Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict

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“They give you a gun and you have to kill the best friend you have. They do it to see if they can trust you. If you don’t kill him, your friend will be ordered to kill you. I had to do it because otherwise I would have been killed.”

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1 Statement of a 17-year old Colombian boy who was forced to join a paramilitary group at seven years of age. See Coalition to Stop the Use of Child Soldiers, available at <http://www.child-soldiers.org/childsoldiers/voices-of-young-soldiers> (visited Mar. 20, 2010).
I. Introduction

Currently, there are tens of thousands of child soldiers among the ranks of combatants in international and internal armed conflicts around the world. Some are coerced into battle by brainwashing and being drugged, some are forced at gunpoint or through extreme violence to take up arms, some are kidnapped by armed groups and forced to fight, some are trafficked and sold to armed groups to be used as cannon fodder, and some are the offspring of fighters, born into conflict and who never know anything other than fighting from the time they are old enough to use a weapon. Some children are forced to the front of an attack in order to compel the enemy to expend their ammunition before the better fighters move up to press an assault. Some children are forced to walk into mine fields to clear paths for the older combatants to pass. Some children are unknowingly given bicycles or motorcycles packed with explosives and told to ride into a populated area or up to a police or military outpost where the explosives are remotely detonated and the child is ruthlessly torn to pieces in the blast. Some children participate in the most bloody acts of violence and many commit unspeakable atrocities, often because they are far too young to understand the gravity of their acts. Some female child soldiers are forced into the ranks to be “comfort women” attending to the personal needs and sexual proclivities of commanders and male combatants. Child soldiers are little more than human chattel—beaten, drugged, sexually assaulted, and cast aside when their usefulness ends.

2 One 13-year old child soldier from Sierra Leone told of being in combat for the first time and being too scared to fire his weapon. “I was in an ambush and bullets were flying back and forth, people were shooting. I didn’t want to pull the trigger at all but when you watch kids … being shot and killed and … dying and crying and their blood was spilling all over your face you just moved beyond, something just pushed you and you start pulling the trigger.” See Nienke Grossman, Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations, 38 GEORGETOWN J. INT’L L. 323, 328 (2007).

3 A young girl abducted by the Lord’s Resistance Army in Uganda was forced to murder a boy who tried to escape and was savagely beaten when under gunfire she dropped a water container and ran for cover. See Nienke Grossman, Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations, 38 GEORGETOWN J. INT’L L. 323, 328 (2007).
If a child soldier does manage to survive such an ordeal, he or she is often left as an outcast and social pariah, disowned by their community, or so far removed from their home and their origins that they never return to their families where they might stand some chance of rehabilitation and reintegration. Many grow up to be criminals and murderers, without hope, and without a future. Many cannot read or write. Many have not even a basic understanding of goodness. Many never know love.

While many child soldiers commit heinous acts that constitute war crimes, the reality is that many child soldiers, especially the youngest of them, are war victims even as they perpetrate atrocities that shock the conscience of men. This article examines the plight of child soldiers and the collective duties of nations in their commitments under international law to protect the fundamental human rights of children subjected to conflict. In the first part of this article, we will determine how children become soldiers in international and internal armed conflict. We will then look at the international law intended to protect children in conflict zones and what tests or standards should be applied in determining how child soldiers should be treated, either as war criminals or as victims of conflict. We will next look at the responsibility nations have to protect children from becoming combatants or being re-recruited into emerging armed conflicts, to prosecute those who use children as combatants, to help children in the process of rehabilitation and reintegration, and to educate the citizens about the plight of child soldiers and the factors that place children at risk of becoming child soldiers. We will conclude with a discussion of what should be the goals and strategies from this point forward in the international effort to stop children from becoming child combatants.

II. How Children Become Child Soldiers
A. Historical Precedents

A child fighting in armed conflict is not a new phenomenon. Even the military term “infantry” alludes to the use of young people to fight on the field of combat. During the age of sail, young boys served on ships of war as “powder monkeys” tasked with running gunpowder and shot from the magazines to gun crews during naval engagements. Drummer boys served with distinction in many battles in the 18th and 19th centuries. During the American Civil War, drummer Willie Johnston became the youngest person ever to be awarded the Congressional Medal of Honor at the tender age of 13 years for conspicuous bravery during the Peninsula Campaign when he was 11 years old. Young boys between the ages of 12 and 15 were conscripted to serve as scouts and combat messengers during the Boer Wars in South Africa in order to free up more men to engage in actual combat. Interestingly, the military commander who devised this use of children in combat was Robert Baden-Powell, who later became famous as the founder of the Boy Scouts movement. In a desperate attempt to slow American forces advancing on Mexico City during the Mexican-American War, young cadets from the Mexican

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4 The term is derived from the French word infante, meaning infant, boy, footman, or foot soldier. See Webster’s Third International Dictionary 1157 (unabridged, 1993). The term suggests that the business of fighting on foot on the field of combat was for the young and strong.
6 See entry for Willie Johnston at the Congressional Medal of Honor Society webpage, http://www.cmohs.org/recipient-detail/713/johnston-willie.php (visited Apr. 28, 2010). Johnston served as a musician in Company D of the 3rd Vermont Infantry. Johnston was also the second recipient to be awarded the Medal of Honor after its establishment during the Civil War. See G. Clifton Wisler, Mr. Lincoln’s Drummer (Puffin, 1997).
military academy were deployed in the Battle of Chapultepec in 1847 and subsequently annihilated by overwhelming opposition.9

To some extent the physical limitations of children during their formative years determine the role they might play in combat. During the Middle Ages, for example, boys up to the age of about 21 who were not yet strong enough to carry the heavy armor or control large warhorses were most often used as auxiliaries.10 During World War II, 16 and 17 year-old boys from the Hitler Youth11 filled the ranks of an entire SS Panzer Division and toward the end of the war, children as young as 12 years of age fought in the last ditch efforts to defend the Fatherland.12 The most decorated American soldier of World War II, the famed actor Audie Murphy, had just turned 17 years old when he falsified his birth records to enlist in the Army at the minimum age of 18.13 In the Asian theater, Chinese Nationalist forces led by Chiang Kai-shek conscripted children as young as ten years of age to fill the ranks of its infantry forces to fight the Japanese.14 Many were transported from Burma into China by the United States Army Air Corps in support its Chinese allies.15

The emergence of children fighting among irregular forces gained momentum in the post-World War II conflicts erupting from post-colonial reorganizations and Cold War maneuverings in the developing world. The most notorious of such examples was the Khmer Rouge of Cambodia, who employed brutal brainwashing techniques to induce armies of children to

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9 See generally JOSÉ MANUEL VILLALPANDO, NIÑOS HÉROES (Planeta, 2004).
10 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 4 (Manchester University Press, 2005).
11 See SUSAN CAMPBELL BARTOLETTI, HITLER YOUTH: GROWING UP IN HITLER’S SHADOW 129-144 (Scholastic Nonfiction 2005).
13 See HAROLD SIMPSON, AUDIE MURPHY: AMERICAN SOLDIER (Hill College Press 1999), and AUDIE MURPHY, TO HELL AND BACK (Holt 2002).
14 For a detailed biography of Chiang Kai-shek, see JAY TAYLOR, THE GENERALISSIMO; CHIANG KAI-SHEK AND THE STRUGGLE FOR MODERN CHINA (Belknap 2009).
commit mass murder and other acts of extreme brutality during the Khmer’s cleansing operations that came to be known as the Cambodian Genocide of the 1970s.\textsuperscript{16} Internal and transborder conflicts in Africa during and following the Cold War have seen large numbers of children used by both government and rebel forces to commit unspeakable acts of brutality and genocide. In Latin America, boys and girls have been forced or coerced into the ranks of illegal armed groups and rebel groups, particularly in Colombia, El Salvador, Nicaragua, and Peru—many used in the most inhuman ways such as to clear mine fields\textsuperscript{17} or to carry out terrorist attacks in which the children do not know they are being used as expendable casualties of war.

**B. Current State of Child Soldiers**

1. Recruitment, Coercion, and Forced Servitude

Our current view of children’s participation in hostilities is related to our changing views about childhood and the laws of war.\textsuperscript{18} A child soldier is defined as a person under the age of eighteen whom directly or indirectly participates in armed conflict as part of an armed force or group.\textsuperscript{19}

In prior eras, boys fighting in war were viewed through romantic notions of heroism. “Today, war is no longer seen as glorious or as a rite of passage into adulthood,”\textsuperscript{20} and we understand that the participation and exploitation of children in violent conflict is tragic and a


\textsuperscript{17} See Nienke Grossman, *Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations*, 38 GEORGETOWN J. INT’L L. 323, 327 (2007) (noting how children are used to sweep roads with tree branches or brooms to detect landmines).

\textsuperscript{18} MATTHEW HAPPOLD, *CHILD SOLDIERS IN INTERNATIONAL LAW* 5 (Manchester University Press, 2005) (noting that we wish to exclude children from participating in hostilities “not because they are too young to engage effectively in combat, in which case they could serve in auxiliary roles, but because the experience is seen as damaging to them”).


\textsuperscript{20} MATTHEW HAPPOLD, *CHILD SOLDIERS IN INTERNATIONAL LAW* 5 (Manchester University Press, 2005)
fundamental violation of human rights. On the other hand, many developed nations, including
the United States, recruit high school children into the military through junior reserve officer
training programs, depicting a life of military service in the most noble and patriotic manner.
Upon high school graduation, boys and girls as young as 16 years of age in Britain,\(^{21}\) and 17
years of age in the United States\(^{22}\) may legally enlist into the armed forces. Burundi and Canada
set the official age of enlistment at 16 years (with parental or guardian permission), while Oman
and Yemen have official enlistments set at age 14, and Bahrain at 15 years of age.\(^{23}\)

In some states where military service is based on indiscriminate compulsory conscription,
recruits can be very young.\(^{24}\) In Bolivia, where the official age of enlistment is 19 years,
approximately forty percent of the army is believed to be under age 18, with about half of that
percentage being below the age of 16.\(^{25}\) Many teenage boys (and those who have reached the
age of 18) are rounded up in conscription operations called batidas (also practiced in Colombia)
in which recruitment units go to public areas where youth gather, such as in transportation
centers, and check for military service documents against a male’s age.\(^{26}\) Officially, but not
necessarily in practice, if the young men do not have such documentation and are 18 years of age
or older, they are placed on a truck and sent off to recruitment depots for processing into the
military to serve for between 12 and 24 months. Under international law, such an involuntary

\(^{21}\) Armed Forces (Enlistment) Regulations 2009, SI 2057, s. 4.

\(^{22}\) 10 USC § 505(a) (2006). Recruits who are seventeen at the time of enlistment must have written permission from
their parents or guardian. The United States sponsors for approximately 400,000 high school children, where they
are taught how to be soldiers, including how to march, shoot, act, and think like soldiers. See UN Briefing Paper
(visited Apr. 18, 2010).

\(^{23}\) See Military Statistics > Manpower > Military age (most recent) by country, at NationMaster.com website,

\(^{24}\) For a complete and current rundown of states having conscription, see Military Statistics Conscription (Most
Recent) by County, NationMaster.com website, available at <http://www.nationmaster.com/graph/mil_con-military-
conscription>.


\(^{26}\) Military conscript in Colombia is governed by Ley 418 de 1997, and in Bolivia by Ley Servicio Nacional
Defensa, Articulo 22.
recruitment method is a violation of Article 9 of the International Covenant on Civil and Political Rights, and it does not help that many nations, such as Colombia, do not recognize conscientious objection—a further violation of the Covenant (art. 18).  

