



United Nations Office of the Special Representative
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**CHILDREN AND
ARMED CONFLICT**



**The Security Council and Children and Armed Conflict:
An Experiment in the Making**

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"In a world of diversity and disparity, children are a unifying force capable of bringing people to common ethical ground"- Graça Machel

INTRODUCTION

Of all the humanitarian issues prevalent in the world today, the theme of children and armed conflict has caught the imagination of the Security Council of the United Nations. Since 2000 there has been a systematic engagement with CAAC as it is called in UN circles, much of it in the form of, what I would term, an experiment. What I propose to do today is to first describe the background to this engagement, then move onto describe the nature of the engagement and finally to reflect upon the implications of such an engagement for human rights issues and children and armed conflict.

In 1996 Graça Machel presented her in-depth expert study on children and armed conflict to the General Assembly. Responding to the terrible news stories of children in conflict, the Assembly had asked the expert to provide guidance on what was necessary at the international level to protect children in times of conflict. Graça Machel, in her report, highlighted the fact that contemporary warfare was changing; that the lines between civilian and combatant were no longer clear; that women and children were often on the frontline and directly targeted. She went on to signal issues that required urgent international attention. These included the issue of child soldiers, the problem of refugees and IDP children, sexual and gender based violence and the effect of landmines on children. She also drew attention to the particular problems posed by generalised sanctions, the terrible impact of warfare on health and nutrition and the need for psychological recovery and social integration for all children affected by war. The Assembly responded to her by creating the post of a Special Representative of the Secretary-General on Children and Armed Conflict at the Under-Secretary-General level to mobilize a UN system wide effort to protect children in times of war.

Olara Otunnu inherited the mantle and was appointed the first Special Representative on Children and Armed Conflict. Olara Otunnu was Uganda's ambassador when Uganda was a member of the Security Council and he saw the potential for Security Council engagement on this issue. He was determined to make the Security Council recognize that children and armed conflict is a peace and security issue under the Council's purview and the full plethora of tools that the Council had at its disposal had the real potential of driving this agenda with the political muscle of the Council behind it.

THE ANNUAL REPORT OF THE SECRETARY GENERAL

Security Council engagement with the issue of children and armed conflict began in 1999 when the Council, in resolution 1261, requested the Secretary-General to provide a report on Children and Armed Conflict to the Council, cementing the recognition sought by Otunnu that children and armed conflict was a peace and security issue. This regular report has become the basis for on going Security Council action on this issue. The first report, following the framework of the Graça Machel report, outlined the issues as contained in the initial study and sought to assess developments in the field. It was general and thematic, much like the reports to the Human Rights Council. However, over time the report would change to become a monitoring and reporting document focusing on parties within country specific situations.

The first important decision made by the former Special Representative was to guide the Security Council process to focus on grave violations. Though a substantial part of the report also looked at UN peacekeeping and how it could foster protection for children, over time the main thrust of the report was to focus on grave violations. It was felt that programmatic reviews would be misplaced since the Council was not a response mechanism but that grave violations as elements of threats to peace and security would be important for its deliberations. After reviewing international humanitarian law, the former Special Representative identified six grave violations that occur against children during war time - the killing and maiming of children, sexual violence against children, recruitment and use of children, abductions, attacks on schools and hospitals and denial of humanitarian access. These were not comprehensive and did not include all the violations suffered by children in armed conflict situations, but they were the most practicable in terms of monitoring. These six grave violations have now become the basis for the Security Council process.

If one examines the 2009 report of the Secretary-General on Children and Armed Conflict the focus is on violations and compliance by parties within country specific situations. With regard to country situations they are divided into two - countries that are on the agenda of the Security Council and countries not on the agenda of the Council. In all there are 20 country situations of concern. If one looks at the text within these country situations, for example Iraq, it examines issues such as the recruitment of children, killing and maiming of children, children in detention as well as issues relating to attacks on educational institutions. The report presents certain statistics but the main thrust of the reporting is incident based reporting with an attempt to identify perpetrators where possible. This specific incident and perpetrator focus makes this a unique report in the UN system, especially as it is presented as the report of the Secretary-General.

