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Abstract

More than two million child soldiers have died in conflicts throughout the world. The official response to this phenomenon, which involved devising international conventions, proved to be inadequate. During the past decade the European Union (EU) has been active in promoting the rights of children affected by armed conflict (CAAC). This paper examines to what extent the EU is determined to promote the rights of CAAC, especially through its development policy and to what degree this determination is translated into concrete action. The central position of this paper is that, even though the EU possesses all the mechanisms needed in order to promote the rights of CAAC, implementation lags behind the declared targets. There are both politically and operationally important reasons explaining the divergence between rhetoric and action, namely, the lack of political will by EU member states as well as the low level of funding allocated to CAAC and the absence of an effective monitoring system.

1. Introduction: Killing Our Future?

The future can be killed and it has been killed repeatedly. The only form of the future that exists in the present tense, children, faces a reality of death throughout the world. Children have been recruited and taught to fight; they have been murdered in combat. During the 1990s alone, more than two million children were killed in armed conflicts and six million disabled or seriously injured.¹ This is an issue that we cannot and should not turn our attention away from because, if we do, we will be diverting our attention from the future itself.

The Cape Town principles define 'child soldier' – a term now used interchangeably with that of 'children affected by armed conflict' – as

any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.²

It was the 1996 Graça Machel report³ on the 'Impact of Armed Conflict on Children' that first emphasised the significance of the problem. In the European Union, the issue of children affected by armed conflict (CAAC) gained prominence only in 2003, with the adoption of the EU guidelines on children and armed conflict.⁴ This paper asks to what extent the EU is determined to promote the rights of CAAC, especially through its development policy, by translating its numerous commitments into concrete action.

The central position put forward is that, even though the EU possesses all the mechanisms and legal instruments needed to promote the rights of CAAC, implementation lags behind the declared targets and this policy remains largely one of words. It will be argued that there are both politically and practically important reasons explaining this divergence between rhetoric and action. First, in terms of

¹ ACP-EU Joint Parliamentary Assembly, Committee on Political Affairs, *Report on Children's Rights and Child Soldiers in Particular*, Rapporteurs: Vitaliano Gemelli, Ephraim Kamuntu (Uganda), ACP-EU 3587/03/fin, Rome, 11 October 2003, p. 18.

² *The Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa*, Cape Town, 30 April 1997, p. 8.

³ UNGA, *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, Note by the Secretary-General, 51st session, item 108 of the provisional agenda, A/51/306, 26 August 1996, and Addendum.

⁴ Council of the European Union, *EU Guidelines on Children and Armed Conflict*, 15634/03, Brussels, 4 December 2003.

politics, there is a tendency to focus on the more high-profile issues of a conflict situation, in which EU action can be utilised, and neglect the less visible dimensions, such as CAAC, considered to be a 'minor issue'. Practically important reasons also account for this situation. The low level of funding allocated to CAAC, combined with the lack of training and experience on the issue, renders implementation problematic. Second, another practical obstacle is the absence of an effective EU monitoring system of the actions undertaken, something that impedes scrutiny of the policy, thus depriving it from an important factor of progress.

First of all, the international standards regulating the protection of children's rights in armed conflict will be examined and the relevant official documentation of the EU will be analysed. Successively, the extent to which these commitments are upheld in practice will be studied through an overview of the EU implementation mechanisms and of the efforts undertaken specifically in Colombia. Subsequently, the paper will examine the utility of the United Nations (UN) monitoring and reporting mechanism as an example for the EU. It will conclude by accounting for the primary reasons behind this rhetoric-action gap and by forming some recommendations.

2. The International Norms and Legal Instruments concerning CAAC

Humanitarian law has treated CAAC since the Geneva Conventions of 1949. However, the question was directly addressed at the level of international human rights law for the first time in 2002 with the Optional Protocol (OP) to the UN Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict. In order to comprehend the current situation we must briefly look into the main international legal instruments governing the topic in terms of international humanitarian law, human rights law as well as the respective soft law norms.

2.1 International Humanitarian Law

To begin with, no provision of any of the four Geneva Conventions directly refers to children's recruitment because, at the time, regulating children's participation in hostilities was perceived to be an internal matter.⁵ Only under article 51 of the Fourth

⁵ M. Happold, 'Child Soldiers in International Law: the Legal Regulation of Children's Participation in Hostilities', *Netherlands International Law Review*, issue 48, 2000, pp. 51-52.

Geneva Convention⁶ is the recruitment of protected persons prohibited. By referring to protected persons, article 51 indirectly includes in its scope children (under fifteen years of age⁷), as long as they enjoy the general protection accorded by the Geneva Conventions to the civil population during the conduct of hostilities. As for non-international armed conflicts, common article 3 of the Geneva Conventions affords protection to “persons not taking active part in the conflict”.⁸ The moment a child engages in combat, thus becoming a child soldier per se, he is no longer protected by international humanitarian law. In such cases, the only legal refuge can be customary law as confirmed by the so-called Martens Clause.⁹

The aforementioned ‘general’ protection is complemented by a ‘special’ protection for children, provided by Additional Protocols I (AP I) and II (AP II), which prohibit parties to an armed conflict to recruit children under fifteen years of age into their armed forces or allow them to take “direct part” (AP I) or simply “part” (AP II) in hostilities.¹⁰ In all, it has been maintained that “international humanitarian law, as it stands today, is incapable of reaching children involved in armed conflicts”,¹¹ so, we will have to turn to the protection offered by international human rights law.

2.2 Human Rights Law

The CRC¹², adopted by the UN General Assembly (UNGA) in 1989, is the most comprehensive legal instrument regarding the promotion and protection of the rights of the child. Article 38 of the CRC obliges state parties to ensure that children who “have not attained the age of fifteen years do not take a direct part in hostilities”.¹³ In 2000, the UNGA adopted the Optional Protocol – to the CRC – on the

⁶ *Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, article 51.

⁷ *Ibid.*, articles 24 and 50.

⁸ Article 3 repeated in all four Geneva Conventions.

