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## INTERNATIONAL COOPERATION IN COMBATING ONLINE SEXUAL ACTS AGAINST CHILDREN DURING ARMED CONFLICTS: CONTEXT OF THE UN DRAFT CONVENTION AGAINST CYBERCRIME

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**Abstract.** The draft text of the UN Convention against cybercrime represents a significant collaborative effort by the UN Ad Hoc Committee, member states, and various stakeholders. However, additional considerations are warranted, particularly regarding the detrimental impact of cybercrime on human rights during armed conflicts. Children, as the most vulnerable social group in such scenarios, are at heightened risk of both offline and online sexual exploitation and abuse. In the absence of a robust legal framework, authorities in conflict zones are unlikely to engage effectively in international cooperation to combat these transnational crimes. Therefore, it is imperative to include a specific provision within the draft convention to ensure its applicability in addressing transnational crimes related to child pornography and other forms of online sexual exploitation and abuse of children during armed conflicts.

**Keywords:** cybercrime; child pornography; transnational crime; United Nations; draft convention.

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# МЕЖДУНАРОДНОЕ СОТРУДНИЧЕСТВО В БОРЬБЕ С АКТАМИ СЕКСУАЛЬНОГО ХАРАКТЕРА, СОВЕРШЕННЫМИ ОНЛАЙН ПРОТИВ ДЕТЕЙ ВО ВРЕМЯ ВООРУЖЕННЫХ КОНФЛИКТОВ, В КОНТЕКСТЕ ПРОЕКТА КОНВЕНЦИИ ООН ПРОТИВ КИБЕРПРЕСТУПНОСТИ

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**Аннотация.** Проект Конвенции ООН против киберпреступности является результатом серьезных усилий специального комитета ООН по разработке всеобъемлющей международной конвенции о противодействии использованию информационно-коммуникационных технологий в преступных целях, государств – участников ООН и всех других заинтересованных сторон, внесших вклад в ее разработку. В то же время существуют определенные вопросы, которые также могут быть приняты во внимание в контексте негативного воздействия киберпреступности на реализацию прав человека в ситуации вооруженного конфликта. Дети, которые являются наиболее уязвимой социальной группой во время вооруженных конфликтов, могут подвергаться сексуальной эксплуатации и насилию как офлайн, так и онлайн. В отсутствие необходимой правовой базы компетентные органы государств – участников вооруженного конфликта вряд ли будут осуществлять международное сотрудничество по борьбе с транснациональной преступностью такого рода. Поэтому в проект конвенции целесообразно внести специальное положение, обеспечивающее возможность применять данный документ при международном сотрудничестве по борьбе с транснациональными преступлениями, связанными с детской порнографией или любыми другими актами сексуальной эксплуатации детей или надругательства над ними, совершаемыми онлайн во время вооруженных конфликтов.

**Ключевые слова:** киберпреступность; детская порнография; транснациональная преступность; Организация Объединенных Наций; проект конвенции.

## Introduction

The digital environment plays an increasingly crucial role in children's development and the promotion of their rights. Nonetheless, as highlighted by the Committee on the Rights of the Child, it also poses significant risks for their violation or abuse<sup>1</sup>. Children in armed conflicts are particularly susceptible to such abuses.

According to the 2023 report of the UN Secretary-General to the Security Council, there are over 100 ongoing armed conflicts worldwide, with an average duration exceeding 30 years<sup>2</sup>. The report underscores that children continue to be disproportionately affected by these conflicts<sup>3</sup>. In 2022 alone, grave violations verified by the UN impacted 18 890 children<sup>4</sup>, with 1165 cases involving conflict-related sexual violence against minors<sup>5</sup>.

The pervasive use of information and telecommunication technologies in nearly all facets of social life has also led to their exploitation for committing illegal acts against children during armed conflicts. The latest report

from WeProtect Global Alliance, published in 2023, documents an 87 % increase in reported cases of child sexual abuse material since 2019, amounting to over 32 million reports globally<sup>6</sup>. The report further notes that global instability, including wars, contributes significantly to the rise in child sexual exploitation and abuse<sup>7</sup>.

