

ARTICLES

CHILD SOLDIERS AND THE DUTY OF NATIONS TO PROTECT CHILDREN FROM PARTICIPATION IN ARMED CONFLICT

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“They give you a gun and you have to kill the best friend you have. They do it to see if they can trust you. If you don’t kill him, your friend will be ordered to kill you. I had to do it because otherwise I would have been killed.”¹

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¹ Statement of a seventeen-year-old Colombian boy who was forced to join a paramilitary group at seven years of age. *Voices of Young Soldiers*, COALITION TO STOP THE USE OF CHILD SOLDIERS, <http://www.child-soldiers.org/childsoldiers/voices-of-young-soldiers> (last visited Sept. 9, 2010).

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I. INTRODUCTION

Currently, there are tens of thousands of child soldiers among the ranks of combatants in international and internal armed

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conflicts around the world. Some are coerced into battle by brainwashing and being drugged; some are forced at gunpoint or through extreme violence to take up arms;² some are kidnapped by armed groups and forced to fight;³ some are trafficked and sold to armed groups to be used as cannon fodder; and some are the offspring of fighters, born into conflict, who never know anything other than fighting from the time they are old enough to use a weapon. Some children are forced to the front of an attack in order to compel the enemy to expend their ammunition before the better fighters move up to press an assault. Some children are forced to walk into mine fields to clear paths for the older combatants to pass. Some children are unknowingly given bicycles or motorcycles packed with explosives and told to ride into a populated area or up to a police or military outpost where the explosives are remotely detonated and the child is ruthlessly torn to pieces in the blast. Some children participate in the bloodiest acts of violence and many commit unspeakable atrocities, often because they are far too young to understand the gravity of their acts. Some female child soldiers are forced into the ranks to be “comfort women” attending to the personal needs and sexual proclivities of commanders and male combatants. Child soldiers are little more than human chattel—beaten, drugged, sexually assaulted, and cast aside when their usefulness ends.

If a child soldier does manage to survive such an ordeal, he or she is often left as an outcast and social pariah, disowned by their community, or so far removed from their home and their origins that they never return to their families, where they might stand some chance of rehabilitation and reintegration. Many grow up to be criminals and murderers, without hope, and without a future. Many cannot read or write. Many have not even a basic understanding of goodness. Many never know love.

² One thirteen-year-old child soldier from Sierra Leone told of being in combat for the first time and being too scared to fire his weapon:

I was in an ambush and bullets were flying back and forth, people were shooting. I didn't want to pull the trigger at all but when you watch kids . . . being shot and killed and . . . dying and crying and their blood was spilling all over your face you just moved beyond, something just pushed you and you start pulling the trigger.

Nienke Grossman, *Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations*, 38 *GEORGETOWN J. INT'L L.* 323, 328 (2007).

³ A young girl abducted by the Lord's Resistance Army in Uganda was forced to murder a boy who tried to escape and was savagely beaten when under gunfire she dropped a water container and ran for cover. *See id.*

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

II. HOW CHILDREN BECOME CHILD SOLDIERS

A. Historical Precedents

A child fighting in armed conflict is not a new phenomenon. Even the military term “infantry” alludes to the use of young people to fight on the field of combat.⁴ During the age of sail, young boys served on ships of war as “powder monkeys” tasked with running gunpowder and shot from the magazines to gun crews during naval engagements.⁵ Drummer boys served with distinction in many battles in the eighteenth and nineteenth centuries. During the American Civil War, drummer Willie

⁴ The term is derived from the French word “infante,” meaning infant, boy, footman, or foot soldier. WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1157 (1993). The term suggests that the business of fighting on foot on the field of combat was for the young and strong.

⁵ Michael Smith, *End of an Era for Little Drummer Boys and the Powder Monkeys*, DAILY TELEGRAPH, Mar. 29, 2002, available at <http://www.telegraph.co.uk/news/uknews/1389146/End-of-an-era-for-little-drummer-boys-and-the-powder-monkeys.html>.

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Johnston became the youngest person ever to be awarded the Congressional Medal of Honor at the tender age of thirteen years for conspicuous bravery during the Peninsula Campaign when he was eleven years old.⁶ Young boys between the ages of twelve and fifteen were conscripted to serve as scouts and combat messengers during the Boer Wars in South Africa in order to free up more men to engage in actual combat.⁷ Interestingly, the military commander who devised this use of children in combat was Robert Baden-Powell, who later became famous as the founder of the Boy Scouts movement.⁸ In a desperate attempt to slow American forces advancing on Mexico City during the Mexican-American War, young cadets from the Mexican military academy were deployed in the Battle of Chapultepec in 1847 and subsequently annihilated by overwhelming opposition.⁹

To some extent, the physical limitations of children during their formative years determine the role they might play in combat. For example, during the Middle Ages, boys up to the age of about twenty-one, who were not yet strong enough to carry the heavy armor or control large warhorses, were most often used as auxiliaries.¹⁰ During World War II, sixteen and seventeen-year-old boys from the Hitler Youth¹¹ filled the ranks of an entire SS Panzer Division and, toward the end of the war, children as young as twelve years of age fought in the last ditch efforts to defend the Fatherland.¹² The most decorated American soldier of World War II, the famed actor Audie Murphy, had just turned seventeen-

⁶ Willie Johnston—Recipient, CONGRESSIONAL MEDAL OF HONOR SOCIETY, <http://www.cmohs.org/recipient-detail/713/johnston-willie.php> (last visited Sept. 9, 2010). Johnston served as a musician in Company D of the Third Vermont Infantry. *Id.* Johnston was also the second recipient to be awarded the Medal of Honor after its establishment during the Civil War. See G. CLIFTON WISLER, *MR. LINCOLN'S DRUMMER* (Puffin 1997).

⁷ See *Military Use of Children*, NATIONMASTER.COM, <http://www.statemaster.com/encyclopedia/Military-use-of-children#History> (last visited Sept. 9, 2010). On the Boer side of battle, young Afrikaner boys were organized into fighting groups known as Penkops. See *The Boer War: Children*, HISTORICAL BOYS' CLOTHING, <http://histclo.com/essay/war/boer/bw-child.html> (last visited Sept. 9, 2010). For a definitive account of the Boer War, see GREGORY FREMONT-BARNES, *THE BOER WAR 1899-1902* (Osprey 2003).

⁸ See *Robert Baden-Powell*, NATIONMASTER.COM, http://www.statemaster.com/encyclopedia/Robert-Baden_Powell (last visited Sept. 9, 2010).

⁹ See generally JOSÉ MANUEL VILLALPANDO, *NIÑOS HÉROES* (Planeta 2004).

¹⁰ MATTHEW HAPPOLD, *CHILD SOLDIERS IN INTERNATIONAL LAW* 4 (Manchester Univ. Press 2005).

¹¹ See SUSAN CAMPBELL BARTOLLETTI, *HITLER YOUTH: GROWING UP IN HITLER'S SHADOW* 129-44 (Scholastic Nonfiction 2005).

¹² See MICHAEL H. KATER, *HITLER YOUTH* 213-15 (Harvard Univ. Press 2004).

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years-old when he falsified his birth records to enlist in the Army at the minimum age of eighteen.¹³ In the Asian theater, Chinese Nationalist forces led by Chiang Kai-shek conscripted children as young as ten years of age to fill the ranks of its infantry forces to fight the Japanese.¹⁴ Many were transported from Burma into China by the United States Army Air Corps in support of its Chinese allies.¹⁵

The emergence of children fighting among irregular forces gained momentum in post-World War II conflicts, which erupted from post-colonial reorganizations and Cold War maneuverings in the developing world. The most notorious of such examples was the Khmer Rouge of Cambodia, who employed brutal brainwashing techniques to induce armies of children to commit mass murder and other acts of extreme brutality during the Khmer's cleansing operations that came to be known as the Cambodian Genocide of the 1970s.¹⁶ Internal and trans-border conflicts in Africa during and following the Cold War have seen large numbers of children used by both government and rebel forces to commit unspeakable acts of brutality and genocide. In Latin America, boys and girls have been forced or coerced into the ranks of illegal armed groups and rebel factions, particularly in Colombia, El Salvador, Nicaragua, and Peru—many used in the most inhuman ways such as to clear mine fields, or to carry out terrorist attacks in which the children do not know they are being used as expendable casualties of war.¹⁷

B. Current State of Child Soldiers

1. Recruitment, Coercion, and Forced Servitude

Our current view of children's participation in hostilities is

¹³ See HAROLD SIMPSON, *AUDIE MURPHY: AMERICAN SOLDIER* (Hill College Press 1999); AUDIE MURPHY, *TO HELL AND BACK* (Holt 2002).

¹⁴ For a detailed biography of Chiang Kai-shek, see JAY TAYLOR, *THE GENERALISSIMO: CHIANG KAI-SHEK AND THE STRUGGLE FOR MODERN CHINA* (Harvard Univ. Press 2009).

¹⁵ See Photograph of Young Chinese Nationalist Soldier During World War II, *in Military Use of Children*, WAPEDIA, http://wapedia.mobi/en/Military_use_of_children (last visited Sept 9, 2010).

¹⁶ See Chiep Mony, *Former Child Soldier Describes Khmer Rouge*, VOANEWS.COM, Sept. 28, 2009, <http://www1.voanews.com/khmer-english/news/a-40-2009-09-28-voa4-90171232.html>.

¹⁷ See Grossman, *supra* note 2, at 327.

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related to our changing views about childhood and the laws of war.¹⁸ “A child soldier is defined as a person under the age of eighteen who directly or indirectly participates in armed conflict as part of an armed force or group.”¹⁹

In prior eras, boys fighting in war were viewed through romantic notions of heroism. “Today, war is no longer seen as glorious or as a rite of passage into adulthood,”²⁰ and we understand that the participation and exploitation of children in violent conflict is tragic and a fundamental violation of human rights. On the other hand, many developed nations, including the United States, recruit high school children into the military through junior reserve officer training programs, depicting a life of military service in the most noble and patriotic manner. Upon high school graduation, boys and girls as young as sixteen years of age in Britain,²¹ and seventeen years of age in the United States²² may legally enlist into the armed forces. Burundi and Canada set the official age of enlistment at sixteen years (with parental or guardian permission), while Oman and Yemen have official enlistments set at age fourteen, and Bahrain at fifteen years of age.²³

In some states where military service is based on indiscriminate compulsory conscription, recruits can be very young.²⁴ In Bolivia, where the official age of enlistment is nineteen years, approximately forty percent of the army is believed to be under age eighteen, with about half of that

¹⁸ HAPPOLD, *supra* note 10, at 5 (noting that we wish to exclude children from participating in hostilities “not because they are too young to engage effectively in combat, in which case they could serve in auxiliary roles, but because the experience is seen as damaging to them”).

¹⁹ See U.N. Briefing Paper No. 4 on Child Soldiers, UNITED NATIONS CYBERSCHOOLBUS, <http://www.un.org/cyberschoolbus/briefing/soldiers/soldiers.pdf> [hereinafter U.N Briefing Paper on Child Soldiers].

²⁰ HAPPOLD, *supra* note 10, at 5.

²¹ Armed Forces (Enlistment) Regulations 2009 SI 2009/2057 § 4.

²² 10 U.S.C. § 505(a) (2010). Recruits who are seventeen at the time of enlistment must have written permission from their parents or guardian. *Id.* “The United States Pentagon sponsors programs for approximately 400,000 high school children, where they are taught how to be soldiers, including how to march, shoot, act, and think like soldiers.” U.N. Briefing Paper on Child Soldiers, *supra* note 19, at 2.

²³ See Military Statistics: Conscription (Most Recent) by Country, NATIONMASTER.COM, http://www.nationmaster.com/graph/mil_con-military-conscription (last visited Oct. 3, 2010).

²⁴ For a complete and current rundown of states having conscription, see Military Statistics: Conscription (Most Recent) by Country. *Id.*

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percentage being below the age of sixteen.²⁵ Many teenage boys (and those who have reached the age of eighteen) are rounded up in conscription operations called *batidas* (also practiced in Colombia) in which recruitment units go to public areas where youth gather, such as transportation centers, and check military service documents against a male's age.²⁶ Officially, but not necessarily in practice, if the young men do not have such documentation and are eighteen years of age or older, they are placed on a truck and sent off to recruitment depots for processing into the military to serve between twelve and twenty-four months.²⁷ Under international law, such an involuntary recruitment method is a violation of Article 9 of the International Covenant on Civil and Political Rights,²⁸ and it does not help that many nations, such as Colombia, do not recognize conscientious objection—a further violation of Article 18 of the Covenant.²⁹

In some armed conflicts, the government itself is the aggressor against children, conscripting youngsters to fill the ranks of its military forces. Many come from impoverished circumstances in which the families of children taken into military service “cannot effectively complain about their treatment.”³⁰ Once children are rounded up by forced recruitment and placed into indoctrination and training units, maltreatment of child conscripts is alarmingly common. Both young boys and girls are routinely raped and assaulted as part of their conditioning or as a result of lack of discipline among supervising military.

In Burma, children as young as ten years of age have been inducted into the armed forces using falsified enlistment papers that indicate their age to be eighteen years.³¹ They are forced to

²⁵ Worst Forms of Child Labour Data: Bolivia, GLOBAL MARCH AGAINST CHILD LABOUR, <http://www.globalmarch.org/worstformsreport/world/bolivia-2002.html> (last visited Sept. 9, 2010).

²⁶ Military conscript in Colombia is governed by Ley 418 de 1997, and in Bolivia by Ley Servicio Nacional Defensa, Artículo 22.

²⁷ See generally COALITION TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS GLOBAL REPORT 2004: BOLIVIA (2004) (on file with author).

²⁸ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368, available at <http://www2.ohchr.org/english/law/ccpr.htm>.

²⁹ For an in-depth analysis of conscientious objection in Colombia, see War Resisters' International, *Military Recruitment and Conscientious Objection in Colombia, Report to the Human Rights Committee 2* (Aug. 2009), http://www2.ohchr.org/english/bodies/hrc/docs/ngos/WRI_Colombia97.pdf.

