

**UNITED NATIONS FRAMEWORK FOR ADDRESSING THE PROTECTION OF
CHILDREN AFFECTED BY ARMED CONFLICT: ORIGIN, EVOLUTION & ITS
SIGNIFICANCE FOR THE CHILDREN AFFECTED BY ARMED CONFLICT IN
INDIA**

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Abstract

The Secretary-Generals Annual Report on Children and Armed Conflict (2018), expressing United Nations (UN) concern on the condition of children affected by Armed Conflict (CAAC) in India, generated a buzz in the national media. However, it is not the first report of its kind which featured this issue. The report- cornerstone of the ‘UN Framework for Addressing the Protection of CAAC’, has been consistently reporting such issues in India since 2010. India has been voicing its objections to this UN scrutiny by arguing that the situations respecting India discussed, do not meet the definition of armed conflict, hence it should not be monitored. To find out the significance of this framework for CAAC in India, the paper besides examining its evolution, discusses the issues of CAAC in India as brought up in the report throughout these years and after analyzing the validity of India’s objections argues that they are misplaced, legally as well as strategically.

- I. Introduction**
- II. Origin and Evolution**
- III. SG Annual Report CAAC & the Issue of CAAC in India**
- IV. Significance of the Framework for CAAC in India**
- V. Conclusion**

I. Introduction

EVEN THOUGH States have a primary responsibility to protect the rights of children under International law, the plight of children affected by armed conflict (hereinafter CAAC) forced the United Nations Organisation (hereinafter UN) to find new and effective ways to protect them. In this regard, the UN General Assembly (hereinafter General Assembly) took the initiative and created the mandate of ‘Secretary Generals Special Representative for Children and Armed Conflict’ (hereinafter SG Special Representative CAAC). Soon the importance of this mandate was recognised and supported by the UN Security Council (hereinafter Security

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Council). The Security Council treated the protection of CAAC as an international peace and security issue and placed it firmly on its agenda. Over the years, continuous and meaningful engagement by these two premier organs of the UN created a unique framework with innovative mechanisms that not only summoned outrage but also compelled action to protect CAAC all over the world. To address the protection of CAAC, this ‘UN Framework for Addressing Protection of CAAC’ (hereinafter *UN framework CAAC*) adopted an incremental approach. In the initial years, much of the attention was focused on recruitment & use of children in armed conflict, which is just one of the six grave violations committed against CAAC that this framework seeks to address. The innovative and comprehensive tools developed to address it subsequently became the foundation to sequentially address the remaining five other grave violations *viz.*, killing & maiming of children, rape & other sexual violence, attacks against schools & hospitals, denial of humanitarian access, and abduction of children. Here it is important to mention that these six categories of grave violations do not represent a comprehensive list of violations against CAAC, but “it has been determined that they constitute especially egregious violations and, as such, should receive priority attention.”¹ Also even though, the Security Council resolutions represent the immediate legal basis of this framework, these six categories of violations, encompass acts that violate international human rights law including the Convention on the Rights of the Child, 1989 and its Optional Protocols, humanitarian law, international criminal law and other international child protection norms. Thus, principally this framework is founded on these conventional legal instruments and standards in place for the protection of children.²

Over the years, in keeping up with this framework, consistent advocacy and action by the SG Special Representatives CAAC, aided by innovative tools *viz.*, (a) the Secretary General’s Annual Report on Children and Armed Conflict (hereinafter SG Annual Report CAAC), containing the *shame list* of offending parties; (b) Action Plans; and (c) Monitoring & Reporting Mechanism- helped the UN to make meaningful progress in its endeavour to monitor, expose and put an end to grave violations against CAAC. Official engagement with

¹ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations Children’s Fund and United Nations Department of Peacekeeping Operations, *Guidelines – Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict* 7 (UNICEF, 2014), available at: https://childrenandarmedconflict.un.org/wp-content/uploads/2016/04/MRM_Guidelines_-_5_June_20141.pdf (last visited on Oct. 27, 2020).

² *Id.* at 10.

the UN to protect of CAAC by all listed Governments,³ demonstrates the significance of this framework, as a seminal tool to combat impunity.⁴

Like many other countries, the situation of CAAC in various conflict affected parts of India is on the agenda of the SG Special Representative CAAC. Consequently, the SG Annual Reports CAAC, which form the cornerstone of this UN framework CAAC, while discussing the situation of CAAC in various conflict affected parts of the world, also discusses the grave violations against CAAC in India. This report tabled in the Security Council each year, contain findings of a worldwide study, informing the international community of the plight of CAAC around the globe. Needless to say, it thereby plays a remarkable role in highlighting and creating awareness about the exploitation of CAAC by various State and non-state actors. As far as India is concerned, the report has been consistently highlighting the issues of CAAC since 2010 and throughout these years, has concerned itself mainly on the developments in central/eastern States of India affected by the Maoists armed groups (hereinafter Naxalites). Besides, the report for once in 2015 underlined the issues of CAAC in the north-eastern States of the country, specifically the States of Assam and Manipur and has been consistently highlighting the grave violations against CAAC in Jammu and Kashmir (hereinafter J&K) since 2017. India has been voicing its objections to this limited UN scrutiny and its inclusion in the report. It argues the situations respecting India dealt under the report do not meet the definition of ‘armed conflict’ or of ‘threat to international peace and security’ - which as per its understanding is a necessary pre-condition for the applicability of this UN framework of CAAC. Consequently, India demands that it should not be monitored. This paper seeks to find out the significance of the framework in protecting CAAC in India. Part II examines its origin and evolution and evaluates the effectiveness of its innovative mechanisms/tools to gauge their significance in protecting CAAC. Part III discusses the issues of CAAC in India as raised over the years in SG Annual Reports CAAC. Part IV reflects an attempt to find out the significance of the framework in protecting CAAC in India and after analysing the rationality of India’s objections to this limited UN scrutiny, argues that India’s objections do not hold up well, legally as well as strategically. Part V concludes the paper and asserts that the action generated

³ Governments listed in the Annexes (Shame List) to the *SG Annual Reports CAAC*. For a detailed discussion, See *Infra* Part-II, Sub-heading ‘SC Resolution 1379 (2001): Name and Shame List.’

⁴ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Twenty Years to Better Protect Children Affected by Armed Conflict 5* (OSRSG-CAAC, 2016), available at: https://childrenandarmedconflict.un.org/wp-content/uploads/2017/01/Twenty-Years-of-Work-Booklet_web.pdf (last visited on Oct. 27, 2020).

under the framework represents a beacon of hope for millions of children caught up in armed conflicts around the globe, including India.

II. Origin and Evolution

Children are the most vulnerable members of the human family. Concern for their wellbeing brought the world community to a common standard to rally around. This common standard known as the Convention on the Rights of the Child (hereinafter CRC), was adopted by the General Assembly in November, 1989.⁵ It came into force in September, 1990 and soon attained the distinction of being a unique instrument that almost every country has ratified.⁶ India ratified it in December, 1992. The CRC not only recognises various civil, political, social, economic and cultural rights of children, but also provides for their realization by setting standards for health, education, legal, civil and social services for children. In other words, the CRC represents a multidisciplinary approach to protect children by demonstrating interdependence of all children's rights.⁷

Shortly after the CRC entered into force, a gathering of world leaders assembled at the UN to attend the World Summit for Children and pledged among other things "to work carefully to protect children from the scourge of war, to give children everywhere a peaceful and secure future."⁸ Subsequently, the UN sought to bring more and more international attention towards the plight of CAAC. As a part of these efforts, in October, 1992, the Committee on the Rights of the Child (hereinafter CRC Committee) - the UN body that monitors implementation of the CRC by its States Parties, initiated a special discussion on CAAC. It was a period when armed conflicts were raging in Afghanistan, the Balkans, Somalia, Sierra Leone, Liberia and elsewhere. Striking images of child soldiers- both boys and girls, killed, injured and displaced had become a regular showcase in the media. This ghastly effect of contentions on kids was difficult to overlook.⁹ Consequently, in its third session held at Geneva in January, 1993, the CRC Committee in accordance with Article 45 (c) of the CRC,¹⁰ recommended to the General

⁵ Adopted, opened for signature, ratification and accession *vide* UN General Assembly, *Convention on the rights of the child*, GA Res 44/25, GAOR, UN Doc A/Res/44/25 (Nov. 20, 1989).

⁶ Except USA, all the member States of UN have ratified the CRC.

⁷ Ms. Graça Machel, *Report of the Expert of the Secretary-General, on the Impact of Armed Conflict on Children*, UN General Assembly, UN Doc A/51/306 (Aug. 26, 1996).