In some armed conflicts, the government itself is the aggressor against children, conscripting youngsters to fill the ranks of its military forces. Many come from impoverished circumstances in which the families of children taken into military service “cannot effectively complain about their treatment.” Once children are rounded up by forced recruitment and placed into indoctrination and training units, maltreatment of child conscripts is alarmingly common. Both young boys and girls are routinely raped and assaulted as part of their conditioning or as a result of lack of discipline among military personnel who oversee them. 

In Burma, children as young as ten years of age have been inducted into the armed forces using falsified enlistments papers that indicate their age to be 18 years. They are forced to work in menial labor and are beaten by older soldiers. Even in Great Britain, 17-year-old army recruits have been subjected to physical and sexual abuse, and according to Amnesty International, more than 1,700 non-natural deaths have been reported in British army barracks since 1990. In an interview conducted by the author in Colombia several years ago, a young conscript whose family worked on the author’s Colombian farm, told of the brutality he experienced at the hands of his drill instructors in basic training, and described how one of his

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28 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 9 (Manchester University Press, 2005). 
fellow recruits was beaten with a board by a sergeant so badly that he was permanently rendered a paraplegic, and that no sanction was placed on the instructor for crippling the boy.

As children become more desirable for use as combatants, particularly by irregular combatants, they become at the same time victims of their circumstances, often caught up in forces beyond their control and often beyond the control of the adults who care for them. Their childish naiveté places them at great disadvantage and makes them susceptible to becoming fighters. Because they are so young and impressionable, they tend to be fearless, have not yet developed an adult’s sense of self-preservation, and are “less able to assess the risks of combat.” Children generally don’t affirmatively look to become soldiers, although some volunteer in order to escape poverty, to obtain personal safety and protection, or to pursue desires for revenge. Most become combatants simply because they are born into regions of conflict, or they belong to cultural or tribal groups that are exploited by more powerful entities who occupy their geographic region or enter a child’s homeland with the express purpose of harvesting children to become combatants or fill various roles of forced servitude, including sexual servitude. To make matters worse, there are reports indicating that some children are being taken back into armed groups after having been released or freed from fighting because

35 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 9 (Manchester University Press, 2005) (noting that forced recruitment is used by government forces, the irregular forces aligned to the government, and rebel forces as a method of repression aimed at minority and dissident groups who might at some point challenge the efforts by such armed groups to assert hegemony.
36 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 10 (Manchester University Press, 2005).
they have already learned the skills of soldiering and have become conditioned to killing and the hardships of warfare.\textsuperscript{37}

Conditions among illegal armed groups are even more brutal for children forced into their ranks. There are several universal traits in common among many illegal armed groups around the world that use child soldiers. First and foremost, the leaders of armed groups know that children are docile, impressionable and easily manipulated.\textsuperscript{38} Second is that they employ horrific methods to indoctrinate children to become willing fighters. Children are routinely drugged with heavy narcotics and hallucinogens, making them extremely violent and capable of committing unspeakable acts.\textsuperscript{39} Some children have scars on their temples where there leaders have made cuts and rubbed in cocaine before attacks.\textsuperscript{40} According to one child soldier, his addiction to narcotics induced him to commit horrible acts.

The first time I went into battle I was afraid. But after two or three days they forced us to start using cocaine, and then I lost my fear. When I was taking drugs, I never felt bad on the front. Human blood was the first thing I would have every morning. It was my coffee in the morning … every morning.\textsuperscript{41}

As part of the indoctrination and control process, child soldiers are forced to commit mayhem, to maim, and to kill their own fellow recruits and sometimes family members.\textsuperscript{42} Not only does this condition them willingly to carry out atrocities, but it effectively severs their ties

\textsuperscript{38} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 10 (Manchester University Press, 2005).
to their communities, ensures they can never escape to return home, and creates strong emotional dependency relationships between the them and their commanders.

The strategy of the MNR [REMANO] was to intimidate young boys until their socialization pattern was broken and they actually accepted a gun willingly. Then they were forced to kill someone. The typical process entailed taking a boy back to his own village and forcing him to kill someone known to him. The killing took place in such a way that the community knew that he had killed, thus effectively closing the door to the child ever returning to his village.

Many illegal armed groups literally go out to hunt children for forced recruitment into their ranks. This is a widespread practice throughout the world where child soldiers are found. Much of the recruitment of children is by brute force, kidnapping and abduction. One common form of forced recruitment is press-ganging, where armed militia groups travel the streets and public places, including schools, to capture children they encounter. In Northern Uganda from 1995-1997, between 5,000-8,000 children were abducted directly from schools by the Lord’s Resistance Army (LRA) to serve as child soldiers. Children are also abducted or recruited from within the conflict areas held by armed groups, from secondary countries, from refugee communities, from within ethnic diasporas, or by organized human trafficking operations across borders. Propaganda and ideological brainwashing can also lure children into the ranks of the armed forces.

Reliable statistics for the number of child soldiers in the world today are difficult to compile. This is due to the nature of internal armed conflicts, which can subside and end as

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44 Matthew Hapgood, CHILD SOLDIERS IN INTERNATIONAL LAW 10 (Manchester University Press, 2005).
quickly as they begin. The Coalition to Stop the Use of Child Soldiers no longer attempts to present an actual count of child soldiers, noting in its most recent 2008 report that while it is estimated the number of child soldiers has fallen since its last report in 2004 due to cessation of hostilities where child soldiers were involved in fighting, new conflicts have arisen involving child soldiers for which no reliable data has been compiled.\(^\text{49}\) Prior to 2004, the United Nations Office for the Coordination of Humanitarian Affairs estimated that more than 500,000 children under 18 years of age were under arms in both government and non-state forces in over 85 countries.\(^\text{50}\) At any one time, more than 300,000 of these children were actively fighting as soldiers with government armed forces or armed opposition groups around the world, mostly in armed groups fighting in opposition to their governments and/or against other government-opposed forces.\(^\text{51}\) Although most of these child soldiers are between the ages of 15 and 18 years of age, some are as young as 7 years of age.\(^\text{52}\) Colombian rebel groups have for years been particularly egregious in forcibly recruiting children, some as young as 8 years of age,\(^\text{53}\) to lay land mines and plant explosives, bear ammunition, or fill the ranks of combatants when necessary. Often, the precise age of child soldiers are never known,\(^\text{54}\) because the children do not have birth records stating the child’s name and age.\(^\text{55}\)


\(^\text{50}\) Special Report: Child Soldiers, United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN), 2003, available at <www.irinnews.org>. The Coalition to Stop the Use of Child Soldiers placed that number at around 300,000.


The treatment of girl soldiers is particularly brutal. Although both government forces and illegal armed groups that recruit or force young women and girls into their ranks expect them to perform the same duties as their male counterparts, female combatants, especially girls, face gender-specific abuses, such as sexual exploitation, including habitual rape and forced abortions. It is estimated that up to 40% of the 300,000 children associated with armed groups are girls. In the Democratic Republic of Congo, where the primary role of girl soldiers was to fight, a large number were also exposed to sexual violence. One girl in Northern Uganda was 14 years old when she was abducted into an illegal armed group in 1996:

That evening all girls were separated from the boys, and we divided up among different men. The man I was given to had two wives. That night, he called me to him. I went obediently, expecting him to ask me to do something for him like take some drinking water. Instead, he told me to sit down next to him, and he started to feel my breast. I pushed his hand away in disgust. I was so embarrassed that I wanted to insult him. He told me to lie down. I refused. He asked me if I had ever seen a dead body. I said no, I hadn’t. Then he said: ‘You will soon see your own corpse.’ He pushed me down and lay on top of me and raped me. I cried out and begged him to stop, but instead he pushed his hand into my mouth and threatened to kill me if I didn’t stop. He raped me three times that night. In the morning, I crawled out of his hut [...] my private parts were very painful. I could not urinate without crying out in pain. I couldn’t believe it when two days later he called me again and raped me twice. My life went on this way for months.

57 See George Bryjak, The Tragedy of Child Soldiers, PEACE MAGAZINE 23:3:26 (July/Sept. 2007) (noting how Colombian girls attached to illegal armed groups there are forced to undergo abortions if they become pregnant). Colombian and Honduran girls taken into the ranks of illegal combatants have been subjected to continual rape and forced abortions. See Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008 - Colombia, 20 May 2008, available at <http://www.unhcr.org/refworld/docid/486cb0f4c.html>. See also MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 16 (Manchester University Press, 2005) (describing how one Honduran girl was forced to have sexual relations with a solder and then forced to undergo an abortion).  
The indoctrination of children into the ranks of illegal armed groups is also accomplished by exploiting the taboos and beliefs imbedded in their culture. In Africa, child soldiers are sometimes smeared in butter prepared from the African Shea tree and told this will stop bullets and prevent them from returning home.\(^\text{6}\) During the Iran-Iraq war in the 1980s, thousands of Iranian children were sent to the front lines to fight and clear mines, “armed with makeshift rifles, a dose of ‘martyr’s syrup’, and the keys to paradise around their necks.”\(^\text{6}\) Some are initiated into secret societies and told that the magic (juju) they receive will protect them from bullets.\(^\text{6}\) Uganda’s brutal Lord’s Resistance Army forced child soldiers to kill their fellow recruits and to participate in blood rituals.

“One boy tried to escape, but he was caught. They made him eat a mouthful of red pepper, and five people were beating him. His hands were tied and then they made us, the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him, and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, “Why are you doing this?” I said I had no choice. After we killed him, they made us smear blood on our arms. I felt dizzy. They said we had to do this so we would not fear death, and so we would not try to escape.”\(^\text{6}\)

2. The Child-Friendly Business of Warfare

The evolution and development of lightweight weaponry combined with higher capacities to inflict destruction have lessened the inherent physical limitations of children such that “the link between adulthood and the ability to bear arms no longer exists.”\(^\text{6}\) Many modern infantry


\(^{6}\) MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 4 (Manchester University Press, 2005).
weapons are easy to use, work well in poor conditions, are readily available and cheap to obtain, and do not require great physical strength to operate with deadly effect. Along with mechanized mobility, a child soldier of very tender age becomes as deadly as an adult twice his age. This ease of arming children, coupled with the drugs, alcohol and magical potions given to children by military leaders, convert these children into ruthless combatants, while still giving commanders the flexibility to use children “where their size and agility is particularly useful, for espionage, carrying communications, and (more recently) de-mining.” Also contributing to the increased use of children in warfare is that many recent conflicts occur in countries located in hot and humid tropical regions where children contend with harsh climates better than older combatants. During Mozambique’s internal conflict in the 1980s, the rebel group RENAMO aggressively forced children into its ranks, according to one former RENAMO child soldier, because “kids have more stamina, are better at surviving in the bush, do not complain, and follow orders.”