Since it is the Secretary-General's report, the process of writing this report with country specific information is also unique and interesting. The information for the report comes from the UN country team itself. Where there is a DPKO or DPA mission, the SRSG in the field is responsible for providing the information after system-wide consultation.

Where there is no DPKO mission, the Resident Co-ordinator is responsible for conveying the final information. UNICEF in the field, as a co-chair of the Task Force in the country - where there is one - is an active member of this process. This information, along with any other relevant information at the Headquarters level, is collated and put together by my Office. The report is then shared with a Headquarters level task force made up of all the relevant agencies - UNICEF, UNHCR DPKO, ILO, UNDP, DPA, UNIFEM, OLA - who make additional inputs as necessary. After their inputs, the report is then finalized and then pertinent sections shown to the Member States so that they have an opportunity to be heard on the allegations against parties to conflict operating within their territories. If they challenge information, we request the country teams to verify the data. Once that process is complete, the report is given to the Executive Office of the Secretary-General who then consults the heads of key departments, if necessary, and may make changes before the report finally comes out.

In the end we can genuinely say that the compilation of the annual report of the Secretary-General to the Security Council on children and armed conflict is a UN system wide process. The process is important in itself since it is a consensus building tool for UN partners as how to best protect children. It contains information that the UN system has access to and that can be verified by UN partners. We only use non-UN material if the country teams for some reason feel that they cannot monitor, report or verify information. In that case we use official sources as well information from child protection partners whose data is credible and based on a sound methodology, and the UN country team will stand by their information.

One of the first legal issues to emerge in the compilation of the report was “what constituted armed conflict?” for the purposes of the report. Several governments felt that their situation was not armed conflict in the strict sense of the word and therefore their situation should not be in the report. The response of our Office is that our determination was derived from a humanitarian angle with a pragmatic emphasis on children, what happens to them and how they can best be protected. This approach puts the interests of children as an overriding concern and that situations requiring scrutiny should be responded to without a legal determination of what constitutes armed conflict. With the help of the Secretary-General’s office and the Office of Legal Affairs, along with language in the recent Security Council resolution 1882, we examine what we call “situations of concern” and inclusion of a country situation in our report is not a legal determination of armed conflict. Still many countries continue to resist their inclusion with demarches and strong language at the open debate that often accompanies the production of the report.

One important aspect of the reporting to the Council that is also included in the annual report is the emphasis on peacekeeping. From the very first report, there was an attempt to ensure that UN peacekeeping missions respond to children’s concerns. The report to the Council highlighted the need for UN Security Council resolutions setting up peacekeeping operations to include provisions on child protection. The reports also called for training of peace keepers and for some time monitored sexual violence and exploitation by peacekeepers against children. As a result of all this emphasis, the

Department for Peacekeeping Operations has formulated a Child Protection Policy. This policy calls for the recruitment of child protection advisors as requested by the Security Council who would help the mission monitor grave violations along with UNICEF and other child protection partners, train peacekeepers and be the advocate and the interface between peacekeepers, civil society and children in the community.

LISTING AND DELISTING

The second initiative with regard to the Security Council and children and armed conflict took place in 2001 when the Council requested that the Secretary-General, in his annual report, also include an annex of named parties that continue to recruit and use children as child soldiers. The issue of child soldiers was of particular concern to the Council since Graça Machel highlighted the issue in her study and most Council members considered this a universally abhorrent practice. Pictures of small children carrying automatic weapons, killing and maiming under the influence of drugs had flooded the media ever since the wars in Liberia and Sierra Leone had begun. This was deemed to be an unacceptable state of affairs. The Council therefore decided on a listing process, a naming and shaming exercise that would indicate to the world who the perpetrators are, their names and where they are located.

The first “list of shame” contained the names of 23 parties, state and non-state actors from Afghanistan to Sierra Leone. In 2009 there were over 50 parties listed. Over the years the numbers have increased as data availability increased but there was also greater specificity so as to focus Security Council action on these violators. Today there are 19 persistent violators who have been on the list for at least five years. Resolution 1379 of 2001 also indicated how parties could get off the list - they should enter into time bound action plans with the United Nations to release and reintegrate the children in a structured manner and to desist from further recruitment and use of children. The action plan then became the vehicle for delisting parties and allowed the United Nations to receive and implement commitments.

