Information Note
on the involvement and recruitment of minors in committing crimes against the national security of Ukraine

July 2025

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Introduction

This legal opinion addresses the recruitment and involvement of minors in committing criminal offences against Ukraine's national security, specifically sabotage, terrorism and targeted arson attacks.[1] The facts presented rely on official information provided in a background note by the Ukrainian Office of the Prosecutor General (OPG) and, where relevant, summaries of cases provided by the OPG. The opinion is designed to provide clear, short summary conclusions to the main questions asked in written form and during a meeting with the OPG ("Summary of conclusions and recommendations") as well as detailed analysis upon which these conclusions are based ("Sections 1, 2 and 3").

According to the information contained in the background provided by the OPG, as of 13 March 2025, at least 150 minors, aged between 12 and 18 years, have committed criminal offences orchestrated by unidentified individuals who potentially constitute a larger centralised group ('recruiters and/or crime organisers'). These offences involve using incendiary mixtures or improvised explosive devices against military-related and civilian infrastructure, including vehicles belonging to military servicemen, railway infrastructure equipment, territorial recruitment buildings, social support centres and postal service offices. The targets for these criminal acts were chosen or approved explicitly by the recruiters. Recruitment and instructions for these criminal activities have been co-ordinated by the recruiters via online messaging platforms, notably Telegram public channels. Recruiters have posted advertisements offering financial payment for engaging in "risky jobs" or similarly described tasks. The summaries of cases provided by the OPG indicate that, in some instances, the minors sent videos or photographs to the recruiters to prove completion of the act. The most affected regions are Dnipropetrovsk, Donetsk, Zaporizhzhia, Kyiv, Kirovohrad, Mykolaiv, Odesa, and Kharkiv.

Currently, the minors recruited for these activities are being prosecuted as direct perpetrators of grave or especially grave crimes under the Criminal Code of Ukraine (CCU), including sabotage (Article 113), obstruction of lawful activity of the Armed Forces of Ukraine and other military groups (Article 114(1)), intentional destruction or endangerment of property (Article 194), acts of terrorism (Article 258) and engaging minors in criminal activities (Article 304). The minors involved are facing criminal prosecution for grave or especially grave crimes under the CCU, with pre-trial detention measures already applied to 75 minors. In the summaries of cases provided by the OPG, imprisonment sentences were imposed on the recruited minors (ranging from between three and five years of imprisonment). All recruited minors in these cases were nevertheless released on probation in light of, *inter alia*, their age and their specific circumstances and vulnerabilities.

To date, the recruiters have not been prosecuted as they remain unidentified. The summaries of cases indicate that, in some instances, these individuals are believed to be connected to the intelligence or special services of the Russian Federation. The working hypothesis of the OPG is that the recruiters form part of a centralised group that is engaged in organising attacks on military-related facilities.

This legal opinion explores several interconnected questions requested by the OPG in the background note and further clarified during a meeting on 9 May 2025.

- First, it examines whether recruiting children for these criminal activities could qualify under international and Ukrainian law as the war crime of "conscripting or enlisting children under fifteen years into the national armed forces or using them to participate actively in hostilities." On this basis, the memo considers what could be an appropriate investigation and prosecution

[1] This legal opinion was drafted by UpRights in June 2025.

strategy for the OPG with respect to the liability of the recruiters (*OPG questions 1 and 2*) (Section 1).

- Second, the legal opinion evaluates the proper treatment of these minors in line with international human rights law, juvenile justice standards and guidelines on the treatment of children associated with armed forces or armed groups (*OPG questions 1 and 3*) (Section 2).

- Finally, the opinion assesses the necessity of developing domestic procedures aimed at preventing recruitment of minors, in light of relevant international legal obligations and best practises (*OPG question 4*) (Section 3).

Summary of conclusions and recommendations

- **Can the recruiters be liable for the war crime of "conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities"?**

  Yes, depending on the particular circumstances of a case. It may be possible in some cases to qualify the conduct of the individuals recruiting children to carry out the acts outlined in the background note as the war crime of "using children under the age of fifteen years to participate actively in hostilities", criminalised under Article 438 of the CCU (Section 1.1)

- **What approach could law enforcement take to investigation and prosecution with respect to the liability of the recruiters?**

  In light of Ukraine's international obligation to take all feasible measures to ensure that children under the age of 15 years of age do not take direct part in hostilities, the OPG is encouraged to investigate and prosecute the recruiters of the acts outlined in the background note. This obligation may be fulfilled through the use of domestic crimes and modes of liability or on the basis of charges for war crimes, where relevant.

  Before considering charging recruiters with the offence of "Using children under fifteen years to participate actively in hostilities" the OPG should focus its investigation in particular on: (1) the identities of the recruiters and whether they can be considered members of the armed forces of the Russian Federation; (2) the existence of evidence to establish a link between the activities for which the child was used and the hostilities, and the recruiter's conduct and the armed conflict.

  Successfully prosecuting the recruiters by relying on the war crime of using children under fifteen years to participate actively in hostilities presents a number of evidentiary challenges and legal uncertainties that it may be difficult to overcome. As a result it will be important to evaluate, in light of the evidence required for the respective charges, the strengths and potential weaknesses of applying the war crimes charge of using children under the age of fifteen to participate actively in hostilities to the conduct of the recruiters, as compared to other relevant domestic crimes charges, such as those currently relied upon to prosecute the minors and/or modes of liability that reflect the role played by the recruiters.

  If charges for the war crime of using children under the age of fifteen to participate actively in hostilities were to be considered by the OPG, the advised approach would be to develop a cautious strategy with initial "test cases" based on the strongest possible evidentiary scenario. A particularly strong case would involve evidence indicating that the perpetrators of the recruitment are members of the armed forces of the Russian Federation, within the meaning of Article 43 of Additional Protocol I, and the target of the recruited child's act can be considered a military objective (Section 1.2).

- **What approach should be taken regarding the prosecution and the treatment of the children under international law?**

  In light of international standards on juvenile justice as well as the principle that children who have committed crimes while associated with armed forces or groups should be considered primarily as victims not only as perpetrators, the OPG should consider where possible and appropriate, alternative measures to judicial proceedings, such as community programmes, temporary

supervision and guidance, restitution, and compensation of victims, for the children accused of the acts outlined in the background note.

Where judicial proceedings are pursued, such children must be treated in accordance with general international standards on juvenile justice, including by detaining such children only as a last resort and for as short a time as possible, and by taking measures to ensure their reintegration and rehabilitation (Section 2).

- **Should Ukraine develop special procedures to prevent the recruitment and use of children for the criminal acts described in the background note?**

  Yes, Ukrainian authorities should be encouraged to develop a plan to prevent the situation described in the background note. In order to prevent recruitment and use of children in armed conflict, international guidance encourages the development of a comprehensive prevention plan, including programmes that addresses factors that may encourage the involvement of children in armed forces or groups. With respect to the conduct outlined in the background note, a first, pre-requisite step to doing so will be to analyse and understand why particular children are vulnerable to being recruited in this way, and the push and pull factors that motivate them to undertake these acts. Based on this analysis, a tailor-made prevention plan could then be developed by the Ukrainian authorities (Section 3).

SECTION 1: Prosecution of recruiters

This section addresses the specific issue of the prosecution of the individuals recruiting children to carry out the acts outlined in the background note. It will first consider whether the conduct of the recruiters can be charged by the OPG as the war crime of "conscripting or enlisting children under fifteen years into the national armed forces or using them to participate actively in hostilities" (1.1). Based on this analysis, a second part elaborates on investigation and prosecution considerations for the OPG with respect to the liability of the recruiters (1.2). This section therefore seeks to answer questions 1 and 2.

The main conclusions of this section are:

- The war crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" is criminalised under Article 438 of the CCU.
- Under the current drafting of Article 438 of the CCU, the recruiters are most likely only liable for this war crime where the children are under the age of 15 years old. Practise from other domestic systems applying this crime to children up to the age of 18 is limited.
- "Using children under fifteen years to participate actively in hostilities" is the only offence (not conscription or enlistment) that can realistically be considered by the OPG for the acts outlined in the background note.
- With respect to conducting investigations, before considering charging recruiters with the offence of "Using children under fifteen years to participate actively in hostilities" the OPG should focus in particular on:
    - The identities of the recruiters and whether they can be considered members of the armed forces of the Russian Federation.
    - The existence of evidence to establish a link between the activities for which the child was used and the hostilities, and the recruiter's conduct and the armed conflict.
- With respect to potential prosecution, the OPG is encouraged to take measures to ensure that the recruiters are adequately prosecuted, in line with Ukraine's international obligation to take all feasible measures to ensure that children under the age of 15 do not take direct part in hostilities. The OPG is therefore encouraged to prioritise investigating the recruiters.
- Successfully prosecuting the recruiters by relying on the war crime of using children under fifteen years to participate actively in hostilities presents a number of evidentiary challenges and legal uncertainties that it may be difficult to overcome. As a result:
    - Before charging the recruiters with this war crime, the OPG should consider the strength of its case, including whether, on the basis of the evidence available, a link can be demonstrated between the activities for which the children were used and the hostilities, as well as between the recruiter's conduct and the armed conflict. Evidence demonstrating that the recruiters are members of the armed forces of the Russian Federation is likely to be particularly important in this respect.

- The OPG could develop a cautious strategy with initial "test cases" based on the strongest possible evidentiary scenario. Particularly strong cases would be those where the evidence strongly indicates that the perpetrators of the recruitment are members of the armed forces of the Russian Federation and the target of the recruited child's act can be considered a military objective.
- The OPG may consider charging the recruiters with other offences under the CCU that may be easier to prove – likely the same offences as those relied upon by the OPG to prosecute the children themselves, but applying modes of liability that reflect the recruiter's involvement in the commission of the offences.

1.1 Liability of recruiters for the war crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities"

This section examines:

- Whether the war crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" is criminalised under Ukrainian law and thus can be relied upon and charged by the Prosecutor.

- Whether the conduct of the individuals recruiting minors to commit crimes against the national security of Ukraine, outlined in the background note,[2] may be qualified as the war crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities."

1.1.1 Applicability under Article 438 of the Criminal Code of Ukraine

As explained below, Article 438 of the CCU can be interpreted as criminalising under Ukrainian law the conscription and enlistment of children under the age of fifteen years into the national armed forces and their use to participate actively in hostilities. This war crime can thus be charged by Ukrainian prosecutors.

The war crime of conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities is not listed explicitly under Article 438 of the CCU. However, it is subsumed under the notion of "other violations of rules of the warfare recognised by international instruments consented to be binding by the Verkhovna Rada (Parliament) of Ukraine."

The conscription and enlistment of children under the age of fifteen years into the national armed forces and their use to participate actively in hostilities is a violation of the laws of warfare recognised in

[2] The terms "to recruit" or "recruitment" are used generically in this memo to refer to actions persuading or incentivising minors to commit crimes. These terms are distinct from the legal terms denoting the criminal offences of conscripting, enlisting or using children under 15 to participate actively in hostilities, discussed in this section.

international treaties ratified by Ukraine, in particular Article 77(2) of Additional Protocol I[3], and is a war crime.[4]

Moreover, Ukraine ratified the Statute of the International Criminal Court (ICC Statute) on 25 October 2024. Since then, the war crimes enumerated in the ICC Statute, including "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities", listed in Article 8(2)(b)(xxvi), can be considered directly subsumed as an "other violations of rules of the warfare recognised by international instruments consented to be binding by the Verkhovna Rada (Parliament) of Ukraine" under Article 438 of the CCU.