On the other hand, because they are not fully developed physically, child soldiers are more prone to injury caused by their activities as combatants and from punishments and brutal training methods imposed by their commanders and older fellow combatants. Reported injuries

66 Guns, such as AK-47s or M-16s can be field stripped and reassembled by children as young as ten years of age. See Monique Ramgoolie, Prosecution of Sierra Leone’s Child Soldiers: What Message is the UN Trying to Send?, Columbia International Affairs Online, at 148, <www.ciaonet.org/olj/jpia/v12-2001.pdf>.
67 In Uganda, for instance, an AK-47 can be bought for the same price as a chicken, while in Mozambique the same weapon is available for the same price as a bag of corn. See Joseph Madubuike-Ekwe, The International Legal Standards Adopted to Stop the Participation of Children in Armed Conflicts, 11 ANN. SURV. INT’L & COMP. L. 29, 34 (2005).
68 See MATTHEW HAPPO LD, CHILD SOLDIERS IN INTERNATIONAL LAW 5 (Manchester University Press, 2005) (noting that “the worldwide availability of cheap, lightweight automatic weapons has meant that children can participate in combat on a far more equal footing with adult combatants than in any previous period”).
70 MATTHEW HAPPO LD, CHILD SOLDIERS IN INTERNATIONAL LAW 5 (Manchester University Press, 2005).
71 Mozambican National Resistance fought a civil war against the ruling Liberation Front party (FRELIMO), and in the 1980s, against Zimbabwean government forces.
72 MATTHEW HAPPO LD, CHILD SOLDIERS IN INTERNATIONAL LAW 9 (Manchester University Press, 2005).
include hearing loss caused by the use of heavy weapons without ear protection and loss of limbs and blindness due to improper or inadequate training or safety precautions.\textsuperscript{73} Also, child soldiers are forced to perform strenuous tasks for which they are not physically suited, and without proper food and rest, their fragile bodies break down quickly.\textsuperscript{74}

Child soldiers also suffer grave and long-term psychological trauma. If being taken from the relatively secure surroundings of their homes and community is not traumatic enough, the accompanying abuse and beatings by their commanders adds to long term desensitization and dulling of emotional responses. “Child soldiers are often the victims, perpetrators and/or witnesses of atrocious acts: killing, maiming, rape, torture, wounding, the destruction of property and displacement of people. They develop a dependency relationship with their commanders and become inured to killing.”\textsuperscript{75} Some child soldiers believe their personal safety is greater inside armed groups than if they remain outside among at-risk groups such as street children, refugees, and displaced populations.\textsuperscript{76}

Still, many child soldiers develop post-traumatic stress disorder, “as well as experiencing feelings of fear, impotence, guilt and depression.”\textsuperscript{77} They lose critical years in their educations, which has an impact on their emotional and intellectual development. Even when they are rescued, demobilized, and reintegrated, their lack of education and work skills makes them unemployable, and long term absence of taking accountability for their actions renders them unreliable and unpredictable to potential employers.\textsuperscript{78}

\textsuperscript{73} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 17 (Manchester University Press, 2005).
\textsuperscript{74} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 17 (Manchester University Press, 2005).
\textsuperscript{75} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 17 (Manchester University Press, 2005).
\textsuperscript{77} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 18 (Manchester University Press, 2005).
\textsuperscript{78} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 18 (Manchester University Press, 2005).
Stigmatization is another long-term obstacle for child soldiers attempting to reintegrate into society. In many communities, the atrocities they have committed or are associated with having committed render them pariahs, unwelcome and unwanted, even by family members who fear abuse and retaliation by neighbors if they take back their children. Stereotyping of former child soldiers as being wild and violent further alienates them from society and increases their anxiety and sense of being an outcast without value. Moreover, conditions where the child soldier is reintroduced may be problematic, particularly in cases where the former child soldier’s home and locality is now controlled or populated by opponents of the group in which he or she was attached.

Former girl child soldiers face even more stigmatizing challenges. Many contract sexually transmitted diseases and have fertility problems as a result of poor medical care and treatment during their time as child soldiers. “They may have borne, and now have responsibility for, their captors’ children.” In many societies, particularly where there is a strong tribal structure, families face the shame of having girls who were child soldiers and who were sexually abused. A girl child soldier also faces damage to her marriage prospects that can be so critical to securing or improving economic stability, and she may be deemed even more unfit for employment than their male counterparts.

There is nothing child-friendly about children caught up in conflict. They are treated as expendable chattel in the prosecution of warfare. They are victimized, abused, and dehumanized. In many instances, the livestock and animal companions are treated with greater

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79 See ILENE COHN AND GUY S. GOODWIN-GILL, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICTS 100 (Clarendon 1994, reprint 2003) (reporting on how “Iran’s attempts to return Iranian child POWs were rebuffed by the Khomeini government, which was said to prefer martyrs to heroes. ‘In any case, outsiders fear[ed] with good reason that children sent back [in 1984] would [have been] abused for allowing themselves to be captured, accused of having been brainwashed and turned traitor.’”).
80 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 18 (Manchester University Press, 2005).
81 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 18 (Manchester University Press, 2005).
82 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 18 (Manchester University Press, 2005).
deference and care. They are viewed by illegal armed groups and many government forces as providing an inexhaustible resource to fill the ranks of combatants and to handle duties in the military chain of command that allow the adults to do more of the fighting. They are sent into the line of fire to expend the ammunition of opponents in advance of committing the adult combatants to the fighting. They are driven to do the most heinous acts under circumstances where they learn from early on that everything they do is a matter of life or death.

III. International Law Intended to Protect Children from Becoming Combatants

International Humanitarian Law (IHL) embodies the law that regulates the conduct of combatants and the protection of civilians in armed conflict, including protection of children. The corpus of laws that comprises international human rights and customary international law also governs the recruitment and use of children in armed conflict. The combined substance of these international laws imposes upon nations both rights and obligations. States assume obligations and duties “to respect, to protect, and to fulfill human rights.” While IHL and international laws pertaining to human rights are codified into instruments such as conventions and agreements, customary international law is an unwritten authority that embodies universally recognized and accepted norms and conducts to which a majority of nations agree to respect and abide. Customary international law develops from States’ practice, and typically includes prohibitions on the use of force, crimes against humanity, war crimes, piracy, genocide, and

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slavery. While it is not written down per se, customary international law is considered binding on the international community.

Within the context of child soldiers, customary international law binds states to the international law that protects children in conflicts, regardless of whether a nation is party to a written treaty or convention. Also, a State may become a party to an instrument of international law by a single act of accession, whereby the State agrees to be bound by the terms of the treaty.

A. Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict

The Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict (CRC) are human rights instruments applicable in times of armed conflict as well as during periods of peace. The main objective of both is to ensure that the child, “by reason of his physical and mental immaturity,” receives “special safeguards and care, including appropriate legal protection, before as well as after birth.” The CRC has three general principles: that every child has an inherent right to life (art. 6), that State Parties have a duty to preserve a child’s identity, “including nationality, name and family relations as

recognized by law without unlawful interference” (art. 8), and that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (art. 19).

The CRC defines not only the rights of a child in armed conflict, but also provides a legal definition of childhood. Under the CRC States have a duty to apply the rules of international humanitarian law that are relevant to the child, and to take “every feasible measure” to ensure protection and care of children under the age of 15 years who are affected by armed conflict (art. 38(2)). However, the CRC is directed to the conducts of States rather than to non-state belligerents.

The CRC addresses the recruitment of child soldiers in Article 38 and directs that States Parties refrain from using or recruiting children under age 15 in their armed forces. The CRC, in this regard, contradicts the notion that children up to the age of 18 years should not be used as child soldiers, and in fact, recognizes a State’s right to recruit or conscript children between the ages of 15 and 18 years. Where the CRC draws the line concerns how such a child placed under arms must be treated, mandating that international humanitarian law applies in armed conflicts, which are “relevant to the child” (art. 38), and that States Parties shall ensure that, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (art. 37(a)). The CRC also sets forth the requirement that State Parties are responsible “to promote

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physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” (art. 39).

The challenge for States Parties emerging from armed conflict, with regard to the plight of child soldiers, is that in some cases, it may be extremely difficult, if not impossible, due to the loss of infrastructure, government authority in conflict zones, and the incapacity of social services, to attend to the long-term physical, emotional, and economic needs of child soldiers. It all sounds noble on paper filed at the United Nations, but in practice, the reality of conflict and post-conflict conditions is that some States are impotent to comply with the mandates of this Convention. While the will of the States to recover the child soldier may be strong, the ability to make it so may be absent. Does it then become incumbent upon intervention by other nations or by non-government organizations such as Save the Children or the International Committee or the Red Cross to fulfill the commitments imposed upon a State under international law? Are such organizations bound to intervene in the absence of State capacity? These are thorny issues with regard to the rehabilitation and reintegration of children into societies, particularly with regard to the cultural intricacies and societal morays about which international intervening entities may have little or no knowledge or sensitivity. An outside organization can say, “Look, we have to do something to make the child soldier whole again because his or her government cannot undertake this duty.” But that does not mean the organization is truly capable of overcoming the cultural factors that may impede recovery of the child soldier back into society. Moreover, there is the issue of long-term monitoring of the children as they grow into adulthood,
or in some instances, are re-recruited into new armed conflicts. These are conditions and nuances that the words and sentiments of international law are largely incapable of addressing.

The most significant feature of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, entered into force in 2002, is that the recognized age for participation in hostilities was raised from 15 to 18 years—a decision that was influenced by the 26th International Conference of the Red Cross and Red Crescent in 1995. The Protocol also fortifies the intent of the Convention on the Rights of the Child in several significant ways. The minimum age for compulsory recruitment or direct participation in hostilities is established at 18 years (art. 2). This attempts to correct the glaring problem inherent in the protection of child soldiers created by the CRC in which the minimum age of recruitment was set at 15 years. Voluntary recruitment is allowed under 18 years of age (art. 3(3)), but with several provisos: (a) Such recruitment is genuinely voluntary; (b) informed consent of the one’s parents or legal guardians is required; (c) voluntary recruits must be fully informed of the duties involved in military service; (d) reliable proof of age prior to enlistment must be provided.

Again, on paper this seems like a sound set of rules, however, in many parts of the world where children are recruited into armed conflict, finding proof of age or parents or legal guardians able to give consent may be impossible to obtain (such as in places where famine or large population displacements have occurred and vital records or the ability to identify and determine the age of a young recruit have been lost).

Of greater, and still more problematic significance, is the distinction created by Article 4 of the Protocol, which sets out requirements to be followed by armed groups “that are distinct from the armed forces of a State.” Here, armed groups are directed not to recruit or use in

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hostilities persons under the age of 18 years “under any circumstances” (art. 4(1). In addition, “State Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices” (art. 4(2). But one must ask, what is the authority in cases where an armed group, such as a paramilitary organization, like the Autodefensas Unidos de Colombia (AUC), is deployed in support of government forces or used as a vanguard by government forces to enter and cleanse conflict zones and thereby create a degree of separation between the government and the human rights abuses that may occur at the hands of that paramilitary force? Moreover, does anyone reasonably believe that the leaders of such armed groups are really going to be concerned with the consequences or threat of punishment for violating art. 4 of the Protocol? We are talking here about holding accountable armed groups that in some situations may rely heavily on the recruitment of children just to keep a fighting force in the field, or who rely on the forced recruitment of children to destabilize and demoralize the enemy. We are talking about cases of armed groups, as well, that forcibly recruit children as a political and strategic agenda for furthering its aims in gaining power or hegemony over contested territory. In such cases, then, it becomes the domain of other international human rights provisions to hold accountable such armed groups and the actors within who forcibly take children into their organizations.

B. Cape Town Principles and Best Practices

In 1997, the NGO Working Group on the Convention on the Rights of the Child and UNICEF convened a symposium in Cape Town, South Africa, to debate the plight of child soldiers and develop strategies for preventing recruitment and improving demobilization apparatus. The product of the symposium, known as the Cape Town Principles and Best
Practices, served as something of an interim addendum to the Convention on the Rights of the Child and to the Protocol. The Principles called on governments to ratify the Optional Protocol, which was still in the adoption phase, and to establish a minimum age of 18 years “for any person participating in hostilities and for recruitment in all forms into any armed force or armed group.” The Principles focused on three issues specifically: (1) Prevention of child recruitment in hostilities, (2) Demobilization, and (3) Reintegration into family and community life.