There are people who are skeptical of the listing process. It is true that a number of parties do not care, and sometimes are unaware, if they are listed by the Secretary-General, but in many cases the listing process has resulted in compliance. For example in 2008 I visited the Central African Republic and met with Commandant Laurent of the APRDC. He lived deep in the bush and did not have much access to international news. I informed him that he was on the annexes of the Secretary-General’s annual report and since it was after Security Council resolution 1612, that there was a possibility of targeted measures being used against him in the near future. He was initially taken aback and gave me a long lecture, his unique version of the history of the United Nations. However, even though he was a rebel now, he had aspirations of leading the country one day. He did not want to be on any list. He made a commitment to release the children as long as there were proper programmes for their care. He is currently releasing the children in a structured manner and all separated children have been reintegrated into their communities.

In December 2008, I met with the MILF (Moro Islamic Liberation front) in their territory in a remote part of Mindanao, Philippines. Though initially they were reluctant to cede any ground, first claiming that they did not have children and then stating that Muslim law defines children differently, they finally relented once the process was explained to them and the cost of remaining on the list became clear. They too wanted to be off the list. Over the course of 2009 they entered into an action plan with the United Nations and we are at the moment trying to raise the necessary funding for the successful implementation of the action plan. A similar change of heart took place in Nepal. After prolonged negotiations, in February this year the Nepalese Maoists released their minors who had been held in the cantonments. Again, they felt that as a past and possible future ruling party they should not be on the Secretary-General's list.

We have also had successes with parties in Cote D'Ivoire, Sri Lanka, the DRC and Sudan. There are also fewer governments now on the annexes since they, especially, do not want to be on any Security Council endorsed list. Recently, the UPDF in Uganda entered into an action plan and opened their camps for inspection. They have since been delisted. The only state parties that remain are in Myanmar, the Democratic Republic of Congo, Sudan and Chad.

In August 2009, the Security Council, recognizing the effectiveness of this listing process in certain contexts, in Security Council resolution 1882, asked the Secretary-General to expand the scope of his annexes and also list parties that have a pattern of committing sexual violence against children and/or killing and maiming of children contrary to international law. The May 2010 report will therefore contain additional listings of such parties. The listing criteria for these violations are premised on the notion of pattern. The violations cannot be random or isolated; they must be systematic, willful and intentional. This now poses a challenge as it will require my office and partners in the field to gather the kind of information that will meet this standard for these new criteria.

SECURITY COUNCIL RESOLUTION 1612 - A MONITORING AND REPORTING MECHANISM

The most significant development with regard to children and armed conflict and the Security Council took place in 2005 with the passage of Security Council resolution 1612. The resolution called on the Secretary-General to set up a monitoring and reporting mechanism and a Security Council Working Group on Children and Armed Conflict. The notion that the Security Council would set up a monitoring and reporting mechanism on anything seemed unthinkable at one time but for the sake of children a unity of purpose was found. Nevertheless, safeguards were in place to ensure the fact that nation states would be fully consulted and their interests protected. Assurances were given and process set in place for effective action. My predecessor, Olara Otunnu, and the French Ambassador at the time, Ambassador de la Sablière, worked tirelessly to put this innovation in place. NGOs and UNICEF staff were also active with support and lobbying on behalf of the resolution. In May 2005, the resolution was unanimously adopted much

to everyone's surprise. It was after all for the sake of the children - who could publicly oppose such noble sentiments?

