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Political Challenges Behind the Implementation of the Optional Protocol to the Convention on the Rights of the Child

Michael Southwick†

I hope to offer some insights into the politics, diplomacy, and policy choices involved in a government addressing the issue of child soldiers. To do this, I would like to review some history and then discuss the development of the U.S. position and the U.S. approach to the Optional Protocol to the Convention on the Rights of the Child.

As is often the case, the larger problem involved in solving big problems is political will. How do you gain the support of whole nations or international organizations? How do you obtain and follow up on political commitments? My account today is from the perspective of a U.S. diplomat. For five years I was the Deputy Assistant Secretary in the International Organizations Bureau of the Department of State. Before that, I spent much of my career in Africa.

Here at this conference we have talked a lot about Sierra Leone, but the African country I want to talk about is my favorite failed state, Somalia. A few years ago, Somalia was front-page news. It was above the fold; it was the lead item on the evening news. It drew the attention of the news media because of the horrible drought, the terrible refugee camps, the plight of the many starving people, and the use of child combatants. Through global news channels such as CNN and BBC, the American public and the international community all learned about the situation in Somalia. During this time, I was the Deputy Chief of Mission at the U.S. Embassy in neighboring Nairobi, Kenya. Kenya had long been regarded as a kind of paradise in Africa. It was not a perfect place, but compared to Somalia it seemed like a wonderful country. We at the embassy knew that the pressure to take action to alleviate the suffering in Somalia was building in the United States.

During that period, I hosted many visitors from the State Department, the CIA, the Pentagon, Congress, and various international organizations. They all asked the same question: What should be done about Somalia? I gathered the best local Somalia experts. They all said essentially the same

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thing to visitors: "Don't intervene militarily. Take any nonmilitary measures that might help, but don't intervene militarily."

Deciding that something had to be done, the United States launched a humanitarian operation using military assets, which the UN soon sanctioned. As the operation evolved over the following months, however, it became apparent that we would have to subdue, if not physically get rid of, Somali faction leaders who were frustrating the humanitarian and political reconstruction efforts. In Nairobi, we had a high-profile American ambassador at the time, a somewhat Hemingwayesque figure named Smith Hempstone. He had not been in favor of intervening in Somalia, and he wrote a cable to Washington on the eve of the U.S. intervention that was leaked to the press and that I frequently cite because it has some relevance to the situation today. It was entitled, "If you liked Beirut, you'll love Mogadishu." In the cable, Hempstone posed several questions: What is the job that we are trying to do? Is it a worthwhile job or is it something that we feel is necessary? What is the cost? He put that last question in brutal terms. He asked, "What is the butcher's bill to do this job? And if there is a butcher's bill, maybe we should think about another way to do it."

Most of you in this room have seen the movie *Black Hawk Down*. This was the seminal event in the Somalia intervention. We lost eighteen soldiers in one day. Naked and dead American soldiers were dragged through the streets of Mogadishu, while international media channels reported it all. The public reaction in the United States was one of overwhelming disgust. Within six months, all the American soldiers in Somalia were gone, from a peak of about 28,000 soldiers to zero, all as a result of that single event.

A few months after the Black Hawk incident, I had lunch with a very prominent African-American at the Terrace Restaurant in the Norfolk Hotel in Nairobi. I told this visitor that it was a shame that this incident had happened, because there was still a lot of work to do in Somalia. I concluded: "We need to stay engaged." This person quickly replied, and I paraphrase: "Look: Those people were starving. We fed them. They killed our soldiers. To hell with them." I believe the visitor was repeating the views of many Americans at that time. Somalia turned off a whole generation of Americans from the idea of intervention and nation-building.

The Rwandan genocide erupted shortly thereafter. I was still in Nairobi at the time, but I knew Rwanda well because I had served in Rwanda earlier in my career. As I considered the Rwandan situation, there was not a doubt in my mind that we would intervene, no matter how terrible the situation became. The Somalia intervention, symbolized by the Black Hawk incident, had made it politically impossible.

More lasting than the immediate impact on Rwanda was the effect on perceptions of nation-building and the efficacy of intervention. Can we rebuild nations or solve complex problems in other nations? In the last presidential campaign, this was an issue. The successful candidate clearly opposed getting involved in nation-building, though this attitude later changed.

Somalia, Rwanda, and some of the other turbulent events of the nineties caused people to focus more on the child soldiering issue. Events mobilized public opinion. The issue is vivid and compelling. The pictures of child soldiers seen by the public worldwide show unimaginable and terrible things.

