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UKRAINE SETTLEMENT OPTIONS:

Children

By Diane Marie Amann

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Map of Ukraine on digital screen. Credit: Getty Images.

Ukraine Settlement Options Paper: Children

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Table of Contents

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I. Introduction

In the months since Russia's 24 February 2022 invasion of Ukraine, discourse on settling the war has tended to dwell on grand strategy. At the centre, of course, is the disposition of territorial claims that encompass the 2014 takeover of Crimea as well as recent seizures of land in eastern Ukraine. In discussions of a potential settlement much also has been said about ensuring Ukraine's independence and bolstering its security, about prosecuting perpetrators of war crimes and harnessing weapons of mass destruction. Much less has been said about protecting and redressing vulnerable populations,[1] however, and very little at all about children. That is unfortunate. At various times and in various contexts, armed conflict renders every individual vulnerable.[2] What is more, failure to repair wrongs done to human beings amid conflict may sap a post-conflict nation's life blood and even nurture post-conflict insurgency. These concerns most surely apply to one group of humans, upon whom war's havoc wreaks disproportionate harms: the subject of this settlement-options paper, children.

Grim experience demonstrates that in times of armed conflict persons who have not yet reached their eighteenth birthday will be killed, or maimed, by weapons ranging from machine guns to cluster munitions – and, in a 20th-century onslaught not since repeated, by nuclear arms. Children of all genders will be subjected to sexual and gender-based violence. They will lose their loved ones and be forced to flee their communities and ways of life, thus deprived of medical care, shelter, even food. And they will be recruited into armed service or used to participate in hostilities – perhaps even compelled to take part in the crimes of war. Although adults too will face ordeals like these, conflict imposes greater burdens upon children: inevitably younger and often more vulnerable than an adult, the child is destined to bear war's memories, war's traumas, for more years, and so more likely to pass them on to future generations.

Recognition of this reality may be found in several 21st-century projects that examine the lives of children in armed conflict by synthesising international child law[3] – not only the near-universally ratified 1989 Convention on the Rights of the Child, its 2000 Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and

[1] By way of an exception, Ukrainian President Ukrainian President Volodymyr Zelensky included 'the return of more than 5 million refugees' in his early-May list of terms to be discussed in any peace settlement. Liz Sly, Karoun Demirjian, Timothy Bella and Ellen Francis, 'Ukraine lays out peace-talk demands as the West braces for escalation', *Washington Post*, 6 May 2022, https://www.washingtonpost.com/national-security/2022/05/06/zelensky-demands-ukraine-biden-funding.

[2] See Diane Marie Amann, 'The Post-Postcolonial Woman or Child', (2014) 30 *American University International Law Review* 41, at 52 and n.49 (discussing, with citations to writings by Professors Fionnuala Ní Aoláin and Martha Albertson Fineman, theorisation of vulnerability that 'refocuses analysis away from a singular identity as "woman" or "child," and toward the varied ways that all persons, on account of some traits but not others, at some periods in their lives but not others, may be vulnerable', and adding that 'the making and implementation of law' should be directed to 'those moments of vulnerability') [hereinafter Amann, 'Post-Postcolonial'].

[3] Use of this term relies on the foundation of a text, now in its fourth edition, which encompasses not only comprehensive child rights treaties, but also national, regional, and international instruments and institutions concerned with adoption, abduction, armed conflict, criminal accountability, indigeneity, labour, sexual exploitation, and digital technology. Rajnaara C. Akhtar and Conrad Nyamutata, *International Child Law*, London and New York, Routledge, 4th ed., 2020.

child pornography, and its 2011 Optional Protocol on a communications procedure,[4] but also many other international legal frameworks on child rights, human rights, humanitarian law, criminal law, refugee law, and transitional justice. The projects' syntheses have influenced the work of bodies ranging from the United Nations Secretariat to the investigating mechanism on Syria to the International Criminal Court Office of the Prosecutor.

These international child law syntheses have had far less influence, however, on peace settlements. This paper seeks to change that dynamic, with the aims both that provisions relating to children will form part of any settlement of the Ukraine-Russia conflict and that children will have opportunities to take part in settlement processes. The paper first will show that, in this as in other wars, children have endured particular harms deserving particularised attention. Next, recognising that international law positions taken during conflict may guide eventual peace agreements,[5] the paper will sketch recent syntheses of relevant international child law and then apply them to conflict resolution. The paper will conclude by proposing options for peace settlement processes and provisions that give due consideration to children. Not least among these will be proposals that children play a role, and that the parties a peace agreement commit to adhere to obligations contained in numerous international instruments related to children and armed conflict.

II. Children and the Ukraine-Russia Conflict

As the Ukraine-Russia conflict entered its third month, one news outlet reprinted an 8-year-old's drawings of the protracted assault on a port city whilst another wrote of an 8-year-old in a village 400 km to the north who 'spends much of his time drawing at a little table, dimly illuminated from above by a tiny LED light, in the corner of the otherwise almost completely dark 40-by-five-metre basement that he shares with 23 others including his mum, aunt and grandmother'.[6] Such accounts underscored society's shame respecting the wartime suffering of

[4] Convention on the Rights of the Child, 20 November 1989 (entered into force 2 September 1990, 196 parties including Russia and Ukraine, with the United States the only UN member that is not a state party), 1577 UNTS 3, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child [hereinafter Convention on the Rights of the Child]; Optional Protocol on the involvement of children in armed conflict, 25 May 2000 (entered into force 12 February 2002, 172 parties including Russia and Ukraine), 2173 UNTS 222, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children [hereinafter Children in Armed Conflict Protocol];
Optional Protocol on the sale of children, child prostitution and child pornography, 25 May 2000 (entered into force 18 January 2002, 178 parties including Russia and Ukraine), 2171 UNTS 227, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child; Optional Protocol on a communications procedure, adopted GA Res 66/138, 19 December 2011 (entered into force 14 April 2014, 48 parties, including Ukraine but not Russia), https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications. Unless otherwise indicated, ratification information in this paper is drawn from UN Treaty Collection, https://treaties.un.org/.

[5] See Christine Bell, *Peace Agreements and Human Rights*, Oxford, Oxford University Press, 2003, discussed infra text accompanying notes 37-39.

[6] 'The Mariupol Siege, Through a Child's Eyes', *Wall Street Journal*, 21 May 2022, https://www.wsj.com/articles/the-mariupol-siege-through-a-childs-eyes-11653139075; Daniel Boffey, 'Drawing monsters in the basement: last child in Ukrainian village in ruin', *Guardian*, 18 May 2022,

children. But they also served to remind that the infliction of such suffering may be intentional, a fact likewise reflected in reports that Ukrainian children had been used as human shields and that schools where children sought shelter had been targeted for bombings.[7]

Indeed, by the end of the war's first few months children reportedly had sustained a panoply of harms. Hundreds of them had been killed, lost arms and legs, or otherwise been wounded,[8] often by cluster bombs,[9] landmines,[10] and other weapons meant for indiscriminate attacks.[11] At moments in the conflict, even the spectre of nuclear attack loomed.[12] Children had

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https://www.theguardian.com/world/2022/may/17/drawing-monsters-in-the-basement-last-child-in-ukrainian-village-in-ruin [hereinafter Boffey, 'Drawing'].

[7] Daniel Boffey, 'Ukrainian children used as "human shields" near Kyiv, say witness reports', *Guardian*, 2 April 2022, https://www.theguardian.com/world/2022/apr/02/ukrainian-children-used-as-human-shields-near-kyiv-say-witness-reports; Barbara Woodward, 'Addressing the impact of Russia's war on Ukrainian children: UK at the UN Security Council', *GOV.UK*, 12 May 2022 (asserting, in speech by British Ambassador to the United Nations at UN Security Council meeting on the conflict, that '[s]chools and nurseries have been targeted across Ukraine, and, as with the tragic bombing of the Mariupol theatre, children sheltering have been mercilessly targeted'), https://www.gov.uk/government/speeches/addressing-the-impact-of-russias-war-on-ukrainian-children-uk-at-the-un-security-council.

[8] Martin Belam and Samantha Lock, 'Lviv commemorates 243 dead children in Ukraine war with school buses memorial', *Guardian*, 2 June 2022 (reporting Ukraine president's statement that 'Ukraine's emergency services had counted 243 children as killed, 446 wounded and 139 missing' since the February invasion), https://www.theguardian.com/world/2022/jun/02/lviv-commemorates-243-dead-children-in-ukraine-war-with-school-buses-memorial; Claire Parker and Bryan Pietsch, 'Nearly two-thirds of Ukrainian children displaced by war, U.N. says', *Washington Post*, 13 April 2022 (quoting Manuel Fontaine, UNICEF's emergency programmes director, who said he had been told during a visit to southeast Ukraine that doctors at one hospital had 'treated 22 children who had lost limbs because of the violence'), https://www.washingtonpost.com/world/2022/04/12/unicef-children-displaced-ukraine; Woodward, supra note 7 (stating that '[c]hildren have been killed and maimed' and elaborating that a report from the UN Office of the High Commissioner 'suggests that at least 238 children have been killed, and 347 injured – although the true toll is likely to be far higher').

[9] Laurie Churchman, 'Ukraine war: Putin accused of using "cluster bombs" that killed child and two adults hiding in pre-school', *Independent*, 28 February 2022, https://www.independent.co.uk/news/world/ukraine-putin-cluster-bombs-child-civilians-preschool-b2025044.html; Human Rights Watch, 'Ukraine: Cluster Munitions Repeatedly Used on Mykolaiv', 17 March 2022, https://www.hrw.org/news/2022/03/17/ukraine-cluster-munitions-repeatedly-used-mykolaiv; Lorenzo Tondo and Isobel Koshiw, 'Ukraine destruction: how the Guarden documented Russia's use of illegal weapons', *Guardian*, 24 May 2022 (reporting on use of cluster bombs, fléchettes, and an '[u]nguided, air-dropped bomb with a high-explosive warhead'), https://www.theguardian.com/world/2022/may/24/ukraine-destruction-how-the-guardian-documented-russia-use-of-weapons.

[10] Anti-Personnel Mine Ban Convention, 'President of the Convention that bans landmines calls for immediate cease of use of this insidious weapon in Ukraine', 5 April 2022 (citing Human Rights Watch, 'Ukraine: Russia Uses Banned Antipersonnel Landmines', 29 March 2022, https://www.hrw.org/news/2022/03/29/ukraine-russia-uses-banned-antipersonnel-landmines), https://new.apminebanconvention.org/en/newsroom/article/article/president-of-the-convention-that-bans-landmines-calls-for-immediate-cease-of-use-of-this-insidious-w. This weapon posed danger even before the 2022 invasion, as Russia had placed mines during its 2014 conflict with Ukraine but had not removed them upon leaving mined territory. See UNICEF, '220,000 children threatened by mines and other explosive weapons in eastern Ukraine', 21 December 2017, https://www.unicef.org/eca/press-releases/220000-children-threatened-mines-and-other-explosive-weapons-eastern-ukraine.

