



EUROPEAN MASTER'S DEGREE in  
HUMAN RIGHTS and DEMOCRATISATION

Academic Year 2003/2004

The policy of the European Union Towards  
Children and Armed Conflict -  
Strengthening Children's Rights through EU external  
relations?

Master's Thesis

European Inter-University Center of Human Rights, Venice  
Ludwig Boltzmann Institut für Menschenrechte, Universität Wien

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Supervisor: Mag. Helmut Sax

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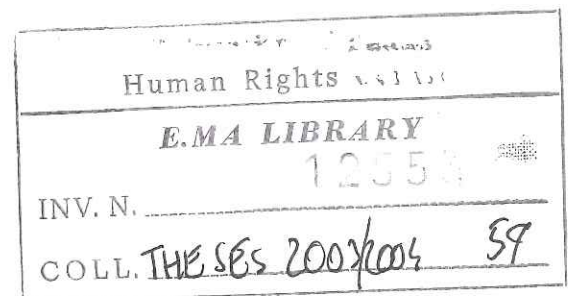
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## **Abstract**

The impact of war on children has many sides. Over the past decade, the situation that children face in wars world-wide has gained more and more international attention. As a reaction to the increased recognition of the problem, several steps have been taken by the International Community, i.e. mainly the UN system but also NGOs, to address the problem. A broad framework of international legal instruments has been established for the protection of war-affected children but in practice children continue to be widely abused and their rights violated.

The European Union, claiming that promotion and protection of children's rights is a priority of its human rights policy, adopted Guidelines on Children and Armed Conflict in December 2003 to address this issue. Already before this, the EU through the Community's development assistance and its Common Foreign and Security Policy has been undertaking many activities, which war-affected children benefited from. The Guidelines as a strategic policy tool should now be used in contact with third countries to consolidate, strengthen and advance relevant action of the EU in order to form a comprehensive policy.

If the Guidelines are going to be effectively implemented to really help children caught up in war and if this is possible with the existing instruments and institutional capacity of the European Union is yet to be seen.

## Contents

|   |    |
|---|----|
| Abstract.....   | 1  |
| Contents .....  | 2  |
| I. Introduction .....   | 4  |
| II. Children and Armed Conflict .....   | 8  |
| 1. The Problem .....  | 8  |
| a. Refugee children and IDPs .....  | 9  |
| b. Child Soldiers .....   | 11 |
| c. Small Arms and Light Weapons and Anti-personal Landmines .....                             | 12 |
| d. Psychosocial Recovery: Disarmament, Demobilisation, Reintegration and Rehabilitation ..... | 14 |
| 2. Approaches by the International Community .....  | 17 |
| a. Political Developments .....   | 17 |
| b. Developments in International Law .....  | 22 |
| Humanitarian Law .....  | 23 |
| Human Rights Law .....  | 23 |
| International Criminal Law .....  | 28 |
| 3. Conclusions of Chapter II. ....  | 30 |
| III. EU Policy towards Children and Armed Conflict .....                                      | 32 |
| 1. Human Rights in EU external relations.....   | 32 |
| a) Actors, instruments and procedures of EU human rights policy.....                          | 35 |
| The European Community .....  | 36 |
| The Common Foreign and Security Policy .....  | 42 |
| b) EU human rights policy in practice .....   | 44 |
| The EU's human rights policy in international fora with regard to children .....              | 45 |
| Initiatives in funding for children .....   | 48 |
| Support for the ICC .....   | 51 |
| Conflict Prevention, Disarmament and Crisis management .....                                  | 51 |
| Restrictive measures and Sanctions .....  | 55 |



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|     |   |    |
|-----|---|----|
| 2.  | Guidelines on Children and Armed Conflict.....  | 57 |
| a)  | Background .....  | 57 |
|     | Guidelines as a new instrument for the promotion and protection of human rights?<br>..... | 57 |
|     | An EU human rights agenda for children? .....   | 60 |
|     | Towards Guidelines on Children and Armed Conflict.....                                    | 60 |
| b)  | Contents and their potential .....  | 62 |
|     | Purpose and Principles.....   | 62 |
|     | Operational part of the Guidelines .....  | 63 |
|     | The question of a Special Envoy or Focal Point .....                                      | 66 |
| c)  | Implementation .....  | 70 |
| IV. | Conclusion and Recommendations.....   | 75 |
|     | Abbreviations .....   | 80 |
|     | Bibliography.....   | 81 |
|     | Books and articles .....  | 81 |
|     | Documents and reports of International Organisations .....                                | 83 |
|     | EU.....   | 83 |
|     | United Nations.....   | 86 |
|     | United Nations System .....   | 88 |
|     | Non Governmental Organisations .....  | 89 |
|     | Miscellaneous .....   | 90 |
|     | Annex .....   | 91 |

## I. Introduction

"The promotion and protection of the rights of the child is an important part of the human rights policy of the EU."<sup>1</sup> This statement may sound surprising since the European Union is not particularly well known for its engagement in children's rights. Indeed, as an outspoken focus it is a relatively new policy area of the Union, although a tendency has become visible in recent years to attach a greater significance to the topic. Internally, children's rights have been given a more important position with their inclusion in the Charter of Fundamental Rights of the European Union. However, member states' observance of children's rights is not monitored in any way.<sup>2</sup> The text of the Treaty establishing a Constitution for the European Union, adopted by the Heads of State and Government in June 2004, mentions the protection of children's rights as a specific objective of the European Union for the first time,<sup>3</sup> but it remains to be seen when and in what form the new treaty will come into effect.

Despite this lack of legal institutionalisation the Union is also becoming more and more active in trying to promote and protect children's rights in its external relations. This has been done primarily within international fora of the UN, such as in the United Nations General Assembly Special Session for Children, the Third Committee of the General Assembly and the Commission on Human Rights. It was within this context that the EU and its member states started to attach more and more importance to one specific aspect of children's rights that has gained importance on the agenda of the various UN Human Rights institutions: the rights of children affected by armed conflict (CAAC). In December 2002, the Council of the EU endorsed a report on enhancing the existing EU human rights and

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<sup>1</sup> Council of the European Union, *EU Annual Report on Human Rights 2003*, Luxembourg, Office for Official Publications of the European Communities, 2003, p. 27.

<sup>2</sup> Art. 24, Charter of Fundamental Rights of the European Union. So far, the Charter is not legally binding, but it is more and more invoked before the judicial bodies of the Union as well as referred to by the Advocates-General at the Court of Justice and even by the Court of First Instance. As the Charter has now been included into the Draft Treaty establishing a Constitution for Europe, it will be legally binding once the Treaty comes into effect.

<sup>3</sup> Provisional consolidated version of the Draft Treaty establishing a Constitution for Europe CIG 86/04, 25 June 2004.

democratisation policy.<sup>4</sup> In this context the proposal was made to elaborate strategic guidelines or a strategy on children in armed conflict. Elements of these proposed guidelines have subsequently been drafted in co-operation with UNICEF, Human Rights Watch and other actors and been made available to the Presidency. The biggest step that the EU has taken in this field was the adoption of Guidelines on Children and Armed Conflict by the Council in December 2003.<sup>5</sup>

With that the EU has taken up a topic that has continuously raised more international awareness. In armed conflicts children have to face the fate of hunger, starvation and diseases. They are forced to flee, thus becoming refugees or internally displaced persons. They miss out on their education and lose their shelters. They are mutilated, abducted, raped and forced to become soldiers. While some may suffer together with their families, many others are left alone because their parents are killed or because they lose them in the confusion and chaos of war and flight. The majority of the children is witnessing cruelties and suffers psychological damages along with the physical damage caused by the fighting or by unexploded ordnance and landmines. Despite the several international legal instruments adopted to protect children's rights and various other initiatives by the international community, little actual progress has been achieved to ease the plight of children as figures of refugee children and child soldiers remain high.<sup>6</sup>

The main aim of this thesis is to examine the various initiatives that the EU has taken up in the field of CAAC and analyse to what extent they can be useful to tackle the problem. The work will focus around the Guidelines adopted in December 2003. Since the issue of children and armed conflict is so vast, the question can hardly be whether the EU can solve the problem or not, but what it can contribute in the bigger mosaic of international action: In how far can the EU Guidelines be an effective tool to put policy into practice and therefore mark a change towards an "era of application"<sup>7</sup> in the field of CAAC, where a variety of

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<sup>4</sup> COHOM/PSC to COREPER/Council 15138/02, *Draft Council conclusions on the implementation of the follow-up to the 25 June 2001 Council conclusions on human rights and democratisation in third countries*, 3 December 2002.

<sup>5</sup> General Affairs and External Relations Council 15634/03, *EU Guidelines on Children And Armed Conflict*, 8 December 2003.

<sup>6</sup> Otunnu, Olara, *Making the 'era of application' a reality for war-affected children*, Statement before the Security Council, New York 20 January 2004.

<sup>7</sup> Ibidem.

international law instruments and political announcements exist but so far have been rarely helpful in practice?

The approach is an interdisciplinary one, encompassing a legal perspective as well as institutional and political aspects throughout the whole work. The thesis combines the field of CAAC with a look on the EU's institutional mechanisms as far as human rights policy is concerned. It will identify main problems posed by the involvement of children in armed conflict, above all those that can realistically be approached by the EU's foreign policy. As a second component it will have to analyse the mechanisms and different actors in EU's human rights policy and how this policy takes up the issue of children in armed conflict.

As a first step of the investigation it will therefore be necessary to give an overview of the general problem and the urgency of CAAC. Only the most important aspects can be covered here. In this context it has to be noted that often, the debate on CAAC focuses mostly on children carrying a gun, although the issues of refugee children, Small Arms and Light Weapons and other aspects are also very much related to the topic. In this first part it will also be identified what legal and political steps the International Community, i.e. mainly the UN system but also NGOs, have taken so far to address the problem. It is assumed that the EU policy in human rights is mainly reactive and that the UN system is the main reference for the EU. As a consequence, the many aspects of the problem as well as international instruments and activities are the framework in which the EU takes up action and follow up on it in order to undertake a successful policy. The first part of this work therefore forms the basis on which grounds the EU's policy will be analysed.

The second part will first examine the role of the EU as a human rights actor on the international scene as well as its mechanisms. The main part of the second part will then focus on the different ways the EU has been getting active in the field of CAAC and the approach taken to protect and promote children's rights. The key initiative in this context is the Guidelines, their drafting process and their implementation. The adoption of the Guidelines in December 2003 gave the main impetus for the present study of the EU's activities in the field of children and armed conflict as they formulate for the first time an outspoken policy strategy and include the topic among the focuses of EU human rights external policy.

Where not mentioned otherwise, in this thesis the European Union will be referred to as a single entity or framework on the grounds of the Treaty of Nice<sup>8</sup> and based on the three pillars. It will be assumed that it also acts as a single entity. Of course, this view will have to be specified and reference be made to the Community, the Council and subordinate bodies, in order to adequately address the EU's policy making in the field of CAAC and identify its strengths and weaknesses. It will have to be seen which internal actors or EU bodies are involved in the Guidelines or should become involved to go beyond mere proclamations.

The main research for this thesis was undertaken in the first half of 2004 and concluded at the end of May. Nevertheless, in some cases also later events have been taken into account.

The many sides of the impact of war on children have become relatively well known in recent years and many studies have been conducted in that field.<sup>9</sup> So far no study exists about EU policy in the field of children and armed conflict or about the use of guidelines as a means of EU human rights policy making. Secondary sources about EU human rights policy have so far above all concentrated on the human rights clauses that exist in co-operation agreements between the European Community and third states.<sup>10</sup> A new comprehensive overview about the EU and Human Rights would be desirable.<sup>11</sup> Apart from secondary sources, the evidence in this thesis is based on EU legal and "soft law" documents as well as overviews about relevant policy areas on the EU's internet page. The research has been enriched by interviews with EU officials and representatives of UNICEF and Save the Children conducted in May 2004.

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<sup>8</sup> All treaty provisions of the treaties on the European Union and the Treaty establishing the European Community will be referred to as in the consolidated version of 24<sup>th</sup> December 2002, accessible in [http://europa.eu.int/eur-lex/en/search/search\\_treaties.html](http://europa.eu.int/eur-lex/en/search/search_treaties.html).

<sup>9</sup> The most comprehensive study on the impact is still the report of Graça Machel for the UN General Assembly respectively its follow up: Machel, Graça, *The Impact of War on Children. A review of progress since the 1996 United Nations Report on the Impact of Armed Conflict on Children*, London, Hurst, 2001.

<sup>10</sup> See among others Hoffmeister, Frank, *Menschenrechts- und Demokratieklauseln in den vertraglichen Außenbeziehungen der Europäischen Gemeinschaft*, Berlin/ Heidelberg, Springer, 1998; Fierro, Elena, *The EU's approach to human rights conditionality in practice*, New York, Martinus Nijhoff Publishers, 2003.

<sup>11</sup> The most comprehensive overview is still Alston, Philip (ed.), *The EU and human rights*, Oxford, Oxford University Press, 1999.

## II. Children and Armed Conflict

The aim of the following chapter is to give a generalised overview of the shades of problems that children may encounter, when exposed to armed conflict, before moving on to the reactions by the International Community. It has to be kept in mind however, that despite of many similarities, the situation of children in different conflicts and in the various regions of the world may be very different.

### 1. The Problem

According to the Convention on the Rights of the Child a child is "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier"<sup>12</sup>. Although the definition of a child is dependant on the legal, cultural and religious circumstances in a society, the minimum age of legal capacity is a good indicator when a society considers a person adult and mature enough to take full responsibility for him or herself and for others, which at the same time marks the end of childhood. The overwhelming majority of States has chosen 18 or older for the age of full legal capacity.<sup>13</sup> Thus, the idea of a child as a person under 18 enjoys wide support. The consequence is that they are universally thought of as being entitled to special protection, care and assistance as has been recognised already in the Universal Declaration of Human Rights.<sup>14</sup> This is especially necessary in situations of general unrest and war. But in reality, quite the opposite is the case.

During the past decades the nature of conflicts has changed in two ways. Firstly, conflicts and wars tend to be more and more internal ones. The classical war of state against state has become the exception which implies changes for the populations affected as well as for humanitarian and human rights law. Most modern internal armed conflicts are fought because of ethnic, racial and religious

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<sup>12</sup> Convention on the Rights of the Child, Art. 1.

<sup>13</sup> Goodwin-Gill, Guy/ Cohn, Ilene, *Child soldiers. The role of children in Armed Conflict*, Oxford, Clarendon Press, 1994, p. 7

reasons and thus mainly affect the respective minorities.<sup>15</sup> Secondly, war nowadays directly concerns civilians to a much greater extent. Whereas during the First World War only five percent, and during the Second World War 48 percent of the civilian population were affected, today the percentage has risen to 90.<sup>16</sup> Apart from elderly people and women it is above all children who suffer. Often the deliberate targeting of civilians serves as a means of social control over the opposing conflict party.

Today, in more than 36 countries around the world, children are the victims of armed conflict. During the 1990s more than two million children died, more than six million were seriously injured or permanently crippled and one million orphaned.<sup>17</sup>

### **a. Refugee children and IDPs**

There are approximately 50 million uprooted people around the world who have become refugees, in case they crossed a national border and looked for shelter or asylum in another country or Internally Displaced Persons (IDPs) if they remain in their own country.<sup>18</sup> In some ways IDPs often face a more insecure future than refugees as they are still under de facto control of their government or rebel groups of their country and thus still close to an ongoing conflict. The access to those people can be impeded more easily by governments.<sup>19</sup> A major part of the almost 25 million IDPs world-wide is uprooted because of armed conflict.<sup>20</sup> It is

<sup>14</sup> Universal Declaration of Human Rights, Art. 25(2).

<sup>15</sup> International Committee of the Red Cross, *Children and war*, in "International Review of the Red Cross", vol. 83 no. 844, 2001, p. 1163-1173, updated 2003, in [www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section\\_review\\_2001\\_844?OpenDocument](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section_review_2001_844?OpenDocument) (found: 30/11/2003).

<sup>16</sup> Kreuzer, Christine, *Kinder in bewaffneten Konflikten*, in Jana Hasse/ Erwin Müller/ Patricia Schneider (eds.), *Humanitäres Völkerrecht. Politische, rechtliche und strafgerichtliche Dimensionen*, Baden-Baden, Nomos, 2001, pp. 304-320, at 304.

<sup>17</sup> Machel 2001, p.1.

<sup>18</sup> UNHCR, *Children. The World of Children at a glance*, in [www.unhcr.ch/children/glance.html](http://www.unhcr.ch/children/glance.html) (found: 28/5/2004).

<sup>19</sup> The UNHCR for example does not have a specific mandate for IDPs as it has for refugees under the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. IDPs remain under the domestic law of their country, i.e. their government. Although the UNHCR also assists several million IDPs the consent of the country concerned is necessary. Cf. UNHCR, *Basic Facts*, in <http://www.unhcr.ch/cgi-bin/tehis/vtx/basics/> (found 20/5/2004).

<sup>20</sup> At the end of 2003, Sudan was the country hosting the largest internally displaced population, some 4 million people followed by the DRC (3 million), Colombia (2.9 million), Uganda (1.2 million), Iraq (1.1 million) and Myanmar (up to one million) are also among the countries with the highest numbers of internally displaced people. Norwegian Refugee Council/ Global IDP Project, *Internal Displacement. A Global Overview of Trends and Development in 2003*, Geneva, Global IDP Project, 2004, p. 4, in [http://www.idpproject.org/global\\_overview.htm](http://www.idpproject.org/global_overview.htm) (found 1/6/2004).



estimated that at least half of all refugee and IDP populations is made up by children, increasing to 70 percent in some situations.<sup>21</sup>

Both refugee and IDP children are highly vulnerable. Children that are separated from their parents are even more exposed to all the other dangers children are facing, like being recruited as soldiers, being sexually abused or exploited or being abducted and trafficked. In refugee or IDP camps, children on their own might be 'overlooked' in registration and thus not have access to the relevant services the camp provides. Especially unaccompanied girls face violence and sexual abuse by other camp members, military personnel and in some cases even by staff of International Organisations, i.e. by those people who are supposed to protect them.<sup>22</sup> Due to overcrowding and scarce supplies, water quality, sanitary conditions and health care in camps may be extremely poor in general, exposing children to spreading diseases. These kinds of situations can increase death rates among children by as much as 60 percent.<sup>23</sup> Education possibilities are also mostly very limited.

Apart from shelter, healthcare, and education facilities one dimension where the International Community can get active is tracing children and family reunification.<sup>24</sup>

It would be very important that help also reaches the approximately one third of all IDPs that currently do not receive any care and assistance by UN agencies.<sup>25</sup> NGOs play a crucial role here but they often lack financial resources or institutional support. The EU is already very active in funding for refugees and IDPs and should be even more committed to do this in a comprehensive manner for children after the adoption of the Guidelines on CAAC. As many refugees including (unaccompanied) children are seeking shelter in Europe, the Union and its member states may have to re-think their asylum policy in the light of their CAAC policy.

<sup>21</sup> Ameratunga, Maya, *Children: The Invisible Generation*, in "Refugees Magazine", vol. 111, 1998, in <http://www.unhcr.ch/cgi-bin/texis/vtx/publ> (found 1/6/2004).; Cf. also Kreuzer 2001, p. 316.

<sup>22</sup> Machel 2001, p. 31.

<sup>23</sup> Idem, p. 35.

<sup>24</sup> An example of this was the case of Rwanda, where between 75.000 and 120.000 children had lost contact with their families while fleeing from the genocide. Between 1994 and 2000, the ICRC, UN agencies and NGOs helped to reunite more than 67.000 unaccompanied children with members of their families. ICRC, *War and family links. The ICRC's Rwandan Unaccompanied Child programme (1994-2000)*, in <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JQSV> (found 1/6/2004).

<sup>25</sup> Norwegian Refugee Council 2004, p.11.



### **b. Child Soldiers**

Another specific phenomenon of armed conflict is child soldiers. According to common statistics, 300.000 children world-wide are exploited as soldiers by armed forces of governments and rebel groups or informal militias<sup>26</sup> - 120.000 alone in Africa<sup>27</sup>. The commonly accepted definition of a child soldier is that developed in a symposium initiated by UNICEF in South Africa in 1997. The outcome document, referred to as The Cape Town principles, states that a child soldier is

"any person under 18 years of age who is part of any kind of regular or irregular armed force in any capacity, including but not limited to cooks, porters, messengers and those accompanying such groups, other than purely as family members. Girls recruited for sexual purposes and forced marriage are included in this definition. It does not, therefore, only refer to a child who is carrying or has carried arms."<sup>28</sup>

This broad definition is important because of the multitude of roles that children have to perform in armed groups and for the recognition of such roles. The exclusion of non-combatants in a definition has serious consequences including in the post-conflict process. However, this definition does not take into account, that in the majority of international treaty provisions the minimum age limit at least for voluntary recruitment is set between 15 and 18 years and can therefore be legal.<sup>29</sup>

Although the majority of child soldiers are between 13 and 18 years of age, children as young as seven years are sometimes recruited and used in battle. The social and economic background of a child and his family stands in close relation with the probability of its recruitment as a soldier. Children from poor and underprivileged families, street children and working children are exposed to a much higher risk.<sup>30</sup>

The recruitment of child soldiers takes place in different ways. Even in countries where there is a legal minimum age for recruitment this not necessarily a guarantee for protection either because they are declared to be older or because

<sup>26</sup> The figure of 300.000 has been repeated in various studies and reports since the early 1990s. The situation seems to remain more or less constant: "The number of child soldiers active around the world at any time has been estimated at some 300 000, though this figure is almost certainly a considerable underestimate" (Krug, Etienne et al. (Eds.), *World report on violence and health*, Geneva, WHO, 2002, p.235). For a detailed overview of numbers and distribution see Brett, Rachel/McCallin, Margaret, *Children. The Invisible Soldiers*, Stockholm, Rädda Barnen, 2<sup>nd</sup> ed. 1998, pp. 19-37 and Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers 2001*, London, Coalition to Stop the Use of Child Soldiers, 2001.

<sup>27</sup> ILO, *Wounded Childhood. The Use of Children in Armed Conflict in Central Africa*, Geneva, ILO, 2003, p. vii.

<sup>28</sup> UNICEF, Cape Town Principles on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa, UNICEF, New York, 1997.

<sup>29</sup> See 'Developments in International Law' below.

children do not know their own age.<sup>31</sup> If provisions exist that should protect children from being recruited, especially rebel groups undermine these laws and governments justify their own recruitment as a counter measure. In other cases, children and youths themselves sign up for the army or participation in a rebel group. There are various factors leading to enrolment of children but in all these cases it is simplification to call this "voluntary" recruitment, as can often be read.<sup>32</sup> Most of the children do not see any other form to protect themselves or to survive economically.<sup>33</sup>

Younger children are often used as porters or made responsible to organise food for their comrades. They are also used as lookouts or spies. Girls have to collect combustibles, cook, wash and are in many cases forced to provide sexual services to commanders and to become their "wives". Many get pregnant or get infected with sexually transmittable diseases and HIV/AIDS. But also boys are sexually abused.<sup>34</sup>

Among the reasons why armies and rebel groups recruit and use children are their availability in a long-time conflict and their limited consciousness for danger as well as that they constitute a very low cost factor if equipped with cheap and easy available guns.