1. Prevention of Child Recruitment in Hostilities

The Principles can be construed as being highly idealistic and to some extent impracticable in the real world of conflict. Among the lofty directives promoted in the Principles which would be very difficult, especially in internal armed conflicts, to enforce were the following directives, which merit some brief comment:

- Establish a permanent international criminal tribunal with jurisdiction over the illegal recruitment of children.

Establishing a permanent international criminal tribunal arises from recent jurisprudence finding that the recruitment of children under 15 years of age to engage in hostilities is a war crime under contemporary international law. Court rulings in the Special Court of Sierra Leone, the International Criminal Tribunal for Rwanda, and the International Criminal Tribunal for Yugoslavia established a baseline for interpreting various provisions of Article 4 of the Statute of the ICTR, Article 3 of the Statute of the ICTY, and Article 4 of Additional Protocol II to the Geneva Conventions, all confirming that child recruitment “poses an affront to human dignity and well-being and is inhumane. Save for murder, child recruitment is an act of the same gravity
as the violations listed in Article 4 of the [Rome] Statute of the ICTR,” and that “child recruitment is a positive act, containing both a mental and physical element, for which individuals can be held responsible both for the complete and the inchoate offence. It is therefore subject to criminal sanctions in exactly the same manner as breaches of the other fundamental guarantees listed in the Statute.”

Subsequent jurisprudence following establishment of the ICC arises from the inclusion of the conscription or enlisting of children as constituting a war crime where the Elements of Crimes under Article 8(2)(b)(xxvi) of the Rome Statute are met:

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.
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.

In January 2007, Thomas Lubanga, a militia commander in the Democratic Republic of Congo, became the first individual to be charged with war crimes for enlisting and conscripting children under the age of 15 years to participate in hostilities during the civil war in 2002-

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What began as a hallmark test of the ability of an international criminal court to bring a recruiter of child soldiers to justice quickly turned into a legal fiasco when shortly before the start of the trial, the Trial Court I stayed the proceedings because the prosecution could not provide to the court or the defense hundreds of documents it had acquired through confidential means as allowed under art. 54(3)(e) of the Rome Statute. The stay was lifted in January 2009 and the trial proceeded. As of the writing of this article, the Lubanga trial is still underway. The very fact that this trial has been ongoing since Lubanga’s arrest in March 2006 presents several issues with the notion of using an international criminal tribunal to hold accountable those who recruit child soldiers. As a number of legal scholars have pointed out, the international community expects results from the ICC and places enormous pressure on the court to try and convict those brought before it. Furthermore, some court watchers have expressed concern that the functional focus of the court is too much on Africa and that some cases warranting trial before the ICC have been dropped due to the lack of “gravity” of the criminal acts. The wheels of justice also seem to move very slowly at other international criminal tribunals. The case of Vojislav Seselj, accused of crimes against humanity and brought before the ICTY in February 2003, is still in trial as of April 2010.

Some international criminal law specialists are pondering the notion of a permanent Trial Chamber to deal with Article 8(2)(b)(xxvi) and (20)(c)(vii) violations. This author and noted legal scholar Jordan Paust tend to agree “given the large number of violations and serious short

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105 This is a view opined in a May 3, 2010 email exchange with Jordan Paust, an eminent international legal scholar, who has, like the author, heard similar sentiments about the work and focus of the ICC.
and long-term effects.”

However, were a special trial chamber in the ICC established to handle cases of such limited jurisdiction, there would be several problematic issues to resolve. First, the demonstrated length of trials at the ICC presents a risk of spoilage of evidence and the loss of witnesses. Second, public interest would wane over time and support for such exclusive proceedings could waiver. Third, as Paust rightly points out, budget limitations in the ICC and “the fact that there are so many other war crimes within the jurisdiction of the ICC” may necessitate difficult choices having to be made with regard to bringing violators of war crimes to justice.

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- Parties to a conflict should memorialize in writing agreements as to the minimum age for recruitment.

The idea of parties to a conflict (especially one involving a civil war between tribal groups taking place in remote areas where literacy and the rule of law are all but non-existent) memorializing in writing agreements to abide to an age restriction in the recruitment of combatants is almost absurd. Armed groups are generally in a life or death struggle where replenishing combatants is a constant preoccupation, and the last thing a desperate armed group would do is bind itself to an agreement that would deny them access to a plentiful source of recruits needed to stay in the field. Some groups, particularly in African conflicts, practice the most ferocious and heinous acts of brutality as a matter of routine. They do so because such acts are deeply imbedded in the culture of their warrior past, or because belligerents have reached such a state of violence that all standards of moral and ethical conduct cease to exist or hold meaning. The Lord’s Resistance Army in Uganda, for example, portrays itself as a sectarian Christian militant group, yet practices ritualistic mutilation, brutal sexual assault, and forced

107 From an email exchange with Jordan Paus, May 3, 2010.
cannibalism as part of its strategy to terrorize opponents and control its own combatants.\textsuperscript{109} Realistically, the interest level of such a group in agreeing to restrict the age of the people they recruit is about zero.

Armed groups may be willing to sign on to such an agreement for reasons of propaganda and currying good will, only to renege at a later date, or to ignore the agreement entirely. This has been the case of Colombia’s FARC guerrillas, which in 1999 agreed to requests by the UN Special Representative to end recruitment of children under the age of 15 years, but never actually complied with the agreement.\textsuperscript{110} It was also later rumored that the UN Special Representative had inappropriate conflicts of interest with the FARC high command.\textsuperscript{111}

- Community-based efforts to monitor, document, and advocate for the elimination of child recruitment should be developed and supported.

As a general rule, armed groups terrorize communities in an effort to gain hegemony. This author has served as an expert witness on behalf of individuals from Central America and Colombia who claimed asylum based on persecution by illegal armed groups and the inability of the State to protect their civil and human rights in the face of such persecution. Several of the asylum petitioners were community activists or perceived to be associated with social improvement organizations or political parties whose activities were anathema to the goals of the armed groups to control the populations within their sphere of influence, both in rural and urban communities. In conflict regions, the State has little control and is generally preoccupied with taking care of its own forces. The State possesses little capacity or desire to expend valuable resources on ensuring the safety of community-based organizations as they go about the business

\textsuperscript{109} See generally Paul Raffaele, Among the Cannibals: Adventures on the Trail of Man’s Darkest Ritual 173-228 (Smithsonian, 2008).
\textsuperscript{110} Matthew Hapgood, Child Soldiers in International Law 41 (Manchester University Press, 2005) (noting that the FARC “expressed a willingness to explore with the UN and relevant NGOs a framework for the demobilization of children already within its ranks,” but never acted on establishing such a demobilization framework).
\textsuperscript{111} According to interviews conducted by the author in the early 2000s.
of monitoring and reporting on instances of child recruitment into armed groups. In instances of such organizations monitoring the recruitment practices of a government’s armed forces, such reporting is subject to the manner in which the State controls the press and the privileges it allows to community and non-government organizations. In the case of illegal armed groups and their forced recruitment of child soldiers, community-based organizations would have to be willing to operate at their own peril. This poses problems for accurate monitoring, to say the least.

- “Alternatives to the glorification of war, including those images shown in the media, can be provided to children.”

The idea of showing to children images that depict alternatives to the glorification of warfare is a nice sentiment, but difficult to imagine being successful in the face of brute force asserted by armed groups. One must overcome historical and cultural patterns of violence and the warrior mentality imbued in children the world over from birth. Children and the communities in which they are at risk of being recruited are often under extreme duress. Alternatives may be impossible to contemplate and so remote as to be untenable. It is difficult to imagine that children belonging to second or third generations of populations caught up in long-running conflict could be influenced by the demonstration of alternatives. There is too much going on in a child’s mind, such as the need for survival, peer pressure, control asserted by adults, a desire for inclusiveness, a desire for revenge, and the reality of living in conditions in which nearly every decision brings extreme consequences.

2. Demobilization

The Symposium members called for a strategy for more effective demobilization of child soldiers, beginning with the directive that, “Direct and free access to all child soldiers should be

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granted to relevant authorities or organizations in charge of collecting information concerning
their demobilization and of implementing specific programmes.” Chief among the plan
offered was that “priority should be given to children in any demobilization process.” It may
seem to some reasonable thinkers that such a priority has inherent problems. For example, which
child soldier should be given greater attention in the demobilization process, and which one may
have the greater need? A 14-year-old child soldier who has been combatant for less than a year,
or a 19-year-old who has been a combatant for five years? Should not a plan or priority be based
on time under arms rather than age at the time of demobilization?

Once a child soldier is demobilized, to what extent is a State willing to spend limited
funds to care for the demobilized child soldier and see to their return to their place of origin? In
conflicts in which many thousands of child soldiers have been involved, the demobilization
process can be prohibitively expensive and time consuming.

The UN Special Representatives overseeing demobilizations have reported mixed results
in the making of action plans for the demobilization of child soldiers. In the Democratic
Republic of Congo, the UN Special Representative reported obtaining sixty commitments from
fifteen parties to demobilize child soldiers, but many other such agreements have not been
observed.

3. Reintegration

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115 Report of the Special Representative of the Secretary/General for Children of Armed Conflict, Nov. 10, 2003
116 MATTHEW HAPFOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 41 (Manchester University Press, 2005).
The Symposium members organized recommendations for reintegration around the notion that “family reunification is the principal factor in effective social reintegration.” In an ideal world, that makes perfect sense. However, there are places in the world, such as Serbia and Bosnia, Rwanda, Uganda, Cambodia, and Colombia where entire communities have been snuffed out of existence. Many child soldiers have been displaced to such great distances, and so thoroughly traumatized by the experience at such a tender age, that reuniting them with their families or tribal communities may be impossible. RENAMO forces, originating in Mozambique, force marched child soldiers into Zimbabwe to fight in the 1980s, while Uganda’s Lord’s Resistance Army forced child soldiers into southern Sudan where it maintains support bases for training and provisioning. Once there, the children have been held for ransom.

If we accept that under art. 39 of the Convention on the Rights of the Child that child soldiers fall into the category of victims of neglect, exploitation, abuse, cruel, inhuman or degrading treatment and/or armed conflict,” then States absolutely bear the responsibility of rehabilitating and reintegrating the child soldier back into the society. This responsibility is described ambiguously as “all appropriate measures,” and is fortified by art. 7 of the Optional Protocol, which states that “States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.” This sounds good, but in reality, what does this actually mean if a State is not in a position to do so or there is no voluntary fund available for the process of reintegration? What becomes of the child? As time passes, the child grows older, the window of opportunity to educate the child is squandered, and

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118 Italics added. MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 110 (Manchester University Press, 2005).
119 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 110 (Manchester University Press, 2005).
the possibility may arise that a new or re-emerging conflict will sweep that individual back into hostilities. It is all well and good that international law provides a legal framework and a set of principles to chart a course for reintegration, but in the real world where conflict has so thoroughly destroyed government authority and so thoroughly eradicated the underpinnings of a civil society, how realistically can such legal directives be implemented and enforced?