[11] On the harm such armaments do to children, see James Denselow, Keyan Salarkia, and Jess Edwards, 'Blast Injuries: The impact of explosive weapons on children in conflict', *Save the Children*, 2019, https://resourcecentre.savethechildren.net/pdf/ch1325872_2_0.pdf.

[12] Russia's campaign in Ukraine stirred debate on whether there was a weakening of the norm against using nuclear weapons which had held since the United States dropped two atomic bombs in 1945, and so brought about Japan's

been subjected to sexual and gender-based violence.[13] They had lost thousands of loved ones, civilians[14] and combatants[15] alike. More than half of Ukraine's children – 4.5 million or more – were said to have fled their communities, crossing national borders as refugees, or enduring displacement within Ukraine,[16] or suffering forced deportation to Russia.[17] Children were

surrender in World War II. See David E. Sanger and William J. Broad, 'Putin's Threats Highlight the Dangers of a New, Riskier Nuclear Era', *New York Times*, 1 June 2022, https://www.nytimes.com/2022/06/01/us/politics/nuclear-arms-treaties.html; 'Russia's invasion of Ukraine has eroded the nuclear taboo', *Economist*, 2 June 2022/updated 14 June 2022), https://www.economist.com/briefing/2022/06/02/russias-invasion-of-ukraine-has-eroded-the-nuclear-taboo; 'Russia won't use tactical nuclear weapons in Ukraine, says ambassador to UK', *BBC*, 29 May 2022 (quoting interview in which Ambassador Andrei Kelin told a BBC reporter 'that according to Russian military rules, such weapons are not used in conflicts like this'), https://www.bbc.co.uk/news/world-europe-61618902.

[13] Beth Van Schaack, 'War Crimes and Accountability in Ukraine', 15 June 2022 (mentioning, in briefing at Washington, D.C., Foreign Press Center by U.S. Ambassador-at-Large for Global Criminal Justice, that investigators have 'heard horrific accounts of sexual violence against women and girls' during the conflict), https://www.state.gov/briefings-foreign-press-centers/war-crimes-and-accountability-in-ukraine; Woodward, supra note 7 (stating, in speech to UN Security Council by British ambassador, that '[t]here are credible allegations of sexual violence against children by Russian forces').

[14] In mid-May, Matilda Bogner, head of the UN Human Rights Monitoring Mission, told news reporters that her unit had 'corroborated 7,061 civilian casualties, with 3,381 killed and 3,680 injured across the country'; she added, however, that '[t]he actual figures are higher and we are working to corroborate every single incident'. 'Ukraine civilian deaths "thousands higher" than official toll: UN', *Al Jazeera*, 10 May 2022, https://www.aljazeera.com/news/2022/5/10/russia-ukraine-war-civilian-death-toll-un.

[15] In late May, Ukraine's president estimated losses as a result of fighting in the eastern part of the country at "'60 to 100 soldiers per day, killed in action, and around 500 people wounded in action'". Agence France Presse, 'Zelensky: Ukraine Losing Up To 100 Soldiers A Day', *Barron's*, 1 June 2022, https://www.barrons.com/news/zelensky-ukraine-losing-up-to-100-soldiers-a-day-01654113907. A month earlier, American intelligence agencies reportedly estimated that by that time '5,500 to 11,000 Ukrainian troops had been killed, and more than 18,000 wounded'. Jane Arraf, 'Deaths of foreign fighters draw renewed attention to the military volunteers in Ukraine', *New York Times*, 1 May 2022, https://www.nytimes.com/2022/05/01/world/europe/foreign-legion-volunteers.html.

[16] On refugees and internally displaced children, see UNICEF, 'Two million refugee children flee war in Ukraine in search of safety across borders', 30 March 2022 (reporting just one month after the invasion that 60 percent of Ukrainian children had been forced from their homes, with 2 million children having fled to neighbouring countries like Poland, Romania, Moldova, Hungary, Slovakia, and the Czech Republic, and that another 2.5 million children were displaced within Ukraine), https://www.unicef.org/press-releases/two-million-refugee-children-flee-war-ukraine-search-safety-across-borders [hereinafter UNICEF, 'Two million']; UNICEF, 'More than half of Ukraine's children displaced after one month of war', 24 March 2022 (estimating Ukraine's child population at 7.5 million), https://www.unicef.org/press-releases/more-half-ukraines-children-displaced-after-one-month-war. The country's total population in 2020 was about 44 million. See World Bank, 'Population, total – Ukraine', https://data.worldbank.org/indicator/SP.POP.TOTL?locations=UA.

[17] 'Ukraine accuses Russia of forcibly deporting over 210,000 children', *Reuters*, 13 May 2022 (reporting assertion by Lyudmyla Denisova, Ukraine's human rights ombudsman, that 'Russia had forcibly deported' from Ukraine to Russia 'more than 210,000 children' and '1.2 million Ukrainians' in total), https://www.reuters.com/world/europe/ukraine-accuses-russia-forcibly-deporting-over-210000-children-2022-05-13. One article quoted an early June speech in which Ukraine's president repeated the claim that 200,000 children had been taken, contending:

> '"The purpose of this criminal policy is not just to steal people but to make those who are deported forget about Ukraine and unable to return. Ukraine cannot be conquered, our people will not surrender and our children will not become the property of the occupiers."'

Belam and Lock, supra note 8. See also Anthony Deutsch and Stephanie van den Berg, 'Exclusive: Ukraine probes deportation of children to Russia as possible genocide', *Reuters*, 3 June 2022 (reporting that Ukraine Prosecutor General Iryna Venediktova said she was pursuing '"more than 20 cases about forcible transfer of people,"' including '"forcible transfer of children"' which may constitute an act of genocide),

compelled to flee their ways of life, to abandon their education.[18] They were denied medical care, even attacked, as in the bombing of a maternity hospital that claimed the life of a just-delivered infant and its mother.[19] Access to humanitarian aid was blocked.[20] Children were deprived of shelter[21] and even – in a crisis that also menaced many other countries – of food.[22] Although early allegations that children had been used in hostilities were debunked as disinformation,[23] it must be said that the longer the conflict drags on, the more likely it will

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https://www.reuters.com/world/europe/exclusive-ukraine-investigates-deportation-children-russia-possible-genocide-2022-06-03.

[18] Omar Abdi, '"Children in Ukraine need an end to this war – their futures hang in the balance'", *UNICEF*, 12 May 2022 (stating, in mid-May remarks delivered by Deputy Executive Director of the UN's children's agency at a Security Council meeting, that '[h]undreds of schools across the country are reported to have been hit by heavy artillery, airstrikes and other explosive weapons in populated areas, while other schools are being used as information centres, shelters, supply hubs, or for military purposes – with long term impact on children's return to education'), https://www.unicef.org/press-releases/children-ukraine-need-end-war-their-futures-hang-balance; Churchman, supra note 9 (quoting Agnès Callamard, Secretary-General of the nongovernmental organisation Amnesty International, who criticised a fatal attack in northeastern Ukraine by stating that '"[t]here is no possible justification for dropping cluster munitions in populated areas, let alone near a school"'); Julia Horowitz, 'Exclusive: A crypto-based dossier could help prove Russia committed war crimes', *CNN*, 10 June 2022 (reporting on communication to ICC alleging attacks on schools), https://edition.cnn.com/2022/06/10/tech/ukraine-war-crimes-blockchain/index.html; Parker and Pietsch, supra note 8 (quoting UNICEF's emergency programmes director, who said in mid-April that '"[h]undreds of schools and educational facilities have been attacked or used for military purposes"'); 'Statement by the Special Representative of the Secretary-General for Children and Armed Conflict', *Reliefweb*, 13 May 2022 (stating, in press release issued by office led by Special Representative Virginia Gamba, that '[i]n Ukraine, the United Nations has reported 155 attacks on school facilities and infrastructures occurring in government-controlled territory, non-government-controlled territory, and contested regions since February 24, 2022'), https://reliefweb.int/report/world/even-during-conflict-schools-and-hospitals-must-remain-safe-havens [hereinafter SRSG Statement]. Before the war broke out, Ukraine registered a 100 percent literacy rate and very high rates of participation in primary and secondary education. See UNESCO Institute for Statistics, 'Ukraine', http://uis.unesco.org/country/UA.

[19] Katie Polglase, Gianluca Mezzofiore and Livvy Doherty, 'Anatomy of the Mariupol hospital attack', *CNN*, 17 March 2022 (reporting that at least fourteen medical facilities had been attacked in the first weeks after the invasion), https://www.cnn.com/interactive/2022/03/europe/mariupol-maternity-hospital-attack/index.html; Mstyslav Chernov, Associated Press, 'Pregnant Woman, Baby Die After Russian Bombing of Ukraine Maternity Hospital', *Time*, 14 March 2022, https://time.com/6157362/ukraine-maternity-hospital-bombing-pregnant-woman-baby-die.

[20] Daniel Boffey and Lorenzo Tondo, 'Russia accused of shelling Mariupol humanitarian corridor', *Guardian*, 26 April 2022, https://www.theguardian.com/world/2022/apr/26/russia-accused-of-shelling-mariupol-humanitarian-corridor.

[21] Boffey, 'Drawing', supra note 6.

[22] Before the invasion, UN Secretary-General Guterres said, Ukraine fed its own people and 'was feeding the world with abundant supplies of food'. Antonio Guterres, 'Secretary-General's remarks to the Security Council – on Conflict and Food Security', 19 May 2022, https://www.un.org/sg/en/content/sg/statement/2022-05-19/secretary-generals-remarks-the-security-council-conflict-and-food-security-bilingual-delivered-scroll-down-for-all-english. But by April the UN 'World Food Programme and its partners distributed food and cash to more than 3 million Ukrainians', he said – and by May, given that 'Russia's invasion of its neighbour has effectively ended its food exports', the conflict was 'adding a frightening new dimension to this picture of global hunger'. Ibid. See also Kylie Atwood, Haley Burton, and Devan Cole, 'Blinken announces $215 million in new emergency food assistance for Ukraine', *CNN*, 18 May 2022, https://www.cnn.com/2022/05/18/politics/ukraine-food-assistance-blinken/index.html.

[23] 'Fact Check – Screenshot purporting to show CNN tweet claiming that child soldiers are fighting in eastern Ukraine is digitally altered', *Reuters*, 15 April 2022, https://www.reuters.com/article/factcheck-alteredtweet-cnn/fact-check-screenshot-purporting-to-show-cnn-tweet-claiming-that-child-soldiers-are-fighting-in-eastern-

become that one or more parties will recruit children into armed service or use them as participants in hostilities.[24] The risk that children will be trafficked has already been acknowledged.[25] Besides age, attributes like ethnicity, LGBTI identity, or disability generate additional risks.[26] Many harms have affected children disproportionately, moreover: by way of example, the invasion put an abrupt end to Ukrainian children's school year,[27] and more than half of all the war's refugees were said to be children.[28]

ukraine-is-digitally-altered-idUSL2N2WD0I1.