### ***c. Small Arms and Light Weapons and Anti-personal Landmines***

Trade in arms that is worth \$ 800 billion annually is flourishing and greatly contributing to the proliferation of conflicts and violence.<sup>35</sup> The excessive and uncontrolled accumulation and spread of small arms and light weapons (SALW) in areas of tension aggravates conflicts, expands violence to civilian populations, hinders post-conflict reconstruction efforts and reduces the prospects for sustainable development. The mass of small arms around the world, that are recycled from one conflict to another are continually fuelling conflicts and are

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<sup>30</sup> Machel 2001, p. 8.

<sup>31</sup> World-wide two fifths of all births - about 50 million children - go unregistered and in some regions of Sub-Saharan Africa more than 70 percent of children are not registered at birth, leaving them ignorant how old they are and unable to prove their minority. UNICEF, *Progress since the World Summit for Children. A Statistical Review*, New York, UNICEF, 2001, p. 30.

<sup>32</sup> For reasons for "voluntary recruitment" see Brett/ McCallin 1998, pp.57-68.

<sup>33</sup> Machel 2001, p. 11.

<sup>34</sup> For functions performed and treatment of child soldiers see Brett/ McCallin 1998, pp. 93-101.

<sup>35</sup> UNICEF, *We the Children. Meeting the promises of the World Summit for Children*, New York, UNICEF, 2001, p. 13.

thus causing more deaths among civilians than any other type of weapon.<sup>36</sup> The strong connection between the widespread availability and trade of SALW and the phenomenon of child soldiers cannot be overestimated. The fact that they are light to carry and require almost no training to use effectively,<sup>37</sup> enables even children to learn quickly how to operate, strip and reassemble an AK 47 or a M-16 thus turning a youth into the "most deadly weapon of mass destruction"<sup>38</sup>. So far no effective way has been found to stop the proliferation of SALW.

Children in 87 countries live among 60 million land mines. As many as 10,000 per year become victims of mines, sometimes years after a conflict has ended.<sup>39</sup> Other unexploded ordnance such as shells, grenades or parts of cluster bombs that fail to detonate on impact but can still be set off, e.g. by playing children, have similar devastating effects on children.

Although a big step forward was made towards the ban of landmines with the Ottawa Convention<sup>40</sup>, mines continue to be used and, above all, there are vast remainders from former conflicts all over the world. Elimination of landmines helps promoting peace and stability. It facilitates peacekeeping missions, allows the return of refugees and decreases the risk for children living in former conflict zones. It can thus lead to the resumption of normal life for children and their families and of economic activity. But clearance of these mines is extremely costly and post-conflict societies often lack the resources of tackling the problem. The removal of each mine can cost up to \$1.000, while the weapon itself may only cost \$3.<sup>41</sup> Apart from aid in clearing remaining mines, assistance for child survivors and awareness raising programmes is urgently needed in many affected countries, a task that the EU should increasingly become engaged in.

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<sup>36</sup> Cf. Renner, Michael, *Small Arms, Big Impact: The Next Challenge of Disarmament*, Washington D.C., Worldwatch, 1997, p. 8, 40.

<sup>37</sup> Muggah, Robert, Berman, Eric, *Humanitarianism Under Threat: The Humanitarian Impact of Small Arms and Light Weapons, A Study Commissioned by the Reference Group on Small Arms of the UN Inter-Agency Standing Committee*, Geneva, Small Arms Survey, 2001, p. 1/2.

<sup>38</sup> Klare, Michael, *The Kalashnikov Age*, in "The Bulletin of the Atomic Scientists", vol. 55/1, 1999, p. 18-22.

<sup>39</sup> UNHCR, *Children. The World of Children at a glance*.

<sup>40</sup> Convention on the Prohibition of the use, stockpiling, production and transfer of antipersonnel mines and on their destruction (1997). As of May 2004 143 countries are parties to the convention. International Campaign to Ban Landmines, in <http://www.icbl.org>.

<sup>41</sup> Harvey, Rachel, *Children and Armed Conflict. A guide to international humanitarian and human rights law*, Montreal, International Bureau for Children's Rights, 2003, p. 52.

#### ***d. Psychosocial Recovery: Disarmament, Demobilisation, Reintegration and Rehabilitation***

The physical and psychological consequences that children suffer if they survive an armed conflict cannot be overestimated. Apart from mutilations, handicaps and badly healed wounds due to non available healthcare in many war zones, it is above all the psychological effects that are hard to overcome. A survey done in Rwanda in 1996 showed that 96 percent of the children had witnessed violence, 80 percent had lost a family member and 70 percent had seen someone killed or injured.<sup>42</sup> Most of the war-affected children are heavily traumatised, show symptoms of stress and emotional disturbance. Even years after a conflict, reactions can range from nightmares and hallucinations to feelings of depression and suicidal tendencies and have a lasting effect on the capacity to build and maintain inter-human relationships or lead to self-isolation or aggression against others.<sup>43</sup> The psychosocial effects of war on children's lives are dependent on a range of contextual and personal factors such as nature and frequency of the violent events that they experienced as well as age, stage of development, sex, personality and cultural background.<sup>44</sup> Despite this, it is important not to overlook that many children show a remarkable resilience to overcome and deal with adversity. The psychosocial effects as well the capacity to resilience must be taken into account and built on when it comes to demobilisation, reintegration and rehabilitation programmes if children are to be helped effectively.

As for child soldiers, without the recognition by all parties that children are or were within their ranks, the post-conflict situation cannot take into account the special needs of children, but for children much depends on how well the different steps of post-conflict reconstruction are implemented. The primary aspects of post-conflict reconstruction are considered to be disarmament, demobilisation and reintegration (DDR) as well as rehabilitation.

Disarmament includes the collection of weapons within a conflict zone and their safe storage or disposal. In a wider sense mine sweeping programmes are also a component of disarmament.

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<sup>42</sup> Cited in Machel 2001, p. 80.

<sup>43</sup> See amongst others Kreuzer 2001, p. 305.

<sup>44</sup> For a detailed analysis see International Save the Children's Alliance, *Promoting Psychosocial well being Among Children Affected by Armed Conflict and Displacement: Principles and Approaches*, Working Paper No. 1, Working Group on Children Affected by Armed Conflict and Displacement, Save the Children, 1995, in <http://www.savethechildren.org/publications/psychsocwellbeing2.pdf> (found: 31/5/2004.)

Demobilisation includes the formal registration and release of child soldiers from duty, providing assistance to help them immediately and eventually transport them back to their home communities.<sup>45</sup> All child soldiers within the broad definition mentioned above need to have access to the demobilisation process, whether they have weapons or not. DDR programmes are often only designed for adults or for 'ex-combatants' thus not taking into account the various other roles that children perform during their life as a soldier. This procedure excludes especially girls. In Sierra Leone for example, it was first not possible to formally enter into the DDR process without surrendering a weapon or if a commander did not certify that an individual was a member of their fighting force.<sup>46</sup>

Reintegration and Rehabilitation is a long-term process that aims to help children to readjust to civilian life and construct a new positive course of development within their society.<sup>47</sup> It should give child soldiers and other war affected children such as ex-refugees and IDPs as well as street and working children viable alternatives and opportunities to their involvement in fighting forces. The different experiences of these children sometimes reintegrating into the same community make a sensitive and multiple approach necessary.<sup>48</sup> In many cases children coming home find their communities shattered by the conflict or it is impossible for them to find their families. Often former child soldiers may be rejected by their community because of the atrocities attributed to them. Coming home may be especially difficult for girls. Girls are often stigmatised because it is assumed that they have been raped or sexually abused, whether this is true or not.<sup>49</sup> Even after demobilisation it is difficult for many ex-girl soldiers to get away from their 'commander-husbands' because they depend on them economically and

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<sup>45</sup> Machel 2001, p. 14.

<sup>46</sup> Women's Commission for Refugee Women and Children, *Disarmament, Demobilization and Reintegration, and Gender-based Violence in Sierra Leone*, New York, Women's Commission, 2002, p. 4, in: <http://www.womenscommission.org/reports/> (found 26/4/2004).

<sup>47</sup> Robinson, Malia: *Community-Based Approaches to Reintegration of Children Affected by Armed Conflict. An Overview of Approaches, Lessons Learned and Challenges*, Presentation to the European Network for a Research Agenda on Children and Armed Conflict's European Seminar on Programmes on Reintegration of Children and Adolescents, Boys and Girls, Involved in Armed Conflicts, Florence, UNICEF/ Istituto degli Innocenti, 2003, p. 8.

<sup>48</sup> *Idem*, p. 3-5.

<sup>49</sup> Although sexual exploitation and abuse is very widespread, it is not true as a general statement. There are various patterns in the different conflict situations and different experiences of individual girls. To take a close look at these differences is important as the assumption that all girls have been involved in sexual activities may lead to further stigmatisation and limit their future prospects and status in society even more. Brett, Rachel, *Girl Soldiers: Challenging the Assumptions*, Quaker United Nations Office, 2002, p. 2, in: <http://www.geneva.quano.info/main/publication.php?pid=115> (found: 15/4/2004).

are only accepted back by her community if they stay with him.<sup>50</sup> Returning home with a baby of an unknown father often makes it extremely difficult for girls to reintegrate and greatly influences the chances of future employment or marriage.

It is important to try to set up community-based reintegration programmes that include mediation between returnees and their communities and thus foster forgiveness and acceptance on both sides. Reintegration programmes should include education opportunities and vocational training. If children are not given a meaningful perspective when they come home, they often feel that they want to return to their armed group and the well-known structures of war and continue life as a soldier.<sup>51</sup> At best, a child's return to its community is a slow process that requires a network of support from the family, teachers, religious and community leaders.

War-affected children and communities heavily depend on international organisations, including the EU, and NGOs to set up and implement DDR programmes, reunite families and accompany rehabilitation of children. This also involves connected reconstruction of educational and health care facilities.

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<sup>50</sup> McKay, Susan and Dyan Mazurana, *Where Are The Girls? Girls in fighting forces in Northern Uganda, Sierra Leone and Mozambique. Their lives during and after war*, Montreal, International Centre for Human Rights and Democratic Development, 2004, p. 56.

<sup>51</sup> See for example voices of demobilised child soldiers in the DRC: Amnesty International, *Democratic Republic of Congo. Children at War*, AI Index: AFR 62/034/2003, London, Amnesty International, 2003, p. 12 & 34.



## 2. Approaches by the International Community

The preceding chapter has shown the problem of children in armed conflict and the necessity of the involvement of the International Community in every aspect ranging from conflict prevention to humanitarian assistance and post conflict reconstruction. The following chapter describes how the problem has been handled in the political and in the legal sphere on the international level. The focus will be on the system around the United Nations as international legal standards developed within that framework. Apart from this, the experiences of the Special Representative of the Secretary General on the Impact of Armed Conflict on Children as well as of UNICEF are the main points of reference for the European Union to get active in this field.

### a. Political Developments

In the beginning of the 1990s, after the entering into force of the Convention on the Rights of the Child, the topic of children has been increasingly addressed within the United Nations. In 1993 the General Assembly (GA) of the United Nations passed the first resolution named *Protection of Children Affected by Armed Conflicts*.<sup>52</sup> A consequence of this resolution was the appointment of the former Minister of Education of Mozambique Mrs. Graça Machel as independent expert to analyse the impact of armed conflict on children. The comprehensive study that was presented at the 51<sup>st</sup> session of the GA provided the first detailed study about the many ways in which children's rights are disregarded and how children are abused in the context of war.<sup>53</sup>

In response to this report the GA recommended the appointment of a Special Representative of the Secretary General on the impact of armed conflict on children.<sup>54</sup> In September 1997 the first Special Representative (SR), Mr. Olara A. Otunnu, former Foreign Minister of Uganda, was appointed for a term of three years. His term has been renewed twice. The SR's role is to act as an advocate for war affected children. His tasks include awareness raising, mobilising action and promoting the application of international standards. He has succeeded in raising

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<sup>52</sup> General Assembly Resolution A/RES/48/157, *Protection of Children affected by armed conflict*, 20 December 1993.

<sup>53</sup> Report of the expert of the Secretary-General A/51/306 and Add.1, *Impact of Armed Conflict on Children*, 26 August 1996.

<sup>54</sup> Art. 35/ 36, General Assembly Resolution A/RES/51/77, *Rights of the child*, 12 December 1996.

awareness of children's special needs and the importance of including them into peace processes, security issues in general and post conflict reconstruction.<sup>55</sup> Within the United Nations system it could be achieved that 'child protection advisors' are increasingly included into peacekeeping missions like in UNAMSIL for Sierra Leone and MONUC for the Democratic Republic of the Congo. The Office of the Special Representative initiated the establishment of two working groups on child protection, co-convened with Department of Peace-keeping Operations, UNICEF and Save the Children (Sweden). The working group on 'Child Protection Training for Peacekeeping Personnel' has drafted a complete training package on child rights and protection for use by personnel in all UN peace operations. The working group on 'Incorporation of Child Protection in UN Peace-making, Peace-keeping and Peace-building Processes' is producing tools and guidelines aimed at strengthening child protection into all phases of peace processes. The working group has completed drafting the first set of three guidance material, 'Crafting a child-conscious peace process: guidelines for UN personnel engaged in peacemaking'.<sup>56</sup>

In consultations with governments and rebel groups, the SR could achieve commitments for child protection in several conflicts.<sup>57</sup> While the fact that leaders were willing to meet with the SR and make these commitments marks a significant progress, it must be underlined, that the majority of these commitments were not kept to.<sup>58</sup> But what was also achieved by Olara Otunnu was to develop a strategy of putting up a chain of communication: He establishes contacts with armed groups as SR and informs the Security Council about the outcomes. The negotiations are then indirectly referred to in a resolution. Thus, in a way, the SR establishes informal contacts which are then formalised by the SC putting pressure on these groups to do something about not recruiting children.

The SR submits annual reports to the GA, the Security Council and the Commission on Human Rights to ensure that the topic remains high on the international agenda. In his GA report for 2003 he underlined amongst others the co-operation with regional organisations like the European Union as well as with NGOs.<sup>59</sup> The SR encouraged the EU to make the protection of children affected by armed conflict

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<sup>55</sup> UNICEF/ Coalition to Stop the Use of Child Soldiers, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*, New York, UNICEF, 2003, p. 8.

<sup>56</sup> UN Office of the Special Representative for Children and Armed Conflict, *Capacity Building*, in <http://www.un.org/special-rep/children-armed-conflict/> (found 2/5/2004).

<sup>57</sup> *Idem*, *Commitments*.

<sup>58</sup> Harvey 2003, p. 15.

a significant aspect of its own agenda, to incorporate the issue in bilateral co-operation arrangements and aid policies and solicit support for research and information projects. The Office of the SR was directly involved in the drafting of the EU Guidelines on Children and Armed Conflict.

In May 2002 the UN General Assembly Special Session (UNGASS) on Children was held in New York. It served both as a follow up to the 1990 World Summit for Children and as a successor to the UN Millennium Summit. For the first time, also some 400 child delegates were taking part in the UNGASS. Among the many topics discussed was also the issue of children and armed conflict including a Security Council meeting on that topic. The outcome document of the UNGASS, called *A World Fit for Children*, contains in the Declaration by Heads of State and Governments as one of the principles and objectives, to "Protect Children from War" and in the Plan of Action one division is dedicated to this protection from armed conflict.<sup>60</sup> The EU took an active role in the UNGASS and has since considerably developed its policy towards CAAC and its activities on this topic in the various UN fora.

Apart from the General Assembly, that has passed a number of resolutions on the topic by now, it has also been continually on the agenda of the Commission on Human Rights.<sup>61</sup>

Since 1999 it is also discussed by the Security Council (SC). Resolution 1261 was the result of a general debate that is now held every year, condemning the targeting of children in situations of armed conflict, including their recruitment and use as soldiers.<sup>62</sup> The resolution contains a variety of requests for states concerning e.g. the proliferation of small arms, the recruitment of child soldiers and the access of humanitarian and UN personnel to concerned areas. In Resolution 1314 of the following year the SC

"Notes that the deliberate targeting of civilian populations [...], including children, and the committing of systematic, flagrant and widespread

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<sup>59</sup> Report of the Special Representative of the Secretary-General for Children and Armed Conflict A/58/328, *Protection of children affected by armed conflict*, 29 August 2003.

<sup>60</sup> Report of the Ad Hoc Committee of the Whole of the twenty seventh Special Session of the General Assembly A/S-27/19/Rev.1 Annex, *A World Fit for Children*, May 2002, pp. 6, 20/21.

<sup>61</sup> See e.g. Commission on Human Rights resolution E/CN.4/RES/2003/86, *Rights of the Child*, 25 April 2003. Apart from that the CHR has also passed resolutions related to children and armed conflict with a special geographical focus, e.g. Commission on Human Rights resolution E/CN.4/RES/2002/53, *Abduction of Children from Northern Uganda*, 23 April 2002.

<sup>62</sup> Security Council Resolution S/RES/1261(1999), adopted at its 4037<sup>th</sup> meeting, 30 August 1999.

violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict may constitute a threat to international peace and security, and in this regard reaffirms its readiness to consider such situations and, where necessary to adopt appropriate steps;<sup>63</sup>

In 2001 the focus of the resolution was mainly on the context of armed conflicts and HIV/AIDS and thus turned towards the problems of rape, sexual exploitation and forced pregnancies. Resolution 1379 also mentioned for the first time the role and responsibility of corporate actors that do business with warring parties that use child soldiers.<sup>64</sup> As a consequence of a request in this resolution, the Secretary General put together a list of parties that recruit and use child soldiers in violation of international law, using a 'naming and shaming' technique. This so-called '1379-list' was published in the third report of the Secretary General on CAAC contained parties both of governments and rebel groups and has been updated in 2003 listing both conflict situations currently on the agenda of the Security Council (Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Liberia and Somalia) as well as other country situations (Chechnya, Colombia, Myanmar, Nepal, Northern Ireland, Philippines, Sri Lanka, Sudan and Uganda).<sup>65</sup>

While the following Resolution 1460 called upon the parties mentioned to provide information on steps taken to stop use and recruitment of child soldiers, it failed to threaten or adopt further reaching measures to counter the problem.<sup>66</sup> The so far furthest reaching step was taken by the Security Council in April 2004, by adopting Resolution 1539.<sup>67</sup> As a reaction to the latest report of the Secretary General,<sup>68</sup> the Council wants to take action against the ongoing recruitment and use of child soldiers. In those conflict situations that the Security Council is seized of, the Council is requesting the parties to the conflict to deliver within three months concrete action plans in order to end the recruitment and use of children within their ranks. In case that the conflict parties fail to do this the Council expressed "its intention to consider imposing targeted and graduated measures, through country specific resolutions, such as, inter alia, a ban on the export or supply of SALW and of other military equipment and on military assistance".<sup>69</sup> Additionally the Council requested the Secretary General to install an effective

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<sup>63</sup> Security Council Resolution S/RES/1314(2000), adopted at its 4185<sup>th</sup> meeting, 11 August 2000.

<sup>64</sup> Security Council Resolution S/RES/1379(2001), adopted at its 4423<sup>th</sup> meeting, 20 November 2001.

<sup>65</sup> Report of the Secretary General S/2002/1299, *Children and Armed Conflict*, 26 November 2002; Report of the Secretary General S/2003/1053, *Children and Armed Conflict*, 10 November 2003 (= A/58/546).

<sup>66</sup> Security Council Resolution S/RES/1460(2003), adopted at its 4695<sup>th</sup> meeting, 30 January 2003.

<sup>67</sup> Security Council Resolution S/RES/1539(2004), adopted at its 4948<sup>th</sup> meeting, 22 April 2004.

<sup>68</sup> Report of the Secretary General S/2003/1053.

<sup>69</sup> Ibidem.

monitoring system. A focal point is to be created that can conduct the dialogues with the different parties and assists in establishing the action plans. The focal point is to report back to the Council via the Secretary General and the SR. Unfortunately the Security Council only made very weak references to those situations that are not on the agenda of the Council but where children also suffer from recruitment and that are also mentioned in the SG's report. This was largely due to the previous protest of the United Kingdom and Russia about the inclusion of Northern Ireland and Chechnya in the SG's report, not so much because of the question if child soldiers are recruited but because of categorising the respective situations as armed conflicts. In a very controversial decision and against the protest of various UN organisations and NGOs<sup>70</sup>, the Secretary General published two corrections to his report stating that neither of these conflicts constitutes armed conflicts within the meaning of the Geneva Conventions or the Additional Protocols thereto.<sup>71</sup>

When the issue first came on the agenda in 1999, it was the first time that the SC put such a 'thematic issue' on its agenda and it has been a tremendous success that the issue was declared to affect international peace and security, bearing in mind that the topic had only been seriously discussed for a few years. Also, the scope of the resolutions has widened every time, which shows the growing awareness of all the different aspects connected with the topic of CAAC and influencing the situation of children. On the negative side, it must be noted that the SC resolutions only have political significance so far, they are not legally binding.<sup>72</sup> The Security Council has taken actions on many countries where children are affected by war and has in some cases imposed targeted measures that the EU also follows up within the Community, but so far this has not happened just because of children's rights violations. This could change if the Security Council adopts resolutions under Chapter VII of the UN Charter in the follow up to Resolution 1539.

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<sup>70</sup> International Coalition to Stop the Use of Child Soldiers, *Newsletter 11/ Mai-Juni 2004*, Deutsche Ausgabe, in <http://www.tdh.de/> (found 21/6/2004).

<sup>71</sup> Corrigendum to the Report of the Secretary General S/2003/1053/Corr.1, *Children and Armed Conflict*, 20 February 2004; Corrigendum to the Report of the Secretary General S/2003/1053/Corr.2, *Children and Armed Conflict*, 19 April 2004.

<sup>72</sup> None of the mentioned resolutions was a specific response to a threat to international peace and security taken under Chapter VII of the UN Charter.

Apart from these and intergovernmental initiatives, like those of UNICEF, it was especially the NGO community that has shown commitment to the topic and, through continuous lobbying, has made advances on this field possible. To help children in conflict situations, in 1998 several NGOs formed the *Coalition to Stop the Use of Child Soldiers*.<sup>73</sup> Apart from concentrated lobbying the Coalition is active in awareness raising, monitoring and reporting. It played an instrumental role in the negotiation, adoption and entry into force of international legal instruments prohibiting child soldiering, including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It is actively engaged in contact with influential international actors, such as the UN Security Council, the Human Security Network, and the Committee on the Rights of the Child. In 2001 it published the first Child Soldiers Global Report giving an overview of situations in over 180 countries including the recruitment and the use of child soldiers by both governments and non-state actors.<sup>74</sup> The Coalition or organisations belonging to it are also involved in intensive lobbying towards the EU and its institution and thus represent an important link between the situation on the ground, the UN and the EU.

### **b. Developments in International Law**

The grown awareness towards the topic also led to a rapid development of international law during the past decade. Earlier provisions and conventions only mentioned a few of the many aspects affecting children in war and did not recognise children as a special vulnerable group. These provisions were not tailored especially for conflict situations. A general problem is, that international treaties often only bind governments and not all parties involved in a conflict.