⁹ R. Ticehurst, ‘The Martens Clause and the Laws of Armed Conflict’, *International Review of the Red Cross*, no. 317, 1997, pp. 125-134, retrieved 2 July 2010, <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNHY>

¹⁰ *Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, article 77, and *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, article 4§3(c) and (d).

¹¹ D. Mulira, *International Legal Standards Governing the Use of Child Soldiers*, LLM thesis, Georgia, University of Georgia School of Law, 2007, p. 29, retrieved 5 April 2010, http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1085&context=stu_llm.

¹² UNGA, *Convention on the Rights of the Child*, adopted by resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

¹³ *Ibid.*, article 38§2.

Involvement of Children in Armed Conflict (OP),¹⁴ which by July 2010 had been ratified by 132 countries. The OP sets eighteen years of age as the minimum for compulsory recruitment to armed forces (article 2) and compels state parties to raise the minimum age for the voluntary recruitment (article 3). Furthermore, state parties to the OP must ensure that minors recruited in their armed forces “do not take a direct part in hostilities.”¹⁵ Overall, the OP strengthens the protection of the rights of CAAC.¹⁶ However, given it failed to clarify what exactly qualifies as ‘voluntary’ recruitment and fix the minimum age for it at eighteen years of age, it still provides considerable room for manoeuvre to unwilling governments.¹⁷

Another prime source of children’s rights is the Rome Statute of the International Criminal Court. Article 8§2 of the Statute defines enlisting children under fifteen years old into the national armed forces or actively using them in combat as a war crime.¹⁸ Nevertheless, according to the principle of complementarity of the ICC jurisdiction, the Statute is uninvocable unless the state in question is unable or unwilling to prosecute.¹⁹ One last instrument relevant to human rights covering, if only briefly, the issue of child soldiers is the ILO Convention Number 182, including compulsory recruitment of minors into armed groups or forces in its enumeration of the worst forms of child labour, defining it as a practice “similar to slavery”.²⁰

2.3 Soft Law

Even though they do not enjoy legally binding force, some documents set standards that have become internationally recognised and respected (‘soft law’). Such an initiative was the endorsement, in 2007, from 58 UN member states of the Paris Commitments and Principles on Children Associated with Armed Forces or Armed Groups, which provide guidelines on the disarmament, demobilization and reintegration (DDR) of children associated with armed groups. Through the Paris

¹⁴ UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, adopted by resolution A/RES/54/263 of 25 May 2000, entry into force 12 February 2002.

¹⁵ *Ibid.*, article 1.

¹⁶ ICRC, Legal Paper, ‘Legal Protection of Children in Armed Conflict’, in *Children in War information kit*, Geneva, ICRC, July 2004, p. 6.

¹⁷ ICRC, ‘Background Article: Children and War’, in *Children in War information kit*, Geneva, ICRC, July 2004, p. 3.

¹⁸ *Rome Statute of the International Criminal Court*, Rome, July 17, 1998, article 8 §2b (xxvi).

¹⁹ ICRC, Legal paper, *op. cit.*, p. 2.

²⁰ International Labour Organisation, *Convention no. 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, adopted by the conference at its 87th session, Geneva, 17 June 1999, articles 1 and 3, and Happold, *op. cit.*, p. 83.

Commitments, they pledged to take all feasible measures to prevent armed groups within their respective jurisdictions from recruiting children under eighteen years old, to fight impunity for child recruiters and to support DDR processes.²¹ The Paris Principles and Guidelines aspire to prevent unlawful recruitment or use of children in hostilities and to create a sustainable protective environment for CAAC.²²

2.4 Final Remarks

Undeniably, numerous rules of international law have been laid down for the protection of children in the event of an armed conflict. Should we then suppose that CAAC are adequately protected by international law? Unfortunately, this is not completely true and mostly because the standards governing the status of child soldiers are not unambiguous. An absolute minimum age for both compulsory and voluntary recruitment has not yet been clearly proclaimed. The failure of agreeing on a clear prohibition of both direct and indirect involvement of children in hostilities adds to this ambiguity.

Therefore, while a uniform framework on the rights of the CAAC would provide the essential clarifications, what is really needed is, as the UN Special Representative for children and armed conflict has put it, an "era of application"²³ bridging the gap "between progress made on paper and progress made on the ground."²⁴ Nonetheless, so long as declarations are not combined with measures bolstering economic, security and social structures of the countries in conflict with a child focus, there are slim chances of the divergence between law and practice narrowing.²⁵

3. The EU Official Documentation

We will now turn to the commitments made by the EU on the issue of CAAC in a series of its official documents. First, we will look into the EU's development policy. Second, we will examine European policy documents devoted to CAAC in humanitarian aid and crisis management. Second, some conclusions will be drawn

²¹ *The Paris Commitments to Protect Children from Unlawful Recruitment or use by Armed Forces or Armed Groups*, Paris, 6 February 2007, para. 4-6.

²² *The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, Paris, 6 February 2007, pp. 5-6 and 20.

²³ UNSC, Report of the Secretary-General on Children and Armed Conflict, S/2002/1299, 26 November 2002, ch. II.

²⁴ Mulira, *op. cit.*, p. 48.

²⁵ *Ibid.*, p. 56.

concerning the rhetoric of EU official documentation regarding the rights of CAAC in its external policy.

3.1 Development Policy

The European Consensus on Development encompasses the most prominent questions regarding development cooperation of the Union. Therefore, the fact that it refers to children's rights three times²⁶ illustrates the importance accorded to the issue by the EU. The Consensus regards the promotion of children's rights as an absolute aspect of sustainable development and defines it as one of the eight cross-cutting issues to be mainstreamed in all development-related activities of the Union.

In addition, in July 2006 the European Commission produced a Communication entitled 'Towards an EU Strategy on the Rights of the Child' setting out the Union's ambition to serve as the leader in the promotion of the rights of the child internationally.²⁷ Moreover, the 'EU Guidelines on the Promotion and Protection of the Rights of the Child'²⁸ were adopted in 2007, paving the way for the 2008 Commission Communication placing children in a 'special place' in EU external action. This Communication provides the framework for a holistic approach towards children's rights through development policy and poverty reduction strategies²⁹ and is accompanied by an Action Plan on children's rights in external action which selected CAAC as one of its priority areas.