As emphasised by the special representative of the Secretary-General on violence against children, children may be subjected to multiple forms of online violence, often intertwined with offline experiences of violence<sup>8</sup>.

Moreover, while the risks to children in the digital environment are well-recognised, the lack of comprehensive global data on violence against children in this context remains a significant challenge. Considering that sexual violence against children in armed conflicts is grossly underreported<sup>9</sup> and that children are disproportionately affected by such conflicts<sup>10</sup>, it is crucial to ensure accountability for all forms of abuse against minors.

<sup>1</sup>General comment No. 25 (2021) on children's rights concerning the digital environment [Electronic resource]. URL: <https://digitallibrary.un.org/record/3906061> (date of access: 13.03.2024).

<sup>2</sup>Protection of civilians in armed conflict. Report of the Secretary-General [Electronic resource]. URL: <https://digitallibrary.un.org/record/4011635> (date of access: 13.03.2024).

<sup>3</sup>Children and armed conflict. Report of the Secretary-General. Para 4 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4013848> (date of access: 13.03.2024).

<sup>4</sup>Ibid.

<sup>5</sup>Ibid. Para 7.

<sup>6</sup>Alarming escalation in child sexual abuse online revealed by Global threat assessment – 2023 [Electronic resource]. URL: <https://www.weprotect.org/wp-content/uploads/Global-Threat-Assesment-2023-Press-Release.pdf> (date of access: 13.03.2024).

<sup>7</sup>Ibid.

<sup>8</sup>Annual report of the special representative of the Secretary-General on violence against children. Para 52 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4002097> (date of access: 13.03.2024).

<sup>9</sup>Report of the special representative of the Secretary-General for children and armed conflict. Para 7 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4019372> (date of access: 13.03.2024).

<sup>10</sup>Children and armed conflict. Report of the Secretary-General. Para 4 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4013848> (date of access: 13.03.2024).

Despite children enjoying special protection under international humanitarian law, this legal framework is insufficient to guarantee their sexual inviolability during armed conflicts. Crimes that do not meet the threshold of grave violations of international humanitarian law are not covered by provisions for international cooperation in combating war crimes. Armed conflict can create conditions conducive to transnational online crimes against children by organised criminal groups. According to G. Waly, executive director of the United Nations Office on Drugs and Crime, “states and regions affected by conflict are considered environments conducive to crime – and particularly organised crime, which takes advantage of weak institutions and the absence of law enforcement and good governance”<sup>11</sup>. Instability and the lack of resources in conflict-affected states to maintain legal order and prevent crime, especially those committed by organised criminal groups, pose serious risks to children.

The Committee on the Rights of the Child stresses that “children should be protected from all forms of exploitation prejudicial to any aspects of their welfare in relation to the digital environment”<sup>12</sup> and highlights the need for stronger international and regional cooperation. However, it did not address the issue of sexual exploitation while providing recommendations concerning the protection of children in armed conflicts<sup>13</sup>.

The problem raised in this article is multifaceted. The three domains of international law most relevant to the discussion are the protection of children in armed conflicts [1–4], international cooperation in combating crimes related to the sexual abuse of children [5–8], and

the effects of armed conflicts on treaties [9–12], which have been thoroughly addressed in academic literature. However, aspects related to international cooperation in combating transnational online sexual abuse against children that do not meet the threshold of international crimes (war crimes or crimes against humanity) during armed conflicts have not received sufficient scholarly attention [13].

In light of the development of the UN Convention against cybercrime, the detrimental impact of armed conflicts on children’s rights must be a focal point for states, the UN, and other relevant stakeholders. Regrettably, the revised draft of the UN Convention against cybercrime, adopted during the concluding session of the Ad Hoc Committee to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes (29 January – 9 February 2024), lacks provisions specifically addressing its applicability during military conflicts<sup>14</sup>.