Some of the most important legal implications concerning the situation of children and armed conflict in international humanitarian, human rights and criminal law will be looked at in the following.<sup>75</sup> They provide a frame work that should give essential guiding to EU action in the field of CAAC.

<sup>73</sup> The organisations are: amnesty international, Human Rights Watch, International Federation *Terre des hommes*, International Save the Children Alliance, Jesuit Refugee Service, the Quaker UN Office, World Vision and Defence for Children International.

<sup>74</sup> Coalition to Stop the Use of Child Soldiers 2001. A new Global Report 2004 is currently prepared.

<sup>75</sup> Not all relevant legal provisions for all the aspects of CAAC can be covered in the following. For an overview of law relating to Refugees and Internally Displaced Persons, Sexual Exploitation, Abuse and Trafficking as well as legal provisions about SALW, cluster bombs and landmines see Harvey 2003.

## Humanitarian Law

Provisions that regulate warfare and seek to protect civilians not directly involved in hostilities can be found in International Humanitarian Law and here especially in the Geneva Conventions of 1949 and the Additional Protocols thereto dating from 1977. The Conventions have been universally ratified, the Protocols to a lesser extend.<sup>76</sup> Convention III relates to the treatment and protection of prisoners of war and thus also applies to child soldiers. Geneva Convention IV regulates the treatment and protection of civilian persons in times of war. Accordingly, access to help children must not be impeded and conflicting parties have to assist children that are orphaned or separated from their parents.<sup>77</sup> But the Convention in general aims more at protecting civilians that live under the occupation by an opposing party or are interned and not so much at regulating the conduct of warring parties in order to protect civilians.<sup>78</sup> Whereas the First Additional Protocol is related to classical inter state conflicts, the Second Additional Protocol for the first time also regulated internal conflicts, which nowadays cause the most suffering for children. But the provisions for internal conflicts are less strict than those for inter-state conflicts, besides they only apply to internal conflicts fulfilling certain conditions. It was the first time that the issue of child soldiers occurs in binding international documents. However, in both documents the minimum age for recruitment and participation in conflicts was set at 15 and not at 18 years.

## Human Rights Law

Human Rights Law is not limited to the times of war and also applies to non-international conflicts where Humanitarian Law is limited. Rights concerned in connection with child soldiers include the right to life, freedom from torture and other inhuman and degrading treatment or punishment, freedom from slavery, right to food and shelter and the right to education. These rights should apply to all children on the basis of non-discrimination.<sup>79</sup>

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<sup>76</sup> The Conventions I-IV have 192 state parties, AP I 161 and AP II 156 state parties, including all EU member states. ICRC, *States Party to the Following International Humanitarian Law and Other Related Treaties as of 02.07.2004*, in

[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party\\_main\\_treaties/\\$File/IHL\\_and\\_other\\_related\\_Treaties.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf) (found 10/7/2004).

<sup>77</sup> Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Art. 23, 24.

<sup>78</sup> Harvey 2003, p. 7/8.

<sup>79</sup> As set out for example in the CRC, Art. 2.



### *The Convention on the Rights of the Child*

Many of the rights mentioned are listed above all in the Convention on the Rights of the Child (CRC), which is still the most comprehensive catalogue of rights for children and at the same time the most universally ratified human rights treaty in general. Only the USA and Somalia failed to ratify it so far. Unfortunately this almost universal ratification doesn't mean that its provisions are respected. Articles 38 and 39 relate to armed conflict and post conflict situations. Again, the minimum age for recruitment and participation in conflict was left at 15 years, being the only provision in the CRC not to apply to all children under 18.<sup>80</sup> Art. 39 obliges states to assist the physical and psychological recovery and social reintegration of children who were victims of armed conflict. Unlike some other treaties, the obligations in the CRC are considered to be non-derogable in times of war or national emergencies. Despite this the Convention and its monitoring body, the Committee on the Rights of the Child is not suited to the realities of conflict, as the monitoring mechanism does not foresee ad hoc recommendations or emergency reactions, cannot hear individual complaints or impose sanctions.<sup>81</sup>

The CRC sets the broader framework for a child rights based approach and any child oriented action by states. Additionally, the CRC in its preamble recognises the importance for international co-operation for improving the living conditions of children in every country, in particular development countries. Thus, this is also an obligation for the member states of the EU and the EU itself, as the Community has competencies in the area of development.

### *The Optional Protocol*

To make up for some of the innate deficits that the CRC, the international community was struggling for some years to adopt an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The adoption was preceded by lobbying efforts by NGOs as well as a recommendation by the Committee on the Rights of the Child.<sup>82</sup> It was finally adopted in 2000 and entered into force in February 2002. By July 2004, there were 73 state parties to the Optional Protocol.<sup>83</sup>

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<sup>80</sup> Art. 38(3) merely states that states should give priority to the oldest children, when recruiting amongst those between 15 and 18 years of age.

<sup>81</sup> Harvey 2003, p. 12.

<sup>82</sup> Committee on the Rights of the Child, *General Recommendation on Children in Armed Conflict* (1998), in <http://www.unhchr.ch/html/menu2/6/crc/doc/recommend.htm> (found 10/7/2004).

<sup>83</sup> ICRC, *States Party to the Following International Humanitarian Law and Other Related Treaties as of 02.07.2004*.

The main objective of the Protocol is to raise the minimum age for recruitment and use of children in hostilities, both by government armies and fighting forces of non state actors. Whereas 18 could be achieved as the minimum age for compulsory recruitment and participation in combat,<sup>84</sup> as well as for voluntary recruitment by non-state actors, a number of states - above all the USA, the UK and Germany - impeded that the same could be established for voluntary recruitment by government armies. Thus, it is still possible even under the Protocol that children join the army from 16 years on, if they do not directly take part in hostilities. But neither the Protocol nor its *travaux préparatoires* define if direct participation only includes the carrying of arms in the battlefield or the wider definition of active use as a child soldier, i.e. as cooks or porters.<sup>85</sup> Also, as has been pointed out above, the distinction between voluntary and forced recruitment is sometimes hard to make, as is the proof of age. Thus, even under-15 year olds may slip through easily when setting voluntary recruitment only at 16.<sup>86</sup> Although the Protocol contains some safeguards to that regard, these may be difficult to implement in practice.<sup>87</sup> As a reaction to this shortcoming, many child rights activist groups, above all the Coalition to Stop the Use of Child Soldiers and UNICEF, have started the "Straight 18"-campaign lobbying for states to set the age limit for all aspects voluntarily at 18 in their national legislation.<sup>88</sup>

The UN Secretary General had established a new policy already in 1998 that members of peacekeeping missions should be over 21 and must not be below the age of 18.<sup>89</sup> Unfortunately this policy is not kept to. For example some 50 under 18s served in the British contingent of the KFOR peacekeeping force in Kosovo after 1998.<sup>90</sup>

Although it is important that non-state actors are also bound by the Protocol it is not very realistic that governments should prevent such recruitment and use by

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<sup>84</sup> Optional Protocol to Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), Arts., 1 & 2.

<sup>85</sup> UNICEF 2003, p. 13/14.

<sup>86</sup> While this problem might occur with whatever age limit a straight-18 provision can still be seen as a higher safeguard to avoid recruitment of youths.

<sup>87</sup> Art. 3(3) requests for the voluntary recruitment of under 18 year olds that "(a) Such recruitment is done with the informed consent of the person's parents or legal guardians; [...] (d) Such persons provide reliable proof of age prior to acceptance into national military service."

<sup>88</sup> Art. 3(1) of the Protocol only obliges states to raise the age limit for voluntary recruitment, so that the de facto minimum age for this is now 16 for state parties. Above that every state can deposit a declaration with the UN Secretary General stating the own national age limit which can be raised at any time (Art. 3(2) & 3(4)).

<sup>89</sup> Kreuzer 2001, p. 312.

<sup>90</sup> Coalition to Stop the Use of Child Soldiers 2001, p. 36.

prohibiting and criminalising such practices,<sup>91</sup> precisely because governments mostly have no control over rebel groups or militia. Another weakness of the Protocol is the soft wording of Art. 1, where states are merely requested to "take all feasible measures" that children under the age of 18 in their armed forces do not take directly part in hostilities. It is largely left to the judgement of states what they regard as feasible. In situations where it is not always easy to identify the exact age of a young person this formulation opens up possibilities to disregard this provision. Further there is no complaint mechanism for individuals, but the monitoring procedure was limited to the analysis of periodical state reports by the Committee of The Rights of the Child.

Despite its shortcomings the Optional Protocol was a big step forward to further codify the rights of children in armed conflict. Positive is, that also the USA have ratified the Protocol, even though they are not a party to the CRC yet. Unfortunately, the OP is as widely disrespected as the CRC itself. For example the Democratic Republic of the Congo, one of the most recent examples of the excessive recruitment and use of child soldiers, has been a party to the OP since 2001 as have been the neighbouring countries Uganda and Rwanda.

Eight member states of the enlarged European Union have not ratified the Optional Protocol so far.<sup>92</sup> Germany for example, has so far not been ready to relinquish the voluntary recruitment of 17 year olds into the 'Bundeswehr'. The discussion about implementing the 'straight-18' request has so far impeded ratification of the OP in Germany. Although the United Kingdom has ratified the OP, it has filed a reservation declaring that in hostilities it will not exclude the deployment of members of the armed forces under the age of 18 under certain circumstances. Many child rights advocates have declared that this reservation is contrary to the object and purpose of the treaty.<sup>93</sup> Therefore, the reservation is not in accordance with the Vienna Convention on the Law of Treaties and not allowed. Although most of the European Union's member states have ratified the Protocol and some even with a 'straight-18' declaration these double standards will definitely cast a shadow on the Union's CAAC-policy.

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<sup>91</sup> OP to CRC, Art. 4(2).

<sup>92</sup> Estonia, Germany, Latvia, Luxembourg, Netherlands, Poland, Slovakia and Slovenia. ICRC, *States Party to the Following International Humanitarian Law and Other Related Treaties as of 02.07.2004*.

<sup>93</sup> UNICEF 2003, p. 24.

### *ILO Convention 182*

Already in 1999 another international instrument for the protection of children was created with Convention 182 of the International Labour Organisation (ILO): The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted unanimously by all 174 member states and entered into force in December 2000. It is now ratified by more than 150 ILO member states.<sup>94</sup> The Convention recognises not only enforced or compulsory recruitment of children for use in armed conflict as the worst forms of child labour, but also other forms of abuse that children are facing in armed conflict such as sexual services, slavery, trafficking or any other activity that gravely harms the physical or psychological well-being of children.<sup>95</sup> The Convention applies to all children under the age of 18. The Convention is important because it connects the misuse of children as soldiers with other forms of work-related exploitation. This connection is important because the groups of children that tend to be recruited as soldiers are often the same that cannot protect themselves against their exploitation through hazardous or health damaging work in non-conflict times: Orphans or children separated from their parents or children from socially and economically underprivileged families without access to education. The Convention is accompanied by Recommendation 190, which provides that member states should make recruitment and other forms of worst child labour a criminal offence.<sup>96</sup>

### *Regional Instruments*

Apart from international legal instruments there also exist some regional human rights provisions for the protection of children. The African Charter on the Rights and Welfare of the Child, which entered into force in 1999 specifically, prohibits the recruitment and use as combatants of children under 18 in both international and internal armed conflicts. State parties are required to take all necessary measures to ensure that no child takes directly part in hostilities and refrain from recruiting any child.<sup>97</sup>

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<sup>94</sup> Including all EU member states except Latvia. ILO, Ratification Database, in <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> (found 10/7/2004).

<sup>95</sup> ILO Convention No. 182 - Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), Art. 2, 3.

<sup>96</sup> Harvey 2003, p. 27.

<sup>97</sup> African Charter on the Rights and Welfare of the Child, Art. 22(2).

### International Criminal Law

Very often, the only possibility to deal with human rights violations that occur in conflict is to bring the perpetrators to justice afterwards and to obtain recognition for the victims. This can happen through international and national courts and tribunals or through truth and reconciliation commissions, or even, as was tried in Sierra Leone, by a mixture of both. Only recently, the question of children and child soldiers has been addressed in International Criminal Law.

While in the Statutes of the ad hoc tribunals for Yugoslavia and Rwanda crimes against children are only covered by the general list of crimes, the provisions of the Special Court for Sierra Leone are more explicitly taking children into account. Reflecting the atrocities committed against children the statute of the Court considers it a serious violation of international law to conscript or enlist children under the age of 15 years or use them to participate actively in hostilities. Already reflecting the Statute of the International Criminal Court, the statute of the Court for Sierra Leone includes rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence in its list of crimes against humanity.<sup>98</sup> Persecutors for those crimes can be prosecuted by the court. The Court is the first international one that has jurisdiction to prosecute children. Many children were forcibly abducted and then committed the worst human rights violations themselves. But the statute also reflects international juvenile justice guarantees that juveniles shall be tried according to human rights standards and that juveniles should not be sentenced to prison but rather receive appropriate rehabilitation and reintegration programmes. The Prosecutor of the court has also indicated that prosecution will focus on those who forced children to commit unspeakable crimes.<sup>99</sup>

In order to have a Court to deal permanently with such situations, the International Criminal Court (ICC) was established. The Statute of the ICC was adopted in Rome in 1998, came into force after the 60<sup>th</sup> ratification on 1 July 2002 and is currently ratified by 94 countries.<sup>100</sup> This means that the Court has jurisdiction over the most serious crimes committed after that date if they were

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<sup>98</sup> Harvey 2003, p. 78.

<sup>99</sup> Ibidem.

<sup>100</sup> This includes all member states of the EU except the Czech Republic. Cf. Coalition for the International Criminal Court, in <http://www.icc-cpi.int/> (found 10/7/2004).

committed on the territory of a state party or by an individual that is a national of a state party. These crimes are: genocide, crimes against humanity, war crimes and aggression.<sup>101</sup> The Statute lists the recruitment and use in hostilities of children as a war crime both in international as well as in national conflicts.<sup>102</sup> The Court that has taken up its work can take measures amongst others against those responsible for the recruitment and deployment of child soldiers, if the state concerned is not able or not willing to persecute these crimes itself. Unfortunately, the age limit up to which the recruitment of children is punishable was set again only at 15 years.

However, the question of responsibility of children for crimes committed while they were soldiers is clear: the ICC cannot judge about persons that had not completed the age of 18 at the time of the incident. Apart from the recruitment and use of child soldiers the Rome Statute also lists other facts of the matter concerning children in armed conflict. The definition of genocide includes the forcible transfer of children from one group to another. The purposeful targeting of schools can be persecuted as a war crime. Important for girls is that rape and trafficking in children for sexual and other purposes according to the Rome Statute can be punished as crimes against humanity. As witnesses and victims in investigations and proceedings children are granted special psychological support to enable them to witness without being further traumatised.<sup>103</sup>

In 2004 the ICC received referrals from two state parties, one of the government of Uganda, that asked the ICC to investigate the crimes committed by the rebel group Lord's Resistance Army and one from the Democratic Republic of the Congo. In June 2004 the Office of the Prosecutor announced that it has begun formal investigations into the DRC.<sup>104</sup> In both cases the recruitment and use of child soldiers will play an important role.

The effectiveness of the ICC is yet to be seen as it highly depends on a higher level of ratification by states, especially the political will of the three Security Council powers, the USA, Russia and China. Especially the current US

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<sup>101</sup> At this stage only the first three crimes can be persecuted as the parties could not yet agree on a definition for the facts of the matter for aggression.

<sup>102</sup> Rome Statute of the International Criminal Court (1998), Art. 8(2)(b)(xxvi) & 8(2)(e)(vii) respectively, applying to international and internal conflicts.

<sup>103</sup> Harvey 2003, p. 74.

<sup>104</sup> International Criminal Court, The Office of the *Prosecutor of the International Criminal Court opens its first investigation*. Press Release, The Hague, ICC, 23 June 2004, in <http://www.icc-cpi.int/newspoint/pressreleases/26.html> (found 10/7/2004).

administration is trying actively to undermine the Rome Statute with the so called American Service Members Protection Act, with bilateral agreements and with Security Council resolutions 1422 and 1467. The European Union on the other hand has taken a positive stand towards the ICC, actively promoting and supporting it.

International criminal jurisdiction is an important means of exerting pressure to keep to the various provisions of international law and to end impunity for the worst forms of human rights violations. In the subsidiary form envisaged in the Rome Statute it can also contribute to reconstructing the judicial system after long times of conflict.

### **3. Conclusions of Chapter II.**

As a conclusion of this part of the investigation it can be said that the problem of children and armed conflict has been examined in detail by researchers in the field and by academics and most aspects are quite well explored. As a consequence more and more attention has been drawn towards the subject by the wider UN system and by NGOs. In addition, nowadays there exists a broad legal framework to protect the rights of children in the context of armed conflict in general and more specifically against the recruitment and use of children as soldiers. There is no urgent need for further standard setting, but the existing system will have to be enhanced and complemented, e.g. by further reaching Security Council Resolutions. Above all, the existing legal provisions have to be universally ratified and implemented into national legislations. If the European Union wants to be credible in its policy on CAAC, its member states will have to lead by example when it comes to ratification and implementation of the relevant standards. This includes placing the age limit for all kinds of recruitment into their armed forces at a straight-18 minimum.

The implementation of these legal instruments remains ultimately dependant on the political will of the respective conflict parties. In practice that means that children continue to be treated in an inhuman manner and are abused more and more. Because of this lack of respect and enforcement of international law, also the SRSG and the UN Secretary General Kofi Annan called for an era of implementation of the existing instruments, a call that has been also taken up by the Security Council in its resolutions concerning CAAC.<sup>105</sup>

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<sup>105</sup> S/RES/1460 (2003).



Meanwhile, if governments and parties to a conflict disregard international law, little can be done by the international community while the conflict is ongoing other than step up humanitarian aid. Targeted measures or sanctions, even when supported by the Security Council, are difficult to enforce and often counter-productive as far as the human rights situation is concerned. The consequence of a what to do when the Security Council does not act, has not been touched upon in this work but certainly raises the question of humanitarian intervention. Intervention because of grave human rights abuses has been widely debated since events like the genocide in Rwanda, but can in any case just be a last resort. Apart from the fact that human rights abuses are rarely enough to create a basis for intervention, the international community often reacts too late or with insufficient means.<sup>106</sup> But human rights abuses in wide-spread conflicts like that in the DRC can hardly be resolved by international intervention alone.

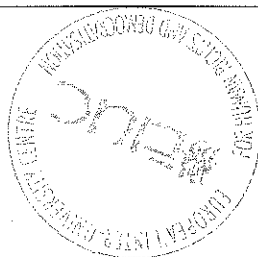
A positive trend is that it has more and more been thought of to include child rights relevant provisions in peace negotiations and agreements, at least when they were undertaken under the auspices of the United Nations and child rights advisors have been included into peace keeping missions.

To bring the perpetrators of violations of child rights to justice was tried above all in Sierra Leone with an ad hoc tribunal, a role that can hopefully be performed by the International Criminal Court at some stage. Generally, the role of the victims was too often neglected in the past, whereas the perpetrators could shield their impunity by immunities or amnesties.

The next part will serve to identify what mandate the European Union has in the field of human rights and how the EU with its institutional framework and the instruments that are at its disposal can react to the situation of children and armed conflict shown above. It will have to be seen if its policy, including the Guidelines on Children and Armed Conflict, can contribute to making the era of implementation more a reality.

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<sup>106</sup> Nowak, Manfred, *Introduction to the International Human Rights Regime*, Leiden, Martinus Nijhoff Publishers, 2003, p. 313.



### III. EU Policy towards Children and Armed Conflict

The European Union's policy towards the above described situation must of course be looked upon in the context of its foreign and human rights policies and is therefore closely connected to the legal framework and policy making as well as the practical functioning of institutions that are involved in these areas. The different competencies within the EU, Community matters on the one hand and intergovernmental co-operation in Foreign and Security Politics on the other hand have created several approaches to human rights that are not always very transparent nor totally consistent with each other.

#### 1. Human Rights in EU external relations

Although the human rights policy of the Union within its borders and the observance of standards of its member states are not explicitly dealt with here, it has to be noted that the EU is increasingly criticised for applying double standards in its internal and external human rights policy. The Union is still lacking a legally enforceable bill of rights. Additionally, it often leaves doubts in giving priority to human rights aspects in dealing with problems such as the treatment of migrants and refugees, the trafficking of women and children or even the ratification of international human rights instruments.<sup>107</sup> All the mentioned points also play a role in connection with children and armed conflict. The EU will have to take these issues very seriously internally as well if it wants to be accepted as a global player in the human rights field by third states. Otherwise there is the danger that its policies are interpreted as a hypocritical 'Don't Do What I Do, Do What I Tell You to Do'.<sup>108</sup> Thus, consistency between internal and external human rights policy is important in all the areas as has been said by the Comité des Sages in an agenda commissioned by the EU in 1998:

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<sup>107</sup> Cf. Nowak 2003, pp. 235-238.

<sup>108</sup> As stated in the context of "preaching democracy to others when it [the Community], itself, continues to suffer from serious democratic deficiencies" by Weiler, J.H.H/ Fries Sybilla, *A Human Rights Policy for the European Community and Union. The Question of Competences*, Harvard Jean Monnet Working Paper 4/1999, in <http://www.jeanmonnetprogram.org/papers/99/990401.rtf> (found 23/4/2004), pp. 3/4.

"These two dimensions of human rights must be seen as two sides of the same coin. A Union, which is not prepared to embrace a strong human rights policy for itself is highly unlikely to develop a credible external policy, let alone to apply it with energy or consistency. As long as human rights within Europe are considered to be an area in which the Union has only a very limited role, their status in the Union's external policy will remain tenuous."<sup>109</sup>

Leading by example, an aim that the Union has set for itself will not be merely achieved by the Charter of Fundamental Rights, even when becoming legally binding within the new treaty. Ensuring respect for human rights requires more than that. Broad positive action by the institutions and member states is needed. All this is also important for the policy towards children and armed conflict, e.g. when it comes to acceding to international instruments and ensuring their stringent implementation.

A framework for this has now been established with the treaty establishing a Constitution for Europe that has been agreed upon by the European Council on 18 June 2003. The protection of children's rights is explicitly mentioned as an objective of the Union in its internal and external actions.<sup>110</sup> As a consequence, in the areas in which the EU is permitted to legislate and adopt policies, the rights of the child have to be taken into consideration. The reference to the "strict observance and development of international law"<sup>111</sup> in the external relations of the EU, means that the UN Convention on the Rights of the Child and the Optional Protocol as well as other treaties also have to be taken into account.<sup>112</sup> Of course, the new treaty is still to be ratified by the member states through national parliaments or through referenda, to come into effect.

The complicated structure that the EU grew into with the various treaties makes it necessary to take a closer look on the development of the division of competencies and responsibilities of the EU's Foreign Policy in the field of Human Rights. It is within this framework that the formation of a policy towards CAAC took place.