For a number of years, the nongovernmental organization ("NGO") community had expressed the belief that an optional protocol to the Children's Convention on children in armed conflict would help combat child soldiering. By this time, I was back in Washington, assigned to the International Organizations Bureau in the State Department of the Clinton Administration. There were competing values, among them the general revulsion against nation-building, and the distaste of many conservatives for treaties. In particular, Senator Helms, Chairman of the Senate Foreign Relations Committee, belonged to a group of conservatives who believed that, by and large, treaties simply do not do any good and in fact sometimes do harm.

It did not help that this particular treaty, as it was being proposed and pushed by the NGO community and to a certain extent by the international community, would have changed the way the U.S. military did business. The military is sacred in American society. It may not have been during the Vietnam War, but it certainly is now. Political leaders, including former President Clinton, hesitated to tell the Pentagon that it had to change the way it did business. I am referring to the "straight-eighteen" position of the NGO community. Bear in mind that the Convention on the Rights of the Child defines a child as any person under the age of eighteen. The human rights community wanted to bar anyone under eighteen from military service. However, the U.S. military recruits voluntarily, with parental consent, at age seventeen, and has done so for as long as anyone can remember. We have to do this these days in order to have a volunteer army instead of a conscripted army to meet desired force levels. We need to recruit when people leave high school, and many people leave high school at seventeen. If we did not recruit seventeen-year-olds, they would drift off to other activities. The U.S. military regarded a trained seventeen-year-old as a full-fledged soldier suitable for deployment.

By late 1999, the negotiations on the child soldier protocol had been in progress for about five years. In January 2000, another negotiating session was scheduled in what many thought would be a final attempt to try to reach an agreement. I was responsible for this negotiation. As the January session approached, a group of people at the State Department, the National Security Council, and at the Pentagon jointly decided that the United States needed to make the best effort possible in the negotiations. We were not confident of success because we knew that recruiting voluntarily at seventeen simply could not and should not be changed, though we thought the Pentagon might be persuaded to limit participation in hostilities by soldiers who had not yet reached age eighteen. Aside from the merits of a child soldier protocol, we were motivated to try to end the isolation of the United States with regard to international treaties. In the previous two years, the United States did not become a part of the International

Criminal Court Treaty and the Land Mines Treaty. We did not want to have strike three. We wanted the United States to be a party to international treaties on subjects about which we cared. We did a lot of research about what countries' recruitment practices actually were. We prepared a carefully worked out alternative text for the protocol that took care of our own interests with regard to the eighteen issue while clearly targeting the actual offenders, mainly non-state actors in developing countries.

In the meantime, I was working in all the ways that I could to get the Pentagon to change its views and to give us some flexibility on the eighteen issue. You might think that in the United States, the President of the United States, as the Commander-in-Chief, had but to tell the Pentagon: "We're not going to deploy seventeen-year-olds. We can recruit at seventeen, but we're not going to deploy them. We're not going to have them taking a direct part in hostilities." Unfortunately, it does not work that way. The military is sacred, and President Clinton did not exactly have the easiest, most comfortable relationship with the military establishment. So, we had to try another approach. About halfway through the negotiations, the Secretary of Defense and National Security Advisor Samuel Berger agreed that the Pentagon would alter its position. That change would allow the United States to accept language that had been put forward two years earlier on the question of deployment: that the government would take "all feasible measures" to prevent the participation of seventeen-year-olds in hostilities.

However, halfway through the negotiations in Geneva, we found that this change no longer seemed sufficient. It should be borne in mind that this was not the unilateral Bush administration; this was the Clinton Administration. President Clinton was quite well-regarded by the international community. Hostility generated by unilateralism and the neoconservatives did not exist at the time. Nonetheless, there were some people, including some of our friends and NATO allies, who simply wanted to make life difficult for the United States. They also felt that it was better to have a purist position than to have the United States on board. They were willing to take this hard-line position, even though it would mean a treaty to which the United States would not become a party. We had to use a lot of diplomatic muscle to overcome this sentiment, and we finally did, much to the surprise of everybody, especially some people in the White House and in our own delegation. The "all feasible measures" formulation was accepted. Our negotiating team felt very good about this. We even had the good fortune of getting President Clinton to sign the treaty in New York on July 5, 2000.

