CHILDSOLDIERS, SLAVERY, AND THE TRAFFICKING OF CHILDREN

Susan W Tiefenbrun, Thomas Jefferson School of Law
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ABSTRACT

Human trafficking is an international crime and a human rights violation that rises to the level of slavery. Trafficking in persons, especially women and children, is the purchase and sale of human beings as cargo for the purpose of engaging in exploitative forms of labor such as sex work or participation in armed conflict. The recruitment of a child (i.e., a person under the age of eighteen) for the purpose of sexual exploitation or participation in armed conflict is considered “trafficking in persons.”

In 2000, it was estimated that 13 million children were displaced as a result of warring conflicts. During the 17-year civil war in Sierra Leone, more than one million children were displaced, and 25,000 children (some as young as eight) were abducted and forced to become members of armed groups. Currently, over 300,000 children are serving as child soldiers in fifty countries in every region of the world. While child participation in armed conflict is not new, child soldiering today is a widespread phenomenon, prevalent particularly in developing countries where political, economic, and social instability are more common place and where approximately half the population are children. These children are subjected daily to dehumanizing atrocities.

Children who are trafficked into child soldiering are often abducted from their own home, tortured, brutally indoctrinated, forced to become intoxicated with mind-altering drugs, threatened with death and or dismemberment if they do not fight, forced to return to their own village to witness or participate in the death or disfigurement of their own family members, required to kill friends who don’t obey the commanders, and made to watch the punishment of other child soldiers who attempt in vain to escape. Some children who try to escape are reportedly boiled alive, and the other child soldiers are forced to eat the human flesh as part of their training.

Girls are abducted as well. In El Salvador, Ethiopia, and Uganda almost a third of the child soldiers are girls who are raped, enslaved, given to military commanders as “wives,” and victimized by sexual violence on a daily basis. These children are pumped up on drugs to make them fearless, empowered with small, light weapons, and indoctrinated into the virtues of committing wartime atrocities. They are victims of brutal brainwashing, and they are trained to obey orders to kill and to maim, just to stay alive. The children in Uganda were so frightened about being abducted and enslaved by the Lord Resistance Army that they did not sleep at home, preferring instead to travel in groups every night in order to reach a safer night time child shelter.

Despite a proliferation of international human rights treaties, labor laws, and humanitarian laws that should provide children with special protection from this heinous form of abuse, the trafficking of children and the use of children as soldiers is increasing! This paper will examine the relationship of human trafficking, slavery, and
child soldiering. Part I will examine the root causes of the development and expansion of child soldiers. Part II will examine the international and domestic laws that protect against the use of children as soldiers. Part III will examine two literary representations of the use of child soldiers and the significant insights such representations can provide to the international community. In this part we will examine the most recent child soldier case before the International Criminal Court, *Prosecutor v. Thomas Lubanga Dyilo* (January 29, 2007) confirming charges against the Congolese militia leader for the conscription and enlistment of children under the age of 15 years. Part IV will conclude by offering some cultural and economic solutions to the global failure to implement the profusion of legal instruments that protect children from being abducted and used as child soldiers.
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INTRODUCTION

Definitions

The prevalent use of children in armed combat is a contemporary manifestation of slavery and a form of human trafficking that is as serious and as lucrative as the international crimes of trafficking in weapons and drugs. Trafficking is defined as the illegal trade of contraband goods, usually across borders, in order to make a profit. Trafficking in persons, especially women and children, is the purchase and sale of human beings as cargo for the purpose of engaging in exploitative forms of labor such as sex work.
work or participation in armed conflict. Trafficking in children for their use on the battlefield is a human rights violation that rises to the level of slavery.5

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime [hereinafter “Palermo Protocol”]6 defines trafficking as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”7 The recruitment of a child (i.e. a person

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4 See Susan Tiefenbrun, Sex Sells, supra note 2, at 167.
7 Palermo Protocol, supra note 6, at Article 3(a).
under the age of eighteen) for the purpose of sexual exploitation or participation in armed conflict falls under the ambit of “trafficking in persons.”

The international definition of the trafficking of child soldiers involves three necessary elements: consent, exploitation, and movement within a country or across a border. A child soldier is “trafficked” when there is forced recruitment or no genuine voluntary recruitment; when the recruitment is done without the informed consent of the person’s parent or legal guardians; and when such persons were not fully informed of the duties involved in the military service. Child soldiering is a form of child trafficking because the acts required of a child soldier are dangerous enough to interfere with a child’s fundamental human right to education, health, and development.

The abduction and employment of children as soldiers is a form of exploitative labor that is tantamount to slavery. Child soldiering is listed as “one of the worst forms of child labor” in the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor [hereinafter “ILO Worst Forms of Child Labor Convention 182”]. In the ILO Worst Forms of Child Labor Convention 182 child soldiering is included as a form of slavery on the same list as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and

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8 Palermo Protocol, supra note 6, at Article 3(c ). In the Palermo Protocol a “child” is any person under eighteen years of age. Id. at Article 3(d). The definition of a “child” is controversial because the age that determines when a child becomes an adult differs in several international treaties.

9 See Sandrine Valentine, supra note 3, at 116-118.


serfdom and forced or compulsory labour, (sic) including forced or compulsory recruitment of children for use in armed conflict.” 13

The trafficking of child soldiers is directly connected to sexual violence and the sexual exploitation of children who are mainly, but not exclusively, young girls. 14 “Child sexual exploitation” is defined as a situation in which an individual takes “unfair advantage of some imbalance of power between themselves and another person under the age of eighteen in order to sexually use them.” 15 UNICEF draws attention to the economic benefits of child sexual exploitation when “a second party benefits, through making a profit or through a quid pro quo, through sexual activity involving a child.” 16

The exploitation of child soldiers is typically accompanied by brutality and sexual violence. “Child soldiers serve within militaries and armed groups in which complete cooperation and obedience is demanded, in contexts where moral and legal safeguards against their abuse may have broken down. In this context sexual violence becomes sexual exploitation.” 17

Very often children are abducted from one place to another (from their home to a camp where they are trained and then to a field of combat). But children do not have to actually cross a border to be trafficked. 18 If they are moved within their own country and

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14 See e.g. UZODINMA IWEALA, BEASTS OF NO NATION 83-84 (Harper Collins, 2005) for a description of a young boy soldier who is sodomized and forced to engage in sex with his male Commander on a regular basis.
forced to engage in exploitative labor like dangerous armed combat, this constitutes child trafficking.\textsuperscript{19}

Thus, using children against their will to engage in armed combat involves human trafficking and unfair labor practices that rise to the level of child slavery. Slavery is one of the most heinous crimes imaginable, especially when it is inflicted on the most vulnerable victims—our children.

**Extent of Child Soldiering Worldwide**

Children who are on the move because they are displaced and impoverished by war or civil unrest are particularly vulnerable for abduction and forced child soldiering. In 2000, about thirteen million children were displaced as a result of warring conflicts.\textsuperscript{20} During the civil war that lasted seventeen years in Sierra Leone, more than one million children were displaced, and twenty-five thousand children (some as young as six\textsuperscript{21}) were abducted and forced to become members of armed groups.\textsuperscript{22} The recruitment of children into armed conflict has claimed the lives of more than two million children, left more than six million children maimed or permanently disabled, caused one million children to be orphaned, afflicted ten million children with serious psychological trauma, and made twelve million children refugees.\textsuperscript{23} Currently, over three hundred thousand children, most of them ranging in ages from eleven to fifteen, are serving as child soldiers

\textsuperscript{19} Hackenberg, *supra* note 18, at 426.
\textsuperscript{22} MacMullin and Loughry, *supra* note 20 , at 461.
\textsuperscript{23} Udombana, *supra* note 21, at 67-68.
in fifty countries in every region of the world.24 With so many countries recruiting children by force, deception, and coercion to serve in armed conflicts, it is fair to say that children of today are “the world’s most endangered species.”25

While the participation of children in armed conflict is not new—it occurred in World War II26—child soldiering today is a widespread phenomenon, prevalent particularly in developing countries where political, economic, and social instability are more common place and where approximately half the population are children.27 Save the Children reported that hundreds of thousands of under-age soldiers are currently being forced to fight around the world, despite guidelines set forth ten years ago in the Cape Town Principles28 of 1997 that established eighteen as the minimum age for recruitment.29 Children have served in government forces, paramilitaries or in opposition forces in Columbia, Mexico, Peru, Turkey, Yugoslavia, Algeria, Angola, Burundi, Chad, Democratic Republic of Congo, Eritrea, Ethiopia, Rwanda, Sierra Leone, Somalia, Sudan, Uganda, Afghanistan, Iran, Iraq, Israel and the Occupied Territories, Lebanon, India, Indonesia, Myanmar, Nepal, Pakistan, Philippines, Solomon Islands, Papua New Guinea, Sri Lanka, East Timor, Tajikistan, and Uzbekistan.30 The use of child soldiers is

25 Udombana, supra note 21, at 68.
26 P.W. SINGER, CHILDREN AT WAR, 14-15 (Pantheon Books, 2005):”The Hitler Jugend were young boys who had received quasi-military training as part of a political program to maintain Nazi rule through indoctrination…Hitler’s regime ordered these boys to fight as well. Lightly armed and mostly sent out in small ambush squads, scores of Hitler Jugend were killed in futile skirmishes, all occurring after the war had essentially been decided.”
27 MacMullin and Loughry, supra note 20, at 460.
still occurring in the Western Hemisphere, Europe, Africa, the Middle East, Central Asia, and Asia. Today fighting forces still recruit child soldiers in Afghanistan, Chad, Colombia, Democratic Republic of Congo, Ivory Coast, Myanmar, Nepal, Philippines, Sri Lanka, Somalia, Sudan and Uganda. Graca Machel, the former first lady of Mozambique and the wife of Nelson Mandela, who served as a special expert for the United Nations on the issue of child soldiers, wrote a ground breaking report on child soldiering, summing up the extent of the use of child soldiers and its significance:

“These statistics are shocking enough, but more chilling is the conclusion to be drawn from them: more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.”

31 Singer, supra note 26, at 16: “In the Americas since 1990, child soldiers have fought in Colombia, Ecuador, El Salvador, Guatemala, Mexico (in the Chiapas conflict), Nicaragua, Paraguay, and Peru. The most substantial numbers are in Colombia. There, more than eleven thousand children are being used as soldiers…one out of every four irregular combatants is underage…Child soldiers in Colombia are nicknamed “little bells” by the military that use them as expendable sentries and “little bees” by the FARC guerrillas, because they “sting” their enemies before they know they are under attack.”

32 Singer, supra note 26, at 18-19. “On the European continent, children under eighteen years of age have served in both British government forces and their opposition in Northern Ireland and on all sides in the Bosnian conflict…It is in Turkey, though, where the most child soldiers in Europe are found, in the Kurdish Workers’ Party (PKK). In 1998 it was reported that the PKK had three thousand underage children within its ranks, with the youngest reported PKK fighter being an armed seven-year-old. Ten percent of these were girls.”

33 Singer, supra note 26, at 19-20. Countries in Africa that employ child soldiers include Sierra Leone, Angola, Liberia, Uganda, Rwanda, Burundi, Kenya, Central African Republic, Tanzania, Congo-Brazzaville and Ivory Coast, Ethiopia, Eritrea, and Democratic Republic of the Congo.

34 Singer, supra note 26, at 21-26: Today children are fighting in Algeria, Azerbaijan, Egypt, Iran (even though it is against Shari’a law), Iraq, Lebanon, Sudan, Tajikistan, and Yemen, including children younger than fifteen serving in a number of radical Islamic groups, and Palestine. Sudan has the largest use of child soldiers in the region, and as many as 100,000 children have served on both sides of the civil war.

35 Singer, supra note 26, at 26-30. The practice of child soldiers is highly prevalent in Asia especially in Cambodia, East Timor, India, Indonesia, Laos, Myanmar, Nepal, Pakistan, Papua New Guinea, the Philippines, Sri Lanka, and the Solomon Islands. Myanmar alone has more than 75,000 child soldiers, one of the highest numbers of any country in the world with some as young as eleven. Id. at 27.


Abuses of Child Soldiers

Child soldiers are subjected daily to dehumanizing atrocities. They are often abducted from their own home, tortured, indoctrinated with brutality, forced to become intoxicated with mind-altering drugs, threatened with death and or dismemberment if they don’t fight, forced to return to their own village to witness or participate in the death or disfigurement of their own family members, required to kill friends who don’t obey the commanders, and made to watch the punishment of other child soldiers who attempt in vain to escape.

Child soldiers are brainwashed thoroughly and brutally until their ethics and moral values become so distorted that they believe doing evil is good. One twelve-year-old child in Columbia described the leadership’s obsession with the virtues of killing: “If you join the paramilitaries [the AUC in Colombia,] your first duty is to kill. They tell you, ‘Here you are going to kill.’ From the very beginning, they teach you how to kill. I mean when you arrive at the camp, the first thing they do is kill a guy, and if you are a recruit they call you over to prick at him, to chop off his hands and arms.” 38

Brainwashing is accomplished by desensitizing children to the sight and commission of atrocities. Some children who try to escape are reportedly boiled alive, and the other child soldiers are then forced to eat the human flesh as part of their training. 39 Other child soldiers who manage to escape have reported that while they were at the training camp they were forced to beat the dead body of a captured escapee and

“smear themselves with his blood.” 40 Rebels keep the children obedient through frequent beatings, threats of death, and threats of retaliation against the children’s family members.41

Young girls are abducted as well and make up forty percent of the ranks of armed groups in some countries.42 In El Salvador, Ethiopia, and Uganda, almost a third of the child soldiers are young girls,43 who are raped, enslaved, given to military commanders as “wives,” and victimized by sexual violence on a daily basis. Girl soldiers encounter serious abuse, including forced pregnancy. During the 1990s over eight hundred children were born to the Lords’ Resistance Army (“LRA”) “wives” who were concentrated at Jabelein camp in southern Sudan.44 Girl soldiers are often used as domestic servants and sex slaves during conflict, and when they become infected with HIV, they are usually not treated. These victimized girl soldiers require rehabilitation and special attention after their demobilization.45

These children who are trained to be fearless actually become dangerous, killing machines. Anyone seeing them in action is naturally stunned into disbelief and is likely to wonder why these children kill, maim, and dismember their own friends and relatives. The answer is quite simple. Child soldiers are pumped up on drugs to make them

43 Abigail Leibig, supra note 24, at 6.
44 See Payam Akhavan, supra note 21, at 408.
45 See AFRICA:Fighting for children, supra note 42, at p.2.
These drugs are no doubt trafficked into the country for a hefty sum. Powerless and abandoned children are empowered with small, light weapons and indoctrinated with brutality into the virtues of committing wartime atrocities. These small weapons are trafficked into the country at a substantial cost. Young girls are also trafficked to service the commanders and even the boy child soldiers. The money earned from one form of trafficking typically supplies the goods and services of the other form of trafficking in a complex network that constitutes a lucrative trafficking industry run by international organized crime groups.

