilian casualties attributed to the strategies and tactics of what it is called as ‘anti-government elements’. See at <<http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US>> accessed 20 July 2014. For a recent brief on those data see <http://unama.unmissions.org/LinkClick.aspx?fileticket=OhsZ29Dgeyw%3d&tabid=12254&mid=15756&language=en-US>> accessed 22 July 2014, 2; it also identifies civilian casualties attributed to pro-government and international forces, see the most recent report at <<http://unama.unmissions.org/LinkClick.aspx?fileticket=OhsZ29Dgeyw%3d&tabid=12254&mid=15756&language=en-US>> accessed 22 July 2014, 12-40.

²⁴⁸ Keith Krause and Jennifer Milliken, ‘Introduction: the Challenge of Non State Armed Groups’ in Keith Krause (ed) *Contemporary Conflicts and Armed Groups. Challenging the Weberian State* (Routledge 2013) 11.

²⁴⁹ Michael Brzoska, ‘Collective Violence Beyond the Standard Definition of Armed Conflict’ in (SIPRI 2007) SIPRI Yearbook 2007 94-106.

²⁵⁰ International Committee of the Red Cross, *Holding Armed Groups to International Standards: An ICRC contribution to the research project of the ICHRP* (ICRC 1999) 2-3.

²⁵¹ See Pablo Policzer, ‘Human Rights Violations and Non-State Armed Groups: A New Framework’ (2005) 40 CIR Working Papers.

unconventional conduct of hostilities.²⁵²The methods used vary from the deliberate targeting of civilians -generating a strong physical and psychological impact- to the use of suicide attacks in places mostly inhabited by civilians, such as markets, for example. One tactic also used to blur the ability of the defendant to identify the enemy, is to take refuge within the civilian population or simulate to be part of the civilian population in order to benefit from their status of protected persons and to surprise the enemy. These practices make it very difficult if not impossible to distinguish between civilians and combatants, therefore overriding the principle of distinction and disabling the protection of civilians under IHL, resulting in them facing increasingly higher risks.

Second, the civilian losses are often not limited to a consequence of non-conventional methods of fighting, but they become a method in itself. The objective would be to generate images of civilian deaths and injuries through the media to undermine support to the adverse military party.²⁵³ Thus, the civilian population becomes the target and the center of gravity of these asymmetric conflicts.

Third, the means deployed also become less conventional. In order to gain advantage over the sophisticated weapons of the opposing party, armed groups seek to acquire or build chemical, biological or nuclear armament,²⁵⁴ or they even make use of improvised explosive devices (IEDs), thereby putting the protection of civilians more at risk. The use of these unconventional ways and methods by the disadvantaged party will have a significant impact in the behavior of the more advantaged party. In effect, the latter will tend to lower the level of compliance with international standards, mainly in terms of proportionality, by adopting and applying a larger concept of 'military objective'. Due to the asymmetry of the belligerents, the goal is to destabilize the dominant military power as long as possible and to make the armed group survive for the longest time possible. As noted by Münkler, 'low intensity warfare' is not just a term to categorise current conflicts but it describes the essence of their development.²⁵⁵

The conduct or practices of non-State armed groups that clearly infringe standards set out in international humanitarian law and/or international human rights law are considered as human rights abuses or violations. Some of the most common human rights abuses attributed to armed groups can be identified in the following list (Box IV. 1).

Box IV. 1. Most common human rights abuses attributed to non-state armed groups

Arbitrary deprivation of the right to life

Includes killing or massacres of civilians, indiscriminate attacks leading to civilian deaths, killing of captured combatants, killing of suspected 'informers', 'traitors' or independent critics (e.g.

²⁵²HPCR, Empowered Groups, Tested Laws and Policy Options, Report on an interdisciplinary seminar on Transnational and Non-State Armed Groups, Program on Humanitarian Policy and Conflict Research (HPCR) (Harvard University 2007) 26; International Committee of the Red Cross, 'International humanitarian law and the challenges of contemporary armed conflicts' (2007) vol. 89 no. 867 International Review of the Red Cross 732.

²⁵³Christopher T. Mayer, *International Humanitarian Law: It is Not Just for Soldiers Anymore* (2009) DePaul Rule of Law Journal 1.

²⁵⁴International Committee of the Red Cross, 'International humanitarian law and the challenges of contemporary armed conflicts' (2007) vol. 89 no. 867 International Review of the Red Cross 733.

²⁵⁵Herfried Münkler, *The New Wars* (Wiley 2004) 25-26.

journalists), civilian deaths resulting from starvation and disease due to deliberate destruction of crops or withholding or preventing access to relief supplies.

Disregard for the protection owed to civilians caught up in conflict

Includes destruction of civilian property, (homes, crops, livestock), attacks on civilian buildings like hospitals and schools, or property with religious or cultural significance; disregard for protection owed to medical and religious personnel; interfering with delivery of relief supplies; attacks on humanitarian workers; blockades of civilian settlements.

Interference with freedom of movement

Forced movement and deportation of people, expulsions of populations on grounds of racial, ethnic, or religious background, denying access to safety for internally displaced persons or refugees, or forcing them back into unsafe areas, detention of refugees or displaced persons.

Interference with freedom of expression, assembly and association

Preventing independent organisations from operating, banning meetings and gatherings, using fear and intimidation to silence critics, denying journalists access to areas, closing independent media, using media to spread hatred or to incite violence.

Torture, ill-treatment

Torturing captured soldiers or suspected informers to extract information, holding prisoners in inhuman or degrading conditions, mutilations, beatings and other cruel punishments to create fear, enforce orders, punish delinquents, or indoctrinate recruits, using villagers as forced labour.

Abuses against children

Forced separation from family, forced abduction into the armed group as combatants or labourers, deliberate denial of access to education, sexual abuse.

Abuses against women

Rape, abduction into forced prostitution or sexual slavery, reprisal attacks against family members, gender-based discrimination.

Arbitrary deprivation of liberty and due process

Mass detentions of suspect groups or populations, taking and holding of hostages, forced disappearance of persons, “trials” against informers without due process.

Source: International Council on Human Rights, Ends and means: human rights approaches to armed groups <http://www.ichrp.org/files/reports/6/105_report_en.pdf> accessed 21 May 2014, 8.

2. Armed opposition groups

Armed opposition groups (AOGs) are non-State actors that generally fight against the government of the territorial State in which they operate.²⁵⁶ As an obvious result, the relevant governments have no control over these groups. Although the term ‘opposition’ refers to a conflict against the government in power, in contemporary conflicts it also is frequent that armed opposition groups fight each other, or even that in some countries, like Somalia, there is no ‘opposition’ and different armed groups fight each other for territory or resources. In any case, it is difficult to categorise them, as there are significant differences

²⁵⁶This reference does not apply to armed groups fighting for self-determination when it is grounded in international law.

between them.²⁵⁷ At one extreme, AOGs are *de facto* governments, with effective control over territory and population, and operating under clear lines of command and control (such as the FARC in Colombia or the SPAL in Sudan). At the other extreme, AOGs may consist of small groups with a weak central power and badly organised armed forces.

In the current international legal framework, there is no definition of AOGs, hence legal analysis tend to rely on the definition of armed conflict given by the ICTY²⁵⁸ by highlighting in particular two common traits: their organised nature and the fact that they pursue a certain common goal normally in the context of non-international conflicts (that could go from trying to overthrow from power the official government, to obtaining autonomy or secession, or either gaining of political power in the absence of a *de facto* government). However, as previously noted, many current conflicts do not fit into the typologies of international humanitarian law but include situations of internationalised internal conflicts or the so-called 'transnational armed conflicts' which usually involve non-State armed groups and take place in several States.²⁵⁹ Particular problems and debate have been raised since the terrorists attacks in New York in 2001, such as the categorisation of the so-called 'war on terror' and the potential classification of a confrontation between a non-State entity with transnational operations and one or more States, as an armed conflict under international humanitarian law.

Human rights violations

The activities of AOGs have an enormous impact on human rights in armed conflicts. They are among the perpetrators of the most serious abuses of human rights committed in conflict. As numerous studies have made clear, AOGs tend to resort to inhuman practices affecting the physical safety and integrity and psychological well-being of individuals. These inhuman practices range from murder and mass rapes up to recruiting child soldiers or forcing displacement.²⁶⁰ AOGs are capable of endangering the lives of communities in many different ways, such as by hindering humanitarian aid, planting landmines, recruiting and using child soldiers and by trafficking and misusing small arms and light weapons. In addition, the presence of international and transnational actors in internal armed conflicts is noticeable.²⁶¹ As noted, 'the very presence of NSAGs on its territory is proof that a State may be incapable or unwilling to extend the rule of law all over its territory; hence the need for external assistance'.²⁶² In recent years, human rights reports provide evidence of the alarming figures of human rights violations committed by these non-State armed actors, including killing, torture and abductions, among the most serious ones.

The conflict in the Democratic Republic of Congo is illustrative of acts of armed violence of non-State armed groups as perpetrators of human rights violations (see Box IV.2).

²⁵⁷There are many aspects (their ideology, size, openness, tolerance, foreign sponsors, constituency, and institutional structure) with which the characteristics of AOGs differ.

²⁵⁸See subsection II. B.1 of this report.

²⁵⁹ See Sylvain Vité, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations' vol. 91 no. 873 International Review of the Red Cross (2009) 83.

²⁶⁰Cedric Ryngaert and Math Noortmann (eds) *Human Security and International Law: the Challenge of Non-State Actors* (Intersentia 2013) 42.

²⁶¹DCAF & Geneva Call, *Armed Non-State Actors: Current Trends & Future Challenges*, (DCAF Horizon 2015) 12.

²⁶²Ibid.

Box IV. 2. Armed Groups in DRC and human rights violations

1) Armed Opposition Groups

ADF: Allied Democratic Forces, a Ugandan Muslim rebel group with limited activities in Uganda and the DRC; **AFDL:** Alliance of Democratic Forces for the Liberation of Congo; **APC:** Peoples Armed Forces of Congo; **FDLR:** Democratic Forces for the Liberation of Rwanda; **FNI:** Nationalist and Integrationist Front. A Lendu rebel group; **Mai-Mai:** Name for various local armed groups. There are currently six main groups operating in the Kivus: the Mai-Mai Yakutumba, RaiaMutomboki, Mai-Mai Nyakiliba, Mai-Mai Fujo, Mai-Mai Kirikicho, and Resistance Nationale Congolaise; **M23/MLC:** The March 23 Movement. An insurgent group that formerly belonged to the rebel group CNDP. The group separated from CNDP in March 2012 with the argument that the Congolese government failed to deliver on its promises from the earlier peace agreement concluded on March 23, 2009. The rebel group's name is in reference to this agreement; **NALU:** National Army for the Liberation of Uganda: Uganda rebel group; **RCD:** Rally for Congolese Democracy. Rebel group consisting of different factions as RCD-Goma, RCD-Kisangani, RCD-K-ML, RCD-ML, RCD-N; **UPC/UPC-FRP:** Union of Congolese Patriots.

2) Human rights violations

According to the UN High Commissioner for Human Rights, the increase in gross violations of human rights can be attributed to various armed groups, specially the March 23 Movement (M23). M23 fighters were responsible for serious violations of human rights and international humanitarian law.

- *Killing, torture, inhuman and degrading treatment, and enforced disappearances*

Since April 2012, most of the human rights violations documented by the Joint Human Rights Office are related to the activities of the March 23 Movement (M23). The M23 committed serious violations of international humanitarian law, gross violations of human rights, as well as with other armed groups, taking advantage of the security vacuum that occurred from May 2012, following the mobilization of the units of the Armed Forces of the Republic Democratic Republic of Congo (FARDC) to fight the M23. These various Congolese and foreign armed groups have sought to extend their influence and control over areas rich in natural resources. In that context, there were murders, forced disappearances, cases of cruel, inhuman and degrading treatment, rape and systematic attacks against civilians and villages.²⁶³

- *Abuses against children*

In 2012, hundreds of children were recruited by armed groups. In particular, M23 was responsible for systematic recruitment and use of children. In addition, as a direct result of conflict-related violence, 154 children were killed and 113 injured in 2012. In 2012, the country task force documented 33 incidents affecting schools and hospitals. Six schools were looted or damaged in arson attacks by armed groups.²⁶⁴

²⁶³United Nations High Commissioner for Human Rights (OHCHR) *Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo* (2013), A/HRC/24/33, para. 3.

²⁶⁴ United Nations Secretary-General (UNSG) *Report of the UNSG on Children in armed conflict* (2013), A/67/845-S/2013/245, para.57-60.

- *Sexual violence*

Sexual violence continued to be a major human rights issue by its magnitude and its systematic nature, especially in the provinces of North Kivu, South Kivu and Oriental. The armed groups committed numerous violations. Cases of sexual violence occurred mainly during attacks on villages along with other human rights violations, including murder, torture and kidnapping. Many armed groups continued fighting for control of resource-rich territories, which resulted in serious violations of human rights against civilians, including mass rape.²⁶⁵

- *Displacement*

In many areas of the eastern part of the DRC, insecurity has led to a significant displacement of people, with large numbers of Congolese fleeing to neighbouring countries for refuge. Since May 2012, at least 1 million people have been displaced as a result of serious violations of human rights and international humanitarian law.²⁶⁶

Sources: United Nations High Commissioner for Human Rights (OHCHR) 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo' (2013), A/HRC/24/3; United Nations Secretary-General (UNSG) 'Report of the UNSG on Children in armed conflict' (2013), A/67/845-S/2013/245.

3. Terrorist groups

There is a large set (currently nineteen) of international conventions and protocols on the suppression or prevention of terrorist acts,²⁶⁷ but as yet, there is no agreed general international legal definition of what constitutes terrorism or a terrorist group.²⁶⁸ Terrorist activities, and counter-terrorism campaigns, raise specific challenges, particularly since the September 2001 attacks in New York. In the context of new forms of transnational networks of terrorists groups and the threat they represent, the Inter-American Commission of Human Rights has proposed the concept of 'terrorist war' with the view to take this concept to develop new international standards and practices in the area of terrorism and human rights, as well as to promote a dialogue on burning issues, such as the characteristics of 'terrorist war' from the human rights perspective, and the adjustments in existing international law, or new law, that might be needed to take these characteristics into account.²⁶⁹

Some other challenges refer in particular to the treatment of alleged terrorists as 'illegitimate' or 'unlawful' combatants by the US Governments,²⁷⁰ as well as the US programme of 'extraordinary

²⁶⁵United Nations High Commissioner for Human Rights (OHCHR) *Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo* (2013), A/HRC/24/33, para. 4.

²⁶⁶Ibid. para. 5.

²⁶⁷Full texts and current status of multilateral treaties on terrorism deposited with the Secretary-General can be found at <http://www.un.org/en/terrorism/instruments.shtml> accessed 21 April 2014.

²⁶⁸See Alex P. Schmid, 'The Definition of Terrorism' in Alex P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor and Francis 2011) 39.

²⁶⁹Inter-American Commission of Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 14.

²⁷⁰Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, War, *Conflict and Human Rights, Theory and Practice* (2nd edn Routledge 2014) 70-71.

rendition'.²⁷¹ In the wake of the new forms and dimensions of terrorism it has been argued that terrorism could constitute a violation of international law categorised as an international crime.²⁷² By defining a non-state armed group as a terrorist group, States can call on recognised international conventions and treaties in place, to counteract terrorist activities and less internationally recognized behaviours such as extraordinary renditions. Some States, particularly the US, have sought to treat the terrorist groups or members of the groups as illegitimate or unlawful combatants, in terms of depriving them from the protection of international humanitarian law.²⁷³ The options currently open to a State are to deal with the groups' unlawful activities through criminal laws within the jurisdiction of the State. In this case, the United States has challenged it in terms of the traditionally recognised laws on jurisdictions and extraditions in the treatment of hundreds of foreigners and some Americans at Guantanamo bay detention facility and in the known practice of extraordinary rendition and use of 'enhanced interrogation techniques'.²⁷⁴

These violations of human rights have engaged the human rights community, as the centrality of the rule of law in the protection of human rights is turned on its head, while the desire for the possibility of negotiated norms to address the newly defined battlefield of States against transnational terrorist groups is currently unattainable.²⁷⁵ Another approach which appears to get less room at the discussion table, it to address the issues that lie behind the terrorist groups motivation to act, not factoring as highly as the concentrated efforts to counterattack through anti-terrorist measures that have reinforced State powers.²⁷⁶

With no definition of terrorism or terrorist group recognised internationally, the terrorist group falls largely within the realm of 'illegitimate' and the international community has attempted to deal with terrorist groups through enactment of laws based on international treaties and conventions prohibiting specific acts of terrorism, regardless of the motivation of the group behind the acts²⁷⁷ and by addressing the facilitation of terrorism through financing with the introduction of the 1999 International Convention for the suppression of the Financing of Terrorism, and the Security Council controversially adopted Resolution 1373, 28 September 2001, creating a set of legally binding obligations on all UN member States to prevent and suppress financing of terrorist acts.²⁷⁸

The use of military attacks by States as techniques of preventative measure against terrorist groups also challenges international humanitarian law, despite their guise as 'pre-emptive self-defense' maneuvers,²⁷⁹

²⁷¹ Ibid. 71.

²⁷² Ibid. 70-71.

²⁷³ Ibid. 71.

²⁷⁴ Ibid.

²⁷⁵ Joan Fitzpatrick, 'Speaking Law to Power: The War Against Terrorism and Human Rights' (2003) 14 *European Journal of International Law* 246.

²⁷⁶ Jan Klabbers, *International Law* (Cambridge University Press 2013) 201.

²⁷⁷ Jan Klabbers, 'Rebel without a Cause? Terrorists and Humanitarian Law' (2003) 14 *European Journal of International Law* 229-312.

²⁷⁸ Jan Klabbers, *International Law* (Cambridge University Press 2013) 199.

²⁷⁹ The assassination policy of the Israeli Government is said to 'straddle the line between deaths in combat (subject to International Humanitarian Law) and the prohibition on extrajudicial execution in human rights law', while in 2003, the proposed future invasion of Iraq to prevent the transfer of weapons of mass destruction to terrorist groups are examples of techniques of

with perhaps more disturbing consequences for innocent civilians caught in the cross fire, in terms of deaths, injuries and other obvious consequences, and the less obvious subsequent difficulties in attainment of any kind of accountability for violations of human rights from following the attacks.

With these anomalies and challenges in international law, civilian casualties and violations of human rights of the civilian population and in particular, those in vulnerable circumstances, whether due to the activities of violence perpetrated by terrorist groups or military attacks conducted by States against terrorist groups, these civilian atrocities and any hope of accountability, appear to get less attention in the 'war on terror'.

Recent research has tried to identify core elements, which can assist in the determining the patterns of terrorist acts. In this regard, Schmid has identified ten elements covering core features of terrorism from academic and international legal definitions under the following terms: a) the demonstrative use of violence against human beings; b) the (conditional) threat of (more) violence; c) the deliberate production of terror or fear in a target group; d) the targeting of civilians, non-combatants and innocents; e) the purpose of intimidation, coercion and/or propaganda; f) the fact that it is a method, tactic or strategy of waging conflict; g) the importance of communicating the act(s) of violence to larger audiences; h) the illegal, criminal and immoral nature of the act(s) of violence; i) the predominantly political character of the act; j) its use as a tool of psychological warfare to mobilize or immobilize sectors of the public.²⁸⁰

Similarly, Schmid's handbook includes an updated 'World Directory of Terrorist and Other Organisations associated with Guerrilla Warfare, Political Violence, and Protest',²⁸¹ listing more than 6,400 organisations.²⁸² The handbook also provides a list of 'Officially Blacklisted Extremist or Terrorist (Support) Organisations' where data is presented by a 'combined list of a number of countries' and two international organisations' (the United Nations' and European Union's) blacklisted terrorist and extremist (support) organisations. The United States' current list includes 45 foreign organisations, which are designated as 'terrorist' (another 60 organisations and support groups or entities are on the Terrorist Exclusion List [TEL]). The United Nations' list, by contrast, contains 24 non-State entities. The United Kingdom has one of the most extensive lists, blacklisting 55 organisations. Canada has blacklisted 41 organisations, India 34, the European Union 29, Australia 18 and Russia 16.²⁸³ If one compares those lists, 15 armed groups appear blacklisted by at least five countries or organisations (see Box IV. 3).

prevention taken by States, cited in Joan Fitzpatrick, 'Speaking Law to Power: The War Against Terrorism and Human Rights' (2003) 14 *European Journal of International Law* 247.

²⁸⁰Alex P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor and Francis 2011) 74.

²⁸¹Albert J. Jongman, 'Introduction to the World Directory of Terrorist and Other Organizations associated with Guerrilla Warfare, Political Violence, and Protest, Organised Crime and Cyber-Crime' in Alex P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor and Francis 2011) 341.

²⁸²Albert J. Jongman, Appendix 6.2. *World Directory of Terrorist and Other Organizations associated with Guerrilla Warfare, Political Violence, and Protest, Organised Crime and Cyber-Crime* in Alex P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor and Francis 2011) 355.

²⁸³*The Routledge Handbook of Terrorism Research*, Alex P. Schmid, Routledge Handbooks, 350.

Box IV. 3. Non-state armed groups blacklisted by at least 5 countries (USA, UK, India, Australia and Russia), the UN and the EU.

Abu Sayyaf Group; Al-Qaeda; Al-Qaeda in the Islamic Maghreb (AQIM); Ansar al-Islam; Asbat al-Ansar; Gama'a al-Islamiya (Islamic Group); Hamas/Izz al-Din al-Qassem Brigades; Harakatul-Mujahidin (HUM); Islamic Movement of Uzbekistan (IMU); Jaish-e-Mohammed (JEM); Jemaah Islamiya (JI); Kongra-Gel/Kurdistan Workers Party (PKK); Lashkar-e-Tayyiba (LT); Liberation Tigers of Tamil Eelam (LTTE); Palestinian Islamic Jihad (PLA).

Source: Benjamin J. E. Freeman, 'Officially Blacklisted Extremist or Terrorist (Support) Organisations' in Alex P. Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor and Francis 2011) 350-353.

Human rights violations

Terrorist acts constitute an assault on the most basic human rights. Acts of terrorism indiscriminately kill and maim, and therefore violate the right to life, liberty, and security of the person. In addition, 'terrorism can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development'.²⁸⁴ Typically, terrorist groups use specific tactic types such as bombing, armed attacks, arson, assassination, barricade/hostages, hijacking, kidnapping, and suicide attacks.²⁸⁵ They can operate in different scenarios: on land (for example using bombs and armed attacks), air (targeting and hijacking planes) and sea (hijacking a vessel). To cite an example, maritime attacks committed by the Abu Sayyaf Group (ASG) have caused a tremendous impact, such as abduction of passenger vessels, kidnapping of foreign tourists, ship bombings causing hundreds of deaths (see Box IV. 4).

Box IV. 4. Maritime Attacks by Abu Sayyaf Group during 2000-2004

The ASG's actions have focused on hijackings of inter-island ferries, tugs, and fishing trawlers sailing in the Sulu-Sulawesi Marine Triangle, where the borders of Malaysia, the Philippines, and Indonesia meet. Attacks typically involve armed takeovers of target vessels followed by the abduction of crew or passengers, who are either robbed or held for ransom. For most of its interceptions, the group uses modified speedboats that are able to outrun and outmanoeuvre anything the Philippine Navy can currently put to sea. In addition to these assaults, the ASG has carried out episodic shore-based strikes, including one highly publicized operation in 2000 that involved the kidnappings of foreign tourists from Sipidan, which reputedly netted the group between \$15 million and \$20 million in 'blood money'.

²⁸⁴See Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counter-terrorism* (Fact Sheet No. 32 2007) <<http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>> accessed 12 June 2014.

²⁸⁵Rollie Lal and Brian A. Jackson, 'Change and Continuity in Terrorism Revisited: Terrorist Tactics, 1980–2005' in *The MIPT Terrorism Annual 2006*, National Memorial Institute for the Prevention of Terrorism, <<https://www.ilis.dhs.gov/sites/default/files/2006-MIPT-Terrorism-Annual.pdf>> accessed 20 May 2014, 4-5.

On a more direct level, the ASG has been linked to several passenger ship bombings. The most destructive assault was the 2004 attack on Super-ferry 14, which eventually led to the deaths of 116 people. More recently, the group managed to place and detonate an IED on the MV Dona Ramona ferry as it was being loaded at the Lamitan Wharf in Basilan, despite the presence of armed soldiers who had been posted at the gangplank to provide portside security for the vessel. No one was killed in the explosion but 30 were injured, however, including several children.

Source: Peter Chalk, 'Maritime Terrorism in the Contemporary Era: Threat and Potential Future Contingencies' in *The MIPT Terrorism Annual 2006* (National Memorial Institute for the Prevention of Terrorism) <<https://www.llis.dhs.gov/sites/default/files/2006-MIPT-Terrorism-Annual.pdf>> accessed 20 May 2014, 36-37.

4. Criminal organisations

Organised crime includes any criminal activity prolonged in time whose ability to obtain and provide goods and services lies in the use of corruption, coercion and, in some cases, violence. A comprehensive set of offenses is linked to organised crime, both at local, national and transnational level. While some focus especially on the local level - as extortion or selling drugs on the street -, others go beyond this scope and affect the national level, with clear connections to the transnational dimension - this is the case in human trafficking and trafficking of drugs and weapons.²⁸⁶ This transnational dimension that has been brought about by the process of globalisation, provides increasing evidence of the different ways in which armed conflict, violence and other forms of violence interact. Violence conducted by criminal organisations has an enormous impact on human rights.

More often than not, violent crime intersects with so-called political violence. Criminal organisations have shown an extraordinary capacity for blurring the boundaries between criminal and political types of violence, as evidenced by the drug wars in Mexico and the rest of Central America, the Caribbean, and certain Andean countries.²⁸⁷ These groups tend to exploit State weakness and situations of State fragility. Unlike insurgents or armed opposition groups, criminal groups do not operate replacing the State. These non-state groups increasingly use the urban space for their illicit activities.²⁸⁸ To make this space available for their services, they build up social support through complex and mutually beneficial relationships.²⁸⁹ Latin America is the region where the highest levels of violence in the world are found. The region as a whole suffers violence rates much higher than other regions, with more than 100,000 records per year according to the Global Study on Homicide 2013 of the United Nations Office on Drugs and Crime

²⁸⁶ PNUD, 'Seguridad Ciudadana con rostro humano: diagnóstico y propuestas para América Latina, Informe Regional de Desarrollo Humano 2013-2014' <<http://www.latinamerica.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf>> accessed 20 May 2014, 76.

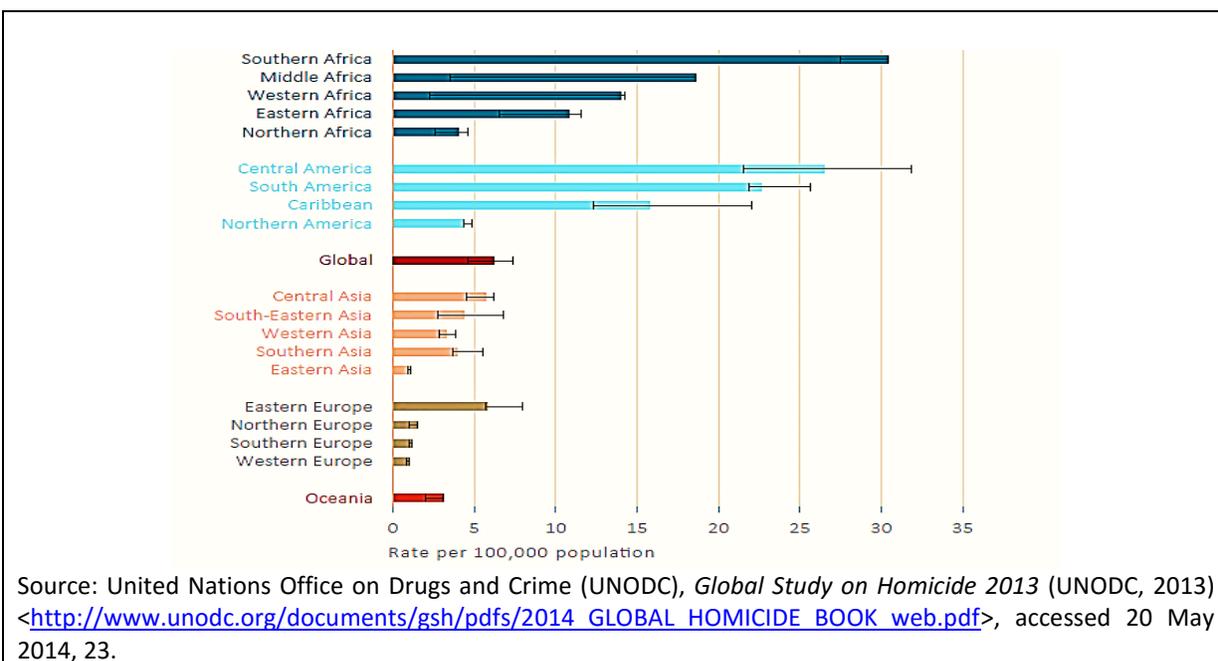
²⁸⁷ For an analysis of the impact of violence conducted by criminal organizations in Central America and the Caribbean see Shivit Bakrania, Organised violence and its impacts in the Central America's northern triangle GSDRC Report <<http://www.gsdr.org/docs/open/hdq933.pdf>> accessed 22 May 2014.

²⁸⁸ See section II.A.2 on urban violence.

²⁸⁹ DCAF & Geneva Call, Armed Non-State Actors: Current Trends & Future Challenges (DCAF Horizon 2015) no. 5 Working Paper 17.

(UNODC).²⁹⁰ Most countries in the region have rates of homicide at epidemic levels as classified by the World Health Organization. In recent years, the rapid expansion of armed groups including organised crime drug trafficking networks, street gangs, gangs and criminal groups, operating from the local to the transnational levels has increased the level and intensity of violence in the Northern Triangle (covering Guatemala, Honduras, El Salvador and Mexico). The humanitarian consequences of this phenomenon are comparable to those experienced during the civil wars that ravaged the region in the mid to late 80's. Concern over the size and scope of violence has led United Nations Development Programme (UNDP) to devote the last Regional Human Development Report for Latin America 2013-14 to the challenge of ensuring public safety.²⁹¹

Figure IV. 1. UNODC. Global Study on Homicide 2013



Human rights violations

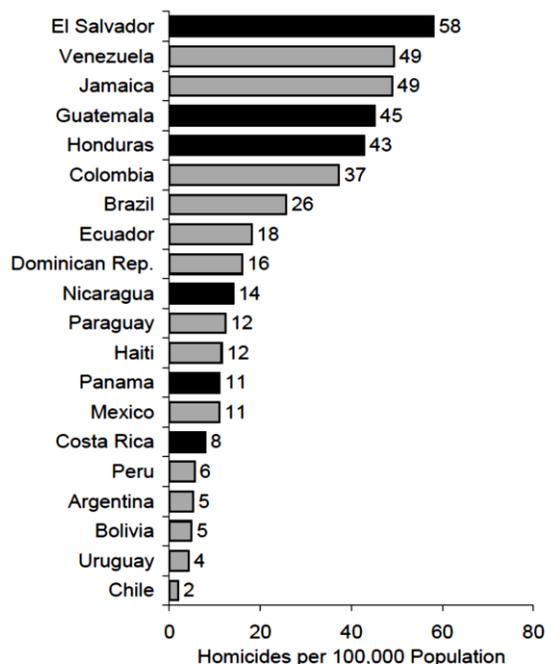
Organised crime is a threat that generates great fear in populations in which it develops and negatively impacts people and communities through the use of armed violence and coercive mechanisms based on intimidation and threat. This is particularly relevant for those Latin American countries that have the highest homicide rates, especially El Salvador, Honduras, Guatemala (whose crime rates are among the

²⁹⁰ United Nations Office on Drugs and Crime (UNODC), 'Global Study on Homicide 2013' (UNODC, 2013) <http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf> accessed 20 May 2014.

²⁹¹The Public Safety report with a Human Face: Diagnosis and proposals for Latin America analyzes and highlights the problem of violence in the region and provides recommendations to improve public policy. See at <<http://www.undp.org/content/dam/rblac/docs/Research%20and%20Publications/IDH/IDH-AL-ExecutiveSummary.pdf>> accessed 20 May 2014.

top five in Latin America),²⁹² Colombia, Brazil, and Mexico.²⁹³ Homicide rates in Latin America and the Caribbean are described in Figure IV. 2.

Figure IV. 2. Homicide rates in Latin American countries



Source: World Bank, Department and Poverty Reduction and Economic Management Unit Latin America and the Caribbean Region, 'Crime and Violence in Central America. A Development Challenge' (World Bank, 2011)
http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf accessed 20 May 2014, 8.

The significant rise of homicide rates in Mexico, the intensity and levels of violence, and the characteristics of the organised criminal groups are important arguments for those that categorise this situation as an internal armed conflict (see Box IV. 5).²⁹⁴

²⁹²World Bank, Department and Poverty Reduction and Economic Management Unit Latin America and the Caribbean Region, 'Crime and Violence in Central America. A Development Challenge' (World Bank, 2011) http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf accessed 20 May 2014, 5.

²⁹³ PNUD, Seguridad Ciudadana con rostro humano: diagnóstico y propuestas para América Latina, Informe Regional de Desarrollo Humano 2013-2014 <http://www.latinamerica.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf> accessed 20 May 2014, 76-77.

²⁹⁴ For a more comprehensive overview see Elisabeth Wilmschurst (ed), *International Law and the Classification of Conflicts* (Oxford University Press 2012) 24-26.

Violent acts of criminal organisations cause injuries, homicide, victimisation, kidnapping, harassment, trafficking of vulnerable segments of society (such as irregular migrants, children²⁹⁵ and women), and sexual exploitation.²⁹⁶ Recent reports attest to the effects of violence on the physical, human and social capital showing how violence disproportionately affects the poor and erodes their livelihoods and assets.²⁹⁷ The United Nations Office for Drugs and Crime (UNODC) has concluded that ‘violent crime in Central America acts as a kind of ‘anti-development’, destroying the trust relations on which society is based’.²⁹⁸ Households and communities can also suffer indirectly the consequences of violence. This form and level of violence has an enormous impact on human security. The World Bank (2011) states that ‘drug trafficking is an important driver of homicide rates in Central America and the main factor behind rising violence levels in the region’.²⁹⁹ It is clearly inferred from the figures, that drug trafficking areas tend to have 100 per cent higher crime rates than non-trafficking areas. Mexico is an example of the rising levels of violence related to drug trade and the availability of firearms (see Box IV.5).

Box IV. 5. Crime, conflict and drug cartels in Mexico

The most important and largest organised criminal groups in Mexico— including the Tijuana, Sinaloa, Gulf and Beltran Leyva cartels—have sought in recent years to establish their own quasi-states-within-a-state in areas under their control in order to maximize their profits and to contest the control of the most violence-prone cities, such as Ciudad Juárez and Tijuana. Mexican organised criminal groups have diverse organisational structures, from more hierarchical and top-down, to networks of semi-independent cells. All of the larger groups have paramilitary units or forces or, like the Gulf Cartel, which controlled territory along Mexico’s eastern coastline, hire a paramilitary force, Las Zetas, to perform the same functions.

The number of fatalities caused by organised crime, especially drug trafficking, has steadily increased in Mexico from 2,100 in 2006 to 2,600 in 2007 and at least 6,200 in 2008. While Mexico has generally had high crime rates in the past, recent years have seen a sharp escalation of criminal and anti-criminal violence.

Source: Ekaterina Stepanova ‘Armed conflict, crime and criminal violence’ in *SIPRI Yearbook 2013*, 56-59.

²⁹⁵See The Guardian, ‘US will deport undocumented migrant children’, 1st July 2014, <http://www.theguardian.com/world/2014/jul/01/john-kerry-undocumented-children-deported-honduras-guatemala>>accessed 2 July 2014; see also UNHCR, *Children on the Run* (2014), <http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report.pdf> accessed 12 June 2014.

²⁹⁶PNUD, Informe Regional de Desarrollo Humano, 2013-14: Seguridad Ciudadana con rostro humano: diagnóstico y propuestas para América Latina.

²⁹⁷Shivit Bakrania, Organised violence and its impacts in the Central America’s northern triangle GSDRC Report <<http://www.gsdrc.org/docs/open/hdq933.pdf>> accessed 22 May 2014.

²⁹⁸United Nations Office on Drugs and Crime (UNODC) (2007), Crime and Development in Central America: Caught in the Crossfire. United Nations Office on Drugs and Crime, <http://www.unodc.org/documents/data-and-analysis/Central-america-study-en.pdf>22

²⁹⁹World Bank, Crime and Violence in Central America: A Development Challenge. <http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf> accessed 24 June 2014.

B. Businesses

1. Overview

In the context of globalised market and particularly where weak economic and political power exists in States or other predeterminates to conflict, as covered in section II of this report, many internal armed conflicts 'are often little more than campaigns to acquire access to natural resources and markets, although somewhere in the distant past it may be possible to identify a role for ideological factors and political objectives'.³⁰⁰ Indeed in these violence ridden-zones and other contexts with lower level of conflict, (internal disturbances, widespread violence and latent tensions) businesses have been involved in human rights abuses in many different ways thus contributing to instability and violence.³⁰¹ In these contexts private companies have found an enormous market for security, defense and military services, which has provoked a remarkable expansion of these private contractors in the last twenty years.

Transnational corporations (TNCs) are engaged in the exploitation of most of the conflict natural resources, either directly or indirectly, since they may have investors or backers with vested interests and they manufacture and commercialise these products, thereby contributing to on-going human rights violations.

In some cases, businesses have been involved in serious abuses in different roles, as perpetrators, accomplices (aiding and abetting), or business partners with the perpetrator. As the former Chief Prosecutor of the ICC has commented

Various reports have pointed to links between the activities of some African, European and Middle Eastern companies and the atrocities taking place in the Democratic Republic of Congo. The alleged involvement of organised crime groups from Eastern Europe has also been mentioned. Their activities allegedly include gold mining, the illegal exploitation of oil, and the arms trade. There is general concern that the atrocities allegedly committed in the country may be fuelled by the exploitation of natural resources there and the arms trade, which are enabled through the international banking system. Although the specific findings of these reports have not been confirmed, the Prosecutor believes that investigation of the financial aspects of the alleged atrocities will be crucial to prevent future crimes and for the prosecution of crimes already committed. If the alleged business practices continue to fuel atrocities, these would not be stopped even if current perpetrators were arrested and prosecuted. The Office of the Prosecutor is establishing whether investigations and prosecutions on the financial side of the alleged atrocities are being carried out in the relevant countries.³⁰²

³⁰⁰Mats Berdal and David M. Malone (eds.): *Greed and Grievance: Economic Agendas in Civil Wars*, (Lynne Rienner 2000); William Schabas, 'War Economies, Economic Actors and International Criminal Law' in Karen Ballentine (ed) *Profiting from Peace: the Resource Dimensions of Civil War* (Lynne Rienner 2005) 426.

³⁰¹ For an analysis of the negative impact of businesses on the protection of human rights see, FRAME Work-Package D.7.1 'Report on the positive and negative human rights impacts of non-state actors' (forthcoming) <http://fp7-frame.eu> 24-58.

³⁰² Communications Received by the Office of the Prosecutor of the ICC, Press Release No.:pids.009.2003-EN (16 July 2003) 3-4.

The main legal difficulty is that, as non-state actors, companies are not (directly) legally bound by international human rights norms. The debate surrounding the relationship between business and human rights has been characterised by ongoing hesitations between binding and non binding international legal instruments to regulate business corporations and other business entities. On 26 June 2014, the UN Human Rights Council (HRC) adopted a resolution, opposed by the European Union, which was co-sponsored by Ecuador and South African and supported by a number of other states where the HRC established an open-ended intergovernmental working group, which has been mandated to elaborate an internationally legally-binding instrument to regulate business and human rights.³⁰³

2. Private military and security companies

While private armies and police forces are not a new presence in armed conflicts,³⁰⁴ in the last 20 years private military companies (PMCs) have started to be used more systematically, providing services in zones of low-intensity armed conflict and post-conflict situations such as Afghanistan, the Balkans, Colombia, the Congo, Iraq, Somalia or Sudan.³⁰⁵ Also there are private security companies (PSCs) that provide security services in more stable environments. PMCs constitute a complex phenomenon qualified by Singer as 'one of the most interesting developments in warfare'.³⁰⁶ Although there is no single definition of PMCs some research studies have contributed to clarify some of their traits.³⁰⁷

These transnational private companies offer for profit security, defense and military services, tasks traditionally carried out by national armed forces and police, within the context of the current trend of privatisation (outsourcing) of public functions of the State. Gómez del Prado has noted the relevant problems related to the difficulties in distinguishing between the activities and functions which are public and those which belong to the private sector because they have been increasingly blurred by the expansion of this new industry, 'creating a dangerous "grey zone" with no transparency, no accountability and no regulation'.³⁰⁸

Their services are increasingly used by governments, international organisations and Non-Governmental Organisations (NGOs) transnational corporations, humanitarian organisations and the media in conflict and post-conflict settings.³⁰⁹ In those contexts PMCs employees, contracted as civilians but armed as military, 'have an ambiguous status which can transform them from civilians into combatants at any moment'.³¹⁰ In the provision of security to humanitarian NGOs, it becomes very difficult for the local

³⁰³ UNHRC, Resolution on the 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (24 June 2014) A/HRC/26/L.22/Rev.1.

³⁰⁴ See Simon Chesterman and Chia Lehnardt, *From Mercenaries to Market The Rise and Regulation of Private Military Companies* (Oxford, 2007).

³⁰⁵ José Luis Gómez del Prado, 'Privatising security and war' issue 3 (2011) *Forced Migration Review* 18-20.

³⁰⁶ Peter W. Singer, 'War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law' (2004) *Columbia Journal of Transnational Law* 521, 522. For an analysis of the different kind of operations and functions undertaken by PMCs see Peter Singer, *Corporate Warriors: the rise of the privatized military industry* (Cornell University Press 2008) 108, 127, 208, 449.

³⁰⁷ See, e.g. Reinmar Nindler, 'Die Grenzen der völkerrechtlichen Regulierung und Regulierbarkeit privater Militärunternehmen (Limits of the Regulation of Private Military) Companies', in Matthias Kettemann (ed.) *Grenzen im Völkerrecht (Borders/Limits in/of International Law)*, (Jan Sramek Verlag 2013) 220.

³⁰⁸ José Luis Gómez del Prado, 'Privatising security and war' issue 3 (2011) *Forced Migration Review* 18-20.

³⁰⁹ According to 2010 figures of the US Department of Defense in Afghanistan there are 107,292 hired civilians and 78,000 soldiers.

³¹⁰ José Luis Gómez del Prado, 'Privatising security and war' issue 3 (2011) *Forced Migration Review* 18-20.

population as well as for government officials to distinguish between humanitarian workers and private forces. PMCs not only participate in on-going conflicts, but also in post-conflict reconstruction activities, such as security sector reform. Whilst their participation in direct combat is not as common as in the early years of their involvement in conflicts, such as in Iraq, their services may involve direct confrontation with combatants in the course of hostilities.³¹¹

Given the expansion of the phenomenon of PMCs in conflict and post-conflict contexts around the world and the variety of contexts where they operate, relevant practical and legal challenges have arisen concerning in particular their implication in human rights abuses and the difficulty in holding them legally accountable.³¹²

The operations and activities of PMCs, together with those of paramilitaries and mercenaries, have an increasingly negative impact by causing forced displacements and other human rights violations. A survey of human rights abuses by PMCs can be presented on the basis of a schematic summary proposed by Palou-Loverdos and Armendáriz, which considers the contexts of PMCs operations, the categories of victims of their abusive practices and the categories of human rights violations.³¹³

In view of the diversity of contexts of their operations, their impacts on human rights have been assessed in the academic literature under three general categories:³¹⁴

- 1) as part of commercial security measures, including violations such as the invasion of privacy through phone tapping, interception of mail and other intelligence-related activities, harassment of protesters, and complicity with local law enforcement forces in arbitrary detentions and enforced disappearances of prominent dissenters;
- 2) in situations of armed conflict and occupation, which comprise mainly of attacks on the civilian population, including cases of summary executions and extrajudicial killings (violations of the right to life), torture (violation of the prohibition of torture), sexual violence, arbitrary detention and disappearance, and participation in weapons, drug and human trafficking (violation of the right to liberty and security of the person)';
- 3) abuses involving the extraction of natural resources, including violations of the right of peoples to self-determination and the right to development.

³¹¹ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman War, *Conflict and Human Rights, Theory and Practice* (2d Routledge 2014) 72.

³¹² Ibid. 73. See Francesco Francioni and Natalino Ronzitti (eds), *War by Contract: Human Rights, Humanitarian Law and Private Contractors* (Oxford University Press 2011).

³¹³ Jordi Palou -Loverdos and Leticia Armendáriz, The Privatization of Warfare, Violence and Private Military & Security Companies. A factual and legal approach to human rights abuses by PMSC in Iraq, <http://www.consciousbeingalliance.com/Informe_PMSC_Iraq_Nova.pdf> accessed 22 May 2014.

³¹⁴ Leonard Gaultier et al., The Mercenary Issue at the UN Commission on Human Rights. The Need for a New Approach, (2001) International Alert <http://www.operationspaix.net/DATA/DOCUMENT/6041~v~The_Mercenary_Issue_at_the_UN_Commission_on_Human_Rights.pdf> accessed 22 May 2014, 14-15.

Considering the victims of the human rights abuses by PMCs,³¹⁵ scholars have distinguished between a) violations against the civilian population and property of the territory where PMSCs operate, including arbitrary detentions and killings, torture and ill-treatment and/or other events of disproportionate use of force against people or property; and b) infringements of the right of their own employees, such as excessive working hours, poor working conditions, denial of medical assistance, and abusive contractual clauses among other.³¹⁶ In fact, 'their employees working conditions tend to be dangerous and unhealthy and in many occasions lack sufficient security measures, which has meant that in some conflicts there have been larger casualties amongst private contractors than official fighting forces'.³¹⁷

Finally, with regard to PMCs, the categories of rights and types of violations have also been distinguished.³¹⁸ a) serious violations of fundamental rights, such as the right to life and the right to freedom; b) breaches of the social and economic rights of workers; c) sexual crimes; d) human trafficking; and d) contraventions of the right of peoples to self-determination and the right to development.

Several factors facilitate that these violations are committed with impunity: the uncertain/ambiguous status of PMSCs and their personnel, and the lack of a clear framework of responsibilities under human rights and international humanitarian law,³¹⁹ the lack of comprehensive regulation, the low level of supervision by both home and host or territorial governments, the difficulties victims face in accessing judicial remedies, due to the fact that domestic jurisdictions are usually ill-equipped for this kind of claims,³²⁰ and the granting of immunity from prosecution. That has been the case in Iraq³²¹ and Afghanistan where PMCs have been able to operate with impunity, in great part due to the granting of immunity from prosecution.³²² In Colombia there have been similar exemptions from prosecution benefiting private contractors.³²³ An important factor contributing to their impunity is the corporate structure of these organisations, which allow them to adopt different names, 'to dissolve and rebrand

³¹⁵Jaume Saura, 'Las empresas militares y de seguridad privada ante el Derecho Internacional de los Derechos Humanos: su actuación en el conflicto iraquí' (2010) 19 Revista Electrónica de Estudios Internacionales 8-12.

³¹⁶ Facts and data are documented on the basis of official reports of the United Nations organs. See Resolution A/HRC/7/7 9 January 2008.

³¹⁷ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman War, *Conflict and Human Rights, Theory and Practice* (2d Routledge 2014) 74

³¹⁸José Luis Gómez del Prado and Helena Torroja, *Hacia la regulación internacional de las empresas militares y de seguridad privadas* (Centro de Estudios Internacionales) (Marcial Pons 2011) 26-35.

³¹⁹See Lindsey Cameron 'Private military companies and their status under International Humanitarian Law' (2006) vol. 86 no. 863 International Review of the Red Cross <http://www.icrc.org/eng/assets/files/other/irrc_863_cameron.pdf> accessed 20 May 2014) 573.

³²⁰ On the difficulties arisen from litigation see Cedric Ryngaert 'Litigating Abuses Committed by Private Military Companies' (2008) vol. 19 European Journal of International Law.

³²¹ For a comprehensive study see Jordi Palou - Loverdos (Dir) and Leticia Armendáriz, *the Privatization of Warfare, Violence and Private Military & Security Companies. A factual and legal approach to human rights abuses by PMSC in Iraq* <http://nova.cat/wp-content/uploads/2011/12/Informe_PMSC_Iraq_Nova_ok.pdf> accessed 25 May 2014.

³²²In Iraq, by Order 17 issued by the Administrator of the Coalition Provisional Authority (CPA) in June 2004, contractors were immune from prosecution during the three years of the Coalition. The order is available at <http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf>, accessed 30 June 2014.

³²³In Colombia any abuses which may be committed by US military personnel and private contractors working under Plan Colombia can be neither investigated nor prosecuted. Following a 2003 agreement between Colombia and the US, the government of Colombia would not be able to submit to the jurisdiction of the International Criminal Court any US armed forces personnel or US private contractors working for transnational private security companies who have committed crimes against humanity.

easily, and individual employees can move from company to company leaving little trace'.³²⁴ In the end it is extremely difficult for victims to pursue justice for these violations.³²⁵

In order to respond to the concerns generated by the expansion of the activities of PMSCs, the two governments where most of the security industry (70%) is located, UK and USA, with the government of Switzerland and the security industry itself, launched the Swiss Initiative based on the idea of self-regulation.³²⁶ This approach has resulted in the adoption of several non-binding instruments (the 2000 Voluntary Principles on Security and Human Rights,³²⁷ the 2008 Montreux Document³²⁸ and the 2010 International Code of Conduct for Private Security Service Providers).³²⁹ With a different agenda at hand, because of PMSCs' impact in the enjoyment of human rights, the United Nations established in 2005 the UN Working Group on the Use of Mercenaries (WGUM)³³⁰ with the aim of drafting a legally binding instrument. In 2010, the WGUM proposed the Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies.³³¹ As it has been noted, these instruments focus specifically on PMSCs, but the substance of the proposed international legal regime lies on 'existing obligations incumbent upon States (home States, territorial States, contracting States, etc.) and upon individual members of PMSCs, their main asset being that they put all these obligations in one place'.³³² The draft convention sets out a specific prohibition on outsourcing or contracting inherent State functions, such as the use of force.

In a final note, it is stressed that

the initiatives make an effort to engage PMSCs as such, by encouraging them to voluntarily sign and implement a set of principles relating to respect for IHL and human rights and even by making it possible – in a rather unprecedented way – for them and other NSAs to declare their adherence to the (draft) Convention on PMSCs. The rules contained in the relevant instruments typically fall under the responsibility component of IHL. As such, they concentrate on identifying and analysing

³²⁴Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 74.

³²⁵ For a documented list of cases brought before Iraqi and US Courts see Jordi Palou -Loverdos and Leticia Armendáriz, *The Privatization of Warfare, Violence and Private Military & Security Companies. A factual and legal approach to human rights abuses by PMSC in Iraq* <http://www.consciousbeingalliance.com/Informe_PMSC_Iraq_Nova.pdf> accessed 25 May 2014: 291.

³²⁶ José Luis Gómez del Prado, 'Privatising security and war' issue 3 (2011) *Forced Migration Review* 19-20.

³²⁷The text of the document is available at <http://www.voluntaryprinciples.org/wp-content/uploads/2013/03/voluntary_principles_english.pdf> accessed 20 May 2014.

³²⁸The text of the document is available at <http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf>, accessed 20 May 2014.

³²⁹The text of the document is available at <http://www.icoc-ppsp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf>, accessed 20 May 2014.

³³⁰ *Ibid.*, 19. Nonetheless the delegations of the Western group at the UN have generally supported the disassociation of the PMSCs from mercenarism.

³³¹Cedric Ryngaert and Math Noortmann (eds), *Human Security and International Law: The Challenge of Non-State Actors* (Intersentia 2013) 45.

³³²Cedric Ryngaert and Math Noortmann (eds), *Human Security and International Law: The Challenge of Non-State Actors* (Intersentia 2013) 47- 48.

the consequences stemming from the violations of primary norms of IHL or human rights committed by members of PMSCs or other actors (States, international organisations, etc.).³³³

Box IV. 6. United States of America v. Paul A. Slough, et al. (Blackwater case)

• About Blackwater

Blackwater Worldwide, a company founded by Erik Price and based in North Carolina, provided a rapidly expanding list of products and services to the U.S. government, among other clients. The for-profit company began by providing training to military officials, police officers and civilians at its headquarters in the U.S. When the U.S. invaded Iraq in 2003, Blackwater positioned itself to provide security personnel to the U.S. State Department and other U.S. agencies operating in Iraq.

• Summary of the case

In September 2007, 14 Iraqi civilians were killed and 20 wounded by employees of Blackwater. These employees declared that the acts were conducted in self-defense, but were charged with manslaughter. They alleged they made those statements under pressure (as they were threatened to be fired if they would not do so). Under US law, these statements are ‘compelled’ and can therefore not be used in criminal proceedings. As the statements appeared in the press, both the prosecution team and witnesses were influenced by them. Thus, the Court ruled, the rights of the defendants have been inexcusably breached. It dismissed the charges against the defendants. The Court of Appeals did not agree and stated that the District Court should have been more specific when it branded the evidence against the defendants as ‘tainted’. It held that witness statements should have been subjected to a part by part examination to determine which parts were tainted. These statements should not have been ‘thrown out’ entirely, according to the Court of Appeals.

• Court's holding and analysis³³⁴

The Court of Appeals held that in analyzing whether the evidence, both physical evidence and witness statements before the indicting grand jury had been ‘tainted’, the District Court made a ‘number of systemic errors based on a erroneous legal analysis’.

Firstly, the Court held that the District Court should not have ‘lumped’ witness statements and should not have excluded them in their entirety when at the most only some portion of the content was tainted. Secondly, the Court held that the District Court erred by failing to conduct a proper independent-source analysis. It failed to distinguish between sources which were ‘tainted’ and which were not. Thirdly, it held that the wrong legal standard had been applied when the Court excluded a witness’ journal and testimony, because the news reports, based on the compelled statements, were a cause, only one, for writing his journal. Lastly, the Court held that the District Court should not have lumped the indictments in holding that all indictments were tainted.

The Court concluded that, on remand, the Court should determine, as to each defendant, what evidence—if any— was tainted.

³³³Cedric Ryngaert and Math Noortmann (eds) Human Security and International Law: The Challenge of Non-State Actors (Intersentia 2013) 47-48.

³³⁴ United States of America, Appellant v. Paul Alvin Slough, et al., appellees, Appeal from the United States District Court for the District of Columbia, No. 1:08-cr-00360 <<http://www.asser.nl/upload/documents/DomCLIC/Docs/NLP/US/blackwaterfeb2011.pdf>> accessed 30 June 2014.

Source: Center for Constitutional Rights, 'Factsheet: Guns for Hire in Iraq, The Cases Against Blackwater', <http://ccrjustice.org/files/CCR_Blackwater_Factsheet_Sept_09_0.pdf> accessed 30 June 2014; International Crimes Database, 'United States of America v. Paul A. Slough, et al.', <<http://www.internationalcrimesdatabase.org/Case/897/Slough-et-al/>> accessed 30 June 2014, 8, 10, 13, 17.

