CHILDREN AS COMBATANTS:
A Dispassionate Look

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Introduction

Much emotion surrounds this topic not only in conversations, but on popular media.\textsuperscript{1} Even in the most intellectually heightened settings, such as, at institutions of higher legal learning,\textsuperscript{2} it can be difficult to put feelings to the side and seek objective solutions to child soldiering. We know that international law prohibits:

1. Use of children under 15 years of age in any military capacity;
2. Compulsory military service of any person under 18 years old; and,
3. Deployment of any child under 18 years into an area of active hostilities.\textsuperscript{3}

These prohibitions only apply to nations that are signatories to the corresponding treaties and statutes, and do not prohibit use of children from 15 to 17 years old in some military capacities. Most people would agree that these prohibitions are proper. However, others contend that the law does not go far enough and should prohibit military service of any kind to anyone under 18.\textsuperscript{4} On the other side of the debate, some find these laws too restrictive. This article will examine the applicable international law and the strategies used to address child soldiering, then will identify the measures the UN has taken to address the problem of child soldiering and suggest other possible courses of action.

Assessment of the current situation: figures, perspectives

The International Committee of the Red Cross (ICRC), and other agencies, estimate that as many as 300,000 children under 18
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CHILDMEN IN COMBAT

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are actively participating in armed conflicts worldwide.\(^5\) The UN reported that, as of 2016, 54 armed groups were using children in their fighting forces.\(^5\) Although the figure of 300,000 is questionable, as this article will show, there is good authority that use of young children as direct combatants can cause post-traumatic stress disorder (PTSD) and other serious psychological and adjustment problems throughout the child’s life.\(^7\) There are also substantiated reports that child soldiers become ready victims of sexual assault, pedophilia, slave trafficking, kidnapping, torture, starvation and forced drug use.\(^8\)

The UN Secretary General’s Annual Reports to the Security Council on Children and Armed Conflict (Annual Reports) details these calamities. By-products of the mandates of UN Security Council Resolution (UNSCR) 1612,\(^9\) they also feature Annexes that list the world’s known offenders of child soldier international law.\(^10\) The bulk of the child soldier violations occur in Sub-Saharan Africa, followed by the Middle East and Asia. In recent months, abuses have increased substantially in the Middle East, due to the escalation of hostilities in Yemen, where recruitment of children increased “fivefold”. Children are even employed as suicide bombers.\(^11\) Also, as shown below in this article, boys overwhelmingly represent child soldiers according to credible UN field research\(^12\) despite popular storylines that contend that girls comprise up to 40 percent of child soldiers.\(^13\) Finally, one should not evaluate the situation without considering age of persons considered “children”. This article will also show that there are major differences legally and morally between military use of persons 15 to 17 years old, and those under 15.

The Annexes to the Annual Reports generally reveal that, in 2015, the nations with the highest numbers of state and non-state actors who practice child recruitment are located in the Democratic Republic of Congo (DRC) (12), Myanmar (8), Syrian Arab Republic (6), and Yemen (5).\(^14\) The known worldwide total of armed groups that practice child recruitment is 54, of which only three are state actors. There have been but spotty improvements in reducing recruitment of children as soldiers in the last two decades; overall it is a runaway crisis situation. How effectively has international law addressed this crisis? We will examine this next. This will reveal that international law has its limitations in bringing those who use child soldiers to justice in the courtroom, yet is effective in its deterrence effect and in bringing the issue to the forefront.

The law

The seminal laws governing children in combat are Additional Protocol I to the 1949 Geneva Conventions (Additional Protocol I);\(^15\) The Convention of the Rights of the Child;\(^16\) Optional Protocol To The Convention On The Rights Of The Child On The Involvement Of Children In Armed Conflict (Optional Protocol CRC);\(^17\) and the Rome Statute of the International Criminal Court (ICC).\(^18\) Criminal prosecution for violations will not apply to nationals of states who are not signatories to the ICC Treaty, as shown in the discussion below.

Additional Protocol I, Article 77 (3) was the first significant step toward applying international law to child participation in armed conflicts. It requires parties to an armed conflict to “take all feasible measures” to ensure that children under 15 years old do not “take a direct part in hostilities”. It also prohibits recruitment of these children into the parties’ armed forces.\(^19\)

The term “feasible” provides ways for a party to rationalize that its use of child soldiers was lawful. Such an escape mechanism weakens the effect Article 77. However, this provision of Additional Protocol I serves to bring the child soldiering issue formally to the attention of UN member states.

