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## Child Soldiers, Slavery and the Trafficking of Children

Susan Tiefenbrun\*

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# Child Soldiers, Slavery and the Trafficking of Children

Susan Tiefenbrun

## **Abstract**

This article will examine the complex relationship of human trafficking, slavery, and child soldiering. Part I will examine the root causes of the development and expansion of the use of child-soldiers. Part II will examine the international and domestic laws and instruments that protect against the use of children as soldiers. Part III will examine some literary representations of the crime of child soldiering in order to raise the readers' awareness of the depths of this atrocity. Part IV will conclude by offering practical suggestions and economic solutions to make these legal instruments more effective. Children are humanity's most valuable investment in the future, and it is the obligation of the adult world to protect them effectively.

# CHILD SOLDIERS, SLAVERY AND THE TRAFFICKING OF CHILDREN

*Susan Tiefenbrun\**

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## INTRODUCTION

### A. Definitions

The prevalent use of children in armed combat is a contemporary manifestation of slavery and a form of human trafficking that is as serious and as lucrative as the international crimes of trafficking in weapons and drugs.<sup>1</sup> Trafficking is defined as the illegal trade of contraband goods, usually across borders, in order to make a profit.<sup>2</sup> Trafficking in persons, especially women and children, is the purchase and sale of human beings as cargo for the purpose of engaging in exploitative forms of labor such as sex work<sup>3</sup> or participation in armed conflict. Trafficking in children for their use on the battlefield is a human rights viola-

1. See generally Susan Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 T. JEFFERSON L. REV. 161 (2002).

2. See Sandrine Valentine, *Trafficking of Child Soldiers: Expanding the United Nations Convention on the Rights of the Child and Its Optional Protocol on the Involvement of Children in Armed Conflict*, 9 NEW ENG. J. INT'L & COMP L. 109, 109 (2003); see also U.N. CHILDREN'S FUND ("UNICEF"), CHILD PROTECTION INFORMATION SHEETS 27 (2006), available at [http://www.unicef.org/publications/files/Child\\_Protection\\_Information\\_Sheets.pdf](http://www.unicef.org/publications/files/Child_Protection_Information_Sheets.pdf).

3. See Tiefenbrun, *supra* note 1, at 167; see also Valentine, *supra* note 2, at 109.

tion that rises to the level of slavery.<sup>4</sup>

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (“Palermo Protocol”)<sup>5</sup> defines trafficking as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>6</sup>

The recruitment of a child (*i.e.* a person under the age of eighteen) for the purpose of sexual exploitation or participation in armed conflict falls under the ambit of “trafficking in persons.”<sup>7</sup>

The international definition of the trafficking of child soldiers involves three necessary elements: consent, exploita-

4. See Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7105 (2006) [hereinafter TVPA], for the link between trafficking of persons and slavery. The Rome Statute that founded the International Criminal Court (“ICC”) also recognizes trafficking in persons as “enslavement” (Article 7) which is considered a “crime against humanity.” Rome Statute of the International Criminal Court, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, June 15-16, 1998, U.N.Doc. A/CONF.183/9 (1998), art. 7 (entered into force July 1, 2002) [hereinafter Rome Statute]. On the issue of trafficking of persons as a contemporary form of slavery, see generally Susan Tiefenbrun, *The Cultural, Political, and Legal Climate Behind the Fight to Stop Trafficking in Women: William J. Clinton’s Legacy to Women’s Rights*, 12 *CARDOZO J. L. & GENDER* 855 (2006); Susan Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?* 2 *LOY. U. CHI. INT’L L. REV.* 193 (2005), *reprinted and completely updated in* 38 *CASE W. RES. J. INT’L L.* 249 (2007); Susan Tiefenbrun, *Sex Slavery in the United States and Its Law to Stop It Here and Abroad*, 11 *WM. & MARY J. WOMEN & L.* 317 (2005); Susan Tiefenbrun, *Copyright Infringement, Sex Trafficking, and Defamation in the Fictional Life of a Geisha*, 10 *MICH. J. GENDER & L.* 327 (2004); Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2001 *UTAH L. REV.* 107 (2002); Tiefenbrun, *supra* note 1, at 161.

5. U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (2001) [hereinafter Palermo Protocol].

6. *Id.* art. 3(a).

7. *Id.* art. 3(c). In the Palermo Protocol a “child” is any person under eighteen years of age. *Id.* art. 3(d). The definition of a “child” is controversial because the age that determines when a child becomes an adult differs in several international treaties.

tion, and movement within a country or across a border.<sup>8</sup> A child soldier is “trafficked” when there is forced recruitment or no genuine voluntary recruitment; when the recruitment is done without the informed consent of the person’s parent or legal guardians; and when such persons were not fully informed of the duties involved in the military service.<sup>9</sup> Child soldiering is a form of child trafficking because the acts required of a child soldier are dangerous enough to interfere with a child’s fundamental human right to education, health, and development.<sup>10</sup>

The abduction and employment of children as soldiers is a form of exploitative labor that is tantamount to slavery. Child soldiering is listed as “one of the worst forms of child labor” in the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (“ILO Worst Forms of Child Labour Convention 182”).<sup>11</sup> In the ILO Worst Forms of Child Labour Convention 182, child soldiering is included as a form of slavery on the same list as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”<sup>12</sup>

The trafficking of child soldiers is directly connected to sexual violence and the sexual exploitation of children who are mainly, but not exclusively, young girls.<sup>13</sup> “Child sexual exploita-

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8. See Valentine, *supra* note 2, at 116-19.

9. See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, Annex I, art. 3, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000) (entered into force Feb. 12, 2002) [hereinafter Children in Armed Conflict Protocol]; see also Jisha S. Vachachira, U.N. Reports, *Report 2002: Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 18 N.Y.L. Sch. J. Hum. Rts. 543 (2002).