³⁰ HAPPOLD, *supra* note 10, at 9.

³¹ *Children Lured into Military*, RADIO FREE ASIA (Sept. 17, 2009), <http://www.rfa.org/english/news/burma/childmilitary-09172009155245.html>.

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work in menial labor and are beaten by older soldiers.³² Even in Great Britain, seventeen-year-old army recruits have been subjected to physical and sexual abuse, and according to Amnesty International, more than 1,700 non-natural deaths have been reported in British army barracks since 1990.³³ In an interview conducted by the author in Colombia several years ago, a young conscript whose family worked on the author's Colombian farm, told of the brutality he experienced at the hands of his drill instructors in basic training, and described how one of his fellow recruits was beaten with a board by a sergeant so badly that he was permanently rendered a paraplegic, and that no sanction was placed on the instructor for crippling the boy.³⁴

As children become more desirable for use as soldiers, particularly by irregular combatants, they increasingly become victims of their circumstances, often caught by forces beyond both their control and the control of the adults who care for them.³⁵ Their childish naiveté places them at great disadvantage and makes them susceptible to becoming fighters. Because they are so young and impressionable, children tend to be fearless, as they have not yet developed an adult's sense of self-preservation, and are "less able to assess the risks of combat."³⁶ Children generally do not actively seek enlistment, although some volunteer in order to escape poverty, to obtain personal safety and protection, or to pursue desires for revenge.³⁷ Most become combatants simply because they are born into regions of conflict, or because they belong to cultural or tribal groups that are exploited by more powerful entities, who either occupy their geographic region³⁸ or enter their homeland with the express purpose of harvesting them to become combatants or fill various roles of forced servitude,

³² *See id.*

³³ Tom Wall, *Our Boy Soldiers*, NEW STATESMAN (Dec. 6, 2004), available at <http://www.newstatesman.com/200412060006>.

³⁴ Interview by Luz Estella Nagle, Dep't of Antioquia, in Rionegro, Columbia (2002).

³⁵ Integrated Regional Information Network (IRIN), *Too Small to be Fighting in Anyone's War* (Dec. 12, 2003), <http://www.irinnews.org/pdf/in-depth/Child-Soldiers-IRIN-In-Depth.pdf>. [hereinafter *Too Small to be Fighting in Anyone's War*].

³⁶ Def. Mot. Dismiss 7, *United States v. Omar Ahmed Khadr*, (Jan. 18, 2008), http://media.miamiherald.com/smedia/2008/02/03/21/Khadr-ChildSoldier.source.prod_affiliate.56.pdf.

³⁷ *See* Grossman, *supra* note 2, at 326.

³⁸ HAPPOLD, *supra* note 10, at 9 (noting that forced recruitment is used by government forces, the irregular forces aligned to the government, and rebel forces as a method of repression aimed at minority and dissident groups who might at some point challenge the efforts by such armed groups to assert hegemony).

including sexual servitude.³⁹ To make matters worse, there are reports indicating that some children are being taken back into armed groups after having been released or freed from fighting because, understandably, they have already learned the skills of soldiering and have become conditioned to killing and the hardships of warfare.⁴⁰ Forcing former child soldiers back into the ranks make perverse economic sense to militias trying to raise a fighting force.⁴¹ In some instances, the difficulty of surviving in civilian life forces children back into soldiering.⁴²

Conditions among illegal armed groups are even more brutal for children forced into their ranks. There are several universal traits of illegal armed groups around the world that use child soldiers. First and foremost, the leaders of armed groups know that children are docile, impressionable and easily manipulated.⁴³ Second, they employ horrific methods to indoctrinate children. Children are routinely drugged with heavy narcotics and hallucinogens, making them extremely violent and capable of committing unspeakable acts.⁴⁴ Some children have scars on their temples where their leaders have made cuts and rubbed in cocaine before attacks.⁴⁵ According to one child soldier, his addiction to narcotics induced him to commit horrible acts:

The first time I went into battle I was afraid. But after two or three days they forced us to start using cocaine, and then I lost my fear. When I was taking drugs, I never felt bad on the front. Human blood was the first thing I would have every morning. It was my coffee in the morning.⁴⁶

³⁹ *Id.* at 10.

⁴⁰ See NICOLAS CLEMESAC, JESUIT REFUGEE SERVICE, UNDERSTANDING THE PHENOMENON OF CHILD SOLDIERS 11 (2007), <http://www.child-soldiers.org/document/get?id=1243> (reporting on conditions in Congo).

⁴¹ See Benjamin Alldritt, *Dallaire Pushes for Child Soldier Initiative: New Book Uses Mix of Personal Experience and Research to Focus on Horrific Global Problem*, NORTH SHORE NEWS, Nov. 5, 2010, available at <http://www.nsnews.com/news/Dallaire+pushes+Child+Soldier+Initiative/3782699/story.html>.

⁴² Zack Baddorf, *Children Too Hungry to Return to Civilian Life*, INTER PRESS SERVICE, Aug. 13, 2010.

⁴³ HAPPOLD, *supra* note 10, at 10.

⁴⁴ Stephanie Bald, *Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for Its Children?*, 18 AM. U. INT'L L. REV. 537, 553 (2002).

⁴⁵ Monique Ramgoolie, *Prosecution of Sierra Leone's Child Soldiers: What Message is the UN Trying to Send?*, 12 PRINCETON UNIV. J. OF PUB. & INT'L AFFAIRS 145, 148 (2001), www.princeton.edu/jpia/past-issues-1/2001/8.pdf.

⁴⁶ Youth Ambassadors for Peace, *Voice and Stories*, FREE THE CHILDREN (2001), reprinted in www.un.org/works/goignon/soldiers/stories.doc.

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As part of the indoctrination and control process, child soldiers are forced to commit mayhem, to maim, and to kill their own fellow recruits and sometimes, family members.⁴⁷ Not only does this condition them to willingly carry out atrocities, but it effectively severs their ties to their communities, ensures that they can never escape to return home, and creates strong emotional dependent relationships between them and their commanders.⁴⁸ In particular:

The strategy of the MNR [REMANO] was to intimidate young boys until their socialization pattern was broken and they actually accepted a gun willingly. Then they were forced to kill someone. The typical process entailed taking a boy back to his own village and forcing him to kill someone known to him. The killing took place in such a way that the community knew that he had killed, thus effectively closing the door to the child ever returning to his village.⁴⁹

Many illegal armed groups literally go out to hunt children for forced recruitment into their ranks. This is a widespread practice throughout the world where child soldiers are found. Much of the recruitment of children is by brute force, kidnapping and abduction. One common form of forced recruitment is press-ganging, where armed militia groups travel the streets and public places, including schools, to capture children they encounter.⁵⁰ In Northern Uganda from 1995-1997, between 5,000 and 8,000 children were abducted directly from schools by the Lord's Resistance Army (LRA) to serve as child soldiers.⁵¹ Children are also abducted or recruited from within the conflict areas held by armed groups, from secondary countries, from refugee communities, from within ethnic diasporas, or by organized human trafficking operations across borders.⁵² Propaganda and ideological brainwashing can also lure children into the ranks of

⁴⁷ *Voices of Young Soldiers*, *supra* note 1 (describing recruitment methods through statements of former child soldiers).

⁴⁸ THE REDRESS TRUST, VICTIMS, PERPETRATORS OR HEROES? *CHILD SOLDIERS BEFORE THE INTERNATIONAL CRIMINAL COURT* 7 (2006), <http://www.redress.org/downloads/publications/childsoldiers.pdf>.

⁴⁹ HAPPOLD, *supra* note 10, at 10.

⁵⁰ Joseph Madubuike-Ekwe, *The International Legal Standards Adopted to Stop the Participation of Children in Armed Conflicts*, 11 ANN. SURV. INT'L & COMP. L. 29, 33 (2005).

⁵¹ See Grossman, *supra* note 2, at 326.

⁵² *Id.* at 326-27.

the armed forces.⁵³

Reliable statistics for the number of child soldiers in the world today are difficult to compile. This is due to the nature of internal armed conflicts, which can subside and end as quickly as they begin. The Coalition to Stop the Use of Child Soldiers no longer attempts to present an actual count of child soldiers, noting in its most recent 2008 report that while it is estimated that the number of child soldiers has fallen since its last report in 2004 due to cessation of hostilities where child soldiers were involved in fighting, new conflicts have arisen involving child soldiers for which no reliable data has been compiled.⁵⁴ Prior to 2004, the United Nations Office for the Coordination of Humanitarian Affairs estimated that more than 500,000 children under eighteen years of age were under arms in both government and non-state forces in over 85 countries.⁵⁵ At any one time, more than 300,000 children were actively fighting as soldiers with government armed forces or armed opposition groups around the world, mostly in armed groups fighting in opposition to their governments and/or against other government-opposed forces.⁵⁶ Although most of these child soldiers are between the ages of fifteen and eighteen years of age, some are as young as seven years of age.⁵⁷ Colombian rebel groups have been particularly egregious in forcibly recruiting children, some as young as eight years of age,⁵⁸ to lay land mines and plant explosives, bear ammunition, or fill the ranks of combatants when necessary. Often, the precise ages of child soldiers are never known⁵⁹ because the children do not have birth records stating the child's name and age.⁶⁰

The treatment of girl soldiers is particularly brutal. Although both government forces and illegal armed groups that recruit or force young women and girls into their ranks expect them to perform the same duties as their male counterparts, female

⁵³ *Too Small to be Fighting in Anyone's War*, *supra* note 35.

⁵⁴ See *Facts and Figures on Child Soldiers*, COALITION TO STOP THE USE OF CHILD SOLDIERS (2008), <http://www.childsoldiersglobalreport.org/content/facts-and-figures-child-soldiers> (last visited Sept. 9, 2010).

⁵⁵ *Too Small to be Fighting in Anyone's War*, *supra* note 35, at 1. The Coalition to Stop the Use of Child Soldiers placed that number at around 300,000. *Facts and Figures on Child Soldiers*, *supra* note 54.

⁵⁶ *Too Small to be Fighting in Anyone's War*, *supra* note 35, at 1.

⁵⁷ *Id.*

⁵⁸ See Grossman, *supra* note 2, at 325.

⁵⁹ THE REDRESS TRUST, *supra* note 48, at 7.

⁶⁰ Bald, *supra* note 44, at 548.

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combatants, face gender-specific abuses, such as sexual exploitation,⁶¹ including habitual rape and forced abortions.⁶² It is estimated that up to forty percent of the 300,000 children associated with armed groups are girls.⁶³ In the Democratic Republic of Congo, where the primary role of girl soldiers was to fight, a large number were also exposed to sexual violence.⁶⁴ One girl in Northern Uganda was fourteen years old when she was abducted into an illegal armed group in 1996:

That evening all girls were separated from the boys, and we divided up among different men. The man I was given to had two wives. That night, he called me to him. I went obediently, expecting him to ask me to do something for him like take some drinking water. Instead, he told me to sit down next to him, and he started to feel my breast. I pushed his hand away in disgust. I was so embarrassed that I wanted to insult him. He told me to lie down. I refused. He asked me if I had ever seen a dead body. I said no, I hadn't. Then he said: 'You will soon see your own corpse.' He pushed me down and lay on top of me and raped me. I cried out and begged him to stop, but instead he pushed his hand into my mouth and threatened to kill me if I didn't stop. He raped me three times that night. In the morning, I crawled out of his hut . . . my private parts were very painful. I could not urinate without crying out in pain. I couldn't believe it when two days later he called me again and raped me twice. My life went on this way for months.⁶⁵

The indoctrination of children into the ranks of illegal armed groups is also accomplished by exploiting the taboos and beliefs imbedded in their culture. In Africa, child soldiers are sometimes smeared in butter prepared from the African Shea tree and told

61 VESSELIN POPOVSKI & KARIN ARTS, POLICY BRIEF: INTERNATIONAL CRIMINAL ACCOUNTABILITY AND CHILDREN'S RIGHTS 4 (2006), www.unu.edu/publications/briefs/policy-briefs/2006/PB4-06.pdf.

62 See George Bryjak, *The Tragedy of Child Soldiers*, PEACE MAGAZINE 26 (July-Sept. 2007) (noting how Colombian girls attached to illegal armed groups are forced to undergo abortions if they become pregnant), available at <http://archive.peacemagazine.org/v23n3p26.htm>. Colombian and Honduran girls taken into the ranks of illegal combatants have been subjected to continual rape and forced abortions. See COALITION TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS GLOBAL REPORT 2008: COLOMBIA 99-103 (2008), http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf. See also HAPPOLD, *supra* note 10, at 16 (describing how one Honduran girl was forced to have sexual relations with a soldier and then forced to undergo an abortion).

63 POPOVSKI & ARTS, *supra* note 61, at 4.

64 *Id.*

65 THE REDRESS TRUST, *supra* note 48, at 13.

this will stop bullets and prevent them from returning home.⁶⁶ During the Iran-Iraq war in the 1980s, thousands of Iranian children were sent to the front lines to fight and clear mines, “armed with makeshift rifles, a dose of ‘martyr’s syrup’, [sic] and the keys to paradise around their necks.”⁶⁷ Some are initiated into secret societies and told that the magic (juju) they receive will protect them from bullets.⁶⁸ Uganda’s brutal Lord’s Resistance Army forced child soldiers to kill their fellow recruits and to participate in blood rituals:

One boy tried to escape, but he was caught. They made him eat a mouthful of red pepper, and five people were beating him. His hands were tied and then they made us, the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him, and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, “Why are you doing this?” I said I had no choice. After we killed him, they made us smear blood on our arms. I felt dizzy. They said we had to do this so we would not fear death, and so we would not try to escape.⁶⁹

2. *The Child-Friendly Business of Warfare*

The evolution and development of lightweight weaponry combined with higher capacities to inflict destruction have lessened the inherent physical limitations of children such that “the link between adulthood and the ability to bear arms no longer exists.”⁷⁰ Many modern infantry weapons are easy to use,⁷¹ work well in poor conditions, are readily available and cheap to obtain,⁷² and do not require great physical strength to operate with deadly

⁶⁶ See Andrew Ehrenkranz, *Cult of Combat*, NEWSWEEK, May 16, 2007, available at <http://www.newsweek.com/id/34687>.