Two other US companies, CACI International Inc. and Titan Corp., were involved in the abuses of Iraqi detainees in the Abu Ghraib prison, where they provided services of interrogation and translation. A group of 250 Iraqis sued both companies in the US under the Alien Tort Claims Act (ATCA) for torture and illegal acts. However, the claims in the case *Saleh v. Titan*, were dismissed. An appeal was refused by the US Supreme Court in 2011, effectively putting an end to the case.³³⁵

3. Transnational corporations

The preconditions for contemporary conflicts, as discussed above, are immersed in a global context of international political economics where the control of natural resources and liberal governance are contributory factors in the analysis and where transnational corporations are amongst the players on contemporary violence-ridden zones.³³⁶

While much weight is given to the lack of legal powers to regulate and hold companies operating across national jurisdictions accountable, the evidence of transnational corporations involvement in violent conflicts has been produced from various sources. A United Nations Panel of Experts in 2001, produced a report which explicitly named companies and highlighted the role of private companies in the continuation of conflict.³³⁷ Civil liability cases taken under the Alien Tort Claims Act (ATCA) in the United States have produced evidence of either direct commissioning (perpetrators) of abuses of human rights or companies have been found to be complicit in abuses in conflict areas. The number of cases to reach successful conclusion under ATCA has been limited, and cases involving accusations of companies acting in collaboration with States in perpetrating violence and human rights abuses, have in some cases, seen the State found not liable, while the case has found the corporation to be responsible.³³⁸ Unocal, a Californian based petroleum company was found to be complicit in murder, rape and torture carried out by Burmese Military during the construction of a pipeline in Myanmar, (then known as Burma) in a case taken by a group of villagers from the region against Unocal, Total, a French company, and the Burmese Government in 2004.³³⁹

³³⁵ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 73-74.

³³⁶ The analysis of the responsibility of TNCs for human rights violations is mapped in detail in FRAME work-package D7.1 'Report on the positive and negative human rights impacts of non-state actors' (forthcoming) <<http://fp7-frame.eu>>.

³³⁷ United Nations Security Council 'Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo' (2001) para 81 – 84, <<http://www.un.org/news/dh/latest/drcongo.htm>>, accessed 5 June 2014.

³³⁸ Koen de Feyter 'Globalisation and Human Rights' in Felipe Gomez Isa and Koen de Feyter (eds) *International Human Rights Law in a Global Context* (University of Deusto 2009) 82.

³³⁹ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 73-74.

Extraction of natural resources involving contractual arrangements between transnational companies and local Governments, particularly in less politically and/or economically powerful States, can result in the fuelling of conflict, through direct actions or indirect actions, with State forces, private forces and/or other nonstate armed groups engaged in conflict.³⁴⁰ The atrocities inflicted on the Ogoni people in Nigeria in their displacement from their traditional homelands and the killing of people who attempt to voice their rights, has been traced to the actions of government police and military forces, with involvement of the transnational oil company, Royal Dutch Shell, the Netherlands being home State country of the corporation.³⁴¹

The extraction of coltan in the Democratic Republic of Congo has fuelled conflict in the country and region, with the demand for the mineral, used in mobile technology, which saw a peak in 2000, along with an estimated 2 million deaths.³⁴² The mineral, traded on the free market at that time (rather than the metals market) was found to be the biggest funding source of the armed conflict in the area during that year, a peak year for demand for tantalum (extracted from Coltan) thought to be linked to demand for Sony Play Station 2, new mobile phone styles and laptops at that time.

The UN Security Council commissioned studies of the movement through the supply chain, involving neighbouring countries including Rwanda, third party traders, on to processing companies in Germany, Kazakhstan and the USA and finally reaching the open markets via China, Europe and the USA.³⁴³ The idea that the end consumer might be somehow complicit in the deaths of an estimated 5 million people in the region from 2000 to 2010, has helped the campaign for supply chain certification and tracing. Tracing supply chains to non-conflict sourced products involves transnational corporations, governments and bodies such as the OECD³⁴⁴ and is one amongst some of the initiatives emerging to attempt to control the occurrence of conflict and violence associated with natural resource extraction and associated involvement of transnational companies.³⁴⁵

A body of evidence relating to the conduct of some European Transnational Corporations has indicated the role played by certain companies in human rights violations in South America, involving the use of private security companies incidents of assassinations, and forced disappearances.³⁴⁶ Practices at a European Institutional level have been called into question relating to the European Investment Bank and European based investment pension funds, in investment and shareholder practices linked to Transnational Corporations such as Goldcorp accused of being complicit in human rights violations in

³⁴⁰ Ibid. 77.

³⁴¹ Moira Feil, Susanne Fischer, Andreas Haidvogel, Melanie Zimmer 'Bad Guys. Good Guys, or something inbetween? Corporate governance contributions in zones of violent conflict' (2008) Peace Research Institute Frankfurt 25.

³⁴² UN Security Council, Follow-up to the Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2003.)

³⁴³ UN Security Council 'Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo' (2001).

³⁴⁴ OECD 'Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas' (OECD 2013).

³⁴⁵ See United Nations Global Compact, and World Business Council for Sustainable Development 'Joint Report to the High Level Panel of the Post-2015 Un Development Agenda' (2013) <<http://post2015.iisd.org/news/ungc-highlights-private-sectors-post-2015-contributions/>> accessed 30 June 2014.

³⁴⁶ Permanent Peoples' Tribunal 'The European Union and Transnational Corporations in Latin America; Policies, Instruments and Actors Complicit in Violations of the Peoples Rights' 2010 Transnational Institute 12.

Guatemala.³⁴⁷ On a larger scale in terms of contributing to multiple factors of social instability, unfair allocation or other sources of relative deprivation as potential sources for conflict, discussed in sections II, and the increasing trends of forced displacement of people, with staggering figures (100 million during the 1990s) related to large scale infrastructural projects,³⁴⁸ policies of international trade, investment and development of the European Union and International institutions such as the World Bank, World Trade Organisation and others, as well as the community of States, should comply with duties upheld in human rights treaties³⁴⁹ and the need to establish a legal framework imposing social and environmental responsibility on Transnational Corporations has been indicated.³⁵⁰ Given the recognised destabilising role that Transnational Corporations can play in areas of conflict, including links to financing and even profiting from links to global demand for resources driving locally based conflict, the demand for accountability of corporations is high.

Human rights regulatory framework

The main instruments that regulate the behavior of corporations with regard to human rights abuses are based on voluntary schemes, such as the UN Global Compact,³⁵¹ the Children's Rights and Business Principles,³⁵² the OECD Guidelines for Multinational Enterprises (OECD 2011), and other sector-specific initiatives and codes at company level in the realm of corporate social responsibility (CSR).³⁵³

In 2011, the UN Human Rights Council endorsed the *Guiding Principles on Business and Human Rights* (hereafter UNGPs) proposed by the Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises's, Professor John Ruggie, after six years of mandate. The UNGPs build on the Protect, Respect and Remedy Framework³⁵⁴ that had been developed by the SRSG in 2008.³⁵⁵ The UNGPs are structured into Foundational and Operational Principles.

³⁴⁷ Ibid. 12.

³⁴⁸ Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 21.

³⁴⁹ Koen De Feyter. 'Introduction' in Wolfgang Benedek, Koen De Feyter and Fabrizio Marrella (eds) *Economic Globalization and Human Rights*, (Cambridge University Press 2007) 1-14.

³⁵⁰ Current instruments are voluntary and not legally binding on Transnational Companies, and include the UN Global Compact: The Global Compact is the United Nations global corporate responsibility initiative., launched in 1999 (UNGC) (www.unglobalcompact.org/Issues/human_rights, Guidance Material), UN Global Compact/Principles for Responsible Investment - Guidance on Responsible Business in Conflict-Affected Areas and High-Risk Areas: a resource for Companies and Investors <http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf> accessed 25 May 2014; The UN Guiding Principles on Business and human rights, 2011 and OECD Guidelines on Multinational Enterprises 2000 and Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas OECD, 2013.

³⁵¹ See <www.unglobalcompact.org> accessed 25 May 2014. The Global Compact is the United Nations global corporate responsibility initiative launched in 1999; see also UN Global Compact Principles for Responsible Investment - Guidance on Responsible Business in Conflict-Affected Areas and High-Risk Areas: a Resource for Companies and Investors <http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf> accessed 25 April 2014.

³⁵² They are available at <<http://www.unicef.org/csr/47.htm>> accessed 25 April 2014.

³⁵³ Karin Buhmann, Lynn Roseberry and Mette Morsing, *Corporate Social and Human Rights Responsibilities: Global Legal and Management Perspectives* (Palgrave MacMillan 2011).

³⁵⁴ See the documents at <<http://www.business-humanrights.org/SpecialRepPortal/Home>> (accessed 20 April 2014).

³⁵⁵ For a comprehensive account see Radu Mares, 'Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress' in Radu Mares (ed) *The UN Guiding Principles on Business and Human Rights: Foundation and Implementation* (Nijhoff 2011) 1-49.

The UNGPs contain a series of recommendations for States and companies in relation to conflict-affected areas that include recommendations for States to engage with companies to assist them in identifying, preventing and mitigating the human rights related risks of their operations and business relationships.³⁵⁶ In particular, the UNGPs include Operational Principle (OP) 7 specially dedicated to ‘human rights in conflict-affected areas’ and an additional report about ‘Business and human rights in conflict-affected regions’³⁵⁷ OP 7 of the UNGPs provides that States ‘should help to ensure that business enterprises operating in [conflict-affected areas] are not involved with [gross human rights abuses]’.³⁵⁸

They also recommend States to provide adequate assistance to assess and address the heightened risks of human rights abuses, paying special attention to gender-based and sexual violence; to deny access to public support and services for companies which are involved in gross human rights abuses and which have refused to cooperate in addressing the situation; and to ensure that they have policies, legislation, regulations and enforcement measures which effectively address the risk of business involvement in gross human rights abuses.³⁵⁹ However, the UNGPs do not include an enforcement mechanism.

Business under international humanitarian law

International Humanitarian Law may have implications for companies that operate in conflict-settings. However, it is uncertain to what the extent IHL limits or conditions the activities of commercial companies. The ICRC published in 2006 a document entitled ‘An Introduction to the Rights and Obligations of Business Enterprises under IHL’ where it recommends that companies be aware of a series of obligations (see Box IV. 7).³⁶⁰

Box IV. 7. ICRC study on business under IHL

The ICRC makes recommendations for companies obligations with regard to:

- The security of their infrastructure and personnel
- The legality of acquisition of resources and property
- The labour conditions of the people working for their business partners
- The displacement of local population who can be forcibly evicted from their land
- The impact on the environment of their operations
- The production and trade of certain types of weapons

³⁵⁶ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 78.

³⁵⁷ Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, *Business and Human Rights in Conflict-Affected Regions: Challenges and Options Toward State Responses*, UN Doc A/HRC/17/32 at <<http://www.ohchr.org/Documents/Issues/TransCorporations/A.HRC.17.32.pdf>> accessed 20 April 2014.

³⁵⁸ Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, Remedy’ Framework*, UN Doc A/HRC/17/31 <<http://business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>> accessed 20 April 2014, 10-11. See also the text of the UNGPs available in publication format at <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>, accessed 20 April 2014, 8.

³⁵⁹ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights, Theory and Practice* (Routledge 2014) 78.

³⁶⁰ ICRC, *An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (2006) available at <http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf> accessed 30 April 2014.

Source: ICRC, *An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (2006) <http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf> accessed 30 April 2014.

V. Nature and types of human rights violations in situations of violent conflict and related crisis

The aim of this section is to provide an overview of serious violations of international human rights in the context of the on-going conflicts reported in 2012 and 2013 and identified in section II on the basis of shared findings of existing databases, in accordance with the terms of reference of this report. For this reason the legal notion or definition of ‘human rights violation’ is not subject to analysis here, as this report relies on figures and practices that allow us to identify patterns of human rights violations.

A. Patterns of human rights violations in current situations of conflict

What follows is an overview of the patterns of human rights violations related to current armed conflicts. Concrete analysis of patterns of human rights violations against particularly vulnerable groups is the object of the next section (VI) of this report.

1. Statistics and trends on human rights violations in conflict

From a statistical point of view, the framework for monitoring violations of human rights during armed conflicts distinguishes two main aspects with which data is collected and analysed: casualties in armed conflicts on the one hand;³⁶¹ displacement caused by armed conflicts, on the other.

Casualties in armed conflicts

The main datasets for gathering information about combatants and civilians killed or injured as a direct result of a violent action conducted by participants in armed conflicts (conflict-related casualties) come from the UN and its agencies (UN Office for the Coordination of Humanitarian Affairs³⁶² (OCHA); the Office of the UN High Commissioner for Human Rights (OHCHR);³⁶³ the Special Procedures of the UN Human Rights Council (UNHRC);³⁶⁴ reports of the UN Secretary-General to the UN Security Council;³⁶⁵ offices of UN peacekeeping and assistance missions),³⁶⁶ the World Health Organisation (WHO),³⁶⁷ the International Committee of the Red Cross (ICRC),³⁶⁸ government reporting on casualties in their countries, national and international NGOs (Amnesty International,³⁶⁹ Action on Armed Violence,³⁷⁰ Human Rights Watch,³⁷¹

³⁶¹ Casualties refer to the people that have been killed or injured during, or directly related to an armed conflict.

³⁶² See at <<http://www.unocha.org/>> accessed 25 May 2014.

³⁶³ See at <<http://www.ohchr.org/SP/Pages/WelcomePage.aspx>> accessed 25 May 2014.

³⁶⁴ See at <<http://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>> accessed 25 May 2014.

³⁶⁵ See at <<http://www.un.org/en/sc/documents/sgreports/>> accessed 25 May 2014.

³⁶⁶ See at <<http://www.un.org/en/peacekeeping/operations/current.shtml>> accessed 25 May 2014.

³⁶⁷ See at <<http://www.who.int/en/>> accessed 25 May 2014.

³⁶⁸ See at <<http://www.icrc.org/eng/>> accessed 25 May 2014.

³⁶⁹ See at <<http://www.amnesty.org/en/armed-conflict>> accessed 25 May 2014.

³⁷⁰ See at <<http://aoav.org.uk/2014/70-per-cent-rise-civilian-casualties-ieds/>> accessed 3 July 2014.

³⁷¹ See at <<http://www.hrw.org/en>> accessed 25 May 2014.

Médecins sans Frontières,³⁷² the International Crisis Group³⁷³) academics,³⁷⁴ media sources (only conflict-related casualties are considered to avoid inaccuracy)³⁷⁵ and other sources (the Iraq Body Count,³⁷⁶ the Bureau of Investigative Journalism,³⁷⁷ and the South Asia Terrorism Portal³⁷⁸).

Some of these databases include casualties resulting from the indirect effects of hostilities without identifying them as such, or define the concept in broader terms. Other limitations are the impossibility of distinguishing between casualties of civilians and combatants in all cases, and exhaustively including in the figures all the casualties reported avoids overlaps caused by different definitions. Another major difficulty is that counting people, whether dead or alive, is an inherently political undertaking because politics will play a role in answering which methods are used, who gets counted, who does the counting, and how the counts will be interpreted and distributed.³⁷⁹ To avoid the problems inherent in the counting of civilian casualties, Aronson has proposed the elaboration, promotion, and institutionalisation of an international norm for recording civilian casualties in times of conflict.³⁸⁰ At the same time, the Working Group for Mortality Estimation in Emergencies has produced recommendations to estimate casualties in humanitarian crises.³⁸¹

Displacements caused by armed conflicts

The main dataset used as a source of information on displaced populations as a result of armed conflicts is the Internal Displacement Monitoring Centre's (IDMC) Global Overview Report, which has been issued annually since 2001. Concerning 2013, it retrieved a figure of 8.2 million new displacements due to armed conflict, generalized violence, and human rights violations compared to 2012, and a total figure of 33.3 million people displaced at the end of 2013.³⁸² Displaced people are defined as 'persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or human-made disasters, and who have not crossed an internationally

³⁷²See at <<http://www.msf.org/>> accessed 25 May 2014.

³⁷³See at <<http://www.crisisgroup.org/>> accessed 25 May 2014.

³⁷⁴For instance, see the Human Rights Clinic Harvard University at <<http://hrp.law.harvard.edu/areas-of-focus/arms-armed-conflict/>> and <<http://hrp.law.harvard.edu/clinic/documentation-and-reporting/>> accessed 25 May 2014.

³⁷⁵ For instance casualties from the recent attacks on Gaza by Israel (July 2014) have been reported in spread media coverage, see <<http://www.bbc.com/news/world-middle-east-28439404>> accessed 26 July 2014.

³⁷⁶ See at <<https://www.iraqbodycount.org/>> accessed 25 May 2014.

³⁷⁷ See at <<http://www.thebureauinvestigates.com/>> accessed 25 July 2014.

³⁷⁸ See at <<http://www.satp.org/>> accessed 25 May 2014.

³⁷⁹ Jay D. Aronson, 'Politics of Civilian Casualty Counts' in Taylor B. Seybolt, Jay D. Aronson, and Baruch Fischhoff, *Counting Civilian Casualties* (Oxford University Press 2013) 29. On the problem of selection bias on human rights data collection see Amelia Hoover Green, 'It Doesn't Add Up: Methodological and Policy Implications of Conflicting Casualty Data' in Taylor B. Seybolt, Jay D. Aronson, and Baruch Fischhoff, *Counting Civilian Casualties* (Oxford University Press 2013). On recent developments in counting casualties of conflicts see Oxford Research Group's Every Casualty Counts, <http://www.oxfordresearchgroup.org.uk/publications/news/new_civil_society_organisation_ECW> accessed 17 September 2014.

³⁸⁰ Ibid., 45.

³⁸¹ See Working Group on Mortality Estimation in Emergencies, *Wanted: Studies on Mortality Estimation Methods for Humanitarian Emergencies, Suggestions for Future Research* (2007) <<http://www.eteonline.com/content/4/1/9>> accessed 25 May 2014.

³⁸² IDMC, *Global Overview 2014: People Internally Displaced by Conflict and Violence* <<http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>> accessed 25 May 2014, 9.

recognized State border'.³⁸³ This being the highest figure reported by IDMC to date, is explained by the large-scale population movements in Africa and the Middle East, particularly from and in Syria (43 per cent of newly displaced people worldwide) as well as Central African Republic, Democratic Republic of Congo, Sudan and South Sudan.

Data on casualties and displacement in situations of armed conflict, categorised according to legal criteria, are provided for the year 2012 by the War Report.³⁸⁴

Table V.1 2012 War report data on casualties and displacement related to armed conflicts

Conflict:	Casualties:	Displacements:
Armed conflict between South Sudan and Sudan	*Death from aerial bombing: 48 *SPLA (Sudan Peoples' Liberation Movement/Army) military deaths: 19 – 1,200 *SAF (Sudanese armed forces) military deaths: 15 – 240	--
Military occupation of Azerbaijan by Armenia	*Civilian deaths: 2 *Military death: 12 (8 Azeri)	600,000
Military occupation of Cyprus by Turkey	*No casualties were identified in 2012	210,144
Military occupation of Eritrea by Ethiopia	*Civilians deaths: 5 (in Ethiopia)	*Undetermined in Ethiopia; Up to 10,000 in Eritrea
Military occupation of Georgia by Russia	*Civilians deaths: 1	280,000
Military occupation of Lebanon by Israel	*No casualties were identified	No figures available
Military occupation of Moldova by Russia	*Civilians deaths: 1	Unknown
Military occupation of Palestine by Israel	*Deaths in Palestine (including those participating in hostilities): 266 *Deaths of Palestine militants/civilians participating in hostilities: 142 *Israeli deaths: 9	144,500
Military occupation of Syria by Israel	*Military deaths: 2	450,000 in Syria

³⁸³ United Nations, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.1, 1998.

³⁸⁴ Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 23-194.

Military occupation of Western Sahara by Morocco	*Total deaths: 3	165,000
Armed conflict in Afghanistan	*Civilians deaths: 2,754 *Civilian female deaths: 301 (include girls) *Civilian child deaths: 488 *Afghan military deaths: 3,400 + soldiers and police *ISAF military deaths: 402 *US military female deaths: 8	492,000+
Armed conflict in the Central African Republic	*Military deaths: 20 *Police deaths: 2 *Civilian deaths: 32	132,000
Armed conflict in Colombia	*Civilians deaths: 291 *Child deaths: 13 *Military deaths: 33	4.9 – 5.5 million
Armed conflict in the Democratic Republic of Congo	*Total recorded deaths: 183 *Civilian deaths: 41+ *Civilian female deaths: 4+ *Child deaths: 20 *Military deaths: 2 – 9 *NSAG members killed: 9 – 113	22.7 million
Armed conflict in Gaza	*Palestinian civilian deaths: 100 *Palestinian children deaths: 39 *Israeli civilian deaths: 4 *Palestinian militant deaths: 74 *Israeli military deaths: 2	144,500
Armed conflict in Mali	*Civilian deaths: 32 *Child deaths: 7 *Mali military deaths: 84 *MNLA military deaths: 7 *Military/civilian deaths: 82	227,000
Armed conflict in Mexico	*Civilian male deaths: 8,473 *Civilian female deaths: 685 *Police deaths: 392 *Military deaths: 24	160,000
Armed conflict in Myanmar	*Myanmar army deaths: 60	450,000
Armed conflict in the Philippines	*Total deaths: 74 *Civilians killed: 59+ *Military deaths: 103 *Police deaths: 8 *Insurgent deaths: 14	178,000
Armed conflict in Somalia	*Total deaths: unknown *Child deaths: 100+ *UN staff deaths: 1	1.1 – 1.36 million

	*Humanitarian worker deaths: 9 *Military deaths: unknown	
Armed conflict in Sudan	<u>Darfur</u> *Total deaths: 1,637+ *Civilian deaths: 1,315+ *UNAMID peacekeeper deaths: 9 <u>S. Kordofan/Blue Nile states</u> *Deaths from aerial bombing: 87 *Civilian deaths (other conflict causes): 9	<u>Darfur</u> 1.5 million <u>S. Kordofan/Blue Nile states</u> 695,000
Armed conflict in Syria	*Total deaths: 55, 000 (est.) *Total deaths: 44,940 (recorded) *Civilian deaths: 31,000+ *Female deaths: 2,593 *Child deaths: 3,981 *Regime deaths: 6,673 *Opposition fighter deaths: 7,312	3 million
Armed conflict in Thailand	*Civilian deaths: 222 *Military deaths: 23 *Police deaths: 14 *Paramilitary deaths: 74 *Non-state armed group deaths: 28	240,000
Armed conflict in Turkey	*Civilian deaths: 17 *Military/security deaths: 147 *Non-state armed actor deaths: 973	954,000
Armed conflict in Yemen	*Civilian deaths: 116-34 *Yemen Military deaths: 233 *AQAP deaths: 554-711 *Other deaths: 47	385,000 – 545,000

Source: Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 23-194

Regarding data concerning the year 2013, the Report of the UN Secretary-General on the protection of civilians in armed conflicts, dated 22 November 2013, provides an overview of the evolution of the active armed conflicts in 2013,³⁸⁵ in particular taking into account the number of casualties and displaced persons.

Box V.1. 2013 data on number of deaths and displaced people in ongoing conflicts

-In Afghanistan, the number of deaths increased by 14 per cent reaching the figure of 1,319 deaths. Conflict-induced displacement continues, with 142,000 people newly displaced.
-In the Central African Republic, as of October 2013, some 400,000 people had been internally displaced and 63,000 had fled to neighbouring countries.

³⁸⁵Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 25 March 2014.

- In Côte d'Ivoire, the security situation remains fragile, in particular along the border with Liberia, although it has improved over recent months. As at October 2013, some 45,000 people remained internally displaced.
- In the eastern Democratic Republic of the Congo, the humanitarian situation has deteriorated. At the beginning of 2013, the number of internally displaced persons stood at 2.6 million, having increased from 1.8 million in 2012.
- In Iraq, more than 5,700 civilians were killed and 13,801 injured in violent attacks from January to September 2013. At the end of 2012, there were more than 1.1 million registered internally displaced persons.
- In Mali, as at October 2013, there were some 311,000 internally displaced persons and an additional 167,000 people had sought refuge in neighbouring States.
- In Myanmar, more than 91,000 people had been displaced in Kachin and Northern Shan States as at August 2013.
- The Occupied Palestinian Territories witnessed a significant increase in civilian casualties from January 2012 to August 2013, with 265 people killed. At least 14,000 Palestinians have been displaced since the previous report, most during the hostilities of November 2012.
- In Pakistan, 143,000 people have been displaced from Khyber and Kurram agencies in the Federally Administered Tribal Areas since January 2013.
- In Somalia, some 1.1 million people remain internally displaced in 2013.
- In the Darfur region of the Sudan, intertribal conflict over natural resources has increased significantly, leading to the displacement of more than 460,000 people in 2013.
- In South Sudan, fighting between the national armed forces and non-State armed groups has affected more than 100,000 people from Pibor County.
- In the Syrian Arab Republic, since March 2011, more than 100,000 people have been killed and 8.7 million displaced (6, 5 million internally displaced and 2,2 million refugees).
- In Yemen, as of July 2013, more than 306,000 internally displaced persons were unable to return to their homes.

Source: Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_689.pdf> accessed 25 March 2014.

Taking into account the information provided by the Global Peace Index (GPI), and considering a seven-year trend, it is reported that there is evidence of a deterioration in the last twelve months that is related to terrorist activity, to increases in the number of on-going internal and external conflicts,³⁸⁶ and also increases in the number of deaths from internal conflicts. The most significant example is Syria, which has

³⁸⁶Ukraine crisis and armed conflict in 2014 is one of the new conflicts impacting on civilians. See the analysis on the evolving situation at <<http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs={8864A71C-2EC4-456D-A9BC-5E7190244489}#results>> accessed 20 July 2014.

reached up to 120,000 casualties by June 2014. The number of refugees and displaced people has reached a record high, with one third of the people in Syria, for example, being displaced in the ongoing conflict.³⁸⁷

As shown in section II of the report, Syria has become the bottom country of the Global Peace Index, replacing Afghanistan, which had been at that position for the last two years. Prior to that period, Iraq was at the bottom position but, in light of current developments taking place, as of July 2014, its position is highly likely to worsen. The GPI indicates that South Sudan had the largest drop, as it experiences its third civil war since independence. It now ranks the third least peaceful country of the world. The population of South Sudan currently suffers an extreme humanitarian emergency, with devastating consequences for children.³⁸⁸In general terms, the most worrying trend concerns the consequences from terrorism, in 2002 there were 38 countries which had recorded deaths from terrorism, and in 2014 this had risen to 58 countries.

Concerning regional distribution, the largest deteriorations were in the Middle East and North Africa, as well as Sub-Saharan Africa; Sub-Saharan Africa highlighted by South Sudan and the Central African Republic. This assessment correlates with the countries 'most at risk' of human rights violations in 2014, the highest risk countries include: Syria (1st), Sudan (2nd), Democratic Republic of Congo (3rd), Pakistan (4th), Somalia (5th), Afghanistan (6th), and Iraq (7th).³⁸⁹

2. 'Civilianisation' of conflicts

Human rights are violated most often and in extreme fashion in all stages of the armed conflicts cycle (pre-conflict; during conflict, and the aftermath of conflict). Civilians account for the highest proportion of the victims in most contemporary armed conflicts. Erosion of respect for humanitarian norms has also led to an increase in the number of civilian casualties, aggravating the protection and assistance needs of refugees and other vulnerable groups in conflict situations, and complicating the task of providing humanitarian assistance and increasing the risks faced by humanitarian personnel.

Civilians are affected in many ways by violent conflict, whether as direct victims of death, injury, rape and forcible displacement or as indirect victims through conflict-induced increases in disease, hunger and malnutrition. They suffer multifaceted threats to their human security, which are likely to be aggravated in complex humanitarian emergencies. Unfortunately research on the changing face of humanitarian crisis indicates mega-catastrophes in the near future,³⁹⁰ with devastating impacts for the most vulnerable populations in post-conflict countries.³⁹¹

³⁸⁷Institute for Economics and Peace, *Global Peace Index 2014. Measuring peace and assessing country risk* (2014) <<http://www.visionofhumanity.org/sites/default/files/2014%20Global%20Peace%20Index%20REPORT.pdf>> accessed 10 June 2014, 11.

³⁸⁸See World Food Programme, *Emergency in South Sudan*, Press release at <<http://www.wfp.org/countries/south-sudan>> accessed 26 July 2014.

³⁸⁹See the summary of the 7th annual Human Rights Risk Atlas by Risk analysis company Maplecroft, at <http://reliefweb.int/sites/reliefweb.int/files/resources/2014_Human_Rights_Risk_Index_Map.pdf> accessed 20 July 2014.

³⁹⁰Frederik M. Burkle, Jr. Gerald Martone and P. Greeg Greenough, 'The Changing Face of Humanitarian Crisis' (2014) vol. XX issue II *Brown Journal of World Affairs* 25. The challenges highlighted by these authors are 'climate change, decreasing biodiversity, resource scarcities, armed conflicts', 25.

³⁹¹These commentators stress that

The impact and experience of conflict is not the same for all civilians, but can vary enormously among the members of different groups, e.g. depending on whether they are men or women, young or old, or living in an urban or a rural area, or are member of a minority. While men account for the largest numbers of combatants, women and children are disproportionately represented among civilians affected by conflict. Women also constitute the majority of refugees and internally displaced persons. This usually leads to dramatic increases in the number of children and women heads of households, leading to abrupt changes in their roles and increases in their workloads. The breakdown of the social fabric and the disintegration of families during times of armed conflict often leave women and girls especially vulnerable to gender-based violence and sexual exploitation, including rape and forced prostitution. However, boys and men are also vulnerable to sexual violence, both as the direct victims of such abuses, which is an increasing trend in ongoing conflicts, or more indirectly, for example by being forced to watch as female family members are raped.

While harm caused to civilians during conflict may be accidental or due to inadequate measures of protection, a substantial part of civilian casualties, injuries and suffering have always been not only intentional but also a method of warfare, a characteristic of the 'new wars' and even of the 'newest wars' as discussed in section II of the report. This tendency is unlikely to be reversed, but it may be mitigated by political commitment to undertake preventive and sanctioning responses by actors at all levels. Most common case examples of civilian targeting are associated with the prevalence and asymmetric character of non-international armed conflicts, in the context of which both the weaker and the stronger parties are encouraged to carry out strikes that disregard the due protection of civilians, as will be discussed below. Indeed, whereas armed groups tend to counteract the military superiority of their opponents by recurring, deliberate flouting of the rules of IHL, States and coalition of States are prone to lowering their standard of compliance with the principles of proportionality, necessity and precaution for the sake of a more efficient counterinsurgency.

In this context, the UN Secretary-General highlighted among the current conflicts in which the methods of warfare are particularly harmful to civilians, the situations in Afghanistan, Côte d'Ivoire, the Central African Republic, the eastern provinces of Democratic Republic of the Congo, Iraq, Mali, Myanmar, the Occupied Palestinian Territories, Somalia, Syria, Darfur, South Sudan and Yemen.³⁹² The ICRC adds to this list the hostilities in Colombia and the Philippines.³⁹³ Among the most recent conflicts, the UN High

One out of every 170 people on the planet is already a refugee or an internally displaced person due to war or disaster. Many are in post-conflict areas that have less than 10 percent of the public health resources they had prior to the conflict. Research is evidencing an increase in indirect deaths and illnesses from a lack of water, sanitation, food, shelter, health access and availability, and energy infrastructures. In such settings, the risk of returning to war within a decade is over 50 percent.

See Frederik M. Burkle, Jr. Gerald Martone and P. Greeg Greenough, 'The Changing Face of Humanitarian Crisis' (2014) vol. XX issue II Brown Journal of World Affairs 25, 34.

³⁹² Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 25 March 2014, 2-6.

³⁹³ ICRC, *Annual Report 2013* <<http://www.icrc.org/eng/assets/files/annual-report/icrc-annual-report-extract-2013.pdf>> accessed 25 May 2014, 12.

Commissioner for Human Rights's (OHCHR) report has highlighted the extremely brutal impacts of the actions of armed groups on the population of the eastern part of Ukraine.³⁹⁴

Regarding on-going conflicts the case of Syria should be noted, where civilian people suffer the worst atrocities and repeated violations of international humanitarian and human rights law with the use by the Syrian regime of chemical weapons, missiles and incendiary weapons against civilians, or attacks against humanitarian and medical targets.

Among the main reasons or causes of violations of international human rights and humanitarian law, the following are to be considered, in order to enhance compliance with the applicable legal frameworks in situations of armed conflicts:³⁹⁵

- Deliberate military or political strategy: The predominant asymmetric character of contemporary armed conflicts constitutes an incentive for both parties to disregard the rules of IHL. Hence, insurgent groups may invoke the ideological or religious considerations to justify intentional targeting of civilians to avoid directly engaging a militarily superior opponent, which may in turn, resort to attacks below the minimum requirement of precaution by alleging a 'just cause' and placing the security of its forces before the protection of civilians, as in the case of Israel. In the case of Syria, one important aspect is the political strategy of repression by the Syrian regime, which has led to an appalling situation, including the radicalization of communities against each other and the destruction of the Syrian heritage.
- Military advantage: In certain cases, the deliberate targeting of civilians may directly serve a military end, aimed at demoralising the adversary and forcing its surrender. An argument of 'humanitarian necessity' which pleads in favour of the lawfulness of this military expediency under IHL, is that more lives are saved as a result of hostilities than the lives sacrificed to expedite it, as was alleged to be the case in the NATO aerial bombardment of Serbia.³⁹⁶ The tactics used by NATO, targeting dual-use objects involved a broadening of the concept of military objective, which can infringe upon the principle of distinction between civil and military objects and increases the risk of civilian harm.³⁹⁷
- Genocidal ideologies: During so-called 'identity' conflicts, which involve ethnic, tribal or religious dimensions, violence against civilians may qualify as a military end in itself, insofar as the goal is not victory but total annihilation of a human group. This was the case of the 'ethnic cleansing' policy that manifested the genocide committed in Rwanda or the crimes against humanity

³⁹⁴OHCHR, *Report on the human rights situation in Ukraine* (15 July 2014) <hr.org/Documents/Countries/UA/Ukraine_Report_15July2014.pdf> accessed 20 July 2014, 2-3, 25-37.

³⁹⁵ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011). This section is elaborated upon consideration of the proposed scheme by NOREF Report, 26-28.

³⁹⁶See an analysis of the action from a legal perspective in Christine Chinkin, 'The Legality of NATO's action the Former Republic of Yugoslavia (FRY) under International Law', (2000) 49 (4) *International and comparative Law Quarterly*, 910-925; Gabriella Blum, 'The laws of war and the "lesser evil"' (2010) vol. 35 (1) *Yale Journal of International Law*, 1-69.

³⁹⁷Marco Sassòli, 'Legitimate targets of attacks under international humanitarian law', *Humanitarian Policy and Conflict Research Harvard University, Policy Brief* (January 2003) <<http://hpcrresearch.org/sites/default/files/publications/Session1.pdf>> accessed 26 May 2014, 6-7.

committed in Yugoslavia.³⁹⁸ In the context of these conflicts, on the one hand, members of the enemy are considered the target of any sort of atrocity regardless of their legal status as combatants or civilians, and, on the other hand, civilians themselves contribute to fading this boundary by taking part in those abuses, often instigated by an intense propaganda which shows the adversaries as indignant creatures devoid of human rights.

This ideology does not only pertain to identity conflicts but also to totalitarian regimes, such as that documented in the case of the Republic of North Korea.³⁹⁹

- Denial of applicability and lack of ownership of the rules: Certain armed non-state actors refuse the legally binding character of IHL on them, alleging that they did not participate in the elaboration of the norms and that the rules governing armed conflicts are devised to foster the State's interests. Besides, insofar as IHL does not recognise the combatant status of these armed groups, their members can be prosecuted under the standards of domestic law instead of those of IHL, which seems to be the purpose of listing armed groups as terrorists on the basis of political considerations, especially since 2001. Therefore, although some armed non-state actors have been willing to make commitments to respecting IHL, even beyond legal obligations, sometimes States engaged in non-international armed conflicts are reluctant to recognise the applicability of IHL, with a view to avoid conceding that they do not have control over a part of their territory. Additionally, in some regions of the world, there is an absence of perceived ownership of the values underpinning IHL, which are deemed to be inspired by Western principles, especially as a consequence of the so-called 'clash of civilisations' between the western and the Muslim worlds.⁴⁰⁰
- Lack of capacity: Other reasons, such as lack of knowledge of the law or inability of leadership to impose compliance with IHL, may determine the practical inapplicability of IHL to armed non-state actors, sometimes devoid of a hierarchical structure and military training. The limited competence of armed groups in the use of weapons may also affect the protection of civilians, particularly in non-international armed conflicts.⁴⁰¹

3. Extreme violations of all categories of human rights

In exceptional circumstances, such of those of armed conflict, 'extreme' violations of all categories of human rights are committed by all those that take part in the hostilities. The whole catalogue of human rights may be significantly affected during armed conflict.

³⁹⁸ The jurisprudence of the ad hoc International Criminal Tribunals has extensively documented the international crimes committed.

³⁹⁹ The Commission of Inquiry on Human Rights in the Democratic's People Republic of Korea established by the UN Human Rights Council found the commission of 'unspeakable atrocities' including ongoing crimes against humanity <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14255&LangID=E>> accessed 30 May 2014. See Human Rights Council, *Report of the Commission of Inquiry on Human Rights in the Democratic's People Republic of Korea* (2014) A/HRC/25/63, 74-79.

⁴⁰⁰ James Cockayne, 'Islam and international humanitarian law: from a clash to a conversation between civilizations', (2002) vol. 84 no. 847 International Review of the Red Cross <http://www.icrc.org/eng/assets/files/other/irrc_847_cockayne.pdf> accessed 30 May 2014, 597-626.

⁴⁰¹ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011), 30.

In international legal terms, the most heinous human rights violations are termed as ‘serious human rights violations’, gross, widespread or systematic human rights violations, or, on condition that they meet certain definitional elements, may be categorised as ‘international crimes’.⁴⁰²

From a legal viewpoint, the main assumption presiding over this analysis is that International Human Rights Law (IHRL) is applicable in situations of armed conflict.⁴⁰³ In this context, measures derogating from human rights provisions established by the International Covenant on Civil and Political Rights (ICCPR), are only permitted ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’ and only ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin’.⁴⁰⁴

Two recent trends in IHRL applicability to armed conflicts are to be noted. On the one hand, it has been held by the International Court of Justice (ICJ) that

The protection offered by human rights conventions does not cease in cases of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the ICCPR. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.⁴⁰⁵

Hence, when IHL and IHRL must be applied concurrently in international or non-international armed conflicts, whether a violation falls under an IHRL provision, for example, the ICCPR, ‘can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself’.⁴⁰⁶

⁴⁰²International crimes entail individual criminal responsibility. On the uncertainties surrounding the notion of ‘international law crimes’ see Jan Wouters, ‘The Obligation to Prosecute International Law Crimes’ at <<http://www.law.kuleuven.be/iir/nl/onderzoek/opinies/obligationtoprosecute.pdf>> accessed 20 May 2014.

⁴⁰³Stuart Casey Masley (ed), *The War Report 2012* (Oxford, 2013) 9.

⁴⁰⁴Article 4 of the International Covenant on Civil and Political Rights, New York 16 December 1966 (entered into force 23 March 1976) United Nations Treaty Series vol. 999, 171 and vol. 1057, 407 <https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en> accessed 25 May 2014.

⁴⁰⁵*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) ICJ, 9 July 2004 <<http://www.icj-cij.org/docket/files/131/1671.pdf>> accessed 25 May 2014 para. 106.

⁴⁰⁶*Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) ICJ, 8 July 1996 <<http://www.icj-cij.org/docket/files/95/7495.pdf>> accessed 25 May 2014, para. 25.

Nevertheless the *lex specialis* approach is currently subject to debate as to its meaning and implications in terms of a workable tool to conceptualise the relationship between IHRL and IHL.⁴⁰⁷ This is an area which deserves further examination and research.⁴⁰⁸

In IHL, human rights are protected under the terms summarized in the following table (Table V.2.); this protection accorded to victims of armed conflict encompass rights that can be categorised as ‘civil and political’ and rights that can be categorised as ‘economic and social’ rights.

Table V.2. Human rights protected under IHL

<p>The protection accorded to victims of war must be without any discrimination;</p> <ul style="list-style-type: none"> • a great deal of humanitarian law is devoted to the protection of life, especially the life of civilians and people not involved in the conflict; IHL also restricts the imposition of the death penalty; • IHL goes beyond the traditional civil right to life by protecting the means necessary for life, a right that might be categorised as ‘<i>economic and social</i>’ under human rights law; • IHL absolutely prohibits torture and inhuman treatment 	<p>IHL specifically prohibits slavery; prisoners of war are not to be seen as the property of those who captured them;</p> <ul style="list-style-type: none"> • judicial guarantees are codified in the Geneva Conventions and the Additional Protocols; • the protection of children and family life is clearly emphasised in IHL: examples include rules on the conditions of internment of children and rules against separating family members; • the respect for religion is taken into account in the rules concerning prisoners of war as well as in customs of burial
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Source: European Training and Research Centre for Human Rights and Democracy, *Understanding Human Rights. Manual on Human Rights Education* <<http://www.etc-graz.at/cms/uploads/media/Manual-engl.pdf>> accessed 20 May 2014, 307.

On the other hand, the binding character of customary rules of IHRL on armed non-state actors (ANSAs) is progressively more accepted, especially obligations related to territorial control, in their capacity as occupant. In this regard, ‘at a minimum, human rights obligations constituting peremptory international law (*ius cogens*) bind States, individuals and non-State collective entities, including armed groups. Acts violating *ius cogens* -for instance, torture or enforced disappearances- can never be justified’.⁴⁰⁹ For example, in the Afghan case, ‘while non-State actors in Afghanistan, including non-State armed groups, cannot formally become parties to international human rights treaties, international human rights law

⁴⁰⁷ See Derek Jinks, ‘International Human Rights Law in time of armed conflict’ in Andrew Clapham and Paola Gaeta (ed) *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press, 2014)

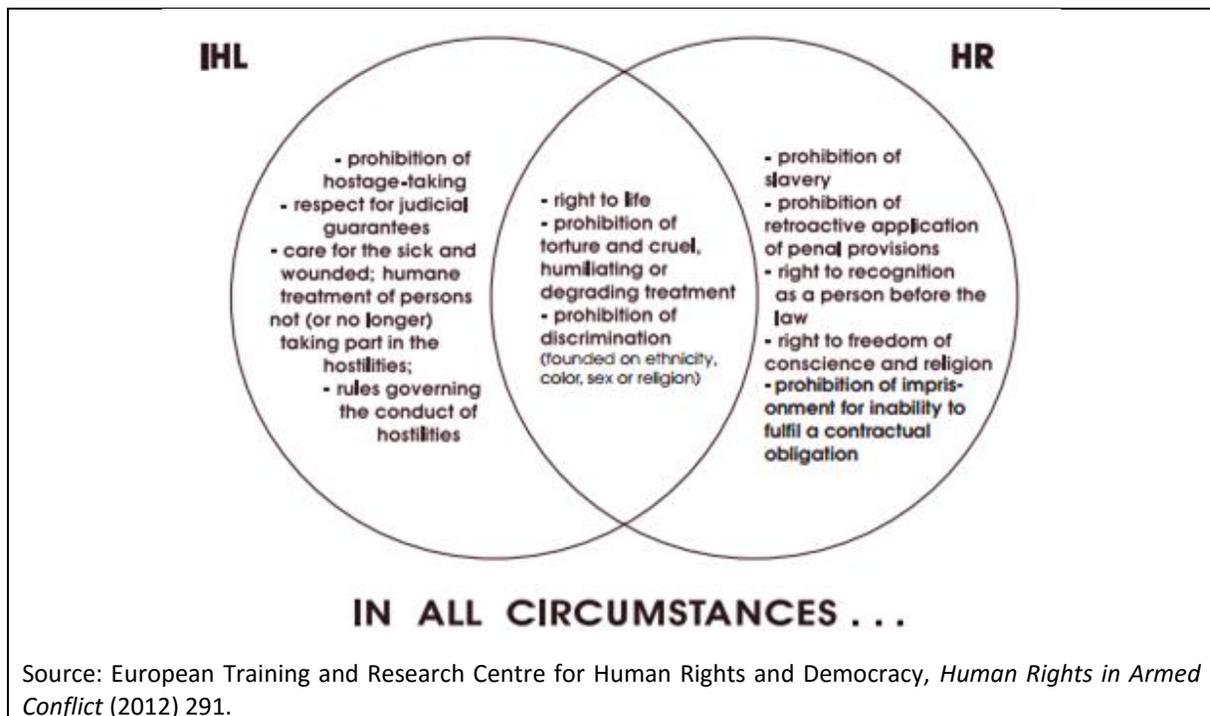
⁴⁰⁸ This research is planned to be undertaken as part of the content of the next report related to ‘Human Rights Violations in Conflict-Settings’ (D.10.2) within the FRAME Project. See also Gerd Oberleitner, *Human Rights in Armed Conflict - Law, Practice, Policy* (Cambridge University Press, forthcoming 2015).

⁴⁰⁹ Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, (2012) UN Document A/HRC/19/69 <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf> accessed 20 May 2014, para. 106.

increasingly recognizes that where non-State actors, such as the Taliban, exercise *de facto* control over territory, they are bound by international human rights obligations'.⁴¹⁰

Serious violations of obligations encompassed by *jus cogens* norms, entail an aggravated form of State responsibility in international law.⁴¹¹ In a similar vein, some human rights violations because of their massive and/or systematic nature/scale, or serious violations of IHL norms, have been recognized as international crimes, given that they comply with the elements and definition of international crimes.

Figure V.1. Key human rights norms in situations of armed conflict



Consequently, among the key human rights norms in situations of armed conflict are the right to life, the prohibition of torture, cruel, humiliating and degrading treatment, and the prohibition of discrimination. There is an international obligation to investigate alleged torture. As has already been highlighted, the prohibition of torture holds the status of *jus cogens*, thereby being binding upon all States in all

⁴¹⁰ United Nations Assistance Mission in Afghanistan, *Afghanistan: Annual Report 2011, Protection of Civilians in Armed Conflict* (2012) at iv.

⁴¹¹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Art. 40. *Yearbook of the International Law Commission*, 2001 vol. II (Part Two) <http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf> accessed 20 May 2014.

circumstances, regardless of whether they are parties to the treaties in which it is codified.⁴¹² Therefore, it is not only important to consider the individual criminal responsibility arising from breaches of the absolute prohibition against torture (Article 50 of Geneva Convention I), which is defined as a war crime under Articles 8(2), sections (a)(ii) and (b)(xxi), of the Statute of the International Criminal Court (ICC), as well as Article 49 of Geneva Convention I, Article 50 of Geneva Convention II, Article 129 of Geneva Convention III, and Article 146 of Geneva Convention IV. In order to ensure that such breaches do not remain unpunished, a duty is imposed upon States under IHL and IHRL to establish the legal avenues to guarantee independent, impartial, effective, prompt, and transparent investigation of allegations of torture and prosecution of those responsible by competent authorities.⁴¹³

B. Challenges and cross-cutting issues

This section seeks to present the most important challenges and cross-cutting themes that are to be taken into consideration when analysing infringements of international human rights and international humanitarian laws in armed conflicts, as well as the protection challenges posed by the impacts of armed conflict on civilian populations.

1. Applicability of IHRL to non-state armed groups

One of the questions that require further discussion and research because of its relevance, is the applicability of international human rights law to armed non-state groups (ANSAs).⁴¹⁴ There is general consensus on the applicability of IHL to ANSAs, providing that they are party to an armed conflict⁴¹⁵ in terms of meeting definitions of sufficient organisation and the degree of intensity of the fight.⁴¹⁶ The binding character of IHRL on them both in wartime or peacetime is controversial, due to the fact that they cannot accede to international treaties.⁴¹⁷ Arguments against ANSAs being bound by IHRL are (a) the traditional tendency for doctrine to consider States as the only subjects to human rights obligations, (b) the scarcity of expressed references to ANSAs in human rights treaties, and (c) the reluctance of States to give certain recognition or legitimacy to ANSAs by imposing IHRL obligations on them.⁴¹⁸

On the other hand, those authors who advocate in favour of the applicability of IHRL to ANSAs hold that, (a) equal obligations must be imposed on both sides of the armed conflict by virtue of the equality of

⁴¹² International Covenant on Civil and Political Rights, Articles 7 and 4(2).

⁴¹³ Michael Schmitt, 'Investigating violations of international law in armed conflicts', (2011) vol. 2 Issue I Harvard National Security Journal (31, 48, 54, 76).

⁴¹⁴ See Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 404 -410.

⁴¹⁵ *Prosecutor v. Sam Hinga Norman* (Decision on the Preliminary Motion Based on Lack of Jurisdiction) Special Court for Sierra Leone (SCSL) (31 May 2004) <<http://www.sierrali.org/sl/judgment/special-court/2004/18>> accessed 25 May 2014, para. 22.

⁴¹⁶ *Prosecutor v. Dusko Tadić* (Judgement) ICTY Case IT-94-1-A (15 July 1999) <<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>> accessed 25 May 2014, para. 70.

⁴¹⁷ Sandesh Sivakumaran, 'Re-envisioning the international law of internal armed conflict', (2011) vol. 22 (1) European Journal of International Law 22(1), 251.

⁴¹⁸ Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006) 46-53.

obligation theory,⁴¹⁹ (b) the fact that non-state actors enjoy human rights implies that they must fulfil correlative human rights obligations,⁴²⁰ (c) as far as ANSAs effectively control a territory, they constitute the authority responsible for protecting the human rights of those subject to their jurisdiction,⁴²¹ (d) customary norms of IHRL which have the status of *jus cogens*, insofar as persistent and coherent State practice provides them with perceived legal force or *opinio iuris*, are deemed to be generally binding on any entity able to comply with them, even non-state actors.

In this regard, the practice of the UN human rights bodies has put forward the arguments of *de facto* control over a territory in the cases of Afghanistan and Libya,⁴²² and the status of *jus cogens* of certain norms of IHRL in the case of Syria, to assert the binding force of at least certain IHRL provisions on ANSAs. Even the UN Security Council implicitly recognised the applicability of IHRL to non-state groups by stating that it

condemns the human rights violations and acts of violence committed in northern Mali, in particular by rebels, terrorist groups and other organized transnational crime network, including the violence perpetrated against women and children, the killings, the hostage-taking, pillaging, theft and destruction of religious and cultural sites, as well as the recruitment of child soldiers, and calls for the perpetrators of these acts to be brought to justice.⁴²³

If ANSAs are willing to become parties to international instruments, this is legally feasible by means of signing political documents, although non-binding, such as special agreements, memoranda of understanding, and action plans, as well as adopting unilateral acts, namely declarations, codes of conduct, standing orders, or commitments.⁴²⁴ Nevertheless, in some cases, such as that of the Free Syrian Army (FSA), the willingness of the leadership is not enough to secure the engagement of the often heterogeneous factions that make up an armed group,⁴²⁵ with increasingly common incidents of 'fighters shifting from one group to another based on the availability of funds and weapons'.⁴²⁶

⁴¹⁹ Christian Tomuschat, 'The applicability of human rights law to insurgent movements', in Horst Fischer, Dieter Fleck et al. (ed), *Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck*, (Berliner Wissenschafts-Verlag 2004) 573-576.

⁴²⁰ Dieter Fleck, 'Humanitarian protection against non-state actors' in Johan Frowein et al. (eds), *Negotiating for Peace: Liber Amicorum Tono Eitel*, (Springer 2003) 69 and 79.

⁴²¹ Geneva Academy of International Humanitarian Law and Human Rights, *Rules of engagement: protecting civilians through dialogue with non-state actors* (Geneva 2011) <<http://www.geneva-academy.ch/docs/publications/Policy%20studies/Rules%20of%20Engagement.pdf>> accessed 25 May 2014, 25.

⁴²² Human Rights Council, *Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, UN Doc. A/HRC/17/44, 1 June 2011 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.44_AUV.pdf> accessed 25 May 2014, para. 72.

⁴²³ Security Council, Resolution 2056, UN Doc. S/Res/2056 (2012) <<http://unowa.unmissions.org/Portals/UNOWA/Security%20Council/Resolution%202056.pdf>> accessed 26 May 2014, para. 13; Security Council, Resolution 2071, UN Doc. S/Res/2071 (2012) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2071%282012%29> accessed 25 May 2014, para. 14; Security Council, Resolution 2085, UN Doc. S/Res/2085 (2012) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2085%282012%29> accessed 25 May 2014, para. 6.

⁴²⁴ Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 411.

⁴²⁵ *Ibid.*, 414.

⁴²⁶ Human Rights Council, *Report of the International Commission of Inquiry on the Syrian Arab Republic*, 5 February 2013. <<http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>> accessed 25 May 2014, para. 12.

2. Asymmetry between parties in conflicts

Asymmetry between parties in conflicts has become increasingly common as an element of hostilities which are more frequently conducted by States against non-state armed groups with access to unequal military capacities. This phenomenon is associated with intentional targeting of civilians by the weaker party and indiscriminate attacks or illegal detention by the stronger one, as highlighted by the UN Secretary-general in 2013 with regard to conflicts such as those in Afghanistan, Iraq, Pakistan and Somalia.⁴²⁷

Indeed, ANSAs tend to attempt to make up for their military inferiority by flouting the rules of IHL, for instance, aiming at 'soft targets', such as civilians or humanitarian personnel, or taking journalists as hostages. This is an efficient alternative to direct engagement in hostilities since the risk of military casualties is lower and the political and psychological effects are greater. Some of these tactics, namely wearing civilian clothes, using civilian objects for military purposes or employing civilians as human shields, may run counter the prohibition of perfidy contained in article 37 of 1977 Additional Protocol I to Geneva Conventions, if attempting killing, injuring or capturing enemies. Especially worrisome is the enlisting of children or other vulnerable persons to take advantage of their special protection. In any event, the increasing asymmetric nature of conflicts poses and exacerbated risk for civilians especially in populated areas.

The militarily superior party, in turn, may engage in unlawful tactics to minimise casualties to the detriment of civilians and force the weaker opponent to resort to the abovementioned practices thus feeding back the risk to civilians. This phenomenon has led to a remarkable development in counter-insurgency doctrine, i.e. the US Army/Marine Corps Counterinsurgency Field Manual published in 2007 and based on lessons learned from Iraq and Afghanistan, in which the minimisation of civilian casualties has come to the forefront⁴²⁸. This shift in tactical directives stems from the realisation that loss of civilian lives hindered the achievement of military and political goals in Iraq and Afghanistan, and therefore a balance between force protection and civilian protection must be sought by implementing more detailed guidelines, inter alia, for aerial bombardments or artillery strikes.

However, data from UN Assistance Mission in Afghanistan shows civilian killing remains a recurrent tactic for the Taliban and other armed groups, 74% of total civilian casualties and injuries having been caused by insurgent groups in 2014.⁴²⁹ The reason is that infringements of IHL by one party forces the other to lower its standard of compliance with IHL, so that reciprocity takes centre stage in practice, whereas one

⁴²⁷ Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 25 March 2014.