[24] In the years of conflict preceding the 2022 invasion, the use of children by separatist groups was documented. E.g., U.S. Department of Labor Bureau of International Labor Affairs, 'Findings on the Worst Forms of Child Labor: Ukraine', (2017), p. 2 (stating that 'children continued to take part in active combat as part of the Russia-led forces', and that '[r]ecruitment of children by militant groups took place primarily in Russia-controlled territory and areas where the government was unable to enforce national prohibitions against the use of children in armed conflict'), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2017/ukraine.pdf.

It is likewise worth noting that many combatants, even if not under eighteen, are quite young; for example, the first Russian soldier convicted in a 2022 war crimes trial in Ukraine was a gaunt-looking male, 21 years of age. See Bryan Pietsch, Annabelle Timsit, Michael Birnbaum, and Sammy Westfall, 'Russian soldier gets life in prison in Ukraine's first war crimes trial', *Washington Post*, 23 May 2022, https://www.washingtonpost.com/world/2022/05/23/ukraine-russia-soldier-war-crimes-verdict.

[25] Josh Meyer, 'Putin's war in Ukraine is driving a hidden horror: Sex trafficking of women and children', *USA Today*, 20 May 2022, https://www.usatoday.com/story/news/politics/2022/05/20/putins-ukraine-war-sex-trafficking/9733542002; Woodward, supra note 7 (stating that 'as others have said, mass displacement has left children exposed to human trafficking and sexual exploitation', and adding further that '[r]eports of forced deportations continue, with over 700,000 people, including many mothers and children, having been moved to Russia').

[26] See David de Groot and Micaela Del Monte, 'Russia's war on Ukraine: The situation of LGBTI people', *European Parliamentary Research Service*, 2 May 2022, https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729412/EPRS_ATA(2022)729412_EN.pdf; UN Office of the High Commissioner for Human Rights, 'Ukraine: UN expert says war against multi-ethnic population must stop, calls for protection of all minorities', 16 March 2022 (highlighting, in statement by Fernand de Varennes, UN Special Rapporteur on minority issues, the additional hardships confronting minorities, 'including people of African, Asian, Middle Eastern descent and Roma', and urging that all persons 'regardless of the colour of their skin, or their ethnicity or religion, must all be dealt with without discrimination along their evacuation route out of Ukraine'), https://www.ohchr.org/en/press-releases/2022/03/ukraine-un-expert-says-war-against-multi-ethnic-population-must-stop-calls; UN Office of the High Commissioner for Human Rights, 'Ukraine: 2.7 million people with disabilities at risk, UN committee warns', 14 April 2022 (detailing additional risks facing persons with disabilities and their families, in statement by UN Committee on the Rights of Persons with Disabilities, and urging in particular that '[c]hildren with disabilities should be provided with individualised support to ensure they are not separated from their families and are protected from institutionalisation and other harmful practices, such as trafficking'), https://www.ohchr.org/en/statements/2022/04/ukraine-27-million-people-disabilities-risk-un-committee-warns. Recognising that the attributes or identities described in the text may go by additional names or acronyms, this paper follows the sources cited in this note in using 'LGBTI' and 'disability'.

[27] Abdi, supra note 18 (stating, in speech of UNICEF Deputy Executive Director at Security Council meeting on Ukraine, that 'the school year came to a standstill when the war broke out').

[28] UNICEF, 'Two million', supra note 16 (reporting in March that '[c]hildren make up half of all refugees from the war in Ukraine, according to UNICEF and UNHCR', the latter the UN's refugee agency); see Parker and Pietsch, supra note 8 (writing in April that UNICEF's emergency programmes director said that over 90 percent of Ukrainian refugees were 'women and children').

III. Syntheses of International Legal Frameworks on Children and Armed Conflict

Despite evidence of the Ukraine-Russia conflict's severe, disproportionate, and doubtless long-lasting consequences on children, to date public discussions of settlement seldom have included provisions for redress to children. That may reflect a tradition by which peace agreements tended to focus more on so-called hard security issues such as land and power and far less on violations of human rights. Over time human rights terms became more common.[29] Even so, early references to children, if any, dwelt on child soldiering – although that is just one out of many experiences that children may confront in time of war. An example is the 1999 Lomé Agreement designed to end a civil war in which children's experiences had garnered significant attention.[30] The agreement's broad preambular reference to 'the imperative that the children of Sierra Leone, especially those affected by armed conflict, in view of their vulnerability, are entitled to special care and the protection of their inherent right to life, survival and development' gave way to just two operative provisions, one on education and health and another on child soldiers.[31]

In the decades since the Lomé Agreement, multiple projects have examined the lives of children in armed conflict through syntheses of international legal frameworks like child rights, human rights, humanitarian law, criminal justice, refugee law, and transitional justice.[32] Such projects include the United Nations' children and armed conflict agenda which monitors and reports on serious violations,[33] efforts by the International Criminal Court Office of the

[29] A mid-1990s article took note of the emergence of instances in 'which there has been explicit affirmation of the central place of human rights in shaping the content of' agreements arising out of 'peace negotiations' – and then proceeded to criticise roles played by human rights advocates in some of these instances. Anonymous, 'Human Rights in Peace Negotiations', (1996) 18 *Human Rights Quarterly* 249, at 249. The article spurred prompt retort; see Felice D. Gaer, 'UN-Anonymous: Reflections on Human Rights in Peace Negotiations', (1997) 19 *Human Rights Quarterly* 1.

[30] See, e.g., Diane Marie Amann, 'Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone', (2001) 29 *Pepperdine Law Review* 167; Cécile Aptel, 'Unpunished Crimes: The Special Court for Sierra Leone and Children', in Charles Cherner Jalloh, ed., *The Sierra Leone Special Court and Its Legacy*, New York, Cambridge University Press, 2014, pp. 340-60.

[31] Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone – Lomé, preamble and arts. XXX-XXXI, 7 July 1999, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/SL_990707_LomePeaceAgreement.pdf [hereinafter Lomé Agreement], discussed infra notes 61, 71, 81-82, 86, 97-98, and accompanying text. Standing in contrast is the expansive treatment of children in a far more recent pact, which is explored later in this paper. *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, Bogotá, Colombia, 24 November 2016, available at https://peacemaker.un.org/node/2924 [hereinafter 2016 *Acuerdo Final*], discussed infra notes 85, 105, 108-13, and accompanying text.

[32] For further discussion of this synthesis, see, e.g., Diane Marie Amann, 'The Policy on Children of the ICC Office of the Prosecutor: Toward greater accountability for crimes against and affecting children', (2019) 101 *International Review of the Red Cross* 537 [hereinafter Amann, 'Policy on Children'].

[33] See UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation', October 2009/updated November 2013, https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf [hereinafter 'Six Grave Violations']; UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UN Department of Peacekeeping

Prosecutor including its Policy on Children,[34] and other initiatives.[35] Today, their analyses frame the work of these international organisations and others; the mechanism established to investigate Syria war crimes, for instance, is mandated both to consider children and to appoint personnel 'with expertise in ... children's rights and crimes against children'.[36]

Operations, and United Nations Children's Fund, 'Guidelines – Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict', June 2014, https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM_Guidelines_-_5_June_20141.pdf [hereinafter 'MRM Guidelines']. See text accompanying notes 50, 72-75 (describing agenda).

[34] See International Criminal Court Office of the Prosecutor, 'Policy on Children', November 2016, available at https://www.icc-cpi.int/Pages/item.aspx?name=161115-otp-policy-children [hereinafter 'ICC OTP Policy']. The 2016 Policy, on which this author worked while she served as ICC Prosecutor Fatou Bensouda's Special Adviser on children, cites multiple sources of law; at its core nevertheless is the Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002, 123 parties not including Russia or Ukraine), available, as amended, at https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf [hereinafter Rome Statute]. On Ukraine's acceptance of ICC jurisdiction, notwithstanding its nonparty status, for purposes of crimes committee since 2013, see infra text accompanying note 83.

Work by the ICC Office of the Prosecutor related to children and conflict extends well beyond the 2016 Policy. See Véronique Aubert, 'Ukraine Symposium – War Crimes Against Children', *Articles of War*, 8 April 2022 (detailing current work, in essay by the Special Adviser to the current ICC Prosecutor Karim Khan QC, who assumed that leadership post in mid-2021), https://lieber.westpoint.edu/war-crimes-against-children.

[35] Such initiatives include coalitions that produced soft law instruments like the 2007 Paris Principles on Children Associated with Armed Forces or Armed Groups, discussed at France Diplomacy, 'What Are the Paris Principles and Paris Commitments?', https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/children-s-rights/protecting-children-from-war-conference-21-february-2017/article/what-are-the-paris-principles-and-paris-commitments; the 2015 Safe Schools Declaration, https://protectingeducation.org/wp-content/uploads/documents/documents_safe_schools_declaration-final.pdf [hereinafter Safe Schools Declaration], and the 2017 Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes-pledge-engageons.aspx?lang=eng. See infra notes 41-42, 96 and accompanying text (further discussing both). Among other projects bearing note are one by the Save the Children and the Oxford Programme on International Peace and Security at the Blavatnik School of Government's Institute for Ethics, Law, and Armed Conflict – *Advancing Justice for Children: Innovations to strengthen accountability for violations and crimes affecting children in conflict*, March 2021, https://resourcecentre.savethechildren.net/pdf/advancing_justice_for_children_0.pdf – and another by the Inquiry into Protecting Children in Armed Conflict chaired by Gordon Brown, UN Envoy and former UK Prime Minister – Shaheed Fatima QC, *Protecting Children in Armed Conflict*, Hart, Oxford, 2018.

Analysis of a state's international legal obligations contributed to another project on which this author worked – one centred on accountability rather than children, and designed to assist persons who might have a role in then-hoped-for negotiations for settlement of the conflict in the Darfur region of western Sudan. See 'Toward Peace with Justice in Darfur: A Framework for Accountability', (2011) 18 *University of California, Davis, Journal of International Law and Policy* 1, at 22-31, 112-13 (reprinting project jointly produced by the California International Law Center at the University of California-Davis and the Robert F. Kennedy Center for Human Rights, with Kathleen A. Doty as principal author).

[36] UN General Assembly Report of the Secretary-General on Implementation of the resolution establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (19 January 2017), UN Doc. A/71/755, p. 8 ¶ 41 and p. 15 ¶ 32, available at https://iiim.un.org/who-we-are/mandate; see ibid., pp. 5 ¶ 25, 7-8 ¶ 40, p. 13 ¶¶ 19 and 21. Such language is however absent from the mandate of similar mechanisms. See infra notes 103-04 and accompanying text.

Notwithstanding that such work often focuses on *post hoc* accountability, these syntheses of international child law additionally offer a basis for *ex ante* prevention of the harms they catalogue. They also may inform peace processes given that, as Professor Christine Bell observed in her 2003 study of peace negotiations, 'the international legal positions taken during the conflict shape the central deal'.[37] Such 'shaping can be positive', as in 'minimum standards set out with which any solution must comply', or 'negative', as in 'a failure to set and/or enforce such minimum standards', Bell wrote.[38] Even when conflict is ongoing and settlement seems still far off, she continued, 'willingness and ability to enforce a human rights framework is therefore crucial'.[39] Her conclusion signals that recent projects' syntheses of international child law indeed may provide a structure for drafting terms on children in an eventual peace settlement. Some of these syntheses thus are outlined below: first, by a recitation of sources on which the projects relied; second, by a precis of what is meant by 'child' and 'child rights'; and third, by an identification of certain armed-conflict injuries to children as grave, even criminal, violations of international law.