On the contrary, there is evidence to suggest that States actually try to minimize their legal responsibilities and obligations under international law to provide financial and emotional support for former child soldiers.120 The most influential report on children in armed conflict, known as the Machel Report,121 paints a discouraging picture of States ducking their obligations to help child soldiers among their populations. The Report notes that no peace treaty to date formally recognizes the existence of child combatants122 and cites the case of Mozambique, where recruitment of children was well known, but “child soldiers were not recognized in demobilization efforts by the Resistência Nacional de Moçambique (RENAMO), by the Government or by the international community.”123

As mentioned earlier in this article, the societal prohibitions confronting the reintegratio

of the child soldier remains a universal barrier for children emerging from years of violent fighting. Families, communities, and tribal groups have great difficulty in forgiving the atrocities children were either forced or brainwashed into committing. A State can attempt to impose an obligation onto a community to take a child back into the fold, but without long-term

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120 MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 110 (Manchester University Press, 2005).
monitoring and follow-up care, an undertaking that can be very costly to the State, it is difficult
to assume whether government promoted reintegration is possible in many cases.

One final note of particular interest about the Principles was the call for a code of conduct
for journalists covering conflicts in which child soldiers were present. Such a code would “take
account of, *inter alia*, the manner in which sensitive issues are raised, the child’s right to
anonymity, and the frequency of contact with the media.”\(^{124}\) This is an overly naïve aspiration.
The press, especially the segment of the press that relies on shock content, cannot be monitored
at all times. While a reputable news organization may have standards of reporting, in many
conflict zones, contract and freelance reporters are used to provide news stories. The story that
may be toned down for a “responsible” news organization may also be sold elsewhere to a
notorious news entity with all the gruesome details. Also, the rise of blogging, satellite
reporting, and Internet-based media transfer renders compliance to a code of conduct for the
press not only more problematic, but also potentially irrelevant.

C. **Declaration on the Protection of Women and Children in Emergency and Armed
Conflict**

The Declaration on the Protection of Women and Children in Emergency and Armed
Conflict\(^{125}\) is among the older instruments pertaining to the protection of children in armed
conflicts. The declaration was drafted in 1974 during a dark period in Cold War-induced
tensions and hostilities in the developing world. In no uncertain terms, the instrument decried
the upheaval caused by the maneuverings of superpowers and expressed deep concern “by the
fact that, despite general and unequivocal condemnation, colonialism, racism and alien and

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\(^{124}\) Cape Town Principles and Best Practices, at 8, April 1997, UNICEF, available at

\(^{125}\) [http://www2.ohchr.org/english/law/pdf/protectionwomen.pdf](http://www2.ohchr.org/english/law/pdf/protectionwomen.pdf)
foreign domination continue to subject many peoples under their yoke, cruelly suppressing the national liberation movements and inflicting heavy losses and incalculable sufferings on the populations under their domination, including women and children.”

This Declaration was issued in a spirit of near militancy when nations struggling to emerge from colonial status were beginning to flex their muscle within the level playing field of the UN General Assembly. The words chosen were selected with great care to reflect the sentiment of emerging states, with great emphasis placed on aggression, colonialism, racism, alien domination, and foreign subjugation. While the Declaration did not address the matter of child soldiers in armed conflict, the language iterated was adopted in most subsequent international instruments addressing child soldiers, namely, that “all the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children” (art. 4). This declaration directly or indirectly formed a basis upon which to address later the treatment and depredations imposed on children induced to become combatants. Reading the Declaration, one senses the anger behind the words that the drafters in the General Assembly must have felt toward the most powerful nations in the world at that time. Yet, one wonders if the drafters could have imagined at the conclusion of 1974 the firestorm of violence that would soon consume so many post-colonial states, particularly in Africa, where communist and capitalist ideologies clashed over the course of the next four decades. Like many other instruments drafted by the United Nations with regard to protection of civilians in armed conflicts, the drafters of this Declaration were thinking in terms of “conventional” warfare such as attacks and bombings, and use of chemical and bacteriological weapons in the course of military operations (arts. 1 and 2). They could not have imagined

126 Preamble of the Declaration.
children being subjected to the most heinous acts of physical violence and mental torment that emerged in subsequent conflicts—children forced to kill their families, forced to eat human flesh, drugged into complacency or desensitized by narcotics to able to commit unspeakable acts of violence. At the same time this and other international declarations imposed upon States the duty to protect women and children, and indeed, all of the civil society, there is a naiveté present in the corpus of international law that does not recognize the extent to which men can summon the darkest depths of evil to commit horrific acts against their fellow men. This leaves us to ponder, if such extreme and wanton brutality can emerge in conflict, then at what point are all the declarations for human rights and protections of children rendered impotent?

D. Other Significant Instruments

There are sundry other pertinent international legal instruments affecting child soldiers around the world. All are suitable for exhaustive analysis and commentary, but the above mentioned three instruments illustrate sufficiently the challenges States and international organizations face in invoking the weight of international law in trying to end the practice of child soldiers and the demobilization and reintegration of child soldiers back into the civil society. These challenges, to an appreciable extent, are applicable to a detailed discussion of the other instruments out there. Rather than continue with an analysis of these other instruments, we will mention them as being suitable for further inquiry outside the scope of this article. These key instruments include: the Rome Statute of the International Criminal Court (1998), the

127 Available at <http://untreaty.un.org/cod/icc/STATUTE/99_corr/cstatute.htm>. The Rome Statute of the International Criminal Court established a protection for children in the International Criminal Court. The Rome Statute makes it a war crime and allows prosecution for those who conscript or enlist children under the age of 15 years into national armed forces or who use them to participate actively in hostilities. However, the court has limited its jurisdiction only to adults who recruit child soldiers. Article 26 of the Statute states: “the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.”
International Labour Organization (ILO) Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999),\textsuperscript{128} the African Charter on the Rights and Welfare of the African Child (1999),\textsuperscript{129} specifically article 22, the Geneva Conventions (1949) and Common Article 3\textsuperscript{130} and Additional Protocol I and Additional Protocol II (1977),\textsuperscript{131} the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007),\textsuperscript{132} and several UN Security Council resolutions (1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), and 1612 (2005), respectively).\textsuperscript{133}

IV. Duty of Nations to Protect Children from Conflict

If the international corpus of declarations, conventions, and protocols has no teeth sharp enough to intimidate those who force children to take up arms and to commit horrific acts, then the next line of accountability resides in domestic legislation imposed on all citizens of a nation’s civil society. We can reduce the intent of domestic law to cover four universal requirements, reflected in the international legal instruments from which many acts of domestic legislation

\textsuperscript{128} Available at <http://www2.ohchr.org/english/law/childlabour.htm>. The International Labour Organization (ILO) is a United Nations agency that brings together representatives of governments, employers, and workers to devise policies and programs related to international labor standards. For a detailed explanation, see <http://www.ilo.org/global/About_the_ILO/lang--en/index.htm>.


\textsuperscript{130} Available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions>. Article 3 common to all Four Geneva Conventions (“Common Article 3”) Common Article 3 applies in cases of internal armed conflict and sets out the basic protections given to “persons taking no active part in the conflict.” The provisions of Common Article 3 only extend certain fundamental humanitarian protections to non-combatants; they do not provide any authoritative codification of the laws of war for non-international armed conflicts.

\textsuperscript{131} Available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/additional-protocols-1977>. Additional Protocol I to the Geneva Conventions applies to international conflicts, and among other provisions imposes the duty to “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” (art. 77(2)). Additional Protocol II applies to non-international armed conflicts in which hostilities occur between a State’s armed forces and rebel or opposition groups or other organized armed groups.


evolve: (1) the duty to protect children from being engaged in the business of war; (2) the duty to prosecute those who force children to become combatants; (3) the duty to rehabilitate and reintegrate former child soldiers back into the civil society; and (4) the duty to educate citizens about child soldiers in the hope that education will contribute to eradication of the use of child soldiers in future conflicts.

A. Duty to Protect under Domestic Law

1. Regarding the Minimum Age of Criminal Responsibility

We have seen that a minimum age for recruitment and use of children in armed conflicts has been established under international law. Yet, a minimum age for criminal responsibility for children that commit crimes while involved in armed conflicts remains undecided,\(^\text{134}\) beyond a general agreement among States that there needs to be a balance between attributing criminal responsibility properly and protecting children from a legal process they may be too young to understand.\(^\text{135}\) The Special Court for Sierra Leone allows children as young as 15 years of age to come under its jurisdiction for crimes committed as a child combatant.\(^\text{136}\) Conversely, the Rome Statute does not include persons under 18 years of age at the time of the commission of a crime within its jurisdiction.\(^\text{137}\)

The Convention on the Rights of the Child calls on States Parties to set a minimum age (art. 30), and recognizes the differences of opinion regarding the definition of a “child,” as “any


person below the age of 18 years unless (emphasis added), under the law applicable to the child, majority is attained earlier.” 138 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, also recognizes differences among nations in establishing the age of criminal responsibility:

It should be noted that the age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of ‘juvenile,’ ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules. 139

However, the Beijing Rules also states that the minimum age should not be set “at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” (Rule 4.1). 140 Over the course of several years, UNICEF has issued regional reports on the minimum age of criminal responsibility. For example, the 2005 South Asia report 141 listed minimum ages as young as 7 years of age in Pakistan, and 8 years of age in Sri Lanka, with the caveat in Sri Lanka that a child between 8 and 12 years of age may bear criminal responsibility only if he or she has “attained sufficient maturity of understanding to judge of the nature and consequence of her [or her] conduct on that occasion.” 142 The determination of criminal responsibility, however, raises two significant concerns for attaching criminal responsibility to acts committed by child soldiers. First, if the minimum age established under the domestic law of a State is subject to

140 The Machel Report calls for the same criteria to be applied rather than using a subjective or imprecise criteria such as personality or puberty. See Expert of the Secretary-General, Ms. Graca Machel, Impact of Armed Conflict on Children, U.N. GAOR, 51st Session, Agenda Item 108, ¶251, U.N. Doc. A/51/306 (1996).
determination of maturity, then what is the point of having an age minimum standard if it is left up to the discretion of the court or a prosecutorial body to make a subjective decision on whether to charge a child soldier with a criminal act? Second, as duly noted in the Forward of the South Asia UNICEF report, children, and especially, one could assume, child soldiers are “likely to be from marginalized sectors of the society” and “will find themselves enmeshed in a system that sends a variety of confusing messages about their status and which is sometimes itself a prisoner of colonial laws rooted in a world that no longer exists.” Finally, and of greatest concern, is the question of determination of age where birth registrations and certification are “scant,” and “patchy adherence can undermine the best of intentions.” In situations where armed conflict has utterly destroyed the infrastructure of entire communities, the issue of minimum age may be rendered moot, at which point we are then back to a subjective standard for determining whether to attach criminal responsibility to a child soldier.

2. **Regarding Conditions of Detention when Prosecuted**

Article 10 of the International Covenant on Civil and Political Rights (ICCPR) mandates the conditions under which juvenile defendants must be treated. These conditions include separating juveniles from adults, treating them in an age-appropriate manner, and bringing them to adjudication as expeditiously as practicable. However, the ICCPR, does permit derogation

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from art. 10 “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed” (art. 4).  

Article 37 of the Covenant on the Rights of the Child (CRC) addresses issues of juvenile detention is far greater detail than the ICCPR, and does not permit derogation in times of national emergency.

- 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 (art. 37(b));
- Every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances (art. 37(c));
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (art. 37(d)).

In a perfect world, with a suitable, functioning criminal justice system, children would be afforded the rights established under art. 37. But in nations where armed conflict has eviscerated the government authority and government infrastructure, one must imagine that adherence to these measures are not realistic, and that children, especially the child soldier, will be subject to torments and retributions while in custody and exposed to the potential of vigilantism and extra-judicial acts of violence.