These factors support recognition of the criminalisation under Article 438 of the CCU of conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities.

Children under the age of 15 years old. With respect to the age of the children - it is important to note that under existing international law, only the conscription, enlistment or use of children under the age of 15 constitute war crimes attracting individual criminal responsibility.[5] This age threshold must be distinguished from wider human rights obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), which require states to take all feasible measures to prevent the use of children under 18 in hostilities, including through criminalising such conduct in their national law.[6] Thus, while some specific international human rights instruments impose a higher standard on states to ensure protection from use in hostilities for all children under 18, international criminal law establishes the age of 15 as the threshold to constitute a war crime attracting individual criminal responsibility under international law.

In line with obligations under the OPAC, approximately 22 states worldwide criminalise the recruitment and use of children up to the age of 18 within their domestic systems.[7] The majority of these states criminalise this act as a war crime, with reference to international law.[8] In light of the limited number of countries that do so, domestic practise involving charges where recruited children were over the age of 15 is limited. While the authors have not undertaken a comprehensive assessment of whether these

[3] Additional Protocol I, Article 77(2) ("[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces"). The ICRC identifies this prohibition as part of customary international law. ICRC, IHL Database, Customary Law, Rule 136, available at https://shorturl.at/F9oiV, accessed 25 July 2025; Rule 137, available at https://shorturl.at/44RIn, accessed 25 July 2025. Ukraine ratified Additional Protocol I on 25 January 1990 - ICRC, IHL Database, IHL Treaties, Treaties and State Parties, Additional Protocol I, available at https://shorturl.at/izvri, accessed 25 July 2025.

[4] The Rome Statute of the International Criminal Court (ICC Statute) and the Statute of the Special Court for Sierra Leone (SCSL) recognise violation of the prohibition against conscripting or enlisting children under the age of fifteen into national armed forces or armed groups or using them to participate actively in hostilities as a war crime - ICC Statute, Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii); SCSL Statute, Article 4(c). According to the ICRC, the recognition of this war crime "reflect[s] the development of customary international law since the adoption of Additional Protocol I in 1977". ICRC, IHL Database, Customary Law, Rule 156. Definition of War Crimes ("Conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities."), available at https://shorturl.at/gwjU4, accessed 25 July 2025.

[5] This is reflected in the ICC Statute, the Statute of the SCSL and in customary international law. See ICRC, IHL Database, Customary Law, Rule 156. Definition of War Crimes ("Conscripting or enlisting children under the age of 15 into armed forces, or using them to participate actively in hostilities."), available at https://shorturl.at/gwjU4, accessed 25 July 2025.

[6] See Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) [hereinafter "Optional Protocol on children in armed conflict"], Articles 1 and 4.

[7] Colombia, Croatia, Slovenia, Spain, Ethiopia, Rwanda, Sri Lanka, Uruguay, Finland, Norway, Guinea, Timor-Leste, Democratic Republic of the Congo, Venezuela, Chile, France. In addition, several states criminalise the recruitment and use of minors without specifying the age but define the age of majority as 18 years or older in other domestic provisions. Namely, Azerbaijan, Iraq, Portugal, Senegal, Burkina Faso, Czech Republic, Ecuador.

[8] Colombia, Croatia, Slovenia, Spain, Ethiopia, Rwanda, Uruguay, Finland, Norway, Timor-Leste, Democratic Republic of the Congo, Chile, France, Azerbaijan, Iraq, Portugal, Senegal, Burkina Faso, Czech Republic, Ecuador.

states have undertaken investigations and prosecutions of individuals for recruiting or using children in hostilities up to the age of 18, a cursory review reveals some limited jurisprudence in Colombia and the Democratic Republic of the Congo (DRC).

In DRC, where the recruitment and use of children up to the age of 18 is criminalised as both a war crime and an ordinary crime within the criminal code, at least one case has involved charges for this crime applicable to children over 15.[9] In this case, the court chose to qualify the conduct for 5 victims who were under the age of 15 as a war crime on the basis of the law implementing the ICC Statute, while the conduct applicable to 3 victims who were over the age of 15 was instead qualified as the ordinary crime of recruiting or using a child under 18 in an armed force or group on the basis of DRC's general law on the protection of children.[10]

The Special Jurisdiction for Peace (JEP) in Colombia has also addressed this question. The JEP is the judicial component of the transitional justice process in Colombia, which works through a process of investigating "macrocases" - large-scale investigations focused on patterns of crimes - and, based on these findings, offers those individuals it identifies as most responsible the opportunity to accept responsibility in exchange for restorative justice measures or, if they deny the charges, subjects them to a formal adversarial trial. In decisions on such "macrocases" including factual conduct on the recruitment and use in hostilities of children over the age of 15, the JEP has concluded that conscripting, enlisting or using persons up to the age of 18 constitutes a war crime within its applicable legal framework.[11]

With respect to the domestic legal framework in Ukraine, it is notable that a current draft amendment to Article 438 of the CCU proposes the explicit criminalisation of the use of a child under the age of 18 years in hostilities, for military purposes, or in armed conflicts.[12] However, as currently drafted, by directly subsuming "other violations of rules of the warfare recognised by international instruments consented to be binding by the Verkhovna Rada (Parliament) of Ukraine", Article 438 is most likely limited to criminalising war crimes established under international law and therefore the conscription, enlistment and use of children to participate actively in hostilities only under the age of fifteen.

1.1.2 Elements of the crime

Article 438 of the CCU does not identify the objective or subjective elements of war crimes. Looking at international humanitarian law (IHL) instruments alone may not assist in identifying the elements because they are not criminal law instruments. Violations of IHL provisions must therefore be transposed into the structure of a criminal offence. The most authoritative – and often the only – sources for identifying the legal elements of war crimes are the case law and legal documents governing the international criminal tribunals. The elements of war crimes have been identified in the case law of the Nuremberg Tribunal, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and other hybrid tribunals such as the Special Court for Sierra Leone (SCSL), and the ICC, as well as in definitions in the ICC Statute and the ICC Elements of Crimes. Given the recent ratification of the ICC Statute, the ICC Elements of Crimes and the ICC Statute may be of particular relevance. This memo relies on these sources to identify and interpret the

[9] Court Militaire du Sud-Kivu, Arret, RP No. 0138/020, 17 June 2022.
[10] *Ibid.*, pp. 102-106 and p.119.
[11] Jurisdicción Especial para la Paz, Auto No. 05 de 2024, 9 October 2024, paras. 1415-1439; Jurisdicción Especial para la Paz, Auto Sub D - Subcaso Casanare - 055, 14 July 2022, paras. 563-589. For discussion of the analysis in English see Rueda Guzmán L, Rojas-Orozco C., "Child recruitment and beyond: Prosecuting the broad spectrum of violence committed against recruited children within the former FARC-EP ranks", International Review of the Red Cross (2025), pp. 9-13.
[12] Draft Law No. 12170.

elements of the war crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities".

This conduct is considered a war crime in both international armed conflict (IAC) and non-international armed conflict (NIAC).[13] Given the situation in Ukraine, this memo focuses on the definition of the crime in IAC. It is important to note that, to date, the existing case law that has addressed this crime has all concerned situations of NIAC. The definition of the crime in NIAC is analogous, with only one minor difference.[14] Noting that the elements of the crime are substantially similar, the ICC has confirmed that the interpretation of the elements of the crime are relevant in both NIAC and IAC.[15]

According to the ICC Elements of Crimes, to convict a perpetrator for conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities in an IAC, the following elements must be established:[16]

1. The perpetrator (a) conscripted or (b) enlisted one or more persons into the national armed forces or (c) used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

1.1.3 Qualification of the factual conduct outlined in the background note

This section analyses each objective, subjective and contextual element of the crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" in light of the factual conduct outlined in the background note.

a. Objective elements

Objective element 1: The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.

The first objective element of this crime incorporates three separate criminal offences, which can be charged independently of one another.[17] Namely, a) the conscription or b) the enlistment into the national armed forces or c) the use of a person to participate actively in hostilities.

[13] ICC Statute, Article 8(2)(b)(xxvi) and Article 8(2)(e)(vii).
[14] In a NIAC, the first objective element requires that the perpetrator enlisted or conscripted a person or persons into an "armed force or group" as opposed to "the national armed forces" in the case of an IAC.
[15] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para. 620.
[16] ICC Elements of Crimes, Article 8 (2) (b) (xxvi) War crime of using, conscripting or enlisting children. See also Benchbook on the Adjudication of International Crimes under Ukrainian Domestic Law, available at https://shorturl.at/rJaiG, accessed 25 July 2025.
[17] See for example, ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para. 609. The SCSL Appeals Chamber has confirmed in this respect that "[t]hese modes of recruiting children are distinct from each other and liability for one does not necessarily preclude liability for the other." - SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 139.

As the crime of conscription requires the compulsory enlistment of persons into military service, it does not appear relevant to the factual scenario outlined in the background note.[18] The two other offences: (1) enlistment into the national armed forces and (2) the use of a person or persons to participate actively in hostilities are considered below.

Enlisting a person or persons into the national armed forces

Enlistment. Enlistment has been defined as "enrolment on the list of a military body"[19], "voluntary integration […] into an armed force or group"[20], and "accepting and enrolling individuals when they volunteer to join an armed force or group."[21] Enlistment is therefore distinguished from conscription by the absence of the element of coercion[22]; the act of enlisting "presupposes that the individual in question voluntarily consented to be part of the armed force or group."[23]

The facts provided in the background note indicate that minors are approached through social media and messaging channels with advertisements for temporary work or "risky" jobs in exchange for payment. As there is no factual information to indicate that this recruitment takes place through coercion or compulsion, the first element of the crime of enlistment, requiring that the enlistment take place on a voluntary basis, would appear to be satisfied.

Relationship between the person and the armed force into which they are enlisted. Existing jurisprudence does not provide a clear interpretation of the process through which children must join or be accepted into an armed force in order to constitute enlistment. The jurisprudence has generally understood enlistment to involve enrolling or integrating a child into an armed force or group in some way[24] and has primarily addressed situations where children have been incorporated into an armed

[18] Conscription requires the compulsory enlistment of persons into military service. The element of compulsion necessary for conscription may be demonstrated by showing that a person joined the armed forces due to a legal obligation, the use of force or the threat of force, or psychological pressure amounting to coercion. See ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 277-278; ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2769; SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, para. 441. The information contained in the background note indicates that minors are recruited through social media channels or messaging apps under the guise of offers of jobs, temporary work or "risky" jobs in exchange for payment. The information provided does not suggest that any form of compulsion or coercion is involved in their recruitment. As such, it does not appear that this factual scenario would satisfy the conditions to qualify as the offence of conscription.

[19] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1107.

[20] ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2769.

[21] SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 140; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 185; SCSL, *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 735.

[22] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para. 608.

[23] SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 140. A child's consent does not constitute a legitimate defence to a charge of enlistment. Given that children under the age of fifteen may not be able to give genuine, informed consent when enrolling in an armed force or group, it may be difficult to distinguish between voluntary and forced recruitment of such persons. See ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1107; SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 140; SCSL, *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 735.

[24] The Trial Chamber in the *Lubanga* case at the ICC has referred to the plain and ordinary meaning of enlisting as "to enrol on the list of a military body." - ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, para. 608. In other cases, enlistment has been defined as "voluntary integration […] into an armed force or group" or "accepting and enrolling individuals when they volunteer to join an armed force or group". - ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2769; SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 140; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 185; SCSL, *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 735. The Trial Chamber in Ntaganda at the ICC has similarly noted that enlistment is a form of recruitment that results in "the incorporation of a person into an armed force or group". - ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1105. In the context

group as a member, often receiving some form of military training by the group, being sent to training camps, living in camps as members of the group or, in some instances, wearing military clothing.[25]

On the basis of existing jurisprudence, it is unclear whether the recruitment of children to commit isolated acts as described in the background note and case summaries, in the absence of evidence to indicate their incorporation or enrolment in some form into the relevant armed force, could constitute the crime of enlistment.