The monitoring and reporting mechanism as initially designed by Olara Otunnu and modified in consultation with partners, established Task Forces at country level to be chaired by the Special Representative of the Secretary-General if there were DPKO or DPA missions and by the Resident Co-ordinators in other country situations. The Chair would therefore be the highest UN representative in the country, signaling the high level of importance the agenda would have politically. These Task Forces are also co-chaired by the UNICEF representative. In some countries the representative of the High Commissioner for Human Rights is also a co-chair. The Task force members include UN departments and agencies that have information on children, independent national institutions such as independent human rights commissions that meet the threshold of the Paris Principles, and select NGOs who the Chair is convinced are doing work on children and are neutral, impartial and independent and who are capable of collecting credible information. However all information collected by non UN partners must be verified by the UN. This Task Force sends its report to our office where it is processed in consultation with UNICEF, DPA, DPKO and other important partners at Headquarters in the manner described for the drafting of the annual report. Finally the document appears as a Secretary-General's report on the country concerned. Again it is a system-wide report with information that focuses on the six grave violations and especially on incident based reporting with an attempt to identify perpetrators of these grave violations. However, unlike the annual report, this report allows for a fuller appreciation of all background information, violations and protection efforts.

Many governments in these situations of concern had an initial reaction to the fact that they were not represented in the Task Force due to concerns for neutrality and impartiality. We argued that those against whom there are possible allegations cannot be on the Task force. However, a practice is emerging where all the government agencies that deal with children form a government working group which then interacts with the Country Task Force. In this way the government may be made aware of the type of allegations against all parties to conflict at regular intervals (though without endangering the sources) and also in some countries it has become very useful in responding to these violations through providing services for affected children.

NGOs and UNICEF have also been concerned that monitoring and reporting should be closely tied to programmatic response so that children are not made more vulnerable without any support. Though the monitoring and reporting process has to be kept separate so that it does not look like witnesses and sources of information become beneficiaries, it was recognized that the international community must also provide support to the class of children affected so that they are given specialized programmes and successfully reintegrated back into their communities. These processes also had to be kept separate to shield programmatic actors in more difficult conflict situations.

THE SECURITY COUNCIL WORKING GROUP

The reports of the Secretary-General on country situations are presented to another innovative creation of Security Council resolution 1612 - the Security Council Working Group on Children and Armed Conflict. In the first few years it was chaired by France - at the moment it is chaired by Mexico. It meets bimonthly and examines the reports of the Secretary-General, an informal global horizontal note and also considers oral or written reports of the Special Representative of the Secretary-General on Children and Armed Conflict of my country visits. This systematic engagement with frequent meetings has deepened the engagement and the knowledge base of the Council on issues relating to children and armed conflict.

When the country report is presented to the Working Group, the national government representative is given an opportunity to respond to the report. After that process, the Working Group deliberates on Conclusions and Recommendations, based on the recommendations of the Secretary-General, which it then adopts at its next meeting. Since its inception, the Working Group has come to a consensus on all the country specific situations placed before it. There has been no instance of complete deadlock. This again speaks volumes for the fact that children's issues are a unifying factor. However, to be truly honest, there have been difficult moments and sometimes the conclusions are not as strong as child protection actors have asked for.

Once there is consensus, these conclusions and recommendations are very useful documents. Our office, UNICEF, DPKO and other child protection partners then use the conclusions and recommendations in our work to try and receive commitments and design programmes in the country concerned. I was recently in Afghanistan and I based my visit on the conclusions and recommendations of the Working Group on Afghanistan. The conclusions have a public statement by the Chairman of the Working Group addressed to non-state actors; it also has very specific recommendations for the government of Afghanistan and has a direct communication to ISAF and the international forces. Again they related to the six grave violations that had been monitored in the Afghanistan report. However, there is no doubt that the next challenge is to ensure effective follow up to all the conclusions and recommendations of the Council.

The Security Council Working Group in its initial sessions also fashioned a "toolkit" of possible actions it could take. There is scope for country visits by the Security Council Working Group and one is being contemplated at the moment. It also contains the possibility for forwarding to the Sanctions Committee and the ICC information from the reports - this I will discuss later. It contains the possibility of directly communicating with funders and donors to assist child protection programmes. Except for the latter, the Working Group has not really used the tools that it originally envisioned.

Processing on average twelve reports a year and coming up with the same number of conclusions and recommendations has resulted in an enormous workload for the Chair of the Working Group. One has to truly commend France and Mexico as successive chairs

for their efforts and dedication. At the moment, the Chair receives very little assistance from the Secretariat to process these reports and must rely on its resources. This has made many countries reluctant to take on the role and has also resulted in much of the toolkit being under-utilized. There is now an effort in place to try and get the proper resources and personnel in place so that the Chair is given the necessary support and the Working Group can do its work effectively.