3. Regarding Holding Child Soldiers Responsible for Their Actions

If we subscribe to the idea that most child soldiers do not willingly participate in the commission of criminal acts during armed conflict, then to what extent shall they be held

accountable to justice? If they are to be brought to justice, then what forum is the appropriate venue for doing so, and in such a way that the child who has become a child soldier is protected under domestic and international law?

Under international law, children are generally excused from legal responsibility due to their age, although some States hold children criminally responsible as adults under national criminal laws. In the United States, for instance, children as young as 12 years of age have been sentenced to life in prison for committing homicide. That such a sentence may be handed down to children suggests that the age of eighteen years as advocated in the international law instruments we have discussed in this article may not be the only reasonable age for moral agency, even though it is widely accepted.

The age of the child soldier influences the perception of the child as either a soldier or a victim. Those children who are abducted at a very young age by armed forces are easily accepted as victims by the community. However, some children involved with the armed forces are willing perpetrators of unthinkable and unimaginable acts. Children between the age of 15 and 18 years who have already undergone cultural rites of passage into adulthood are widely considered to be the predominant youths perpetrating such acts. If such is the case, then can a universal age standard be applied across all regions of the world affected by armed

conflict, or should local custom prevail in determining whether to try a child soldier for the crimes he or she commits?

If a child is determined to be cognizant of the acts he or she committed as a combatant, then he or she is culpable before the law and must answer to charges. We accept that the recruitment of children into armed groups is most often by force and includes threats of death, drugging, and extreme violence. But we also are aware that in many cases, children willingly become soldiers, are clearly in control of their own actions, and have voluntarily committed atrocities against others.\footnote{Child Soldiers, Criminal or Victims? at 2, Amnesty International Report, available at <http://www.amnesty.org/en/library/asset/ior50/002/2000/en/f1883757-dc60-11dd-bce7-11be366d687/ior500022000en.pdf>.
} In such cases, prosecution is allowed under the CRC (art. 10), as long as the best interests of the child (and by extension, the civil society) remain a primary consideration (art. 3).

The question of whether a person under 18 years of age has joined an armed group voluntarily also needs to be assessed critically. As mentioned earlier, Article 3 of the Optional Protocol includes provisions to ensure that recruitment is genuinely voluntary (informed consent of parents or guardians, knowledge of the duties assumed in military service, and proof of age). It is extremely important that children under 18 years of age who have acted voluntarily and who were in control of their actions be held accountable for their actions in an appropriate setting, giving due consideration to their age and other mitigating factors (such as if they were brutalized...
after voluntary recruitment by their recruiters). The child’s awareness of the choices open to him, if any, should be assessed, with ample consideration given to a child’s vulnerability, maturity, and limited understanding of the legal system. Such an assessment should conform to international standards, be applied consistently among parties in a conflict, and should contribute to mitigation of the child’s responsibility for the actions committed if such mitigating factors are found.

Yet, even where a child’s decision to become a combatant is voluntary, is not a child soldier a victim of acts perpetrated against him or her by superiors who place the child in harm’s way or in a position to commit heinous conduct? Someone or some set of circumstances compels a child to become a fighter. This does not happen in a vacuum, and regardless of the implementation of standards to determine age or maturity as a benchmark to bring a child soldier to justice, prosecuting children for heinous crimes committed during armed conflicts presents a moral dilemma. If we accept that very bad things happen to child soldiers regardless of the circumstances that placed them in harm’s way, how then can a judicial authority find a balance between the best interests of a former child soldier and the public policy of prosecuting crimes perpetrated during conflict?


As we know, a crime consists of three elements: the actus reus (the conduct element), the mens rea (the mental element), and the absence of any defense. Most systems of criminal law hold that before a person can be held accountable, blameworthy, and punishable, his behavior must include a fault element. In general, to be guilty of a crime, it is not enough simply to have done a particular illegal act; both the mens rea and actus reus must be present and demonstrable. Therefore, criminal responsibility can only attach when there is sufficient mental awareness on the part of the person committing the illegal act of the consequences or the potential consequences of his or her actions.

To prosecute a child soldier successfully, the State must make certain that the child meets the intent requirements of the crime. Child soldiers, as we have seen, participate in the commission of war crimes and other atrocious acts by being coerced through various sundry methods of control and threats of death. Under such conditions, the child soldier may invoke a claim of defense of duress by threats, effectively removing the mens rea requirement. Where it is known that the child soldier was not acting freely upon his or her own will, it is not in the interests of justice to prosecute a child who clearly was not in control of his or her actions.

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Where the three elements can be proven and a determination can be made that the child soldier committed heinous acts, the question then arises as to whether a child under the age of 18 years, who was forcibly recruited into a conflict, should be prosecuted or punished as an adult might be. It is one thing to look at the black letter of the law, line up the elements of a crime against the status of the individual, and decide whether to prosecute. But in the fog of war and in conditions where humanity and the civil society have been replaced by extreme brutality and the complete breakdown of the rule of law, to what extent should such extenuating circumstances figure into the decision to hold a child accountable for the horrific acts he or she is accused of having committed? There must be more flexibility between holding a child soldier accountable to satisfy the public policy behind criminal justice and recognizing that regardless of the degree of violence or wanton conduct, the child soldier is no less a victim as is the person or property upon which the criminal acts have been perpetrated.  

International standards for a fair trial should ensure just outcomes for holding accountable those who commit heinous acts during conflict. Yet, subjecting the child soldier to a conventional trial may not serve the best interests of either the child or the civil society if the special needs and vulnerabilities of the child are not taken into account. Trials are less likely to promote the child’s well-being and social reintegration than primarily rehabilitative measures. Even if a child is found not guilty, pardoned, or provided with a disposition other than being deprived of liberty after undergoing a trial, the process of a trial itself may threaten the child’s psychological healing and make it more difficult for the former child soldier to

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reintegrate back into society.\textsuperscript{170} Furthermore, trials will misplace blame on children who were rendered by others incapable of making the choices required to show intent and even guilt.\textsuperscript{171}

Perhaps the public policy can best be satisfied (even if this does not make some members of the society feel that justice has been done) if States could recognize the vulnerability and victimization of the child soldier and redirect the attainment of justice toward reintegration, rehabilitation, and reunification with the child’s family and community.\textsuperscript{172} Such a policy would to some extent conform to the intent of the CRC, which mandates that the best interest of the child “shall be a primary consideration” in all actions concerning the child (art. 1). It also requires States to promote the establishment of measures for children accused of violating penal law “without resorting to judicial proceedings” (art. 40). Such measures could include such alternative dispositions as long-term counseling and monitoring, vocational training, restitution, and reconciliation to ensure that “children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.”\textsuperscript{173}

The approach promoted by Amnesty International merits careful consideration with regard to resolving the process of accountability for criminal acts and human rights crimes committed by child soldiers.\textsuperscript{174} If prosecution by trial may not be in the child’s best interest, then truth commissions may provide a viable alternative. Amnesty International holds the view that while truth commissions “are not a substitute for bringing perpetrators of serious crimes and

human rights violations to justice,” such a venue would satisfy three important concerns: (1) that “it is important to set an example to others that the truth about crimes and human rights violations will be exposed,\textsuperscript{175} (2) that with regard to child soldiers, the crimes committed could be exposed, “but the identity of the perpetrator should not,” thereby reducing to some extent the trauma to the child involved;\textsuperscript{176} and, (3) the “need of victims and society for justice and accountability” will be satisfied.\textsuperscript{177}

\section*{B. Duty to Prosecute Those Who Force Children to Become Combatants}

The prosecution of those adults who conscript or enlist children into armed conflict is another important and essential measure to prevent the recruitment of children.\textsuperscript{178} With regard to the recruitment of children into armed forces, general customary international law applies to all States, “so any such rules would constitute a minimum standard of behavior below which states could not fall without being in breach of their international obligations regardless of which treaties they are party.”\textsuperscript{179} The problem is that the heaviest recruiters of child soldiers are armed groups and non-state actors, which means that international humanitarian law and other international legal instruments regarding child soldiers do not apply, at least not in States that are not party to such instruments.\textsuperscript{180} Moreover, just because a State may make reservations or

\begin{flushleft}
\textsuperscript{178} Grossman, \textit{ supra } note 2, at 359 \\
\textsuperscript{179} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 86 (Manchester University Press, 2005). \\
\textsuperscript{180} MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW 86 (Manchester University Press, 2005).
\end{flushleft}
choose at some point not to be bound by a treaty obligation does not relieve it of the customary international law that forms the underpinnings of international law instruments.

Whether customary international law binds non-state actors is something of a thorny issue. Armed groups operating inside States that are parties to treaties, for instance the Optional Protocol to the CRC, are considered to be bound to those instruments.\footnote{See Ilene Cohn and Guy S. Goodwin-Gill, Child Soldiers: The Role of Children in Armed Conflicts 65 (Clarendon 1994, reprint 2003), and also Matthew Happold, Child Soldiers in International Law 95 (Manchester University Press, 2005).} However, whether an armed group is bound to a treaty obligation depends on additional factors such as if an armed group is operating outside a State’s jurisdiction or the State in which an armed group is a belligerent is a party to a treaty or convention that applies to internal armed conflicts. In the absence of conditions, customary international law should apply to both government armed forces and non-state armed groups.

On the other hand, forced recruitment of child soldiers is subject to both international law and customary international law regarding child labor and slavery. Article 1 of the International Labour Organization Convention states that State Parties “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency,” and art. 3(a) includes forced or compulsory recruitment of children for use in armed conflict as among the “worst forms of child labour.”\footnote{International Labour Organization (ILO) Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), available at <http://www2.ohchr.org/english/law/childlabour.htm>}. Forced recruitment of child soldiers is also defined as being a form of slavery (art. 3(a)). As one legal scholar notes, “This is of particular interest because slavery and slavery-like practices are already prohibited in international law, both in a number of treaties and as a matter of customary international law.”\footnote{Matthew Happold, Child Soldiers in International Law 83 (Manchester University Press, 2005).}
If we accept, then, that armed groups can be made subject to customary international law for the recruitment, forced or voluntary, or child soldiers, then we must look to the ability of international tribunals to bring such actors to justice. The Rome Statute of the International Criminal Court (Rome Statute)\textsuperscript{184} created such a venue for the protection for children in the International Criminal Court. The Rome Statute makes it a war crime and allows prosecution for those who conscript or enlist children under 15 years of age into national armed forces or who use them to participate actively in hostilities.\textsuperscript{185} However, because the age limit is 15 years and not 18 years, the recruiters of thousands of children under the universally accepted age of 18 years will not be subject to prosecution in the International Criminal Court. Also, because the Court will not prosecute individuals under 18 years of age, then recruiters of child soldiers who are themselves under 18 years of age will not be subject to prosecution.\textsuperscript{186} This also means that court’s jurisdiction extends only to adults who recruit child soldiers and not to older children.\textsuperscript{187}

The prosecution of recruiters of child soldiers, then, must be left up to special international criminal tribunals or the judicial apparatus of the State involved.\textsuperscript{188} Where we stand now in international law is that customary international law prohibits the recruitment of children under 15 years of age by both state and non-state actors, but the prohibition of children between 15 and 18 years of age remains a matter of international treaty agreements and not of

\textsuperscript{186} Art. 26 states: “the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.”  
\textsuperscript{187} Rome Statute, \textit{supra} note 141, Art. 26; Ramgoolie \textit{supra} note 21, at 153  
\textsuperscript{188} In 2004, the Special Court for Sierra Leone, in Prosecutor v. Samual Hinga Norman, Case No. SCSL-2004-14-AR729E, in the course of determining at what point in time the recruitment of child soldiers became a war crime, found that the “prohibition on child recruitment had crystallized as customary law,” based on conclusions reached over the widespread international acceptance of the Geneva Conventions, the Additional Protocol II, and the Convention on the Rights of the Child. \textit{See discussion in Matthew Happold, Child Soldiers in International Law} 94 (Manchester University Press, 2005).
customary international law—which means that bringing a vast number of individuals involved in the forced recruitment of child soldiers to justice is not forthcoming any time soon.