National armed forces. Lastly, in order to constitute enlistment in IAC, the person is required to have been enlisted into "the national armed forces." The term "national armed forces" has been interpreted as not being limited to the armed forces of a state.[26] The ICC has referred *inter alia* to the definition of armed forces contained in Article 43 of Additional Protocol I.[27] This provides that "[t]he armed forces of a Party to a conflict consist of all organised armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party."[28] The ICRC explains in this respect that "this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command. […] The definition contained in Additional Protocol I does not distinguish between the regular armed forces and other armed groups or units, but defines all armed forces, groups and units which are under a command responsible to a party for the conduct of its subordinates as armed forces of that party."[29] The key criteria for determining whether an individual constitutes a member of the armed forces are therefore whether the entity of which they are a member is a) organized and b) under a command responsible to a party to the conflict.

Article 43(3) of Additional Protocol I also explicitly recognises that States may incorporate paramilitary or armed law enforcement agencies into their armed forces.[30] The ICRC Customary IHL Database notes in this respect that, while incorporation of such agencies into armed forces is usually carried out through a formal act, such as an act of parliament, in the absence of such formal incorporation, the status of such groups is judged on the facts, in light of the criteria for defining armed forces.[31] In analysing the status of police officers during armed conflict, the SCSL has confirmed this approach, stating that "the status of police officers in a time of armed conflict must be determined on a case-by-case basis in light of an analysis of the particular facts. A civilian police force, for instance, may be incorporated into the armed forces, which will cause the police to be classified as combatants instead of civilians. This incorporation may occur *de lege*, by way of a formal Act, or *de facto*."[32]

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of armed groups, enlistment has been interpreted broadly and has not been limited to a formal process, covering "any conduct accepting the child as a part of the militia. Such conduct would include making him participate in military operations." See for example, SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeal Judgement, 28 May 2008, para. 144. The jurisprudence addressing enlistment has primarily addressed situations where children have been incorporated in some way into an armed group as a member, often receiving some form of military training by the group, being sent to training camps, living in camps as members of the group or, in some instances, wearing military clothing. See for example, ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras 658, 765, 792, 862, 770-819; SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-T, Trial Judgement, 2 August 2007, paras. 667-689 and 696-671.

[25] See for example, ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras. 658, 765, 792, 862, 770-819; SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-T, Trial Judgement, 2 August 2007, paras. 667-689 and 696-671.

[26] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-803-tEN, Decision on the confirmation of charges, 29 January 2007, para. 285.

[27] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-803-tEN, Decision on the confirmation of charges, 29 January 2007, paras. 268-285.

[28] Additional Protocol I to the Geneva Conventions (1977) [hereinafter "Additional Protocol I"], Article 43.

[29] ICRC, IHL Database, Customary Law, Rule 4, available at https://shorturl.at/Qd7Ep, accessed 28 July 2025.

[30] Additional Protocol I, Article 43(3).

[31] ICRC, IHL Database, Customary Law, Rule 4, available at https://shorturl.at/Qd7Ep, accessed 28 July 2025.

[32] SCSL, *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 87-88.

The background note indicates that the minors are recruited to commit criminal acts by unidentified individuals who may be members of a centralised group organising such crimes. The summaries of cases indicate that, in some cases, these individuals are believed to be connected to the intelligence or special services of the Russian Federation. This information is not sufficient to reach a conclusion as to the identities of the recruiters. If it can be established that the recruiters are part of the intelligence or special services of the Russian Federation and that the service he/she belongs to is formally incorporated into the military structure, then he/she would likely be considered a member of the armed forces. If it can be established that the recruiters are part of intelligence or special services of the Russian Federation which are not formally incorporated into the military structure, then a determination of whether the recruiters are members of the armed forces will require a case-by-case analysis of whether they meet the criteria for defining armed forces in Article 43 of Additional Protocol I, namely whether they are members of an organised armed force, group or unit under a command responsible to the Russian Federation for the conduct of its subordinates.

Conclusion - Based on the analysis above, and notably regarding the element of enlistment, it does not appear likely that the factual scenario outlined in the background note would satisfy the conditions to qualify as the offence of enlisting a person or persons into the national armed forces.

Using a person or persons to participate actively in hostilities

The final possible offence involves "using a person or persons to participate actively in hostilities." The term "participate actively in hostilities" is not limited to the concept of 'direct participation in hostilities' as that phrase is used in the context of the IHL principle of distinction between combatants and non-combatants.[33] Rather, this phrase is to be given a "wide interpretation."[34]

Link to the hostilities. All that is required for a person to have participated actively in hostilities is "the existence of a link between the activity and the hostilities."[35] More specifically, "it is necessary to analyse the link between the activity for which the child is used and the combat in which the armed force or group of the perpetrator is engaged".[36]

In conducting this analysis, the ICC Appeals Chamber has been guided by activities set out in commentary to the Additional Protocols and in the Preparatory Committee's Draft Statute.[37] These include both direct combat and also active participation in military activities linked to combat such as scouting, spying, sabotage, acting as couriers or decoys, and taking supplies to the frontline, while

[33] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, paras. 324-328 ("324. Nevertheless, and contrary to Mr Lubanga's submissions, the Appeals Chamber finds that the term 'participate actively in hostilities' in article 8 (2) (e) (vii) of the Statute does not have to be given the same interpretation as the terms active or direct participation in the context of the principle of distinction between combatants and civilians, as set out, in particular, in Common Article 3 of the Geneva Conventions. […] 328. In sum, the Appeals Chamber finds that the provisions of international humanitarian law do not establish that the phrase "participate actively in armed hostilities" should be interpreted so as to only refer to forms of direct participation in armed hostilities, as understood in the context of the principle of distinction and Common Article 3 of the Geneva Conventions.").
[34] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 340; ICC, Prosecutor v Bosco Ntaganda, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1108.
[35] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 333.
[36] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 335; ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2770; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1108.
[37] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 335.

excluding activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's accommodation.[38]

The ICC and SCSL have found a number of instances where there was a sufficient link between the activity for which children under fifteen were used and the hostilities to conclude that the children were used to "participate actively in hostilities". The ICC has concluded that it is "beyond dispute" that the use of children under fifteen to participate in "actual combat" demonstrates this link.[39] The following other acts have also been found to constitute using children under fifteen to participate actively in hostilities; using them to act as bodyguards for military officials in conflict-zones;[40] for "reconnaissance missions" or "to gather intelligence information";[41] in attacks against civilians and civilian objects;[42] in armed patrols, even when away from the "front";[43] as spies;[44] on food finding missions, at least where there was an additional link to hostilities;[45] and to carry ammunition and looted items.[46]

Activities that have been found not to constitute using children to "participate actively in hostilities" due to being insufficiently linked to hostilities include using them; as part of a unit in an armed group, in and of itself;[47] to guard detained persons, without further details such as "who were guarded and where the guarded persons were detained";[48] to carry out patrols, where "the Chamber could not establish a military purpose" and it appeared that the patrols "were aimed at the prevention of ordinary crimes, such as theft"[49]; for domestic labour;[50] on food finding missions when not related to the conduct of hostilities.[51]

Definition of hostilities. In interpreting the term hostilities, the SCSL endorsed the proposition that the concept of hostilities encompasses not only combat operations but also military activities linked to combat, such as the use of children at military checkpoints or as spies.[52]

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[38] *Ibid*, para. 334.
[39] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, paras. 336, 340; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, paras. 1109, 1125, 1128.
[40] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, paras. 337, 340; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, paras. 1109, 1126, 1129; SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1460, 1486, 1526, 1540-1541,1581-1582; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1731, 1735-1738.
[41] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, paras. 1127, 1130.
[42] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1462, 1489-1490; 1502-1505; 1516, 1526, 1528, 1565, 1575, 1591-1594; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1719-1724.
[43] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, para. 1523; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras 1717-1718. But see ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1132.
[44] SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1729.
[45] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1461, 1479-1482, 1509, 1519, 1523, 1528, 1546.
[46] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1463, 1524, 1565, 1591-1594.
[47] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 338.
[48] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1131.
[49] *Ibid*, para. 1132.
[50] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras.1477, 1522; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1730, 1739.
[51] SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1743.
[52] *Ibid*, para. 1720. In the Chamber's view, the types of acts that may be characterized as hostilities may differ depending on the particularities of each armed conflict and the modus operandi of the warring factions - SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1720.

The ICC and SCSL have identified as relevant considerations in this respect "the military purpose of these activities that have a connection with military operations"[53], how the activities were "clearly related to [the group's] military operations and objectives"[54], were "military in nature and directly supported the war efforts"[55] of the group, that their purpose was "ultimately to damage or harm the adversary"[56], and that they were "related to the hostilities and directly supports the military operations of the armed group."[57] They have further identified the fact that children were armed with guns as a basis for concluding that they were taking part in hostilities,[58] while in situations where children were used as bodyguards for commanders, the fact that the persons the children were protecting constituted legitimate military targets or were key targets for the adversary party provided the basis for concluding that their activities were related to the conduct of hostilities.[59]

The background note describes a variety of acts perpetrated by minors, including arson attacks on vehicles belonging to or used by servicemen and volunteers, buildings of territorial recruitment and social support centres, equipment servicing railway infrastructure, and offices of JSC "Ukrposhta", as well as the preparation and use of improvised explosive devices (IEDs) to target law enforcement facilities (for example police stations) or places where military personnel are present (for example cafés, shops). The background note suggests a working hypothesis that these attacks are targeting military-related facilities, railway infrastructure, and military transport.

In light of existing jurisprudence, the central question for determining whether the recruitment of minors to engage in the activities described in the background note can be qualified as the offence of using a person or persons to participate actively in hostilities is whether there is a link between these activities and the hostilities. It is important to note that the elements of the crime of using a person or persons under the age of 15 to participate actively in hostilities does not require that the perpetrator/recruiter be a member of the armed forces. Nevertheless, in the circumstances outlined in the background note, an important factual question for demonstrating the link between the activities and the hostilities is likely to be the identities of the recruiters and their relationship to the armed forces. While in some instances, the summaries of cases indicate that the recruiters are believed to be individuals connected to the intelligence or special services of the Russian Federation, their identities remain unknown or uncertain. As such, the analysis will entertain two relevant possibilities; that the recruiters are members of or affiliated with the armed forces of the Russian Federation, as defined in detail in the previous subsection[60], or that they are not. It will also consider the nature of the targets of the children's acts, namely whether they can be considered military objectives or civilian objects, as relevant factual evidence for demonstrating the link between their acts and the hostilities.