These children are victims of inhumane brainwashing and mercilous combat training that makes them robotically obey orders to kill innocent victims, just to stay alive. These children undergo a terrifying initiation that consists of killing or raping a close relative. They are forced to participate in acts of extreme violence and barbarity including beheadings, amputations, rape, and the burning of people alive. The Lord’s Resistance Army in Uganda initiates children into its gang by forcing them “to club, stamp or bite to death their friends and relatives, and then to lick their brains, drink their blood and even eat their boiled flesh.” The LRA slices off the lips and noses of children it suspects of disloyalty. The children of Uganda are reportedly so frightened about being abducted and enslaved by the LRA that they do not sleep at home, preferring

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46 Ishmael Beah, *The Making, and Unmaking of a Child Soldier*, NEW YORK TIMES MAGAZINE, January 14, 2007, at 36: “I smoked marijuana, ate and snorted cocaine and brown brown. That was all I did for a few days before we went back to the new base we had captured.” (at 65).
47 Payam Akhavan, *The Lord’s Resistance Army Case*, supra note 21, at 408. See also ISHMAEL BEAH, A LONG WAY GONE: (Sarah Crichton Books, 2007). See also Justice Versus Reconciliation, supra note 39, at 41.
48 Justice Versus Reconciliation, supra note 39, at 41. See also Udombana, supra note 21, at 68.
49 Justice Versus Reconciliation, note 39, at 41.
instead to become “night commuters”\footnote{See UGANDA: Child “Night Commuters”, Amnesty International Article, November 18, 2005, available at http://web.amnesty.org/library/print/ENGAFR590132005: “We come to the shelter because I fear being abducted again. I was eight years old then. I do not want my brothers and sisters to be abducted as I was. We walk fast in the night to be here.” See also Uganda: Child “night commuters’ fear abduction, AMNESTY INTERNATIONAL PUBLIC STATEMENT, November 18, 2005, available at http://web.amnesty.org/library/print/ENGAFR590162005: “Some walk for several kilometers, without the protection of adult family members…All risk harassment, physical abuse, sexual exploitation and rape on the way.”} who travel alone or in groups every night to “protected villages” where “they sleep on verandas, in bus parks, on church grounds” for safety.\footnote{Payam Akhavan, supra note 21, at 409.}

**Organization of Article**

Despite a proliferation of laws--international human rights treaties, conventions prohibiting slavery, labor laws, trafficking laws and laws of war that provide special protection for civilian children who are particularly vulnerable-- the trafficking and the use of children as soldiers is increasing! This paper will examine the complex relationship of human trafficking, slavery, and child soldiering. Part I will examine the root causes of the development and expansion of the use of child soldiers. Part II will examine the international and domestic laws and instruments that protect against the use of children as soldiers. Part III will examine some literary representations of the crime of child soldiering in order to raise the readers’ awareness of the depths of this atrocity. Part IV will conclude by offering practical suggestions and economic solutions to make these legal instruments more effective. Children are humanity’s most valuable investment in the future, and it is the obligation of the adult world to protect them effectively.

**I. THE ROOT CAUSES OF THE USE OF CHILD SOLDIERS**

**Voluntary and Forced Recruitment of Children**
Children’s recruitment in armed conflict is either by force (conscription) or voluntary (enlistment), even though voluntary recruitment is often coupled with hidden forms of coercion. Armed militia, police, or army cadres arbitrarily seize young recruits from the streets, schools, and orphanages.\(^{52}\) Children forcibly recruited cannot exercise a choice or give their consent to serve in armed conflict. Nevertheless, consent is the key element required to determine whether the recruitment of children for armed conflict actually constitutes trafficking and not just the smuggling of migrants, in accordance with the definition of trafficking set forth in the Palermo Protocol.\(^{53}\) If a child is voluntarily recruited and takes up arms “consensually,” he or she may not be protected under the trafficking statutes.

Various factors in a child’s environment may cause her to join an armed group voluntarily. The child’s parental and family background, peer groups, school, and religious community can strongly influence their decision to fight.\(^{54}\) Poverty, ignorance, illiteracy, intellectual and developmental immaturity, and a lack of formal education prevent children from making an informed choice or even understanding why they are fighting.\(^{55}\) Children without schooling are prone to recruitment, like the many children in Sierra Leone who were without schooling for several years after 1997 when three hundred schools were closed due to damage or destruction.\(^{56}\) Children often lack the capacity to determine their best interests, to form opinions, and to analyze competing

\(^{52}\) See Mike Wessells, *Child Soldiers: In Some Places, If You’re as Tall as a Rifle, You’re Old Enough to Carry One*, BULL. ATOM. SCI., Nov. 21, 1997, at 32.


\(^{56}\) See Sandrine Valentine, *supra* note 3, at 120.
ideologies. This is why the element of “consent” required to determine whether or not a child is “trafficked” is complex and should not be determinative.

**Why Children Become Soldiers**

Several interrelated factors explain the underlying causes of the rise in the abduction and use of child soldiers. Social disruptions and governmental failures to protect children and adults have been attributed to globalization, to the increase in the number and length of wars, and to the spread of fatal diseases like AIDS, all of which create familial and generational disconnections leaving many potential child recruits available for abduction. The social and psychological effects of war can create a need for children to join a group, especially one like an army that promises to provide relative security and stability, a sense of power, and acceptance by peers and authority figures. There are also purely military advantages of using children as soldiers in war. Technological improvements and the proliferation of thin, small, and light-weight weapons like assault rifles, machine guns, pistols, and hand grenades have enabled child soldiers to engage effectively in warfare. The huge number of children available and the military successes of these child soldiers have accelerated the trend toward recruiting young soldiers. The rise of a new type of armed warfare that is more brutal and lasts much longer than typical wars has encouraged military leaders to rationalize the forced recruitment and use of children as a low cost military measure that enables them to mobilize and generate force.

**Changes in Family and Ethical Values**

A serious and pervasive change in family and ethical values is one of the most

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57 J. Udombana, *supra* note 21, at 63-64.
59 Singer, *supra* note 26, at 38.
significant factors causing the rise in the use of child soldiers. In many countries children are devalued in the family and in society at large. Children do not occupy the center of the life of the family. They do not represent a precious hope for the future. In some countries children are considered less than human, expendable, invisible, especially in the midst of an overwhelming cult of death and martyrdom that developed during the Iran-Iraq War and continues today in many parts of the world. The lack of respect and the marginalization of children are no doubt one of the most pernicious causes of the increased use of child soldiers. This perverse ethos that devalues and dehumanizes children will be particularly difficult to eradicate.

**Globalization**

Globalization involves travel, trade, and the displacement of families, all of which affect children. Socio-economic problems associated with globalization impact children because of their vulnerability and dependency on adults for survival. Despite the advancement of technology in the modern global community, today there are unprecedented numbers of children around the world who are undereducated, malnourished, marginalized, and disaffected. Desperate children who are excluded from the protection of their family for various reasons constitute an available pool of cheap labor for the traffic of weapons, drugs, and humans. The three most serious and lucrative international crimes today are the traffic of weapons, drugs, and humans in that order. Each of these crimes is intricately involved in the abduction and exploitation of children in armed conflict. These crimes are very profitable, and money earned from one form of trafficking (e.g. weapons) helps finance the trafficking of the other (child soldiering).

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60 Singer, supra note 26, at 38-39.
61 Singer, supra note 26, at 39.
Trafficking is run by powerful international organized crime groups that are in the trafficking business for reasons of pure profit.\(^{62}\) Thus, the exploitation of the population of child soldiers drives a new “economy of war.”\(^{63}\)

**AIDS and Orphans**

The AIDS epidemic has created another available pool of orphans and abandoned children. Many children who have lost their parents and siblings due to the scourge of AIDS are especially susceptible to the lure of child soldiering.\(^{64}\) Many orphans have actually watched their parents die and were forced to fend for themselves at a very young age in an unusually dangerous environment. In this context, the structure of an army setting can provide orphans with the false sense of belonging to a community, an escape from loneliness, and the hope of more security and stability in a country at war.

**Increase in the Use of Small Personal Weapons**

Amidst the current dissolution of traditional notions of the family and the socio-economic disconnections that wars invariably produce, people and especially children are scrambling for self-protection and a sense of security. For this reason there has been a proliferation of the sale of technologically advanced personal weaponry.\(^{65}\) There are an estimated five hundred million small arms sold globally, one small weapon for every twelve persons.\(^{66}\) The increased use of small personal weapons reflects the instability of the world and the development of a generalized sense of fear among people. The proliferation of small weapons facilitates the expanded use of children in armed combat.

\(^{62}\) See Tiefenbrun, *The Saga of Susannah*, supra note 5, at 139.


\(^{64}\) Singer, *supra* note 26, at 42.

\(^{65}\) Singer, *supra* note 26, at 45.

\(^{66}\) Charles Cobb, *Arms and Africa on UN Agenda This Week*, available at ALLAFRICA.COM, July 9, 2001.
Changes in the Nature of Warfare

Conflicts around the globe are characterized not as temporary outbreaks of instability but rather as long, protracted states of mass violence and disorder. Today’s wars involve the organized and systematic use of mass violence and the blurring of distinctions between traditional conceptions of war, organized crime, and large scale violations of human rights. Vulnerable, abandoned and orphan children are now more readily available and easily transformed into willing combatants. Since the leaders of combatants may not concern themselves with public opinion, human rights, or decency, they invariably seize upon impressionable and obedient young children as a cost saving military measure. Thus, the doctrine of child soldiers and child exploitative employment in armed conflict is justified as a new and less expensive way of engaging in combat.

Long wars lead to many casualties and cause shortages in manpower that some governments believe can be remedied by the involuntary recruitment of children. In Africa, conflicts are very long, and there is evidence of the extensive use of children in these conflicts in order to fill the ranks of adult casualties. Sudan has been fighting a continuous civil war since 1956, with Darfur being the latest area of conflict rising to the level of genocide. Children were recruited during the Angolan conflict that lasted over thirty years. The use of children as soldiers enables wars to continue indefinitely. “War

67 Singer, supra note 26, at 52.
68 Kaldor, New and Old Wars, p. 1.
69 Singer, supra note 26, 53.
70 Singer, supra note 26, 53.
children have difficulty turning into peace children and this, itself, may contribute to prolonging conflicts and a serious erosion of local value systems.”71

The use of child soldiers can change the very nature of the way wars are traditionally fought. Children are more likely to violate the rules of war due to their young age and diminished capacity to appreciate the consequences of their actions.72 "The greater suggestibility of children and the degree to which they can be normalised (sic) into violence means that child soldiers are more likely to commit atrocities than adults.”73 In fact, the use of child soldiers may erode the applicability and effectiveness of well-established laws of war.

Military Reasons for the Use of Child Soldiers

Children are often recruited as soldiers for purely military reasons. The technological advances in weaponry and the prevalent use of small arms and light weapons facilitate the increasing use of child soldiers. Such weapons allow small children to shoot steady streams of bullets with the mere pull of the trigger. Presently, there is no universal treaty addressing the use of small arms and light weapons.74 Children are recruited because they are small and can be used as guinea pigs by their leaders who force them to the front lines or to minefields ahead of older troops while their commanders stay behind.75

71 Udombana, supra note 21, at 71.
74 Udombana, supra note 21, at 66-67.
75 Payam Akhavan, supra note 21, at 408.
Social and Psychological Causes of the Use of Child Soldiers

Children may “volunteer” to go to war for many reasons. Some children have witnessed the brutal death of their own close family members, and they simply want revenge. Some children have grown up in a chronic state of conflict in a country constantly at war, and they know no other way of life. They may be influenced to fight out of a sense of loyalty to their community.76 Children who volunteer may do so out of fear of abduction and reprisals by the armed group just because they appear to be unwilling to fight for their country.

Children may seem to go to war “voluntarily” even though they may have actually been coerced and sold out to the armed group by their own poor and hungry parents.77 Many of these parents do not understand the danger they are subjecting their child to by making them join the army. Some parents may encourage their daughters to become soldiers if their marriage prospects are poor.78

In the chaotic environment of a country in armed conflict, children’s survival skills instinctively start to work. They seek stability and three square meals a day. They may simply be making an “intuitive choice for the better of the bad alternatives.”79 Many of them are abandoned street children who crave physical protection and relief from abject poverty and loneliness. Like any normal child, a voluntary child soldier needs identification with a peer group. These powerless children search for acceptance, a sense of competence, and the sheer adventure associated with the glory and power of victory in armed conflict. UNESCO reports that “regardless of age, gender, or how they are

76 Udombana, supra note 21, at 63.
77 Udombana, supra note 21, at 64.
78 Udombana, supra note 21, at 64.
79 Udombana, supra note 21, at 64.
recruited, child soldiers disproportionately come from the poor and marginalized segments of society, isolated rural areas, the conflict zones themselves, and from disrupted or non-existent family backgrounds.”

**Economic Reasons for the Use of Child Soldiers**

Sadly, children are recruited because they are perceived as cheap labor and expendable. They are obedient, fast to indoctrinate and to control, physically vulnerable, and easily intimidated. Young adolescents reportedly have a sense of their own omnipotence and “view themselves as invulnerable to harm and injury.” Thus, some believe it is arguably economically efficient to use children as soldiers.

These are some of the social, cultural, psychological, military and economic root causes for the use of voluntary and forcibly conscripted child soldiers. Taking this larger context into consideration, the very concept of the “voluntary” recruitment of children into armed conflict is arguably discussable and clearly subject to interpretation. Children lack the capacity to determine their best interests, to form independent opinions or to analyze competing ideologies. One may legitimately question whether a child living in a war-torn nation has the freedom of choice to go to war. A culture of violence defines their childhood experiences, and the militarization of that culture may incite them to participate “voluntarily.” This complex issue of consent and the “voluntary” recruitment of child soldiers is crucial to the determination of whether child soldiers who

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80 Udombana, *supra* note 21, at 67.
83 Abbott, *supra* note 82, at 518.
84 Abbott, *supra* note 82, at 518.
are forced to fight out of fear for their lives should be held accountable in a court of law for the atrocities they commit.

**Treatment of Child Soldiers as Criminals**

Child soldiers who commit atrocities because they are coerced out of fear of death are being arrested and convicted of war crimes. These children are often treated as if they were adults simply because indoctrinated child soldiers do not look like children and have often committed atrocities together with adults. For example, in January 1999, the Ugandan army executed five teenage boys between the ages of fourteen and seventeen suspected of being rebel soldiers, although such actions were not believed to be characteristic of the government forces. In Colombia, child soldiers are not afforded special legal status or treatment. In Rwanda, in 1999 the International Committee of the Red Cross reported that approximately 570 children under the age of fourteen were incarcerated on genocide-related charges and still remain in the prison system. In a leading neurology law brief filed by the American Medical Association and other groups, the AMA argued, and Justice Anthony Kennedy agreed, that “adolescent brains are not fully developed in the prefrontal regions, and adolescents are less able than adults to control their impulses and should not be held fully accountable for the immaturity of their neural anatomy.”

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87 Sandrine Valentine, supra note 3, at 128.
88 Sandrine Valentine, supra note 3, at 128.
II. LAWS RELATING TO THE USE OF CHILD SOLDIERS

Introduction

The use and abduction of child soldiers is an international crime and a heinous human rights violation that is caught in the intersection of four different but related areas of the law: children’s rights, slavery, human trafficking, and exploitative child labor. Child soldiers are protected under international human rights laws, international humanitarian laws (i.e. laws of war), international criminal laws, and international labor laws.\(^{91}\)

The first international instrument to address specifically the legal rights of children was The United Nations Convention on the Rights of the Child (“CRC”)\(^{92}\) enacted in 1989. The CRC was amended to include two Optional Protocols: The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (“Children in Armed Conflict Protocol”)\(^{93}\) and The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (“Sale of Children Protocol”).\(^{94}\) The Children in Armed Conflict Protocol amends the CRC’s minimum age for recruitment of persons into the armed forces from fifteen to eighteen years of age\(^{95}\) on the theory that the CRC’s age of fifteen as the standard for recruitment does not

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91 See Udombana, supra note 21, at 70-90 for a complete analysis of the laws that cover child soldiering.
95 Children in Armed Conflict Protocol, supra note 93, at Art. 1.
adequately protect children and in fact appears to have encouraged more recruitment, as evidenced by the increasing number of child soldiers. The Children in Armed Conflict Protocol also urges States Parties to take “all 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.”

