THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: THE DICHOTOMY BETWEEN RHETORIC AND REALITY*

Abstract
The United Nations Convention on the Rights of the Child is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention made elaborate provisions relating to the welfare of children but the utility of these provisions are tested during armed conflict when state parties abandon the covenants contained in the Convention and pursue military advantages to the detriment of the child. Being a human rights Convention, some argue that its operation is limited to peace situation and not during armed conflict. As such, there is a dichotomy between rhetoric and reality. The rhetoric is one of virtual world-wide acceptance and promotion of children’s rights through the medium of the United Nations Convention on the Rights of the Child, but the reality is one in which children are consistently subjected to the full brutality of war. The outstanding question is of course, how will better protection be given to children caught up in armed conflict? It is submitted that the present provisions of humanitarian law and the Convention of the Rights of the Child are not adequate and effective in offering protection to children. As part of our contribution towards effective protection of children at all times, we recommend measures inter alia, the adoption of a legal instrument with punitive sanctions designed specifically for protection of children applicable at all times especially during armed conflict.

Keywords: Child’s right, international humanitarian law, armed conflict.

1. Introduction
The 19th century marked the start of children’s rights. The child began to be considered as a being in need of protection. For the first time in Europe, laws were passed governing child labour. Different legal texts progressively encouraged or made education obligatory for young children, and society recognized the fact that the child could not be dealt with in the same way as an adult. However, the history of children’s rights movement accelerated in the 20th century with the formation by the League of Nations in 1919. Five years later, it adopted the Geneva Declaration on the Rights of the Child, 1924, first international treaty on children’s rights, inspired by the work of Janusz Korczak, who is considered to be the father of children’s rights. The Declaration of the Rights of the Child, sometimes known as the Geneva Declaration of the Rights of the Child, is an international document promoting child rights, adopted by the League of Nations in 1924, and adopted in an extended form by the United Nations in 1959 called ‘Declaration of the Rights of the Child. The 1990 Convention on the Rights of the Child adopted first by 140 Countries was an improvement of the two earlier Conventions, the 1924 Convention and the 1959 Declaration and this is seen as stated in the preamble of the 1990 Convention of the Rights of the Child thus:

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the

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1 The climax was the adoption of the United Nations Convention on the Right of the Child in 1989.  
International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children.

Following the Second World War, the history of children’s rights underwent several key stages following the creation of the United Nations. Because of the horror experience of the World War II, the international Community agreed on a human rights document which followed the adoption in 1948, of Universal Declaration of Human Rights, which amongst other thing stipulates that motherhood and childhood are entitled to special care and assistance. It was in the same year that BICE⁴ was created. By 1959, the UN adopted the Declaration of the Rights of the Child, which recognized the child as a subject of rights. The Convention⁵ was unanimously adopted by the United Nations General Assembly but it came into effect the following year in accordance with Article 49 of the Convention.

The 21st century saw a renewed movement towards an effective application of children’s rights. The international community in 2000 in a bid to strengthen the application of the Convention of the Rights of the Child, adopted two additional protocols on the sale of children, child prostitution and child pornography, and child involvement in armed conflicts. It also adopted the third optional protocol, introducing a mechanism by which children may submit complaints to the Committee on the Rights of the Child in 2011, and in 2014, during the 25th anniversary of the 1989 Convention. So far, 193 member states of the UN have ratified the Convention on the Right of the Child except the United States and Somalia. Since 1991, the UN Committee on the Rights of the Child has continued to monitor the implementation of the Convention of the Rights of the Child. The Nigeria Child’s Right Act of 2003 was Nigeria’s domestication of the Convention, as states parties were urged to respect and ensure implementation of the Convention. The United Nations Children’s Fund is another major Organ of the UN that promotes the welfare of the child. It was created by the Convention with fundamental mission being to promote the rights of every child, everywhere, in everything the organization does. UNICEF has global presence in nearly every country in the world and as result, it is able to reach places others cannot, and thus is uniquely positioned to make a difference in the lives of children. In advocating to protect children’s rights, to help meet their basic needs, and to expand their opportunities to reach their full potential, UNICEF helps to strengthen laws and policies and to improve understanding of the Convention at all levels of society. UNICEF supports countries to ratify and implement the Convention and its Optional Protocols. UNICEF draws attention to the duties of governments, families, communities and individuals to respect those rights and provides support for them to do so.