⁶⁷ ILENE COHN & GUY S. GOODWIN-GILL, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICT 100 (1994).

⁶⁸ See *Children of Conflict*, BBC WORLD SERVICE, <http://www.bbc.co.uk/worldservice/people/features/childrensrights/childrenofconflict/soldier.shtml> (last visited Sept. 9, 2010).

⁶⁹ HUMAN RIGHTS WATCH, THE SCARS OF DEATH: CHILDREN ABDUCTED BY THE LORD’S RESISTANCE ARMY IN UGANDA (1997), <http://www.hrw.org/legacy/reports97/uganda/>.

⁷⁰ HAPPOLD, *supra* note 10, at 4.

⁷¹ Guns, such as AK-47s or M-16s, can be field stripped and reassembled by children as young as ten years of age. See Ramgoolie, *supra* note 45, at 148.

⁷² “In Uganda, for instance, an AK-47 . . . can be bought for the same price as a chicken, and in Mozambique, for a bag of maize.” See Madubuike-Ekwe, *supra* note 50, at 31.

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effect.⁷³ Along with mechanized mobility, a child soldier of very tender age becomes as deadly as an adult twice his age. This ease of arming children, coupled with the drugs, alcohol, and magical potions given to children by military leaders, convert these children into ruthless combatants,⁷⁴ while still giving commanders the flexibility to use children “where their size and agility is particularly useful, for espionage, carrying communications, and (more recently) de-mining.”⁷⁵ Also contributing to the increased use of children in warfare is that many recent conflicts occur in countries located in hot and humid tropical regions where children contend with harsh climates better than older combatants. During Mozambique’s internal conflict in the 1980s, the rebel group RENAMO⁷⁶ aggressively forced children into its ranks, according to one former RENAMO child soldier, because “kids have more stamina, are better at surviving in the bush, do not complain, and follow orders.”⁷⁷

On the other hand, because they are not fully developed physically, child soldiers are more prone to injury caused by their activities as combatants and from punishments and brutal training methods imposed by their commanders and older fellow combatants. Reported injuries include hearing loss caused by the use of heavy weapons without ear protection, as well as loss of limbs and blindness due to improper or inadequate training or safety precautions.⁷⁸ Also, child soldiers are forced to perform strenuous tasks for which they are not physically suited, and, without proper food and rest, their fragile bodies break down quickly.⁷⁹

Child soldiers also suffer grave and long-term psychological trauma. If being taken from the relatively secure surroundings of their homes and community is not traumatic enough, the accompanying abuse and beatings by their commanders adds to

⁷³ See HAPPOLD, *supra* note 10, at 5 (noting that “the worldwide availability of cheap, lightweight automatic weapons has meant that children can participate in combat on a far more equal footing with adult combatants than in any previous period”).

⁷⁴ See Madubuikwe-Ekwe, *supra* note 50, at 34.

⁷⁵ HAPPOLD, *supra* note 10, at 5.

⁷⁶ Mozambican National Resistance fought a civil war against the ruling Liberation Front party (FRELIMO), and in the 1980s, against Zimbabwean government forces. See BUREAU OF AFRICAN AFFAIRS, U.S. DEP’T OF STATE, BACKGROUND NOTE: MOZAMBIQUE (Nov. 5, 2010), <http://www.state.gov/r/pa/ei/bgn/7035.htm>.

⁷⁷ HAPPOLD, *supra* note 10, at 9.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

long term desensitization and dulling of emotional responses. “Child soldiers are often the victims, perpetrators and/or witnesses of atrocious acts: killing, maiming, rape, torture, wounding, the destruction of property and displacement of people. They develop a dependency relationship with their commanders and become inured to killing.”⁸⁰ Some child soldiers believe their personal safety is greater inside armed groups than if they remain outside among at-risk groups such as street children, refugees, and displaced populations.⁸¹

Still, many child soldiers develop post-traumatic stress disorder, “as well as experiencing feelings of fear, impotence, guilt and depression.”⁸² They lose critical years in their education, which has an impact on their emotional and intellectual development. Even when they are rescued, demobilized, and reintegrated, their lack of education and work skills makes them unemployable, and long term absence of taking accountability for their actions renders them unreliable and unpredictable to potential employers.⁸³

Stigmatization is another long-term obstacle for child soldiers attempting to reintegrate into society.⁸⁴ In many communities, the atrocities they have committed or are associated with having committed render them pariahs, unwelcome and unwanted, even by family members, who fear abuse and retaliation by neighbors if they take back their children. Stereotyping of former child soldiers as being wild and violent further alienates them from society and increases their anxiety and sense of being an outcast without value. Moreover, conditions where the child soldier is reintroduced may be problematic, particularly in cases where the former child soldier’s home and locality is now controlled or populated by opponents of the group to which he or she was attached.⁸⁵

Former girl child soldiers face even more stigmatizing challenges. Many contract sexually transmitted diseases and have

⁸⁰ *Id.*

⁸¹ COHN & GOODWIN-GILL, *supra* note 67, at 97.

⁸² HAPPOLD, *supra* note 10, at 18.

⁸³ *Id.*

⁸⁴ See COHN & GOODWIN-GILL, *supra* note 67, at 100 (reporting on how Iraqi attempts to return “Iranian child POWs were rebuffed by the Khomeini government, which was said to prefer martyrs to heroes. ‘In any case, outsiders fear[ed] with good reason that children sent back [in 1984] would [have been] abused for allowing themselves to be captured, accused of having been brainwashed and turned traitor.’”).

⁸⁵ HAPPOLD, *supra* note 10, at 18.

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fertility problems as a result of poor medical care and treatment during their time as child soldiers. “They may have borne, and now have responsibility for, their captors’ children.”⁸⁶ In many societies, particularly where there is a strong tribal structure, families face the shame of having girls who were child soldiers and who were sexually abused. A girl child soldier also faces damage to her marriage prospects that can be so critical to securing or improving economic stability, and she may be deemed even more unfit for employment than their male counterparts.⁸⁷

There is nothing child-friendly about children caught up in conflict. They are treated as expendable chattel in the prosecution of warfare. They are victimized, abused, and dehumanized. In many instances, the livestock and animal companions are treated with greater deference and care. They are viewed by illegal armed groups and many government forces as providing an inexhaustible resource to fill the ranks of combatants and to handle duties in the military chain of command that allow the adults to do more of the fighting. They are sent into the line of fire in advance of their adult counterparts to exhaust the opponent’s ammunition supply. They are driven to perform the most heinous acts imaginable under a looming threat of death.

III. INTERNATIONAL LAW INTENDED TO PROTECT CHILDREN FROM BECOMING COMBATANTS

International Humanitarian Law (IHL) embodies the law that regulates the conduct of combatants and the protection of civilians in armed conflict, including protection of children.⁸⁸ The corpus of laws that comprises international human rights and customary international law also governs the recruitment and use of children in armed conflict. The combined substance of these international laws imposes upon nations both rights and obligations.⁸⁹ States assume obligations and duties “to respect, to protect, and to fulfill human rights.”⁹⁰ While IHL and international laws pertaining to

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Chen Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict*, 28 COLUM. HUM. RTS. L. REV. 629, 635 (1997). See Madubuike-Ekwe, *supra* note 50, at 35.

⁸⁹ *What Are Human Rights?*, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last visited Sept. 9, 2010).

⁹⁰ *Id.*

human rights are codified into instruments such as conventions and agreements, customary international law is an unwritten authority that embodies universally recognized and accepted norms and conducts, which a majority of nations agree to respect and abide by. Customary international law develops from states' practices, and typically includes prohibitions on the use of force, crimes against humanity, war crimes, piracy, genocide, and slavery.⁹¹ While it is not written down per se, customary international law is considered binding on the international community.⁹²

Within the context of child soldiers, customary international law binds states to transnational doctrines that protect children in conflicts, regardless of whether a nation is party to a written treaty or convention.⁹³ Also, a State may become a party to an instrument of international law by a single act of accession, whereby the State agrees to be bound by the terms of the treaty.⁹⁴

*A. Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict*⁹⁵

The Convention on the Rights of the Child (CRC) and the Optional Protocol on the Involvement of Children in Armed Conflict (Optional Protocol) are human rights instruments which

⁹¹ *Customary International Humanitarian Law*, INT'L COMMITTEE OF THE RED CROSS, <http://www.icrc.org/eng/customary-law> (last visited Sept. 9, 2010).

⁹² *Id.*

⁹³ See Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation, Working Paper No. 1* (Oct. 2009), http://www.un.org/children/conflict/_documents/SixGraveViolationspaper.pdf.

⁹⁴ See Glossary on the Treaties, Council of Europe, <http://conventions.coe.int/Treaty/EN/v3Glossary.asp> (last visited Sept. 9, 2010) (see definition of "accession").

⁹⁵ Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, *available at* <http://www2.ohchr.org/english/law/crc.htm>. For a current state on signatories and ratifications, see United Nations Treaty Collection, Status of the Convention of the Rights of the Child, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Sept. 9, 2010). Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/625/67/PDF/N0062567.pdf?OpenElement> [hereinafter *Optional Protocol*]. For status of signatories and ratifications of the Optional Protocol, see United Nations Treaty Collection, Status of the Convention for the Rights of the Child, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en (last visited Sept. 9, 2010).

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are applicable in times of armed conflict, as well as periods of peace.⁹⁶ The main objective of both is to ensure that the child, “by reason of his physical and mental immaturity,” receives “special safeguards and care, including appropriate legal protection, before as well as after birth.”⁹⁷ The CRC has three general principles: that every child has an inherent right to life,⁹⁸ that States Parties have a duty to preserve a child’s identity, “including nationality, name and family relations as recognized by law without unlawful interference,”⁹⁹ and that:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹⁰⁰

The CRC defines not only the rights of a child in armed conflict, but also provides a legal definition of childhood. Under the CRC, States have a duty to apply the rules of international humanitarian law that are relevant to the child, and to take “every feasible measure” to ensure protection and care of children under the age of fifteen who are affected by armed conflict.¹⁰¹ However, the CRC is directed to the conducts of states rather than to non-state belligerents.¹⁰²

The CRC addresses the recruitment of child soldiers in Article 38 and directs that States Parties refrain from using or recruiting children under age fifteen in their armed forces.¹⁰³ The CRC, in this regard, contradicts the notion that children up to the age of eighteen years should not be used as child soldiers, and in fact, recognizes a State’s right to recruit or conscript children between the ages of fifteen and eighteen years. Where the CRC draws the line concerns how such a child placed under arms must be treated, mandating that international humanitarian law applies

⁹⁶ See U.N. Briefing Paper on Child Soldiers, *supra* note 19, at 3-4. See also THE REDRESS TRUST, *supra* note 48, at 24.

⁹⁷ Convention on the Rights of the Child, *supra* note 95, pmbl.

⁹⁸ *Id.* art. 6.

⁹⁹ *Id.* art. 8.

¹⁰⁰ *Id.* art. 19.

¹⁰¹ *Id.* art. 38(2). See U.N. Briefing Paper on Child Soldiers, *supra* note 19, at 3.

¹⁰² See discussion of Article 38 in COHN & GOODWIN-GILL, *supra* note 67, at 68.

¹⁰³ Convention on the Rights of the Child, *supra* note 95, art. 38.

in armed conflicts, which are “relevant to the child,”¹⁰⁴ and that States Parties shall ensure that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”¹⁰⁵ The CRC also sets forth the requirement that States Parties:

[P]romote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.¹⁰⁶

The challenge for States Parties emerging from armed conflict, with regard to the plight of child soldiers, is that in some cases, it may be extremely difficult—if not impossible—due to the loss of infrastructure, government authority in conflict zones, and the incapacity of social services to attend to the long-term physical, emotional, and economic needs of child soldiers. It all sounds noble on paper filed at the United Nations, but in practice, the reality of conflict and post-conflict conditions is that some States are impotent to comply with the mandates of this Convention.

While the will of States to recover the child soldier may be strong, the ability to make it so may be absent. Does it then become incumbent upon intervention by other nations or by non-government organizations, such as Save the Children or the International Committee or the Red Cross, to fulfill the commitments imposed upon a state under international law? Are such organizations bound to intervene in the absence of state capacity? These are thorny issues with regard to the rehabilitation and reintegration of children into societies, particularly with regard to the cultural intricacies and societal morays about which international intervening entities may have little or no knowledge or sensitivity.

An outside organization can say, “Look, we have to do something to make the child soldier whole again because his or her government cannot undertake this duty.” However, that does not mean that the organization is truly capable of overcoming the cultural factors which may impede integration of the child soldier

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* art. 37(a).

¹⁰⁶ *Id.* art. 39.

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back into society. Moreover, there is the issue of long-term monitoring of the children as they grow into adulthood, or in some instances, are re-recruited into new armed conflicts. These are conditions and nuances that the words and sentiments of international law are largely incapable of addressing.

The most significant feature of the 2002 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict is that the recognized age for participation in hostilities was raised from fifteen to eighteen years—a decision which was influenced by the Twenty-sixth International Conference of the Red Cross and Red Crescent in 1995.¹⁰⁷ The Optional Protocol also fortifies the intent of the Convention on the Rights of the Child in several significant ways. The minimum age for compulsory recruitment or direct participation in hostilities is established at eighteen years.¹⁰⁸ This attempts to correct the glaring problem inherent in the protection of child soldiers created by the CRC in which the minimum age of recruitment was set at fifteen years.

Voluntary recruitment is allowed under eighteen years of age, but with several provisos: (1) such recruitment is genuinely voluntary; (2) informed consent of the parents or legal guardians is required; (3) voluntary recruits must be fully informed of the duties involved in military service; and (4) reliable proof of age prior to enlistment must be provided.¹⁰⁹ Again, on paper this seems like a sound set of rules. However, in many parts of the world where children are recruited into armed conflict, locating proof of age or guardians willing to give consent may be impossible (such as in places where famine or large population displacements have occurred and vital records or the ability to identify and determine the age of a young recruit have been lost).