Human rights policy in EU external relations include elements such as development and technical assistance by the Commission, the insertion of human

<sup>109</sup> Cassese, Antonio/ Lalumière, Catherine/ Leuprecht, Peter/ Robinson, Mary, *Leading by Example. A Human Rights Agenda for the European Union for the Year 2000. Agenda of the Comité des Sages and Final Project Report*, Florence, European University Institute 1998, p. 4.

<sup>110</sup> Provisional consolidated version of the Draft Treaty establishing a Constitution for Europe CIG 86/04, 25 June 2004, Part I, Art. I-3(3),(4).

<sup>111</sup> Idem, Part I, Art. I-3(4).

<sup>112</sup> Save the Children Brussels Office, Newsletter Issue 75, June 2004, Brussels, Save the Children, 2004.

rights clauses into co-operation agreements with third states, standards with regard to the Generalised System of Preferences, the inter-state co-operation in the Common Foreign and Security Policy (CFSP) and the role of the European Parliament. Whereas the European Community headed by the Commission, and often referred to as the 'first pillar' of the EU, can be seen as a supranational organisation, the 'second pillar' of CFSP functions on an intergovernmental basis.<sup>113</sup> Under the Treaty of Nice the EU has no explicit legal personality, e.g. the competence to conclude agreements with other actors under international law.<sup>114</sup> The Community, on the contrary, does have this competence as well as external capacity.<sup>115</sup> The draft Constitution submitted by the European Convention would have conferred legal personality upon the EU.

Despite the fact that the Treaty on the European Union (TEU) provides for the consistency of the Union's external policy,<sup>116</sup> many doubts have been raised in the past whether a common human rights foreign policy exists at all within the EU.<sup>117</sup> Or is it more accurate to speak of several policies created by the different actors within the EU, the interrelation of which is characterised by rivalry and competition?<sup>118</sup> At this stage it is certainly a mixture of both with quite a clear and consistent standing of all the institution and member states on some points, e.g. the death penalty, and fundamental differences and discrepancies in policy in other issues, e.g. in human rights dialogues with specific countries.

The European Union is exercising its foreign human rights policy both through the more independent European Community and the CFSP. So far, every part has set up their own procedure to try to integrate human rights in external affairs. Apart

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<sup>113</sup> Human rights matters are also touched by the 'third pillar', Justice and Home Affairs, but will not be dealt with here as it exclusively deals with internal policies. See Peers, Steve, *Human Rights and the Third Pillar*, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 167-186.

<sup>114</sup> Article 24 TEU however, foresees the conclusion of agreements with third states or international organisations in the implementation of the CFSP. When it is necessary to conclude an agreement with one or more states or international organisations with a view to implementation of CFSP, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Member states are not necessarily bound by such agreements. "Even though Article 24 is not enough to endow the Union with legal personality, at the very least, it presents a first step in such a direction." Fierro 2003, pp. 6/7.

<sup>115</sup> *Idem*, p. 5.

<sup>116</sup> Art 3(2) TEU: "The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers."

<sup>117</sup> See e.g. Clapham, Andrew, *Where is the EU's Human Rights Common Foreign Policy, and How is it manifested in Multilateral Fora?*, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 628-683, at pp. 628/629 & 632.

<sup>118</sup> See Aschenbrenner, Jo Beatrix, *Menschenrechte in den Außenbeziehungen der EU. Gemeinschaftspolitik versus GASP*, Frankfurt a.M., Lang, 2000, p. 2.

from consistency in their policies both the EC and the CFSP are obliged to respect human rights in their external actions by Art. 6 TEU.<sup>119</sup>

### ***a) Actors, instruments and procedures of EU human rights policy***

The European Council, the Council and the Commission are the main actors in policy making, decision making and implementation. The European Parliament has since long had a pioneering role concerning human rights issues, has often taken the lead in putting human rights issues on the EU's agenda and has called upon the Council or the Commission to take action in various ways.<sup>120</sup> Despite that, Parliament's powers are very limited when it comes to taking action.<sup>121</sup> The role of the European Court of Justice is strong when community matters are involved and in this regard also touches upon human rights in external relations.<sup>122</sup>

The European Council, consisting of Heads of State or Government of the member states takes decisions upon the definition of general political guidelines of the Union. The Council of the EU is composed of ministerial representatives of the member states. Human rights issues in the EU's external relations through the Community's trade or development policies or through CFSP are dealt with by Foreign Affairs Ministers in the General Affairs and External Relations Council (GAERC).<sup>123</sup> It was the GAERC that finally adopted the Guidelines on Children and Armed Conflict in December 2003. The Council's work is prepared by the Permanent Representatives Committee (COREPER). COREPER, which has existed since the beginning of the Community, is the only example of a true trans-pillar group and established the geographical and thematic Council working groups. The main instance responsible for dealing with human rights at working party level is COHOM, which is composed of members of the human rights divisions in Ministries of Foreign Affairs of the member states as well as a representative of the

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<sup>119</sup> Apart from reference to internal matters this provision is also valid for external relations. Cf. Brandtner, Barbara/ Rosas, Alan, *Human Rights and the External Relations of the European Community. An Analysis of Doctrine and Practice*, in "European Journal of International Law", vol. 3/9, 1998, pp. 468-490, at p. 471. Although speaking about Community law Art 6(2) also refers to CFSP as it stands within the Common Provisions of the treaty and is thus applicable to all pillars. Cf. Aschenbrenner 2000, p. 57.

<sup>120</sup> For the role of the European Parliament in human rights issues see Rack, Reinhard/ Lausegger, Stefan, *The Role of the European Parliament. Past and Future*, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 801-837.

<sup>121</sup> Parliament's role will therefore not be examined in detail in this work.

<sup>122</sup> See below for the debate about human rights competencies of the EC. The Court issued a series of judgements and opinions to clarify the case. The Court will not be dealt with in detail in this context.

Commission. So far COHOM lacked any specific emphasis on children's rights, but it was this forum that first discussed the idea of Guidelines on Children and Armed Conflict within the EU.<sup>124</sup>

In the following, the instruments and procedures with regard to human rights of the EC and the CFSP shall be shown in some more detail, in order to determine, which of these are or can be applicable in the context of the Guidelines on Children and Armed Conflict. It will become clear that the responsibilities and competencies for Human rights in external relations are not very clear cut and overlap at various points.

### The European Community

The EC can look back on a longer history of taking into account human rights in external relations, which CFSP lacks. This is above all due to the fact that the trade and development policies that the EC has been undertaking with third states as well as the humanitarian assistance could hardly be neutral and naturally encompassed foreign policy strategies.<sup>125</sup> This has a big impact since the European Union, together with its member states is the largest player in development assistance, including humanitarian aid. The collective European contribution to Official Development Assistance makes up more than half of all development assistance world-wide.<sup>126</sup> EC development aid is managed by four administrative units: The Directorate General for Development is in charge of programming of development policy and actions towards African, Caribbean and Pacific (ACP) states, whereas the programming and policy making towards Asian, Latin American and Mediterranean countries is done by DG External Relations. The implementation of projects and programmes is carried out by two separate units. EuropeAid Office is responsible for programmes concerning development aid, whereas the European Community Humanitarian Aid Office (ECHO) is responsible for humanitarian assistance and relief programmes to all third countries.<sup>127</sup>

DG External Relations has a unit responsible for human rights and democratisation. There is no sub-section dealing with children's rights but there is one official who

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<sup>123</sup> EU Annual Report on Human Rights 2003, p. 9.

<sup>124</sup> Interview with Olivia Lind Haldorsson, Policy Officer Save the Children, Brussels 7 May 2004.

<sup>125</sup> Aschenbrenner 2000, p. 60.

<sup>126</sup> Reisen, Mirjam van, *Invisible Children. Towards Integration of Children's Rights in EU and Member States' Development Co-operation Policies*, Stockholm, Save the Children Sweden, 2002, p. 6.

<sup>127</sup> Idem, p. 54.

has responsibilities for children's rights among other tasks.<sup>128</sup> A similar structure exists in DG Development EuropeAid and ECHO. Since the UN Special Session on children, there exists an inter-service group in the Commission on Children's rights consisting of officials from ECHO, DG Development, DG RELEX, and DG Justice and Home affairs to discuss children's rights, where it is discussed how to feed policy making on children into the various Community programmes.<sup>129</sup>

The instruments that the EC can use to promote and protect human rights in third countries are human rights clauses in agreements, as well as unilateral measures like unilateral trade preferences within the Generalised System of Preferences and financial or technical aid.

Starting with ad-hoc actions in the 1970s that included above all negative measures like sanctions to protect human rights, the EU gradually set up guidelines for introducing provisions into development co-operation agreements with third states. The Lomé Conventions with ACP states gradually contained such references and then clauses concerning human rights.<sup>130</sup> The Maastricht treaty first created an explicit legal basis for the EC's engagement and Art 177 of the Treaty of the EC (ECT) names human rights as one of the aims of development policy. The successor of the Lomé Conventions, the Cotonou Agreement was signed by the EU and its member states and 78 ACP states, including almost all Least Developed Countries, in 2000 and apart from human rights also contains a request for good governance. The Cotonou Agreement contains within the 'social and human development' section an article on youth issues stating that co-operation policies should include

"the establishment of a coherent and comprehensive policy for realising the potential of youth so that they are better integrated into society to achieve their full potential. In this context, cooperation shall support policies, measures and operations aimed at: (a) protecting the rights of children and youth, especially those of girl children; (b) promoting the skills, energy, innovation and potential of youth in order to enhance their economic, social and cultural opportunities and enlarge their employment opportunities in the productive sector; (c) helping community-based institutions to give children the opportunity to develop their physical, psychological, social and economic

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<sup>128</sup> Interview with Charles Whiteley, EU Commission DG RELEX B1, Brussels 11 May 2004.

<sup>129</sup> Ibidem.

<sup>130</sup> While the third Lomé Convention (1984) only contained a reference to human rights in its preamble the first form of human rights clause was introduced in Lomé IV (1989) but the way it was phrased did not constitute an adequate basis for treaty suspension in case of human rights violations. Because of this vagueness the clause was developed in later agreements with other states toward the 'basis clause' (e.g. Argentina 1990) and then the essential 'element clause' (e.g. Brazil, Baltic states and Albania 1992) which finally states the conditions under which human rights violations can be a justification for suspension or termination of the agreement. Hoffmeister 1998, pp. 452-559.

potential; and (d) reintegrating into society children in post-conflict situations through rehabilitation programmes.”<sup>131</sup>

However, the Agreement is accompanied by a compendium of texts on co-operation strategies as a detailed reference regarding the objectives and policy orientations of co-operation areas, but this does not contain any reference to children or children's rights.<sup>132</sup> Article 11 of the Agreement foresees measures dealing with peace-building policies, conflict prevention and resolution.

In the case of serious human rights violations, Art. 96 of the Agreement foresees first a consultation procedure, followed by unilateral EU measures or even suspension only if such negotiations fail.<sup>133</sup> The suspension or termination of an agreement cannot be decided upon by the Commission alone, but has to be determined by the Council following a proposal by the Commission.<sup>134</sup>

Apart from this framework agreement there are also two types of unilateral measures which are not subject to negotiation with the third country. They are aimed at providing assistance to third countries and contain a similar human rights clause.

Firstly, human rights have been part of the EC's technical and financial assistance, regulated by autonomous EC acts. The assistance may encompass different aspects including institution-building and judicial reforms, i.e. programmes that in themselves are aimed at stabilising democracy and human rights. These regulations are always directed at a more or less coherent regional group of countries. This has been used especially in central and eastern European states with regard to accession to the Union (PHARE), in Assistance to the Commonwealth of Independent States and Mongolia (TACIS) as well as to Mediterranean countries to underline the Europe-Mediterranean partnership (MEDA) and towards countries in Asia and Latin America (ALA).<sup>135</sup> All of these regulations also include a reference to human rights or a clause bearing resemblance to the human rights clause in bilateral agreements. These clauses

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<sup>131</sup> Art. 26, Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States, signed in Cotonou (Benin) 23 June 2000.

<sup>132</sup> Cf. Reisen 2002, p. 50.

<sup>133</sup> Nowak 2003, p. 244.

<sup>134</sup> As set out in Art. 300 ECT. Cf. Riedel, Eibe/ Will, Martin, *Human Rights Clauses in External Agreements of the EC*, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 723-754, at pp. 738/739.

<sup>135</sup> For a detailed analysis of these programmes concerning the human rights clause see Fierro 2003, pp. 351-361.



can be used to suspend or terminate co-operation in the event of substantial human rights violations of significant undemocratic developments. But these clauses can also be used for some positive measures aimed at promoting or restoring human rights and democracy, e.g. in the case of Belarus in 1997.<sup>136</sup>

The second type exists within the EC's scheme of unilateral generalised tariff and trade preferences. It contains extensive provisions relating to labour standards, allowing for the withdrawal of benefits from countries that practice forced labour, as was successfully applied in the case of Myanmar in 1997.<sup>137</sup> Measures of that kind where on the other hand not applied to Pakistan for the use of forced child labour in the same year. Here the EU worked more through the Special Incentives Arrangements redirecting funds to an ILO project combating child labour in that country.<sup>138</sup> The withdrawal of unilateral preferences is decided about by the Council following a recommendation of the Commission.<sup>139</sup>

Since 1995 all trade agreements and other treaties contain a separate standardised human rights clause replacing a variety of clauses depending on each region and standard of development. Including the Cotonou Agreement, these clauses exist in relation with more than 120 countries.<sup>140</sup>

The specifically emphasised connection between respect for human rights by a third state and economic co-operation, called conditionality, can mean positive measures, i.e. incentives to foster the respect for human rights as well as negative measures such as sanctions or the interruption or suspension of an agreement.<sup>141</sup> Conditionality as a means of protection and promotion of human rights is still very controversial. It has been criticised that it is based on the inequality of partners, where the economically weaker side has to accept the values of the stronger.<sup>142</sup> Significantly, the EU had to experience that the human rights clause poses an obstacle to concluding agreements with more powerful states like Australia and New Zealand and Russia, as well as with Mexico, Egypt

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<sup>136</sup> While some restrictive measures were adopted as a consequence of the deteriorating human rights situation, ways of associating civil society with the democratisation process were examined and money provided to develop the media system. Idem, pp. 368-371.

<sup>137</sup> Brandtner, Barbara/ Rosas, Alan, *Trade Preferences and Human Rights*, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 699-722, at 715-717.

<sup>138</sup> Ibidem.

<sup>139</sup> Tannous, Isabelle, *Menschenrechtspolitik*, in Weidenfeld, Werner/ Wessels, Wolfgang (eds.), *Europa von A bis Z, Taschenbuch der europäischen Integration*, Bonn, Bundeszentrale für politische Bildung, 2002, pp. 293-297, at 295.

<sup>140</sup> Tannous 2002, p. 295.

<sup>141</sup> Fierro 2003, pp. 96-105.

<sup>142</sup> Cf. Nowak 2003, p. 44 & 244.

and Tunisia.<sup>143</sup> For various reasons, the preferred way of the EC and the EU in general is a more positive, participatory and preventive approach that uses negative measures as an ultima ratio in the case of grave and continuous human rights violations.<sup>144</sup> The EU today speaks of "restrictive measures" imposed on a country if this measure is negative as the term sanctions is firmly avoided by the Commission itself as is the term conditionality. In 1995 it affirmed that the EC's policy "should not be seen as imposing conditions, but in the joint undertaking to respect and promote universal values."<sup>145</sup> The Community's positive approach towards the respect of human rights and encouragement of democracy includes political dialogue with governments of developing countries.<sup>146</sup>

The financial resources for development aid and assistance are financed by the European Development Fund in the case of the Cotonou Agreement and by a variety of budget lines in the case of all other third states.<sup>147</sup> There are also a number of initiatives that go beyond these agreements and programmes that are always implemented with the respective government of a third country. Measures that directly aim at promotion and protection of human rights, e.g. by supporting local NGOs, trade unions, the media or other elements of civil society often do not lie within the interests of governments of third states and are therefore impossible to implement with the above described programmes.<sup>148</sup> Most of these initiatives were subsumed with the involvement of the European Parliament under one budgetary chapter of the EC called "European Initiative for Democracy and Human Rights" in 1996.<sup>149</sup> The missing legal basis for the implementation of some parts of the European Initiative made a Council regulation necessary. This generated a debate about the extent of competencies of the Commission in the field of human rights protection between the Commission and the Council with

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<sup>143</sup> Fierro 2003, pp. 107 & 285-308.

<sup>144</sup> Aschenbrenner 2000, p. 62/63.

<sup>145</sup> Commission communication COM (95) 567 final, *The European Union and the external dimension of human rights policy. From Rome to Maastricht and beyond*, supplement.

<sup>146</sup> Simma, Bruno/ Aschenbrenner, Jo Beatrix/ Schulte, Constanze, Human Rights Considerations in the Development Co-operation Activities of the EC, in Alston, Philip (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, pp. 571-626, at p. 612.

<sup>147</sup> Cf. Aschenbrenner 2000, p. 74.

<sup>148</sup> Brandtner, Barbara, *Menschenrechte in der Praxis - die Menschenrechtsverordnungen*, in, "Die Union. Vierteljahrsschrift für Integrationsfragen", vol. 1, 2001 (*Europäische Union und Menschenrechte*), pp. 78-86, at 79.

<sup>149</sup> Chapter B7-7 of the Community budget. Cf. *ibidem*. There now is a new numbering system concerning the Community budget. However, in this work all budgetary issues will be mentioned according to the old system, that is also still in use.

both seeking control over the European Initiative.<sup>150</sup> The compromise reached in 1999 was two regulations,<sup>151</sup> one for implementation in developing countries and the second one for other third states.<sup>152</sup> The Initiative has quite a few focuses but in the context of children in armed conflict it is especially interesting that one of its objectives is directed at human rights specific action in connection with internal and international armed conflicts, including:

“support for measures to promote respect for human rights and democratisation by preventing conflict and dealing with its consequences, in close collaboration with the relevant competent bodies, in particular: (a) supporting capacity-building, including the establishment of local early warning systems; (b) supporting measures aimed at balancing opportunities and at bridging existing dividing lines among different identity groups; (c) supporting measures facilitating the peaceful conciliation of group interests, including support for confidence-building measures relating to human rights and democratisation, in order to prevent conflict and to restore civil peace; (d) promoting international humanitarian law and its observance by all parties to a conflict; (e) supporting international, regional or local organisations, including the NGOs, involved in preventing, resolving and dealing with the consequences of conflict, including support for establishing *ad hoc* international criminal tribunals and setting up a permanent international criminal court, and support and assistance for the victims of human rights violations.”<sup>153</sup>

In addition the regulations cover almost all costs connected with preparing, implementing and evaluating such projects, including research and studies, technical aid, education and training, awareness raising and publicity measures. Partners in implementation can be regional and international organisations including NGOs but not principally excluding governments or governmental agencies in third states.<sup>154</sup> Since 2001, EuropeAid Co-operation Office is responsible for the project cycle, from identification to implementation.

<sup>150</sup> At the heart of the debate was the problem that Art. 177 ECT is referring to development co-operation and not to the promotion and protection of human rights in general, whereas at the same time Art. 11 TEU gives the Council competence in pursuing these aims within the CFSP (see below). For the legal arguments of the debate see Weiler/ Fries 1999.

<sup>151</sup> Council Regulation (EC) No 975/1999 of 29 April 1999 *laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms*. Council Regulation (EC) No 976/1999 of 29 April 1999 *laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries*.

<sup>152</sup> Cf. Brandtner 2001, p. 81.

<sup>153</sup> Chapter I Art. 2(3), Council Regulation No. 975/1999. Regulation 976/1999 contains an abridged version of this article.

<sup>154</sup> Brandtner 2001, p. 82.

### The Common Foreign and Security Policy

Having its predecessor in the European Co-operation in the sphere of foreign policy, the CFSP was introduced with the Maastricht treaty and partly revised in Amsterdam. The legal basis for the CFSP is title V TEU. The general objectives described in Art 11 are to safeguard the common values and the independence and integrity of the Union in conformity with the principles of the UN Charter, to preserve peace and strengthen international security, to promote international co-operation and to develop and consolidate democracy and the rule of law, the respect for human rights and fundamental freedoms. The underlying key aim is for Member States to work together to enhance their mutual political solidarity and refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

To assist the Council in the area of CFSP through contributing to the formulation, preparation and implementation of policy decisions, the post of a High Representative was introduced.<sup>155</sup> Unfortunately, the High Representative has so far not taken a very active role in the Union's human rights policy. As an additional body within the CFSP, there is, since Nice, the Political and Security Committee (PSC).<sup>156</sup> As supposed to COREPER it is exclusively a second pillar committee tasked with co-ordinating CFSP issues. The PSC monitors the international situation from a CFSP point of view and contributes to the definition of CFSP policies by delivering opinions to the Council. It monitors the implementation of agreed policies. As such it is also responsible to oversee the implementation of the Guidelines on Children and Armed Conflict. In CFSP the EU is usually represented by the so-called Troika. In accordance with Article 18 TEU, the Presidency is assisted by the High Representative for external representation purposes, and the Commission is fully associated. In addition, the Presidency shall, be assisted by the future Presidency for reasons of continuity.<sup>157</sup>

The main legal instruments of CFSP are Common Strategies, Joint Actions and Common Positions as well as ensuring that their national policies conform to these

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<sup>155</sup> Art. 26 TEU.

<sup>156</sup> Art. 25 TEU. It is also called Comité Politique et de Sécurité (COPS). PSC/COPS meets normally at the level of ambassador and, exceptionally, Political Directors level. The Commission is represented by the CFSP Director in DG Relex or his representative.

<sup>157</sup> Art. 18 TEU.

Common Positions.<sup>158</sup> Common Strategies are adopted by the European Council, Joint Actions and Common Positions are decided by the Council.<sup>159</sup>

Whereas Joint Actions translate into tangible operations, military or civil ones, Common Positions set out the overall Member States positions to a given policy subject with possible consequences on community law e.g. sanctions against a third country. But member states are not bound legally by these rules, and the instruments mentioned in the CFSP provisions and their application cannot be controlled as such by the European Court of Justice.<sup>160</sup> Most of the Common Positions are country related. An exception is the Common Position on the ICC.

As a coercive, yet non-military instrument, restrictive measures or sanctions are generally employed to react to violations of international law, violations of human rights, and policies that do not respect the rule of law and democratic principles. There are two sorts of restrictive measures that the EU can apply to third countries in order to bring about a change of policy as regards to respect of human rights: those based on UN Security Council Resolutions, and those which are applied autonomously. Restrictive measures include visa bans, assets freezes as well as trade and flight embargoes. Sanctions or restrictive measures are normally applied through Common Positions and Regulations where implementation touches upon Community competences.<sup>161</sup> Restrictive measures are at the very interface of the second and first pillars. While the political discussions often start in the CFSP framework, the Commission has a role in developing and implementing restrictive measures.

Softer than sanctions are the classic diplomatic instruments of *démarches* and declarations. *Démarches* are widely used to convey concerns related to human rights and carried out either by the Presidency or by the Troika, sometimes in a confidential manner. In addition to this CFSP foresees that member states are to

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<sup>158</sup> Art. 12 TEU.