The commitment to safeguarding children’s rights should not be hindered by a lack of political will to foster international legal cooperation among conflict parties in combating online sexual abuse against children. Freedom from sexual violence is a fundamental human right that must not be compromised during armed conflicts.

Therefore, this research aims to examine the effect of armed conflicts on treaties that establish a legal framework for protecting children from online sexual abuse that does not meet the threshold of war crimes or crimes against humanity. Additionally, it seeks to formulate academically grounded proposals for the draft text of the UN Convention against cybercrime.

### Online sexual acts committed against children

There is no universally accepted term in international law to encompass the various types of online sexual offences committed against children. The Optional protocol to the Convention on the rights of the child on the sale of children, child prostitution and child porno-

graphy refers to the “sale of children, child prostitution and child pornography” (Art. 2)<sup>15</sup>. Other documents use terms such as “child sexual exploitation and abuse”<sup>16</sup>, “acts of sexual exploitation of children”<sup>17</sup>, “child sexual exploitation and sexual abuse online”<sup>18</sup>, “sexual ex-

<sup>11</sup>(Transnational) Organized crime and corruption in conflict settings: interview with Ms Ghada Waly [Electronic resource]. URL: <https://international-review.icrc.org/articles/transnational-organized-crime-interview-with-ms-ghada-waly-923> (date of access: 13.03.2024).

<sup>12</sup>General comment No. 25 (2021) on children’s rights in relation to the digital environment. Para 123 [Electronic resource]. URL: <https://digitallibrary.un.org/record/3906061> (date of access: 13.03.2024).

<sup>13</sup>Ibid. Para 121–122.

<sup>14</sup>Ad Hoc Committee to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes [Electronic resource]. URL: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/AC.291/22/Rev.2&Lang=E> (date of access: 17.05.2024).

<sup>15</sup>Optional protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography [Electronic resource]. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (date of access: 13.03.2024).

<sup>16</sup>INTERPOL and UNICEF signed a cooperation agreement to address child sexual exploitation and abuse [Electronic resource]. URL: <https://www.interpol.int/News-and-Events/News/2023/INTERPOL-and-UNICEF-sign-cooperation-agreement-to-address-child-sexual-exploitation-and-abuse> (date of access: 13.03.2024).

<sup>17</sup>The Rio de Janeiro declaration and call for action to prevent and stop sexual exploitation of children and adolescents [Electronic resource]. URL: <https://www.mofa.go.jp/policy/human/child/congress0811-d.pdf> (date of access: 13.03.2024).

<sup>18</sup>Strengthening national and international efforts, including with the private sector, to protect children from sexual exploitation and abuse : resolut. 77/233 adopt. by the UN Gen. Assembly on 15 Dec. 2022 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4000175> (date of access: 13.03.2024) ; Countering child sexual exploitation and sexual abuse online : resolut. 74/174 adopt. by the UN Gen. Assembly on 18 Dec. 2019 [Electronic resource]. URL: <https://digitallibrary.un.org/record/3847147> (date of access: 13.03.2024).

ploitation and abuse as well as sexual harassment”<sup>19</sup>, and “online child sexual exploitation and abuse”<sup>20</sup>. The United Nations Office on Drugs and Crime Teaching module on cybercrime uses the term “sexual abuse and sexual exploitation through the use of information and communications technology, including the use of real-time video streaming of sexual abuse”<sup>21</sup>.

The UN Special rapporteur on the sale and sexual exploitation of children, along with other special procedures of the UN Human Rights Council, advocates for the elimination of “all forms of child sexual exploitation, abuse, and violence, both online and offline”<sup>22</sup>. She highlights that numerous studies, publications, and reports reveal an increase in the scale and methods of online child sexual abuse and exploitation. This includes risks such as child sexual abuse material, grooming, soliciting children for sexual purposes, online sexual harassment, intimate image abuse, financial sexual extortion, and technology-assisted child sexual abuse material<sup>23</sup>.