But the most specific and targeted document that the EU has produced concerning CAAC are the 'EU Guidelines on Children and Armed Conflict' (CAC Guidelines), adopted in 2003 and updated in 2008.³⁰ They represent the first attempt to bring together all EU policies on the issue but led to hardly positive implementation

²⁶ Council of the European Union, European Commission and European Parliament, Joint Declaration by the Council and the Representatives of the Governments of the Member States Meeting within the Council, the European Parliament and the Commission on the Development Policy of the European Union, 'The European Consensus', *Official Journal of the European Union*, C 46, Brussels, 24 February 2006, para. 12 and 101.

²⁷ Commission of the European Communities, Communication from the Commission, *Towards an EU Strategy on the Rights of the Child*, COM(2006) 367 final, Brussels, 4 July 2006, p. 4.

²⁸ Council of the EU, *EU Guidelines for the Promotion and Protection of the Rights of the Child*, approved by the Council on 10 December 2007.

²⁹ Commission of the European Communities, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *A Special Place for Children in EU External Action*, SEC(2008) 135, Brussels, 5 February 2008, p. 7.

³⁰ Council of the European Union, *EU Guidelines on Children and Armed Conflict*, 15634/03, Brussels, 4 December 2003 and updated on 8 December 2008, retrieved 10 January 2010, <http://consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf>.

reviews. The biggest disappointment relates to 'priority countries' where the EU had decided to intensify its action but, ultimately, did not manage to have any impact.³¹ In response, the 2006 implementation strategy refocused on the need for comprehensive reporting, closer cooperation with the UN and making effective use of the techniques the EU has at its disposal, especially mainstreaming and démarches.³² The suggestions formulated by the Implementation strategy³³ were of a general nature and did not provide a guide on the next practical steps. Therefore, they remained merely words for several years.

The problems and gaps thus identified had to be addressed very soon. By 2008 the EU had already come up with a thorough update on the CAC guidelines. Through this update, the EU uses the international norms and standards in order to deduce the level of protection, therefore implicitly recognising that the weight must fall onto implementation rather than the production of new rules.³⁴

3.2 Humanitarian Aid and Crisis Management

The EU has also developed actions concerning CAAC through its humanitarian aid and crisis management policies. Humanitarian action specifically focuses upon vulnerable groups of the population; however, the principle of impartiality renders it difficult to engage with child soldiers in particular. The 2008 Commission staff working document addressing children's rights in emergency and crisis situations focuses on the special difficulties faced by girls associated with armed forces and on the need for demobilisation efforts of ex-combatant children to be carried out at any time, even during hostilities.³⁵

Another area where the EU has been particularly active in pushing forward the question of CAAC is crisis management. A checklist was created in 2006 in order to help integrate systematically child rights and protection concerns in all phases of

³¹ Council of the EU, Working Party on Human Rights (COHOM), *Biennial Review of the EU Guidelines on Children and Armed Conflict*, as an annex to the Draft Council conclusions on the biennial review of the EU Guidelines on Children and Armed Conflict, 15309/05, Brussels, 2 December 2005, pp. 5-7.

³² Council of the EU, Working Party on Human Rights (COHOM), *Implementation Strategy for Guidelines on Children and Armed Conflict*, Council doc. 8285/06, Brussels, 25 April 2006, pp. 3-12.

³³ *Ibid.*, pp. 13-16.

³⁴ Council of the EU, *Update of the EU Guidelines on Children and Armed Conflict*, 2008, p. 3, retrieved 10 January 2010, <http://consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf>.

³⁵ Commission of the European Communities, Commission staff working document, *Children in Emergency and Crisis Situations*, SEC(2008) 136, Brussels, 5 February 2008, pp. 9 and 11.

European Security and Defence Policy (ESDP) operations.³⁶ The checklist delineates an overall system of incorporating child protection measures from the pre-deployment phase until the final assessment of the mission complemented by overall mainstreaming of child protection activities throughout an ESDP operation addressing key concerns, such as the reintegration of child soldiers.

Furthermore, the 'Guidelines on Protection of Civilians in EU-led Crisis Management Operations', endorsed by the PSC, aim to ensure that children do not take direct part in hostilities and are not recruited by armed groups.³⁷ Also of relevance is the EU concept for DDR, which takes the EU's crisis management intervention a step further towards post-conflict peace building safeguarding a prominent position for former child-combatants.³⁸ Currently, a 'Children's Rights Toolkit' is being developed in partnership with UNICEF, destined to integrate children's rights into a vast array of political actions.

3.3 Assessing the EU Documentation

Based on this brief overview, one can easily conclude that the EU policy documents on the topic of CAAC are ample and comprehensive, thus indicating a commitment to protect children in conflict situations, safeguard their rights and eliminate the phenomenon of child soldiering. The intentions are there, so are the means and instruments, but this is only an indication of commitment unless a response mechanism is put in action. Indisputably, the EU framework is adequate; the doubts arising concern implementation. It is on the ground that commitment is proved and the rhetoric of official documents put to the test. Therefore, it is now time to examine the implementation of the principles included in the aforementioned documents.

4. EU Practice Concerning CAAC: The EU's Efforts to Stick to its Promises

So far, we have looked into what the EU is committed to do regarding CAAC rights' protection. At this point we will examine the Union's action on the ground. First, we will refer to the main implementation tools at the Union's disposal. Following this, we

³⁶ PSC, *Checklist for the Integration of the Protection of Children Affected by Armed Conflict into ESDP Operations*, 9822/08, Brussels, 23 May 2006, p. 4.

³⁷ PSC, *Guidelines on protection of civilians in EU-led crisis management operations*, Working Document 14805/03, Brussels, 14 November 2003, para. 4 and 8.

³⁸ *EU Concept for Support to Disarmament, Demobilisation and Reintegration (DDR)*, approved by the European Commission on 14 December 2006 and by the Council of the European Union on 11 December 2006, para. 12-14.

will address the European Parliament's (EP) role as well as the funding process of the projects that helps turn intentions into action. Finally, we will assess the effectiveness of these implementation efforts.