If the perpetrators are members of or closely affiliated with the armed forces. In a situation where the recruiters are members of or closely affiliated with the armed forces and the target of the act for which the child is used may be considered a military objective,[61] such as attacks on vehicles belonging to servicemen, buildings of territorial recruitment or places where military personnel are present, it would appear likely that, as acts intended to cause damage or harm to the military capabilities of the

[53] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1130.
[54] SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1718.
[55] *Ibid*, para. 1729.
[56] *Ibid*, para. 1722.
[57] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, para. 1524.
[58] *Ibid*, para. 1486.
[59] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1129; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1731.
[60] See supra the discussion of the definition of "National armed forces" with respect to the crime of enlistment.
[61] On the basis of the information contained in the background note, it is not possible to make a determination as to whether these buildings or facilities constitute military objectives or civilian objects. This analysis will depend on their nature, location, purpose or use to make an effective contribution to military action and whether their partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

adversary party to the conflict, the required link between the minor's activities and the hostilities would be satisfied. As such, engaging minors to commit these types of acts could be considered to constitute their use to participate actively in hostilities. The nature of the attacks, such as the fact that, in some cases, minors have received instructions on how to prepare incendiary mixtures and construct improvised explosive devices, which could be considered an indirect method of supplying them with weapons, could similarly provide evidence of a link to the hostilities for the same reason.

With respect to attacks on buildings or facilities that are likely to constitute civilian objects, depending on their nature and use,[62] such as social support centres, equipment servicing railway infrastructure, offices of JSC "Ukrposhta" and police stations, it would similarly be necessary to demonstrate a link between the attacks on these targets and the hostilities in order to qualify this conduct as using a person to participate actively in hostilities. As noted previously, the international tribunals have found a variety of acts, including attacks on civilians and civilian objects involving amputations, killings, rapes and destruction of property,[63] to constitute active participation in hostilities. While none of these examples match the facts at hand, by analogy, acts targeting such civilian infrastructure may also be considered to be sufficiently linked to the hostilities to constitute active participation in hostilities. However, in such a case, the identities of the recruiters as members of the armed forces would be a particularly important evidentiary factor for demonstrating the existence of a link between the children's activities targeting civilian objects and the hostilities.

Other factors supporting the link between the children's activities and the hostilities in such a scenario could also include the nature of the acts, such as when minors have received instructions on how to prepare incendiary mixtures and construct improvised explosive devices, which could be considered an indirect method of supplying them with weapons. Consistent with the reasoning in Sesay et al. at the SCSL, where the Trial Chamber held that in an armed conflict marked by systematic violence against civilians, "active participation in hostilities" includes crimes against civilians[64], it could also be possible to demonstrate that repeated attacks of this nature on Ukraine's civilian infrastructure, as an integral part of the Russian Federation's conduct of hostilities, establishes a sufficient link between such acts and the hostilities.

If the perpetrators are not members of or closely affiliated with the armed forces. In the alternative hypothesis, where the perpetrators of the recruitment are not members of or closely affiliated with the armed forces of the Russian Federation, it is less clear whether the activities of the minors described in the background note could be considered to be linked to the hostilities, such that their use could constitute the offence of using a person to actively participate in hostilities.

As noted above, the identities of the recruiters as members of the armed forces would provide strong evidence for the required link between the activities for which the children are used and the hostilities.

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[62] *Ibid.*

[63] SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1462, 1489-1490; 1502-1505; 1516, 1526, 1528, 1565, 1575, 1591-1594; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1719-1724.

[64] The SCSL Trial Chamber in *Sesay et al.* noted that "the types of acts that may be characterised as hostilities […] may differ depending on the particularities of each armed conflict and the modus operandi of the warring factions." In the context of the conflict in Sierra Leone, the Chamber explained that "frequent and brutal acts of violence directed against civilians were a hallmark of the operations" of the armed groups. It went on to state that the attacks on civilians perpetrated by children were "directly linked to combat by the fact that they typically occurred while the children were armed and in the company of adult fighters and Commanders" and that "the purpose of the crimes [the attacks on civilians] was ultimately to damage or harm the adversary" by eradicating support for them, capturing towns, consolidating control over territory, destroying territory and retaining control over critical resources. On this basis, the Trial Chamber concluded that "in the context of an armed conflict where violence against civilians was an integral and defining feature of the conduct of hostilities, the concept of active participation in hostilities encompasses crimes committed against civilians." See SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1720-1724.

However, the elements of the crime of "conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" do not require that the perpetrator of the crime be a member of or affiliated with an armed force or group that is engaged in the hostilities in which the child is used to participate. The elements of the crime do not therefore seem to exclude the possibility that an individual can be liable for the offence of using a child to participate actively in hostilities if they are not themselves a member of or affiliated to an armed force or group which is engaged in the hostilities in which the child participates.

The international jurisprudence addressing this crime to date has nevertheless exclusively addressed factual situations where the perpetrator who uses a child to actively participate in hostilities has been a member of or affiliated with the armed force or group that is engaged in the hostilities in which the child participates. In identifying the need to demonstrate "the existence of a link between the activity and the hostilities"[65] in which the child participates, the jurisprudence has reflected this factual focus in explaining that "it is necessary to analyse the link between the activity for which the child is used and the combat *in which the armed force or group of the perpetrator is engaged*"[66] (emphasis added). To date, the international tribunals have not contemplated a scenario where the perpetrator of this offence is not a member of an armed force or group which is engaged in the hostilities in which the child is used to participate.

As the elements of the crime do not exclude this possibility, it is possible that a link could be established between the activities for which a child is used and the hostilities in circumstances where the perpetrators themselves are not members of or affiliated with an armed force or group engaged in the hostilities. While, in the factual scenario outlined in the background note, the identities of the recruiters as being members of or affiliated with the armed forces would provide particularly strong evidence of the link between the hostilities and the activities of the children, in the absence of such evidence, it may be possible to demonstrate such a link through other factors, such as the military nature of the targets or the nature of the acts for which the children are used, which have, in some cases, involved instructions for constructing improvised explosive devices.

Conclusion - On the basis of this analysis, in certain circumstances, namely, when sufficient evidence exists to link the activities for which the child has been used to the hostilities, it may be possible to qualify the conduct of the recruiters outlined in the background note as the offence of using a person or persons to participate actively in hostilities.

Objective element 2: Such person or persons were under the age of 15 years.

The second objective element of the crime requires that the person or persons conscripted, enlisted or used were under the age of 15 years. For discussion of this age threshold, see Section 1.1.1.

Based on the information provided, the minors recruited to commit the acts outlined in the background note range from ages 12 to 18. As such, the individuals recruiting minors to commit these acts could only be liable for the crime where they recruited a person who was under the age of 15 years at the time they were conscripted, enlisted or used to participate in hostilities.

b. Subjective elements

[65] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 333.
[66] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-3121-Red, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, para. 335; ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2770; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 1108.

With respect to the subjective elements, the general part of the CCU under Chapter V (Articles 23, 24, and 25), identifies subjective elements (*mens rea*) that apply to all crimes before Ukrainian courts, including the crime of using children under the age of fifteen years to participate actively in hostilities under Article 438 of the CCU. In addition, this crime requires the further subjective element that the perpetrator "knew or should have known that such person or persons were under the age of 15 years."[67]

Subjective element 1: Direct or indirect intent or recklessness under Articles 23, 24, and 25 of the CCU

On the basis of the information provided in the background note, it appears likely that the recruiter intended to use a person or persons to participate actively in hostilities and that, as such, the *mens rea* would be satisfied. Recruitment of the minors is carried out through public Telegram channels under the guise of offering jobs or temporary work. The information refers to the recruiters "actively seeking perpetrators through messaging apps by publishing advertisements offering "risky jobs" or similar, in exchange for payment." The minors subsequently receive "instructions on how to prepare incendiary mixtures, construct improvised explosive devices (IEDs), delete communication records, record their actions on video, etc", while the target for arson or explosion is "chosen and/or approved by the crime organiser via the internet." In some cases, the summaries of cases indicate that minors have been required to send photos or videos to the recruiters to prove completion of the task. In actively seeking individuals to undertake "risky" jobs, providing them with instructions on constructing IEDs and incendiary mixtures and choosing or approving the target of the act, it seems possible to demonstrate that the recruiters intended to use the minors to participate actively in hostilities.

Subjective element 2: The perpetrator knew or should have known that such person or persons were under the age of 15 years.

The second subjective element of the crime requires that the perpetrator knew or should have known that such person or persons were under the age of 15 years. The international jurisprudence has confirmed that the perpetrator's knowledge of the age of the persons conscripted, enlisted, or used to participate actively in hostilities can be inferred. International courts have concluded in this respect that perpetrators must have known the ages of children based on, for example, the fact that they had frequent, direct contact with children who were "manifestly under the age of 15 years"[68], that they called for young people to join their armed group, including by calling for "parents and families to give their children to the group",[69] that screening or registration processes existed expressly aimed at creating "Small Boy Units" and Small Girl Units" within the armed force or group,[70] and on the basis of the sheer prevalence of children under fifteen in the relevant armed force or group.[71] The SCSL has further

[67] See ICC Elements of Crimes, Article 8(2)(b)(xxvi); ICC, *Prosecutor v Dominic Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, 4 February 2021, para. 2772; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2666-Red, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, paras. 1103, 1176, 1190-1195; ICC, *Prosecutor v Germain Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1048; ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-2842, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras. 1013(i), 1018(iii); SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, para. 439; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 190-193; SCSL, *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-T, Trial Judgement, 2 August 2007, paras 195-196; SCSL, *Prosecutor v. Brima et al*., Case No. SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 729.

[68] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, paras. 387-389, 1191-1192.

[69] *Ibid*, paras. 1193-1194.

[70] See for example, SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1378, 1419, 1424, passim; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1745- 1746.

[71] See for example, SCSL, *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment, 18 May 2012, paras. 1367, 1393, 1410, 1416, 1418, 1422, 1431, 1438, 1446, 1450, 1455.

confirmed that a consistent pattern of conduct of using persons under the age of 15 in hostilities can be sufficient to demonstrate that the perpetrators had reason to know the ages of the children.[72]

Based on the information contained in the background note, which indicates that recruitment takes place remotely though public social media channels, it is unclear whether the individuals recruiting minors to commit these acts know the ages of those that they recruit. It may be possible to demonstrate that the perpetrators had reason to know if there is evidence that would put them on notice that the individual with whom they are communicating is under the age of 15. This could include, for example, the nature of the language used by the minor in communication, their understanding of the circumstances, information contained on their social media profile or other evidence that would indicate that the perpetrator had reason to know that the individual with whom they were communicating was under the age of 15.

Similarly, in light of the findings of international courts that a consistent pattern of conduct of conscripting or enlisting persons under the age of 15 or using them to participate in hostilities is sufficient to demonstrate the perpetrator's knowledge that such persons were under the age of 15, evidence demonstrating such a pattern in this case could support a conclusion that the perpetrators had reason to know that those they were recruiting were under the age of 15. Evidence indicating that children under the age of 15 are the primary or exclusive target of such recruitment efforts could be relevant in this respect. By contrast, if such recruitment efforts also target adults, substantiating such a pattern of conduct would be more difficult.

If the evidence does not indicate that the perpetrators knew that the persons they were recruiting to participate in hostilities were under the age of 15, this subjective element may still be satisfied if it is possible to demonstrate that the perpetrator should have known. The standard "should have known that such person or persons were under the age of 15 years" has been interpreted to require that the perpetrator a) did not know that the victims were under the age of fifteen years at the time they were conscripted, enlisted or used to participate actively in hostilities; and b) lacked such knowledge because he or she did not act with due diligence in the relevant circumstances (one can only say that the suspect "should have known" if his or her lack of knowledge results from his or her failure to comply with his or her duty to act with due diligence).[73] The SCSL has further noted that "where doubt may have existed as to whether a person abducted or trained was under the age of 15, it was incumbent on the perpetrators to ascertain the person's age."[74]

On the basis of the information provided in the background note, it is not clear whether the perpetrators have taken measures to ascertain the age of those they recruit through social media. If the evidence indicates that the perpetrators recruit individuals without taking reasonable and feasible safeguards to establish the age of those they are recruiting, the subjective element requiring that the perpetrator "should have known that such person or persons were under the age of 15 years" would likely be satisfied.