A. International Legal Sources

The projects under review reflect distillations of norms found in a myriad of international legal sources. As would be expected in international child law analyses, a touchstone is the treaty regime comprising the 1989 Convention on the Rights of the Child, its three Optional Protocols, and the work of its Committee on the Rights of the Child.[40] Along with UN Security Council resolutions, international jurisprudence, and customary international law, other sources relevant to children and armed conflict[41] include:

- International treaties like the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; four 1949 Geneva Conventions; 1951 Convention relating to the Status of Refugees; 1966 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of all Forms of Discrimination Against Women; 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects; 1984 Convention against Torture and Other

[37] Bell, supra note 5, p. 313 (summarising findings from her studies of conflict resolution efforts in Bosnia and Herzegovina, Israel/Palestine, Northern Ireland, and South Africa).
[38] Ibid.
[39] Ibid. Although Bell's precise reference was to the 'willingness and ability' of '[t]he international community', her point likewise would extend to parties to the conflict.
[40] See ICC OTP Policy, supra note 34, p. 7 ¶ 3 and *passim*; see generally Six Grave Violations, supra note 33. For citations and additional information relating to the 1989 Convention and its three protocols, see supra note 4; on the treaty body, see UN Office of the High Commissioner for Human Rights, 'Committee on the Rights of the Child', https://www.ohchr.org/en/treaty-bodies/crc.
[41] For citations to these sources, see, e.g., ICC OTP Policy, supra note 34, pp. 7 ¶ 3 nn.8-9, 10 ¶ 11 n.19, and *passim*; Six Grave Violations, supra note 33, pp. 27-29. See Government of Canada, 'The Vancouver Principles' (labeling several of these sources 'the existing international child protection framework'), https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes.aspx?lang=eng.

Cruel, Inhuman or Degrading Treatment or Punishment; 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; 1998 Rome Statute of the International Criminal Court; 1999 International Labour Organisation Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; 2006 Convention on the Rights of Persons with Disabilities; 2006 International Convention for the Protection of All Persons from Enforced Disappearance; 2008 Convention on Cluster Munitions; and relevant protocols.

- Regional treaties like the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms; 1969 American Convention on Human Rights; 1981 African Charter on Human and Peoples' Rights; 1990 African Charter on the Rights and Welfare of the Child; 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; and relevant protocols.

- Soft law instruments like the 1948 Universal Declaration of Human Rights; 2005 UN Guiding Principles on Internal Displacement; 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation; 2007 Paris Principles on Children Associated with Armed Forces or Armed Groups; 2008 EU Guidelines on Children and Armed Conflict; 2015 Safe Schools Declaration;[42] and UNICEF's Humanitarian Principles.[43]

This paper will revisit some of these sources in its descriptions of synthesising projects and in its discussion of international law (re)commitments which could be included in a Ukraine-Russia peace settlement.[44]

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[42] To be precise, an early UN document, in stating that 'use of schools for military purposes puts children at risk of attack and hampers children's right to education', expressed support for the 'Lucens Guidelines'. Six Grave Violations, supra note 33, p. 20. These guidelines were a precursor to the 2015 Safe Schools Declaration, supra note 35. That 2015 declaration has been endorsed by endorsed by 114 states, including Ukraine but not Russia. See Norway Ministry of Foreign Affairs, 'The Safe Schools Declaration', GOVERNMENT.NO, last updated 8 March 2022, https://www.regjeringen.no/en/topics/foreign-affairs/development-cooperation/safeschools_declaration/id2460245/. For background, see Global Coalition to Protection Education from Attack, 'The Safe Schools Declaration', https://ssd.protectingeducation.org. On its significance to the instant discussion, see SRSG Statement, supra note 18 (making reference to attacks in Ukraine and 'encourag[ing] all States to endorse and implement the Safe Schools Declaration', in statement by UN Special Representative to Secretary-General on Children and Armed Conflict); see also infra text accompanying note 96.

[43] See UNICEF, 'Global Standards and Principles: Humanitarian Principles', https://www.corecommitments.unicef.org/ccc-1-3.

[44] See Appendix, infra § VI. In consideration of debate regarding nuclear-arms discussions, see supra note 12 and accompanying text, the Appendix tables illustrating that discussion add to the weapons control treaties just mentioned in the text, both the 1968 Treaty on the Non-Proliferation of Nuclear Weapons and the 2017 Treaty on the Prohibition of Nuclear Weapons. See also UK Parliament, 'Nine European parliamentary delegations publish joint statement on Ukraine', 17 June 2022 (noting that delegations' statement on Ukraine war 'reaffirms the Nuclear Non-Proliferation Treaty as the cornerstone of the nuclear disarmament and non-proliferation regime'), https://committees.parliament.uk/committee/78/foreign-affairs-committee/news/171521/nine-european-parliamentary-delegations-publish-joint-statement-on-ukraine.

B. The Child and Child Rights

Syntheses of international law on children and armed conflict typically embrace the four general principles that undergird all the rights listed in the 1989 Convention on the Rights of the Child:[45]

- non-discrimination;
- the best interests of the child;
- the right to life, survival and development; and
- the right to express one's views and have them considered.[46]

Embrace of these four principles has implications, not least with respect to the question of age.

Like the 1989 Convention, international child law syntheses generally define 'child' as any person who has not yet turned eighteen.[47] The 1989 Convention sets a lower age threshold, of fifteen, for its child-soldiering prohibitions;[48] however, its 2000 Optional Protocol on children in armed conflict, to which 172 parties including Russia and Ukraine belong, raises to eighteen the age for use in hostilities and compulsory recruitment.[49] The United Nations' children and

[45] E.g., ICC OTP Policy, supra note 34, p. 13 ¶ 22 (stating that it is 'guided' by these four principles); Office of the Special Representative to the Secretary-General for Children and Armed Conflict, *Study on the Evolution of the Special Representative to the Secretary-General for Children and Armed Conflict Mandate 1996-2021*, January 2022, p. 16 (writing that all four 'principles are at the core of the mandate'), https://childrenandarmedconflict.un.org/wp-content/uploads/2022/01/Study-on-the-evolution-of-the-Children-and-Armed-Conflict-mandate-1996-2021.pdf [hereinafter SRSG Study].

[46] ICC OTP Policy, supra note 34, p. 13 ¶ (restating in short form the four general principles set forth in Committee on the Rights of the Child, 'General Comment No. 5 on General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)', pp. 3–5 ¶ 12, UN Doc. CRC/GC/2003/5 (27 November 2003) (citing in support the Child Rights Convention, supra note 4, arts. 2, 3, 6, 12) [hereinafter Committee on the Rights of the Child General Comment No. 5]; this and all the committee's General Comments are available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11. See also African Committee of Experts on the Rights and Welfare of the Child, 'General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child', p. 9 ¶ 17, ACERWC/GC/01 (2013) (finding same four principles in the African Charter on the Rights and Welfare of the Child, arts. 3, 4, 5, 1 July 1990 (entered into force 29 November 1999), OAU Doc. CAB/LEG/24.9/49, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf [hereinafter African Child Rights Charter]), available at https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/gc_1_article_30_booklet.pdf.

[47] 1989 Convention on the Rights of the Child, supra note 4, art. 1 (stating that 'a child means every human being below the age of eighteen years unless,' in a reference understood to refer to national legislation, 'under the law applicable to the child, majority is attained earlier'), cited with approval in ICC OTP Policy, supra note 34, pp. 11-12 ¶ 16, and Six Grave Violations, supra note 33, p. 9.

[48] 1989 Convention on the Rights of the Child, supra note 4, art. 38(2)-(3). Treaties with analogous provisions include Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 77(2), 8 June 1977 (entered into force 7 December 1978, 174 parties including Ukraine, though Russia withdrew its ratification in 2019), 1125 UNTS 3, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf [hereinafter Additional Protocol I], and Rome Statute, supra note 34, arts. 8(2)(b)(xxvi), 8(2)(e)(vii).

[49] 2000 Children in Armed Conflict Protocol, supra note 4, arts. 1-2 (banning all use and compulsory recruitment by

armed conflict agenda favours those higher age limits,[50] while the 2016 Policy of the ICC Office of the Prosecutor regards the under-fifteen threshold in the 1998 Rome Statute as a jurisdictional element applicable solely to child-soldiering crimes.[51] In all other instances, including enumerations of crimes[52] and pledges to take children's experiences into account,[53] any person under eighteen is considered a child.[54]

But age alone neither defines children nor predetermines how every child is to be treated. Also pertinent are the facts that children live within larger societies and that children's capacities and vulnerabilities change according to time and context.

Even as it sets forth rights of the child, the 1989 Convention makes clear that such rights must be considered in relation to those of others.[55] Exemplary is the emphasis in its education provision not only on the child's personal development, but also on 'development of respect' for family, cultural identity, national values, international human rights, and the natural environment – all with an aim to 'preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin'.[56] The interplay of personal and societal concerns is especially salient in adolescence, as discussed in a General Comment that the UN Committee on the Rights of the Child published in 2016.[57]

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states); ibid., art. 3 (setting out conditions for states' voluntary recruitment); ibid., art. 4 (stating that under no circumstances 'should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years'). Another treaty with the higher age limit, to which both Russia and Ukraine belong, is the International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, arts. 1-3, 17 June 1999, C182 (entered into force 19 November 2000), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182; see International Labour Organisation, Ratifications of C182 – Worst Forms of Child Labour Convention, 1999 (No. 182) (listing a total of 187 parties), https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327. One regional treaty refers only to recruitment, without mention of qualifiers like 'compulsory' and 'voluntary', in setting its age limit at eighteen. African Child Rights Charter, supra note 46, arts. 2, 22; see African Union, 'List of Countries Which Have Signed, Ratified/Acceded to the African Charter on the Rights and Welfare of the Child', 28 June 2019 (listing 49 parties), https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf.

[50] Six Grave Violations, supra note 33, p. 11.

[51] ICC OTP Policy, supra note 34, p. 20 ¶ 40 and n.51.

[52] See, e.g., International Criminal Court, 'Elements of Crimes', 2011, p. 3 (stating that for purposes of 'forcibly transferring children', which may constitute an act of genocide punishable by the ICC pursuant to Rome Statute, supra note 34, art. 6(e), 'children' are persons 'under the age of 18 years'), https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf.

[53] See Rome Statute, supra note 34, arts. 36(8)(b), 42(9), 54(1)(b), 68(1).

[54] See ICC OTP Policy, supra note 34, pp. 11-12 ¶ 16.

[55] 1989 Convention on the Rights of the Child, supra note 4, arts. 2-3, 5, 7, 9-10, 13-15, 18-19, 21-24, 26-30, 40.

[56] Ibid., art. 29. See also ibid., art. 30 (stating with respect to ethnic, religious, or linguistic minorities and to indigenous groups, 'a child belonging to such a minority or who is indigenous shall not be denied the right, *in community with other members of his or her group*, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language') (emphasis added).