4.1 Implementation Tools

The prime means of promoting children's rights has indisputably been development cooperation. After being established as a cross-cutting issue by the EU development policy statement in 2000, children's rights became the object of a special budget line (210212) for the "integration of children's rights into development cooperation". It suffices to say that since 2002 no funds have been allocated through this budget line.³⁹ In all, the bulk of projects (representing 2/3 of the funding) contributing to the implementation of the CAC guidelines have been carried out in the EU-selected priority countries for CAAC.⁴⁰ Examining the distribution of funding thematically, we note a strong focus on DDR, education and reintegration.⁴¹ Yet the fact that within the Commission responsibility on DDR is fragmented between different units with contributes to delays between the demobilisation and reintegration phases.⁴²

Humanitarian aid presents another implementation tool. The 2004 ECHO Aid Strategy names children as one of its three priority areas. ECHO finances the first stages of demobilisation and reintegration (education or formation programs) while it is also involved in the prevention of recruitment, but only in small financial volumes and in limited geographical scope.⁴³ Thus, it has been suggested that ECHO's work on linking relief, rehabilitation and development is an example of convincing Communications that have completely failed in their implementation.⁴⁴

³⁹ L. Peters, 'War Is No Child's Play: Child Soldiers from Battlefield to Playground', Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Occasional Paper*, no. 8, July 2005, p. 35.

⁴⁰ I. Specht, L. Attree & Y. Kemper (Transition International), *Children and Armed Conflict: The Response of the EU*, United Nations Institute for Disarmament Research, Background Paper Prepared for the Project 'European Action on Small Arms and Light Weapons and Explosive Remnants of War', 2004, p. 8, retrieved 23 February 2010, http://www.unidir.org/pdf/EU_background_papers/EU_BGP_02.pdf.

⁴¹ See figure 'Distribution of Funding on Children and Armed Conflict by Thematic Activity', in *ibid.*, p. 9.

⁴² *Ibid.*, p. 13.

⁴³ Consultation via e-mail, M. Gorska, European Commission, DG External Relations, RELEX B1, Policy Desk Officer, 10 to 12 March 2010.

⁴⁴ D. Helly, 'Security Sector Reform: From Concept to Practice', *European Security Review*, December 2006, cited in A. Sherriff, 'Enhancing the EU Response to Children Affected by Armed Conflict - with Particular Reference to Development Policy - A Study for the Slovenian EU Presidency', *ECDPM Discussion paper*, no. 82, Maastricht, 2007, p. 8, endnote 68.

As for the diplomatic tools available, the Union seeks to ensure that the issue of CAAC is discussed during political and human rights dialogues. These dialogues try to raise awareness about international standards and provide the support needed by third countries (financially, technically, etc.) in responding to the challenges.⁴⁵ However, in an interview with a Commission official, the value of political dialogues was put in question: “they come to nice conclusions but what about action?” he said.⁴⁶ Therefore, the added value of these dialogues may sometimes be limited only to building up trust. Démarches are also often used even though their potential impact has been repeatedly put into question.

Furthermore, the EU has been active in supporting international initiatives regarding CAAC and children’s rights in general at numerous multilateral fora. For example, it has committed itself to supporting the UN 1612 monitoring mechanism, the UN Special Representative on Children and Armed Conflicts and the UN Security Council Working Group on Children and Armed Conflicts.⁴⁷ Furthermore, Brussels has used the UNGA as a forum for promoting regional cooperation on the issue. An example is the 2009 UNGA Resolution on the Promotion and Protection of the Rights of the Child adopted on a common proposal by the EU and the Group of Latin America and Caribbean Countries, which specifically refers to CAAC.⁴⁸

It should be underscored that the Union has established a wide cooperation network on CAAC involving UN agencies, NGOs and civil society organisations. Among these, one partnership that seems to be working particularly well is that with UNICEF. Collaboration on the ground is considered satisfactory – UNICEF being the biggest beneficiary of the EU in the field in terms of funds – and there is also an established practice of holding a thorough information session on general planning at the beginning of every presidency. Furthermore, the human rights working group of the Council holds relevant discussions with UNICEF once a month. UNICEF considers its support to EU projects to be important for sustaining political support.⁴⁹

Nevertheless, cooperation is not always perfect. One complaint commonly raised by UNICEF as well as other implementing partners is the complexity of EU funding structures and processes. For example, funding for DDR processes benefiting

⁴⁵ Consultation, M. Gorska, op. cit.

⁴⁶ Interview with a Commission Official, DG Development, policy desk officer, Brussels, 18 March 2010.

⁴⁷ Consultation, M. Gorska, op. cit.

⁴⁸ UNGA, *Resolution on the Rights of the Child*, 64th session, Third Committee, Agenda item 65(a): Promotion and Protection of the Rights of Children, A/C.3/64/L.21, 19 October 2009.

⁴⁹ Interview with M. Wachenfeld, UNICEF-Senior Policy Adviser, Relations with the EU institutions, Brussels, 18 March 2010.

CAAC emanates from ECHO, the European Development Fund (EDF), the 'Uprooted People' budget line, the Rapid Reaction Mechanism, the European Initiative for Democracy and Human Rights (EIDHR) and the NGO co-financing line, while the procedures to obtain these funds vary among the different instruments.⁵⁰

4.2 Mainstreaming

Mainstreaming is usually characterised as an implementation tool. However, its general, framework-like use obliges us to categorise it as a method, rather than a tool. The EP has defined mainstreaming as "a strategic process of incorporating human rights considerations into processes and structures that are not explicitly mandated to deal with human rights".⁵¹ Effective mainstreaming requires, on the one hand, a comprehensive strategy incorporating human rights impact assessments, relevant clauses in project implementation reporting, training and institutional capacity building and, on the other hand, commitment to follow up efforts in the long run.⁵²

As a Commission official admitted, mainstreaming of the rights of CAAC is particularly difficult given that this is such a specific issue,⁵³ requiring targeted rather than diffuse action. The pertinent EU documents stress the need to mainstream the rights of CAAC, nevertheless, they do not give guidance on how to do this in everyday EU practice nor do they provide quantifiable indicators so as to evaluate the results of mainstreaming in development policy.⁵⁴ An additional impediment to mainstreaming in development cooperation is the fact that both human and financial resources are limited,⁵⁵ and delegation staff are not always adequately trained on EU guidelines and EU human rights policy.⁵⁶

Especially for mainstreaming in ESDP, one of the problems is the lack of uniform training standards in human rights, given that training is mainly a task of the member states. As long as there is no common training programme formed on EU

⁵⁰ Specht, op. cit., p. 6.