The Convention of the Rights of the Child, Article 38 (2) and (3) repeats nearly verbatim the restrictions of AP I. It prepared the way for future treaties, such as Optional Protocol CRC, that increased the age restrictions by defining a child in Article 1 as a person “below the age of eighteen years”, except where legal majority is at an earlier age.\(^20\) This latter clause is another avenue to evade the law, as it gives nations the opportunity to take advantage of local laws that confer majority on a person at an age under 18.\(^21\)

Optional Protocol CRC is the treaty that brings the child-soldier protection provisions of Additional Protocol I and Convention of the Rights of the Child together by raising to 18 the minimum age for compulsory conscription and direct participation in hostilities.\(^22\) To date, 165 nations have ratified Optional Protocol CRC; 47 of these nations have made reservations to limit the scope of the treaty’s application. This points to “wiggle room,” or another way around the rules, as most of the reservations ease the strictness of the provisions; for example, by agreeing to use “feasible” measures to comply with underage recruitment.\(^23\)

THE ICC STATUTE gives these treaties the force of law in Article 8, 2 b (xxvi) by declaring it a war crime to “(conscript or enlist) children under the age of 15 years into the national armed forces or (use) them to participate actively in hostilities.”\(^24\) However, other legal prohibitions provided for in Convention of the Rights of the Child or Optional Protocol CRC are not within the prosecutorial authority of the ICC, such as drafting of children between the ages of 15 to 17. Also, since the ICC only tries cases that states cannot or will not prosecute, its reach is limited. The only case involving illegal child recruitment that the ICC has completed to sentencing, with great difficulty and cost, was its first case: The trial of Thomas Lubanga Dyilo, a warlord who operated in DRC.\(^25\)

As a new tribunal still establishing precedent, to date the ICC has only tried twelve cases to completion.\(^26\) Also, as with the Optional Protocol CRC, not all nations have embraced the ICC. Thirty-one signatories have not ratified the ICC, to include the U.S. and the
Syrian Arab Republic; and 41 member nations, to include India, China and Iraq, have neither signed nor accepted jurisdiction. This is especially problematic in the case of the Syrian Arab Republic and Iraq, where notorious terrorists groups such as Islamic State in Iraq and the Levant (ISIL) continue to openly recruit and train children, over half under the age of 15, for lethal military and terrorist missions. It is also likely that many violations occur in India and China, both nations with large populations and governmental structures that make monitoring difficult.

In sum, the prohibition of child soldiering in international law—with its loopholes; inapplicability to certain state actors and terrorists; member nation exceptions; and ICC’s nascent track record—serves as a modest deterrent to use of child soldiers. Despite these laws and the pledges of nations that have ratified them, illicit use of child soldiers persists, as the UN itself attests. With apparent knowledge of the laws’ weaknesses, the UN has established research and “compliance mechanisms” through the United Nations Security Council Resolution 1612 (UNSCR 1612)\(^\text{29}\), and has sponsored and encouraged many outreach initiatives designed to raise public consciousness of illicit child soldiering. This endeavor has been an effective, detached fact gathering mechanism.

**Anti-child soldiering fact-gathering and advocacy outreach initiatives**

Outside of UNSCR 1612, the UN has used its own agencies, and encouraged non-governmental organizations (NGOs), to tackle the issue of child soldier recruitment. Within the UN, the principal task masters on child soldiering are the Security Council, United Nations Educational, Scientific and Cultural Organization (UNESCO), and United Nations International Children’s Emergency Fund (UNICEF). Major NGOs working with UN encouragement include ICRC, Amnesty International, World Vision, and Human Rights Watch.\(^\text{30}\)

The Security Council has taken the lead in the fact-gathering tasks through its issuance of UNSCR 1612. UNSCR 1612 establishes the compliance and advocacy measures to dissuade nations from using children as warriors. UNSCR 1612 has engendered the Annual Report, as discussed above, an excellent chronicle that provides statistics, credible accounts of militia groups using child soldiers, and many other related statistics detailing child war casualties. Well-worth reading, it summarizes findings of field agents who get as close as possible to hostile actors in order to ascertain facts. The Report relies on bare facts, data and logical analysis, unlike some unreliable non-UN reports.