⁸ World Summit for Children, *World Declaration on the Survival, Protection and Development of Children, Held in New York on 29 and 30 September 1990*, para. 20, pt. 8, available at: <http://www.un-documents.net/wsc-dec.htm> (last visited on Oct. 27, 2020).

⁹ *Supra* note 4 at 14.

¹⁰ The United Nations Convention on the Rights of the Child, 1989, art. 45 (c) provides that "the Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child."

Assembly, to ask the UN Secretary General (hereinafter Secretary General) to carry out a study of methods to improve the protection of CAAC.¹¹

Following the recommendation, the General Assembly in December, 1993, adopted Resolution 48/157 and called upon the Secretary General “to appoint an expert to undertake a comprehensive study on the impact of armed conflict on children.”¹² Accordingly, in June, 1994, the Secretary General chose Graça Machel, a former Mozambican minister of education and an international advocate for children to lead the study. Her report titled ‘Impact of armed conflict on children,’ also known as the Machel Report was presented to the General Assembly in August, 1996.¹³ Identifying children as the primary victims of armed conflict, the report described the various brutalities they are exposed to in great detail. The report noted, not only are they killed and maimed, but also the entire fabric of their societies, their homes, schools, health systems and religious institutions are torn to pieces. The report went on to say “conflict violates every right of a child - the right to life, the right to be with family and community, the right to health, the right to the development of the personality and the right to be nurtured and protected.”¹⁴ Besides documenting some of the gravest impacts of armed conflict on children, the report analyzed the effectiveness of existing international child protection standards and made several recommendations, including a suggestion to appoint SG Special Representative CAAC to monitor and strengthen the protection of CAAC.¹⁵ This powerful report brought worldwide attention to the agony of CAAC and led to the steady progress of international normative standards to protect them.

General Assembly’s Resolution 51/77 (1997): Appointment of the SG Special Representative CAAC

The Machel Report noted that “whatever the causes of modern-day brutality towards children, the time has come to call a halt.”¹⁶ This call for urgent action was reciprocated by the General Assembly barely six months since its publication by adopting Resolution 51/77,¹⁷ in February, 1997. In this resolution, the General Assembly accepted the report’s suggestion and

¹¹ Committee on the Rights of the Child, United Nations Convention on the Rights of the Child, *Report of the Committee on the Rights of the Child on its Third Session, Held at Geneva from 11 to 29 January 1993*. See *Infra* note 12 at p.no. 2-3.

¹² UN General Assembly, *Protection of children affected by armed conflicts*, GA Res 48/157, GAOR, UN Doc A/RES/48/157 (Dec. 20, 1993).

¹³ *Supra* note 7.

¹⁴ *Id.* at para. 30.

¹⁵ *Id.* at para. 266, 267.

¹⁶ *Id.* at para. 12.

¹⁷ UN General Assembly, *The rights of the child*, GA Res 51/77, GAOR, UN Doc A/RES/51/77 (Feb. 20, 1997).

recommended the appointment of the SG Special Representative CAAC. This resolution thus marks the birth of the principal UN advocate for the protection and well-being of CAAC. With the appointment of Olara Otunnu, from Uganda as Secretary-General's first Special Representative CAAC in August, 1997,¹⁸ the Office of the SG Special Representative CAAC was set up in the same year in September.¹⁹ This mandate for the Special Representative, created at first only for a period of three years, was subsequently continuously extended from time to time, most recently in May 2017.²⁰ Though initially created by the General Assembly, the mandate shortly acquired recognition and support of the Security Council.²¹ The Security Council in particular created a strong framework and provided it with new tools to respond to violations against CAAC.

The SG Special Representative CAAC, has the following responsibilities:

- a. monitor the situation of CAAC around the globe;
- b. raise awareness and promote the collection of information about their plight;
- c. foster international cooperation to ensure respect for their rights;
- d. work closely with the CRC Committee, relevant UN agencies and other competent bodies, including non-governmental organizations (hereinafter NGOs) to strengthen their protection.²²

The Special Representative submits annual reports containing information on the situation of CAAC around the globe to the General Assembly and the Human Rights Council.²³ In addition, he/she also plays a key role in preparing the SG Annual Report CAAC to the Security Council.²⁴ Besides it also chairs the 'Monitoring and Reporting Task Force on CAAC'²⁵ and "engages in regular field missions to conflict-affected countries and works to secure commitments from fighting forces to end violations against children."²⁶ In other words, to

¹⁸ *Supra* note 4 at 15-16.

¹⁹ Office of the Special Representative of the Secretary-General for Children and Armed Conflict and United Nations Children's Fund, *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World 2* (UNICEF, 2009), available at: https://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf (last visited on Oct. 27, 2020).

²⁰ *Supra* note 4 at 44-45.

²¹ UN Security Council, SC Res 1261, SCOR, UN Doc S/RES/1261 (Aug. 25, 1999).

²² *Supra* note 17 at para. 36.

²³ The Human Rights Council is an inter-governmental body within the UN system responsible for strengthening the protection and promotion of human rights around the globe.

²⁴ See Sub-heading 'Secretary-General's Annual Report on Children and Armed Conflict.'

²⁵ See Sub-heading 'SC Resolution 1612 (2005): Monitoring, Reporting & Compliance Mechanism.'

²⁶ International Bureau for Children's Rights, *Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law* 65 (IBCR, Montreal, 2010).

secure commitments to end grave violations against CAAC, the Special Representative in collaboration with the Security Council and other UN agencies, engages with ‘listed parties’²⁷ to persuade them to formulate and implement ‘Action Plans’²⁸ to end violations against children.²⁹ By raising challenges faced by CAAC before the General Assembly, Human Rights Council, Security Council, the fighting forces, the Special Representative not only maintains a sense of urgency amongst key decision makers, but also tries to secure political and diplomatic engagement. This makes it “a focal point for action to reinforce global child protection mechanism.”³⁰

SC Resolution 1261 (1999): CAAC- A Peace and Security Issue on the Agenda of the Security Council

By creating a mandate for the SG Special Representative CAAC, General Assembly took the initiative to address the protection of CAAC at the UN. Soon the importance of this mandate was recognised and supported by the Security Council. Security Council- the UN body which under the UN Charter has the primary responsibility to maintain international peace and security, adopted its first resolution on CAAC viz., *Resolution 1261*,³¹ unanimously in August, 1999. Highlighting the harmful and widespread impact of conflict on children and its long term consequences for durable peace and security, the resolution “affirmed that the protection and security of CAAC was an international peace and security issue, and, as such, firmly within the remit of the Security Council.”³² In other words, this landmark resolution placed the issue of CAAC on the Security Council’s agenda by affirming that their protection is a global peace and security concern, thus creating a new platform for the protection of war affected children. Further, besides expressing its support for the progressive work of the SG Special Representative CAAC, this resolution also condemned what is today known as the *six grave violations* against CAAC viz., (i) killing & maiming of children; (ii) sexual violence; (iii) abduction & forced displacement; (iv) recruitment & use of children; (v) denial of humanitarian access; and (vi) attacks on places that generally have a significant presence of children, for instance, schools and hospitals and called upon parties to armed conflicts to undertake measures to limit the harm endured by children. Here it is important to mention that though

²⁷ Parties listed in the Annexes (Shame List) to the *SG Annual Reports CAAC*. For a detailed discussion, see Sub-heading ‘*SC Resolution 1379 (2001): Name and Shame List.*’

²⁸ See Sub-heading ‘*SC Resolution 1539 (2004): Action Plan.*’

²⁹ *Supra* note 26 at 112.

³⁰ *Supra* note 4 at 15.

³¹ *Supra* note 21.

³² *Supra* note 26 at 86.

these six categories of violations “do not represent a comprehensive list of violations committed against children, but it has been determined that they constitute especially egregious violations, and, as such, should receive priority attention”³³ under this framework. Most importantly, the resolution additionally asked the Secretary-General to gather and affirm information, describing where and the way boys and girls are suffering from armed conflict around the globe, and use this information to prepare a report to be presented before it the following year. This resolution, thus also marks the birth of what is today known as the *SG Annual Report CAAC*.

Secretary-General’s Annual Report on Children and Armed Conflict

The SG Annual Report CAAC, containing findings of a worldwide study on the plight of CAAC, serves as the principal vehicle for conveying ground level info on the exploitations of CAAC by various State and non-state actors to the Security Council. Since 1999, when Security Council initially asked the Secretary-General to submit this report, it has been serving as the base for the deliberations of the Security Council on CAAC. Also, the Security Council resolutions on CAAC are generated on the basis of the suggestions of the Secretary General as provided in this report. Typically, prepared on an annual cycle at the request of the Security Council, which also specifies its vital components and calls together an open debate to deliberate it, this report contains substantiated information detailing where and the way children are affected in:

1. situations of armed conflict on the agenda of the Security Council; &
2. situations of armed conflict not on its agenda or other situations of concern around the globe.