2. Legal Protection Of Children Under the Convention on the Rights of Child During Armed Conflict

It is our desire to appraise the protection of children as offered by the Convention on the Rights of the Child during armed hostilities. Before the analysis, it is important to state herein that the adoption of all the various Child Rights Conventions beginning with the 1924 Geneva Convention down to the

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⁴ BICE means ‘Best Interest of the Child’ is an NGO fighting for the child protection worldwide available on https://bice.org>...>Discover BICE accessed on 19 October 2018. A Charter to protect the best interest of the child, BICE as an organization is devoted to the protection of children. BICE works to defend the dignity and human rights of children around the world.

⁵ On November 20, 1989 but it took effect on the 2nd of September, 1990 following the accession of the Convention by 20 member nations in accordance with article 49.
1990 Convention on the Rights of the Child and its Additional Protocols has not reduced the sufferings of children world-wide especially during armed conflict. It is submitted that the present provisions of humanitarian law and the Convention of the Rights of the Child are not adequate and effective in protecting children from the effects of armed conflict. This inadequacy was acknowledged by the 1990 World Summit for Children in New York which recognized the need to improve humanitarian law and urged the ‘acceptance and observation of the Convention of the Rights of the Child’, in particular, it urged ‘for a growing acceptance of the idea of special protection for children in time of war’. This was an admission of failure that the Conventions have not prevented mistreatment of Children especially during armed conflict. Though the UN Convention on the Rights of the Child contains its own provisions relating to armed conflict in Articles 38 and 39 of the Convention, it has not improved the protection of children because the language of the provisions were merely discretionary, giving the state parties opportunity to decide what is feasible or not in the circumstance. For instance, Article 38 of the CRC provides that: ‘States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

Article 38(4) it provides that:

In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

The rights contained in Article 38 are not innovative and, from a child right’s view, are extremely disappointing. Article 38(4) only requires States to take ‘all feasible’ measures to ensure protection and care of children who are affected by an armed conflict. It does not impose an absolute duty. According to Detrick, there were attempts to raise the level of protection beyond that provided by humanitarian law, but this prime opportunity to increase the level of protection and respect for children during armed conflict was, once again, lost to the need to achieve consensus and the view of certain states that the Convention was not a proper vehicle for rewriting international humanitarian law. Thus, the provisions in Article 38 represent the lowest common denominator. Both the Red Cross and UNICEF regarded article 38(4) as potentially offering less protection to children than

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8 The delegate for the USA stated that the text adopted reaffirmed existing international humanitarian law on the protection of children in armed conflict, in particular, by adhering to the language of article 77 of Protocol 1 of the Geneva Conventions. He stated that the language was the result of lengthy debates in the Diplomatic Conference convened during the last decade to draft the Protocols and that his Government did not believe that the Working Group was an appropriate forum to revise existing international law in this area. See UN Doc. E/CN.4/1989/48 para. 603 available on on hr.travaux.law.virginia.edu>crc>nid-713. Accessed on 25 May, 2019.


that contained in the Fourth Geneva Convention and the Additional Protocols. The disappointment at
the failure to grapple with the difficult question of improving protection for children in situations of
armed conflict is reflected in the fact that the Committee on the Rights of the Child, recognizing the
inadequacy of the provisions in Article 38, did make firm recommendations for additional protection
of civilian and children in armed conflicts and recommended\(^\text{11}\) that a major UN study should be
undertaken to consider their situation. The United Nations followed this recommendation with the
appointment of Ms Graça Machel as the expert to head the study which was published in November
1996.\(^\text{12}\) Article 39 of the Convention did not advance any help towards the chil-
d. It provides thus:

State Parties shall take all appropriate measures to promote physical and
psychological recovery and social re-integration of a child victim of: any form of
neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or
degrading treatment or punishment; or armed conflicts. Such recovery and re-
integration shall take place in an environment which fosters the health, self-
respect and dignity of the child.

