

## International Law Barring Child Soldiers in Combat: Problems in Enforcement and Accountability - Question & (and) Answer Session

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# International Law Barring Child Soldiers in Combat: Problems in Enforcement and Accountability

## Question & Answer Session

**From the floor:** My first question regards the enforcement mechanisms available for use against non-state actors: There are not many mechanisms for procuring the release of child soldiers other than stigma and norms. (It seems that those responsible for the use of child soldiers may not be prosecuted in the International Criminal Court ("I.C.C.") in the near future.) Are there any mechanisms with teeth that can force non-state actors to cease their use of child soldiers in armed conflict? My second question concerns the reporting of violations to the UN: What is the best-case scenario for a UN response to a negative report? What is a plausible reaction?

**Ms. Vandergrift:** We are increasing our efforts to speak to non-state actors. The problem also arises in the issue of land mines and the Land Mines Treaty. There is now a non-governmental organization ("NGO") called the Geneva Call, which works with non-state actors, encouraging them to be accountable to international norms. In some places, this strategy is being implemented to solve the problems of child soldiering as well as other children's rights violations. Consider that non-state actors are fighting not only for power but also for public legitimacy and thus may be subject to public pressure. Further, the international links between non-state actors are increasing. In some cases, we have been able to use these international links to encourage behavior changes. To be sure, this is the exception, but we have at least begun to experiment in this area. When this issue first began to be discussed we could not report any progress with non-state actors whatsoever. Recently, when the Security Council went to Liberia, they met with the rebel leaders and spoke to them directly about the use of child soldiers. We are making progress, but we need more creativity in this area.

In response to the question regarding UN responses to investigations, it depends in part on the timing of the reporting: If there were reports earlier, there could be nonmilitary responses such as implementing or increasing human rights monitoring. Regular reporting and consistent follow-up has a positive impact; timely follow-up has been the problem. Further, we are suggesting that all forces that use children be cut off from military assistance. If the United States would stop providing military assistance to all forces that use children, it would send a strong message. Other potential instruments include conditional community aid and travel bans, but it

is not clear that these measures are appropriate or effective. One suggestion I have heard is that we should bar the children of leaders who misuse children from attending school in developed countries. Apparently, not allowing the children of some leaders out of the country was an effective tool in the struggle in Nigeria. Of course, those of us who believe in the Convention on the Rights of the Child are hesitant to punish children for wrongs committed by their parents. We must at least look at these very targeted measures and, if we decide to implement them, stick to them. I do not think there is the political will to use very harsh measures yet.

**Ms. Cohn:** I will just try to add to what Ms. Vandergrift said. There is a list of suggested graduated measures in the Secretary-General's recent report to the Security Council, and it includes things that Ms. Vandergrift mentioned, from travel restrictions to exclusions from governance structures to bans on exports of small arms and restrictions on assistance to parties that recruit or use children. Those measures can be implemented bilaterally by countries with the leverage and the political will to induce nonstate actors or states to comply with relevant human rights or child protection commitments or legal obligations.

You also asked what would be an effective response by the UN. Ms. Vandergrift made it very clear that there is criticism of how far the UN has gone to report or monitor child rights violations effectively or to take further action. However, I think that one must distinguish between what the UN Secretariat or agencies can do and what Member States or political UN organs can do. The political will of Member States and political bodies is required to implement the measures outlined in the Secretary-General's report. The UN Secretariat should be urged to articulate country- or actor-specific recommendations, but the real solution does not lie in the Secretariat of the UN reporting ten pages or one page on what is happening to children in a given armed conflict. It is for the countries who have leverage in a particular conflict or with a particular party to a conflict—and they already know who they are—to do what it takes to achieve the child protection ends that they have defined as their objective in Security Council and General Assembly resolutions on children and armed conflict. And it is unreasonable to ignore the fact that influential states do not have many competing objectives, and child protection is only one of many concerns.

So, I think that some of the UN critique is accurate, and we can do better at systematic monitoring and reporting, but more reporting or more monitoring of abuses will not protect children.