⁵¹ European Parliament, Subcommittee on Human Rights (DROI), *Human Rights Mainstreaming in EU's External Relations*, Directorate-General for External Policies (DG B), EXPO/B/DROI/2008/66 PE407.003, September 2009, p. 15, retrieved 8 April 2010, http://www.barbara-lochbihler.de/cms/upload/PDF/DROI_2009_Human_Rights_in_EU_external_relations.pdf.

⁵² Ibid., p. 24.

⁵³ Interview with a Commission official, EuropeAid, AidCo F2, Brussels, 16 February 2010.

⁵⁴ European Parliament, Subcommittee on Human Rights, op. cit., p. 18.

⁵⁵ Interview with a Commission Official, DG Development, op. cit.

⁵⁶ European Parliament, Subcommittee on Human Rights, op. cit., p. 44.

principles rather than national ones, there can be no effective or uniform mainstreaming.⁵⁷

4.3 The Role of the European Parliament in Implementation Efforts

An actor we should not overlook when referring to human rights promotion is the European Parliament. Through its resolutions,⁵⁸ questions and discussions with third countries and non-state actors it has always advocated the primacy of human rights in EU's external relations and has managed to build synergies with a wide range of varying actors. A successful example of this technique has been the linkage achieved between its activities and those of UN bodies (notably UNICEF), NGOs, and the ACP-EU Joint Parliamentary Assembly (JPA) which resulted in a recognisable contribution to the elaboration of the CAC Guidelines in 2003.⁵⁹ The EP also practices 'naming and shaming tactics' through research and fact-finding missions, country and individual cases reports and via the Sakharov Prize.⁶⁰

Moreover, the EP is involved in human rights (and thus children's rights) protection through its various committees, particularly the Sub-Committee on Human Rights (DROI) of the Committee on Foreign Affairs (AFET), which prepares an Annual Report on the EU's human rights policy and monitors the operation of the EIDHR as well as the Committee on Development (DEVE), which oversees the implementation of human rights projects funded by the EDF and the Development Cooperation Instrument (DCI). DEVE also includes the members of the EP delegation to the EU-ACP JPA. The monitoring and reporting procedure on human rights violations⁶¹ established by the EU-ACP JPA adopted children's rights and child soldiers in particular as a focal issue in 2003. Raising the allocation of financial resources for CAAC by both EU and ACP countries was a key idea put forward by the resulting report, which deplores the "lack of political will to give children's rights priority".⁶²

⁵⁷ Ibid., p. 54.

⁵⁸ See for example, European Parliament, *European Parliament Resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union's Policy on the Matter*, P6_TA-PROV(2009)0385, 7 May 2009.

⁵⁹ European Inter-University Centre for Human Rights and Democratisation, *Beyond Activism: The Impact of the Resolutions and Other Activities of the European Parliament in the Field of Human Rights Outside the European Union (complete version)*, October 2006, p. 271.

⁶⁰ R. Gropas, *Human Rights and Foreign Policy: the Case of the European Union*, Athens, Ant. N. Sakkoulas/Emile Bruylant, 2006 pp. 116-117.

⁶¹ European Inter-University Centre for Human Rights and Democratisation, op. cit., p. 46.

⁶² ACP-EU Joint Parliamentary Assembly, op. cit., p. 20.

4.4 The Funding Process

The EU may fund projects on CAAC in two ways; through calls for proposals (CFP) or standalone projects. CFPs are mostly used for cooperation with civil society organisations and NGOs and operate on a two-phase elimination process. Under the 2009 'Investing in People' CFP for CAAC the first selection phase ended up with 815 proposals and it is estimated to culminate in funding only about 20 projects after the second assessment.⁶³ The other option is standalone projects. They are mostly used when the EU needs the expertise of a specific international organisation to achieve a certain result.

Interviewees considered CFPs to be an unfocused tool, lacking a strategic, long-term approach.⁶⁴ In addition, the rules for the allocation of funds often deter civil society organisations from benefiting from the EU budget lines. The minimum amount given to a project by the EU is 250,000 Euros and it must represent at the most the 80% of the whole budget of the project. Small NGOs find it difficult to gather such a large amount from their own resources to cover the remaining 20%. Even though civil society organisations are considered to be the best in implementing, they are usually excluded from the eligibility list because they cannot find that 20%.⁶⁵

4.5 Assessing Implementation Efforts

The EU has a variety of tools at its disposal for implementing the commitments it has undertaken regarding the rights of CAAC. Their utilisation though has been inconsistent. Specifically on the CAC guidelines, NGO representatives underline that their implementation has been very dependent upon a Presidency wishing to take them on as a priority.⁶⁶ We should therefore identify the primary reasons why EU implementation efforts do not produce the desired results.

The UN Under-Secretary General and Special Representative of the UN Secretary General for Children and Armed Conflict, Radhika Coomaraswamy, stressed that the main implementation problem in EU's policy towards CAAC is the lack of political will of the member states to actively maintain a strong position on the

⁶³ A. Sherriff, *op.cit.*, p. 15.

⁶⁴ Interview with a Commission Official, DG Development, *op. cit.*

⁶⁵ Interview with a Commission Official, EuropeAid, AidCo E4, Brussels, 24 March 2010.

⁶⁶ Consultation via e-mail, T. Cox, Policy and Advocacy Officer, Save the Children, 5-11 March 2010.

promotion of child soldiers' rights.⁶⁷ The ACP-EU JPA has also identified the absence of political will to be the most important obstacle to making the rights of CAAC a real priority in the EU and worldwide.⁶⁸ Prioritisation of other, more visible issues over CAAC is usually the case since in these issues it is easier and more 'cost-efficient' to bring about a change.