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[72] The SCSL Trial Chamber in *Brima et al*. noted that "the illegal recruitment and/or use of children as combatants was not an isolated, localised, or accidental phenomenon. While "widespread or systematic use" of children is not a chapeau element for a finding of liability under Article 4 (c) of the Statute, the Trial Chamber finds that the information may be useful in assessing whether a perpetrator "knew or should have known" that persons recruited were under the age of 15." Similarly, in *Sesay et al*. the SCSL Trial Chamber concluded that "the consistent pattern of conduct of using persons under the age of 15 in hostilities was sufficient to put the perpetrators on notice that there is a substantial likelihood that the persons being used by them in hostilities were under the age of 15. The fact that the perpetrators may not in all cases have had actual knowledge of the ages of the persons used is immaterial given that the perpetrators had reason to know of their ages. See SCSL, *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Trial Judgement, 20 June 2007, para. 1248; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1745.

[73] ICC, *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06-803-tEN, Decision on the confirmation of charges, 29 January 2007, para. 358.

[74] SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Judgment, 2 March 2009, para. 1704.

c. Contextual elements

Lastly, the crime of "Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" requires that the contextual elements, common to all war crimes, are satisfied.

Contextual element 1: The conduct took place in the context of and was associated with an international armed conflict.

The first contextual element requires two components a) the existence of an international armed conflict and b) a nexus between the conduct and the armed conflict. It is not deemed necessary to address the definition of international armed conflict and its application in Ukraine in this memo, which assumes that this aspect of the first contextual element is satisfied.

The second component of this contextual element requires that the conduct was associated with an international armed conflict. This requires that the perpetrator's conduct must have been sufficiently closely linked to the hostilities, namely that the conflict played a substantial part in the perpetrator's ability to commit the crime, decision to commit it, or with regard to the purpose of its commission.[75] In order for the nexus requirement to be satisfied, the perpetrator's conduct need not take place as part of the hostilities, and the required nexus can be met even for crimes temporally or geographically remote from the actual fighting.[76] Similarly, the armed conflict need not have been causal to the commission of the crime.[77]

Factors indicating a link between the crime and the relevant armed conflict may include that: (1) the perpetrator is a combatant; (2) the victim is a non-combatant or is a member of the opposing party; and (3) the crime may be said to serve the ultimate goal of a military campaign; (4) the fact that the crime is committed as part of or in the context of the perpetrator's official duties.[78] This list of factors should not be considered exhaustive.

On the basis of the information contained in the background note, it is unclear whether the nexus to the armed conflict required to qualify the conduct of those recruiting the minors as war crimes would be satisfied in each case. Demonstrating the required nexus would require a case-by-case analysis.

If the recruiters are proved to be members of the armed forces of the Russian Federation, the nexus to the armed conflict would be demonstrated by virtue of the identities of the perpetrators as combatants. Evidence of the required nexus to the conflict would be particularly strong where the targets of the acts carried out by the children can also be considered to be military objectives,[79] such as attacks on vehicles belonging to military servicemen, buildings of territorial recruitment or places where military personnel are present. In such a scenario, both the identities of the perpetrators and the nature of the children's

[75] ICC, *Prosecutor v Germain Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1176; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 731.
[76] ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 731.
[77] ICC, *Prosecutor v Germain Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 1176.
[78] ICC, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07-717, Decision on the confirmation of charges, 30 September 2008, para. 382.
[79] On the basis of the information contained in the background note, it is not possible to make a determination as to whether these buildings or facilities constitute military objectives or civilian objects. This analysis will depend on their nature, location, purpose or use to make an effective contribution to military action and whether their partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

acts, which could be considered to serve the ultimate goal of a military campaign, would support a clear nexus between the perpetrator's conduct and the armed conflict.

In cases where the targets of the children's acts are likely to constitute civilian objects, depending on their nature and use,[80] such as social support centres, equipment servicing railway infrastructure, offices of JSC "Ukrposhta" and police stations, the identities of the perpetrators as members of the armed forces of the Russian Federation would likely be sufficient to demonstrate the existence of a nexus to the armed conflict. Similarly, if the evidence indicates that the recruiters are in fact not members of the armed forces but the targets of the children's acts are military objectives, this would also likely be sufficient to demonstrate the existence of the required nexus between the perpetrator's conduct and the armed conflict.

If the existence of a nexus to the armed conflict cannot be demonstrated either through the identity of the perpetrator as a member of the armed forces or through the military nature of the target of the minor's acts, other evidence demonstrating that the conflict played a substantial part in the perpetrator's ability to commit the crime, decision to commit it, or with regard to the purpose of its commission would be required. In this respect, the ICTR has confirmed that crimes committed by civilians or non-combatants under the "pretext" of the conflict can also be considered to be sufficiently closely related to the hostilities to satisfy the requirement of a nexus to armed conflict.[81] As such, the required nexus to the armed conflict could still be satisfied where the perpetrators are civilians or non-combatants and the targets of the children's act are not military objectives, if it is possible to provide evidence of some other kind that the conflict played a substantial part in the perpetrator's ability to commit the crime, decision to commit it, or with regard to the purpose of its commission.

Contextual element 2: The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Finally, the second contextual element for an act to constitute the crime of "Conscripting or enlisting children under the age of 15 years into national armed forces or using them to participate actively in hostilities" requires that the perpetrator was aware of factual circumstances that established the existence of an armed conflict. As the ICC Elements of Crimes and the jurisprudence of the ICC and the ICTY make clear, the perpetrator was not required to make legal evaluation of whether an international armed conflict existed, or to have realised that the situation qualified as such, but he/she must have been aware of the factual circumstances that established the existence of the armed conflict.[82]

Without information as to the identities of the perpetrators of the acts outlined in the background note, it is not possible to examine whether this contextual element would be satisfied. However, given the overall context, it seems likely that this would not be a difficult element to satisfy.

1.2 Investigation and prosecution considerations for the OPG with respect to the liability of the recruiters

Currently, only the minors recruited for the acts outlined in the background note are being prosecuted as direct perpetrators of grave or especially grave crimes under the CCU. The recruiters have not been prosecuted as they remain unidentified. Based on the legal analysis conducted in section 1.1, this second

[80] *Ibid.*
[81] ICTR, *Prosecutor* v. *Semanza*, Case No. ICTR-97-20-T, Trial Judgement and Sentence, 15 May 2003, para 518.
[82] ICTY, *Prosecutor v. Prlić et al.*, Case No. IT-04-74-A, Appeal Judgement, 29 November 2017, para. 2392; ICTY, *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, paras 116-121; ICC, *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06-2359, Trial Judgment, 8 July 2019, para. 733.

section elaborates on investigation and prosecution considerations for the OPG with respect to the liability of the recruiters. This section examines:

- The need for the OPG to take all feasible measures to ensure that the recruiters are adequately prosecuted, in order to align with international standards.

- Practical investigation and prosecution considerations for the OPG.

1.2.1 The OPG should take all feasible measures to ensure that the recruiters are adequately prosecuted

Various international legal instruments to which Ukraine is a party, including the Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions, require states to take all feasible measures to ensure that children under the age of 15 years do not take direct part in hostilities.[83] The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict further requires states to take legal, administrative and other measures to ensure effective implementation of the Protocol's provisions.[84] This includes ensuring that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities and preventing the recruitment or use of children under 18 by armed groups, including the adoption of legal measures necessary to prohibit and criminalise such practises.[85]

The 2007 Paris Principles on Children Associated with Armed Forces or Armed Groups, a set of state-endorsed international guidelines for protecting children from recruitment and use by armed forces or groups and supporting their safe release and reintegration into civilian life, reaffirm these obligations. The Paris Principles define a child associated with an armed force or group as any person below 18 years of age who is or who has been recruited or used by an armed force or group in any capacity.[86] While it remains unclear whether the recruiters can be considered part of or related to the Russian armed forces, it appears nevertheless clear that there is a relationship between the children's recruitment and use and the armed conflict. As such, the Paris Principles offer a useful framework on the protection and treatment of the children mentioned in the background note.

The Paris Principles call on states to end impunity for those who have unlawfully recruited or used children in armed conflict, and to take all feasible measures to ensure that perpetrators are adequately prosecuted.[87] The Operational Handbook to the Paris Principles further note that "States bear the primary responsibility for holding the perpetrators of child recruitment and use to account. National-level judicial systems and processes should therefore investigate cases of child recruitment and, where appropriate, prosecute and impose sentences on those responsible."[88]

As such, according to international standards, the OPG should be encouraged, where possible, to investigate and prosecute those individuals suspected of having unlawfully used children to commit the acts outlined in the background note. When determining its investigation and prosecution priorities for the acts outlined in the background note, the OPG is encouraged to prioritise investigating the identities of the recruiters and their involvement in the crimes.

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[83] Convention on the Rights of the Child (1989), Article 38(2); Additional Protocol I, Article 77(2); Additional Protocol II to the Geneva Conventions (1977) [hereinafter "Additional Protocol II"], Article 4(3)(c).
[84] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Article 6.
[85] *Ibid,* Articles 1 and 4.
[86] The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (February 2007), 2.1 [hereinafter "Paris Principles"].
[87] Paris Principles, paras 8.1 and 6.18.
[88] Paris Principles: Operational Handbook (2002), available at https://shorturl.at/qq0lR, accessed 25 July 2025, p.348.

1.2.2 Practical investigation and prosecution considerations for the OPG

As explained in detail in the section above, it may be possible to qualify the conduct of the individuals recruiting children to carry out the acts outlined in the background note as the war crime of "using children under the age of fifteen years to participate actively in hostilities" under Article 438 of the CCU.

Whether or not specific conduct reflected in the background note can be qualified as the crime of using a child under 15 to actively participate in hostilities will nevertheless require a case-by-case analysis by the OPG.

Successfully prosecuting the recruiters by relying on the war crime of using children under 15 years to participate actively in hostilities presents a number of evidentiary challenges and legal uncertainties that it may be difficult to overcome. The primary challenge to prosecuting the recruiters with the war crime of "using children under the age of fifteen years to participate actively in hostilities" will be to demonstrate both the link between the activities for which the child is used and the hostilities, as well as the wider requirement of a nexus between the perpetrator's conduct and the armed conflict. In this respect, establishing the identities of the recruiters is likely to be critical.

Identities of the recruiters. On the basis of the information contained in the background note, the primary evidentiary challenge to prosecuting the individuals recruiting minors for the crime of using children under the age of 15 years to participate actively in hostilities relates to the unknown identities of the recruiters. While in some instances, the summaries of cases indicate that the recruiters are believed to be individuals connected to the intelligence or special services of the Russian Federation, their identities remain unknown or uncertain. This poses not only the fundamental challenge of identifying the perpetrators of the crime, but also raises particular legal and evidentiary challenges related to linking the activities of the minors to the hostilities and the crime more broadly to the armed conflict, required in order to qualify such conduct as the war crime of using children under the age of 15 years to participate actively in hostilities.

Demonstrating the link between the activities for which the child was used and the hostilities

With respect to the definition of the offence itself, which, as discussed in section 1, requires that the activity for which the child has been used is linked to the hostilities, the identities of the recruiters, and whether or not they are members of or closely affiliated with the armed forces of the Russian Federation within the meaning of Article 43 of Additional Protocol I, could be decisive.