It should be noted that the Convention on the Right of the Child is a human rights treaty and thus
applicable only during peace time. It does not apply ordinarily during armed conflict. It is
international humanitarian law that applies during armed conflict. While human rights laws operate
primarily in peace time, International humanitarian law applies only to armed conflict and seeks to
regulate the relationship between adversaries. International humanitarian law is subject to a wide
range of rules, including those set out in the four Geneva Conventions and Additional Protocols I and
II. This however, does not mean that human rights such as Convention on the Right of the Child or
Universal Declaration of Human Rights are suspended or inapplicable during armed conflicts but
their enforcement and implementation may be affected by the realities of the war. In some cases, the
state actors may suspend some provisions on human rights in the interest of national security. In fact,
in most cases, human rights are applicable during armed conflict as individual rights are protected\(^\text{13}\).
But there are derogations which we may now consider.

3. Derogation from the Convention in Situations of Armed Conflict

The Convention on the Rights of the Child also contains general rights for children, including rights
of protection, provision and participation. The full implementation of such rights during times of
armed conflict would go a very considerable way to protecting children. Because the Convention is a
human rights treaty as earlier noted, it is uncertain the status of the Convention once armed conflict
erupts within a State. Some states\(^\text{14}\) argue that once there is armed conflict, that the provisions of the
Convention are suspended. However, there is no reason why those States who have ratified the
Convention should not continue to be bound by it in relation to all children within their jurisdiction.
This is because Article 2 of the United Nations Convention on the Rights of the Child requires that
States Parties shall respect and ensure the rights set forth in the present Convention to each child

\(^{11}\) The memorandum can be found in Annex V of the Committee on the Rights of the Child (UN Doc. CRC/C/16).
\(^{12}\) The Impact of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. GraçaMachel submitted
pursuant to General Assembly Resolution 48/157.
\(^{13}\) See the Advisory Opinion of the ICJ on the Threat or Use of Nuclear Weapons, ICJ Reports 1996, 226 at para.25
\(^{14}\) J. Doek, ‘The International Legal Framework for the Protection of Children in armed Conflict’ available on
within their jurisdiction without discrimination of any kind’. There is no provision in the Convention for derogation or for suspension of the Convention during armed conflict. Article 2 of the Convention is very clear that state parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. However, the application of certain articles may be limited in certain circumstances. The right to leave the country for purposes of reunion with parents or loved ones to freedom of expression, to freedom of religion, to freedom of association and peaceful assembly can all be limited, as in other human rights instruments, on the basis of protection of national security, public order, public health, morals or the rights and freedoms of others. It is arguable that all provisions other than those which can expressly be restricted remain in force during war.

However, relying on Article 38(4), it is submitted according to some writers that it will be safe to say that only Article 38 applied in war-time situations and that other parts of the Convention are suspended. In other words, once armed conflict begins, the State ceases to be under an obligation to implement the other provisions of the United Nations Convention on the Rights of the Child except provisions contained in Article 38. This is a very big problem because most violations of the children’s right occur during armed conflict. Cohn in his submission on this issue points out that if all the articles on the protection and care of children do in fact apply at all times, the necessity for Article 38(4) may be doubted, and it is, therefore, not unreasonable to suppose that the drafters expected that the Convention on the Rights of the Child would be subject to derogation during armed conflict. But this view by Cohn is not shared by many human rights activist including members of the Committee on the Rights of the Child, who hold the view that the whole Convention continues to apply in times of armed conflict or emergency. It was Hammarberg, a member of the Committee on the Rights of the Child, who stated that:

15 Article 10 of the CRC
16 Article 13 provides that Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.
17 Article 14. Under Article 14, Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.
18 Article 15. Under Article 15, Children have the right to meet together and to join groups and organizations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.
19 Just as section 45 of the 1999 Constitution of Nigeria provides for the powers of the state to suspend or withdraw some of the rights provided in chapter 2 of the Constitution.
21 Iiene Cohn, Ibid
22 See UN Doc. CRC/C/SR.90 (1994)
23 Being a Keynote Speech by Thomas Hammerberg delivered at the International Conference on the Rights of children in Armed Conflict titled ‘Children as a Zone of Peace’ what needs to be Done’ in Aldrich and Van Baarda(eds), 1994, available on shodhganga.inflibnet.ac.in>bitstream. Accessed on 19 October 2018.
Article 38 specifically addresses the situation of children in armed conflicts, however all other articles of the Convention are relevant. In fact there is no derogation clause in this Convention, it applies in its entirety also in times of war or emergency. The child has a right to a family environment, to go to school, to play, to get health care and adequate nutrition - also during the armed conflict. The principles of the Convention are valid as well: that all children without discrimination should enjoy their rights, that the best interests of the child be a primary consideration in decisions, that the right to life, survival and development be protected.

This argument only helps to provide belligerent parties with reasons or justification to evade implementation of the Convention and to justify their violation of same. The present language of Article 38(4) is not encouraging regarding international protection of children and this argument makes the whole situation worse. It is submitted that a review of this particular article is necessary as well as a clear language prescribing the universal application of the entire Convention during armed conflict.

4. Other issues affecting the implementation of the Convention on the Rights of the Child
Apart from the derogation noted above and the imprecise language of Article 38 of the Convention, the implementation of the Convention on the Rights of the Child faces many other problems. In many internal armed conflicts for example, the State if it continues to exist at all, only does so in a muted form: although the state may technically retain control over territory, the infrastructure and organization of the state may have all but disappeared and the ability to implement the Convention may be non-existent. This is the situation in Somalia since 1991. This is the present situation in Syria and Yemen where armed conflicts have been going on in the last few years. In Syria, the state lost control of many territories and even those under its control lacks basic infrastructure and organizational ability to provide basic amenities for the civilian population. In Yemen, the international recognized Interim National Government led by Abdul Mansur fled the capital Sanai and lives in Riyadh, Saudi Arabia. The Houthirebels backed by Iran are in control of the capital and some parts of Yemen. All routes for the delivery of aid materials to civilian caught up in the civil war remained blocked by the warring parties. In the current circumstances in Syria and Yemen, the least concern of the warring parties is the advancement of military tactics to win the war instead of implementation of the Convention on the Rights of Child. In such instances, only humanitarian law exists in reality to fill the void. It may, in reality, if its provisions are implemented, be the only practical form of protection that covers children in such circumstances.

Another problem of implementation is as it concerns non-state entities. In many internal conflicts, a state may lose control over a particular area of its territory to an armed group. The armed group now in control of the territory is not bound by the UN Convention on the Rights of the Child as, currently, the United Nations Convention on the Rights of the Child refers to ‘State Parties’, so that only formally recognized governments may accede to the Treaty. However, just as non-state entities who are parties to a conflict may declare their intention to accept and apply humanitarian legal principles, the Committee on the Rights of the Child should consider the adoption of mechanisms that would allow non-state entities in de facto control of territories to make declaration that they regard
themselves as bound by the UN Convention on the Rights of the Child.\textsuperscript{24} What of non state actors who has been declared to be terrorist organization? Will the international community accept their declaration to respect the provisions of the Convention\textsuperscript{25}? There is urgent need for a legal machinery to give effect to such ratifications and Declarations.

Another major challenge against the implementation of the Convention on the Right of The Child is the argument by some people that the Convention on the Rights of the Child, as a human rights instrument, has no place in times of armed conflict. Cohn represents a chunk of these writers.\textsuperscript{26} This is quite understandable because human rights laws operate primarily in peace time while international humanitarian law apply only to armed conflict and seek to regulate the relationship between adversaries and persons who are not participating in the conflict especially women and children. It therefore does not cover internal tensions or disturbances such as isolated acts of violence. International Humanitarian Law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. However, an individual does not cease to have basic rights once an armed conflict begins. Moreover, human rights treaties continue to be applicable even if derogations may be permitted. In the light of the above, it is hard to see how one could seriously argue that the rights envisioned in the United Nations Convention on the Rights of the Child unilaterally come to an end with the outbreak of hostilities.