⁴²⁸ See Petraeus D H, Amos J F and Nagl J A, *The U.S. Army Marine Corps Counterinsurgency Field Manual* (University of Chicago Press Ed. 2007)

⁴²⁹ UNAMA, *Afghanistan Mid-Year Report. Protection of Civilians in Armed Conflict* (2014), at <http://www.unama.unmissions.org/Portals/UNAMA/human%20rights/2UNAMA%20Protection%20of%20Civilians%20MYR%202014_17%20July%202014_FINAL.pdf> accessed 25 July 2014, 1-2. In previous reports the figure was 77 %. See UN Assistance Mission in Afghanistan/Afghanistan Independent Human Rights Commission, *Afghanistan Annual Report 2010 on Protection of Civilians in Armed Conflict*, August 2011, <http://unama.unmissions.org/Portals/UNAMA/Documents/UNAMA%20POC%202011%20Report_Final_Feb%202012.pdf>, 1-2 iv.

party's failure to comply with their legal obligations does not relieve the other party of its. In conclusion, the reduction in civilian harm by asymmetric conflicts may only be achieved by a combined effort of both opponents.

3. Difficulties in the practical application of IHL principles of proportionality and distinction

The implementation of IHL to specific armed conflicts poses practical challenges insofar as 'law is [...] sometimes too general to serve as a guide for practical behaviour in combat [...]. It is therefore necessary to interpret it, analyse its operational implications, and identify consequences at all levels'.⁴³⁰

First of all, interpretation of broadly or ambiguously defined terms, such as 'civilian objects', 'concrete and direct military advantages' or 'all feasible precautions', may lead to differences even assuming that interpreting the rules remains 'a question of common sense and good faith for military commanders'.⁴³¹ In this regard, the main difficulty lies with the principle of proportionality, which raises unresolved questions relating to weighing the quantum of military advantage and incidental civilian harm,⁴³² the inherent bias introduced in the assessment by the military commander conducting it, or the divergences in considering proportionality applicable separately to the different elements of an attack or to the attack in its entirety.

Besides, the principle of distinction also raises the challenge of defining the notion of 'direct participation in hostilities', which determines that civilians taking direct part in the conflict are no longer protected from attacks as provided by Articles 51(3) of the Additional Protocol I and 13(3) of the Additional Protocol II. The difficulty involved in distinguishing between combatants and civilians having increased due to the nature of contemporary conflicts, instigated the ICRC to issue a document providing guidance for interpreting and applying the concept of 'direct participation in hostilities'.⁴³³ Conversely, no common ground has been reached on how to apply in practice other concepts also critical to the conduct of hostilities, with blurred lines between 'unfortunate' and 'unlawful' harm to civilians.⁴³⁴ In this respect, it is of the utmost importance that the burden of proof falls on the warring parties, and that the level of incidental civilian casualties considered lawful is clearly defined.

This assessment, conducted by third parties such as UN fact-finding mission investigating allegations of war crimes, such as those allegedly committed by Israel and Hamas in the Gaza conflict during 2008-2009, becomes harder, due to the reluctance of parties to the conflict to disclose intelligence information related to targeting decisions. Their misleading allegations and counter-allegations of intentionality, lead

⁴³⁰ICRC, *Integrating the Law* (ICRC 2007) <http://www.icrc.org/eng/assets/files/other/icrc_002_0900.pdf> accessed 25 May 2014, 17.

⁴³¹ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (ICRC/Martinus Nijhoff 1987) <http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf> accessed 25 May 2014, 683-684.

⁴³²ICTY Ad Hoc Committee, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia*, PR/PIS/510-e, para 49.

⁴³³Nils Melzer, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under Humanitarian Law*, (ICRC 2009) <<http://www.icrc.org/eng/resources/documents/publication/p0990.htm>> accessed 25 May 2014.

⁴³⁴Charli Carpenter, 'Collateral damage control', *New York Times* (11 August 2010) <<http://www.nytimes.com/2010/08/12/opinion/12iht-edcarpenter.html>> accessed 18 April 2014.

by political considerations, tampers the legal analysis at the expense of the protection of civilians. To tackle this absence of information, the 'Recording casualties of armed conflict project', developed by the Oxford Research Group, aims at contributing to enhanced documentation, analysis and monitoring of civilian harm, in order to foster accountability, identifying measures for parties to take, and preventing and reducing future civilian casualties.⁴³⁵

For these reasons, the translation of IHL provisions into military and police guidelines and their inclusion in training programmes and even civil instruction, as imposed by article 144 of the IV Geneva Convention, is crucial to promote the practical application of IHL, by means of making it intelligible and consistent. In this respect, article 82 of the Additional Protocol I imposes an obligation, not applicable to ANSAs, to 'ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject'. Legal awareness has to be supplemented with reliable on-the-ground intelligence for the purpose of ensuring adequate precaution, which the development of surveillance technology has made more feasible. However, the technological gap between belligerents may influence the minimum precaution requirements that they are legally bound to meet. From a moral viewpoint, the more sophisticated the weaponry, the less likely public opinion is to tolerate civilian casualties. The development of surveillance technologies also gives rise to negative consequences insofar as an excessive reliance on them may lead commander to take greater risks with regard to potential harming of civilians.

Technology may also play a relevant role in reducing the time between the assessment of risk and the attack, but at the same time, it cannot substitute on-the-ground intelligence as geographical and cultural contextualisation carries great weight in decision-making. Indeed, the environment is a fundamental factor to take account of when conducting hostilities as, for example, different standards apply to populated and unpopulated areas both in legal and operational terms.

4. Conduct of hostilities in urban and populated areas

The Second World War demonstrated that urban settlements suffered the most devastating consequences of hostilities for civilians, because of the high concentration of population, especially capital cities, being the core of the social, political and economic functioning of a country and the seat of national power. However, it was not until 1977 that detailed protection of civilians in armed conflicts was regulated under IHL, by the Additional Protocol I to the Geneva Conventions, which already contained general provisions on the protection of civilians since 1949.

In particular, article 51(5) of the Additional Protocol I explicitly forbids area bombardment or 'carpet bombing' as an indiscriminate attack, insofar as air strikes and artillery are more often used for military operations carried out in urban centres, rather than ground engagement in cities and towns, which poses an especially high risk for soldiers. This danger for the attacking army, as well as the difficulties in discriminating between civilian and military objectives and therefore in conducting proportionality assessments and taking precautionary measures, turns populated areas into a complex scenario of which

⁴³⁵ See at <http://www.oxfordresearchgroup.org.uk/rcac/documenting_existing_casualty_recording_practice_worldwide> accessed 26 May 2014.

defending armed forces usually takes advantage of in order to gain military superiority. In this respect, there is a tendency for armed groups to rely on tactical advantages and civilian support provided by cities and towns for military purposes, thus making urban settlement a potential military target either unintentionally or on purpose. The examples of Iraq and Afghanistan illustrate this trend.

The application of proportionality and distinction principles in populated areas is connected with another cross-cutting issue: the choice of weapons. The use of certain arms giving rise to an area effect will certainly lead to infringe these rules when used close to urban centres, as the UN Secretary-General warned in his 2009 report on the protection of civilians,⁴³⁶ and reiterated in 2010, noting that ‘a common feature of explosive weapons is that they are indiscriminate within their zones of blast and fragmentation effect, which makes their use highly problematic in populated areas’ and urging ‘Member States, United Nations actors and international and non-governmental organizations to consider the issue of explosive weapons closely, including by supporting more systematic data collection and analysis of the human costs of their use’.⁴³⁷ At any rate, attacks on ‘objects indispensable to the survival of the civilian population’ are prohibited by article 54 of the Additional Protocol I, with the only exception of facilities ‘used by an adverse Party: (a) as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military action [...]’.

Data from the organisations Landmine Action and Medact showed an average number of casualties due to explosive weapons in populated areas -the majority being civilians- to be twice as high as the same figure in unpopulated areas.⁴³⁸ This risk is increased by the use of ‘homemade’ exploding devices, which are often employed in locations with high concentrations of civilians, for terrorist purposes. Especially controversial are explosives containing white phosphorus, reportedly used by Afghan militants,⁴³⁹ as well as US troops in Iraq and Israeli forces in Gaza,⁴⁴⁰ despite the fact that the use of incendiary weapons against military targets is prohibited in populated areas under Protocol III to 1980 Convention on Certain Conventional Weapons.⁴⁴¹ The general principles of distinction, proportionality and precaution prohibit

⁴³⁶ ‘As demonstrated by this year’s hostilities in Sri Lanka and Israel’s campaign in Gaza, the use in densely populated environments of explosive weapons that have so-called “area effect” inevitably has an indiscriminate and severe humanitarian impact. First, in terms of the risk to civilians caught in the blast radius or killed or injured by damaged and collapsed buildings. Secondly, in terms of damage to infrastructure vital to the well-being of the civilian population, such as water and sanitation systems. I urge Member States, in consultation with relevant United Nations and other actors, to consider this issue further. I would also call upon States that have not yet done so to ratify Protocol V to the Convention on Certain Conventional Weapons with a view to addressing, in a timely and effective manner, the serious humanitarian problems caused by explosive remnants of war’. UN Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, 29 May 2009, S/2009/277, para 36.

⁴³⁷ Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, 11 November 2010, S/2010/579, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/617/64/PDF/N1061764.pdf?OpenElement>> accessed 25 May 2014, paras 48–51.

⁴³⁸ See Landmine Action, *Explosive Violence. The problem of Explosive Weapons* (London 2009) <http://reliefweb.int/sites/reliefweb.int/files/resources/1FE6DF6F6C1402E4C125763F004469BA-Full_Report.pdf> accessed 3 June 2014.

⁴³⁹ Program on Humanitarian Policy and Conflict Research, IHL and White Phosphorus Munitions, IHL Primer, no. 5, <<http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewpage&pageid=2105>> accessed 21 June 2010.

⁴⁴⁰ Program on Humanitarian Policy and Conflict Research, IHL and White Phosphorus Munitions, IHL Primer, no. 5, <<http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewpage&pageid=2105>> accessed 21 June 2010.

⁴⁴¹ Article 2 of the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) to the Convention on Certain Conventional Weapons (adopted on 10 October 1980 and entered into force on 2 December 1983) UNTS vol. 1342, 137.

that threat to life [necessity requirement]', taking account of the fact that 'the necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate'.⁴⁴⁶ Additionally, the hazard involved in the uncontrollability of fragmentation falls foul of the principle that 'shooting indiscriminately into a crowd is not allowed and may only be targeted at the person or persons constituting the threat of death or serious injury'.⁴⁴⁷

Worth noting here, the Basic Principles on The Use of Force and Firearms by Law Enforcement Officials (BPUFF)⁴⁴⁸ do not expressly prohibit law enforcers from using explosive weapons nor do they delimitate the concept of firearms. They go no further than urging States to 'prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk'⁴⁴⁹.

Challenges posed by autonomous weapons systems

A growing number of States and even armed groups are reported to be acquiring autonomous weapon systems and to increasingly use them in the context of conflict and other settings which entail several relevant problems for the protection of civilians.⁴⁵⁰ In particular this kind of technology 'could increase the risk of civilian harm by reducing human control over the decision-making process. The risks that may ensue from taking humans 'out of the loop' concern a whole range of autonomous and semi-autonomous weapons systems being developed'.⁴⁵¹

Known examples among this rapidly expanding remote technology are the sentry gun, which is automatically aimed and fired at targets that are detected by sensors, and the unmanned aerial vehicles (UAVs) or so-called 'drones'. Drones equipped with missiles have been increasingly used by the United States to attack targets in Iraq, Somalia, Afghanistan, Pakistan and Yemen,⁴⁵² and by other States such as Israel, reportedly having used them during Operation Cast Lead in Gaza.⁴⁵³ The Phalanx CIWS sentry gun, used in naval ships, was involved in the attack by a US Navy on an Iranian civilian passenger jet over the Persian Gulf in 1988, killing 290 passengers and crew, including 66 children.⁴⁵⁴

⁴⁴⁶ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, UN doc. A/HRC/14/24/Add.6, 2010, para. 32 and 33.

⁴⁴⁷ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Doc. A/HRC/17/28, 2011, para. 61.

⁴⁴⁸ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>> accessed 25 May 2014.

⁴⁴⁹ *Ibid.* 3.

⁴⁵⁰ See Stuart Casey Masley (ed), *The War Report 2012* (Oxford, 2013) 236-238.

⁴⁵¹ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011), 16.

⁴⁵² See Human Rights Watch, *'Between a drone and Al-Qaeda' The Civilian Cost of US Targeted Killings in Yemen* (HRW, October 2013) <http://www.hrw.org/sites/default/files/reports/yemen1013_ForUpload_1.pdf> accessed 2 June 2014.

⁴⁵³ See Human Rights Watch, *Precisely Wrong. Gaza civilians killed by Israeli Drone-Launched Missiles* (HRW, June 2009) <http://www.hrw.org/sites/default/files/reports/iopt0609web_0.pdf> accessed 2 June 2014.

⁴⁵⁴ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011), 16. As commented by this author 'The plane had been mistakenly identified as an Iranian military aircraft by the computer system, and despite physical evidence to the contrary, crew members relied on the computer's

The threats posed to civilians by drone technology have been highlighted by the UN Secretary-General: sharpening the asymmetry between States and non-state parties in the hostilities, the technologically inferior parties increasingly resort to strategies intended to harm civilians as the most accessible targets; in general drone technology increases the opportunities to conduct attacks that might otherwise be considered unrealistic or undesirable through other forms of air power or the deployment of ground troops, thus increasing the threats to civilians.⁴⁵⁵ Following reports on country visits by UN Special Rapporteur on Counter-Terrorism and Human Rights, conducted in connection with the Special Rapporteur's ongoing inquiry into the civilian impact of the use of drones and other forms of targeted killing in the context of counter-terrorism operations,⁴⁵⁶ the Human Rights Council has adopted Resolution 25/22 where it

Urges all States to ensure that any measures employed to counter terrorism, including the use of remotely piloted aircraft or armed drones, comply with their obligations under international law, including the Charter of the United Nations, international human rights law and international humanitarian law, in particular the principles of precaution, distinction and proportionality.⁴⁵⁷

Other autonomous weapons systems such as 'killer robots', if successfully developed in the near future, will pose similar if not even greater challenges, related to the ability of such systems to operate in accordance with international humanitarian and human rights law, the moral acceptability of delegating decisions about the use of lethal force to such systems; the determination of perpetrator to be assigned legal responsibility in case their use results in a serious humanrights violation or in a war crime/crimes against humanity; the legal or ethical dimensions of the deployment of such systems if the responsibility for their use could not be determined as required by international law.⁴⁵⁸ As to the protection of civilians, Wazinsk rightly points that 'one of the fundamental questions would be whether and how such weapons would distinguish between combatants and civilians, in particular in current scenarios where combatants and civilians are increasingly intermingled' in particular with regard to how proportionality assessments would be undertaken and precautions in attack ensured.⁴⁵⁹

The main challenge posed by CIA's drone strikes against terrorist targets, i.e. those conducted particularly in Pakistan, Afghanistan and Yemen, to IHRL is the absence of 'sufficiently robust and impartial investigations' at the State level, in view of which the UN Special Rapporteur on the Promotion and Protection of human rights and fundamental freedoms while countering terrorism indicated the need for

judgment more than their own. This incident illustrates some of the key questions being posed with regard to unmanned weapons, such as the extent of human control retained over these systems and the risk of humans deferring to a computer's "superior" intelligence in targeting decisions'.

⁴⁵⁵ Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 25 March 2014, para. 28.

⁴⁵⁶ See <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13146&LangID=E>> accessed 20 May 2014.

⁴⁵⁷ UNHRC, *Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law* (15 April 2014) A/HRC/RES/25/22, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/136/24/PDF/G1413624.pdf?OpenElement>> accessed 25 May 2014, 2.

⁴⁵⁸ Security Council, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* (S/2013/689) <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 25 March 2014, para. 29.

⁴⁵⁹ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011) 17.

'the UN to conduct investigations into individual drone strikes'.⁴⁶⁰ To this he added that 'the exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law, both as a matter of principle, and inevitably as a matter of political reality, the international community should be focusing its attention on the standards applicable to this technological development, particularly its development in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and safeguards which should apply to it [namely the application of conventional or customary IHL and IHRL by domestic courts]'.⁴⁶¹

Despite the argument put forward by the US Department of Justice that matters related to foreign policy and national security are per definition of unaccountable nature and thus the lawfulness of targeted killings by means of unmanned aircraft, must remain outside the purview of judicial control, at the discretion of the executive or legislative powers, according to a settled case-law,⁴⁶² the conclusions of the abovementioned inquiry by the UN Special Rapporteur call upon the United States to clarify its position regarding legal and factual aspects of the use of Unmanned Aerial Vehicles (UAVs).⁴⁶³ Furthermore, they request the disclosure of the information on US lethal extraterritorial counter-terrorism operations, the level of civilian casualties inflicted through the use of remotely piloted aircraft, and the methodology used.⁴⁶⁴

Besides, the Special Rapporteur invokes the duty of States to protect civilians in armed conflict stating that

[...] in any case in which civilians have been, or appear to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties may have been sustained, including where the facts are unclear or the information is partial or circumstantial. The obligation arises whether the attack was initiated by remotely piloted aircraft or other means, and whether it occurred within or outside an area of active hostilities.⁴⁶⁵

6. Sexual violence as a method of warfare

Systematic use of sexual violence as a method of warfare started to receive more attention in the 1990s when such practices were seen on a large scale during the genocide in Rwanda and the armed conflicts in

⁴⁶⁰ UN Human rights Council, *Statement by the Special Rapporteur on counter-terrorism and human rights concerning the launch of an inquiry into the civilian impact, and human rights implications of the use of drones and other forms of targeted killing for the purpose of counter-terrorism and counter-insurgency* (2013) available at <http://www.foreignpolicy.com/files/fp_uploaded_documents/130124_SRCTBenEmmersonQCStatement.pdf> (accessed 14 June 2014) 9. The press release is available at <<http://www.ohchr.org/Documents/Issues/Terrorism/SRCTBenEmmersonQC.24January12.pdf>> accessed 14 June 2014.

⁴⁶¹ *Ibid.*, 2.

⁴⁶² US Department of Justice, 'Lawfulness of a lethal operation directed against a US citizen who is a senior operational leader of al-Qaeda or an associated force' (2013) *White Paper* 9-10.

⁴⁶³ UN Human Rights Council, *Report of the UN Special Rapporteur on Human Rights and Countering Terrorism: Drone Strike Inquiry* (2013) <http://www.un.org/en/ga/search/view_doc.asp?symbol=A%20/68/389> accessed 25 May 2014, para. 80.

⁴⁶⁴ *Ibid.*, para 80.

⁴⁶⁵ *Ibid.*, para. 78.

the former Yugoslavia. It has become a widespread phenomenon, equally present in international and non-international armed conflicts,⁴⁶⁶ as reported in many recent or ongoing conflicts, including in the DRC, Sudan (in particular in Darfur), Uganda, Myanmar and Colombia. Frequently, heightened sexual violence remains a problem in the post-conflict period, as currently seen in Liberia and Sierra Leone.⁴⁶⁷ Sexual violence is used as a military strategy for various – often mutually supporting – purposes, ‘including as a way of spreading fear among the civilian population, as retaliation for alleged abuses committed by the other party, to humiliate and degrade the adversary, and to displace population groups from certain areas or as part of a strategy of so-called ‘ethnic cleansing’.⁴⁶⁸ It affects especially girls and women, who in addition to the physical and psychological harm they are subjected to, also face a high risk of impregnation and HIV infection, but also boys and men, either as direct victims of abuses or more indirectly, for example by being forced to watch as female family members are raped.⁴⁶⁹

This global scourge of contemporary conflicts raises a number of issues in international humanitarian law and international human rights law, including the absence of a specific regulation under these legal frameworks.⁴⁷⁰ In terms of accountability, several problems have been discussed in the last years pointing to the gaps in the grave breaches regime of the 1949 Geneva Conventions, traditionally considered to be applicable only to conflicts of international character.

From an IHRL viewpoint, sexual violence has been assessed under the prohibition against torture, or other forms of cruel, inhuman, or degrading treatment or punishment, which is deemed to be an IHRL peremptory norm preventing States, and even non-state actors, from exerting sexual violence, during armed conflicts, due to its status as *jus cogens*. As defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture requires, firstly, that ‘severe pain or suffering, whether physical or mental, is intentionally inflicted’, and that the ‘pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’.⁴⁷¹ Particularly, rape is unanimously accepted as constituting torture and thus an infringement of IHRL as implying ‘a violation of the inherent dignity and the right to physical integrity of the human being’,⁴⁷² and leaving ‘deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence’.⁴⁷³ Moreover, domestic violence, genital mutilation and trafficking are considered as amounting to torture,⁴⁷⁴ and even strip-search of a

⁴⁶⁶ Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 311-317.

⁴⁶⁷ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011) 23-24.

⁴⁶⁸ *Ibid.* 23.

⁴⁶⁹ *Ibid.* 23-24.

⁴⁷⁰ In this respect, a proposed avenue for the prosecution of sexual violence is the exercise of universal jurisdiction by domestic courts.

⁴⁷¹ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 UNGA Res 39/46) article 1.

⁴⁷² Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN doc. E/CN.4/1996/34 (1996) para. 15-24.

⁴⁷³ *Aydin v. Turkey*, Application No 57/1996/676/866, Judgment, European Court of Human Rights (25 September 1997) <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58371#%7B%22itemid%22:%5B%22001-58371%22%5D%7D>> accessed 25 May 2014, para. 83.

⁴⁷⁴ United Nations Committee against Torture, General Comment No. 2 (24 January 2008) para. 18.

male by a female officer was held by the European Court of Human Rights (ECtHR) to be a degrading treatment in the meaning of Article 3 of the European Convention on Human Rights (ECHR).⁴⁷⁵

Furthermore, sexual violence also raises concerns from the point of view of slavery, prohibited as well by an IHRL norm of *jus cogens* nature,⁴⁷⁶ insofar as it is defined as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence'.⁴⁷⁷ Slavery encompasses forced marriages, explicitly banned at least under conventional IHRL,⁴⁷⁸ requisition, and forced prostitution.

Additionally, it is to be noted that the customary character of the IHRL norms prohibiting torture and degrading treatment, as well as slavery, implies that States are obligated, regardless of their involvement in any armed conflict in progress, from a negative perspective, to refrain from taking part in acts qualifying as such violations of the IHRL, and, from a positive perspective, to enact and enforce legislation against torture and slavery and prosecute those who infringe it within their jurisdiction.⁴⁷⁹ Albeit the fact that the Convention against torture defines torture as instigated or consented by public authorities, the failure to deter and punish private individuals committing such acts can be viewed as acquiescence, thereby resulting in the State breaching its obligations under the Convention.⁴⁸⁰ Other obligations imposed on States in this respect, are the duty to conduct prompt and effective investigation of alleged torture and cruel, inhuman, or degrading treatment,⁴⁸¹ and to guarantee redress and compensation to victims.⁴⁸²

In international criminal law, the different *ad hoc* tribunals dealing specifically with the adjudication of atrocities of a specific conflict, and the International Criminal Court have contributed to a wealth of jurisprudence on sexual violence crimes, including some on sexual violence against men. Sexual violence has been integrated into international criminal law. These Courts have all been instrumental in developing the body of international criminal law in relation to sexual violence and in imposing criminal sanctions for the commission of those crimes. Pioneers in defining acts of sexual assault in armed conflict, including rape and sexual violence, were the International Criminal Tribunal for the Former Yugoslavia (ICTY) and

⁴⁷⁵*Valasinas v. Lithuania*, Application no. 44558/98, Judgement, European Court of Human Rights (24 October 2001) <http://en.tm.lt/dok/Valasinas_v_Lithuania_JUDG.pdf> accessed 25 May 2014, para. 117.

⁴⁷⁶Human Rights Council, *Report of the Special Rapporteur on the situation of systematic rape, sexual slavery and slave-like practices during wartime*, UN Doc. E/CN.4/sub.2/1998/13 (1998) para. 28.

⁴⁷⁷ *Ibid.*, para. 27.

⁴⁷⁸ Article 1 (d) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted on 30 April 1956 by Economic and Social Council Resolution 608(XXI), entered into force 30 April 1957); Article 23 (2), International Covenant on Civil and Political Rights; Article 16 (1), Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979 by UNGA Res 2263, entered into force on 3 September 1981); Article 17 (2), American Convention on Human Rights (adopted on 22 November 1969 by the OAS, entered into force on 18 July 1978); Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted on 11 July 2003 by the AU, entered into force on 25 November 2005).

⁴⁷⁹ International Covenant on Civil and Political Rights, Article 2(2).

⁴⁸⁰*Dimitrijevic v. Serbia and Montenegro*, United Nations Committee against Torture, UN Doc. CAT/C/33/D/207/2002 (24 November 2004) <http://www.univie.ac.at/bimtor/dateien/cat_2004_dimitrijevic_vs_serbia.pdf> accessed 25 May 2014, para. 5.4.

⁴⁸¹*Blanco Abad v. Spain*, United Nations Committee against Torture, UN Doc CAT/C/20/D/59/1996, Communication No 59/1996 (14 May 1998) para. 8.2; *Ristoc v. Yugoslavia*, United Nations Committee against Torture, UN Doc. CAT/C/26/D/113/1998, Communication No. 113/1998 (11 May 2001) para. 9.5.

⁴⁸²United Nations Committee against Torture, *General Comment number 3*, UN Doc. CAT/C/GC/3 (2012) <http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf> accessed 25 May 2014.

the International Criminal Tribunal for Rwanda (ICTR), who were the first tribunals in the international judicial system to prosecute and convict rape and sexual violence during armed conflict as a crime against humanity. As there is no international definition of rape, they both developed their own definitions. Important in this instance, are the *Akayesu* judgment of the ICTR in 1998 and the *Furundzija* judgment of the ICTY in 2005. These definitions are in gender-neutral terms, allowing for the adjudication of sexual violence against both men and women.

The ICC Statute broadened the concept of rape to cover other sexual assaults as crimes against humanity and war crimes. The Rome Statute includes a more comprehensive spectrum of sexual violence. To illustrate, Article 7(1)(g) states that ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity’ are crimes against humanity.⁴⁸³ Article 8(2)(b)(xxiii) considers ‘committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7(2)(f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva conventions’ to be war crimes.⁴⁸⁴

Additionally, the ICC Elements of Crime provides three sets of definitions of rape, relating to crimes against humanity, to war crimes in a non-international armed conflict, and to war crimes in an international conflict. All of these definitions cover both men and women as potential victims of rape. In the context of a crime against humanity, all of the definitions are in sex-neutral sense, encompassing a multitude of forms of sexual violence.⁴⁸⁵

Sexual violence in conflict is considered a threat to international peace and security because it provokes resurges of tensions and violence and undermines social and political stability. The Security Council has developed on this interaction in a number of resolutions since 2000, which will be discussed in the next section of the report. Current awareness about this phenomenon as an ‘atrocities of first order’ explains the mobilisation that has taken place at the global level. At the sidelines of the 2013 session of UN General Assembly (UNGA), which was pioneered in the recognition of sexual and gender-based violence against women as particularly relevant to conflict situations,⁴⁸⁶ a great majority of UN Member States endorsed the Declaration of Commitment to End Sexual Violence in Conflict adopted by the Group of Eight in April 2013.⁴⁸⁷ The Declaration, aiming at engendering a global shift in attitudes towards sexual violence, has been subsequently followed by the launching of the Protocol on the Documentation and Investigation of

⁴⁸³ Article 7 (1) Rome Statute of the ICC.

⁴⁸⁴ Article 8 (2) Rome Statute of the ICC.

⁴⁸⁵ A related issue that is particularly controversial for its moral, social and practical implications, is the right to abortion for victims of rape, a matter that seems to fall outside the scope of IHL and IHRL, and thus governed by national legislation, which varies substantially from country to country. Although the tendency for human rights practice is to plead in favour of allowing victims of rape to abort, the international legal framework cannot go further than ensuring that the administrative and practical requirements for abortion are met and it effectively takes place in those countries recognising such a right under domestic law.

⁴⁸⁶ The UNGA’s Declaration on the Elimination of Violence Against Women, adopted in December 1993, defined violence against women as including violence in the family, violence in the general community, and violence by the State.

⁴⁸⁷ The Declaration was launched in New York on 24 September 2013 during the United Nations General Assembly, by UK Foreign Secretary and the UN Special Representative on Sexual Violence in Conflict. See <<http://www.un.org/sexualviolenceinconflict/press-release/122-countries-endorse-historic-declaration-of-commitment-to-end-sexual-violence-in-conflict/>> accessed 20 May 2014.

born infants that require particular care and nutrition. The special protection inherent in the rights of children, particularly those suffering from under-age enlisting, is neglected during detention, putting at risk their physical and psychological development. Especially worrisome is the ill-treatment to which they are often subjected to by inhuman or degrading disciplinary measures and the total lack of access to education, recreation, and contact with their families.

On this premis, the Inter-American Commission on Human Rights declared that ‘where persons find themselves within the authority and control of a State and where a circumstance of armed conflict may be involved, their fundamental rights may be determined in part by reference to international humanitarian law as well as international human rights law. Where it may be considered that the protections of international humanitarian law do not apply, however, such persons remain at a minimum, the beneficiaries of the non-derogable protections under international human rights law. In short, no person under the authority and control of a State, regardless of his or her circumstances, is devoid of legal protection for his or her fundamental and non-derogable human rights’.⁴⁹⁶ Thus no ‘black hole’ in IHL can be alleged to create a category of individuals utterly devoid of human rights. In any event, when responding to the exercise of the right to individual petition, human rights bodies can clarify and enforce IHL.

However, when it comes to armed non-state actors, although there seems to be agreement on considering them bound by IHL as long as they are parties to armed conflict and even by peremptory rules of IHRL, as it has been discussed above, the main challenges are devising internationally agreed standards complementing IHL in order to guarantee the protection of vulnerable persons detained by ANSAs. In this regard, the ICRC has been entrusted by Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, to pursue further, by means of research, consultation and discussion in cooperation with States, the identification of proposed recommendations to ensure that IHL remains practical and relevant in providing legal protection to all persons deprived of their freedom in connection to armed conflicts. The resulting Copenhagen Process Principles and Guidelines are tool to ensure that basic principles are being met with regard to detainees in all conflict situations.⁴⁹⁷

These groups play an important role in practically applying IHL, they must be encouraged by domestic law to provide the detainees with health-care, food and shelter instead of forcing them to kill the prisoners by legally impairing the detention, for the sake of IHL applicability in practice.

8. Attacks on journalists

Acts of violence against journalist and media personnel in armed conflict are a current pattern at on-going conflicts and situations of concern, as recently acknowledged by statement of the President of the UN

⁴⁹⁶*Persons detained by the United States in Guantanamo Bay* (Precautionary Measure 259/02) Inter-American Commission on Human Rights (13 March 2002) <<http://www.oas.org/en/iachr/pdl/decisions/GuantanamoMC.asp#MC25902>> accessed 26 May 2014.

⁴⁹⁷ See Ministry of Foreign Affairs of Denmark, Copenhagen Process on the Handling of Detainees in International Military Operations (2007) <<http://um.dk/en/politics-and-diplomacy/copenhagen-process-on-the-handling-of-detainees-in-international-military-operations>> accessed 17 September 2014.

Security Council.⁴⁹⁸ Beside the protection that journalists deserve under IHL by reason of their vulnerability as non-combatants, attacks on them may fall foul of the IHRL as well, namely provisions governing the right to life and, considering the relevance of their professional activities, the right to freedom of opinion and expression.⁴⁹⁹ Although both rights are interconnected in the sense that depriving journalists of their lives or even inflicting them to torture or another kind of degrading treatment is a sort of censorship that affects not only their individual freedom of expression but also the general freedom of press,⁵⁰⁰ these two aspects have been often treated separately.

Firstly, the already referred to peremptory prohibition from deprivation of life, provided that it qualifies as arbitrary in light of IHL as *lex specialis* applicable to situations of armed conflict⁵⁰¹ protects journalists from being targeted either by State forces⁵⁰² or non-state actors. In the latter case, the negative obligation is supplemented by a positive duty of States to protect journalists within their jurisdictions by taking all necessary legal measures, including passing and implementing legislation, as well as effectively neutralising real and immediate threats to life.⁵⁰³ Particularly, failure to respond to violence, intimidation or harassment of a journalist by non-state actors has been found to constitute a State violation of the right to life.⁵⁰⁴ The duty to protect also comprises the obligation on States to conduct an effective investigation of criminal acts that may threaten life even in a situation of armed conflict.⁵⁰⁵

Secondly, attacks against journalists give rise to a further effect exceeding the scope of the right to life, as long as the attacks are aimed at silencing them or the media in general, thereby infringing their freedoms of expression, enshrined in the international and regional human rights treaties,⁵⁰⁶ and the public's wider right to benefit from the freedom of press. Indeed, the right to freedom of expression is two-fold, having an individual dimension allowing to emit information and a collective dimension including the right of the public to receive this information, which can be violated by requisitioning journalist's

⁴⁹⁸ Statement made by the President of the Security Council (12 February 2013) S/PRST/2013/2 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2013/2> accessed 20 June 2014, 3.

⁴⁹⁹ See Stuart Casey Masley (ed), *The War Report 2012* (Oxford 2013) 366-374.

⁵⁰⁰ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Doc. A/HRC/20/22, 10 April 2012, <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-22_en.pdf> accessed 25 May 2014, para. 21.

⁵⁰¹ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) ICJ, 8 July 1995, para. 25.

⁵⁰² *Bustíos-Saavedra v. Peru* (Judgment) Inter-American Court of Human Rights (5 June 1990); *Trévalec v. Belgium*, Judgment, European Court of Human Rights (28 November 2011).

⁵⁰³ Human Rights Committee, *General Comment number 31*, 'The nature of the general legal obligations imposed on states parties to the Covenant', UN doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004.

⁵⁰⁴ *Kiliç v. Turkey*, Application no. 22492/93, Judgment, European Court of Human Rights (28 March 2000) <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58524#%7B%22itemid%22:%5B%22001-58524%22%5D%7D>> accessed 25 May 2014.

⁵⁰⁵ Human Rights Committee, *General Comment number 6*, 'Article 6', U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003), 30 April 1982.

⁵⁰⁶ Article 9, International Covenant on Civil and Political Rights; Article 10, European Convention on Human Rights; Article 13, American Convention on Human Rights; Art. 9, African Charter on Human And Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58; and Article 32, Arab Charter on Human Rights (adopted by the Council of the League of Arab States on 15 September 1994 and revised on 22 May 2004).

material,⁵⁰⁷ censoring or closing down media,⁵⁰⁸ or searching the journalist's private dwelling.⁵⁰⁹ However, the freedom of expression is not absolute as it is subject to restrictions provided by law that are necessary 'for respect of the rights or reputations of others', and 'for the protection of national security or of public order (*ordre public*), or of public health or morals'.⁵¹⁰ 'Propaganda for war' and 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' are also prohibited.⁵¹¹

Despite the fact that protection of the freedom of expression seems to place the emphasis on the free and uncensored functioning of media, the physical integrity of journalists plays an important role in the exercise of that freedom, thus deserving protection for the sake of society in its entirety,⁵¹² as it has been repeatedly recognised by the case-law of the international human rights bodies. Like in the case of the right to life, the obligation of States to guarantee the individual and collective freedom of expression has a negative dimension prohibiting State-sponsored violence against journalists⁵¹³ and a positive one obliging public authorities to 'create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear', and to achieve this 'the State must not just refrain from any interference with the individual's freedom of expression, but was also under a positive obligation to protect his or her right to freedom of expression against attack, including by private individuals'.⁵¹⁴ Unlike this narrower view of the ECtHR, restricted to the individual dimension of expression, the Inter-American Commission on Human Rights (IACCommHR) takes a wider stance by considering State failure to conduct a proper investigation in cases of alleged attacks against journalists as an act of censorship qualifying as a separate breach of the freedom of expression and press.⁵¹⁵

⁵⁰⁷ *Alejandra Marcela Matus Acuña and others v. Chile* (Decision) Inter-American Commission on Human Rights (2 October 2000) <<http://www.cidh.org/annualrep/2000sp/capituloiii/admisible/Chile12.142.htm>> accessed 25 May 2014.

⁵⁰⁸ *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria* (Decision) African Commission on Human and Peoples' rights (20 October 2009) <http://www.achpr.org/files/sessions/24th/comunications/105.93-128.94-130.94-152.96/achpr24_105.93_128.94_130.94_152.96_eng.pdf> accessed 25 May 2014.

⁵⁰⁹ *Roemen and Schmit v. Luxembourg*, Application no. 51772/99, Judgment, European Court of Human Rights (25 February 2003) <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60958#%22itemid%22:%22001-60958%22>> accessed 25 May 2014.

⁵¹⁰ International Covenant on Civil and Political Rights, Article 19(3).

⁵¹¹ *Ibid.* Article 20.

⁵¹² See UN Human Rights Committee, General Comment 11: Prohibition of Propaganda for War and Inciting national, racial or religious hatred (Art. 20) 29/07/1983 at <<http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>> accessed 30 May 2014, para. 2.

⁵¹³ *Restrepo v. Colombia* (Judgment) Inter-American Commission on Human Rights (4 September 2012) <http://www.corteidh.or.cr/docs/casos/articulos/seriec_248_ing%20.pdf> accessed 25 May 2014, para. 137-146.

⁵¹⁴ *Dink v. Turkey*, Applications no. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment, European Court of Human Rights (14 September 2010) <<http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-3262169-3640194#%22itemid%22:%22003-3262169-3640194%22>> accessed 25 May 2014, para. 137.

⁵¹⁵ *Restrepo v. Colombia* (Judgment) Inter-American Commission on Human Rights (4 September 2012) <http://www.corteidh.or.cr/docs/casos/articulos/seriec_248_ing%20.pdf> accessed 25 May 2014, para. 206-212.

VI. The impact of human rights violations on most vulnerable groups in conflict-settings: figures and trends

This section seeks to survey human rights violations driven and caused by armed conflict in view of their impact on most vulnerable groups. The identification of the patterns of human rights violations will proceed on the basis of information available from existing databases and reports. For the purposes of this report particularly vulnerable groups have been selected for study: children, women, refugees and internally displaced people, and indigenous peoples.

Although these classifications give an idea of which characteristics can lead to a situation of vulnerability related to conflict, it is important to highlight that those categories are interrelated and not fixed in stone. Indeed vulnerability is the result of numerous factors, that need to be studied on a case-by-case basis. Furthermore, these factors are not separated but can interact, as individuals can be part of different groups and encompass different categories. Indigenous women or disabled children, for example, are likely to encounter numerous challenges, because they can face different types of discrimination. The classifications of those groups is therefore more an indication of factors of vulnerability rather than the description of fixed groups that are vulnerable in conflict settings. Furthermore, if general trends can be drawn, the vulnerability needs to be constantly reviewed, and adapted to the context.

The selection of those particularly vulnerable groups has also taken into consideration that the aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights. There are particular groups who, due to various factors, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.⁵¹⁶ Often human rights instruments set out additional guarantees for persons belonging to these groups; the Committee on Economic, Social and Cultural Rights, for example, has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring States to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints.

Thus, this report focuses on groups that are especially vulnerable to suffer human rights violations in the context of conflict in present day settings, where internal conflict within States is more prevalent than what was the traditional conflict between States, and where this is compounded by the existence of non-State armed groups/actors and the complexity that globalisation presents. For the purposes of this report the groups subject to study are those that are structurally discriminated against such as women or indigenous peoples, and groups that have difficulties defending themselves, like children, disabled and elderly persons, and are therefore in need of special protection. Conflict and violent crisis settings add a specific layer of stronger needs of protection due to the devastating effects on the population in general, and in particular on those groups that are already disadvantaged.

⁵¹⁶ There are factors that are common to certain groups which are considered vulnerable. See the analysis of social, cultural, religious and ethnic factors in FRAME work-package 2.1. 'Report on factors which enable or hinder the protection of human rights' (forthcoming) <<http://fp7-frame.eu>> 85-144.

The conflict-related human rights violations and specific impacts are discussed in relation to the following groups: 1) children; 2) women and girls; 3) refugees and internally displaced persons; 4) indigenous peoples. Attention to the needs of disabled persons and elderly persons is given in the context of the corresponding groups. Clearly this is not an exhaustive list of persons in need of particular protection, but they are identified according to international norms and practice.

A. Children

Due to their particular vulnerability, children require priority protection in crisis settings or situations of armed conflict. However, the reality is quite the opposite. Children are the primary victims of war atrocities. In the context of the changing character of contemporary conflicts, armed groups' strategies aim at maximizing their impact on the core civilian population. As noted in the previous section of the report (section V) children have become more vulnerable due to new tactics in the conduction of hostilities (indiscriminate attacks on civilian areas or attacks directly targeting civilians, through explosive weapons, air strikes, the use of new weapons technology or the use of terror tactics),⁵¹⁷ that bear a heavy toll on millions of children.⁵¹⁸

The changing nature of armed conflict has created new dilemmas for the protection of children. The continuum of conflict and armed violence requires that children protection needs are addressed at all stages: pre-, during and post-conflict, thus delivering with urgency a continuum of protection approach that considers the role of all the actors involved in this continuum.⁵¹⁹ This idea has been stressed by the UN Secretary-General:

The protection of children in armed conflict is a litmus test for the United Nations and the Organisation's Member States. It is a moral call, and deserves to be placed above politics. It requires innovative, fearless engagement by all stakeholders.⁵²⁰

1. Overview

One of the findings strongly underlined by international reports and other documents is the fact that armed conflicts cause systematic and widespread violations of all rights of the child civil and political, economic, social and cultural rights.⁵²¹ According to the UN Convention of the Rights of the child, a child

⁵¹⁷Programme on Humanitarian Policy and Conflict Research, *Transnationality, War and the Law: A report on a roundtable on the transformation of warfare, international law, and the role of transnational armed groups*, Programme on Humanitarian Policy and Conflict Research, (Harvard University, Cambridge, MA, April 2006) 6; UN Expert of the Secretary-General, *Report of the expert of the Secretary-General Ms. Graça Machel submitted pursuant to General Assembly resolution 48/157 on the 'Impact of Armed Conflict on Children'* (26 August 1996), A/51/306, 8.

⁵¹⁸ UN General Assembly-Security Council, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, para. 6.

⁵¹⁹ Wilton Park Conference report, *Protecting children affected by armed conflict: advancing the agenda of the last 10 years* WP1151 (March 2012) <<https://www.wiltonpark.org.uk/wp-content/uploads/wp1151-report.pdf>> accessed 30 June 2014, 1.

⁵²⁰ UN Secretary-General's remarks at the Security Council open debate on Children and Armed Conflict, New York, 17 July 2008 <<http://www.un.org/sg/statements/?nid=3301>> accessed 20 April 2014.

⁵²¹ See UN General Assembly-Security Council, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014.

is 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.⁵²²

In the face the protracted increasingly harmful effects of conflicts, this trend will continue. It is documented that 'about 50% of the people currently displaced by armed conflict and violence are children,⁵²³ and children and young people constitute the majority in conflict-affected areas and fragile States.⁵²⁴ Children and young people have become the primary target of armed actors and are victimised by the advances in arms technology, including the proliferation of small and light weapons. The far-reaching consequences of the horror of conflict and armed violence for children, includes forced displacement, sexual exploitation and abuse, and the weakening of formal and informal protection systems, which continues to affect them long after hostilities cease.

The last two decades have led to improved global awareness on this problem. A turning point in this regard was the publication in 1996 of a report entitled 'The Impact of Armed Conflict on Children', commissioned to Graça Machel by the UN General Assembly.⁵²⁵ Following the presentation of the Machel Report, the General Assembly recommended the establishment of the mandate of the Special Representative of the Secretary General for children and armed conflict (SRSG-CAAC),⁵²⁶ and in September 1997 the first Special Representative was appointed. The General Assembly and the Security Council have contributed substantially to moving forward this agenda.

The international concern about the impact of armed conflict on children's rights is clearly identified within the framework of international conventions,⁵²⁷ UN Security Council Resolutions⁵²⁸ and internationally agreed principles and guidelines on the subject 'children and armed conflict'.⁵²⁹

⁵²² Article 1 UN Convention on the Rights of the Child (adopted by General Assembly Resolution 44/25 of 20 November 1989 and entered into force 2 September 1990) UNTS, vol. 1577, consulted at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> accessed 30 May 2014.

⁵²³ For instance, the effects of the Syrian conflict and humanitarian and regional crisis on displaced children. In addition, the current deteriorating situation in Iraq and its impact on children, correspond to the child majority figures indicated. See Syria crisis, monthly report by UNICEF <http://childrenofsyria.info/wp-content/uploads/2014/06/UNICEF-Syria-Regional-Crisis-Humanitarian-SitRep-Syria-Jordan-Lebanon-Iraq-Turkey-Egypt-12Jun2014.pdf> accessed 1 July 2014.

⁵²⁴ This is the case in Gaza that can be cited as a very current example (July 2014) of the devastating effects of armed conflict on children. The Special Representative of the Secretary-General for Children and Armed Conflict, Leila Zerrougui, has condemned in the strongest terms the killing of at least twenty one children and the injuring of many more during Israel's ongoing military operation in the Gaza strip. See <http://childrenandarmedconflict.un.org/press-release/special-representative-condemns-killing-children-in-fighting-gaza-israel/> accessed on 12 July 2014. See also Statement by UNICEF Executive Director Anthony Lake on impact of violence on children in Gaza and Israel http://www.unicef.org/media/media_74262.html accessed 14 July 2014.

⁵²⁵ The UN General Assembly welcomed the Machel report in Resolution 51/77 adopted on 20 February 1997 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/51/77 accessed 1 July 2014.

⁵²⁶ See Office of the SRSG-CAAC at <http://childrenandarmedconflict.un.org/> accessed 1 July 2014.

⁵²⁷ In particular, the Geneva Conventions and its Additional Protocols and the 1989 Convention on the Rights of the Child.

⁵²⁸ See below.

⁵²⁹ Such as the Paris Principles and Paris Commitments. As it has been noted, 'the Paris Principles of 2007 deal with children associated with armed groups. The Principles call for community-based inclusive programming that recognises the different needs of children, yet understands that the long term interest of children is integrally linked to the well-being of their families and their communities. These Principles call for long term commitments on the part of the donor community and for a greater understanding of what is sustainable in the context of conflict-ridden societies'. See International Bureau for Children's Rights, *Children in Armed Conflict* (2010) http://www.essex.ac.uk/armedcon/story_id/000911.pdf accessed 30 May 2014, 330. For the text of the Principles and Commitments see UNICEF, *The Paris Commitments to Protect Children Unlawfully Recruited or Used*

Following-up on the 1996 Graça-Machel (1996) milestone survey, between 1999 and 2009, the Security Council adopted seven resolutions between 1999 and 2009, which have progressively developed a concrete policy framework aimed at protecting children in the context of armed conflict. Adopted on the 26th July 2005, Resolution 1612 marked a turning-point in the Security Council's approach to the issue. The resolution authorized the establishment of a Monitoring and Reporting Mechanism (MRM) to focus on the six grave violations against children previously identified by the Secretary-General: namely, (1) the recruitment or use of child soldiers; (2) the killing or maiming of children; (3) the rape and other grave sexual abuse of children; (4) the attacks against schools and hospitals; (5) the abduction of children, and (6) the denial of humanitarian access for children. The Monitoring and Reporting Mechanism introduced by Resolution 1612 presented a new opportunity for States to achieve substantive progress on this issue by tracking the recruitment and use of children as soldiers, as well as the means by which to respond to ongoing violations. Resolution 1612 also established a Security Council Working Group to oversee the implementation of the Monitoring and Reporting Mechanism (WG on CAC).⁵³⁰

In August 2009 the Security Council adopted Resolution 1888, expanding the criteria for listing parties as violators in the Secretary-General's report to include killing and maiming and/or rape and other sexual violence among the grounds for inclusion. Under the previous Resolution 1612, only situations that involved the grave violation of the recruitment and use of children as soldiers triggered the establishment of a Monitoring and Reporting Mechanism country team. Resolution 1882 expanded the triggers for the establishment of a Monitoring and Reporting Mechanism in a country of concern to include two additional grave violations in situations of conflict: rape and other grave sexual violence against children and the killing and maiming of children.⁵³¹ Only one of the three violations must have occurred in order to trigger the establishment of a Monitoring and Reporting Mechanism country team. This is a groundbreaking development. For example, prior to the adoption of Resolution 1882, a situation where children were sexually abused in armed conflict would only have been documented if a Monitoring and Reporting Mechanism country team was established due to the occurrence of the grave violation of the recruitment and use of children as soldiers. Resolution 1998 further expands the triggers for the establishment of a Monitoring and Reporting Mechanism to include the grave violation of attacks against schools and hospitals.⁵³²

The data collected by the Monitoring and Reporting Mechanism feeds into the Secretary-General's annual report on children and armed conflict.⁵³³ The report includes an annex which list offenders (State and/or

by Armed Forces or Armed Groups ('The Paris Commitments'), and Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, (February 2007) <<http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>> accessed 30 May 2014.

⁵³⁰S/RES/1612/2005. It can be consulted at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement>> accessed 1 July 2014.

⁵³¹S/RES/1882/2009. It can be consulted at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/442/14/PDF/N0944214.pdf?OpenElement>> accessed 1 July 2014, para. 3, 2.

⁵³²S/RES/1998/2011. See at <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201998.pdf>> accessed 1 July 2014, para. 3, 2-3.

⁵³³ For the list the annual reports since 2000 and access to them see <<http://watchlist.org/secretary-general-annual-reports-to-the-security-council-on-children-and-armed-conflict/>> accessed 1 July 2014.

non-state actors) that commit one or more of the Monitoring and Reporting Mechanism trigger violations against children in conflict situations.

Resolutions 1882 and 1998 also focus on accountability by calling for greater cooperation and information sharing between the Security Council Working Group on Children and Armed Conflict and the relevant Sanctions Committees. This link, aimed at holding accountable those who commit grave violations against children in armed conflicts, is a major step in taking concrete actions against perpetrators.⁵³⁴

The Security Council and its Working Group on CAC have made significant advances in establishing a strong normative framework for ensuring protection of children in armed conflict, and in moving towards the implementation of that framework at the field level.

In 2009 UNICEF published the Machel Study 10-Year Strategic Review: Children and conflict in a changing world, a follow-up report to the previous 1996 survey in order to analyze the progress – and challenges – of the subsequent decade.⁵³⁵ The 1996 Machel Study had only provided a synopsis of the extent of the suffering of children as data collection was and remains a real challenge. The Strategic Review went further in the gathering of information on the actual impact of conflict on children. More than 40 UN agencies, non-governmental organizations and academic institutions – along with children from nearly 100 countries – contributed to this review, which was co-convened by the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and UNICEF. The Strategic Review constituted a part of ongoing advocacy efforts to bring the issues of children in conflict at the top of the agenda.

The European Union, similarly to the United Nations, is focusing its attention on the issue of children affected by armed conflict. The issue is one of the top human rights priorities of the European Union, as stated in the 2012 Strategic Framework and Action Plan on Human Rights and Democracy.⁵³⁶ Specific guidelines on children in armed conflict were developed by the EU in 2003 and revised in 2008, which address the needs of children in armed conflict but also highlight the ongoing impunity of the crimes committed against them.⁵³⁷ The EU has also developed an implementation strategy for those guidelines.⁵³⁸ The member States of the EU and the EU itself, are significant donors towards assistance programmes for children affected by armed conflict. This child-focused policy is also provided through crisis management initiatives of the EU and in the EU Common Security and Defense Policy (CSDP) operations, where a Checklist for the integration of the protection in children affected by armed conflict

⁵³⁴ Ibid., para. 9 and para. 11, 4-5.

⁵³⁵ Wilton Park, 'Conference report. Protecting children affected by armed conflict: advancing the agenda of the last 10 years', WP1151 (March 2012) <<https://www.wiltonpark.org.uk/wp-content/uploads/wp1151-report.pdf>> accessed 30 June 2014.

⁵³⁶ Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy (2012) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf> accessed 20 April 2014.

⁵³⁷ Council of the European Union, EU Guidelines on Children and Armed Conflict (2003), Doc. 15634/03 <<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf>> accessed 30 May 2014; revised EU Guidelines on Children and Armed Conflict (2008) Doc. 1019/08 at <<http://consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf>> accessed 30 May 2014.

⁵³⁸ Council of the European Union, Revised Implementation Strategy of EU Guidelines on Children and Armed Conflict, (2010) Doc. 17488/10 at <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017488%202010%20INIT>> accessed 30 May 2014.

is incorporated.⁵³⁹ A minimum standards pre-deployment training program on child protection, gender and human rights for CSDP staff has been devised by the EU in collaboration with Save the Children. However, different institutional challenges are present: limited knowledge of international humanitarian law by parties to conflict, insufficient implementation of the law's provisions and limited insight into the different country contexts in which violations occur still hamper the design of clear strategies to address grave violations against children in armed conflict. All the above- mentioned achievements are relevant to be highlighted,⁵⁴⁰ but also critically reflect on pressing challenges identified as crucial for the agenda on 'children and armed conflict'⁵⁴¹:

- keeping children and armed conflict high on the agenda of the Security Council in the face of other political priorities and considerations
- challenges to the mandate of the SRSB-CAAC to increase the efficacy of the UN Security Council Working Group
- improve the protection needs of all children are met in situations of contemporary armed conflict over the long-term
- capacity of the UN system to monitor and respond to grave violations against children in situations of armed conflicts, in view of the impediments that the MRM is facing in relation to its implementation at national and international levels
- need to identify possible additional sources of information which can inform the MRM process

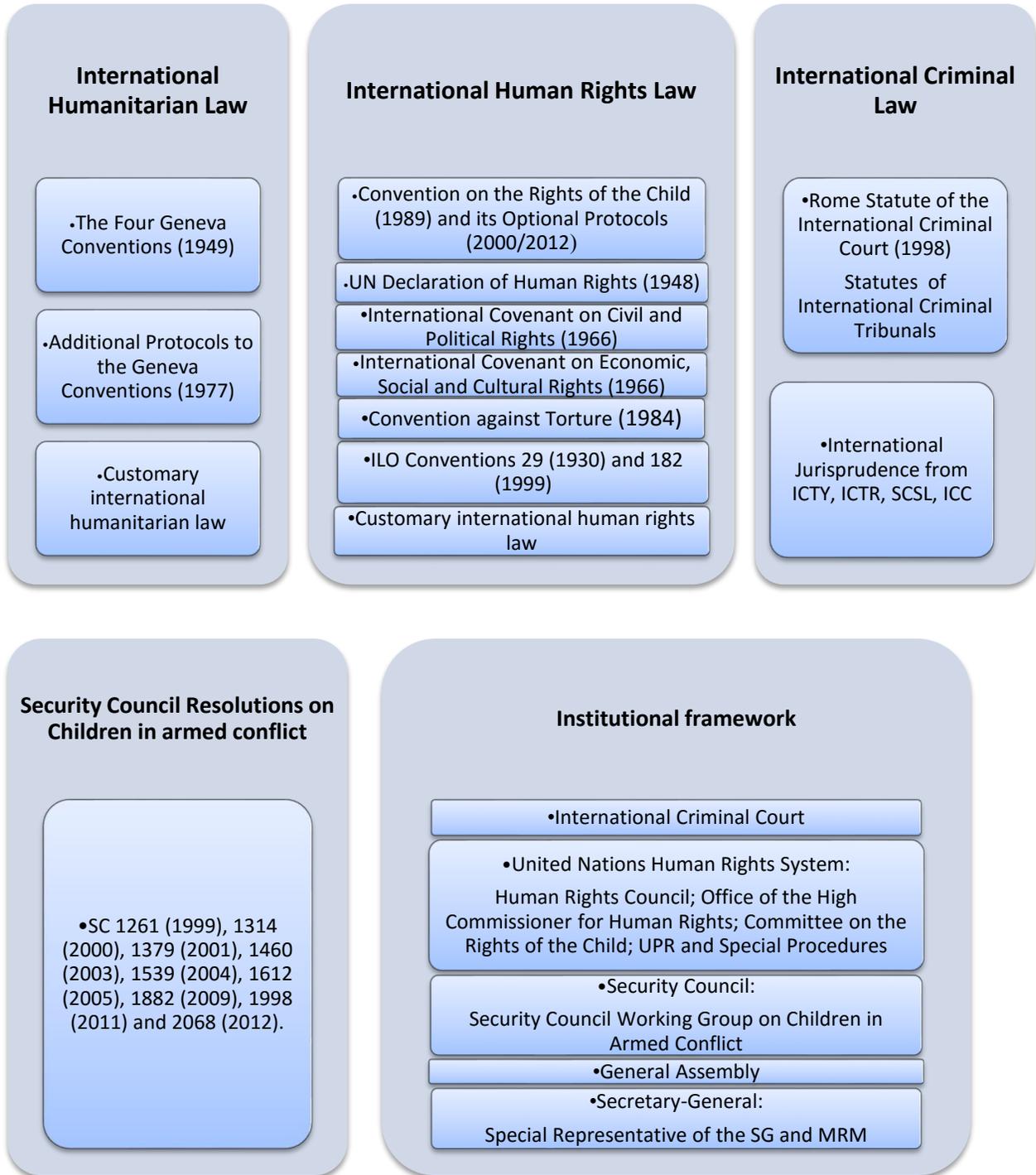
The legal basis for the protection of children rights in situations of conflict lies in international humanitarian law, international human rights law and international criminal law. This legal framework can be summarised, as illustrated by Figure VI.1

Figure VI.1. Legal and institutional frameworks on children's rights in armed conflicts

⁵³⁹ Council of the European Union, Checklist for the Integration of the Protection of Children Affected by Armed Conflict into ESDP Operations (2006) Doc. 9767/03 <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209767%202006%20INIT>> accessed 20 May 2014; the Checklist has been revised in 2008, see Doc. 9822/08 at <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209822%202008%20INIT>> accessed 30 May 2014.