<sup>159</sup> Unanimity is the general rule, with the possibility of constructive abstention of one or several Member States (Art. 23 TEU). However, Joint Actions and Common Positions that are decided under a Common Strategy and decisions covering aspects of the implementation of a Joint Actions or Common Positions may be adopted by qualified majority.

<sup>160</sup> Clapham 1999, pp. 634/635. He notes that in theory CFSP obligations are binding international legal obligations and would therefore be justiciable before the International Court of Justice. In practice of course this will not happen and the Union will always try to find a political way to solve disagreements in this context.

<sup>161</sup> The legal basis for decisions on Community measures is Article 301 TEC with the Council deciding upon a proposal from the Commission with qualified majority. Further legal bases for special restrictive measures that lie more within the Community competence are the above described human rights clauses.

co-ordinate their actions in international organisations and uphold Common Positions in these fora.<sup>162</sup>

In general though, the CFSP follows the Community approach that action with regards to human rights should be more of a positive than a negative nature.<sup>163</sup> This includes political dialogue with third states.

CFSP also includes all questions relating to the external security of the Union, including the progressive framing of a common defence policy, commonly called the European Security and Defence Policy (ESDP). Interesting in this context is that the ESDP includes developing the capacity to meet the so-called "Petersberg tasks" which encompass humanitarian and rescue tasks, peacekeeping and combat forces in crisis management, including peacemaking.<sup>164</sup> This has been translated into the setting of concrete goals for the development of military and civilian capabilities for crisis management, the launching of directly managed EU missions e.g. in the Former Yugoslav Republic of Macedonia, in Bosnia and the in the Democratic Republic of Congo.

CFSP allows the Council to appoint EU Special Representatives with a mandate in relation to particular policy issues.<sup>165</sup> Special Representatives are deployed to crisis regions that are of special interest to the Union. They act under the authority and operational direction of the High Representative for the CFSP. The Union currently has seven Special Representatives: Middle East, African Great Lakes, South-Eastern Europe (Coordinator of the Stability Pact), Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Afghanistan, and South Caucasus. Special Representatives could be tasked to also monitor the situation of children affected by armed conflict if this applies to their region. But so far this is not one of their tasks and not in all regions where children are affected such Special Representatives exist.

### ***b) EU human rights policy in practice***

In the following, practical aspects of EU human rights policy will be considered that are relevant in the context of children and armed conflict. Not all of these

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<sup>162</sup> Art. 19 TEU. See below under b) EU human rights policy in practice.

<sup>163</sup> Aschenbrenner 2000, p. 97.

<sup>164</sup> Art. 17(2) TEU.

<sup>165</sup> Article 18(5) TEU. SRs are appointed by qualified majority, the appointment taking the form of a Joint Action.

measures are exclusively to protect children. Whereas some are designed especially to improve the situation of children other activities and initiatives have to be seen within the broader framework of conflict prevention or humanitarian assistance. It has to be kept in mind that all of these actions were taken or at least begun before any mainstreaming of issues concerning children affected by armed conflict took place, i.e. before the adoption of the Guidelines. Thus, although conflict prevention or crisis management mostly also improves the situation of children in a specific region, it does not mean that the action taken necessarily has a child sensitive or child rights approach.

### The EU's human rights policy in international fora with regard to children

Great part of the CFSP statements on international human rights protection, are delivered in International Organisations. EU action in the UN General Assembly Third Committee and in the Commission on Human Rights is of special interest.<sup>166</sup> At the GA and the CHR the EU tries to speak with one voice on human rights issues concerning specific country situations and thematic issues. Following a policy document on "European Union Coordination in the United Nations Framework" adopted by the GAERC in 1995<sup>167</sup> as well as Art. 19 TEU the EU member states hold regular co-ordination meetings to prepare EU statements, resolutions and contacts with third countries that are then carried out by the Presidency on behalf of the member states. The weight of these statements and votes for resolutions lay in the high number of states speaking with one voice, especially as accession countries, EFTA and other associated countries usually align themselves with the statements of the EU that can thus be used as an instrument for leverage.<sup>168</sup> The cohesion of the EU in voting together for human rights resolutions is significantly higher than in other policy areas reaching a consensus most of the time.<sup>169</sup>

As regards to children's rights, until quite recently, the Common Positions and Statements as well as the tabling of resolutions in the GA Third Committee and in the Commission on Human Rights was one of the main activities that the EU was doing in its Common Foreign and Security Policy.

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<sup>166</sup> Apart from within the UN, EU human rights policy is pursued within the OSCE and in the Council of Europe. See COM (95) 567 final, p. 7.

<sup>167</sup> Cited in Luif, Paul, *EU cohesion in the UN General Assembly*, (ISS Occasional paper no 49), Paris, European Union Institute for Security Studies, 2003, p. 11.

<sup>168</sup> Clapham 1999, p. 645.

<sup>169</sup> Luif 2003, p. 29.

In the Third Committee the EU has for some years now been the sponsor of the annual "Rights of the Child" Resolution, together with the group of Latin American and Caribbean countries. The resolution usually is a so called omnibus-Resolution encompassing all aspects of children's rights, one of which is children and armed conflict.<sup>170</sup> The text of the resolutions stays very similar each year since so-called "agreed language" is hard to change and child rights relevant improvements are only made on a small scale basis. The resolution, amongst others, calls for ratification and full implementation of the Convention on the Rights of the Child and the Optional Protocols thereto. Because of this as well as references to the ICC and the SR on Children in armed conflicts the United States have been calling for a vote on the previously unanimously adopted resolution and voted against.<sup>171</sup> Due to intensive lobbying by the EU Presidency no other state so far followed the US or even abstained from voting.

The EU has through its member states also actively taken part in the United Nations General Assembly Special Session on Children and the EU committed itself to the Action Plan contained in a World Fit for children.<sup>172</sup> At the same time the UNGASS can be seen as a turning point for the EU's child rights policy in general as it was in preparation of this event and in its aftermath that the Union started to get more and more involved. Preparation for the UNGASS included amongst others a discussion about how external relations policy and development programmes of the European Union better take into account children rights, including of those children affected by armed conflict, at the annual EU Human Rights Discussion Forum in 2000.<sup>173</sup> A Commission Document prepared for the UNGASS set out three main areas concerning the subject of children and armed conflict where additional efforts need to be undertaken: more reliable information about the situation of war-affected children and data collection, increased focus on CAAC in humanitarian assistance and conflict prevention through poverty alleviation and

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<sup>170</sup> Most recently, General Assembly Resolution A/RES/157, *Rights of the Child*, 22 December 2003.

<sup>171</sup> For 2003 cf. General Assembly Official Record A/58/PV.77, 77<sup>th</sup> plenary meeting, 22 December 2003, p. 10. See also *EU Annual Report on Human Rights 2003*, p. 78.

<sup>172</sup> Council of the European Union, *EU Annual Report on Human Rights 2002*, Luxembourg, Office for Official Publications of the European Communities, 2002, p. 67-69.

<sup>173</sup> The idea of holding regular Human Rights Discussion Fora was one of the six operational points of the EU Declaration of 10 December 1998 adopted on the occasion of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights and endorsed by the Vienna European Council. The declaration proposed to "reflect on the usefulness of convening a periodic human rights discussion forum with the participation of EU institutions as well as representatives of academic institutions and NGOs.", in

[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/50th\\_decl\\_98.htm](http://europa.eu.int/comm/external_relations/human_rights/doc/50th_decl_98.htm) (found 19/5/2004).



sustainable development.<sup>174</sup> The idea of Guidelines on Children and Armed Conflict and the whole process leading up to their adoption has to be seen in this increased involvement of the EU before and after the UNGASS.<sup>175</sup> As another follow-up to the UNGASS, the European Commission established a new sub-group on children's rights designed to provide a forum in the Commission for the exchange of information and best practice on children's rights. The group has since been addressed by Mr Olara Otunnu, and representatives of UNICEF and Save the Children with respect to the Commission's approach to mainstreaming children's rights in policy and external assistance.<sup>176</sup>

In the Commission on Human Rights the EU together with the group of Latin American and Caribbean countries presents a similar resolution to that passed in the General Assembly. In its statement on the rights of the child to the UN Commission on Human Rights in 2003 and 2004 the EU emphasised the importance it attaches to the problem of children in armed conflicts. The statements underlined the EU's support for the UN Special Representative for Children and Armed Conflict and welcomed the initiatives taken by the UN Security Council in this area. In 2004 the Irish Minister for Foreign Affairs in his capacity as President even said that children's rights in General are a priority for the European Union.<sup>177</sup> Similarly, the EU represented by the Irish Presidency gave a statement at the 2004 debate about children and armed conflict at the Security Council, where it mainly reinforced the positions put forward in the Secretary General's report and the reports of the SR Olara Otunnu. Apart from that the EU placed emphasis on its own Guidelines on CAAC announcing that:

"The EU will address the short, medium and long term impact of armed conflict on children in an effective and comprehensive manner, making use of the variety of tools at its disposal and building on past and ongoing activities. These objectives will be pursued through a number of specific initiatives, including, importantly, the monitoring of and reporting on conflict area situations and the continuation and development of technical cooperation programmes for the disarmament, rehabilitation and reinsertion of children into civilian life."<sup>178</sup>

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<sup>174</sup> European Commission, *The European Community's Responses to the World Summit for Children. Commission Document for the UN Special Session on Children*, in Annex 12 to *EU Annual Report on Human Rights 2002*, Luxembourg, Office for Official Publications of the European Communities, 2002, pp. 227-263, at pp. 237/238.

<sup>175</sup> Interview with Hadewych Hazelzet, Council of the European Union General Secretariat (DG E IV, Human Rights and United Nations), Vienna 17 November 2003.

<sup>176</sup> *EU Annual Report on Human Rights 2003*, p. 27.

<sup>177</sup> NGO Group for the Convention on the Rights of the Child, Children's Human Rights Caucus at the 60th Session of the UN Commission on Human Rights, Info note No 1, informal paper, Geneva 2004.

<sup>178</sup> Statement by the Presidency, on behalf of the European Union, to the UN Security Council on Children in Armed Conflict, 21 January 2004, in [http://www.eu2004.ie/templates/news.asp?Navlocator=66&list\\_id=105](http://www.eu2004.ie/templates/news.asp?Navlocator=66&list_id=105) (found 26/3/2004).

All this shows that the EU is at the forefront when it comes to supporting and sponsoring statements, resolutions and standard setting for children's rights in the UN fora. But in order for this not only to be mere lip service, the EU has to rank children higher on its own agenda and develop a comprehensive Community and CFSP approach to meet the realities of children's rights and their special needs throughout the world.

### Initiatives in funding for children

#### *The European Initiative for Democracy and Human Rights*

The European Initiative for Democracy and Human Rights has already been mentioned as a high-profile instrument for human rights. In 2000, approximately 10% of the budget of the EIDHR, went just on projects for children.<sup>179</sup> Between 1999 and 2002, 25 projects targeting children were financed within the EIDHR with a volume of almost 19 million €. <sup>180</sup> About half of them were related to children affected by war in the wider sense. So up until 2001 the promotion of children's rights was one of the priorities of the EIDHR. That changed with the 2001 Communication on Human Rights where four major priorities were identified for the EIDHR: torture, death penalty, racism, and rule of law and international justice.<sup>181</sup> It was decided that children's rights will be mainstreamed so that in practise every project proposal under the other four priority themes had to demonstrate that it was taking into account children's rights.<sup>182</sup> The emphasis on mainstreaming de facto led to the situation where almost all children's rights projects disappeared.<sup>183</sup> As a consequence, NGOs such as Save the Children, as well as UNICEF were criticising mainstreaming to be not a helpful thing within the EIDHR as it has to reflect policy priorities. Before the adoption of the Guidelines the rights of children affected by armed conflict was not an explicit priority anymore. It is now planned within the EIDHR to re-include children's rights as one of the main campaign issues.

<sup>179</sup> Interview with Charles Whiteley, 11 May 2004.

<sup>180</sup> EuropeAid Co-operation office, *European Initiative for Democracy and Human Rights. EIDHR projects Targeting Children*, in [http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/themes-children-projects\\_en.pdf](http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/themes-children-projects_en.pdf) (found 25/5/2004).

<sup>181</sup> Commission Communication, *The European Union's Role in Promoting Human Rights and Democratisation in Third Countries*, COM (2001) 252 final, 8 May 2001.

<sup>182</sup> Interview with Charles Whiteley, 11 May 2004.

<sup>183</sup> Ibidem. Cf. also Reisen 2002, p. 54.

The policy development of the EIDHR is a significant example of how mainstreaming,<sup>184</sup> as set out generally in the 2001 Communication on Human Rights, is not enough and sometimes even contradictory to addressing children's rights issues.

### *Humanitarian Aid*

Humanitarian assistance provided by the European Commission Humanitarian Office (ECHO) is based on the Humanitarian Aid Regulation of 1996, which stipulates that aid shall comprise assistance, relief and protection operations to help people in third countries, particularly the most vulnerable like refugees and IDPs and people affected by war according to international agreements.<sup>184</sup> Children form an integral part of the most vulnerable populations and constitute one of the main target groups for all humanitarian projects funded by ECHO and implemented by partner intergovernmental and non-governmental organisations.<sup>185</sup> ECHO has in the past supported humanitarian initiatives and operations with a child component. In 2000 and 2001 ECHO funded a number of projects world-wide to assist children with a focus on demobilisation, rehabilitation and reintegration of child soldiers, health and nutrition projects and psychosocial support. Child-related projects in these two years amounted to a total of € 40 million, about 4% of ECHO's total budget.<sup>186</sup> Examples of projects from 1998 to 2002 include: demobilisation, rehabilitation and reintegration projects (Uganda), health and nutrition projects especially for refugee and displaced children including vaccination and immunisation (Sudan, Colombia, Palestine), psychosocial support as well as re-adaptation for amputees and mutilated children (Sierra Leone, Sudan, Palestine and Lebanon), funding of schools in emergency camps for displaced persons (DRC, Sudan, Sierra Leone, Kosovo, the Former Yugoslav Republic of Macedonia and Montenegro among others), family tracing and reunification (Colombia).<sup>187</sup>

Additionally, children were also declared a horizontal priority in ECHO's strategy for 2002 and 2003, following a needs-based approach, and reflecting the fact that

<sup>184</sup> Council Regulation (EC) No.1257/96, *concerning humanitarian aid*, 20 June 1996.

<sup>185</sup> European Commission, *An overview of Community activities in the field of Children and Armed Conflict. Commission Non-paper*, Brussels, European Commission, 2004, in [http://europa.eu.int/comm/external\\_relations/human\\_rights/child/auditpaper.htm](http://europa.eu.int/comm/external_relations/human_rights/child/auditpaper.htm) (found 27/4/2004). In the following, this document will be referred to as *Commission Non-Paper*.

<sup>186</sup> Reisen 2002, p. 60.

<sup>187</sup> See *The European Community's Responses to the World Summit for Children. Commission Document for the UN Special Session on Children*, pp. 2387239; *EU actions in the field of Children and armed conflict (indicative)*, in Annex 1 to *EU Guidelines on Children and Armed Conflict*.

children represent one of the most vulnerable groups during a crisis.<sup>188</sup> Among ECHO decisions, in 2003 identifying children beneficiaries are longer lasting programmes, e.g. in Afghanistan, Burundi, Liberia, Côte d'Ivoire, DRC Congo and Iraq for displaced and otherwise war-affected children covering various aspects of their situation like health and education.<sup>189</sup>

All in all, ECHO's funding has to be considered the most important instrument with which the EU is currently supporting war affected children from a funding point of view. Nevertheless, considering that children make up at least half of ECHO's target group as set out in the regulation and that children are among the most vulnerable, the above mentioned figures of approximately 4% of ECHO's budget spent on projects to protect and assist children seems to be very little.<sup>190</sup> The need for a more proportionate funding focused on children will definitely have to be addressed with a view to the Guidelines.

*Assistance through the European Development Fund, Aid to Uprooted People and other Community budget lines.*

Apart from the above mentioned programmes, various other projects that support war-affected children are financed through other budget lines.

The European Development Fund (EDF) is responsible for financing assistance and aid within the Cotonou Agreement context, i.e. for the ACP states. It supports among others actions related to demobilisation, disarmament and rehabilitation processes, complementing the range of humanitarian activities assisted through ECHO. EDF-funded projects are implemented by a variety of partners e.g. by the International Organisation for Migration in Congo-Brazzaville or by the World Bank managed Multi-donor trust fund to contribute to DDR in Sierra Leone.<sup>191</sup>

The "Uprooted People" budget line<sup>192</sup> was created to assist people in Asian and Latin American developing countries and applies to refugees, IDPS and returnees and other persons, such as demobilised former soldiers and their families. The programme is designed to contribute to their requirements which are not covered

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<sup>188</sup> Commission Non-paper.

<sup>189</sup> European Commission, ECHO Decisions 2003 with grant agreements in 2003 identifying children beneficiaries, in Annex 1 to Commission Non-paper.

<sup>190</sup> Reisen 2002, p. 60.

<sup>191</sup> European Commission, Recent Projects in the Field of CAAC, in Annex 2 to Commission Non-paper.

<sup>192</sup> Chapter B7-302 of the Community budget.

by humanitarian aid and carry out long-term activities aimed at encouraging self-sufficiency.<sup>193</sup> Many of these projects are implemented through the UNHCR.

Several projects in the field of children and armed conflict have also been supported under the NGO co-financing line.

### Support for the ICC

The EU's active support of and involvement of member states in the establishment of the ICC has been one of the more successful examples in the history and process of the Common and Foreign Security Policy. The adoption in June 2001, renewed 2002 and 2003, of the Council Common Position on the ICC<sup>194</sup> and the May 2002 Action Plan, strengthened in 2004<sup>195</sup> incorporating concrete practical measures to implement that Position, have been crucial for the positive developments towards the prompt entry into force of the Rome Statute. Bilateral and multilateral démarches have been fruitful in raising awareness and bringing other states to the ICC. In addition, between 1995 and 2003, the European Commission has channelled around €13 million to a wide range of activities in support of the ICC through the European Initiative for Democracy and Human Rights.<sup>196</sup>

Through its support for the ICC the EU is contributing to the aim of respect for International Law and to bring the perpetrators of violations of child rights to justice thus reducing the cases of impunity for such crimes.

### Conflict Prevention, Disarmament and Crisis management

The EU has recently become more engaged in conflict prevention and crisis management. It is obvious that this policy is of relevance in the field of children and armed conflict. In this context, the Commission adopted in 2001 a Communication on conflict prevention reviewing main instruments in this field and putting forward recommendations for specific actions.<sup>197</sup> The main objectives of the Communication are to address the root causes of conflict by means of EU instruments, to improve the efficiency of actions targeting specific causes of

<sup>193</sup> Commission Non-paper.

<sup>194</sup> Council Common Position 2003/444/CFSP on the International Criminal Court, 16 June 2003.

<sup>195</sup> Council of the European Union, Action Plan to Follow up on the Common Position on the International Criminal Court, 4 February 2004, in <http://ue.eu.int/uedocs/cmsUpload/ICC48EN.pdf> (found 10/6/2004).

<sup>196</sup> Cf. European Commission, Inauguration of the International Criminal Court, in [http://europa.eu.int/comm/external\\_relations/human\\_rights/news/ip03\\_354.htm](http://europa.eu.int/comm/external_relations/human_rights/news/ip03_354.htm) (found 14/5/2004).



conflict, including e.g. the trading of SALW and diamonds, and to improve EU capacity to react quickly to emerging conflicts. Children are not explicitly mentioned in the Communication. The initiatives listed below were also not taken up specifically to improve the situation of children in armed conflict but fall within the field of armed conflict and conflict prevention in general. It would be desirable in the light of the Guidelines on Children and Armed Conflict that these instruments are in future adapted in a way that they address the special needs of children in a comprehensive manner.

#### *Small Arms And Light Weapons and Anti-personnel Landmines*

In order to contribute to the destabilising effect of Small Arms and Light Weapons, which as has been shown above also have a strong connection to the problem of child soldiers, the European Union decided to get active within the CFSP by means of a Joint Action on SALW<sup>198</sup> in 1998 which was repealed in July 2002 and replaced with a new Joint Action, mainly in order to incorporate ammunition.<sup>199</sup> Since 1999, the Council has adopted 10 Decisions implementing the Joint Action. These projects are financed through a specific budget line for non-proliferation and disarmament within the Community budget subsection for CFSP, and their financial implementation is carried out by the European Commission. The total amount committed for these actions so far is € 7,321,200.<sup>200</sup>

Similarly, the EU has committed itself to pursue a campaign to eliminate the threat posed by anti-personnel landmines and other unexploded ordnance. The European Commission is increasing its efforts to contribute to reducing the humanitarian, social and economic costs to mine-affected countries by funding the destruction of stockpiles and demining action like carrying out surveys, mine clearance and assistance to victims as well as rehabilitation measures for the resettled populations. This also includes risk reduction education, which can be of special importance for children. In July 2001, the Council and the European Parliament adopted two regulations on the reinforcement of the EU response against anti-personnel landmines – the first covering developing countries and the

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<sup>197</sup> Commission Communication COM (2001) 211 final, on *Conflict Prevention*, 11 April 2001.

<sup>198</sup> Council Joint Action 1999/34/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons, 17 December 1998.

<sup>199</sup> Council Joint Action 2002/589/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, 12 July 2002.

<sup>200</sup> Commission Non-paper.

second covering other countries.<sup>201</sup> The regulations lay the foundations for a European integrated and focused policy.<sup>202</sup> In December 2002 the EC adopted its first Strategy and Multiannual Indicative Programme for mine action during 2002-2004. The Strategy states that EU efforts in the fight against landmines are directly related to the goals set by the international community in the context of the Ottawa Convention. It also points out that the EU will use its resources to mobilise rapid mine action to ensure the safe passage and resettlement of displaced populations, as a tool for post-conflict humanitarian security, reconciliation, and consolidation of peacemaking agreements.<sup>203</sup> The amount spent by the European Commission on mine action financed through different budget lines between 1998 and 2002 lay between 28 and 42 million € per year.<sup>204</sup>

### *Crisis Management*

The Petersberg tasks include humanitarian and rescue tasks. Civil protection was identified as one of the priority areas of civilian crisis management in European Council conclusions.<sup>205</sup> Civilian Crisis Management is not confined to actions taken by the Council under CFSP. It includes external and development assistance delivered by the Commission aimed at alleviating political instability and the consequences of violent conflict in third countries.

The Rapid Reaction Mechanism is the Commission's primary instrument for crisis response. It is designed to leverage the longer term programmes and to support crisis response strategies in order for partner countries to pursue their long term development goals.<sup>206</sup> The Rapid Reaction Mechanism can mobilise funds at very short notice for actions aimed at stabilisation of political crisis, including peace and mediation initiatives, post conflict reconstruction including DDR, high level policy advice, and contributions to international trust funds.<sup>207</sup> Several projects in

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<sup>201</sup> Regulation (EC) of the European Parliament and of the Council No 1724/2001 *concerning action against anti-personnel landmines in developing countries*, 23 July 2001; Council Regulation (EC) No 1725/2001 *concerning action against anti-personnel landmines in third countries other than developing countries*, 23 July 2001.

