

Progress and Hurdles on the Road to Preventing the Use of Children as Soldiers and Ensuring Their Rehabilitation and Reintegration

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Progress and Hurdles on the Road to Preventing the Use of Children as Soldiers and Ensuring Their Rehabilitation and Reintegration

Ilene Cohn†

Introduction	531
I. Tendency One: The Human Rights vs. The Humanitarian Impulse	535
II. Tendency Two: Advocacy in the Absence of Conflict-Specific Analysis	536
III. Tendency Three: Neglecting To Measure the Long-Term Impact of Preventive or Responsive Interventions	537
IV. Tendency 4: Over-Reliance on the C.R.C. To Inform Distinct Programs and Policies	538
Conclusion	540

Introduction

Over the past twenty years, the international child rights movement has, without a doubt, spurred the development of international law, policies, and programs for children.

As this Symposium demonstrates, the movement has been extremely effective at putting children affected by conflict—and especially child soldiers—on the map of public concern. Of course, the compelling nature of their plight almost speaks for itself. If any children have a forceful claim

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for increased attention and resources, it is this group of millions on every continent that suffers daily exposure to extreme and chronic violence, death, torture, rape, maiming, displacement, loss of home and schooling, separation from loved ones, and, in the case of scores of thousands, participation in war as soldiers, sometimes as young as seven, eight, and nine.

Yet in spite of stronger laws and advocacy, the situation of these children has deteriorated in important respects. The Secretary-General reported in 2001, a decade after the 1990 World Summit for Children and the adoption of the Convention on the Rights of the Child ("C.R.C."),¹ that "[p]erhaps more children have suffered from armed conflicts and violence since the Summit than at any comparable period in history."²

So what has the ascendance of child rights to the international plane meant for the lives of children living in the midst of armed conflict and, more specifically, for child soldiers?

The good news is the remarkably strengthened legal regime that has developed over the past fifteen years, particularly focused on eliminating the use of children as soldiers. In the wake of the 1977 Protocols to the Geneva Conventions,³ we have the C.R.C., the African Charter on the Rights and Welfare of the Child,⁴ the International Labour Organization's Convention No. 182 on the Elimination of the Worst Forms of Child Labour,⁵ and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ("Optional Protocol").⁶

The Optional Protocol, which entered into force in February 2002, strengthened the legal regime relevant to children's rights in three important respects. First, the Optional Protocol precludes compulsory recruitment of persons under the age of eighteen. Second, it obliges parties to take all feasible measures to prevent the deployment of persons under age eighteen to hostilities. Third, it requires parties to raise the age of voluntary enlistment to at least one year above the fifteen-year age limit, which is the minimum threshold established by existing international law.

1. See U.N. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, art. 3, 28 I.L.M. 1457.

2. See *We the Children: End-Decade Review of the Follow-Up to the World Summit for Children—Report of the Secretary-General*, U.N. GAOR, 27th Sess., para. 28, U.N. Doc. A/S-27/3 (2001) (emphasis added).

3. Geneva Protocol I, Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *reprinted in* 16 I.L.M. 1391, 1425 (1977); Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 609.

4. African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999, *available at* <http://www.africa-union.org>.

5. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 38 I.L.M. 1207, 1208, *available at* <http://www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>.

6. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/263 (2000).

Domestic legislation prohibiting the recruitment or use of children as soldiers has been—and is being—promulgated in a number of countries as well. The statute of the International Criminal Court (“I.C.C.”), the Rome Statute, classifies the recruitment or use of persons under the age of fifteen by armed forces or armed groups as a war crime.⁷ Child recruiters in the Democratic Republic of the Congo (“D.R.C.”) will possibly be among the first to be prosecuted under the Rome Statute.

Country-specific ad hoc tribunals can provide further venues for addressing violations of the norms precluding the recruitment or use of children in armed conflicts. A case is currently pending in the Special Court for Sierra Leone against Hinga Norman, the Chief of the Civil Defense Forces, which recruited large numbers of young people, often through perverted versions of traditional initiation rites.