10. See generally Rebecca Rios-Kohn, *The Convention on the Rights of the Child: Progress and Challenges*, 5 GEO. J. ON FIGHTING POVERTY 139 (1998).

11. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (I.L.O. No. 182), arts. 1-3, June 17, 1999, 38 I.L.M. 1207, 1208 (1999) [hereinafter ILO Worst Forms of Child Labour Convention 182].

12. See *id.* art. 3; see also Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Recommendation 190), art. 12(a), June 17, 1999, 38 I.L.M. 1211, 1213 available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm> [hereinafter ILO Recommendation 190].

13. See UZODINMA IWEALA, BEASTS OF NO NATION 83-85 (2005) for a description of

tion” is defined as a situation in which an individual takes “unfair advantage of some imbalance of power between themselves and another person under the age of eighteen in order to sexually use them.”<sup>14</sup> The United Nations Children’s Fund (“UNICEF”) draws attention to the economic benefits of child sexual exploitation when “a second party benefits, through making a profit or through a *quid pro quo*, through sexual activity involving a child.”<sup>15</sup> The exploitation of child soldiers is typically accompanied by brutality and sexual violence. “Child soldiers serve within militaries and armed groups in which complete cooperation and obedience is demanded, in contexts where moral and legal safeguards against their abuse may have broken down. In this context sexual violence becomes sexual exploitation.”<sup>16</sup>

Very often children are abducted from one place to another (from their home to a camp where they are trained and then to a field of combat).<sup>17</sup> But children do not have to actually cross a border to be trafficked. If they are moved within their own country and forced to engage in exploitative labor like dangerous armed combat, this constitutes child trafficking.<sup>18</sup>

Thus, using children against their will to engage in armed combat involves human trafficking and unfair labor practices that rise to the level of child slavery. Slavery is one of the most heinous crimes imaginable, especially when it is inflicted on the most vulnerable victims—our children.

### B. *Extent of Child Soldiering Worldwide*

Children who are on the move because they are displaced and impoverished by war or civil unrest are particularly vulnera-

a young boy soldier who is sodomized and forced to engage in sex with his male Commander on a regular basis.

14. Julia O’Connell Davidson, *The Sex Exploiter*, SECOND WORLD CONGRESS AGAINST THE SEXUAL EXPLOITATION OF CHILDREN 8, 8-9 (2001), available at [http://www.csecworldcongress.org/PDF/en/Yokohama/Background\\_reading/Theme\\_papers/Theme%20paper%20The%20Sex%20Exploiter.pdf](http://www.csecworldcongress.org/PDF/en/Yokohama/Background_reading/Theme_papers/Theme%20paper%20The%20Sex%20Exploiter.pdf).

15. UNICEF, *supra* note 2, at 27.

16. LISA ALFREDSON, SEXUAL EXPLOITATION OF CHILD SOLDIERS: AN EXPLORATION AND ANALYSIS OF GLOBAL DIMENSIONS AND TRENDS 1 (2001), available at [http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5RPBPA/\\$FILE/csusc-exploit.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5RPBPA/$FILE/csusc-exploit.pdf?OpenElement).

17. See Marsha L. Hackenberg, *Can the Optional Protocol for the Convention on the Rights of the Child Protect the Ugandan Child Soldier?*, 10 IND. INT’L & COMP. L. REV. 417, 426 (2000).

18. See Valentine, *supra* note 2, at 116-19.



ble for abduction and forced child soldiering. In 2000, about thirteen million children were displaced as a result of warring conflicts.<sup>19</sup> During the civil war that lasted seventeen years in Sierra Leone, more than one million children were displaced, and twenty-five thousand children (some as young as six)<sup>20</sup> were abducted and forced to become members of armed groups.<sup>21</sup> The recruitment of children into armed conflict has claimed the lives of more than two million children, left more than six million children maimed or permanently disabled, caused one million children to be orphaned, afflicted ten million children with serious psychological trauma, and made twelve million children refugees.<sup>22</sup> Currently, over three hundred thousand children, most of them ranging in ages from eleven to fifteen, are serving as child soldiers in fifty countries in every region of the world.<sup>23</sup> With so many countries recruiting children by force, deception, and coercion to serve in armed conflicts, it is fair to say that children of today are “the world’s most endangered species.”<sup>24</sup>

While the participation of children in armed conflict is not new—it occurred in World War II<sup>25</sup>—child soldiering today is a widespread phenomenon, prevalent particularly in developing countries where political, economic, and social instability are more commonplace and where approximately half the population are children.<sup>26</sup> Save the Children reported that hundreds of thousands of under-age soldiers are currently being forced to fight around the world, despite guidelines set forth ten years ago

19. See generally Colin MacMullin & Maryanne Loughry, *Investigating Psychosocial Adjustment of Former Child Soldiers in Sierra Leone and Uganda*, 17 J. REFUGEE STUD. 460 (2004).

20. See Payam Akhavan, *The Lord’s Resistance Army Case: Uganda’s Submission of First State Referral to the International Criminal Court*, 99 AM. J. INT’L L. 403, 407 (2005). See generally Nsongurua J. Udombana, *War is Not Child’s Play! International Law and the Prohibition of Children’s Involvement in Armed Conflicts*, 20 TEMP. INT’L & COMP. L.J. 57 (2006).

21. See MacMullin & Loughry, *supra* note 19, at 461.

22. See Udombana, *supra* note 20, at 67-68.

23. See generally Abigail Leibig, *Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection?*, 3 NW. U. J. INT’L HUM. RTS. 6 (2005).

