

Who is left in the gap?

An analysis of the United Nations'
discourse on children born of war and its
relation to international children's rights

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Abstract

Children born of war (CBOW) – children born of relationships between a local citizen and a foreign soldier, peacekeeping officer, child soldier, rebel, or a person part of the enemy military force – are entitled the same international human rights as all other children. However, regardless of whether these children are born of consensual relationships or of sexual violence, they are particularly susceptible to several human rights violations. Despite constituting a vulnerable group of society, CBOW, in particular children born of consensual relationships, have up until recently been overlooked by the international community, including the United Nations. In this thesis, I perform a qualitative content analysis of the UN discourse on CBOW since 2009. Further, I position this discourse within the international legal framework on children’s rights. I demonstrate that the UN only addresses children born of sexual violence. Even though they are primarily considered as victims and rights’ holders, there is a strong nexus between their mothers’ suffering and their lack of well-being. I argue several legal blind spots are created for children born of consensual relationships, thus potentially undermining the efficiency of international human rights law.

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List of abbreviations

Abbreviation	Definition
API	Additional Protocol I to the Geneva Conventions
APII	Additional Protocol II to the Geneva Conventions
CBOSV	Children born of Sexual Violence
CBOW	Children born of War
CRC	Convention on the Rights of the Child
GCI	Geneva Convention I on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 1949
GCIV	Geneva Convention IV relative to the Protection of Civilian Persons in Time of War of 1949
ICC	International Criminal Court
ICJ	International Court of Justice
IHRL	International Human Rights Law
IHL	International Humanitarian Law
MSs	Member States
NSAG	Non-State Armed Groups
SG	United Nations Secretary-General
TJ	Transitional Justice
UN	United Nations
UNICEF	United Nations Children's Fund
WWII	World War II

1. Introduction

A relevant achievement of the last two decades in children’s human rights has been the recognition, at least in the academic sphere, that children born of war (CBOW) form a potentially vulnerable group of children. Indeed, researchers from across disciplines have documented their plight in various contexts. CBOW are children born out of relationships between a local citizen – usually the mother – and a foreign soldier, peacekeeping officer, child soldier, or rebel, or a person part of the enemy military force – usually the father.¹ Whether the sexual relationships leading to the conception of these children are consensual or coercive is irrelevant for children to fall under the scope of this concept, as researchers have found that the consequences may be very similar. The term “children born of war” thus encompasses various groups of children, each with varying needs.

Despite the lack of sufficient data on these groups of children, namely due to ethical concerns, and data gathering and monitoring difficulties, the interest in studying the risks faced by CBOW is ever-growing. While acknowledging the variety of experiences these children have, research has shown that both children born of sexual violence and consensual relationships are prone to experiencing similar hardships, including lacking identification papers, being stateless, lacking access to social benefits, education, healthcare, and experiencing heightened levels of stigma, discrimination, marginalization, and infanticide.² Similarly, human rights organizations have paid more attention to the issue, with many projects now being implemented to address the plight these children may suffer. Both the scholarly community and the United Nations (UN) point to how the experiences CBOW live may amount to violations of the International Convention of the Rights of the Child of 1989 (CRC). Yet the focus lies on children born of sexual violence, including wartime-rape, exploitation, and coercion. Although existing research highlights how both groups require particular types of protection, such emphasis may render children born of consensual relationships invisible. The significant difference between the two lies more in the

¹ Ingvill C. Mochmann, “A Decade of International and Interdisciplinary Research,” *Historical Social Research / Historische Sozialforschung* Vol. 42 No. 1 (2017): 320–46, doi:10.12759/HSR.42.2017.1.320-346.

² Ingvill C. Mochmann and Sabine Lee, “The Human Rights of Children Born of War: Case Analyses of Past and Present Conflicts / Menschenrechte Der Kinder Des Krieges: Fallstudien Vergangener Und Gegenwärtiger Konflikte” 35, no. 3 (2010): 268–98.

international attention they receive rather than on the actual human rights violations faced by the children.³

With many of these children unaware of their biological origins -- let alone of their international human rights -- one cannot expect their rights to be implemented if the issue is not prioritized within States' agendas. This is particularly true in the context of armed conflicts, where the best interests of the children may not be prioritized or even distorted to match nationalist and religious agendas.⁴ The way CBOW are framed by the international community matters. Framing that is consistent with the international legal framework on children's rights matters even more, particularly for children born of consensual relationships who are often overlooked. Proper implementation of these children's CRC rights depends on their degree of visibility.

In this vein, the aim of this thesis is to assess the suitability of the United Nations' discourse regarding CBOW in light of their varied experiences. More specifically, this thesis shall ask the following research questions: 1) What is the UN discourse on CBOW? 2) How is this discourse situated within the international legal framework on children's rights? Through this process, I shall assess whether the discourse creates any legal blind spots for children born of consensual relationships. The focus of this thesis shall lie on the UN for the following reasons. As established in the Charter of the United Nations, article 1(1) and (2), the UN is an international organization mandated to protect and promote international security and peace, including equal rights for all. Notably, according to article 1(4), the UN also aims to harmonize national efforts to reach these goals. It is therefore an internationally authoritative body in the field of international security and human rights. Even though answering these research questions will not in itself ensure the proper implementation of the CRC regarding children born of war, it will highlight the importance of addressing the various groups encompassing the term. Adequately framing CBOW in the international agenda is not only imperative for States to thoroughly recognize and address their needs, but it is also crucial to ensure that States respect these children's CRC rights. Therefore, in

³ Sabine Lee, "Children Born of War: Who Are They? Experiences of Children, Mothers, Families, and Post-Conflict Communities," in *Children Born of War in the Twentieth Century*, 1st ed. (Manchester University Press, 2017), 22–3.

⁴ See Joana Daniel-Wrabetz, "Children Born of War in Bosnia-Herzegovina and the Convention on the Rights of the Child," in *Born of War* (Kumarian Press, 2007), 21–39.

addition to enlarging the limited body of knowledge and literature on CBOW, this thesis shall provide valuable insights on how the CRC can be best implemented in this regard.

In the next chapter, I shall provide some background information regarding CBOW, namely who they are, what kind of human rights violations they are prone to be victims of, how they are protected under international human rights law, and what the limitations of such regime are. This shall be presented by means of a literature review. In chapter 3 and 4, the research questions and the methodology chosen shall be presented, respectively. In chapter 5 and 6, I shall thoroughly present the various findings found, which shall be discussed in chapter 7.

2. Who are Children Born of War?

2.1. A Note on Terminology

The existing definitions of the term “children born of war” in the academic sphere are numerous, and they have been evolving. Originally, CBOW was used to refer to those children born by a local citizen and an enemy soldier, a soldier from an occupying force, a child soldier, or an officer from a peacekeeping force.⁵ In academic literature, these four categories have been used and expanded by several authors to make sense of these children.⁶ Yet these categories are not exhaustive. Following the expansion of geographical networks and research, and the atrocities witnessed during the war in the former Yugoslavia during the 1990s, the term has evolved to now also encompass children born from paramilitary soldiers and rebels. The conflict need not be of an international character. What remains relevant is that one of the parents – and therefore the child - is socially linked to the “enemy” side.⁷ It follows that the type of conflict, time, and geographic zone are non-important.⁸ In fact, children born of war have for centuries been tied to a wide variety of armed conflicts -- ranging from military occupations, as was the case in the Second World War,

⁵ Mochmann, “A Decade of International and Interdisciplinary Research,” 323.

⁶ Ibid; Lee, “Children Born of War: Who Are They?” 24-5.

⁷ Mochmann, “A Decade of International and Interdisciplinary Research,” 325.

⁸ Lee, “Children Born of War: Who Are They?” 24.

where German officials fathered many children in the occupied territories, to conflicts with non-state armed groups such as the Lord's Resistance Army in Uganda.

Importantly, the fact that the soldiers or occupiers are perceived to be enemies does not predict the type of relationship between the parents of CBOW. On the contrary, across the four categories presented above, children can be born of rape and exploitative/coercive relationships, or consensual relationships. In the context of armed conflict, the relationships between the parents of CBOW are both varied and fluid: there is a continuous spectrum ranging from a respectful, loving long-term relation, to an exploitative and coercive one.⁹ This becomes apparent by looking at the origins of the term “children born of war” and its definition. Both were first introduced by Ingvill Mochmann at an international meeting in 2006 bringing together experts on the field. Mochmann had been working with data from WWII regarding children born in Norway from local women and soldiers and/or officers from the German occupying forces, most of which were consensual.¹⁰ Thus, the origin of the term and its definition are based on these children that were born of war, but also of consensual relationships.

Despite original efforts to conceptually separate children born from sexually exploitative relationships and children born from consensual relationships within the field, whether these relationships are consensual, coercive, violent, or anything in between, is irrelevant for the terminology.¹¹ In this light, throughout this thesis, the author shall use the term “children born of war” to reflect the intended meaning in the present definition, thus encompassing both children born of sexual violence, exploitation, or rape, and children born of consensual relationships. The determining factor is, as presented above, that one of the parents is socially perceived to belong to one of the belligerent parties of the conflict. Therefore, children that are born from civilian parents during a conflict shall not be considered in this thesis. The broadness of the term becomes the more important when noting that in the context of armed conflict, it is often impossible to differentiate between a voluntary and exploitative relationship, as sex can often be used as a means of survival to access certain goods, money, or protection.¹² Moreover, conceptual distinctions between what consensual and coercive sexual relations look like change not only over time, but also from society

⁹ Ibid, 26.

¹⁰ Sabine Lee, Heide Glaesmer, and Barbara Stelzl-Marx, eds., *Children Born of War: Past, Present and Future*, Routledge Studies in Modern History (London; New York: Routledge, 2022).

¹¹ Mochmann, “A Decade of International and Interdisciplinary Research.”

¹² Ibid, 325.

to society. What was then considered consensual, may now be considered rape, for instance when there is lack of consent for sex between individuals forming an established romantic relationship.

Most of research and literature around children born of war focuses on children born of rape and sexual exploitation. Several reasons can explain this, including evolving modern conflict dynamics. Indeed, occupations like the ones in WWII, which propelled consensual relationships between officers/soldiers and local citizens, are currently not as prevalent. This focus could similarly be explained by the emerging interest in conflict-related sexual violence within the scholarly community. In fact, rather than addressing “children born of war”, many scholars adopt the concept of “born of wartime rape”. This is now a concept that is used separately from CBOW, even though the latter falls under the former’s scope. Focus on consensual relationships regarding this matter have been almost non-existent.¹³ Nevertheless, while in some conflicts the sexual exploitation of women has prevailed – take, for instance, the example of the conflict in the former Yugoslavia and in Rwanda where rape was used with genocidal intent – in others, consensual relationships were the most common, such as following the German occupation in Norway during WWII. Further, in recent times, many children are born from consensual relationships between local women and officers in UN peacekeeping missions, including that established in 2000 in Ethiopia and Eritrea.¹⁴ Yet even throughout history, children have been born from consensual relationships between local women and soldiers. In early modern times, it would be common for men and women to engage in pre-marital relationships upon promise of marriage after the ceasing of hostilities. Regardless of whether such promises were genuine or not, birthing children born of consensual relationships is neither recent nor rare.¹⁵

2.2. Experiences

Having clarified what the term “children born of war” encompasses, this section shall expand on the varied experiences CBOW live, namely in function of the conflict they are born in.

¹³ Lee, "Children Born of War: Who Are They?" 23.

¹⁴ Olivera Simić and Melanie O’Brien, “‘Peacekeeper Babies’: An Unintended Legacy of United Nations Peace Support Operations,” *International Peacekeeping* 21, no. 3 (May 27, 2014): 345–63, doi:10.1080/13533312.2014.938581.

¹⁵ Lee, "Children Born of War: Who Are They?" 21-22.

Research done on CBOW in the last decades has shown that these groups have for long been associated with pejorative terms that illustrate their attached stigma. For instance, in East Timor, they were considered “children of the enemy”, while in Rwanda they were called “the devil’s children.”¹⁶ CBOW are more prone to experience institutional and personal discrimination, stigma, and social marginalization, notably due to this association,¹⁷ though evidence suggests this can also be due to them being born out of wedlock. In many cases, this may result in trauma, identity crises, poorer health, lack of access to education, poverty and even statelessness.¹⁸ In turn, many children develop a deep lack of social trust, and subsequent difficulties in building a social network and familial relationships throughout their development and adult age.¹⁹

However, the experiences children born of war live are far from homogenous. On the contrary, the definition encompasses children who experience different realities. Depending on the socio-economic, political and juridical contexts they live in, as well as availability of medical, and psychological support at their disposal, children’s developments are meant to differ significantly.²⁰ In turn, the nature, duration and type of conflict the children were born in may influence the former factors.²¹ The type and level of impact suffered by children born of war varies from conflict to conflict, and on a case-to-case basis. Hence, one must be cautious with generalizations over CBOW, as they can be both unrealistic and dangerous.²²

Considering such variance, in the next section of this research, this thesis’ author shall expand on these lived experiences. It shall become apparent that both children born of sexual violence and of consensual relationships are at a heightened risk of suffering human rights violations. This shall be done by drawing from research done on the conflict in Bosnia-Herzegovina in the 1990s, and on Norway’s German occupation during WWII. These two conflicts have been selected for two imperative reasons. First and foremost, as explained above, there was a stark contrast in the nature of the prevailing sexual relationships producing CBOW. Secondly, there is a considerable amount of research written on them, which shall therefore allow the author

¹⁶ Charli Carpenter, “Gender, Ethnicity, and Children’s Human Rights,” in *Born of War* (Kumarian Press, 2007), 5.