The bad news is that our improved capacity to monitor and report on compliance with this strengthened normative regime reveals an excessive number of blatant violations. The Secretary-General’s annual reports to the Security Council on children and armed conflict⁸ and his periodic country-specific reports to the Security Council testify to the ever-worsening situation.⁹

In 2001, after four years of considering and resolving on the impact of armed conflict on children, and with a note of exasperation, the Security Council called for “a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Council’s agenda”¹⁰ The Secretary-General’s

7. See Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc A/CONF 183/9, art. 8(2)(b)(xxvi), 37 I.L.M. 999 (1998).

8. *Children and Armed Conflict: Report of the Secretary-General*, U.N. SCOR, 58th Sess., U.N. Doc. S/2003/1053, revised by U.N. Doc. S/2003/1053 Corr. 1, revised by U.N. Doc. A/58/546-S/2003/1053 Corr. 2; *Report of the Secretary-General on Children and Armed Conflict*, U.N. SCOR, 57th Sess., U.N. Doc. S/2002/1299 (2002); *Children and Armed Conflict: Report of the Secretary-General*, U.N. SCOR, 56th Sess., U.N. Doc. A/56/342-S/2001/852 (2001); *Children and Armed Conflict: Report of the Secretary-General*, U.N. SCOR, 55th Sess., U.N. Doc. A/55/163-S/2000/712 (2000).

9. See, e.g., *Report of the Secretary-General on Côte d’Ivoire*, U.N. SCOR, paras. 54, 80, 58th Sess., U.N. Doc. S/2003/374 (2003) (calling for additional measures to protect children’s rights); *Report of the Secretary-General on the UN Mission in Angola*, U.N. SCOR, paras. 35–37, 46, 58th Sess., U.N. Doc. S/2003/158 (2003) (calling for the implementation of child protection and assistance measures); *Seventeenth Secretary-General Report on the UN Mission in Sierra Leone*, U.N. SCOR, paras. 42–43, 58th Sess., U.N. Doc. S/2003/321 (2003), revised by U.N. Doc. S/2003/321/Corr. 1 (discussing the need for increased child protection); *Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of Congo*, U.N. SCOR, paras. 29, 45, 47, 62, 55th Sess., U.N. Doc. S/2000/30 (2000) (referring to measures necessary to protect human and children’s rights); *Second Report of the Secretary-General on the United Nations Preliminary Deployment in the Democratic Republic of Congo*, U.N. SCOR, paras. 27, 34, 39–40, 54th Sess., U.N. Doc. S/1999/1116 (1999) (discussing the need for measures to protect human rights and children’s rights); *Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone*, U.N. SCOR, paras. 20–21, 46–51, 54th Sess., U.N. Doc. S/1999/836 (1999) (reporting on the violation of human rights in general and children’s rights in particular).

10. S.C. Res. 1379, U.N. SCOR, 56th Sess., 4423rd mtg., U.N. Doc. S/RES/1379 (2001).

2002 report to the Security Council¹¹ includes a list of twenty-three parties to conflicts in five countries that were in violation of their obligations regarding the recruitment of children: Afghanistan, Liberia, D.R.C., Burundi, and Somalia. In addition, the body of the report contains information on illegal child recruitment by an additional seventeen parties in eight conflicts not on the Security Council's agenda, and it was noted that in five recently concluded conflicts high numbers of children had been recruited and demobilization was then underway.