Despite some terminological discrepancies in this field, most international organisations use the term “child sexual exploitation and abuse”.

At the regional level, the Organisation for Security and Co-operation in Europe employs “sexual exploitation of children”<sup>24</sup>, the Association of Southeast Asian Nations refers to “online exploitation and abuse”<sup>25</sup>, and the Organisation of American States addresses “sexual exploitation of children”<sup>26</sup>.

The revised draft text of the UN Convention against cybercrime prohibits offences related to online child sexual abuse or child sexual exploitation material (Art. 13) and solicitation or grooming for committing a sexual offence against a child (Art. 14)<sup>27</sup>. The list of prohibited acts is extensive, encompassing most forms

of online child sexual abuse or exploitation, including online streaming (“broadcasting, displaying or otherwise making available child sexual abuse or child sexual exploitation material through an information and communications technology system”)<sup>28</sup>. However, it does not address certain acts identified by the UN Special rapporteur, such as online sexual harassment and financial sexual extortion, including those using computer-generated imagery like deep fakes and deep nudes.

Within the CIS, the distribution of materials or objects with pornographic pictures of minors is prohibited<sup>29</sup>. The Council of Europe addresses sexual exploitation and abuse in its Convention on the protection of children against sexual exploitation and sexual abuse<sup>30</sup>.

Regional conventions on cybercrime primarily prohibit offences related to child pornography. This includes the Council of Europe Convention on cybercrime (Art. 9), the Arab convention on combating information technology offences (Art. 12(1–2)), the African Union Convention on cyber security and personal data protection (Art. 3(1)(a–d)), and the Agreement on cooperation between participating states of the CIS in the fight against crimes in the field of information technology (Art. 3(1)(д)).

In academic literature, the term “child sexual abuse and exploitation” is frequently used as a general descriptor [14–16]. Various publications also address specific forms and manifestations of such crimes. For instance, B. Netkova and M. A. Qosaj use the term “child sexual abuse, including online sexual abuse and exploitation” [5]. A. Lavorgna discusses “grooming” as a complex issue requiring attention [17, p. 99], while N. Sanette highlights the problem of child pornography [18]. F. Avery focuses on the challenges of prosecuting the live streaming of child sexual abuse occurring abroad [19].

<sup>19</sup>International cooperation for access to justice, remedies and assistance for survivors of sexual violence: resolut. 76/304 adopt. by the Gen. Assembly on 2 Sept. 2022 [Electronic resource]. URL: <https://digitallibrary.un.org/record/3987243> (date of access: 13.03.2024).

<sup>20</sup>The role of social media in facilitating online child sexual exploitation and abuse [Electronic resource]. URL: <https://safeonline.global/wp-content/uploads/2023/12/DH-data-insights-7-EVAC-131223.pdf> (date of access: 13.03.2024); Protecting children from sexual exploitation and abuse [Electronic resource]. URL: <https://www.unicef.org/protection/protecting-children-from-sexual-exploitation-and-abuse> (date of access: 13.03.2024).

<sup>21</sup>Online child sexual exploitation and abuse [Electronic resource]. URL: <https://sherloc.unodc.org/cld/en/education/tertiary/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html> (date of access: 13.03.2024).

<sup>22</sup>The global emergency of child exploitation and abuse needs global action [Electronic resource]. URL: <https://www.ohchr.org/en/statements/2022/11/global-emergency-child-exploitation-and-abuse-needs-global-action-un-experts> (date of access: 13.03.2024).

<sup>23</sup>UN expert alarmed by new emerging exploitative practices of online child sexual abuse [Electronic resource]. URL: <https://www.ohchr.org/en/press-releases/2024/02/un-expert-alarmed-new-emerging-exploitative-practices-online-child-sexual> (date of access: 13.03.2024).