¹⁷ Mochmann, “A Decade of International and Interdisciplinary Research,” 339-40.

¹⁸ *Ibid*, 339-40.

¹⁹ Andrea Meckel et al., “Children Born of War and Social Trust – Analyzing Consequences of Rejection,” *Social Change Review* 15, no. 1–2 (December 1, 2017): 26-7, <https://doi.org/10.1515/scr-2017-0002>.

²⁰ Mochmann, 337.

²¹ *Ibid*, 338.

²² Charli Carpenter, “Protecting Children Born of War,” in *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones* (Kumarian Press, 2007), 210–24.

to provide a more thorough and expansive overview of these children's experiences. This is important, as research suffers from a lack of data on these groups of children. Many CBOW hide their identities, others lack birth certificates or identity documents, others are not aware of their biological origins – any kind of monitoring or large-scale data collection becomes difficult, in particular due to the sensitive nature of the subject and subsequent ethical concerns in researching these groups of children.²³ In the next sub-sections, I shall firstly present the newest conflict, so as to best highlight that even though the literature is focused on children born of sexual violence, children born of consensual relationships may suffer similar harms.

2.2.1. Bosnia-Herzegovina

The international armed conflict that took place in Bosnia-Herzegovina between 1992 and 1995 highlighted how rape can be used systematically as a weapon of war,²⁴ in the context of an ethnic cleansing policy.²⁵ An estimated number of 35.000 women became pregnant as a result of sexual violence.²⁶ Drawing from data collected from women's organizations providing medical and psychological support working in Bosnia-Herzegovina, Joana Daniel-Wrabetz demonstrates how all the women who approached such types of organizations had difficulties accepting their pregnancy.²⁷ Only a small percentage of these women kept their babies, with many having abortions. For those kept in captivity or unable to access abortions, many women chose to give their babies for national adoption. Several other children were abandoned and sent to local institutions.²⁸ Evidence suggests that most of CBOW in Bosnia-Herzegovina were not aware of their origins while growing up. Policies were issued to protect the confidentiality of the children's identity.²⁹ In particular, much documentation regarding birth and parentage was destroyed not only to make it practically impossible for children born of rape to connect with their mothers, but also

²³ Mochmann, "A Decade of International and Interdisciplinary Research," 229-30.

²⁴ Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Appeal Judgment), IT-96-23 & IT-96-23/1-A, (International Criminal Tribunal for the former Yugoslavia (ICTY) June 12, 2002).

²⁵ Prosecutor v. Radislav Krstic (Trial Judgement), IT-98-33-T, (ICTY August 2, 2001); Prosecutor v. Radislav Krstic (Appeals Chamber), IT-98-33-A, (ICTY April 19, 2004).

²⁶ Mochmann and Lee, "The Human Rights of Children Born of War," 35, no. 3 (2010): 282-83.

²⁷ Joana Daniel-Wrabetz, "Children Born of War in Bosnia-Herzegovina and the Convention on the Rights of the Child," in *Born of War* (Kumarian Press, 2007), 27.

²⁸ *Ibid.*, 25-6.

²⁹ *Ibid.*, 26.

to prevent these children from being stigmatized by society .³⁰ For those sent to institutions, few records were kept, special shelters for these children were not created, and monitoring of these children's well-being was not a priority.³¹

Moreover, fatwas providing guidelines for the inclusion of raped women, as well as their children, in Bosnian society were issued. In contrast to other post-war societies, the fatwas declared women and their children as martyrs, and thus accepted as valid members.³² They were based on the conviction that the community was better capable of acting in accordance with the best interests of the child.³³ These women were not to be considered unchaste, but they did carry the duty of caring for the child; if not, and the babies are left abandoned, they would be considered sinners.³⁴ Therefore, the fatwas required local communities to welcome the mothers and children and raise the orphans. Yet the fatwas also stipulated the inclusion of these children would best be done if their identities were hidden. Similarly, these children were prohibited to be given for international adoption, namely due to fears of slavery and trafficking.³⁵

In practice, however, research suggests that integration attempts were not always successful. Rape remained a significant taboo in local communities, even with local therapists.³⁶ Lacking psychosocial support, being linked to “the enemy” and experiencing identity crises, many of these children born of sexual violence still experienced neglect, trauma, rejection, social marginalization both at the family and community level,³⁷ a general lack of recognition and protection of their rights, and even infanticide.³⁸ In other countries where infanticide was also committed following rape, such as Kosovo, evidence suggests such an option was considered a legitimate and an understandable reaction.³⁹

³⁰ Mochmann and Lee, “The Human Rights of Children Born of War,” 291.

³¹ *Ibid*, 283.

³² *Ibid*, 283.

³³ Daniel-Wrabetz, “Children Born of War in Bosnia-Herzegovina,” 30.

³⁴ *Ibid*, 29.

³⁵ Mochmann and Lee, “The Human Rights of Children Born of War,” 283.

³⁶ Daniel-Wrabetz, “Children Born of War in Bosnia-Herzegovina,” 28.

³⁷ Mochmann and Lee, “The Human Rights of Children Born of War,” 288.

³⁸ Charli Carpenter, “War’s Impact on Children Born of Rape and Sexual Exploitation: Physical, Economic, and Psychosocial Dimensions: Coalition to Stop the Use of Child Soldiers,” 2007, 320
<https://doi.org/10.12759/hsr.42.2017.1.320-346>.

³⁹ *Ibid*.

2.2.2. Norway

It is estimated that around 10.000 children were born in Norway during the German occupation between 1940-45 by German soldiers and local women. In contrast to the conflict presented above, the majority of these children were born from consensual relationships.⁴⁰ In line with the National Socialist policy, relationships between German soldiers and Norwegian women were encouraged to produce children of an allegedly superior race. For those who became pregnant, the national socialist organization “Lebensborn” could provide support to women both during and after pregnancy, including the option to birth the children anonymously in Lebensborn homes.⁴¹ Mochmann and Lee show how because procreation was supported by the Nazi system, those women who engaged in relationships with German soldiers faced severe criticism after the war ended. As in other European countries, many were detained, had their hair shaved off in public, and were socially isolated. Despite this ill-treatment, they received no governmental support or protection at the time. On the contrary, the Norwegian government actively contributed to the discrimination suffered, in particular against the women who also gave birth to Norwegian-German children. For instance, women who married the German soldiers were stripped of their Norwegian citizenship.⁴² Not only were children born of war barred from receiving governmental benefits, but they were also offered to the Australian government for labor.⁴³

Mochmann and Larsen have conducted a comparative study regarding the treatment of CBOW in Norway and in Denmark, using questionnaires with 336 Norwegian and 209 Danish CBOW from the Norwegian and Danish war child associations, respectively.⁴⁴ The goal of the analysis was to comprehend the extent to which these children were discriminated and stigmatized against, and if there were any differences between the two countries in this regard. The authors examined health problems, social relationships during school years, and relationships within the

⁴⁰ Ingvill Mochmann and Stein Larsen, “Children Born of War: The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII – Some Empirical Results,” *Historical Social Research / Historische Sozialforschung* Vol. 33 No. 1 (2008): 354, <https://doi.org/10.12759/HSR.33.2008.1.347-363>.

⁴¹ Mochmann and Lee, “The Human Rights of Children Born of War,” 275.

⁴² *Ibid*, 275.

⁴³ *Ibid*, 276.

⁴⁴ Mochmann and Larsen, “The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII,” 355.

family.⁴⁵ Whereas the comparative findings are not relevant for this thesis, the data regarding Norway's treatment of these children reveals important findings.

Firstly, CBOW experienced significant worse health from adolescence until the time this research was conducted, with many suffering from tiredness, nightmares, and restlessness. Secondly, during school, CBOW were often ill-treated by their classmates and felt a sense of alienation.⁴⁶ Thirdly, with regards to family relationships, experiences were particularly varied. Children born of war in this study have grown up in varying contexts. Many grew up in foster homes, with foster families or with close relatives.⁴⁷ The high degree of stigmatization, lack of financial means and social support led some women to abandon their children.⁴⁸ In fact, the Norwegian government strongly discouraged contact between the mother and child, and the German father, promoting the withholding of information.⁴⁹ What is more, Norway has overlooked the needs of CBOW by outwardly discriminating them and pondering sending them to Australia for labor.⁵⁰

In general, poverty, poor access to food, lack of access to education, alcohol abuse, neglect, and violence were prevalent in the case of CBOW, in contrast with children with Norwegian parents, who did not share such experiences during this timeframe. Further, the data collected showed that those children who grew up in foster families or with grandparents and with a mother and a stepfather suffered negative experiences, such as higher levels of psychological violence, though some differences were found between the two groups.⁵¹ Further, biographies corroborate the fact that, within their communities, they were considered enemies and therefore a threat to the population, leading to them being outcasted.⁵² Interestingly enough, Koegeler-Abdi has shown how across Europe, CBOW born both to German soldiers and Allied soldiers have lived similar

⁴⁵ Ibid, 355.

⁴⁶ Ibid, 355.

⁴⁷ Ibid, 357.

⁴⁸ Ibid, 357.

⁴⁹ Mochmann and Lee, "The Human Rights of Children Born of War: Case Analyses of Past and Present Conflicts / Menschenrechte Der Kinder Des Krieges: Fallstudien Vergangener Und Gegenwärtiger Konflikte," 290.

⁵⁰ Ibid, 276.

⁵¹ Mochmann and Larsen, "The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII," 358.

⁵² Ibid, 354.

negative experiences. Despite the contrasting context, these children also had to carry the stigma of possessing a “foreign national essence”, thus being forced to live in secrecy.⁵³

A further study on these children has proven that, against this background of rejection, CBOW are particularly likely to grow up with low levels of self-worth. In turn, the authors find a correlation between low self-worth and chronic social mistrust, which is a requirement for establishing positive and meaningful interactions with others.⁵⁴ Hence, lack of social trust may negatively impact these children’s capacity of attachment towards other human beings throughout their lives. It is therefore shown that regardless of the origins of social rejection, societal marginalization can have severe negative impacts on children’s well-being.⁵⁵

2.2.3. Discrimination across borders

Children born of war have varied experiences, yet both structural and personal discrimination are often prevalent. This shows that the nature of the relationship between mother and father is not a predicament for the child’s life quality. The two contrasting cases shown above demonstrate that even though the degrees of suffering may vary, “being conceived in a love affair (...) is not necessarily a ticket to a good life for these children.”⁵⁶ Even in consensual relationships, many of which happen outside of marriage, CBOW suffer discrimination and stigma. Children are broadly mistreated at the familial, communal and political level due to their connotation with enemy forces,⁵⁷ or even due to their parents not being married at the time of conception.⁵⁸ Thus, evidence suggests that the well-being of CBOW is rather dependent on acceptance from the communities they grow up in, rather than on the nature of the parents’ relationships and the mother’s potential victimization.⁵⁹

⁵³ Martina Koegeler-Abdi, “Family Secrecy: Experiences of Danish German Children Born of War, 1940–2019,” *Journal of Family History* 46, no. 1 (January 2021): 64, <https://doi.org/10.1177/0363199020967234>. For a comprehensive in-depth study on children born of war in Norway fathered by German soldiers, see Dag Ellingsen, *Krigsbarns levekår: en registerbasert undersøkelse*, Rapport / Statistisk Sentralbyrå, 2004,19 (Oslo: Statistisk Sentralbyrå, 2004).

⁵⁴ Meckel et al., “Children Born of War and Social Trust – Analysing Consequences of Rejection,” 29.

⁵⁵ Ibid.

⁵⁶ Mochmann and Larsen, “The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII,” 354.

⁵⁷ Ibid.

⁵⁸ Lee, “Children Born of War: Who Are They?” 23.

⁵⁹ Mochmann and Larsen, “The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII,”; Mochmann, “A Decade of International and Interdisciplinary Research”; Lee, “Children Born of War: Who Are They?”

2.3. Theoretical framework - The Rights of Children Born of War

As argued by Mochmann and Larsen, in accordance with the previous section, children born of war constitute a vulnerable group of society. The recognition of their needs and protection of their human rights is therefore crucial, both at the national and international level.⁶⁰ In the present section, the author shall expand on how CBOW are protected at the international level, and on the shortcomings of such regime. The United Nations Convention on the Rights of the Child of 1989 is the most comprehensive convention on children's rights at the international level. It is the most universally ratified convention, with all the States but the United States and Somalia being parties to it. Along with its two Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the CRC establishes a wide range of human rights every child is entitled to – including CBOW. The CRC therefore enjoys universal applicability. In this section, this thesis' author shall demonstrate how the children are protected at the international level. Though it is not the goal to thoroughly present each article of the CRC, this section aims to highlight the key provisions pertinent to these children.⁶¹

According to UNICEF, there are four cornerstone principles of the CRC, three of which may be particularly relevant for CBOW.⁶² Firstly, the CRC imposes an obligation on Member States (MSs) not to discriminate against children from open-ended list of grounds and provide equal opportunities for all.⁶³ Secondly, due to their vulnerability of need for support, the CRC formulates that the best interests of the child must be the primary consideration in any decision affecting them.⁶⁴ Governmental, public and private decisions that have an impact of children must prioritize their interests and be implemented accordingly.⁶⁵ Lastly, the Convention includes not only a right to life, but also a right to survival and development.⁶⁶ This is, however, in many cases not respected, namely when infanticide is committed. These are relevant for CBOW, as the

⁶⁰ Mochmann and Larsen, "The Life Course of Children Fathered by German Soldiers in Norway and Denmark during WWII," 349.