Before the adoption of the CRC and its subsequent two Protocols, many treaties were enacted to eradicate slavery, some of which specifically address the special needs of enslaved children. The international community has repeatedly condemned slavery and involuntary servitude. Community condemnations are manifested in the form of declarations, treaties, United Nations Resolutions and Reports. They include, but are not limited to, the following legal instruments: The Universal Declaration of Human Rights of 1948, whose non-binding aspirations were given force in 1966 by the passage of the International Covenant on Civil and Political Rights and the International Covenant on the Economic, Social and Cultural Rights, all of which condemn slavery. The 1904 International Agreement for the Suppression of the White Slave Traffic was amended by the 1910 International Convention for the Suppression of White Slave Traffic, which prohibit the trafficking of women for their use as sex slaves.

International concern over the increased development of slave trafficking eventually

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96 Udombana, supra note 21, at 90.
97 Children in Armed Conflict Protocol, supra note 93, at Art. 1.
resulted in the passage of the 1926 U.N. Slavery Convention.\textsuperscript{103} Due to the continued failed enforcement of these slavery conventions, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery\textsuperscript{104} was adopted in 1956 (“1956 U.N. Slavery Convention”).

Earlier legal instruments like the United Nations Charter of 1945,\textsuperscript{105} the 1948 American Declaration on the Rights and Duties of Man,\textsuperscript{106} and the Universal Declaration of Human Rights\textsuperscript{107} enacted in 1948 all prohibit slavery. Other treaties purporting to eliminate slavery include the 1930 Convention Concerning Forced or Compulsory Labor, Adopted by General Conference of the International Labor Organization,\textsuperscript{108} the 1957 Abolition of Forced Labor Convention,\textsuperscript{109} the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,\textsuperscript{110} the Final Report of the World Congress Against Sexual Exploitation of Children (Stockholm, 1996), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),\textsuperscript{111} and the 2000 U.N. Convention Against Transnational Organized Crime and the Protocol to

\textsuperscript{103}International Convention to Suppress the Slave Trade and Slavery, Sept. 24, 1926, 46 Stat. 2183.
\textsuperscript{104}Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3.
\textsuperscript{106}The American Declaration on the Rights and Duties of Man, signed May 2, 1948, OEA/Ser.L./V/11.71, at 17 (1988).
\textsuperscript{108}Convention Concerning Forced or Compulsory Labor, Adopted by General Conference of International Labor Organization, 14\textsuperscript{th} Sess. (June 28, 1930).

Despite the profusion of declarations and treaties condemning slavery, this crime still exists today in the form of human trafficking and child soldiering. Laws protecting against child slavery have actually continued to increase because protection against slavery is included under the ambit of human trafficking laws and child sex tourism legislation. For example, the United States Victims of Trafficking Protection Act (“TVPA”) 113 was enacted in October 2000 to eliminate human trafficking, which is referred to as a form of slavery. 114

The goals of the TVPA are to prevent human trafficking, to protect trafficked women and children who should be treated as victims and not as criminals, and to punish the perpetrators with a severe criminal sentence of thirty years in jail. Recognizing that human trafficking is an international problem requiring an international solution, the TVPA requires the United States to provide financial and educational assistance worldwide to women and children who are in danger of being trafficked. Under the threat of non-humanitarian sanctions, the TVPA requires nations to draft trafficking laws that


meet the minimum standards of protection against trafficking. Similarly, the U.S. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (Protect) Act of 2003 [“the Protect Act”]\(^{115}\) has extraterritorial effect and punishes U.S. citizens engaging in sex with minors in countries abroad where sex tourism might even be legal. The TVPA and the Protect Act protect children all over the world who are trafficked into slave-like conditions of forced labor, forced prostitution, or forced soldiering.

Most of the funds allocated for the TVPA and the Protect Act have been spent on prosecution of perpetrators. More emphasis should be placed on the prevention of trafficking while maintaining the legislative goals of victim protection and perpetrator punishment. Prevention of human trafficking, and especially the trafficking of children, must become the main focus. However, prevention of child trafficking requires worldwide consciousness raising, the establishment of a political will to eliminate the crime, radical changes in current family value systems, and the eradication of poverty which is at the root of the proliferation of armed conflicts that perpetuate child soldiering.

The increasing employment of children as soldiers is clearly a violation of international labor laws. The International Labor Organization (ILO) establishes and supervises the application of international labor standards including standards for child labor. Child soldiering is identified as one of the worst crimes under the International Labor Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor Convention (No. 182), enacted in 1999

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(ILO Worst Forms of Labor Convention 182)\(^{116}\) and the recommended ILO Convention (No.190).\(^{117}\) The Minimum Age Convention of 1973\(^{118}\) tried to eliminate child labor by requiring the completion of compulsory schooling and setting the minimum age for child labor at fifteen. The ILO Worst Forms of Child Labor Convention 182 defines a child as a person under the age of eighteen and recognizes that forced labor (e.g. child soldiering) is a modern variant of slavery.\(^{119}\)

A. International Legal Instruments that Specifically Protect Children:

The Declaration of the Rights of the Child\(^{120}\)

Although the Declaration of the Rights of the Child was not a binding instrument, it established aspirational norms and set forth a code for the well being of every child.\(^{121}\) The Declaration provided, \textit{inter alia}, that every child should be given opportunities and facilities, by law and by other means, to enable them to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.\(^{122}\)

\textbf{United Nations Convention on the Rights of the Child ("CRC")}\(^{123}\)

The CRC is the most universally accepted human rights instrument in history.\(^{124}\) The CRC has been ratified by every country in the world except the United States\(^{125}\) and

\begin{itemize}
  \item \(^{116}\) ILO Worst Forms of Child Labor Convention 182, \textit{supra} note 12.
  \item \(^{117}\) ILO Recommendation 190, \textit{supra} note 13.
  \item \(^{118}\) Convention Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297, at Art. 3.
  \item \(^{119}\) ILO Worst Forms of Child Labor Convention 182 \textit{supra} note 12, at Art. 3(a).
  \item \(^{121}\) Declaration of the Rights of the Child, \textit{supra} note 120, at 19.
  \item \(^{122}\) Declaration of the Rights of the Child, \textit{supra} note 120, at Article 12.
  \item \(^{123}\) See \textit{Rios-Kohn, supra} note 11, at 141.
  \item \(^{124}\) See \textit{Abbott, supra} note 82, at 530 for some of the reasons why the United States refuses to ratify the CRC. According to Abbott, the United States is unwilling to change American policy. The US recognizes
Somalia. By ratifying the CRC, States and their national governments express their agreement with the principles contained in the treaty and their commitment to protect children’s rights by enacting measures to ensure these rights.\textsuperscript{126}

The almost universal adoption of the CRC in 1989 is evidence of a profound shift in the world’s thinking about children and their inalienable and definable rights.\textsuperscript{127} The CRC specifically protects against child trafficking by asserting a child’s right to protection from economic exploitation, child military recruitment, and participation in armed conflict.\textsuperscript{128} The CRC sets the minimum age for military recruitment of children in armed conflict at age fifteen, and the CRC asks States recruiting those under eighteen to give priority to the eldest.\textsuperscript{129} In order to prevent child trafficking, Article 35 of the CRC requires State Parties to take all appropriate national, bilateral, and multilateral measures to prevent the abduction, sale, or trafficking of children for any purpose or in any form.\textsuperscript{130} Article 32 refers indirectly to the forced recruitment of child soldiers by giving children the right to protection from economic exploitation and from performing any work that is likely to be hazardous or will interfere harmfully with a child’s education, health or physical, mental, spiritual, moral or social development.\textsuperscript{131} But if the child is not below that in order to sign the CRC all fifty states must harmonize their laws relating to children. The US opposes efforts to raise the minimum age of military recruitment from 17 to 18 because the U.S. now allows seventeen year olds to enlist. There are other serious reasons why the US does not want to ratify the CRC which it believes overly regulates parents, endorses abortion, denies parents of their right to inculcate children with their religious beliefs, and other complex objections.

\textsuperscript{126} CRC. \textit{supra} note 92, at Article 44, Para I: “States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights.”

\textsuperscript{127} Udombana, \textit{supra} note 21, at 79.

\textsuperscript{128} CRC, \textit{supra} note 92, at Arts. 11, 32, and 38.

\textsuperscript{129} CRC, \textit{supra} note 92, at Art. 18, P2.

\textsuperscript{130} CRC, \textit{supra} note 92, at Art. 35. \textit{See also} CRC, at Art.19.

\textsuperscript{131} CRC, \textit{supra} note 92, at Art. 32.
the minimum age allowed for employment, any work that does not interfere with a child’s rights to education and development is not necessarily deemed “harmful.”

The CRC has certain anomalies and contradictions. By using the age of fifteen as the threshold for its prohibition of recruitment and by precluding only direct participation in hostilities, only those children under the age of fifteen who are conscripted forcibly are protected and only if they are placed in “direct” combat. Given the problematic nature of informed consent in this context, children between the ages of fifteen and eighteen who appear to have voluntarily joined armed combat as child soldiers will not be protected. The CRC’s Optional Protocol for Children in Armed Combat changed the minimum age for conscription to eighteen in order to address this problem.

The general failure to enforce the stipulations of the CRC has eroded the ideological shift that we have seen toward more universal recognition of children’s rights. This ideological shift is evidenced by the almost unanimous adoption of the CRC treaty. However, failure to implement the CRC has resulted in the actual diminution of children’s rights manifested by an alarming increase in the use of child soldiers. For example, Article 32 of the CRC provides general protection for children from “any work that is likely to be hazardous or to interfere with the child’s education.” Clearly, the participation of children between the ages of fifteen and eighteen in armed combat is, by its very nature, “hazardous” and thus constitutes a flagrant violation of Article 32 of the CRC. Moreover, the first part of Article 38 of the CRC provides: “States Parties undertake to respect and to ensure respect for the rules of international humanitarian law

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133 See Udombana, *supra* note 21, at 81.
134 CRC, *supra* note 92, at Art. 32 (1).
applicable to them in armed conflicts which are relevant to the child.”\textsuperscript{135} In addition, specifically relating to child soldiers, Article 38 of the CRC declares, “States Parties should take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.” [my emphasis].\textsuperscript{136} Even though by the year 2000, 191 States had ratified the CRC and expressed agreement thereby with the terms of Article 38, child soldiering has increased exponentially. Although global treaty ratification signifies ideological agreement that persons under fifteen should not bear arms, perpetrate violence, nor wear the uniform of any combative group in any form of political conflict in the world,\textsuperscript{137} the reality on the ground is woefully far from this ideal.\textsuperscript{138}

Even though the CRC recognizes a child’s inherent right to life and creates the State’s obligation to safeguard the survival and development of the child,\textsuperscript{139} the CRC does not contain enforcement mechanisms, making its implementation dependent upon the domestic laws of each nation.\textsuperscript{140} If the CRC is ever to move from a universal charter of idealism and aspiration to a working and implementable agreement, there must be an

\textsuperscript{135} CRC, supra note 92, at Art. 38 (1).
\textsuperscript{136} The United States allows seventeen-year olds to enlist voluntarily in the American armed forces with parental permission, but bars them from combat training until they reach eighteen years of age. See Julie R. Hirschfeld, United States Reluctant to Endorse Minimum Age for Military, DETROIT NEWS (January 21, 1998), available at http://www.detnews.com/1998/nation/9801/21/01210098.htm.
\textsuperscript{137} Jo de Berry, Child Soldiers and the Convention on the Rights of the Child, 575 ANNALS 92 (May 2001).
\textsuperscript{138} Jo de Berry, supra note 137, at 93.
\textsuperscript{139} CRC, supra note 92, at Art 38: “1. States parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in the hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. …States Parties shall endeavor to give priority to those who are oldest. 4. …States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”
\textsuperscript{140} Abbott, supra note 82, at 524.
awareness of the contexts and horrific realities in which children come to fight,\textsuperscript{141} and often well below the age of fifteen. In an attempt to strengthen the CRC and to implement the aspirations of the Declaration of the Rights of the Child, two Optional Protocols have been added to the CRC.

**Optional Protocol on the Involvement of Children in Armed Conflict (2000)[“Children in Armed Conflict Protocol”]\textsuperscript{142}

The Children in Armed Conflict Protocol\textsuperscript{143} is the main international legal instrument that specifically addresses the use of children as soldiers, the minimum age for compulsory recruitment, voluntary recruitment, and direct participation in hostilities. The United States signed it on July 5, 2000 and ratified it on December 23, 2002, subject to some reservations, understandings, and declarations. The Children in Armed Conflict Protocol raises the minimum age from fifteen (set forth earlier in the CRC) to eighteen for direct participation in hostilities, compulsory recruitment and any recruitment by non-governmental armed groups.\textsuperscript{144} Article 3 (5) of the Children in Armed Conflict Protocol obligates States to maintain safeguards with respect to voluntary recruitment by ensuring that such recruitment is genuinely voluntary; by requiring informed consent of the person’s parents or legal guardians; by informing recruits of the duties involved in

\textsuperscript{141} Jo de Berry, *supra* note 137, at 93.
\textsuperscript{142} Children in Armed Conflict Protocol, *supra* note 93.
\textsuperscript{144} Children in Armed Conflict Protocol, *supra* note 93, at Art 1: “States Parties shall take all 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”. See also CRC Art.4, P(1): “Armed groups distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” See also Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INTL L. 789, 789 (2000).
military service; and by requiring reliable proof of age prior to acceptance into military service.\textsuperscript{145}

The Children in Armed Conflict Protocol requires States to take "all feasible measures" to ensure that members of their armed forces under the age of eighteen do not take a "direct part in hostilities."\textsuperscript{146} [my emphasis] Language of the Children in Armed Conflict Protocol is drawn from Article 38(2) of the CRC and from Article 77(2) of Geneva Protocol I,\textsuperscript{147} both of which require States to take all "feasible measures" to ensure that children under the age of fifteen do not take a "direct part in hostilities."\textsuperscript{148} The term "direct participation in hostilities" in the context of treaties relating to the law of armed conflict has been interpreted in the Rome Statute of the International Criminal Court\textsuperscript{149} as covering “both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage, and the use of children as decoys, couriers or at military checkpoints.”\textsuperscript{150} For children to engage in “direct participation in combat” there has to be a direct causal relationship between the activity engaged in by the child soldier and the harm done to the enemy at the time and place where the activity takes place.\textsuperscript{151} According to this standard, the Children in Armed

\begin{footnotesize}
\begin{enumerate}
\item Children in Armed Conflict Protocol, supra note 93, at Article 3(5).
\item Michael J. Dennis, Newly Adopted Protocols, supra note 144, at 789.
\item Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, art. 48, 1125 U.N.T.S. 17512 [hereinafter “Protocol I”]. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, art. 13, Section 2, 1125 U.N. T.S. 609 [hereinafter “Protocol II”].
\item Rome Statute, supra note 5.
\item Rome Statute, supra note 5.
\end{enumerate}
\end{footnotesize}
Conflict Protocol does not prohibit indirect participation in hostilities or forward deployment.\(^{152}\) Unfortunately, the legitimization of indirect participation in hostilities is a crack through which children trafficked for sexual exploitation or child soldiering may fall.