Of greater, and still more problematic significance, is the distinction created by Article 4 of the Optional Protocol, which sets out requirements to be followed by armed groups “that are distinct from the armed forces of a State.”¹¹⁰ Here, armed groups are directed not to recruit or use in hostilities persons less than eighteen years of age “under any circumstances.”¹¹¹ In addition,

¹⁰⁷ Optional Protocol, *supra* note 95, pmb1.

¹⁰⁸ *Id.* art. 2.

¹⁰⁹ *Id.* art. 3(3).

¹¹⁰ *Id.* art. 4(1).

¹¹¹ *Id.*

“States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.”¹¹² Yet one must ask, what is the authority in cases where an armed group, such as a paramilitary organization, like the Autodefensas Unidas de Colombia (AUC), is deployed in support of government forces or used as a vanguard by a government to enter and cleanse conflict zones; thereby, creating a degree of separation between the government and the human rights abuses that may occur at the hands of that paramilitary force? Moreover, does anyone reasonably believe that the leaders of such armed groups are truly going to be concerned with the consequences or threat of punishment for violating Article 4 of the Optional Protocol?

We are talking about holding accountable armed groups that in some situations may rely heavily on the recruitment of children just to keep a fighting force in the field, or who rely on the forced recruitment of children to destabilize and demoralize the enemy. We are talking about cases of armed groups that forcibly recruit children as a political and strategic tool in order to gain power or hegemony over contested territory. In such cases, other international human rights provisions must hold accountable the armed factions and the individuals who forcibly take children into their organizations.

B. Cape Town Principles and Best Practices

In 1997, the NGO Working Group on the Convention on the Rights of the Child and the United Nations Children’s Fund (UNICEF) convened a symposium in Cape Town, South Africa, to discuss the plight of child soldiers and develop strategies for preventing recruitment and improving demobilization apparatuses. The product of the symposium, known as the Cape Town Principles and Best Practices (the Principles), served as something of an interim addendum to the Convention on the Rights of the Child and to the Optional Protocol. The Principles called on governments to ratify the Optional Protocol, which was still in the adoption phase, and to establish a minimum age of eighteen years “for any person participating in hostilities and for recruitment in all forms into any armed force or armed group.”¹¹³ The Principles

¹¹² *Id.* art. 4(2).

¹¹³ UNICEF SYMPOSIUM ON THE PREVENTION OF RECRUITMENT OF CHILDREN INTO

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focused on three issues specifically: (1) prevention of child recruitment in hostilities; (2) demobilization; and (3) reintegration into family and community life.

1. *Prevention of Child Recruitment in Hostilities*

The Principles can be construed as being highly idealistic and to some extent impracticable in the real world of conflict. Among the lofty directives promoted in the Principles that would be difficult to enforce—especially in internal armed conflicts—are the following directives:

- a. Establish a Permanent International Criminal Tribunal with Jurisdiction over the Illegal Recruitment of Children

This directive arises from recent jurisprudence finding that the recruitment of children less than fifteen years of age to engage in hostilities is a war crime under contemporary international law. Court rulings in the Special Court of Sierra Leone, the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for Yugoslavia (ICTY) established a baseline for interpreting various provisions of Article 4 of the Statute of the ICTR, Article 3 of the Statute of the ICTY, and Article 4 of Additional Protocol II to the Geneva Conventions, confirming that child recruitment “poses an affront to human dignity and well-being and is inhumane. Save for murder, child recruitment is an act of the same gravity as the violations listed in Article 4 of the [Rome] Statute of the ICTR.”¹¹⁴ Court rulings further held that:

[C]hild recruitment is a positive act, containing both a mental and physical element, for which individuals can be held responsible both for the complete and the inchoate offence. It is therefore subject to criminal sanctions in exactly the same manner as breaches of the other fundamental guarantees listed in the Statute.¹¹⁵

THE ARMED FORCES AND ON DEMOBILIZATION AND SOCIAL REINTEGRATION OF CHILD SOLDIERS IN AFRICA, CAPE TOWN PRINCIPLES AND BEST PRACTICES 1 (1997), [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) [hereinafter CAPE TOWN PRINCIPLES AND BEST PRACTICES].

¹¹⁴ Brief of UNICEF as Amicus Curiae, *Prosecutor v. Sam Hinga Norman*, Case No.: SCSL-2003-08, ¶ 67 (Special Ct. for Sierra Leone 2004), available at <http://www.unhcr.org/refworld/category,POLICY,,AMICUS,,49aba9462,0.html>.

¹¹⁵ *Id.* ¶ 68.

Following the establishment of the ICC, jurisprudence developed from the inclusion of the conscription or enlisting of children as a war crime where the terms of Article 8(2)(b)(xxvi) of the International Criminal Court's Elements of Crimes¹¹⁶ are met:

- (1) The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
- (2) Such person or persons were under the age of 15 years.
- (3) The perpetrator knew or should have known that such person or persons were under the age of 15 years.
- (4) The conduct took place in the context of and was associated with an international armed conflict.
- (5) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.¹¹⁷

In January 2007, Thomas Lubanga, a militia commander in the Democratic Republic of Congo, became the first individual to be charged with war crimes for enlisting and conscripting children under the age of fifteen years to participate in hostilities during the civil war in 2002-2003.¹¹⁸ What began as a test of the ability of an international criminal court to bring a recruiter of child soldiers to justice quickly turned into a legal fiasco when, shortly before the start of trial, the Trial Court I stayed the proceedings because the prosecution could not provide hundreds of documents it had acquired through confidential means as is allowed under Article

¹¹⁶ Rome Statute of the International Criminal Court, *adopted* July 17, 1998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9 (entered into force July 1, 2002), http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf. Article 8 reads:

- (1) The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy as part of a large-scale commission of such crimes.
- (2) For the purpose of this Statute, "war crimes" means:
....
(b)(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

Id. art. 8.

¹¹⁷ Elements of Crimes, International Criminal Court (ICC), art. 8(2)(b)(xxvi) (Sept. 9, 2002), http://www.icc-cpi.int/NR/rdonlyres/9CAEE830-38CF-41D6-AB0B-68E5F9082543/0/Element_of_Crimes_English.pdf.

¹¹⁸ For a thorough analysis of the Lubanga proceedings, see *The Status of the ICC Trial of Thomas Lubanga*, HUMAN RIGHTS WATCH (Nov. 12, 2008), <http://www.hrw.org/en/news/2008/11/12/status-icc-trial-thomas-lubanga>.

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54(3)(e) of the Rome Statute.¹¹⁹ The stay was lifted in January 2009 and the trial proceeded. As of the writing of this article, the Lubanga trial is still underway.

The fact that this trial has been ongoing since Lubanga's arrest in March 2006 illustrates several issues with the use of an international criminal tribunal. As a number of legal scholars have pointed out, the international community expects results from the ICC and places enormous pressure on the court to try and convict those brought before it. Furthermore, some court watchers have expressed concern that the functional focus of the court is too much on Africa and that some cases warranting trial before the ICC have been dropped due to the lack of "gravity" of the criminal acts.¹²⁰ The wheels of justice also seem to move very slowly at other international criminal tribunals. The case of Vojislav Seselj, who was accused of crimes against humanity and brought before the ICTY in February 2003, is still on trial as of July 2010.¹²¹

Some international criminal law specialists are pondering the notion of a permanent Trial Chamber to deal with Article 8(2)(b)(xxvi) and (20)(c)(vii) violations. Author and noted legal scholar, Jordan Paust, tends to agree "given the large number of violations and serious short and long-term effects."¹²² However, were a special trial chamber in the ICC established to handle cases of such limited jurisdiction, there would be several problematic issues. First, the demonstrated length of trials at the ICC presents a risk of spoilage of evidence and the loss of witnesses. Second, public interest would wane over time and support for such exclusive proceedings could waiver. Third, as Paust rightly points out, budget limitations in the ICC and "the fact that there are so many other war crimes within the jurisdiction of the ICC" may necessitate difficult choices having to be made with regard to bringing violators of war crimes to justice.¹²³

¹¹⁹ *See id.*

¹²⁰ This is a view opined in a May 3, 2010 email exchange with Jordan Paust, an eminent international legal scholar, who has, like the author, heard similar sentiments about the work and focus of the ICC. E-mail from Jordan Paust, Professor of International Law at the Law Center of the University of Houston, to author (May 3, 2010, 3:56 p.m.) (on file with author) [hereinafter Paust E-mail].

¹²¹ For a thorough overview of the trial, see *Trial Watch: Vojislav Seselj*, TRIAL: TRACK IMPUNITY ALWAYS (last visited Sept. 9, 2010), <http://www.trial-ch.org/en/resources/trial-watch/search.html> (search "Vojislav;" then follow the "Vojislav Seselj" hyperlink).

¹²² Paust E-mail, *supra* note 120.

¹²³ *Id.*

b. Parties to a Conflict Should Memorialize in Writing
Agreements as to the Minimum Age for Recruitment

The idea of parties to a conflict (especially one involving a civil war between tribal groups taking place in remote areas where literacy and the rule of law are all but non-existent) executing written agreements to abide to an age restriction in the recruitment of combatants is almost absurd. Armed groups are generally in a life or death struggle where replenishing combatants is a constant preoccupation, and the last thing a desperate armed group would do is bind itself to an agreement that would deny them access to a plentiful source of recruits. Some groups, particularly in African conflicts, practice the most ferocious and heinous acts of brutality as a matter of routine. They do so because such acts are deeply imbedded in the culture of their warrior past, or because belligerents have reached such a state of violence that all standards of moral and ethical conduct cease to exist or hold meaning. The Lord's Resistance Army in Uganda, for example, portrays itself as a sectarian Christian militant group, yet practices ritualistic mutilation, brutal sexual assault, and forced cannibalism as part of its strategy to terrorize opponents and control its own combatants.¹²⁴ Realistically, the interest level of such a group in agreeing to restrict the age of the people it recruits is about zero.

Armed groups may sign such an agreement for propaganda reasons and currying good will, only to renege at a later date or to ignore the agreement entirely. This has been the case of Colombia's FARC guerrillas, who agreed in 1999 to requests by the UN Special Representative to end recruitment of children under the age of fifteen years; however, they never actually complied with the agreement.¹²⁵ It was also later rumored that the UN Special Representative had inappropriate conflicts of interest with the FARC high command.¹²⁶

c. Community-based Efforts to Monitor, Document, and

¹²⁴ See generally PAUL RAFFAELE, *AMONG THE CANNIBALS: ADVENTURES ON THE TRAIL OF MAN'S DARKEST RITUAL* 173-228 (Smithsonian, 2008).

¹²⁵ HAPPOLD, *supra* note 10, at 41 (noting that the FARC "expressed a willingness to explore with the UN and relevant NGOs a framework for the demobilization of children already within its ranks," but never acted on establishing such a demobilization framework).

¹²⁶ According to interviews conducted by the author in the early 2000s.

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Should be Developed and Supported

As a general rule, armed groups terrorize communities in an effort to gain hegemony. This author has served as an expert witness on behalf of individuals from Central America and Colombia who claimed asylum based on persecution by illegal armed groups and the inability of the State to protect their civil and human rights in the face of such persecution. Several of the asylum petitioners were community activists or perceived to be associated with social improvement organizations or political parties whose activities were anathema to the goals of the armed groups to control the populations within their sphere of influence, both in rural and urban communities. In conflict regions, the State has little control and is generally preoccupied with taking care of its own forces. The State possesses little capacity or desire to expend valuable resources to ensure the safety of community-based organizations as they go about the business of monitoring and reporting on instances of child recruitment into armed groups. In instances of such organizations monitoring the recruitment practices of a government's armed forces, such reporting is subject to the manner in which the State controls the press and the privileges it allows to community and non-government organizations. In the case of illegal armed groups and their forced recruitment of child soldiers, community-based organizations would have to be willing to operate at their own peril. This poses problems for accurate monitoring, to say the least.

d. Alternatives to the Glorification of War, Including Those
Images Shown in the Media, Can Be Provided to
Children¹²⁷

The idea of showing to children images that depict alternatives to the glorification of warfare is a nice sentiment, but difficult to imagine being successful in the face of brute force asserted by armed groups. One must overcome historical and cultural patterns of violence and the warrior mentality imbued in children from birth. Children and the communities in which they are at risk of being recruited are often under extreme duress. Alternatives may be impossible to contemplate and so remote as to be untenable. It is difficult to imagine that children belonging

127 CAPE TOWN PRINCIPLES AND BEST PRACTICES, *supra* note 113, at 2.

to second or third generations of populations caught up in long-running conflict could be influenced by the demonstration of alternatives. There is too much going on in a child's mind, such as the need for survival, peer pressure, control asserted by adults, a desire for inclusiveness, a desire for revenge, and the reality of living in conditions in which nearly every decision brings extreme consequences.

2. *Demobilization*

The Symposium members called for a strategy for more effective demobilization of child soldiers, beginning with the directive that, "Direct and free access to all child soldiers should be granted to relevant authorities or organizations in charge of collecting information concerning their demobilization and of implementing specific programmes."¹²⁸ Chief among the plan offered was that "priority should be given to children in any demobilization process."¹²⁹ It may seem to some reasonable thinkers that such a priority has inherent problems. For example, which child soldier should be given greater attention in the demobilization process, and which one may have the greater need? A fourteen-year-old child soldier who has been a combatant for less than a year, or a nineteen-year-old who has been a combatant for five years? Should not a plan or priority be based on time under arms rather than age at the time of demobilization?

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

The U.N. Special Representatives overseeing demobilizations have reported mixed results in the making of action plans for the demobilization of child soldiers.¹³⁰ In the Democratic Republic of Congo, the U.N. Special Representative reported obtaining sixty commitments from fifteen parties to demobilize child soldiers, but many other such agreements have not been observed.¹³¹

¹²⁸ *Id.* at 4.

¹²⁹ *Id.* at 5.

¹³⁰ U.N. Secretary-General, *Children and Armed Conflict: Rep. of the Secretary-General* ¶¶ 48-49, U.N. Doc. A/58/546-S/2003/1053* (Nov. 10, 2003).