<sup>202</sup> *Commission Non-paper*.

<sup>203</sup> European Commission, *EC Mine Action 2002-2004. Strategy and Multiannual Indicative Programme*, in [http://europa.eu.int/comm/external\\_relations/mine/intro/02\\_04en.pdf](http://europa.eu.int/comm/external_relations/mine/intro/02_04en.pdf) (found 5/7/2004).

<sup>204</sup> European Commission, *Small Arms and Light Weapons and Demining Projects*, in Annex 3 to *Commission Non-paper*.

<sup>205</sup> Cf. European Commission Conflict Prevention and Crisis Management Unit, *Civilian instruments for EU crisis management*, April 2003, in [http://europa.eu.int/comm/external\\_relations/cfsp/doc/cm03.pdf](http://europa.eu.int/comm/external_relations/cfsp/doc/cm03.pdf) (found 13/2/2004), p. 5.

<sup>206</sup> Council Regulation (EC) 381/2001 *creating a rapid-reaction mechanism*, 26 February 2001.

<sup>207</sup> *Civilian instruments for EU crisis management*, p. 22.

the field of children and armed conflict have also been supported under the Rapid Reaction Mechanism.<sup>208</sup>

The evolution of CFSP/ESDP has significantly increased the EU's options for supporting the efforts of the UN to foster international peace and security. EU-UN co-operation covers various issues laying at the interface between the development and security agendas, among them the implementation of UN SC sanctions and increasingly conflict prevention and crisis management, including EU contributions to UN-mandated peacekeeping and peace-making operations, e.g. Operation Artemis in DRC. To that end the EU Presidency and the UN Secretary General signed a Joint Declaration on UN-EU Co-operation in Crisis Management in September 2003, in which the EU reasserts its commitment to contribute to the objectives of the United Nations in crisis management.<sup>209</sup> Both sides agreed to establish a joint consultative mechanism at the working level to examine ways and means to enhance mutual co-ordination and compatibility in the areas of planning, training, communication and best practices in crisis management. This should be reviewed to better take into account the situation of war-affected children.

How important that is can be seen very well in the example of Operation Artemis in the DRC. It was the first completely autonomous EU military operation.<sup>210</sup> It was aimed at preventing the further escalation of conflict in the Ituri Region, improving the humanitarian situation and allowing for a deployment of a reinforced UN presence in MONUC. It was launched on 12<sup>th</sup> June and terminated in September 2003.<sup>211</sup> The operation also wanted to contribute to the implementation of the peace process and the stabilisation of the transitional government in Kinshasa. The EU intervened at the request of the UN Secretary General, in support of the United Nations and with a chapter VII mandate. Despite of some shortcomings the positive assessment of the mission included improvement of the security situation in Bunia including demilitarisation and

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<sup>208</sup> European Commission, *Recent Projects in the Field of CAAC*, in Annex 2 to *Commission Non-paper*.

<sup>209</sup> Presidency of the Council of the EU/ Secretary General of the UN, *Joint Declaration on UN-EU Co-operation in Crisis Management*, 24 September 2003, in [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/misc/77348.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/misc/77348.pdf) (found 10/7/2004).

<sup>210</sup> The operation was first to take place under French command only. For several reasons, one of which was to boost ESDP. Faria, Fernanda, *Crisis management in sub-Saharan Africa. The role of the European Union* (ISS Occasional paper no 51), Paris, European Union Institute for Security Studies, 2004, p. 41.

<sup>211</sup> Council Decision 2003/432/CFSP on the launching of the European Union military operation in the Democratic Republic of Congo, 12 June 2003.



disarmament. Amongst the disarmed militia members were also child soldiers.<sup>212</sup> The threat posed to the civilian population by armed groups and militias was greatly reduced and as a consequence of that about 100.000 displaced persons returned to the city during the time of the operation, many of which were children.<sup>213</sup>

Although the operation had no specific mandate to deal with the issue of child soldiers, a problem that was especially grave in the Ituri region, one main reason for the deployment was the dire humanitarian and human rights situation. This kind of mission will in future have to incorporate the Guidelines on CAAC, e.g. by getting a specific mandate to take the situation of children into account or by the inclusion of child protection advisors.

### Restrictive measures and Sanctions

As has been pointed out, the EU can respond to grave human rights violations by applying the human rights clause that is contained in agreements. But with the ACP states for example, there have only been eleven cases where the clause has been used to take some kind of negative measures in response to violations of human rights or democracy.<sup>214</sup> Most of those cases were connected with clear instances of a democratic process being interrupted, with Zimbabwe as the only example where a genuine human rights concern has actually led to introduce sanctions.<sup>215</sup> There is not an impressive record in taking negative action on the basis of HR violations. It is mostly stressed, that the clause is a positive basis for dialogue rather than an instrument to suspend the whole agreement.<sup>216</sup> Even though in most cases human rights may be better protected and promoted by positive measures, negative measures should be applied in case of the worst violations of children's rights in armed conflict.

Nevertheless, in a number of cases of ongoing conflicts in countries some sort of restrictive measures have in the past been applied on the basis of CFSP. This includes arms embargoes, freezing of funds and import bans on certain goods in several African countries that are mentioned in the '1379-list' of the UNSG. Although these measures have not been taken strictly on the basis of CAAC, but

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<sup>212</sup> Deutscher Bundestag, *Operation „Artemis“ für die Demokratische Republik Kongo war ein Erfolg*, Berlin, Pressedienst des Deutschen Bundestages, 2003, in [http://www.europa-web.de/europa/03euinf/04AUS\\_BU/artemis.htm](http://www.europa-web.de/europa/03euinf/04AUS_BU/artemis.htm) (found 17/6/2004).

<sup>213</sup> Faria 2004, p. 43.

<sup>214</sup> *EU Annual Report on Human Rights 2003*, p. 43.

<sup>215</sup> Interview with Charles Whiteley, 11 May 2004.

<sup>216</sup> *EU Annual Report on Human Rights 2003*, p. 43.

under consideration of the bigger picture there, they also serve to protect children. Examples include Common positions on Rwanda, Sierra Leone, DRC, Nigeria, Liberia.<sup>217</sup> The legal instruments providing for the ban on exports of arms and related equipment normally also foresee certain limited exemptions to the ban for humanitarian or protective purposes.

### *Conflict diamonds*

A special case is the regime that has been introduced for so-called conflict diamonds. Since the beginning of 2003, the European Community has been implementing the Kimberley Process certification scheme to contribute to the EU's policy on conflict prevention.<sup>218</sup> The Kimberley Process is a multilateral initiative bringing together governments, the diamond industry and NGOs, with the aim of eradicating the trade in conflict diamonds which has contributed to violent conflict and human rights abuses in a number of African countries such as those in Angola, Sierra Leone, and the DR Congo. An effective ban would deprive rebel movements of significant finances and would therefore be an important contribution to peace and stability. The Scheme, which has been in place since the beginning of 2003, seeks to ensure that no conflict diamonds are traded by requiring that all diamond shipments are accompanied by special certificates, by banning all trade in rough diamonds with non-Participants, and by requiring all Participants to respect certain minimum standards including human rights in diamond production and trade.<sup>219</sup>

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<sup>217</sup> For an overview of targeted countries and full list of Common Positions and Council Regulations see European Commission, *Sanctions or restrictive measures in force. Measures adopted in the framework of the CFSP*, July 2004, in [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/measures.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm) (found 6/7/2004).

<sup>218</sup> Council Regulation (EC) No 2368/2002, *implementing the Kimberley Process certification scheme for the international trade in rough diamonds*, 20 December 2002.

<sup>219</sup> *Commission Non-paper*.

## 2. Guidelines on Children and Armed Conflict

While some points of the EU Guidelines on CAAC have already been mentioned, they will be the focus of the following chapter. They are now the most important policy initiative that the EU has taken up in the field of children and armed conflict and they should serve to streamline and incorporate all actions that the EU is already doing in this field, as well as widen the scope of the Union's action towards CAAC.

### a) Background

**Guidelines as a new instrument for the promotion and protection of human rights?**

The Guidelines on Children and Armed Conflict have already been preceded by various other guidelines that the EU has decided upon in human rights policy areas. Yet, guidelines are not a classical EU instrument and can not be found in any of the treaties.

The first guidelines that were adopted on a human rights issue in 1998 were the ones on EU policy towards Third Countries on the Death Penalty.<sup>220</sup> Since then, guidelines have been adopted on EU policy towards Third Countries on Torture<sup>221</sup> and Guidelines on Human Rights Dialogue.<sup>222</sup> Recently, Guidelines on Human Rights Defenders have been adopted in June 2004.<sup>223</sup>

Despite many common features in the structure and contents of all these guidelines, the subjects under consideration are of course quite distinct. Because of that, they each have a different emphasis on instruments. Whereas the Guidelines on the Death Penalty are limited to making general and individual démarches under circumstances identified in the guidelines and action within

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<sup>220</sup> Council of the EU, *Guidelines on EU policy towards third countries on the death penalty*, 29 June 1998. The document can be accessed in [http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm) (found 10/7/2004).

<sup>221</sup> Council of the EU, *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, 9 April 2001. The document can be accessed in [http://europa.eu.int/comm/external\\_relations/human\\_rights/torture/guideline\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/torture/guideline_en.htm) (found 10/7/2004).

<sup>222</sup> Council of the EU, *European Union guidelines on Human rights dialogues*, 13 December 2001. The document can be accessed in [http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/ghd12\\_01.htm](http://europa.eu.int/comm/external_relations/human_rights/doc/ghd12_01.htm) (found 10/7/2004).

<sup>223</sup> Cf. Council of the EU, Presidency Conclusions 10679/04, 18 June 2004. The document can be accessed in <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf> (found 10/7/2004).

multilateral fora, the Guidelines on Human Rights Dialogue aim more at consistency and coherence in implementing the various, already existing forms of dialogues that the EU is engaged in. All of the guidelines mainly belong to the CFSP area, in the sense that they were adopted by the Council in this kind of foreign policy area and because they are mainly based on CFSP instruments. But they are cross-pillar in the sense that they also touch on EC competencies and involve the Commission, although to a different degree depending on the subject. Thus, guidelines have a hybrid nature in between the first and the second pillar. This hybrid nature can be very positive as it involves the Community and the CFSP in the same human rights policy area and can contribute to consistency and coherence of EU human rights policy, if adequately implemented.

Although guidelines are not a very clear cut policy instrument defined by a treaty and not legally binding, they commit the various actors as they were decided about by the Council.<sup>224</sup> This reduces the wiggle room for member states that might find it inconvenient for their national policy at times to take action for human rights in a certain field and towards a certain country. But they cannot easily opt out, provided that it is about circumstances within the restricted categories of cases foreseen in the guidelines. Thus, guidelines can promote unity and predictability, by making clear when and under which circumstances certain actions or reactions will be taken by the EU.

This of course depends on the subject of the guidelines. The subject of the death penalty and the EU's aim of abolition of the death penalty as well as the guidelines thereon are a well defined issue. Whenever there is a pending execution or when a moratorium is being lifted, it is clear for Heads of Delegation that they should act and a démarche will be made if someone about to be executed is a juvenile or mentally handicapped or pregnant. Although with torture the policy aim of eradicating and preventing torture is also very clear, the issue is not as open as with the death penalty and governments will not readily admit that torture is occurring in their countries. The need for credible reports is much bigger. The Danish Presidency tried to reduce the room for non-action by supplementing the guidelines with the informal rule that, if there are two reliable reports from NGOs that torture is applied with regard to a certain individual or

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<sup>224</sup> Interview with Hadewych Hazelzet, Council of the European Union General Secretariat (DG E IV, Human Rights and United Nations), Brussels 10 May 2004.

generally in a certain spot, the EU will make a démarche.<sup>225</sup> Despite this, at the same time when COHOM adopted the Guidelines on CAAC, it had to conclude that the Guidelines on torture “had failed even to get off the ground”.<sup>226</sup>

Another situation will now have to be faced with the Guidelines on Children and Armed Conflict. There is a lot of information about the problem in general and also about country specific situations, there are reports by NGOs and individual experts and there is the SG report, so on a very high level there is a lot of information, even more than on torture in many ways. So, on the one hand it is a well defined area and it is widely acknowledged that the problem exists. On the other hand it is quite a wide issue because CAAC has so many aspects and encompasses pre-conflict, during conflict, and post-conflict situations. Additionally, it has to be taken into account that the political background and the state of the conflict in Sri Lanka is not the same as in Colombia or the DRC, for example. And, in this topic, non-state actors are highly involved whereas normally, the EU tends to build and maintain contacts above all with governments. So far, no approach or standard responses have been developed, e.g. for démarches like in the case of the Guidelines on the death penalty. Within the EU it is a cross pillar issue, which makes it more difficult to take action, because it touches upon development, which is Community competence, a new area within CFSP which is this crisis management and human rights which is supposed to be a horizontal issue. Thus, many actors within the EU have to be involved in order to implement the Guidelines on CAAC effectively. As with the other guidelines, this requires a lot of co-ordination between the various EU institutions as well as between these institutions and the member states and the necessary political will to put the guidelines into practice.

Of course, adopting guidelines in more and more fields of human rights is not enough; they also have to be implemented. Thus, problems with the capacity and the collective strength of purpose will have to be overcome.<sup>227</sup> It has been shown above that the EU has all the instruments at their disposal to perform a strong role in human rights.

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<sup>225</sup> Ibidem. Cf. also European Commission/ Danish Ministry for Foreign Affairs, 4<sup>th</sup> EU Human Rights Discussion Forum, Copenhagen 20-21 December 2002, in [http://europa.eu.int/comm/external\\_relations/human\\_rights/conf/forum4/forum4.pdf](http://europa.eu.int/comm/external_relations/human_rights/conf/forum4/forum4.pdf) (found 15/3/2004), pp. 25-30.

<sup>226</sup> Amnesty International Irish Section, *Human Rights Begin at Home. Recommendations to Ireland's EU Presidency*, Dublin, Amnesty International, 2004, p. 2.

<sup>227</sup> Ibidem.

### **An EU human rights agenda for children?**

Although different initiatives were taken and a range of projects have been financed and supported, all in all it can be said that there has been no coherent approach by the EU so far to promote and protect children's rights in their external policy. With the Guidelines on Children and Armed Conflict the EU goes the opposite way of picking out a quite specialised child rights topic.

This has to be seen within a broader policy decision in human rights where, at least at the moment, the Union is not ready to endorse a comprehensive approach not only what children's rights are concerned, but with human rights in general. The 25 June 2001 GAERC conclusions suggested that the question of a possible EU Common Strategy in the area of human rights and democratisation should be further explored. But COHOM has concluded that improving, and adding value to, consistency, coherence and effectiveness in the EU's human rights and democratisation policies would be best pursued on the basis of existing Common Positions and guidelines.<sup>228</sup> Guidelines and other separate initiatives are expressively seen as an alternative for a comprehensive EU strategy.

With this approach it is only to be hoped that other child rights relevant policy areas will follow in order to avoid once more a one sided approach where the needs of many children in other situations are neglected.

### **Towards Guidelines on Children and Armed Conflict**

There have been many initiatives, mostly from NGOs in the past to call for an increased engagement by the EU for children's rights both internally and externally.<sup>229</sup> Also in the field of CAAC there have been concrete proposals, e.g. by Human Rights Watch as early as 2000 within the EU Human Rights Forum.<sup>230</sup> These initiatives already contained many of the points and ideas that were then discussed and incorporated into the Guidelines. Generally, a lot of input came and comes from the quite active Brussels-based Coalition on Children and Armed

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<sup>228</sup> Cf. COHOM/PSC to COREPER/Council 15138/02, *Draft Council conclusions on the implementation of the follow-up to the 25 June 2001 Council conclusions on human rights and democratisation in third countries*, 3 December 2002, p. 8.

<sup>229</sup> See for example International Save the Children Alliance, *Towards an EU Human Rights Agenda for Children*, Brussels, International Save the Children Alliance - Europe Group, 1998.

<sup>230</sup> See Leicht, Lotte, *Introduction to working group IV "Rights of the child: How to contribute to the implementation of the convention on the rights of the child in the world?"*, European Commission/French Presidency, *Report of the European Union Human Rights Forum*, Paris, 13 December 2000, in [http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/forum\\_report\\_05\\_01.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/forum_report_05_01.pdf) (found 3/6/2004), pp. 39-45.

Conflict.<sup>231</sup> Discussions there were ongoing about Guidelines for the EU on CAAC and mainly stimulated by Human Rights Watch.

In December 2002 the GAERC in its Conclusions on Human Rights and Democratisation took up and endorsed the already mentioned report of COHOM on enhancing the existing human rights and democratisation policy.<sup>232</sup> There the proposal was made to examine the possibility of a limited strategy or Guidelines on Children and Armed Conflict. In the light of the ongoing discussions UNICEF co-hosted two brainstorming meetings to agree on the details of an EU policy towards CAAC. The first one was initiated together with Human Rights Watch in March 2003 mainly with NGO experts on CAAC, but already including some member states representatives and some members of the Commission. Discussion was very general on EU policy on CAAC, not focussing only on guidelines yet. In summer 2003 the European Parliament encouraged the adoption of a Common Strategy on Children and Armed Conflict and reiterated this call in its annual resolution on human rights in the world in September.<sup>233</sup> Then it was decided to pursue the issue of Guidelines, originally aiming at the Irish Presidency to put them forward, considering the time these procedures usually take.<sup>234</sup> But the decision making process could be started faster than had first been foreseen, largely because the Italian Presidency took a keen interest in this issue and decided to put it on its agenda. Thus the second brainstorming meeting was decided to take place in Florence in September 2003, co-hosted by the Italian Presidency and UNICEF. At this meeting there was already a broader participation involving representatives of COHOM, the Council Secretariat and the Commission as well as experts. Participants also included a representative of the Office of the UN Special Representative on Children and Armed Conflict who pointed out lessons learned on the UN level, including the importance of a focal point capacity with which the communication between the organisations can be facilitated and improved.<sup>235</sup> Discussion on what form this focal point should take was one of the most debated

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<sup>231</sup> Consisting of Amnesty International-EU Office, Coalition to Stop the Use of Child Soldiers, Human Rights Watch, International Federation Terre des Hommes-EU Liaison Office, International Rescue Committee, Organisation Mondiale Contre la Torture, Plan European Office, Save the Children-EU office, Search for Common Ground-Brussels, World Vision-EU Liaison Office, UNICEF takes part as an observer.

<sup>232</sup> COHOM/PSC to COREPER/Council 15138/02, p. 9.

<sup>233</sup> European Parliament Resolution B5-0320/2003 on *trafficking in children and child soldiers*, 3 July 2003. European Parliament Resolution A5-0274/2003 on *human rights in the world in 2002 and European Union's human rights policy*, 4 September 2003.

<sup>234</sup> Interview with Tamar Schrofer, Programme Officer UNICEF Brussels Office, Brussels 6 May 2004.

<sup>235</sup> Cf. UNICEF Innocenti Research Centre, *Report of the Second Informal Brainstorming Meeting on the Proposed EU Strategy on Children And Armed Conflict*, unpublished paper, Florence, UNICEF IRC, 2003, p. 3.

issues. It was discussed whether the EU should adopt a strategy or guidelines which at this stage was still not clear. EU and member states representatives opted for guidelines rather than a Common Strategy "to take full account of EU procedures and structures".<sup>236</sup> The outcome of this meeting, was a document containing elements for EU strategic guidelines,<sup>237</sup> on the basis of which COHOM drafted the proposal that was then agreed upon by the PSC. The Guidelines were finally approved by the Council at its meeting on 8 December 2003. It was thus all in all a very quick procedure that was a big success on the one hand but also had its disadvantages. When comparing the draft and the final document there are a lot of discrepancies and deficits. Nevertheless, the adoption can be seen as a first and very important step and a fruitful result of extensive NGO lobbying, without which the Guidelines might not have come reality.<sup>238</sup>

Just a few days after the adoption the Guidelines were discussed at the EU Human Rights Forum 2003 in Rome to speak about the follow up and implementation process. Whereas member states were defending the adoption as success, NGOs were very critical about the Guidelines as they did not go as far as they had hoped after the second Florence brainstorming meeting.

### ***b) Contents and their potential***

As has been mentioned, the Guidelines on CAAC are the first specific EU policy strategy on children. They aim at mainstreaming rights of children affected by armed conflict throughout the EU policy agenda. They fall within the competencies of all EU institutions and should be implemented by all bodies, mechanisms and programming components. The Guidelines thus equally address CFSP including EDSP and crisis management as well as the Communities policies regarding trade and development co-operation and humanitarian assistance.

### **Purpose and Principles**

The EU explicitly chose to follow a rights based approach with the Guidelines:

"Promotion and protection of the rights of the child is a priority of the EU's human rights policy. The European Union (EU) considers it of critical importance to address the issue of children and armed conflict both because children hold the future, and because they have rights, as set out in the CRC,

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<sup>236</sup> Idem, p. 2.

<sup>237</sup> UNICEF Innocenti Research Centre (ed.), *Elements of EU Strategic Guidelines Towards third Countries on Children And Armed Conflict* (unpublished paper), Florence, UNICEF IRC, 2003.

<sup>238</sup> Interview with Hadewych Hazelzet, 10 May 2004.



its Optional Protocols and other international and regional human rights instruments.”<sup>239</sup>

The purposes defined in the Guidelines include awareness raising as regard to the importance of promoting and protecting children's rights, “both within the EU and towards third parties”.<sup>240</sup> Although the internal aspect is mentioned here, it is the only instance in the Guidelines and is thus rather weak. The objective to influence third countries and non-state actors to implement the various norms and standards of international humanitarian and human rights law is formulated stronger. Annex II of the Guidelines contains the international instruments that are referred to, above all the Convention on the Rights of the Child and the Optional Protocol thereto on the Involvement of Children in Armed Conflict as well as the Rome Statute and the relevant Security Council resolutions. The rights based approach of the Guidelines is underlined by the principle that the EU commits itself to be guided by these standards in its work.<sup>241</sup>

The main aim of the Guidelines is “to address the short medium and long term impact of armed conflict on children in an effective and comprehensive manner, making use of the variety of tools at its disposal, and building on past and ongoing activities.”<sup>242</sup> It is important to note again that the Guidelines do not constitute a completely new policy of the Union. This is in line with the Council Conclusions of December 2002 to build on existing policy elements and, where possible mould them into a more coherent approach and this is the reason why the instrument of guidelines was chosen by member states.

### Operational part of the Guidelines

The main part of the Guidelines is divided into monitoring and reporting, assessment and recommendations for actions and tools for action in relations with third countries.

Monitoring and reporting is supposed to take place above all through Heads of Missions of the over 120 delegations that the Community has in third countries. If applicable, Heads of Missions of civilian operations and EU military Commanders are also supposed to report. They should prepare unspecified periodic reports of the situation on the ground and the possible and actual effects of conflict on children as well as evaluations about the effect that EU actions have on children

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<sup>239</sup> Art. 5, EU Guidelines on Children and Armed Conflict.

<sup>240</sup> Ibidem.

<sup>241</sup> Idem, Art. 8.