In other words, the report documents condition of children in all situations of concern in which “apparent violations of international norms for the protection of CAAC are considered to be of such gravity as to warrant international concern.”³⁴ Its key features are as under:

- a. It provides information on grave violations committed by parties to the conflict (both State and non-state) against children in specific country-situations;

³³ *Supra* note 1.

³⁴ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/72/865-S/2018/465, (May 16, 2018) para. 3.

- b. It updates progress on the implementation of Security Council resolutions on CAAC, including the implementation of the ‘Monitoring and Reporting Mechanism’ and dialogue with parties to the conflict for child protection commitments and ‘Action Plans’;
- c. It contains targeted recommendations to a wide range of stakeholders to advance the agenda for the protection of children;
- d. It contains two annexed lists that specify State and non-state parties who commit grave violations against children.³⁵

Thus besides addressing and discussing the condition of CAAC in two distinct situations of armed conflicts around the globe, the report also contains two annexures- Annex I&II, popularly known as the ‘name and shame list’ or ‘shame list’ of parties, who commit grave violations against CAAC. The *Annex-I* lists the names of the parties in country-situations that are on the formal agenda of the Security Council, whilst the Annex-II enumerates parties in country-situations not on its agenda. The purpose of these annexed lists is to focus the attention of the Security Council on specific parties, who in violation of International norms commit grave violations against CAAC. It is understood that “on this basis, the Security Council may take targeted measures against these violators, including the possibility of sanctions.”³⁶

In characterising the facts as grave violations, the report also aims to bring these violations to the attention of national Governments to encourage them to take remedial measures, since it is they who bear the primary responsibility to protect children under International law. The report, therefore, represents a powerful advocacy and pressure tool to force parties to conflict to play their part in the protection of CAAC. Here it is important to mention that reference to a situation is not a legal determination as to the existence of armed conflict and reference to a non-state actor does not affect its legal status or accord it any legitimacy. Thus in identifying situations and in naming parties, the report adopts a pragmatic approach aimed at ensuring broad and effective protection for children exposed to situations of concern.³⁷

Recruitment and Use of Children in Armed Conflict

One of the most unfortunate trends in armed conflicts around the globe is the participation of children, both boys and girls as soldiers, recruited by both State as well as non-state armed

³⁵ *Supra* note 1 at 16-17.

³⁶ *Id.* at 17.

³⁷ *Supra* note 34.

groups, as they are more submissive and easier to manipulate than adult soldiers. While some of them are forcibly recruited or conscripted, others present themselves for service on account of various reasons including social, economic, cultural, or political pressures. Not only do they take part in violence, but also work in supporting roles as spies, messengers, lookouts, cooks, and porters. Their lack of experience and training leaves them particularly exposed to exploitation and brutalities.³⁸ The Security Council's first resolution on CAAC,³⁹ among others identified this issue of 'recruitment and use of children' as one of the grave violations committed against CAAC and in the initial years much of the attention of the UN framework CAAC was focussed on it. The innovative and comprehensive tools developed to address it subsequently became the foundation to sequentially address the remaining five other grave violations against CAAC.

To begin with, this issue of recruitment and use of children was in part dealt with under the CRC. Article 38, CRC obliges the States Parties to ensure that no child below fifteen years of age takes part in hostilities and places a total prohibition on their recruitment in State armed forces. In other words, it puts a complete prohibition on the recruitment and use of children below fifteen years of age in armed conflict. But as far as children in the age group of fifteen to eighteen are concerned, it permits their recruitment and use (both compulsory as well as voluntary) in State armed forces and is silent on their recruitment and use by non-state armed groups.⁴⁰ Therefore, the endeavour to adopt an international legal instrument to end and prevent the recruitment and use of children below the age of eighteen years by both State armed forces and non-state armed groups continued. The Machel Report had also highlighted this issue and recommended "early and successful conclusion of the drafting of the 'Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts' (hereinafter *OPAC*), raising the age of recruitment and participation in the armed forces to eighteen years."⁴¹ Consequently, in May, 2000 to curtail the growing recruitment and use of children in situations of armed conflict and to raise the standards set out in the CRC in this

³⁸ *Supra* note 13 at para. 34-48.

³⁹ *Supra* note 31.

⁴⁰ *Supra* note 10, art. 38.

⁴¹ *Supra* note 13 at para. 62 (d).

respect, the General Assembly adopted the OPAC.⁴² It entered into force in February, 2002. At present, 167 countries, including India have ratified it.⁴³

Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (2000)

The OPAC was adopted to protect children under the age of eighteen years from recruitment and use in hostilities. Consequently, it prohibits States Parties from compulsory recruiting children below eighteen years of age, but at the same time, it allows the voluntary recruitment of children in the age group of fifteen to eighteen years in State armed forces, even though they are prohibited from taking part in hostilities (Article 1&2). Thus there is no blanket prohibition on the recruitment and use of children below eighteen years, but still, it is an improvement over the mechanism provided in Art. 38, CRC. Even though OPAC permits the voluntary recruitment of children in the age group of fifteen to eighteen years in State armed forces, it suggests that the lower limit of fifteen years set by the CRC should be raised to eighteen years [Article 3(1)] and in case a States Party decide not to raise the lower limit and permit such recruitment, it shall ensure that the following four condition are satisfied:

- (a) such recruitment is genuinely voluntary;
- (b) with the informed consent of the child’s parents or legal guardians;
- (c) the child is fully aware of the duties involved in military service;
- (d) provides a reliable proof of age.⁴⁴

The most important salient feature of the OPAC is that unlike CRC it explicitly dealt with the issue of recruitment and use of children by non-state armed groups. It provides that the “armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen years.”⁴⁵ Thus non-state armed groups are totally barred from recruiting children under the age of eighteen years. It also asks the States Parties to “take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.”⁴⁶ Here it

⁴² Adopted, opened for signature, ratification and accession *vide* UN General Assembly, *Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, GA Res 54/263, GAOR, UN Doc A/RES/54/263 (May 25, 2000).

⁴³ India ratified it on Nov 30, 2005.

⁴⁴ The Optional Protocol to the United Nations Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, art. 3 (3).

⁴⁵ *Id.*, art. 4(1).

⁴⁶ *Id.*, art. 4(2).

is worth mentioning that, even though recruitment & use of children by non-state armed groups has been time and again reported in India,⁴⁷ India despite ratifying the OPAC has not enacted legislation to criminalize such practices. The situation remains the same, despite CRC Committee in its concluding observations for the last reporting cycle under OPAC recommended India to “expeditiously enact legislation that prohibits and criminalizes the recruitment and use of children under the age of eighteen years in hostilities by non-state armed groups.”⁴⁸

SC Resolution 1379 (2001): Name and Shame List

Building on previous efforts to halt recruitment and use of children, the Security Council adopted another landmark resolution on CAAC viz., Resolution 1379⁴⁹ in November, 2001 and asked the Secretary-General to append to his next SG Annual Report CAAC, a list of parties to armed conflicts that recruit or use children in situations:

- (a) which are on the agenda of the Security Council;
- (b) that although not on the agenda of the Security Council, but which may in his opinion threaten the maintenance of international peace and security and which may be brought to the attention of the Security Council, in accordance with Article 99 of the UN Charter.⁵⁰

Thus in order to modify the conduct of parties to the conflict, the Security Council requested Secretary-General to provide it with a list of parties (State forces as well as non-state armed groups), who in violation of international legal standards recruit or use children in situations of armed conflict. This list is now popularly known as the ‘shame list’. Though this resolution made ‘recruitment or use children’ as the only trigger for listing, subsequent resolutions added remaining other grave violations except ‘Denial of humanitarian access for children’ as additional triggers for listing. Denial of humanitarian access even though considered as a grave violation is not a trigger for listing. This resolution thus marks the beginning of naming and shaming of parties to armed conflict, who carry out grave child rights violations.

⁴⁷ Refer Part-III of this paper.

⁴⁸ Committee on the Rights of the Child, United Nations Convention on the Rights of the Child, *Concluding observations on the report submitted by India under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted at its 1901st meeting, held on June 13, 2014*, para. 23 UN Doc CRC/C/OPAC/IND/1 (July 7, 2014).

⁴⁹ UN Security Council, SC Res 1379, SCOR, UN Doc S/RES/1379 (Nov. 20, 2001).