C. Duty to Rehabilitate and Reintegrate Former Child Soldiers

If our concern for the child soldier is to minimize or eliminate the infliction of emotional pain on the child in the course of judicial or alternative adjudication/truth commission proceedings, then it becomes incumbent upon the State authority to consider culturally appropriate, community-based methods for helping child soldiers heal and to encourage communities to reintegrate the children. For example, some indigenous cultures believe that accepting a murderer into the community invites evil spirits. To overcome such social taboos and superstitions, a social reintegration and forgiveness process might include traditional healers and cleansing processes. Where religious faiths are strong in a community, spiritual leadership may be called upon to take a pivotal role as intermediaries and advocates for reintegrating former child soldiers. However, no matter what methods are chosen for the reintegration of these children into their communities, children need mechanisms to relate the things they have experienced, and the child’s psychological and physical well-being and dignity must be accounted for and fortified, with emphasis on the concepts of forgiveness.

Within the context of the international law, several instruments articulate a shared duty to protect children before, during, and following armed conflict, and most reflect the same choice of language. The Preamble to the CRC addresses the duty for States Parties to provide special protections for children, invoking the Universal Declaration of Human Rights,\(^ {194}\) in which the U.N. “proclaimed that childhood is entitled to special care and assistance,” and the Declaration of the Rights of the Child of 1924 declared that “the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”\(^ {195}\) Art. 39 of the CRC states:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.\(^ {196}\)

Art. 39 uses the same ambiguous term of “appropriate” as used in the Optional Protocol to the CRC without providing specific guidance as to what is deemed appropriate, and one is left to ponder what constitutes “an environment which fosters the health, self-respect and dignity of the child?” Is such a fostering environment available where armed conflict has so devastated a country or a region? Are we talking about a safe and peaceful facility such as a hospital or orphanage, or an entire community where the former child soldier has freedom of movement and liberty?

The Optional Protocol to the CRC requires States first and foremost to “take feasible measures to ensure that members of their armed forces who have not attained the age of 18 years


do not take a direct part in hostilities,” (art. 1) and not to engage in compulsory recruitment of persons who have not attained the age of 18 years (art. 2). The Optional Protocol calls upon States Parties to demobilize or release from service all persons who have been recruited or used in hostilities contrary to the present Protocol (art. 6(3)), which would include persons under the age of 18 years, and to “accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.” The problem with enforcing the Optional Protocol, however, is two-fold. First, the ambiguity of language used in article 6 is troubling. What is meant by “appropriate assistance?” What standard of care is to be employed, and of greater concern, should not the provision of long-term monitoring be mandated in the article? To do so would be to impose upon the States Parties a long-term duty that some governments might balk at fulfilling, even though we know that physiological and psychological trauma from combat and violent conflict can persist for decades in the form of post-traumatic stress syndrome and other maladies. Second, art. 11 allows States Parties to “denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations,” and that the “denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General,” or if the “State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.” This article gives de facto States Parties the option to opt out of its duties under the Protocol. On the other hand, the Protocol attempts to hold States Parties accountable throughout the duration of an armed conflict. Furthermore, art. 6 of the Optional Protocol directs that States Parties should assist in the demobilization, reintegration, and physical and psychological rehabilitation of all child soldiers

197 Optional Protocol, Art. 6(3): States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.
further establishing the duty of States to rehabilitate children that have fallen victim to armed groups.  

It is not enough to establish duties and responsibilities for States to follow for rehabilitating child soldiers. The level of trauma and total disaffection experienced by child soldiers is so much more extreme than a compassionate society can often get its collective hands around. We are not dealing with refugees from conflict or peoples displaced by natural disasters.

According to one psychologist who specializes in counseling adolescents, rehabilitating former child soldiers requires “exhaustive, comprehensive and long-term professional care in a specialized setting,” although, as we will note momentarily, in some places of the world the rehabilitation of child soldiers proceeds without the benefit of trained professionals. The child soldier’s necessary emotional, behavioral, cognitive, physical and social milestones necessary for human development and growth are often severely disrupted, and in addition to whatever treatments a former child soldier must undergo for whatever devastation the war experience has imprinted, the individual also must learn how to be a capable of living in and contributing to society in a meaningful way.

The humanitarian organizations in the world have a fairly good comprehension of the needs and mechanisms essential to addressing such populations in stress. What we have less experience and capacity with is in dealing with the rehabilitation of children who have lived

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198 Art. 6(3). “States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.”


200 Statements by Dr. Pam Hamilton, Ed.D. (Counseling) in email exchanges, June 4, 2010. On file with the author. According to Dr. Hamilton, “Children who are exposed to prolonged stress tend to have smaller areas in the brain known as the hippocampus. The hippocampus is a neural center responsible for learning and memory, thus children that endure a traumatic childhood are at risk for life-long educational and learning difficulties.”
through the blackest night and must overcome not only their past, but must “earn the respect of a suspicious community.”\textsuperscript{201}

Creative measures, including involving spiritual and religious leaders in a comprehensive care agenda,\textsuperscript{202} must be found to pull these children back toward the light before we can even begin to think about reintegrating them back into a civil society. Affected children and families may benefit from the concept of forgiveness and unity as a part of the healing process. In the best of conditions, clinical care would include a team of childhood developmental professionals proficient in trauma care and sensitive to the particular cultural nuances and societal mores present in a child’s culture and community. Such a team would ideally include physicians and physical therapists to treat the physical assaults the children endured (with particular attention paid to sexual abuse and drug addiction); clinical therapists to address post-traumatic stress disorders, neurological development trauma, attachment disorders, anxiety disorders, addictions, etc, and help young victims learn positive emotions such as joy and love and important socialization skills; and teachers, especially education specialists, who understand the neuroscience of trauma on brain development would also be a part of the team.\textsuperscript{203}


\textsuperscript{202} Statements by Dr. Pam Hamilton, Ed.D. (Counseling) in email exchanges, June 4, 2010.

\textsuperscript{203} Dr. Hamilton notes that, “Due to the severity of emotional, psychological, and physical trauma, it would be unlikely that the former child soldiers would be quickly welcomed back into their childhood homes.” She suggests that rehabilitation and reintegration could occur in a parallel therapeutic community with proximity to the children’s communities, stressing that the goal of the professionally staffed community would be to meet the unique needs of former child soldiers by providing a multi-axis, long-term, ‘home away from home’ treatment, whereby the staff become surrogate parents and fellow former child soldiers become siblings. “By employing Abraham Maslow’s hierarchy of human needs as a model, international organizations such as the Red Cross or Red Crescent could replicate a smaller version of the community and begin to provide for the physiological needs of the returning youngsters. Food, shelter, medical care, would serve as the point of entry of rehabilitation. Safety needs such as consistent care, predictable routines, and freedom from fear and harm can be quickly and efficiently met in a warm and inviting therapeutic milieu. As the basic biological needs are met, returning child soldiers have the opportunity to be exposed to and experience positive human emotions of love and belongingness. This is the point that clinical intervention can be initiated, as children must be able to integrate the atrocities of war with the reality of their future lives and families. As healing progresses, education and life skills will help to establish needs of self esteem. During this time, youngsters may discover their natural talents and gifts and begin to develop areas of competencies that are prized and esteemed by others. These special talents as well as formal education, and learning practical
Of the many efforts this author has studied in the course of writing this article, a few have seemed profound in both the innovation and the simplicity of the process. The aftermath of the 2003 civil war in Liberia illustrates one of the points we have been arguing throughout this article—how child soldiers can be redeemed in communities completely destroyed by conflict. A U.S.-Liberian non-government organization, Everyday Gandhis demonstrates a way of filling a gap that cannot be provided by the local community.

Everyone in Liberia is starting from less than scratch. Food, shelter, and school fees cost more than local elders can provide, so there’s an important role for loving outsiders. These youths found their way to the compound of a small US-Liberian NGO called Everyday Gandhis (everydaygandhis.com) and began doing chores and construction work in exchange for food. After a few months, the organization gave them a permanent home and is now guaranteeing their education through university. This has relieved the hard-scrabble stress of life, and the youths are effusively grateful.

Even more innovative and therapeutic is a program begun by another NGO, Future Guardians of Peace, which began training former child soldiers in photography. Through the lens of a camera, the youth were able to accomplish rehabilitation and rejuvenation on several levels through such a simple venue—taking photos. “They immediately begin taking stunning photos and using the cameras to build relationships in the community.”

Another organization, Friends of Orphans, which operates in northern Uganda, was founded by a former child soldier. Among the many services and programs it provides, perhaps the most key significance is that many of the staff were themselves child soldiers. Such peer influence over the children being helped provides a two-way healing function: the children being

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assisted are bonding more readily to their counselors because they know the counselors lived
their own nightmares, and the counselors make peace with their own demons through helping the
children who are placed in their care.206

The bottom line is that returning child soldiers require a welcoming environment to begin
the rehabilitation process without that process becoming a social or economic burden to the
family and the community. “The lost avenues of childhood can be accessed at an accelerated
pace due to the constancy and efficiency of professional staff members and the therapeutic
environment. As the former child soldiers heal both physically and emotionally, families may be
able to reconnect and remember their child, not as a soldier, but as a member of the family. In
time, the community may even begin to value this special population. Child soldiers that have
been rehabilitated have the ability to be useful and productive family members and community
citizens. More importantly, many of these unique emerging adults will have the skill set,
knowledge, and desire to evoke change in their communities and nations.”207

D. Duty to Educate Citizens about Child Soldiers

Much has been written about child soldiers from different perspectives and disciplines,208
and many compelling autobiographical accounts by child soldiers are in print.209 But even with
so much powerful documentation and narratives produced in several languages around the world,

208 Among the many books written about child soldiers are the following: ILENE COHN AND GUY S. GOODWIN-GILL, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICTS (Clendon 1994, reprint 2003); MATTHEW HAPPOLD, CHILD SOLDIERS IN INTERNATIONAL LAW (Manchester University Press, 2005); P.W. SINGER, CHILDREN AT WAR, (University of California Press, 2006); MICHAEL G. WESSELLS, CHILD SOLDIERS: FROM VIOLENCE TO PROTECTION (Harvard University Press, 2009), and; LEORA KAHN, ED., CHILD SOLDIERS (powerhouse, 2008).
the general public seems oblivious or insensitive to the plight of child soldiers—or perhaps 
overwhelmed and desensitized. Is a societal lack of will to address the issue of child soldiers a 
matter of underreporting or over saturation in the media? In order to get the attention of John Q. 
Public, the media believes it must report on the notorious and the sensational, and must compete 
with the notorious and sensational of other world events. Yet, when most people know more 
about the travails and personal indiscretions of an adolescent celebrity than the crisis affecting 
adolescents forced into armed conflict, we must ask if the civil society just doesn’t care, or if the 
authors, investigative journalists and documentarians, and non-government organizations 
mемorializing the catastrophes of child soldiers are talking over the heads of the general public 
and not getting their attention. Are we as a society just so overwhelmed by trauma and crisis due 
to the evolution of news media as a 24/7 juggernaut that we just can’t process any more reports 
of crisis, war, death, and societal calamity? Is it not easier just to tune out the noise of the real 
world and concentrate on the video games that involve crisis, war, death, and societal calamity?