<sup>242</sup> Idem, Art. 6.

in these conflict situations if there are any. These reports should in particular contain information concerning "violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children and the measures taken to combat them by the parties in case."<sup>243</sup> The Commission will then distribute the information from the reports to the Council and to Member states.

The assessment will be done on the basis of these reports and other information available, e.g. from UNICEF or NGOs. COHOM should identify situations for further EU actions and agree on further steps or confer with higher levels such as PSC, COREPER or the Council in order for action to be taken.<sup>244</sup>

At the heart of the Guidelines lie the tools that are supposed to be used to pursue the aims set out before and to

"ensure that specific needs of children will be taken into account in early-warning and preventive approaches as well as actual conflict situations, peace negotiations, peace agreements, ensuring that crimes committed against children be excluded from all amnesties, post-conflict phases of reconstruction, rehabilitation, reintegration and long-term development. In this context, the EU will take advantage of and build on experience gained within the UN system and regional organisations."<sup>245</sup>

Explicitly mentioned are political dialogue, démarches, multilateral co-operation and crisis management. "The human rights component of the political dialogue between the EU and third countries and regional organisations shall, where relevant, include all aspects of the rights and well being of the child during pre-conflict, conflict and post-conflict situations."<sup>246</sup> Although the relevance, of course, refers to those dialogues with countries, where children are actually suffering from armed conflict, it could also be used as a backdoor not to get active in cases where other interests prevail. Likewise, there are no clear circumstances defined under which the EU will make démarches or issue public statements to "relevant third states". Whereas these démarches and statements will be naturally directed towards governments to urge them to take measures for protection, including to end the use of children in armies and armed groups and to end impunity, the EU Special Representatives and Heads of Missions will be tasked

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<sup>243</sup> Idem, Art. 10.

<sup>244</sup> Idem, Art. 12.

<sup>245</sup> Idem, Art. 17.

<sup>246</sup> Idem, Art. 13.

to continue to address the matter with non state actors where relevant.<sup>247</sup> If implemented, the Special Representatives and Heads of delegations could perform a similar role like the UNSRSG is doing and maybe even on a more regular basis as they are on the ground permanently.

Concerning multilateral co-operation, the focus is directed at the already existing funding for projects relating to children and armed conflict, in particular Disarmament, Demobilisation, Reintegration and Rehabilitation. The Commission should identify possibilities to extend such support e.g. through their country strategy papers.<sup>248</sup> Again the wording is not very strong and does not bind the Commission.

In crisis management operations the protection of children shall in future be taken fully into account during the planning phase and on the ground. Training for crisis management should also be influenced by the Guidelines, thus include child rights relevant components.

It is left up to the EU to also make use of any other instrument or tool at its disposal to ensure the effectiveness of the Guidelines, including targeted measures, but these are not defined more specifically.<sup>249</sup> In addition to the tools directly mentioned in the Guidelines, Annex I lists EU actions that should be built upon, co-ordinated and possibly expanded. The list is not meant to be exhaustive but includes Common Positions on country-specific situations like Sierra Leone, DRC and Liberia as well as the ICC and on the Kimberley process. Also included are crisis management-related activities, above all the operation in Bunia, and the activities concerning protection of civilians in crisis management. In the Community field the wording of activities is vague, simply stating that assistance and protection of children involved in armed conflicts is channelled through a number of commission programmes. As has been shown, most of the initiatives within programmes like the EIDHR were not directly aimed at children although children also benefit from them. This is not the case with the ECHO initiatives that are also mentioned in the Annex of the Guidelines.

Throughout the Guidelines, special reference is made to the higher vulnerability of girls and special attention to their needs is granted in various provisions. This is a success compared to many of the existing international norms and standards, where the special role of girls was not taken into account.

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<sup>247</sup> *Idem*, Art. 14.

<sup>248</sup> *Idem*, Art. 15.

<sup>249</sup> *Idem*, Art. 19.

Another positive aspect that can be noted is the emphasis throughout the Guidelines to not only concentrate on the effects on children on the conflict situation itself but also addresses the pre-conflict phase, including early warning and conflict prevention. To be able to implement this commitment, the flow of information and reporting will have to function effectively and rapid response mechanisms have to react quickly to potential conflict situations.

### **The question of a Special Envoy or Focal Point**

The most debated item of the Guidelines before adoption was the question whether a Special Envoy for Children and Armed Conflict should be established to oversee implementation of the Guidelines and act as a focal point to receive and distribute information within the EU system as well as with other organisations like the UN.

In the adopted form of the Guidelines implementation and follow-up is left to COHOM respectively the EU Presidency to prepare work for COHOM and other levels. The Presidency respectively COHOM will have to oversee the implementation of EU action taken and "develop modalities to render paragraph 12 operational", i.e. identification for EU action, as well as promote and oversee mainstreaming of the issue of CAAC throughout relevant EU policies.<sup>250</sup> Apart from examining further ways of co-operating within the EU system and with other actors, the Presidency has to report once a year to the PSC on progress made towards fulfilling the objectives set out in the Guidelines.

A stronger focal point or even special envoy is at the moment not foreseen by the Guidelines. The only compromise made in that direction is that the question will be taken up again two years after the adoption of the Guidelines, within the framework of an evaluation that COHOM will have to make through the British Presidency at that time. Among the recommendations for improvement could then be "establishing a focal point (for instance a special group of experts or Special Representative) to ensure the future implementation of these Guidelines".<sup>251</sup>

When looking at the outcome document of the second Florence brainstorming meeting, hereafter called the 'Elements-Paper', it becomes clear that the issue of a focal point is the element of the proposals that has been watered down most by member states and EU institutions before adopting the Guidelines. The importance of a strong focal point or Special Envoy was stressed by various sides,

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<sup>250</sup> Idem, Art. 20(a), (b).

as this institution would be a key factor in mainstreaming this issue throughout the system. This would be especially important in a framework, where the operational tools and the institutions that should get active to pursue the aims of the Guidelines are scattered over the whole EU. To that end, the 'Elements-Paper' was foreseeing a Special Envoy/Focal Point appointed for four years to assist all parts in carrying out their respective responsibilities and to "provide leadership within the EU and its CFSP, ESDP and Community structures and externally in maintaining high attention to the situation of children affected by armed conflict."<sup>252</sup> Despite the strong language in the 'Elements-Paper' there was no consensus in the brainstorming meetings on the optimal nature of a focal point. Without commenting directly on specific proposals, UNICEF pointed out to COHOM before adoption that getting the focal-point provision right would be critical for the success of the Guidelines. Mainstreaming of attention to this or any other issue would remain ineffectual without a strategically located dedicated entity which has both the resources and the access to promote and assist system-wide action.<sup>253</sup>

Nevertheless, it has been decided that until the revision after two years the focal point activities should be carried out by the Human Rights Division in the Council Secretariat together with the incumbent Presidency. The Secretariat will serve as a focal point, in the sense of a liaison office between civil society, the member states, the UN and other relevant international organisations.<sup>254</sup>

First, member states were positive about a Special Envoy whereas the Council and Commission were cautioning.<sup>255</sup> For various reasons COHOM then opted against a high-level focal point or Special Envoy. Among the main objectives against a Special Envoy was that so far there are no thematic Special Envoys within the EU system. There are only the regional Special Representatives, and it would set a precedence for other topics in human rights, as it could not be justified to have a Special Envoy on Children and Armed Conflict and none on torture, as this is a priority of the Union as well.<sup>256</sup> Besides that, it was argued that on this topic there

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<sup>251</sup> Idem, Art. 20(f), (g).

<sup>252</sup> *Elements of EU Strategic Guidelines Towards third Countries on Children And Armed Conflict*, Art 15(a).

<sup>253</sup> O'Flaherty, Michael, *The Impact of Armed Conflict on Children. Policy Responses*, (address to COHOM Brussels 12 November 2003), Florence, UNICEF IRC, 2003.

<sup>254</sup> Interview with Hadewych Hazelzet, 10 May 2004.

<sup>255</sup> Interview with Olivia Lind Haldorsson, 7 May 2004.

<sup>256</sup> Interview with Tamar Schrofer, 6 May 2004.

already is the Special Representative in the UN context with whom the Union will work closely together and that the regional EU Special Representatives could raise the issue as well. In addition there is the High Representative for CFSP who could advocate the topic.<sup>257</sup> Another main argument was the lack of funds to finance a Special Envoy/ Focal Point who is assisted maybe by an own secretariat and an advisory panel as it had been suggested in the Elements paper.<sup>258</sup> Apart from that, entrusting focal point activities to the Council Secretariat is in accordance with the December 2000 COHOM report and the Council Conclusions that aim at strengthening the Secretariat's role in further promoting coherence and consistency within the CFSP and, in co-operation with the Commission, between the CFSP and Community actions, including development co-operation: "The Council Secretariat has a crucial role to play in providing a focal point for the human rights dimension in CFSP political dialogues and other actions."<sup>259</sup> In addition according to that, the Secretariat is supposed to co-operate with the Commission and to intensify contacts with and function as a focal point for society at large including NGOs, the media, companies, universities and the broader public, which is exactly the role that the Secretariat is trying to perform now. But even taking into account the argument that instead of having Special Envoys on all the specific human rights topics, it would make more sense to have one human rights focal point, the Secretariat is currently significantly understaffed to take over that function effectively. With only two to three people in total specifically dealing with human rights issues and another two to follow UN issues, the Secretariat depends to a large extend on the staff the different Presidencies provide to deal with an issue like CAAC.<sup>260</sup> This means that the implementation of the Guidelines depends largely on the vigour and the political will of each Presidency to push the issue and a possible lack of continuity and coherence.

Despite the co-ordination by the Council Secretariat, leading NGOs still feel the necessity of an EU Special Envoy for CAAC. But it seemed clear that if the aim was to include the Special Envoy into the Guidelines they would not have been adopted within such a short time. The inclusion of the two year revision paragraph

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<sup>257</sup> Interview with Hadewych Hazelzet, 10 May 2004.

<sup>258</sup> *Elements of EU Strategic Guidelines Towards third Countries on Children And Armed Conflict*, Art. 16.

<sup>259</sup> COHOM/PSC to COREPER/Council 15138/02, p. 4.

<sup>260</sup> Interview with Hadewych Hazelzet, 10 May 2004.

came as a negative surprise.<sup>261</sup> Thus, NGOs, above all the Brussels-based Coalition on Children and Armed Conflict, continue to lobby for the issue. NGOs expressed concern that without appointing or designating a Special Representative to oversee the implementation of the Guidelines the EU lacks the operational mechanisms and the know-how to fulfil its commitment.<sup>262</sup> Because of the institutional inertia, the momentum generated by the adoption of the Guidelines may be lost. This view is supported by the European Parliament. In February 2004 the EU-ACP Joint Parliamentary Assembly passed a resolution, containing a clear request for the appointment of a High Representative for Children's rights.<sup>263</sup> This was the second call within five months that the ACP-EU Joint Assembly issued a similar call. Already before the adoption of the Guidelines it had adopted a resolution recommending the appointment of an EU Special Envoy on Children Affected by Armed Conflict.<sup>264</sup>

The chances of a revision of the whole issue and the appointment of a Special Envoy/ Focal Point after the two year period will to some extent depend on how much success the Guidelines had until that point. If implementation is slow and insufficient, NGOs and other institutions will have to strongly lobby for a Special Envoy/ Focal Point again, to achieve a better co-ordination of actions and better implementation.

An alternative to a Special Representative on these Guidelines would be a general Children's rights representative or even a high level Human Rights Representative that has sufficient staff and resources to also oversee the effective implementation of these Guidelines.

Budgetary implications have been mentioned as one reason not to install the Office of a Special Envoy or strong and high level focal point. However, this may also reflect the attitude to the Guidelines as a whole. On the one hand the EU wants to make children and armed conflict a priority of the Union's human rights policy; on the other hand this should be achieved within the existing framework of instruments and institutional capacities. But to really be able to carry out a strong and effective policy, implementing all elements of the Guidelines, the EU will

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<sup>261</sup> Interview with Olivia Lind Haldorsson, 7 May 2004.

<sup>262</sup> Brussels-based coalition on Children and Armed Conflict, *It's time for the EU to deliver on its pledges*, Joint press release, Brussels, 28 February 2004.

<sup>263</sup> ACP-EU Joint Parliamentary Assembly Resolution ACP-EU 3601/04/final on conflict prevention and resolution and the establishment of a lasting peace, 19 February 2004.

have to recognise that this is only possible by also showing this commitment by re-allocating relevant resources towards this policy area.

### **c) Implementation**

As with many other policy strategies, there is a certain danger of the Guidelines on Children and Armed Conflict remaining merely on paper. The above analysis of the contents has shown that the Guidelines do not so much introduce new policies but try to mainstream the issue into all areas of existing EU external policies. Without a clear implementation framework that is effectively pushed on a high level, mainstreaming may have the effect that no stronger or additional measures are being taken up and the Guidelines just produce reports about programmes that the EU is already doing anyway.<sup>265</sup> A not so positive example in that sense are the above mentioned EU Guidelines on Torture, adopted in April 2001, that remain largely unimplemented so far.<sup>266</sup> It seems that most EU officials in the field do not act according to them, partly because some are not aware of their existence or don't know how to use them in their work with national authorities.<sup>267</sup> Although the Guidelines on Children and Armed Conflict will probably not be similarly neglected, as in the field of CAAC there is too much lobbying from NGO side and NGOs may feel more responsible because they have been closely involved in the drafting process, the degree to which these new Guidelines can be effectively implemented, remains largely unclear.

Following the adoption talks were held in COHOM how to implement the Guidelines with the existing mechanisms that there are. The Secretariat drafted a paper on the implementation together with the Commission and the Presidency to be discussed in COHOM. The Commission circulated a survey of what they are already doing in terms of funding projects for children in armed conflict.<sup>268</sup> The outcome of the debate between the Presidency, the Council Secretariat and the Commission is a strategy paper for implementation of the EU Guidelines on

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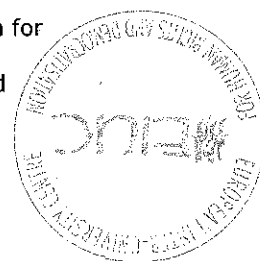
<sup>264</sup> ACP-EU Joint Parliamentary Assembly Resolution ACP-EU 3587/03/final on children's rights and child soldiers in particular, 15 October 2003.

<sup>265</sup> Interview with Olivia Lind Haldorsson, 7 May 2004.

<sup>266</sup> Amnesty International 2004.

<sup>267</sup> Coalition to Stop the Use of Child Soldiers, Action Appeals to the European Union - Campaign for an EU Special Representative on Children and Armed Conflict, May 2004, in <http://www.child-soldiers.org/cs/childsoldiers.nsf/0/a4384cbd974cb6a880256e9f004b9dcb?OpenDocument> (found 4/6/2004).

<sup>268</sup> Interview with Hadewych Hazelzet, 10 May 2004.





Children and Armed Conflict. It was adopted by the Political and Security Committee and welcomed by the Council of the European Union in June 2004.<sup>269</sup> The paper mainly says that it is the COHOM Troika that is responsible to follow up on the Guidelines but assisted by the Secretariat that would serve as a focal point. The paper also gives an overview who will be responsible for implementation of each part of the Guidelines.<sup>270</sup> The Council Secretariat and the Commission and the Presidency are planning to organise further meetings with NGOs to update them. One year after the adoption of the Guidelines the Dutch Presidency will have to write the first Interim Report to the PSC and after two years there is the general evaluation and review scheduled which will have to be lead by the British Presidency.<sup>271</sup>

At this stage of the process, it is too early to judge to what extend the Guidelines will be implemented effectively and what additional measures will be taken as a direct result of the Guidelines. Nevertheless, some steps have already been taken that could contribute to the implementation.

The PSC discussed the Guidelines with all EU Special Representatives and amended the mandate of Mr. Aldo Ajello, responsible for the Great Lakes region, so that he in particular can contribute to the implementation of the Guidelines in that region.<sup>272</sup> Aldo Ajello has also met with Olara Otunnu to that end.<sup>273</sup> It is certainly very important to include this into the mandate of the Special Representative for the Great Lakes as this is one of the regions where children are currently most affected by armed conflict and an enhanced co-operation between Aldo Ajello and Olara Otunnu could be a model of EU Special Representatives becoming engaged in implementation of the Guidelines. It is therefore regrettable that mandates of other EU SRs that are also dealing with regions where children are or were affected by war, have not been amended in the same way yet, e.g. those for

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<sup>269</sup> Council of the EU, *Presidency Conclusions 10679/04*, 18 June 2004.

<sup>270</sup> Hadewych Hazelzet, Council of the European Union General Secretariat (DG E IV, Human Rights and United Nations), 5 June 2004. The Strategy for implementation of the EU Guidelines on Children and Armed Conflict paper is not public.

<sup>271</sup> Art. 20 (e), (f), EU Guidelines on Children and Armed Conflict.

<sup>272</sup> Council Joint Action 2004/532/CFSP *extending the mandate of the Special Representative of the European Union for the African Great Lakes Region and amending Joint Action 2003/869/CFSP*, 28 June 2004.

<sup>273</sup> Hadewych Hazelzet, 5 June 2004.

Afghanistan, the Middle East and the Southern Caucasus.<sup>274</sup> The mandate of all EU SRs will have to be reviewed as soon as possible to take account of the Guidelines. According to Art. 10 of the Guidelines, Heads of EU Missions are mainly responsible for monitoring and reporting on the ground. Heads of delegations have already received the instructions to write reports on the basis of the Guidelines and been instructed that taking account of the Guidelines is important in any local dialogue.<sup>275</sup> The reports from Heads of Mission will be important with a view to the mid-term evaluation by the end of 2004. It will then show how well the monitoring and reporting system works and whether Heads of Missions need more specific instructions. But deadlines are not imposed; delegations will only be encouraged to submit the reports by relevance. Further steps depend to some extent on the recommendations in the reports, because they take into account the country specific situations. Heads of Missions are also asked to follow up on their reports on the ground.<sup>276</sup> Where they exist, EU military and police missions are also involved in reporting back.

Of course this is not relevant for all Delegations in the same way. The implementation process has therefore first of all to identify which countries are most relevant, above all the countries in the '1379-list' of the UN Secretary General as well as countries currently under consideration of the EU Political and Security Council because of ongoing conflicts.<sup>277</sup> Nevertheless, all Heads of Missions should be reporting on the issue in order to keep up with the prevention and early warning objectives of the Guidelines.

EU Heads of Missions should also be aware of the specific developments in the UN system especially what the office of the UN SRSG is concerned. The monitoring system and follow up process to SC Resolution 1539 (2004) could involve a close co-operation between the UN and EU delegations on the ground. The Office of UN SRSG is very engaged in working together with the EU and takes an active interest in the implementation process of the Guidelines. Along the same lines it tries to

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<sup>274</sup> Cf. Council Joint Action 2004/533/CFSP *extending the mandate of the Special Representative of the European Union for Afghanistan and amending Joint Action 2003/871/CFSP*, 28 June 2004; Council Joint Action 2004/534/CFSP *extending the mandate of the Special Representative of the European Union for the Middle East peace process and amending Joint Action 2003/873/CFSP*, 28 June 2004; Council Joint Action 2004/532/CFSP *extending and amending the mandate of the Special Representative of the European Union for the South Caucasus*, 28 June 2004.

<sup>275</sup> Interview with Charles Whiteley, 11 May 2004.

<sup>276</sup> Interview with Hadewych Hazelzet, 10 May 2004.

<sup>277</sup> Ibidem.

work together with the Brussels-based coalition of NGOs to co-ordinate advocacy efforts for the implementation of the Guidelines.<sup>278</sup>

NGOs that are active in the field should be encouraged to get in contact with Heads of Missions as they often have better mechanisms to overview the situation on the ground and as delegations don't always have access to places where NGOs do. NGOs could thus feed substantially into the reports. They could also create some pressure from outside to make sure that reports are being written on a regular basis.

All these are steps to improve the knowledge about the Guidelines and how to use them within and outside the EU system in order to be able to work with them. Awareness raising within the EU system and the member states' ministries as well as military staff and police officers is very important in order to make the concerns of war affected children an integer part of any policy in a country in conflict and every aspect of development co-operation.

As has been mentioned, the Guidelines will not bring about a total change in the Commissions policy. In the ideal case it will be a more comprehensive and enhanced extension of the various programmes and projects that the Community was already doing. One of the aspects where there was a great deficit, as has been shown above is The EIDHR where children's rights projects were effectively thrown out because of the mainstreaming approach. It is planned that in 2005/2006 the programming of the EIDHR on campaign things is totally refocused and children's rights in CAAC will be one of the four or part of one of the four campaign themes and that is planned to be the only new initiative in response to the Guidelines.<sup>279</sup> A key area which is not currently supported - and which will be considered in the context of current reflections on the shape of the EIDHR after 2004 - is advocacy, awareness-raising and training in the field of children and armed conflict relating to the signature, ratification and implementation of relevant international instruments and commitments, including the Convention on the Rights of the Child and its Optional Protocols, and the Plan of Action agreed at the UN Special Session on Children in May 2002.<sup>280</sup>

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<sup>278</sup> Various communications between the Office of the UN SRSG and the EU as well as the Brussels-based coalition on CAAC. Interview with Tamar Schrofer, 6 May 2004.

<sup>279</sup> Interview with Charles Whiteley, 11 May 2004.

<sup>280</sup> *Commission Non-paper*.

As part of its strategy, ECHO is planning to deepen its reflection on fundamental issues, such as activities related to children. This can be seen as a reaction to the adoption of the Guidelines. An evaluation of ECHO's activities in this regard has shown that a well-defined methodology is necessary to compare the different activities concerning children and to measure their impact. That would allow for an evaluation in terms of inputs and in terms of results. ECHO aims to develop a first version of this methodology before the end of 2004.<sup>281</sup> ECHO's strategy for humanitarian operations in 2004 has been refined as regards needs and impact evaluation. The indicator "general malnutrition of the population" has been replaced by "children under-nourished for their age", allowing the needs of children to be better taken into account.<sup>282</sup> ECHO adopted a financing decision on 23<sup>rd</sup> December 2003 entitled "*Commission Decision on humanitarian aid for children affected by armed conflict*". Its principal goal is the development of indicators and collection of precise and disaggregated data on the impact of armed conflict on children, including displacement and recruitment. The specific object of the project, which will take place during 2004, will be to improve the methodology and tools for the collection and analysis of data. UNICEF will lead the project in collaboration with a research institute and other actors. It is intended to focus in a pilot phase on four countries - DRC, Angola, Colombia and Sri Lanka - with subsequent extension to all countries affected by the problem.<sup>283</sup>

Further measures to implement the Guidelines are not clear at this stage. It is to be hoped that by the time of the first anniversary of the Guidelines in December 2004 and the corresponding report by the Dutch Presidency further reaching implementation action has taken some shape.

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<sup>281</sup> Ibidem.

<sup>282</sup> European Commission Humanitarian Aid Office, *ECHO Aid Strategy 2004*, 18 December 2003, in [http://europa.eu.int/comm/echo/pdf\\_files/strategy/2004/strategy2004\\_en.pdf](http://europa.eu.int/comm/echo/pdf_files/strategy/2004/strategy2004_en.pdf) (found 10/7/2004), p. 8.