⁵⁰ The United Nations Charter, art. 99 authorises the Secretary-General to “bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”

Accordingly, in the SG Annual Report CAAC submitted pursuant to this resolution as well as subsequent reports, the shame list of the offending parties is contained in the two annexes attached to the reports. Annex I contains a list of parties who commit all or any of the above mentioned five grave violations in situations on the agenda of the Security Council and Annex II contains the list of parties that commit similar violations in situations that are not on the agenda of the Security Council, and other situations, as determined by the Secretary General. Thus these lists, which identify the offending parties, “encompass all offending parties, while preserving a clear distinction between parties in situations on the agenda of the Security Council and parties in situations not on the agenda of the Security Council and other situations of concern.”⁵¹ Here it is important to mention that these annexed lists do not intend to name countries as such. Their purpose is only to ascertain specific parties to conflict who are responsible for specific grave violations against children and in this regard, “the names of countries are cited only in order to indicate the locations or situations where the offending parties are committing the violations in question.”⁵²

This naming and shaming strategy- a landmark development, greatly influences the conduct of the parties to the conflict to protect the CAAC and makes the SG Annual Report CAAC a crucial tool to raise the profile of child protection in specific armed conflicts.⁵³ This has been beautifully explained in SG Annual Report CAAC (2004):

At political and practical levels there are levers of influence that can have significant sway with all parties to a conflict. In today’s world, parties to a conflict cannot operate as islands unto themselves. The viability and success of their political and military projects depend on networks of cooperation and goodwill that link them to the outside world, to their immediate neighbourhood as well as to the wider international community. There are, consequently, powerful factors that can influence all parties to conflict: the force of international and national public opinion; the desire of the parties for acceptability and legitimacy at the national and the international level; international accountability as enforced by the International Criminal Court and ad hoc tribunals; restrictions on the external provision of arms, financial

⁵¹ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, para. 76 UN Doc A/59/695-S/2005/72 (Feb. 9, 2005).

⁵² *Id.* at para. 97.

⁵³ *Supra* note 26 at 65.

flows and illicit trade in natural resources; the growing strength and vigilance of international and national civil societies; and media exposure.⁵⁴

SC Resolution 1460 (2003): Era of Application

In order to further influence the behaviour of parties to armed conflict enumerated in the shame lists on account recruitment or use of children, the Security Council adopted another resolution on CAAC *viz.*, Resolution 1460⁵⁵ in January, 2003. Besides calling upon these parties to immediately halt such practices, and provide information on steps taken in this direction to the SG Special Representative CAAC, the Security Council in this resolution, also stated its desire to enter into dialogue or to support the dialogue of Secretary-General with these parties, to develop clear and time bound action plans to end such practices. Moreover, the Security Council also specified its intention to consider taking additional appropriate steps to address this issue, if it believes inadequate progress is made upon the appraisal of the next SG Annual report CAAC.

SC Resolution 1539 (2004): Action Plan

Building upon its earlier resolution, wherein it had indicated its desire to enter into dialogue or to support the dialogue of Secretary-General with listed parties to develop action plans to halt recruitment or use of children, the Security Council adopted another resolution on CAAC *viz.*, Resolution 1539⁵⁶ in April, 2004. This resolution besides calling upon listed parties, for the first time, in absolute terms, to prepare the said ‘action plans’ in close collaboration with the UN, also stated Security Council intent to impose sanctions through country-specific resolutions against the offending parties, if they decline to enter into dialogue; or fail to develop an action plan or fell short to honour the pledges included therein. Though this resolution made action plans mandatory only for halting the recruitment and use of children, subsequent resolutions extended it other five grave violations.

An action plan is a written commitment to halt and prevent grave violations against CAAC signed between the UN and listed parties. These are drafted to end and prevent infringements against CAAC, which were responsible for the listing of the party. Therefore, each action plan is framed to tackle a specified party’s situation; and sketches tangible, and time-bound steps that elicit respect for international law and a more secure future for CAAC. To formulate and

⁵⁴ *Supra* note 51 at para. 77.

⁵⁵ UN Security Council, SC Res 1460, SCOR, UN Doc S/RES/1460 (Jan. 30, 2003).

⁵⁶ UN Security Council, SC Res 1539, SCOR, UN Doc S/RES/1539 (Apr. 22, 2004).

execute action plans, the UN through SG Special Representative CAAC engages in dialogue with the listed Parties. A party who successfully implements its action plan becomes eligible for de-listing after UN verification that all pledges have been effectively executed. Thus a party who wants to remove its name from the ‘shame list,’ has to engage in child protection dialogue with the UN in order to formulate an action plan and meet the commitments made therein.⁵⁷

Lastly, to get hold of timely and genuine information on recruitment and use of children and other grave violations against CAAC, the Security Council in this resolution additionally asked the Secretary-General to devise “an action plan for a systematic and comprehensive monitoring and reporting mechanism”⁵⁸ (hereinafter MRM), using both UN and civil society resources. In response to this request, and after extensive consultations with various stakeholders, the Secretary-General in February, 2005 submitted his proposal for the establishment of MRM to the Security Council.⁵⁹

SC Resolution 1612 (2005): Monitoring, Reporting & Compliance Mechanism

Thereafter, in July, 2005 realising that in spite of advances in developing a robust CAAC protection framework, violence against CAAC and impunity for violations persist on ground, the Security Council adopted another landmark resolution on CAAC *viz.*, Resolution 1612,⁶⁰ and endorsed the Secretary-General MRM proposal. The aim was to strengthen the framework, by creating a mechanism that will collect and bring forth to the Security Council timely, precise and objective ground level (or in-country) information on the recruitment & use, and other grave violations committed against CAAC, which can be used to engender compliance and bring about an era of application. The resolution also established a subsidiary body, consisting of all the members of the Security Council *viz.*, the ‘Security Council Working Group on Children and Armed Conflict’ (hereinafter SC Working Group CAAC), and charged it with a duty to review the MRM reports; the progression in the formulation and execution of the action plans; and to consider other available pertinent information; and make recommendations to the Security Council on possible measures to advance the protection of CAAC. Lastly, this resolution also reaffirmed the Security Council’s intent to impose sanctions against violators, if they fail to end or prevent violence against CAAC. Thus this resolution besides trying to bridge the gap between action in the field and political action at the premier levels- by

⁵⁷ *Supra* note 4 at 20.

⁵⁸ *Supra* note 56 at para. 2.

⁵⁹ *Supra* note 51 at para. 58-137.

⁶⁰ UN Security Council, SC Res 1612, SCOR, UN Doc S/RES/1612 (Jul. 26, 2005).

establishing an in-country MRM and the SC Working Group CAAC respectively,⁶¹ also tried “to leverage the means of the Security Council, including its capacity to apply pressure through sanctions, to engender compliance with international standards for the protection of children.”⁶²

The MRM is set up in those country-situations wherein parties to a conflict are listed in the annexes or shame list to the SG Annual Report CAAC.⁶³ Its implementation is automatically initiated in all country-situations covered in Annexure I. In country-situations that fall under Annexure II, the UN consults with the national governments for the setting up of a formal MRM process.⁶⁴ Then there are some country-situations like that of India, where even though violation against CAAC reported, none of the offending parties are placed in the shame list. No MRM is established in such situations, even though they are deemed to be situations of concern owing to their inclusion in the report.⁶⁵ Here it is pertinent to mention that these country-situations as well as others- those who are not mentioned anywhere in the report, are free to adopt the mechanism voluntarily and utilize the help and expertise of UN agencies to protect CAAC within their jurisdictions.⁶⁶ They can do so even without running the risk of conferring any legitimacy to any hostile non-state group, since the establishment of MRM in a country-situations does not have any implications on the political or juridical status of the parties to the conflict in the international arena.⁶⁷

In 2005, when Security Council endorsed MRM for the first time, only those parties, who recruited or used children in armed conflict were included in the shame list. In other words, back then recruit and use of children was the only trigger for listing. Subsequently, the Security Council not only added remaining other grave violations baring ‘Denial of humanitarian access for children’ as additional triggers for listing, but also extended the application of MRM to those country-situations where one or more parties to conflict have been listed on account of committing all or any of these grave violations. Even though only five out of six recognised grave violations are considered serious enough to be triggers for listing and consequently for the establishment to MRM, MRM once established in a country-situation monitors, collects and verifies information on all the six grave violations. In other words, once MRM is established in a country-situation, the monitoring endeavour concentrates on all the six

⁶¹ *Supra* note 19 at 47.

⁶² *Supra* note 1 at 11.

⁶³ *Supra* note 60 at para. 3.

⁶⁴ *Supra* note 1 at 8.

⁶⁵ *Ibid.*

⁶⁶ *Supra* note 19 at 47.