24. Udombana, *supra* note 20, at 68.

25. See P.W. SINGER, CHILDREN AT WAR 14-15 (2005). “The Hitler Jugend were young boys who had received quasi-military training as part of a political program to maintain Nazi rule through indoctrination. . . . Hitler’s regime ordered these boys to fight as well. . . . Lightly armed and mostly sent out in small ambush squads, scores of Hitler Jugend were killed in futile skirmishes, all occurring after the war had essentially been decided.” *Id.*

26. See MacMullin & Loughry, *supra* note 19, at 460.

in the Cape Town Principles<sup>27</sup> of 1997 that established eighteen as the minimum age for recruitment.<sup>28</sup> Children have served in government forces, paramilitaries or in opposition forces in Colombia, Mexico, Peru, Turkey, Yugoslavia, Algeria, Angola, Burundi, Chad, Democratic Republic of Congo, Eritrea, Ethiopia, Rwanda, Sierra Leone, Somalia, Sudan, Uganda, Afghanistan, Iran, Iraq, Israel and the Occupied Territories, Lebanon, India, Indonesia, Myanmar, Nepal, Pakistan, the Philippines, Solomon Islands, Papua New Guinea, Sri Lanka, East Timor, Tajikistan, and Uzbekistan.<sup>29</sup> The use of child soldiers is still occurring in the Western Hemisphere,<sup>30</sup> Europe,<sup>31</sup> Africa,<sup>32</sup> the Middle East, Central Asia,<sup>33</sup> and Asia.<sup>34</sup> Today fighting forces

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27. UNICEF, CAPE TOWN ANNOTATED PRINCIPLES AND BEST PRACTICE ON THE PREVENTION OF RECRUITMENT OF CHILDREN INTO THE ARMED FORCES AND DEMOBILIZATION AND SOCIAL REINTEGRATION OF CHILD SOLDIERS IN AFRICA (1997), available at [http://iggi.unesco.or.kr/web/iggi\\_docs/02/952579100.pdf](http://iggi.unesco.or.kr/web/iggi_docs/02/952579100.pdf) [hereinafter CAPE TOWN ANNOTATED PRINCIPLES]

28. See Nick Tattersall, *Child Soldiers Still Recruited 10 Years After Pact*, REUTERS, Feb. 5, 2007, available at [http://www.reuters.com/article/homepageCrisis/idUSL05604214\\_CH\\_2400](http://www.reuters.com/article/homepageCrisis/idUSL05604214_CH_2400).

29. See Human Rights Watch, *Where Child Soldiers Are Being Used*, <http://www.hrw.org/campaigns/crp/where.htm> (last visited Oct. 25, 2007).

30. See SINGER, *supra* note 25, at 16.

In the Americas since 1990, child soldiers have fought in Colombia, Ecuador, El Salvador, Guatemala, Mexico (in the Chiapas conflict), Nicaragua, Paraguay, and Peru. The most substantial numbers are in Colombia. There, more than eleven thousand children are being used as soldiers . . . one out of every four irregular combatants is underage. . . . Child soldiers in Colombia are nicknamed 'little bells' by the military that use them as expendable sentries and 'little bees' by the FARC guerrillas, because they 'sting' their enemies before they know they are under attack.

*Id.*

31. See *id.* at 18-19.

On the European continent, children under eighteen years of age have served in both British government forces and their opposition in Northern Ireland and on all sides in the Bosnian conflict. . . . It is in Turkey, though, where the most child soldiers in Europe are found, in the Kurdish Workers' Party ("PKK"). . . . In 1998 it was reported that the PKK had three thousand underage children within its ranks, with the youngest reported PKK fighter being an armed seven-year-old. Ten percent of these were girls.

*Id.*

32. See *id.* at 19-21. Countries in Africa that employ child soldiers include Sierra Leone, Angola, Liberia, Uganda, Rwanda, Burundi, Kenya, Central African Republic, Tanzania, Congo-Brazzaville, Ivory Coast, Ethiopia, and Democratic Republic of the Congo. See *id.*

33. See *id.* at 21-22, 24. Today, children are fighting in Algeria, Azerbaijan, Egypt, Iran (even though it is against *Shari'a* law), Iraq, Lebanon, Sudan, Tajikistan, and Yemen, including children younger than fifteen serving in a number of radical Islamic

still recruit child soldiers in Afghanistan, Chad, Colombia, Democratic Republic of Congo, Ivory Coast, Myanmar, Nepal, the Philippines, Sri Lanka, Somalia, Sudan and Uganda.<sup>35</sup> Graca Machel, the former first lady of Mozambique and the wife of Nelson Mandela, who served as a special expert for the United Nations on the issue of child soldiers, wrote a ground breaking report on child soldiering, summing up the extent of the use of child soldiers and its significance:

These statistics are shocking enough, but more chilling is the conclusion to be drawn from them: more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.<sup>36</sup>

### C. Abuses of Child Soldiers

Child soldiers are subjected daily to dehumanizing atrocities. They are often abducted from their own home, tortured, indoctrinated with brutality, forced to become intoxicated with mind-altering drugs, threatened with death and/or dismemberment if they don't fight, forced to return to their own village to witness or participate in the death or disfigurement of their own family members, required to kill friends who don't obey the commanders, and made to watch the punishment of other child soldiers who attempt in vain to escape.

Child soldiers are brainwashed thoroughly and brutally until their ethics and moral values become so distorted that they

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groups, and Palestine. Sudan has the largest use of child soldiers in the region, and as many as 100,000 children have served on both sides of the civil war. *See id.*

34. *See id.* at 26-27. The practice of child soldiers is highly prevalent in Asia especially in Cambodia, East Timor, India, Indonesia, Laos, Myanmar, Nepal, Pakistan, Papua New Guinea, the Philippines, Sri Lanka, and the Solomon Islands. Myanmar alone has more than 75,000 child soldiers, one of the highest numbers of any country in the world with some as young as eleven. *See id.* at 27.