The Council had to take concrete steps in the face of this very clear information, and so, the Council expressed its intention to enter into a dialogue or support the UN in dialogues, with the parties involved in child recruitment to "develop clear and time-bound action plans to end this practice" and called on the parties themselves to provide information regarding steps they had taken to halt illegal child recruitment.¹² The Council urged Member States to control the illicit trade of small arms to parties in violation of relevant international legal provisions and indicated that it would take "appropriate steps to further address this issue . . . if it deem[ed] that insufficient progress [was] made upon the review of the next Secretary-General's report."¹³

About forty parties, mentioned explicitly in the 2002 report, were monitored throughout the following year. In November 2003, the Secretary-General reported to the Council that all parties on the 2002 list continue to recruit and use child soldiers.¹⁴ In addition, a new total of over fifty-five parties to conflicts are named and shamed in an expanded set of lists annexed to the report. (The revised lists include at least thirty-three parties in six conflicts that are on the Security Council agenda, and over twenty-two parties in nine conflicts that are not on the Council's agenda). The Council considered the expanded lists in an open debate held on January 20, 2004 and issued a resolution on April 22, 2004.¹⁵

Armed with this clear and specific information, what could the Council do? The Secretary-General's report enumerated a set of graduated measures the Council might consider taking where insufficient or no progress was made by particular parties to conflicts, including "the imposition of travel restrictions on leaders and their exclusion from any governance structures and amnesty provisions, a ban on the export or supply of small arms, a ban on military assistance, and restriction on the flow of financial resources to the parties concerned."¹⁶ However, of course, by this time you

11. *Report of the Secretary-General on Children and Armed Conflict*, U.N. SCOR, 57th Sess., U.N. Doc. S/2002/1299 (2002).

12. S.C. Res. 1460, U.N. SCOR, 58th Sess., 4695th mtg., U.N. Doc. S/RES/1460 (2003).

13. *See id.*

14. *Children and Armed Conflict: Report of the Secretary-General*, U.N. SCOR, 58th Sess., U.N. Doc. S/2003/1053, revised by U.N. Doc. S/2003/1053 Corr. 1, revised by U.N. Doc. A/58/546-S/2003/1053 Corr. 2.

15. S.C. Res. 1539, U.N. SCOR, 59th Sess., 4948th mtg., U.N. Doc. S/RES/1539 (2004), revised by U.N. Doc. S/Res/1539/Corr. 1 (2004).

16. *Id.* para. 105(g).

will have observed a pattern: the Secretary-General provides information and recommends steps, the Council affirms and reaffirms its commitment to take concrete steps, but the situation for children worsens, and few of the steps identified are, in fact, taken.¹⁷ That is a lot of bad news!

I want to mention four tendencies in the field of child rights and armed conflict that I believe we must address if we are to narrow the gap between progress in the law and progress on the ground.

1. First, we avoid resolving the tensions between the human rights impulse to strengthen norms and the humanitarian impulse to assist war-affected children.

2. Second, we pursue advocacy and humanitarian programming without serious assessment of the political, economic, and social dynamics driving a particular conflict.

3. Third we avoid assessing the long-term qualitative impact of the many and varied interventions that have been mounted on behalf of war-affected children—so we don't know much about what works.

4. And finally, there is a tendency to refer to the C.R.C. as a policy and programming tool while glossing over the divergent conceptual approaches to children's rights and the contradictory programs and policies that result.

I. Tendency One: The Human Rights vs. The Humanitarian Impulse

The human rights impulse has driven child rights advocates to focus heavily on strengthening the normative protection for children in armed conflicts, and, as I have mentioned, there has been great and measurable progress towards this goal. On the humanitarian side of our agenda, however, progress is harder to discern; there are at least as many child soldiers today as there were when the campaigning escalated over ten years ago.

The reasons for child soldier recruitment and enlistment are simple to articulate: manpower shortages in armed forces and groups, the attraction of children who are easily manipulated into fierce fighters, the lack of alternatives available to destitute children and families, the pressure that can come from peers or influential members of the children's lives, and, for some young people, a commitment to the objectives of the party in which they enlist. However, when the movement was focused on achieving consensus on the text of the Optional Protocol, advocates' slogans belied any knowledge of those complex root causes. A dedicated group of NGOs led the campaign for an Optional Protocol with slogans calling on states to "stop the recruitment of child soldiers" by adopting a "straight-eighteen approach" to child soldiering—one that prohibits the voluntary or compulsory recruitment or use of anyone under age eighteen in armed forces or groups.