⁶⁷ *Supra* note 51 at para. 75.

violations. Also, the MRM seeks to influence the conduct of all the parties to the conflict. The parties to be scrutinized are not limited to those who are listed, but all other parties to that conflict in that country-situation are also placed under scrutiny. In other words, “if the MRM is triggered in a country-situation because of the listing of one party, this does not imply that the MRM is limited to the activities of that party alone; all other parties to a conflict in that country-situation are covered.”⁶⁸ Likewise, each of the six grave violations are monitored, and not just the ones in respect of which a party was originally listed. In respect of non-state parties, “the MRM is concerned particularly with grave violations as committed by organized armed groups and does not typically focus on isolated violations committed by civilians in what could be characterized as criminal activities.”⁶⁹ The MRM ends when the mechanisms to protect children are put in place and the violations against children cease and all parties in that country situation are de-listed.⁷⁰

This MRM, composed of various bodies and actors, having relevant competence and expertise, functions at three principal planes: (i) Country-level; (ii) UN Headquarters-level; (iii) Security Council-level. Structures have been set up at each level to gather, confirm, review and act on information. At the country level, the ‘UN Country Task Force on Monitoring and Reporting’ (hereinafter CTFMR), gathers information in respect of grave violations and coordinates advocacy and response activities, which include deliberations with offending parties to formulate action plans. The information collected and verified by the CTFMR is passed on to the Office of SG Special Representative CAAC to go through a process of screening and review at the Headquarters level. After vetting, the Headquarters level MRM actors consolidate the information to prepare an annual country-specific report. The report is then submitted to ‘the executive office of the Secretary-General’ for review and clearance. After the clearance, this report, known as the ‘Secretary-General’s Country-Specific Annual Reports on CAAC’ (hereinafter SG Country-Specific Annual Report CAAC) is formally submitted by the Secretary-General to the Security Council, and reviewed on its behalf by the SC Working Group CAAC.⁷¹ Thus the information gathered and corroborated by the CTFMR at the country level, informs the SG Country-Specific Annual Report CAAC to the Security Council, which is then reviewed on behalf of the Security Council by its working group on CAAC. To sum up, the innovation of MRM is that the Secretary General now in addition to SG Annual Report

⁶⁸ *Supra* note 1 at 8.

⁶⁹ *Ibid.*

⁷⁰ *Id.* at 23.

⁷¹ *Id.* at 17-18.

CAAC, also submits SG Country-Specific Annual Report CAAC to the Security Council for its review and action.

The SC Working Group CAAC, established to provide consistent and ongoing attention to the issues faced by CAAC, after reviewing the report makes tangible recommendations for action against offending parties. These “actions may range from calls for compliance, to condemnation of violations, to the application of targeted measures.”⁷² The conclusions and recommendations of the working group are “addressed to a broad range of actors, including parties to the conflict, governments concerned, the Security Council, the Secretary-General, other UN entities and donors.”⁷³ This makes MRM an essential tool for protecting CAAC, since the information thus collected and verified not only helps in advocacy but also “fosters the accountability and compliance of parties to the conflict with international child protection standards and norms.”⁷⁴

Thus in order to advance the drive for compliance, the Security Council by means of this resolution, endorsed an unprecedented protection framework for CAAC, which not only created “an organized, functioning system at country-level to collect and verify information on grave violations committed against children,”⁷⁵ but also, established a channel to link information thus gathered with the reporting to the Security Council that influences the conduct of parties to obey international child protection norms.⁷⁶ For endorsing this unique CAAC protection framework that comprises a broad range of actors and partners in an MRM, this “resolution is considered ground-breaking on the issue of CAAC and more generally, for human rights issues at the Security Council level.”⁷⁷

SC Resolution 1882 (2009): Killing & Maiming and Sexual Violence as Additional Triggers for Listing

Apart from recruitment and use, other unfortunate hallmarks of armed conflicts around the world are the large scale ‘killing & maiming of children’- due to deliberate targeting, indiscriminate and disproportionate use of force, landmines, cluster munitions and other weapons, use of children as human shields; and the atrocious levels of the cruelty of ‘rape & other forms of sexual violence against children’, including their use as a tactic of war in some

⁷² *Supra* note 51 at para. 107.

⁷³ *Supra* note 26 at 89.

⁷⁴ *Supra* note 1.

⁷⁵ *Supra* note 4 at 23.

⁷⁶ *Supra* note 19 at 86.

⁷⁷ *Supra* note 26 at 88.

situations. After creating a working framework to protect children from recruitment and use, the Security Council proceeded to address their protection from these grave violations, by adopting another resolution on CAAC *viz.*, Resolution 1882,⁷⁸ in August 2009.

In this resolution, the Security Council recalled its Resolution 1379 (2001)⁷⁹ and asked the Secretary-General to include in the shame list, from now onwards, names of all those parties who engage in killing & maiming of children and/or commit rape & other forms sexual violence against children during armed conflict. Besides, it also called upon those listed parties, who commit these two grave violations against CAAC, to formulate action plans to end such violations. Thus in the year 2009, the Security Council made a commission of two more grave violations against CAAC, as ‘triggers for listing’⁸⁰ parties in the shame list. Besides expanding the list of triggers for listing, this resolution reiterating the Security Council’s resolve to secure respect for its resolutions on CAAC, requested grander communication between its Working Group CAAC and Sanctions Committees through the exchange of relevant information on violations committed against CAAC. Establishment of this vital link between the Security Council’s CAAC agenda and its sanctions committees indicates a major step towards tangible action against offenders.

SC Resolution 1998 (2011): Attacks on Schools & Hospitals Fourth Trigger for Listing

Other pressing issues in respect of the protection of CAAC include the attacks/ destruction and the occupation/military use of schools by parties to the conflict, including those involving their use as incarceration & interrogation centers, military camps & command centers, firing & observation stations, and weapon storage facility. These practices, besides endangering teacher’s and children’s safety and education, often result in the closure of schools and make them a legitimate target of attack. Another ugly reality of the armed conflict are the attacks on medical and health workers, facilities, carriages and activities. While such unfortunate attacks affects all non-combatants, their adverse effect on access to health services for wounded and sick children is disproportionate.⁸¹

Recognizing that these attacks and actions hamper a child’s right to education and health services, the Security Council adopted another resolution on CAAC *viz.*, Resolution 1998⁸² in

⁷⁸ UN Security Council, SC Res 1882, SCOR, UN Doc S/RES/1882 (Aug. 4, 2009).

⁷⁹ *Supra* note 49.

⁸⁰ Triggers for listing are the grave violations committed against children by parties to conflict that warrant a listing in the annexes of the *SG Annual Report CAAC*.

⁸¹ UN Security Council, SC Res 2143, SCOR, UN Doc S/RES/2143 (Mar. 7, 2014).

⁸² UN Security Council, SC Res 1998, SCOR, UN Doc S/RES/1998 (Jul. 12, 2011).

July, 2011. In this resolution, the Security Council besides urging offending parties to immediately abstain from such attacks and actions asked the Secretary-General to keep an eye on and report these violations of international humanitarian law. Further, the Security Council also asked the Secretary-General to add in the shame list, from now onwards, names of all those parties to armed conflicts, who engage in persistent attacks or threats of attacks: (a) on schools and/or hospitals; and (b) against protected persons in relation to them.⁸³ Thus moving forward in its fight against impunity for crimes committed against CAAC, the Security Council in the year 2011, made a commission of one more grave violation against CAAC *viz.*, attacks on schools & hospitals as an additional trigger for listing parties in the shame list, taking up a number of triggers to four.

SC Resolution 2225 (2015): Abduction of Children Fifth Trigger for Listing

The abduction of children en masse by Boko Haram, a non-state armed group in Nigeria; and other warring parties in Africa and the Middle East, stimulated another expansion of the triggers for listing.⁸⁴ By adopted another resolution on CAAC *viz.*, Resolution 2225⁸⁵ in June 2015, the Security Council besides expressing its concern over the abduction of children in situations of armed conflict, acknowledged that a substantial number of these abductions are carried out by non-state groups in diverse settings, including schools and that these abductions frequently precede or follow other abuses and violations that invariably include recruitment & use, killing & maiming, rape & other forms of sexual violence, which may amount to war crimes or crimes against humanity. Further following its time-honoured scheme, the Security Council in this resolution also asked the Secretary-General to add in the shame list, from now onwards, names of all those parties to armed conflicts who engage in the abduction of children. Besides making abduction of children as a trigger for listing, it also called upon the parties abducting children, to formulate and implement without delay action plans to end such practices. Lastly, the resolution urged for the instant, benign and unconditional release of abducted children by all warring parties. This resolution thus took up the number of triggers for listing to five, leaving out ‘denial of humanitarian access for children,’⁸⁶ which is yet to become a trigger for listing parties in shame list.

⁸³ Protected person in relation to schools and hospitals include teachers and medical personal.

⁸⁴ *Supra* note 4 at 33.

⁸⁵ UN Security Council, SC Res 2225, SCOR, UN Doc S/RES/2225 (Jun. 18, 2015).