<sup>24</sup>Decision Nr. 6, strengthening efforts to prevent and combat child trafficking, including of unaccompanied minors [Electronic resource]. URL: <https://reliefweb.int/report/world/decision-nr6-strengthening-efforts-prevent-and-combat-child-trafficking-including> (date of access: 13.03.2024).

<sup>25</sup>Regional plan of action for the protection of children from all forms of online exploitation and abuse in ASEAN [Electronic resource]. URL: [https://asean.org/wp-content/uploads/2021/11/4.-ASEAN-RPA-on-COEA\\_Final.pdf](https://asean.org/wp-content/uploads/2021/11/4.-ASEAN-RPA-on-COEA_Final.pdf) (date of access: 13.03.2024).

<sup>26</sup>Commercial sexual exploitation of children and the Internet [Electronic resource]. URL: <http://scm.oas.org/pdfs/2011/IIN/CP25719E.pdf> (date of access: 13.03.2024).

<sup>27</sup>Further revised draft text of the convention [Electronic resource]. URL: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/AC.291/22/Rev.2&Lang=E> (date of access: 13.03.2024).

<sup>28</sup>Ibid.

<sup>29</sup>Model law about the basic of Internet regulation (new edition) [Electronic resource]. URL: <https://iacis.ru/public/upload/files/1/658.pdf> (date of access: 13.03.2024) (in Russ.).

<sup>30</sup>Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (CETS No. 201) [Electronic resource]. URL: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=201> (date of access: 13.03.2024).

It is evident that “online child sexual abuse and exploitation” is a widely accepted term in academia and among international organisations<sup>31</sup>. In contrast, regional conventions on cybercrime often specifically target child pornography, adopting a narrower scope that excludes other forms of online abusive materials involving children. As previously mentioned, there are emerging forms of illegal acts against the sexual integrity of children facilitated by information and communication technologies. These include live streaming of

sexual abuse, grooming, soliciting children for sexual purposes, online sexual harassment, and financial sexual extortion.

Thus, the term “offences related to online child sexual abuse, child sexual exploitation material, or other sexually related online acts against children prohibited by state parties” appears sufficiently comprehensive to encompass various types of sexually related online acts against children. This terminology aligns with established legal frameworks in international law and doctrine.

### The effects of armed conflict on treaties against cybercrime

None of the existing treaties governing international cooperation in combating cybercrime<sup>32</sup> at either the universal or regional level contains specific provisions addressing their applicability during armed conflict<sup>33</sup>.

The principle of continuity and stability of treaties implies that the mere existence of an armed conflict does not automatically terminate or suspend the operation of treaties between conflicting states or between a conflicting state and a non-conflicting state. The Vienna convention on the law of treaties of 1969 does not include provisions that consider armed conflict as a basis for the suspension or termination of treaties *per se*<sup>34</sup>. This perspective is also upheld by the International Law Commission in its Draft articles on the effects of armed conflicts on treaties of 2011 (Art. 3)<sup>35</sup> and the Institute of International Law in its resolution on the effects of armed conflicts on treaties of 1985 (Art. 2, 5, 6)<sup>36</sup>.

However, it is generally accepted that bilateral treaties of a political or economic nature are often suspended during armed conflicts [9]. Articles 60 (termination or suspension of the operation of a treaty as a consequence of its breach), 61 (supervening impossibility of performance), and 62 (fundamental change of circumstances) of the Vienna convention on the law of treaties of 1969

may provide grounds for terminating or withdrawing from a treaty due to armed conflict<sup>37</sup>. When assessing whether a specific treaty is subject to termination, suspension, or withdrawal due to armed conflict, the nature of the treaty and the characteristics of the conflict must be considered, as outlined in Art. 6 of the Draft articles on the effects of armed conflicts on treaties of 2011.