Another crucial problem is the lack of financial resources. There are two main thematic instruments that currently fund actions on CAAC, the DCI and the EIDHR. First, a specific envelope for children's rights containing €90 million for 2007-2013, under the DCI's thematic programme 'Investing in People' formed the basis of a restricted CFP in 2009,⁶⁹ in which it is referenced that some of the money should be dedicated to CAAC. However, an exact amount was not earmarked. In January 2008, there was a two-lot CFP under this same instrument.⁷⁰ Lot 1, dedicated to CAAC, represented 25% of the whole funding, that is, only 4 million Euros.

Second, within the EIDHR, the European Commission has earmarked for the years 2007-2013 an indicative amount of 6.8 million Euros on the protection of the rights of CAAC, out of the general budget of 1,104 million Euros of the EIDHR budget for this period.⁷¹ As a first step, in January 2009, the Commission launched a CFP under the objective 3⁷² of the EIDHR for the implementation of the EU Guidelines for the Promotion and Protection of the Rights of the Child and the CAC Guidelines, being the first call with a direct link with them. Clearly, the allocation of money is connected to the political importance accorded to each topic; CAAC is but a minor issue on the EIDHR agenda and thus gets less than 0,7% of the EIDHR budget.

As for the EDF, the amount of money allocated to child-related initiatives is limited, usually incorporated in poverty-alleviation projects, and remains available for two consecutive years. This means that there is no incentive for the beneficiary governments to establish child-related policies as quickly as possible because they can pull from the same resources for one more year. Therefore, they usually choose to pursue other policies for which money must be used in the year or is lost otherwise.

⁶⁷ Interview with R. Coomaraswamy, UN Under-Secretary-General, Special Representative of the UN Secretary General for Children and Armed Conflict, Brussels, 1 February 2010.

⁶⁸ ACP-EU Joint Parliamentary Assembly, *op. cit.*, p. 20.

⁶⁹ Council of the European Union, 2009 and 2010 Part 1 Action Programme covered by the 2007-2013 Strategy Paper for the Thematic Programme 'Investing in People' under the Development Cooperation Instrument, Decision C(2009) 3438, Brussels, 12 May 2009, p. 5.

⁷⁰ Consultation, M. Gorska, *op. cit.*

⁷¹ Sherriff, *op. cit.*, p. 14.

⁷² Objective 3 refers to supporting actions on human rights and democracy in areas covered by EU guidelines.

Furthermore, we should not forget that a large part of the implementation is undertaken and carried out by the member states on a bilateral basis. In 2003-2004 figures, almost 60% of the funds spent on children and armed conflict was spent bilaterally.⁷³ Bilateral actions are welcome by the EU, but there is always a risk of undermining coordinated and comprehensive Union programmes.

Finally, monitoring of EU projects is conducted through the system of result-oriented monitoring (ROM) which entails periodical reports from the implementing parties and pre-scheduled visits. Nevertheless, ROM is mandatory only for projects funded with more than one million Euros. As for post-project evaluation, there is no coherent approach. It takes place sporadically, either for very successful or problematic projects.⁷⁴ Regarding CAAC, a comprehensive thematic evaluation has not taken place yet (the first all-encompassing review of CAAC conducted by COHOM – the Working Party on Human Rights – is expected to be ready in 2011).⁷⁵ On a final note, we should bear in mind that monitoring reports on EU CAAC-related projects are confidential. This secrecy leads to a lack of transparency on the actual EU actions impact on the ground. What data is accessible suggests that numerous impediments hinder EU actions on the issue of CAAC from having a considerable impact. Nevertheless, as most NGOs admit, it is very hard to get concrete feedback.⁷⁶

5. Case Study: EU Action on CAAC in Colombia

Colombia is one of the priority countries for both the EU and the UN concerning the issue of children and armed conflict. It could not be otherwise given that, in Colombia, one out of four combatants is a child.⁷⁷ The reason why I chose Colombia is because CAAC policy there is targeted, not dominated by poverty alleviation concerns, since Colombia is a middle-income country. Also, it is a country vested with a strong presence of civil society, with high-capacity local implementing partners to work with, implying that any problems in implementation cannot be exclusively attributed to third, implementing actors.

⁷³ Specht, *op. cit.*, p. 7.

⁷⁴ Interview with a Commission official, EuropeAid, AidCo F2, *op. cit.*

⁷⁵ Interview with M. Wachenfeld, *op. cit.*

⁷⁶ Consultation, T. Cox, *op. cit.*

⁷⁷ Human Rights Watch (Brett Sebastian), 'You'll learn not to cry; child combatants in Colombia', *Human Rights Watch*, New York, September 2003, p. 4.

5.1 The Background Situation in Colombia

Colombia is a troubled country where between 11,000 and 14,000 children are involved in warfare as child soldiers.⁷⁸ It has been tormented by a series of armed conflicts renewed in the 1960s and still continuing between the government forces and the opposition Revolutionary Armed Forces of Colombia (FARC) as well as the National Liberation Army (ELN).⁷⁹ Paramilitary groups also came together during the 1990s under the banner of the United Self-Defense Forces of Colombia (AUC).⁸⁰

The 2009 UN Secretary-General's report on children and armed conflict in Colombia confirmed that the recruitment and use of children by armed groups remains a widespread phenomenon.⁸¹ Evidence suggests that FARC as well as the ELN forcibly recruit children,⁸² and an estimated 20% of the paramilitary forces are children⁸³ tempted by the salaries offered.⁸⁴ In addition, the killing and maiming of children who refuse to join the illegal armed groups, deaths of minors in combat and abductions of children are frequent. In the period 1996-2008, 55 children were reported to have been abducted by illegal armed groups.⁸⁵ Lastly, one cannot overlook the high level of sexual-based violence in and by armed groups in Colombia, which remains vastly underreported due to fear of retaliation as well as mistrust in the state institutions. Calculations place the reporting of sexual violence incidents at a mere 17% of the cases.⁸⁶

5.2 The EU CAAC-related Action in Colombia and Its Results

The main actors working on CAAC protection in Colombia are the government itself, the UN and the EU. NGOs and civil society organisations also contribute to raising awareness on the issue but act to a lesser degree as agents for rehabilitation. Whereas the UN has a long-standing presence in Colombia, the EU became involved

⁷⁸ Ombudsman's Office, Human Rights Watch, Coalition to Stop the Use of Child Soldiers, 2003, cited in *Watchlist on Children and Armed Conflict*, 'Colombia's War on Children', op. cit., table p. 1.