The Children in Armed Conflict Protocol sets the minimum age for compulsory recruitment at eighteen as distinguished from the age of voluntary recruitment.\(^{153}\) The Children in Armed Conflict Protocol permits the voluntary recruitment of 16-17 year olds, provided certain protections are put into place that safeguard their truly voluntary recruitment. Thus, States that permit voluntary recruitment of children under the age of eighteen must maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary; (b) Such recruitment is done with the informed consent of the person’s parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) such persons provide reliable proof of age prior to acceptance into national military service.\(^{154}\) Children between the ages of fifteen and eighteen years of age are not permitted to participate directly in the hostilities.\(^{155}\)

The Children in Armed Conflict Protocol is not a perfect piece of legislation. It does not define a “child soldier.” It merely establishes legitimate parameters within which children can be used in government or non-government armed forces.\(^{156}\) Earlier in 1997 the Cape Town Principles \(^{157}\) defined a child soldier as “any person under eighteen years of age who is part of any kind of regular or irregular armed force or armed group in participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.”.

\(^{152}\) Michael J. Dennis, Newly Adopted Protocols, supra note 144, at 789.

\(^{153}\) Children in Armed Conflict Protocol, supra note 93, at Arts. 2 and 3, P(l).

\(^{154}\) Children in Armed Conflict Protocol, supra note 93, at Art. 3, P(3).

\(^{155}\) Children in Armed Conflict Protocol, supra note 93, at Art. 3, P (3).

\(^{156}\) Sandrine Valentine, supra note 3, at 115.

\(^{157}\) See Cape Town Annotated Principles, supra note 28.
any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members.” The Cape Town Principles include girls recruited for sexual purposes and forced marriage.

In formulating a definition of a “child soldier” there should be no confusion or identification of that term with the term “combatant.” In international humanitarian laws the term “combatant” is frequently contrasted to the term “civilian.” Children who are either civilians or combatants have different rights to protection during armed conflict under the international humanitarian laws. The problem is that a child soldier who is not in an official “army” and who is fighting but non-consentually is arguably neither a civilian nor a combatant and thus totally unprotected.


The CRC protects against the illicit transfer of children abroad, their exploitation, and trafficking. Although the CRC is the main legislation regarding the protection of trafficked children, it has been poorly enforced and lacks effectiveness. In an effort to strengthen the CRC, the Protocol on the Sale of Children was adopted by the United Nations General Assembly on May 25, 2000, and it came into force on January 18, 2002. The United States signed it on July 5, 2000 and ratified it on December 23, 2002, subject to certain reservations, understandings, and declarations. It is the first international instrument to define the “sale of children” as any act or transaction whereby

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158 See Lisa Alfredson, Sexual Exploitation of Child Soldiers, supra note17.
159 See Sale of Children Protocol, supra note 94.
160 Michael J. Dennis, Newly Adopted Protocols, supra note 144, at 789.
161 101 instruments of ratification of the Optional Protocol on the Sale of Children were delivered to the Secretariat of the United Nations. The ratification list is available at http://www.ohchr.org/english/countries/ratification/11_c.htm#reservations (last visited Aug. 15, 2006).
a child is transferred by any person or group of persons to another for remuneration or any other consideration." The Sale of Children Protocol is arguably applicable to the abduction and use of children as soldiers. The Sale of Children Protocol further defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration." Girls abducted into the army are frequently forced into prostitution, sex slavery, and pregnancy. The Protocol on the Sale of Children was intended to provide the means for greater punishment of offenders through the use of cooperative law enforcement mechanisms. For example, the Sale of Children Protocol provides for broad jurisdiction, enabling the extradition of offenders to ensure prosecution regardless of where they are discovered.

The Sale of Children Protocol also criminalizes any action relating to child prostitution. Article 9 requires parties to strengthen existing laws or create new laws to protect child victims, particularly those who are most vulnerable to trafficking. Articles 8 and 10 of the Sale of Children Protocol further encourage parties to take steps toward multilateral cooperation and to provide assistance to victims and their families. But like many other international human rights agreements, the Protocol for the Sale of Children lacks the enforcement mechanism to ensure adherence to its provisions.

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163 Sale of Children Protocol, supra note 94, at Art. 2(b)  
164Michael J. Dennis, Newly Adopted Protocols, supra note 144, at 789.  
165Michael J. Dennis, Newly Adopted Protocols, supra, note 144, at 789.  
166Michael J. Dennis, Newly Adopted Protocols, supra note 144, at 794.  
International Humanitarian Laws and the Protection of Children

Current international humanitarian law, as defined in the four Geneva Conventions of 1949\textsuperscript{170} and the two Additional Protocols of 1977,\textsuperscript{171} provide standards for the treatment of persons including children who are members of the civilian population during a state of armed conflict or occupation. Most of the current armed conflicts today are “internal” whereas the Geneva Conventions regulate international conflicts. However, Article 3 common to the Geneva Conventions defines certain rules to be applied in armed conflicts of a non-international character, like a civil war. Protocol II also applies to all non-international armed conflicts taking place in a territory of a State party between its armed forces and dissident armed forces.\textsuperscript{172} The Additional Protocols of 1977 combine rules of war with rules protecting civilians, including children.

International humanitarian laws protect children in three ways. Firstly, they recognize the need to provide children with special protection because children are persons of particular vulnerability, which is a norm of customary international law.\textsuperscript{173} Secondly, they question the use of children in military operations.\textsuperscript{174} Thirdly, they take into account children’s immaturity if they commit offenses during armed conflicts.


\textsuperscript{171} See Protocols I and II of the Geneva Conventions, supra note 147.

\textsuperscript{172} Protocol II, supra note 147, at Art 1.

\textsuperscript{173} Udombano, supra note 21, at 75.

\textsuperscript{174} Udombano, supra note 21, at 75.
International humanitarian law distinguishes between combatants and non-combatants. Children who are civilians are protected against inhumane treatment and directed attacks during international and domestic armed conflicts under the international humanitarian laws. Article I common to the Geneva Conventions affords children, as members of the civilian population, protection against inhumane treatment and directed attacks during armed conflicts, whether international or non-international. Article 3 of the Geneva Conventions protects persons “taking no active part in hostilities.” Arguably, children used as soldiers are not protected under either Article I or Article 3 common to the Geneva Conventions.

Protocols I and II of the Geneva Conventions provide children with special protection and preferential treatment during warfare. Protocol I obligates States to prevent children under the age of fifteen from taking a direct part in international armed conflict, specifically in recruitment efforts, requiring the States to give priority to the eldest children when recruiting persons between the ages of fifteen and eighteen. Protocol II specifically prohibits children in armed conflict under the age of fifteen from both direct and indirect participation in non-international conflicts.

Article 24 of the Fourth Geneva Convention is devoted to children under the age of fifteen who are orphaned or separated from their families as a result of war. Article 51 of the Fourth Geneva Convention prohibits forced labor of children under the age of

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175 Udombano, supra note 21, at 74. See also Protocol I of the Geneva Conventions that states the basic rule: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” Protocol I, supra note 147, at Art. 48.
176 Abbott, supra note 82, at 520.
178 Protocol I, supra note 147, at Art. 47. See also II, supra note 147, at Art. 4.
179 Protocol II, supra note 147, at Art. 4.
eight. The Fourth Geneva Convention also prohibits the use of the death penalty on persons younger than eighteen.

The international humanitarian laws also prohibit killing civilians for revenge. The Geneva Conventions prohibit murder, torture, mutilation, and any other form of brutality imposed by civilians or military representatives. All these international humanitarian legal protections for civilians, if implemented, should amply protect children from being abducted and mistreated during a war, but they arguably will not cover children if they are deemed voluntary child soldiers or combatants. Thus, children taking part in hostilities lose the protective status of “civilians” and become legitimate military targets under the Geneva Conventions and the Additional Protocols.\footnote{Abbott, supra note 82, at 523.}

Notwithstanding the clarity of the laws of war inscribed in the Geneva Conventions and the Additional Protocols of 1977, participants in a majority of the internal conflicts today blatantly violate international humanitarian laws, especially Common Article Three of the Geneva Conventions that mandates humane treatment of civilians, including children. The Geneva Conventions fall short of providing a precise definition of a “child,”\footnote{Udombano, supra note 21, at 73.} but they do establish the age of fifteen as the age below which a child must enjoy some special protections. In contrast, the Convention on the Rights of the Child actually defines a child and commits States to respect and ensure the rights set forth in the Convention without any discrimination.\footnote{CRC, supra note 92, at Art. 2(1).} The African Charter on the Rights and Welfare of the Child\footnote{African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (1990).} defines a “child” as “every human being below the age of 18
years.”\textsuperscript{184} The continued use of child soldiers in so many countries today illustrates the failure by the international community to protect the world’s children\textsuperscript{185} or to implement and adhere to the principles inscribed in the international humanitarian laws. The laws of war and international humanitarian laws as implemented simply do not adequately protect children as civilians\textsuperscript{186} and certainly do not adequately protect child soldiers.

**B. DOMESTIC AND INTERNATIONAL HUMAN TRAFFICKING LAWS**

Child soldiers are children who are trafficked into exploitative and dangerous forms of work performed under slave-like conditions. Thus, the laws relating to human trafficking are applicable to the illegal abduction and forcible use of children as soldiers. The U.S. trafficking law, The Victims of Trafficking Protection Act (“TVPA”)\textsuperscript{187} considers children who are trafficked to be ”victims of severe forms of trafficking”\textsuperscript{188} and therefore eligible for “enhanced benefits.” “Traffickers abuse virtually the entire spectrum of rights protected in the Universal Declaration of Human Rights.”\textsuperscript{189} Victims of trafficking are denied the right to freedom of movement, freedom of association, and freedom to have and enjoy a childhood. Traffickers profit mightily from the arbitrary detention, enslavement, rape, and cruel, inhuman, and degrading treatment of children who are deprived of their dignity and equality. Traffickers view their victims as objects, “chattel to be bought and sold as needed.”\textsuperscript{190}

\begin{itemize}
  \item \textsuperscript{184} African Charter, supra note 183, at Art. 2.
  \item \textsuperscript{185} Abbott, supra note 82, at 520.
  \item \textsuperscript{186} Abbott, supra note 82, at 519-520 (Summer 2000).
  \item \textsuperscript{187} Victims of Trafficking and Violence Protection Act of 2000, supra note 5. [hereinafter “TVPA”]. See Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad, supra note 5 for a complete analysis of the TVPA and its provisions.
  \item \textsuperscript{188} TVPA, supra note 5, at 22U.S.C. Section 7105©(1)(2004)
  \item \textsuperscript{189} Universal Declaration of Human Rights, supra note 107.
  \item \textsuperscript{190} The Global Problem of Trafficking in Persons: Breaking the Vicious Cycle on "Trafficking of Women and Children in the International Sex Trade", Before the House Comm. on Int'l Relations, 106th Cong. 2 (1999) (testimony of Harold Koh, Assistant Secretary of State)
\end{itemize}
The United States Trafficking Victims Protection Act ("TVPA")

In October 2000, Congress enacted the Trafficking Victims Protection Act to prevent trafficking, protect victims and punish perpetrators of trafficking. The TVPA is narrower in scope than the U.N. Palermo Protocol that was passed on November 2000, just one month after the passage of the TVPA. Unlike the Palermo Protocol, the TVPA does not address trafficking for the purposes of exploitative labor, inter-country adoption, organ harvesting, or pornography. The stated purpose of the TVPA is to combat trafficking in persons, which it recognizes to be nothing less than a modern manifestation of slavery and one that disproportionately affects women and children. The TVPA prevents the transnational crime of trafficking from spreading by establishing and funding international programs to educate women and children about trafficking. It also grants victims of trafficking permanent residency status and the right to work in the United States if they are willing to assist with the prosecution of their perpetrators. However, the inadequate protection of these witnesses and the fear of retaliation against their families in their native countries remain challenges to the enforcement of the TVPA.

The TVPA is by far the most comprehensive piece of legislation to address the global problem of trafficking in persons, including children. Children trafficked abroad or

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191 TVPA, supra note 5.
193 Mathews, supra note 192, at footnote 119.
194 TVPA, supra note 5, at Section 102(A).
into the United States from abroad for the purpose of child soldiering are arguably
protected under this statute. The TIP Report of 2006 specifically refers to child soldiering
in Uganda as an example of one form of human trafficking.197 While there is no
significant incidence of child soldiering occurring in the United States,198 the TVPA can
help to educate parents in other countries about the dangers of child soldiering and serve
as a good model statute for other nations where child soldiering is more prevalent. The
TVPA expands U.S. involvement in prevention measures worldwide by increasing
assistance and protection available to victims and by enhancing penalties for perpetrators.
In other words, it takes the "three P approach" - prevention, protection, and prosecution –
and adds the “three R approach” –rescue, rehabilitation, and reintegration--that has been
advocated by human rights groups and legal scholars for the past decade.

An important feature of the TVPA is its mandate to compile and publish a yearly
report to assess the efforts of governments in meeting minimum standards to eliminate
trafficking.199 This Trafficking in Persons Report (“TIP Report”) is a comprehensive
collection of data on trafficking in countries worldwide. Although Secretary of State
Colin Powell accurately described the TIP Report as a diplomatic tool to end modern day
slavery, others see it as a form of U.S. hegemony and a repugnant form of American

197 Department of State, Trafficking in Persons Report (2006), available at
See also 1) Department of State Trafficking on Persons Report 1(2001). Available at
2) Department of State, Trafficking in Persons Report 2(2002), available at
3) Department of State, Trafficking in Persons Report 7(2003), available at
4) Department of State, Trafficking in Persons Report (2004), available at
5) Department of State, Trafficking in Persons Report (2005), available at
198 See Colonel Ann Wright, Blood Diamonds and Blood Oil, TRUTHOUT, March 6, 2007, writing about
child and teen soldiers in the US.
imperialism designed to embarrass other nations.

The TIP Report includes a short narrative of each country describing the scope and severity of trafficking within that country, a brief discussion of the government's conformity with the requisite minimum standards, and a description of the country's attempts to prevent the offense, prosecute the offenders, and protect the victims involved in trafficking. Governments that fully comply with the minimum standards set forth in the TVPA are placed in Tier One. Governments that are not in full compliance, but are making significant efforts to comply are placed in Tier Two. In 2003, a new Tier Two Watchlist was added for countries that have a significant amount of trafficking but are making some efforts to comply. Countries that do not fully comply with the minimum standards and are not making significant efforts to comply are placed in Tier Three. Tier Three countries are subject to the U.S. imposing non-humanitarian sanctions and withholding non trade-related assistance.

The TVPA puts political and economic pressure on countries through the implementation of sanctions. Although sanctions can be used to modify a government's behavior to conform to US and international law standards, sanctions harm women and children in poor countries. The President of the United States can waive the sanctions when necessary to avoid significantly adverse effects on vulnerable populations, including women and children.