⁵⁴⁰ As noted, 'the past 15 years have seen considerable gains in the children and armed conflict agenda with the development of an international architecture at UN level that has gained worldwide attention, awareness and acceptance for the issue. Both the roles of the SRSB-CAAC and the UN Security Council Working Group on Children and Armed Conflict have become an integral part of the peace and security agenda'. Up to date '17 action plans have been signed; the UN Department of Peacekeeping Operations (DPKO) has a child protection policy in place which further mainstreams child protection responsibilities of peacekeeping missions and has Child Protection Advisers –where budget allows -in most of its country missions; and, in 2010 alone, around 11,000 children were separated from armed forces or armed groups'. Wilton Park, 'Conference report. Protecting children affected by armed conflict: advancing the agenda of the last 10 years', WP1151 (March 2012) <<https://www.wiltonpark.org.uk/wp-content/uploads/wp1151-report.pdf>> accessed 30 June 2014, 3.

⁵⁴¹ See UNHRC, Oral update of the Special Representative for Children and Armed Conflict (4 September 2013) A/HRC/24/CRP.1



As noted in previous sections of this report, the changing nature of conflict and, in particular, the absence of a battlefield, the fragmentation of non-state armed actors and the blurring line between civilian and combatants, pose relevant challenges for the existing legal frameworks and UN institutional architecture,

which have been developed to deal with a particular model of conflict. Further review of the architecture on children and armed conflict and its implementation is merited in the light of these new challenges.

2. Figures and trends

Exposure to armed conflict is known to have harmful effects on the wellbeing, both physical and emotional, of those who experience or are witness to traumatic events such as sexual violence or mass killings, be they children or adults.⁵⁴² The impact that child participation in armed conflict can have on communities can be devastating, destroying all concepts of community protection and previous social roles which no longer exist and where stigmatisation becomes prevalent.⁵⁴³ Child participation, whether part of a generalised civilian mobilisation in an armed conflict setting or whether through direct child recruitment to armed groups or armed forces, has the potential to have a long lasting impact on the individual children involved, their long term emotional and physical wellbeing and a grave impact on the peace and stability within their communities for years to come.⁵⁴⁴

The phenomenon of direct targeting by armed groups of schools and school children is reported by UNESCO to be on the increase and a worrying trend in some armed conflict areas.⁵⁴⁵ The figures of children not attending to primary schools due to conflict, i.e. due to the fact that they live in countries that are afflicted with conflict and poverty, are as high as 28 million children and the literacy rates are of 78% compared to an overall rate of 93% for other non-conflict affected countries.⁵⁴⁶ The impact that displacement can have on children in the area of education is significant, tied with the discrimination factors which internally displaced persons are at risk of experiencing, and/or the impact that the sheer volume of numbers of displaced can have on resources in areas where they seek protection. The risk of discrimination which children who are displaced in conflict may experience is dealt with further in the section on IDPs (section VI(c)), where layers of intersecting rights that are challenged in scenarios where children who are refugees and have a disability (long term or caused by conflict) can create barriers to accessing their right to education.⁵⁴⁷ 80% of refugee children aged 6 to 17 from Syria are out of school according to 2013 figures from UNHCR.⁵⁴⁸

UNESCO identifies four systemic failures related to children and their denied access to education in conflict and post conflict settings. These are: 'failures of protection (against gross human rights abuses in

⁵⁴² Ilse Derluyn et al., 'Towards a Relational Understanding of Reintegration and Rehabilitation Processes of Former Child Soldiers', 22 (8) 2013 Journal of Aggression, Maltreatment and Trauma; UN Expert of the Secretary-General, *Report of the expert of the Secretary-General Ms. Graça Machel submitted pursuant to General Assembly resolution 48/157 on the 'Impact of Armed Conflict on Children* (26 August 1996), A/51/306.

⁵⁴³ Frederick M. Burkle, 'Lessons Learnt and Future Expectations of Complex Emergencies,' (1999) British Medical Journal 422-426.

⁵⁴⁴ Bayer et al., 'Association of Trauma and PTSD Symptoms with Openness to Reconciliation and Feelings of Revenge among Former Ugandan and Congolese Child Soldiers', (2007) 298/5 Journal of the American Medical Association 555-559; Pham et al., 'Trauma and PTSD: Their Implication for Attitudes Towards Justice and Reconciliation', (2004) 292(5) Journal of the American Medical Association 602-612.

⁵⁴⁵ UNESCO, *The hidden crisis: Armed conflict and Education* (UNESCO, 2011) <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/gmr2011-UNESDOC.pdf>> accessed 10 June 2014.

⁵⁴⁶ *Ibid.* 2

⁵⁴⁷ See section IV(c) case of Syrian refugees in Lebanon.

⁵⁴⁸ UNHCR, *Syria Regional Response Plan, January to December 2013* (2013) <<https://data.unhcr.org/syrianrefugees/download.php?id=2148>> accessed 10 June 2014, 110.

which schools and/or students are targeted), provision (not maintaining access to education amid conflict), reconstruction (not giving a more prominent place to education in the post-conflict reconstruction agenda) and peace-building (not recognising that education policy is part of conflict prevention and peace-building).⁵⁴⁹

Female children associated with armed forces or armed groups are at risk of sexual violence and sexual harassment.⁵⁵⁰ They run the risk of sexual assault and harassment, which can happen during armed conflict and in the aftermath.

The engagement of children with armed groups as the only resort open to them is indicative of the severity of the situations they find themselves in, where the forces pushing them towards these groups are not always explicit, and are described by analysts as voluntary, rather than forced.⁵⁵¹ Forced recruitment usually means that the armed groups give these children no option and may involve the use of arms to intimidate them into joining. However, the conflict environment in itself can lead children to willingly join an armed group and to wish to remain within this group. This may go against the image of vulnerability that humanitarian discourse might wish to portray of all children, instead of acknowledging that children can be resilient within the environment that they are in and acknowledge their actions and their responsibility within them, particularly in the rebuilding their lives following conflict.⁵⁵² These viewpoints may be dependent on local culture and the amount of external influence in the analysis of children's perceptions of the direct experience of conflict.⁵⁵³

The unfortunate reality for some of these children is that even if they access help in rehabilitating their lives and reintegrating into their community, success will depend on the quality of engagement of the reintegration programme, or the existence of one for them to access in the first place. The reports indicate that they often return to armed groups or forces that they previously belonged to.⁵⁵⁴

A positive trend in recent years is the substantial reduction in child casualties due to landmines. The Convention on the Prohibition of Anti-Personnel Mines ('Ottawa Convention'), in force since 1999, has

⁵⁴⁹ UNESCO, *The hidden crisis: Armed conflict and Education* (UNESCO, 2011) <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/gmr2011-UNESDOC.pdf>> accessed 10 June 2014, 3.

⁵⁵⁰ CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30 (1 November 2013) para. 36.

⁵⁵¹ Jonathan Somer, 'Engaging Armed Non-State Actors to Protect Children from the Effects of Armed Conflict: When the Stick Doesn't Cut the Mustard' (2012) 4:1 *Journal of Human Rights Practice*, 116.

⁵⁵² Mark A. Drumble, *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press 2012); Yannick Weyns, 'On Children's Rights and Wrongs: The Challenges for a Rights-Based Approach to Integration' in I. Derluyn, C. Mels, S. Parmentier and W. Vandenhole, *Re-Member: Rehabilitation, Reintegration and Reconciliation of War-Affected Children* (Antwerp, Intersentia 2012) 533-555.

⁵⁵³ Ah-Jung Lee, 'Understanding and Addressing the Phenomenon of "Child Soldiers": The Gap between the Global Humanitarian Discourse and the Local Understandings and Experiences of Young People's Military Recruitment', Working Paper Series No. 52 (2009), Refugee Studies Centre Oxford, Department of International Development, University of Oxford.

⁵⁵⁴ European Parliament, Directorate-General for External Policies, *Child Soldiers and the EU Policy on Children and Armed Conflict* (March 2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24 <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET%282014%29433845_EN.pdf> accessed 10 June 2014, 11.

reduced the impact of mines on children, taking into account that more than one third of the lower limb losses of the world due to the existence of explosive remnants of war are children.⁵⁵⁵

According to the 2014 Annual Report of the UN Secretary-General on Children and Armed Conflict (reporting on the year 2013),⁵⁵⁶ information about most serious violations committed against children in situations of armed conflict occurred in 23 countries. The report also includes a list of armed groups and armed forces, which recruit and use children, kill and maim, commit sexual violence or attacks on schools and hospitals in conflict zones. The conflict settings include Afghanistan; Central African Republic; Chad; Colombia, Cote d'Ivoire; Democratic Republic of Congo; India; Iraq; Israel and Palestine; Lebanon; Libya; the areas of operation of Lord's Resistance Army (Central African Republic, Democratic Republic of the Congo and South Sudan); Mali; Myanmar; Nigeria; Pakistan; Philippines; Somalia; South Sudan; Sudan; Syria; Thailand and Yemen (see Map VI.1).⁵⁵⁷ Along similar lines, the SRS-CAAC has stressed that the rights of children are being violated in conflict situations with total impunity, especially in Iraq, Syria, South Sudan, Nigeria and the Central African Republic.⁵⁵⁸

Map VI.1. Most serious violations committed against children in armed conflicts in 2013

The 2014 annual report of the Secretary-General on children and armed conflict presents information about grave violations committed against children in 23 country situations.



Source: Office of the Special Representative of the Secretary-General on Children and Armed Conflict <<http://childrenandarmedconflict.un.org/countries/children-and-armed-conflict-interactive-world-map/>> accessed 30 June 2014

⁵⁵⁵ UNICEF, *Machel Study 10-year Strategic Review 'Children in armed conflict in a changing world'* (UNICEF April 2009) <http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf> accessed 20 April 2014, 21.

⁵⁵⁶ UN General Assembly-Security Council, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014.

⁵⁵⁷ UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, 5-44.

⁵⁵⁸ See Press release *Child rights being violated in conflict situations with total impunity, says UN official* (1 July 2014) at <<http://www.un.org/apps/news/story.asp?NewsID=48180#.U9evRmOeGmS>> accessed 10 July 2014.

The trends identified in the 2014 UN Secretary-General (SG) report worsen the figures of the previous year by observing ‘a significant spike in the killing and maiming of children in several situations, including in Afghanistan and Iraq’.⁵⁵⁹ Particularly relevant in view of the gravity of the violations committed against children are the conflict and humanitarian crisis in Syria; in the Central African Republic, where the recruitment and use of children became endemic throughout 2013; in South Sudan, where the use of children by State and non-state armed groups is reported, due to the resumption of conflict; in northern Nigeria, where attacks on schools and school girls conducted by the extremist group Boko Haram (see Box VI.1), resulting in grave violations against children, have been intensified.⁵⁶⁰ More recently, in the Resolution adopted on 24 July 2014, the UNHRC referred to the violations of international human rights and fundamental freedoms arising from the Israeli military operations carried out in the Occupied Palestinian Territory that ‘may amount to international crimes, directly resulting in the killing of more than 650 Palestinians, most of them civilians and more than 170 of whom are children’.⁵⁶¹

Box VI.1. Boko Haram attacks against schools in Nigeria

- Since the beginning of 2012, Boko Haram members have attacked at least 20 schools in northern Nigeria, damaging and in some cases destroying them, according to media reports monitored by Human Rights Watch. The group began torching schools in February in a two-week spate of attacks on at least 12 schools in and around Maiduguri, temporarily leaving several thousand children without access to education. All of the attacks occurred at night or early in the morning when pupils and teachers were absent. A Boko Haram spokesperson told journalists that the attacks were in response to alleged security force raids on Quranic schools and ‘indiscriminate arrests of students of Koranic schools by security agents’. Suspected members of the group have also burned down schools in Gombe, Yobe, and Kano states, according to media reports.
- According to the last report of the UNSG on children in armed conflict in March 2013 at least 11 schools in Borno State were attacked resulting in the killing of at least seven teachers and three children. In June, two secondary schools were attacked in Yobe and Borno States, resulting in the killing of seven school children and two teachers in Yobe and eight boys and two girls in Borno. The escalating violence and recurrent attacks on schools severely disrupted the right of children to education, with 15,000 children in Borno State reportedly having to stop attending schools between February and May 2013.

Sources: HRW, *Spiralling Violence. Boko Haram Attacks and Security Force Abuses in Nigeria* (October 2012) <http://www.hrw.org/sites/default/files/reports/nigeria1012webwcover_0.pdf> accessed 30 June 2014, 57; UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, para. 38-39.

⁵⁵⁹ UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, para 2.

⁵⁶⁰ *Ibid.*, 2.

⁵⁶¹ UNHRC, *Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem* (July 2014) A/HRC/RES/S-21/1 <<http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session21/Pages/21stSpecialSession.aspx>> accessed 26 July 2014, para. 2.

Among the serious human rights violations against children, is the concern that children under the age of 18 years are associated with armed forces and armed groups. This serious violation of children's rights (as prohibited under international law), is of grave concern as it is reportedly occurring in most armed conflicts, and in most regions in the world.⁵⁶² The exact figures are not attainable and estimates of the number of children involved change regularly. It is estimated that tens of thousands of children are recruited in the activities of armed forces or armed groups across all major conflicts, with children reportedly representing up to 40% of the membership of armed groups.⁵⁶³

For the year 2013, 'more than 4,000 cases were documented by the United Nations in 2013, but thousands more children are estimated to have been recruited and used'.⁵⁶⁴ Other patterns that intensify the vulnerability of children, like sexual violence and the detention of children for alleged association with armed groups or on security charges, are present in the majority of the reported conflict situations.⁵⁶⁵

3. Serious human rights violations

The UN Secretary-General has identified six grave violations against children during armed conflict based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children. The legal basis for the categorization of these violations lies in relevant international law, which in turn encompasses international humanitarian law, international human rights law and international criminal law. During armed conflict, international humanitarian law and international human rights law must be respected. Moreover, the full range of children's rights, economic, social and cultural as well as political and civil, must be respected, protected and fulfilled.

Figure VI.2. Six grave violations of children's rights in armed conflict

Recruiting or use of child soldiers
Killing or maiming of children
Rape and other grave sexual abuse of children
Attacks against schools and hospitals
Abduction of children
Denial of humanitarian access for children

⁵⁶² European Parliament, Directorate-General for External Policies, *Child Soldiers and the EU Policy on Children and Armed Conflict* (March 2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24 <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET%282014%29433845_EN.pdf> accessed 10 June 2014, 1.

⁵⁶³ Child Soldiers International, *Child Soldiers Global Report 2008*, available on-line at <www.childsoldiersglobalreport.org> accessed 30 May 2014.

⁵⁶⁴ UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, para 9.

⁵⁶⁵ UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014, para 2.

In addition to these six grave violations, armed conflicts also provoke other violations that often occur against children: torture and other forms of ill-treatment, administrative detention, forced displacement, sexual exploitation and hazardous work.⁵⁶⁶ Disruption and even disintegration of basic services and sources of social protection or destruction of community structures also have indirect impacts on children. The psychosocial impact of violence on children in the conflict aftermath, once the armed hostilities have officially finalised, deserves further consideration.

a) *Recruitment and use of children as child soldiers*

The different fields of international law, specifically international humanitarian law, as well as international criminal law, human rights law and international labour law are referenced in the development of legal standards on child soldiers and children and armed conflicts (CAACs). The difficulty with IHL in this context of protection of children's rights is the lack of a strong mechanism for monitoring their rights. The 1977 Additional Protocols to the Geneva Conventions provides for a prohibition of recruitment of children under the age of 15 years in conflict or military hostilities.⁵⁶⁷ As stated, the difficulty is the prevention and the monitoring of this law in conflict settings. Special protection is needed for children in terms of preventing their participation in armed hostilities or in any form of conflict activities.⁵⁶⁸ The ICRC has a role here but cannot act as an enforcement body, instead it is limited to provide a role as a watchdog body.

The Convention on the Rights of the Child (CRC, 1989) in its Article 38 provides the prohibition of the recruitment and participation of children under the age of 15 in armed hostilities.⁵⁶⁹ In addition, Article 39 of the CRC provides for the recovery of the children's physical and social wellbeing and their social reintegration following conflict.⁵⁷⁰ The CRC has a monitoring system where countries that have ratified the convention, most of the States in the world in the case of the CRC (193 ratifications for the CRC, 165 and 170 for the Additional Protocols), submit reports on aspects pertaining to the rights enshrined in the convention.⁵⁷¹ The protection provided by the CRC applies in peacetimes and in times of war. Therefore, the inclusion of this IHL standard of non-recruitment of children in a human rights treaty has added value, as a further step to its applicability, extending its application to non-state actors.⁵⁷²

⁵⁶⁶ UNICEF, *Machel Study 10-year Strategic Review 'Children in armed conflict in a changing world'* (UNICEF April 2009) <http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf> accessed 20 April 2014, 19-22.

⁵⁶⁷ Article 4 para. 3c Additional Protocols to the Geneva Conventions

⁵⁶⁸ European Parliament, Directorate-General for External Policies, *Child Soldiers and the EU Policy on Children and Armed Conflict* (March 2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24 <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET%282014%29433845_EN.pdf> accessed 10 June 2014, 10.

⁵⁶⁹ Article 38 of the Convention on the Rights of the Child

⁵⁷⁰ Article 39 of the Convention on the Rights of the Child

⁵⁷¹ Data on countries ratification of CRC and protocols is available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en accessed 30 June 2014.

⁵⁷² European Parliament, Directorate-General for External Policies, *Child Soldiers and the EU Policy on Children and Armed Conflict* (March 2014) EXPO/B/ DROI FWC 2009 01 Lot 6 – 24 <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433845/EXPO-DROI_ET%282014%29433845_EN.pdf> accessed 10 June 2014, 5.

The minimum age of 18 years for compulsory recruitment is defined within the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC 2000) which also has a focus on the reintegration of children and their recovery post conflict.⁵⁷³ The risk of the involvement of children in hostilities does not only arise from unlawful recruitment but also exists where the presence of under-18s is regarded under the OPAC 2000 as lawful (16 years and above). In this case, there are some states in which voluntary recruitment into national armies is permitted at the age of 16 and 17.⁵⁷⁴ Despite the establishment of the age of 18 years as the minimum age for compulsory recruitment in national law, in practice the issue of age is systematically ignored in some countries such as the DRC, Myanmar (see Box VI.2), Sudan and Yemen, as reported by Child Soldiers International.⁵⁷⁵

Box VI.2. Recruitment and use of child soldiers by the Myanmar army

- Recruitment of boys by the army in Myanmar takes place in violation of domestic law (since the army is all male, underage recruitment affects only boys). Under the 1959 Defence Services Act (amended in 1974) and War Office Regulation 13/73 of 1974, persons under the age of 18 are prohibited from joining the armed forces. The Myanmar military is also an all-volunteer force, making compulsory recruitment illegal under current domestic law.
- While the precise number of children in the army's ranks is unknown, levels of reported cases of child recruitment (widely recognised as being lower than the actual number) suggest that they are high: 243 complaints of underage recruitment were reported in 2011; and 24 cases of underage recruitment were verified in the first three months of 2012.

Source: Child Soldiers International, *Louder than Words. An agenda for action to end state use of child soldiers* (London 2012) <http://www.child-soldiers.org/global_report_reader.php?id=562> accessed 30 June 2014, 119.

The African Charter on the Rights and Welfare of the Child (ACRWC, 1990) explicitly addresses children's involvement in armed conflicts as a regional human rights instrument applicable within the African context for those States that have ratified it.⁵⁷⁶ The 'forced or compulsory recruitment of children for use in armed conflict' is listed specifically in the ILO Convention No. 182 adopted in 1999 as one of the worst forms of child labour (Article 3).⁵⁷⁷ There are no exceptions to the age limit of 18 years within the ILO Convention. The ILO Convention applies a 'straight-18' approach with no exceptions.

As already noted, recruiting or using children under the age of 15 as soldiers is incontrovertibly prohibited under international humanitarian law (Article 4, para. 3c Additional Protocol II).⁵⁷⁸ Moreover, the

⁵⁷³Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC 2000).

⁵⁷⁴Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC 2000).

⁵⁷⁵Child Soldiers International, *Louder than Words. An agenda for action to end state use of child soldiers* (London 2012) <http://www.child-soldiers.org/global_report_reader.php?id=562> accessed 30 June 2014, 24.

⁵⁷⁶African Charter on the Rights and Welfare of the Child (ACRWC, 1990) adopted by the Organisation of African Unity (OAU) in 1990 and entered into force in 1999, 3.

⁵⁷⁷ILO Convention No. 182 on the Worst Forms of Child Labour adopted in 1999 (Article 3).

⁵⁷⁸API obliges States to take all feasible measures to prevent children under 15 from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages Parties to give priority in recruiting among those aged from 15

prohibition of recruitment of children has been considered customary international law in both international and non-international armed conflicts.⁵⁷⁹ Article 8, para.2b [xxvi] and 2e [vii] of the Statute of the ICC provides for the conscription of children under 15 years as a war crime.⁵⁸⁰ The Rome Statute defines *individual* criminal responsibility as opposed to the other instruments just mentioned, the CRC, the OPAC and the ILO Convention No 182, all of which provide for State responsibility. In particular, there has been specific case law related to the determination of recruitment of children as a war crime such as the *Hinga Norman* case before the Special Court for Sierra Leone (SCSL) in 2004⁵⁸¹ and more recently the *Lubanga* case before the ICC in March 2012 and the *Charles Taylor* case before the SCSL in April 2012 (see Box VI.3).

Box VI.3. Cases before the ICC and the SCSL related to recruitment of children

- **The Lubanga case before the ICC⁵⁸²**

The ICC convicted Lubanga Dyilo of committing war crimes consisting of the enlisting and conscripting of children under the age of 15 into the Forces patriotiques pour la libération du Congo and their use for active participation in hostilities. Lubanga was sentenced to 14 years of imprisonment. The *Lubanga* case was the first of its kind before the ICC. The Court considered that the line between voluntary and involuntary recruitment is legally irrelevant in the context of children's association with armed forces or armed groups in times of conflict. The ICC also applied a broad interpretation of the notion 'active participation in hostilities' to ensure justice and protection for all children associated with armed conflicts, from those on the front line to the boys and girls who were involved in multiple roles supporting the combatants.

- **The Charles Taylor case before the Special Court for Sierra Leone⁵⁸³**

On 26 April 2012, the SCSL found former President of Liberia, Charles Taylor, guilty of aiding and abetting war crimes committed by the Revolutionary United Front (RUF) during the 1991-2002 civil war in Sierra Leone. The Court sentenced Taylor to 50 years in prison, which the Appeals Chamber confirmed in September 2013. The Court's judgment against Charles Taylor 'marks the first time that a former Head of State has been convicted of war crimes against children that were committed by an armed group found not to be under his direct command and control but to which he gave his practical assistance, encouragement and moral support. The SCSL was also the first international court to

to 18 to the oldest (Art. 77). APII goes further, prohibiting both the recruitment and the participation – direct or indirect – in hostilities by children under 15 years of age (Article 4, para. 3c).

⁵⁷⁹ Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 'The Six Grave Violations against Children During Armed Conflict: The Legal Foundation'* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 June 2014, 12.

⁵⁸⁰ Article 8, para.2b [xxvi] and 2e [vii] of the Statute of the International Criminal Court (ICC 1998)

⁵⁸¹ Judicial affirmation came in 2004, when the Special Court for Sierra Leone (SCSL) ruled in the *Hinga Norman* case that the recruitment and use of children in armed conflict is a war crime under customary international law. See *Prosecutor v. Sam Hinga Norman* (Decision on Preliminary Motion Based on Lack of Jurisdiction) SCSL Case No. SCSL-2004-14-AR72 (E) (31 May 2004)

⁵⁸² The full text of the judgment is available at <<http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>> accessed 10 June 2014.

⁵⁸³ The full text of the judgment is available at <<http://www.rscsl.org/Documents/Decisions/Taylor/1285/SCSL-03-01-T-1285.pdf>> accessed 10 June 2014.

determine that the recruitment and use of children aged less than 15 years constituted a war crime under customary international law’.

Source: Office of the SRSG for children and armed conflict, *Working paper No. 1 ‘The Six Grave Violations against Children During Armed Conflict: The Legal Foundation’* (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 June 2014, 12-13.

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (‘Paris Principles’) address the recovery and reintegration of children affected by armed conflict and replaced the 1997 Cape Town Principles, when they were adopted in February 2007 in Paris.⁵⁸⁴ In particular, the Paris Principles state that children ‘should be considered primarily as victims of offences against international law’ and that, ‘they must be treated in accordance with international law in a framework of restorative justice and social rehabilitation’.⁵⁸⁵ Therefore, the primary goal is not the prosecution but the reintegration.⁵⁸⁶

In 2004, the Security Council issued the Resolution 1539, aimed at stopping the recruitment and use of children under the age of 18 and encouraging Governments to develop action plans to separate and release children associated with armed forces.⁵⁸⁷ To date 18 action plans have been being implemented by 20 parties with a release of approximately 10000 children.⁵⁸⁸ However, recruitment of children continues to be a major concern especially in Africa, Asia and Middle East, as reported by the last report of the SG on children in armed conflict (see Box VI.4).

Box VI.4. Figures on recruitment of children in armed conflicts

- According to the 2014 Annual report of the UNSG on children and armed conflict, most grave cases of recruitment of children by both state security forces and armed groups were committed in 2013 in:
 - 1.- **India:** 2,500 children recruited
 - 2.- **Somalia:** 1,293 children recruited
 - 3.- **DRC:** 910 children recruited
 - 4.- **Myanmar:** 233 children recruited
 - 5.- **Central African Republic:** 188 children recruited
 - 6.- **South Sudan:** 162 children recruited
 - 7.- **Yemen:** 106 children recruited
 - 8.- **Afghanistan:** 97 children recruited
 - 9.- **Colombia:** 81 children recruited
 - 10.- **Mali:** 57 children recruited

⁵⁸⁴Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (‘Paris Principles’) adopted February 2007 <<http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>> accessed 17 September 2014.

⁵⁸⁵ See Art. 3.6 UNICEF, *The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups* (February 2007) Article 3.6, available on-line at <<http://www.unhcr.org/refworld/docid/465198442.html>> accessed 20 May 2014.

⁵⁸⁶ International Bureau for Children’s Rights, *A Guide to International Humanitarian and Human Rights Law* (2010) <http://www.ibcr.org/editor/assets/Conflict_Eng.pdf> accessed 30 May 2014, 144.

⁵⁸⁷UNHRC, *Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict Leila Zerrougui* (December 2013) UN Doc.A/HRC/25/46, 7.

⁵⁸⁸ *Ibid.*, 8.

(*No complete data was available for Syria)

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

b) Killing and maiming of children

In 2009, the UN Security Council adopted resolution 1882, which added patterns of killing or maiming of children in contravention of applicable international law as an additional trigger for the listing of parties to conflict in the Secretary-General's Annual Report on Children and Armed Conflict'.⁵⁸⁹

Murder, torture, mutilation and cruel treatment against civilians are prohibited by the Geneva Conventions and customary international law in all situations of armed conflict. In particular, common Article 3 of the Geneva Conventions is the internationally recognised legal source of this protection. Besides this general protection, children also enjoy special protection under the Geneva Conventions, 'including an obligation that all parties to a conflict prioritise the welfare during hostilities of vulnerable groups, including children'.⁵⁹⁰

The right to life and the right to liberty and security of a person come under the scope of international human rights law. States hold a duty to protect these rights and with specific reference to children, the CRC stipulates that every child has an inherent right to life and that State parties must ensure to the maximum extent possible the survival and development of the child.⁵⁹¹

The killing or causing serious harm to civilians including children according to the Rome Statute of the International Criminal Court, can amount to war crimes, crimes against humanity or genocide, depending on the circumstances of the crimes committed.⁵⁹²

Thus, the key human rights norm that provides protection to children against the referred practices with regard to the right to life, was designated by the Committee on the Rights of the Child as one of four guiding principles of the entire CRC, along with the prohibition on torture, inhuman and degrading treatment. In addition, the UN Convention against Torture (CAT), and corresponding regional conventions, include an absolute prohibition on torture and inhuman or degrading treatment, even during wartime.

The International Criminal Tribunals for Rwanda, the former Yugoslavia and Sierra Leone have successfully taken prosecutions of military commanders for murder, arbitrary killing, torture and other forms of ill-treatment against civilians, and have held commanders legally accountable for crimes committed by

⁵⁸⁹ See Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 'The Six Grave Violations against Children During Armed Conflict: The Legal Foundation'* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 May 2014, 14-15.

⁵⁹⁰ Articles 23, 24, 38, 50, 76 and 89 Geneva IV; Article 70 and 77 AP I; Article 4 AP II

⁵⁹¹ Articles 6 and 37 Convention on the Rights of the Child

⁵⁹² Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 'The Six Grave Violations against Children During Armed Conflict: The Legal Foundation'* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 May 2014, 14-15.

their soldiers.⁵⁹³ The definition of the crimes under the Rome Statute of the International Criminal Court (1998) also provide that killing or causing serious bodily harm to civilians may in certain circumstances amount to war crimes, crimes against humanity or even genocide.⁵⁹⁴ Furthermore, the International Criminal Tribunal for the Former Yugoslavia (ICTY) held in the Kunarac, Kovac^ˇ and Vukovic case that when children are the victims of murder, torture or injury it amounts to ‘aggravating circumstances’ of such crimes, warranting lengthier than ordinary prison terms for perpetrators.⁵⁹⁵

Box VI.5. Figures on killing and maiming of children in armed conflicts

• According to the 2014 Annual report of the Secretary-General on children and armed conflict, killing and maiming of children were reported by both UN and the national authorities with more intensity in 2013 in the following conflicts:

- 1.- **Afghanistan:** 545 children killed and 1,149 injured
 - 2.- **Iraq:** 335 children killed and 1,326 injured
 - 3.- **Somalia:** 237 children killed and 494 injured
 - 4.- **Sudan (Darfur):** 91 children killed and 98 injured
 - 5.- **DRC:** 68 children killed and 96 maimed
 - 6.- **South Sudan:** 63 children killed and 83 injured
 - 7.- **Colombia:** 43 children killed and 98 injured
 - 8.- **Yemen:** 36 children killed and 154 maimed
 - 9.- **Philippines:** 20 children killed and 22 injured
 - 10.- **Pakistan:** at least 18 children killed and 76 injured
- (*No complete data was available for Syria)

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

c) *Sexual violence against children*

The Security Council, in its resolution 1882 adopted in 2009, added sexual violence against children as an additional trigger for listing parties to conflict in the Secretary-General’s Annual Report on Children and Armed Conflict. The OSRSG-CAAC, together with partners prepared field guidance for its subsequent implementation.⁵⁹⁶

Rape and other forms of sexual violence during armed conflict are prohibited under the Geneva Conventions and their Additional Protocols. Child-specific provisions of these treaties specifically forbid

⁵⁹³*Prosecutor v. Kordic and Cerkez* (Judgment) ICTY Case No.IT-95-14/2-T (26 February 2001): Accused guilty of ‘murder’ as a crime against humanity, and ‘willful killing’ as grave breach of the Geneva Conventions and war-crime. See the full judgment at <http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf> accessed 20 May 2014. *Prosecutor v. Kupreskic* (Judgement) ICTY Case No.:IT-95-16-T (14 January 2000): Accused found ‘guilty of a crime against humanity (murder)’. See the full judgment at <<http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>> accessed 20 May 2014

⁵⁹⁴ See Articles 6, 7, 8 Rome Statute of the ICC.

⁵⁹⁵*Prosecutor v. Kunarac, Kovac^ˇ and Vukovic^ˇ* (Judgment) ICTY Case No.:IT-96-23-T& IT-96-23/1-T (22 February 2001) <<http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>> accessed 20 May 2014.

⁵⁹⁶Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 ‘The Six Grave Violations against Children During Armed Conflict: The Legal Foundation’* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 May 2014, 16-17.

sexual violence against children.⁵⁹⁷ The obligation of humane treatment under Common Article 3 implicitly prohibits rape or any other sexual violence, be it against adults or children. Article 27 of the IV Geneva Convention explicitly prohibits such acts stating that: 'Women [including girls] shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'.⁵⁹⁸

Rape and other forms of sexual violence against children, both boys and girls, are serious violations of international human rights law. The CRC and its Optional Protocol on Trafficking and Exploitation unequivocally affirm that 'children must enjoy protection from torture, cruel, inhuman or degrading treatment', a protection broadly accepted as encompassing acts of rape and sexual violence.⁵⁹⁹ In the Rome Statute of the ICC, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or 'other forms of sexual violence of comparable gravity' may constitute war crimes and crimes against humanity⁶⁰⁰, or may be a constitutive act of genocide.⁶⁰¹

The *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda, as well as other judicial organs such as the European Court of Human Rights and the Inter-American Commission on Human Rights, have recognized that rape amounts to torture and is covered by an absolute prohibition. Several international treaties and other international instruments prohibit the sexual abuse and exploitation of adults and children. These include the Convention against Torture (1984), the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) and the Vienna Declaration of the World Conference on Human Rights (1993). The CRC and its Optional Protocol on Trafficking and Exploitation stress that children must enjoy protection from torture, cruel, inhuman or degrading treatment, a protection broadly accepted as encompassing acts of rape and sexual violence.⁶⁰² Regional human rights instruments such as the African Charter on the Rights and Welfare of the Child (1990) also include an explicit prohibition of sexual violence against children.⁶⁰³

Sexual violence against civilians has been prosecuted by several international tribunals established to punish the perpetrators of international crimes. At the ICTR the Akayesu (1998) and Musema (2000) cases and at the ICTY the Furundžija (1998) and Kunarac (2000) cases. A number of accused have been convicted for rape, torture and enslavement. This was the first time in history that an international tribunal convicted

⁵⁹⁷ Article 27(2) Geneva IV; Article 75(2), 76(1), 77(1) AP I; Article 4(2)(e) AP II—which specifically adds 'rape' to the list of forms of indecent assault. See also: Customary Rule 93, ICRC, *Customary International Humanitarian Law. Volume I: Rules* (Cambridge University Press 2009), 323. Child-specific provisions: Article 77 AP I; Article 4 (3) AP II.

⁵⁹⁸ Specific provisions in the Geneva Conventions relating to protection against rape and sexual abuse include: Common Article 3; Articles 12, 50 Geneva I; Articles 12, 51 Geneva II; Articles 13, 17, 87, 89 Geneva III; Articles 5, 27, 32, 147 Geneva IV; Articles 75 AP I; Article 4(1) AP II; and Rules 87, 89-92 of ICRC, *Customary International Humanitarian Law. Volume I: Rules* (Cambridge University Press 2009).

⁵⁹⁹ Articles 34, 35, 37 Convention on the Rights of the Child (CRC), Article 3, CRC's Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) adopted by General Assembly resolution A/RES/54/263 of 25 May 2000.

⁶⁰⁰ Articles 7(1)(c), 7(1)(g), 8(2)(b), 8(2)(c), 8(2)(e) of the Rome Statute.

⁶⁰¹ Article 6 of the Rome Statute

⁶⁰² Articles 34, 35, 37 CRC, Article 3, CRC's Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

⁶⁰³ Article 27, African Charter on the Rights and Welfare of the Child (1990) adopted by the Organisation of African Unity (OAU) in 1990.

individuals solely on charges of sexual violence against women and girls. In addition, the SCSL established that 'forced marriage' is also an offence under international criminal law when it found three militia leaders guilty of crimes against humanity for forcing girls into marriage.⁶⁰⁴

The Rome Statute of the ICC provides that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or 'other forms of sexual violence of comparable gravity' may constitute war crimes and crimes against humanity.⁶⁰⁵ The case against Jean Pierre Bemba Gombo, a former leader of a Congolese armed group, is currently (as of July 2014) proceeding at the ICC where he stands trial on war crimes and crimes against humanity charges resulting from allegations of rape and other abuses by troops under his command.⁶⁰⁶

The Security Council, in its resolution 1820 (2008) on 'Women, Peace and Security' recognised for the first time that 'sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security'. It has been further developed by the Security Council through Resolutions 1888 (2009),⁶⁰⁷ 1960 (2010)⁶⁰⁸ and 2106 (2013).⁶⁰⁹

Box VI.6. Figures on sexual violence against children in armed conflicts

• According to the 2014 Annual report of the UNSG on children and armed conflict, most grave cases of sexual violence against both girls and boys were verified in 2013 in:

- 1.- **DRC:** 209 cases of sexual violence
- 2.- **Somalia:** 154 cases of sexual violence
- 3.- **Sudan (Darfur):** 40 cases of sexual violence
- 4.- **Cote d'Ivoire:** 23 cases of sexual violence
- 5.- **Colombia:** at least 22 cases of sexual violence
- 6.- **Central African Republic:** 20 cases of sexual violence
- 7.- **Afghanistan:** 12 cases of sexual violence
- 8.- **South Sudan:** 7 cases of sexual violence
- 9.- **Occupied Palestinian Territories:** 5 cases of sexual violence
- 10.- **Sudan (South Kordofan, Blue Nile State and Abyei):** at least 3 cases of sexual violence

(*No complete data was available for Syria)

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

⁶⁰⁴*Prosecutor vs. Alex Tamba Brima, Brazzy Camara and Borbor Kanu* (Judgement) SCSL Case No.:SCSL-04-16-T (20 June 2007) <<http://www.rscsl.org/Documents/Decisions/AFRC/624/SCSL-04-16-T-624.pdf>> accessed 10 June 2014

⁶⁰⁵ Articles 7(1)(c), 7(1)(g), 8(2)(b), 8(2)(c), 8(2)(e) Rome Statute.

⁶⁰⁶ Confirmation of charges in *Prosecutor v. Jean- Pierre Bemba Gombo*, International Criminal Court No.: ICC-01/05-01/08 (12-15 January 2009) <<http://www.icc-cpi.int/iccdocs/doc/doc699541.pdf>> accessed 10 June 2014

⁶⁰⁷Security Council Resolution 1888 (2009) is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1888%282009%29> accessed 20 May 2014

⁶⁰⁸Security Council Resolution 1960 (2010) is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1960%282010%29> accessed 20 May 2014

⁶⁰⁹Security Council Resolution 2160 (2013) is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2106%282013%29> accessed 20 May 2014

d) *Unlawful or arbitrary detention of children*

Unlawful or arbitrary detention of children is prohibited under international humanitarian and human rights law. The arrest, detention or imprisonment of a child shall be in conformity with national law, in line with international standards, and only be used as a measure of last resort and for the shortest appropriate period of time.⁶¹⁰ Children as well as all other detainees must be treated humanely, including an absolute ban on torture and cruel, inhuman and degrading treatment. In addition, special protection must be afforded to all children by virtue of their age.⁶¹¹ In some cases, children are placed in administrative detention, which can be defined as the deprivation of liberty of a person initiated or ordered by the executive branch of Government, not the judiciary, outside the criminal law context without criminal charges. The detention of children for alleged association with armed groups must not breach any existing humanitarian law regulating detention in times of armed conflict and must also be in conformity with national laws, in line with international standards on arrest, detention and imprisonment of children, including safeguards on judicial review.⁶¹² Alternatives to punitive measures are recommended, in accordance with the CRC, where it specifies that States should promote rehabilitation back into society.

Administrative detention is 'lawful' in exceptional circumstances, only when provided for and carried out in accordance with national law and accompanied by certain procedural safeguards for children, including regular judicial review.⁶¹³ In other cases, children are being prosecuted for unlawful acts committed while associated with armed groups. In such a situation, legal safeguards and fair trial principles must be upheld. The CRC specifies, however, that States should seek alternative diversionary measures away from the judicial system, which are in the best interest of children and promote their rehabilitation into society.⁶¹⁴

Box VI.7. Figures on unlawful or arbitrary arrest of children in armed conflict

- According to the 2014 Annual report of the UNSG on children and armed conflict, most grave cases of unlawful or arbitrary detention of children took place in 2013 in:
 - 1.- **Somalia:** 1,009 children arrested
 - 2.- **Israel-Palestine:** 1,004 children arrested
 - 3.- **Iraq:** 391 children detained
 - 4.- **Afghanistan:** 196 boys detained
 - 5.- **DRC:** 136 children arrested
 - 6.- **Myanmar:** 98 children arrested
 - 7.- **Mali:** 24 children detained
 - 8.- **Yemen:** 9 boys detained
 (*No complete data was available for Syria)

⁶¹⁰ Art. 37 (b) CRC

⁶¹¹ Art. 37 (a) (c) CRC

⁶¹² Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 'The Six Grave Violations against Children During Armed Conflict: The Legal Foundation'* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 May 2014, 13.

⁶¹³ *Ibid.*, 13.

⁶¹⁴ Art. 40 (3) (b) CRC

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

e) *Attacks against schools and hospitals*

In July 2011, Security Council Resolution 1998 added attacks and threats of attacks on schools, hospitals and protected persons in relation to schools and hospitals to the existing triggers for listing in the annexes of the Secretary-General's Annual Report on Children and Armed Conflict.⁶¹⁵

The targeting of civilian objects is prohibited under the IV Geneva Convention, emphasizing the importance of schools and hospitals to the civilian population and especially for children.⁶¹⁶

A child's right to education and to health is also enshrined in the CRC and the application of the conventions should cover both times of war and times of peace.⁶¹⁷ The deliberate targeting of schools or hospitals can also be interpreted as being in violation of human rights law, from sources such as the UDHR and the ICESCR where the right of all persons to enjoy the highest attainable standard of physical and mental health is enshrined along with right to education for every child.⁶¹⁸

International criminal law also provides specific direction in the context of attacks on schools or hospitals during armed conflict. Regardless of whether the incident happens in an international armed conflict or a non-international armed conflict, the deliberate attack of a school or a hospital is considered to be a war crime and those responsible can be held individually accountable under the Rome Statute which provides specific jurisdiction for these crimes.⁶¹⁹

The various parties to conflict must not only abstain from attacking the civilian schools and hospitals, as stipulated in the international customary and treaty law, there is also an obligation on them to protect civilian objects within their own territory or territory that they control. This is perhaps reflective of the previously dominant interstate wars, while internal armed conflict does not have such defined territories. This principle remains applicable, in that no school or hospital should be attacked, regardless of territorial control, with the one proviso of military necessity, if they are being used for military purposes, which should still entail the application of proportionality, in terms of potential civilian casualties, children or adults. The importance of respecting international humanitarian law in protecting civilians and civilian objects has been reinforced by the ICJ in the Nuclear Weapons Case.⁶²⁰

The protection of medical personnel and hospitals in the provision of medical assistance to civilians in times of conflict is to be found in the very first international humanitarian law of the 1864, the Geneva

⁶¹⁵Office of the Special Representative of the Secretary-General for children and armed conflict, *Working paper No. 1 'The Six Grave Violations against Children During Armed Conflict: The Legal Foundation'* October 2009 (Updated November 2013) <http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf> accessed 30 May 2014, 18-19.

⁶¹⁶Articles 11, 18 Geneva Convention IV and Article 48 AP I.

⁶¹⁷Articles 24 and 28 CRC.

⁶¹⁸Article 26 UDHR; Article 12 (- health) and Article 13 (- education) ICESCR (1966).

⁶¹⁹Articles 8(2)(b), 8(2)(e) of the Rome Statute.

⁶²⁰*Nuclear Weapons Case* (Advisory Opinion) International Court of Justice (1996) <<http://www.icj-cij.org/docket/files/95/7495.pdf>> accessed 20 May 2014, para. 78.

Convention and the Hague Conventions of 1899 and 1907. Customary International law stipulates this protection of medical facilities and medical personnel in times of conflict. Many countries have transferred this international legal understanding into their national laws, prohibiting deliberate attacks on school and hospitals and including it in their national military manuals.⁶²¹ The cases of Kupreskic (2000) and Kordi and Cerkez (2001) by the ICTY have provided strong jurisprudence in respect of the protection of schools and hospitals from attacks.⁶²²

Following the Security Councils resolution 1998 of 2011, the OSRSG-CAAC, along with partners, came together to provide a set of guidelines to assist with the implementation of the resolution on the ground. The guidelines' (produced in 2012 as the Lucens Guidelines on the military use of schools) objectives are to provide a better understanding of the international legal framework of protection for children in armed conflict and what it means practically in the field, for example, a toolkit for use in providing protection for a school or schools in an area experiencing conflict, as well as guidelines on advocacy and dialogue promotions amongst parties in a conflict situation, that focuses on ensuring child and civilian protection.⁶²³ These guidelines and the Security Council Resolution give direction on ensuring that schools are protected, refraining from association with military use or direct military use, so that children can continue to attend their education and are not at risk of attack, or in high conflict activity, that the schools may operate as a place of safety for children and families. This is a far cry from the use of schools amongst other buildings in the massacre of men and boys in Srebrenica in Bosnia and Herzegovina in 1995.⁶²⁴

Box VI.8. Figures on attacks against schools and hospitals in armed conflicts

- According to the 2014 Annual report of the UNSG on children and armed conflict serious attacks against schools and hospitals were committed in 2013 causing the following incidents:
 - In **Nigeria** attacks on schools by Boko Haram resulted in the killing of at least 100 children and 70 teachers.
 - In **Syria** 3,000 schools were damaged and 63 hospitals targeted by armed groups
 - In **Mali** 1,418 schools were closed due to conflict
 - In **DRC** there were 95 attacks on schools and 42 on hospitals
 - In **Pakistan** there were 78 attacks on schools
 - In **Afghanistan** there were 73 incidents involving attacks on schools
 - In **Israel-Palestine** there were 58 education-related incidents

⁶²¹ As illustrative examples: Germany Military Manual and United States Naval Handbook.

⁶²² *Prosecutor v. Kupreskic* (Judgement) ICTY Case No.: IT-95-16-T (14 January 2000) <<http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>> accessed 20 May 2014; and *Prosecutor v. Blaskic* (Judgement) ICTY Case No. IT-95-14-T (3 March 2000) <<http://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>> accessed 20 May 2014.

⁶²³ See the Draft Lucens Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict at <http://www.protectingeducation.org/sites/default/files/documents/draft_lucens_guidelines.pdf> accessed 10 June 2014.

⁶²⁴ Mass executions took place in the area of Srebrenica of Bosnian men including older boys, some taking place in school buildings where they were detained at Grbavci School near Orahovac, the school at Petkovci, and the school at Pilica between the 14th and 16th of July 2014. Security Council Resolution 819 (1993) had demanded that all parties to the conflict treat Srebrenica and its surroundings as a 'safe area'. Some of those killed in the subsequent massacre had been forced out of a UN protected compound in Potocari, with the negotiation skills of the Drina Corps of the Army of Republika Srpska outwitting the UN Dutch-lead troops on the ground into releasing them. *Prosecutor v. Radislav Krstic* (Judgement) ICTY Case no. IT-98-33 (2 August 2001) <<http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>> accessed 20 May 2014.

- In **Central African Republic** 36 schools and 5 hospitals were attacked
- In **Iraq** there were 27 attacks on schools and hospitals
- In **South Sudan** there were 26 incidents of military use of schools and hospitals

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

f) *Abduction of children*

The abduction of children is a serious violation of their rights and is commonly associated with other violations such as recruitment into armed groups; sexual exploitation or abuse; disappearances, or indoctrination for hostage taking purposes. In legal terms, two separate violations may be occurring simultaneously, so for example, a case of recruitment by force, is considered in terms of abduction and recruitment.⁶²⁵

Common Article 3 of the Geneva Conventions is considered to cover these overlapping violations in the general obligation for humane treatment of all civilians, including children in conflict setting, since there is no explicit article in IHL stating the prohibition of abduction of children during conflict.⁶²⁶ A specific convention against hostage taking exists, called the International Convention against the taking of hostages, which if read in conjunction with common Article 3 and other aspect of the Geneva Convention offers legal protection against hostage taking of children or adults.⁶²⁷

Other related international instruments that address the abduction of children include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime.⁶²⁸ Situations of forced displacement or deportation of civilian population, expressly prohibited by the Geneva Conventions, may include instances of abduction. This can be considered to be a crime of war or a crime against humanity, as covered by the ICC, where unlawful confinement may be considered to amount to a war crime.⁶²⁹

The abduction of a child is considered to violate a number of human rights treaties and other international instruments such as the CRC, the ICCPR and the UDHR, where such abduction would be a violation of the rights of child and family.⁶³⁰ This protection against the abduction of children is also enshrined in regional

⁶²⁵ UNICEF, *Machel Study 10-year review, 'Children in armed conflict in a changing world'* (UNICEF April 2009) <http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf> accessed 30 May 2014.

⁶²⁶ Common Article 3, Geneva Conventions (1949); Customary Rule 99 of ICRC, 332

⁶²⁷ Articles 34, 147 IV Geneva Convention; Article 75(2) AP I; Article 4(2) AP II; Customary Rule 96 of ICRC, 334; Article 1 International Convention Against Taking of Hostages (1979).

⁶²⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) UNTS vol. 2237, 319 <<https://treaties.un.org/doc/Publication/UNTS/Volume%202237/v2237.pdf>> accessed 17 September 2014.

⁶²⁹ Article 8(2)(a) of the Rome Statute

⁶³⁰ Child: Articles 8, 35, 37 CRC; Articles 9, 23 ICCPR; Article 9 UDHR. Family: Articles 3, 5; Article 16, UDHR

human rights instruments at a European, American and African level and is implemented at a national level with national legislation prohibiting such acts and ensuring child protection policies are in place.⁶³¹

As stated above, other violations of rights occur for some children following abduction, such as child trafficking for sexual exploitation, child rape, enslavement, forced labour, killings and recruitment in to armed services. Particularly serious violations are committed by the Lords Resistance Army (LRA) in Central Africa where children were forcibly recruited, leading to grave violations of rape and killing, subsequent to their abductions.⁶³²

The trafficking of children and women was explicitly prohibited in the UN Convention against Transnational Organized Crime and its Protocol⁶³³ In addition, the Rome Statute includes under the crimes within the jurisdiction of the ICC those acts that amount to the abduction, enslaving or transporting/displacing of children including acts of hostage taking and enforced disappearance.⁶³⁴ This has been illustrated in the ICTY cases of Kupreskic (2000) and Kunarac (2001) where enslavement was denounced as a crime against humanity according to customary law and enforced disappearances, an inhumane act, amounting to crime against humanity.⁶³⁵

Box VI.9. Figures on abduction of children in armed conflicts

- According to the 2014 Annual report of the Secretary-General on children and armed conflict, most grave cases of abduction were reported in 2013 in:

- 1.- **South Sudan:** 250 children abducted
- 2.- **DRC:** 147 children abducted
- 3.- **LRA-affected region:** 65 children abducted
- 4.- **Syria:** at least 50 children abducted
- 5.- **Afghanistan:** 30 children abducted
- 6.- **Sudan (Darfur):** 15 children abducted

⁶³¹ Articles 3, 5 European Convention on Human Rights (1950) formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*, adopted in 1950 by the Council of Europe; Art. 6-7 American Convention on Human Rights, *Pact of San Jose, Costa Rica* adopted in 1969 by the Organisation of the American States (OAS); art. 6 African Charter on Human and Peoples' Rights, also known as the *Banjul Charter*, adopted in 1981 by the Organisation of African Unity (now the African Union); art. 23 African Charter on the Rights and Welfare of the Child (1990).

⁶³² The OSRSG-CAAC has expressly stated that 'since the early 1990s, the LRA leadership adopted a policy of forced recruitment, particularly of children. Abducted girls and boys are beaten into submission, are sometimes required to commit atrocities against others, and serve as combatants as well as cooks, porters, and spies'. See Office of the Special Representative of the Secretary-General on Children and Armed Conflict at <<http://childrenandarmedconflict.un.org/the-lords-resistance-army-and-children/>> accessed 30 June 2014.

⁶³³ Articles 2-9 UN Convention Against Transnational Organized Crime (2000) adopted by the General Assembly resolution 55/25 of 15 November 2000; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2003) adopted by the General Assembly resolution A/RES/55/25 of 15 November 2000.

⁶³⁴ Articles 7(1)(c)-(e), 7(1)(i), 8(2)(a), 8(2)(c) of the Rome Statute.

⁶³⁵ *Prosecutor v. Kupreskic et. Al* (Judgement) ICTY Case No.:IT-95-16-T (14 January 2000) <<http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>> accessed 20 May 2014; *Prosecutor v. Kunarac, Kovac and Vukovic* (Judgement) ICTY Case No.:IT-96-23-T & IT-96-23/1-T (22 February 2001) <<http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>> accessed 20 May 2014.

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878–S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

g) Denial of humanitarian access

‘Blocking the free passage or timely delivery of humanitarian assistance to persons in need, including children’ is considered as a denial of humanitarian access.⁶³⁶ Reasons for denial are usually based on security or political reasons. In a situation of armed conflict, States have an obligation to allow access for humanitarian assistance. This also applies in times of natural disasters or other emergencies resulting in humanitarian assistance being required.