⁸⁶ *Supra* note 19 at 24.

III. SG Annual Report CAAC & the Issue of CAAC in India

The SG Annual Report CAAC, gateway to the UN Framework CAAC, has been highlighting the issues of CAAC in India since 2010. It discusses the situation of CAAC in India in ‘Section B’ which covers information on grave violations against children in situations of armed conflict which are not on the agenda of the Security Council. Over the years, the report has concerned itself mainly with the developments in central/eastern States of India affected by the Maoists or Naxalite armed groups. Here it is important to mention that the Naxalite problem is spread over several states in the centre/east of the country. Besides, Naxalite affected areas, the report once in 2015 underlined the issues of CAAC in north-eastern States, particularly State of Assam and Manipur and has been consistently highlighting the grave violations committed against CAAC in J&K since 2017. Given below is the summary of concerns raised in the report throughout these years with respect to the situation of CAAC in different conflict affected parts of India.

The SG Annual Report CAAC (2009),⁸⁷ highlighted the issue of CAAC in India for the first time and expressed concern on the forced recruitment and use of children by Naxalites, chiefly in the State of Chhattisgarh. The report underlined the practice of intimidation and coercion by Naxals forcing families to send boys or girls to join their ranks, as well as their abduction or forcible recruitment from schools. The report notes that besides using children as messengers and informers, they are trained to use non-lethal/lethal weapons including landmines.⁸⁸ The report also highlights attacks and occupation of schools by Naxals and security forces, respectively, and mentions that in order to damage/destroy Government structures and to instill fear among the local community, the Naxals carry out systematic attacks on schools, which not only cause damage/destruction of the school buildings, but also result in closure or abandonment of schools, particularly when they are occupied by security forces.⁸⁹

Thereafter, the SG CAAC Annual Report (2010),⁹⁰ besides continuing to highlight the recruitment and use of children by Naxals in the State of Chhattisgarh and targeting/destruction and occupation of schools, respectively by Naxals and security forces, also expressed worry over the killing and maiming of children as a direct result of violence between Naxals and

⁸⁷ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/64/742–S/2010/181 (Apr. 13, 2010).

⁸⁸ *Id.* at para. 135.

⁸⁹ *Id.* at para. 136.

⁹⁰ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/65/820–S/2011/250 (Apr. 23, 2011).

security forces. The report, also underlined the absence of genuine data to ascertain the number of children affected by recruitment and use.⁹¹

Continuing to express concern over the constant recruitment and use of children by Naxals in Chhattisgarh and some districts of neighbouring States, the SG CAAC Annual Report (2011),⁹² highlighted the recruitment of children by intimidation, abduction and indoctrination. The report notes the constitution of child squads and groups like Bal Dastas, Bal Sangham and Bal Manch as a component of Naxal mass mobilization, and the recruitment of children by the Salwa Judum, a Government backed militia in Chhattisgarh mobilised to counter Naxalites. Moreover, the report also points out the use of recruited children in supporting roles *viz.*, cooks, porters, messengers and lookouts by Naxalites. Insofar, Naxalite attacks on schools are concerned, the report accepting that the number of such attacks have progressively declined since 2009, quotes Government statistics to indicate destruction of 258 school buildings between 2006 and 2011 in Chhattisgarh, Jharkhand and Bihar. Lastly, the report expressed worry on the continued occupation of schools by the security forces in various states, particularly Chhattisgarh, where the State Government had conceded that security forces were using thirty-one schools.⁹³

Voicing concern over the limitations of the UN to verify information in relation to India under this framework, the SG CAAC Annual Report (2012)⁹⁴ reported violations against children in the States of Bihar, Chhattisgarh, Jharkhand, Maharashtra and Odisha. In respect of recruitment and use, the report mentions mass Naxalite recruitment of children in child units (Bal Sanghatans), and other youth groups in the affected States. The report notes that besides handling weapons, improvised explosive devices, and fighting with unsophisticated weapons such as sticks, children also perform various tasks, including acting as informants and those who try to leave such associations to suffer reprisals including the killing of family members. Further, expressing concern over the continued trend of the killing of children, the report points out the killing of several children in the State of Chhattisgarh in clashes between the Central Reserve Police Force and Naxalites and the use of children as human shields by Naxalites. Lastly, the report raising concerns in respect of children's access to education, indicates the

⁹¹ *Id.* at para. 165.

⁹² UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/66/782-S/2012/261 (Apr. 26, 2012).

⁹³ *Id.* at para. 138.

⁹⁴ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/67/845-S/2013/245 (May 15, 2013).

destruction of 267 schools by Naxalites since 2006.⁹⁵

Continuing to report violations against CAAC in India, the SG CAAC Annual Report (2013),⁹⁶ mentions Naxalite recruitment of children (between six and twelve years of age) into specific child units (Bal dasta & Bal sangham) in the States of Bihar, Jharkhand, Chhattisgarh and Odisha. Further, the report notes that once these children attain twelve years of age, they are assigned to age-specific units to acquire military training in weapon handling and use of improvised explosive devices. Expressing concern that in India recruitment and use of children has not been to be criminalized, the report mentions that although no disaggregated data on the number of children associated with armed groups in India is available, independent assessments show no less than 2,500 such children in Naxal-affected areas. Taking note of abuse of security legislations vis-a-vis children; and consequent arrest and detention of children alleged to be associated with armed groups in adult facilities, depriving them of their right to due process and to be tried in a juvenile justice system, the report expresses concern over such mistreatment of children.⁹⁷ Further, continuing to express concern over the killing and maiming of children in hostilities, the report points out the unavailability of disaggregated data on a number of children killed or maimed in confrontations between Naxalites and security forces.⁹⁸ Expressing concern over sexual violence against children, the report takes note of allegations of sexual abuse including rape in Naxalite camps and expresses worry about the presence of girls within Naxalite ranks.⁹⁹ Lastly, expressing concern on continual attacks/destruction of schools by Naxals and the military use of schools as bases and barracks, the report cautions against the deployment of armed forces in the vicinity of schools as it renders them along with students and teacher vulnerable to attacks, affecting access by children to education.¹⁰⁰

Noting that Naxalite recruitment campaigns continue to target poor communities, forcing parents to offer children under threat of violence, the SG CAAC Annual Report (2014),¹⁰¹ once again highlights the persistent Naxalite recruitment and use of children as old as six years of age in Bihar, Chhattisgarh, Jharkhand and Odisha.¹⁰² The report notes that children are

⁹⁵ *Id.* at para. 183.

⁹⁶ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/68/878-S/2014/339 (May 15, 2014).

⁹⁷ *Id.* at para. 173.

⁹⁸ *Id.* at para. 174.

⁹⁹ *Id.* at para. 175.

¹⁰⁰ *Id.* at para. 176.

¹⁰¹ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/69/926-S/2015/409 (Jun. 5, 2015).

¹⁰² *Id.* at para. 226.

threatened with reprisals which include the killing of family members if they escape or surrender. Further, besides expressing concern over sexual violence against children in Naxalite camps, the report mentions that in Naxal affected areas violence and the use of schools as recruitment grounds adversely affect child's access to education.¹⁰³ Highlighting recruitment and use of children by armed groups in the North-Eastern States of Assam and Manipur, the report mentions that in these States apart from abduction and forcibly recruited, children are also reportedly lured into joining armed groups due to the lack of livelihood alternatives. The report also expresses concerns over persistent allegations of arbitrary detention of children by security forces in violence-affected States over allegations of their association with armed groups. Lastly, the report notes the use of children as human shields and in combat roles by the Naxalites, as well as killing & maiming of children in the north-eastern States.¹⁰⁴

Expressing concern over the continual trend of the recruitment and use of children by armed groups, including Naxalites in Bihar, Chhattisgarh, Jharkhand, Maharashtra, Odisha and West Bengal States, the SG CAAC Annual Report (2015),¹⁰⁵ mentions that reports received by UN indicate that children continue to be forced to join child units (Bal Dasta). The report notes that these children besides being used as messengers and spies, are trained to set improvised explosive devices and lead operations against security forces. Further, the report indicates that the Naxal tactic of coercing people to hand over a particular number of children from each village to join their ranks is forcing children to drop out of school, since to avoid such forcible recruitment, families send their children away at a young age.¹⁰⁶ Expressing concern over killing and maiming of children, the report notes that in the eastern provinces, particularly in the State of Jharkhand, children are killed and injured in clashes between armed groups and security forces.¹⁰⁷ Highlighting the abduction of children mainly girls by armed groups, especially in the State of West Bengal, the report notes that the "abducted children are subjected to further grave violations and abuses, and have been forced to serve in combat functions, exposed to sexual violence and, reportedly, used as human shields."¹⁰⁸

¹⁰³ *Id.* at para. 227.