¹³¹ HAPPOLD, *supra* note 10, at 41.

3. Reintegration

The Symposium members organized recommendations for reintegration around the notion that “family reunification is the principal factor in effective social reintegration.”¹³² In an ideal world, that makes perfect sense. However, there are places in the world, such as Serbia, Bosnia, Rwanda, Uganda, Cambodia, and Colombia, where entire communities have been snuffed out of existence. Many child soldiers have been displaced to such great distances, and so thoroughly traumatized by the experience at such a tender age, that reuniting them with their families or tribal communities may be impossible. Resistência Nacional de Moçambique (RENAMO) forces, originating in Mozambique, forced child soldiers into Zimbabwe to fight in the 1980s, while Uganda’s Lord’s Resistance Army forced child soldiers into southern Sudan where it maintained support bases for training and provisioning. Once there, the children were held for ransom.

If we accept that, under Article 39 of the Convention on the Rights of the Child, child soldiers fall into the category of “victims of neglect, exploitation, abuse, cruel, inhuman or degrading treatment and/or armed conflict,”¹³³ then States absolutely bear the responsibility of rehabilitating and reintegrating the child soldier back into the society. This responsibility is described ambiguously as “all appropriate measures,” and is fortified by Article 7 of the Optional Protocol, which states that “States Parties *in a position to do so* shall provide such assistance through existing multilateral, bilateral or other programmes, or inter alia, through a *voluntary* fund established in accordance with the rules of the General Assembly.”¹³⁴ This sounds good, but in reality, what does this actually mean if a State is not in a position to do so or there is no voluntary fund available for the process of reintegration? What becomes of the child? As time passes, the child grows older, the window of opportunity to educate the child is squandered, and the possibility may arise that a new or re-emerging conflict will sweep that individual back into hostilities. International law provides a legal framework and a set of principles to chart a course for reintegration but, in the real world where conflict has so thoroughly destroyed government authority and so thoroughly

¹³² CAPE TOWN PRINCIPLES AND BEST PRACTICES, *supra* note 113, at 8.

¹³³ HAPPOLD, *supra* note 10, at 110 (emphasis added).

¹³⁴ *Id.*

eradicated the underpinnings of a civil society, how realistically can such legal directives be implemented and enforced?

On the contrary, there is evidence to suggest that States actually try to minimize their legal responsibilities and obligations under international law to provide financial and emotional support for former child soldiers.¹³⁵ The most influential report on children in armed conflict, known as the Machel Report,¹³⁶ paints a discouraging picture of States ducking their obligations to help child soldiers among their populations. The Report notes that no peace treaty to date formally recognizes the existence of child combatants¹³⁷ and cites the case of Mozambique, where recruitment of children was well known, but “child soldiers were not recognized in demobilization efforts by the RENAMO, by the Government, or by the international community.”¹³⁸

As mentioned earlier in this article, the societal prohibitions confronting the reintegration of the child soldier remains a universal barrier for children emerging from years of violent fighting. Families, communities, and tribal groups have great difficulty in forgiving the atrocities children were either forced or brainwashed into committing. A State can attempt to impose an obligation onto a community to take a child back into the fold, but, without long-term monitoring and follow-up care which can be very costly to the State, it is difficult to assume whether government-promoted reintegration is possible in many cases.

One final note of particular interest about the Principles was the call for a code of conduct for journalists covering conflicts in which child soldiers were present. Such a code would “take account of, *inter alia*, the manner in which sensitive issues are raised, the child’s right to anonymity, and the frequency of contact with the media.”¹³⁹ This is an overly naïve aspiration. The press, especially the segment of the press that relies on shock content, cannot be monitored at all times. While a reputable news organization may have standards of reporting, in many conflict

¹³⁵ *Id.*

¹³⁶ Expert of the Secretary-General, *Impact of Armed Conflict on Children: Rep. of the Expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to G.A. Res. 48/157, transmitted by Note of the Secretary-General, U.N. Doc. A/51/306 (Aug. 26, 1996), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N96/219/55/PDF/N9621955.pdf?OpenElement> [hereinafter Machel Report].*

¹³⁷ *Id.* ¶ 49.

¹³⁸ *Id.*

¹³⁹ CAPE TOWN PRINCIPLES AND BEST PRACTICES, *supra* note 113, at 8.

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zones, contract and freelance reporters are used to provide news stories. The story that may be toned down for a “responsible” news organization may also be sold elsewhere to a notorious news entity with all the gruesome details. Also, the rise of blogging, satellite reporting, and Internet-based media transfer renders compliance to a code of conduct for the press not only problematic, but also potentially irrelevant.

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

The Declaration on the Protection of Women and Children in Emergency and Armed Conflict¹⁴⁰ is among the older instruments pertaining to the protection of children in armed conflicts. The declaration was drafted in 1974 during a dark period of Cold War-induced tensions and hostilities in the developing world. In no uncertain terms, the instrument decried the upheaval caused by the maneuverings of superpowers and expressed deep concern “by the fact that, despite general and unequivocal condemnation, colonialism, racism and alien and foreign domination continue to subject many peoples under their yoke, cruelly suppressing the national liberation movements and inflicting heavy losses and incalculable sufferings on the populations under their domination, including women and children.”¹⁴¹

This Declaration was issued in a spirit of near militancy when nations struggling to emerge from colonial status were beginning to flex their muscle within the level playing field of the UN General Assembly. The words chosen were selected with great care to reflect the sentiment of emerging states, with great emphasis placed on *aggression, colonialism, racism, alien domination, and foreign subjugation*. While the Declaration did not address the matter of child soldiers in armed conflict, the language iterated was adopted in most subsequent international instruments addressing child soldiers, namely, that “all the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of

¹⁴⁰ Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. Res. 3318 (XXIX), U.N. Doc. A/RES/3318 (XXIX) (Dec. 14, 1974), <http://www2.ohchr.org/english/law/pdf/protectionwomen.pdf>.

¹⁴¹ *Id.*

the civilian population that consists of women and children.”¹⁴²

The Declaration directly or indirectly formed a basis upon which to address later the treatment and depredations imposed on children induced to become combatants. Reading the Declaration, one senses the anger behind the words that the drafters in the General Assembly must have felt toward the most powerful nations in the world at that time. Yet, one wonders if the drafters could have imagined at the conclusion of 1974 the firestorm of violence that would soon consume so many post-colonial states, particularly in Africa, where communist and capitalist ideologies clashed over the course of the next four decades. Like many other instruments drafted by the United Nations with regard to protection of civilians in armed conflicts, the drafters of this Declaration were thinking in terms of “conventional” warfare, such as attacks, bombings, and the use of chemical/bacteriological weaponry.¹⁴³ They could not have imagined children being subjected to the most heinous acts of physical violence and mental torment that emerged in subsequent conflicts—children forced to kill their families, forced to eat human flesh, drugged into complacency or desensitized by narcotics to such an extent that they are able to commit unspeakable acts of violence.

At the same time this and other international declarations imposed upon States the duty to protect women and children, and indeed, all of the civil society. There is a naiveté present in the corpus of international law that does not recognize the extent to which men can summon the darkest depths of evil to commit horrific acts against their fellow men. This leaves us to ponder, if such extreme and wanton brutality can emerge in conflict, then at what point are all the declarations for human rights and protections of children rendered impotent?

D. Other Significant Instruments

There are sundry other pertinent international legal instruments affecting child soldiers around the world. All are suitable for exhaustive analysis and commentary, but the above-mentioned three instruments illustrate sufficiently the challenges States and international organizations face in invoking the weight of international law in trying to end the practice of child soldiers

¹⁴² *Id.* art. 4.

¹⁴³ *Id.* arts. 1-2.

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and the demobilization and reintegration of child soldiers back into the civil society. These challenges, to an appreciable extent, are applicable to a detailed discussion of the other instruments out there. Rather than continue with an analysis of these additional instruments, they are suitable for further inquiry outside the scope of this article. These key instruments include: the Rome Statute of the International Criminal Court (1998),¹⁴⁴ the International Labour Organization (ILO) Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999),¹⁴⁵ the African Charter on the Rights and Welfare of the African Child (1999),¹⁴⁶ specifically Article 22, the Geneva Conventions (1949) and Common Article 3¹⁴⁷ and Additional Protocol I and Additional Protocol II (1977),¹⁴⁸

¹⁴⁴ The Rome Statute of the International Criminal Court established a protection for children in the International Criminal Court. See Rome Statute of the International Criminal Court, supra note 116. The Rome Statute makes it a war crime and allows prosecution for those who conscript or enlist children under the age of fifteen into national armed forces or who use them to participate actively in hostilities. *Id.* However, the court has limited its jurisdiction only to adults who recruit child soldiers. *Id.* Article 26 of the Statute states, “the Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of a crime.” *Id.* art. 26.

¹⁴⁵ Int’l Labour Org., *Worst Forms of Child Labour Convention*, adopted June 17, 1999, No. 182 (entered into force Nov. 19, 2000), available at <http://www2.ohchr.org/english/law/childlabour.htm>. The International Labour Organization (ILO) is a United Nations agency that brings together representatives of governments, employers and workers to devise policies and programs related to international labor standards. *About the ILO*, INTERNATIONAL LABOUR ORGANIZATION, http://www.ilo.org/global/About_the_ILO/lang-en/index.htm (last visited Sept. 9, 2010).

¹⁴⁶ The African Member States of the Org. of African Unity, African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20O.N.%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf.

¹⁴⁷ The four Geneva Conventions of 1949 are as follows: (i) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 973, available at <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>; (ii) Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 972, available at <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument>; (iii) Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 971, available at <http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument>; and (iv) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 970, available at <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument> [hereinafter Four Geneva Conventions of 1949]. Article 3, common to all four Geneva Conventions (Common Article 3), applies in cases of internal armed conflict and sets out the basic protections given to “[p]ersons taking no active part in the hostilities.” Four Geneva Conventions of 1949. The provisions of Common Article 3 only extend certain fundamental humanitarian protections to non-combatants; they do not provide any authoritative codification of the

the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (2007),¹⁴⁹ and several U.N. Security Council resolutions.¹⁵⁰

IV. DUTY OF NATIONS TO PROTECT CHILDREN FROM CONFLICT

If the international corpus of declarations, conventions, and protocols has no teeth sharp enough to intimidate those who force children to take up arms and to commit horrific acts, then the next line of accountability resides in domestic legislation imposed on all citizens of a nation's civil society. We can reduce the intent of domestic law to cover four universal requirements reflected in the international legal instruments from which many acts of domestic legislation evolve: (1) the duty to protect children from being engaged in the business of war; (2) the duty to prosecute those who force children to become combatants; (3) the duty to rehabilitate and reintegrate former child soldiers back into the civil society; and (4) the duty to educate citizens about child soldiers in the hope that education will contribute to eradication of the use of child soldiers in future conflicts.

laws of war for non-international armed conflicts. *Id.*

¹⁴⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 17512 [hereinafter Additional Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 17513 [hereinafter Additional Protocol II], <http://treaties.un.org/doc/Publication/UNTS/Volume%201125/v1125.pdf>. Additional Protocol I applies to international armed conflicts, and among other provisions imposes the duty to "take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities." Additional Protocol I, art. 77(2). Additional Protocol II applies to non-international armed conflicts in which hostilities occur between a State's armed forces and rebel or opposition groups or other organized armed groups. Additional Protocol II.

¹⁴⁹ U.N. Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Paris Principles: The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (Feb. 2007), http://www.un.org/children/conflict/_documents/parisprinciples/ParisPrinciples_EN.pdf.

¹⁵⁰ S.C. Res. 1261, U.N. Doc. S/RES/1261 (Aug. 30, 1999); S.C. Res. 1314, U.N. Doc. S/RES/1314 (Aug. 11, 2000); S.C. Res. 1379, U.N. Doc. S/RES/1379 (Nov. 20, 2001); S.C. Res. 1460, U.N. Doc. S/RES/1460 (Jan. 30, 2003); S.C. Res. 1539, U.N. Doc. S/RES/1539 (Apr. 22, 2004); and S.C. Res. 1612, U.N. Doc. S/RES/1612 (July 26, 2005).

*A. Duty to Protect under Domestic Law**1. Regarding the Minimum Age of Criminal Responsibility*

We have seen that a minimum age for recruitment and use of children in armed conflicts has been established under international law. Yet, a minimum age for criminal responsibility for children that commit crimes while involved in armed conflicts does not exist,¹⁵¹ beyond a general agreement among States that there needs to be a balance between attributing criminal responsibility and protecting children from a legal process they may be too young to understand.¹⁵² The Special Court for Sierra Leone allows children as young as fifteen years of age to come under its jurisdiction for crimes committed as a child combatant.¹⁵³ Conversely, the Rome Statute does not include persons less than eighteen years of age at the time of the commission of a crime within its jurisdiction.¹⁵⁴

Article 30 of the Convention on the Rights of the Child calls on States Parties to set a minimum age and recognizes the differences of opinion regarding the definition of a “child,” as “any person below the age of 18 years *unless*, under the law applicable to the child, majority is attained earlier.”¹⁵⁵ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, also recognizes differences among nations in establishing the age of criminal responsibility:

It should be noted that the age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of ‘juvenile’, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.¹⁵⁶

¹⁵¹ Grossman, *supra* note 2, at 339.

¹⁵² Amnesty Int’l, *Child Soldiers: Criminal or Victims?* 15 (AI INDEX IOR 50/02/00 Dec. 2000), <http://www.amnesty.org/en/library/asset/IO50/002/2000/en/f1883757-dc60-11dd-bce7-11be3666d687/ior500022000en.pdf>.

¹⁵³ Grossman, *supra* note 2, at 339.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* (emphasis added).

¹⁵⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res.40/33, U.N. Doc. A/RES/40/33, cmt. to r. 2.2 (Nov. 29, 1985), available at <http://www.un.org/documents/ga/res/40/a40r033.htm>.