⁷⁹ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008*, p. 99, retrieved 23 March 2010, http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf.

⁸⁰ *Watchlist on Children and Armed Conflict*, 'Colombia's War on Children', op. cit.

⁸¹ UNSC, *Report of the Secretary-General on Children and Armed Conflict in Colombia*, S/2009/434, 28 August 2009, p. 4.

⁸² *Watchlist on Children and Armed Conflict*, op. cit., pp. 28-29.

⁸³ *Ibid.*, p. 29.

⁸⁴ Human Rights Watch, op. cit., p. 27.

⁸⁵ UNSC, S/2009/434, op. cit., pp. 6-8.

⁸⁶ *Watchlist on Children and Armed Conflict*, op. cit., p. 19.

in protecting child soldiers there during the last few years. CAAC now constitutes a topic tackled even at the level of the Country Strategy Paper.⁸⁷

The first major CAAC-related project was run in 2005. It made use of a budget of 1,9 million Euros and aimed at preventing recruitment and assisting the rehabilitation of demobilised child combatants.⁸⁸ The Union has also been extensively involved there through ECHO's 2009 Global Plan for Colombia.⁸⁹ Projects financed through ECHO in Colombia on protection and prevention of recruitment of children often pertain to educational activities.⁹⁰

The EU delegation in Colombia is currently running six projects concerning children under two financial instruments: the EIDHR and the DCI's 'Investing in People'. Another eighteen projects will become operational during the next months through the EU's programme for sustainable peace in Latin America entitled 'The third laboratory for peace'. Two of the child-related projects currently run by the delegation are focusing on gender-based violence.⁹¹ The project named 'Tenemos una oportunidad ahora...' disburses a budget of 540,000 Euros in improving the implementation of the monitoring mechanism of UNSC Resolution 1612 in Colombia while two other projects target prevention of recruitment and creating a favorable environment for reintegration of former child soldiers respectively. Finally, the project entitled 'Building a Future for CAAC in Colombia' financed with 600,000 Euros by 'Investing in People' targets the psychosocial consequences of conflict on children.

In sum, the EU has largely been involved through diplomatic means and disperses a little more than 1,6 million Euros on CAAC in Colombia for the period 2010-2013. Comparing this number to the costs of demobilisation of a child, which is estimated at 3,500-4,000 Euros per year,⁹² it is only logical to observe that EU efforts may have contributed to raising awareness on the issue, but the practical effect is not particularly noticeable.⁹³ Human Rights Watch has recommended that the EU

⁸⁷ Commission of the European Communities, *Colombia Country Strategy Paper 2007-2013*, E/2007/484, 28 March 2007, p. 7.

⁸⁸ *Ibid.*, p. 69.

⁸⁹ European Commission Humanitarian Aid Office, *ECHO's Global Plan 2009 in Colombia: Action Proposals for a Complex and Denied Humanitarian Crisis*, Brussels, 26 February 2010.

⁹⁰ Commission of the European Communities, *Children in Emergency and Crisis Situations*, op. cit., p. 9.

⁹¹ Delegation of the European Union in Colombia and Ecuador, Working document: *Proyectos sobre niñez implementados en Colombia*, Bogota, December 2009, p. 1.

⁹² Commission of the European Communities, Directorate-General External Relations, *Aid To Uprooted People - Programme Activities: 1997-2006*, retrieved 15 April 2010, http://ec.europa.eu/external_relations/uprooted_people/index_en.htm.

⁹³ Consultation via e-mail with an Official, Delegation of the European Union in Colombia and Ecuador, 14 January to 1 February 2010.

could have a significant role in changing the situation if it increased funds for the rehabilitation of these children.⁹⁴

At this point, one should highlight that the majority of projects run by the Delegation do not form part of the EU plan on addressing holistically the question of CAAC in Colombia. For example, many projects try to raise awareness without any parallel projects providing support to protective structures or ensuring the basic survival rights of Colombian children. It is therefore also the absence of a global strategy that minimises the impact of EU action.

6. The UN Monitoring and Reporting Mechanism: a Source of Inspiration?

The UN has established a long-standing tradition of engaging with CAAC. The topic has been treated by its most prominent organs; the UN Security Council (UNSC) has adopted pertinent resolutions since 1999. The 2005 report of the Secretary General on children and armed conflict highlighted the urgent need to establish a monitoring and reporting mechanism in order to discard the "cruel dichotomy"⁹⁵ surrounding the CAAC question. This dichotomy consists of the divergence between the abundance of conflict protection standards set by international law and the actual situation on the ground which remains unchanged, with children still recruited into armed forces and groups and still subjected to violations of their basic human rights.

The decisive step towards an "era of application"⁹⁶ came with the establishment of the UN monitoring and reporting mechanism (MRM) for children and armed conflict by UNSC resolution 1612/2005.⁹⁷ This monitoring mechanism operates on the country level to gather information, on the headquarters level to evaluate information and on the level of regional and national bodies undertaking concrete actions destined to ensure compliance.⁹⁸

An innovation of the MRM is that it is not bound by concerns over the technical applicability of international standards on armed groups that do not have legal personality but rather pragmatically tries to involve them into formulating

⁹⁴ Human Rights Watch, *op. cit.*, pp. 17-18.

⁹⁵ UNGA and UNSC, Report of the Secretary-General, UNGA 59th session, Agenda item 101, Promotion and Protection of the Rights of Children, Security Council 60th year, Children and Armed Conflict, A/59/695-S/2005/72, 9 February 2005, p. 15.

⁹⁶ *Ibid.*, p. 15.

⁹⁷ UNSC, Resolution 1612 (2005), Adopted by the Security Council at its 5235th meeting, 26 July 2005, para. 2.