¹⁰⁴ *Id.* at para. 228, 229.

¹⁰⁵ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/70/836-S/2016/360 (Apr. 20, 2016).

¹⁰⁶ *Id.* at para. 184.

¹⁰⁷ *Id.* at para. 185.

¹⁰⁸ *Id.* at para. 186.

The SG CAAC Annual Report (2016),¹⁰⁹ besides expressing concern on the situation of children affected by violent clashes between the Government and armed groups in Chhattisgarh and Jharkhand, also voiced concern on the state of children trapped in the conflict of J&K.¹¹⁰ Continuing to highlight persistent recruitment and use of children by armed groups, including the Naxalites, predominantly in Chhattisgarh and Jharkhand, the report notes that these groups allegedly resort to abduction, and intimidations against parents to enlist children. Subsequent to such recruitment, the report mentions that the children undergo combat training and serve as couriers, spies or guards in child units (Bal Dasta). Expressing concern over access restrictions for monitoring and reporting hindering the UN ability to verify information/incidents, the report quoting unverified information suggests that security forces may be using children formerly associated with armed groups as informers/spies, making them potential targets for retaliation.¹¹¹ The report also expresses worry over the allegations that Naxalites were running several schools in Chhattisgarh and included combat training as part of their curriculum.¹¹² Further, the report notes that children continued to be killed and injured in security force operations against Naxalites and underlined the need for disaggregated data on children victims in this respect.¹¹³ Lastly, besides indicating the burning or partial destruction of about thirty schools in the reporting period by armed groups in J&K, the report confirms military use of four schools by security forces in that region for quite a few weeks.¹¹⁴

Continuing to express concern on the state of children affected by incidents of violence in Chhattisgarh, Jharkhand and J&K, the SG CAAC Annual Report (2017),¹¹⁵ besides highlighting the use of a ‘lottery system’ by Naxalites to enlist children in Jharkhand, for the first time highlights the recruitment and use of children by militant groups in J&K. Quoting unverified reports, it also indicates the use of children as informants and spies by security forces in J&K.¹¹⁶ Further, expressing concern over the killing & maiming of children in security forces operations against armed groups in Naxalite-affected regions and J&K, the report notes the lack of disaggregated data on these children victims. Lastly, besides noting Naxalites attack on schools in Jharkhand and military use or occupation of over twenty schools by the Central

¹⁰⁹ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/72/361–S/2017/821 (Aug. 24, 2017).

¹¹⁰ *Id.* at para. 201.

¹¹¹ *Id.* at para. 202.

¹¹² *Id.* at para. 204.

¹¹³ *Id.* at para. 203.

¹¹⁴ *Id.* at para. 204.

¹¹⁵ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/72/865–S/2018/465 (May 16, 2018).

¹¹⁶ *Id.* at para. 218.

Reserve Police Force in Srinagar, J&K, the report also mentions the closure of schools for varying periods during tensions in the J&K.¹¹⁷

The latest SG CAAC Annual Report (2018),¹¹⁸ which covers the period from January to December 2018, and which generated a buzz in the national media, once again notes that “children continued to be affected by incidents of violence between armed groups and the Government, particularly in J&K and in the context of the Naxalite insurgency.”¹¹⁹ In respect of grave violations, the report indicates recruitment and use of children as old as fourteen years in J&K by militant groups viz., Hizbul Mujahideen, Ansar Ghazwat-ul-Hind, and Lashkar-e-Tayyiba, some of whom were reportedly neutralised in an encounter with the security forces. Besides, the reports note that the systematic recruitment of children by Naxalites continues.¹²⁰ Further, besides expressing concern over the persistent killing & maiming of children in the context of security forces operations against Naxalites in the States of Bihar, Chhattisgarh, Jharkhand, Maharashtra and Odisha, the report underlines that in J&K, thirty-one children in the age group of seven and seventeen were allegedly killed, including in security force operations and “at least, 150 children, some as young as one, were reportedly injured, mostly by pellet bullets used by the security forces.”¹²¹ Lastly, the report also mentions the “allegations of the perpetration of sexual violence against girls by the security forces in Kashmir.”¹²²

Thus over the years, the SG Annual Report CAAC, with a view to encourage the Government of India to end and prevent grave violations against CAAC within its territory and to effectuate accountability measures to hold offenders to account, besides highlighting ‘recruitment & use of children’ by Naxalites and armed groups in north-eastern States and J&K, also highlighted ‘killing & maiming of children’ in security force operations against these groups. Besides these violations, the report also highlighted attacks/destruction and occupation/military use of schools; the abduction of children, especially girls; sexual violence and other forms of abuse, including rape against children, as other forms of grave violations committed against children in these situations. Here it is important to mention that the information contained in the SG Annual Report CAAC, as acknowledged by the report itself, is only indicative, and does not

¹¹⁷ *Id.* at para. 219.

¹¹⁸ UN Secretary General, *Children and Armed Conflict- Report of the Secretary-General*, UN Doc A/73/907–S/2019/509 (Jun. 20, 2019).

¹¹⁹ *Id.* at para. 201.

¹²⁰ *Id.* at para. 202.

¹²¹ *Id.* at para. 203.

¹²² *Id.* at para. 204.

reflect the full scale of violations committed against CAAC.¹²³ Besides highlighting these grave violations against CAAC in India, the Secretary-General in this report, has also time and again voiced concern over access restrictions for monitoring and reporting placed on UN human rights protection actors by the Government of India, hindering UN's ability to verify the incidents of grave violations committed against children, especially when they are committed by security forces. Consequently, the report has been qualifying its findings as unverified where it so deems necessary e.g., the SG CAAC Annual Report (2017)¹²⁴ quotes unverified reports also point out the use of children as informants and spies by security forces in J&K.¹²⁵ Also, besides expressing concern that in India the recruitment and use of children remains to be criminalized by law, the report repeatedly highlights the unavailability of disaggregated data on the number of children associated with armed groups and on children killed or maimed in security force operations against armed groups. Moreover, the report besides recommending the Government to put in place measures to hold perpetrators of these violations to account, also recommends India to engage with the UN to end and prevent these violations against children.¹²⁶

IV. Significance of the Framework for CAAC in India

From the above discussion, it becomes evident that the situation of the CAAC in various conflict affected parts of India is under the scrutiny of UN under this framework. Consequently, the SG Annual Reports CAAC, while discussing the situation of CAAC in various conflict affected parts of the world, also discusses the grave violations committed against CAAC in India. Having said that, it is rather important to mention that the SG Annual Report CAAC discusses the situation of CAAC in India only in Section B, which documents violations against CAAC in locations not on the agenda of the Security Council or other situations of concern. In other words, the names of the offending parties do not figure in the shame list. Consequently, there are neither any Action Plans to protect these CAAC nor any MRM to secure observance of CAAC protection standards. This non-inclusion may be either due to inadequacy of verified information, or the determination by the Special representative CAAC that existing information does not meet the threshold for including the offending parties in the annexes. Whatever the reason, the MRM Guidelines provide that owing to their inclusion in the SG Annual Report CAAC, such situations are deemed to be situations of concern, and therefore, the UN Country

¹²³ *Supra* note 115 at para. 2.

¹²⁴ *Supra* note 115.

¹²⁵ *Id.* at para. 218.

¹²⁶ *Id.* at para. 221.

Team should “strengthen monitoring and reporting activities in these country-situations through the establishment of a working group or other informal modality.”¹²⁷ Since, the SG Annual Report CAAC represents a powerful advocacy and pressure tool to force warring parties to participate in child protection dialogue, this situation also indicates an opportunity for us researchers, academics, NGO’s, other pro-child activists to document the violations and engage with the Government and play our part in making this world a better place for children.

India has been voicing its objections to this limited UN scrutiny of the situation of CAAC within its territory. It argues that the situations respecting India that are discussed in the report, including the situation in J&K, do not fulfil the definition of ‘armed conflict or of threat to international peace and security’- which as per its understanding is an essential pre-condition for the applicability of this UN framework CAAC. Consequently, it demands that India should not be monitored. This positioning of India becomes evident from the statement of India's Deputy Permanent Representative to the UN, Ambassador Tanmaya Lal, who while expressing India’s disappointment on India’s inclusion in the SG Annual Report CAAC (2017),¹²⁸ quoted Security Council Resolution 1379,¹²⁹ to contended that this resolution asks the Secretary General to report only on situations of armed conflict that are on the agenda of the Security Council or that although not it’s on the agenda, but which may in his opinion threaten the maintenance of international peace and security. And since the situations in India addressed in the report do not satisfy this definition, he suggested that this distraction should be rectified and the mandate strictly adhered.¹³⁰

This Security Council Resolution 1379,¹³¹ relied on by India to support its argument was adopted in November, 2001. This resolution supplemented by subsequent resolutions of Security Council, demanded the Secretary-General to fasten to the SG Annual Report CAAC, a list of parties (shame list) who commit all or any of the grave violations against CAAC that are triggers for listing, in situations: (a) which are on the agenda of the Security Council; (b) that although not on the agenda of the Security Council, but which may in his opinion threaten the maintenance of international peace and security. This resolution no doubt is one of the most

¹²⁷ *Supra* note 1 at 8.