17. Resolution 1539, issued on April 22, 2004 (after the Symposium), does make specific requests for action by the Secretary-General and parties to conflicts, and does express the intent of the Council to take concrete measures. S.C. Res. 1539, *supra* note 15.

Many humanitarian agencies joined the advocacy groups in the Optional Protocol campaign without posing the hard questions derived from facts they knew well. Field-based organizations might well have asked the following questions:

- What is the likelihood of achieving compliance with a new standard when the earlier and lower domestic and international standards are consistently violated?
- How can a new human rights legal standard reach the primary offenders in conflict settings—non-state armed groups?
- How will the assignment of individual criminal responsibility to recruiters stop children from volunteering or alter the social, political, and economic factors at the root of volunteerism?

For the five years of treaty negotiations on the Optional Protocol, the movement had the ear of the international political community but failed to raise the hard questions and generate sustained commitment to addressing the harder realities underlying the problem.

So where are we now that we have an Optional Protocol? At the end of 2003, some two years after the Optional Protocol's entry into force, sixty-three states have ratified. Only five are engaged in armed conflicts, and all five—Afghanistan, the D.R.C., the Philippines, Sri Lanka, and Uganda—have taken the straight-eighteen approach. Is this a victory for the advocates urging adherence to stronger norms? Perhaps. However, all five of these countries are on the Secretary-General's most recent lists of parties to armed conflict that are in violation of obligations regarding child soldier recruitment and use.¹⁸

II. Tendency Two: Advocacy in the Absence of Conflict-Specific Analysis

Our advocacy agenda has been articulated and pursued not only with little attention to what the humanitarian colleagues in the field know, but also without sufficient analysis of the political, social, economic, and military dynamics of particular conflicts. This is a serious impediment to progress in concrete situations. To generate compliance with commitments and obligations, we must get beyond slogans calling for "compliance."

As an illustration, the Special Representative of the Secretary-General for Children and Armed Conflict ("Special Representative") has elicited child protection commitments from parties to conflicts during his field visits. He obtained commitments to end or restrict child soldiering from the Sudan People's Liberation Army ("S.P.L.A."), the Liberation Tigers of Tamil

18. *Children and Armed Conflict: Report of the Secretary-General*, U.N. GAOR, 58th Sess., Annex I, II, Agenda Item 113, at 20–23, U.N. Doc. A/58/546-S/2003/1053 (2003) (stating that "factional fighting groups" in Afghanistan, various state armed forces and nonstate actors in the D.R.C., nonstate armed groups in the Philippines and in Sri Lanka, and both state armed forces and nonstate armed groups in Uganda "recruit or use children in situations of armed conflict").

Eelam ("L.T.T.E.") in Sri Lanka, the Revolutionary Forces of Colombia ("F.A.R.C."), and the government of the D.R.C.¹⁹

Members of the child rights movement have rallied behind these commitments, calling for compliance and for reports by monitoring groups. Yet the movement does not seem to be building bridges to the political scientists, the economists, the bankers, and the corporate actors, who either have influence in or understanding of what is driving a particular conflict or a particular warring party. We have been slow to build the networks and undertake the analysis required to develop initiatives that can truly aspire to induce specific actors to comply with their commitments and that render noncompliance too costly for a particular armed force or group to bear.

None of the commitments to demobilize child soldiers or refrain from recruitment have been complied with, and all the armed forces or groups that made commitments appear now on the Secretary-General's lists of child soldier recruiters.

The child rights community must build partnerships with political scientists, economists, the private sector, country analysts, and others to conceive of actor-specific initiatives likely to compel compliance with child protection commitments and obligations.