In terms of conflict situations, the IV Geneva Convention and its Additional Protocols have specific provisions that prohibit the denial of humanitarian access to children and also prohibit attacks on humanitarian workers assisting children.⁶³⁷ This duty to allow and to facilitate assistance to any civilian group that is in need in a conflict area, under the control of a conflict party, is required under customary international law.⁶³⁸ There are specific provisions within the IV Geneva Convention and its additional protocol that define that refugees and internally displaced persons, including children, can be accessed by humanitarian personnel.⁶³⁹ This determination of facilitation of humanitarian assistance and appropriate protection for children in need, including children seeking refugee status, is also included in the CRC, which is also applicable time of conflict.⁶⁴⁰

Children should be provided with medical care and assistance in relief situations where they are protected as requiring special attention and a denial of this assistance can be interpreted as in violation of basic human rights to be free from hunger, a fundamental right. The importance of the delivery of humanitarian assistance has been frequently reinforced by the Human Rights Council of the UN, the General Assembly and the Security Council, all of which have condemned such impediments. The Security Council has issued a number of Resolutions demanding that all parties to conflicts provide access to children as requiring special attention and all refugees and displaced persons, to ensure that their basic needs are met.⁶⁴¹

IHL requires that humanitarian personnel have adequate access to the civilians in need, particularly the most vulnerable including children. Special recognition is given to medical supplies and facilities and the transporting of medical assistance, under customary international law. It is only in cases where military necessity is imperative, that an exemption can be applicable, with proportionality applied.

A specific Convention to reinforce the protection requirements of the UN humanitarian and associated personnel was enacted in 1994, the Convention on the Safety of United Nations and Associated

⁶³⁶ UNICEF, Machel Study 10-year review, *Children in armed conflict in a changing world* (UNICEF April 2009) <http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf> accessed 30 May 2014, 24.

⁶³⁷ Articles 23, 142 Geneva IV; Articles 54, 70, 77 AP I; Articles 14, 18 AP II.

⁶³⁸ Articles 23, 142 Geneva IV; Articles 54, 70, 77 AP I; Articles 14, 18 AP II.

⁶³⁹ See for example: Article 49 Geneva IV; Article 78 AP I; Article 17 AP II.

⁶⁴⁰ Article 22(1) CRC; also see: Articles 6, 24 and 27 CRC.

⁶⁴¹ See UNSC Resolutions 688 (1991), 819 (1993), 999 (1995), 1010 (1995), 1019 (1995), 1124 (1997).

Personnel.⁶⁴² The condemnation of attacks on aid workers has led the UN Security Council to issue specific resolutions against such attacks on those providing vital humanitarian assistance.⁶⁴³

The Rome Statute defines intentional attacks against a peacekeeping or humanitarian assistance mission acting in accordance with the UN Charter as constitutive of a war crime.⁶⁴⁴ Furthermore, under the Statute's definitions, using starvation as a method of warfare or willfully impeding relief supplies may amount to a war crime or even genocide.⁶⁴⁵ The first conviction for targetting humanitarian assistance personnel through deliberate attacks was issued in 2009, declaring it a war crime.⁶⁴⁶ The ICTY declared the denial of vital assistance including food to those in detention centres a war crime and crime against humanity.⁶⁴⁷

Box VI.10. Figures on incidents of denial of humanitarian access in armed conflicts

- According to the 2014 Annual report of the Secretary-General on children and armed conflict, most grave incidents of denial of humanitarian access were reported in 2013 in the following conflicts:

- In **Syria** 242,000 people were estimated to be living in besieged areas
- In **DRC** there were 109 incidents of denial of humanitarian access
- In **Israel-Palestine** 80% of the Gazan families are dependant on humanitarian assistance
- In **Sudan** no humanitarian access has been allowed in the non-Government controlled areas of Blue Nile and South Kordofan
- In **Myanmar** humanitarian access was only granted in June, September and November
- In **Central African Republic** and **South Sudan** there were 24 incidents of denial of humanitarian access

Source: UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict* (2014), A/68/878-S/2014/339, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339> accessed 10 June 2014

h) *Forced displacement*

According to official recorded data of the 2012 UNHCR Yearbook figures 48% of the refugee population in 2012 were women and girls, a trend that has been constant over the last 10 years and an average of

⁶⁴² See Articles 5 and 7 of the UN Convention on the Safety of United Nations and Associated Personnel (1994).

⁶⁴³ In UNSC Resolution 897 (1994) the Security Council condemned 'violence and armed attacks against persons engaged in humanitarian... efforts' in Somalia. In UNSC Resolution 913 (1994) the Council condemned all attacks against humanitarian relief workers in Gorade, former Yugoslavia.

⁶⁴⁴ Article 8(2)(b) and (e) of the Rome Statute.

⁶⁴⁵ Article 6(c), 8(2)(b) and (e) of the Rome Statute.

⁶⁴⁶ *Prosecutor vs. Sesay, Kallon and Gbao* (RUF Case) SCSL Case No. SCSL-04-15-T (February 2009) <<http://www.rscsl.org/Documents/Decisions/RUF/1234/SCSL-04-15-T-1234.pdf>> accessed 10 June 2014.

⁶⁴⁷ *Prosecutor v. Nikolic* (Judgement) ICTY Case No. IT-94-2-S (18 December 2003) <http://www.icty.org/x/cases/dragan_nikolic/tjug/en/nik-sj031218e.pdf> accessed 10 June 2014, *Prosecutor v. Krnojelac* (Judgement) ICTY Case No.: IT-97-25-T (15 March 2002) <<http://www.icty.org/x/cases/krnojelac/tjug/en/krn-tj020315e.pdf>> accessed 10 June 2014 and *Prosecutor v. Delalic et al.* (Judgement) ICTY Case No.: IT-96-21-T (16 November 1998) <http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf> accessed 10 June 2014.

49% is indicated for the number of refugee population under 18 years with 13% under the age of 5 years.⁶⁴⁸

The legal framework of protection for children in circumstances of forced displacement, (an overview of which is contained in the IDP and refugee sub-section of this report),⁶⁴⁹ is provided through a combination of International Humanitarian Law, International Human Rights Law, Refugee Law, evolving IDP law and international criminal law and aim to) protect children from any unnecessary displacement in times of conflict and displacement should be restricted to circumstances that reflect their safety and security due to military offences or in times of natural disasters, b) protect them from any human rights violations that might cause displacement, such as persecution based on discrimination of race, ethnicity, religion, family membership of social or political groups, and c) offer them protection from further human rights violations if displaced, whether within their country or across borders to seek protection from another State. The legal framework of protection for displaced persons, including children is provided in detail in the section on IDPs and refugees.

Additional protection for children is provided within IHL where children are afforded special protection and should be afforded the care that their specific needs might require in times of conflict and be protected from vulnerability towards certain weapons. If an occupying power is in place, they are obliged to facilitate the identification of children and registration of their parentage. There are specific provision for children in Additional Protocol II of Geneva Conventions, which include family reunification and temporary removal from conflict zones.⁶⁵⁰

A set of Guiding Principles on unaccompanied and separated children was produced by the ICRC in 2004 as an inter-agency working document of best principles to apply when children are displaced and/or separated from family.⁶⁵¹ The international instruments listed as applicable in the protection of children in these circumstances include the Hague Conference on Private International Law, including the Convention on the Protection of Minors, 1961, the Convention on the Civil Aspects of International Child Abduction, 1980, the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993 and its Recommendations concerning the application to Refugee Children and other Internationally Displaced Children, 1994.⁶⁵²

As it will be elaborated in the section on IDPs and refugees, intersecting vulnerabilities and discriminatory factors characterise the experiences of refugees and internally displaced persons in conflict and high-risk areas.⁶⁵³ In conflict situations, the statuses of IDPs or refugees merges with other potentially vulnerability factors, such as gender, age, disability and access to social and economic resources, the intersection of potential human rights violations becoming greater. Children in refugee and internally displaced

⁶⁴⁸ UNHCR, *UNHCR Statistical Yearbook 2012 12th* (2013) <www.unhcr.org/52a7213b9.html> accessed 24 July 2014, 8.

⁶⁴⁹ See sub-section C.

⁶⁵⁰ AP II includes special provisions for children for protection from specific acts of ill-treatment.

⁶⁵¹ International Committee of the Red Cross, *Inter-Agency Guiding Principles for Unaccompanied and Separated Children* (2004) <www.icrc.org/eng/resources/documents/publication/p1101.htm> accessed 27 July 2014

⁶⁵² *Ibid.* 69

⁶⁵³ Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 27.

population settings are at heightened risk of suffering serious violations of their rights. This has brought the United Nations High Commissioner for Refugees' Executive Committee to adopt a conclusion on children at risk and to put forward guidelines on how to determine the best interest of the child in refugee and internally displaced population settings. The Rights and Guarantees of Internally Displaced Children were submitted by the Human Rights Council, which was noted by the United Nations General Assembly during its 2009 session.⁶⁵⁴

4. Perpetrators

Persistent violators of the rights of children in armed conflict are parties to conflict who have been named and listed by the Secretary-General for five years or more in his annual report on children and armed conflict as perpetrators of any of the six grave violations against children. Persistent perpetrators are composed of both State security forces and non-state armed forces. The SRS-CAAC advocates for the adoption of sanctions by the Security Council on military and political leaders of these groups in order to end impunity and to prevent the commission of these violations.⁶⁵⁵

Currently, 46 non-State actors in 14 country situations have been listed as parties that recruit or use children, or perpetrate other grave violations against children. Out of these 46 armed groups 28 have been listed for more than five consecutive years and are considered to be persistent perpetrators (See Table VI.1).⁶⁵⁶ Currently two persons in Côte d'Ivoire and 14 individuals in the Democratic Republic of the Congo have been sanctioned for grave violations committed against children. The listing exercise aims ultimately at holding perpetrators accountable and encourages them to comply with child protection standards. In order to be de-listed, parties must prepare and implement an action plan with concrete and time-bound activities to halt the violations.

Table VI.1. List of persistent perpetrators of serious violations committed against children⁶⁵⁷

Situations on the agenda of the Security Council		
COUNTRIES	STATE ACTORS	NON-STATE ACTORS
Parties in Afghanistan		•Taliban forces, including the Tora Bora Front, the JamatSunat al-DawaSalafia and the Latif Mansur Network (a, b,d)

⁶⁵⁴ See UNGA, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, A/64/254 (6 August 2009), Annex I <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/446/07/PDF/N0944607.pdf?OpenElement>> accessed 10 June 2014. See also Office of the Special Representative of the SG on Children and Armed Conflict, *Working Paper No. 2 'The Rights and Guarantees of Internally Displaced Children in Armed Conflict'* (September 2010) <<http://childrenandarmedconflict.un.org/publications/WorkingPaper-2-Rights-GuaranteesIDP-Children.pdf>> accessed 10 June 2014.

⁶⁵⁵ Office of the Special Representative of the Secretary-General on Children and Armed Conflict at <<http://childrenandarmedconflict.un.org/our-work/persistent-violators-and-sanctions/>> accessed 30 June 2014.

⁶⁵⁶ UNHRC, *Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict*, Leila Zerrougui (December 2013) A/HRC/25/46, para. 32.

⁶⁵⁷ Office of the Special Representative of the Secretary-General on Children and Armed Conflict <<http://childrenandarmedconflict.un.org/our-work/persistent-violators-and-sanctions/>> accessed 30 June 2014.

Parties in the Central African Republic		<ul style="list-style-type: none"> •Front démocratique du peuplecentrafricain (FDPC) (a) •Union des forces démocratiques pour le rassemblement (UFDR), as part of the Séléka coalition. <i>This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005).</i>(a)
Parties in Chad	<ul style="list-style-type: none"> •National Army of Chad. <i>This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005).</i>(a) 	
Parties in the Democratic Republic of the Congo	<ul style="list-style-type: none"> •Armed Forces of the Democratic Republic of the Congo (FARDC). <i>This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005).</i>(a, c) 	<ul style="list-style-type: none"> •Forces démocratiques de libération du Rwanda (FDLR) (a, c, d)
Parties in Myanmar		<ul style="list-style-type: none"> •Democratic Karen Benevolent Army (DKBA) (a) •Kachin Independence Army (KIA) (a) •Karen National Liberation Army (KNLA). <i>This party has sought to conclude an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005), but the United Nations has been prevented from doing so by the Government of Myanmar</i> (a) •Karen National Liberation Army Peace Council (a) •Karenni Army (KA). <i>This party has sought to conclude an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005), but the United Nations has been prevented from doing so by the Government of Myanmar</i> (a) •Shan State Army South (SSA-S) (a) •Tatmadaw Kyi, including integrated border guard forces.a This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005). (a) •United Wa State Army (UWSA) (a)

Parties in Somalia	<ul style="list-style-type: none"> •Somali National Armed Forces. This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005) (a,b) 	<ul style="list-style-type: none"> •Al-Shabaaba (a, b)
Parties in the Sudan		<ul style="list-style-type: none"> •Justice and Equality Movement (JEM) (a) •Pro-Government militias (a) •Sudan Liberation Army/Abdul Wahid (a) •Sudan Liberation Army/MinniMinawi (a) •Sudan Liberation Army/Mother Wing (Abu Gasim) (a)
Parties in South Sudan		<ul style="list-style-type: none"> •Sudan People's Liberation Army (SPLA). <i>This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005) (a, b)</i>
Situations not on the agenda of the Security Council or other situations		
Parties in Colombia		<ul style="list-style-type: none"> •Ejército de Liberación Nacional (ELN) (a) •Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo (FARC-EP) (a)
Parties in the Philippines		<ul style="list-style-type: none"> •Abu Sayyaf Group (ASG) (a) •Moro Islamic Liberation Front (MILF). <i>This party has concluded an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005) (a)</i> •New People's Army (NPA) (a)

According to the OSRSG-CAAC, the parties included in this table have been in the annexes for at least five years and are therefore considered persistent perpetrators: (a) Parties that recruit and use children; (b) Parties that kill and maim children; (c) Parties that commit rape and other forms of sexual violence against children; (d) Parties that engage in attacks on schools and/or hospitals.

B. Women

The discussion on the doctrine on the new wars and new forms of violence, on the newest wars, and on databases and frameworks on working typologies of armed conflict formed the content of section II of this report in order to demonstrate the dramatic changes brought about in the structure of war. Despite these changes in the nature of contemporary conflicts, the position of women, and more precisely, the position of women among the victims most affected by warfare has remained a constant.

Women suffer human rights violations before, during and after an armed conflict. Women are not only to be portrayed as victims of human rights violation, as they can play vital roles in working proactively to secure peaceduring conflict. In the pre-conflict phase, the latent and structural causes of conflicts already exist: they include lack of participation in political life, suppression, discrimination and exclusion of all kinds, violation of human rights, little access to land and resources, and the absence of security. During an armed conflictthe threat of violence is extremely high: fear and insecurity, the destruction of livelihoods, expulsion, loss of family, sexual violence and death are just some examples of the enormous problems to be confronted. Owing to pre-existing discriminatory legal frameworks and practices, women and girls are more vulnerable to conflict-related violations.

The purpose ofthe present section is to survey the conflict-related violations to which women are more vulnerable and to identify the aggravated impacts that they suffer as a result of such violations.

1. Overview

Women and children form the majority of the civilian population, often displaced or turned into refugees by armed conflict.⁶⁵⁸ Statistics are revealing and frightening at the same time. According to estimates, women represent approximately 80% of casualties of wartime and, globally, 80% of refugees and displaced persons in their own country are women and children.⁶⁵⁹ Women's experiences of war are shaped by separation, the loss of family members and livelihood, and an increased risk of sexual violence, wounding, deprivation and death.⁶⁶⁰In situations of armed conflict, whether international or non-international, women not only experience that same devastating effects of armed conflict on civilian populations, but they are also specificallyselected victims that suffer serious violations of human rights and international humanitarian law, such as rape, sexual slavery, forced pregnancy, enforced prostitution.⁶⁶¹ Although sexual violence affects both women and men, women are decidedly more targeted, and are also exposed to additional risks, such as forced pregnancy. Moreover, what has become a disturbing feature of these 'new wars' is that these acts do not occur sporadically, but more often they

⁶⁵⁸ Human Security Centre, *Human Security Report 2005: War and Peace in the 21st Century* (New York: Oxford University Press, 2005) <<http://www.hsrgroup.org/docs/Publications/HSR2005/2005HumanSecurityReport-Part3-AssaultOnVulnerable.pdf>> accessed 30 June 2014, 102.

⁶⁵⁹ UN Expert of the Secretary-General, *Report of the expert of the Secretary-General Ms. Graça Machel submitted pursuant to General Assembly resolution 48/157 on the 'Impact of Armed Conflict on Children'* (1996), A/51/306, para 26.

⁶⁶⁰ See Charlotte Lindsey, *Women facing war. ICRC Study on the impact of armed conflict on women* (ICRC, October 2001) <http://www.icrc.org/eng/assets/files/other/icrc_002_0798_women_facing_war.pdf> accessed 30 May 2014.

⁶⁶¹ Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011) 3.

are true systematic attacks, designed as military strategies or tactics aimed at destroying, terrorising, humiliating and/or displacing entire communities.⁶⁶²

If women and men face the same phenomena during armed conflict, their experience is determined by different aspects of their gender roles. Because women are differently embodied, have different roles in their families and communities, they are also targeted differently and suffer from the consequences of their injuries in the functioning of their status. They also have different livelihoods and possibilities to access the necessary resources in order to ensure their survival and recovery.

The relationship between conflict and the prior discrimination or marginalisation of women leads to an increased vulnerability and particular threats. A number of factors linked with their status in society, influences women's ability to survive and recover from armed conflict. Furthermore, the UN General Assembly, in its Declaration on Elimination of Violence Against Women expressed its concern that 'some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflicts, are especially vulnerable to violence'.⁶⁶³

Armed conflict is therefore not gender-neutral; on the contrary, there are gender specific issues and consequences related to armed conflict.⁶⁶⁴ A study of 14 ethnic conflicts and 4 non-ethnic conflicts that lasted at least 10 years, found that over the span of the entire conflict period, interstate and civil wars (and, in particular, ethnic conflicts and conflicts in States in situations of fragility) affect women more negatively than men.⁶⁶⁵ This research showed that women are more affected by both the direct and indirect consequences of armed conflict than their male counterparts; it is the indirect effects of conflict that are, in fact, the most deadly.⁶⁶⁶ The different consequences of a conflict, such as limited access to food and water, affect women more heavily than men.⁶⁶⁷ After the conflict, women still suffer dramatic consequences arising from their social status and, most often, because they have been victims of sexual violence. During and after conflicts, their role in the family and in society changes dramatically, becoming the sole bread winner of the family, or being stereotyped or rejected by their social environment. In some societies, being a rape victim has extreme consequences, which include stigma and loss of marital status. Thus, the way women experience armed conflict is deeply 'gendered' as they have roles and responsibilities which are socially and culturally determined.⁶⁶⁸ Crises increase the feminisation of

⁶⁶² Camilla Wazinsk, *Protection of civilians under international humanitarian law: trends and challenges* (Norwegian Peacebuilding Resource Centre (NOREF) Report 2011), 23.

⁶⁶³ Jan Bauer and Anisa Hélie, *Documenting Women's Rights Violations by Non-State Actors* (International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws, 2006) <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/non-state-actors.pdf>> accessed 30 June 2014, 19.

⁶⁶⁴ Dyan Mazurana, 'The gendered impact of conflict and peace keeping in Africa' in ACCORD, *Conflict Trends*, Issue 2 (ACCORD 2013) <[https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_\(4-Jul-13\)-CDR-832.pdf](https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_(4-Jul-13)-CDR-832.pdf)>, accessed 30 June 2014, 5.

⁶⁶⁵ Ibid. 5.

⁶⁶⁶ Ibid. 5.

⁶⁶⁷ See sub-section d) on the denial of humanitarian access.

⁶⁶⁸ See Charlotte Lindsey, *Women facing war. ICRC Study on the impact of armed conflict on women* (ICRC, October 2001) <http://www.icrc.org/eng/assets/files/other/icrc_002_0798_women_facing_war.pdf> accessed 30 May 2014.

poverty, affecting women as the primary victims. Conflicts and crisis challenge and change the roles of men and women. The understanding of vulnerability of women in such settings has to take into account the social structures in which women find themselves in order to find and develop appropriate answers. In the same way, there is the need to avoid the portrayal of women as only victims, and to acknowledge that sometimes they take part in hostilities as combatants, or their role as important actors in the peace building processes.⁶⁶⁹

In all violent crisis situations, whether international or non-international armed conflict, public emergencies, foreign occupation or other situations of concern such as political strife, women's rights are guaranteed by an international law framework that consists of complementary protections under International Human Rights Law, International Humanitarian Law, Refugee Law and International Criminal Law. Considering human rights law the *lex generalis* armed conflict would trigger the applicability of International Humanitarian Law as *lex specialis*. However, as it has been noted in other sections of this report, the changing nature of contemporary conflict question the adequacy and efficiency of this body of law in view of the new scenarios and patterns of conflicts. These limitations call for the need of the interaction of IHL with International Human Rights Law in particular because of its more inclusive scope.

In situations of armed conflict as defined under IHL, women enjoy the general protection afforded to civilians,⁶⁷⁰ as well as specific protection in their capacity of women civilians or women combatants.⁶⁷¹ As already noted, there is a difference in the scope of the protective rules of IHL depending on the international or non-international character of the conflict.⁶⁷² In international armed conflicts, the general protection of civilians, applying equally to women and men is comprised in several provisions of the IV Geneva Conventions and Additional Protocols, declarative of customary international law.⁶⁷³ These provisions are expressions of the principle stating that persons or categories protected shall be 'treated humanely [...] without adverse distinction founded on sex' (article 12 IGC).⁶⁷⁴ Likewise, men and women benefit from the general protection for combatants, and prisoners of war.⁶⁷⁵ Thus, the fundamental principle of non-discrimination is provided for in the Geneva Conventions and Additional Protocols. However, due to a certain (social) conceptions about women, this legal framework grants women a special or specific protection.⁶⁷⁶

⁶⁶⁹ Ibid.

⁶⁷⁰ Like all civilians, women are protected both against abusive treatment by the Party to the conflict in whose power she finds herself and against effects of hostilities: 'A civilian is any person who does not belong to the armed forces' (Article 50 AP I).

⁶⁷¹ See Articles 14, 25(4), 29(2), 88 (2) (3) GC III and Articles 25, 75 (5), 76 (2), 97 and 108 AP I.

⁶⁷² The protection afforded for civilians in a non-international armed conflict is based on Common Article 3 to the GC and AP II, while the protection for civilians in an international armed conflict is distributed among the four GC and AP I.

⁶⁷³ For instance, they benefit from the principle of distinction: the Parties to a conflict 'shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives' (Article 48 AP I).

⁶⁷⁴ Women benefit from all the provisions which state the basic principle of humane treatment, including respect of life and physical and moral integrity, particularly forbidding coercion, corporal punishment, torture, collective penalties, reprisals, pillage and the taking of hostages. Furthermore, in the event of infractions committed in relation to the conflict, women have the right to trial by an independent and impartial court established by law respecting the generally recognised principles of judicial procedure.

⁶⁷⁵ See Articles 25, 97 and 108 of the III Geneva Convention and Article 75 of AP I.

⁶⁷⁶ According to those provisions, women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault (Article 27, para 2, GC IV; Article 75 and 76, AP I). Acts against which

In non-international armed conflicts, women are protected by the fundamental guarantees governing the treatment of persons not taking part in hostilities set forth in Common Article 3 to the Geneva Conventions. However, this article does not provide special protection for women. Additional Protocol II completes that provision by, *inter alia*,⁶⁷⁷ expressly forbidding in Article 4 ‘outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault’.

It is note worthy that neither sexual violence nor other violence committed against women is specifically included in the list of ‘grave breaches’ of the IV Geneva Convention. The fact that a behavior is considered as a serious offense under the Convention is important in so far as only in these cases, State parties would be required to adopt new rules to prosecute and punish such acts, as provided in Article 146 of that Convention.

These and other important limitations of some aspects of the Geneva regime (such as their norms are archaic and reflect stereotypes), have brought some feminist scholars to question the necessity to invoke IHL to protect women.⁶⁷⁸ From this perspective it is contended that the development of international criminal law in the Statutes and jurisprudence of the International Criminal Tribunals and Courts have brought important advancement in so far as they have promoted new commitments to end the culture of impunity for crimes committed against women.

The challenges posed by the unique impact of armed conflict on women have brought the UN Security Council to develop a policy framework under the so-called agenda on ‘women, peace and security’ that has evolved over the last thirteen years. The first milestone of this framework was Resolution 1325 (2000), adopted on 31 October 2000.⁶⁷⁹ The Security Council reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. It also calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict.⁶⁸⁰ The resolution provides a number of important operational mandates, with important implications for Member States and the bodies of the United Nations system.

women are protected by Article 27, para 2 GC IV are and remain prohibited in all places and in all circumstances, and women, whatever their nationality, race, religious beliefs, age, marital status or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.

⁶⁷⁷Article 13 of AP II stipulates that ‘the civilian population as such, as well as individual civilians, shall not be the object of attack’.

⁶⁷⁸ Karima Bennouna, ‘Do We Need New International Law to Protect Women in Armed Conflict?’ (2007) vol. 38. No. 2 Case Western Reserve Journal of International Law, 363-391, 364.

⁶⁷⁹ UNSC Resolution 1325 (2000) adopted by the Security Council at its 4213th meeting, on 31 October 2000. It is available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>> accessed 20 May 2014.

⁶⁸⁰ UNSC Resolution 1325 (2000), para. 10.

Furthermore, the Security Council, in Resolution 1820 adopted in 2008, went on to recognise in particular that during armed conflicts, sexual violence can become an actual weapon of war, and that it can represent an obstacle to re-establishing peace and international security.⁶⁸¹ In the text of the resolution, the Security Council stressed that sexual violence in conflict constitutes a war crime and demands parties to armed conflict to immediately take appropriate measures to protect civilians from sexual violence, including training troops and enforcing disciplinary measures.

As a follow-up to Resolution 1820, the Security Council adopted Resolution 1888 demanding that all parties in armed conflict immediately introduce measures to protect civilians, in particular women and children, against all forms of sexual violence, and introduces new tools allowing for a more effective application of resolution 1820: it requests that the Secretary-General appoints a special representative on sexual violence during armed conflict (Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict), the publication of annual reports containing detailed information on individuals and groups that have committed acts of violence; the establishment of a group of experts to be deployed on the ground; and the appointment of advisors responsible for women protection within peacekeeping operations.⁶⁸² On 16 December 2010, the Security Council unanimously adopted Resolution 1960 in the process of review of the implementation of Resolution 1325 on sexual violence in armed conflict.⁶⁸³ The Resolution enabled the Security Council to obtain reliable information in real time, as a basis for its action. It opened the way for the listing of parties who commit sexual violence in a systematic way and, finally, it enhanced the prospect of sanctions against the perpetrators and those responsible for sexual violence.

Recent Resolutions 2106 and 2122, adopted by the Security Council in 2013, condemn the use of rape as a weapon of terror in conflict and reaffirm the commitment to the fight against sexual violence and the impunity of perpetrators.⁶⁸⁴ These two new resolutions, and particularly resolution 2122,⁶⁸⁵ were praised by many women's organisations because they place an important emphasis on women's leadership. Another contribution from the UN should also be noted in terms of authoritative interpretation of the standards under IHRL. The CEDAW Committee approved General Recommendation No. 30 on women in conflict prevention, in conflict and post-conflict situations. This is an important step, given that the States party to the CEDAW will have to discuss the measures adopted when submitting their CEDAW convention compliance reports in order to honour the commitments required as part of the women, peace and

⁶⁸¹ UNSC Resolution 1820 (2008) adopted by the Security Council at its 5916th meeting, on 19 June 2008. It is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1820%282008%29> accessed 20 May 2014.

⁶⁸² UNSC Resolution 1888 (2009) adopted by the Security Council at its 6195th meeting, on 30 September 2009 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1888%282009%29> accessed 30 May 2014, para. 4. The next step was Resolution 1889 (2009), adopted on 5 October, where the Security Council emphasises the medical needs of women who are victims of sexual violence and requests the secretariat to identify indicators within six months in order to allow progress to be monitored.

⁶⁸³ UNSC Resolution 1960 (2010) adopted by the Security Council at its 6453rd meeting, on 16 December 2010. It is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1960%282010%29> accessed 20 May 2014.

⁶⁸⁴ UNSC Resolution 2106 (2013) adopted by the Security Council at its 6984th meeting, on 24 June 2013. It is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2106%282013%29> accessed 20 May 2014.

⁶⁸⁵ UNSC Resolution 2122 (2013) adopted by the Security Council at its 7044th meeting, on 18 October 2013. It is available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2122%282013%29> accessed 20 May 2014.

security agenda. The breath of the topics and fields of application tackled in this general recommendation is remarkable; it covers the application of CEDAW to conflict prevention, international and non-international armed conflicts, situations of foreign occupation, as well as other forms of occupation and the post-conflict phase. In addition, the recommendation also includes other situations of concern, such as internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organised crime, situations that may not necessarily be classified as armed conflict under international humanitarian law but which result in serious violations of women's rights and are of particular concern to the Committee. Some of those situations have been included in the Security Council Resolutions.⁶⁸⁶

As regards the EU, the Council has adopted new Guidelines on violence against women and the fight against all forms of discrimination against women, 'which provide a framework for the actions undertaken by the diplomatic network of the EU and the Member States' encouraging efforts to fight against discrimination against women in legislation and in practice, and has committed to contribute to the implementation of UN Security Council resolution 1325 through the EU Comprehensive Approach on the implementation of UNSC Resolutions 1325 and 1820,⁶⁸⁷ which was adopted on 2008 in response to assessed shortcomings of the previous EU policy.⁶⁸⁸ This EU Strategy aims at improving exchange of practices among the various EU members and also with non-EU countries. It also contains a pledge by the EU to adopt a tripartite approach based on: a) policy dialogue: integration of women, peace and security issues; b) gender mainstreaming: above all in crisis management and long-term development strategies; c) specific activities to protect, support and empower women.⁶⁸⁹ In addition, on 1 February 2012, the European Commission, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Development Program (UNDP) announced the start of a multi-country initiative to enhance women's participation in peace-building and post-conflict planning and economic recovery. The initiative which is in line with the EU Policy on women, peace and security, is funded by the EU Instrument for Stability.⁶⁹⁰

⁶⁸⁶CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>> accessed 30 June 2014.

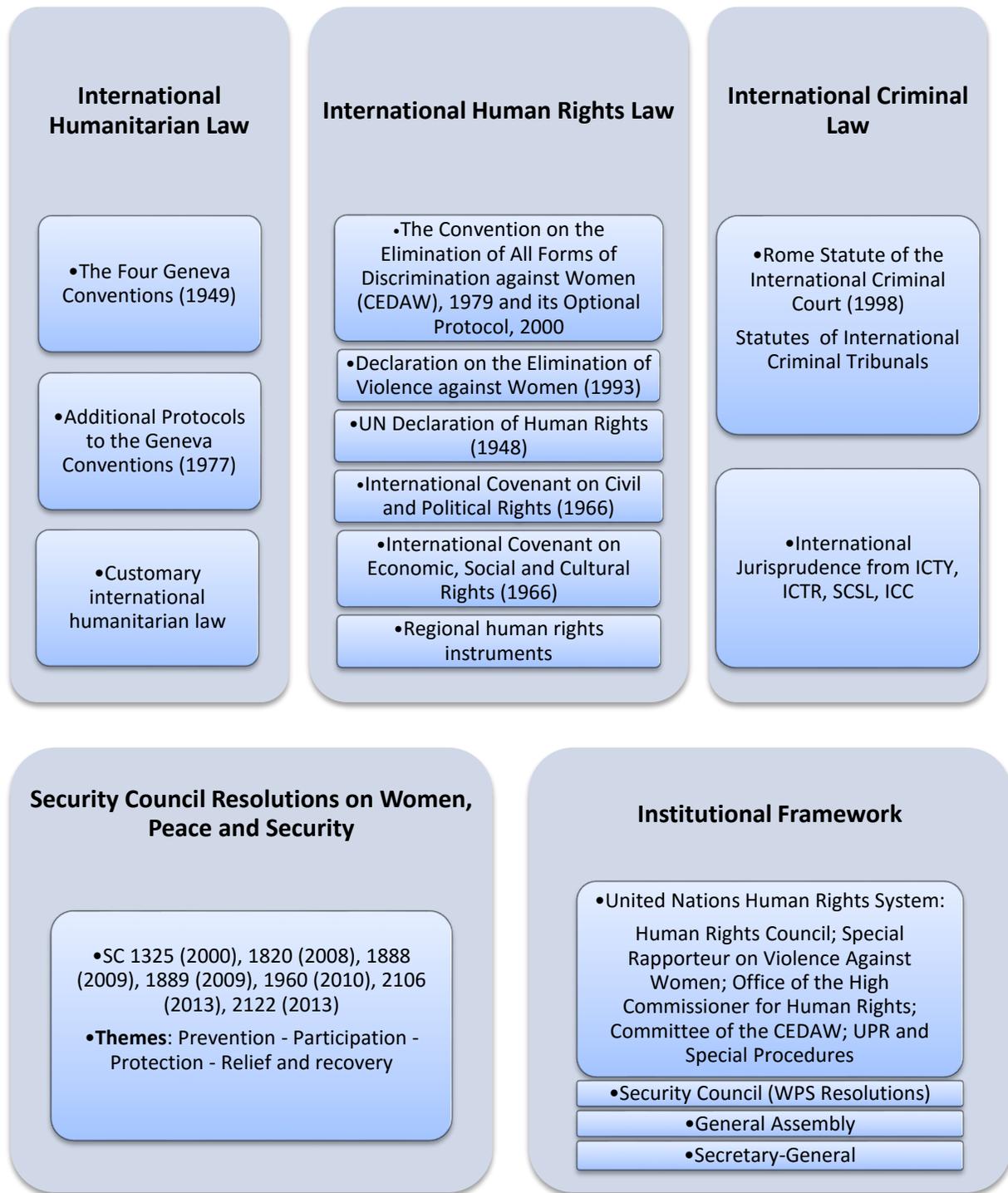
⁶⁸⁷Council of the European Union, Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security (1 December 2008) 15671/1/08 REV 1 <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news187.pdf> accessed 20 May 2014

⁶⁸⁸A study prepared for the Slovenian EU Council Presidency, co-financed by Austria, dealt with the EU strategy on women in armed conflicts: Enhancing the EU Response to Women and Armed Conflict with particular Reference to Development Policy. The findings of this study revealed some shortcomings such as an insufficient appreciation of the complexity of this issue and a lack of clear indicators for the coherent supervision of European strategies. See Andrew Sherriff and Karen Barnes, 'Enhancing the EU Response to Woman and Armed Conflict with particular reference to development policy Study for the Slovenian EU Presidency', Discussion Paper No. 84 (April 2008) <<http://www.europarl.europa.eu/document/activities/cont/200805/20080507ATT28495/20080507ATT28495EN.pdf>> accessed 20 May 2014

⁶⁸⁹Austrian Development Agency, 'Focus: Women, Gender and Armed Conflict' (October 2009) <<http://www.oecd.org/social/gender-development/44896284.pdf>> accessed 20 May 2014

⁶⁹⁰The funds consist of a 1.5 million euros grant. See Press release 'EU supports Women's Participation in Peacebuilding and Post-Conflict Planning', EU-UNDP (1 February 2012) at <http://eeas.europa.eu/ifs/docs/20120201_pressrelease_eu-undp_en.pdf> accessed 20 May 2014.

Figure VI.3 Legal and institutional frameworks on women’s rights in conflict-settings



The policies and normative and institutional frameworks briefly noted within this report, have contributed to the gradual establishment of protection mechanisms at national and international level. Notwithstanding the achievements, a slow process and inconsistencies in the actions of the Security

Council and the EU have to be noted in view of the alarming figures of violence against women and girls related to conflict, as will be indicated next.

2. Figures and trends

The situations of armed conflict and post-conflict create a whole spectrum of security threats for women and girls, posing them to heightened risks of serious human rights violations.⁶⁹¹ Evidence of gender-specific impacts of conflict-settings point to forced displacement, family separation, withholding of humanitarian assistance,⁶⁹² denial of health services and education,⁶⁹³ loss of property and livelihood,⁶⁹⁴ as well as other serious human rights violations such as human trafficking and early and forced marriage, mass rape and other forms of and sexual violence. The proliferation of small arms and light weapons also raises serious security concern for women.⁶⁹⁵

The devastating effects of sexual violence in armed conflict for women and girls have been documented in the UN monitoring reports on the implementation of the agenda 'women, peace and security' for the last years, particularly since the adoption of indicators.⁶⁹⁶ Recent annual reports of 2013 and 2014, by the UN Secretary-General and the Special Rapporteur for Violence against Women document alarming figures on sexual violence, the highest ones corresponding to the situations of South Sudan, Syria, Central African Republic and Colombia.⁶⁹⁷ The Secretary General has also highlighted 'the omnipresence of such violence in Democratic Republic of Congo, in Syria, in Northern Mali and in Central African Republic'.⁶⁹⁸

Despite the difficulties in data gathering, in particular in relation to sexual violence,⁶⁹⁹ information from the UN reports and other sources confirm that conflict-related sexual violence represents a worldwide

⁶⁹¹See Commission on the Status of Women, Report on the fifty-seventh session (4-15 March 2013), Economic and Social Council Official Records, 2013 Supplement No. 7, UN Doc E/2013/27-E/CN.6/2013/11 at <http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/27> accessed 20 May 2014.

⁶⁹²UNSC, *Report of the Secretary-General on the protection of civilian in armed conflicts* (22 May 2012) S/2012/376 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/328/94/PDF/N1232894.pdf?OpenElement>> accessed 30 June 2014, para. 5, 24, 32.

⁶⁹³ *Ibid.*, 4.

⁶⁹⁴ *Ibid.*, 13.

⁶⁹⁵The Arms Trade Treaty, adopted on 2 April 2013, is the first treaty to recognize the link between gender-based violence and the international arms trade. States parties are called upon, when assessing whether to export items covered under the scope of the Treaty, to take into account risks that the arms or items would be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children. As at early September 2013, the Treaty had been signed by 84 States and ratified by 4 (Antigua and Barbuda, Guyana, Iceland and Nigeria). See UNSC, *Report of the Secretary-General on women and peace and security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, para. 41.

⁶⁹⁶ The UN Secretary General has acknowledged the limitations of this information as providing accurate data is still in need of improvement due to deficits in the systematization of the information linking gender and conflict. See UNSC, *Report of the Secretary-General on women and peace and security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, 3-4.

⁶⁹⁷On 25 April 2014, the Security Council held its annual debate on 'women, peace and security and sexual violence in conflict' where the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Zainab Hawa Bangura, presented harrowing reports of wartime rape and other forms of conflict-related sexual violence.

⁶⁹⁸UNSC, *Report of the Secretary-General on women and peace and security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, 3-4.

⁶⁹⁹See an assessment of those difficulties in the UNSC, *Report of the Secretary General on conflict-related sexual violence* (13 March 2014) UN Doc S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 June 2014, para 3, 2. The Secretary

threat as well as an obstacle to peace-building, particularly in light of its increasing use as a strategic weapon in conflict, and as a tool to attack women protesters in the context of contested political processes linked to conflict contexts, as was the case during the Kenyan elections in 2007 and Guinea in 2009.⁷⁰⁰ Information on the situation in Somalia in 2012 reported a tenfold increase in gender-based violence in comparison to the previous year. In Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA) provided data for 2012, showing an increase of 20 per cent of women and girls killed or injured compared to 2011, within an overall trend of decreasing civilian casualties. In the Eastern Republic of Congo the hostilities between the Government and the M23 are characterised by mass rape as a method of warfare. In Syria and Mali women are suffering serious violations of their rights, whether in their communities or in refugee settings.⁷⁰¹

Since 2012 the situations of concern highlighted by the Security Council and the Council's Expert Group on Protection of Civilians are those of Afghanistan, Cote d'Ivoire, Democratic Republic of Congo, Iraq, Mali, Somalia, Sudan and South Sudan.⁷⁰²

Other trends of concern refer to human trafficking and early and forced marriage, and elevated levels of intra-family violence that correlate with conflict-settings.⁷⁰³ Other conflict-related forms of violence have been reported, covering the year 2012 that include extrajudicial executions, enforced disappearances, torture, arbitrary detentions and abduction.⁷⁰⁴ Killing, maiming and sexual violence against women continues to be widespread, as evidenced by reported data on the first half of 2013, that indicated an increase by 61 % in the number of women killed and injured compared with the same period in 2012.⁷⁰⁵ For instance in Somalia, Médecins Sans Frontières (MSF) reported that 38 % of those with war-related injuries in a seven month period in 2010, were women or children under 14 years of age.⁷⁰⁶

Conflict-induced displacement, as will be analysed specifically in subsection VI. C of this report, exacerbates the vulnerability of women and girls to violence and serious human rights violations, including

General expressly refers to 'The lack of sex-disaggregated and age-disaggregated data on security threats remains a challenge in some mission settings, meaning that potential action that could contribute to greater security for women may not be taken' (ibid. para 5).

⁷⁰⁰UNSC, *Report of the Secretary General on conflict-related sexual violence* (13 March 2014) UN Doc S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 June 2014, para 5, 2.

⁷⁰¹UNSC, *Report of the Secretary-General on Women and Peace and Security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, para 31.

⁷⁰² See UNSC, *Report of the Secretary-General on the protection of civilian* (22 May 2012) S/2012/376 and *Report of the Secretary-General on the protection of civilian* (22 November 2013) S/2013/689.

⁷⁰³UNSC, *Report of the Secretary-General on women and peace and security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, 2-3.

⁷⁰⁴Information provided by the UN Special Procedures mandate holders on their allegation letters or urgent appeals sent to 8 territories of concern or under review.

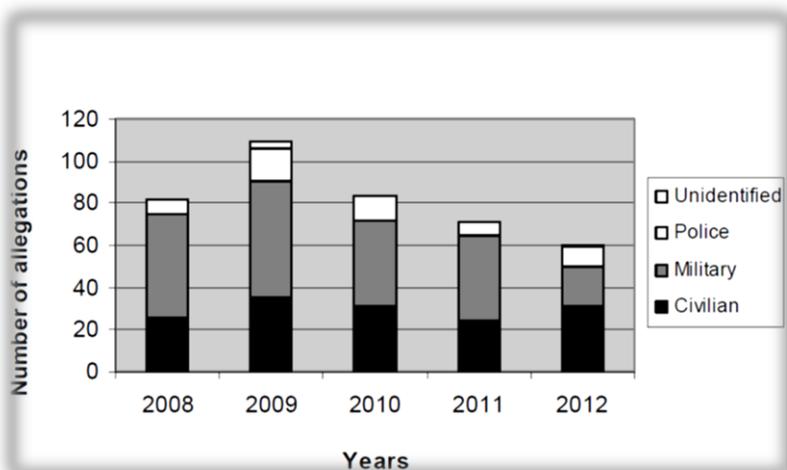
⁷⁰⁵ UNSC, *Report of the Secretary-General on the protection of civilian* (22 November 2013) S/2013/689 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/689> accessed 30 June 2014, 2.

⁷⁰⁶UNSC, *Report of the Secretary-General on the protection of civilian* (22 May 2012) S/2012/376 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/376> accessed 30 June 2014, 3.

sexual violence.⁷⁰⁷ In current ongoing conflicts, reports indicate that sexual violence is a significant driver of displacement.⁷⁰⁸

Despite the alarming figures and trends, one positive trend can be noted. It concerns the decrease in figures related to allegations of sexual exploitation and abuse by United Nations staff and other personnel,⁷⁰⁹ accompanied by an increase in follow-up by UN Member States, an important dimension of the enforcement of the zero-tolerance policy (see Figure VI.4). Covering the year 2012, data points to four field missions with the highest number of reported allegations: the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the United Nations Stabilization Mission in Haiti, the United Nations Mission in Liberia and the United Nations Mission in South Sudan.⁷¹⁰

Figure VI. 4. Total allegations of sexual exploitation and abuse by UN staff and other personnel (2008-2012)



Source: UNGA, *Report of the Secretary General. Special measures for protection from sexual exploitation and sexual abuse* (28 February 2013) A/67/766 <http://www.un.org/ga/search/view_doc.asp?symbol=A/67/766> accessed 30 June 2014, 7.

⁷⁰⁷ Ibid., 5.

⁷⁰⁸ UNSC, *Report of the Secretary General on conflict-related sexual violence* (13 March 2014) UN Doc S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 June 2014, para 6, 2.

⁷⁰⁹ See UNGA, *Report of the Secretary General 'Special measures for protection from sexual exploitation and sexual abuse'* (28 February 2013) A/67/766 <http://www.un.org/ga/search/view_doc.asp?symbol=A/67/766> accessed 30 June 2014. Findings on EU operations are analysed in Johanna Valenius, *Gender Mainstreaming in ESDP missions* (May 2007) No101 Chaillot Paper ISS.

⁷¹⁰ However, non UN sources have highlighted that the inclusion of references to zero tolerance in the establishment and renewal of mission mandates has been inconsistent S/2013/525.

3. Serious human rights violations

Women suffer the aggravated impacts of conflict-related violations of their rights, experiencing all forms of physical, sexual and psychological violence. As reported, these forms include murder, unlawful killings, torture and other cruel, inhuman or degrading treatment or punishment, abductions, maiming and mutilation, forced recruitment of women combatants, rape, sexual slavery, sexual exploitation, involuntary disappearance, arbitrary detention, forced marriage, forced prostitution, forced abortion, forced pregnancy and forced sterilization.⁷¹¹ Security Council resolutions on women, peace and security refer to sexual and gender-based violence in conflict and post-conflict settings as a serious human rights violation.⁷¹²

As the Recommendation No.30 of the CEDAW Committee has affirmed

Conflicts exacerbate existing gender inequalities, placing women at a heightened risk of various forms of gender-based violence by both State and non-State actors. Conflict-related violence happens everywhere, such as in homes, detention facilities and camps for internally displaced women and refugees; it happens at any time, for instance, while performing daily activities such as collecting water and firewood or going to school or work.⁷¹³

Violence against women is expressively defined by Article 1 of the Declaration on the Elimination of Violence against Women (1993) as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.⁷¹⁴ In this regard, violence against women and girls is a form of discrimination and it is prohibited by IHL and IHRL.

Taking into consideration the patterns and practices identified in the different reports and recommendations of the CEDAW Committee, the reports of the Special Rapporteur on violence against women and the Secretary-General Reports on Women, Peace and Security, it is possible to identify the most serious conflict-related violations of women’s human rights *asexual violence; trafficking; other threats against personal safety; denial of humanitarian aid and social services; and unequal participation.*

a) Sexual violence

As already noted in section V of this report, ‘conflict-related sexual violence’ has become a global scourge that attracts international condemnation, and has provoked the mobilisation of institutional and advocacy

⁷¹¹ UNGA, *Report of the Secretary-General ‘In-depth study on all forms of violence against women’* (6 July 2006) A/61/122/Add.1 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>> accessed 20 May 2014, par. 143.

⁷¹² Security Council Resolution 1325 expresses the call on ‘all parties to armed conflict to take special measures to protect women and girls from *gender based violence*, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict’.

⁷¹³ CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>> accessed 30 June 2014, par. 13.

⁷¹⁴ UNGA, Resolution 48/104 Declaration on the Elimination of Violence against Women (20 December 1993) A/RES/48/104. It is available at <<http://www.un.org/documents/ga/res/48/a48r104.htm>> accessed 20 May 2014.

efforts. Security Council Resolution 2106 (2013), designed for the first time, a comprehensive approach and framework to prevent conflict-related sexual violence. In April 2013, the countries of the Group of Eight adopted the historic Declaration on Preventing Sexual Violence. On the sidelines of the sixty-eighth session of the General Assembly 144, UN Member States endorsed the Declaration of Commitment to End Sexual Violence in Conflict at an event co-chaired by the UN Secretary General Special Representative on Sexual Violence in Conflict and the Secretary for Foreign Affairs of the United Kingdom.⁷¹⁵ Recently these efforts have culminated in the Global Summit against sexual violence, as indicated previously.⁷¹⁶

As commented by the UN Secretary General, the ‘term “conflict-related sexual violence” refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict’. It is important to note that this link to conflict ‘may be evident in the profile of the perpetrator, the profile of the victim, the climate of impunity or State collapse, any cross-border dimensions or violations of the terms of a ceasefire agreement’,⁷¹⁷ although conflict-related sexual violence may also be present in other contexts.⁷¹⁸

These forms of sexual violence are often used as a method of warfare when they are used systematically in relation to an armed conflict in order to torture, injure, extract information, degrade, threaten, intimidate or punish.⁷¹⁹ Forms of sexual violence can therefore serve different purposes in a context of armed conflict. For instance, sexual slavery can be used as a systematic attack upon the civilian population in order to dissolve family and community bonds. Information on recent practices also highlights the links between sexual violence and natural resource extraction, and sexual violence as a tool to cause forced displacement of civilian populations.⁷²⁰

The consequences of sexual violence are felt long after the conflict. The scope of sexual violence against women in relation to conflict includes the following main practices:⁷²¹

- *systematic campaigns of abduction, rape and forced impregnation* of women and adolescent girls by armed groups (e.g. Central African Republic, Cote d’Ivoire), leading to suicides by survivors or social rejection because of the shame that raped or pregnant women allegedly bring to their families;

⁷¹⁵ See report to the UN Secretary General A/68/633, annex.

⁷¹⁶ See section V of this report, sub-section B. 6

⁷¹⁷ UNSC, *Report of the Secretary General on conflict-related sexual violence* (13 March 2014) UN Doc S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 June 2014, para 1, 1.

⁷¹⁸ UNGA, *Report of the Secretary-General ‘In-depth study on all forms of violence against women’* (6 July 2006) A/61/122/Add.1 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>> accessed 20 May 2014, par. 143.

⁷¹⁹ See UNHRC, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo* (23 May 2012) A/HRC/20/16.

⁷²⁰ See UNSC, *Report of the Secretary-General on Women and Peace and Security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014.

⁷²¹ Jan Bauer and Anisa Hélie, *Documenting Women’s Rights Violations by Non-State Actors* (International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws, 2006) <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/non-state-actors.pdf>> accessed 30 June 2014, 64.

- *widespread sexual crimes* including rape and genital mutilation as part of terror tactics against civilian communities (e.g., Colombia, RDC), or as members of minorities or indigenous peoples; in some cases, women may be targeted because they challenge the authority of armed groups or are seen as the means by which to inflict humiliation on the enemy;
- *the targeting of women*, as part of a conscious strategy to terrorise the ‘opposing community’ (e.g., Central African Republic, South Sudan, Darfur) through such violence as mutilations and gang rapes.
- *honour killings*, related to sexual violence crimes.
- *early or forced marriages* by armed groups,⁷²² in some cases as part of a ‘traditional arrangement’ between the family of victims of rape and their perpetrators (e.g. in Afghanistan, Central African Republic).

The International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have innovated in the area of jurisprudence on sexual violence under international law, by convicting individuals of using rape as an instrument of genocide and a form of torture and by recognising rape as a crime against humanity. The 1998 Rome Statute of the International Criminal Court prohibits ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence’ and takes gender concerns into account in the definition of the crimes of genocide (Article 6), crimes against humanity (Article 7) and war crimes (Article 8). For the first time, victims have the possibility to present their views and observations before the Court.

The Statute of the Special Court for Sierra Leone, established in January 2002, includes rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence among the constituent elements of crimes against humanity. Article 5 gives the Special Court jurisdiction over crimes under Sierra Leone law, including offences relating to the abuse of girls under the Prevention of Cruelty to Children Act of 1926.⁷²³ In May 2004, for the first time in the history of international law, the Special Court decided that forced marriage would be prosecuted as an ‘inhumane act’, that is, a crime against humanity. In 2009, the Court convicted three former leaders of the Revolutionary United Front (RUF) on the charge of forced marriage, thereby recognising the deep and long lasting suffering inflicted upon women through conscription as ‘bush wives’ during the Sierra Leone conflict.⁷²⁴

Box VI.11. Figures on sexual violence in armed conflicts

⁷²²UNGA-UNSC, *Report of the Secretary-General on sexual violence in conflict* (14 March 2013) A/67/792-S/2013/149, para. 6

⁷²³The statute of the SCSL has provisions on gender-sensitive proceedings and evidence before the Special Court (articles 14 and 16) and requires expertise in trauma related to crimes of sexual violence and violence against children.

⁷²⁴*Prosecutor v. Sesay, Kallon & Gbao* (Judgement, Trial Chamber) Special Court for Sierra Leone Case No. SCSL-04-15-T (2 March 2009) <<http://www.rscsl.org/Documents/Decisions/RUF/1234/SCSL-04-15-T-1234.pdf>> accessed 30 June 2014. See also Valerie Oosterveld, ‘The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments’ (2011) volume 44 No. 1 Cornell International Law Journal <<http://www.lawschool.cornell.edu/research/ILJ/upload/Oosterveld-final.pdf>> accessed 30 June 2014, 49-74.

- According to the UNSG Report on conflict-related sexual violence (March 2014) most grave cases of sexual violence in armed conflicts in 2013 were committed in
 - **Afghanistan:** increase of 25% in violations against women, especially incidents of sexual violence;
 - **Central African Republic:** conflict-related sexual violence has been a main feature of attacks between March and December 2013;
 - **Colombia:** 86 cases of sexual violence;
 - **Cote d'Ivoire:** 381 cases of sexual violence;
 - **DRC:** 15,352 cases of sexual violence;
 - **Mali:** incidents of sexual violence by armed State and non-state actors were reported, including during house searches, at checkpoints, and in place of detention;
 - **Myanmar:** increased reports of sexual violence in Rakhine, Kachin and Shan States;
 - **Somalia:** sexual violence remains one of the most serious human rights violations. IDPs and women from minority clans were particularly vulnerable;
 - **South Sudan:** 73 cases of sexual violence;
 - **Sudan-Darfur:** 149 cases of sexual violence;
 - **Syria:** sexual violence has been a persistent feature and the fear of rape has served as a driving motivation for families fleeing the violence;
 - **Yemen:** concern of sexual violence among the poorest and most vulnerable girls

Source: UNSC, *Report of the Secretary-General on conflict-related sexual violence* (Annex) (13 March 2014) S/2014/181 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/181> accessed 30 May 2014

b) Human trafficking

Human trafficking is a form of gender-based violence that, when linked to an armed conflict, increases the level and consequences of violence, as it benefits from the breakdown of political, legal, economic and social structures. There is increasing evidence on the relationship between armed conflict and human trafficking. According to the United Nations Office on Drugs and Crime (UNODC), approximately 79% of all human trafficking is carried out for the purpose of sexual exploitation.⁷²⁵ Amongst them, 98% are women and girls.⁷²⁶ Indeed, human trafficking is a deeply gendered issue, especially when it concerns sexual exploitation.⁷²⁷

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol or Palermo Protocol) defines trafficking under the following terms:

⁷²⁵ United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons 2009* (UNODC 2009) <http://www.unodc.org/documents/Global_Report_on_TIP.pdf> accessed on 10 July 2014, 6.

⁷²⁶ International Labour Office (ILO) (2009), *Give girls a chance: Tackling child labour: a key to the future* (ILO, Geneva 2009) <<http://www.ilo.org/jpecinfo/product/viewProduct.do?productId=10290>> accessed 30 June 2014, 37.