200 See Tiefenbrun, The Saga of Susannah, supra note 5 for a complete overview of the TVPA, its organization and content.
203 TVPA, supra note 5, at 22 U.S.C. Section 7107 (b) (1)(C) and Section 7107 (d)(1).
204 See 2003 TIP Report, supra note 197.
The TVPA allows victims of severe trafficking (i.e. trafficked children) to receive enhanced benefits and services from the United States. \footnote{TVPA, supra note 5, at 22 U.S.C. Section 7105©(1)(2004).} Victims of severe forms of trafficking are defined as people held against their will “for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” \footnote{TVPA, supra note 5, at 22 U.S.C. Section 7102(8)(a)(2004).} Children who are trafficked into the United States have the opportunity to obtain a T-visa permitting them to stay in the country at least through the duration of their captors’ prosecution and, perhaps, even permanently, if they are willing to assist in the prosecution of their perpetrators. \footnote{TVPA, supra note 5, at 22 U.S.C. Section 7105 ©(3).}

Children who are trafficked are considered “victims of severe forms of trafficking” and as such are “not [to] be detained in facilities inappropriate to their status as crime victims.” \footnote{TVPA, supra note 5, at Section 107©(1)(A)} Moreover, victims of severe forms of trafficking are eligible for Assistance Programs that provide such benefits as housing, living expenses, medical care, and other services to assist the victim in becoming self sufficient and safe from their perpetrators. \footnote{Mathews, supra note 192, at footnote 255.} Before the passage of the TVPA, adequate protection services were not available to victims of trafficking. A woman under the age of 18 could be held in jail or prison prior to the trafficker's trial rather than being housed in a facility that could appropriately meet her needs. The refugee programs now available to victims provide an infrastructure for people who have suffered from persecution and torture. Often victims have been torn away from their family and from the culture familiar to them. Enhanced assistance, intensive mental health counseling, and specialized foster care programs are offered to child victims of trafficking. All these and similar benefits could presumably

\footnote{TVPA, supra note 5, at 22 U.S.C. Section 7105©(1)(2004).}
\footnote{TVPA, supra note 5, at 22 U.S.C. Section 7102(8)(a)(2004).}
\footnote{TVPA, supra note 5, at 22 U.S.C. Section 7105 ©(3).}
\footnote{TVPA, supra note 5, at Section 107©(1)(A)}
\footnote{Mathews, supra note 192, at footnote 255.}
apply to child soldiers who should be rehabilitated if and when they escape; however, child soldiers are sometimes treated with Western style therapy that simply does not work for children from Africa, Asia, and other parts of the world.

The U.S. TVPA could serve as a model statute for the establishment of domestic laws in foreign lands against the abduction and use of child soldiers. It is the first U.S. law to penalize a range of serious offenses associated with the trafficking of children. TVPA advances the prosecution of perpetrators of trafficking through increased punishments and the creation of new criminal offenses. Unfortunately, the TVPA lacks an enforcement arm to reach U.S. citizens engaging in sex acts with minors abroad. That is why President Bush passed the important PROTECT Act.210

Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (Protect) Act of 2003 [“U.S. PROTECT Act”]211

The U.S. PROTECT Act has extraterritorial reach and can target individuals - both U.S. citizens who commit sexual crimes against children abroad, and those who enter the United States to traffic children for sexual exploitation illegally. Any U.S. citizen aiding in the abduction of child soldiers for the purpose of performing sex acts could be subject to this Act. The PROTECT Act "comprehensively strengthens law enforcement’s ability to prevent, investigate, prosecute and punish violent crimes committed against children."212 Violent crimes are often committed against children by commanders of child soldiers. If U.S. citizens are in any way connected to this activity, they are subject to the PROTECT Act that increases penalties for sex crimes and crimes

210 PROTECT Act, supra note 115.
211 PROTECT Act, supra note 115.
associated with the trafficking of children. It also modifies the burden of proof
requirements for convictions.\textsuperscript{213} Harsh punishment applies to anyone who benefits
financially from a child trafficking venture.\textsuperscript{214} Penalties for the sexual exploitation of
children by previous offenders have been increased as well.\textsuperscript{215} For example, a person who
was previously convicted of any offense relating to the sexual exploitation of children
faces increased minimum and maximum sentences, from ten to twenty years and from
thirty to fifty years, respectively.\textsuperscript{216} Another provision adds aiding and abetting liability
such that anyone who, for financial gain, "arranges, induces, procures, or facilitates the
travel of a person" - knowing that such a person's interstate or foreign travel is "for the
purpose of engaging in illicit sexual conduct" - can be sentenced up to thirty years in
prison.\textsuperscript{217} Such a scenario could arise if a U.S. citizen aids and abets the trafficking of
child soldiers. Previously, defendants charged with crimes against children were normally
granted bail while awaiting trial. Now, the PROTECT Act models its bail determination
rules after legislation used for deciding bail in drug, firearm, and violent crimes.\textsuperscript{218} The
PROTECT Act attempts to fill certain gaps in the TVPA, and thereby strengthens the
U.S. government's ability to prosecute child trafficking offenders.\textsuperscript{219} This statute could be
used as a model statute for nations whose citizens engage in the recruitment and
exploitation of child soldiers from other neighboring countries and who traffic them
across a border to engage in direct or indirect hostilities in their own nation.

\textsuperscript{213} \textit{U.S. Congress Passes Sweeping Child Protection Legislation}, World Vision US, available at
http://www.worldvision.org/worldaction_protectact.
\textsuperscript{214} PROTECT ACT, supra note 115, at Section 103.
\textsuperscript{215} PROTECT ACT, supra note 115, at Section 103-104.
\textsuperscript{216} PROTECT Act, supra note 115, at Art. 103.
\textsuperscript{217} PROTECT Act, supra note 115, at Art. 105(d).
\textsuperscript{218} Fact Sheet, supra note 212. There is no statute of limitation for crimes involving the abduction or
physical or sexual abuse of a child in the PROTECT Act.
\textsuperscript{219} PROTECT Act, supra note 115, at 101-204. 42 U.S.C. 5119a, 5791.

In December 2000, in Palermo, Italy, the U.N. General Assembly approved and signed the International Convention against Organized Transnational Crime (“Palermo Protocol”) and its supplementary protocols on alien smuggling and trafficking in persons. 221 This international trafficking law closely resembles the U.S. TVPA and clearly links the crime of child trafficking to international organized crime. The Palermo Protocol defines an organized criminal group as "a structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit." 222 The need for the supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children came from the knowledge that well-established criminal organizations traffic women and children. 223 Clearly stated, the purpose of the Palermo Protocol is:

a) To prevent and combat trafficking in persons, paying particular attention to the protection of women and children; and

b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

220 Palermo Protocol, supra note 6.
c) To promote cooperation among States Parties in order to meet those objectives.\textsuperscript{224}

The trafficking standards proposed by the Global Alliance against Trafficking Women just prior to the enactment of the Palermo Protocol include eight specific principles that the Palermo Protocol incorporates in its definition of trafficking:

1) Principle of Non-Discrimination: States shall not discriminate against trafficked persons in substantive or procedural law, policy or practice.

2) Safety and Fair Treatment: States shall recognize that trafficked persons are victims of serious human rights abuses, protect their rights notwithstanding any irregular immigration status, and protect them from reprisal and harm.

3) Access to Justice: The police, prosecutors and court shall ensure that their efforts to punish traffickers are implemented within a system that respects and safeguards the rights of the victims to privacy, dignity and safety. An adequate prosecution of traffickers includes prosecution where applicable, for rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions), kidnapping, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labor, debt bondage, or forced marriage.\textsuperscript{225}

4) Access to Private Actions and Reparations: States must ensure that trafficked persons have a legal right to seek reparations from traffickers as well as assistance in bringing such actions, if necessary.


\textsuperscript{225} Girls who are abducted as child soldiers are frequently victims of rape, sexual assault, sex slavery, forced pregnancy and marriage. They would be protected under this provision.
5) Resident Status: States shall provide trafficked persons with temporary residence visas (including the right to work) during the pendency of any criminal, civil or other legal actions and shall provide trafficked persons with the right to seek asylum and to have the risk of retaliation considered in any deportation proceedings.226

6) Health and other Services: States shall provide trafficked persons with adequate health and other social services during the period of temporary residence.

7) Repatriation and Reintegration: States shall ensure that trafficked persons are able to return home safely, if they so wish, and when they are able to do so.

8) State Cooperation: States must work cooperatively in order to ensure full implementation of these standards.227

**Palermo Protocol and Provisions Specifically for Trafficking in Children**

Mary Robinson, U.N. High Commissioner for Human Rights, advocated that a separate section for children be added to the Palermo Protocol.228 Such a section would help clarify the special problems and needs of children who are victims of trafficking. The Palermo Protocol does include a sub-section that provides in particular that the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any

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226 Child soldiers who return home are frequently rejected by their family and friends, if alive. They would be protected under this provision


of the means set forth in the aforementioned definition of trafficking in persons. \(^{229}\) A separate section in the Palermo Protocol on trafficking and children not only highlights the special needs of children, but it provides an important forum to advocate States’ adoption of protections designed specifically for child victims of trafficking schemes. \(^{230}\)

**C. INTERNATIONAL LAWS RELATING TO SLAVERY**

The prohibition against slavery and the slave trade is a well-established rule of customary law that has been elevated to the status of *jus cogens* in international law. \(^{231}\) State practice and *opinio juris* on the issue of slavery and the slave trade are unequivocal – almost every State has prohibited institutionalized slavery and the slave trade.

Nevertheless, human trafficking and the forced use of children as soldiers are

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\(^{229}\) Report of the Ad Hoc Committee on Palermo Protocol, *supra* note 224, at Art. 3(c).


\(^{231}\) For a definition of *jus cogens*, see A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT’L. L. 303, 311 (1999). Certain customary international rules are elevated to the status of *jus cogens* - rules that cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The concept of *delicta juris gentium* or general wrongs against international society takes four forms:

1. breach of *jus cogens* or high illegality;
2. cases where international law recognizes general competence to exercise jurisdiction to apprehend, irrespective of nationality (like piracy);
3. acts that harm states indiscriminately (like nuclear testing); and
4. acts infringing principles of law creating rights the beneficiaries of which do not have legal personality or means of protecting (i.e., non-self-governing peoples).

See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 3 (2d ed. 1979).

Jus Cogens is defined in Article 50 of the Vienna Convention on Treaties which states: "A treaty is void if it conflicts with a preeminent norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." See Vienna Convention on the Law of Treaties, May 22, 1969, I.L.C. Yearbook, (1966), ii. 247-9, 261, 266, at Art. 50. Despite its universal acceptance, "more authority exists for the category of *jus cogens* than exists for its particular content." Brownlie, at 501. Specific human rights are often cited to as *jus cogens* - the least controversial examples being the prohibition of aggressive war, the law against genocide, and the rules prohibiting trade in slaves and slavery. For example, in the Barcelona Traction Case, the International Court of Justice recognized that *jus cogens* were obligations, *erga omnes* - owing to the entire legal community - and that they derive "from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." *Barcelona Traction*, 1970 I.C.J., at 32. The International Law Commission cites as an example of a violation of *jus cogens* "a treaty contemplating or conniving the commission of acts, such as trade in slaves, piracy or genocide. The most well-established *jus cogens* as human rights are the prohibitions against slavery, genocide, torture and other cruel, inhuman and degrading treatment." OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 343 (1991).
contemporary forms of slavery that exist and that blatantly contradict State obligations set forth in international treaties outlawing slavery.

**Slavery Convention of 1926**

The 1926 Slavery Convention is the first important attempt made by the League of Nations to fight against slavery and the first international legal instrument to define slavery:

(1) “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”

**U.N. Slavery Convention of 1956**

Subsequently, the United Nations expanded the definition of slavery, adopting a new treaty supplementing the 1926 Convention on Slavery. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery was adopted in 1956, and it includes certain practices in the definition of slavery: debt bondage, serfdom, and any other institution or practice whereby a woman or a child may be transferred by a person to another. The abduction, transport, and forcible use of children as soldiers is arguably within this definition of slavery.

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232 See 1926 Slavery Convention, *supra* note 103.
Working Group on Contemporary Forms of Slavery

Although the U.N. Slavery Conventions of 1926 and 1956 outlaw slavery, they fail to create a permanent international body to evaluate and pursue information about governmental violations that are tantamount to slavery. In place of a formal mechanism to monitor and implement States’ obligations to abolish slavery, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities ["the Sub-Commission"] created the Working Group on Contemporary Forms of Slavery ["the Working Group"]. The Working Group reviews developments on contemporary forms of slavery at the annual session of the Sub-Commission. In order to focus on specific issues pertinent to modern forms of slavery, the Working Group established the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Special Rapporteur on Violence Against Women.

The United Nations Working Group consists of independent experts who study current problems regarding slavery and who make recommendations for future action. Its official mandate is to review developments in the field of slavery and the slave trade in all their variant forms of practices and manifestations, including the slavery-like practices of apartheid and colonialism, the traffic in persons, and the exploitation of the prostitution of others as they are defined in the UN Slavery Convention of 1926, the

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237 Tiffany Richards, supra note 55, at 832.
Supplementary Convention on the Abolition of Slavery of 1956, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949. This list should also include the use of child soldiers as victims of slavery and exploitative labor. The U.N. Working Group is the primary body responsible for interpreting the slavery and trafficking conventions. Over the years, the Working Group has integrated a wide range of exploitative practices under its ambit such as sex tourism, the sale of children, child prostitution, child pornography, the exploitation of child labor, the sexual mutilation of female children, and the use of children in armed conflict. Therefore, the practice of using child soldiers has been specifically linked to contemporary forms of slavery and trafficking studied by the U.N. Working Group.

Despite repeated requests from the Working Group and from the United Nations' Secretary General, governments continually fail to provide information on measures taken to implement the relevant slavery and trafficking conventions and the Working Group's recommendations. Moreover, the lack of mandatory government participation in the Working Group's process diminishes the force of its recommendations.

240 See Tiffany Richards, supra note 55, at 832.
242 Tiffany Richards, supra note 55, at 835.
D. INTERNATIONAL LABOR CONVENTIONS AND CHILD SOLDIERS

The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ("ILO Worst Forms of Child Labor Convention 182")\textsuperscript{243}

The ILO Worst Forms of Child Labor Convention 182 includes the trafficking of children for their use as child soldiers within the definition of child slavery:

(a) [A]ll forms of slavery or practices similar to slavery, such as the sale and trafficking of children, …including forced or compulsory recruitment of children for use in armed conflicts.\textsuperscript{244}

The use of child soldiers is linked to human trafficking, child labor violations, and slavery. The definition of child soldiering in the ILO Worst Forms of Child Labor Convention 182 underscores the link between the trafficking of children and their abduction and illegal employment as child soldiers and as slaves. Child soldiers, especially girls, often lead dual lives acting as combatants by day and sex slaves by night.

Children are trafficked and used by other soldiers and commanders for sexual exploitation and as child soldiers for combat in direct hostilities.

According to the ILO, approximately 180 million working children between the ages of 5 and 17 are engaged all over the world in the worst forms of child labor, as

\textsuperscript{243} ILO Worst Forms of Child Labor Convention 182, \textit{supra} note 12. The General Conference of the International Labour Organization adopted the Convention in June 1999, and it entered into force on November 19, 2000. 158 countries have ratified it. For a complete list of the states that ratified the ILO Worst Forms of Child Labor Convention 182 see http://www.ilo.org/ilolex/english/convdispl.htm (last visited Jan. 16, 2006). Article 3 of the ILO Worst Forms of Child Labor Convention 182 and Article 22 of the ILO Constitution states that: “Each of the Members agrees to make an annual report to the International Labour (sic) Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.” \textit{See also} ILO Recommendation Concerning the Prohibition Child Labour 190, \textit{supra} note 13.