As noted previously, while international jurisprudence has not addressed a factual scenario where a perpetrator who is not a member of an armed force or group has used a child to participate actively in hostilities, the elements of the crime do not require such an affiliation on the part of the perpetrator. However, the identities of the perpetrators as members of or closely affiliated with the armed forces would nevertheless be a strong evidentiary factor in support of demonstrating the required link between the activities for which the child was used and the hostilities.

As such, a case involving perpetrators who are members of the armed forces, within the meaning of Article 43 of Additional Protocol I, would provide the strongest foundation for the charge of using children under the age of fifteen to participate actively in hostilities. In this respect, a case involving a perpetrator who is a member of the armed forces and where the target of the act for which the child is used is also a military objective would provide the strongest evidence of the necessary link between the

child's acts and the hostilities. If the target of the child's act is a civilian object, the identity of the perpetrator as a member of the armed forces would also be an important, if not an indispensable, factor for demonstrating the necessary link to the hostilities.

Therefore, identifying the identity and affiliation of the recruiters is an essential element to investigate, not only to be able to prosecute them, but to be able to establish the strength of bringing a case on the basis of the war crime of "using children under the age of fifteen to participate actively in hostilities".

Demonstrating the nexus to the armed conflict

A similar, although not identical, analysis applies to the necessity of fulfilling the contextual elements for war crimes, in particular demonstrating the required nexus between the conduct of the perpetrator and the armed conflict. The identities of the perpetrators as members of the armed forces, within the meaning of Article 43 of Additional Protocol I, would provide strong evidence of the nexus to the armed conflict. In a situation where the target of the act for which the child was used is also a military objective, evidence supporting the existence of the nexus to the armed conflict would be particularly strong.

If the perpetrator is not a member of the armed forces, the nature of the target of the act for which the child is used is likely to be important. If the act for which the child is used targets a military objective, the required evidence of a nexus to the armed conflict would likely be clear, as such an act may be understood to have served the ultimate goal of a military campaign. If the act for which the child is used instead targets a civilian object, the nexus to the armed conflict would be more challenging to demonstrate. In such a situation, it would be necessary to provide some other evidence that the conflict played a substantial part in the perpetrator's ability to commit the crime, decision to commit it, or with regard to the purpose of its commission.

Similar to the analysis of the link required between the child's activities and the hostilities to fulfil the objective elements of the crime, the strongest case to fulfil the contextual element requiring that the perpetrator's conduct took place in the context of and was associated with an armed conflict would therefore be a case involving a perpetrator who is a member of the armed forces and where the act for which the child was used targeted a military objective.

In circumstances where it is challenging to qualify the conduct as the war crime of using children under the age of 15 years to participate actively in hostilities, the OPG should explore other relevant charges, such as those currently being applied to prosecute the minors as direct perpetrators, and modes of liability capturing the relationship between the recruiter and the child who committed the crime directly.

Ages of the children. An evident limitation of the charge of using children under the age of 15 years to participate actively in hostilities in the current drafting of Article 438 of the CCU is that it can be applied only to perpetrators who committed the crime when the child was under the age of 15 at the time that they were used to participate actively in hostilities. Other charges, such as those currently being applied by the OPG to prosecute the minors, and associated modes of liability applicable to the conduct of the recruiters would provide greater scope to pursue individuals who have recruited children over the age of 15 years.

In addition, in cases that do fall within the scope of the war crime on the basis of the victim's age, in circumstances where children are recruited remotely through social media, providing evidence of the perpetrator's knowledge of the child's age to satisfy the subjective elements of the crime may pose an evidentiary challenge. Based on the international jurisprudence, it is possible that this challenge could be overcome by providing evidence that the perpetrator nevertheless "should have known" that the child was under the age of 15, by failing to act with due diligence.

Recommendation - On the basis of the analysis of the conduct contained in section 1.1 and the relevant evidentiary considerations discussed above, it will be important to evaluate the strengths and potential weaknesses of applying the charge of the war crime of using children under the age of 15 to participate actively in hostilities to the conduct of the recruiters, as compared to other relevant domestic crimes charges and/or modes of liability that would reflect the conduct of the recruiters.

Charging the recruiters with the war crime of using children to participate actively in hostilities under Article 438 of the CCU would ensure that, in line with the international guidance on children associated with armed forces or groups, discussed in more detail in section 2, children accused of having been the direct perpetrators of the acts outlined in the background note would be recognised as victims of offences under international law; not only as perpetrators.[89] However, international guidance does not require that the conduct of such recruiters is investigated or charged specifically as the war crime of "Conscripting or enlisting children under the age of 15 years into national armed forces or using them to participate actively in hostilities." Other relevant charges and modes of liability, on the basis of domestic law, can also be employed to ensure that those who have unlawfully recruited or used children in armed conflict are investigated and prosecuted. The OPG may therefore consider charging the recruiters with other offence under the CCU that may be easier to prove–likely the same as those applied by the OPG to the conduct of the children themselves but relying on modes of liability that reflect the recruiter's involvement in the commission of the offences.

If charges of using children under the age of 15 to participate actively in hostilities were to be considered by the OPG, given the potential legal and evidentiary hurdles, the advised approach would be to start with one or several "test cases" based on the strongest possible evidentiary scenario. Based on the analysis above, a particularly strong case would be one in which the perpetrator can be proved to be a member of the armed forces of the Russian Federation, within the meaning of Article 43 of Additional Protocol I, and the target of the recruited child's act can be considered a military objective. Such a case would facilitate the demonstration of the required link between the activities for which the child was used and the hostilities as well as the wider requirement that the perpetrator's conduct took place in the context of and was associated with an international armed conflict.

SECTION 2: International standards on the treatment of recruited minors

This section addresses international standards applicable to the prosecution and treatment of minors recruited for the acts outlined in the background note. It first outlines the international legal obligations on children's rights and juvenile justice applicable to the treatment of all children in conflict with the law, including those associated with armed forces or groups. It subsequently examines wider obligations and guidance on rehabilitating and reintegrating children associated with armed forces or groups. It aims to answer questions 1 and 3.

The Convention on the Rights of the Child (CRC) serves as the primary international legally binding instrument that outlines essential principles for the treatment of children generally and when they are alleged as, accused of or recognised as having infringed the penal law specifically. Ukraine is a party to the CRC and is therefore bound by its provisions.[90]

[89] Paris Principles, para. 3.6; UN Security Council Resolution 2427 (2018), para. 20; Committee on the Rights of the Child, General Comment No. 25 (2021), para. 83.
[90] UN Treaty Body Database, available at https://shorturl.at/N9yUO, accessed 25 July 2025: Ukraine ratified the Convention on the Rights of the Child (CRC) on 28 August 1991, the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on 3 July 2003, and the Optional Protocol on the involvement of children in armed conflict (OPAC) on 11 July 2005.

The 2007 Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups provide comprehensive guidance for preventing the recruitment and use of children in armed conflict and for ensuring their release, protection, and sustainable reintegration into civilian life. The Paris Principles define a child associated with an armed force or group as any person below 18 years of age who is or who has been recruited or used by an armed force or group in any capacity.[91] While it remains unclear whether the recruiters can be considered part of or related to the Russian armed forces, it appears nevertheless clear that there is a relationship between the children's recruitment and use and the armed conflict. As such, the Paris Principles offer a useful framework on the protection and treatment of the children mentioned in the background note.

A comprehensive analysis of Ukraine's procedures on juvenile justice is beyond the scope of this memo.[92] Thus, this section focuses on outlining the international principles applicable to juvenile justice and the treatment of children alleged to have committed crimes while associated with armed forces or groups. In doing so, the section highlights to the extent possible considerations on the current practise of prosecuting the minors accused of the crimes outlined in the background note and in the summaries of cases provided. The next step could be, in close co-operation with the OPG, to consider if and how it is possible to operationalise these principles within the Ukrainian justice system.

The main conclusions of this section are:

- International standards affirm that all children in conflict with the law, regardless of whether they are associated with armed forces or armed groups, must be treated in accordance with the same standards on children's rights and juvenile justice. There is no different or higher standard for children associated with armed forces or armed groups. The special protections and safeguards enshrined in international law and standards apply equally to all children in contact with the justice system without distinction.[93]

- **Prosecution of the minors:** In light of international standards on juvenile justice as well as the principle that children who have committed crimes while associated with armed forces or groups should be considered primarily as victims not only as perpetrators, the OPG should consider, where possible and appropriate, alternative measures to judicial proceedings, such as community programmes, temporary supervision and guidance, restitution, and compensation of victims, for the minors recruited for the acts outlined in the background note.

- **Procedure:** In circumstances where judicial proceedings are pursued, children alleged to have committed crimes while associated with armed forces or groups are entitled to be treated in accordance with the general international standards for juvenile justice. Children accused of crimes while associated with armed groups should only be prosecuted with respect for internationally recognised juvenile justice and fair trial standards and with due consideration to their rights to child-specific due process, and minimum standards based on their age, needs and specific vulnerabilities.

[91] Paris Principles, para. 2.1.
[92] For a recent overview see the Council of Europe report, Comprehensive Assessment of Child-Friendly Justice System in Ukraine (2024), available at https://rm.coe.int/-b5/1680af3518, accessed 25 July 2025.
[93] International humanitarian law (IHL), applicable during armed conflict, does not contain specific provisions relating to the treatment of children in conflict with the law or juvenile justice standards. Article 77(4) of Additional Protocol I provides only that, if children are arrested, detained or interned for reasons related to the armed conflict, they shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.

- **Detention:** The general principles applicable to depriving children in conflict with the law of their liberty, regardless of whether they are associated with armed forces or armed groups, are that detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. As a result, the OPG is encouraged to continue its efforts in limiting detention of the recruited minors and to consider any measures within its purview that align with international standards applicable to juvenile detention, in particular at the pre-trial phase.

- **Promotion of rehabilitation and reintegration:** The primary purpose of any measures taken against children in conflict with the law, irrespective of their association with armed forces or armed groups, must be to promote their rehabilitation and reintegration into society, rather than impose punishment or prioritise protection of society. The summary of cases provided by the OPG indicates efforts to limit the detention of the recruited minors, but it is unclear whether judges also decide on measures specifically directed at the rehabilitation and reintegration of the recruited minors.[94] A next step could be to conduct a comprehensive analysis to identify concrete measures that could be implemented in the existing Ukrainian procedural framework to promote the reintegration of the recruited minors and/or to propose to the relevant authorities the adoption of a rehabilitation and reintegration programme to address the phenomenon.