⁷²⁷ Gender refers to socially constructed roles of men and women, ascribed to them on the basis of their sex, whereas the term 'sex' refers to biological and physical characteristics. Gender roles depend on a particular socio-economic, political and cultural context, and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned, and vary widely within and between cultures. Unlike a person's sex, gender roles can change. Gender roles help to determine women's access to rights, resources and opportunities'. UNGA, *Report of the Secretary-General on the Implementation of the outcome of the Fourth World Conference on Women* (3 September 1996) A/51/322, <<http://www.un.org/documents/ga/docs/51/plenary/a51-322.htm>> accessed 30 June 2014, paras. 7–14.

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁷²⁸

Trafficked women and girls face severe consequences affecting their physical and mental health, especially when they are victims of rape, sexual abuse, STIs, trauma and unwanted pregnancies.⁷²⁹ Push factors of trafficking can be diverse but situations prior of conflicts, which are based on gender inequality, place women and girls at high risk of trafficking as situations of poverty, instability, and disintegrated social networks also reinforce a situation of vulnerability.

Trafficking in conflict settings is also characterised by the use of sexual slaves for combatants. In some cases, women and girls are sold into camps of rebels or soldiers, lured by offers of protection or deliberately abducted.⁷³⁰ They are sometimes obliged to work for armed groups, in diamonds or gem mining. In Sierra Leone, women were used as sexual slaves and forced to provide services such as cooking. In the Democratic Republic of the Congo and Liberia, women and children have been forced to work in diamond fields. In Afghanistan, the conflict has led to an increase in the trafficking of women and young girls to India, Pakistan, and other countries of Central Asia.⁷³¹

c) Other serious threats against personal safety

Aside from the conflict-related forms of sexual violence and sexual assault against women described above, they are also exposed to other serious threats against personal safety. According to the ICRC, these threats encompass 'dangers, acts of violence or threats thereof against members of the civilian population not or no longer taking a direct part in hostilities. Violence – physical or mental harm – includes: killing, summary and arbitrary execution, torture and mutilation, cruel, inhuman and degrading treatment'.⁷³² In the context of armed conflicts, women face specific threats depending on each specific conflict, the parties involved, the conflict background and its primary targets or victims.⁷³³ Personal safety of women in conflicts involves also issues related to displacement, as will be seen in sub-section VI.A.C).

The personal safety of women in situations of armed conflict is protected in IHL by the general regulation on methods and means of warfare in order to protect civilians from the effects of conflicts. It also prohibits

⁷²⁸ Art. 3 United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 40 ILM 335 (Organized Crime Convention).

⁷²⁹ UNSG, *Women, Peace and Security. Study submitted by the Secretary-General pursuant to Security Council Resolution 1325* (2000) (United Nations 2002) <<http://www.un.org/womenwatch/daw/public/eWPS.pdf>> accessed 30 June 2014, 17-18.

⁷³⁰ *Ibid.*, 17-18.

⁷³¹ *Ibid.*, 17-18.

⁷³² ICRC, *Addressing the Needs of Women Affected by Armed Conflict. An ICRC Guidance Document* (ICRC, March 2004) <http://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf> accessed 20 May 2014, 17.

⁷³³ *Ibid.*, 17-18.

specific conducts or acts of violence against civilians. The spirit of IHL is to ensure that conflicts are conducted in a way that spares at maximum the civilian population from its effects and consequences.⁷³⁴ Parties to an armed conflict are required to ensure the humane treatment of all persons within their power. This includes security of life and person and fundamental judicial guarantees. Women are especially mentioned in those provisions, as they have to be especially protected against violent assaults.⁷³⁵

Personal safety of women is also protected in international human rights and refugee law, as it has been indicated in section V of this report. Human rights law includes the right to life, the prohibition of torture, cruel, inhuman and degrading treatment or punishment. Those rights are inalienable; no derogation is admissible, even in time of conflicts. States therefore have the duty to ensure that the core rights are respected in any circumstances. Refugee law protects women's right to personal safety, through the principle of *non-refoulement*, or the definition of refugee.

More specifically, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ensures the protection of women from conducts inflicting physical, sexual or psychological suffering based on gender. The aim of the Convention is to protect women from violence, no matter where it occurs and who are the perpetrators.⁷³⁶

Finally, the Convention on the Prevention and Punishment of Genocide refers as a crime, the 'measures intended to prevent births within a group'. Those measures, which can therefore constitute genocide, are prohibited under the Convention, thus directly protecting women from attacks aimed at destroying the whole or part of a group.⁷³⁷

Therefore, in order to protect the personal safety of women, States must adopt and implement relevant international instruments that provide protection of women in situations of armed conflict.

Box VI.12. Incidents of violence against women in conflict-settings (2012- 2013)

Grave incidents of violence against women continued to happen during and after armed conflicts in 2012, especially in Afghanistan, DRC, Somalia and Iraq.

- **Afghanistan:** In 2012, the number of Afghan women and girls killed or injured increased by 20 per cent compared with 2011. Prosecutors registered 306 cases of violence against women in the 16 provinces during the one-year period for an average of 25 cases registered per month. The prosecution

⁷³⁴ Ibid., 17-18.

⁷³⁵ ICRC, *Addressing the Needs of Women Affected by Armed Conflict. An ICRC Guidance Document* (ICRC, March 2004) <http://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf> accessed 20 May 2014, 18.

⁷³⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belém Do Pará') adopted in Belém do Pará, Brasil on June 9 1994 at the twenty fourth regular session of the General Assembly of the OAS.

⁷³⁷ ICRC, *Addressing the Needs of Women Affected by Armed Conflict. An ICRC Guidance Document* (ICRC, March 2004) <http://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf> accessed 20 May 2014, 18.

registered 10 per cent more cases this period than last, reflecting a small increase.⁷³⁸ UNAMA observed that 2013 was the worst year for Afghan women: Conflict-related violence caused 746 women casualties (235 women killed and 511 injured), up 36 percent from 2012.⁷³⁹

- **DRC:** According to United Nations Joint Human Rights Office (UNJHRO) between April and September 2012, armed groups attacked villages, often early in the morning: many civilians were killed as they attempted to flee their villages. Most victims were women, children and the elderly, as they are more often in the village and are least able to flee. The UNJHRO also documented four cases where combatants cut the foetus out of a pregnant woman. Several witnesses reported cases of sexual mutilation on the remains of victims who had been killed.⁷⁴⁰

- **Iraq:** The Kurdistan Regional Government (KRG) informed UNAMI that it had received 2,469 cases of violence against women between July and December 2012. The highest numbers were reported in Sulaimaniya (1019 cases), followed by Erbil (807 cases) and Dahuk (431 cases). There were 237 cases of physical abuse of women, 87 cases of sexual abuse, and 153 cases of women who had burned themselves or were reported as accidentally burnt. Some 50 cases included a woman's death.⁷⁴¹

- **Somalia:** In November 2012, gender-based violence had increased tenfold over the previous year, with as many as 115,000 incidents reported.⁷⁴²

d) Denial of humanitarian aid

The total breakdown of State public services and infrastructure is one of the major and direct consequences of armed conflict, resulting in the lack of delivery of essential services to the population. This entails a serious threat to the welfare of women and their families, and has an enormous impact on the provision of humanitarian aid.⁷⁴³

The destruction of hospitals, health-care facilities and the inability to access facilities that are still in place after armed conflict, infringes on the health of all, with particularly negative consequences for women and children. Women's needs for reproductive health services in the context of armed conflict are

⁷³⁸UNAMA-OHCHR, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan* (December 2013).

<<http://unama.unmissions.org/Portals/UNAMA/Press%20Statements/UNAMA%20EVAW%20Law%20Report%202013%20%28Revised%20on%2016%20Dec%20%202013%29.pdf>> accessed 30 June 2014, 15.

⁷³⁹UNAMA-OHCHR, *Afghanistan Annual Report 2013 Protection of civilians in armed conflict* (February 2014) <http://www.unama.unmissions.org/Portals/UNAMA/human%20rights/Feb_8_2014_PoC-report_2013-Full-report-ENG.pdf> accessed 30 June 2014, 2.

⁷⁴⁰ MONUSCO-OHCHR, *Report of the United Nations Joint Human Rights Office on Human Rights violations perpetrated by armed groups during attacks on villages in Ufamandu I and II, Nyamaboko I and II and Kibabi groupements, Masisi territory, North Kivu Province, between April and September 2012* (November 2012) <<http://www.monusco.unmissions.org/LinkClick.aspx?fileticket=UnOinT6es6M%3d&tabid=10770&mid=13783&language=en-US>> accessed 30 June 2014, 12.

⁷⁴¹UNAMI-OHCHR, *Report on Human Rights in Iraq: July - December 2012* (June 2013) <http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf> accessed 30 June 2014, 20.

⁷⁴² UNSC, *Report of the Secretary-General on Women and Peace and Security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, para. 31.

⁷⁴³ UNSC, *Report of the Secretary-General on Women and Peace and Security* (16 September 2009) S/2009/465 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/503/63/PDF/N0950363.pdf?OpenElement>> accessed 20 May 2014, para. 15.

particularly critical because of high levels of sexual and related violence and abuse.⁷⁴⁴ Women also face particular risks due to their sexual and reproductive roles. Those risks include 'sexually transmitted infections, female urogenital fistula, trauma, mutilation, complications from botched abortions, uterine problems, scarring of the vagina and problems having a normal sexual life or giving birth in the future' which are exacerbated in conflict situations. Pregnant and lactating mothers require additional nutritional and physical care. A denial of access to humanitarian assistance has therefore consequences on maternal and infant mortality rates. Furthermore, during food shortages, women and girls are the first victims of an unequal distribution of food within communities and households. Women's health deteriorates more rapidly, as they are physiologically more susceptible to vitamin and iron deficiencies.⁷⁴⁵

Conflict settings presents particular challenges with regard to women's employment and reintegration, given that the breakdown of services often results in food insecurity, inadequate shelter, and deprivation of property and lack of access to water.⁷⁴⁶ Conflict renders prior discrimination regarding access to food, resources and services, even more deadly.⁷⁴⁷ Gender roles therefore also have consequences on how women and girls are affected by the denial of humanitarian access.⁷⁴⁸

Box VI.13. Deliberate attacks against medical workers and health facilities in the Gaza strip

Amnesty International has recently brought evidence of attacks by the Israeli forces against medical workers and health facilities during the Operation 'Protective Edge' launched by Israel on 8 July 2014. The ongoing violence has led to the destruction of public services and health facilities throughout the Gaza Strip. Amnesty International has received reports of direct attacks by the Israeli army against 'clearly marked ambulances with flashing emergency lights and paramedics wearing recognisable fluorescent vests while carrying out their duties'. Amnesty International reports at least 6 killings of ambulances workers, 13 killings of other aid workers, 82 doctors, nurses, paramedical staff and other aid workers injured while accomplishing their work. Amnesty further reports that at least five hospitals and 34 clinics have been forced to shut down due to damage from Israeli fire or continuing hostilities in the immediate area. The UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools and other buildings, used as temporary shelters for the nearly 270,000 displaced people throughout the Gaza Strip, have been hit. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), more than 130 schools and 24 medical facilities have been damaged or destroyed.

Sources:

⁷⁴⁴ UNSC, *Report of the Secretary-General on Women and Peace and Security* (16 September 2009) S/2009/465 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/503/63/PDF/N0950363.pdf?OpenElement>> accessed 20 May 2014, para. 17.

⁷⁴⁵ Dyan Mazurana, 'The gendered impact of conflict and peace keeping in Africa' in ACCORD, *Conflict Trends*, Issue 2 (ACCORD 2013) <[https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_\(4-Jul-13\)-CDR-832.pdf](https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_(4-Jul-13)-CDR-832.pdf)>, accessed 30 June 2014, 5.

⁷⁴⁶ CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>> accessed 30 June 2014, 12-13.

⁷⁴⁷ Dyan Mazurana, 'The gendered impact of conflict and peace keeping in Africa' in ACCORD, *Conflict Trends*, Issue 2 (ACCORD 2013) <[https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_\(4-Jul-13\)-CDR-832.pdf](https://www.pksoi.org/document_repository/Misc/ACCORD_Conflict_Trends_2013-2_(4-Jul-13)-CDR-832.pdf)>, accessed 30 June 2014, 5.

⁷⁴⁸ ICRC, *Addressing the Needs of Women Affected by Armed Conflict. An ICRC Guidance Document* (ICRC, March 2004) <http://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf> accessed 20 May 2014, 18.

Amnesty International, *Public Statement: Evidence of medical workers and facilities being targeted by Israeli forces in Gaza* (August 2014) <<http://www.amnesty.org/en/library/asset/MDE15/023/2014/en/c931e37b-a3c2-414f-b3a6-a00986896a09/mde150232014en.pdf>> accessed 8 August 2014, 1; OCHA, *Briefing of the Under-Secretary-General Valerie Amos to the Security Council On the Situation in the Gaza Strip* (July 2014) <<https://docs.unocha.org/sites/dms/Documents/USG%20Amos%20SecCo%20statement%20on%20Gaza%20-%2031%20July%202014%20-%20As%20delivered.pdf>> accessed on 8 August 2014, 4.

e) Unequal participation

Unequal participation of women refers to their representation and participation in peace processes, electoral processes (as both candidates and voters), UN decision-making positions, and in the broader social-political sphere. The 2008-2009 United Nations System-wide Action Plan for the implementation of Security Council Resolution 1325 (2000) outlined one of its thematic areas as ‘participation’ aiming at promoting and supporting women’s active and meaningful participation in all peace processes as well as their representation in formal and informal decision-making at all levels; improving partnership and networking with local and international women’s rights groups and organizations; recruiting and appointing women to senior positions in the United Nations, including the Special Representatives of the Secretary-General, and in peacekeeping forces, including military, police and civilian personnel.⁷⁴⁹

The right of women to participate in the political and public life of the country as well as in the work of international organisations is expressively recognized in Articles 7 and 8 of the CEDAW.⁷⁵⁰ The Security Council further emphasises the need for women’s participation in peacebuilding processes (Resolution 1889) and calls for the mobilisation of resources for advancing gender equality and empowering women, reporting on the progress of women’s participation in UN missions, equal access to education for women and girls in post-conflict societies, and the increase of women’s participation in political and economic decision-making. The potential for women’s full and equal contribution to international peace and security depends on the complete realisation of these objectives.⁷⁵¹

The implementation of States parties’ obligations to ensure women’s equal representation in political and public life at national and at international level, requires measures to address this broader context of gender discrimination and inequality in conflict affected areas, in addition to the specific and multiple barriers to women’s equal participation that are linked to additional conflict-related restrictions on mobility, security, fundraising, campaigning and technical skills. This applies in particular to States’ parties

⁷⁴⁹ UNSC, *Report of the Secretary-General on Women and Peace and Security* (12 September 2007) S/2007/567, <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/503/69/PDF/N0750369.pdf?OpenElement>> accessed 20 May 2014, para. 42.

⁷⁵⁰ Article 7 affirms that ‘States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country’. Article 8 affirms that ‘States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations’.

⁷⁵¹ See Maria Butler, Kristina Mader and Rachel Kean, *Women, Peace, and Security Handbook: Compilation and Analysis of United Nations Security Council Resolution Language 2000-2010* (PeaceWomen Project of Women’s International League for Peace and Freedom (WILPF) October 2010) <<http://www.peacewomen.org/assets/file/PWPublications/handbook.peacewomen.2010.pdf>> accessed 20 May 2014.

on whose territory hostilities have occurred, in addition to other States' parties involved in peacemaking processes that are required to ensure that women are represented in their own institutions and to support local women's participation in peace processes.⁷⁵²

Since 2009, the UN Secretary General reports on women, peace and security, in respect of the lack of presence, participation and representation of women at peace processes and at different political positions. Up to present date, the assessment has had meagre results,⁷⁵³ as illustrated by the information compiled in Box VI.14.

Box VI. 14. Participation and representation of women in political processes (2012)

- **Representation of women among mediators, negotiators and technical experts in formal peace negotiations:**In 2012, the United Nations led or co-led 12 formal peace negotiation processes. In those processes, all (100 per cent) United Nations mediation support teams included women, an increase from 86 per cent in 2011.
- **Women's political participation in parliaments and ministerial positions:** As at 31 July 2013, women accounted for 21 per cent of parliamentarians globally, an increase of 1 per cent from the 2012 figure. In the countries and territories reviewed, women's participation stood at 16.4 per cent, compared with 18 per cent for the aggregate of countries reviewed in 2012 and 2011.
- **Women's share of senior positions in United Nations field missions:** As at 31 December 2012, women headed 4 of the 27 (15 per cent) peacekeeping, political and peacebuilding missions (in the Central African Republic, Cyprus, Liberia and South Sudan), compared with 6 of 28 (21 per cent) in December 2011.
- **Number and percentage share of women in executive positions of relevant regional and subregional organizations involved in preventing conflict:**As at December 2012, 105 women were working in executive positions in the six regional and sub-regional organisations involved in preventing conflict that reported data, meaning that 24 per cent of the total leadership positions were occupied by women.
- **Percentage of field missions with senior gender experts:**As at December 2012, 60 per cent of all peacekeeping missions had gender advisers and 47 per cent had gender focal points, while 50 per cent of all field missions had gender advisers and 83 per cent had gender focal points.

Source: UNSC, *Report of the Secretary-General on Women and Peace and Security* (4 September 2013) S/2013/525 <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525> accessed 30 June 2014, 8-15.

⁷⁵²CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>> accessed 30 June 2014, 11-12.

⁷⁵³ UNSC, *Report of the Secretary-General on Women and Peace and Security* (16 September 2009) S/2009/465 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/503/63/PDF/N0950363.pdf?OpenElement>> accessed 20 May 2014, para. 22.

4. Perpetrators

There are multiple perpetrators of conflict-related gender-based violence. As the Recommendation No. 30 of the CEDAW Committee has noted,⁷⁵⁴ these perpetrators may include:

- States acting individually* (for example, as the State within whose borders the conflict arises, neighbouring States involved in the regional dimensions of the conflict or States involved in unilateral cross-border military manoeuvres)
- States acting as members of international or intergovernmental organizations and coalitions* (for example, by contributing to international peacekeeping forces or as donors giving money through international financial institutions to support peace processes)
- Non-State actors, such as armed groups, paramilitaries, corporations, private military contractors, organized criminal groups and vigilantes*

Non-state actors are responsible for the deliberate targeting of civilians, and are involved in systematic humiliation and harassment, sexual violence, mutilations, extra-judicial executions, forced disappearances or torture. Women are victims of this violence from non-state actors from within the family and community, as well as from armed groups. Armed groups specifically target women in situations of conflict. Some groups of women are more at risk, such as divorced or single women, women engaged in prostitution, lesbian or transsexual women.⁷⁵⁵

Ms. Radhika Coomaraswamy, former Special Rapporteur on violence against women has highlighted the relevant issues for consideration on holding non-state armed actors accountable for such egregious human rights violations

The impunity of non-State actors for violations of human rights and humanitarian law is an issue that deserves serious international consideration [...]. Although rape and sexual violence are often committed by government forces, non-State actors also commit serious abuses against women and girls and often target the civilian population, including in particular women and children, as a tactic of war [...]. Non-State actors, just as government forces, can be held accountable for violations of international humanitarian law and will be subject to the jurisdiction of the ICC, once it is established. There are, however, particular difficulties in enforcing international standards with regard to non-State actors. In particular, there are often limited means of exerting pressure on non-State actors [...].⁷⁵⁶

⁷⁵⁴ CEDAW Committee, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (18 October 2013) CEDAW/C/GC/30 <<http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>> accessed 30 June 2014, para. 13.

⁷⁵⁵ Jan Bauer and Anisa Hélie, *Documenting Women's Rights Violations by Non-State Actors* (International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws, 2006) <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/non-state-actors.pdf>> accessed 30 June 2014, 64.

⁷⁵⁶ UNHRC, *Report of the Special Rapporteur on violence against women, its causes and consequences. Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)* (23 January 2001) E/CN.4/2001/73 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/104/44/PDF/G0110444.pdf?OpenElement>> accessed 30 June 2014, para 47.

Two important related questions aimed at putting an end to impunity arise in this connection, namely legal accountability of non-state armed actors, already introduced in section V of this report, and a specific accountability regime to implement it, as well as the identification of concrete alleged perpetrators.

Notable advancements introduced by the UN Security Council Resolutions on women, peace and security, as already noted, are Resolution 1960, which enabled the Security Council to obtain reliable information in real time, as a basis for its action, through reports requested to the Secretary General. It opened the way for the listing of parties who commit sexual violence in a systematic way and, finally, it enhanced the prospect of sanctions against the perpetrators and those responsible for sexual violence. Also commendable is Resolution 2106, as it is the first to establish an accountability regime for acts of sexual violence. In compliance with this framework, the UN Secretary General Report on sexual violence lists 'parties to conflict that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict' (see Table VI. 2). However, in situations of armed conflict, the distinction between State and non-State actors is quite challenging, as sometimes States use non-state actors to commit human rights violations.⁷⁵⁷

Table VI.2. List of parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in conflict-settings⁷⁵⁸

COUNTRIES	STATE ACTORS	NON-STATE ACTORS
Parties in Central African Republic		<ul style="list-style-type: none"> • Lord's Resistance Army • Ex - Séléka forces • Anti-balaka forces, including associated elements of the armed forces of the Central African Republic.
Parties in Côte d'Ivoire	<ul style="list-style-type: none"> • Forces républicaines de Côte d'Ivoire 	<ul style="list-style-type: none"> • Ex-militia groups, including the Alliance patriotique de l'ethnie Wé, the Front pour la libération du Grand Ouest, the Mouvement ivoirien de libération de l'Ouest de la Côte d'Ivoire and the Union patriotique de résistance du Grand Ouest
Parties in DRC	<ul style="list-style-type: none"> • Forces armées de la République démocratique du Congo • National Police of DRC 	<ul style="list-style-type: none"> • Alliance des patriotes pour un Congo libre et souverain • Allied Democratic Forces/National Army for the Liberation of Uganda • Forces démocratiques de libération du Rwanda • Forces de défense congolaises • Forces de résistance patriotique en Ituri

⁷⁵⁷ See Jan Bauer and Anisa Hélie, *Documenting Women's Rights Violations by Non-State Actors* (International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws, 2006) <<http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/non-state-actors.pdf>> accessed 30 June 2014, 64.

⁷⁵⁸ UNSC, *Report of the Secretary-General on conflict-related sexual violence* (Annex) (13 March 2014) S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 May 2014, 32-33.

		<ul style="list-style-type: none"> • Lord's Resistance Army • Mai-Mai Cheka • Mai-Mai Kifuafua • Mai-Mai Morgan • Mai-Mai Simba/Lumumba • Mouvement du 23 mars • Nyatura armed group • Patriotes résistants congolais • Raïa Mutomboki
Parties in Mali		<ul style="list-style-type: none"> • Mouvement national pour la libération de l'Azawad • Ansar Dine • Movement for Unity and Jihad in West Africa • Al -Qaida in the Islamic Maghreb
Parties in South Sudan	<ul style="list-style-type: none"> • South Sudan National Police service 	<ul style="list-style-type: none"> • Sudan People's Liberation Army • Sudan People's Liberation Movement/ Army in Opposition • Lord's Resistance Army
Parties in Syria	<ul style="list-style-type: none"> • Government forces, including the Syrian armed forces, the intelligence forces and the shabbiha, a government-affiliated militia 	<ul style="list-style-type: none"> • Armed opposition elements operating in contested and opposition-held areas, including Damascus, Rif Damascus, Aleppo and Homs

Source: UNSC, *Report of the Secretary-General on conflict-related sexual violence* (Annex) (13 March 2014) S/2014/181 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/263/64/PDF/N1426364.pdf?OpenElement>> accessed 30 May 2014.

C. Refugees and internally displaced persons

This sub-section seeks to identify the most serious violations of the rights of refugees and internally displaced persons related to armed conflict and crisis. An accurate description of the current dismaying landscape is the one provided by Antonio Guterres, the UN High Commissioner for Refugees

Today, more people are uprooted by violence, persecution and war than at any time since World War II. Nearly 3 million Syrians have fled their country in little more than three years. And more than 1 million of them are in neighbouring Lebanon, which today has the highest concentration of refugees in the world (...).⁷⁵⁹

1. Overview

The present day phenomenon of displacement of people within countries and across borders is a defining feature of the contemporary context of insecurity, violence and conflict, both as a consequence of conflict and a contributing factor to conditions of deprivation and violations of rights of personal security and freedom, as discussed in section II, contained within assertions on preconditions for protracted situations of conflict, across borders and internally within States.⁷⁶⁰

The term displacement indicates an element of force, involuntary or coerced movement as opposed to where an individual or group chooses to migrate. A refugee is a person who flees across and international border, while a displaced person is forced from his/her community but remains in the territory of the country of origin. In order to obtain formal refugee status a person has to satisfy the criteria laid down in national, regional and international law. During the process this status is determined, that person is called asylum seeker.⁷⁶¹ Thus, the elements of the definitions of refugees and internally displaced people status are relevant as determined by the applicable international legal framework consisting of a complex web of legal instruments, which will be unraveled in an overarching presentation which follows.

The causes of displacement have been described in five broad categories: displacement related to conflict; generalized violence and human rights violations, natural disasters and the effects of climate change; development projects and, the fifth, other circumstances.⁷⁶² The focus of this report is the context of conflict and human rights violations and the cyclical phenomena of conflict resulting in displacement. The displacement of communities due to infrastructural developments, with States and Transnational Corporations complicit in the forced displacement of people, often without compensation, can also be considered in the cyclical phenomena of violations of rights leading to conditions predetermining conflict.

⁷⁵⁹António Guterres, UN High Commissioner for Refugees, 'Forced Displacement and the Promise of Pluralism' (2014) High Commissioner's Op-Ed published in *The Globe and Mail* (29 May 2014) <<http://www.unhcr.org/538d822b9.html>> accessed 24 June 2014

⁷⁶⁰ Edward Azar, *The Management of Protracted Social Conflict* (Dartmouth 1990) 9.

⁷⁶¹International Bureau for Children's Rights, *Children in Armed Conflict* (2010) <http://www.essex.ac.uk/armedcon/story_id/000911.pdf> accessed 30 May 2014, 158.

⁷⁶² IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence* (Norwegian Refugee Council 2014) <<http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>> accessed 30 June 2014, 9; See also Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 17.

The figures involved in development projects related causes of displacement speak for themselves, 10 million on an annual basis caused by dam constructions alone.⁷⁶³

The UN Human Rights Council has expressed its concern on

[...] the alarmingly high number of internally displaced persons throughout the world, for reasons including armed conflict, generalised violence, violations of international law, in particular human rights law, and natural or human-made disasters, who receive inadequate protection and assistance, and conscious of the serious challenges that this is creating for the international community.⁷⁶⁴

Regarding displacement, three perceptions of the concepts are presented: human rights violations can lead to displacement in the first instant; human rights violations can occur during and following displacement; and arbitrary displacement can be considered a human rights violation in itself. In this aspect, while the right not to be displaced, outside of the limited protections afforded by IHL, does not exist as a distinct right explicitly formulated in any international human rights convention, it could rely instead on the unlawful acts leading to displacement or the combined violation of several human rights resulting from displacement, and on the State's national systems within which the displacement occurs as primary duty bearer.⁷⁶⁵

Box VI.15. Notions relevant to refuge and displacement

- **Refugees** are persons who, 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country' (Article 1 UN Convention on the Status of Refugees).⁷⁶⁶
- **Internally displaced persons (IDPs)**, are persons or groups of persons 'who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border '(Para. 2 Guiding Principles on Internal Displacement).⁷⁶⁷
- **Asylum seeker** is a person who has applied for refugee status in a foreign country.⁷⁶⁸

⁷⁶³Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 21.

⁷⁶⁴ UNHRC, Resolution 23/8 Mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons, (20 June 2013) A/HRC/RES/23/8 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/154/00/PDF/G1315400.pdf?OpenElement>> accessed 30 June 2014, para. 5

⁷⁶⁵Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 28.

⁷⁶⁶ The UN Convention relating to the Status of Refugees was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V) 1, adopted by the General Assembly of the United Nations on 14 December 1950. It entered into force on 22 April 1954. United Nations, Treaty Series, vol. 189.

⁷⁶⁷ UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement* (11 February 1998) E/CN.4/1998/53/Add.2 <<http://www.unhcr.org/43ce1cff2.html>> accessed 30 June 2014.

⁷⁶⁸International Bureau for Children's Rights, *Children in Armed Conflict* (2010) <http://www.essex.ac.uk/armedcon/story_id/000911.pdf> accessed 30 May 2014, 158.

- **Stateless person** is the person who does not have a nationality of any country.⁷⁶⁹

In the context of IHL, the applicability of protection offered to people threatened with displacement can be limited by the context of conflict. In an international armed conflict, protection is regulated by the III Geneva Convention relative to Prisoners of War and the IV Geneva Convention and Additional Protocol I relating to protection afforded to protected civilians and prohibits the individual or mass forcible transfer of people, with some room for evacuations for security or military purposes.⁷⁷⁰

The establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR) took place in 1950, introducing the international refugee protection system along with the Convention relating to the Status of Refugees (CRSR, known as the Refugee Convention).⁷⁷¹ The system was at that time attempting to support and respond to the risks of large population movements in the aftermath of the Second World War and to support States in their role of providing host to refugees. Palestinian refugees are not part of this system as they are under the mandate of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).

In 1967, the Convention was supplemented by the 1967 Protocol and regional systems of protection of refugees have also been introduced such as the Cartagena Declaration on Refugees.⁷⁷² Regarding the protection of IDPs, the first step adopted by the UN was the appointment of Francis M. Deng from Sudan as the first Representative of the UN Secretary-General on internally displaced persons.⁷⁷³ One of the most important contributions of his mandate was the development of international standards for internally displaced persons known as the UN Guiding Principles on Internal Displacement.⁷⁷⁴ The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. In April 2004, the Commission on Human Rights (now the UN Human Rights Council) called upon the Secretary-General to create a new mechanism to build on the work of the prior Representative and to bring a further focus on the human rights of internally displaced persons appointing Walter Kälin as the new Special Representative of the UN Secretary-General on the human rights of internally displaced persons in September 2004.⁷⁷⁵ Therefore, International Refugee Law, in particular the 1951 Convention

⁷⁶⁹International Bureau for Children's Rights, *Children in Armed Conflict* (2010) <http://www.essex.ac.uk/armedcon/story_id/000911.pdf> accessed 30 May 2014, 158.

⁷⁷⁰ Article 49 IV Geneva Convention and Article 85. 4 (a) API I to the Geneva Conventions.

⁷⁷¹ Convention relating to the Status of Refugees (1951) UNTS vol. 189, 137 (online at <<https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>>)

⁷⁷²The UN Convention and Protocol relating to the Status of Refugees are available at <<http://www.unhcr.org/3b66c2aa10.html>> accessed 14 June 2014. The Cartagena Declaration is available at <<http://www.unhcr.org/45dc19084.html>> accessed 14 June 2014. This Declaration is a non-binding agreement adopted by the Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama, held at Cartagena, Colombia, from 19-22 November 1984.

⁷⁷³ In 1992, the Secretary-General of the United Nations, at the request of the UN Commission on Human Rights (now the UN Human Rights Council) appointed Francis M. Deng of Sudan as the first Representative of the UN Secretary-General on internally displaced persons.

⁷⁷⁴ UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement* (11 February 1998) E/CN.4/1998/53/Add.2 <<http://www.unhcr.org/43ce1cff2.html>> accessed 30 June 2014

⁷⁷⁵ In September 2010, Dr. Chaloka Beyani was subsequently appointed by the Human Rights Council as the new Special Rapporteur on the Human Rights of Internally Displaced Persons, commencing his functions on November 1, 2010. While the title

on the Status of Refugees, IHL,⁷⁷⁶ a slowly evolving body of international law on internal displacement, and a gradual acceptance of the application of International Human Rights Law for refugees, asylum seekers and displaced people, form the legal basis for the rights of displaced people.

The recognition that the rights of refugees and displaced persons can be addressed not only through humanitarian means began to surface within the United Nations and non-governmental organisations during the 1980s and resulted in a still fragmented approach to the issue of displacement.

The UNHCR is the main international agency responsible for refugees and internally displaced people. In situations where there is large numbers of displaced people fleeing at the same time, UNHCR and the host country establish together camps for refugees or the internally displaced persons. Due to considerations of administrative efficiency the host governments may require the refugees or internally displaced to be registered and resident in a camp in order to access social services. Those persons that do not follow these requirements are called 'self-settled' refugees. They are often deprived of identity cards and cannot access basic services.⁷⁷⁷

As section II has outlined, the number of conflicts of an international character have declined and the IHL protection standards afforded to people in internal armed conflicts are fewer, regulated by Additional Protocol II, where again, the displacement of people is prohibited unless military or security reasons demand it.⁷⁷⁸ What limits there are to the IHL standards of protection become irrelevant in many situations of conflict when the acts of fighting groups including State and non state actors pay little or no consideration to any rules of IHL, with regard to the forced displacement of people and other violations of human rights. For instance the extraordinarily difficult humanitarian situation of the population in Gaza has been aggravated by the Israeli military offensive from July 2014 that has caused 440000 Palestinians to leave their homes and to seek refuge at the UNRWA centres, as it has been reported to the UN Security Council by Valerie Amos, OCHA Coordinator and by Pierre Krahenbuhl, Commissioner of the UNRWA.

The decline in the number of interstate conflicts does not correlate with declining numbers of refugees and IDPs, as internal armed conflicts result in large numbers of people forced to exit from their State along with even greater numbers of internally displaced people, forced to move from their homes to alternative locations within their State territory. Situations where long standing refugees in a host country are then forced to move because of conflict also occurs such as Palestinian refugees forced to flee the conflict in Syria since 2011, introducing more difficulties in the complexity of needs faced by refugees with other factors such as disability, age or health related factors intersecting (see box VI.16).

of the mandate holder changed, the functions of the mandate-holder and the mandate itself have remained essentially the same. See his mandate at <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx>> accessed 30 June 2014

⁷⁷⁶ In particular, Article 17 of Additional Protocol II (dealing with non-international armed conflicts) states that: [t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand [...] Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

⁷⁷⁷International Bureau for Children's Rights, *Children in Armed Conflict* (2010) <http://www.essex.ac.uk/armedcon/story_id/000911.pdf> accessed 30 May 2014, 159.

⁷⁷⁸Articles 17(1) and (2) AP II to the Geneva Conventions.

Box VI.16. Intersecting vulnerabilities: elderly refugees with disabilities in post conflict settings

Elderly refugees interviewed in a survey carried out by Caritas Lebanon Migrant Center (CLMC) recounted their experiences of leaving Syria in 2011 and 2012, many waiting until violence escalated to an unbearable level, where they were forced to leave, some in search of food or water. (210 older refugees, over 60 years in age, were included in this study). A significant number reported that destruction of hospitals and diminished or overly-priced medical supplies, forced them to leave, some reporting traumatic experiences in their journey.

With regard to mental health, 57.8% older refugees reported their mental health had become worse since leaving Syria. Difficulty with walking was the most common functional difficulty reported (44%) with 10% physically unable to leave their homes. The predominant barrier in accessing medical care reported by the older refugees was financial (79%) with only 1.5% reporting no difficulties in seeing a doctor. Access to assistive and medical devices such as mobility aids, glasses, hearing aids, wound care supplies differed between elderly Palestinian refugees and elderly Syrian refugees in the study, with elderly Palestinian refugees significantly more in need of all devices. This disparity between two groups of older refugees and their access to assistive devices is commented on in the CLMC study in terms of possible actionable reasons.⁷⁷⁹

Source: Caritas Lebanon Migrants Centre, *Forgotten Voices: An insight into older persons among refugees from Syria in Lebanon* (2013) <data.unhcr.org/syrianrefugees/download.php?id=2797> accessed 30 June 2014

Recent preoccupation in the West with containing refugee and asylum seeker movements and the growth in humanitarian presence within countries experiencing large-scale displacement has resulted in an expanding interest in protecting people within their own countries. The presence of humanitarian agencies dealing with IDP protection has evolved. There has been a steady increase, since 1997, in the number of IDPs from around 17 million recorded then, while the number of refugees has remained between 13 million and 16 million during the same period.⁷⁸⁰ According to the Internal Displacement Monitoring Centre (IDMC) at the end of 2013, the number of people internally displaced by conflict, generalized violence or human rights violations across the world stood at approximately 33.3 million.⁷⁸¹

Progress has been established with regards to the normative framework protecting the rights of IDPs, with the UN Guiding Principles on Internal Displacement,⁷⁸² the emergence within customary law reflective of

⁷⁷⁹ Caritas Lebanon Migrants Centre, *Forgotten Voices: An insight into older persons among refugees from Syria in Lebanon* (2013) <data.unhcr.org/syrianrefugees/download.php?id=2797> accessed 30 June 2014.

⁷⁸⁰ Figures retrieved from the website of the IDMC/Norwegian Refugee Council *Global Figures* (2014) <<http://www.internal-displacement.org/global-figures>> accessed 27 July 2014.

⁷⁸¹ IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence* (Norwegian Refugee Council 2014) 9.

⁷⁸² UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement* (11 February 1998) E/CN.4/1998/53/Add.2 <<http://www.unhcr.org/43ce1cff2.html>> accessed 30 June 2014.

their guidance, and with some regional and sub-regional organisations normative frameworks⁷⁸³, such as the African Union’s Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention) of 2009.⁷⁸⁴ Notwithstanding, the Kampala Convention ‘goes beyond the Guiding Principles by articulating the need for a holistic response to internal displacement based on a combined framework of international human rights law and international humanitarian law’.⁷⁸⁵ It provides a framework for States and other groups and entities involved or affected by internal displacement ‘to analyse the multiple causes of internal displacement and to identify appropriate responses to these phenomena, including durable solutions’.⁷⁸⁶ However, the positive impact of the Kampala Convention on the ground remains to be seen with the occurrence and the subsequent need for protection of internally displaced persons in States, with weak State institutions and limited capacity and the constraints on international intervention or assistance tied to State sovereignty.

The Kampala Convention and the Guiding Principles prohibit displacement based on ethnic cleansing, racial discrimination, apartheid practices or other practices which constitute persecution,⁷⁸⁷ while the Statute of the ICC includes forced displacement into the definition of crimes against humanity, where displacement of groups occur through expulsion or other coercive acts not permitted under International Law, as part of widespread or systematic attack directed against civilian population.⁷⁸⁸ The following figure summarises the intersecting international laws and bodies involved in this complex provision of human rights protection (see Figure VI.).

⁷⁸³Such as the Cartagena Declaration, cited above. It is available at <<http://www.unhcr.org/45dc19084.html>> accessed 30 June 2014.

⁷⁸⁴ According to data from 2013, 39 of 54 States Members of the African Union had signed the Kampala Convention, while 22 had ratified it. The Convention is described as ‘an innovative agreement in that it provides guarantees against forced displacement and standards for the protection of and assistance for persons during displacement, as well as with regard to durable solutions. It also addresses the causes of displacement, which are not limited to situations of armed conflicts and human rights violations but also encompass situations of natural or human-made disasters. Moreover, the Convention is unique in that, in its article 2(d), it provides for the obligations and responsibilities of States parties, while also specifying the roles and responsibilities of non-State armed groups, private companies, humanitarian agencies and civil society organizations, the international community, internally displaced persons and communities affected by displacement’. UNHRC, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani* (4 April 2014) A/HRC/26/33 <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Annual.aspx>> accessed 30 June 2014, para. 28.

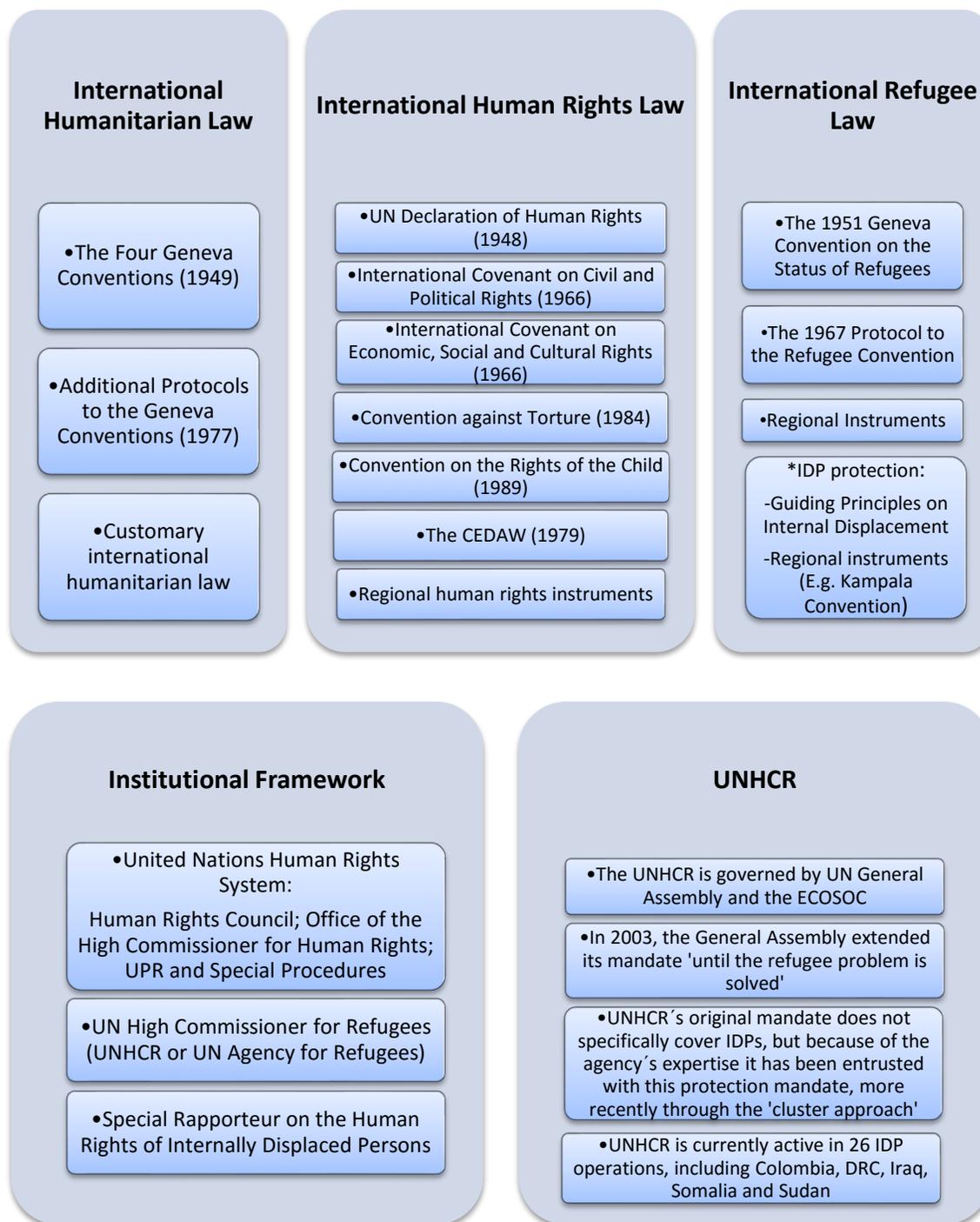
⁷⁸⁵ UNHRC, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani* (4 April 2014) A/HRC/26/33 <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Annual.aspx>> accessed 30 June 2014, para. 37.

⁷⁸⁶ *Ibid.*, para. 38.

⁷⁸⁷It is worth noting that the Kampala Convention ‘innovates by listing, non-exhaustively, a wide range of causes of arbitrary displacement, demonstrating that it is not only caused by conflicts. Indeed, in addition to armed conflict and situations of generalized violence or human rights violations, the Convention obliges States parties to protect all persons against policies of racial or other discrimination aimed at or resulting in altering the ethnic, religious or racial composition of the population; displacement due to harmful practices; and forced evacuations in situations of natural or man-made disasters or other scenarios where evacuation is not required by safety or health considerations of those affected. The warning against the use of “safety and health” reasons to justify displacement that is fundamentally arbitrarily is an important safeguard established by the Convention. Similarly, the Convention devotes the whole entire of article 10 to internal displacement caused by development projects carried out by public and private actors’. See UNHRC, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani* (4 April 2014) A/HRC/26/33 <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Annual.aspx>> accessed 30 June 2014, para. 40.

⁷⁸⁸Article 7(1)(d) and (2)(d) ICC Statute.

Figure VI.5. Legal and institutional frameworks on refugees and IDPs



Expulsion of people from their State of origin is prohibited by various International and Regional Human Rights Treaties, the Universal Declaration of Human Rights (Article 13), the International Covenant on Civil and Political Rights (ICCPR) Article 12(4) contains the right to enter and the right to return to one's country

for every person, while explicit prohibition of expulsion of nationals is contained in regional legal instruments such as the European Convention on Human Rights (ECHR)⁷⁸⁹ and the American Convention on Human Rights (ACHR).⁷⁹⁰

Where the influence of International Law has less impact on individual State sovereignty or regional authority is the case of the EU where less human rights protection is afforded to people in terms of expulsion in State's domestic laws or EU laws covering aliens' expulsion. A full analysis of the applicable procedural and legal mechanisms dealing with entry and expulsion of non nationals will not be included here, other than to make reference to the International Convention on the Status of Refugees, which has been ratified by 145 States,⁷⁹¹ including all the EU Member States, the Migrant Workers Convention which has been signed by 45 States (no European State has signed or ratified this convention)⁷⁹² and the limbo in between, for those that do not meet the criteria for refugee status or have not freely chosen to move in order to seek the opportunity to work in their host country. The conditions and treatment afforded to displaced people awaiting recognition of their status in host countries in Europe is also of concern to the EU institutions and member States in Europe as it is a concern for the many host countries with refugees and asylum seekers throughout the world.⁷⁹³

2. Figures and trends

Given the scale of the problem and the impacts on human rights, a presentation on figures and trends on the phenomenon of displacement requires to make reference to global trends in the first place, and to a regional distribution of the situations of refugees and internally displaced people in the second place.

Sources for the overall figures of IDPS and refugees in the world are primarily the Internal Displacement Monitoring Centre (IDCM) provided by the Norwegian Refugee Council and the latest published figures from the UNHCR and specific UN missions in place in certain countries and Brookings-LSE Project on Internal Displacement and Forced Migration Online.⁷⁹⁴ The figures presented are predominantly those for 2013, published in reports such as the Global Overview 2014 report of the IDMC (see Map VI. 2) and the UNHCR Mid Year Global Trends 2013 report. In some cases figures for 2012 are presented from the UNHCR Global Trends Report 2012 and the UNHCR Statistical Yearbook of 2012, the latest available published reports at the time of gathering this data. As mentioned in section V of the report, the collection of accurate data on conflict related displacement is problematic while it is clear that the numbers are high and the trend is upwards. UNHCR's annual Global Trends report, which covers displacement based on data from governments, NGO partners, and the UN refugee agency itself, shows that as of the end of 2012, more than 45.2 million people were in situations of displacement compared to 42.5 million at the

⁷⁸⁹ Article 3(1) of Protocol no 4 ECHR 213 UNTS 222.

⁷⁹⁰ Article 22(5) ACHR 1144 UNTS 123.

⁷⁹¹ United Nations Treaty Collection UN Database Convention relating to the Status of Refugees <https://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en> accessed 13 July 2014.

⁷⁹² United Nations Treaty Collection UN Database International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families at <https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en> accessed 13 July 2014.

⁷⁹³ These problems are with the field of research assigned to WP 11 of the FRAME Project.

⁷⁹⁴ Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 21.

Figures from the Internal Displacement Monitoring Centre indicate a figure of 33.3 million people displaced (includes figures for refugees and IDPs) by conflict as of January 2014. The figures for IDPs suffered a dramatic increase since 2010/2011, contributing to this overall figure of 33.3 million, the highest number of recorded displaced people as a consequence of conflict and violence.⁷⁹⁸

Although the present day displacement crisis is global in nature, some regions of the world are more affected than others. The worst affected continent is Africa, which has nearly half of the world's IDPs, approximately 12.5 million. Artificial borders retained from colonial exploitation, combined with intense competition for power and scarce economic resources, make the continent a source of continued conflict and displacement.⁷⁹⁹ As reported by the UN Special Rapporteur on the human rights of internally displaced people, the region is making more than four times the figure of displaced people in the previous four years. Regarding causes of displacement in this region, it has been noted by the Special Rapporteur that 'in some countries, displacement due to natural disasters further exacerbated the dire situation of people already displaced due to conflict'.⁸⁰⁰

In relation to specific countries currently most affected by displacement due to conflict, worldwide Syria, Colombia, Nigeria, DRC, Sudan, Iraq and Somalia are on the top of the list.⁸⁰¹ Figures relating to new refugees during the first half of 2013 saw the Syrian Arab Republic providing the biggest flow of refugees during that time period (at 1.3 million people), fleeing to countries like Lebanon, Jordan and Turkey, as well as Iraq and Egypt. The figures at July 2013 indicated Afghanistan, Syria, Somalia, Sudan and the Democratic Republic of Congo as the top five countries of source of refugees.⁸⁰² The figure for those persons defined as *stateless* is estimated to be at 10 million, based on data from countries where reliable data on estimates of stateless people are available, 73 countries at the end of 2012.⁸⁰³ Data on sex and age is disaggregated for children and women in the refugee populations statistics provided by UNHCR. The 2012 yearbook figures indicate that 48% of the refugee populations in 2012 were women and girls, a trend that has been constant over the last 10 years. An average of 49% is indicated for the number of refugee population under 18 years, 13% under the age of 5 years, while 4% is the average given for those over 60 years.⁸⁰⁴

⁷⁹⁸IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence* (Norwegian Refugee Council 2014) 5.

⁷⁹⁹ Roberta Cohen and Francis Deng, 'Mass displacement caused by conflicts and one-sided violence: national and international responses' (2009) in *SIPRI Yearbook 2009*.

⁸⁰⁰ UNHRC, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani* (4 April 2014) A/HRC/26/33 <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Annual.aspx>> accessed 30 June 2014, para. 31.

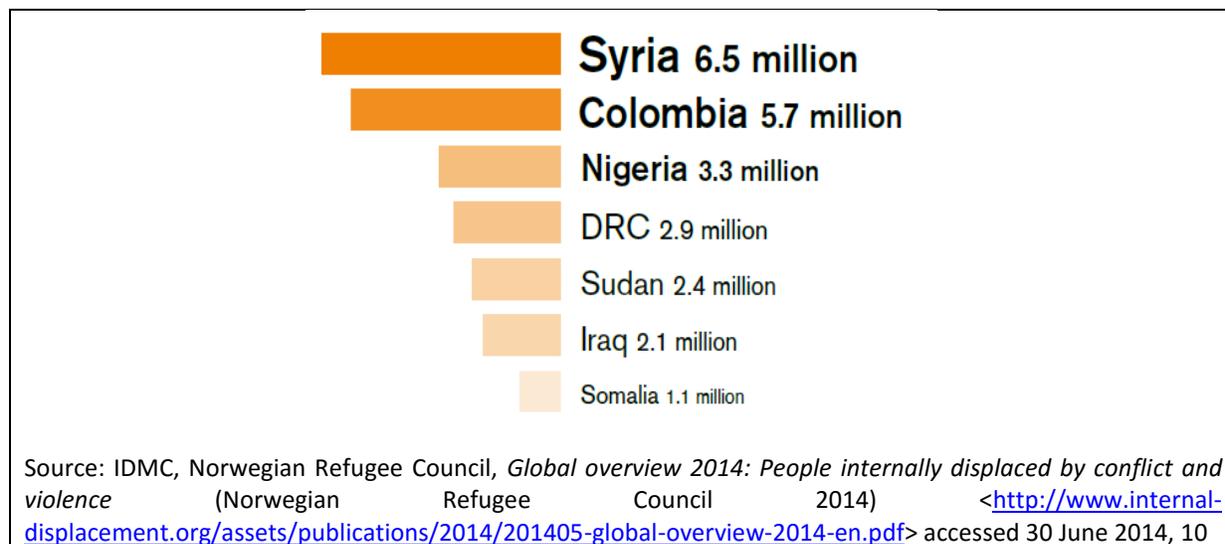
⁸⁰¹IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence*, (Norwegian Refugee Council 2014) <<http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>> accessed 30 June 2014, 9-10.

⁸⁰²UNHCR, *UNHCR Mid-Year Trends 2013* (2014) <www.unhcr.org/52af08d26.html> accessed 24 July 2014, 7.

⁸⁰³ *Ibid.*, 11.

⁸⁰⁴ UNHCR, *UNHCR Statistical Yearbook 2012 12th* (2013) <www.unhcr.org/52a7213b9.html> accessed 24 July 2014, 8.

Figure VI.6. Countries with the highest displacement figures related to conflict and violence



The following regional and country data has been retrieved and combined from the 2014 IDCM Global trends report, which reports on 2013 data and the UNHCR Mid-Year Trends 2013 report.⁸⁰⁵

Sub-Saharan Africa

With more than 12.5 million IDPs in 21 countries as of the end of 2013, sub-Saharan Africa was again the region worst affected by internal displacement caused by conflict and violence. Countries with the highest figures were the Democratic Republic of Congo with an estimated 2,963,700 and Nigeria, where figures were provided for by the Nigerian Government the first time for the IDMC report, with 3.3 million people displaced.⁸⁰⁶ During the first half of 2013, the UNHCR figures on new refugees for that 6 month period estimate 65,000 fled from violence in Sudan, 55,000 from Central African Republic, 26,000 from Mali, 6,5000 from Somalia, 40,000 from the Democratic Republic of Congo.⁸⁰⁷ A sub-region within Sub-Saharan Africa, Central Africa, saw the worst affected population displacement in 2013, with conflicts in DRC, CAR, Nigeria, Sudan and South Sudan as major contributing factors in movement of people within this region.

Latin-America

⁸⁰⁵IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence*, (Norwegian Refugee Council 2014) <<http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf>> accessed 30 June 2014 and UNHCR, *UNHCR Mid-Year Trends 2013* (2014) <www.unhcr.org/52af08d26.html> accessed 24 July 2014.

⁸⁰⁶ Ibid., 18.

⁸⁰⁷UNHCR, *UNHCR Mid-Year Trends 2013* (2014) <www.unhcr.org/52af08d26.html> accessed 24 July 2014, 11.

The figures for the Americas region for IDPs in 2013 reached six million, the majority from Colombia stemming from years of armed conflict there at over 5.5 million, while people were newly displaced there, and in Mexico and Honduras in 2013. The reasons for large population movements in Mexico in 2013 were compounded violence with tropical storms forcing people to areas they then did not wish to return to, due to the violence. Urban gangs related to drug cartels were the main cause for displacement in Honduras, with territorial disputes over trafficking corridors and natural resources compounding the problems.

Middle East and North Africa

The numbers of IDPs for the region of the Middle East and North Africa rose by over 50% compared to the 2012 figures, with a total of at least 9.1 million at the end of the 2013. The numbers of people displaced in the conflict in Syria has seen a dramatic increase, representing over 70% of those displaced in the region. Large numbers of people were recorded as displaced in Iraq, 2,100,000 at the end of 2013.