35. *See* Tattersall, *supra* note 28, at 1.

36. Expert of the Secretary-General, Ms. Graca Machel, *Impact of Armed Conflict on Children*, ¶ 5, delivered to the General Assembly, U.N. Doc. A/51/306 (Aug. 26, 1996), [hereinafter Machel Report].

believe doing evil is good. One twelve-year-old child in Columbia described the leadership's obsession with the virtues of killing:

If you join the paramilitaries [the AUC in Colombia,] your first duty is to kill. They tell you, 'Here you are going to kill.' From the very beginning, they teach you how to kill. I mean when you arrive at the camp, the first thing they do is kill a guy, and if you are a recruit they call you over to prick at him, to chop off his hands and arms.<sup>37</sup>

Brainwashing is accomplished by desensitizing children to the sight and commission of atrocities. Some children who try to escape are reportedly boiled alive, and the other child soldiers are then forced to eat the human flesh as part of their training.<sup>38</sup> Other child soldiers who manage to escape have reported that while they were at the training camp they were forced to beat the dead body of a captured escapee and "smear themselves with his blood."<sup>39</sup> Rebels keep the children obedient through frequent beatings, threats of death, and threats of retaliation against the children's family members.<sup>40</sup>

Young girls are abducted as well and make up forty percent of the ranks of armed groups in some countries.<sup>41</sup> In El Salvador, Ethiopia, and Uganda, almost a third of the child soldiers are young girls,<sup>42</sup> who are raped, enslaved, given to military commanders as "wives," and victimized by sexual violence on a daily basis. Girl soldiers encounter serious abuse, including forced pregnancy. During the 1990s over eight hundred children were born to the Lords' Resistance Army ("LRA") "wives" who were concentrated at Jabein camp in southern Sudan.<sup>43</sup> Girl soldiers are often used as domestic servants and sex slaves during

37. HUMAN RIGHTS WATCH, *YOU'LL LEARN NOT TO CRY: CHILD COMBATANTS IN COLUMBIA* 95 (2003), available at <http://www.hrw.org/reports/2003/colombia0903/colombia0903.pdf>.

38. See *Justice Versus Reconciliation: Hunting Uganda's Child-Killers*, *ECONOMIST*, May 7, 2005, at 41.

39. See *I Don't Know Why They Did It*, *NEWS 24* (S. Afr.), Oct. 6, 2005, [http://www.news24.com/News24/Africa/Features/0,,2-11-37\\_1719250,00.html](http://www.news24.com/News24/Africa/Features/0,,2-11-37_1719250,00.html).

40. See HUMAN RIGHTS WATCH, *THE SCARS OF DEATH* 37 (1997), available at <http://www.hrw.org/reports97/uganda/>.

41. See U.N. Office for the Coordination of Humanitarian Affairs, *AFRICA: Fighting for Children*, IRIN, Feb. 7, 2007, <http://irinnews.org/report.aspx?reportid=70016> [hereinafter *AFRICA: Fighting for Children*].

42. See Leibig, *supra* note 23, at 6.

43. See Akhavan, *supra* note 20, at 408.

conflict, and when they become infected with HIV, they are usually not treated. These victimized girl soldiers require rehabilitation and special attention after their demobilization.<sup>44</sup>

These children who are trained to be fearless actually become dangerous, killing machines. Anyone seeing them in action is naturally stunned into disbelief and is likely to wonder why these children kill, maim, and dismember their own friends and relatives. The answer is quite simple. Child soldiers are pumped up on drugs to make them fearless.<sup>45</sup> These drugs are no doubt trafficked into the country for a hefty sum. Powerless and abandoned children are empowered with small, light weapons and indoctrinated with brutality into the virtues of committing wartime atrocities. These small weapons are trafficked into the country at a substantial cost. Young girls are also trafficked to service the commanders and even the boy child soldiers. The money earned from one form of trafficking typically supplies the goods and services of the other form of trafficking in a complex network that constitutes a lucrative trafficking industry run by international organized crime groups.

These children are victims of inhumane brainwashing and merciless combat training that makes them robotically obey orders to kill innocent victims, just to stay alive. These children undergo a terrifying initiation that consists of killing or raping a close relative. They are forced to participate in acts of extreme violence and barbarity including beheadings, amputations, rape, and the burning of people alive.<sup>46</sup> The LRA in Uganda initiates children into its gang by forcing them "to club, stamp or bite to death their friends and relatives, and then to lick their brains, drink their blood and even eat their boiled flesh."<sup>47</sup> The LRA slices off the lips and noses of children it suspects of disloyalty.<sup>48</sup> The children of Uganda are reportedly so frightened about be-

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44. See *AFRICA: Fighting for Children*, *supra* note 41.

45. See Ishmael Beah, *The Making, and Unmaking of a Child Soldier*, *N.Y. TIMES MAG.*, Jan. 14, 2007, at 7 ("I smoked marijuana, ate and snorted cocaine and brown brown. That was all I did for a few days before we went back to the new base we had captured.").

46. See Akhavan, *supra* note 20, at 408; see also ISHMAEL BEAH, *A LONG WAY GONE: MEMOIRS OF A BOY SOLDIER* (2007); *Justice Versus Reconciliation: Hunting Uganda's Child-Killers*, *supra* note 38, at 41.

47. See *Justice Versus Reconciliation: Hunting Uganda's Child-Killers*, *supra* note 38; see also Udombana, *supra* note 20, at 68.