However, the Beijing Rules also state that the minimum age should not be set “at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity [Rule 4.1].”¹⁵⁷ Over the course of several years, UNICEF has issued regional reports on the minimum age of criminal responsibility. For example, the 2005 South Asia report¹⁵⁸ listed minimum ages as young as seven years of age in Pakistan, and eight years of age in Sri Lanka, with the caveat in Sri Lanka that a child between eight and twelve years of age may bear criminal responsibility only if he or she has “attained sufficient maturity of understanding to judge of the nature and consequence of his [or her] conduct on that occasion.”¹⁵⁹

The determination of criminal responsibility, however, raises two significant concerns for attaching criminal responsibility to acts committed by child soldiers. First, if the minimum age established under the domestic law of a state is subject to determination of maturity, then what is the point of having an age minimum standard if it is left to the discretion of the court or a prosecutorial body to make a subjective determination on whether to charge a child soldier with a criminal act? Second, as duly noted in the Forward of the South Asia UNICEF report, children and, especially one could assume, child soldiers are “likely to be from marginalized sectors of the society” and “will find themselves enmeshed in a system that sends a variety of confusing messages about their status and which is sometimes itself a prisoner of colonial laws rooted in a world that no longer exists.”¹⁶⁰

Finally, and of greatest concern, is the question of determination of age where birth registrations and certification are “scant,” and “patchy adherence can undermine the best of intentions.”¹⁶¹ In situations where armed conflict has utterly destroyed the infrastructure of entire communities, the issue of minimum age may be rendered moot, at which point we are then back to a subjective standard for determining whether to attach

¹⁵⁷ See Machel Report, *supra* note 136, ¶ 251. The Machel Report calls for the same criteria to be applied rather than using subjective or imprecise criteria such as personality or puberty. *Id.*

¹⁵⁸ UNICEF Reg'l Office for South Asia, *South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children's Rights* 48, 56 (2005), [http://www.unicef.org/rosa/Criminal_Responsibility_08July_05\(final_copy\).pdf](http://www.unicef.org/rosa/Criminal_Responsibility_08July_05(final_copy).pdf).

¹⁵⁹ *Id.* at 56.

¹⁶⁰ *Id.* at iii.

¹⁶¹ *Id.*

criminal responsibility to a child soldier.

2. *Regarding Conditions of Detention when Prosecuted*

Article 10 of the International Covenant on Civil and Political Rights (ICCPR) mandates the conditions under which juvenile defendants must be treated. These conditions include separating juveniles from adults, treating them in an age-appropriate manner, and bringing them to adjudication as expediently as practicable.¹⁶² However, the ICCPR does permit derogation from art. 10: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed [art. 4].”¹⁶³

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

- (1) The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;¹⁶⁴
- (2) [E]very child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;¹⁶⁵
- (3) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.¹⁶⁶

In a perfect world, with a suitable, functioning criminal justice system, children would be afforded the rights established under Article 37. But in nations where armed conflict has eviscerated the government authority and infrastructure, one must imagine that adherence to these measures is not realistic, and that children,

¹⁶² International Covenant on Civil and Political Rights, art. 10, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, <http://treaties.un.org/doc/Publication/MTDSDG/Volume%20I/Chapter%20IV/IV-4.en.pdf>.

¹⁶³ *Id.* art. 4.

¹⁶⁴ Convention on the Rights of the Child, *supra* note 95, art. 37(b).

¹⁶⁵ *Id.* art. 37(c).

¹⁶⁶ *Id.* art. 37(d).

especially the child soldier, will be subject to torments and retributions while in custody and exposed to the potential of vigilantism, as well as extra-judicial acts of violence.

3. *Regarding Holding Child Soldiers Responsible for Their Actions*

If we subscribe to the idea that most child soldiers do not willingly participate in the commission of criminal acts during armed conflict, then to what extent shall they be held accountable to justice? If they are to be brought to justice, then what forum is the appropriate venue for doing so?

Under international law, children are generally excused from legal responsibility due to their age, although some States hold children criminally responsible as adults under national criminal laws.¹⁶⁷ In the United States, for instance, children as young as twelve years of age have been sentenced to life in prison for committing homicide.¹⁶⁸ That such a sentence may be handed down to children suggests that the age of eighteen years as advocated in the international law instruments we have discussed in this article may not be the only reasonable age for moral agency, even though it is widely accepted.¹⁶⁹

The age of the child soldier influences the perception of the child as either a soldier or a victim. Those children who are abducted at a very young age by armed forces are easily accepted as victims by the community.¹⁷⁰ However, some children involved with the armed forces are willing perpetrators of unthinkable and unimaginable acts.¹⁷¹ Children between the age of fifteen and eighteen years who have already undergone cultural rites of passage into adulthood are widely considered to be the predominant youths perpetrating such acts.¹⁷² If such is the case, then can a universal age standard be applied across all regions of the world affected by armed conflict, or should local custom prevail in determining whether to try a child soldier for the crimes he or she commits?

¹⁶⁷ Milla Emilia Vaha, *Victims or Perpetrators? Adolescent Child Soldiers and the Vacuum of Responsibility*, INTERNATIONAL STUDIES ASSOCIATION ANNUAL CONVENTION, Feb. 2009, at 15.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ THE REDRESS TRUST, *supra* note 48, at 14.

¹⁷¹ *Id.* at 14.

¹⁷² *Id.* at 14.

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If a child is determined to be cognizant of the acts he or she committed as a combatant, then he or she is culpable before the law and must answer to charges. Society accepts that the recruitment of children into armed groups is most often by force and includes threats of death, drugging, and extreme violence. But we also are aware that in many cases, children willingly become soldiers, are clearly in control of their own actions, and have voluntarily committed atrocities against others.¹⁷³ Where a child soldier acted with full awareness of his actions and with the full intent to commit heinous acts, then it would be in his best interest and in the best interest of society to impose responsibility for those acts.¹⁷⁴ In such cases, prosecution is allowed under the CRC art. 10, as long as the best interests of the child (and by extension, the civil society) remain a primary consideration as stated in art. 3.

The question of whether a person under eighteen years of age has joined an armed group voluntarily also needs to be assessed critically. As mentioned earlier, Article 3 of the Optional Protocol includes provisions to ensure that recruitment is genuinely voluntary (informed consent of parents or guardians, knowledge of the duties assumed in military service, and proof of age).¹⁷⁵ It is extremely important that children under eighteen years of age who have acted voluntarily and who were in control of their actions be held accountable for their actions in an appropriate setting, giving due consideration to their age and other mitigating factors (such as if they were brutalized after voluntary recruitment by their recruiters).¹⁷⁶ The child's awareness of the choices open to him, if any, should be assessed, with ample consideration given to a child's vulnerability, maturity, and limited understanding of the legal system.¹⁷⁷ Such an assessment should conform to international standards, should apply consistently to parties in a conflict, and should contribute to mitigation of the child's responsibility for the actions committed if such mitigating factors are found.¹⁷⁸

Yet, even where a child's decision to become a combatant is voluntary, is not a child soldier a victim of acts perpetrated against him or her by superiors who place the child in harm's way or in a

¹⁷³ Amnesty Int'l, *supra* note 152.

¹⁷⁴ *Id.* at 6-7.

¹⁷⁵ Optional Protocol, *supra* note 95, art. 3.

¹⁷⁶ Amnesty Int'l, *supra* note 152, at 6.

¹⁷⁷ *Id.* at 6-7.

¹⁷⁸ *Id.* at 6.

position to commit heinous conducts? Someone or some set of circumstances compels a child to become a fighter. This does not happen in a vacuum and, regardless of the implementation of standards to determine age or maturity as a benchmark to bring a child soldier to justice, prosecuting children for heinous crimes committed during armed conflicts presents a moral dilemma.¹⁷⁹ If we accept that very bad things happen to child soldiers regardless of the circumstances that placed them in harm's way, how then can a judicial authority find a balance between the best interests of a former child soldier and the public policy of prosecuting crimes perpetrated during conflict?

As we know, a crime consists of three elements: the *actus reus* (the conduct element), the *mens rea* (the mental element), and the absence of any defense.¹⁸⁰ Most systems of criminal law hold that before a person can be held accountable, blameworthy, and punishable, his behavior must include a fault element.¹⁸¹ In general, to be guilty of a crime, it is not enough simply to have done a particular illegal act; both the *mens rea* and *actus reus* must be present and demonstrable.¹⁸² Therefore, criminal responsibility can only attach when there is sufficient mental awareness on the part of the person committing the illegal act of the consequences or the potential consequences of his or her actions.¹⁸³

To prosecute a child soldier successfully, the State must make certain that the child meets the intent requirements of the crime.¹⁸⁴ Child soldiers, as we have seen, participate in the commission of war crimes and other atrocious acts by being coerced through various methods of control and threats of death.¹⁸⁵ Under such conditions, the child soldier may invoke a defense claim of duress by threat,¹⁸⁶ effectively removing the *mens rea* requirement. Where it is known that the child soldier was not acting freely upon his or her own will, it is not in the interests of justice to prosecute a child who clearly was not in control of his or her actions.¹⁸⁷

Where the three elements can be proven and a determination

¹⁷⁹ Grossman, *supra* note 2, at 341-42.

¹⁸⁰ Matthew Happold, *Excluding Children from Refugee Status: Child Soldiers and Article 1F of the Refugee Convention*, 17 AM. U. INT'L L. REV. 1131, 1146 (2002).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 1150.

¹⁸⁴ Grossman, *supra* note 2, at 344-45.

¹⁸⁵ Happold, *supra* note 180, at 1158.

¹⁸⁶ *Id.* at 1146.

¹⁸⁷ Amnesty Int'l, *supra* note 152, at 2.

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can be made that the child soldier committed heinous acts, the question then arises as to whether a child under the age of eighteen years, who was forcibly recruited into a conflict, should be prosecuted or punished as an adult might be. It is one thing to look at the black letter of the law, line up the elements of a crime against the status of the individual, and decide whether to prosecute. But in the fog of war and in conditions where humanity and civil society have been replaced by extreme brutality, to what extent should such extenuating circumstances figure into the decision to hold a child accountable for the horrific acts he or she is accused of having committed? There must be more flexibility between holding a child soldier accountable to satisfy the public policy behind criminal justice and recognizing that regardless of the degree of violence or wanton conduct, the child soldier is no less a victim as is the person or property upon which the criminal acts have been perpetrated.¹⁸⁸

International standards for a fair trial should ensure just outcomes for holding accountable those who commit heinous acts during conflict. However, subjecting the child soldier to a conventional trial may not serve the best interests of either the child or civil society if the special needs and vulnerabilities of the child are not taken into account.¹⁸⁹ Trials are less likely to promote his or her well-being and social reintegration than primarily rehabilitative measures.¹⁹⁰ Even if a child is found not guilty, pardoned, or provided with a disposition other than being deprived of liberty after undergoing a trial, the process of a trial itself may threaten the child's psychological healing and make it more difficult for the former child soldier to reintegrate back into society.¹⁹¹ Furthermore, trials will misplace blame on children who were rendered by others incapable of making the choices required to show intent and even guilt.¹⁹²

Perhaps public policy can best be satisfied (even if this does not make some members of society feel that justice has been done) if States recognize the vulnerability and victimization of the child soldier and redirect the attainment of justice toward reintegration, rehabilitation, and reunification with the child's family and

¹⁸⁸ Grossman, *supra* note 2, at 346.

¹⁸⁹ Amnesty Int'l, *supra* note 152, at 2.

¹⁹⁰ Grossman, *supra* note 2, at 350-51.

¹⁹¹ *Id.*

¹⁹² Reis, *supra* note 88, at 653-54.

community.¹⁹³ Such a policy would, to some extent, conform to the intent of the CRC, which mandates that the best interest of the child “shall be a primary consideration” in all actions concerning the child.¹⁹⁴ It also requires States to promote the establishment of measures for children accused of violating penal law “without resorting to judicial proceedings.”¹⁹⁵ Measures could include such alternative dispositions as long-term counseling and monitoring, vocational training, restitution, and reconciliation to ensure that “children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offense.”¹⁹⁶

The approach promoted by Amnesty International merits careful consideration with regard to resolving the process of accountability for criminal acts and human rights crimes committed by child soldiers.¹⁹⁷ If prosecution by trial may not be in the child’s best interest, then truth commissions may provide a viable alternative. Amnesty International holds the view that, while truth commissions “are not a substitute for bringing perpetrators of serious crimes and human rights violations to justice,”¹⁹⁸ such a venue would satisfy three important concerns: (1) “it is important to set an example to others that the truth about crimes and human rights violations will be exposed[;]”¹⁹⁹ (2) with regard to child soldiers, the crimes committed could be exposed, “but the identity of the perpetrator should not,” thereby, reducing to some extent the trauma to the child involved;²⁰⁰ and (3) the “need of victims and society for justice and accountability” will be satisfied.²⁰¹

B. Duty to Prosecute Those Who Force Children to Become Combatants

The prosecution of those adults who conscript or enlist children into armed conflict is another important and essential

¹⁹³ Grossman, *supra* note 2, at 346-47.

¹⁹⁴ Convention on the Rights of the Child, *supra* note 95, art. 3.

¹⁹⁵ *Id.* art. 40.

¹⁹⁶ Grossman, *supra* note 2, at 349-50 (citing Convention on the Rights of the Child, *supra* note 95, art. 40).

¹⁹⁷ See Amnesty Int’l, *supra* note 152, at 8.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 2.

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measure to prevent the recruitment of children.²⁰² With regard to the recruitment of children into armed forces, general customary international law applies to all states, “so any such rules would constitute a minimum standard of behavior below which states could not fall without being in breach of their international obligations regardless of which treaties they are party.”²⁰³ The problem is that the heaviest recruiters of child soldiers are armed groups and non-state actors which mean that international humanitarian law and other international legal instruments regarding child soldiers do not apply—at least not in States that are not party to such instruments.²⁰⁴ However, a State may not escape the customary underpinnings of international law by making reservations or volitionally choosing not to abide by treaty obligations.