ACTION PLANS

One important aspect of all these resolutions is that it calls on the parties to conflict who are accused of grave violations to enter into a dialogue with the United Nations for the purpose of implementing an action plan. These action plans must be concrete and time bound and must have within them a system of verifying that the violations have stopped. In many instances they also spell out what will happen to the affected children and the suggested plan for their reintegration into their communities. As mentioned earlier, some parties, especially those who respect the role of the United Nations, are willing to enter into such action plans. Others who reject the presence of the United Nations are less likely. A major concern is that any dialogue must take place with the consent of the nation state concerned, and a few states are of the opinion that any international contact with armed groups only gives them legitimacy and have therefore refused consent. This poses a major difficulty for the 1612 process.

1612 - TARGETED MEASURES

Security Council Resolution is also a powerful tool because it threatens action against persistent violators. The structure of resolution 1612, the gathering of information that attempts to address accountability all point to, perhaps, one of the most important parts of the resolution, that those who persist in committing grave violations against children may be at the receiving end of targeted measures, which include an arms embargo, assets freeze and travel bans. The mere threat of these sanctions was enough for some parties to enter into action plans - particularly all five parties in Cote D'Ivoire. In other contexts, where the international system is rejected, this threat may of course fall on deaf ears. Nevertheless, it is an important aspect of 1612. The only institution within the UN system that is capable of a punitive response is the Security Council. It is for this reason that this complex exercise was initially begun and why it is important that we move ahead with this process.

In August this year, the Council reiterated in resolution 1882 that sanctions against perpetrators may be considered, especially where there are already existing sanctions committees. This is an important step forward and in the sanctions committee deliberations on the Democratic Republic of Congo, it is possible that the agenda will move forward. However, there is no separate mechanism for children and armed conflict and sanctions and many child protection partners feel that we should try and influence the Council to move in that direction, especially with regard to persistent violators.

The issue of sanctions committee listing and punishment was before the House of Lords recently and before the European Court in the Kadi case. Certain important issues were raised - such as the fact that those against whom sanctions are imposed, if they are individuals, should be given the opportunity to be heard, the evidence should be communicated to them and there should be some form of judicial review. These are important safeguards and it is my understanding that the Council is seeking to make necessary adjustments so that due process is fulfilled. Nevertheless, since the sanction power of the Security Council remains the only punitive power within the system to deal with states and parties, we should not forsake this power and it should be strengthened so that human rights protection is also embedded. The International Criminal Court does exist but it is based on consent jurisdiction and therefore has its limitations with regard to punitive and remedial measures.

REFLECTING BACK

Reflecting back on the five years after resolution 1612 was adopted, one may recognize certain issues and problems. The first question that comes to mind is should we have brought these issues before the Security Council? The Council deals with armed conflict and this is about children in the midst of that conflict – for that reason alone the Council has the mandate to deal with these issues. The Council also has the power to punish those who are a threat to peace and security –those who commit horrendous violations against children surely fall within that category. By recognizing the link between the protection of children and the threat to peace and security, the Council has shown that it is willing to recognize a more comprehensive view of its mandate. In recent times, it has also recognized the importance of the protection of women and the protection of civilians. In modern wars, where the separation of civilian from combatants is rarely acknowledged, this holistic approach displays a better understanding of the true dynamics of modern warfare.

And yet, the Security Council is essentially a political body. Where countries agree on the political issues such as in Burundi for example, we have been able to move the agenda effectively. Where there are contested political issues, it is more difficult. This has made many critics charge that the UN system has double standards, that some states are more protected than others. For all of us who work in human rights within the UN system, our policy has always been where we can protect human rights we should do so with effectiveness; where it is more difficult because of political reasons, we should continue to advocate for the system to recognize the human rights and child protection issues and to strive to make a difference. There is something disingenuous about the statement that just because we cannot protect all the children all the time, we should not protect some of the children when we can. Surely that cannot be a valid approach.