48. See *Justice Versus Reconciliation: Hunting Uganda's Child-Killers*, *supra* note 38.

ing abducted and enslaved by the LRA that they do not sleep at home, preferring instead to become “night commuters”<sup>49</sup> who travel alone or in groups every night to “protected villages” where “they sleep on verandas, in bus parks, on church grounds” for safety.<sup>50</sup>

#### D. *Organization of Article*

Despite a proliferation of laws—international human rights treaties, conventions prohibiting slavery, labor laws, trafficking laws and laws of war that provide special protection for civilian children who are particularly vulnerable—the trafficking and the use of children as soldiers is increasing! This Article will examine the complex relationship of human trafficking, slavery, and child soldiering. Part I will examine the root causes of the development and expansion of the use of child soldiers. Part II will examine the international and domestic laws and instruments that protect against the use of children as soldiers. Part III will examine some literary representations of the crime of child soldiering in order to raise the readers’ awareness of the depths of this atrocity. Part IV will conclude by offering practical suggestions and economic solutions to make these legal instruments more effective. Children are humanity’s most valuable investment in the future, and it is the obligation of the adult world to protect them effectively.

### I. *THE ROOT CAUSES OF THE USE OF CHILD SOLDIERS*

#### A. *Voluntary and Forced Recruitment of Children*

Children’s recruitment in armed conflict is either by force (conscription) or voluntary (enlistment), even though voluntary recruitment is often coupled with hidden forms of coercion. Armed militia, police, or army cadres arbitrarily seize young re-

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49. See Amnesty Int’l, *UGANDA: Child “Night Commuters”*, AI Index AFR 59/013/2005, Nov. 18, 2005, available at <http://web.amnesty.org/library/print/ENGAFR590132005>. “We come to the shelter because I fear being abducted again. I was eight years old then. I do not want my brothers and sisters to be abducted as I was. We walk fast in the night to be here.” *Id.*; see also Amnesty Int’l, *UGANDA: Child “Night Commuters” Fear Abduction*, AI Index AFR 59/016/2005, Nov. 18, 2005, available at <http://web.amnesty.org/library/print/ENGAFR590162005>. “Some walk for several kilometers, without the protection of adult family members . . . . All risk harassment, physical abuse, sexual exploitation and rape on the way.” *Id.*

50. Akhavan, *supra* note 20, at 409.

cruits from the streets, schools, and orphanages.<sup>51</sup> Children forcibly recruited cannot exercise a choice or give their consent to serve in armed conflict. Nevertheless, consent is the key element required to determine whether the recruitment of children for armed conflict actually constitutes trafficking and not just the smuggling of migrants, in accordance with the definition of trafficking set forth in the Palermo Protocol.<sup>52</sup> If a child is voluntarily recruited and takes up arms “consensually,” he or she may not be protected under the trafficking statutes.

Various factors in a child’s environment may cause her to join an armed group voluntarily. The child’s parental and family background, peer groups, school, and religious community can strongly influence his decision to fight.<sup>53</sup> Poverty, ignorance, illiteracy, intellectual and developmental immaturity, and a lack of formal education prevent children from making an informed choice or even understanding why they are fighting.<sup>54</sup> Children without schooling are prone to recruitment, like the many children in Sierra Leone who were without schooling for several years after 1997 when three hundred schools were closed due to damage or destruction.<sup>55</sup> Children often lack the capacity to determine their best interests, to form opinions, and to analyze competing ideologies.<sup>56</sup> This is why the element of “consent” required to determine whether or not a child is “trafficked” is complex and should not be determinative.

### B. *Why Children Become Soldiers*

Several interrelated factors explain the underlying causes of the rise in the abduction and use of child soldiers. Social disruptions and governmental failures to protect children and adults have been attributed to globalization, to the increase in the number and length of wars, and to the spread of fatal diseases

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51. See Mike Wessells, *Child Soldiers: In Some Places, If You’re as Tall as A Rifle, You’re Old Enough to Carry One*, BULL. ATOM. SCI., Nov. 21, 1997, at 32.

52. See Palermo Protocol, *supra* note 5, art. 3(a); see also Valentine, *supra* note 2, at 117. See *infra* text accompanying notes 306-08 for discussion of “consent” in *Prosecutor v. Dyilo* (ICC, Jan. 29, 2007).

53. See Machel Report, *supra* note 36, at 36.

54. See Wessells, *supra* note 51, at 39; see also Tiffany A. Richards, *The War is Over But the Battle Has Just Begun: Enforcing A Child’s Right to Education in the Wake of Armed Conflict*, 23 PENN ST. INT’L L. REV. 203, 205-06 (2004).

55. See Valentine, *supra* note 2, at 120.

56. See Udombana, *supra* note 20, at 63-64.

like AIDS, all of which create familial and generational disconnections leaving many potential child recruits available for abduction. The social and psychological effects of war can create a need for children to join a group, especially one like an army that promises to provide relative security and stability, a sense of power, and acceptance by peers and authority figures. There are also purely military advantages of using children as soldiers in war. Technological improvements and the proliferation of thin, small, and light-weight weapons like assault rifles, machine guns, pistols, and hand grenades have enabled child soldiers to engage effectively in warfare. The huge number of children available and the military successes of these child soldiers have accelerated the trend toward recruiting young soldiers.<sup>57</sup> The rise of a new type of armed warfare that is more brutal and lasts much longer than typical wars has encouraged military leaders to rationalize the forced recruitment and use of children as a low cost military measure that enables them to mobilize and generate force.<sup>58</sup>

### C. *Changes in Family and Ethical Values*

A serious and pervasive change in family and ethical values is one of the most significant factors causing the rise in the use of child soldiers. In many countries children are devalued in the family and in society at large. Children do not occupy the center of the life of the family. They do not represent a precious hope for the future. In some countries children are considered less than human, expendable, invisible, especially in the midst of an overwhelming cult of death and martyrdom that developed during the Iran-Iraq War and continues today in many parts of the world. The lack of respect and the marginalization of children are no doubt two of the most pernicious causes of the increased use of child soldiers. This perverse ethos that devalues and dehumanizes children will be particularly difficult to eradicate.