[57] See generally Committee on the Rights of the Child, 'General comment No. 20 (2016) on the implementation of

In a similar vein, the Policy on Children which the ICC Office of the Prosecutor issued that same year acknowledges 'children as persons with individual rights, as members of families and as constituents of multi-generational communities'.[58] These distinctions affect practice: because 'children may be impacted differently by crimes based on their sex, gender, or other status or identities',[59] the policy encourages inquiry into both

> 'the significance of attributes like age and birth, and the degree to which they may give rise to multiple forms of discrimination and social inequalities, either alone or as they intersect with other factors, like race, ability or disability; religion or belief; political or other opinion; national, ethnic or social origin; gender, sex, sexual orientation; or other status or identity ...'[60]

Also meriting careful consideration is the question of a child's capabilities. Protection is of course a facet of frameworks regarding children; to cite by way of example the International Committee of the Red Cross, in international humanitarian law '[c]hildren affected by armed conflict are entitled to special respect and protection'.[61] That said the 1989 Convention's listing of child rights does not presume that all children always are 'vulnerable' – indeed it does not use that word – but instead requires attention be paid to 'the evolving capacities of the child'.[62] Following suit is the 2016 Policy on Children in which the ICC Office of the Prosecutor states:

> 'Children, by the very fact of their youth, are frequently more vulnerable than other persons; at certain ages and in certain circumstances, they are dependent on others.

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the rights of the child during adolescence', UN Doc. CRC/C/GC/20 (6 December 2016) [hereinafter Child Rights Committee General Comment No. 20].

[58] ICC OTP Policy, supra note 34, p. 7 ¶ 3 (referring to Rome Statute, supra note 34).

[59] Ibid., p. 12 ¶18.

[60] Ibid., pp. 18-19 ¶ 37. See also ibid., pp. 15 ¶ 28, 16 ¶ 30 (delineating as part of policy's 'child-sensitive approach' a 'best interests inquiry' that considers both 'individual profile of the child' and 'the child's social and cultural context'); ibid., p. 38 ¶ 100 (indicating expert testimony to be adduced might include 'the prevalence of crimes against or affecting children' and 'the multi-generational and multi-layered impact of such crimes on children'). Notably, many of the attributes in the passage of the ICC OTP Policy quoted in the text likewise appear in specific provisions of the principal child rights treaty; not least, its non-discrimination provision, which speaks of 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. 1989 Convention on the Rights of the Child, supra note 4, art. 2(1).

[61] 'Rule 135', in Jean-Marie Henckaerts and Louise Doswald-Beck, with contributions by Carolin Alvermann, Knut Dörmann, and Baptiste Rolle, *International Committee of the Red Cross: Customary International Humanitarian Law*, Cambridge, Cambridge University Press, 2005, pp. 479-82. Cited *inter alia* in support of this rule were Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, arts. 23-24, 38, 50, 76, 89, 12 August 1949 (entered into force 21 October 1950, 196 parties including Russia and Ukraine), 75 UNTS 287, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf, and Additional Protocol I, supra note 48, arts. 70, 77. See also, e.g., text accompanying note 31 (quoting statement in preamble of 1999 Lomé Agreement, supra note 31, that children, 'in view of their vulnerability, are entitled to special care' as well as 'protection').

[62] 1989 Convention on the Rights of the Child, supra note 4, art. 5 (mandating that states parties 'provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'); ibid., art. 14(2) (requiring states parties to respect rights and duties of parents or guardians 'to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child').

> Notwithstanding any vulnerability and dependence, children possess and are continuously developing their own capacities – capacities to act, to choose and to participate in activities and decisions that affect them'.[63]

That last reference, to participation, points to an aspect of child rights sometimes lost in victim-centred discourses. Even when caught in the mire of armed conflict, not every child warrants, exclusively and at all times, the label of 'faultless passive victim', to quote Professor Mark Drumbl.[64] Rather children, like adults, are complex, rights-bearing human beings who possess measures of autonomy even as they live, interact, and coexist, or not, with others in society. The 1989 Convention therefore includes as one of its four general principles 'the right to express one's views and have them considered'.[65] Initiatives in furtherance include international organisations' consultations with children,[66] as well as some jurisdictions' lowering of the voting age.[67] A recent General Comment by the UN Committee on the Rights of the Child indicates that inclusion in decision-making is particularly urgent in the case of adolescents,[68] and the Committee's newest General Comment, on digital technologies, looks to 'realize children's participation at the local, national and international levels', to enable 'children to express their views', and 'to participate on an equal basis with adults ... so that they can be effective advocates for their rights, individually and as a group'.[69]

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[63] ICC OTP Policy, supra note 34, p. 14 ¶ 25; see ibid. (adding in sentence just after those quoted in this text that '[t]he Office will remain mindful, in all aspects of its work, of the evolving capacities of the child'). See also ibid., p. 13 ¶ 22 (stating that the 'child-sensitive approach' taken in the policy 'appreciates the child as an individual person and recognises that, in a given context, a child may be vulnerable, capable, or both'); ibid., p. 15 ¶ 27 (writing 'that children are not a homogenous group' and 'will not always have the same interests or concerns', and that '[t]he vulnerability, capacity and resilience of each child will be different'). See also SRSG Study, supra note 45, p. 91 (anticipating efforts to 'support national and regional entities engaged in the protection of conflict-affected children in developing or enhancing their capacities, including in the framework of mediation and prevention efforts').

[64] Mark A. Drumbl, *Reimagining Child Soldiers in International Law and Policy*, Oxford and New York, Oxford University Press, 2012, p. 9.

[65] Committee on the Rights of the Child General Comment No. 5, supra note 46, pp. 3–5 ¶ 12. Central to this right is the 1989 Convention on the Rights of the Child, supra note 4, art. 12(1), which provides: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'. For additional relevant provisions, see ibid., arts. 9(2), 23(1), 31.

[66] For references to prior consultations with children as well as anticipated child participation, see Committee on the Rights of the Child, 'Child participation in the work of the Committee', https://www.ohchr.org/en/treaty-bodies/crc/child-participation-work-committee; ICC OTP Policy, supra note 34, pp. 10-11 ¶ 13 and n.22, 14-15 ¶¶ 26-27, 40 ¶ 106; SRSG Study, supra note 45, pp. 4, 11, 86, 91.

[67] Electoral Reform Society, 'Votes at 16' (writing that voting age for at least some elections is as low as sixteen in Austria, Brazil, Isle of Man, Germany, Guernsey, Jersey, Malta, Norway, Scotland, and Wales), https://www.electoral-reform.org.uk/campaigns/votes-at-16; see Christine Huebner, 'How Young People in Scotland Experience the Right to Vote at 16: Evidence on "Votes-at-16" in Scotland from Qualitative Work with Young People', (2021) 74 *Parliamentary Affairs* 563.

[68] Child Rights Committee General Comment No. 20, supra note 57, p. 6¶ 17 (citing 'opportunities for participation and decision-making' among '[f]actors known to promote the resilience and healthy development of adolescents').

[69] Committee on the Rights of the Child, 'General comment No. 25 (2021) on children's rights in relation to the digital environment', p. 3 ¶ 16, UN Doc. CRC/C/GC/25 (2 March 2021).

These developments counsel that any Ukraine-Russia peace process include a participatory role for children in addition to paying attention to what harms children endured during the conflict. Before addressing that role further,[70] this paper now turns to international law's evaluation of children's wartime experiences.

C. Conflict Harms to Children As Grave, Even Criminal, Violations of International Law

A milestone in international child law occurred just weeks after the July 1999 Lomé Agreement respecting Sierra Leone, when the UN Security Council said, in its Resolution 1261, that it

> 'Strongly condemns the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and calls on all parties concerned to put an end to such practices...'[71]

The statement spurred further advocacy, research, and implementation, including in the context of what is called the UN conflict and armed conflict agenda. The UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict coordinated efforts, which also involved the Council's own Working Group on Children and Armed Conflict,[72] the Secretary-General, UNICEF, and other UN entities, as well as nongovernmental organisations and affected communities. By means of a Monitoring and Reporting Mechanism and with an eye to enhancing both compliance and accountability, they gather and make public data respecting the commission of the practices that Resolution 1261 condemned.[73] Known today as the 'Six Grave Violations' against children during armed conflict, and mirrored in this paper's foregoing description of children's experiences in Ukraine, the UN-monitored practices are:

- killing or maiming of children;
- rape and other forms of sexual violence against children;
- abduction of children;
- attacks against schools or hospitals;
- recruiting or use of children in armed forces or armed groups; and

[70] See infra notes 84-94 and accompanying text.
[71] UN S.C. Res. 1261 (25 August 1999), p. 1 ¶ 2 (emphasis in original), https://digitallibrary.un.org/record/278324 [hereinafter 'Resolution 1261']. On the 1999 Lomé Agreement, supra note 31, see supra text accompanying notes 30-32 and infra text notes 61, 81-82, 86, 97-98, and accompanying text.
[72] See UN Security Council, 'Working Group on Children and Armed Conflict' (explaining that this Working Group, established pursuant to UN Security Council Resolution 1612 (26 July 2005), 'comprises all 15 members of the Security Council and makes its decisions by consensus', and is chaired through 2022 by Ambassador Mona Juul, Norway's Permanent Representative to United Nations), https://www.un.org/securitycouncil/subsidiary/wgcaac.
[73] See generally MRM Guidelines, supra note 33.

- denial of humanitarian access.[74]

The UN's Six Grave Violations overlap considerably with what are identified as 'crimes directed specifically against children or those that disproportionately affect them' in the 2016 Policy on Children of the ICC Office of the Prosecutor.[75] 'Almost all crimes within the jurisdiction of the Court affect children', this policy observes before it names 'some' of those crimes.[76] Codified in Articles 5-8 of the 1998 Rome Statute, they are:

- torture and related crimes such as inhumane acts, inhuman or cruel treatment, and wilfully causing great bodily suffering, as war crimes and crimes against humanity;
- sexual and gender-based crimes against children of all genders,[77] including rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilisation, as war crimes and crimes against humanity;
- forcible transfer of children and prevention of birth, as acts of genocide;
- attacks on buildings dedicated to education and health care, as war crimes;
- conscription, enlistment and use of children under fifteen years to participate actively in hostilities, as war crimes;
- trafficking of children as a form of enslavement constituting a crime against humanity; and
- persecution, on grounds including status as a child, ethnicity, religion, and gender, as a crime against humanity.[78]

In light both of jurisprudential developments after publication of the 2016 Policy and of the particular nature of the Ukraine-Russia conflicts, other Rome Statute crimes against and affecting children that merit addition to this list are:

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[74] See MRM Guidelines, supra note 33, p. 7; Six Grave Violations, supra note 33, p. 9. Although the paragraph quoted supra text accompanying note 71 omits mention denial of humanitarian access, the 1999 resolution did call for 'the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict'. Resolution 1261, supra note 71, p. 2 ¶ 11. Denial of humanitarian access is expressly set forth as the sixth violation no later than UN S.C. Res. 1882 (4 August 2009), p. 2 ¶ 1, https://digitallibrary.un.org/record/661765.