<sup>283</sup> *Commission Non-paper*.

## IV. Conclusion and Recommendations

A broad international legal framework exists in the field of children and armed conflict. Standard setting can be seen as satisfactory although some of the existing instruments could be further built upon and improved.<sup>284</sup> But not all instruments are as widely ratified as the Convention on the Rights of the Child. EU member states have to make sure that they ratify all relevant instruments as soon as possible in order to avoid applying double standards for EU countries and third states. As long as a member state like the United Kingdom is struggling alongside with Russia to get deleted out of the 1379-list of the UN Secretary General, and others, like Germany, still have not ratified the OP to the CRC, the EU will have great problems in formulating a credible policy in their external relations toward CAAC. Pursuing a policy of 'Don't Do What I Do, Do What I Tell You to Do' will create cynicism and third states will not hesitate to point at the weaknesses in the record of all 25 EU member states.

The fact that the EU adopted Guidelines on Children and Armed Conflict signalled its principal willingness to re-orientate EU action in the coming years to further combat the many phenomena that are the consequences for children in situations of conflict: becoming refugees and IDPs, becoming child soldiers, being forced to kill and being killed by small arms, being maimed by landmines or being deprived of education and healthcare.

EU funding already now provides wide support to projects tackling the effects of armed conflict on children. Notable examples include support through ECHO for humanitarian assistance, funding under the "Aid to Uprooted People" budget line and projects under the European Development Fund. Projects have also been supported in recent years through the Rapid Reaction Mechanism and the European Initiative for Democracy and Human Rights. The EU's support for the ICC contributes to the fight against impunity against perpetrators of some of the worst violations of children's rights.

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<sup>284</sup> Cf. above Conclusions to Chapter II.

Many other relevant policies of the EU still lack a specific awareness for children, like targeted measures and the military components of the ESDP. Military planning will in future have to take children into account and missions like that in Bunia should include child protection advisors. Efforts have been made to tackle small arms, light weapons and landmines but it would be positive to design programmes especially directed at assistance for child survivors and raising awareness towards children's rights.

The impact that the EU has or will have in the future with its policy on CAAC is difficult to assess. It is without doubt, that the EU has become an important player on the international political scene, and the instruments of its CFSP/ EDSP complement the ones of the Community in order to be active in external relations. The EU is not only the biggest donor in development assistance, it also has become an important collective actor in international fora, including the UN General Assembly and the UN Commission on Human Rights and is about to become more involved in conflict prevention and crisis management. It is of extreme importance that the EU uses its important role to put forward a comprehensive human rights agenda that it can also implement in practice.

In the field of CAAC, the UN has broken the path with the debate in the Security Council and the activities of the Special Representative for Children and Armed Conflict. As the EU is with its policy at least partly reacting to events at the UN level, the UN can help to push the agenda of the EU. At least for the moment it has to be concluded that the EU is rather being a reactive than necessarily a huge proactive force in the field of CAAC.

Together with the UN and NGOs, the EU can make a decisive contribution to tackle the many problems in the field of CAAC. Above all, with its 25 member states and Commission delegations all over the world, it can contribute to tighten up a world-wide network that works to help war-affected children by gathering and exchanging information, by creating the necessary political pressure and by funding relevant projects for children.

There are mixed experiences concerning the implementation of other EU human rights guidelines. In the field of CAAC, the active engagement of non-EU actors gives hope that the necessary driving force for implementation will prevent the Guidelines from remaining merely on paper. NGOs had an unprecedented role in

the adoption of the Guidelines. Especially the active Brussels-based Coalition on Children and Armed Conflict, through active lobbying and their expertise can now also contribute towards implementation, as can the Office of the UN SRSG and UNICEF.

With the new Guidelines on Children and Armed Conflict the EU aims to address the problem of CAAC in a comprehensive manner, by using already existing instruments. Monitoring, reporting and analysis are to be the basis for enhanced EU action to influence third countries and also non state actors, to provide actual protection to children from the effects of armed conflict, to halt the use of child soldiers and to end impunity. The EU must not be content with mainstreaming of this issue into external, development and humanitarian assistance policies as well as crisis management operations. A double track approach is necessary, connecting mainstreaming of children's rights with specific actions focussed on children's rights.

It has to be doubted whether the EU is able to implement this policy effectively with the existing institutional capacities and the resources allocated for it. It has to be assumed that however well-intentioned the EU Council Secretariat and the Commission can be, the Guidelines won't be effective without a high level post that will seize the initiative to push for serious, effective and timely implementation inside the large EU bureaucracy. So far, EU leaders and member states are worried about the potential cost and further demands for other Special Representatives on other human rights issues. But without a Special Representative or another focal point that provides leadership on the issue, the EU Guidelines may remain a document that in practice fails to help children caught up in war.

The only alternative to a Special Representative on these Guidelines would be a general Children's rights representative or even a high level Human Rights Representative that has sufficient staff and resources to also oversee the effective implementation of these Guidelines.

Neither in human rights in general nor in the fields of children's rights, can the EU be accused of sitting still. Its record in the field of children and armed conflict as well as in other areas shows an impressive range of activities. It can therefore be recognised that the EU has both the ambition and the potential to be one of the most powerful human rights actors in the world. But with all this said, sometimes

the EU lacks to produce the necessary impact and effectiveness. Big efforts are needed to turn its policy on children and armed conflict into a success.

### *Recommendations*

The adoption of the guidelines was an important step into the right direction. However, the momentum created by the process leading up to the adoption must not be lost. The following represents a non-exhaustive list of recommendations based on this study:

- All EU member states, including the new members, quickly have to ratify international instruments relevant in the field of children and armed conflict. National legislation has to be adapted accordingly, including an absolute minimum recruitment age of 18 for all forms of recruitment in their national armed forces.
- Make the rights based approach a reality. Mainstreaming children's rights into all policy fields has to be complemented by child impact assessments for programmes and projects and go hand in hand with specific actions on children's rights.
- An active partnership between EU institutions, member states, International Organisations and Civil Society is needed to keep the issue high on the international and EU agenda.
- Close EU - UN co-operation must be established in this field that ranges from information exchange, common conflict prevention strategies to the training of child protection advisors in military missions. An alarm and early warning mechanism should be constructed linking all the actors in the field of CAAC.
- NGOs should not only continue with their extensive lobbying activities towards the EU institutions. Wherever possible they should work together with EU delegations in the field to provide and exchange information on the situation of children to improve the monitoring and reporting system.
- All EU delegations must report in a timely manner including on possibilities for conflict prevention. Early warning must be made an important element in the reporting and assessment of country situations.



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- All the mandates of the EU's regional Special Representatives should be reviewed and amended accordingly, to take account of the guidelines and to contribute to their implementation in their region. This is especially important as long as there is no Special Envoy/ Focal point on CAAC. The High Representative should also get involved in this issue.
  - The EU Guidelines on Children and Armed Conflict could best be implemented if there is a Special Representative or high level focal point appointed to ensure that the EU takes the commitments made in the Guidelines seriously. Forthcoming Presidencies should work towards the establishment of such a post with the necessary resources for the effective implementation of the Guidelines.

## Abbreviations

|            |   |
|------------|---|
| ACP States | African, Caribbean, and Pacific States  |
| CAAC       | Children and Armed Conflict / Children Affected by Armed Conflict   |
| CFSP       | Common Foreign and Security Policy  |
| COHOM      | Working party on Human Rights   |
| COREPER    | Permanent Representatives Committee   |
| CRC        | Convention on the Rights of the Child   |
| DDR        | Disarmament, Demobilisation and Reintegration   |
| DRC        | Democratic Republic of the Congo  |
| EC         | European Community  |
| ECHO       | European Community Humanitarian Aid Office  |
| ECT        | Treaty establishing the European Community (EC Treaty)  |
| EIDHR      | European Initiative for Democracy and Human Rights  |
| ESDP       | European Security and Defence Policy  |
| EU         | European Union  |
| GAERC      | General Affairs and External Relations Council  |
| ICC        | International Criminal Court  |
| ICRC       | International Committee of the Red Cross  |
| IDP        | Internally Displaced Person   |
| ILO        | International Labour Organisation   |
| GA         | General Assembly (of the United Nations)  |
| OP to CRC  | Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict |
| PSC        | Political and Security Committee  |
| SALW       | Small Arms and Light Weapons  |
| SC         | Security Council (of the United Nations)  |
| SG         | Secretary General   |
| SR(SG)     | Special Representative (of the Secretary General)   |
| TEU        | Treaty on the European Union (EU Treaty)  |
| UN         | United Nations  |
| UNHCR      | United Nations High Commissioner for Refugees   |
| UNICEF     | United Nations Children's Fund  |

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## **Annex**

### **EU GUIDELINES ON CHILDREN AND ARMED CONFLICT**

#### **I. CHILDREN AND ARMED CONFLICT**

1. In the past decade alone, armed conflicts are estimated to have claimed the lives of over two million children and physically maimed six million more. Conflict deprives children of parents, care-givers, basic social services, health care and education. There are some twenty million displaced and refugee children, while others are held hostage, abducted or trafficked. Systems of birth registration and juvenile justice systems collapse. At any given time, there are estimated to be at least 300,000 child soldiers participating in conflicts.
2. Children have special short and long term post-conflict needs, such as for tracing of family members, redress and social reintegration, psycho-social rehabilitation programmes, participation in disarmament, demobilisation and reintegration programmes as well as within transitional justice frameworks.
3. In many situations, there remains a climate of impunity for those committing crimes against children, as proscribed by international humanitarian law and the Rome Statue of the International Criminal Court.
4. The Convention on the Rights of the Child (CRC) is almost universally ratified, but by no means universally applied. Particularly in situations of armed conflict, children suffer disproportionately, in a variety of ways, and with long lasting effects. The impact of armed conflict on future generations may sow the seeds for conflicts to continue or to re-emerge. The Optional Protocol to the CRC on the involvement of children in armed conflict aimed at countering this situation.

## **II. PURPOSE**

5. Promotion and protection of the rights of the child is a priority of the EU's human rights policy. The European Union (EU) considers it of critical importance to address the issue of children and armed conflict both because children hold the future, and because they have rights, as set out in the CRC, its Optional Protocols and other international and regional human rights instruments. The EU aims to raise the awareness of this issue by giving more prominence to EU actions in this field, both within the EU and towards third parties.
6. The EU undertakes to address the short, medium and long term impact of armed conflict on children in an effective and comprehensive manner, making use of the variety of tools at its disposal, and building on past and ongoing activities (overview of EU actions in Annex I). The EU's objective is to influence third countries and non state actors to implement international human rights norms and standards and humanitarian law, as well as regional international human rights law instruments (as in Annex II) and to take effective measures to protect children from the effects of armed conflict, to end the use of children in armies and armed groups, and to end impunity.

## **III. PRINCIPLES**

7. The EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States. Respect for human rights features among the key objectives of the EU's Common Foreign and Security Policy (CFSP), which includes the European Security and Defense Policy (ESDP). Respect for human rights is also part of the Community's policies regarding trade and development co-operation and humanitarian assistance.
8. The promotion and protection of the rights of all children is a priority concern of the EU and its Member States. In its work to ensure the protection of children affected by armed conflict, the EU is guided by relevant international and regional norms and standards on human rights and humanitarian law including, inter alia, those contained in Annex II.

9. The EU supports the work of the relevant actors, in particular the UN Secretary General, the Special Representative of the Secretary General for Children and Armed Conflict, UNICEF, UNIFEM, OHCHR, UNHCR, UNDP, the Committee on the Rights of the Child, the Human Rights Committee, the Council of Europe, OSCE/ODIHR as well as UN Special Mechanisms and other relevant actors such as the ICRC, the Human Security Network and civil society organisations. The EU will pro-actively contribute and work with these actors to ensure that the existing international safeguards to the rights of the child are strengthened and effectively implemented.

#### **IV. GUIDELINES**

Regular monitoring, reporting and assessments form the basis for the identification of situations where EU action is called for. Where EU-led crisis management operations are concerned, decision making will proceed on a case-by-case basis, bearing in mind the potential mandate for the specific action and the means and capabilities at the disposal of the EU.

##### **A. Monitoring and reporting**

10. In their periodic reports and where relevant, the EU Heads of Mission, Heads of Mission of civilian operations, EU Military Commanders (through the chain of command) as well as the EU Special Representatives will include an analysis of the effects of conflict or looming conflict on children. These reports should address in particular violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children and the measures taken to combat them by the parties in case. They will include in their normal reporting periodic evaluation of the effect and impact of EU actions on children in conflict situations where appropriate. Lessons learned from EU crisis management operations may form another important source of information for the competent working parties provided they are not classified.

11. The Commission will draw the attention of the Council and Member States to relevant reporting in this area and provide further information, where appropriate and necessary, on Community-funded projects aimed at children and armed conflict and post-conflict rehabilitation. Member States will feed into this overview by providing information on bilateral projects in this area.

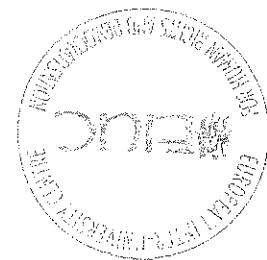
**B. Assessment and recommendations for action**

12. The Council Working Group on Human Rights (COHOM) in close co-ordination with other relevant working parties, will on the basis of the above mentioned reports and other relevant information, such as reports and recommendations from the UNSG (including the list of parties to armed conflict that recruit or use children as annexed to the annual report to the UN Security Council on children and armed conflict), the Special Representative of the Secretary General for Children and Armed Conflict, UNICEF, UN Special Mechanisms and human rights Treaty Bodies as well as non-governmental organisations, at regular intervals identify situations where EU actions are called upon, in particular where alarming situations arise which call for immediate attention, and make recommendations for such action to the appropriate level (PSC/Coreper/Council).

**C. EU tools for action in relations with third countries**

The EU has a variety of tools for action at its disposal. The EU will build on existing initiatives in order to consolidate, strengthen and advance EU actions for children affected by armed conflict (as in Annex I). In addition, the tools at the EU's disposal include, inter alia, the following:

13. Political dialogue: The human rights component of the political dialogue between the EU and third countries and regional organisations shall, where relevant, include all aspects of the rights and well being of the child during pre-conflict, conflict and post-conflict situations.





14. Démarches: EU will make démarches and issue public statements urging relevant third countries to take effective measures to ensure protection of children from the effects of armed conflict, to end the use of children in armies and armed groups, and to end impunity. The EU Special Representatives and Heads of Mission will be tasked to continue to address the matter with non state actors where relevant. Where appropriate, the EU will also react to positive developments that have taken place.
15. Multilateral co-operation: the Community is engaged in funding projects relating to children and armed conflict in several fields, in particular for Disarmament, Demobilisation, Reintegration and Rehabilitation (DDRR) and through humanitarian assistance. The Commission will identify possibilities for extending such support, for example in the context of its Country Strategy Papers and its Mid Term reviews. Member States will equally seek to reflect priorities set out in these guidelines in their bilateral co-operation projects.
16. Crisis management operations: during the planning process, the question of protection of children should be adequately addressed. In countries where the EU is engaged with crisis management operations, and bearing in mind the mandate of the operation and the means and capabilities at the disposal of the EU, the operational planning should take into account, as appropriate, the specific needs of children, bearing in mind the particular vulnerability of the girl child. In pursuit of the relevant UNSC resolutions, the EU will give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security.
17. Making use of the various tools at its disposal, the EU will seek to ensure that specific needs of children will be taken into account in early-warning and preventive approaches as well as actual conflict situations, peace negotiations, peace agreements, ensuring that crimes committed against children be excluded from all amnesties, post-conflict phases of reconstruction, rehabilitation, reintegration and long-term development. In this context, the EU will take advantage of and build on experience gained within the UN system and regional organisations. Girls and those who are refugees, displaced, separated, abducted, affected by HIV/AIDS, disabled, subject to sexual exploitation or in detention are particularly vulnerable.

18. Training: the co-ordinated EU Training Concept in the field of crisis management should take account of the implications of these guidelines.
19. Other measures: the EU might consider making use of other tools at its disposal where appropriate, such as the imposition of targeted measures.

## **V. IMPLEMENTATION AND FOLLOW-UP**

20. COHOM is furthermore requested to:
  - a) oversee the implementation of EU action taken in accordance with these guidelines and to that end develop modalities to render paragraph 12 operational. In this context, reference is made to the 25 June 2001 GAC conclusions, which recalled that the Community actions should be consistent with the EU's action as a whole;
  - b) promote and oversee mainstreaming of the issue of children and armed conflict throughout all relevant EU policies and actions;
  - c) undertake ongoing review of the implementation of these guidelines, in close co-ordination with the relevant working groups, Special Representatives, Heads of Mission, Heads of Mission of civilian operations and EU Military Commanders (through the chain of command);
  - d) continue to examine, as appropriate, further ways of co-operation with the UN and other international and regional intergovernmental organisations, NGOs as well as corporate actors in this area;
  - e) report to PSC on an annual basis on progress made towards fulfilling the objectives set out in these guidelines;
  - f) submit an evaluation of these guidelines to the Council, two years after the adoption of these guidelines, with recommendations for improvements or updates as appropriate;

- g) On that basis, consider establishing a focal point (for instance a special group of experts or Special Representative) to ensure the future implementation of these guidelines.

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**EU Actions in the field of Children and Armed Conflict (INDICATIVE)***CFSP Instruments*

1. Council Conclusions of 10 December 2002 (doc. 15138/02, page 9).
2. Common Positions on human rights and good governance in Africa (98/350/CFSP).
3. Common Positions on Rwanda, Somalia, Sierra Leone, Zimbabwe, DRC, Nigeria, Liberia, Angola, Cuba (including the imposition of targeted sanctions in some of these cases).
4. Common Position on the ICC (2001/433/CFSP as amended by CP 2002/474/CFSP).
5. Joint Actions (DRC, South Ossetia, Bosnia Herzegovina, various special representatives), and Common Strategies (Russia, Ukraine, Mediterranean region).
6. EU Code of Conduct on Arms Export adopted on 8 June 1998. Ongoing work to introduce EU-wide controls on the exports of paramilitary equipment.
7. Common Position on conflict diamonds and Council Regulation implementing the Kimberley Process certification scheme for the international trade in rough diamonds (doc. 15328/02).
8. Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (doc. 7369/01) and working paper to implement the guidelines (doc. 15437/02).
9. European Union Guidelines on the Death Penalty (doc. 9199/98).
10. European Union Guidelines on Human Rights Dialogues (doc. 14469/01).

*Crisis management (ESDP)*

11. Council Conclusions of 16 June 2003 on Artemis Operation in Bunia, DRC (doc. 10369/03).
12. Crisis management operations in Bosnia Herzegovina, the former Yugoslav Republic of Macedonia.
13. Council conclusions concerning the declaration by the EU and the UN on cooperation between the two in crisis management (doc. 12875/03).
14. Council Conclusions of 21 July 2003 on co-operation between the EU and the UN on crisis management: protection of civilians in EU-led crisis management operations (doc. 11439/03).
15. Draft guidelines on protection of civilians in EU-led crisis management operations (doc. 14805/03).

16. Comprehensive EU concept for missions in the field of rule of law in crisis management, including annexes (doc. 9792/03).
17. Implementation of the EU programme for the Prevention of Violent Conflicts (doc. 10680/03). This programme sets out the various EU initiatives undertaken in the context of conflict prevention, including training of officials.
18. Harmonisation of training for EU civilian aspects of crisis management and recruiting (doc. 11675/1/03) and Common Criteria for training for EU aspects of civilian aspects of management (doc. 15310/03).
19. The EC has contributed to increase the UN capabilities in areas such as rapid deployment, training and DD&R (disarmament, demobilisation and reintegration). The Commission and the Council Secretariat's Policy Unit have also developed "conflict indicators" (watch lists of countries in difficult situations). One programme example is the co-operation with the African Union in order to improve its capacity building on the peaceful solution of conflicts and desk to desk co-operation with partner countries covering specific sectors such as illegal exports of timber and water resources.

*Community instruments (development co-operation, trade, humanitarian assistance)*

20. Council Resolution on Corporate Social Responsibility (doc. 5049/03).
21. Various Trade and Co-operation Agreements, in particular the ACP-EU "Cotonou" Partnership Agreement, contain specific paragraphs on children, conflict prevention, human rights.
22. Assistance and protection of vulnerable children is seen in the wider context of poverty eradication, therefore, in the framework of EC development cooperation. Children are an important focal group of external aid, in particular in sectoral policies such as education and health. Numerous child-related activities are funded by the EC through ECHO, EDF, EIDHR.
23. Assistance and protection of children involved in armed conflicts is channeled through a number of Commission programmes. The promotion of children's rights was one of the priorities for funding under the European Initiative for Human Rights and Democracy in 2001 and is mainstreamed in funding for the period 2002-2004.

24. Child-related activities were one of the three priorities for ECHO 2003 strategy. ECHO has in the past supported humanitarian operations with a child component. Examples of projects in 2001 and 2002 include: demobilisation, rehabilitation and reintegration projects (Uganda), health and nutrition projects (Sudan, Colombia, Palestine), psychosocial support (Sierra Leone, Sudan, West Bank, Gaza Strip and Lebanon), funding of schools in emergency camps for displaced persons (DRC, Sudan, Sierra Leone, the Former Yugoslav Republic of Macedonia among others), family tracing and reunification (Colombia).
25. ECHO also funded research and advocacy activities of Save the Children, Belgian Red Cross and others and is considering to support a UNICEF initiative to improve availability of quality data on children affected by armed conflicts.

#### *Action in Multilateral Fora*

26. Resolutions on the rights of the child introduced by EU, jointly with GRULAC, at Commission on Human Rights and Third Committee of UN General Assembly on a yearly basis. These resolutions contain paragraphs on children and armed conflict.
27. EU statements in and contributions to Security Council, UNGA, CHR and UNGASS (8-10 May 2002), Monterrey Consensus.

#### *European Parliament*

28. The EP called upon the Council to adopt a limited strategy on children and armed conflict in its Annual Report of 2003 (adopted in September).
29. The EU-ACP Joint Parliamentary Assembly adopted a resolution on children and armed conflict at its meeting on 12 October in Rome, following a report by two of its members, published in June 2003.

**Relevant international and regional instruments***Rights of the Child*

- Convention on the Rights of the Child, 1989
- Optional Protocol II to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002
- Optional Protocol I to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002
- African Charter on the Rights and Welfare of the Child, 1990
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

*International Humanitarian Law, Refugees and IDPs*

- Geneva Convention relative to the Treatment of Prisoners of War, 1949
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1978
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977
- Convention relating to the Status of Refugees, 1951
- Protocol relating to the Status of Refugees, 1967
- Guiding Principles on Internal Displacement, 1998

*International Criminal Law*

- Rome Statute of the International Criminal Court, 2002
- Amended Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, 1993 (as amended in 1998, 2000, 2002)
- Statute of the International Criminal Tribunal for Rwanda, 1994

### *Security Council Resolutions*

- Security Council Resolution 1261 (1999)
  - Security Council Resolution 1314 (2000)
  - Security Council Resolution 1379 (2001)
  - Security Council Resolution 1460 (2003)
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