Therefore, it can be concluded that multilateral treaties against cybercrime are not automatically suspended or terminated by states involved in a conflict, nor between a conflicting state and a non-conflicting state. Nonetheless, the nature of the treaty and the characteristics of the armed conflict may influence its operation. Additionally, an armed conflict may constitute a fundamental change of circumstances, a material breach, or a supervening impossibility to perform a treaty, potentially leading to its termination or withdrawal by one or more state parties.

Thus, if the Draft comprehensive international convention on countering the use of information and communications technologies for criminal purposes does not include provisions regarding its applicability during armed conflicts, it may be subject to suspension or termination between future state parties engaged in an armed conflict.

<sup>31</sup>Implementation handbook for the Convention on the rights of the child [Electronic resource]. URL: <https://digitallibrary.un.org/record/620060?ln=ru&v> (date of access: 22.05.2024).

<sup>32</sup>The United Nations Convention against transnational organized crime [Electronic resource]. URL: <https://digitallibrary.un.org/record/427192> (date of access: 13.03.2024); Optional protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography [Electronic resource]. URL: <https://digitallibrary.un.org/record/496737> (date of access: 13.03.2024).

<sup>33</sup>Arab convention on combating information technology offences [Electronic resource]. URL: <https://www.asianlaws.org/gclid/cyberlawdb/GCC/Arab%20Convention%20on%20Combating%20Information%20Technology%20Offences.pdf> (date of access: 13.03.2024); Convention on cybercrime [Electronic resource]. URL: <https://rm.coe.int/1680081561> (date of access: 13.03.2024); Additional protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems [Electronic resource]. URL: <https://rm.coe.int/168008160f> (date of access: 13.03.2024); African Union Convention on cyber security and personal data protection [Electronic resource]. URL: [https://au.int/sites/default/files/treaties/29560-treaty-0048\\_-\\_african\\_union\\_convention\\_on\\_cyber\\_security\\_and\\_personal\\_data\\_protection\\_e.pdf](https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf) (date of access: 13.03.2024); CSTO protocol on counteracting crimes in the information security area [Electronic resource]. URL: <https://docs.cntd.ru/document/561354812> (date of access: 13.03.2024); Agreement on cooperation of the member states of the CIS in fighting crimes in the sphere of information technologies [Electronic resource]. URL: <https://cis-legislation.com/document.fwx?rgn=110821> (date of access: 13.03.2024); Agreement between the governments of the SCO member states on cooperation in the field of ensuring international information security [Electronic resource]. URL: <https://cis-legislation.com/document.fwx?rgn=28340> (date of access: 13.03.2024).

<sup>34</sup>Vienna convention on the law of treaties [Electronic resource]. URL: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (date of access: 13.03.2024).

<sup>35</sup>Draft articles on the effects of armed conflicts on treaties, with commentaries [Electronic resource]. URL: [https://legal.un.org/ilc/texts/instruments/english/commentaries/1\\_10\\_2011.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf) (date of access: 13.03.2024).

<sup>36</sup>The effects of armed conflicts on treaties [Electronic resource]. URL: [https://www.idi-iil.org/app/uploads/2017/06/1985\\_hel\\_03\\_en.pdf](https://www.idi-iil.org/app/uploads/2017/06/1985_hel_03_en.pdf) (date of access: 13.03.2024).

<sup>37</sup>Vienna convention on the law of treaties [Electronic resource]. URL: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (date of access: 13.03.2024).

## Rationale for including a clause on the applicability of the UN Convention against cybercrime during armed conflict in the context of combating offences related to online child sexual abuse

From a practical standpoint, armed conflicts can significantly hinder a state's ability to combat cybercrime. States involved in conflicts may face shortages in resources, technical capabilities, and trained law enforcement personnel. Additionally, such states might lose control over parts of their territory. Nevertheless, certain provisions of treaties against cybercrime should remain in force for these states.