[75] ICC OTP Policy, supra note 34, p. 19 ¶ 38 n.48; see Amann, 'Policy on Children', supra note 32, at 544-45 (discussing overlap).

[76] ICC OTP Policy, supra note 34, p. 19 ¶ 38; see ibid., p. 12 ¶ 17 ('recognis[ing] that most crimes under the Statute affect children in various ways, and that at times they are specifically targeted').

[77] The 2016 Policy acknowledges that girls and boys both may be subjected to sexual or gender-based crimes. Ibid., p. 12 ¶ 19 n.28 (writing that '[g]ender-based crimes are committed against boys or girls because of their sex and/or socially constructed gender roles, and are not always manifested as a form of sexual violence'). Although it does not expressly refer to children who identify as LGBTI, the inclusion of these children is implicit in the policy's overall content. See ibid., pp. 18-19 ¶ 37 (stating Office will pay heed to child's 'gender, sex, sexual orientation; or other status or identity'); see also ibid., p. 16 ¶ 30(i) (referring to child's 'sex, and gender'); ibid., p. 21 ¶ 43 (noting that '[c]hildren in armed forces and groups may perform an array of tasks, including those of combatant, sexual slave, cook, porter, spy or scout', and adding that '[t]he experiences endured may differ on account of a child's sex or gender'). See also 2016 *Acuerdo Final*, supra note 31, p. 2 preámbulo and *passim* (including 'the LGBTI population' in guarantees set forth in Colombian peace agreement).

[78] Ibid., pp. 19-25 ¶¶ 39-52 (including citations to relevant provisions of the Rome Statute, supra note 34). On the child-soldiering age threshold, see supra text accompanying notes 48-54.

- deportation or forcible transfer of population, and enforced disappearance, as crimes against humanity;[79] and the
- crime of aggression.[80]

Taken together, these two syntheses of international law constitute a catalogue of unlawful injuries that – recalling the 1989 Convention's general principles – likely entail discrimination, never are in a child's best interests, and acutely affect the child's right to life, survival and development.[81] The catalogue should prompt investigators to seek out evidence that will permit prosecution and punishment of those who perpetrate conflict-related offenses. It also offers a basis for transitional justice efforts short of criminal prosecution – and for examination, as discussed below, of all such efforts during peace settlement processes.

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[79] Rome Statute, supra note 34, arts. 7(1)(d), 7(2)(d) (enumerating and defining crime against humanity of deportation or forcible transfer); ibid., arts. 7(1)(i), 7(2)(i) (enumerating and defining crime against humanity of enforced disappearance, and explaining that it may include 'abduction'). On deportation, see Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC-RoC46(3)-01/18-37 (Pre-Trial Chamber I, 6 September 2018) (ruling that ICC has jurisdiction over crime against humanity of deportation if requisite crossing of national border took place on territory of at least one ICC state party), https://www.icc-cpi.int/court-record/icc-roc463-01/18-37; on forced displacement within a country's borders, see Walter Kälin, 'The Guiding Principles on Internal Displacement As International Minimum Standard and Protection Tool', (2005) 24 *Refugee Survey Quarterly* 27 (discussing UN Guiding Principles on Internal Displacement available at https://www.unhcr.org/uk/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html). On the Ukraine war and legal prohibitions of enforced disappearances, see this series by Ruby Axelson and Anna Mykytenko: 'The Disappeared: Ensuring Future Investigations Recognise Enforced Disappearances in Ukraine (Part 1)', *IntLawGrrls*, 13 May 2022, https://ilg2.org/2022/05/13/the-disappeared-ensuring-future-investigations-recognise-enforced-disappearances-in-ukraine-part-one/, and 'The Disappeared: Ensuring Future Investigations Recognise Enforced Disappearances in Ukraine (Part II)', *IntLawGrrls*, 15 May 2022, https://ilg2.org/2022/05/15/the-disappeared-ensuring-future-investigations-recognise-enforced-disappearances-in-ukraine-part-ii/.

[80] Rome Statute, supra note 34, art. 8 *bis*. Russia's 24 February 2022 invasion of Ukraine prompted immediate and widespread allegations of aggression, a crime established in the wake of the post-World War II international criminal proceedings at Nuremberg and Tokyo. Article 5 of the 1998 Rome Statute gave the ICC jurisdiction over the crime of aggression. Article 8 *bis*, which codified in amendments that took effect in 2010, activated the Court's authority to punish the crime, but only as to the 43 parties that have ratified those amendments; neither Ukraine nor Russia is among them. See UN Treaty Collection, 'Amendments on the crime of aggression to the Rome Statute of the International Criminal Court', https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en. On a proposal thus to establish a new *ad hoc* tribunal, see infra note 102. On the pertinence of the crime of aggression to children and armed conflict, see Shane Darcy, 'Accident and Design: Recognising Victims of Aggression in International Law', (2021) 70 *International and Comparative Law Quarterly* 103, at 115-16:

> 'Victims of the crime of aggression might also include civilians harmed in ways that are not necessarily contrary to human rights or international humanitarian law, such as those forced by the war to flee, but not coerced into doing so, or those unable to access food or medical care because of a collapse of services. In each of these situations, women frequently experience harm disproportionately to men, while children and other vulnerable groups also invariably suffer.'

[81] See supra text accompanying notes 45-46 (enumerating four general principles); see also supra text accompanying note 31 (quoting passage in preamble of 1999 Lomé Agreement, supra note 31, which stresses war's effect on children's 'inherent right to life, survival and development').

IV. International Child Law Syntheses and Options for the Ukraine-Russia Peace Settlement Processes

The preceding discussion establishes that in settling the Ukraine-Russia conflict it is 'imperative' – to borrow a term from the 1999 Lomé Agreement[82] – to give distinct consideration to children's experiences, needs, rights, and capabilities. Informing this consideration will be two peace agreements, along with the syntheses of child rights and conflict harms found in the UN children and armed conflict agenda and the ICC Office of the Prosecutor Policy on Children. Because they reflect customary international law as well as UN Security Council resolutions, these syntheses apply even if neither state is cooperating with the ICC; in the instant case neither Russia nor Ukraine belongs to the Rome Statute, but Ukraine accepts the ICC's jurisdiction over acts since 2013 and is working with its investigators.[83] Focusing therefore on Ukraine-Russia, this paper first applies pertinent child rights precepts and then evaluates what it calls 'independent' and 'composite' options for including children within the terms of a peace agreement.

A. Precepts: Process and Preamble Options

Precepts by which peace processes may pay heed to children are grounded in the global treaty regime established by the 1989 Convention on the Rights of the Child and its three Optional Protocols. That is surely true in this conflict, since Ukraine and Russia are states parties to the 1989 Convention and its two substantive Optional Protocols, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.[84] Settlement processes thus should take that regime into account. Any eventual agreement should confirm, as early as its preamble, adherence to that regime.

Presenting one such option is the 2016 accord that brought the decades-long civil war in Colombia to an end; its preamble includes 'the right of boys, girls, and adolescents' in a list of the many types of human rights to be honoured.[85] A fuller statement seems in order, however, to assure due regard for the significance and scope of children's rights. This paper thus builds on the already-quoted paragraph in the 1999 Lomé Agreement to propose this statement:

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[82] See text accompanying note 31 (quoting 1999 Lomé Agreement, supra note 31, preamble).

[83] International Criminal Court, 'Ukraine', https://www.icc-cpi.int/ukraine; International Criminal Court, 'Statement: ICC Prosecutor Karim A.A. Khan QC announces deployment of forensics and investigative team to Ukraine, welcomes strong cooperation with the Government of the Netherlands', 17 May 2022, https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-deployment-forensics-and-investigative-team-ukraine.

[84] See supra note 4 (stating further that only Ukraine is party to the third protocol which establishes a procedure by which individuals may file complaints with the Committee on the Rights of the Child).

[85] 2016 *Acuerdo Final*, supra note 31, p. 2 preámbulo. An English translation of this accord may be found in the University of Edinburgh 'Peace Agreements Database'. See Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Bogotá, Colombia, 24 November 2016, available at https://www.peaceagreements.org/viewmasterdocument/1845 [hereinafter 2016 Colombia Final Agreement translation]. However this paper takes issue with certain translated passages, see infra note 109; accordingly, unless otherwise stated all translations are by this author.

> Recognising that this armed conflict has affected children of all ages, genders, capacities, and vulnerabilities, in particular and often disproportionate ways, it is imperative that the parties, as well as this agreement and its implementation, respect and ensure the rights of children, articulated in treaties to which the parties belong, especially the 1989 Convention on the Rights of the Child and its Optional Protocols, and understood to comprehend, as guiding principles, the right of non-discrimination, the right of best interests of the child, the right of life, survival and development, and the right to express one's views and have them considered.[86]

This pledge, in particular its reference to the four general principles, suggests directions both for peace processes and for the preamble of an eventual agreement.

1. Processes

The fourth general principle just listed, the right to express one's views and have them considered, bears relevance to negotiations leading to a peace agreement and not just to programmes in implementation of that agreement. By no means is every child too young, too vulnerable, either to express views on armed conflict or to take part in processes designed to bring it to an end. Based on her study of Ukrainian children's wartime social media, Professor Aparna Mishra Tarc wrote:

> '[C]hildren understand what is happening to them and in their world. They are not unwitting, oblivious or resilient in social and political events. Children are deeply affected, able to comprehend and reel from witnessed atrocities.
>
> 'Far from being helpless victims, children show themselves to be remarkably like adults or, more precisely, like adults ought to be in times of war. They console, uplift, despair, find beauty in devastation and join in armed combat'.[87]

Throughout the development and implementation of a peace agreement, therefore, children who possess what one project described as the 'capacities to act, to choose and to participate in activities and decisions that affect them' must be given an opportunity to do so.[88] Adolescents especially must have this opportunity.[89]

Peace processes increasingly involve once-excluded stakeholders. A potential model for children's participation is the Nairobi Declaration on Women's and Girls' Right to a Remedy

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[86] Compare Lomé Agreement, supra note 31, preamble, quoted supra text accompanying note 31. On the guiding influence of the 1989 Convention's four general principles, see supra notes 45-46 and accompanying text.
[87] Aparna Mishra Tarc, 'We need to pay attention to the experiences of children in Ukraine during the Russian invasion', *Conversation*, 9 March 2022, https://theconversation.com/we-need-to-pay-attention-to-the-experiences-of-children-in-ukraine-during-the-russian-invasion-178772.
[88] ICC OTP Policy on Children, supra note 34, p. 14 ¶ 25 (quoted supra text accompanying note 63); see also text accompanying note 62 (quoting 1989 Convention on the Rights of the Child, supra note 4, art. 5, respecting 'the evolving capacities of the child').
[89] See supra notes 57, 68 and accompanying text (discussing Child Rights Committee General Comment No. 20, supra note 57).

and Reparation which arose out of a 2007 meeting that included 'survivors of sexual violence in situations of conflict' on all continents, including Europe.[90] 'Processes', this declaration said, 'must empower women and girls, or those acting in the best interests of girls, to determine for themselves what forms of reparation are best suited to their situation', and 'must also overcome those aspects of customary and religious laws and practices that prevent women and girls from being in a position to make, and act on, decisions about their own lives'.[91] The Nairobi Declaration included additional paragraphs on participation:

> 'In order to achieve reparation measures sensitive to gender, age, cultural diversity and human rights, decision-making about reparation must include victims as full participants, while ensuring just representation of women and girls in all their diversity. Governments and other actors must ensure that women and girls are adequately informed of their rights'.[92]
>
> 'Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making'.[93]
>
> 'Reconciliation is an important goal of peace and reparation processes, which can only be achieved with women and girls victims' full participation, while respecting their right to dignity, privacy, safety and security'.[94]

Use of these paragraphs *mutatis mutandis* – applying them to peace processes as a whole, with a phrase like 'children of all ages and genders, to the extent of their capacities' replacing 'women and girls' – could delineate children's participation in Ukraine-Russia peace processes.