\textsuperscript{244} ILO the Elimination of Worst Forms of Child Labor Convention 182, at 11999.
defined above in the ILO Worst Forms of Child Labor Convention 182. Over 8 million children are engaged in the so-called unconditional worst forms of child labor, including: "slavery, trafficking, and forced recruitment for use in armed conflicts." However, this figure has to be treated with caution, considering the hidden and illegal nature of such activities.

Usually young boys are employed as messengers or spies because of their agility to penetrate enemy lines. Boy children may also be used as porters to carry provisions and munitions while engaging in direct hostilities. Girls are exploited as cooks and sexual slaves for soldiers, and they may be forced to engage in combat and in direct hostilities as well. These children are exposed to injuries and death. Even if they survive, they will forever bear the traces of the physical and psychological violence they suffered during their captivity. Girls who have been victimized by gender violence have difficulty reintegrating in society without special assistance. The ILO finds an identity of circumstances for “the sale and trafficking of children, and forced or compulsory recruitment of children for use in armed conflicts” as well as “other forms of slavery”. Thus, there is a direct link between child trafficking, child slavery, and child soldiers.

U.S. Department of Labor Recommendations on Child Labor (190)

The United States Department of Labor recommends the implementation of certain initiatives to help the increase in the illegal use of child labor for the purposes of engaging in direct or indirect hostilities. To change this horrible trend, the US Department of Labor recommends a ‘holistic’ approach involving direct interventions, data collection and partnerships.\(^{248}\) Direct interventions should be able to raise awareness, monitor the workplace, create alternative income generation for families, create alternative production processes to make child labor unprofitable and unnecessary, and establish affordable and accessible education for children and families. Data collection establishes the basis for selecting and shaping the direct intervention. ILO-IPEC’s Statistical Information and Monitoring Program on Child Labor (SIMPOC) has central statistical offices in several countries to conduct household surveys that yield national estimates on the number of working children.\(^{249}\) Partnerships consist of working relationships between the ILO and governments, employers, and workers in order to incentivize the elimination of child labor and offer technical assistance to countries that do eliminate child labor as a national policy.\(^{250}\)

Other strategies proposed to eliminate the worst forms of child labor including child soldiering are: legal strategies, education strategies, market based strategies, rescue, rehabilitation, and reintegration strategies. Any of these approaches requires a willingness and capacity of the society to find and help these children. The key to the implementation of these strategies is the identification of children in the worst forms of child labor,


\(^{249}\) Faces of Change, *supra* note 248, at p. 3.

\(^{250}\) Faces of Change, *supra* note 248, at p. 3.
III. LITERARY REPRESENTATIONS OF CHILD SOLDIERS:

A. ALLAH IS NOT OBLIGED BY AHMADOU KOUROUMA

This short but powerful book about the life of a child soldier in Liberia and Sierra Leone won the two most prestigious literary awards in France: the Prix Renaudot and the Prix Goncourt. The book is written by Ahmadou Kourouma, an African man who was born in the Ivory Coast in 1927, fought in the French colonial army in Indochina, and later studied science in France. Ahmadou Kourouma eventually returned to the Ivory Coast, worked in insurance, was put in jail because he opposed the regime, and spent many years in exile. He ended up becoming a playwright and the author of four novels. He recently died in 2004. Kourouma is recognized as one of the major figures of contemporary African literature.

Allah is not obliged is more than just a book about child soldiers. It is a tale about the utter despair of children victimized by decadence in Africa and the corruption of social values during endless and inhumane tribal warfare. Kourouma shocks his readers into seeing that even the most humane members of society who have somehow lost their values are capable of committing unspeakable atrocities. The brutality of a child soldier’s life experience can make even innocent young children become professional killers. For example, at the end of the book the young narrator is saddened because he cannot ever become an evil “lycaeon”. Since his mother and father are already both dead, he can’t

personally kill them which is the rite of passage to become a prestigious lycaeon.

Kourama describes this serious ethical transformation of the innocent ingenue into an evil killing machine through the effective symbolic metaphor of the lycaeon:

“…lycaeons are wild dogs that hunt in packs. They gobble everything; mother, father, all and everything. When they finish sharing a victim, every lycaeon goes off to clean his self. If one comes back with blood on his fur, even one drop of blood, they think he is wounded and he’s gobbled up by the others right there. That’s what it is. Got it? They have no mercy. Your mother alive?” 253

The narrator adds that “to be a brave young lycaeon of the revolution, you “must first kill with your bare hands …one of your own parents.” 254 Thus, Birahima who grew up in a very religious home has had his ethics and social values totally transformed by the devastating experience of being a child soldier.

In the spirit of Voltaire and through the extensive use of irony and sarcasm Kourouma debunks the power of religion to purify man’s soul. 255 He depicts the fate of a convent transformed into a brothel 256 for the carnal use of the commanders. He describes the Mother Superior Marie-Beatrice as “a saint who made love like every woman in the universe.” Mother Superior Marie-Beatrice turns out to be one of the most superior fighters in this topsy-turvy world where good is evil and evil is good. Kourouma accuses the U.N. Peacekeepers of “slaughtering innocent civilians and massacring people, all in the name of humanitarian peacekeeping.” 257 This sad but insightful tale is told by an innocent ten year old boy, Birahima, an ingenue who is ceaselessly stunned by the

253 Allah is not obliged, supra note 252, at 173.
254 Allah is not obliged, supra note 252, at 174.
255 Allah is not obliged, supra note 252, at 134.
256 Allah is not obliged, supra note 252, at 74.
257 Allah is not obliged, supra note 252, at 126. See also, “The peacekeeping forces didn’t keep the peace, they didn’t take any unnecessary risks. They weren’t bothered about details, they just fired shells at random, they fired shells at the people doing the attacking and at the people being attacked.. They bombed every part of the town…” Id. at 140-141.
horrors of war, sickened by the cruelty and barbarism\(^{258}\) of his own people, and educated into the power structures and customs that fuel Africa’s bitter tribal wars. For example, he stuns the readers by revealing Sierra Leone’s leader of the Rebels, Foday Sankoh, and his unique solution to stop democratic elections that might vote him out:

“Someone with no arms couldn’t vote. All Foday Sankoh had to do was cut off the arms of as many people, as many of the citizens of Sierra Leone as possible. Every Sierra Leone prisoner had his hands cut off before being sent back into the territory occupied by government forces. If a woman showed up with a baby on her back, the woman’s hands were amputated and the baby’s hands too…because they’ll be voters some day.”\(^{259}\)

This is the kind of madness that Birahima witnessed as a child soldier and that ultimately transformed him into a killer.

Birahima grew up in the Ivory Coast in a matriarchal family with a crippled mother, a feisty grandmother, and an absentee father who traveled all the time. Birahima was a “fearless, blameless kid” who “slept anywhere [he] wanted and stole all kinds of stuff to eat”.\(^{260}\) Birahima loved his long-suffering mother who was always crying because she, like her son, was a victim of a failed society caught up in mystery and magic\(^{261}\) and

\(^{258}\) Allah is not obliged, supra note 252, at 132-133. “Prince Johnson…took Doe by the ear and sat him down. He cut off his ears, the right ear after the left…The more the blood flowed, the more Johnson laughed, the more delirious he became. Prince Johnson ordered that Samuel Doe’s fingers be cut off, one by one, and with this torture victim squealing like a suckling calf, he had his tongue cut out. Through the torrent of blood, Johnson hacked at the arms, one after the other. When he tried to hack off the left arm, the victim had had enough: he gave up the ghost (‘give up the ghost’ means ‘die’).” Later Kourouma narrates that Johnson ordered Samuel Doe’s heart to be removed, and “one of the officers ate some human flesh to make himself look more cruel, more brutal, more barbarous and inhuman—real, genuine human flesh. Samuel Doe’s heart was put to one side for the officer so he could make a delicious kebab out of it.” Id. at 133.

\(^{259}\) Allah is not obliged, supra note 252, at 165.

\(^{260}\) Allah is not obliged, supra note 252, at 5.

\(^{261}\) Allah is not obliged, supra note 252, at 24: “My maman died because Allah wanted her back. The imam said that a devout Muslim isn’t allowed to criticize Allah or say anything bad about him. Then he said that my mother didn’t die of magic, she died of her ulcer.”
superstition. African society deprived her of her rights as a child and as a woman. She was the victim of a forced and badly executed female genital circumcision and a sacrificial ceremony of excision where the most beautiful girl is killed by the *djinn* (magical creature) of the forest who keeps her as his sacrifice. Birahima’s mother also suffered from a festoring, painful ulcer on her amputated leg that was never treated properly because she was a black African native who did not have the same privileges as the black African Americans. Birahima remembers that “sometimes, i’d fall on to Maman’s ulcer and she’d howl with the pain. The ulcer would start bleeding. Maman would howl like a hyena with its paws caught in the teeth of a wolf trap.” Birahima’s mother dies literally rotting to death, like the corrupt African society that will soon capture Birahima and force him into a child soldier’s life of murder for murder sake.

When both his father and mother die, Birahima leaves his native village in search of a far-away aunt, hoping to find a family and stability. Birahima and his friend Yacouba, the sorcerer, go off together on this thankless journey in search of stability. They cross the border into Liberia and are soon captured by a rebel force. They are then recruited into military service as child soldiers where they learn to terrorize and murder
civilians in Liberia and Sierra Leone. In these countries people are not protected by civil order, and these child soldiers have no choice but to struggle for survival.

One of the most vivid examples of why children become child soldiers is the story Birahima tells of a young boy named Kik whose village is attacked during the tribal wars:

“Kik ran into the forest. And the kids stayed in the forest all the time they could hear the gunfire from the village. Kik stayed in the forest. It was only the next morning when there was no more noise that the children dared to go back to their family huts. Kik went back to his family hut and found his father’s throat cut, his brother’s throat cut, his mother and his sister raped and their heads bashed in. All of his relatives, close and distant, dead. And when you’ve got no one left on earth, no father, no mother, no brother, no sister, and you’re really young, just a little kid, living in some fucked-up barbaric country where everyone is cutting everyone’s throat, what do you do? You become a child-soldier of course, a small-soldier, a child soldier so you can have lots to eat and cut some throats yourself, that’s all your only option.”

The narrator describes how the children are captured and recruited:

“...The kid, the child-soldier, who’s about as tall as an officer’s cane, chats to the guys on the motorbike protecting the convoy. They get to know each other a bit, laughing and joking as if they drank beer together every night. Then the kid whistles, then he whistles again. Then a four-by-four truck comes out of the forest all covered in camouflage leaves. A four-by-four full of kids, child-soldiers, small soldiers. Kids about this tall...as tall as an officer’s cane.”

Kourouma also describes the significant role that girl child soldiers play in these tribal wars. “The funniest thing is that there’s girls, genuine girls with real AK-47s showing off. But there aren’t too many girls. Only the cruel ones: only the one’s who’d stick a live bee right in your eye.” One of the cruelest girls actually becomes a General

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268 Allah is not obliged, supra note 252, at 90.
269 Allah is not obliged, supra note 252, at 46.
270 Allah is not obliged, supra note 252, at 47.
in the group of child soldiers. Another Commander girl soldier actually sexually violates a boy soldier in a surprising and ironic reversal of expectation.

The book is a mixture of fact and fiction as the author tries to debunk traditional beliefs about African Society’s through a blend of irony, sarcasm, humor, and vivid descriptions of atrocities. The author shocks the readers by making outrageous but ironic proclamations like:

“Child-soldiers are the most famous celebrities of the late twentieth century, so whenever a child-soldier dies, we have to say a funeral oration. That means we have to recount how in this great big fucked-up world they came to be a child-soldier.”

The book appears to be factual because Kourouma provides detailed information about the life of child soldiers and the bestial conduct of corrupt criminal despot and warlords of various West African countries, like Charles Taylor, Foday Sankoh, and Prince Johnson. Despite rumors about the good life of child soldiers, Birahima is amazed that he is given only a gun, very little food, scant wages, and plenty of hash to fight in a civil war with other child and adult soldiers who are also constantly starving and constantly pumped up on drugs. He refers to the child soldiers as “the drugged-up

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271 Allah is not obliged, supra note 252, at 102: “General Onika was a small woman, lively as a nanny-goat whose kid has been taken from her. With her general’s stripes and her AK-47, she ran the whole show.” Allah is not obliged at 102. “The son had married three wives and all three wives were commandery in charge of the three most important divisions: finance, prisons and child-soldiers.” Id. at 103.

272 Allah is not obliged, supra note 252, at 104.

273 Allah is not obliged, supra note 252, at 83.a

274 Allah is not obliged, supra note 252, at 37: “He said they had tribal wars in Liberia, and street kids like me could be child-soldiers. Small soldiers had every-fucking-thing. They had AK—47s. AK-47s are Kalashnikov guns invented by the Russians so you can shoot and keep shooting and never stop. With the Ak-47s the small-soldiers got every-fucking-thing. They had money, they even had American dollars. They had shoes and stripes and radios and helmets and even cars that they call four-by-fours. I shouted Walahe! Walahe! I want to go to Liberia. Right now this minute. I want to be a child-soldier, a small soldier.”

275 “With all the hash, we got hungrier and hungrier. Hash isn’t good when you’re hungry. So we ate all the fruit we could find and after that we ate roots and after that leaves. And even after all that Yacouba still said Allah in his infinite goodness never leaves empty a mouth he has created.” Allah is not obliged, supra note 252, at 81-82.
child-soldiers,” “the child-soldiers [who] were fucked up on drugs.” The drugs make them strong and fearless: “We were dying to fight, we all felt as strong as bulls from all the hash…”

Birahima recounts what he sees in this chaotic world of war through the eyes of a naïve ten year old and in the fresh idiom of a child who is just learning French. Thus, with the use of four dictionaries, he writes in passable French mixed with *malinke* and pidgin English, giving parenthetical explanations of the most basic terms, as if he is speaking to an audience of children. The immediacy of Kourouma’s style and language and the gripping details of his narration add authenticity to his depictions of death, torture, amputations, fear, superstition, and madness that surround him on this journey through the hell of war. When the book comes to an end, Birahima finally escapes and the tale is brought full circle to where it began, like the classical pattern of inevitable tragic repetition.

**B. BEASTS OF NO NATION BY UZODINMA IWEALA**

“All we are knowing is that, before the war we are children and now we are not.”

Uzodinma Iweala’s Harvard thesis developed into a very beautiful and informative work of fiction that effectively illustrates how child soldiers become trafficking victims. *Beast of No Nation* is a novel written in the urgency and immediacy of the present tense in order to highlight the severity of the related crimes of child abduction for the use of soldiering and child sex trafficking. Iweala’s novel is a

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276 Allah is not obliged, *supra* note 252, at 107.
277 Allah is not obliged, *supra* note 252, at 109.
278 UZODINMA IWEALA, BEASTS OF NO NATION (Harper Collins, Publisher, 2005).[hereinafter “Iweala”]
279 Iweala, *supra* note 278, at 36.
realistic slice of life that portrays in vivid pictures the human rights principles and laws relating to child enslavement by abduction, forced enlistment, and trafficking.  