III. Tendency Three: Neglecting To Measure the Long-Term Impact of Preventive or Responsive Interventions

The tendency not to assess the qualitative impact of our interventions on behalf of war-affected children over the medium and long term is an oversight that hampers our ability to advocate for particular programs, to guide the flow of donor contributions, and to refer confidently to "best practices" or "lessons learned" in programming for war-affected children. We simply fail to stick around long enough to learn whether our programs have made a positive difference in the lives of children. Without this knowledge we cannot, for example, seek to enforce Articles 6 and 7 of the Optional Protocol. Article 6 requires states parties to demobilize child soldiers and to provide appropriate assistance for the physical and psychosocial recovery and social reintegration of child soldiers. Article 7 requires states parties to provide technical cooperation and financial assistance to support child soldier rehabilitation programs.

What do we know about which programs work or what assistance is "appropriate"? The international community has assisted in the demobilization of child soldiers since the late 1980s and still we see a muddle of programs and approaches. We heard earlier in this symposium that child soldiers seeking to demobilize recently in Sierra Leone were required to hand in a weapon to gain access to the program. Yet all the UN policy or

19. See *Promotion and Protection of the Rights of Children*, U.N. GAOR, paras. 7, 45, 48, 59, 74, 75, 76, 77, 58th Sess., U.N. Doc. A/58/328 (2003); *Promotion and Protection of the Rights of Children: Protection of Children Affected by Armed Conflict*, U.N. GAOR, para. 47, 57th Sess., U.N. Doc. A/57/402 (2002).

lessons-learned documents on child soldier demobilization stipulate that no gun requirement should be applied to child soldiers, because commanders are unlikely to prioritize child soldier demobilization if they must give up a weapon. Child rights organizations disagree over whether children ought to be immediately reunified with their families, when this is possible, or housed for some period of time in interim care centers where a range of services or training opportunities or both might be provided. And if they should stay in interim care centers, it is not clear how long children should be housed there. It is not clear how best to attract and assist girls who have served as soldiers, camp followers, wives or sexual slaves of combatants, or mothers of children of combatants into the demobilization and reintegration process. Successful reintegration is at least in part a function of skills training that enables former combatants to be self-sustaining or to contribute to the community after they return. Yet we have heard even in this morning's panel about training in irrelevant vocations—those for which no jobs will be found in the local economy—being provided to former child combatants in Sierra Leone.²⁰ The Optional Protocol requires states to provide appropriate assistance; the international child rights movement must invest far more in credible, long-term program evaluations if we are to guide or implement such assistance.

IV. Tendency 4: Over-Reliance on the C.R.C. To Inform Distinct Programs and Policies

Others have stated that accountability for child recruitment is essential to the enforcement of international law prohibiting child recruitment. We will have to wait and see whether the prosecution of child recruiters in the I.C.C. or the Special Court for Sierra Leone has a deterrent effect, but my fourth tendency illustrates how hard it has been for the international child rights movement to address the accountability of the child soldiers themselves. I am raising this aspect of the accountability issue because it is relevant to the discussion of how best to assist children who serve as soldiers and to foster their social reintegration. If we fail to enforce the norms that protect children from participation in armed conflict in the first place, we cannot then seek comfort in the possibility of merely punishing the recruiters. We must focus even greater attention and resources on *appropriate* reintegration measures that will ensure the former child soldier the chance to function as a member of his or her community. As we seek to define what measures are appropriate, I think that the question of individual accountability for child soldiers who commit egregious crimes should be considered as a possible component of rehabilitative interventions.

However, because the child rights movement tends to gloss over conceptual differences in the interpretation and application of basic principles embodied in the C.R.C., it is no surprise that child rights advocates cite the same C.R.C. provisions in support of completely opposing approaches to

20. See Kathleen Kostelny, *What About the Girls?*, 37 CORNELL INT'L L.J. 505; Michael Wessells, *Psychosocial Issues in Reintegrating Child Soldiers*, 37 CORNELL INT'L L.J. 513.

the question of child soldier accountability. This is well illustrated by the debates on the involvement of children in the Special Court for Sierra Leone.²¹

There is broad consensus that transitional justice mechanisms—truth commissions and war crimes tribunals—should explicitly address egregious crimes involving children. The Sierra Leone Truth and Reconciliation Commission was the first to do so. Its Statute, adopted in 2000, requires the Commission to give special attention to the experiences of children within the armed conflict, including child perpetrators of abuses or violations.