Whether customary international law binds non-state actors is something of a thorny issue. Armed groups operating inside states that are parties to treaties, for instance the Optional Protocol to the CRC, are considered to be bound to those instruments.²⁰⁵ However, whether an armed group is bound to a treaty obligation depends on additional factors such as if an armed group is operating outside a state’s jurisdiction or the state in which an armed group is a belligerent is a party to a treaty or convention that applies to internal armed conflicts. In the absence of conditions, customary international law should apply to both government armed forces and non-state armed groups.

On the other hand, forced recruitment of child soldiers is subject to both international law and customary international law regarding child labor and slavery. Article 1 of the ILO’s Worst Forms of Child Labour Convention states that States Parties “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency[,]”²⁰⁶ and Article 3(a) includes forced or compulsory recruitment of children for use in armed conflict as among the “worst forms of child labour.”²⁰⁷ Forced recruitment of child soldiers is also defined as being a form of slavery.²⁰⁸ As one legal

²⁰² Grossman, *supra* note 2, at 359.

²⁰³ HAPPOLD, *supra* note 10, at 86.

²⁰⁴ *Id.*

²⁰⁵ See COHN & GOODWIN-GILL, *supra* note 67, at 65; HAPPOLD, *supra* note 10, at 95.

²⁰⁶ Worst Forms of Child Labour Convention, *supra* note 145, art. 1.

²⁰⁷ *Id.* art. 3(a).

²⁰⁸ *Id.*

scholar notes, “This is of particular interest because slavery and slavery-like practices are already prohibited in international law, both in a number of treaties and as a matter of customary international law.”²⁰⁹

Then, if we accept that armed groups can be made subject to customary international law for the recruitment, forced or voluntary, of child soldiers, then we must look to the ability of international tribunals to bring such actors to justice. The Rome Statute of the International Criminal Court²¹⁰ created such a venue for the protection for children in the International Criminal Court. The Rome Statute makes it a war crime and allows prosecution for those who conscript or enlist children under fifteen years of age into national armed forces or who use them to participate actively in hostilities.²¹¹ However, because the age limit is fifteen years and not eighteen years, the recruiters of thousands of children under the universally accepted age of eighteen years will not be subject to prosecution in the International Criminal Court. Also, because the court will not prosecute individuals under eighteen years of age, the recruiters of child soldiers who are themselves under eighteen years of age will not be subject to prosecution.²¹² This also means that the court’s jurisdiction extends only to adults who recruit child soldiers and not to older children.²¹³

The prosecution of recruiters of child soldiers, then, must be left up to special international criminal tribunals or the judicial apparatus of the state involved.²¹⁴ Where we stand now in international law is that customary international law prohibits the recruitment of children under fifteen years of age by both state and non-state actors, but the prohibition of children between fifteen and eighteen years of age remains a matter of international

²⁰⁹ HAPPOLD, *supra* note 10, at 83.

²¹⁰ Rome Statute of the International Criminal Court, *supra* note 116.

²¹¹ Grossman, *supra* note 2, at 333.

²¹² Article 26 states: “The Court shall have no jurisdiction over any person who was under the age of eighteen at the time of the alleged commission of a crime.” Rome Statute of the International Criminal Court, *supra* note 116, art. 26.

²¹³ *Id.*; Ramgoolie, *supra* note 45, at 153.

²¹⁴ In 2004, the Special Court for Sierra Leone, in *Prosecutor v. Samuel Hinga Norman*, Case No. SCSL-2004-14-AR729E (Special Ct. for Sierra Leone 2004), while determining at what point in time the recruitment of child soldiers became a war crime, found that the “prohibition on child recruitment had crystallized as customary law,” based on conclusions reached over the widespread international acceptance of the Geneva Conventions, the Additional Protocol II, and the Convention on the Rights of the Child. See HAPPOLD, *supra* note 10, at 94.

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treaty agreements and not of customary international law—which means that bringing a vast number of individuals involved in the forced recruitment of child soldiers to justice is not immediately forthcoming.

C. Duty to Rehabilitate and Reintegrate Former Child Soldiers

If our concern for the child soldier is to minimize or eliminate the infliction of emotional pain on the child in the course of judicial or alternative adjudication proceedings, then it becomes incumbent upon the state authority to consider culturally appropriate, community-based methods for helping child soldiers heal and to encourage communities to reintegrate the children.²¹⁵ For example, some indigenous cultures believe that accepting a murderer into the community invites evil spirits.²¹⁶ To overcome such social taboos and superstitions, a social reintegration and forgiveness process might include traditional healers and cleansing processes.²¹⁷ Where religious faiths are strong in a community, spiritual leadership may be called upon to take a pivotal role as intermediaries and advocates for reintegrating former child soldiers. However, no matter what methods are chosen for reintegration of the children into their communities, they need mechanisms to relate the things they have experienced.²¹⁸ The child's psychological and physical well-being and dignity must be accounted for and fortified,²¹⁹ with emphasis on the concepts of forgiveness.²²⁰

Within the context of the international law, several instruments articulate a shared duty to protect children before, during, and following armed conflict—most of which reflect the same choice of language. The preamble to the CRC addresses the duty for States Parties to provide special protections for children,²²¹ invoking the Universal Declaration of Human Rights, which declares that “childhood [is] entitled to special care and

²¹⁵ Machel Report, *supra* note 136.

²¹⁶ See Michael Wessels et al., *Community-Based, Holistic Approaches to Increasing the Well-Being of African Children* 9, <http://www.epesmandala.com/Michelle/WessellsAfricaCCF.pdf> (on file with the author).

²¹⁷ Machel Report, *supra* note 136.

²¹⁸ Ramgoolie, *supra* note 45, at 158-59.

²¹⁹ Grossman, *supra* note 2, at 352.

²²⁰ *Id.*

²²¹ Convention on the Rights of the Child, *supra* note 95, pmbl.

assistance.”²²² The CRC also invokes the Declaration of the Rights of the Child of 1959, which declares that “the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”²²³ Article 39 of the CRC states:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.²²⁴

Article 39 uses the same ambiguous term of “appropriate” as used in the Optional Protocol to the CRC failing to provide specific guidance as to what is deemed appropriate. One is left to ponder what constitutes “an environment which fosters the health, self-respect and dignity of the child.” Is such a fostering environment available where armed conflict has so devastated a country or a region? Is a safe and peaceful facility such as a hospital or orphanage required, or an entire community where the former child soldier has freedom of movement and liberty?

The Optional Protocol to the CRC requires states first and foremost to “take feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities,”²²⁵ and not to engage in compulsory recruitment of persons who have not attained the age of eighteen years.²²⁶ The Optional Protocol also calls upon States Parties to demobilize or release from service all persons who have been recruited or used in hostilities contrary to the present Protocol,²²⁷ which would include persons under the age of eighteen years, and to “accord to such persons all appropriate assistance for their physical and psychological recovery and their social

²²² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec.10, 1948), available at <http://www.un.org/Overview/rights.html> (last visited Sept. 14, 2010).

²²³ Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc A/4354, pmbl. (1959), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NR0754/08/IMG/NR075408.pdf?OpenElement>. See Convention on the Rights of the Child, *supra* note 95, pmbl.

²²⁴ Convention on the Rights of the Child, *supra* note 95, art. 39.

²²⁵ Optional Protocol, *supra* note 95, art. 1.

²²⁶ *Id.* art. 2.

²²⁷ *Id.* art. 6(3).

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reintegration.”²²⁸

The problem with enforcing the Optional Protocol, however, is two-fold. First, the ambiguity of language used in Article 6 is troubling. What is meant by “appropriate assistance?” What standard of care is to be employed, and, of greater concern, should not the provision of long-term monitoring be mandated in the Article? To do so would impose upon States Parties a long-term duty that some governments might balk at fulfilling, even though it is evident that physiological and psychological trauma from combat can persist for decades in the form of post-traumatic stress syndrome and other maladies.

Second, Article 11 allows States Parties to “denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations,”²²⁹ and holds that the “denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General,”²³⁰ or if the “States Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.”²³¹ On one hand, this Article gives *de facto* States Parties the latitude to opt out of its duties under the Protocol. On the other hand, the Protocol attempts to hold States Parties accountable throughout the duration of an armed conflict. Furthermore, Article 6 of the Optional Protocol directs that States Parties should assist in the demobilization, reintegration, and physical and psychological rehabilitation of all child soldiers further establishing the duty of States to rehabilitate children that have fallen victim to armed groups.²³²

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

²²⁸ “States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or . . . released from service. States Parties shall . . . accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.” *Id.*

²²⁹ *Id.* art. 11.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* art. 6.

According to one psychologist who specializes in counseling adolescents, rehabilitating former child soldiers requires “exhaustive, comprehensive and long-term professional care in a specialized setting.”²³³ Nevertheless, in some places of the world the rehabilitation of child soldiers proceeds without the benefit of trained professionals. The child soldier’s emotional, behavioral, cognitive, physical, and social milestones that are necessary for human development are often severely disrupted. Furthermore, in addition to whatever treatment a former child soldier must undergo, he or she must learn how to live in and contribute to society in a meaningful way.²³⁴

The humanitarian organizations in the world have a fairly comprehensive understanding of the mechanisms essential to addressing such children. What they have less experience and capacity with is dealing with the rehabilitation of children who have lived through the blackest night and must overcome not only their past, but also must “earn the respect of a suspicious community.”²³⁵

Creative measures, which include involving spiritual and religious leaders in a comprehensive care agenda,²³⁶ must be implemented to pull these children back toward the light before they can be reintegrated into civil society. Affected children and families may benefit from the concept of forgiveness and unity as a part of the healing process. In the best of conditions, clinical care would include a team of childhood developmental professionals proficient in trauma care and sensitive to the particular cultural nuances and societal mores present in a child’s culture and community. Such a team would ideally include physicians and physical therapists to treat the physical assaults that the children endured (with particular attention paid to sexual abuse and drug addiction); clinical therapists to address post-traumatic stress disorders, neurological development trauma, attachment disorders, anxiety disorders, addictions, etc., and help young

²³³ E-mail from Dr. Pam Hamilton, Ed.D. (Counseling), to author (June 4, 2010, 12:46 p.m.) (on file with author) [hereinafter Dr. Hamilton E-mail].

²³⁴ *Id.* According to Dr. Hamilton, “Children who are exposed to prolonged stress tend to have smaller areas in the brain known as the hippocampus. The hippocampus is a neural center responsible for learning and memory, thus children that endure a traumatic childhood are at risk for life-long educational and learning difficulties.” *Id.*

²³⁵ NJMyers, *Loving Child Soldiers Back into Society*, Posting on *Exchange*, ODE MAGAZINE (Apr. 11, 2008, 3:12 p.m.), http://www.odemagazine.com/exchange/1600/loving_child_soldiers_back_into_society.

²³⁶ Dr. Hamilton E-mail, *supra* note 233.

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victims learn positive emotions such as joy and love and important socialization skills; and, teachers, especially education specialists, who understand the neuroscience of trauma on brain development.²³⁷

Of the many efforts this author has studied in the course of writing this article, a few have seemed profound in both the innovation and the simplicity of the process. The aftermath of the 2003 civil war in Liberia illustrates one of the points argued throughout this article—how child soldiers can be redeemed in communities completely destroyed by conflict. A U.S.-Liberian non-governmental organization, Everyday Gandhis, demonstrates a way of filling a gap that cannot be provided by the local community:

Everyone in Liberia is starting from less than scratch. Food, shelter, and school fees cost more than local elders can provide,

²³⁷ Correspondence with Dr. Hamilton (on file with the author). Dr. Hamilton notes, “Due to the severity of emotional, psychological, and physical trauma, it would be unlikely that the former child soldiers would be quickly welcomed back into their childhood homes.” *Id.* She suggests that rehabilitation and reintegration could occur in a parallel therapeutic community with proximity to the children’s communities, stressing that the goal of the professionally staffed community would be to meet the unique needs of former child soldiers by providing a multi-axis, long-term, “home away from home” treatment, whereby the staff become surrogate parents and fellow former child soldiers become siblings. *Id.* Dr. Hamilton further notes:

By employing Abraham Maslow’s hierarchy of human needs as a model, international organizations such as the Red Cross or Red Crescent could replicate a smaller version of the community and begin to provide for the physiological needs of the returning youngsters. Food, shelter, medical care, would serve as the point of entry of rehabilitation. Safety needs such as consistent care, predictable routines, and freedom from fear and harm can be quickly and efficiently met in a warm and inviting therapeutic milieu. As the basic biological needs are met, returning child soldiers have the opportunity to be exposed to and experience positive human emotions of love and belongingness. This is the point that clinical intervention can be initiated, as children must be able to integrate the atrocities of war with the reality of their future lives and families. As healing progresses, education and life skills will help to establish needs of self esteem. During this time, youngsters may discover their natural talents and gifts and begin to develop areas of competencies that are prized and esteemed by others. These special talents as well as formal education, and learning practical skills to live independently, serve to wean the individuals from the sheltered therapeutic environment back into the community at large. Finally, after potentially years of being nurtured in a professional therapeutic parallel community, former soldiers could gradually integrate back into the community at large. Perhaps some of the individuals would find a sense of higher purpose and transcend out of the community to evoke political, cultural, and economic change that alleviates the need for future childhood soldiers.

Id.

so there's an important role for loving outsiders. These youths found their way to the compound of a small US-Liberian NGO called everyday gandhis (everydaygandhis.com) and began doing chores and construction work in exchange for food. After a few months, the organization gave them a permanent home and is now guaranteeing their education through university. This has relieved the hard-scrabble stress of life, and the youths are effusively grateful.²³⁸

Even more innovative and therapeutic is a program begun by another NGO, Future Guardians of Peace, which began training former child soldiers in photography. Through the lens of a camera, youth were able to accomplish rehabilitation and rejuvenation on several levels through a simple venue—taking photos. “They immediately begin taking stunning photos and using the cameras to build relationships in the community.”²³⁹

Another organization, Friends of Orphans, which operates in northern Uganda, was founded by a former child soldier. Among the many services and programs it provides, perhaps the organization's key significance is that several members of the staff were themselves child soldiers.²⁴⁰ Such peer influence over the children provides a two-way healing function: (1) the children being assisted bond more readily with their counselors because they know the counselors lived their own nightmares; and (2) the counselors make peace with their own demons by helping the children who are placed in their care.²⁴¹

The bottom line is that returning child soldiers require a welcoming environment to begin the rehabilitation process. Dr. Hamilton notes:

The lost avenues of childhood can be accessed at an accelerated pace due to the constancy and efficiency of professional staff members and the therapeutic environment. As the former child soldiers heal both physically and emotionally, families may be able to reconnect and remember their child, not as a soldier, but as a member of the family. In time, the community may even begin to value this special population. Child soldiers that have been rehabilitated have the ability to be useful and productive family members and community citizens. More

²³⁸ NJMyers, *supra* note 235.