⁶¹ For a detailed analysis, see Mochmann and Lee, "The Human Rights of Children Born of War."

⁶² Rachel Hodgkin and UNICEF, eds., *Implementation Handbook for the Convention on the Rights of the Child*, Fully rev. 3. ed (Geneva: Unicef, 2007) (Implementation Handbook).

⁶³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. (CRC), art 2.

⁶⁴ CRC art 3.

⁶⁵ Implementation Handbook, 35.

⁶⁶ CRC art 6.

previous section has pointed to the overall pattern of discrimination they face, and their vulnerability.

There are many other provisions of similar importance. According to article 7, every child has a right to have their birth registered, to have a name, a nationality, and to know their parents, to the extent possible. Denial of citizenship in itself contributes to lack of access to education, social care and health, being the latter particularly problematic in light of their birth circumstances. Their chances of receiving asylum are also compromised.⁶⁷ Yet many children are denied this right. For example, in Vietnam, due to *jus sanguinis* laws according to which nationality is acquired through the father, many children born of rape to American soldiers were rendered stateless, as fathers would not register the births.⁶⁸ Additionally, article 8 enshrines the right to respect for identity, which includes family relations. Article 10 includes a right to family reunification, which may be particularly important and in the best interests of children born of consensual relationships would wish to connect with their families.⁶⁹ Furthermore, other relevant provisions include: article 19 on the right to protection from physical and mental violence or any form of ill-treatment against the child; article 20 on the right to alternative means of care; article 24 on the right to the highest attainable standard of health; article 26 to social security; article 27 on an adequate standard of living; article 28 on the right to education; and article 39 on the right to physical and psychological recovery and social reintegration of a child victim of neglect, exploitation, or abuse. The CRC therefore has numerous provisions suitable to tackle a wide range of CBOW's needs.

Nevertheless, many scholars have criticized the international human rights protection system. The case of Bosnia can illustrate perhaps the strongest critique to the CRC: decisions that allegedly are in the best interest of the child may conflict with other CRC provisions. In Bosnia, it was argued that it was in the best interest of the child to keep the origins and identities of CBOW secret to prevent stigmatization. Yet this contradicts the right to know one's parents, as included in article 7, and therefore one's origins.⁷⁰ Whether or not this worked in their best interests is disputed. This shows that the best interests of the child may be both politicized and neglected by

⁶⁷ Carpenter, "War's Impact on Children Born of Rape and Sexual Exploitation."

⁶⁸ Ibid.

⁶⁹ Mochmann and Lee, "The Human Rights of Children Born of War," 290.

⁷⁰ Ibid, 289.

various actors, thus jeopardizing the respect for article 3.⁷¹ The determination of what is in a child's best interests is therefore socially and politically situated.⁷²

Moreover, writing on children born of sexual violence, Roupetz, Delic, and Glaesmer show how not knowing one's identity can "leave many CBOW with an impaired sense of belonging," which may contribute to the development of mental health disorders.⁷³ However, conflicts may also appear in between different rights-holders, namely between the rights of CBOW and ex-combatants, and of CBOW and their mothers. According to McEvoy-Levy, the reintegration of ex-combatants -- that have raped -- into the armed forces or law-making institutions can undermine the rights of CBOW if it leads to a pragmatic peace process where CBOW and their mothers are left out of the political discourse;⁷⁴ in case of abandonment or adoption, the right of a mother to anonymity conflicts with a child's right to their parents.⁷⁵

Furthermore, Lee points to how the CRC is a "state-centric instrument"⁷⁶ that imposes vertical obligations on States -- from the State towards the individuals --, without duly considering the horizontal relationships between individuals themselves. Thus, in Lee's argument, the CRC is inadequate to deal with the human rights violations that happen on the horizontal, communal level, between individuals.⁷⁷ Similarly, Carpenter argues that rather than the State, communities are the most suitable actors to enable the social environment CBOW need to have their rights guaranteed.⁷⁸ In this light, she points to how the need to meaningfully belong to one's social group cannot be enforced through the CRC.⁷⁹ It is also questioned if in the case of children born of sexual violence, the resulting harms can be tackled through the imposed State obligations.⁸⁰ What is more, national interests and subsequent reproductive and public welfare schemes can negatively affect

⁷¹ Ibid, 289.

⁷² Mehmoona Moosa-Mitha, "The Political Geography of the 'Best Interest of the Child,'" in *Establishing Geographies of Children and Young People*, ed. Tracey Skelton and Stuart Aitken (Singapore: Springer Singapore, 2016), 1–21, doi:10.1007/978-981-4585-88-0_17-1.

⁷³ Sophie Roupetz, Amra Delic, and Heide Glaesmer, "An Intergenerational Perspective on Conflict-Related Sexual Violence against Women: Femane Survivors and Their Children Born of War Rape," in *Children Born of War: Past, Present, and Future*, 1st ed. (Routledge, 2021), 113.

⁷⁴ Siobhan McEvoy-Levy, "Human Rights of Culture and Children Born of Wartime Rape," in *Born of War* (Kumarian Press, 2007), 156-7.

⁷⁵ Daniel Wrabetz, "Children Born of War in Bosnia-Herzegovina," 33.

⁷⁶ Lee, "Children Born of War: Who Are They?" 39.

⁷⁷ Ibid, 39.

⁷⁸ Carpenter, "Gender, Ethnicity, and Children's Human Rights."

⁷⁹ Ibid, 6.

⁸⁰ Ibid, 8.

the implementation of human rights obligations. For instance, Carpenter shows how changing reproductive laws to exceptionally allowing rape survivors to abort has enhanced stigma towards CBOW, as their connotation to “the enemy” is strengthened.⁸¹ For Mochmann and Lee, both national interests and political willingness are relevant factors in predicting the enforcement of laws that protect vulnerable groups, including CBOW.⁸² Yet the potential lack of cultural legitimacy of rights can also work as a barrier to human rights protections. The prevalence of stereotypes and prejudice attached to CBOW may undermine the enforceability of the CRC. Further, the enforcement of children’s human rights will be the more difficult in situations where both the war-affected state and government are not functioning, which is a precondition for the implementation of any human right.⁸³

Nevertheless, the Convention does impose obligations on MSs to protect individuals from violations, meaning that horizontal violations – those committed at the community level – may also be attributable to the State. It is therefore a State’s obligation to ensure CBOW are protected on both the vertical and horizontal level.⁸⁴

A different, yet pressing question is whether there is enough (international) political attention on this matter. As Carpenter writes, what is necessary is that CBOW’s rights become mainstream within the children’s rights international forum, so that the relevant stakeholders, namely States, duly consider and act upon their needs. Unless children’s rights organizations address the needs of CBOW, we cannot expect the international community to act on them.⁸⁵ Similarly, there is a need to discuss the needs and rights of CBOW while addressing these children “as a category of their own,” as it could provide them with a due place on the international agenda.⁸⁶ In fact, in 2003, members from the Norwegian War and Children Identity Project attempted to start a process to create an Optional Protocol to the CRC on Children Born of War. The goal was to push States to apply initiatives that would protect children from stigma and discrimination, and that would provide them with information about their biological origins. Above all else, the endeavors on creating an Optional Protocol aimed at placing their experiences

⁸¹ Ibid, 10.

⁸² Mochmann and Lee, “The Human Rights of Children Born of War,” 292.

⁸³ Ibid, 293.

⁸⁴ Lee, “Children Born of War: Who Are They?” 39.

⁸⁵ Carpenter, “War’s Impact on Children Born of Rape and Sexual Exploitation.”

⁸⁶ Ibid.

in the public eye.⁸⁷ Indeed, the manner in which we address a certain group can influence how we position its members and frame them within international issues, namely how we frame their rights claims. Under this theoretical assumption, it becomes crucial to understand how CBOW are “constructed, represented, or rendered invisible by different sectors of the world community”.⁸⁸ This is exactly what this research shall attempt to achieve in the next sections.

3. Research Questions

In this light, this thesis shall attempt to answer two interrelated research questions: 1) What is the UN discourse on CBOW? and 2) How is the discourse on CBOW situated within the international legal framework on children’s rights? Through the first question, I shall assess how CBOW are legally addressed, what rights are ascribed to them, and which obligations are imposed on States. Further, through the second question, I shall ascertain whether the UN discourse creates blind spots for children born of consensual relationships. Thus, the findings from the content analysis shall guide the focus of the legal analysis. While it is acknowledged that the UN is not the sole entity comprising the international community, the organization is mandated by the Charter of the United Nations, articles 1(1) and (2), to protect and promote international security and peace, notably through the ensuring the protection of every person’s human rights. It is clear it produces international authoritative legal documents in the field of international security and human rights. The United Nations shall therefore be the focus of this thesis.

4. Methodology

In order to answer these questions, this thesis shall adopt a socio-legal methodological approach, hence mixing social and legal methods. This approach allows for establishing a connection between understandings and representations of CBOW by the UN and their legal rights,

⁸⁷ Charli Carpenter, “Different Things Become Sexy Issues,” in *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond* (Columbia University Press, 2010), 45.

⁸⁸ Carpenter, “Gender, Ethnicity, and Children’s Human Rights,” 8.

thus establishing a connection between the social and the legal order. As this research relies on the social context to analyse the law, this approach is the most suitable option to answer the research questions. The first main question shall be answered through a qualitative content analysis, whereas the second question shall be answered through a doctrinal legal analysis. Relevantly, in both methods, a distinction shall be made between “children born of sexual violence” – those born from rape, exploitation, and coercion -- and children conceived consensually. Despite recognizing that this distinction is not always clear in practice, I shall differentiate between the two to thoroughly analyse how these two groups of CBOW are constructed. The next subsections shall present the methods chosen.

4.1. Qualitative Content Analysis

The goal of the content analysis is to study the UN’s written documents addressing CBOW. Content analysis is a widely used empirical method in social sciences, which can be either quantitative or qualitative. The latter, which can be defined as an “*analytical method used for the subjective interpretation of the contents of both qualitative (assignment of categories) and quantitative (the use of text passages and analysis of frequencies of categories) steps in a systematic and context-dependent manner,*”⁸⁹ has been chosen for this thesis. This choice departs from the assumption that the systematic and subjective interpretation of the documents chosen can reveal how the UN constructs CBOW and legally frames them. Importantly, since the approaches to qualitative content analysis can be adapted to the theoretical background or existing research supporting the research questions,⁹⁰ it remains a rather flexible data-gathering method. As this section shall demonstrate, such flexibility is imperative to properly answer this thesis’ research questions.

Section 2.3 has pointed to pre-existing research that demonstrates that the degree of attention given to CBOW by organizations dealing with children’s rights, including the United Nations, may dictate the degree to which the broader international community and States address

⁸⁹ Ali Selvi, “Qualitative Content Analysis,” in *The Routledge Handbook of Research Methods in Applied Linguistics*, 1st ed. (Routledge, 2019): 442.

⁹⁰ Hsiu-Fang Hsieh and Sarah Shannon, “Three Approaches to Qualitative Content Analysis,” *Qualitative Health Research* 15, no. 9 (November 2005): 1277, doi:10.1177/1049732305276687.

them. In this light, content analysis allows for the “subjective interpretation of the content of textdata through the systematic classification process of coding and identifying themes or patterns.”⁹¹ It has been chosen to allow the author to draw inferences regarding the conceptualization of CBOW within the UN by classifying the text from the selected documents issued by the organization.

Because the content analysis conducted was informed by preexisting research, specific pre-determined key codes were created before analyzing the literature. The classification of the information in the data was determined prior to reading all the data. Therefore, I have applied a deductive content analysis, also referred to as a “directed content analysis”.⁹² In light of the flexibility of this approach, in the process of coding, I have created new codes to better classify data that had not been previously considered. Sub-codes were also created to best organize the phenomena present in the data. Throughout this section, the term “meaning units” shall be used to refer to relevant segments of text that have been assigned different codes, and, in some cases, sub-codes.

In total, 64 files were analyzed. These included annual reports from the Secretary-General on Sexual Abuse and Exploitation, annual reports from the Special Representative on Children and Armed Conflict to the General Assembly, annual reports from the Secretary-General to the Security Council and General Assembly and SC resolutions on Children and Armed conflict, annual reports from the Secretary-General to the Security Council and General Assembly and SC resolutions on Conflict-Related Sexual Violence, and the Women, Peace, and Security resolutions. The annual reports and resolutions mentioned date from 2009 to 2022, as the issue of CBOW only became apparent to the Security Council in 2009.⁹³ These documents were chosen due to their scope of application, as all the documents fall under the thematic umbrella of children in armed conflict, conflict-related sexual violence, sexual exploitation by UN forces, and the women, peace, and security agenda. Analyzing annual rather than country-specific documents allowed the author to better manage the pool of UN documents, while still ensuring that CBOW would be addressed. Additionally, the Secretary General report to the Security Council on “women and girls who

⁹¹ Ibid, 1278.