According to Annex (a) of the Draft articles on the effects of armed conflicts on treaties of 2011, "treaties on the law of armed conflict, including treaties on international criminal law", remain operative during armed conflict<sup>38</sup>. International humanitarian law affords special protection to children in both international and non-international armed conflicts. Article 77 of Protocol 1 to the Geneva conventions of 1949 mandates that "children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason"<sup>39</sup>. Similarly, Art. 4 of Protocol 2 stipulates that "children shall be provided with the care and aid they require".

However, these international instruments lack specific provisions addressing online child sexual abuse or exploitation during armed conflicts that do not meet the threshold of grave breaches under the respective protocols. Furthermore, existing international mechanisms for monitoring and assessing violations against children in armed conflicts are limited to grave violations. Transnational crimes that do not constitute grave violations may be addressed through international cooperation in criminal matters between states, as per relevant international instruments. Yet, as previously mentioned, such cooperation based on treaties may be terminated or suspended in the event of armed conflict. Regional treaties also do not include clauses regarding their applicability during armed conflicts.

Articles 18, 34 of the Convention on the rights of the child of 1989<sup>40</sup> obligate state parties to protect children

from sexual abuse. The Optional protocol to the Convention on the rights of the child on the sale of children, child prostitution, and child pornography of 2000 mandates the prohibition of child pornography (Art. 1) and requires states to "take all necessary steps to strengthen international cooperation by multilateral, regional, and bilateral arrangements for the prevention, detection, investigation, prosecution, and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography, and child sex tourism", and to "promote international cooperation and coordination between their authorities, national and international non-governmental organisations, and international organisations" (Art. 11(1))<sup>41</sup>. However, this optional protocol does not contain any provisions regarding its applicability during armed conflicts. Noting the provisions of the aforementioned international instruments, Art. 24 of the International covenant on civil and political rights of 1966<sup>42</sup> and various United Nations General Assembly resolutions, it is imperative to enhance both national and international efforts to protect children from sexual exploitation and abuse. Some resolutions call upon states to ensure legal protection for children from violence, both online and offline, in accordance with their obligations under international law, including international human rights law<sup>43</sup>. Furthermore, para 53 of resolution of the United Nations General Assembly A/RES/78/187 urges states to criminalise conduct related to violence against children, including forms of sexual exploitation and abuse<sup>44</sup>.

The importance of strengthening international cooperation within the United Nations framework is underscored in the preamble to resolution of the UN General Assembly A/RES/78/187<sup>45</sup>. Additionally, para 24 of the resolution of the UN General Assembly A/RES/76/147<sup>46</sup> emphasises the need to end impunity for violations of international humanitarian law and human rights law against children affected by armed conflict, by ensuring accountability and punishing perpetrators. The

<sup>38</sup>Vienna convention on the law of treaties [Electronic resource]. URL: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (date of access: 13.03.2024).

<sup>39</sup>Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol 1) [Electronic resource]. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and> (date of access: 13.03.2024).

<sup>40</sup>Convention on the rights of the child [Electronic resource]. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (date of access: 13.03.2024).

<sup>41</sup>Optional protocol on the sale of children, child prostitution and child pornography [Electronic resource]. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (date of access: 13.03.2024).

<sup>42</sup>International covenant on civil and political rights [Electronic resource]. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (date of access: 13.03.2024).

<sup>43</sup>See: Strengthening national and international efforts, including with the private sector, to protect children from sexual exploitation and abuse : resolut. 77/233 adopt. by the UN Gen. Assembly on 15 Dec. 2022 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4000175> (date of access: 13.03.2024).

<sup>44</sup>Rights of the child : resolut. 78/187 adopt. by the UN Gen. Assembly on 19 Dec. 2023 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4032437> (date of access: 13.03.2024).

<sup>45</sup>Rights of the child : resolut. 78/187 adopt. by the UN Gen. Assembly on 19 Dec. 2023 [Electronic resource]. URL: <https://digitallibrary.un.org/record/4032437> (date of access: 13.03.2024).