2. Preamble

The above pledge's reference to the three other general principles, of non-discrimination, best interests, and life, survival, and development, merits further development in the peace agreement's preamble. One paragraph, for example, might recite legal prohibitions against conflict harms affecting children:

> Recognising that the particular, and often disproportionate, harms that children endure in armed conflict may constitute grave, even criminal, violations of international law, including but not limited to those harms enumerated in the 'Six Grave Violations' of the UN children and armed conflict agenda and in the 1998 Rome Statute of the International Criminal Court, and pledging to refrain from commission of those harms; ...

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[90] Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, 19-21 March 2007, p. 1, https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf [hereinafter Nairobi Declaration]. See ICC OTP Policy on Children, supra note 34, pp. 14-15 ¶ 26 n.33 (citing declaration as relevant international legal source).
[91] 2007 Nairobi Declaration, supra note 90, p. 3 ¶ 1(D).
[92] Ibid., p. 3 ¶ 2(A).
[93] Ibid., p. 3 ¶ 2(B).
[94] Ibid., p. 4 ¶ 3(D).

Subsequent paragraphs then might contain commitments – or recommitments – to treaties that implicate child rights or that protect against harms against and affecting children in armed conflict. Such (re)commitments aim to advance the goals of international legal regimes. Grant Dawson, formerly the principal legal officer of the Organisation for the Prohibition of Chemical Weapons, thus wrote in a settlement-options paper on disarmament: 'Where such obligations exist, they may be recalled or reinforced in any peace agreement. Where obligations do not exist, new obligations can be contemplated and memorialised in the peace agreement.'[95] Soft law instruments also may warrant support, as evinced by a mid-May 2022 speech on the Ukraine-Russia war in which Britain's UN ambassador 'urge[d] all countries to endorse and implement the 2016 Safe Schools Declaration, designed to protect education in armed conflict'.[96]

An inventory of relevant instruments would make for dense reading. This paper locates its full list in its Appendix, and thus proposes a preambular paragraph doing the same, along the lines of the following:

> Realising that compliance with relevant international instruments promotes the fulfillment of children's rights, the parties:
>
> - Reaffirm the international legal obligations they assumed upon adhering to relevant international treaties, including the 1989 Convention on the Rights of the Child and its Optional Protocols as well as other human rights, anti-discrimination, anti-torture, protection of civilians, and arms control treaties detailed in the Appendix;
>
> - Will consider joining relevant treaties to which one or more of them do not belong, including the 1998 Rome Statute of the International Criminal Court, as well as other human rights, anti-discrimination, anti-trafficking, protection of civilians, and arms control treaties detailed in the Appendix; and
>
> - Reaffirm the endorsement or, in some cases, endorse for the first time relevant soft law instruments, including but not limited to the 2005 UN Guiding Principles on Internal Displacement, 2007 Paris Principles on Children Associated with Armed Forces or Armed Groups, 2015 Safe Schools Declaration, and 2017

[95] Grant Dawson, 'Ukraine Options Paper Weapons of Mass Destruction', p. 3, https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/grant_wmd_options_paper.pdf (published as Grant Dawson, 'Options for a Peace Settlement for Ukraine: Option Paper III – Weapons of Mass Destruction', *Opinio Juris*, 6 May 2022, http://opiniojuris.org/2022/05/06/options-for-a-peace-settlement-for-ukraine-option-paper-iii-weapons-of-mass-destruction); see ibid., p. 2 n.6 (noting further with respect to conduct not yet proscribed by any treaty, that is, the development or use of radiological weapons, that if the parties 'wish to include' prohibition of this conduct 'as part of a comprehensive agreement to end hostilities, this could be achieved through a voluntary commitment'),). For additional papers in this Ukraine-Russia project, see University of Cambridge Lauterpacht Centre for International Law, 'Settlement options', https://www.lcil.cam.ac.uk/researchcollaborative-projects-housed-lcilukraine-peace-settlement-project/settlement-options [hereinafter Lauterpacht Centre, 'Settlement options']

[96] Woodward, supra note 7; on the Safe Schools Declaration initially adopted in 2015, see notes 35 and 43 and accompanying text.

Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers.

B. Options for Including Children in the Substance of the Agreement

Within a given peace agreement, due consideration of children may take multiple forms. This paper considers two opposite paths, which it terms 'independent' and 'composite' options.

1. Independent Option: Stand-Alone Provisions Related to Children

By what this paper terms an 'independent' option, a chapter of the agreement might be labelled 'Children', with the articles in it amounting to an itemisation of pertinent children's issues; alternatively, in an agreement organised by thematic chapters, on demobilisation, education, resettlement, and the like, each such chapter might include a separate, child-specific article.

An initial template may be found in the 1999 Lomé Agreement's two child-specific provisions. The first one reads:

> 'CHILD COMBATANTS
>
> 'The Government shall accord particular attention to the issue of child soldiers. It shall, accordingly, mobilize resources, both within the country and from the International Community, and especially through the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies, to address the special needs of these children in the existing disarmament, demobilization and reintegration processes.'[97]

The second provides:

> 'EDUCATION AND HEALTH
>
> 'The Government shall provide free compulsory education for the first nine years of schooling (Basic Education) and shall endeavour to provide free schooling for a further three years. The Government shall also endeavour to provide affordable primary health care throughout the country'.[98]

This format could be adapted to the spectrum of conflict-resolution issues in which children figure. To cite a very few of these:

[97] 1999 Lomé Agreement, supra note 31, art. XXX.
[98] Ibid., art. XXXI.

- An end to the war and 'the withdrawal of Russian troops', actions that Britain's UN ambassador has identified as the 'solution' for ending 'the suffering of children in Ukraine',[99] as well as guarantees of Ukraine's independence, stability, and security.

- Maintenance of a humanitarian-aid corridor and provision of all needed aid.[100]

- Return of children to their families, homes, and communities, regardless of whether those children have become refugees, are internally displaced, or have been subjected to forced deportation, as well as provision of all services needed to redress harms resulting from their departures.

- Reintegration, in the broadest sense of that term, of children uprooted through conflict harms including not only recruitment into armed service or use in hostilities, but also child trafficking and the like.

- Accountability for crimes against and affecting children, achieved through evidence-gathering, investigation, as well as the establishment and operation of mechanisms able to secure measures of accountability.[101] These might include existing or proposed criminal tribunals,[102] truth and reconciliation commissions, and claims commissions, to name a few. In the case of children, each mechanism would be required to engage personnel with expertise in issues related to children and armed conflict – an expertise present in institutions like the International Criminal Court and the investigating mechanism for Syria,[103] but not stated in public documents related to the UN Commission of Inquiry on Ukraine launched in March 2022.[104]

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[99] Woodward, supra note 7.

[100] See ibid. (calling for improvement of the 'humanitarian effort in Ukraine, delivering vital supplies and life-saving medical aid to those most in need, including children').

[101] See ibid. (seeking to 'ensure that all credible allegations of crimes on the territory of Ukraine are investigated, including grave violations against children, whoever is accused of committing them', and, with reference to the mechanism described in MRM Guidelines, supra note 33, 'to improve our collective understanding of the situation on the ground, through evidence and data collection, and the work of the monitoring and reporting mechanism').

[102] Among proposals under discussion is one for an *ad hoc* tribunal, sometimes labelled a 'Special Tribunal for the Punishment of the Crime of Aggression against Ukraine'. UK Parliament, supra note 44 (describing content of mid-June joint statement on Ukraine by nine European parliamentary delegations), https://committees.parliament.uk/committee/78/foreign-affairs-committee/news/171521/nine-european-parliamentary-delegations-publish-joint-statement-on-ukraine; see supra note 80 (discussing jurisdictional issues related to prosecuting the crime of aggression).

[103] See supra note 36 and accompanying text. See also 2007 Nairobi Declaration, supra note 90, p. 3 ¶ 2(D) (insisting that '[m]ale and female staff who are sensitive to specific issues related to gender, age, cultural diversity and human rights, and who are committed to international and regional human rights standards must be involved at every stage of the reparation process').

[104] This commission's mandate contains one brief, preambular reference to children, and another to girls, but it does not mention child rights as a requisite expertise. UN General Assembly, Human Rights Council Resolution adopted on 4 March 2022, 49/1. Situation of human rights in Ukraine stemming from the Russian aggression, A/HRC/RES/49/1 (7 March 2022), https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F49%2F1. See Aubert, supra note 34 (urging 'that dedicated expertise and analysis regarding crimes committed against children is included in the work of the Commission, despite the absence of a child rights expert included in the list of positions currently advertised').

2. Composite Option: Explicit Mentions of Children Together with Other Persons

An advantage of the just-described independent option is its repetitive specificity. Placement in the peace agreement of stand-alone articles on children would single out children's experiences, capacities, and needs. But disadvantages are obvious. The list above is woefully incomplete, yet a complete list would add considerable length to an already-long agreement.[105] Insertion of child-centred articles that reiterate concerns set out elsewhere as to other persons also would be duplicative. Full separation of children from others further would risk cutting children off from others – their families, their cultures – and undercutting children's rights to live as members of communities.[106] And that could put at risk the community's sense of responsibility towards its children.

What this paper terms a 'composite' option could lessen such disadvantages. According to this option, the peace agreement would have no article devoted to children – or at least few such articles – and yet would address children's issues by naming children explicitly in every provision in which they have a stake. In view of this paper's comprehensive account of conflict-related rights and experiences, express references to children still would appear frequently. Yet such insertions scarcely would lengthen the agreement. Multiple express references would serve as reminders, moreover: first, that children are simultaneously 'persons with individual rights', 'members of families', and 'constituents of multi-generational communities', to quote one of the syntheses outlined above; and second, that their experience is not determined by age alone but in intersection with 'race, ability or disability; religion or belief; political or other opinion; national, ethnic or social origin; gender, sex, sexual orientation; or other status or identity'.[107]

Precedent for this option may be found in Colombia's 2016 *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, or Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, which makes no fewer than 36 explicit references to children and child rights.[108] Often it speaks of '*niños, niñas y*

[105] The Colombian agreement, for instance, exceeds 300 pages though it contains no separate chapter on children. See 2016 *Acuerdo Final*, supra note 31, discussed further infra text accompanying notes 108-13. Examples of issues that implicate children as well as other persons may be found in the many provisions of that agreement and also, e.g., in the list of papers at Lauterpacht Centre, 'Settlement options,' supra note 95.