2.1 Prosecution of minors

The CRC encourages States Parties, whenever appropriate and desirable, to promote measures for dealing with children accused of having infringed the penal law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.[95] This principle applies to all children alleged to have committed criminal offences. It is nevertheless particularly relevant to children accused of crimes while associated with armed forces or groups, as the principle is reinforced by specific international standards directed to the treatment of these children. Indeed, a central tenet of the Paris Principles affirms that children associated with armed forces or groups should be considered primarily as victims of offences against international law; not only as perpetrators.[96] This principle has been reaffirmed by a variety of international bodies, including the Committee on the Rights of the Child[97] and the UN Security Council.[98] In accordance with this principle, the Paris Principles also encourage states, wherever possible, to pursue alternatives to judicial proceedings.[99] Such alternatives may include community programmes, temporary supervision and guidance, restitution, and compensation of victims.[100]

According to the background note, pre-trial investigations are currently being conducted in over 150 criminal proceedings. The children accused of engaging in the acts outlined in the background note are being investigated and charged as direct perpetrators, primarily with offences that constitute grave or

[94] In the summaries provided by the OPG, several cases impose participation in a probation programme on the minors. It is nevertheless unclear whether these programmes include activities aimed at reintegrating and rehabilitating the recruited minors. See Criminal Proceedings No. 1-кп/473/416/2024, Judgement of 20 November 2024, Voznesensk City District Court, Mykolaiv Region; Criminal Case No. 1-кп/473/416/2024 (473/6143/24), Voznesensk City District Court, Mykolaiv Region, 20 November 2024; Criminal Case No. 1-кп/154/379/25, Judgement of 24 March 2025, Volodymyr City Court, Volyn Region.
[95] Convention on the Rights of the Child, Article 40(3)(b).
[96] Paris Principles, para. 3.6.
[97] Committee on the Rights of the Child, General Comment No.24 (2019), para. 98-100: recognises the specific vulnerabilities of children associated with armed groups, recommending they be treated primarily as victims and provided with specialized support services.
[98] UN Security Council Resolution 2427 (2018), para. 20; UN Security Council Resolution 2764 (2024), p.1.
[99] Paris Principles, para. 3.7.
[100] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) ("Beijing Rules"), Rule 11.4.

especially grave crimes under the CCU. Prosecuting the minors for the acts described in the background note is not prohibited by international law. Nevertheless, in light of international standards on juvenile justice, as well as the principle that children who have committed crimes while associated with armed forces or groups should be considered primarily as victims, not only as perpetrators, the OPG should consider, where possible and appropriate, alternative measures to judicial proceedings. The next step could be, in close co-operation with the OPG, to determine concretely what is possible and appropriate from a procedural and criminal policy perspective in the current Ukrainian context.

2.2 Procedure

In circumstances where judicial proceedings are pursued, children alleged to have committed crimes while associated with armed forces or groups are entitled to be treated in accordance with the general international standards for juvenile justice.[101] These standards, outlined in the CRC[102] and further detailed in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), as well as a number of General Comments by the Committee on the Rights of the Child, providing guidance on the implementation of the CRC,[103] provide detailed guidelines on the treatment of all children within the justice system, which apply equally to children who have been associated with armed forces or groups.

In general, the CRC mandates that four fundamental principles must be applied at all times throughout judicial processes: (a) non-discrimination;[104] (b) best interests of the child;[105] (c) the child's right to survival and development;[106] and (d) the right of the child to be heard.[107] Articles 37 and 40 outline specific obligations relating to the treatment of children alleged and/or accused of committing offences, emphasizing that they must be treated in a manner consistent with the promotion of the child's sense of dignity and worth, respectful of their age and level of development and must promote rehabilitation. These provisions apply regardless of the type or seriousness of the offence.

As applicable specifically to the situation of children associated with armed groups, the Paris Principles and their Operational Handbook similarly affirm that children accused of crimes while associated with armed groups should only be prosecuted with respect for internationally recognised juvenile justice and fair trial standards and with due consideration to their rights to child-specific due process, and minimum standards based on their age, needs and specific vulnerabilities.[108] They further stress that, during the course of judicial proceedings, consideration should always be given to the coercive environment under which the child was living or forced to act and that minimum standards for juvenile justice must be applied without discrimination.[109]

Analysing whether minors recruited to commit the acts described in the background note are treated by the Ukrainian judicial system in accordance with these standards requires a comprehensive analysis of Ukraine's procedures on juvenile justice which is beyond the scope of this memo. The next step could be to support the OPG in conducting an analysis of Ukraine's procedures and practises to determine

[101] *Ibid*, para. 8.8 and 8.9.
[102] Convention on the Rights of the Child, Article 40.
[103] See Committee on the Rights of the Child, General Comment No. 10 (2007); General Comment No. 14 (2013); General Comment No. 24 (2019); General Comment No. 25 (2021).
[104] Convention on the Rights of the Child, Article 2.
[105] *Ibid*, Article 3.
[106] *Ibid*, Article 6.
[107] *Ibid*, Article 12.
[108] Paris Principles, para. 8.8; Paris Principles: Operational Handbook (2002), available at https://shorturl.at/qq0lR, accessed 25 July 2025, p.65.
[109] Paris Principles: Operational Handbook (2002), available at https://shorturl.at/qq0lR, accessed 25 July 2025, p.65.

whether these principles are respected and, as relevant, if and how it is possible to operationalise some of them within the Ukrainian justice system.

2.3 Detention

The general principles applicable to depriving children of their liberty are that: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.[110]

While the CRC does not therefore prohibit the detention of children in conflict with the law, Article 37(b) states that the "arrest, detention or imprisonment of a child […] shall be used only as a measure of last resort and for the shortest appropriate period of time". When considering whether detention is necessary, the child's best interests must be a primary consideration and if detained, Article 40(2) establishes procedural rights that are applicable from the moment a child is first apprehended, throughout the criminal justice process, and continuing for any period of detention until the child reaches 18. UN Security Council Resolution 2427, on the protection of children in armed conflict, similarly urges states to avoid wherever possible the use of pretrial detention for children formerly associated with armed forces or groups.[111] The Havana Rules reaffirm that pre-trial detention of minors shall be used only as a measure of last resort and in exceptional circumstances.[112] Wherever possible, alternative measures to detention must be applied. In cases where preventive detention is deemed necessary, judicial and investigative authorities must prioritise the swift processing of such cases to ensure that the period of detention is as short as possible.[113]

With respect to sentencing, international standards similarly affirm that a strictly punitive approach is not in accordance with the principles of child justice.[114] As such, custodial sentences, such as post-trial imprisonment, should be imposed only after careful consideration, strictly as a measure of last resort and for the shortest appropriate duration.[115] Such deprivation of liberty should be limited to cases involving serious offences and/or persistent offenders, and only where no appropriate non-custodial alternatives exist.[116] Importantly, the general principle remains that states should prioritise non-custodial measures wherever possible, including options such as residential care, educational or vocational programmes, and community service.[117] The Beijing Rules also call upon states to develop a range of non-custodial measures, including community-based alternatives, in dealing with juvenile offenders, even in cases of serious crimes that carry heavy penalties[118] while the 1990 UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[119] set out a series of fundamental principles designed to promote the use of non-custodial measures as well as minimum safeguards for persons subject to alternative measures to imprisonment.

The information provided indicates that the children accused of engaging in the acts outlined in the background note are being investigated and charged as direct perpetrators primarily with offences that

[110] Committee on the Rights of the Child, General Comment No. 10 (2007), para. 79; and General Comment No. 24 (2019), para. 82-88: reaffirms that that detention must only be used as a last resort and for the shortest appropriate period of time, with regular review mechanisms in place.
[111] UN Security Council Resolution 2427 (2018), para 21.
[112] United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) ("Havana Rules"), Rule 1.
[113] Havana Rules, Rule 17.
[114] Committee on the Rights of the Child, General Comment No. 24 (2019), para. 76.
[115] *Ibid.*, para. 75-78.
[116] Beijing Rules, Rule 17.1(c).
[117] Beijing Rules, Rules 11 and 19.
[118] Beijing Rules, Rule 11.4 and 17.
[119] United Nations Minimum Rules for Non-Custodial Measures (1990) ("Tokyo Rules").

constitute grave or especially grave crimes under the CCU, with possible sentences ranging from between 3 and 15 years.[120] The background note also states that courts have applied pre-trial detention as a preventive measure in respect of 75 minors. In all the summaries of cases provided by the OPG, imprisonment sentences were imposed on the recruited minors (ranging from between three and five years of imprisonment). All recruited minors in these cases were nevertheless released on probation in light of, *inter alia*, their age and their specific circumstances and vulnerabilities.

The OPG is encouraged to consider any measures within its purview to align its practise with international standards applicable to juvenile detention. This might include, if feasible, measures such as charging the minors with offences carrying lower sentences or taking any other available measures within the Ukrainian judicial system that would reduce the likelihood or the duration of the detention of the minors recruited. As appropriate, the OPG could propose or support alternatives to pre-trial detention, be supportive of age as a mitigating circumstance in sentencing and imprisonment sentences being suspended and transformed into probation. The summary of cases shared by the OPG shows a tendency - whenever possible – for the OPG and the minors to conclude plea agreements that promote probation over imprisonment. This is an example of a concrete measure taken by the OPG to limit the detention of the recruited minors in line with international standards. A next step could be to conduct, in close co-operation with the OPG, an analysis of procedures on juvenile justice to identify all concrete measures that can be taken or promoted by the OPG to align with the principle that detention of children should be used only as a measure of last resort, and for the shortest appropriate period of time.

2.4 Promotion of rehabilitation and reintegration

The primary purpose of any measures taken against children in conflict with the law, irrespective of their association with armed forces or armed groups, including any deprivation of liberty, must be to promote their rehabilitation and reintegration into society, rather than to impose punishment or prioritise the protection of society. In general, a preventive and reintegrative approach should be promoted and implemented in matters of juvenile justice, in accordance with international human rights obligations and established juvenile justice standards.

In this respect, the international human rights framework requires that states use restorative justice mechanisms and reintegration programmes over punitive custodial measures when dealing with children in conflict with the law. Central to this framework is the CRC. Article 40(1) provides that every child alleged or recognised as having infringed the penal law must be treated in a manner that upholds their dignity and worth, considers their age and promotes their reintegration and ability to assume a constructive role in society. In circumstances where a child is convicted, the Committee on the Rights of the Child and the Paris Principles, applicable to children associated with armed forces or groups, affirm that the primary objective of any sentence must be to promote the child's rehabilitation and reintegration into society, rather than punishment.[121] UN Security Council Resolution 2427 similarly urges states to consider non-judicial measures as alternatives to prosecution and detention for children associated with armed forces or groups, with an emphasis on reintegration-focused approaches.[122]

International guidelines on juvenile justice reinforce this approach, requiring that the purpose of training and treatment for juveniles in detention is to provide care, protection, education and vocational skills, with the aim of supporting their reintegration into society as socially constructive and productive

[120] Criminal Code of Ukraine, Article 12 - Classification of criminal offences; Article 113 - Sabotage (8-15 years); Article 114-1 - Obstruction of lawful activity of the Armed Forces of Ukraine and other military groups (5-15 years); Article 194 - Intended destruction or endamagement of property (3-10 years); Article 258 - Act of terrorism (5 years to life imprisonment); Article 304 - Engaging minors in criminal activity (3-5 years).
[121] Committee on the Rights of the Child, General Comment No. 10 (2007), para. 10; Paris Principles, para. 3.6.
[122] UN Security Council Resolution 2427 (2018), para. 21.

individuals.[123] They also emphasise the importance of maintaining contact with the wider community[124] and providing reintegration support as essential components in preparing juveniles for their return to society and reducing stigma.[125]

In addition to the promotion of the rehabilitation and reintegration into society of all children who come into conflict with the law, the CRC also requires States Parties to take all feasible measures to ensure the protection and care of all children affected by armed conflict[126] and to adopt appropriate measures for their physical and psychological recovery and social reintegration.[127] Complementing the CRC, the OPAC requires States Parties to take all feasible measures to ensure the demobilisation or release of children who have been unlawfully recruited or used in hostilities. Following their release, States Parties should provide all appropriate assistance to support the children's physical and psychological recovery and social reintegration. This applies to all children within a state's jurisdiction[128] and have been reaffirmed in a variety of UN Security Council resolutions.[129]

International standards on children associated with armed forces or groups provide guidance on the implementation of these obligations. The Paris Principles outline in this respect a comprehensive release and reintegration framework[130], defining child reintegration as the process by which children transition back into civilian life, assume meaningful roles within their families and communities in a context of reconciliation. Sustainable reintegration is achieved when the necessary political, legal, economic and social conditions are in place to support their rights, including access to education, family unity, livelihoods and protection from harm.[131]

The Paris Principles affirm that the release, protection and reintegration of children who have been unlawfully recruited or used by armed forces or groups must be pursued at all times and without conditions.[132] They emphasise that all appropriate measures must be taken to support the physical and psychological recovery and social reintegration of children who leave armed forces or armed groups by any means.[133] They stress that children recruited and used in hostilities have a right to equal access to services that can assist in their reintegration and that reintegration measures should avoid stigmatisation and be free from negative distinctions between children who were recruited and used by armed forces or groups and those who were not.[134]

Collectively, these international instruments establish a consistent requirement for states to prioritise the rehabilitation and reintegration of children associated with armed forces or armed groups, ensuring that all measures taken are primarily guided by the child's best interests and aimed at restoring their rights, dignity and place in society.