⁹² Ibid, 1281.

⁹³ Secretary-General, “Women and Girls Who Become Pregnant as a Result of Sexual Violence in Conflict and Children Born of Sexual Violence in Conflict,” S/2022/77 (United Nations, January 31, 2022)

become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict” of January 2022 (SG report on women and girls who become pregnant) and the Joint Statement on “Ensuring prevention, protection and assistance for children born of conflict related rape and their mothers” of November 2021 (Joint Statement) were analyzed. These were selected due to their specific focus on children born of sexual violence and their mothers.

It is worth mentioning that the above-mentioned list of documents is not exhaustive, and that it is possible that other documents issued by the United Nations refer to CBOW, such as those authored by the Committee of the Convention on the Rights of the Child (the Committee). This choice stems from the fact that the documents issued by the Committee are country- or article-specific. Given the impossibility to filter documents on a thematic basis, I consider it would become unreasonable to objectively select a range of documents to be quantitatively analyzed. In this vein, even though the following legal analysis will focus on the Convention on the Rights of the Child, no documents from the Committee were selected.

Throughout the selected documents, the pre-determined codes were used to assess whether the documents addressed CBOW, and if so, whether these were of consensual relationships or of sexual violence; how the children were legally positioned – that is, seen as victims, rights’ holders, evidence of CRSV against their mothers, and as a vulnerable group --; what kind of rights and obligations were connected to the children; and which harms and risks they were vulnerable too. For this purpose, the following codes were created: “subject,” “positioning” (sub-coded into “victims,” “rights’ holders,” “evidence of conflict-related sexual violence against their mothers”, and “vulnerable group”), “rights of children,” “obligations of MSs,” “harms,” “risks.” Sub-codes have been created for “rights of children” and “obligations of MSs”. Additionally, when analyzing both “harms” and “risks,” I have created sub-codes to classify their different types one by one into “discrimination,” “marginalization,” “isolation,” among many others. Even though they are interconnected, individual sub-codes have been chosen in the process of analyzing the literature to provide a more thorough analysis. Not only have I coded all possible relationships of causation present in the literature between the two codes, but also between other relevant text data and either of the two codes. This has allowed me to infer which factors the UN perceives to cause such harms and risks, as will become apparent in the results section.

Further, to classify data not considered prior to reading the literature, other codes were later created. These included: “mother’s rights” – when CBOSV are mentioned to refer to the rights of their mothers, namely to pass their nationality onto their children --, “mothers’ suffering” – when CBOSV are mentioned to describe their mothers’ needs and harms --, “needs of CBOW,” “UN efforts,” “UN recommendations,” “good practices,” “inactions of States,” and “needed actions from States.” The latter refers to statements that clarify steps that MSs should follow, but that are neither in the form of an obligation nor recommendation. Seen together, most codes chosen in this analysis fall under three different categories. The table below clarifies what these categories are, and which codes and sub codes fall under them. The list of sub-codes here presented is, however, not exhaustive. A full overview of codes and of sub-codes can be found in Appendix A. Coding was done through the software program NVivo.

Legal Framing	Suffering of CBOW	Actions and Efforts required
<p>Subject CBOW CBOSV Omission</p> <p>Legal Positioning Rights’ holders Victims Vulnerable group Evidence</p> <p>States’ Obligations Respect right to education Include CBOSV in reparation programs etc.</p> <p>Children’s Rights Right to education Right to protection from discrimination etc.</p>	<p>Harms Abuse Abandonment Violence Social rejection etc.</p> <p>Risks Trauma Stigmatisation Social rejection etc.</p> <p>Needs of CBOW</p>	<p>UN efforts</p> <p>UN recommendations</p> <p>States’ Good Practices</p> <p>Inactions of States</p> <p>Needed Actions from States</p>

Some further details ought to be clarified. The code “subject” has been used to classify which documents address CBOW, and if so, which type, and which ones do not address them at all. Thus, “subject” only contains one entry data per document. It is therefore possible that in certain documents there is only one coded meaning unit, that is the omission of references to

CBOW. Regarding the code “positioning”, children have been placed under “victims” whenever the text addresses them directly as such, whereas they have been placed under “rights’ holders” when there is a specific reference either to their legal rights or specific obligations of States towards them. As a consequence, text was not coded as children being “victims” when it describes what types of harm they endure, as children can have suffered harms without being legally seen as victims. Instead, children were also placed under these codes when it is clearly implied in the text. For instance, in instances where the UN commends States for recognizing CBOW as victims, the relevant text has been coded into children as “victims”. Further, even if a particular segment of text with reference to CBOW is coded, such reference may not fall under “placement”. This is the case, for example, when the harms and risks are described.

Not all sentences relating to all children in armed conflict have been coded, as the goal is to see how CBOW in particular are perceived by the UN. One could argue that from context it could be inferred that some of these general references also relate to CBOW, in particular if these follow specific provisions on CBOW. Yet the assessment of whether this relation is implied would be highly subjective and would potentially undermine the quality of the research. Thus, I have solely analyzed meaning units that are directly related to CBOW, unless it is extremely clear by context that the sentence refers to CBOW without explicitly using the term, i.e. when grammatical terms are constructed through ellipsis. What is more, not every single reference to CBOW was coded, as the reference may not address the questions this thesis aims to answer. This was the case when the documents cross reference other UN documents, or when statistics on CBOW were presented, except for when such statistics are used as “evidence of conflict-related sexual violence” committed against their mothers. In those cases, text has been duly coded.

Moreover, as these codes are interconnected and complementary, oftentimes a particular unit of meaning can fall under different codes simultaneously. Illustratively, when the UN states that CBOW have a right to education, the unit falls both under “positioning” to describe that children are seen as rights-holders and “rights”, in particular the sub-code “right to education” to code which precise right the UN is mentioning.

One additional point is worth mentioning. This section shall not focus on the exact frequency in which children born of war are referred to within a given document, nor which portion, or range of the document addresses them. Neither the number of times CBOW are

mentioned, or the length of a particular coded text provide insights as to how they are legally situated, how their suffering is perceived, and which actions the UN deems to be required. For instance, because the documents used for this analysis cover a wide span of time, some UN recommendations, or some projects, either done at the UN or national level, are mentioned several times across documents. Thus, the number of times units of meaning are coded as “UN efforts”, as an example, does not equal the number of actual singular actions the UN was involved in. Yet the frequency with which some codes are present can oftentimes be valuable in understanding where the focus of the UN lies. Frequency shall therefore often be referred to throughout the next section, though not in absolute terms.

4.2. Doctrinal Legal Analysis

Following the qualitative content analysis, I shall conduct a doctrinal legal analysis to legally situate the results from the former analysis. This shall answer the second research question, which is: how is the UN discourse situated within the international legal framework on children’s rights? A doctrinal legal approach uses primary legal sources and case law in order to systematically describe and make sense of “*the principles, rules, and concepts governing a particular legal field or institution and analyzes the relationship between these principles, rules and concepts with a view to solving unclarities and gaps in the existing law.*”⁹⁴ Doctrinal legal research is based on the assumption that law is normative, and thus respects legal institutions, though its evaluative nature opens the possibility of change within the designated framework. It is also independent because it does not rely on non-legal justifications and reasoning.⁹⁵ In this light, in conformity with the sources of international law prescribed in article 38 of the Statute of the International Court of Justice (ICJ), the author shall use the CRC and individual communications by the Committee. General Comments and other soft law documents issued by the Committee will also be used. Even though these do not constitute a primary source of law in the sense of article 38 of the ICJ statute, they expand on normative content derived by the CRC, and subsequently inform how the CRC ought to be interpreted and applied. Hence the sources too

⁹⁴ Jan M. Smits, “What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research,” *SSRN Electronic Journal*, 2015, doi:10.2139/ssrn.2644088, 5.

⁹⁵ *Ibid*, 5.

belong to “the complex mechanism regulating the activities of international legal entities.”⁹⁶ As this analysis is guided by the qualitative analysis, I shall also connect these sources to information presented in the literature review and the findings from said analysis.

Concretely, in order to answer the second question, I shall legally analyze the rights and obligations identified in the content analysis and analyze who they apply to – that is, if they apply both to CBOSV and children born of consensual relationships. Rather than addressing every single identified obligation, in chapter 6, I shall simply analyze the ones most referred to by the UN. A full list of the identified obligations can be found in appendix A. What is more, rather than analyzing rights and obligations individually, I shall connect them to CRC provisions. Therefore, articles 7 and 3, 2, 19, 34, and 39 of the CRC shall be presented and analysed. I shall address the scope of each article and present the obligations they generate, though it is recognized they are all interdependent and interconnected. In light of this thesis’ aim, the legal analysis shall be tailored to generated obligations that directly relate to CBOW. In this process, I shall identify potential legal blind spots in the UN discourse regarding CBOW conceived consensually. A more detailed overview of this process shall be presented in chapter 6 after having presented the results from the content analysis, which shall guide the doctrinal legal analysis.

4.3. Research Quality and Limitations

Prior to presenting the findings, one must consider the quality and limitations of the methods adopted. The quality of a content analysis, notably of the research findings, depends on its level of trustworthiness. According to Graneheim and Lundman, in the case of qualitative analysis, trustworthiness is seen through the intertwined concepts of credibility, dependability, and transferability.⁹⁷ This section shall expand on each of these and explain how this thesis meets these criteria.

⁹⁶ László Blutman, “In the Trap of a Legal Metaphor: International Soft Law,” *The International and Comparative Law Quarterly* 59, no. 3 (2010): 608.

⁹⁷ U.H Graneheim and B Lundman, “Qualitative Content Analysis in Nursing Research: Concepts, Procedures and Measures to Achieve Trustworthiness,” *Nurse Education Today* 24, no. 2 (February 2004): 109, doi:10.1016/j.nedt.2003.10.001.

Credibility can be described as the soundness of the methods for data selection and data analysis. Thus, it is ensured if the type and amount of data chosen addresses the appropriate research questions.⁹⁸ As explained above, the data was chosen according to its thematic and temporal scope. Even though country-specific reports were not included, the various types of themes selected -- including children and armed conflict and CRSV -- and wide temporal scope nonetheless allow for a complete view of the UN's discourse. Further, credibility is present if the codes and categories were identified correctly.⁹⁹ This was ensured through peer reviewing and cross checking with other scholars. Moreover, dependability means "the degree to which data change over time and alterations made in the research's decisions during the analysis process." That is, the lack of inconsistencies throughout the various processes of research, including coding, categorizing, and analysis process. Throughout the classifying process, all documents and codes were individually checked to ensure consistency. Lastly, transferability refers to the degree to which research can be replicated in other contexts or groups. Here it is crucial that the context of the research, as well as the process of data collection and analysis is made clear to the reader.¹⁰⁰ This was ensured through providing a detailed overview of the codes used and the process behind their selection, including the reasoning behind it. Ensuring transferability means that the same analysis could be applied to other regional human rights bodies, including the Council of Europe, the Inter-American Organization of Human Rights, the African Union, or to future UN documents dealing with this issue to track the evolution of its discourse over time.

However, using a qualitative content analysis also comes with its limitations. As pointed out by Hsieh and Shannon, the fact that the codes are informed by a particular theory or research already done may lead the researcher to find evidence that supports the former.¹⁰¹ This is directly connected to the inherent subjectivity of doing a qualitative analysis. While the details on the methods facilitate transferability of the research, the process of coding is inherently subjective, and bound to differ from researcher to researcher. Yet, as internal consistency has been ensured through multiple revisions during and after coding, such a limitation is not in itself a fundamental issue. Though these points do not invalidate the research, they must be duly considered.

⁹⁸ Ibid, 109.

⁹⁹ Ibid, 110.

¹⁰⁰ Ibid, 110.

¹⁰¹ Hsieh and Shannon, "Three Approaches to Qualitative Content Analysis," 1283.

As for the second method, doctrinal legal analysis is a traditional method in legal research that primes form applying a systematic structure that is objective, value-free and independent from non-legal reasoning. Further, the method dictates which established sources to use, leaving little room for discretion. However, due to its theoretical nature, it ignores non-legal reasoning, overlooking the socio-political and economical context in which the law is inserted. It solves identified legal issues without explaining why these exist and how to solve them in practice. The picture provided is incomplete. While these issues do not render the method inappropriate, they point to relevant shortcomings.

Having explained the methods and pointed to their quality as research tools, the next section shall present the results of said methods.

5. Results from Qualitative Analysis

The aim of this content analysis is to qualify how the UN frames CBOW. As mentioned above, most codes were pre-determined, yet many others were created and used throughout the coding process. As a result, three main categories of meaning were identified: legal framing, suffering of CBOW, and actions and efforts required to address the needs of CBOW. The results shall be presented category by category in the following sub-sections.

5.1. Legal Framing

The first category of analysis is the children's legal framing. Here, I shall analyze who the "subject" of each document is, how the subject is legally positioned, and what rights and States obligations apply to them. For those documents that refer to children born of war in general, I shall clarify whether they are considered "victims," "rights' holders," "evidence of CRSV against their mothers," or a "vulnerable group." Yet, as explained in the methodology section, not every single reference to CBOW has been assigned to this code.