²³⁹ *Id.*

²⁴⁰ Free the Slaves, The Freedom Awards, <http://www.freetheslaves.net/Page.aspx?pid=450> (last visited Sept. 9, 2010).

²⁴¹ *Id.*

importantly, many of these unique emerging adults will have the skill set, knowledge, and desire to evoke change in their communities and nations.²⁴²

D. Duty to Educate Citizens about Child Soldiers

Much has been written about child soldiers from different perspectives and disciplines,²⁴³ and many compelling autobiographical accounts by child soldiers are in print.²⁴⁴ However, even with so much powerful documentation and narratives produced in several languages around the world, the general public seems oblivious or insensitive to the plight of child soldiers—or perhaps overwhelmed and desensitized. Is a societal lack of will to address the issue of child soldiers a matter of underreporting or over saturation in the media? In order to get the attention of the public, the media believes it must report on the notorious and the sensational. Yet, when people know more about the travails and personal indiscretions of an adolescent celebrity than the crisis affecting children forced into armed conflict, one must ask if civil society does not care, or, if those reporting the atrocities are talking over the heads of the general public. Is society just so overwhelmed by trauma and crisis in the media that it just cannot process additional reports of war, death, and societal calamity? Is it not easier to tune out the noise of the real world and concentrate on the video games that involve death and destruction?

Possibly we are inured to the crisis of child soldiers because it is something that happens in faraway places in the Third World where we have come to expect and assume that such horrible atrocities transpire. We do not personally know a child soldier in our family, we do not have armed conflict in our neighborhoods, we are not intimately tied up in tribal tensions that threaten to erupt unexpectedly, although one could look at what happened in

²⁴² Dr. Hamilton E-mail, *supra* note 233.

²⁴³ Among the many books written about child soldiers are the following: COHN & GOODWIN-GILL, *supra* note 67; HAPPOLD, *supra* note 10; P. W. SINGER, CHILDREN AT WAR (2006); MICHAEL G. WESSELLS, CHILD SOLDIERS: FROM VIOLENCE TO PROTECTION (2006); COALITION TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS GLOBAL REPORT 2008 (2008), <http://www.childsoldiersglobalreport.org/>.

²⁴⁴ CHARLES LONDON, ONE DAY THE SOLDIERS CAME: VOICES OF CHILDREN IN WAR (2007); FAITH J. H. McDONNELL & GRACE AKALLO, GIRL SOLDIER: A STORY OF HOPE FOR NORTHERN UGANDA'S CHILDREN (2007); and ISHMAEL BEAH, A LONG WAY GONE: MEMOIRS OF A BOY SOLDIER (2007).

Northern Ireland and in the former Yugoslavia and wonder just how far from societal breakdown we actually are.

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

1. Moral Standards for Civil Society

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

Western society may believe that a child has inherent human and civil rights, as elucidated in the CRC;²⁴⁵ yet, in other parts of the world a child may be viewed as little more than chattel property to be used and exploited as suits the caprices of the adult who is in charge.²⁴⁶ Moreover, in conflict, morality focuses the justification of violence. “[T]he concept of a just or an unjust use of force involves complex judgments of means and aims—an accounting of lives and deaths and intentions—that go to the very heart of civilization.”²⁴⁷ At the most base level of conflict, where children are used and exploited as combatants, concepts cease to mean anything. There are no anchors by which to steady the

²⁴⁵ Convention of the Rights of the Child, *supra* note 95.

²⁴⁶ Recalling my time as a judge in Medellín, Colombia, I once had to send a man to jail for sexually abusing his daughter. He was a poor peasant living in an isolated rural community where the laws of the nation were remote and abstract and where according to the code that he and his community had lived by for generations, children were to be used however the patron of the family saw fit—including acts of incest. Even when he was sent away to serve his sentence, he came to accept that he had violated a law, but still did not accept that what he had done was wrong.

²⁴⁷ *Essay: The Morality of War*, TIME MAGAZINE, Jan. 20, 1967, available at <http://www.time.com/time/magazine/article/0,9171,843310-1,00.html>.

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imperatives of social interchange imbued even in those societies that sink into violent and extremely brutal conflict.

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

To fortify moral standards in any civil society, individuals must be “assigned duties to the community and . . . ’meet[] the just requirements of morality, public order and the general welfare.’”²⁴⁸ When such assignments break down and are torn asunder during violent armed conflict, the moral compass of a people loses its direction. What we see on broadcast news, read in the press, and learn about in documentary films are generally only the symptoms of deeper issues and tensions that do not readily emerge if the caring viewer is not given sufficient time to ruminate. Most people in their busy lives do not have the luxury of time. Yet they may care deeply about the plight of a child in the news, such as an iconic image of an obviously traumatized child wearing a pink teddy bear backpack while brandishing an assault rifle at the photographer.²⁴⁹

If the attention of society can be held long enough to effect change, then what is the most meaningful form of assistance to render? The answer is not in the type of assistance, but in the duration that assistance can be sustained. In the First World, we tend to have short attention spans. In the Second World, the privileged and political elite are often too busy with their own self-

²⁴⁸ Lara L. Manzione, *Human Rights in the Kingdom of Nepal: Do They Only Exist on Paper?*, 27 *BROOK. J. INT’L L.* 193, 197 (2001) (citing Article 29 of the Universal Declaration of Human Rights, *supra* note 222, at 71).

²⁴⁹ This photograph, by award winning photographer George Gobet, was taken in Monrovia on June 27, 2003, and published with a story in *USA TODAY*. *Paris Conference Focusing on Ways to Demobilize World’s 250,000 Child Soldiers*, *USA TODAY* (Feb. 2, 2007), http://www.usatoday.com/news/world/2007-02-05-child-soldiers_x.htm.

absorption and ambition to be First World citizens to be bothered with what is occurring around them or in other parts of the world, and the Third World citizens are often too busy merely trying to survive day to day to care about much of anything beyond fulfilling their most immediate needs and the needs of their loved ones. Realizing that this is a generalization, there is, nevertheless, truth to this.

The governmental, non-governmental, and faith-based organizations tasked with humanitarian relief are by and large products of the First World. They rely on First World societies to sustain their relief efforts in conflict regions of the world. They appeal to the sentiments and caring of many well-meaning people who give of their time and treasure and leave it up to the relief professionals to determine the best use of the resources presented to them. These resources are spent in the Second and Third Worlds where the hope is that some good will be done, and we do know that such good is done on a daily basis. Yet, the challenge before us as civil society is not that we must provide aid and comfort to those in greatest need, but that we must find ways to sustain the effort. We have seen several examples regarding the rehabilitation and reintegration of child soldiers which illustrate that merely providing help is not enough. As of 2007, an estimated 95,000 child soldiers worldwide had been processed through demobilization programs. However, “[o]ften, the psychological support and technical training prove too little, too late,”²⁵⁰ as one UNICEF official pointed out, “We are finding out that children we thought were successfully reinserted were not”²⁵¹ and have gravitated or been re-recruited back into hostilities. The moral imperative for civil society, then, is not so much to “do something,” but to do something for the long haul.

2. *Address Cultural Taboos and Biases*

Finally, while we have a corpus of international law that ties respect for cultural heritage to human rights,²⁵² what are we to do

²⁵⁰ *Id.* (citing UNICEF Deputy Executive Director Rima Salah).

²⁵¹ *Id.*

²⁵² See Francesco Francioni, *Beyond State Sovereignty: The Protection of Cultural Heritage As a Shared Interest of Humanity*, 25 MICH. J. INT'L L. 1209, 1212-14 (2004) (noting that “the development of international law since then provides evidence that the protection of human rights, now part of positive international law, extends to culture and cultural heritage of peoples”).

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when respect for cultural heritage clashes with the manner in which cultural accoutrements of a society in conflict are used as a weapon of coercion and control? International law may protect the right of a tribal group to exercise its spiritual beliefs, but what happens when a spiritual taboo, such as invoking the ire of one's ancestors or the power of juju rituals, are used by a controller to convince child soldiers that they will be protected from bullets? What are we to make of a cultural heritage that imposes shame, scorn, and ostracism on a former child soldier who wants nothing more than to return to the bosom of his family and village, but cannot do so because the customs of his people will not allow it? If we intervene, we violate the protected human rights of the community as we are interfering with their cultural heritage; however, if we do not act, we are violating the human rights of the child, which are also duly protected under international law. At what point do the rights of the child supersede the rights of the community? At what point does the nature and circumstances of an armed conflict become so dire that one set of rights must bow before another set of rights?

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

Consider the sobering tale carried out repeatedly by Palestinian radicals who use children as weapons in their war against Israel. One Arab journalist questioned the practice of sending children on suicide bombing missions, writing, "While U.N. Organizations save child-soldiers, especially in Africa, from the control of militia leaders who hurl them into the furnace of gang-fighting, some Palestinian leaders . . . consciously issue orders with the purpose of ending their childhood, even if it means their

last breath.”²⁵³ In response, the editor of an official Palestinian Authority newspaper rebuked, “Some of the Arab media have become too ‘foreignized’ and subject to the influences of ‘Jewish money.’”²⁵⁴ The editor added that journalists who question the actions of sacrificing children for the Palestinian cause should, “leave the campaign of lead pencils and instead communicate through lead bullets.”²⁵⁵ This instance of extreme vitriol not only underscores our issue of how we must educate civil society about the plight of child soldiers, but also illustrates the challenges of overcoming deeply rooted biases and irrational hatreds in societies in conflict.

V. CONCLUSION

If there is another common thread to pull from the fabric of this discussion of child soldiers, one overarching factor emerges—those who coerce, force, or allow children to become soldiers are, at their root, bullies, in the most classic sense of the “law” of the schoolyard. Napoleon, perhaps one of the greatest bullies of modern history, is attributed with having quipped, “God fights on the side with the best artillery.”²⁵⁶ If we want to end the use of child soldiers around the world, then we must assert universal moral and legal imperatives supported by an overwhelming bombardment of public opinion and swift, certain, harsh justice, or military firepower when practicable.

In a 2002 interview, the U.N. Secretary-General’s Special Representative for Children and Armed Conflict, Olara Otunnu, stated, “The international community has done very well in terms of developing and elaborating norms, standards and rules against the use of child soldiers But where we have not been effective is their application on the ground. Words on paper do not save a child in war.”²⁵⁷ His suggestion for overcoming this void was to establish better monitoring mechanisms utilizing networks of

²⁵³ Justus Reid Weiner, *The Use of Palestinian Children in the Al-Aqsa Intifada: A Legal and Political Analysis*, 16 *TEMP. INT’L & COMP. L.J.* 43, 79 (2002).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ Harry G. Summers, Jr., *When It Comes to Artillery, U.S. Is Outgunned by Enemy’s Weaponry*, *L.A. TIMES*, Jan. 29, 1991, available at http://articles.latimes.com/1991-01-29/news/mn-370_1_korean-war.

²⁵⁷ Norimitsu Onishi, *Children of War in Sierra Leone Try to Start Over*, *N.Y. TIMES*, May 9, 2002, available at <http://www.nytimes.com/2002/05/09/world/children-of-war-in-sierra-leone-try-to-start-over.html>.

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organizations actively promoting children's rights that would "name and shame"²⁵⁸ states using child soldiers, and report those states to the UN Security Council for possible "punitive action."²⁵⁹ His ideas reflect the desire of many in the diplomatic community to establish an "era of application,"²⁶⁰ in which policies such as a "name and shame campaign,"²⁶¹ "diplomatic isolation, curtailment of arms supplies or sources of financing, and criminal prosecution"²⁶² might get the attention of those who "continue to abuse children"²⁶³ by recruiting them into armed conflicts. In practical application, Otunnu proffered:

New efforts to monitor and report on situations where children are used in armed forces will prioritise the killing and maiming of children; the recruitment or abduction of child soldiers; the deliberate use of sexual violence as a strategy of warfare; and the denial of humanitarian access to children in distress.²⁶⁴

Another mechanism to consider that shows particular merit is the idea of involving retired diplomats and non-governmental organizations with nothing to lose in "second track" diplomacy efforts to define and assert a set of demands and mechanisms for the demobilization of child soldiers in a manner that does not involve great political risk to States that might hesitate to become involved.²⁶⁵

Whatever solutions come to be considered viable, time is of the essence. We are not talking about an international response to long-term issues such as environmental degradation or weapons disarmament. The child who lives at risk of becoming a soldier has a very small window of opportunity to be protected from such fate and the child who has become a soldier has a very small window of opportunity for redemption. That window of opportunity is but a short span of less than ten years, and in many cases less than five years. Once a child soldier crosses the threshold into adulthood, his or her status changes forever and the best intentions of all to

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Too Small to be Fighting in Anyone's War*, *supra* note 35.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ This is a suggestion borrowed from John Braithwaite in his discussion about the application of second track diplomacy to establishing an enforcement pyramid for networked governance. See John Braithwaite, *Methods of Power for Development: Weapons of the Weak, Weapons of the Strong*, 26 MICH. J. INT'L L. 297, 325-26 (2004).

help quickly evaporate. Time cannot be squandered on the debate over policies and mechanisms, drafts or amendments to international and regional declarations, conventions, and other such instruments that more or less say the same thing over and over again. The call to action has already been sounded in abundance around the world. What is lacking is the will to deal with the “bully factor” that emboldens wicked people who subject children to such evil. The sooner the international community realizes that standing up to bullies in a manner that garners attention is the only way to get results in the fight to end child soldiers, the sooner the world will see a significant reduction in the exploitation of children in armed conflict.