⁹⁸ UNGA and UNSC, Report of the Secretary-General, *op. cit.*, para. 67.

action plans with commitments on halting violations of children's rights and hold them accountable to these commitments as if they were legally binding rules.⁹⁹ However, only nine out of the 64 groups listed in the Resolution annexes have so far signed such action plans.¹⁰⁰

The MRM also addresses the primary reasons for inadequate reporting, namely the lack of resources and technical skills required to gather and analyse the relevant information as well as the lack of political will, by providing a holistic system of information gathering that leaves no excuse to states that hesitate to or are impeded from reporting.¹⁰¹

Nevertheless, the MRM presents some problematic issues. First of all, it does not provide the desired legitimacy to the negotiations with armed groups and has been accused of being biased concerning the selection of parties to monitor.¹⁰² In addition, it is a noteworthy effort to control the situation of CAAC but it does not constitute an answer to the root causes of the phenomenon, and therefore is incapable of providing a sustainable solution to the problem. However, taking into account that its scope is delimited to monitoring and recommending, one must conclude that it serves its purpose well.

The UN MRM may constitute a significant source of inspiration for the Union since to a large extent the UN and the EU are based on similar commitments and try to get similar results. First, we observe that the UN has allocated considerable amounts of money and has showed more ingenuity in finding solutions. In addition, there is a better understanding of the topic by the UN personnel engaged in the field through extensive and continuous training on monitoring. However, we must recognise that the UN has been treating the issue since 1991, while the EU since only 2003. Moreover, when trying to adapt lessons from the UN to the EU, it is essential to remember the EU's qualitatively different nature.¹⁰³ Its 'state-like' character leads it to engage in a broad range of policy areas, and therefore entails more difficulty in its quest to ensure a degree of consistency across all relevant policy areas.

In all, the EU could be inspired by the UN's MRM for the formation of a comprehensive European strategy on CAAC protection. Yet, a rapprochement with

⁹⁹ P. Mendez, 'Moving from Words to Action in the Modern 'Era of Application': a New Approach to Realising Children's Rights in Armed Conflicts', *International Journal of Children's Rights*, issue 15, 2007, p. 235.

¹⁰⁰ *Watchlist on Children and Armed Conflict*, 'UN Security Council Resolution 1612', and 'Beyond: Strengthening Protection for Children in Armed Conflict', May 2009, p. 2.

¹⁰¹ Mendez, op. cit., p. 240.

¹⁰² Ibid., p. 243.

¹⁰³ European Parliament, Subcommittee on Human Rights, op. cit., p. 24.

the UN results will not come about unless firm action is taken on considerably raising funds and personnel dedicated to the topic.

7. Conclusions and Recommendations

At this point we can certify that, despite ever more ambitious commitments being proclaimed, this has not been translated into tangible results. The number of children benefiting on the ground from EU actions has not increased. On the contrary, implementation keeps lagging behind rhetoric.

In an effort to identify the primary reasons for this divergence between words and action, it has been determined that often more visible norms gain priority over the rights of CAAC which are thus degraded to an issue of 'minor importance'. Member states want to be seen acting successfully and this of course is not easy on a question as complicated as CAAC. Second, and as a consequence of the low level of political will, CAAC-related projects have never benefited from adequate levels of funding, nor have they been the subject of delegation staff training. Without this cardinal material basis the progress achieved could only be marginal. Finally, the deficiency of a monitoring and reporting system of the activities of the EU on CAAC impedes any public scrutiny that would lead to the improvement of the quality of implementation efforts.

Using wisely the methods and instruments it already has at its disposal and the relevant UN practice as a source of lessons, the EU can become an important actor in the protection of the rights of CAAC. For that to happen, some changes are indispensable. In this respect, two facets of a reform of CAAC-related policies need to be addressed. First, an increase in the volume of funds allocated for children in armed conflict constitutes the basis of any progress. Budgeting for CAAC should take place both at the national and international levels and amounts should be clearly earmarked.¹⁰⁴

Second, the EU may use the UN MRM practice as an inspiration to establish a monitoring system which will work in a transparent and organised manner. Such a system, based on the EU's multi-level external action, will complement the UN's efforts and provide an answer to the UN MRM's main problem: the lack of a response

¹⁰⁴ UNICEF, *The State of the World's Children*, special edition, Celebrating 20 Years of the Convention on the Rights of the Child, New York, Division of Communication of UNICEF, November 2009, p. 10.

combining different policy fields. A comprehensive evaluation encompassing the impact of both EU and member state initiatives is long overdue.¹⁰⁵ All evaluations should be made public in order to better identify the problems and thus achieve better results. This monitoring system can be based on the existing network of EU delegations and EU Special Representatives, who will be provided with concrete guidelines and indicators so as to effectively report, monitor, give early warning and make recommendations on addressing the problem.¹⁰⁶ The monitoring system should also integrate the already existing Inter-service Quality Support Group, which consists of staff specialised in children's rights and mainstreaming methods.¹⁰⁷ If monitoring of the implementation process improves, so will responsibility and accountability, leading to increased impact on the ground.

However, one should always bear in mind that the only long-term solution will come through addressing the root causes of the problem. As it has become evident through the examination of the Colombian case, without a global strategy for CAAC based on long-term development of the society, any targeted measures will prove inadequate. If the frequency of conflicts does not diminish and new opportunities for education, training and employment are not created for children in conflict areas, all other measures will fall short of bringing a decrease in the number of children associated with armed groups. Development cooperation can be the primary means of pursuing the rights of CAAC given it addresses the root causes of the phenomenon while building a long-term perspective. However, the combination of human development with measures focusing on education and better living conditions form an indispensable part of building a safe future for children in war-affected countries; a better future for these countries and the whole world.

¹⁰⁵ Sherriff, op. cit., p. 28.

¹⁰⁶ Specht, op. cit., p. 21.

¹⁰⁷ International Human Rights Network, *Human Rights-Based Approaches and European Union Development Aid Policies*, joint initiative by Terre des Hommes International Federation, Action Aid International, Amnesty International EU Office & International Human Rights Network (IHRN), September 2008, p. 64, retrieved 24 February 2010, <http://www.ihrnetwork.org/uploads/files/10.pdf>.

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