When the Security Council called in August 2000 for a Special Court to try persons “who bear the greatest responsibility” for international and domestic war crimes committed in Sierra Leone, integrants of the movement vehemently disagreed over whether the Court’s jurisdiction should extend to child soldiers who had perpetrated terrible abuses. We agreed on the facts around the experiences of child soldiers in Sierra Leone and we all cited the C.R.C. in support of our arguments, but the Office of the Special Representative for Children and Armed Conflict, the Office of Legal Affairs, and several NGOs felt that the Court’s jurisdiction should extend to those young people who joined without restraint in brutal and wanton violence, while UNICEF, Human Rights Watch, and Save the Children entirely disagreed.

The Office of the Special Representative felt that in the particular circumstances of Sierra Leone, some children and young adults would benefit from participation in a process that ensures accountability for one’s actions, respects the procedural guarantees appropriate in the administration of juvenile justice, and takes into account the desirability of promoting the child’s reintegration and capacity to assume a constructive role in society. The Special Court might help to ensure that the most recalcitrant and feared young offenders, those perhaps least likely to seek programmatic and therapeutic support, would be brought into a credible system of justice that would result in guided, supervised access to rehabilitation and ensure opportunities for reinsertion into productive civilian life.

UNICEF, some local NGOs, and others insisted that the threat of prosecution would undermine their efforts at child soldier rehabilitation, stigmatize the child, reduce the likelihood of community reintegration, and place the child at increased risk of re-recruitment. Moreover, these organizations felt that prosecutions would run counter to Sierra Leone’s cultural values of healing and forgiveness.

Ultimately the Security Council adopted a Statute that extended personal jurisdiction to persons between fifteen and eighteen at the time of the crime and includes a number of protective and therapeutic provisions to ensure the best interests of children who appear as defendants, victims and

21. See generally Ilene Cohn, *The Protection of Children and the Quest for Truth and Justice in Sierra Leone*, 55 J. INT’L AFF. 1 (2001) (discussing the involvement of children in the Special Court for Sierra Leone and the Truth and Reconciliation Commission in Sierra Leone).

witnesses. Rehabilitation programs are the only possible dispositions available to the judges.

Even so, the Council expressed its ambivalence and noted that it believes "that it is extremely unlikely that juvenile offenders will, in fact, come before the Special Court and that other institutions, such as the Truth and Reconciliation Commission ("T.R.C."), are better suited to address cases involving juveniles." Very early after his appointment, the Prosecutor stated that he did not plan to prosecute children. Of course, virtually all former child soldiers who had committed war crimes were adults by the time the T.R.C. and the Special Court began to function. Will young adults in Sierra Leone be better served without resort to judicial proceedings? Have those children and young adults who participated in the T.R.C. proceedings benefited in some way? We do not know.

Conclusion

When you work at the policy level in the field of children and armed conflict, it is easy to become complacent; there has been enormous progress in a relatively short period of time, particularly in terms of strengthening the legal regime. However, nothing heard this morning, in any film or photograph, can convey what it is like to have been a child in Sierra Leone or Mozambique during the wars, or Colombia, Liberia, D.R.C., or Uganda today. If you go to the field and witness children living in or affected by armed conflict, you cannot but despair. I keep waiting for the student who is going to raise her hand and have the new perspective, the new answer, the new question—the one who is going to leave the room and devote her research to this complex set of issues and come up with something new. I urge you to ask hard questions about the gap between law and reality on the ground, about the utility of stronger laws and new approaches to enforcement, and to always consider the situation of child soldiers within the larger context of all war-affected children.