Then there was an election and a new president. Some of the people from Senator Helms's staff, who really did not like that treaty, showed up in the Pentagon, advising the Secretary of Defense on these matters. We had to mount an operation within the State Department and within the White House to try to convince the Bush Administration to stay on course with this treaty. Frankly, this was not as hard as some people thought it would be. Once the Bush Administration—the President in particular—

embraced the treaty, resistance fell. Even Senator Helms, who generally did not like treaties, was willing to allow it to go forward. By the end of 2002, we ratified and acceded to it.

In internal U.S. government discussions about whether or not to accede to the treaty, we had talked extensively about many of the fundamental issues concerning child soldiers. The United States's use of seventeen-year-old volunteers was not really the issue. Rather, the issue was the use of far younger child soldiers in Sierra Leone, Uganda, and other such countries. Why didn't the international community, the human rights community, and the activist community talk seriously about this problem instead of using this treaty negotiation as an opportunity to attack the United States? This still puzzles me.

As I told Senator Helms at the Senate Foreign Relations Committee ratification hearing, the treaty is not a magic wand, but it will help. It will end the debate about age eighteen and create a strong new international standard. The treaty should also foster cooperation on practical steps to deal with child soldiers, especially their rehabilitation and reintegration into society. Of course, new issues have also arisen concerning the implementation of the treaty such as the role of the Security Council in enforcing the treaty and the need for improved reporting and for more personal involvement of the Secretary-General.

For its part, the United States has campaigned diplomatically to get countries to ratify this treaty. We have asked our ambassadors stationed in countries where there are child soldiers to work with host governments and our allies to try to get these governments to implement strategies to ratify and implement the treaty. Obviously, much work needs to be done. However, I think cooperating with other countries, European countries in particular, is going to make a difference.

We have heard that implementation of the treaty is not going well. This tends to vindicate criticism made during the ratification process about the efficacy of treaties. The persistence of child soldiering is very troublesome to me. I was an ambassador in Uganda. When I left Uganda in 1997, I thought that surely the problem involving the rebel Lord's Resistance Army and its many abuses, including child abductions and the use of child soldiers, would be solved in a few years. Seven years later, the situation in Northern Uganda is probably worse than ever. On the other hand, worldwide, there have been significant improvements in the approaches and programs that focus on rehabilitating child soldiers and reintegrating them into society.

I attended a conference on peace-keeping a couple of months ago in Ankara, Turkey, where two of the speakers were Turkish generals who had commanded peacekeeping forces, one who was in Somalia in the early nineties, the other who more recently commanded NATO forces in Afghanistan. They spoke at different times in the conference and did not appear to have had time to compare notes beforehand. The general in Somalia basically said that everything that could go wrong did go wrong. The Afghanistan operation was much smoother. It wasn't perfect, but a lot of the kinks

had been worked out. Reportedly, in Afghanistan there has also been a greater effort in peacekeeping operations to address the needs of war-affected children, including child soldiers, from the beginning of the peacekeeping effort. It gratified me that the state of the art on peacekeeping was advancing.

Like others here, I am worried about Iraq and how Iraq is going to influence public attitudes toward humanitarian intervention. Frankly, the situation in Iraq reminds me of Somalia. While we did not go into Iraq for humanitarian reasons, Iraq has evolved into a humanitarian and nation-building operation. The United States is again involved in a major effort overseas to promote democracy and greater respect for human rights.

But the memory of Somalia is still with me. We left Somalia in shambles, and it has stayed in shambles. That said, just in the last few months, there has been some indication that the Somalis might be able to come to an agreement that would put a national government in place.

How are we going to leave Iraq? Will Americans have any appetite for foreign intervention in the wake of Iraq? Will it affect our engagement as a nation in a whole host of international issues, not only child soldiers, but war, economic development, and poverty? We have experienced donor fatigue and disaster fatigue. Intervention fatigue may be setting in again. Where is that going to leave us?

Fortunately, the situation is getting slightly better in Africa. The big struggles that have generated a lot of child soldiers are coming to an end. There is a peace agreement in Congo, and there is likely to be one in Sudan in the near future. In Liberia there is a UN peacekeeping force that is gradually spreading out throughout the country. Côte d'Ivoire will soon, we hope, have some kind of Security Council resolution that will improve the situation there.

Perhaps the worst is over in Africa. Whatever happens, however, I believe there is always going to be an activist community to address remaining problems. There will always be people who, regardless of what else is happening in the world, will work hard with slim resources and often against much opposition. However, to be truly effective in solving massive problems, you need strong collective will and resolve. From time to time we have exhibited such will as a nation and as an international community. It will be interesting to see in the coming months whether we can muster the collective will necessary to deal with current challenges.