State Parties failed to remedy these deficiencies in the protection of children during armed conflict, an opportunity lost even with the two additional Protocols. The United Nations Convention on the Rights of the Child, it might be argued, has advanced respect for humanitarian law to a small degree. Even if a state has not acceded to or ratified the Fourth Geneva Convention or the Protocols, it might nevertheless be bound to observe the humanitarian law provisions as a result of Article 38. However, Article 38(4) provides that States Parties undertake to respect and ensure respect for rules of international humanitarian law applicable to them in times of armed conflict. The International Committee of the Red Cross has argued that Article 38 of the Convention on the Rights of the Child threatens to undermine humanitarian law because many provisions in the Geneva Conventions and the Protocols designed to protect children lay down absolute obligations as opposed to calling for feasible measures to be taken and thus stronger and provide more protection for children.\textsuperscript{27}

However, it is to be noted that Article 41 of the Convention appear to have provided a succor to the provisions of Article 38 by providing that nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the Child and that may be contained in the law of a state party or international law in force for that state. It therefore follows that if there are strong and mandatory provisions on the protection of children during armed conflict which are stronger than Article 38, irrespective of the instrument in which the provision is found, it shall apply notwithstanding Article 38.

\begin{itemize}
\item \textsuperscript{18}The Palestinian Authority is not a nation state but has been allowed to sign most of the UN Treaties including the Convention on the Rights of the Child which it signed in 1995.
\item \textsuperscript{25}The Machel Report recommends that non-state entities be urged to make a formal statement accepting and agreeing to implement the standards contained in the Convention on the Rights of the Child. As a result, in 1995, in Sudan, several combatant groups became the first non-state entities to commit to abide by the provisions of the Convention on the Rights of the Child.
\item \textsuperscript{26}Ilene Cohn, Op. cit, footnote 20.
\item \textsuperscript{27}Guiding Principle for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Group. Available on https://www.icrc.org\textgreater download\textgreater filePDF accessed on 26 May 2019.
\end{itemize}
5. Towards an Effective Protection of Children during Armed Conflict

In the horrifying new face of armed conflict, the challenge for the international community today is to meet the changing nature of armed conflict. In particular, international law has the potential to create real protection for children and mitigate their suffering. While no system of law can ever eradicate the hardship of war, it is submitted that international law could be changed to enhance protection. To this end, it is submitted that ‘protection’ under humanitarian law should cease to be a term of art; rather it should amount to the level of protection for children envisioned in the United Nations Convention on the Rights of the Child. However, because humanitarian law represents a practical compromise between humanitarian and military considerations, the military will always rationalize disregard for humanitarian law by the claim that its demands are unreasonable and were not developed with the realities of war in mind. This argument is wrong and remains invalid. Not only was humanitarian law developed specifically with the brutality of armed conflict in mind, but it has always sought to accommodate military necessity, even at the expense of humanitarian considerations. Article 38(4) readily comes in mind where states parties were urged to take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

The task of protecting children in armed conflict must therefore begin with the overall protection of the civilian population. The civilian population at large must be protected from the effects of armed conflict as provided for under humanitarian law because the civilian population is the ones taking care of the children. If they are displaced by war, invariably, the children will be affected. It is therefore submitted that the most effective way to improve the protection of children under humanitarian law is to improve compliance with its provisions dealing with protection of the civilian population. And to provide effective enforcement and deterrent mechanism for individual and state actors who violate the Conventions. To that end, its applicability should be simplified, expanded and opened to adjudication, and its enforcement mechanisms should be strengthened.