### D. *Globalization*

Globalization involves travel, trade, and the displacement of families, all of which affect children.<sup>59</sup> Socio-economic

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57. See Valentine, *supra* note 2, at 119.

58. See SINGER, *supra* note 25, at 38.

59. *Id.* at 38-39.



problems associated with globalization impact children because of their vulnerability and dependency on adults for survival. Despite the advancement of technology in the modern global community, today there are unprecedented numbers of children around the world who are undereducated, malnourished, marginalized, and disaffected.<sup>60</sup> Desperate children who are excluded from the protection of their family for various reasons constitute an available pool of cheap labor for the traffic of weapons, drugs, and humans. The three most serious and lucrative international crimes today are the traffic of weapons, drugs, and humans in that order. Each of these crimes is intricately involved in the abduction and exploitation of children in armed conflict. These crimes are very profitable, and money earned from one form of trafficking (*e.g.* weapons) helps finance the trafficking of the other (child soldiering). Trafficking is run by powerful international organized crime groups that are in the trafficking business for reasons of pure profit.<sup>61</sup> Thus, the exploitation of the population of child soldiers drives a new “economy of war.”<sup>62</sup>

#### E. AIDS and Orphans

The AIDS epidemic has created another available pool of orphans and abandoned children. Many children who have lost their parents and siblings due to the scourge of AIDS are especially susceptible to the lure of child soldiering.<sup>63</sup> Many orphans have actually watched their parents die and were forced to fend for themselves at a very young age in an unusually dangerous environment. In this context, the structure of an army setting can provide orphans with the false sense of belonging to a community, an escape from loneliness, and the hope of more security and stability in a country at war.

#### F. Increase in the Use of Small Personal Weapons

Amidst the current dissolution of traditional notions of the family and the socio-economic disconnections that wars invaria-

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60. *Id.* at 39.

61. See Tiefenbrun, *The Saga of Susannah*, *supra* note 4, at 139.

62. See UNICEF, CHILDREN AFFECTED BY ARMED CONFLICT: UNICEF ACTIONS 3 (2002).

63. See SINGER, *supra* note 25, at 42.

bly produce, people and especially children are scrambling for self-protection and a sense of security. For this reason there has been a proliferation of the sale of technologically advanced personal weaponry.<sup>64</sup> There are an estimated five hundred million small arms sold globally, one small weapon for every twelve persons.<sup>65</sup> The increased use of small personal weapons reflects the instability of the world and the development of a generalized sense of fear among people. The proliferation of small weapons facilitates the expanded use of children in armed combat.

### G. *Changes in the Nature of Warfare*

Conflicts around the globe are characterized not as temporary outbreaks of instability but rather as long, protracted states of mass violence and disorder.<sup>66</sup> Today's wars involve the organized and systematic use of mass violence and the blurring of distinctions between traditional conceptions of war, organized crime, and large scale violations of human rights.<sup>67</sup> Vulnerable, abandoned and orphan children are now more readily available and easily transformed into willing combatants. Since the leaders of combatants may not concern themselves with public opinion, human rights, or decency,<sup>68</sup> they invariably seize upon impressionable and obedient young children as a cost-saving military measure. Thus, the doctrine of child soldiers and child exploitative employment in armed conflict is justified as a new and less expensive way of engaging in combat.<sup>69</sup>

Long wars lead to many casualties and cause shortages in manpower that some governments believe can be remedied by the involuntary recruitment of children. In Africa, conflicts are very long, and there is evidence of the extensive use of children in these conflicts in order to fill the ranks of adult casualties. Sudan has been fighting a continuous civil war since 1956, with Darfur being the latest area of conflict rising to the level of genocide. Children were recruited during the Angolan conflict that

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64. *See id.* at 45.

65. *See* Charles Cobb, *Africa: Arms and Africa on UN Agenda This Week*, ALL AFR. (S. Afr.), July 9, 2001, available at <http://allafrica.com/stories/200107090396.html>.

66. *See* SINGER, *supra* note 25, at 52.

67. *See* MARY KALDOR, *NEW AND OLD WARS: ORGANIZED VIOLENCE IN A GLOBAL ERA* 1 (1999).

68. *See* SINGER, *supra* note 25, at 53.

69. *See id.*

lasted over thirty years. The use of children as soldiers enables wars to continue indefinitely. "War children have difficulty turning into peace children and this, itself, may contribute to prolonging conflicts and a serious erosion of local value systems."<sup>70</sup>

The use of child soldiers can change the very nature of the way wars are traditionally fought. Children are more likely to violate the rules of war due to their young age and diminished capacity to appreciate the consequences of their actions.<sup>71</sup> "The greater suggestibility of children and the degree to which they can be normalised (sic) into violence means that child soldiers are more likely to commit atrocities than adults."<sup>72</sup> In fact, the use of child soldiers may erode the applicability and effectiveness of well-established laws of war.

#### H. *Military Reasons for the Use of Child Soldiers*

Children are often recruited as soldiers for purely military reasons. The technological advances in weaponry and the prevalent use of small arms and light weapons facilitate the increasing use of child soldiers. Such weapons allow small children to shoot steady streams of bullets with the mere pull of the trigger. Presently, there is no universal treaty addressing the use of small arms and light weapons.<sup>73</sup> Children are recruited because they are small and can be used as guinea pigs by their leaders who force them to the front lines or to minefields ahead of older troops while their commanders stay behind.<sup>74</sup>

#### I. *Social and Psychological Causes of the Use of Child Soldiers*

Children may "volunteer" to go to war for many reasons. Some children have witnessed the brutal death of their own close family members, and they simply want revenge. Some children have grown up in a chronic state of conflict in a country constantly at war, and they know no other way of life. They may

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70. See Udombana, *supra* note 20, at 71.