Possibly we are inured to the crisis of child soldiers because it is something that happens 
in faraway places in the Third World where we have come to expect and assume that such 
horrible things occur. We don’t personally know a child soldier in our family, we don’t have 
armed conflict in our neighborhoods, we are not intimately tied up in tribal tensions that threaten 
to erupt unexpectedly, although one could look at what happened in Northern Ireland and in the 
former Yugoslavia and wonder just how far from societal breakdown we actually are.

Perhaps the best way to get the attention of the world to focus on the tragedy of child 
soldiers for longer than the time used between commercial breaks is to look at the underpinnings 
that influence our perception and response to crisis.
1. Moral Standards for the Civil Society

Child soldiers are found throughout the world, among all races, within religious groups, and they transcend geographic boundaries. But the places in the world in which child soldiers exist do not necessarily share the same moral standards and values adhered to in another part of the world that watches unaffected from the sidelines. For this reason the concept of customary international law evolves in an attempt to find a common ground upon which to judge and hold accountable to a universally agreed upon standard the conducts of all members of the world society. We can condemn the actions of child soldiers and the individuals who forcibly recruit them and direct their violence. But if it is not in my backyard, the resolve to carry out the mechanisms of accountability wavers and the force of public opinion and outcry is tragically muted and rendered impotent.

We in western society may believe that a child has inherent human and civil rights, as elucidated in the Convention of the Rights of the Child. Yet, in other parts of the world and even in societies or in indigenous or rural groups within the domain of western sentiments and norms, a child may be viewed as little more than chattel property to be used and exploited as suits the caprices of the adult who is in charge.\(^\text{210}\) Moreover, in conflict, morality focuses the justification of violence. “The concept of a just or an unjust use of force involves complex judgments of means and aims—an accounting of lives and deaths and intentions—that go to the very heart of civilization.”\(^\text{211}\) At the most base level of conflict, where children are used and exploited as combatants, concepts cease to mean anything. There are no anchors by which to steady the

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\(^{210}\) Recalling my time as a judge in Medellín, Colombia, I once had to send a man to jail for sexually abusing his daughter. He was a poor peasant living in an isolated rural community where the laws of the nation were remote and abstract and where according to the code that he and his community had lived by for generations, children were to be used however the patron of the family saw fit—including acts of incest. Even when he was sent away to serve his sentence, he came to accept that he had violated a law, but still did not accept that what he had done was wrong. \(^{211}\) *Essay: The Morality of War*, *TIME Magazine*, Jan. 20, 1967, available at <http://www.time.com/time/magazine/article/0,9171,843310-1,00.html>.
imperatives of social interchange imbued even in those societies that sink into violent and extremely brutal conflict.

Instead we turn to organizations such as the United Nations Office of the High Commissioner on Human Rights, Save the Children, and Amnesty International for both guidance on behaviors and responses when behaviors are not fulfilled. When we fail as an individual country or civil society, we wring our hands and implore the world community to step in and clean up the mess we have created for ourselves, to hold those of us accountable for the evils they committed that we could not or would not control, and to commit to vast wealth and resources to reform, rehabilitate, and reintegrate—and to what effect? What do we learn? How do we go forward and at what point do we determine that the confluence of redemption and humanity has been reached?

To fortify moral standards in any civil society, individuals must be “assigned duties to the community,” and meet “just requirements of morality, public order and the general welfare.” When such assignments break down and are torn asunder during violent armed conflict, the moral compass of a people loses its direction. What we see then on the broadcast news, read in the press, and learn about in documentary films is generally only the symptoms of deeper issues and tensions that do not readily emerge if the caring person who see the images and reads the narratives of armed conflict is not given sufficient time to ruminate on them. Most people in their busy lives do not have the luxury of time. They may care about the plight of a child they

see in the news, such as an iconic image of an obviously traumatized child wearing a pink teddy bear backpack while brandishing an assault rifle at the photographer.\textsuperscript{213}

If the attention of many members of the society can be held long enough to effect change, then what is the most meaningful form of assistance to render? The answer is not in the type of assistance, but in the duration that assistance can be sustained. In the first world, we tend to have short attention spans. In the second world, the privileged and political elite are often too busy with their own self-absorption and ambition to be first world citizens to be bothered with what is occurring around them or in other parts of the world, and the third world citizens are often too busy merely trying to survive day to day to care about much of anything beyond fulfilling their most immediate needs and the needs of their loved ones. Realizing this is a generalization, there is, nevertheless, truth to this.

The government, non-government, and faith-based organizations tasked with humanitarian relief are by and large products of the first world. They rely on the first world societies to sustain their relief efforts in conflict regions of the world. They appeal to the sentiments and caring of many well-meaning people who give of their time and treasure and leave it up to the relief professionals to determine the best use of the resources presented to them. These resources are spent in the second and third world where the hope is that some good will be done, and we do know that such good is done on a daily basis. But the challenge before us as a civil society is not that we must provide aid and comfort to those in greatest need, but that we must find ways to sustain the effort. We have seen several examples with regard to the rehabilitation and reintegration of child soldiers that merely providing help is not enough. As of

\textsuperscript{213} This photograph, by award winning photographer Georges Gobet, was taken in Monrovia on June 27, 2003 and published with a story in USA TODAY, 	extit{Paris Conference Focusing on Way to Demobilize World’s 250,000 Child Soldiers}, available at <http://www.usatoday.com/news/world/2007-02-05-child-soldiers_x.htm> (last visited Apr. 23, 2010).
2007, an estimated 95,000 child soldiers worldwide had been processed through demobilization programs. But “often, the psychological support and technical training prove too little, too late,” as one UNICEF official pointed out, “We are finding out that children we thought were successfully reinserted were not,” and have gravitated or been re-recruited back into hostilities. The moral imperative for the civil society, then, is not so much to “do something,” but to do something for the long haul.

2. Address Cultural Taboos and Biases

Finally, while we have a corpus of international law that ties respect for cultural heritage to human rights, what are we to do when respect for cultural heritage clashes with the manner in which cultural accoutrements of a society in conflict are used as a weapon of coercion and control? International law may protect the right of a tribal group to the spiritual beliefs that comprise that group’s identity. But what happens when a spiritual taboo, such as invoking the ire of one’s ancestors, or magic potions or the power of juju rituals are used by a controller to convince child soldiers that they will be protected from the bullets when they are forced into a firefight? What are we to make of a cultural heritage that imposes shame, scorn, and ostracism on a former child soldier who wants nothing more than to return to the bosom of his family and village but cannot do so because the customs of his people won’t allow it? If we intervene, we

violate the protected human rights of the community because we are interfering with their
cultural heritage. But if we do not intervene, then we are in violation of the human rights of the
individual child that are also duly protected under international law. At what point do the rights
of the child supersede the rights of the community, and at what point does the nature and
circumstances of an armed conflict become so dire that one set of rights must bow before the
other set of rights?

We as legal scholars can sit back comfortably in our offices within our ivory towers and
ruminate with detachment on the nature of international law and human rights, make what we
feel are learned prognostications on the law and on the duties of a civil society—and still be
completely and utterly dead wrong when it comes to applying our work product to the real
world. From our offices in Cambridge or Geneva, we can tell a drug-crazed warlord in Africa
who sends 13 year-old boys to the slaughter during an offensive that he cannot do that because it
is a violation of that child’s human rights, and that warlord will just laugh at us. And does one
really think such a depraved human being fears being held accountable under international law?

Consider the sobering tale carried out repeatedly by Palestinian radicals who use children
as weapons in their war against Israel. One Arab journalist questioned the practice of sending
children on suicide bombing missions, writing, “While U.N. Organizations save child-soldiers,
especially in Africa, from the control of militia leaders who hurl them into the furnace of gang-
fighting, some Palestinian leaders ... consciously issue orders with the purpose of ending their
childhood, even if it means their last breath.”217 In response, the editor of an official Palestinian
Authority newspaper rebuked, “Some of the Arab media have become ‘foreignized’ and subject

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to the influences of ‘Jewish money’”218 The editor added that journalists who question the actions of sacrificing children for the Palestinian cause should, “leave the campaign of lead pencils and instead communicate through lead bullets.” This instance of extreme vitriol not only underscores our issue of how we must educate the civil society about the plight of child soldiers, but it also illustrates the challenges of overcoming deeply rooted biases and irrational hatreds in societies in conflict.

V. Conclusions

If there is another common thread to pull from the fabric of this discussion of child soldiers, one overarching factor emerges—that those who coerce, force, or allow children to become soldiers are at their root, bullies, in the most classic sense of the “law” of the schoolyard. Napoleon, perhaps one of the greatest bullies of modern history, is attributed with having quipped, “God fights on the side with the best artillery.”219 If we want to end the use of child soldiers around the world, then we must assert universal moral and legal imperatives supported by an overwhelming bombardment of public opinion, swift, certain, and harsh justice, or military firepower when practicable.

In a 2002 interview, the U.N. Secretary-General Special Representative on Children in Armed Conflict, Olara Otunnu, stated, “The international community has done very well in terms of developing and elaborating norms, standards and rules against the use of child soldiers. But where we have not been effective is their application on the ground. Words on paper do not save

a child in war.” 220 His suggestion for overcoming this void was to establish better monitoring mechanisms utilizing networks of organizations actively promoting children’s rights that would “name and shame” States using child soldiers, and report those States to the UN Security Council for possible “punitive action.” 221 His ideas reflect the desire of many in the diplomatic community to establish an “era of application,” in which policies such as a name and shame campaign, diplomatic isolation, curtailment of arms supplies or sources of financing, and criminal prosecution might get the attention of those who continue to abuse children by recruiting them into armed conflicts. 222 In practical application, Otunnu proffered:

New efforts to monitor and report on situations where children are used in armed forces will prioritize the killing and maiming of children; the recruitment or abduction of child soldiers; the deliberate use of sexual violence as a strategy of warfare; and the denial of humanitarian access to children in distress. 223

Another mechanism to consider that shows particular merit is the idea of involving retired diplomats and non-government organizations with nothing to lose in “second track” diplomacy efforts to define and assert a set of demands and mechanisms for the demobilization of child soldiers in a manner that does not involve great political risk to States that might hesitate to become involved. 224

Whatever the solutions that come to be considered viable, time is of the essence. We are not talking about an international response to long-term issues such as environmental degradation or weapons disarmament. The child who lives at risk of becoming a soldier has a

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224 This is a suggestion borrowed from John Braithwaite in his discussion about the application of second track diplomacy to establishing an enforcement pyramid for networked governance. See John Braithwaite, *Methods of Power for Development: Weapons of the Weak, Weapons of the Strong*, 26 MICH. INT’L L. 297, 325 (2004).
very small window of opportunity to be protected from such a fate and the child who has become a soldier has a very small window of opportunity for redemption. That window of opportunity is but a short span of less than ten years, and in many cases less than five years. Once a child soldier crosses the threshold into adulthood, his or her status changes forever, and the best intentions of all of us to help them quickly evaporate. Time cannot be squandered on the debate over policies and mechanisms, drafts or amendments to international and regional declarations, conventions, and other such instruments that more or less say the same thing over and over again. The call to action has already been sounded in abundance around the world. What is lacking is the will to deal with the “bully factor” that emboldens wicked people to subject children to such evil. Once the international community realizes that standing up to bullies in a manner that will get their attention is the only way to get results in the fight to end child soldiers, the sooner the world will see a significant reduction in the exploitation of children in armed conflict.