**Mr. Southwick:** Having worked for the UN, I find it is a wonderful organization capable of marvelous things. However, it is also one of the most maddening organizations because of the amount of paper produced with little result. Thus, it is important to work in the UN, but also at the national level. For example, signatories to the Optional Protocol are supposed to criminalize behavior that is outlined in the Protocol, such as recruiting under the age of eighteen. I hope more attention is focused on some of the measures that can be implemented at the national level.

**From the floor:** We have heard arguments for why child soldiers who committed wrongs in warfare should not be punished for those wrongs. Does this not create an incentive for warlords of revolutionary groups to employ child soldiers, knowing that they will not use their military leaders because of the amnesty for child soldiers? It seems almost as if you have to punish children for their participation in armed conflicts in order to deter their further recruitment.

**Ms. Cohn:** It is a good point. However, I wonder how many armed groups are likely to make that calculation when in fact they typically enjoy impunity for their actions. How many child recruiters will be prosecuted in fact, and how many recruiters will be deterred by a few prosecutions taking place far away? Will prosecutions deter recruiters who are on a quest for power and alluvial diamonds?

I certainly think it is important to prosecute those who recruit or use children in armed conflict. It matters for the child and for their communities and societies, but I do not count on these prosecutions having a deterrent effect in the short-run. I do think there is merit in attributing individual criminal responsibility to child soldiers if this can be done appropriately.

In the debate over the personal jurisdiction of the Special Court for Sierra Leone, the office that I was with took the position that the court's jurisdiction should extend to those who were fifteen to eighteen at the time of the alleged crime. We did not actually make an argument along the lines you suggested, although it is reasonable. We argued that some young people did have the capacity to know that their actions were unacceptable. Further, we argued that, for these youths, it would be beneficial to participate in a forum where the facts could be ascertained, and, if warranted, they could be told that they had transgressed the acceptable boundaries of conduct for society and that rehabilitative measures would be prescribed. Only rehabilitative dispositions are available to the judges on the Special Court in the case of a person who was under the age of eighteen at the time of the crime.

**Ms. Vandergrift:** We agree that a well-functioning youth justice system is important. The question is how youth should be held accountable. Different countries have different systems. I think that there are appropriate ways of holding former child soldiers accountable while still acknowledging that the children should not have been made to participate in the conflict in the first place.

There is an issue of timing, however. For example, in Sierra Leone, the UN system called for the children to come before the court. Some of us who were working with child soldiers at that time were quite upset. We were still trying to get these children out of the bush at that time. A number of children that we were working with decided to return to the bush rather than face trial. It would have been better for security in Sierra Leone if these children had not returned to the bush. In contrast, in Cambodia, the court process is just beginning now, many years after the conflict. We

need to first get the young people to leave fighting forces, disarm them, and enroll them in a program before we subject them to trials.

Ms. Cohn: I actually would posit that there is widespread misinformation and misunderstanding about what transitional justice means and for whom in any country that is in transition from a devastating conflict. I am quite hard-pressed to believe that child soldiers in Sierra Leone had accurate information and were able to understand what might really happen to them in the Special Court. I do not even believe that all humanitarian workers on the ground fully understood what could happen to the child soldiers who could possibly be involved in court proceedings.

Let me give you an example. First of all, a commander who wants to keep a child soldier from going to demobilize is going to tell the child that he will be prosecuted and thrown in jail. The commander has enormous influence and is an uncontested source of information. He can be expected to say, "Well, it sounds good to turn yourself in, but they are going to really punish you." Commanders who want to retain their troops can be expected to try and scare them with threats of prosecution or retribution even if there is no court on the horizon at all.

NGOs or the United Nations Children's Fund ("UNICEF") might have communicated accurate information about the nature and possibility of child involvement in transitional justice processes, at least to the child soldiers they had access to, including those demobilizing child soldiers who were already in interim care centers.