<sup>46</sup>Rights of the child : resolut. 76/147 adopt. by the UN Gen. Assembly on 16 Dec. 2021 [Electronic resource]. URL: <https://digitallibrary.un.org/record/3954144> (date of access: 13.03.2024).

preamble to the resolution of the UN General Assembly A/RES/74/174<sup>47</sup> further stresses the necessity of enhancing coordination among member states to prevent and combat child sexual exploitation and abuse online, identify child victims, and bring perpetrators to justice.

The report of the Special rapporteur of the Human Rights Council on the sale and sexual exploitation of

children also highlights the critical need for international cooperation in combating online child sexual exploitation and abuse<sup>48</sup>. This cooperation should extend to criminal matters even between states engaged in armed conflict, covering crimes related to child pornography and other acts of sexual exploitation or abuse facilitated by communication technologies.

## Conclusions

Given that states involved in armed conflict may suspend or terminate cooperation on transnational criminal matters, it is unrealistic to expect them to fully cooperate on cases related to online child sexual abuse due to the political complexities associated with armed conflicts. Therefore, it is reasonable to propose a clause in the draft UN Convention against cybercrime mandating states to take all necessary measures “to ensure accountability and punish perpetrators present in their territory” for such acts. This provision would establish a minimum standard for measures taken in good faith by any state party to an armed conflict, ensuring the criminal protection of children’s basic rights against various forms of online abuse or exploitation committed within their territories.

This clause aligns with fundamental principles for asserting criminal jurisdiction, such as territoriality (if the crime was partly committed within the state’s territory) and passive personality [20]. It also echoes the UN General Assembly’s call to enhance international cooperation in criminal justice, including providing mutual legal assistance in investigating and prosecuting crimes of sexual violence, in accordance with member states’ obligations under international law<sup>49</sup>.

Ensuring the protection of children’s fundamental human right to be free from sexual abuse during armed conflict is consistent with states’ human rights obligations as outlined in the Convention on the rights of the child<sup>50</sup>. This is based on the principle that “no violence against children is justifiable”<sup>51</sup>. Furthermore, as recommended in the re-

port of the Special rapporteur of the Human Rights Council on the sale and sexual exploitation of children, including child prostitution and child pornography, it is imperative “to make states more accountable for enacting safeguards for the rights of the child in the digital context”<sup>52</sup>.

This effort also contributes to achieving the sustainable development goals. Notably, the 2030 Agenda for sustainable development prioritises the dignity of children and their right to live free from violence through various goals and targets<sup>53</sup>, particularly goal 16.

Therefore, a provision to ensure the applicability of the UN Convention against cybercrime in combating online child abuse during armed conflict is necessary. Based on the above considerations, the following provision is proposed for the draft UN Convention on combating the use of information and communication technologies for criminal purposes:

1) in the event of an armed conflict between two or more high contracting parties, this convention shall not automatically cease to apply either between them or concerning third states;

2) in any event of suspension or termination of this convention during armed conflict, the parties shall nonetheless continue their cooperation to the maximum practicable extent in combating offences related to online child sexual abuse, child sexual exploitation material, or other online sexual acts against children. This is to ensure accountability and to punish perpetrators present in their territory.

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<sup>47</sup>Countering child sexual exploitation and sexual abuse online : resolut. 74/174 adopt. by the UN Gen. Assembly on 18 Dec. 2019 [Electronic resource]. URL: <https://digitallibrary.un.org/record/3847147> (date of access: 13.03.2024).

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<sup>49</sup>International cooperation for access to justice, remedies and assistance for survivors of sexual violence : resolut. 76/304 adopt. by the UN Gen. Assembly on 2 Sept. 2022. Para n [Electronic resource]. URL: <https://digitallibrary.un.org/record/3987243> (date of access: 13.03.2024).

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