Notably, the Reports undercut the widely held figure of 200,000-300,000 child soldiers worldwide. They provide documented figures of new known child recruits each year, but due to the ever-changing situation, they cannot keep a running total. A fair reading of the Reports from 2000 to 2015 cannot produce a figure to within 10,000; but the total is certainly less than 200,000. At best, the standard figure is speculative.

It is eye-grabbing when we read that there are 200,000-300,000 child soldiers worldwide, and some UN agencies go along with this estimate.\(^\text{31}\) While this number ignites passions and commands initial attention to the issue, even the UN agencies asserting it acknowledge that the figure is uncertain. Even if we were able to verify a figure, we would also need to break the numbers down to make them useful, with categories such as: Specific age ranges of children involved, whether the counted soldiering is in direct or indirect combat support, or the duration of soldier status of the child. While headcount is not all-important, it is essential when assessing a crisis accurately and in allocating resources to address it. A serious study of the statistics would reveal many underlying circumstances of child recruitment, and would more reliably show the actual ratio of boys to girls who are child soldiers.

Another questionable statistic is the popular assertion that girls comprise 40 per cent of child soldiers.\(^\text{32}\) There simply is not enough reliable data to arrive at such a figure. In fact, the UN Annual Reports and other studies show that girls comprise at most ten percent of new child recruits total, and may be as low as two percent.\(^\text{34}\) It is clear that boys are the primary victims of child soldier recruitment, and are in the most need of rehabilitative resources due to the effects of child soldiering and abductions worldwide.
A South Sudanese soldier. The country, who got its independence six years ago, is suffering one of the gravest humanitarian crises in the world. Photo by Shutterstock

**Under 18, or under 15? (What constitutes a child soldier? Does culture matter in the debate? Are child soldiers always innocent victims?)**

The internet advocacy sites are loaded with disturbing photos of weapon-bearing children and other poignant images, such as cartoons of crayon boxes full of bullets. Such sites apparently receive the majority of access “hits”, since initial Google® searches will pull up these sites first. Most of the general public worldwide support prohibiting deployment of children under 15 in combat and drafting of any person under 18; but there is not an overall consensus to ban all children under 18 from taking part in hostilities. Cultural differences result in a different approach to child soldiers. Sub-Saharan Africa, where about half of the world’s child soldiering takes place, can serve as an example of how culture can explain, but not excuse, use of child soldiers.

In this region, roughly 40 per cent of its 930 million people are below the age of 15 years, contrasted with a figure of under 20 per cent in European countries and the U.S.° Often, child soldier recruitment is more a quest to access plentiful labor than an evil design on children. Also, contrary to norms in Western countries, these cultures do not attach stigmas to child labor. African children, especially those of the predominant lower class, perform arduous household and farming chores at a young age and even work as house servants for the wealthy in order to help support their families. Naturally, these factors do not justify the abuses in child recruiting, but they ought to factor into decision-making.

The popular, stylish advocacy outlets often assume that child soldiers are always victims and never assailants. Under international law, a child pointing a loaded weapon, or otherwise showing hostile intent, can be legally engaged with lethal force.°° We certainly want to keep young children out of this situation, but before applying prohibitions to older children, we should consider that banning military service for persons between the ages of 15 and 17 is unreasonable in some circumstances. Adolescents mature and grow at different rates, especially in the 15-17-year age range. Some 16-year olds are indeed more mature than many people over 18. Nations not on the UN child soldiering offender list continue to allow military academies to matriculate children as young as 12 years old.