So what happened? The Security Council decided to take a trip to Sierra Leone prior to adopting a resolution on the court's statute. Prior to the trip and in Sierra Leone, the delegation requested and received a lot of input from UN and NGO actors that held widely divergent views about child involvement in the Special Court. When the Security Council's delegation visited former child soldiers in an interim care center, a child of twelve or fourteen years of age handed the delegation a letter pleading with the Council not to agree to prosecute these very young, victimized children. But clearly no child this age could possibly be prosecuted. UNICEF and the NGOs that were involved with these children and were responsible for arranging the visit with the Security Council delegation should not have let a child of that age harbor the irrational and unfounded fear of prosecution. A twenty-three-year-old who was recruited or enlisted and committed a crime seven years ago could possibly write something to the Security Council because he might fear prosecution. No one disagreed about the experience of children in Sierra Leone, but being a victim of recruitment does not necessarily absolve a young person from individual criminal responsibility for all actions they take after they are recruited and so we are still left wondering: what is the best approach to child involvement in transitional justice processes?

If very young children left interim care centers, as Ms. Vandergrift suggested, I do not think it is because we, in New York, were having a debate about juvenile justice and the role of the Special Court for Sierra Leone in former child soldier rehabilitation. Rather, it is because there is misinfor-

mation on the ground generally, and from the children's commanders and, unfortunately, also from humanitarian workers who do not fully understand the debate.

**From the floor:** Regarding the minimum age for military recruitment, there is a discrepancy between an age limit that is desirable and one that is feasible.

**Ms. Vandergrift:** I am puzzled why the African Charter on the Rights of the Child sets the minimum age at eighteen if African countries do not accept it.

**From the floor:** The answer might be in the more Western-oriented leadership of Africa as opposed to the tradition and culture of Africa.

**Professor Ndulo:** Doesn't the minimum recruitment age issue create a problem of cultural identity? If we accept the argument that an eighteen-year age limit is not acceptable to the African community on cultural grounds, even the women's rights convention would be in serious trouble. How do we reconcile the African position?

**From the floor:** Ms. Cohn, among your first points was that we should work more with political and economic experts. Could you elaborate on how that would be effective?

**Ms. Cohn:** This juvenile justice question and the role of justice-seeking mechanisms in child soldier rehabilitation is a good example of an issue on which specialized expertise was required. I am not a juvenile justice expert. So, as the debate on the Special Court's personal jurisdiction was going on, it occurred to me to consult domestic experts. I convened a panel of juvenile justice and child development practitioners and academics. They had important things to say about rehabilitation efforts that had proven successful, or not, in the comparable environment of urban gangs.

Child rights advocates need not themselves be economists or country analysts, but if we are going to persuade parties to conflicts to refrain from using children as soldiers or to grant humanitarian access to vulnerable populations, or convince the World Bank to take measures to advance child protection, we have to reach out and tap into the right people from a variety of disciplines and draw on their expertise to make the most compelling arguments.

**Ms. Vandergrift:** In Congo, for example, some of us are trying to create a dialogue with some of the mining firms. There were some Canadian mining firms named in the report that went to the Security Council about the Congo. I am from Canada as well. In the first meeting, the owner of one of these mines was not forthcoming, although he did understand us when we said that mine owners needed to work with us to address the issues facing the youth of Congo. In the following meeting, however, he admitted to me that his mine was then in the hands of child soldiers, so we began to discuss how we could turn the situation around. Mining firms are important players in these regions. We should endeavor to get these people to contribute to solving the problem of child soldiers. This is one example of engaging important players and trying to see what they might be able to contribute to the agenda, in addition to just naming and shaming them.

**Ms. Vandergrift:** We have talked a lot about Africa in the last two days. Those of us working to solve this issue take pains to make clear this is not just a problem in Africa, and so I would like to make sure that is on the record. Myanmar has the worst child soldiering situation, judging by the sheer numbers of child soldiers. Not many NGOs are working there. It is a very difficult situation to deal with there. We also just released a Watch List on Colombia. It is important that we not leave the impression that this is only an African problem. The problem exists in other places in the world as well.

**Professor Ndulo:** Thank you very much to all panelists. You provided us with an excellent analysis of the legal position as well as the problems and the challenges that are faced by the international community in this field of child soldiers. Thank you very much.