Europe, the Caucasus and Central Asia

Turkey has the largest population of IDPs in this grouped region in IDMC global trend report based on 2013 figures. Roma IDPs in the Balkans having experienced forced displacement during the armed conflicts of 1990s, continue to face widespread discrimination, living in informal settlements, experiencing difficulties accessing services. Trafficking of displaced women and children, including Roma, is reported to have increased in Bosnia and Herzegovina during 2013. Some IDPs experienced eviction from collective centers in Serbia, Azerbaijan and Russia. Some have experienced opportunities to return with support programs in some municipalities in Kosovo, while others faced repeated displacement as returnees in Kosovo, Bosnia and Herzegovina and Russia.

Regarding refugees flows, reported figures indicate that by the end of 2012, developing countries hosted 8.5 million refugees, or 81 per cent of the global refugee population. The 49 Least Developed Countries provided asylum to 2.5 million refugees, or 24 per cent of the total. The Asia and Pacific region hosted about one third of the global refugee population (34%). This was followed by Sub-Saharan Africa (26%), Europe (17%), the Middle East and North Africa (15%), and the Americas (8%).

Table VI.3. Refugees: top countries of origin and top host countries

TOP HOST	TOP ORIGIN
1. Pakistan (1.6 million)	1. Afghanistan (2.6 million)
2. Islamic Republic of Iran (868,200)	2. Somalia (1.1 million)
3. Germany (589,700)	3. Iraq (746,200)
4. Kenya (564,900)	4. Syrian Arab Republic (729,000)
5. Syrian Arab Republic (476,500)	5. Sudan (569,000)
	6. DR Congo (509,300)
Source: UNHCR, <i>UNHCR Global Trends 2012</i> (2013) < http://www.unhcr.org/51c071816.html > accessed 12 June 2014	

3. Serious human rights violations

Before presenting in more detail the most serious human rights violations, the three perspectives broadly taken when considering human rights and displacement are re-introduced here for the sake of clarity. They are (1) the circumstances that lead to displacement can be human rights violations, (2) human rights violations can occur during or after displacement and (3) arbitrary displacement can be considered a human rights violation in itself.

The facts and figures just presented in the previous subsection, can be considered to be the data representing this third perspective and in the context of this report, those persons displaced due to conflict as opposed to natural disasters or other causes have been highlighted. The first perspective is an important one to analyse particularly in the context of violence and conflict and the serious human rights violations associated with displacement based on race, religion, nationality, political opinion or any other form of discrimination or persecutory factor, particularly when considering the onward discrimination many displaced people experience as they move. Those that cross borders face the process of having to prove the persecution they have experienced in order to receive status of refugee and the protection this affords them in the international legal framework. The situations faced in refugee camps can lead to new human rights violations as forms of discrimination intersect, or based on accessing basics of food and water and shelter⁸⁰⁸. It is this last aspect that is presented in the forthcoming section, namely the perspective on the human rights violations which occur during or after displacement, with particular focus on the vulnerable status of the refugees and IDPs in conflict-affected and high-risk areas.

Intersecting vulnerabilities and discriminatory factors experienced by refugees and internally displaced persons in conflict and high-risk areas is complex and difficult to collate data on.⁸⁰⁹ Discrimination happens against refugees and IDPs on a daily basis.⁸¹⁰ In conflict situations, the risks are heightened and as the status of IDP or refugee merges with other potentially vulnerability factors, such as gender, age, disability, membership of a minority group and access to social and economic resources, the intersection of potential human rights violations becomes greater.

Regarding disabilities, a study carried out by the Women's refugee commission in 2008, cites a research study based on refugees with disabilities, stating that 'Almost without exception, all the refugees involved in the field studies mentioned discrimination, stigmatization, harassment, neglect and exclusion of persons with disabilities as major protection concerns both within their own communities and in the host communities.'⁸¹¹ Reports from Kenya's refugee camps indicate ethnic discrimination of Somali refugees,

⁸⁰⁸International Federation of Red Cross and Red Crescent Societies, *World Disaster Report 2007: Focus on Discrimination* (2007) <<http://www.ifrc.org/publicat/wdr2007/index.asp?gclid=CJS4iMDAlJICFSDMXgodIV4e7g>> accessed 14 Jul 2014, 11.

⁸⁰⁹These vulnerabilities have been acknowledged by Article 9 (2) of the Kampala Convention which requires States to provide special protection and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of household, expectant mothers, mothers with young children, persons with disabilities and older persons, and to take measures for family tracing and reunification.

⁸¹⁰Michele Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 27.

⁸¹¹Women's Refugee Commission, *Disabilities among refugees and conflict affected populations* (2008) <www.womensrefugeecommission.org/.../disabilities/...disabilities...refugees.../file> accessed 20 June 2014: 32

depending on their Somali clan, adding to multiple forms of discrimination experienced by refugees, with specific identity papers given to some clan groups and not others.⁸¹² In a recent report on Sudanese people seeking refugee protection in Uganda, it was found that the camps are often segregated along ethnic lines, as a preventative measure against tensions among groups. Other tensions were generated, with accusations that some groups receive more assistance than others.⁸¹³ The defining criteria for status of refugee based on 'being persecuted for reasons of race, religion, nationality, member of a particular social group or political opinion' is inextricably linked to discrimination resulting in persecution.⁸¹⁴

When identifying the most serious violations of human rights experienced by IDPs and refugees, the notion of discrimination resulting in denied or violated rights can be applied as one of the root causes. The dynamic of conflict and violence adds to the potential for further forced displacement or denied return, grave violations of rights, in the form of loss of life, detention, torture, sexual violence, which are broadly defined here, as *violations of the right to life and physical integrity*. The specific phenomena of *sexual and gender based violence* is provided separately while linked to physical security. Other violations are identified as the attacks to the right to access to *basic needs of water, food and shelter, as well as the right to education and the right to health* with reference to the experiences of those with intersecting vulnerabilities, women, children, people with disabilities and the elderly.

It is recognized that the State is the primary institute responsible for the physical safety of refugees in respect of their host state, and for IDPs within a given State. It is also recognized that States may be unwilling or unable to provide protection, which transfers a duty of responsibility to the United Nations High Commissioner for Refugees (UNHCR) to provide protection in the context of refugee and IDP camps. In this regard, some criticism has been voiced in terms of the capabilities of the organisation to fulfill this extended role and the confusion which results as to whether the State or the UN body it to be held responsible for ensuring refugee rights.⁸¹⁵

IDPs have emerged as the largest group of people receiving and in need of protection and assistance. The level of legally binding instruments that is required may not be established fully yet, while the non-binding UN Guiding Principles on Internal Displacement are widely accepted and increasingly implemented through domestic policies,⁸¹⁶ and some regional instruments such as the Kampala Convention go further

⁸¹²Peter Mwangi Kagwanja 'Ethnicity, gender and violence in Kenya' (2000) 9 Forced Migration Review <<http://www.fmreview.org/FMRpdfs/FMR09/fmr9full.pdf>> accessed 14 July 2014, 21.

⁸¹³International Refugee Rights Initiative 'Conflict in South Sudan: Refugees seeking protection in Uganda and a way home' (2014) <<http://www.refugee-rights.org/Publications/Papers/2014/14%2004%2001%20South%20Sudanese%20refugees%20FINAL.pdf>> accessed 12 June 2014, 14.

⁸¹⁴Article 1(A) (2) Refugee Convention (adopted July 28, 1951, entered into force April 22, 1954, UNTS 137).

⁸¹⁵Ilse Griek, 'The "rights turn" in refugee protection: an analysis of UNHCR's adoption of the human rights based approach' in (2009) No. 6 Yearbook on Humanitarian Action and Human Rights, 79.

⁸¹⁶As noted by the UN Special Rapporteur on the human rights of internally displaced people, Governments, including six in Africa, have adopted a variety of national policies or legislation specifically addressing internal displacement. African States were among the first in the world to adopt national laws and policies based on the Guiding Principles. The six African States to have developed laws and policies on internally displaced persons are Angola (2000), Burundi (2001), Sierra Leone (2002), Uganda (2004), the Sudan (2009) and Kenya (2012), while Somalia and the Democratic Republic of the Congo are in currently developing relevant laws.

in that they require those States that have ratified the Convention to implement the protection systems as a national level in legal terms and in policies dealing with internal displacement. It is recognised that there is a large gap in the protection mechanisms in terms of ensuring rights and legally enforcing the protection of the rights of internally displaced people within States.⁸¹⁷

a) *Serious forms of arbitrary displacement*

While international human rights law does not clearly and explicitly set out the right not to be arbitrarily displaced, research has pointed out that some elements of the content of this right are to be found in the right to freedom of movement and residence, the right to privacy, the right to choose one's own residence and the right to adequate housing.⁸¹⁸ The prohibition of arbitrary displacement has also been addressed to a certain extent in international humanitarian law.⁸¹⁹ Article 49 of the IV Geneva Convention, prohibits 'individual or mass forcible transfers' as a grave breach of international humanitarian law. This prohibition was later extended to non-international armed conflicts by the Additional Protocol II to the Geneva Conventions. It is contended by the ICRC study on IHL and customary law that State practice establishes these rules as norms of customary international humanitarian law applicable in both international and non-international armed conflicts.⁸²⁰

The worst forms of arbitrary displacement are those amounting to genocide, war crimes or crimes against humanity, or those which have strong similarities with these crimes, such as forcible removal, displacement and deportation of civilian population furthering a policy of 'ethnic cleansing'. Various reports have documented the commission of such serious acts, among others, in the Yugoslavian wars in 1992-1995;⁸²¹ in Darfur (Sudan) during the conflict in 2003-2006;⁸²² during the Iraqi civil war since 2003 affecting the civilian population in general or specifically religious minorities such as Iraqi Christian and Mandaean and Yazidi communities, a practice that has worsened in June 2014 with respect to the Christian

See UNHRC, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani* (4 April 2014) A/HRC/26/33 <<http://www.ohchr.org/EN/Issues/IDPersons/Pages/Annual.aspx>> accessed 30 June 2014, para. 25.

⁸¹⁷UNHCR, *The State of the World's Refugees 2012 in search of solidarity* (2012) <<http://www.unhcr.org/publications/20-chapter-5-protecting-the-internally-displaced.html>> accessed 14 June 2014, Chapter 5.

⁸¹⁸IDMC, Norwegian Refugee Council, *The Kampala Convention one year on: Progress and prospects* (December 2013) <<http://www.internal-displacement.org/assets/publications/2013/201312-af-kampala-convention-progress-report-thematic-en.pdf>> accessed 30 June 2014, 25.

⁸¹⁹Megan Bradley and Mike Asplet, 'Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force' (2012) vol. 16 No. 36 *American Society of International Law*.

⁸²⁰ICRC, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press 2009) 457.

⁸²¹The term 'ethnic cleansing' has been used to refer to the events that took place in relation to the conflict in Bosnia Herzegovina. For instance, the UN General Assembly Resolution 47/121 (18 December 1992) referred in its Preamble to 'the abhorrent policy of 'ethnic cleansing', which is a form of genocide', as being carried on in Bosnia and Herzegovina. See at <<http://www.un.org/documents/ga/res/47/a47r121.htm>> accessed 30 June 2014.

⁸²²HRW, 'Q & A: Crisis in Darfur' <<http://www.hrw.org/sites/default/files/features/darfur/fiveyearson/qanda.html>> accessed 30 June 2014.

minority due to the actions of the militants of the Islamic State of Iraq and Sham (ISIS)⁸²³; in the Central African Republic in 2013,⁸²⁴ and in South Sudan also in 2013.⁸²⁵

In its broadest sense, ethnic cleansing refers to the forcible deportation of population. This is encompassed by the definitions of crimes against humanity under the Statutes of both the ICC and the ICTY.⁸²⁶ The grave human rights violations integral to stricter definitions of ethnic cleansing appear under separate crimes falling under the definitions of genocide or crimes against humanity of those statutes. Academic research points that while genocide includes an intent at complete or partial destruction of the target group, ethnic cleansing may involve murder only to the point of mobilizing the target group out of the territory. Hence there may be varied degrees of mass murder in an ethnic cleansing, often subsiding when the target group appears to be leaving the desired territory, while during genocide the mass murder is ubiquitous and constant throughout the process, continuing even while the target group tries to flee. In this line, the European Court of Justice in the judgment *Jorgic v. Germany* on 12 July 2007 elaborated upon the distinction between ethnic cleansing and the crime of genocide when reviewing the ICJ *Bosnian Genocide Case*.⁸²⁷

b) Killings and other attacks on the rights to life, physical integrity and security

There are a cross section of applicable laws that should afford protection from violence, torture, detention or killing of IDPs and refugees. The prohibition of violence to civilians, in particular murder, mutilation, cruel treatment and torture is a principle of customary international law, with universal applicability in all situations of armed conflict. Common Article 3 of the Geneva Conventions is the most recognized source for this fundamental protection. Some with additional enhancement specific to whether the individual IDP

⁸²³HRW, 'Iraq: ISIS Abducting, Killing, Expelling Minorities' <<http://www.hrw.org/news/2014/07/19/iraq-isis-abducting-killing-expelling-minorities>> accessed 20 July 2014.

⁸²⁴Reliefweb, '100 Day Plan for Priority Humanitarian Action in Central African Republic' (2013) <<http://reliefweb.int/report/central-african-republic/100-day-plan-priority-humanitarian-action-central-african-republic>> accessed 30 June 2014.

⁸²⁵HRW, Press tv 'HRW accuses South Sudan rebels of ethnic cleansing' <http://www.presstv.ir/detail/2013/12/19/340859/south-sudan-hit-by-ethnic-cleaning-hrw/> accessed 30 June 2014.

⁸²⁶Article 7 of the ICC Statute and Article 5 of ICTY Statute.

⁸²⁷The ECtHRECHR found that '[*ethnic cleansing*] can only be a form of genocide within the meaning of the Genocide Convention if it corresponds to or falls within one of the categories of acts prohibited by Article II of the Convention. Neither the intent, as a matter of policy, to render an area "ethnically homogeneous", nor the operations that may be carried out to implement such policy, can as such be designated as genocide: the intent that characterizes genocide is "to destroy, in whole or in part" a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is such destruction an automatic consequence of the displacement. This is not to say that acts described as 'ethnic cleansing' may never constitute genocide, if they are such as to be characterized as, for example, 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part', contrary to Article II, paragraph (c), of the Convention, provided such action is carried out with the necessary specific intent (*dolus specialis*) that is to say with a view to the destruction of the group, as distinct from its removal from the region. As the ICTY has observed, while 'there are obvious similarities between a genocidal policy and the policy commonly known as 'ethnic cleansing' ' (*Krstić*, IT-98-33-T, Trial Chamber Judgment, August 2, 2001, para. 562), yet '[a] clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide. ECHR, *Case of Jorgic v Germany* Application no. 74613/01 judgment 12 July 2007 para. 45 <<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81608#%22itemid%22:%22001-81608%22>> accessed 20 June 2014. The European Court cites the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide judged by the International Court of Justice.

or refugee is a child or a person with a disability is present in the form of the CRC and the Convention on the Rights for Persons with Disabilities (CRPD).⁸²⁸

The examples presented highlight the violations to physical integrity and the killing and injury to displaced people in conflict situations or in post conflict settings. Evidence from the analysis is indicative of the heightened risk of violations on arrival at a refugee or IDP camp.⁸²⁹ These abuses suppose an attack to the *right to life and physical integrity* as recognised in Article 3 UDHR and Articles 6 and 7 of the ICCPR and other international and regional human rights instruments, as reported in the case of human rights violations experienced by children and women.⁸³⁰ Violations of the rights to life and physical integrity are illustrated in the case presented in the following, namely that of South Sudan.

Box VI.17. Serious violations of the rights to life, physical integrity and security of internally displaced persons in South Sudan

More than 400,000 people are living as internally displaced and another 200,000 are living as refugees across borders as a result to the armed violence and violations occurring in South Sudan. There have been reports of extrajudicial killings, sexual violence, torture, looting, destruction of property, recruitment of children and other violations of major concern. Displaced people living in South Sudan also suffer from high food insecurity and fragile State governance and infrastructure.

On the 19th of December 2013, a mass killing was reported in Akobo, where an armed group attacked the UNMISS base, resulting in a large group of civilians seeking protection and UN personnel were killed.⁸³¹ It has also been reported that internally displaced persons close to the UNMISS compound in Bor were killed, most likely by SPLA. The UNMISS Human Rights Division reports that about 200 bodies were found in the area and even more people have most likely been burned, buried or gone down the river. The circumstances of these killings are not yet known.⁸³²

The mass killing in Akobo is one example of the extent of killing in South Sudan that may constitute war crimes⁸³³ and crimes against humanity. The figures of over 10,000 killed in the conflict and rising concerns about humanitarian needs requiring assistance, the conflict threatens to create more and more incidents of war crimes and crimes against humanity without further determined intervention from the international community.⁸³⁴ As of July 2014, UNMISS have confirmed that the numbers of IDP at their 10 bases in South Sudan are expected to stay high, with no clear picture of a cessation of the

⁸²⁸ Article 6(1) Convention on the Rights of the Child (CRC) and Article 10 Convention on the Rights of Persons with Disabilities (CRPD) (adopted on 13 December 2006 by General Assembly resolution A/RES/61/106, entered into force on 3 May 2008, UNTS vol. 2515).

⁸²⁹ James C. Hathaway, *The rights of refugees under International Law* (Cambridge University Press 2005) 441.

⁸³⁰ See section VI A and VI B of this report.

⁸³¹ United Nations Mission in South Sudan (UNMISS), *UNMISS Interim Report on Human Rights crisis in South Sudan* (21 February 2014)

<<http://unmiss.unmissions.org/Portals/unmiss/Documents/PR/Reports/HRD%20Interim%20Report%20on%20Crisis%202014-02-21.pdf>> accessed 12 April 2014, 3.

⁸³² Ibid. 14-15.

⁸³³ Recognised as customary international law, see ICRC, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press 2009) Rule 1.

⁸³⁴ International Crisis Group, *South Sudan: A civil War by any other name*, Africa Report No. 217 (10 April 2014) <<http://www.crisisgroup.org/en/regions/africa/horn-of-africa/south-sudan/217-south-sudan-a-civil-war-by-any-other-name.aspx>> accessed 24 July 2014, 10

conflict and with the additional threat of flooding and food security threatening to escalate to famine according to early warning forecasts.⁸³⁵

Sources: UNHCR, *Global Appeal 2014-2015 - South Sudan* (UNHCR 2014) <<http://www.unhcr.org/528a0a25b.html>> accessed on 5 April 2014 and UN Security Council, *Report of the Secretary-General on South Sudan* (6 March 2014)S/2014/158

c) *Sexual violence*

As mentioned in section VI (A) of this report on women rights' violations, sexual and gender-based violence is committed in conflict and post-conflict settings, with refugee and IDP women and girls being particularly vulnerable. It has been reported that 'sexual violence against refugees is a global problem. It constitutes a violation of basic human rights, instilling fear in the lives of victims already profoundly affected by their displacement'.⁸³⁶

The UN Executive Committee Conclusion No. 73 (XLIV), 8 October 1993, on Refugee Protection and Sexual Violence has referred to sexual violence as a serious offence of human dignity, stating that:

[...] sexual violence, which not only constitutes a gross violation of human rights, as well as, when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offense to human dignity.⁸³⁷

Apart from the general protection afforded to women and girls against sexual violence, the UNHCR has elaborated the Guidelines on Preventing and Responding to Sexual Violence Against Refugees which provides information on how and when sexual violence can occur in the refugee context and the physical, psychological and social effects that it can have on those exposed to it. The reasons given for the lack of reporting of many if not most incidents of sexual violence is due to 'reasons including shame, social stigma and fear of reprisal or the case going to trial'.⁸³⁸ The Guidelines provide information on methods for the prevention of sexual violence and information on how to respond when it occurs. Training, education and information dissemination is recommended and in particular, the Guidelines emphasize the need for refugees, specifically refugee women, to receive education, skills training and in particular training in legal awareness.⁸³⁹

Recognised as a global concern, primarily targeting women and girls, with male victims also reported in comparatively less numbers, in armed or violent attacks on civilian groups, while the predominant perpetrators are men or in some armed conflict areas such as Central African Republic, child soldiers can

⁸³⁵ UNMISS, Press release 'UN relief chief warns of looming disaster in Sudan and South Sudan' (16 July 2014) at <<http://www.unmiss.unmissions.org/Default.aspx?tabid=3465&ctl=Details&mid=6047&ItemID=4616850&language=en-US>> accessed 24 July 2014.

⁸³⁶ UNHCR, *Sexual Violence against Refugees: Guidelines on Prevention and Response* (1995) <<http://www.unhcr.org/3b9cc26c4.html>> accessed 14 July 2014, 1.

⁸³⁷ UNHCR, UN Executive Committee Conclusion No. 73 (XLIV), on Refugee Protection and Sexual Violence (8 October 1993) <<http://www.unhcr.org/3ae68c6810.html>> accessed 24 July 2014.

⁸³⁸ UNHCR, *Sexual Violence against Refugees: Guidelines on Prevention and Response* (1995) <<http://www.unhcr.org/3b9cc26c4.html>> accessed 14 July 2014, 1.

⁸³⁹ *Ibid.*, 7.

be the perpetrators.⁸⁴⁰ Research consisting of a systematic review of relevant literature from multiple databases on the estimated prevalence of sexual violence among refugees and displaced persons in complex humanitarian emergencies, conducted in 2013, concluded that the prevalence of sexual violence amongst this identified group was estimated at 21%.⁸⁴¹ This is a statistic of one in five refugees or displaced women in complex humanitarian settings may experience sexual violence, with underestimation of the true prevalence likely, given the fact that many victims do not disclose.

One significant case is presented here in the context of internally displaced persons within Colombia where displacement takes place primarily from rural areas to urban areas and in those specific urban areas where armed conflict presides.

Box VI.18. Sexual violence against internally displaced persons in Colombia

According to official figures of March 2013, over 4.7 million people were internally displaced in Colombia. Despite the Government's efforts to improve its response to forced displacement and implement the Victims Law, widespread insecurity and violence including the forced recruitment of children and youth, sexual and gender-based violence (SGBV), threats, disappearances and murders continue to occur in many regions. The growth of displacement in urban areas and continued conflict in remote rural areas that are difficult to access for UNHCR and its partners, highlight the need for the continuation of prevention and protection programs at national and local levels.

In the context of the Colombian armed conflict, sexual violence is one of the most serious and invisible crimes.⁸⁴² According to statistics from the Unit for the Care and Reparation of Victims in 2014, there are only 3,931 victims registered for crimes against sexual freedom and integrity.⁸⁴³ The figure highlights that sexual violence cannot be considered as marginal or isolated offenses, but it fails to reflect the true magnitude of this problem.⁸⁴⁴ The National Center for Historical Memory has noted that armed actors in the Colombian conflict commit crimes of sexual violence in order to humiliate women leaders, punish transgressive behavior of subordinates or as an incentive to cohere their troops.⁸⁴⁵ Other reasons why sexual violence is used in the conflict are stated to be to terrorize the population in order to facilitate military control of territory or to use the victims as sex slaves.⁸⁴⁶

⁸⁴⁰ Megan Bastick, Karin Grimm Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the security sector* (Geneva Centre for the Democratic Control of Armed Forces 2007) 14.

⁸⁴¹ Alexander Vu, Atif Ada, Andrea Wirtz, Kiemanh Pham, Leonard Rubenstein, Nancy Glass, Chirs Beyer Sonal Singh, 'The prevalence of Sexual violence among refugees in complex humanitarian emergencies: a systematic review and meta-analysis' (2014) PLOS Current Disasters, 9.

⁸⁴² See Centro Nacional de Memoria Histórica, *¡Basta ya! Colombia: Memorias de la Guerra y dignidad* (Centro Nacional de Memoria Histórica 2013) <<http://www.centrodememoriahistorica.gov.co/descargas/informes2013/bastaYa/basta-ya-memorias-guerra-dignidad-new-9-agosto.pdf>> accessed 30 June 2014, 32

⁸⁴³ See the numbers of victims registered by Unidad para Atención y Reparación Integral para las Víctimas at <<http://rni.unidadvictimas.gov.co/?q=v-reportes>> accessed 4 March 2014

⁸⁴⁴ Centro Nacional de Memoria Histórica, *¡Basta ya! Colombia: Memorias de la Guerra y dignidad* (Centro Nacional de Memoria Histórica 2013) <<http://www.centrodememoriahistorica.gov.co/descargas/informes2013/bastaYa/basta-ya-memorias-guerra-dignidad-new-9-agosto.pdf>> accessed 30 June 2014, 32

⁸⁴⁵ Ibid. 31.

⁸⁴⁶ Amnistía Internacional, *Déjennos en paz: la población, víctima del conflicto armado interno de Colombia* (2008) <<http://www.amnesty.org/en/library/asset/AMR23/023/2008/en/6f073aec-a1b5-11dd-aa42d973b735d92e/amr230232008spa.pdf>> accessed 4 March 2014, 61. According to statistics from the Unit for the Care and Reparation of Victims in 2014, there are only 3,931 victims registered for crimes against sexual freedom and integrity. The figure highlights that

Source: UNHCR, *Global Appeal 2014-2015 – Colombia* (UNHCR 2014) <<http://www.unhcr.org/528a0a367.html>> accessed 24 June 2014.

In 2010, a large study was undertaken across conflict affected urban areas, where the research recorded that over a nine year period, 489,687 women were victims of sexual violence in these urban conflict zones.⁸⁴⁷ While the figures are not broken down into those women specifically identified as displaced, it is a record of the environment where displaced women live in the context of Colombia. The research recorded the women's socio-economic status and ethnicity including if they were from an indigenous community. Indigenous women face multiple forms of discrimination based on gender race ethnicity and socioeconomic status and in the context of Columbia are reported to be at risk of being singled out for sexual violence by armed groups.⁸⁴⁸ Another study in the context of Colombia has indicated that the risk of experiencing violence within the family may be considered greater in situations of displacement due to economic and social pressures caused by poverty in displacement.⁸⁴⁹ In this regard, the following table shows the various kinds of sexual violence and its incidence in Colombia as recorded over the nine year period of the study.

Table VI.4. Incidence of sexual violence in Colombia related to displacement		
(2001-2009)		
Type of violence	Definition	Number of affected victims⁸⁵⁰
Rape	The Inter-American Court considers that rape does not necessarily mean sexual intercourse without consent, vaginally, as it has been traditionally considered; but rather should be understood as acts of vaginal or anal penetration without consent of the victim, using other parts of the body of the	An estimated 94,565 women between 15 and 44 years were victims of rape in the period 2001-2009.

sexual violence cannot be considered as marginal or isolated offenses, but it fails to reflect the true magnitude of this problem. The National Center for Historical Memory has noted that armed actors in the Colombian conflict commit crimes of sexual violence in order to humiliate women leaders, punish transgressive behavior of subordinates or as an incentive to cohere their troops. Other reasons why sexual violence is used in the conflict are stated to be to terrorize the population in order to facilitate military control of territory or to use the victims as sex slaves.

⁸⁴⁷ Olga Amparo Sanchez, Jose Lopez Vivas, Siane Rubriche Cardenas and Maria del Pilar Pengifo Cano, *First Survey on the Prevalence of Sexual Violence against women in the context of the Columbian armed conflict 2001-2009* (Oxfam 2011) <http://www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf> accessed 30 May 2014, 7.

⁸⁴⁸ Inter-American Commission on Human Rights, *Annual Report 2010* (2012) <<http://www.cidh.org/annualrep/2010eng/TOC.htm>> accessed 10 May 2014, 385.

⁸⁴⁹ Refugees International, *Displaced Women Demand Their Rights* (2011) <<http://www.refintl.org/policy/field-report/colombia-displaced-women-demand-their-rights>> accessed 10 May 2014.

⁸⁵⁰ Olga Amparo Sanchez, Jose Lopez Vivas, Siane Rubriche Cardenas and Maria del Pilar Pengifo Cano, *First Survey on the Prevalence of Sexual Violence against women in the context of the Columbian armed conflict 2001-2009* (Oxfam 2011) <http://www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf> accessed 30 May 2014, 11.

	perpetrator or objects as well as oral penetration by the male member. ⁸⁵¹	
sexual slavery	It is defined as the status or condition of a person over whom one or all the powers inherent to property rights are exercised in order to have sexual access through rape or other forms of sexual violence. ⁸⁵²	There is no information available
forced prostitution	It is coercion performed in a variety of ways not limited to physical violence for a person to perform the act of prostitution. ⁸⁵³	7,754 women aged between 15 and 44 were victims of forced prostitution in the period of 2001-2009.
forced pregnancy	It is understood as the action of control over a pregnant woman, with the intention to control to ensure the continuation of the pregnancy or the birth of her child against the will of the mother. This pregnancy may be the result of rape, but this it is not always the case. Similarly, on many occasions this attempt to control includes the unlawful confinement of pregnant women. ⁸⁵⁴	26,353 women aged between 15 and 44 were victims of forced pregnancy in the period of 2001-2009.
Forced abortion	Abortion performed without the woman's consent and against her will through any surgical, medical, pharmaceutical or any other procedure. ⁸⁵⁵	27,058 women aged between 15 and 44 were victims of forced abortion in the period of 2001-2009.
forced sterilization	Forced sterilization is the act of depriving a person of the ability of biological reproduction, without behavior being justified by any medical or hospital treatment of the victim and which is carried out without her consent. ⁸⁵⁶	19,422 women were victims of forced sterilization in the period of 2001-2009.

⁸⁵¹Miguel Castro Castro Prison v. Peru (Judgment) Inter-American Court of Human Rights (25 November 2006) Series C No. 160, para. 310.

⁸⁵² UNHRC, *Systematic rape, sexual slavery and slavery-like practices during armed conflict - update report by the Special Rapporteur* (6 June 2000) E/CN.4/Sub.2/2000/21 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/139/34/PDF/G0013934.pdf?OpenElement>> accessed 30 May 2014, para. 27.

⁸⁵³ Lorena Garrido, Carisa Velocci y Vanesa Valino, *Análisis socio jurídico de la trata con fines de prostitución forzada: Herramientas para una intervención desde una perspectiva de derechos*, Genera, Observatori DESC, Grup Antígona UAB (November 2011) 9.

⁸⁵⁴ Olga Amparo Sanchez, Jose Lopez Vivas, Siane Rubriche Cardenas and Maria del Pilar Pengifo Cano, *First Survey on the Prevalence of Sexual Violence against women in the context of the Colombian armed conflict 2001-2009* (Oxfam 2011) <http://www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf> accessed 30 May 2014, 13.

⁸⁵⁵ Womens Link Worldwide, *Calificación del crimen de aborto forzado en el marco del derecho y la jurisprudencia internacionales* (September 2010) <www.womenslinkworldwide.org/wlw/bajarFS.php?tl=3&per=53> accessed 10 May 2014, 4.

⁸⁵⁶ Preparatory Commission for the International Criminal Court, *Finalized draft text of the Elements of Crimes* (2 November 2000) U.N. Doc. PCNICC/2000/1/Add.2 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/724/27/PDF/N0072427.pdf?OpenElement>> accessed 30 June 2014.

d) Attacks on the rights to water, food, health and education

Civilian populations are at risk as a direct result of conflict in terms of death or injury and also face ongoing risks as result of military or rebel operations, as reported by the World Health Organisation (WHO),⁸⁵⁷ through a combination of associated factors resulting from the conflict: decreased access to food, leading to poor nutrition; increased risk of communicable diseases; reduced access to health services; reduced public health programs; poor environmental conditions; psychosocial distress.

The associated factors identified in this WHO report are environmental factors related to social, political and economic systems, which contribute to the difficulties experienced by people fleeing from violence. Many aid agencies are having serious difficulties to provide aid because of the increased acts of threatened and actual kidnappings.⁸⁵⁸ In addition, health facilities of countries affected by armed conflicts have been damaged or destroyed. This has provoked alarming figures regarding the access to food, water and health assistance. The most serious case of damages caused to health facilities is Syria. These circumstances lead to the violation of *the right to food, water and health* for those citizens in most need due to their displacement in times of conflict. These rights are protected both by IHL and IHRL. In particular, it is a principle of customary international law that parties to conflict must allow and facilitate aid to any civilian population in need, subject to their control. International humanitarian law demands that humanitarian personnel have adequate access to refugee and displaced populations.⁸⁵⁹

Taking the right to food, it is a recognized right in many specific international instruments such as the Convention relating to the Status of Refugees (Articles 20 and 23), the Convention on the Rights of the Child, CRC (Articles 24(2)(c) and 27(3)), the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW (Articles 12(2)) and the Convention on the Rights of Persons with Disabilities (CRPD (Article 28(1)). Taking the CRPD further articles as Article 11 calls on State parties to take, in accordance with their obligations under international law, all measures to ensure the protection and safety of persons with disabilities in situations of armed conflict, and other situations of risk such as natural disasters. Article 32 of the CRPD calls for awareness, education and specific healthcare, assistive technology and supports for diverse disability needs, along with systematic planning, participation and consultation with persons with disabilities and DPOs in areas of humanitarian response and international cooperation. A further, non-legally binding document exists in the context of disability and refugees and IDPs requiring humanitarian assistance, the Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR No. 110 (LXI) – 2010.⁸⁶⁰ The intersection of vulnerabilities in the context of refugees and IDPs and disability, women, children and elderly calls for a range of protection measures for what can be broadly considered their access to economic, social and cultural rights, crudely gathered together in this section to give an overview of how these rights are violated in situations of conflict or post conflict and the complexity of providing humanitarian assistance

⁸⁵⁷ World Health Organisation (WHO), *World Report on Violence and Health* (WHO Geneva 2002), <http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf?ua=1> accessed 30 June 2014, 225.

⁸⁵⁸ UN Human Rights Council, *Report of the United Nations High Commissioner for human rights on the human rights situation in Mali* (2013) UN Doc. A/HRC23/57 para. 14-25.

⁸⁵⁹ Article 49 Geneva IV; Article 78 AP I; Article 17 AP II.

⁸⁶⁰ UNHCR, UN Executive Committee Conclusion No. 110 (LXI) on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR (12 October 2010) <<http://www.unhcr.org/4cbeb1a99.html>> accessed 14 May 2014.

such as health and education in conflict and refugee settings.

Conflict and political instability can result in the breakdown of national health services and criticism has been made of international organisations, private providers, NGOs and UN agencies in terms of weak coordination, use of uneven skills and accountability structures in provision of services in times of conflict and violent political instability.⁸⁶¹ This raises the question of States obligations under international law, their failure to provide in some situations of conflict and non-state organisation's roles in provision of humanitarian assistance and healthcare. New mechanisms for ensuring worldwide commitment to humanitarian governance and protection of the rights of civilians in accessing basic services in conflict have been called for.⁸⁶²

Box VI.19. Internally displaced persons in the Syria Arab Republic

The humanitarian situation in Syria is extremely challenging and continues to deteriorate at a rapid pace with more than 6.8 million Syrians (the majority internally displaced) now requiring humanitarian assistance. OCHA has estimated that, by the end of 2013, 6.5 million of Syria's 22 million populations will be affected and in need of humanitarian assistance, including 4.25 million internally displaced.

Syria is hosting various groups of refugees, mostly Iraqis, but also small groups of Somalis, Afghans and Palestinians. The total number of refugees in Syria has decreased from nearly 110,000 at the beginning of 2012 to some 70,000 at the end of 2012, of whom some 64,000 are Iraqis (89 per cent). This decrease is expected to continue due to the volatile security situation. Despite figures indicating nearly half the population of Syria either displaced within Syria or as one of the 2.5 million refugees in neighbouring countries, the Government of Syria has refused to recognise those fleeing conflict within Syria as IDPs, referring to them as 'people who have left their homes'.

Source: UNHCR, *Global Appeal 2014-2105 – Syrian Arab Republic* available at <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486a76&submit=GO>> accessed 30 June 2014

The majority of these situations show the intersecting vulnerabilities of refugees and internally displaced persons as it is illustrated in the Box VI. 20.

Box VI.20. Intersecting vulnerabilities of refugees and IDPs arriving in Lebanon

The numbers of refugees from Syria in Lebanon, 2,500 arriving daily, is threatening to escalate the difficulties in providing assistance into what some are reporting will become the real humanitarian crisis in the region. Sectarian factors between Shiite, Sunnis and Christian communities contribute one aspect of concern, the existing number of Palestinian refugees in the county another, while reports

⁸⁶¹ Sue Lautze, Jennifer Leaning, Angela Raven-Roberts, Randolph Kent, Dyan Mazurana, 'Assistance, protection, and governance networks in complex emergencies' (2004) 364 *Lancet*, 2134–41.

⁸⁶² *Ibid.* 2134-41.

from Lebanon on the experiences of refugees from Syria, shines some light on the heightened risk for displaced elderly and persons with disabilities seeking shelter, when forced to flee conflict. The impact that conflict, particularly sustained conflict, has on elderly people with disabilities may be direct trauma such as the loss of family members or their home being destroyed in the conflict, or indirect impact of conflict, such as lack of access to medical or social services as indicated in the earlier cited research. Older women with disabilities face particular risk of violence as highlighted by the CEDAW Committee general Recommendation on Older Women No. 27.

Displacement inflicts a greater vulnerability on children with intellectual disabilities to experiences of violence and denied economic, social and cultural rights. These situations place children with disability at risk of abandonment or institutional placement due to the difficult circumstances faced by families including lack of access to medication, finances and no support within their community.

4. Perpetrators

Grave violations of the rights of IDPs and Refugees occur with killings, sexual violence, attacks on physical integrity and the worst forms of arbitrary displacement, amounting to international crimes, both perpetrated by State and non-state actors. In terms of denial of rights for shelter, support, education, the right to work for IDPs, their status of IDP or refugee can be compounded by discrimination and vulnerabilities and all States denying IDPs access to these basic rights are responsible. In terms of refugees, denial of rights are perpetrated by all States that deny access to refugees or detain them awaiting approval of refugee status for years, denying them access to civil and economic rights in this process. Deliberate and intentional attacks on civilians, defined as ‘one-sided violence’ in some circumstances, can be perpetrated by the armed forces of a State or by non-state armed groups.⁸⁶³

Deliberate targeting of IDPs and refugees due to political, ethnic, racial or religious grounds has taken place in the past and still does take place. As the presentation of the legal framework prohibiting the killing or attacking of civilians has illustrated, serious forms of arbitrary displacement may amount to genocide, war crimes and crimes against humanity.⁸⁶⁴ Under the international legal framework States are obliged to ensure the individual responsibility for acts of arbitrary displacement perpetrated by State officials, as well as by non-State entities, including multinational companies or private security organizations.⁸⁶⁵

Forced displacement committed by States

⁸⁶³ See the UCDP definition of one-sided violence against civilians in section II.

⁸⁶⁴ As provided in Article 9 of the Kampala Convention, during displacement, States are required to protect the rights of internally displaced persons, regardless of the cause of their displacement, and to refrain from and prevent discrimination, including on the basis of displacement; genocide, crimes against humanity, war crimes and other violations of international law committed against displaced persons; forms of cruel, inhuman or degrading treatment or punishment, including arbitrary killing, summary execution, arbitrary detention, abduction and enforced disappearance or torture; and sexual and gender-based violence, including rape, harmful practices, the recruitment of children and their use in hostilities, forced labour, human trafficking, smuggling and starvation. States moreover have the obligation to guarantee the safety, security and dignity of internally displaced persons, to respect and ensure their freedom of movement and choice of residence, and to protect them against forcible return or resettlement to areas where their life, safety, liberty and/or health would be at risk.

⁸⁶⁵ Article 7 (4) of the Kampala Convention provides that States must hold members of armed groups criminally responsible for human rights abuses and violations of international humanitarian law.

The acts of forced displacement have been reported and documented by SIPRI. According to data,

- in 21 of 28 countries with new internal displacement in 2007, governments were found to be responsible, directly or indirectly, for forcibly uprooting their people.

- most affected are countries torn apart by racial, ethnic, linguistic or religious divisions where the State is monopolized by or identified with one ethnic group or groups to the exclusion or marginalization of others.

- the denial of protection and assistance by the State to the excluded or marginalized groups often provoke conflict with those in dominant positions.⁸⁶⁶

In the case of Darfur, the International Commission of Inquiry, although it did not recognize the commission of genocide by the Government and the Janjaweed, found that:

[g]iven the systematic and widespread character of the forced displacement of persons in Darfur, the Commission finds that such action may well amount to a crime against humanity. The requisite subjective element (awareness of the systematic nature of the forced displacement) would be inherent in the fact that such displacement clearly amounted to a Government policy consistently pursued by the relevant Government authorities and the Janjaweed.⁸⁶⁷

Regarding the prosecution of international crimes related to forced displacement or 'forcible transfer of population' (article 7(l)(d) Rome Statute), several leaders from African States have been charged before the ICC such as in the case of *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* in Kenya. The confirmation of charges expressively mentioned the commission of 'deportation or forcible transfer of population' by these leaders defined as the 'forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law'.⁸⁶⁸ The Decision on the Confirmation of Charges stated that

[t]he Prosecutor charges deportation or forcible transfer of population constituting a crime against humanity under article 7(l)(d) of the Statute, namely the deportation or forcible transfer of the civilian population supporting the ODM in or around Nakuru and Naivasha. He alleges that in Nakuru, the attacking Mungiki 'forcibly displaced thousands [of ODM supporters] from their homes into IDP camps'. Concerning Naivasha, the Prosecutor asserts that 'about 9,000 perceived ODM supporters were forced to seek refuge in the Naivasha Police Station'.⁸⁶⁹

⁸⁶⁶ Roberta Cohen and Francis Deng, 'Mass displacement caused by conflicts and one-sided violence: national and international responses' in *SIPRI Yearbook 2009*.

⁸⁶⁷ International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the Secretary-General pursuant to Security Council Resolution 1564 of 18 September 2004* (Geneva 25 January 2005) ('Darfur Report') <http://www.un.org/news/dh/sudan/com_inq_darfur.pdf> accessed 30 June 2014, para. 332.

⁸⁶⁸ *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (Decision on the confirmation of charges) ICC No.:ICC-01/09-02/11 (23 January 2012) <<http://www.icc-cpi.int/iccdocs/doc/doc1314543.pdf>> accessed 30 June 2014, para. 242

⁸⁶⁹ *Ibid.*, para. 241.

Similarly, in the case of *Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Zarić*, the ICTY convicted Tadić for persecutions based upon deportation and forcible transfer. It found that he had contributed to the deportation of non-Serb civilians as an aider and abettor and intended that the non-Serb civilians would be permanently displaced from their homes in the municipality of Bosanski Šamac.⁸⁷⁰

In relation to asylum-seekers, we have to highlight the case of Eritrean asylum-seekers and refugees forcibly returned by Sudan. Despite Sudan's obligations under international law not to return people to a situation where they would face a real risk of human rights violations, Amnesty International reported at least 10 cases of Eritrean persons forcibly returned to Eritrea.⁸⁷¹

Forced displacement committed by non-state actors

In internal conflicts where insurgents or warlords are dominant, in particular in States in situation of fragility, the belligerents often violate the laws of war, both targeting civilians and using them as weapons of war to achieve political, military and economic goals. 'Usually rebel groups descend into criminal activity, fighting among themselves, seizing the land and possessions of the marginalized, including refugees and IDPs, and engaging in one-sided violence against civilians and thus causing new displacement. Some of the worst atrocities against displaced persons have been perpetrated by armed non-state actors'.⁸⁷²

Nowadays, there are two major cases of forced displacement committed by armed groups. In the case of DRC, the ICC has confirmed the charges against Bosco Ntaganda, former alleged Deputy Chief of the Staff and commander of operations of the Forces Patriotiques pour la Libération du Congo [Patriotic Forces for the Liberation of Congo] (FPLC), for the displacement of civilian, among other crimes. In the Decision of confirmation of charges, the Prosecutor affirmed that

[A]s a result of the assault on Mongbwalu, a considerable number of civilians, mostly Lendu, were forced to leave the area and to take refuge in the surrounding villages. Some of them were injured by machetes or by bullets [...] Civilians displaced from Mongbwalu would have been killed had they attempted to return to their houses. Similarly, civilians displaced from Nzebi as a result of the First Attack by the UPC/FPLC soldiers would have been killed had they attempted to return to their houses.⁸⁷³

⁸⁷⁰Prosecutor v. Blagoje Simić, Miroslav Tadić, Simo Sarić (Judgement) ICTY Case No. IT-95-9-T (17 October 2003) <<http://www.icty.org/x/cases/simic/tjug/en/sim-tj031017e.pdf>> para 65.

⁸⁷¹ Nine asylum-seekers and one refugee were convicted in July of unlawfully entering Sudan, and were subsequently forcibly deported to Eritrea. On 11 October, a 24-year-old Eritrean man was forcibly returned to Eritrea following a decision by a court in Kassala. He was arrested after going to a police station to claim asylum. See Amnesty International, *Annual Report 2013 – Sudan* (2013) at <<http://www.amnesty.org/en/region/sudan/report-2013>> accessed 30 June 2014 .

⁸⁷²Roberta Cohen and Francis Deng, 'Mass displacement caused by conflicts and one-sided violence: national and international responses' in *SIPRI Yearbook 2009*.

⁸⁷³ Prosecutor v. Bosco Ntaganda (Decision) ICC No. ICC-01/04-02/06 (9 June 2014) <<http://www.icc-cpi.int/iccdocs/doc/doc1783301.pdf>> 292 -293.

More recently, in July 2013, thousands of people, mostly women, children and the elderly, have been displaced when the M23 fought the national army and took control of the town of Bunagana in Rutshuru territory, according to Amnesty International.⁸⁷⁴

In the case of Colombia, the official figures of March 2013 indicate that over 4.7 million people were internally displaced. However, according to the UNHCR 'it does not yet take into account the Constitutional Court's decision of June 2013 to review all previous decisions that did not include cases of displacement caused by violence perpetrated by some armed groups following demobilization. As displacement caused by these groups was not officially recognized previously, this revision will result in an increase in figures reported and UNHCR anticipates that at the end of 2013 the number will reach over 5.2 million people'.⁸⁷⁵

⁸⁷⁴Amnesty International, *Annual Report 2013 – Democratic Republic of Congo* (2013) at <<http://www.amnesty.org/en/region/democratic-republic-congo/report-2013>> accessed 30 June 2014.

⁸⁷⁵UNHCR, *Global Appeal 2014-2015 – Colombia* (UNHCR 2014) <<http://www.unhcr.org/528a0a367.html>> accessed 24 June 2014.

D. Indigenous peoples

Internal conflicts have posed an enormous burden on indigenous communities and have sometimes led to massive human rights violations. The former Special Rapporteur on indigenous peoples, James Anaya, has stated that ‘indigenous peoples are among the most vulnerable victims of conflicts and violence in Africa, Asia and Latin America’.⁸⁷⁶ It therefore requires a special attention as the phenomenon threatens not only individuals but entire communities, as well as the ethnic and cultural diversity of the countries concerned.⁸⁷⁷

This sub-section seeks to survey conflict-related human rights violations experienced by indigenous peoples in view of their particular vulnerability, and to identify the aggravated impacts that they suffer.

1. Overview

As the vocabulary concerning indigenous people might be confusing, it is necessary to introduce the analysis of ‘indigenous people’ as a vulnerable group in conflict settings. The terms ‘indigenous peoples’, ‘indigenous ethnic minorities’, and ‘tribal groups’ are used in various regions to define social groups that share similar characteristics, namely a social and cultural identity that is distinct from dominant groups in society. The vocabulary mainly differs from one region to another. For instance, the term ‘indigenous people’ or ‘tribes’ are more used in South-East Asia, while in North America, Australia or New Zealand, they refer more to ‘native’, ‘aboriginal’ or ‘First Nations’.

There is no definition of ‘indigenous people’. As Corntassel explains, ‘the question of who is indigenous is best answered by indigenous communities themselves’.⁸⁷⁸ This statement is the illustration of the principle of self-determination of indigenous people adopted by the international community.⁸⁷⁹ According to the UN Permanent Forum on Indigenous Issues, there are more than 370 million indigenous people across the world.⁸⁸⁰ Being descendants of the original habitants of their living territory, there are spread across 70 different countries and their situations, traditions and culture differ from one group to another.⁸⁸¹ However, they share common distinct characteristics from the majority of the society in which they are found and a common history of conquest, colonisation, oppression and settlement. Therefore, if self-identification is the key to belonging to an indigenous community, these criteria help to distinguish indigenous people from other groups.⁸⁸²

⁸⁷⁶ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2005) UN Doc A/60/358 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 11 June 2014, 15.

⁸⁷⁷ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2010) UN Doc A/HRC/15/37 <<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/150/75/PDF/G1015075.pdf?OpenElement>> accessed 11 June 2014, 12.

⁸⁷⁸ Jeff. J. Corntassel, ‘Who Is Indigenous? ‘Peoplehood’ and Ethnonationalist Approaches to Rearticulating Indigenous Identity’ (2003), vol.9, no.1, *Nationalism and Ethnic Politics* 75. See also James Anaya, *Indigenous Peoples in International Law* (Oxford University Press 2004) 74.

⁸⁷⁹ United Nations Secretariat of the Permanent Forum on Indigenous Issues (UNPFII), *Who are the indigenous people?* (2006) <http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf> accessed 13 July 2014, 1.

⁸⁸⁰ *Ibid.* 1.

⁸⁸¹ *Ibid.*

⁸⁸² Robyn Eversole & John-Andrew McNeish & Alberto D.Cimadamore, *Indigenous people and Poverty: an International Perspective* (Comparative Research Programme on Poverty 2005) 5.

Indigenous peoples are exposed to the consequences of armed conflict and crisis as any other groups. However, the particularity of the challenges they are confronted with linked with their opposition to resource extraction or development projects that take place or impact indigenous territories and lands.⁸⁸³ Conflict-related human rights violations faced by indigenous people are deeply linked with discrimination and with land dispossession.⁸⁸⁴ Indigenous people are subjected to forced evictions, militarisation of traditional lands, and suffer from intimidation and violence justified under the campaign against terrorism or under the pretext of national security concerns.⁸⁸⁵ The destruction of indigenous lands, the forced displacement of their communities and other human rights violations exacerbate tensions and conflicts and have severe economic, social, and cultural rights consequences.⁸⁸⁶ However, while it is acknowledged indigenous peoples are caught in conflicts, it does not mean that they are always victims.⁸⁸⁷ Indigenous peoples have shown strength and are increasingly organising in order to defend their rights in demonstrations or strikes, by engaging dialogue with the warring parties.⁸⁸⁸

Numerous conflicts have taken place on indigenous territories such as in Bangladesh, the Philippines, Nepal, Colombia, Guatemala, Rwanda and the Democratic Republic of the Congo.⁸⁸⁹ Most of the conflicts on indigenous lands are linked with issues of control of natural resources such as wood, minerals, or oil. Areas that indigenous peoples occupy are unfortunately often considered as 'strategic' by parties to the conflict.⁸⁹⁰

At the international level, there are several instruments protecting indigenous peoples' rights. Two international treaties are of particular relevance for the protection of indigenous peoples: the International Convention on the Elimination of All Forms of Racial Discrimination and the UN International Labour Organization (ILO) Convention 169 concerning the rights of indigenous and tribal peoples. The ILO Convention 169 establishes the right of Indigenous Peoples to participate in decision-making processes that concern them by obliging States to guarantee prior consultation of communities involved before conducting any activities affecting their land, lives or culture.⁸⁹¹ It therefore protects the cultural and territorial rights of indigenous peoples and provides them protection against the forced removal from

⁸⁸³ Ellen L. Lutz, 'Indigenous Peoples and Violent Conflict: Preconceptions, Appearances, and Realities' (2005) 29.1 Indigenous Peoples and Violent Conflict <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/indigenous-peoples-and-violent-conflict-preconceptions>> accessed 9 July 2014.

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

⁸⁸⁸ Ibid.

⁸⁸⁹ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2005) UN Doc A/60/358 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 11 June 2014, 15.

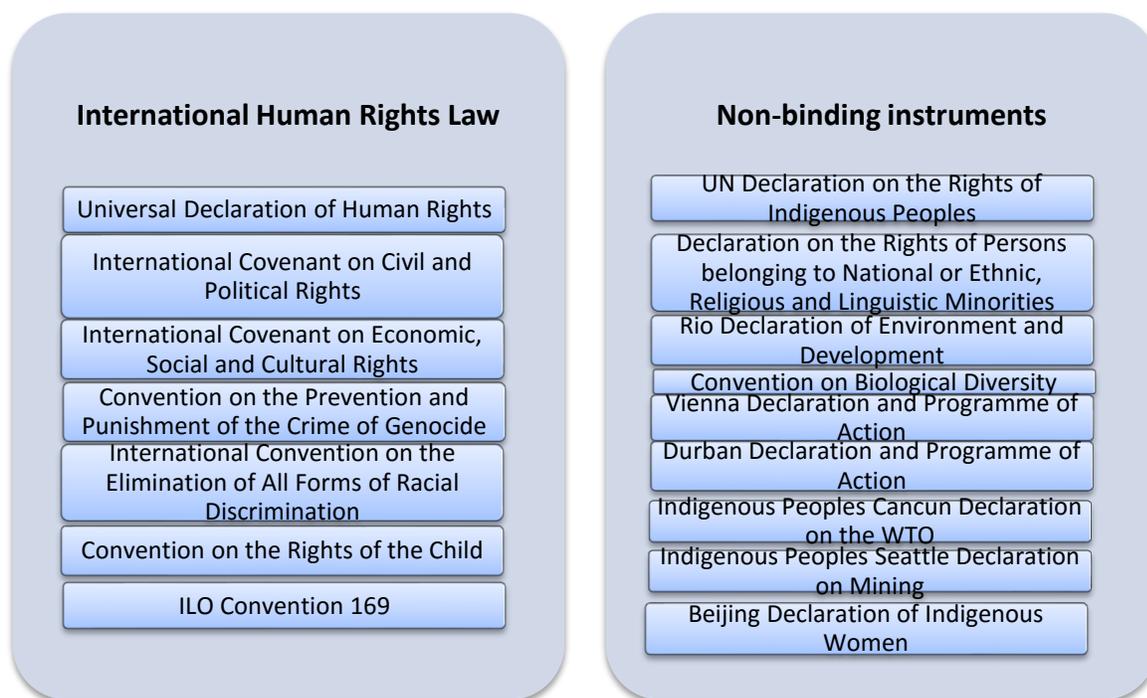
⁸⁹⁰ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2010) UN Doc A/HRC/15/37 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/150/75/PDF/G1015075.pdf?OpenElement>> accessed 11 June 2014, 12.

⁸⁹¹ ABColombia, *Caught in the Conflict – Colombia's indigenous peoples* (2010) <http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf> accessed 2 July 2014, 9.

their lands. It also establishes the right of ownership and possession and prohibits the removal from the lands they occupy.⁸⁹²

The vulnerable position of indigenous children is addressed in the Convention on the Rights of the Child, ensuring that they can develop within their own culture, religion and language (Article 30) and promoting an education that respects and reflects their identity (Article 29). The Committee on the Rights of the Child interprets these provisions in General Comment No. 11, 'Indigenous Children and their Rights under the Convention'. The UN Declaration on the Rights of Indigenous Peoples is founded on the concepts of equality, respect for diversity and non-discrimination and establishes the rights of indigenous peoples, including the right to culture; identity; free, prior and informed consent; and traditional lands.⁸⁹³ The Declaration establishes the right to 'live in freedom, peace and security' and not to be 'subjected to any act of genocide or any other act of violence, including forcibly removing children of one group to another group'. The UN Declaration on the Rights of Indigenous Peoples therefore establishes the duties of States to protect indigenous peoples, asserts their right to culture, identity and traditional lands.⁸⁹⁴ Other non-binding texts exist, such as the Indigenous Peoples Cancun Declaration on the WTO, the Indigenous Peoples Seattle Declaration on Mining and the Beijing Declaration of Indigenous Women.