Out of all the 64 documents reviewed, 28 mention and/or expand on children born of war. Thus, more than half of the documents are silent on this issue. I have chosen to code these

nonetheless to provide an overview of the portion of relevant UN documents addressing CBOW. Whereas 27 documents focus on children born of sexual violence (CBOSV), only 1 document – the 2016 annual report of the Special Representative of the SG for children and armed conflict – explicitly mentions the wider term “children born of war”. The latter is used to refer to the risks of conflict-related sexual violence that CBOW face. Children born of consensual relationships are not directly addressed. In this light, throughout this section on results of the qualitative analysis, rather than referring to “children born of war”, I shall refer to “children born of sexual violence.”

The analysis of this category reveals that there is a shift in the UN discourse regarding CBOSV. Since 2013, the term has been used to explain the suffering of their mothers, and in reports/resolutions from 2015 and 2016, to function as “evidence” that sexual violence has occurred against their mothers. Though they were often referred to as “victims,” starting in 2015, it is only with the Joint Statement and the SG report on women and girls who become pregnant that this is expanded on. It is worth mentioning that children are most often considered “victims of war” or “victims of armed conflict”, and never explicitly of human rights violations. The significance of this finding shall be discussed in the next section. Further, only in 2018 were CBOSV directly referred to as a vulnerable group, as well as rights’ holders, although this is more thoroughly achieved in the Joint Statement of 2021.

Regarding their rights, the focus lies on the right to birth registration and nationality, which is enshrined in Article 7 of the CRC. Other rights mentioned are the right to education, the right to prohibition on discrimination, and protection from CRSV and trafficking, abuse, and exploitation. As for obligations, these are only clearly mentioned in the Joint Statement between CEDAW and CRC. The obligations mentioned are quite varied, though there is an emphasis on the obligations to ensure rehabilitation and reintegration, to combat discrimination and stigmatization, to respect the best interests of the child, to respect the right to identity and nationality, and to foster children’s agency. Other obligations are worth mentioning, namely to provide CBOSV and their mothers with free legal aid if they seek redress.

The analysis of this category reveals that the UN does recognize that rather than being mere evidence that CRSV has occurred, CBOSV are victims and constitute a vulnerable group that has specific rights. Never are children born of consensual relationships mentioned.

5.2. Children's Suffering

The risks and harms CBOSV face started being thoroughly addressed by the UN only in 2015 and 2017, respectively. Though in different frequencies, the types of suffering – sub-codes - - most expanded on throughout the 64 documents were abandonment, being socially perceived as being associated with the enemy, discrimination, facing identity issues, marginalization, stigmatization, societal rejection and isolation, trauma, and being left statelessness. Not being included justice interventions, in reparations and reconciliation programs, as well as disarmament, demobilization and reintegration programs were also mentioned as potential risks and factual harms. Though not very often, the UN also identifies these children's vulnerability military recruitment and radicalization. Interestingly, this implies that CBOSV are also seen as potential threats.

As mentioned above, the relationships of causality between the various sub-codes, and between a sub-code and a particular segment of text data have been registered. The latter refers to information that may be relevant for this relationship, but that does not fit into a particular code, namely “economic impact of raising children born of sexual violence,” “mother who has suffered sexual violence,” “mothers who are victims of CRSV struggling to raise their children,” and “unknown paternity.” Though several relationships were registered, some are of particular relevance.

The UN presents a causal connection between children being associated with enemy forces and experiencing stigmatization, rejection, abuse, ostracism, and infanticide, as well as risking being marginalized and abandoned by their mothers. In turn, the risk of being abandoned is also presented as a factor leaving children vulnerable to recruitment by armed or terrorist groups. In contrast, being children of victims of CRSV in itself is referred to explain why these children are stigmatized, abandoned, and suffer “transgenerational” trauma. In turn, such trauma explains several of the “harms” identified, namely substance abuse, their physical and psychological ill-health, and their being also victims of violence. It follows that “stigmatization” is explicitly mentioned as a consequence of the sexual violence suffered by their mothers and to the children's perceived association with the enemy/terrorist group. Though these references are only made once for each factor, in most references to stigma and rejection suffered by CBOSV, it is implicit this

relates to the rape their mothers endured. However, in one instance the UN has also stated that the stigma is attached to them due to being born out of wedlock, which could also apply to children born of consensual relationships. Moreover, unknown paternity is presented as a factor possibly leading to stigmatization. The difficulty that survivors of CRSV have with raising their children is identified as causing neglect and violence towards the children.

Further, in some instances, stigmatization of CBOSV is presented as a cause for their recruitment into armed groups or radicalization, as well as a factor increasing their risks of societal marginalization, low socioeconomic status, and rejection. According to the UN, these children's risk of being stigmatized may lead to them being deprived of societal and familial resources. In turn, not being integrated into one's society may foster vulnerability to exploitation, and recruitment by armed or terrorist groups. Moreover, not being registered at birth is presented both as a factual harm and a factor increasing the risks of marginalization, vulnerability to trafficking, and vulnerability to recruitment by armed groups and future radicalization, with the latter being more frequently mentioned. Lastly, impunity and lack of accountability for the sexual violence committed against the mothers is presented as a factor potentially leading to revictimization of their CBOSV.

Therefore, although the main subject of the documents analyzed is children born of sexual violence, the UN does recognize that being socially perceived as being associated with enemy forces fosters stigmatization, rejection, marginalization, ostracism, abuse, abandonment, and infanticide. Similarly, the UN explicitly expands on the harms and risks of not registering CBOSV at birth. Though just once, as just mentioned, the UN accepts that being born out of wedlock leads to stigmatization. What is relevant is that these three factors – being socially perceived as being associated with enemy forces, not being registered at birth, and being born out of wedlock – are realistic outcomes not only to children born of sexual violence, but also to children born of consensual relationships. Yet the 64 documents are silent on the latter.

5.3. Actions required from States and UN

Throughout the 64 documents, the UN points out States' inactions regarding CBOSV, good practices on the national level, both by States and civil society. Further, the UN provides recommendations to States and regional organizations -- and to a lesser extent to the UN Security

Council --, it maps out both intended UN-led actions and projects for the future, and past UN-led actions and projects, many of which are in cooperation with MSs.

The UN has been signaling States' lack of action towards CBOSV since 2013, though this has been more thoroughly done in the SG report of 2022 on women and children who become pregnant. The inactions presented by the UN include: not including CBOSV in reintegration programs or statements by religious leaders; implementing laws that address victims of CRSV, namely by providing access to land and to social welfare programs, but that fall short of including their children in the provision of relief services; implementing laws that provided for the rehabilitation and reparations for victims of CRSV by Da'esh members but that did not include women who were forcibly married and their children born of rape; implementing reparation programs that fail to address the economic consequences of raising children born of rape or programs regarding CRSV that do not address children born as a result of sexual violence; not including CBOSV in transitional justice (TJ) initiatives; imposing or not removing obstacles to birth registration of CBOSV; not providing or not funding enough social support to these children; and having the authorities actively reinforcing the idea that CBOSV are affiliated with extremist groups, therefore being perceived as perpetrators rather than as victims. Interestingly, most of these inactions are in direct connection to programs directly addressing CRSV and their mothers.

The UN has also been commending good practices at the national level since 2014, though the SG report on women and girls who become pregnant has also addressed this issue the most. A measure that has stood out was the inclusion of CBOSV in national action plans regarding the Women, Peace, and Security agenda, namely in relation to measures addressing CRSV. Other good practices mentioned include various efforts by civil society to support and reintegrate children born of sexual violence, and measures providing for relief and support, including dialogue with religious leaders to foster social integration. Measures to ensure birth registration of these children were also commended.

In this light, since 2013, the UN has been issuing recommendations addressed to States and regional organizations, and to the Security Council, though the former is much more prevalent. Within these, the UN has mostly addressed the need to include children born of sexual violence in relief and reintegration programs, many of which are designed to apply to victims of CRSV, to clarify these children's legal status, and to include them in TJ initiatives. Within the latter point,

some recommendations address providing reparations to mothers who were victims of CRSV, whereby children born as a result of sexual violence are included through the provision of housing and education. In line with the harms and risks previously mentioned, there is a stress on the delivery of justice and accountability for both mothers and their children.

What is more, UN efforts on initiatives regarding CBOSV have been thoroughly mentioned in the documents reviewed. Most of these relate to providing legal aid to survivors and their children, as well as investigating and prosecuting perpetrators of CRS, creating rehabilitation centers for children who had been formerly associated with armed groups, providing overall support to CBOSV, including material, educational, psychosocial and livelihood support through the implementation of multi-partner trust fund projects. All such projects presented were implemented in connection with other projects that have addressed the abuse that the mothers as victims of CRSV have suffered. Further, the UN has commended UNICEF for prioritizing children born of sexual violence in their various initiatives. Lastly, the UN has also mentioned intended future projects directed towards CBOSV, mostly in relation to sexual exploitation committed by UN officers against their mothers. These include applying survivor-centered approaches and incorporating CBOSV into such initiatives, providing reintegration assistance to survivors and their CBOSV, as well as ensuring procedural safeguards.

Both the inactions and recommendations presented emphasize the perceived nexus between the sexual violence suffered by the mothers, and the lack of the children's well-being. Indeed, including CBOSV in relief, rehabilitation and reintegration programs related to victims of CRSV is the primary solution identified by the UN. With many selected documents falling under the thematic umbrella of CRSV and WPS, these findings must be read without much surprise. Nevertheless, despite the legitimate goal of these programs, the underlying logic of this nexus precludes other CBOW from being given the same level of attention. The UN perceives CBOSV as victims and as rights' holders, yet it does so mostly in connection with the sexual violence their mothers have suffered. Therefore, even though this category was not the initial focus of this research, its results provide valuable insights.

6. Legal Analysis

6.1. Legal Issue

The previous section has shown that CBOSV have been described as direct victims of armed conflict, as constituting a particularly vulnerable group, and as rights' holders. The UN has in this respect referred to several rights CBOSV have and States' obligations in relation to these children. Further, the UN has recognized the various risks and harms they are vulnerable to. Based on this recognition, the UN has pointed to several States' inactions, and has accordingly issued a wide range of recommendations to Member States. Past UN projects and efforts regarding children born of sexual violence have also been mentioned, many of which are positioned in direct connection to already existing projects supporting victims of conflict-related violence. In addition, it has been demonstrated that some of the risks and harm these children suffer stem from their alleged association with enemy armed groups, with them being born out of wedlock, as well as from the sexual violence their mothers have suffered. Even though the two former factors apply to CBOW conceived consensually, these are never directly addressed. Rather, the focus of the UN lies almost entirely on CBOSV. In this vein, the legal question of whether the UN's focus on CBOSV and respective exclusion of other CBOW is consistent with the international legal framework on children's rights arises. Does the available data on CBOW conceived consensually not call for a similar emphasis on them? Given the dim distinction between consensual and coercive relationships, would it not be more appropriate to address CBOW in a general manner? After all, the CRC should be applied to *all* children equally, even if some provisions adopt a narrower personal scope. Addressing these issues shall tackle my second research question, which is: how is the UN discourse on CBOW situated within international children's rights law? Hence, this section shall thus illustrate how not addressing CBOW conceived consensually potentially undermines their consideration when implementing CRC rights.

In order to answer the question, I shall firstly connect the rights and obligations identified in the content analysis to existing CRC provisions. Even though the only provision the UN refers to is article 7, the identified rights and obligations are directly connected to CRC provisions. Thus, the next sub-sections shall present and analyse provisions related to the identified rights to birth and registration and nationality, right to education, right to prohibition on discrimination, and right

to protection from CRSV and trafficking, abuse and exploitation. Worth mentioning is that even though the right to education was also identified, it *prima facie* applies to *all* children, meaning that no further analysis is required. This section shall also present and analyse the provisions related to the obligations to protect the best interests of the child, to reintegrate of CBOSV in society, to provide legal aid to mothers and children seeking redress for the sexual violence committed against their mothers, to foster children's agency in matters affecting them, and obligation to include CBOSV in justice, humanitarian, and diplomatic initiatives. Although the obligation to include CBOSV in justice, humanitarian and diplomatic initiatives is only mentioned once, it is inherently connected to the obligation to foster children's agency in decisions affecting them and shall therefore be analysed in conjunction with it. Articles 7 and 3, 2, 19, 34, and 39 of the CRC shall be presented and analysed. Special focus shall be given to the analysis of the latter, which shall also rely on international humanitarian law.

6.2. Right to Birth Registration and Nationality

Rules

The right to birth registration and nationality was repeatedly emphasized by the UN. It can be found in article 7 CRC, which states that “[t]he child shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality (...).” Birth registration involves declaring the episode of the birth to national civil registrars, the record of such birth within the registrars, and the issuing of a birth certificate, which functions as evidence of the recognition of the child as a legal person before the State. The issuing of this document must be free and accessible to all.¹⁰² The individual's name, data and place of birth should be registered, along with the name, “age or date of birth, place of usual residence or nationality of both parents,” if possible.¹⁰³

As expanded by the Office of the United Nations High Commissioner for Human Rights, through the continuous and permanent recording within a given civil registry of a person under the law, birth registering provides everyone with civil, political, economic, social and cultural

¹⁰² Ibid, para 5.