The issue of ratification of international treaties by member states should be encouraged once agreement is reached particularly regarding protection of children For instance, during the gulf crises in 1991, it was reported that both the United States, France, Italy and Iraq are yet to ratify the fourth Geneva Convention and its Additional Protocols. But since most states has ratified the Convention on the Rights of the Child, it is our submission that all States should abide by their obligations ‘to respect and to ensure respect’ for the Fourth Geneva Convention and its Additional Protocols. As regards international conflicts, States should respect their Fourth Geneva Convention ‘obligation to search for persons alleged to have committed, or to have ordered to have committed, such grave breaches,’ and to "bring such persons, regardless of their nationality, before its own courts. The obligation of compulsory universal jurisdiction in relation to grave breaches should become a reality rather than merely a subject for lectures on the law of armed conflict.

The paper therefore calls for advancement of children’s best interests at all circumstances especially during armed conflict. If this is done, it will be clear that children deserve the highest level of

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28 Convention on the Right of the Child: (CRC) American SPCC. Italy and France only ratified the Optional Protocol to the Convention On the Rights of the Child recently in February, 2016. The United States is yet to ratify the Convention. It is said that US ratification of the Convention will catalyze a comprehensive review of the federal law, state law and policies in the United States. Available on https://americanspcc.org>the –convention-on-the-right-of-the-child
29 See Article 1 of the Fourth Geneva Convention
30 See Article 146 of the Fourth Geneva Convention
protection possible under international humanitarian law. If one considers the law in its present form from the perspective of the child’s best interests, the distinction between protection offered in international conflict and that offered in internal conflict is unjustifiable. Consequently, a set of legally binding provisions relating to the protection of children and civilians in all situations of armed conflict should be drawn up and considered. Given that any amendments to current humanitarian law will require ratification by States before they are binding, it is therefore the position of this paper that customary international law in the area of armed conflict, and specifically non-international armed conflict, be explicated and reaffirmed by the international community.

The paper also recommend the establishment of a permanent international court which should be vested with jurisdiction to deal with all forms of breaches of international humanitarian law in both international and non-international conflicts, particularly breaches concerning the rights of children. Because of the imprecise nature of the language used in Article 38 regarding state responsibility, it is submitted that the international community should take an opportunity to state clearly that the Convention on the Rights of the Child continues to apply to all children within a State’s jurisdiction at all times and in all circumstances. It should also be made clear that no derogations are permitted other than those stated in the Convention itself. The international community should also re-examine Article 38(4) and declare what is expected of States, if possible to also reconsider the use of the word ‘feasible’ with a view to an amendment with a stronger and more precise term. Finally it is important to put in place a machinery to allow non-state entities in de facto control of territory to declare their intention of being bound by the United Nations Convention on the Rights of the Child and a machinery to examine the extent of a non-state entity’s compliance with the Convention in the same way as that of a State Party should be established.

6. Conclusion
In international law today, the philosophy of humanitarian law is not that of children’s rights, nor was it ever intended to be so. As was noted in the course of this paper, it was a compromise between humanitarian needs and military compromise. Despite the provisions of Article 3 of the United Nations Convention on the Rights of the Child which requires that in all actions concerning children, whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’, this guiding principle of ‘best interests’ of the child does not find a place in humanitarian law during armed conflict. Article 38 that specifically provides for duties of state actors towards children during armed conflict did not use a mandatory language but rather ‘urges States Parties to take all feasible measures to ensure protection and care of children who are affected by an armed conflict’ meaning that when it is not feasible, the state parties should simple ignore the provisions of the Convention. It is thus submitted that the protection offered children under the Convention is more of rhetoric than achievable reality. The level of sufferings and grave breaches of human rights been suffered by children in armed conflict supports the call for a review of Article 38 of the Convention and for the international community to articulate a comprehensive legal machinery for the protection of children irrespective of the circumstance, and to establish an international mechanism for responsibility of both state and non-state actors for violation of international humanitarian laws and Convention on the Right of the Child. It is by so doing that the protection of Children during armed conflict will become a reality.