71. See FRANCOISE J. HAMPSON, UNIV. ESSEX CHILD AND ARMED CONFLICT UNIT, LEGAL PROTECTION AFFORDED TO CHILDREN UNDER INTERNATIONAL HUMANITARIAN LAW § 3 (1996), available at <http://www.essex.ac.uk/armedcon/international/comment/Text/paper002.htm>

72. See RACHEL BRETT & MARGARET MCCALLIN, CHILDREN: THE INVISIBLE SOLDIERS 25 (Rädda Barnen ed., 1998).

73. See Udombana, *supra* note 20, at 66-67.

74. See Akhavan, *supra* note 20, at 408.

be influenced to fight out of a sense of loyalty to their community.<sup>75</sup> Children who volunteer may do so out of fear of abduction and reprisals by the armed group just because they appear to be unwilling to fight for their country.

Children may seem to go to war “voluntarily” even though they may have actually been coerced and sold out to the armed group by their own poor and hungry parents.<sup>76</sup> Many of these parents do not understand the danger they are subjecting their child to by making them join the army. Some parents may encourage their daughters to become soldiers if their marriage prospects are poor.<sup>77</sup>

In the chaotic environment of a country in armed conflict, children’s survival skills instinctively start to work. They seek stability and three square meals a day. They may simply be making an “intuitive choice for the better of the bad alternatives.”<sup>78</sup> Many of them are abandoned street children who crave physical protection and relief from abject poverty and loneliness. Like any normal child, a voluntary child soldier needs identification with a peer group. These powerless children search for acceptance, a sense of competence, and the sheer adventure associated with the glory and power of victory in armed conflict.<sup>79</sup> The United Nations Educational, Scientific and Cultural Organization (“UNESCO”) reports that “regardless of age, gender, or how they are recruited, child soldiers disproportionately come from the poor and marginalized segments of society, isolated rural areas, the conflict zones themselves, and from disrupted or non-existent family backgrounds.”<sup>80</sup>

### J. *Economic Reasons for the Use of Child Soldiers*

Sadly, children are recruited because they are perceived as cheap labor and expendable. They are obedient, fast to indoctrinate and to control, physically vulnerable, and easily intimidated.<sup>81</sup> Young adolescents reportedly have a sense of their own omnipotence and “view themselves as invulnerable to harm and

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75. See Udombana, *supra* note 20, at 63.

76. See *id.* at 64.

77. See *id.*

78. *Id.*

79. See *id.*

80. *Id.*

81. See *id.* at 67.

injury.”<sup>82</sup> Thus, some believe it is arguably economically efficient to use children as soldiers.

These are some of the social, cultural, psychological, military and economic root causes for the use of voluntary and forcibly conscripted child soldiers. Taking this larger context into consideration, the very concept of the “voluntary” recruitment of children into armed conflict is arguably discussable and clearly subject to interpretation. Children lack the capacity to determine their best interests, to form independent opinions or to analyze competing ideologies.<sup>83</sup> One may legitimately question whether a child living in a war-torn nation has the freedom of choice to go to war.<sup>84</sup> A culture of violence defines their childhood experiences, and the militarization of that culture may incite them to participate “voluntarily.”<sup>85</sup> This complex issue of consent and the “voluntary” recruitment of child soldiers is crucial to the determination of whether child soldiers who are forced to fight out of fear for their lives should be held accountable in a court of law for the atrocities they commit.

#### K. *Treatment of Child Soldiers as Criminals*

Child soldiers who commit atrocities because they are coerced out of fear of death are being arrested and convicted of war crimes.<sup>86</sup> These children are often treated as if they were adults simply because indoctrinated child soldiers do not look like children and have often committed atrocities together with adults.<sup>87</sup> For example, in January 1999, the Ugandan army executed five teenage boys between the ages of fourteen and seventeen suspected of being rebel soldiers, although such actions were not believed to be characteristic of the government forces.<sup>88</sup> In Colombia, child soldiers are not afforded special le-

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82. B.J. SADOCK & V.A. SADOCK, KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY 38 (Lippincott Williams & Wilkins, 9th ed. 2003).

83. See Amy Beth Abbott, *Child Soldiers—The Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L. REV. 499, 517 (2000).

84. See *id.*

85. See *id.* at 517-18.

86. See generally, Manisuli Ssenyonjo, *Accountability of Non-State Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the International Criminal Court*, 10 J. CONFLICT & SECURITY L. 405 (2005).

87. See Stephanie H. Bold, Note, *Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for its Children?*, 18 AM. J. INT'L. L. REV. 537, 552 (2002).