¹⁰³ Ibid, para 5.

rights.¹⁰⁴ Not registering children may deny them the enjoying other basic rights such as “health, education, and social welfare.”¹⁰⁵ In this light, the Committee has stated in its General Comment No. 7 that MSs should be able to provide health and social care for children who have not been registered.¹⁰⁶

Analysis

The content analysis above has showed how this right was implicitly mentioned in other domains, namely in “good practices”, whereby the UN commended States for implementing projects to ensure CBOSV are registered. The content analysis also shows that the UN has placed emphasis on this right, perhaps due to the dire potential consequences of not registering children.

Relevantly, the UN often links the lack of birth registration to discriminatory birth registration laws and general “critical administrative challenges.”¹⁰⁷ Such laws may include *jus sanguinis* laws, where the father must claim legal paternity and which make the child’s nationality dependent upon the father’s, as mentioned in chapter 2. By imposing an unnecessary requirement to acquiring a birth certificate, they contravene article 7. However, due to the negative consequences of depriving children from rights deriving from having a birth certificate, *jus sanguinis* laws also contravene article 3 on the best interests of the child. According to article 3(1) of the CRC, “[i]n 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.” Rather than being a stand-alone right, this principle is inherently connected to all the remaining provisions in the CRC. When implementing actions concerning children, including when implementing article 7, the interests of children must be prioritized.

Nonetheless, even if these laws and challenges probably disproportionately impact CBOSV, they might also negatively impact children born of consensual relationships. This would be the

¹⁰⁴ OHCHR, “Birth Registration and the Right of Everyone to Recognition Everywhere as a Person before the Law” (Human Rights Council, A/HRC/27/22, June 17, 2014), para 4.

¹⁰⁵ “General Comment No. 7 (2005): Implementing Child Rights in Early Childhood,” CRC/C/GC/Rev.1, September 20, 2006 (General Comment No. 7), para 25.

¹⁰⁶ *Ibid.*

¹⁰⁷ Secretary-General, “Conflict-Related Sexual Violence,” Report of the Secretary-General to the Security Council, S/2019/280 (United Nations, March 29, 2019), para 20.

case, for instance, of children born of mothers who have consensual relationships with soldiers in exchange for safety, goods, and money, but who are not able to identify them or register them as fathers. The stigma attached to sexual relations outside of wedlock in some societies might also lead mothers to not register their children, so they do not experience such stigma.

6.3. Right to Protection from Discrimination

Rule

Furthermore, the UN refers to the right to protection from discrimination, which is specified in article 2. Paragraph 1 enumerates the grounds upon which discrimination in respecting and ensuring CRC rights is prohibited. These include: “the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The right to prohibition on discrimination is not a stand-alone right. On the contrary, it must be applied in conjunction with other rights in the CRC, as article 2(1) only prohibits discrimination in the respect of rights in the CRC. Considering the wide substantial scope of the Convention, one could argue this element is not limiting. In General Comment No. 7, the Committee goes further to expands on MSs’ obligations to “monitor and combat discrimination *in whatever forms it takes* and wherever it occurs - within families, communities, schools or other institutions” (emphasis added). Similarly, the Committee stated that both public and private discrimination are prohibited by the Convention, and that States ought to protect children from rules that have discretionary effects on either sphere, even if they appear to be neutral.¹⁰⁸ In the same individual communication, the Committee has clarified that both direct and indirect, explicit and hidden forms of discrimination are prohibited. In this vein, General Comment No. 7 expands on MSs’ obligation to “raise awareness about discrimination against young children in general, and against vulnerable groups in particular.”¹⁰⁹

¹⁰⁸ A.B.A. v. Spain, No. CRC/C/91/D/114/2020, CRC/C/91/D/116/2020, CRC/C/91/D/117/2020, CRC/C/91/D/118/2020 (Committee on the Rights of the Child September 12, 2022), para 10.7.

¹⁰⁹ General Comment No. 7, para 12.

Analysis

Being born of war or even of sexual violence is not one of the listed grounds of discrimination. However, “birth status” is. It can be argued that “being born of war” as a general term, or more specifically, “being fathered by an enemy soldier”, “being born of sexual violence” and “being born out of wedlock”, which would apply to both CBOSV and CBOW, constitute a particular birth status. Moreover, paragraph 1 provides an open-ended list of grounds upon which discrimination is prohibited, by including “other status” as a ground. Even if it is not accepted that the general term “being born of war” constitutes a birth status, the specific type of stigma, social marginalization and isolation, and vulnerability to violence and exploitation many of these children suffer could render “being born of war” a “other status”. It follows CBOW are also protected by this provision, entailing these children are beneficiaries of the obligations this right imposes. MSs can therefore be held accountable for not addressing the various ways children born of war are discriminated against not only in the public, but also in the private sphere. This may be particularly relevant for CBOSV, as the content analysis has shown they are considered a particularly vulnerable group. In fact, in the Joint Statement, the UN explicitly enumerates measures States should adopt to combat discrimination against children born of rape, namely through educational campaigns, and through mobilizing traditional and religious leaders. Yet, if one accepts that children born of consensual relationships are also protected by virtue of their “birth status” and “other status”, such obligations ought to extend to these children.

Furthermore, paragraph 2 of article 2 states that MSs “shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status (...) of the child’s parents (...)” If one considers “being an enemy fighter”, “being a soldier from an occupying force, “being a child soldier”, or “being a peacekeeping officer”¹¹⁰ a status in the meaning of article 2(2), then one could argue MSs have further positive obligations towards children born of war. Hence, even if the interpretation in General Comment No. 7 is not accepted in virtue of its non-binding nature, paragraph 2 clearly imposes similar obligations on MSs for CBOW.

¹¹⁰ Non-exhaustive list of categories for assigning “born of war” status to a child.

6.4. Right to Protection from All Forms of Violence

Rule

In addition, the UN refers to the rights of protection from CBOSV from trafficking, abuse, and exploitation. There is no provision with this specific wording in the CRC, but article 19(1) calls upon States to adopt “measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” The wording of the provision implies this right creates positive rather than negative obligations on States. In connection, the UN refers to the right to protection from sexual violence, which is enshrined in article 34. The provision imposes on MSs the obligation to “protect the child from all forms of sexual exploitation and abuse.” Prior to analysing its application to CBOW, several aspects of this article ought to be analysed. I shall refer to General Comment No. 13, in which the Committee extensively expands on the legal implications of this provision. Rather than addressing every aspect, I shall focus on those relevant for CBOW.

Analysis

In General Comment No. 13, the Committee noted that a crucial component of article 19 is due diligence, thus clarifying that proper implementation of the provision requires taking positive steps to ensure prevention of violence against children.¹¹¹ States are bound to adopt and revise legislation to align it with the goals of article 19, properly implement laws and regulations, and provide “material, technical and human resources” to authorities which “identify, prevent, and react to violence against children.”¹¹² This is particularly relevant due to the role this provision plays in securing and promoting all the remaining rights in the CRC.¹¹³ In the documents, the UN refers to this right by recommending States to directly combat stigma against CBOSV and by welcoming the revision of the school curriculum in Rwanda that introduced discussion of CBOSV to prevent peer discrimination.

¹¹¹ Committee on the Rights of the Child, “General Comment No. 13 (2011): The Right of the Child to Freedom from All Forms of Violence,” CRC7C/GC/13, April 18, 2011 (General Comment No. 13), para 5.

¹¹² *Ibid*, para 13.

¹¹³ *Ibid*, para 13.

Further, according to the Committee, this right is best implement if child rights-based definitions of the forms of violence encompassed in article 19 are used to operationalize prevention mechanisms.¹¹⁴ Importantly, article 19(1) prohibits “*all forms of violence*” (emphasis added), which include “physical, psychological and sexual violence, often my bullying, exerted by children against other children.”¹¹⁵ It follows that violence coming from actors other than those in the care of the child are covered by the provision as well. In addition, in the same General Comment, the Committee expands on what is meant by “any other person who has the care of the child”, as written in article 19(1). In fact, General Comment No. 13 clearly states this segment refers to anyone with a clear “legal, professional -ethical and/or cultural responsibility for the safety, health, development and well-being of the child”, which includes “family and community members.”¹¹⁶ When the child is left unaccompanied, the State acts as the caregiver.¹¹⁷ Hence, article 19 imposes obligations on States to protect children from all forms of violence, injury, abuse, negligence, and exploitation that occur inter alia within the family, neighbourhoods and communities, including schools. This entails that the violence referred to this provision goes beyond violence committed in a personal context.¹¹⁸ Article 19 extends States’ obligations to educational, public health, and other measures that ensure all children live violence-free lives. In this context, MSs should openly promote discussions within media and civil society regarding “attitudes, traditions customs and behavioural practices” promoting violence.¹¹⁹ Not only would this enhance capacities and skills of caregivers in this regard,¹²⁰ but also contribute to challenging attitudes and beliefs that promote violence, which is an essential element of prevention.¹²¹

The Committee further expands on prevention mechanisms, and highlights the importance of identifying risk factors that certain individuals or groups of children may have that render them more vulnerable to suffering violence.¹²² In turn, such risk factors – including discrimination, social isolation and marginalization -- need to be taken into consideration when implementing the

¹¹⁴ Ibid, para 32.

¹¹⁵ Ibid, para 27.

¹¹⁶ Ibid, para 23.

¹¹⁷ Ibid, para 23.

¹¹⁸ Ibid, para 36.

¹¹⁹ Ibid, para 44.

¹²⁰ Ibid, para 44.

¹²¹ Ibid, para 47(a)(i).

¹²² Ibid, para 48.

related measures at the national level.¹²³ Lastly, it is noted that article 19 must be read in conjunction with article 4 of the CRC, which reads that

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

As article 19 is neither an economic, social, and cultural right, the Committee has clarified that States’ failure to protect children from violence cannot be justified by a lack of resources.¹²⁴

6.5. Right to Recovery and Social Reintegration

Rules

I shall firstly touch upon the obligation to rehabilitate and reintegrate children born of sexual violence in society. The obligation to provide adequate measures to reintegrate children stems from article 39 CRC on the right to physical and psychological recovery and social reintegration. Rather than applying to all children, article 39 applies to any child victim of “any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts”. Several aspects of this article ought to be legally analysed before assessing its applicability to children born of war.

Analysis

In the wording of the 64 documents, the UN repeatedly referred to CBOSV as “victims of armed conflict”. However, the traditional recipients of article 39 are child soldiers. It is therefore relevant to analyse on which grounds the UN considers CBOSV to be victims of armed conflict. The meaning of “victim” in the context of article 39 can be found in the 2000 Report by the Special Rapporteur Cherif Bassiouni on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. The report clarifies that:

¹²³ Ibid, para 72(f).

¹²⁴ Ibid, para 73.

*“a person is “a victim” where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights.”*¹²⁵

The concept of “victim” here implies that one can enjoy such status without a judgement or individual communication from a judicial body finding violations of international human rights law. In this context, one can only be a victim if the harm suffered amounts to violations of international human rights law or humanitarian law, which sets a relatively high threshold for victimhood. The report further clarified that whether the perpetrator has been prosecuted, or even identified is irrelevant for having victim status.¹²⁶

Further, the definition is based on the fact that in the context of an armed conflict, both international humanitarian law (IHL) and (IHRL) apply. IHL is the body of law that regulates the conduct of hostilities with the aim of limiting the effects of armed conflict. Not only does it restrict the means and methods that can be used in warfare, but it also establishes protection mechanisms for civilians and persons who are no longer participating in hostilities. It is mostly regulated by the Geneva Conventions of 1949 and its Additional Protocols of 1977 on the protection of victims of armed conflicts, and customary international law. While the Four Geneva Conventions and Additional Protocol I regulate international armed conflicts, which include situations of occupation, common article 3 to the Geneva Conventions and Additional Protocol II regulate non-international armed conflicts. Customary international law regulates both.

One of the fundamental principles of IHL is that both in international and non-international armed conflicts, attacks against civilian objects and populations are prohibited. However, the rules of IHL entail that the suffering of civilians is not always unlawful. In fact, attacks against military objectives, whose resulting harm to civilian persons and objects is proportional to the anticipated military advantage gained with the attack, are not unlawful. It follows that not every harm that children suffer in an armed conflict constitutes a violation of IHL. This implies that only those who suffer from unlawful attacks, for instance those which specifically target civilian objects, that

¹²⁵ Special Rapporteur Cherif Bassiouni, “Final Report on The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,” E/CN.4/2000/62, January 18, 2000, para 8.

¹²⁶ Ibid, para 9.

use unlawful means and methods of warfare, or that are directed at military objectives and use lawful means and methods but are otherwise unproportional, can be victims of violations of IHL. In addition, those people whose rights provided for in the Geneva Conventions, Additional Protocols and international customary law are not respected will also be victims of IHL. In relation to children, several provisions and customary rules on the protection of civilians afford children with special protections in both international and non-international armed conflicts, though these are not strictly identical. These provisions oblige parties to a conflict to treat children according to their age,¹²⁷ to provide assistance and care,¹²⁸ to education and an appropriate cultural environment,¹²⁹ among others. Those children that do not have these rights respected can also be considered victims of violations of IHL. Hence, children born of consensual relationships can also be considered victims of armed conflict, and thus recipients of article 39.