*Beasts of No Nation* paints a close-up portrait of a traumatized child soldier who was victimized, just like the 300,000 child soldiers today who are begging for help to escape from enslavement and the fear of death. These children and their parents or caretakers do not know that laws actually exist to protect children. Iweala portrays one of these desperate children, Agu, who tells his tragic tale in pidgin English bristling with repetition, adjectival verbs, metaphors, similes, and capitalized exclamations that reveal his youth and the depth and intensity of his pleas for help from the international community.

Agu is the precocious, gentle son of a village school teacher and a religious mother who is dragooned one day into the madness of a West African nation's civil war. Despite his youth, he is forced through rigorous indoctrination to shoulder a soldier’s heavy burden. Agu is very soon molded into a hard fighting man by his demented guerrilla leader who forces him to witness his father’s savage slaying. After his father’s murder, Agu is left all alone in the world and driven by an unrelenting need to belong to a group or a family. When he is captured and indoctrinated by the armed group, Agu soon becomes a killer, plagued by a muddled sense of revenge and guilt. He butchers a mother and her daughter when his ragtag unit raids a defenseless village. Starved for

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282 NZ Listener, supra note 281.

283 NZ Listener, supra note 281.
both food and affection, Agu is frequently sodomized by his Command and rewarded with extra food scraps and a dry place to sleep. 284

The unnamed West African nation provides the setting for this unsettling story of the life of a child soldier. 285 Iweala’s fiction represents the “countless victims whose names remain unknown.” When asked by New York Times writer Boris Kachka, “Why fictionalize it at all?” Iweala responded, “In non-fiction there is still that distance: ‘This is not happening to me….but in fiction, it allows you to transport yourself in the way that non-fiction doesn’t.’” 286 The reality is that ‘Beast of No Nation’ could be the life story of any child soldier in any country afflicted by hatred, mistrust, and civil war. 287

The story grips the reader by its brutality and unremitting intensity. 288 Iweala is a trafficked child who is deprived of the most basic human rights and prevented from “developing physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.” 289 Through its impressionistic narration, the exotic singsong cadence of its style, and the narrator’s peculiar use of tense, 290 the book enables its readers to observe with disbelief the human rights violations and horrifying experiences Agu is forced to endure: rape, the denial of education, utter despair, the development of his own desire for revenge, constant starvation, the use of serious weaponry, exposure to and forced intake of drugs that make him fight fearlessly,
the fostering of self-hate, and a lingering sense of the hopelessness of his situation and
the impossibility of his escape from this dreadful captivity and enslavement.

RAPE:

Agu participates in massacres and rapes of an ill-defined enemy. The International
Criminal Tribunal of the Former Yugoslavia and the International Criminal Tribunal in
Rwanda\textsuperscript{291} have made major strides in deciding cases involving the systematic use of
rape as a method of warfare. Rape is not only a war crime, but also a crime against
humanity\textsuperscript{292} and a form of genocide. When rape is inflicted on or by children, it is even a
more heinous crime. Agu rapes women indiscriminately but he is himself made into a sex
slave by the Commandant.\textsuperscript{293} In this maddening world of tribal warfare, sexual violence
is equated with manliness in the mind of the child soldiers, even though Agu is personally
repelled by the act of having sex with his Commandant. Agu refers frequently to his penis
as “my soldier”.\textsuperscript{294} When the Commandant sodomizes him, Agu is in pain and fear:

“He is telling me, take off your clothe(sic). I do not want to be taking off my
clothe but I am not saying so because Commandant is powerful more than me and
he is also sometimes giving me small favor like more food… But me, I am not
struggling because I know he will be killing me if I am struggling and since I am
wanting to die, I just let him to be moving back and forward even though it is
hurting me so much.”\textsuperscript{295}

DENIAL OF EDUCATION:

\textsuperscript{291} See Prosecutor v.Akayesu, Trial Chamber, International Criminal Tribunal For Rwanda, 1998, Case No
\textsuperscript{292} Statute of the ICTY, reprinted in 33 I.L.M. 1590 (1994), at Article 3(g)—Crimes against Humanity
includes rape. See Janet Halley, Prabha Kotiswaren, Hila Shamu, Chantal Thomas, From the International
to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four
Studies in Contemporary Governance Feminism 29 HARV. J. L. & Gender 335, 342 to 347 (2006) for
discussion of the role of ICTY and ICTR in developing law on rape and sexual violence of women.
\textsuperscript{293} Iweala, supra note 278, at. 84-85.
\textsuperscript{294} Iweala, supra note 278, at 95-96.
\textsuperscript{295} Iweala, supra note 278, at. 84-85
Agu’s life represents flagrant violations of CRC, Article 32 that protects children from “any work that is likely to be hazardous or to interfere with the child’s education.” Before Agu was abducted into the rebel army, he was like any typical little boy receiving a compulsory education in a small village schoolhouse. His abduction into armed combat deprived him of an education. Wars actually forced the schools to close in Uganda and in other African countries.

“I am learning how to read very early in my life from my mother and father. I was the smartest person in my class, so smart that the only thing I am having to learn is writing. But these thing are before war and I am only remembering them like dream.”

HELPLESSNESS AND THE DESIRE FOR REVENGE OF “LOST CHILDREN”:

Agu describes the state of helplessness and revenge experienced by children, like himself, who are victims of family massacres and who volunteer to become soldiers once they are abducted: “If you are staying with me, I will be taking care of you and we will be fighting the enemy that is taking your father. So I am joining. Just like that. I am soldier.”

Additionally, child soldiers that are survivors of family massacres experience “survivors guilt,” and are filled with anger and desire for revenge. Iweala’s responses to his own family massacre demonstrate the concept of “survivor’s guilt”:

“Commandant is saying that she is enemy, she is stealing our food, and killing my family,

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296 CRC, supra note 92, at Art. 32 (1).
297 Iweala, supra note 278, at 29.
298 Iweala, supra note 278, at 26-27.
299 Iweala, supra note 278, at 11.
300 RACHEL BRETT AND MARARET MCCALLEN, INVISIBLE SOLDIERS, supra note 73.
301 See, NZ Listener, supra note 281.
because she is enemy. I am liking the sound of knife chopping KPWUD KPWUD on her head and how the blood is just splashing…”302

SOLDIERS BUT NOT REAL SOLDIERS

Prosecutor v. Thomas Lubanga Dyilo (ICC January 29, 2007)303

Children who are abducted by a group that engages in armed combat see themselves as “soldiers,” but they also know that they are not “real soldiers” because they have no uniform.304 The narrator’s fine distinction between soldiers and real soldiers refers to a very important and controversial legal issue regarding the nature of “national armed forces or groups,” as set forth in the Rome Statute of the ICC.

Recently, the International Criminal Court (ICC) Pretrial Chamber I (Chamber) decided this very question when it issued its decision on the confirmation of charges in the case of Prosecutor v. Thomas Lubanga Dyilo.305 In that case, the Chamber confirmed that there were substantial grounds to believe that Lubanga (the President of the Union des Patriotes Congolais (UPC) and the Commander-in-Chief of its former military wing, the Forces Patriotiques pour la Liberation du Congo (FPLC)) is responsible for committing war crimes in the Ituri region of the Democratic Republic of the Congo (DRC) in 2002 and 2003. The Chamber confirmed that there was substantial evidence to believe that Lubanga was responsible, as co-perpetrator, for the conscription and enlistment of children under the age of 15 years into the FPLC from the beginning of September 2002 to June 2, 2003 in violation of Articles 8(2)(b)(xxvi) and 25 (3)(a) of the

302 Iweala, supra note 278, at 51.
303 Le Procureur c. Thomas Lubanga Dyilo, Decision sur la confirmation des charges, Cour Penale Internationale, Chambre Preliminaire I, Doc. No. ICC-01/04-01/06 (29 janvier 2007). The charges of this important case in the ICC will be discussed in this section of the paper, especially with regard to the distinction made between national armed forces and other paramilitary groups.
304 Iweala, supra note 278, at 33-34.
305 Le Procureur c. Thomas Lubanga Dyilo, supra note 303. (French translation of ease)
Rome Statute; and from June 2, 2003 to August 13, 2003 in violation of Articles 8(2)(e)(vii) and 25 (3)(a). The Lubanga case is only the second major international criminal proceeding to focus on the use of child soldiers, following the decision of the Special Court for Sierra Leone in the case of *Prosecutor v. Sam Hinga Norman* in 2004.

The Prosecutor in the Lubanga case, Luis Moreno-Ocampo, charged Lubanga under Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute with the war crimes of (1) conscripting children into armed groups, (2) enlisting children into armed groups, and (3) using children to participate actively in hostilities. Article 8(2)(e)(vii) of the Rome Statute provides that “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” during a non-international armed conflict constitutes a war crime. Article 25(3)(a) of the Rome Statute provides for individual criminal responsibility for anyone who “commits…a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.”

The Chamber concluded that between July 2002 and June 2, 2003 there existed in the Ituri region an international armed conflict and between June 2, 2003 and August 13, 2003 a non-international armed conflict.

The Chamber then examined three material elements of the crime. It looked at the terms “conscription or enlistment,” and noted that these terms in the Rome Statute do not

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306 Jason Morgan-Foster: *ICC Confirms Charges Against DRC Militia Leader*, 11, 6 ASIL INSIGHT (March 9, 2007), available at: http://mail.tjsl.edu/exchange/SusanT/Inbox/ASIL%20Insight:%201CC%20Confirms%Ch.  
307 *Prosecutor v. Sam Hinga Norman*, Decision on Preliminary Motion Based on lack of jurisdiction (child recruitment), Special Court for Sierra Leone, Appeals Chamber, Case No. SCSL-2004-14-14-AR72(E) (31 May 2004).  
carry the same meaning as “recruiting,” which is the term used with respect to the
prohibition against child soldiers in Article 77 of Additional Protocol I to the Geneva
Conventions\textsuperscript{309}. The Chamber further concluded that the terms “conscription and
enlistment” are distinct from each other. Conscription is “forced recruitment” whereas
enlistment is “voluntary recruitment”. It is important to note that the Chamber concluded
that “consent of the child” is not a valid defense to a charge of “conscription or
enlistment.” Hopefully, this decision will finally put to rest the problematic necessary
element of “consent” with regard to the distinction between trafficking of persons and
smuggling.

The Court then examined the phrase “using them to participate actively in
hostilities” as distinguished from the controversial phrase “take a direct part in hostilities”
found in Article 51(3) of Additional Protocol I of the Geneva Conventions\textsuperscript{310}. The
Chamber placed limits on this “participate actively” standard holding that any activity
that is “manifestly without connection to the hostilities” would not fall within the
prohibition \textit{(e.g. food delivery, “domestic help in an officer’s married accommodation”).
But acting as a “body guard” would fall within the “participate actively” standard.\textsuperscript{311}
However, girl soldiers who are employed against their will as domestic help in the armed
camp and forced into becoming the “wife” of a commander will no longer be protected
under this finding.

The Chamber then compared the language of Article 8(2)(b)(xxvi) with Article
8(2)(e)(vii) noting that Article 8(2)(b)(xxvi) of the Rome Statute regarding child
conscription in international conflict uses the language “into the \textbf{national armed forces}”

\textsuperscript{309} See Protocol I, \textit{supra} note 147.
\textsuperscript{310} Protocol I, \textit{supra} note 147, at Article 51(3).
\textsuperscript{311} Procureur \textit{c. Thomas Lubanga Dyilo}, \textit{supra} note 303, at paras. 261-263.
whereas Article 8(2)(e)(vii) of the Rome Statute, under which Lubanga was actually charged, uses the language “into armed forces or groups.” The Chamber held that if the term “national” refers only to “governmental” that would contravene the very purpose of the Rome Statute which is to make sure that “the most serious crimes of concern to the international community as a whole must not go unpunished.” Therefore, the Chamber concluded that the term “national armed forces” was not limited to the armed forces of a State. Thus, the Rome Statute permits Lubanga to be prosecuted for conscripting or enlisting child soldiers into the FPLC, which is a non-governmental force, during both the non-international and international phases of the conflict.

**Child Soldiers: Civilians or Combatants**

The distinction between “civilians” and “combatants” is related to the issue of whether a paramilitary or non-national armed group is a real “army” and whether the persons serving in this armed group are real “soldiers”. According to the finding in *Prosecutor v. Thomas Lubanga Dyilo* (ICC January 29, 2007), the leader of the Congolese militia can be prosecuted for conscripting or enlisting child soldiers into a non-governmental force during both the non-international and international phases of the conflict. Does this hold true for the soldiers in this armed group? Is a child soldier a civilian or a combatant if he or she is not wearing a uniform, not working for a State armed forces, but is acting against his/her will as a soldier in an armed group? The distinction between combatants and civilians is critical to the protection of the rights of a child soldier. Civilians and combatants are protected differently under the Geneva Conventions and under other laws of war. If Agu is a soldier, he is not a civilian. But if

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312 *Procureur c. Thomas Luganga Dyilo*, supra note 303, at paras. 281-285.
he is not a “real” soldier, does that mean he is eligible for civilian protection during wartime? Or worse, is he not protected under either category?

**STARVATION:**

Children, particularly those orphaned or disconnected from civil society, may volunteer to join any group if they believe it is the only way to guarantee regular meals, clothing, or medical attention.313 But Agu remains hungry most of the time that he is with the other child soldiers.314 Iweala says: “On the ground he is writing HUNGRY and I am wanting to say to him I am hungry too, but the word are not coming out of my mouth.” 315

**SLAVERY:**

The children who are abducted and used as child soldiers are abused badly and enslaved, especially because they are not permitted to leave or return home to the comforts of their family. Agu realizes very soon after he joins the ranks of the young soldiers that he is in fact a slave. He has a deep sense of despair knowing that he cannot escape his enslavement.316

**USE OF WEAPONRY:**

Agu and the other child soldiers are powerless and alone. That is why they are especially impressed with the power of the small guns they are given.317 The special names the child soldiers give themselves, like “Rambo,”318 the guns, and the drugs319

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313 Singer, *supra* note 26, at 62.
314 Iweala, *supra* note 278, at ll7-ll8.
315 Iweala, *supra* note 278, at 36.
316 Iweala, *supra* note 278, at 41-42.
318 Iweala, *supra* note 278, at 43.
319 Agu calls his drug “gun juice.” Iweala, *supra* note 278, at 43.
they are forced to take (appropriately called “gun juice”) all give these young soldiers a false but effective sense of power.

Regrettably, there is presently no universal treaty addressing small arms and light weapons proliferation. Most of the laws that exist in this area are nation-specific and lack international coordination.\textsuperscript{320} However, the ongoing elaboration of a draft Protocol in the Illicit Manufacturing, Circulation, and Proliferation of Small Arms and Light Weapons and Illicit Trafficking in Firearms, Ammunitions and Other Related Materials by the U.N. Group of Experts on Small Arms is a welcome development in this regard.\textsuperscript{321}

Article 38 of the CRC states that persons under fifteen\textsuperscript{322} should not bear arms, perpetrate violence, nor wear the uniform of any combative group in any form of political conflict in the world. Even though 191 nations have ratified the CRC, many nations violate this provision and forcibly recruit children younger than fifteen years of age.\textsuperscript{323} “Commandant is saying that I am too small to be carrying gun because small person is not holding gun well and just bouncing up and down when they are shooting. Instead he is giving me knife.”\textsuperscript{324} Iweala shows, through a powerful child’s-eye view,\textsuperscript{325} how “disposable especially the smallest child is to the commanders of these armies of children: “…if I am throwing gun away, then Rambo will be throwing me away because gun is more important than me.”\textsuperscript{326}

\textsuperscript{320} Graduate Inst. Of Int’l Studies, Small Arms Survey 2001: Profiling the Problem 123-26 (2001) (outlining various national approaches to the problem of illegal arms transfers.)
\textsuperscript{321} See Udombana, supra note 21, at 62. (The Protocol relating to small arms traffic, when adopted, will supplement the Convention Against Transnational Organized Crime, signed at the High-Level Political Signing Conference in Palermo, Italy in Dec. 2000).
\textsuperscript{322} Note that the age is now 18, pursuant to the CRC Optional Protocol for Children in Armed Conflict, supra note 93.
\textsuperscript{323} CRC, supra note 92, at Article 38.
\textsuperscript{324} Iweala, supra note 278, at 43.
\textsuperscript{325} See, NZ Listener, supra note 281.
\textsuperscript{326} Iweala, supra note 278, at 129.
EXPOSURE TO AND FORCED INTAKE OF DRUGS:

Another human rights violation affecting child soldiers and trafficked children is the forced use of drugs to numb the experience of warfare. Drugs such as cocaine and marijuana are often given to child soldiers to alleviate their fears and enhance their capacity in battle.  