¹²⁸ *Supra* note 115.

¹²⁹ *Supra* note 49.

¹³⁰ Press Trust of India, “India says disappointed at UN chief’s report on children and armed conflict” *Hindustan Times*, July 10, 2018, available at: <https://www.hindustantimes.com/india-news/india-says-disappointed-at-un-chief-s-report-on-children-and-armed-conflict/story-e4YCPTGltrvfkzoBb3k2nM.html> (last visited on Oct. 28, 2020).

¹³¹ *Supra* note 49.

important resolutions of the Security Council on CAAC, which by establishing a shame list of offending parties came to become one of the keystones of this UN framework CAAC. But at the same time, it does not form its foundation. In other words, firstly, this resolution is applicable only in preparing Annex I & Annex II (shame list) to the SG Annual Report CAAC and does not cover the entire report. Since none of the offending parties in India figures in the shame list, citing this resolution to object to the applicability of the whole framework does not reflect great diplomatic acumen. Secondly and most importantly, the SG Annual Report CAAC, owes its origin to the first Security Council Resolution on CAAC *i.e.*, Resolution 1261,¹³² adopted in August, 1999 and not to Resolution 1379.¹³³ In that resolution, the Security Council simply asked the Secretary-General to collect and verify information describing where and the way boys and girls are suffering from armed conflict around the globe and use this information to prepare a report, which later came to be known as SG Annual Report CAAC. It neither gave any definition of armed conflict nor talked about the threat to international peace and security. Consequently, since 1999, the report typically prepared by the Secretary-General on an annual cycle on the insistence of the Security Council has been documenting situations of CAAC around the globe in which “apparent violations of international norms for the protection of CAAC are considered to be of such gravity as to warrant international concern.”¹³⁴ It has never concerned itself with the technical definition of the term ‘armed conflict’ or ‘threat to international peace and security’.

Thus India’s reasoning to firewall this limited UN scrutiny is flawed, firstly, because there is no universally applicable definition of ‘armed conflict’ in general, and secondly, in particular the Office of the SG Special Representative CAAC- the focal point for the development of SG Annual Report CAAC at the UN Headquarter level, while detecting situations that fall within the purview of its mandate, adopts a realistic and accommodating approach, aiming on guaranteeing comprehensive and effective protection for children exposed to situations of concern, rather than on the definition of the term ‘armed conflict’ or ‘threat to international peace and security.’ In other words, the mandate of the SG Special Representative CAAC does not contain any definition of these terms; and the reference or discussion of any particular country-situation in the SG Annual Report CAAC is not construed as a legal determination that there exists a situation of armed conflict within the meaning of the Geneva Conventions, 1949

¹³² *Supra* note 31.

¹³³ *Supra* note 49.

¹³⁴ *Supra* note 115 at para. 3.

and their Additional Protocols, 1977.¹³⁵ Also, the mention of non-state actors does not affect their legal status or give them any legitimacy. The only concern of the SG Annual Report CAAC is to document situations in which apparent violations of international standards for the protection of CAAC are of such enormity as to warrant international concern and in describing the facts as grave violations, it aims to bring these situations to the attention of national Governments, so that they can take remedial measures.¹³⁶ Here, it is also important to note that “monitoring and reporting on human rights violations represent a core mandate and responsibility of the UN in all situations of concern. As such, the conduct of such activities does not require the prior agreement of governments.”¹³⁷

Thus, even though India has been objecting to the applicability of this framework on itself, the objections rest on very shaky grounds. Besides, India has also never disputed the findings of the SG Annual Report CAAC in relation to it. Therefore, it would be wise for India to respect the mandate and utilise the expertise of UN agencies to develop appropriate mechanisms to ensure the protection of CAAC within its territory if it really wants to exclude itself from being monitored. This is also what the report recommends when it says that the Government of India should “put in place measures to hold perpetrators of child recruitment and use to account and engage with the UN in view of ending and preventing violations against children.”¹³⁸

Also since under international law, the States bear the primary responsibility to protect and promote the rights of children living within their jurisdiction, one of the objectives of the SG Annual Report CAAC is to gather timely and precise information on violations against them and bring it to the attention of the national government for swift corrective action. Therefore, to fulfill its obligations under International law, including the CRC, India should utilise the information provided, to exhibit its own desire “to improve the situation of children who are victims of grave violations, and put in place appropriate mechanisms to prevent, respond to and ensure accountability for grave violations against children.”¹³⁹ This not only will help India in ending and preventing violations against CAAC within its territory but will also suit it strategically at the UN. India seeks to become a permanent member of the Security Council and sees a larger global role for itself. Therefore, respecting and adhering to the mandate of this UN Framework CAAC, which originated and is sustaining on the resolutions of none other

¹³⁵ *Supra* note 51 at para. 7.

¹³⁶ *Supra* note 115 at para. 3.

¹³⁷ *Supra* note 1 at 9.

¹³⁸ *Supra* note 115 at para. 221.

¹³⁹ *Supra* note 1 at 13.

than the Security Council itself, will showcase India's goodwill as an upright global partner ready for a larger global role. Attempts to firewall the mandate, besides showing India in a bad light, also is a sort of a contradiction that on the one hand India seeks to become a permanent member of the Security Council and on the other hand, refuses to respect the mandate of a momentous child protection framework created by the same Security Council.

Also, since despite India's objections, the SG Annual Report CAAC has unrelentingly continued to report the situation of CAAC in India, often fixing responsibility for committing grave violations against children on non-state groups, even though, now and then, it also names security forces. Therefore, there is no point in letting the matter linger unnecessarily. The best course is to take necessary measures to prevent and end violations against CAAC, which can commence by passing a legislation criminalising 'child recruitment and use' and then gradually move on to address other violations. In the absence of any sincere initiative on the ground, India will continue to expose itself to this international scrutiny. There is also a real possibility that someday any of these non-state armed groups or security forces for that matter might end up in the shame list. Assuming, it will only be a non-state armed group, still it will be embarrassing for India because under the International law, States bear the primary responsibility to protect the rights of children living within their jurisdiction.

V. Conclusion

The Machel Report (1996), brought the world together in the common cause to protect children trapped in the most difficult of circumstances. The resultant creation of mandate for the SG Special Representative CAAC compelled greater awareness as well as greater action for their protection, by highlight their plight and ensuring compliance of parties to the conflict with international child protection standards and fostering accountability for violations of their rights. As the adoption of OPAC reveals, it also led to the steady development of international normative standards to protect CAAC, which was further augmented by the Security Council resolutions. With a series of resolutions, the Security Council created a unique framework to gathers and verify information, describing where and the way CAAC are affected around the globe; identified six grave violations against them that receive priority attention; established shame list of parties who commit these grave violations; enforced mandatory action plans to halt and prevent these grave violations; established a MRM in all country-situations where parties are listed on account of committing these grave violations; created the SC working

group CAAC that meets on a bimonthly basis to analysis issues relating to CAAC; and most importantly, held out the prospect of sanctions against defiant States and groups. All of this became possible because of a new global consensus that children must be protected from the grave violations committed against them during armed conflict.

Grounded on the cogent effect of both dialogue and the threat of action against the usurpers of child rights in armed conflicts, ever since its creation, the UN framework CAAC has been constantly evolving to better address the needs of affected children. Being mindful of the State politics of recognising or not-recognising a particular situation as a situation of ‘armed conflict’ within the meaning of the Geneva Conventions, 1949 and their Additional Protocols, 1977; and taking advantage of the fact that there is no globally accepted definition of armed conflict, this framework does not contain a definition of the term. In its endeavour to protect CAAC, it adopts a realistic and accommodating approach, focusing on guaranteeing comprehensive and effective protection to children exposed to situations of concern, rather than on the definition of the term armed conflict. This conscious choice is made to ensure effective protection of CAAC in all situations by firewalling the framework against the attempts of States to sabotage it over the technicalities of the definition of the term armed conflict. Even though, the framework has developed into an unrelenting force to monitor, expose and put an end to grave violations against CAAC, still protecting CAAC is a continual and evolving endeavour, as there are both new and reoccurring concerns which need additional solutions. But still, the action generated by this framework represents a beacon of hope for millions of children caught up in armed conflicts around the globe, including India.