However, throughout the documents, the prescribed victimhood is not presented in relation to international humanitarian law, perhaps because the harm suffered by these children can prevail even after the armed conflict in which they were born is over. It remains unclear in which grounds the UN considers CBOSV to be victims of armed conflicts. While it is not contested that they may be victims, this lack of clarity opens the possibility for CBOW conceived consensually to also be victims of armed conflicts. The UN states that as a group of children, CBOSV are more vulnerable and susceptible to experience trauma, discrimination, marginalization, social isolation, exploitation, trafficking, etc. The content analysis has shown that the two major contributing factors to these types of harms and risks are 1) being socially associated with the enemy, and 2) not being registered at birth.¹³⁰ The UN may also attribute these children victimhood status because of the violent nature of their conceiving. In fact, in the *Prosecutor v. Bosco Ntaganda*, the International Criminal Court (ICC) has considered CBOSV to be victims of rape for the purpose of reparations, “as the harm they suffered is a direct result of the commission of the crimes of rape

¹²⁷ International Committee of the Red Cross (ICRC), “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts,” 1125 UNTS 3 (1977) (API), art 77; ICRC, “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts,” 1125 UNTS 609 (1978) (APII), art 4(3).

¹²⁸ ICRC, “Geneva Convention Relative to the Protection of Civilian Persons in Time of War,” 1125 UNTS 609 (1949) (GCIV). arts 23, 24(1), 38(5), 50 and 89(5); art. 70(1) and 77(1) API; art. 4(3) APII.

¹²⁹ Arts. 24(1), 50 and 94 GCIV; art. 78(2) API; art. 4(3)(a) APII.

¹³⁰ Being born out of wedlock is also presented as a factor, but simply once and only in relation to stigmatization.

and sexual slavery”.¹³¹ Though the ICC and UN are different institutions, this remains a significant ruling.

While the latter argument is not contented, the relevant issue is whether being socially associated with the enemy and being stateless -- as a result of being born of war -- would in themselves also be a basis for victimhood. In the next sub-sections, these two issues will be analysed.

Being socially associated with enemy forces

Being socially associated with enemy forces is related to experiences of marginalization, stigmatization, abandonment, infanticide, abuse and others. It could be argued that marginalization and stigmatization are forms of discrimination. As shown in section 6.1.1., the right to protection from discrimination imposes obligations on States to take adequate measures to protect children from both public and private discrimination, whatever form it takes. Thus, as General Comments by the Committee have argued, article 2(1) CRC imposes obligations on MSs to take adequate measures to combat this negative association, that may take place within the family, schools, and communities. Article 2(2) CRC imposes similar obligations towards children who are discriminated due to the status of their parents, legal guardians, or family members. Section 6.1.1. has shown how both provisions may apply for CBOW in general. It follows that if MSs fail to take measures to combat this negative association, for instance through means of educational campaigns, children born of consensual relationships may be victims of IHR violations.

Moreover, being socially associated with enemy forces is presented as a factor potentially leading to abuse and infanticide. As argued, article 19 imposes obligations on States to protect children from any form of violence or abuse in the private and public sphere while in the care of others. Thus, if States fail to address the abuse and infanticide children born of consensual relationships suffered due to them being associated with the enemy. On these two grounds, they may be “victims of armed conflict.”

¹³¹ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, No. ICC-01/04-02/06-2659 (International Criminal Court March 8, 2021), para 122.

Not being registered at birth

For children born of war, birth registration is likely to occur during an armed conflict, though it is also possible this occurs shortly after the conflict has ended. In case of the former, IHL still applies in conjunction with IHRL. As mentioned above, article 7 CRC imposes on MSs the obligations to register the individual immediately after birth, and to provide the child with a name and a nationality. Rights in the CRC cannot be derogated from in situations of armed conflict, meaning that States must always abide by these obligations. These include the obligations to eradicate discriminatory birth practices that may prevent CBOW from being registered at birth. In *Georgia v. Russia*,¹³² the ICJ has clarified that States are bound by IHL in areas under its effective control, as well as in areas where a State has effective control extraterritorially.

Furthermore, under IHL, States have an obligation to register the birth of children in situations of belligerent occupation, as prescribed by article 50 of the Fourth Geneva Convention (GC IV), which imposes the obligation on occupying powers to “facilitate the identification of children and the registration of their parentage.” GC IV does not apply to non-international armed conflicts. However, article 4(3) of Additional Protocol II could be interpreted to impose a similar obligation on both States and non-State armed groups (NSAG). Article 4(3) states that “children shall be provided with the care and aid they require, including (...)”, subsequently providing a list of particular measures that States and NSAG should follow, including providing children with education, facilitating family reunification, not recruiting and using children under 15 in hostilities, and facilitating the removal of children from areas where hostilities are occurring to safer areas. Even though birth registration is not listed here, having a birth certificate, or proof of identity from birth, is an implied requirement to enjoy the safeguards contained in article 4(3). Authorities will need to ascertain the age and identity of the civilian in question to determine if they are a child, and if the special care imposed by article 4(3) ought to be applied to them. Therefore, in a non-international armed conflict, whatever authority has effective control over a certain territory will have the implied obligation to provide children with a form of birth certification.

¹³² Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v. Russia*) (International Court of Justice (ICJ) April 1, 2011).

According to the International Law Commission, “no State shall recognize as lawful a situation created by a serious breach [of jus cogens]”,¹³³ which may include an unlawful belligerent occupation. However, the ICJ has stated that the invalidity of legal acts “cannot be extended to those acts, such as the registration of births (...), the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”¹³⁴ Thus, in such situations where insurgent groups have issued birth certificates, one could argue that States are obliged to recognize them. If neither States nor NSAG issue birth certificates during armed conflicts, or if NSAG issue such certificates but the State fails to recognize them, children may be victims of armed conflict. This is a likely scenario for children born of consensual relationships. Hence these children could also be considered “victims of armed conflict” and be recipients of the obligations stemming from article 39. Concluding, in situations where children born of consensual relationships are discriminated and/or do not have their birth registered, they may be victims of armed conflict, and therefore recipients of article 39.

Other grounds

It must be noted, however, that if a case-by-case analysis demonstrates that a CBOW born of consensual relationships has suffered neglect, exploitation, abuse, torture, cruel or degrading treatment, that child is automatically also a recipient of article 39. This is irrespective of whether the child is considered a victim of armed conflict or not.

Obligations

It is worth expanding on the scope of the obligations article 39 imposes. Rather than calling for the accomplishment of reintegration, article 39 demands States to “take all appropriate measures to promote physical and psychological recovery and social reintegration (...).” This follows the same wording of article 4 CRC. The Committee has reiterated in the Implementation Handbook that article 39 is directly related to the right to health, education, and an adequate standard of living,¹³⁵ as well as with leisure and sports activities. In this light, article 39 can be

¹³³ International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” Supplement No. 10 (A/56/10) (November 2001), art 41(2).

¹³⁴ Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (ICJ June 21, 1971), para 125.

¹³⁵ Implementation Handbook, para 589.

implemented through progressive realization. States must facilitate adequate resources to facilitate recovery and reintegration.

If the tripartite obligations scheme is applied to article 39, then States are obligated to apply all reasonable measures to ensure there is no State interference with this right, to ensure that this right is not interfered with by any other non-State actor, and to apply its resources to facilitate and promote the implementation of this provision. In its concluding observations, the Committee has stated that rehabilitation and reintegration can be achieved through reintegrating children into the education system, rehabilitating school buildings, and ensuring the provision of basic goods and facilities in conflict-affected areas.¹³⁶ The Committee has also argued that states should “(d) extend the psychosocial and social assistance for children who have been affected by armed conflict; [and] (e) take effective measures to ensure that the affected children receive adequate compensation.”¹³⁷ In this vein, throughout the documents, the UN reminds States of its obligations to inter alia provide “equal access to vocational training, life skills and socioeconomic support, sports and leisure activities, religion and cultural activities by means of an individualized plan that is adapted to the child’s needs,” as well as “income-generating skills training, [and] livelihood opportunities.”¹³⁸

Moreover, the Committee has reiterated that article 39 equally requires states to “ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provides just and adequate reparation to the victims.”¹³⁹ This component of article 39 directly relates to the identified States’ obligation to provide mothers and their CBOSV with free legal aid to seek redress. This is reiterated in General Comment No. 5, in which the Committee has clarified that “for rights to have meaning, effective remedies must be available to redress violations.”¹⁴⁰ The Committee further states that due to children’s obstacles in pursuing remedies for rights violations, States ought to make effective and

¹³⁶ Committee on the Rights of the Child, “Concluding Observations: Sri Lanka,” CRC/C/15/Add.207, July 2, 2003, para 45.

¹³⁷ Committee on the Rights of the Child, “Concluding Observations: Croatia,” CRC/C/15/Add.243, November 3, 2004, para 65.

¹³⁸ Committee on the Rights of the Child and Committee on the Elimination of Discrimination Against Women, “Ensuring Prevention, Protection and Assistance for Children Born of Conflict Related Rape and Their Mothers,” Joint Statement by CEDAW and CRC (United Nations, November 19, 2021) (Joint Statement).

¹³⁹ Committee on the Rights of the Child, “Concluding Observations: India,” Consideration of Reports Submitted by States Parties under Article 44 of the Convention, CRC/C/15/Add.228, (February 26, 2004), para 69.

¹⁴⁰ Committee on the Rights of the Child, “General Comment No. 5 (2003): General Measures of Implementation of the CRC,” CRC/GC/2003/5, November 27, 2003, para 24.

adequate procedures available to children and their representatives. Victims of breaches should be awarded reparations, which may include monetary compensations.¹⁴¹ Article 39 thus has the potential to address many of the harms and risks listed in the 64 documents, as it imposes obligations on States to actively implement measures that fight social isolation, marginalization, discrimination, and that improve their potential low socio-economic status.

Relevantly, it could also be interpreted that contrary to other provisions, article 39 may apply to persons who are older than 18, as long as the harm granting them victimhood has occurred when they were still children. Following this reasoning, persons may be entitled to the measures article 39 provides long after the harm or the armed conflict has occurred.¹⁴² This component deems article 39 even more relevant for CBOW. Whereas all other provisions become irrelevant once the child turns 18, article 39 has the potential to address many of the harms that children born of war who are now adults suffer throughout their lives.

6.6. Right to Express One's Views in Matters Affecting the Child

Rules

Furthermore, the UN refers to the obligation to foster children's agency, namely "in relation to their care, recovery, and reintegration."¹⁴³ Though no specific provision is mentioned, these obligations fall under the scope of article 12, which in paragraph 1 establishes that:

"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."

¹⁴¹ Ibid, para 24.

¹⁴² John Tobin, "Article 39: The Right to Reintegration and Recovery," in *The UN Convention on the Rights of the Child: A Commentary* (Oxford, United Kingdom: Oxford University Press, 2019), section D.

¹⁴³ Joint Statement.

Analysis

In connection to this obligation, the UN urges States to foster children's "participation in conflict prevention, peace building and post-conflict reconstruction,¹⁴⁴ as well as in the "development of strategies, decision-making processes and justice mechanisms related to the prevention, protection of and assistance to children born of conflict-related rape."¹⁴⁵ Moreover, the UN mentions the obligation to give due consideration to CBOSV in justice, humanitarian, and diplomatic initiatives. One could argue that such initiatives would require the involvement of CBOSV to be successful, and that therefore they are also directly related to article 12, although the provision does not explicitly relate to access to justice.

By relating to these obligations, the UN recognizes the need to address the needs of CBOSV in transitional justice initiatives and provide for these children's participation in their design and development. Due to the wide potential transitional justice initiatives have in fostering dialogue within and among communities and creating a factual narrative of harms suffered during conflicts, they may contribute to combating discrimination, stigmatization, marginalization, and social isolation. TJ can play a crucial role in addressing most of CBOSV's needs. In this vein, the obligation to give due consideration to CBOSV in justice, humanitarian, and diplomatic initiatives may also be related to article 39.

6.7. Conclusion

The legal analyses presented above demonstrate that even though the UN only focuses on children born of sexual violence, children born of consensual relationships are also beneficiaries of articles 7, 3, 2, as well as to articles 19 and 34, 39, and 12. It is regrettable that throughout the documents, the UN fails to not only address the significance of these rights, but also to relate them to children conceived consensually. As argued repeatedly in this research paper, children born of consensual relationships may experience similar harms to CBOSV -- it is not the nature of the sexual relationship between these children's parents that dictate the quality of their well-being, but rather communal acceptance.

¹⁴⁴ Ibid, para 7.

¹⁴⁵ Ibid, para 7.

Specifically, the rights to protection from discrimination, recovery and social reintegration, and fostering of children's agency are invaluable in preventing the types of the stigmatization and marginalization these children may suffer and in ensuring they can adequately integrate and participate in society with similar access to communal resources. Thus, the various positive obligations these rights impose on States are of utmost importance to children born of consensual relationships, and ought to be implemented in relation to them. The same reasoning applies to the respect for articles 3 and 7, which are crucial for the proper implementation and enjoyment of any other rights in the CRC.