**Definition of a child soldier**

* A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. (Source: Paris Principles on the Involvement of Children in Armed Conflict, Published in 2007)

https://childrenandarmedconflict.un.org

**RECOMMENDED READING**


**TO KNOW MORE ON CHILDREN AFFECTED BY WAR:**

**A LONG WAY GONE**

Ishmael Beah (left), former child soldier, best-selling author, and UNICEF Advocate for Children Affected by War. In 1991, the outbreak of a brutal civil war in Sierra Leone upended the lives of millions. Ishmael Beah’s parents and two brothers were killed and he was forcibly recruited into the war at age 13. After two years, with UNICEF help, he was removed from the army and placed in a rehabilitation home in Freetown. Ishmael Beah’s book, “A Long Way Gone: Memoirs of a Boy Soldier” was published in the United States in 2007. It has since been published in Canada, Europe, Latin America and Asia and appears in over 35 languages.

https://www.unicef.org/people/people_47890.html
In the U.S., with strong public approval, local police operate military style “boot camps” to teach juvenile offenders discipline and moral character. Therefore, the UN should cautiously consider gray areas of child soldiering in the upper teen years as it adjusts its laws and policies concerning child soldiers.

**Solutions: Legal and practical**

The UN continues to address illegal use of children as soldiers and seeks to prioritize efforts that address conditions that give rise to the crisis. On the legal side, the UN already assists Rule of Law programmes, such as those of the U.S. sponsored Defense Institute of International Legal Studies (DIILS). DIILS has sent teams of legal educators into disadvantaged countries, with success, to teach native legal personnel techniques on investigating and prosecuting war crimes in country.37 Empowering local professionals keeps a foreign national footprint away from criminal justice, and is designed to obtain support from local populations. The UN provides logistical and in-country support to DIILS. The UN has a robust Rule of Law programme,38 but concentrates mainly on developing national laws and constitutions. The UN currently relies heavily on Demobilization, Demilitarization and Reintegration (DDR) of former child soldiers,39 to remedy damages. This tends to be an expensive programme, which is difficult to execute.40 The DIILS model is cheaper and gets better results, and the UN should direct its resources in emulating that model.

In addition, the UN should attack the problem with an effects-based military approach. The UN has at its disposal some 67,000 peacekeeping troops from the UN and the African Union (AU) in Africa,41 and in other areas where child soldiering takes place. This presents an opportunity for multinational missions to develop Information Operations that teach rebel groups that use of child soldiers is not only morally questionable, but ineffective. The messaging would stress that children tend to be less-disciplined combatants who are easily influenced by outside forces. Also, putting children in harm’s way is not a good way to get people sympathetic to the rebel cause.

Addressing these problems in the hardened rogue elements is particularly challenging due to the raw danger and lack of accessibility, but with skilled special forces troops some progress could be made. Unfortunately, some use of lethal force is likely in these operations, which would result in casualties. However, the problem has become so ingrained in some areas that strictly non-lethal methods will not accomplish the mission. Commanders would have to make careful judgments based on doctrinal targeting analyses. Also, the UN could play a significant role in providing balance to some of the emotionally-charged rhetoric found mostly on the internet, and sometimes in print media. The aforementioned studies that UNSCR 1612 generates is a definite “sustain” practice. Distribution of extracts and adaptations of this report around NATO would spread accurate information and appropriate situation awareness. Finally, NATO trainers are doing their part by including more scenarios involving rogue paramilitary groups who use child soldiers in its training exercises. Given that exercises cannot be issue-centric, addressing child soldier abusers will inevitably touch upon so many other wartime effects on children to include displacement, fratricide, and sexual abuse as a weapon of war. Such injects that involve child soldiering will spread correct information about the law and will enrich training for all Training Audience participants.

**END NOTES:**

1 Some of the most influential, and often militant, anti-child soldiering websites include: https://www.dosomething.org/facts/11-facts-about-child-soldiers (Site uses vernacular and mild profanities); http://www.peacedirect.org/child-soldiers?gclid=CJy-77bmppM4CFTYW0wo0XMN5; https://www.warchild.nl/doneer?gclid=Clr56bTnpM4CFYv0wo dTaAbwv; https://twitter.com/ChildSoldiersInt?ref_src=c=twsrc%5Egoogle%7Ctwcamp%5Etweets%7Ctwgr %5Eauthor; http://www.child-soldiers.org/ Splash page features interpretative dancers and the title in bold: “It is immoral for children to be used in adult wars”; https://www.globalcitizen.org/en/content/7-countries-that-still-use-child-soldiers/

2 One classroom at a renowned military law institute is bedecked with child-authored paintings of sad-faced children in military uniforms.

3 See FN 15-18, and accompanying text, infra, for full description of the laws.


6 Secretary-General Annual Reports to the Security