Figure VI.7. International legal framework on indigenous peoples' rights



⁸⁹² Amnesty International, *The struggle for survival and dignity: human rights abuses against indigenous peoples in Colombia* (2010) <http://www.kolko.net/downloads/indigenous_people_Col_report.pdf> accessed 15 July 2014, 11.

⁸⁹³ Ibid.

⁸⁹⁴ ABColombia, *Caught in the Conflict – Colombia's indigenous peoples* (2010) <http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf> accessed 2 July 2014, 9.

At EU level, Article 2 of the Treaty on European Union establishes the respect for the rights of persons belonging to minorities as one of the values of the EU.⁸⁹⁵ Article 21 of the Charter of Fundamental Rights of the EU explicitly prohibits discrimination on the basis of membership of a national minority. If the Commission ensures the respect of article 21, it has nevertheless ‘no general power as regards minorities’.⁸⁹⁶ It also has no power concerning issues regarding the recognition of the status of minorities; their self-determination and autonomy; or the regime governing the use of regional or minority languages.⁸⁹⁷ However, the EU declares the integration of ‘indigenous issues into all aspects of its external policies’ (political dialogues, multilateral fora, financial support).⁸⁹⁸ In practice, it addresses the rights of indigenous peoples mainly through the European Instrument for Democracy and Human Rights, supporting indigenous representatives to participate in international fora or supporting them in promoting the International Labour Organisation’s Convention 169.⁸⁹⁹

Concerning development cooperation activities, the European Consensus on Development commits the EU ‘to apply a strengthened approach to mainstreaming’ specific cross-cutting issues, including ‘indigenous peoples’, to integrate their concerns at all levels of cooperation, ensuring their full participation and free, prior and informed consent.⁹⁰⁰ The Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Member States (1998) provides the main EU guidelines for the protection and support of Indigenous Peoples.⁹⁰¹

UN treaty bodies also address the particular situation of indigenous peoples. The Human Rights Committee has established that indigenous peoples are minorities for the purposes of Article 27 (General Comment 23) (see IV§6 above).⁹⁰² The Committee on the Elimination of Racial Discrimination (CERD) has also issued a General Recommendation on Indigenous Rights under CERD (General Recommendation 23). At regional level, the Inter-American Democratic Charter states that the protection and promotion of the human rights of indigenous peoples contributes to the strengthening of democracy and citizen participation (Article 9).⁹⁰³

Indigenous rights are therefore mostly protected by non-binding instruments. The precarious human rights situation of indigenous peoples in conflict settings demonstrates the gap between the international

⁸⁹⁵European Union, Charter of Fundamental Rights of the European Union (2012) 2012/C 326/02.

⁸⁹⁶European Commission, ‘Minorities’ (2013) <http://ec.europa.eu/justice/fundamental-rights/minorities/index_en.htm> accessed 22 July 2014.

⁸⁹⁷ Ibid.

⁸⁹⁸European External Action Service, ‘EU policy on indigenous peoples’ <http://eeas.europa.eu/human_rights/ip/index_en.htm> accessed 19 July 2014.

⁸⁹⁹ Ibid.

⁹⁰⁰European External Action Service, ‘EU policy on indigenous peoples’ <http://eeas.europa.eu/human_rights/ip/index_en.htm> accessed 19 July 2014.

⁹⁰¹Council Resolution 13461/98 of 30 November 1998 on Indigenous peoples within the framework of the development cooperation of the Community and the Member States [1998] 13461/98.

⁹⁰²Icelandic Human Rights Centre, *Indigenous Peoples* <<http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightskonceptsideasandfora/Undirflokkur/indigenouspeoples/>> accessed 16 July 2014.

⁹⁰³ Ibid.

framework, national legislation, and the ineffectiveness of the institutions responsible for protecting indigenous people caught in an internal conflict.⁹⁰⁴

2. Figures and trends

Data on the impacts of conflict on indigenous peoples' civil, political, economic, social and cultural rights indicate that armed conflict and crisis places indigenous communities rights under serious threats. When members of the indigenous groups try to defend them, they are often victims of forced disappearances, assassination of their leaders, torture and massacres.⁹⁰⁵ It is also very difficult for indigenous peoples not to be involved in the conflict. They are sometimes victims of forced recruitment for combat or directly targeted if they want to stay 'neutral'.⁹⁰⁶

Furthermore, specific groups suffer from different types of discrimination because of their status or gender, such as indigenous women and children.⁹⁰⁷ Indigenous women are victims of constant discrimination, exclusion and exploitation and are often directly targeted. Rape against indigenous women has been widely used in order to humiliate and terrorise the population.⁹⁰⁸ In Colombia, for example, women and children were victims in 70% of the cases of human rights violations committed against the indigenous population between 1998 and 2009.⁹⁰⁹

In Asia, local conflicts resulting from the lack of recognition of the rights of indigenous peoples to their communal lands is another permanent source of repression and abuse and often leads to human rights violations of indigenous peoples. In Laos, the conflict has led to deaths of civilians, as a result of the continuous struggle of the Hmong with the Lao Government since 1975. Many human rights violations have been reported, following the fleeing of the indigenous communities in Thailand and Cambodia, such as the killing and gang rape of five girls by armed forces in 2004.⁹¹⁰ Hundreds of human rights violations against indigenous people have also been reported in Viet Nam, such as arbitrary arrest, ill-treatment, torture, extrajudicial killing and other human rights abuses by security forces. Many hundreds of indigenous asylum-seekers fled the country into neighbouring Cambodia in fear of government repression.

In countries such as India, Indonesia, the Lao People's Democratic Republic, Malaysia and Thailand, arbitrary arrest or fake criminal charges made against members of indigenous and tribal peoples has been

⁹⁰⁴ ABColombia, *Caught in the Crossfire – Colombia's indigenous peoples* (2010) <http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf> accessed 2 July 2014, 10.

⁹⁰⁵ UNGA, *Note by the Secretary General on the situation of human rights and fundamental freedoms of indigenous people* (2005) UN Doc A/60/358 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 10 July 2014, 15.

⁹⁰⁶ *Ibid.*, 15.

⁹⁰⁷ UNGA, *Note by the Secretary General on the situation of human rights and fundamental freedoms of indigenous people* (2005) UN Doc A/60/358 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 10 July 2014, 15.

⁹⁰⁸ *Ibid.*, 16.

⁹⁰⁹ See http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf accessed 10 July 2014, 9, 12.

⁹¹⁰ UN Committee on the Elimination of Racial Discrimination, *Concluding observations on Lao People's Democratic Republic*, UN Doc CERD/C/LAO/CO/15 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/411/67/PDF/G0541167.pdf?OpenElement>> accessed 16 July 2014, 5.

reported, as well as other forms of threats and intimidations, as a result of their mobilization to defend their rights against State authorities. Cases of ill-treatment and torture during detention, as well as extrajudicial killings have also been widely reported.

In the Philippines, the lethal conjunction of militarization and large-scale mining and dam projects have led indigenous peoples to coin the expression 'development aggression', which is to blame for a wide range of human rights violations, including murders, massacres, and illegal detention.

In Nepal, protracted conflict has brought about numerous violations against indigenous peoples. Decades of conflict in Nepal and in several Indonesian provinces have led to numerous recordings of killings, forced displacement and other serious human rights abuses among local indigenous groups.⁹¹¹ Indigenous peoples now demand full participation in the post-conflict political arrangements, and plead for transitional justice schemes to repair past human rights violations.

The Americas, where 6 million people are internally displaced,⁹¹² has the particularity that the majority of forced displacement occurred due to State military activity and to the activities of armed groups involved in drug cultivation and trafficking in indigenous regions, as well as to indigenous conflict, such as in Mexico and in Colombia where indigenous people are indicated to be amongst the vulnerable groups.⁹¹³ Information from reports indicates that indigenous peoples have suffered massacres perpetrated by paramilitaries, guerrillas and other armed groups.⁹¹⁴ Indigenous communities have also been the object of aerial bombing of State-sponsored military activities. This has resulted in increasing the populations of refugees in neighbouring countries (mainly in Brazil, Ecuador, Peru, Panama and Venezuela) and internal displacement within Colombia to urban areas where malnutrition and deaths due to hunger have been documented.⁹¹⁵ Internal conflicts in the referred countries have also affected education of indigenous children, as it has been reported in Guatemala.⁹¹⁶ A lack of education can have an important impact on the conflict, as it has been the case in Peru, where the rebels exploited the high levels of poverty and unemployment to recruit indigenous youth with low levels of education.⁹¹⁷ Currently, there are numerous conflicts between corporations, States and indigenous peoples over extractive industries and development projects. Indigenous peoples are struggling to preserve control over their lands and natural

⁹¹¹UNHRC, *Report on the situation of the rights of indigenous peoples in Asia* (2007) A/HRC/6/15/Add.3 <<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G07/148/22/PDF/G0714822.pdf?OpenElement>> accessed 16 July 2014, 5 and UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

⁹¹²Internal Displacement Monitoring Centre, 'Americas' <<http://www.internal-displacement.org/americas/>> accessed on 20 July 2014.

⁹¹³US Department of State, *2011 Trafficking in Persons Report – Mexico* (2011) <<http://www.unhcr.org/refworld/docid/4e12ee5f2d.htm>> accessed 12 July 2014.

⁹¹⁴Commission on Human Rights, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum Mission to Colombia*, UN Doc. E/CN.4/2005/88/Add.2 <<http://www.galdu.org/govat/doc/colombia.pdf>> accessed 17 July 2014, 8-9.

⁹¹⁵Ibid., 11-12.

⁹¹⁶UNESCO, *The hidden crisis: armed conflict and education* (2011) <<http://unesdoc.unesco.org/images/0019/001914/191433e.pdf>> accessed 17 July 2014, 8.

⁹¹⁷Ibid., 9.

resources.⁹¹⁸ Indigenous leaders are constantly under threat and suffer from numerous grave human rights violations.⁹¹⁹ Colombia is the last armed conflict of Latin America and displacement has disproportionately affected indigenous peoples.⁹²⁰

In Africa, apart from the Democratic Republic of Congo,⁹²¹ no other country in the region has legislation that provides protection to indigenous peoples. This situation is of particular concern as indigenous peoples in Africa are often caught in violent conflicts, such as in eastern and western Africa where there are numerous violent conflicts between nomadic peoples and sedentary farmers as well as inter-community conflicts between nomadic groups themselves.⁹²² These conflicts are further exacerbated by effects of climate change and increased competition over natural resources, and they lead to massive suffering, impoverishment and displacements. In some countries, such as Niger and Burkina Faso, situations of violence became extreme, involving organised massacres of entire villages.⁹²³ Abuses against indigenous peoples committed by military and armed militia groups have been widely reported.⁹²⁴

Indigenous peoples experience numerous challenges such as ‘separation of family, breakdown of health and education services, destruction of communities, displacement and exile as refugees, forced recruitment and experience of torture, gender-based violence and extrajudicial killings’.⁹²⁵ Armed conflicts also put multiple pressures on indigenous peoples— from the Maasai in Kenya and the Tuareg in Mali to the Baka of the Central African Republic. They are also particularly vulnerable to the exclusion from humanitarian relief. In addition, indigenous peoples’ territories are often affected by mining projects and other extractive industries. These industries threaten the livelihoods of indigenous peoples and the traditional use of indigenous lands and natural resources, such as in the Congo Basin, in the Niger Delta or in East Africa.⁹²⁶

⁹¹⁸United Nations Indigenous Peoples’ Partnership (UNIPP), *Strategic Framework 2011-2015* (2010) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_186285.pdf> accessed 22 July 2014, 11.

⁹¹⁹ Inter-American Commission for Human Rights, *First Report on the Situation of Human Rights Defenders in the Americas* (2006) <http://www.cidh.oas.org/countryrep/Defensores/defensorescap6-8.htm#campesinos_> accessed 20 July 2014.

⁹²⁰UNESCO, *The hidden crisis: armed conflict and education* (2011) <<http://unesdoc.unesco.org/images/0019/001914/191433e.pdf>> accessed 17 July 2014, 8.

⁹²¹The Parliament adopted on the 30th December 2010 a law for the promotion and protection of the rights of indigenous peoples. See ILO, ACHPR & University of Pretoria, *Overview Report of the Research Project by the International Labour Organisation and the African Commission on Human and Peoples’ Rights on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries* (2009) <http://www.ilo.org/indigenous/Resources/Publications/WCMS_115929/lang--en/index.htm> accessed 15 July 2014.

⁹²²International Work Group for Indigenous Affairs, *Indigenous peoples in Africa - a general overview* <<http://www.iwgia.org/regions/africa/indigenous-peoples-in-africa>> accessed 15 July 2014.

⁹²³ Ibid.

⁹²⁴ Ibid.

⁹²⁵ Child Rights International Network, *Armed Conflict and Minority and Indigenous Children in the Horn and Great Lakes Regions of Africa* (2001) <<http://www.crin.org/en/library/publications/armed-conflict-and-minority-and-indigenous-children-horn-and-great-lakes>> accessed 17 July 2014.

⁹²⁶UN Permanent Forum on Indigenous Issues, *Indigenous Peoples in the African region* (2013) <[http://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet Africa %20UNPFII-12.pdf](http://www.un.org/esa/socdev/unpfii/documents/2013/Media/Fact%20Sheet%20Africa%20UNPFII-12.pdf)> accessed 8 July 2014, 2.

Box VI.21. Human rights violations related to conflict of the Awa community in Colombia

Indigenous peoples of Colombia are amongst the groups most affected by the conflict.⁹²⁷ They live in territories where conflict is particularly intense because their lands are often rich in biodiversity, minerals and oil.⁹²⁸ The ongoing conflict, coupled with the impacts of development projects, renders indigenous peoples especially vulnerable. The Special Rapporteur James Anaya has highlighted in 2009 that 'Colombia's indigenous peoples find themselves in a grave, critical and profoundly worrying human rights situation'.⁹²⁹ The Constitutional Court of Colombia identified 34 different indigenous groups at risk of physical and cultural extinction, while the National Indigenous Organisation of Colombia (Organización Nacional Indígena de Colombia – ONIC) has identified another 30 groups yet to be presented and analysed by the Court.⁹³⁰

The list includes the Awa community which is composed of 21,000 people and facing a grave humanitarian and human rights crisis.⁹³¹ As they inhabit a region rich in natural resources, they have been pressured by security forces, guerrillas, paramilitaries, and drug-traffickers present in their territory. Their structural poverty is reinforced by the continuing threats, killings, and forced displacement to which they are subjected.⁹³² In 2009, more than 40 Awá were killed, more than 400 people fled their homes in the Tortugaña Telembi Resguardo. Landmines on the roads around their resguardos have restricted their safe and free movement and caused 13 deaths of Awá people between 2006 and 2009. Armed groups continued to forcibly recruit Awá men, women, children and young people and members of the Colombian Army maintained a permanent presence in the Tortugaña Telembí Resguardo. The Human Rights Ombudsman received reports of 1,081 Awá families affected by 41 separate incidents of aerial spraying between 2000 and July 2009.

Source: ABColombia, *Caught in the crossfire: Colombia's indigenous peoples* (2010), <http://www.abcolombia.org.uk/DOWNLOADS/CAUGHT_IN_THE_CROSSFIRE.PDF> accessed on 10 July 2014, 4-9 and 14-15.

3 Serious violations of indigenous people's rights

Indigenous people have been confronted by the worst consequences of internal conflicts, experiencing all sorts of human rights violations, including extrajudicial killings, massacres, torture and sexual violence, and large movements of refugees and internally displaced persons as a result.⁹³³ They often suffered intimidation and abuses under the argument of counter-insurgency operations.⁹³⁴ The former UN Special Rapporteur has also mentioned 'murder and torture, mass displacement, forced disappearance, forced

⁹²⁷ ABColombia, *Caught in the crossfire – Colombia's indigenous peoples* (2010) <http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf> accessed 2 July 2014, 9.

⁹²⁸ Ibid. 9.

⁹²⁹ Ibid. 8.

⁹³⁰ Ibid. 9.

⁹³¹ Ibid. 16.

⁹³² Ibid. 15.

⁹³³ UNHCR, *Report on the situation of the rights of indigenous peoples in Asia* (2007) UN Doc A/HRC/6/15/Add.3 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/148/22/PDF/G0714822.pdf?OpenElement>> accessed 16 July 2014, 12 and UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) UN Doc A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

⁹³⁴ UNHCR, *Consultation on the situation of indigenous peoples in Asia* (2013) UN Doc A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8.

recruitment of young people into combat units, rape of women, occupation of indigenous people's lands by guerrilla, paramilitary and other illegal armed groups and the militarization of some indigenous communities',⁹³⁵ as being part of the devastating effects of the internal armed conflicts on indigenous peoples. Perpetrators of those violations are both non-State and State actors.⁹³⁶

Each time conflicts occur, indigenous peoples' civil, political, economic, social and cultural rights are threatened.⁹³⁷ They are often faced with the impossible situation of defending their rights to live on lands connected to their indigenous roots, only to be forcibly displaced and/or persecuted.⁹³⁸ Their situation is such that they are forced into becoming involved in conflicts not of their making, due to demands for the resources within their territories or the land itself. Their association and livelihood connected to that land, results in their defensive actions, related to the land, the resources, or their mere existence in the territory.⁹³⁹

Intersecting rights can be violated when considering women and children from indigenous communities.⁹⁴⁰ This can result in direct targeting of indigenous women in conflict situations, where their vulnerability to exploitation and discrimination can be heightened.

Box VI.22. Impacts of mining activities on indigenous communities in Guatemala

Latin America is the largest destination for international mining investments. The case of Guatemala shows the relationship between the exploitation of natural resources, environmental degradation and violent conflict and its specific impact on indigenous peoples.

Exploitation of indigenous territories through mining activity had important consequences in Guatemala, including social conflict and environmental destruction. Indigenous communities are especially vulnerable in this context, as they continue to be discriminated and marginalised. As they are extremely dependent on natural resources, transnational mining companies and government agencies are imposing conditions that do not meet their lifestyle, which poses a direct threat to their survival. The consequences include environmental and social impacts on communities, loss of access to land and territorial integrity, water contamination and competition for water. Socio-economic impacts such as social disruption and ungovernability have also been reported.

⁹³⁵ UNGA, *Note by the Secretary General on the situation of human rights and fundamental freedoms of indigenous people* (2005) UN Doc A/60/358 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 10 July 2014, 6.

⁹³⁶ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2010) UN Doc A/HRC/15/37 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/150/75/PDF/G1015075.pdf?OpenElement>> accessed 11 June 2014, 6.

⁹³⁷ UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) UN Doc A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 7.

⁹³⁸ UNGA, *Note by the Secretary General on the situation of human rights and fundamental freedoms of indigenous people* (2005) <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement>> accessed 10 July 2014, UN Doc A/60/358, 15.

⁹³⁹ *Ibid.*, 15.

⁹⁴⁰ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2010) UN Doc A/HRC/15/37 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/150/75/PDF/G1015075.pdf?OpenElement>> accessed 11 June 2014, 9-10.

Source: Cordaid, *Mining conflicts and Indigenous Peoples in Guatemala* (2009) <https://www.cordaid.org/media/publications/Mining_Conflicts_and_Indigenous_Peoples_in_Guatemala.pdf> accessed on 5 July 2014, 5.

a) *Forced displacement*

Key challenges for indigenous people are inherent to collective rights to autonomy, property and prior consultation. Indigenous peoples are one of the groups most vulnerable to *forced eviction in situations of conflict*, being generally displaced from their ancestral territories on the basis of disputes over land rights. Poverty and marginalisation renders indigenous people vulnerable to be lured into other conflicts and to create conflicts within indigenous communities.⁹⁴¹

As analysis in the previous sub-section indicates, displacement affects the social structures of any population, but impacts more heavily on indigenous people.⁹⁴² Indeed, indigenous cultures are closely linked with agriculture, land rights and farming. Their relationship with their lands forms a part of their identity.⁹⁴³ Displacement and relocation to cities affect directly their cultural and economic survival and increase their vulnerability. The loss of their lands has a close relationship with the marginalisation, exclusion, discrimination, and poverty of indigenous people.⁹⁴⁴ The most affected are women and children, who become especially vulnerable to abuse and exploitation, including to human trafficking for sexual exploitation.⁹⁴⁵

In Colombia, violence has displaced millions of Colombians internally, and continues to displace tens of thousands every year.⁹⁴⁶ Indigenous people are disproportionately represented in the displacement figures, at about 7%, while representing only 3.4% of the population.⁹⁴⁷ Small communities are on the brink of extinction as a result of forced displacement.

In South Asia, in Burma, as a result of decades of armed conflict, many indigenous people were displaced from the highland to the lowland of the Kachin state.⁹⁴⁸ Nowadays 80% of the Kachin population lives on

⁹⁴¹ Ellen L. Lutz, 'Indigenous Peoples and Violent Conflict: Preconceptions, Appearances, and Realities' (2005) 29.1 *Indigenous Peoples and Violent Conflict* <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/indigenous-peoples-and-violent-conflict-preconceptions>> accessed 9 July 2014.

⁹⁴² R. K. Akee, A. K. Basu, N. H. Chau & M. Khamis, 'Ethnic fragmentation, conflict, displaced persons and human trafficking: an empirical analysis', in Hamid Beladi & E. Kwan Choi (eds.), *Frontiers of Economics and Globalization* (Emerald Group Publishing Limited 2010).

⁹⁴³ United Nations Secretariat of the Permanent Forum on Indigenous Issues (UNPFII), *Indigenous Peoples - Lands, Territories and Natural Resources* (2007) <http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf> accessed on 11 July 2014, 2.

⁹⁴⁴ *Ibid.* 2.

⁹⁴⁵ R. K. Akee, A. K. Basu, N. H. Chau & M. Khamis, 'Ethnic fragmentation, conflict, displaced persons and human trafficking: an empirical analysis', in Hamid Beladi & E. Kwan Choi (eds.), *Frontiers of Economics and Globalization* (Emerald Group Publishing Limited 2010).

⁹⁴⁶ Human Rights Watch, *World Report 2012: Colombia* (2012) <<http://www.hrw.org/world-report-2012/colombia>> accessed 15 July 2014.

⁹⁴⁷ ABColombia, *Caught in the crossfire – Colombia's indigenous peoples* (2010) <http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf> accessed 2 July 2014, 12.

⁹⁴⁸ Kachin Women's Association Thailand, *Driven Away: Trafficking of Kachin Women on the China-Burma Border* (2005), Bangkok: KWAT, 11.

the plains.⁹⁴⁹In total, more than 75,000 people have been internally displaced due to the conflict between the government and the Kachin Independence Army (KIA). The Kachin population lives in the North-eastern of Burma, representing 1 to 1,5 millions of people.⁹⁵⁰The management of resources from the Kachin State has basically consisted of land confiscation, forced displacement and relocation.⁹⁵¹ Women and children have been indicated as particularly at risk of being trafficked.⁹⁵² Indigenous women, because of their connection to their lands, are disproportionately affected by this issue. Unable to find alternative sources of income, they are more prone to migrate and lose the bond with their communities. In Bangladesh, a large number of indigenous people have been displaced in the south eastern region over the last fifty years, due to environmental crisis and the ethnic conflict. The example of Bangladesh illustrates the impact of development projects and ethnic conflict on the creation of IDPs and refugees.⁹⁵³

In conclusion, as indigenous peoples maintain strong cultural and spiritual links to the land, displacement is particularly devastating for indigenous communities because their survival, both physical and cultural, depends on being able to remain on their ancestral territories and maintain close links to the land.

b) Sexual violence against indigenous women and girls

Discrimination against indigenous women can be expressed through different forms of violence, deep rooted in patriarchal systems and practices that relegate indigenous women to an inferior status in society.⁵⁴ Violence can take various forms such as domestic violence, harmful practices, economic exploitation, sexual abuse and exploitation. Sexual violence in conflict settings is one form of violence expressed against indigenous women.

Experience of sexual violence of indigenous women has multiple dimensions.⁹⁵⁴As recognised by the United Nations' Secretary-General at the World Conference against Racism, Xenophobia and Intolerance, indigenous women face multiple forms of discrimination because of the 'nexus between gender, race, colour or ethnicity and other axes of subordination'.⁹⁵⁵ They are the most vulnerable among indigenous people, because they face double discrimination, on the basis of their gender and on the basis of ethnicity, for being indigenous.⁹⁵⁶ In the 1980s, post-colonial and gender studies developed the concept of 'double

⁹⁴⁹ Ibid. 11.

⁹⁵⁰ Ibid.

⁹⁵¹ Ibid. 5.

⁹⁵² Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), *Armed Conflict and Trafficking in Women* (2004) <http://www.ungift.org/doc/knowledgehub/resourcecentre/NGO_GTZ_Armed_conflict_and_trafficking_in_women.pdf> accessed 13 July 2014,13.

⁹⁵³ IDMC, Norwegian Refugee Council, *Global Overview 2012: People internally displaced by conflict and violence – Bangladesh* (Norwegian Refugee Council 2013) <<http://www.refworld.org/docid/517fb07217.html>> accessed 8 August 2014.

⁹⁵⁴ Megan Bastick, Karin Grimm, & Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector* (2007)

<http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full%5B1%5D.pdf> accessed 10 July 2014, 9.

⁹⁵⁵ UNGA, *Note by the Secretary-General: Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference* (2001) <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/147/44/PDF/G0114744.pdf?OpenElement>> accessed 20 July 2014, UN Doc A/CONF.189/PC.3/5, 4.

⁹⁵⁶ Chandra K. Roy, *Indigenous Women: A Gender Perspective* (Resource Centre for the Rights of Indigenous Peoples 2004), 6.

colonisation', referring to the processes by which women became colonised by imperialism but also by patriarchal systems of oppression.⁹⁵⁷

There is an obvious intersection between gender and ethnicity in many conflicts involving indigenous peoples, along with systematic and widespread discrimination.⁹⁵⁸ Conflict-related sexual violence needs to be understood in its social and cultural context.⁹⁵⁹ Sexual violence against indigenous women occurs in context of historical attitudes linked to slavery and racial discrimination.⁹⁶⁰ Patriarchal systems are coupled with social, political and economic marginalisation, which create a context of vulnerability of indigenous women.⁹⁶¹ It has been used in order to wound the enemy, dehumanize the victim, inspire fear and destroy family circles and communities.⁹⁶² As a result, indigenous women and girls are often forced to migrate and become therefore vulnerable to sexual violence. The UN Special Rapporteur on the rights of indigenous peoples has reported many cases of gang-rape, sexual enslavement and killing of tribal women and girls in a number of countries and has highlighted the impunity of the perpetrators of the crimes.⁹⁶³

Box VI.23. Minority women deliberately targeted for sexual violence

'During the inter-communal conflict in Kyrgyzstan, in June 2010, ethnic Uzbeks reported widespread rape and sexual violence. In Iraq, Christian and other religious minority women have been forced to wear a head-scarf to protect themselves from violent attack (...). In Somalia, Bantu and other minority women suffer rape, including by police officers, in an environment of almost total impunity for the perpetrators. In North and South Kivu, in the Democratic Republic of Congo, Bambuti Pygmy women have experienced an epidemic of rape and extreme sexual violence throughout the long-running conflict.'

Source: Minority Rights Group International, Press Release 'Minority women deliberately targeted for rape and other violence – new global report' (6 July 2011) <<http://www.minorityrights.org/10851/PRESS-RELEASES/MINORITY-WOMEN-DELIBERATELY-TARGETED-FOR-RAPE-AND-OTHER-VIOLENCE-NEW-GLOBAL-REPORT.HTML#sthash.5XDf9mam.dpuf>> accessed 8 August 2014

In 2008, the Colombian Constitutional Court affirmed that 'sexual violence against indigenous women is a habitual, extensive, systematic and invisible practice within the armed conflict in Colombia, as is sexual exploitation and abuse by all illegal armed groups, and in some cases, by individual members of the State

⁹⁵⁷ Bill Ashroft, Gareth Griffiths & Helen Tiffin (eds.), *The Post-colonial studies Reader* (Routledge 1995), 249-250.

⁹⁵⁸ Nobel's Women Initiative, *War on women: time for action to end sexual violence in conflict* (2011) <<http://nobelwomensinitiative.org/wp-content/uploads/2013/09/war-on-women-web.pdf>> accessed 15 July 2014, 7.

⁹⁵⁹ *Ibid.*, 9.

⁹⁶⁰ ABColombia, *Colombia: Women, Conflict-Related Sexual Violence and the Peace Process* (2013) <http://reliefweb.int/sites/reliefweb.int/files/resources/ABColombia_Conflict_related_sexual_violence_report.pdf> accessed 13 July 2014, 1.

⁹⁶¹ Nobel's Women Initiative, *War on women: time for action to end sexual violence in conflict* (2011) <<http://nobelwomensinitiative.org/wp-content/uploads/2013/09/war-on-women-web.pdf>> accessed 15 July 2014, 9.

⁹⁶² Inter-American Commission on Human Rights (OAS), *Violence and discrimination against women in the armed conflict in Colombia* (2006) <<http://www.cidh.oas.org/women/Colombia06eng/part3co.htm>> accessed 15 July 2014.

⁹⁶³ UNICEF, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women* (2013) <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/VAIWG_FINAL.pdf> accessed 15 July 2014, 35.

Security Forces'.⁹⁶⁴In Ethiopia, armed group have been responsible for targeting indigenous Anuak women with systematic sexual violence, including rape and sexual slavery during the 1998-2000 war with Eritrea.⁹⁶⁵ Sexual assault was an element of Nicaragua's years of conflict, particularly targeting indigenous communities.⁹⁶⁶During the conflict in Indonesia, cases of rape, sexual slavery and other sexual violence against local indigenous women and girls have been reported.⁹⁶⁷ Gang-rape, sexual enslavement and killing of tribal women have also been committed by members of the military during the armed conflict in Myanmar.⁹⁶⁸Cases of sexual violence have also been reported in the conflicts in Bangladesh and the Philippines.⁹⁶⁹

However, data is often not disaggregated by race or ethnic background and therefore does not reflect the real scope of the problem.

Box VI. 24. Sexual violence against indigenous women during Guatemala civil war

During Guatemala civil war, indigenous women have been particularly targeted and have suffered from egregious human rights violations, including sexual violence.⁹⁷⁰During the civil war, at least 100000 women were raped, 88,7 % of women who suffered from sexual violence were of Mayan descent.⁹⁷¹ Other (9,411 cases) human rights violations against women have been reported before UN organs, of which 1,465 were cases of sexual assault.⁹⁷²

The Peace Accords signed in 1996 did not end the suffering of indigenous women. For instance, pregnant women suffered violence from the Guatemalan military and civilian patrols.⁹⁷³ Terrific violence was perpetrated against them.

Indigenous women have been directly targeted as part of the strategy of eliminating the guerilla movement. Rape has been a weapon of war and the sexual violence committed against indigenous women as a 'victory'.⁹⁷⁴ During the armed conflict, men were trained accordingly. After the conflict, they returned to their homes without any psychological care. As a result, domestic violence and

⁹⁶⁴ Otramerica, *Sexual violence against indigenous women as a weapon of war* (2012) <<http://otramerica.com/solo-texto/temas/sexual-violence-against-indigenous-women-as-a-weapon-of-war/2012>> accessed 20 July 2014.

⁹⁶⁵Genocide Watch and Survivor's Rights International, *Operation Sunny Mountain: Soldiers, Oil and Ongoing State Terror against Anuak and other Indigenous Minorities of Southwestern Ethiopia* (2004) <www.grassrootspeace.org/operation_sm_16dec04.doc> accessed 10 July 2014, 20.

⁹⁶⁶Megan Bastick, Karin Grimm, & Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector* (2007) <http://www.essex.ac.uk/armedcon/story_id/sexualviolence_conflict_full%5B1%5D.pdf> accessed 10 July 2014, 81.

⁹⁶⁷ Ibid.,99.

⁹⁶⁸UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) UN Doc A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

⁹⁶⁹ Ibid.

⁹⁷⁰ UN Human Rights Committee, *Violations of women's rights in Guatemala, Recommendations for the List of Issues to the Guatemalan Government* (2010), <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE_Guatemala100.pdf> accessed 16 July 2014, 5.

⁹⁷¹ Ibid.

⁹⁷² Ibid.

⁹⁷³ Ibid.

⁹⁷⁴ Ibid.

femicide cases have been rampant. The government has failed to investigate and prosecute cases of violence and discrimination against indigenous women.⁹⁷⁵

Massive rape against Mayan women has been investigated as part of the proceedings before the Spanish National Court in the so-called Guatemala Genocide Case.⁹⁷⁶

Source: UN Human Rights Committee, *Violations of women's rights in Guatemala, Recommendations for the List of Issues to the Guatemalan Government* (2010), <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/MADRE_Guatemala100.pdf> accessed 16 July 2014; MADRE, *Demanding Women's Human Rights in Guatemala* (2012) <http://www.madre.org/images/uploads/misc/1332520499_Guatemala%20Shadow%20Report%20Shortened%20032312_FINAL.pdf> accessed on 15 July 2014

c) *Attacks against the life and physical integrity of indigenous leaders*

As context is the key to understand vulnerability, human rights violations committed against indigenous peoples are often deeply linked with political factors, such as the fight for autonomy and self-determination. Indigenous leaders are often directly targeted due to their involvement in the defense and protection of territories and natural resources, as well as due to their fight for the right to autonomy and cultural identity. For instance, many indigenous people have been subjected to attacks due to their opposition to extractive projects, being victims to intimidation and violence, in some cases leading to death.⁹⁷⁷ This issue has been raised in 2011 by the Inter-American Commission in the evaluation of their 2006 report on the situation of human rights defenders.⁹⁷⁸ The Inter-American Commission observed an increase of the vulnerability of indigenous leaders due to attacks against their life and personal integrity,⁹⁷⁹ pointing out the frequency of murders and threats to indigenous leaders and the consequent impunity, in the majority of cases, of those responsible for these grave violations.⁹⁸⁰

In Philippines, massive scale of political killing and threats against indigenous leaders and human rights defenders has been the object of increased international concerns.⁹⁸¹ Indigenous communities are constantly threatened because of their human rights-related activities and their opposition to mining

⁹⁷⁵MADRE, *Demanding Women's Human Rights in Guatemala* (2012) <http://www.madre.org/images/uploads/misc/1332520499_Guatemala%20Shadow%20Report%20Shortened%20032312_FINAL.pdf> accessed on 15 July 2014, 3.

⁹⁷⁶See background and current state of the proceedings at the website of the Center for Justice and Accountability (CJA) <<http://www.cja.org/section.php?id=83>> accessed 17 July 2014.

⁹⁷⁷ UNHRC, *Special Rapporteur for the Rights of Indigenous Peoples James Anaya: Extractive Industries and Indigenous Peoples* (2013) UN Doc A/HRC/24/41 <<http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>> accessed 16 July 2014, 7.

⁹⁷⁸ OAS Office of the Rapporteur on Freedom of Expression, *2012 Annual Report on Freedom of Expression in the Hemisphere* (2012) <<http://www.oas.org/es/cidh/expresion/docs/informes/anales/monitoreo/Monitero%20Informe%20Anual%202012.pdf>> accessed 15 July 2014, 147.

⁹⁷⁹ Ibid. 147.

⁹⁸⁰ Inter-American Commission for Human Rights, *First Report on the Situation of Human Rights Defenders in the Americas* (2006) <<http://www.cidh.oas.org/countryrep/Defensores/defensorescap6-8.htm#campesinos>> accessed 12 July 2014, section 220.

⁹⁸¹ UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) UN Doc A/HRC/24/41/Add.3 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

operations. According to the Melo Commission, established in 2006 by the Parliament to investigate the situation, the majority of the killings could be attributed to members of the Philippine military. 119 killings have been reported from April 2001 to January 2007.⁹⁸²

The Committee Against Torture expressed its concern over reports of cases of disproportionate use of force by the police and the national armed forces in Peru.⁹⁸³ Violence was used in the context of social protests or detention of human rights defenders, lawyers, representatives of the Ombudsman's Office or members of indigenous populations. The UN Human Rights Committee has expressed its concern for the significant number of aggressions, violent events and murder against human rights defenders, particularly in the case of peasant and indigenous leaders in Paraguay.⁹⁸⁴

4 Perpetrators

States are at the forefront of repression of indigenous peoples, by omissions but also by the commission of human rights violations against them.⁹⁸⁵ Numerous cases of serious violations suffered by indigenous peoples by military and paramilitary forces in the name of public security, anti-insurgency, and counter-terrorism are reported, although there is no systematic gathering of data on alleged perpetrators.

In Bangladesh, indigenous peoples have suffered countless human rights violations. The military had played an important role because of its influence over political, economic and social affairs.⁹⁸⁶ Despite the fact that indigenous peoples of Bangladesh inhabit 1% of the total territory of the country, one third of the national army has been deployed in the region where they live. The presence of the army in those territories led to numerous attacks of indigenous villages, often in order to take control of their traditional lands.⁹⁸⁷ It has been documented that between April 2011 and February 2012, the military, the Rapid Action Battalion (RAB), the Bangladesh Rifles (BDR), and the police and intelligence servicemen, have committed arbitrary arrest, detention and torture of members of Jumma leaders in the Chittagong Hill Tracts and other regions under the argument of the fight against corruption.⁹⁸⁸

In Ethiopia, in 2011, the government was responsible for the displacement of 70,000 indigenous peoples from their lands. As a result, tensions increased between communities, leading to violence and sometimes

⁹⁸² UNHRC, *Report on the situation of the rights of indigenous peoples in Asia* (2007) UN Doc A/HRC/6/15/Add.3 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/148/22/PDF/G0714822.pdf?OpenElement>> accessed 16 July 2014, 12-13.

⁹⁸³ UN Committee Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Peru*, adopted by the Committee at its Forty-nine session- Advanced unedited version (2012) <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Peru_CAT_concluding_observations.pdf> accessed 20 July 2014, 4.

⁹⁸⁴ UNHRC, *Final Observations on Paraguay's third periodic report* (2013), UN Doc CCPR/C/PRY/CO/3, 4.

⁹⁸⁵ UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

⁹⁸⁶ International Work Group for Indigenous Affairs, *Bangladesh: Militarization in the Chittagong Hill Tracts - The slow demise of the region's indigenous peoples* (2012) <http://www.iwgia.org/publications/search-pubs?publication_id=577> accessed on 15 July 2014, 14.

⁹⁸⁷ Ibid.

⁹⁸⁸ UNHRC, *Report on the situation of the rights of indigenous peoples in Asia* (2007) <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/148/22/PDF/G0714822.pdf?OpenElement>> accessed 16 July 2014, A/HRC/6/15/Add.3, 12-13.

to killings.⁹⁸⁹ The military has accompanied the displacement programme, forcing indigenous peoples to flee their territories. Some were beaten, others killed by the military if they were opposed to moving.⁹⁹⁰ Examples of these dynamics in the past decades in Asia include the armed insurgencies in north-eastern India, in Aceh and West Papua, in Indonesia, and in Mindanao, in the Philippines, as well as the protracted conflicts in Myanmar and Nepal.⁹⁹¹ In the Lao People's Democratic Republic and Viet Nam, some indigenous peoples are still denied full citizen rights and persecuted as criminals.⁹⁹²

In Latin America, Colombia's internal armed conflict continued to result in serious abuses by irregular armed groups in 2011, including guerrillas and successor groups to paramilitaries. Armed actors, including the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), frequently threaten or attack indigenous leaders seeking land restitution or justice.⁹⁹³ Private security groups are also responsible for committing human rights abuses to ensure the safety of the company's facilities. Despite the adoption of the Voluntary Principles on Security and Human Rights, human rights violations carried out by private security groups are still reported, affecting indigenous peoples.⁹⁹⁴

Indigenous peoples are among the groups most severely affected by the extractive, agro-industrial and energy sectors.⁹⁹⁵ Extractive operations on or next to indigenous territories pose threats to indigenous rights and contribute to persistently conflictive social environments. Rights of indigenous peoples to maintain their chosen traditional way of life, with their distinct cultural identity, to access without discrimination employment opportunities and goods and services are often violated.⁹⁹⁶ They are in many cases victims of forced displacement, with no respect for their land use and ownership. Because of deficient regulatory frameworks, indigenous rights remain inadequately protected, and too often entirely unprotected, against the actions of extractive industries.⁹⁹⁷ Extractive companies are also responsible for the destabilization of communities.⁹⁹⁸ The presence of companies on lands that were previously owned

⁹⁸⁹ UNESCO, *State of the World's Minorities and Indigenous Peoples 2012* (2012) <<http://www.unesco.org/library/PDF/MRG.pdf>> accessed on 12 July 2014, 67.

⁹⁹⁰ Ibid.

⁹⁹¹ UNHRC, *Report on the situation of the rights of indigenous peoples in Asia* (2007) UN Doc A/HRC/6/15/Add.3 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/148/22/PDF/G0714822.pdf?OpenElement>> accessed 16 July 2014, 12 and UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 8-9.

⁹⁹² UNHRC, *Consultation on the situation of indigenous peoples in Asia* (2013) <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf> accessed 17 July 2014, 7.

⁹⁹³ Human Rights Watch, *World Report 2012: Colombia* (2012) <<http://www.hrw.org/world-report-2012/colombia>> accessed 15 July 2014.

⁹⁹⁴ UNESCO, *State of the World's Minorities and Indigenous Peoples 2012* (2012) <<http://www.unesco.org/library/PDF/MRG.pdf>> accessed on 12 July 2014, 42.

⁹⁹⁵ UN Department of Economic and Social Affairs, *Preventing violation of indigenous rights* (2013) <<http://www.un.org/en/development/desa/news/social/indigenous-and-business.html>> accessed 13 July 2014.

⁹⁹⁶ Ibid.

⁹⁹⁷ UNHRC, *Special Rapporteur for the Rights of Indigenous Peoples James Anaya: Extractive Industries and Indigenous Peoples* (2013) UN Doc A/HRC/24/41 <<http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>> accessed 16 July 2014, 7.

⁹⁹⁸ UNESCO, *State of the World's Minorities and Indigenous Peoples 2012* (2012) <<http://www.unesco.org/library/PDF/MRG.pdf>> accessed on 12 July 2014, 46.

by indigenous peoples can create tensions if jobs and benefits from this occupation are unequally distributed.⁹⁹⁹ Companies sometimes support specific groups providing assistance to their projects, which can also reinforce tensions.¹⁰⁰⁰ Extractive operations in indigenous territories can therefore be the cause of the escalation of violence by Government and private security forces.¹⁰⁰¹ Political instability, violence, and rise of extremist groups in indigenous areas have been reported in areas where extractive industries occupy indigenous territories.¹⁰⁰² The complex relation between the actors involved, including States, corporate actors and indigenous peoples themselves, is a source of violent social conflict.

Box VI. 25 The Bagua incidents in Peru

Tensions arose as a result of opposition to the passing of a series of legislative decrees by the Peruvian Government that were questioned by organisations and indigenous representatives. Between March and June 2008, the Executive enacted 101 legislative decrees on the basis of Law 29157, which delegated legislative faculties to the Executive for the adoption of measures; government development of policies related to the implementation of the Free Trade Agreement between Peru and the United States.¹⁰⁰³

On June 5, 2009 three grave violent incidents occurred. One in the Curva del Diablo (Devil's Curve) in the context of the eviction of indigenous and other protesters located in the Fernando Belaunde highway, another incident in PETROPERU Station 6 in Imaza and the last one constituted a series of simultaneous violent protests against public entities in Bagua and Utcubamba (Amazonas), and Jaen (Cajamarca). As a result, there were 33 deaths (23 police officers, 5 indigenous people and 5 Bagua residents), a disappeared police officer and 200 wounded (among these, 82 fire weapon related lesions, and 17 caused by pellets.)

A few months later, the Special Rapporteur James Anaya visited Peru and issued a report calling for dialogue between the State and indigenous organisations as well as the establishment of an independent investigation concerning the events that unfolded in Bagua.¹⁰⁰⁴

In June 2012, Congress approved a report that concluded that no minister was responsible for the events in Bagua of June 2009. On May 14, 2014 the Criminal Chamber of Bagua carried out the trial against Apu Alberto (leader of the Asociación Interétnica de Desarrollo de la Selva Peruana AIDSESP) and the other 53 leaders who have been accused.

⁹⁹⁹ Ibid. 46.

¹⁰⁰⁰ UNESCO, *State of the World's Minorities and Indigenous Peoples 2012* (2012) <<http://www.unesco.org/library/PDF/MRG.pdf>> accessed on 12 July 2014, 46.

¹⁰⁰¹ UNHRC, *Special Rapporteur for the Rights of Indigenous Peoples James Anaya: Extractive Industries and Indigenous Peoples* (2013) UN Doc A/HRC/24/41 <<http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>> accessed 16 July 2014, 15.

¹⁰⁰² Ibid. 15.

¹⁰⁰³ Defensoría del Pueblo (2009) Informe sobre la actuación de la Defensoría del Pueblo en los sucesos acontecidos en las ciudades de Bagua y Utcubamba <<http://www.defensoria.gob.pe/modules/Downloads/documentos/INFORME-ACTUACIONES-BAGUA.pdf>> accessed 10 July 2014, 24.

¹⁰⁰⁴ UNHCR, *Special Rapporteur on the Rights on Indigenous Peoples, James Anaya* (2009), Observations on the situation of the indigenous peoples of the Amazon region and the events of 5 June and the following days in Bagua and Utcubamba provinces, Peru UN Doc.A/HRC/12/34/Add.8 (2009) <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/150/32/PDF/G0915032.pdf%3FOpenElement>> accessed 17 July 2014.

Conclusions

This report has attempted to provide a comprehensive survey of conflict-related human rights violations on the basis of existing databases, with a focus on the role of non-state actors as perpetrators of human rights violations and on particularly vulnerable groups in current conflict settings. The report has examined features of contemporary armed conflicts and new forms of violence that can have implications for the protection of particularly vulnerable groups. In doing so it has sought to present the complex interaction between human rights violations and conflict and to identify some of the obstacles that impeded the protection of these vulnerable groups through the provisions of relevant legal frameworks. It has surveyed patterns, perpetrators and trends of serious human rights violations committed against selected vulnerable groups (children, women, refugees and internally displaced people and indigenous peoples) on the basis of the information provided in existing databases and human rights reports. The survey of human rights violations related to current conflicts and new forms of violence offers a complex picture of the contemporary 'atlas' of human rights violations of vulnerable groups related to conflict.

Particularly vulnerable groups have been selected for this study: children, women, refugees and internally displaced people, and indigenous peoples. The consequences of conflict are deeply gendered but also intrinsically linked with situations of prior discrimination. As a general trend, vulnerable groups share a common structural discrimination, which is reinforced by the situation of conflict. Human rights abuses suffered by different groups are interlinked with the stigmatisation, discrimination, intimidation already felt before the beginning of the conflict. Furthermore, different forms of discrimination can sometimes intersect, with different types of discrimination due to status or gender, such as indigenous women and children. A full understanding of vulnerable groups in conflict settings has therefore not only to acknowledge the actual context but also the prior factors of vulnerability.

The report indicates that new forms of conflict, with the phenomenon of direct targeting or indirect but devastating consequences for civilians, reinforces the vulnerability of all groups, as conflict-induced displacement demonstrates. Detailed analysis of data concludes that *conflict is the primary contributory factor for displacement*. IDPs and refugees become vulnerable because of the simple fact of being displaced as a result of conflict. The vulnerability created by displacement can then interact with other factors such as gender, age, or ethnicity, which will shape the experience of groups differently. When identifying the most serious violations of human rights experienced by IDPs and refugees, the notion of discrimination resulting in denied or violated rights can be applied as one of the root causes. Human rights violations against IDPs and refugees have been identified as: (1) serious forms of arbitrary displacement; (2) killing and other attacks on the right to life, physical integrity and security; (3) sexual violence; and (4) attacks on the right to water, food, health and education. In conflict situations, the risks are heightened and as the status of IDP or refugee merges with other potentially vulnerability factors, such as gender, age, disability, membership of a minority group and access to social and economic resources, the intersection of potential human rights violations becomes greater. According to statistics gathered by this study, *48% of the refugee populations in 2012 were women and girls*, a figure that has been constant over the last 10 years. Displacement exacerbates the vulnerability of women and girls to violence and serious human rights violations.

The evidence collected by this survey confirms that women and children are the primary victims of conflicts. The most serious conflict-related violations of women's human rights have been identified as: (1) sexual violence; (2) trafficking; (3) other threats against personal safety; (4) denial of humanitarian aid and social services; and (5) unequal participation. Their personal safety is increasingly at risk in recent years, as data from Afghanistan, Colombia, Central African Republic, Democratic Republic of Congo, Iraq, Somalia, Syria, Northern Mali and Sudan and South Sudan has shown. Killings, other serious violent attacks and sexual violence against women continue to be widespread, as reported by an increase by 61% in the number of women killed and injured in 2013, compared with the same period in 2012.

Age is also an important factor of vulnerability. Current research reveals that about 50% of the people currently displaced by armed conflict and violence are children, and children and young people constitute the majority in conflict-affected areas and fragile States. Children do not have the same ability to protect themselves and cope with the devastating effects of conflicts. They have become the primary target of armed actors and are victimised by the advances in arms technology, including the proliferation of small and light weapons. Conflict causes systematic and widespread violations of all rights of the child. Six grave violations against children during armed conflict have been identified by monitoring bodies, which have been confirmed by the figures and trends analysed in this report: (1) the recruitment or use of child soldiers; (2) the killing or maiming of children; (3) the rape and other grave sexual abuse of children; (4) the attacks against schools and hospitals; (5) the abduction of children, and (6) the denial of humanitarian access for children. Situations of serious concern, on the basis of the data collected by this report, are Iraq, Syria, South Sudan, Nigeria and the Central African Republic.

Finally, Indigenous people have been confronted with the worst consequences of internal conflicts, experiencing all forms of human rights violations, including extrajudicial killings, massacres, torture and sexual violence, and large movements of refugees and internally displaced persons as a result. On the basis of reports of the UN Special Rapporteur on indigenous peoples, three grave violations of human rights against indigenous peoples have been identified: (1) forced displacement; (2) sexual violence against indigenous women and girls; and (3) attacks against the life and physical integrity of indigenous leaders. Conflict-related human rights violations faced by indigenous people are indeed deeply linked with discrimination and with land dispossession. The loss of their lands, the threats and attacks and the sexual violence they suffer has a close relationship with the marginalisation, exclusion, discrimination, and poverty of indigenous people. In Asia, local conflicts resulting from the lack of recognition of the rights of indigenous peoples to their communal lands is a permanent source of repression and abuse and often leads to human rights violations of indigenous peoples. In the Americas, where 6 million people are internally displaced, the majority of forced displacement occurred due to State military activity and to the activities of armed groups involved in drug cultivation and trafficking in indigenous regions, as well as to indigenous conflict. In Africa, indigenous peoples are often caught in violent conflicts, which are further exacerbated by effects of climate change and increased competition over natural resources. In these contexts, abuses against indigenous peoples committed by the military and armed militia groups have been widely reported.

The groups represented all have the common experience of discrimination and each factor such as age, gender, or ethnicity, can intersect in order to create a situation of vulnerability. The factors are interrelated and cannot be separated from each other in a hermetic way, as they will shape experiences differently and will reinforce vulnerability. Vulnerability has therefore to be analysed taking into account these specific elements along with the specifics of the conflict situation. This is replicated in the the intersection of dimensions of international human rights law and international humanitarian law, where conflict creates heightened vulnerability to violations of human rights that both sets of law aim to protect and prevent. This report has illustrated the violations of human rights that occur, despite the existence of these legal frameworks and policies linked to them, indicating the need to further analyse the normative frameworks more extensively, to be carried out in the next report of this FRAME project, as well as the policies of States and International institutions, in terms of causes and preventive measures of conflict and violations of human rights.

The following conclusions seek to offer some preliminary ideas about how prevention of such violations and protection of the selected vulnerable groups might be strengthened.

- Many contemporary conflicts are characterised by State weakness and State fragility, or other instances in which the State lacks control of its territory. There is a need for greater clarity of States obligations under IHRL in the context where conflict is threatened due to this fragility.

- The analysis of human rights violations as causes of conflict is imperative to the complex analysis of causes of conflict, in order to address these violations as one aspect of conflict prevention. In situations of armed conflict and related violent crisis, positive international legal obligations of States to respect, protect and fulfill human rights continues to apply.

- In situations of armed conflict, IHL and IHRL must be applied concurrently in international and internal conflicts. The precise conceptualisation of the relationship/interaction between IHRL and IHL merits further study with particular reference to the applicability of IHL to current, new and specific forms of conflict.

- There is a trend favouring the applicability of IHRL to non-state armed actors in order to hold them accountable for violations (or 'abuses') of human rights on the basis of their exercising effective control over a territory or where they violate jus cogens human rights norms. The confirmation of this trend in international practice merits further research and analysis.

- There is a need for greater clarity with regard to the use of autonomous weapons systems under international humanitarian law and human rights law, in particular with regard to the principles of precaution, distinction and proportionality.

- Children, constitute a particular vulnerable group, and they become even more vulnerable due to the new tactics in the conduct of hostilities, indiscriminate attacks on civilian areas or attacks directly targeting civilians, through explosive weapons, air strikes, the use of new weapon technology or the use

of terror tactics. The changing nature of armed conflict – the continuum of conflict- requires that child protection needs are addressed at all stages of conflict and to consider the role of all the actors involved in this continuum.

-There is a trend to identify alleged perpetrators of serious human rights violations of women such as the systematic UN reporting related to perpetrators of sexual violence. More systematic reporting methods of all serious violations would contribute to better assessment and to improve accountability for the wide range of serious violations against women.

- The applicable legal frameworks on vulnerable groups related to conflict-settings must be continuously assessed in light of any new circumstances or challenges that arise in all possible conflict scenarios. The report has identified certain areas where development would be beneficial, such as internal conflicts related to situations of lawlessness and urban violence.

-In addition to the steps that parties to conflict can take themselves, there is an important role for third parties in improving the implementation of and compliance with IHRL and IHL. States not party to the conflict, the UN or other multilateral bodies, the EU and other regional organisations, and humanitarian organisations – among others – have moral and legal responsibilities in this regard.

- A range of tools are at the disposal of different actors, depending on their role and the situation on the ground, including, for example, the monitoring and documentation of IHL implementation, the initiation of political dialogue and the application of diplomatic pressure, the imposition of targeted sanctions, the denial of arms transfers, and the investigation and prosecution of serious violations of IHRL and IHL. In this sense, the European Union has its toolkit at its disposal for the integration and prevention of human rights in conflict-settings. However, there is the need for further research on the way the EU should implement its external policies for the prevention of such human rights violations.

-Comprehensive analysis of the prevention of human rights violations related to conflict and the protection of particularly vulnerable groups under IHL must consider how third actors can more effectively utilise existing mechanisms or develop new ones to improve respect for and implementation of IHL during armed conflicts.

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