What is more, even though article 19 imposes obligations on States to protect all children from any form of violence they might encounter, regardless of the source of such violence, the UN only addresses these dimensions regarding CBSV. However, as both children born of sexual violence and of consensual relationships experience both physical and psychological violence, namely in the forms of discrimination, marginalization, and social isolation and rejection, article 19 does apply to both sets of children born of war. MSs are thus bound to implement measures that condone the attitudes and beliefs leading to CBOW's marginalization, rejection, and isolation, whether it takes place in the personal or in the public sphere. Further, although the UN has not reported acts of sexual violence against children born of consensual relationships and does not refer to this group in relation to this right, obligations stemming from article 34 do apply to all children.

In this light, UN ought to connect the above-mentioned articles to children conceived consensually. By not recognizing the plights of these children, and by not addressing these children as recipients of these articles, the UN has created various legal blind spots.

7. Discussion

The previous analyses have shown that most of the rights and obligations the UN mentions in relation to CBOSV are also legally relevant for CBOW conceived consensually. It follows that the UN ought to address children born of war in general and highlight the plight that children born of consensual relationships may suffer: all the inactions, recommendations, and obligations

pointed out should address the former group. UN projects on CBOSV should equally extend to children born of war. While it is not surprising that reports under the scope of “conflict-related sexual violence” and Women, Peace and Security resolutions focus on CBOSV, those under “children and armed conflict” and those that address sexual exploitation by UN forces could adopt the broader term of CBOW and address the different groups it encompasses. This becomes the more relevant for children fathered consensually by UN peacekeeper officers who do not comply with their paternity obligations and fail to provide financial and emotional support to the mother and child. As an example, evidence from East Timor demonstrates that dozens of children born of war were abandoned by UN officers. Against this background, their well-being becomes dependent on community acceptance, though in this context babies of “foreign origin” were also widely rejected.¹⁴⁶ Similarly, the rights and obligations mentioned in the Joint Statement could be extended to address CBOW, rather than only CBOSV. Despite the wide range of rights and obligations mentioned, other CRC rights could have been addressed by the UN, including the right to highest attainable standard of health (article 24), the right to alternative means of care (article 20), and the right to family reunification (article 10), which could be relevant for those children born of consensual relationships wanting to connect with their parents.¹⁴⁷

Regardless of the reason why the focus lies on CBOSV, the present lack of comprehensive data on CBOW in general, and children born of consensual relationships in particular ought not to preclude the UN from enlarging its focus. As the literature review has shown, there is enough information proving that CBOW conceived consensually may suffer somewhat similar harms than CBOSV, and that much of the reasoning presented by the UN to protect CBOSV would also apply to the former group. This is particularly the case for those harms connected to perceived associations with enemy forces. On the contrary, the difficulty in gathering data on CBOW should be an argument in favour of addressing the various groups within CBOW. Many CBOW may be unaware of their biological origins, as evidence from Bosnia shows. Even if they know they were fathered by an enemy soldier or officer, they may believe they were conceived consensually when in fact they were not.

Another pertinent point is that the idea of what a consensual relationship entails is also constantly evolving. It varies across different time spans, regional locations, and even perhaps on

¹⁴⁶ Simić and O’Brien, “Peacekeeper Babies,” 349.

¹⁴⁷ Mochmann and Lee, “The Human Rights of Children Born of War,” 290.

the individual level. For instance, whereas in some societies all sexual relations between a married couple are perceived as being consensual, in others, marital rape is criminalised. What one may consider a consensual relationship may in fact constitute a coercion-induced sexual act. The differing national legislations on the requirement of consent for sexual acts illustrates this point. The distinction between CBOSV and children born of consensual relationships is not as clear cut as one may think, especially in the context of armed conflict. Focusing on one exclusionary group may result in not addressing the rights of children, thus overlooking their suffering and subsequent needs. Doing so could potentially lead to a counterproductive approach that fails to make CBOW visible as a whole. This is relevant because children's human rights do not exist in a vacuum. Rather, their implementation is dependent not only on political will but also on their cultural legitimacy within a certain society. If the State itself discriminates children born of consensual relationships due to their perceived association with enemy forces – as happened in Norway after the second World War --, their rights may be severely compromised. Proper representation has the potential to start conversations around the stigma children conceived consensually may face and remind States of their obligations towards them.

In addition, adopting the broader term “CBOW” could also spark stronger interest and research efforts in understanding the various realities and needs of children conceived consensually, and how their interests can be best protected. This is particularly relevant for the proper implementation of article 3 on the best interests of the child. Chapter 2 has demonstrated the interpretation of the best interests of a child may be tailored to fit a State's interests. In Bosnia, the fatwas ordered that the biological identities of CBOSV were hidden to protect these children from stigma. Yet such decisions also caused harm to children by hindering them from getting to know their roots and identities.¹⁴⁸ Stronger visibility research efforts would not necessarily be sufficient to address these concerns on the politicization of article 3, but they may be a step in the right direction.

Another argument supporting the use of the broader term “children born of war” relates to the findings from a paper presented in chapter 2, which stated that in the case of Norwegian CBOW from German soldiers, rejection was correlated to low social trust. Not enough is known to generalize such findings to more conflicts or to assess the precise implications of experiencing chronic levels of social mistrust. Notwithstanding the ethical dilemmas and difficulties in gathering

¹⁴⁸ Carpenter, “War's Impact on Children Born of Rape and Sexual Exploitation.”

data on children born of war, the scholarly community researching these groups could benefit from having a better understanding of how the ostracism and abuse some of these children suffer impacts their socialization. Regardless, the UN has itself identified that stigmatization and lack of social integration may increase children's vulnerability to recruitment. If this is accepted, then addressing "children born of war" and connecting State's obligations of combating discrimination towards these groups of children may be a better tool to prevent recruitment and radicalization. This is not to advocate, however, for a stronger focus on securitization of children born of war. This is a topic that in itself needs more attention and research, which this thesis cannot afford. Yet a careful balance must be taken between recognizing the vulnerability of recruitment and radicalization these children have without allowing security concerns to overshadow CRC obligations States have towards CBOW.

Lastly, one might consider that "born of sexual violence" is in itself a derogatory term with strong negative connotations, whereas "born of war" is more neutral. In this vein, in addition to many CRC provisions being relevant and applying to children born of consensual relationships, many other arguments also explain why the UN ought to address children born of war in general. A lot of primary documentation needed to conduct research of children born of war, including birth certificates, diaries, love letter, etc, may be lost or hard to retrieve, especially if the conflicts in question are not recent. There are indeed many practical and ethical limitations of researching children born of war from past conflicts who are now adults. Yet there is a chance that a shift in the UN discourse may ensure that the international community does not forget about children born of war in future conflicts, which will unfortunately certainly emerge.

Against this background, it remains unclear why the UN only addresses children born of sexual violence. While it was not the goal of this thesis to focus on such issue, it remains relevant. One could perhaps point to existing criticism on the over-emphasis the international sphere poses on conflict-related sexual violence, which has overshadowed other issues within the feminist agenda, such as the occurrence of rape during peace times.¹⁴⁹ It seems that the focus on CBOSV conforms with this trend, thought further research is needed for a more specific answer.

¹⁴⁹ Kiran Kaur Grewal. "International Criminal Law as a Site for Enhancing Women's Rights? Challenges, Possibilities, Strategies." *Feminist Legal Studies*, no. 23(2) (2015):149-165.

8. Conclusion

This thesis has attempted to demonstrate how children born of war are constructed and legally framed by the UN. It has been argued throughout that even though the UN discourse is focused on children born of sexual violence, such emphasis is not consistent with the various negative and positive obligations the CRC imposes on States. In fact, many CRC provisions would be equally important and apply to some children born of consensual relationships, particularly those who are associated with enemy forces and subsequently discriminated by authorities and their peers, stigmatized, abused, and exploited. While this is not to deny that the concept of CBOW encompasses a wide range of children with varying experiences, research proving that children born of consensual relationships may suffer similar harms that CBOSV must not be forgotten.

Understanding how children are framed and arguing for addressing the various groups of CBOW is not in itself a solution for these children's problems. There is still much information lacking about these groups of children, their needs and how being born of war impacts their lives in the long term. With a few exceptions, it also remains unknown how States perceive these children and securitize them. However, this research is an important first step to understanding why addressing CBOW as a category in itself would be relevant to best address their needs and implement their rights. This is the more relevant when considering the difficulty in establishing what constitutes a consensual and coercive sexual relationship in times of conflict, and the various hardships in gathering data on children born of war. In fact, appropriate framing has the potential to place CBOW high on international community agenda and catapult the development of projects from children's rights organizations. This could function as a steppingstone for a successful proposal to adopt an Optional Protocol on CBOW and finally provide children born of war with the assistance and protection some of them may require.

Children born of war are not a recent phenomenon. Many of them have been born and have died throughout the centuries. Many are still alive, and as adults continue to suffer the consequences of stigma, discrimination, and social mistrust with which they have lived. While the rights enshrined in the CRC cannot address their needs now – except for article 39 if they fall under its scope --, the CRC is suitable to address the needs of many CBOW who are still under 18. It shall remain suitable for many centuries more, as new conflicts emerge. Yet children's rights do not exist in a vacuum. They are dependent on the degree of knowledge and visibility of the issues

experienced by children, as well as on the degree of legitimacy they hold within a given society. Proper implementation of the CRC requires proper framing, in particular for groups of children who may not be unaware of their accrued vulnerability as a result of their biological origins. It is therefore vital that the UN recognizes that children born of war are more than children born of sexual violence and addresses the plights and rights of both as one.

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10. Appendix A

Overview of Codes and Sub-codes, number of files, and references:

Name	Files	References
Children's rights	3	11
Birth registration, name, and nationality	3	6
Education	1	1
Protection from CRSV	1	1
Protection from discrimination	1	2
Protection from violence, abuse, trafficking, labour in dangerous conditions, abduction and exploitation	1	1
Good practices	6	22
Altering school curriculum to include CBOSV	1	1
Birth registration of CBOSV	1	1
CBOSV as victims	1	1
Determining CBOSV's legal status	1	1
Efforts and projects done by civil society to support CBOSV	2	4

Name	Files	References
Including CBOSV on national action plan on Women, Peace and Security	5	5
Providing overall support to CBOSV	2	5
Reintegration processes	1	2
Religious leaders' acceptance of CBOSV	1	1
Transitional Justice initiatives	1	1
Harm	13	111
Abandonment	6	7
Abuse	1	1
Association to the enemy	3	8
Displaying violence	1	1
Discrimination	2	4
Discriminatory land ownership laws	1	4
Exploitation	1	1
Identity issues	3	3
Ill health	2	3
Infanticide	1	4
Insecurity	1	1

Name	Files	References
Kept in captivity or displacement settings	3	5
Legal barriers	1	1
Marginalization	3	5
Neglect	1	1
No education	2	3
No employment	1	1
No family protection	2	2
No health care	1	1
No housing	1	1
No humanitarian interventions	1	1
No peace and justice interventions	2	2
Not being recognized as victims	1	1
Not gaining access to reparations	1	1
Ostracism	1	1
Physical injury	1	1
Recruitment	1	2
Rejection	5	9
Social isolation	3	6

Name	Files	References
Statelessness or not being registered at birth	3	6
Stigmatization	6	10
Substance abuse	1	1
Threat	1	1
Trauma	2	8
Uncertain legal status	1	1
Unmet needs	1	1
Violence	1	2
Inactions of States	10	20
Inactions of the UN	1	1
Mothers' rights	3	3
Mothers' suffering	11	15
Needed Actions from States	5	14
Needs of CBOSV	2	3
Positioning	15	80
Evidence of CRSV	3	10
Rights' holders	7	40
Victims	4	9
Vulnerable group	3	3
Risks	10	64

Name	Files	References
Abandonment	3	3
Abduction	1	1
Abuse	1	1
Being sustained in captivity	1	1
Deprivation from resources	2	2
Discrimination	1	1
Exploitation	3	3
Ill-health	1	4
Impunity of perpetrators	1	1
Isolation	2	2
Low socioeconomic status	2	2
Marginalization	4	4
Not being included in DDR programmes	1	2
Not being included in reparation and reconciliation programmes	1	1
Political and security challenges	1	1
Recruitment	5	6
Rejection	4	4

Name	Files	References
Revictimization	2	2
Shelters	1	1
Statelessness or not being registered at birth	8	10
Stigmatization	5	6
Trafficking	4	4
Violence	2	2
States' obligations	2	25
Not to recruit children	1	1
To combat stigmatization and discrimination	2	4
To ensure free legal aid for children born of rape	1	1
To ensure reintegration and rehabilitation	2	5
To ensure the right to education	1	1
To foster children's agency	1	4
To include CBOW in humanitarian, justice and diplomatic initiative	1	1
To meet physical and mental health needs	1	1
To protect women and children against CRSV	1	1

Name	Files	References
To provide abandoned children with care services	1	1
To respect best interests of the child	1	3
To respect the right to identity and nationality	1	2
Subject	64	64
CBOW	1	1
Children born of sexual violence	27	27
Omission of CBOW	36	36
UN Efforts	9	19
UN Promises	4	10
UN Recommendations	12	30
to MS	12	28
Legal status	2	2
Mothers' right to pass nationality	2	2
Others	2	4
Recognition of rights	3	4
Relief programmes (overall support)	8	16
Transitional Justice initiatives	4	7

Name	Files	References
to the SC	1	2