Efforts to rehabilitate and reintegrate children associated with armed forces or groups will necessarily entail the development of context-specific programmes, that respond appropriately to the needs of the children in a particular social context. In other contexts, efforts to rehabilitate and reintegrate children have taken the form of the development of holistic reintegration programmes, including psychological

[123] Beijing Rules, Rule 26.
[124] Havana Rules, Rules 59-62.
[125] Havana Rules, Rule 80.
[126] Convention on the Rights of the Child, Article 38(4).
[127] *Ibid,* Article 39.
[128] Optional Protocol on children in armed conflict, Article 6(3).
[129] UN Security Council Resolution 1314 (2000), para. 11; UN Security Council Resolution 1379 (2001), para. 8(e); UN Security Council Resolution 2427 (2018), para. 26; UN Security Council Resolution 2764 (2024), para. 8.
[130] Paris Principles, paras. 7.0-7.84.
[131] *Ibid*, para. 2.8.
[132] *Ibid*, para. 3.11.
[133] *Ibid*, para. 7.6.4.
[134] *Ibid*, para. 3.3.

support, education, professional opportunities and other support for economic reintegration.[135] In some contexts, religious counselling and deradicalisation support have been offered.[136] An important component of such programmes are also specific initiatives developed to address the potential hostility and stigma faced by children formerly associated with armed forces or groups.[137]

The summary of cases provided by the OPG indicates some apparent efforts to limit the detention of the recruited minors. However, it is unclear if courts are, at present also imposing measures specifically designed to promote the rehabilitation and reintegration of the recruited minors.[138] A next step could be to support the OPG in conducting a comprehensive analysis to identify all concrete measures that could be implemented in the existing Ukrainian procedural framework to promote the rehabilitation and reintegration of the recruited minors and/or to suggest the development of a holistic rehabilitation and reintegration programme to address the phenomenon.

SECTION 3: Preventing recruitment and use of children in hostilities

This third section addresses the question of the prevention of the recruitment and use of children for the criminal acts described in the background note. It aims at answering question 4.

The main conclusions of this section are:

- Ukrainian authorities should be encouraged to develop a plan to prevent the situation described in the background note.
- In order to prevent recruitment and use of children in armed conflict, international guidance encourages the development of a comprehensive prevention plan, including programming that addresses factors that may encourage the involvement of children in armed forces or groups. With respect to the conduct outlined in the background note, a first, pre-requisite step to doing so will be to analyse and understand why particular children are vulnerable to being recruited in this way, and the push and pull factors that motivate them to undertake these acts. Once this step is completed, a tailor-made prevention plan could be developed by the authorities.

Various international legal instruments to which Ukraine is a party, including the Convention on the Rights of the Child and the Additional Protocols to the Geneva Conventions, as well as customary international law, require states to take all feasible measures to ensure that children under the age of 15

[135] Solomon, S. and Ginifer, J. (2008), "Disarmament, Demobilisation and Reintegration in Sierra Leone", Center for International Cooperation and Security, p. 11; International Crisis Group (2021), "An Exit from Boko Haram? Assessing Nigeria's Operation Safe Corridor", available at https://rb.gy/zz7b8z, accessed 25 July 2025; and Ugwueze, M. I., Ngwu, E. C., and Onuoha, F. C. (2021), "Operation Safe Corridor Programme and Reintegration of Ex-Boko Haram Fighters in Nigeria", Journal of Asian and African Studies, 57(6), p.1229-1248.

[136] International Crisis Group (2021), "An Exit from Boko Haram? Assessing Nigeria's Operation Safe Corridor", available at https://rb.gy/zz7b8z, accessed 25 July 2025; and Ugwueze, M. I., Ngwu, E. C., and Onuoha, F. C. (2021), "Operation Safe Corridor Programme and Reintegration of Ex-Boko Haram Fighters in Nigeria", Journal of Asian and African Studies, 57(6), p.1229-1248.

[137] Solomon, S. and Ginifer, J. (2008), "Disarmament, Demobilisation and Reintegration in Sierra Leone", Center for International Cooperation and Security, p. 17.

[138] In the summaries provided by the OPG, several cases impose participation in a probation programme. However, it is unclear whether these programmes include activities aimed at reintegration and rehabilitation of the recruited minors. See Criminal Proceedings No. 1-кп/473/416/2024, Judgment of 20 November 2024, Voznesensk City District Court, Mykolaiv Region; Criminal Case No. 1-кп/473/416/2024 (473/6143/24), Voznesensk City District Court, Mykolaiv Region – 20 November 2024; Criminal Case No. 1-кп/154/379/25, Judgment of 24 March 2025, Volodymyr City Court, Volyn Region.

years of age do not take direct part in hostilities.[139] The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict further requires taking measures to prevent the recruitment or use of children under 18 by armed groups, including the adoption of legal measures necessary to prohibit and criminalise such practises.[140] The importance of preventing the recruitment and use of children in armed conflict has been repeatedly reaffirmed by the UN Security Council.[141] The Committee on the Rights of the Child has also specifically called on States Parties to ensure that children are not recruited or used in armed conflicts through the digital environment, including by preventing, criminalising and sanctioning the technology-facilitated solicitation and grooming of children, for example, through use of social networking platforms or chat services in online games.[142]

The Paris Principles further call on states to implement a comprehensive prevention plan, including relevant legal reforms at the national level as well as programming that addresses factors that may encourage the involvement of children in armed forces or armed groups.[143] Doing so requires understanding and addressing the causes of the recruitment and use of children in armed conflict, which varies according to context.

The Paris Principles emphasise that children become associated with armed forces or groups for numerous reasons, which vary depending on the nature and context of a conflict. As such, successful prevention programmes will address the underlying causes of recruitment.[144] UN Security Council Resolution 2764 (2024) reinforces this framework by highlighting the importance of addressing root causes of the vulnerabilities of children including poverty, deprivation and inequality and promoting education to prevent child recruitment.[145]

The Paris Principles stress that programmes to prevent unlawful recruitment should be context-specific, developed in collaboration with local communities and children themselves, and based on a proper analysis of the factors underlying children's involvement in armed forces or armed groups.[146] The Principles highlight that certain factors of vulnerability, which will be context-specific, may put children at particular risk of recruitment or use by armed forces or groups, such as, for example, children separated from their families or in institutions, those living or working on the streets, or those in conflict with the law.[147] Risk mapping can identify such vulnerabilities and particular groups at risk, while the involvement of children themselves, who are best placed to explain why they became associated with an armed force or group, and the involvement of families, teachers and communities in the design and implementation of prevention activities will contribute to their effectiveness. [148]

The UN Integrated Disarmament, Demobilisation and Reintegration Standards (IDDRS), which provide guidance for DDR practitioners and child protection actors on planning, designing and implementing interventions to prevent the recruitment of children, provide a relevant framework for analysing the drivers behind the recruitment and use of children in hostilities. They emphasise that children's

[139] Convention on the Rights of the Child, Article 38(2); Additional Protocol I, Article 77(2); Additional Protocol II, Article 4(3)(c); ICRC, IHL Database, Customary Law, Rule 136, available at https://shorturl.at/F9oiV, accessed 25 July 2025; ICRC, IHL Database, Customary Law, Rule 137, available at https://shorturl.at/44RIn, accessed 25 July 2025.
[140] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Articles 1 and 4.
[141] UN Security Council Resolution 1539 (2004); UN Security Council Resolution 1612 (2005); UN Security Council Resolution 2427 (2018); UN Security Council Resolution 2764 (2024).
[142] Committee on the Rights of the Child, General Comment No. 25 (2021), para. 122.
[143] Paris Principles, paras. 6.1 and 6.2.
[144] *Ibid*, para. 6.0.
[145] UN Security Council Resolution 2764 (2024).
[146] Paris Principles, para. 6.27.
[147] *Ibid.*
[148] Paris Principles, paras. 6.27.0-6.27.5

association with armed forces and groups is driven by complex "push and pull factors" that vary by individual and context. Understanding these recruitment pathways, the dynamics of recruitment and its underlying causes, is crucial for developing effective prevention strategies.[149]

"Push factors" are understood as negative circumstances that the child tries to escape by joining an armed force or group, while "pull factors" represent the positive incentives, attracting the children to join.[150] Potentially relevant "push factors" have been identified to include, for example poverty, marginalisation, discrimination and a weakened social structure, including special risk groups, such as street children, the rural poor, refugee children and internally displaced children; lack of education or employment opportunities; lack of protection, disruptive social contexts and experience of violence, including children without parents or families or who have experienced violence, trauma or loss; lack of a feeling of autonomy and identity, including children who feel disenfranchised and without opportunities for social success; or the notion of injustice, including because of issues such as corruption or perceived or real discrimination.[151] Examples of "pull factors" may include propaganda and indoctrination; revenge and indirect identification with victims of violence; previous involvement in the justice system; or material inducements.[152]

Efforts to prevent child recruitment should also recognise that children are embedded in families and communities, and that prevention programmes must therefore target each part of their ecosystem. Since the root causes of recruitment often span multiple sectors, it is usually necessary to collaborate across all relevant areas to deliver a comprehensive response. Understanding that children at risk of recruitment are also likely facing other protection issues, interventions should take a holistic approach, be integrated with existing systems, and align with broader, long-term child protection strategies and support services.[153]

Programmes to prevent recruitment of children may include a variety of multisectoral measures such as support for livelihood opportunities for children and/or their families, such as apprenticeships, vocational training or income-generating activities; working with educational authorities on human rights awareness; recreational activities, life-skills programming, or psychosocial support activities, to foster peer support, increase children's sense of belonging, and facilitate monitoring of vulnerable children; public information campaigns in schools and children's groups, guidance from community leaders, peer-to-peer outreach, or social media campaigns to raise awareness.[154]

In the context of the conduct outlined in the background note, a first, pre-requisite step to developing effective programmes to prevent such recruitment would require analysing and understanding why particular children are vulnerable to being recruited in this way, and the push and pull factors that motivate them to undertake the acts outlined in the background note. Relevant programmes aimed at preventing such recruitment should be developed on this basis.

[149] Paris Principles: Operational Handbook (2002), available at https://shorturl.at/qq0lR, accessed 25 July 2025, p.149; UN Integrated Disarmament, Demobilisation and Reintegration Standards (IDDRS), Module 5.20 Children and DDR, available at https://shorturl.at/DV41Q, accessed 25 July 2025, p.21.
[150] UNODC, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (2017), available at https://shorturl.at/u6Kwc, accessed 25 July 2025, p. 30.
[151] *Ibid.*
[152] *Ibid.*, pp. 30-31.
[153] Paris Principles: Operational Handbook (2002), available at https://shorturl.at/qq0lR, accessed 25 July 2025, p. 149.
[154] *Ibid*, p. 155.