However, the use of drugs also destroys a child’s ability to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity. “Everybody is getting gun juice. Everybody is always wanting gun juice because it is drug and making life easy.”

FOSTERING OF SELF-HATE:

In Iweala’s novel gruesome depictions of random killings alternate with Agu’s confused sense of guilt: “I am not bad boy. I am not bad boy. I am soldier and soldier is not bad if he is killing.” They feel guilty because they have survived and others are dead due to their inability to fight against the leader’s commands. The children have lost their autonomy and self-control.

AUTONOMY:

“He (Commandant) is taking my hand and bringing it down so hard on top of the enemy’s head. I am vomiting everywhere. I cannot be stopping myself.” Children recruited into war have no choice but to obey orders and commit atrocities or die.

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327 See generally Machel Report, supra note 37, at 47. See also David Ott, Under Age and Under Arms, THE HERALD (Glasgow), Jan. 12, 1999, at 11 (revealing that leaders give children drugs to make them more efficient killers).
329 Iweala, supra note 278, at 43.
330 NZ Listener, supra note 281.
331 Iweala, supra note 278, at pg 22.
332 Iweala, supra note 278, at 21.
themselves. The more people they kill, the better they are accepted by their commanders and peers:

“If they are ordering me KILL, I am killing, SHOOT, I am shooting, ENTER WOMAN, I am entering woman and not even saying anything even if I am not liking it. I am killing everybody, mother, father, grandmother, grandfather, soldier. It is all the same. It is not mattering who it is, just that they are dying.”

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INABILITY TO ESCAPE:

Once abducted children must comply with their captors or die. 334 The ultimate aim of the process is to foster a child’s dependency on an armed organization and prevent escape. 335

“I am not wanting to fight today because I am not liking the gun shooting and the knife chopping and the people running. I am not liking to hear people scream or to be looking at blood. So I am asking to myself, why am I fighting? Why can I not just be saying no? Then I am remembering how one boy is refusing to fight and Commandant is just telling us to jump on his chest, so we are jumping on his chest until it is only blood that is coming out of his mouth.” 336

Agu represents children who are hopeless victims of war. 337 “Hope is dying, just burning up in the fire of bomb that is hitting truck.” 338 The use and abduction of child soldiers is one of the most horrifying forms of child slavery and trafficking that must be stopped before we raise a whole generation of deprived and hate-filled children that populate the world and proliferate more conflict. Agu understands this when he says, “I am knowing I am no more child. 339

333 Iweala, supra note 278, at 135.
334 Singer, supra note 26, at 61.
335 Singer, supra note 26, at 57.
336 Iweala, supra note 278, at 42.
337 Boston.com, Book review, “In ‘Beasts,’ lambs are forced to lead the slaughter” by Renee Graham, supra note 285.
338 Iweala, supra note 278, at 11.
339 Iweala, supra note 278, at 93.
IV. CONCLUSION AND SOME PROPOSALS FOR SOLUTIONS

So many laws

Despite a profusion of domestic and international laws that prohibit the use of child soldiers, this inhumane and widespread practice continues today and is likely to increase in the future due to the economics of war. Considering that the use of child soldiers is rooted in the “endemic competition for economic resources” and fueled by the huge profits from the traffic in drugs, weapons, and human beings, any proposal to eradicate child soldiering must necessarily involve economic solutions in order to effectuate real change in this hideous practice and to firmly re-establish traditional ethics relating to the protection and preservation of children’s rights.

I would like to propose some solutions that might make the practice of using child soldiers more difficult and thus pave the way towards its eradication. Stated differently, I believe we need to destabilize the cost/benefit ratio and decrease the economic benefits of child trafficking by increasing the business costs and the legal risks.

Prevention

The key to the elimination of child soldiering and trafficking is prevention, which can be accomplished by raising public awareness of the extent of this international crime and its impact on the society at large. Consciousness raising can be done by education, effective use of the media, State support for NGOs, publicity about international conferences, and publications that disseminate information widely about the

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340 Udombana, supra note 21, at 107.
following issues: children’s rights, recruitment guidelines,\textsuperscript{341} new anti-trafficking and anti-child soldiering legislation, and the dangers of child soldiering. States should publicize information widely through the media about children’s rights and recruitment guidelines\textsuperscript{342} in order to educate the public at large. Governments and people must be made aware of children’s rights and the international agreements that protect children against their endangerment and enslavement as child soldiers. Education of the most vulnerable children such as refugees and street children must be made more available so that parents and children can avoid being duped into thinking that the life of a child soldier provides security and stability.

Awareness about the use of child soldiers can be raised by holding and widely publishing international conferences on child soldiering like the “Free Children from War” Conference that just took place in Paris on February 6, 2007.\textsuperscript{343} African nations participating in that international conference on child soldiers pledged to do their utmost to prevent children from being used as fighters, although the commitment is not legally binding. This conference was hosted by France and UNICEF and included delegates from nearly 60 nations, other UN agencies and 30 non-governmental organizations all of whom vowed “to spare no effort to put an end to the illegal use and recruitment of children by groups of armed forces.”\textsuperscript{344} This Conference should have been picked up by


\textsuperscript{342} Id.


the media, televised on C-SPAN, and covered by CNN international to disseminate the message that our children are in danger worldwide.

The international community must raise awareness worldwide of the extent and impact of the crime of child soldiering in order to create the political will to eradicate the crime and to shame government leaders into implementing legislative protection of children. The media can and should draw more attention to the plight of children in armed conflict. For example, in May 2001, sixty Angolan children were abducted by the National Union for the Total Independence of Angola (UNITA), and the documentation available on the abducted children, including their names, ages, and photographs, enabled UNICEF and the United Nations Humanitarian Coordinator in Angola to launch an international publicity campaign that prompted the release of children to a Catholic Mission after twenty days. 345

States must show support for non-governmental organizations as well as religious and community leaders who do work on the ground to educate the public. NGOs can change values and influence ethics by appealing to the people to adhere to local values and to customs that validate children and their basic human rights. 346 However, in the past many of the non-governmental organizations, groups and the international coalition 347 created to stop the use of child soldiers have been distracted or misdirected by anti-American sentiment that thwarts their mission to stop the use of child soldiers. 348

The international community must help create the political will to eradicate child

346 Singer, supra note 26, at 146.
347 Singer, supra note 26, at 146. “The Coalition to Stop the Use of Child Soldiers has wasted its political capital by engaging in a long-drawn-out public relations war with the U.S. and British governments.”
348 Singer, supra note 26, at 148.
soldiering by shaming government leaders into implementing legislative protection of children.

Protection of Child Victims

In order to eliminate child soldiering, the global community must address the protection of the child victims by strengthening compliance and implementation\(^{349}\) of international humanitarian laws, human rights norms, slavery conventions, trafficking conventions, international criminal laws, and fair labor laws that are applicable to children’s rights and child soldiering. Implementation starts by abolishing the general perception of impunity for crimes related to child soldiering.\(^{350}\) The Rome Statute of the International Criminal Court established child soldiering as a war crime in 2002. The international *ad hoc* tribunals and the permanent International Criminal Court should prosecute individuals and State parties engaging in child soldiering and widely publicize the outcome of its cases. Foreign victims of child soldiering should be informed that they can also file lawsuits under the Alien Tort Claims Act in the U.S. federal courts.

In order to protect the child victims, the international community must support the availability of birth records. This would better document the age of children and avoid inadvertent underage recruitment.\(^{351}\)

States should provide rescue missions, financial aid, health and psychological assistance, meaningful rehabilitation to child victims of war, and carefully planned

\(^{349}\) If a State is not a party to the relevant treaties protecting children, they may be obligated to enforce the provisions anyway because the provisions have become part of international custom. *See* Vienna Convention on the Law of Treaties, *supra* note 231, at Art. 38: “Nothing in articles 34-37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.”

\(^{350}\) “The referral of LRA leaders to the ICC by the Ugandan Government provided the first experiment of the ICC’s ability to suppress impunity. In December 2003, the Ugandan Government referred the LRA atrocities committed in Northern Uganda to the ICC Prosecutor.” Udombana, *supra* note 21, at 102-103.

\(^{351}\) Singer, *supra* note 26, at 146.
reintegration programs so that children once abducted can once again live in the
community that once welcomed them as children.

**Economic Solutions**

Shaming States and engaging in a universal moral outcry is necessary and helpful,
but the most effective form of deterrence is linked to economic solutions affecting trade
and international aid that do not negatively impact women and children. The international
community should limit small arms trade to non-State actors and target trading partners
of States engaging in child soldiering. States should withhold recognition and financial
benefits to any groups that seize power through the use of child soldiers or to States that
aid them.\(^{352}\) States should reduce international aid and trade or implement divestiture
policies in countries engaging in child soldiering. International aid donors should make
compliance with the CRC Use of Children in Armed Combat Protocol a condition for
development assistance.\(^{353}\)

U.N. Resolution 1612\(^ {354}\) requires States to monitor and report on the recruitment
and use of child soldiers, and any State engaging in child soldiering could be subject to a
ban on the export and supply of small arms and light weapons and other military
equipment. States should also develop a policy that targets the external support structures
providing donations to the groups or States that engage in child soldiering. Any State
engaging in human rights violations such as the use of child soldiers could be deprived of
their Most Favored Nation status in the General Agreement on Tariffs and Trade and the
World Trade Organization, pursuant to the Jackson-Vanick amendment. Other effective

\(^{352}\) Singer, *supra* note 26, at 160.

\(^{353}\) Udombana, *supra* note 21, at 105.

\(^{354}\) Resolution 1612, see Machel Report, *supra* note 37, at p. 27.
measures to eliminate child soldiering might include taking away seats at the United Nations for States engaging in or aiding and abetting this crime.

**Prosecution of Perpetrators**

The next step in the process of eliminating child soldiering is effective prosecution of the perpetrators. Governments should be held accountable for their deliberate decision to use children as human shields and combatants. States must establish and implement laws that criminalize perpetrators with a severe sentence of imprisonment for thirty or more years for anyone who employs child soldiers. This increased sentence would act as a deterrence measure and provide victims with a sense of justice and retribution. For example, on December 16, 2003, Uganda referred the situation concerning the Lord’s Resistance Army to the prosecutor of the International Criminal Court. The referral was an attempt by Uganda to engage an “otherwise aloof international community” to stop this inhumane practice and to address the moral outrage of using children as soldiers. The prosecution of perpetrators of child soldiering with a severe sentence would increase the risk and thus the cost of doing the business of child soldiering.

Leaders may know that child soldiering is a war crime, but they seem to believe they will never be brought to justice because of a sense of “rampant impunity.” Criminalizing the practice could be accomplished by prosecuting former leaders of groups that use child soldiers in *ad hoc* international tribunals like the war crimes tribunal in Sierra Leone or in permanent the International Criminal Court. Local communities

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357 Singer, *supra* note 26, at 149.
should increase their level of financial support for the *ad hoc* tribunals that are plagued by limited funds.

One of the problems associated with implementing accountability for atrocities associated with child soldiering is the possibility that child soldiers themselves will be prosecuted unfairly. The prospect of prosecuting children for war crimes is controversial. Sierra Leone seems to have found a good solution to this problem. The Statute of the special court of Sierra Leone does allow for the prosecution of children between the ages of fifteen and eighteen, but the prosecutor has not taken such action yet, focusing instead on the adult leaders. Children implicated in these crimes are given hearings in special closed juvenile chambers so that their identity is not disclosed. Children are also given psychological counseling and other assistance. Moreover, children are not sentenced to prison with adult perpetrators but rather they are placed in special custody and rehabilitation/demobilization programs, as well as foster care. This kind of response recognizes that child soldiering is a unique crime because perpetrators are oftentimes themselves the victims.

In view of the uniqueness of the crime of child soldiering, the UN Security Council should consider establishing a new *ad hoc* tribunal specifically centered on the crime of child soldiering. In addition, the rules of the ICC might be modified to allow children to testify before the court and thereby create a more accurate historical record that should be publicized widely.

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358 Singer, *supra* note 26, at 155.
360 Singer, *supra* note 26, at 151.
Three years after the CRC Protocol on Children in Armed Combat entered into force, the U.N. Security Council expressed deep concern “over the lack of overall progress on the ground, where parties to conflict continue to violate with impunity the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict.” The use of children as soldiers in armed combat is nothing less than a contemporary form of slavery that must be eradicated by carefully implemented measures to re-establish ethical norms that valorize children.

Hope is not dead in this campaign against the enslavement of child soldiers. Last week 58 countries and nongovernmental agencies signed a treaty to free current and potential child soldiers from peril. On January 29, 2007 the International Criminal Court forged ahead with its first war crimes prosecution targeting the leader of the Congolese militia with charges of recruiting child soldiers. The act was declared a war crime when the International Criminal Court was established in 2002. Radhika Coomaraswamy, the United Nations envoy for children and armed conflict, stated that “We’ve come a long way. Ten years ago this was an invisible issue.” Last summer groups in Burundi, Ivory Coast, Myanmar, the Democratic Republic of the Congo, Sudan and Somalia were referred to the U.N. Security Council for possible sanctions related to their use of children as soldiers. Individual commanders are being held responsible for their war crimes.

But in order to do more to eradicate this crime, funds must be found and steps must be taken to restore normal life for the children victimized by this atrocity. Many of

362 See Machel Report, supra note 37, at Resolution 1612.
364 See “Stolen kids turned into terrifying killers,” supra note 363, at p. 2.
these children need rehabilitation and serious counseling in improved rehabilitation and transit centers. Many of the escapees who return home are rejected by their own families (if they are still alive) and shunned by villagers who view them as killers. Changing community and family norms to safeguard the reintegration of these victims is no easy task and can only be done by a widespread information and education campaign, as well as a serious attempt to eradicate poverty which is at the source of many of the armed conflicts that produce and perpetuate the use of child soldiers as a military strategy. The fact is that children are devalued, viewed as expendable, and a convenient natural resource for economic efficiency during war. Public condemnation of this kind of perverse thinking and of the leaders who recruit children into armed combat can help to reduce future recruitment. Imposing sanctions on corporations that trade with leaders of groups that use children as soldiers is more effective than punishing women and children by imposing sanctions on the State as a whole. Without the moral outcry and the effective intervention of the international community, these children could become a lost generation of migratory professional killers who perpetuate conflict and war.

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