[106] See supra text accompanying notes 58-60.

[107] See supra text accompanying note 60 (quoting ICC OTP Policy on Children, supra note 34, pp. 12 ¶ 18, 18-19 ¶ 37 (punctuation as in original). To invoke the child's connections to other generations is fraught; therefore linkages to future generations, though real, should be addressed whilst keeping in mind the present rights of the child. See Aoife Nolan, 'The Children are the Future – Or Not? Exploring The Complexities of the Relationship between the Rights of Children and Future Generations', *EJIL: Talk!*, 26 May 2022, https://www.ejiltalk.org/the-children-are-the-future-or-not-exploring-the-complexities-of-the-relationship-between-the-rights-of-children-and-future-generations/.

[108] For these references, some of them further examined in this paragraph, see 2016 *Acuerdo Final*, supra note 31, pp. 2-3 preámbulo, 6, 10-12, 21 ¶ 1.2.1, 23 ¶ 1.3, 26 ¶ 1.3.2.1, 26 ¶ 1.3.2.2, 34 ¶ 1.3.4, 47 ¶ 2.2.4, 74 ¶ 3.2.2.5, 79 ¶ 3.4.1, 82 ¶ 3.4.3(g), 84 ¶ 3.4.4, 85 ¶ 3.4.4, 113 ¶ 4.1.3.6(a), 115 ¶ 4.1.3.6(f), 116 ¶ 4.2, 118 ¶ 4.2.1.4, 119 ¶ 4.2.1.4, 128 ¶ 5.1, 131 ¶ 5.1.1.1, 134 ¶ 5.1.1.1.2, 144 ¶ 5.1.2(I)(7)-(8), 187 ¶ 5.1.4, 189 ¶ 5.2, 198 ¶ 6.1.3. For English renderings, see 2016 Colombia Final Agreement translation, supra note 85.

adolescentes', or 'boys, girls, and adolescents'. The formulation is welcome, for it invites acknowledgement that the experiences, capabilities, and needs of a child – that is, a person under eighteen – will differ according to the child's age, gender, sex, and sexuality.[109] Nor is that formulation happenstance; various provisions mention 'boys, girls, and adolescents' not only as a distinct group, but also in relation to 'women', to 'women and men', to 'elder persons', to 'youths', and to the 'LGBTI population'.[110] Indeed the agreement repeatedly situates boys, girls, and adolescents within an array of communities – some described as 'vulnerable' or subjected to 'discrimination' or 'exclusion' – defined by attributes such as colour, race, ethnicity, indigeneity, African ancestry, pregnancy or lactation, disability, rural or displaced status, religion, and political or social opinion or affiliation.

The express references furthermore identify children as stakeholders in many aspects of the peace agreement. These aspects reflect the precise circumstances of the Colombian conflict. For example, the agreement thus mentions children in: its enumerations of those who were most affected by the conflict in ways violative of rights, and who thus were in special need of 'public services like education', physical and psychological 'health, recreation, infrastructure, technical assistance, food and nutrition';[111] its guarantees of personal security from criminal organisations, and of investigatorial focus on crimes against children; and its preventive measures regarding poverty, illicit drugs, and other areas. The agreement provides too that children would be a central concern in the contemplated work of documenting disproportionate harms and making recommendations for redress, to 'truth, justice, reparation, and non-repetition'.[112] With respect to all facets of implementation, in fact, the agreement promises that 'the best interest of boys, girls, and adolescents, as well as their rights, and its prevalence over the rights of others, will be guaranteed'.[113]

V. Conclusion

No less than other conflicts, the Ukraine-Russia war has had grave, disproportionate, and enduring effects on children. The experiences, needs, capacities, and rights of children – of persons of all ages, genders, and identities who have not yet reached their eighteenth birthday – thus must form part of any peace processes and ensuing peace agreement. In order to establish contemporary legal understandings of children and armed conflict, this paper first detailed

[109] It is thus unfortunate that the 2016 Colombia Final Agreement translation, supra note 85, frequently combines '*niños, niñas*' into a single word, 'children'.
[110] The treatment described also deserves credit for avoiding 'womenandchildren' conflation. See Amann, 'Post-Postcolonial', supra note 2, at 48.
[111] 2016 *Acuerdo Final*, supra note 31, p. 11 (listing these services with particular reference to rural areas). For references to psychological as well as physical health care for children, see ibid., pp. 26 ¶ 1.3.2.1, 74 ¶ 3.2.2.5, 76 ¶ 3.2.2.2.7, 118 ¶ 4.2.1.4.
[112] See ibid., p. 8 (citing these in relation to an 'Integral System' of redress).
[113] Ibid., p. 198 ¶ 6.1.3 ('*En la implementación de todo lo acordado se garantizará el interés superior de los niños, niñas y adolescentes así como sus derechos y su prevalencia sobre los derechos de los demás'*.). The second clause of the sentence bears echo with the 1989 Convention on the Rights of the Child, supra note 4, art. 3(1), which requires: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

international legal syntheses arising out of projects by the United Nations and by the International Criminal Court Office of the Prosecutor. Relying on these syntheses and on peace agreements that address children in quite different ways, this paper then posited options for including children in any Ukraine-Russia process and an agreement. A mix of options is perhaps advisable. Only one thing is essential. The mix must meaningfully include the experiences, needs, capacities – and views – of children.

VI. Appendix: International Child Law Instruments Relevant to Armed Conflict[114]

Table 1. Relevant treaties which both states have joined

Name	Entered into force	Parties	Russian Federation	Ukraine	Notes
1948 Convention on the Prevention and Punishment of the Crime of Genocide	1951	153	1954	1954	proscribed acts include forcible transfer of children
1949 Geneva Conventions on protection of victims of armed conflict	1950	196	1954	1954	(I) Wounded and Sick in Armed Forces in the Field; (II) Wounded, Sick and Shipwrecked of Armed Forces at Sea; (III) Prisoners of War; (IV) Civilians
1950 European Convention for the Protection of Human Rights and Fundamental Freedoms	1953	47**	1998**	1997	**having been expelled from the Council of Europe on 16 March 2022, as of 16 September 2022, Russia no longer will be subject to jurisdiction of court that adjudicates violations of this regional human rights treaty
1951 Convention relating to the Status of Refugees	1954	146	1993	2002	

[114] Text and other information about these instruments is available in the text of this paper; see also UN Treaty Collection, https://treaties.un.org; International Committee of the Red Cross, 'Treaties, States Parties and Commentaries', https://ihl-databases.icrc.org/applic/ihl/ihl.nsf; International Labour Organisation, 'C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)', https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182; 'Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights', 22 March 2022, https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf.

1966 International Convention on the Elimination of All Forms of Racial Discrimination	1969	182	1969	1969	
1966 International Covenant on Civil and Political Rights	1976	173	1973	1973	both states also belong to 1966 Optional Protocol allowing individual complaints
1966 International Covenants on Economic, Social and Cultural Rights	1976	171	1973	1973	neither state belongs to 2008 Optional Protocol allowing individual complaints
1967 Protocol related to the Status of Refugees	1967	147	1993	2002	expands scope of 1951 Convention beyond post-World War II context
1968 Treaty on the Non-Proliferation of Nuclear Weapons	1970	191	1970	1994	
1977 Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts	1978	174	1989*	1990	*Russia withdrew its ratification in 2019
1979 Convention on the Elimination of all Forms of Discrimination Against Women	1981	189	1981	1981	foundational treaty on rights not only of adult women but also of girl-children; both states also belong to 1999 Optional Protocol allowing individual complaints

1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects	1983	125	1982	1982	framework treaty; both states also belong to all its Protocols: (I) non-detectable fragments; (II) mines, booby traps, and other devices; (III) incendiary weapons; (IV) blinding laser weapons; (V) explosive remnants of war
1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1987	173	1987	1987	only Ukraine is party to treaty's 2002 Optional Protocol
1989 Convention on the Rights of the Child	1990	196	1990	1991	main child-rights treaty with two 2000 Optional Protocols, to which both Russia and Ukraine belong, and one 2011 Optional Protocol, to which only Ukraine belongs
1999 International Labour Organisation Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	2000	187	2003	2000	pledges to end egregious forms of child labour including trafficking and recruitment for armed service or use in hostilities

2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2002	172	2008	2005	both states also belong to main 1989 Convention and other 2000 Optional Protocol but only Ukraine to 2011 Optional Protocol
2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2002	178	2013	2003	both states also belong to main 1989 Convention and other 2000 Optional Protocol but only Ukraine to 2011 Optional Protocol
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing UN Convention against Transnational Organized Crime	2003	178	2004	2004	
2006 Convention on the Rights of Persons with Disabilities	2008	185	2012	2010	only Ukraine is party to treaty's 2006 Optional Protocol

Table 2. Relevant treaties which one state has joined

Name	Entered into force	Parties	Russian Federation	Ukraine	Notes
1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	1999	164		2005	outlaws use, production, and stockpiling of landmines, reportedly used in Ukraine-Russia conflict
2002 Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	2006	91		2006	both Russia and Ukraine belong to main1984 Convention Against Torture
2006 Optional Protocol to the Convention on the Rights of Persons with Disabilities	2008	100		2010	authorizes individuals to file complaints alleging violations of 2006 Convention to which both states belong
2006 International Convention for the Protection of All Persons from Enforced Disappearance	2010	68		2015	outlaws state-sanctioned abduction
2011 Optional Protocol to the Convention on the Rights of the Child on a communications procedure	2014	48		2016	both states belong to main 1989 Convention and its 2000 Optional Protocols

Table 3. Relevant treaties which neither state has joined

Name	Entered into force	Parties	Russian Federation	Ukraine	Notes
1998 Rome Statute of the International Criminal Court	2002	123		***	*** though not party to treaty, Ukraine has accepted ICC jurisdiction over crimes since 2013
2008 Convention on Cluster Munitions	2010	110			outlaws manufacture and use of cluster bombs, weapon reportedly used in Ukraine-Russia conflict
2017 Treaty on the Prohibition of Nuclear Weapons	2021	65			

Table 4. Relevant soft law instruments that both states endorsed

Name	Adopted	Endorsing states	Russian Federation	Ukraine	Notes
Paris Principles on Children Associated with Armed Forces or Armed Groups	2007	105	✓	✓	

Table 5. Relevant soft law instruments that only one state endorsed

Name	Adopted	Endorsing states	Russian Federation	Ukraine	Notes
Safe Schools Declaration	2015	114		2019	condemns conflict harms to education, including military use of schools and physical attacks on school buildings, students, and educators

Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers	2017	105		✓	particularly concerned with peacekeeping situations, sets out principles aimed at preventing recruitment and use of children in armed conflict

Table 6. Other relevant soft law instruments

Name	Adopted				Notes
UN Guiding Principles on Internal Displacement	2005				
Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation	2007				