In recent times, there has been the argument that the Security Council should not focus on human rights issues and that the “sovereignty” of nations should be respected. This has been in response to what some perceive as misplaced humanitarian intervention of the past two decades. For the most part, the children’s agenda in the Council has withstood the

partisan rhetoric surrounding other areas. This is primarily because we are dealing with children and most governments find it difficult to take a public position against such interventions. It is also because the Council has kept a close watch on developments and decisions of the Working Group are still made by consensus. Our office has also been extremely careful in protecting this theme from politicization through advocacy and outreach both at UN Headquarters and in the capitals.

The other factor that is important to keep in mind is that this process described above is before the Security Council and not the Human Rights Council. The reason for this, as stated earlier, is that children and armed conflict is a peace and security issue - since it involves armed conflict - and we also hoped that the Council would move toward targeted measures, a possibility for the Security Council and not for the Human Rights Council. As a result, the process has been somewhat different. From the beginning Member States made it clear that this should be a consultative and collaborative process and they placed a high value on engaging nation states in dealing with grave violations. For this reason both the report writing process and the report review process involves interaction with the Member State concerned. This has its advantages and disadvantages but it actually locks the nation state into a dialogue with our office and the Task Forces on the ground. This is often very healthy and raises the level of the issue within the country and among government ministries. The disadvantage is that we spend many hours with Member States defending our position and the position of the Task Forces and there is a constant process of verifying information because of the high level of scrutiny.

The third important aspect is that any report goes to the Council as the Secretary-General's report. It is not the report of a special representative or a special rapporteur. As a result there is a great deal of consultation within the UN system before the report is finalized. The Executive Office of the Secretary-General scrutinizes every detail as the Secretary-General must stand behind the data collected. Since much of this data names and shames, they work closely with our office to ensure that all information is credible and verified. This UN system wide reporting also has its advantages and disadvantages. On the one hand every agency and department has its priority and sensitivities and this may lead to some intense round of consultations within the system. Secondly the field, especially UNICEF and those working on child protection, feel that field interests and concerns must be adequately reflected since they are on the frontline. To get the report right we have to balance the information and concerns coming from the field with the data and interests of departments working at Headquarters who have access to a different set of information from Member States. In recent years we seem to have got the system working quite well and this year's report was produced with a minimum of glitches and on time.

The true success of the Security Council process is that it has created structures within the UN system - the Task Forces at the country and Headquarters level that now focus a great deal of attention on children affected by armed conflict. They gather and share information and they co-ordinate responses where earlier the efforts were scattered and piecemeal. It has also created a committed group of experts at the technical level from Member States who, despite their political differences, do try very hard to move forward

on this agenda. At the government level, the high visibility of this issue, precisely because of Security Council attention, has led to many countries setting up implementing machinery that will respond to many of the concerns.

The other important fact to remember is that the monitoring and reporting mechanism is collecting a great deal of information and data on the protection of children. These information management systems exist both in the field and at Headquarters. Information is key to the effective protection of children and for any future justice mechanism that may be set up in the post conflict era. This information will only be shared, however, with the full knowledge and consent of those who have given the information.

As Graça Machel did write in her report, children are a unifying factor and they, more than any other group, remind us of our common ethical concerns. I have described to you the response of the Security Council to some of these challenges. Like all systems, it has its imperfections, but one must still conclude that these are extraordinary and innovative developments. Recently we brought to the Security Council, a young girl who was once a child soldier, raped, beaten and nearly killed by the Lords Resistance Army. She rebuilt her life and is now a graduate student in a prestigious American university. After her moving intervention, she received sustained response from every ambassador in the room along with the Secretary-General. Those are special moments, when our common humanity trumps our politics. They are also moments that show us the possibility of the United Nations. We hope the children will continue to show us the way.

ACRONYMS

❖ CAAC	Children and Armed Conflict
❖ DPA	United Nations Department of Political Affairs
❖ DPKO	United Nations Department for Peacekeeping Operations
❖ ILO	International Labour Organization
❖ OLA	United Nations Office of Legal Affairs
❖ SRSG	Special Representative of the Secretary-General
❖ UNDP	United Nations Development Programme
❖ UNHCR	United Nations High Commissioner for Human Rights
❖ UNICEF	United Nations Fund for Children
❖ UNIFEM	United Nations Fund for Women