88. See Valentine, *supra* note 2, at 128.

gal status or treatment.<sup>89</sup> In Rwanda, in 1999 the International Committee of the Red Cross reported that approximately 570 children under the age of fourteen were incarcerated on genocide-related charges and still remain in the prison system.<sup>90</sup> In a leading neurology law brief filed by the American Medical Association (“AMA”) and other groups, the AMA argued, and Justice Anthony Kennedy agreed, that “adolescent brains are not fully developed in the prefrontal regions, and adolescents are less able than adults to control their impulses and should not be held fully accountable for the immaturity of their neural anatomy.”<sup>91</sup>

## II. LAWS RELATING TO THE USE OF CHILD SOLDIERS

### A. Introduction

The use and abduction of child soldiers is an international crime and a heinous human rights violation that is caught in the intersection of four different but related areas of the law: children’s rights, slavery, human trafficking, and exploitative child labor. Child soldiers are protected under international human rights laws, international humanitarian laws (*i.e.* laws of war), international criminal laws, and international labor laws.<sup>92</sup>

The first international instrument to address specifically the legal rights of children was The United Nations Convention on the Rights of the Child (“CRC”)<sup>93</sup> enacted in 1989. The CRC was amended to include two Optional Protocols: The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (“Children in Armed Conflict Protocol”)<sup>94</sup> and The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (“Sale of

89. *See id.*

90. See U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: RWANDA (2000), available at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/index.cfm?docid=720>; see also Judith Matloff, *Rwanda’s Bind: Trying Children for Genocide*, CHRISTIAN SCIENCE MONITOR, Jan. 28, 1997.

91. Jeffrey Rosen, *The Brain on the Stand: How Neuroscience is Transforming the Legal System*, N.Y. TIMES MAG., Mar. 11, 2007, at 48, 51.

92. See Udombana, *supra* note 20, at 70-90 for a complete analysis of the laws that cover child soldiering.

93. Convention on the Rights of the Child, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

94. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, Annex I, U.N. GAOR, 54th

Children Protocol").<sup>95</sup> The Children in Armed Conflict Protocol amends the CRC's minimum age for recruitment of persons into the armed forces from fifteen to eighteen years of age<sup>96</sup> on the theory that the CRC's age of fifteen as the standard for recruitment does not adequately protect children and in fact appears to have encouraged more recruitment, as evidenced by the increasing number of child soldiers.<sup>97</sup> The Children in Armed Conflict Protocol also urges States Parties to take "all 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."<sup>98</sup>

Before the adoption of the CRC and its subsequent two Protocols, many treaties were enacted to eradicate slavery, some of which specifically address the special needs of enslaved children. The international community has repeatedly condemned slavery and involuntary servitude. Community condemnations are manifested in the form of declarations, treaties, and United Nations resolutions and reports. They include, but are not limited to, the following legal instruments: The Universal Declaration of Human Rights of 1948,<sup>99</sup> whose non-binding aspirations were given force in 1966 by the passage of the International Covenant on Civil and Political Rights<sup>100</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>101</sup> all of which condemn slavery. The 1904 International Agreement for the Suppression of the White Slave Traffic<sup>102</sup> was amended by the 1910 International Convention for the Suppression of White Slave

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Sess., U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter Children in Armed Conflict Protocol].

95. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (Jan. 18, 2002) [hereinafter Sale of Children Protocol].

96. See Children in Armed Conflict Protocol, *supra* note 94, art. 1.

97. See Udombana, *supra* note 20, at 90.

98. Children in Armed Conflict Protocol, *supra* note 94, art. 1.

99. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71 U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration of Human Rights].

100. International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (Dec. 16, 1966).

101. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (Dec. 16, 1966).

102. International Agreement for the Suppression of the White Slave Traffic, May

Traffic,<sup>103</sup> which prohibits the trafficking of women for their use as sex slaves. International concern over the increased development of slave trafficking eventually resulted in the passage of the 1926 League of Nations Slavery Convention.<sup>104</sup> Due to the continued failed enforcement of these slavery conventions, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery<sup>105</sup> was adopted in 1956 ("1956 U.N. Slavery Convention").

Earlier legal instruments like the United Nations Charter of 1945,<sup>106</sup> the 1948 American Declaration on the Rights and Duties of Man,<sup>107</sup> and the Universal Declaration of Human Rights<sup>108</sup> enacted in 1948 all prohibit slavery. Other treaties purporting to eliminate slavery include the 1930 Convention Concerning Forced or Compulsory Labour, adopted by the General Conference of the International Labour Organization,<sup>109</sup> the 1957 Abolition of Forced Labour Convention,<sup>110</sup> the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>111</sup> the Final Report of the World Congress Against Sexual Exploitation of Children (Stockholm, 1996), the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),<sup>112</sup> and the 2000 U.N. Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially

18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 [hereinafter 1904 Agreement] (commonly referred to as the "Mann" Act).

103. International Convention for the Suppression of White Slave Traffic, May 4, 1910, 2 U.S.T. 1997, 30 U.N.T.S. 23.

104. International Convention to Suppress the Slave Trade and Slavery, Sept. 24, 1926, 46 Stat. 2183 [hereinafter 1926 League of Nations Slavery Convention].

105. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3 [hereinafter 1956 U.N. Slavery Convention].

106. See U.N. Charter.

107. American Declaration on the Rights and Duties of Man, O.A.S. Res., OEA/Ser.L./V/I.4 Rev. 9 (May 2, 1948).

108. Universal Declaration of Human Rights, *supra* note 99, at III.

109. Convention Concerning Forced or Compulsory Labour (ILO No. 29), June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932).

110. Convention Concerning the Abolition of Forced Labour (ILO No. 105), June 25, 1957, 320 U.N.T.S. 291 (entered into force Jan. 17, 1959).

111. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 112 Stat. 2681, 1465 U.N.T.S. 85, 113.

112. Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), Dec. 18, 1979, 1249 U.N.T.S. 13.



Women and Children (“Palermo Protocol”).<sup>113</sup>

Despite the profusion of declarations and treaties condemning slavery, this crime still exists today in the form of human trafficking and child soldiering. Laws protecting against child slavery have actually continued to increase because protection against slavery is included under the ambit of human trafficking laws and child sex tourism legislation. For example, the United States Victims of Trafficking Protection Act (“TVPA”)<sup>114</sup> was enacted in October 2000 to eliminate human trafficking, which is referred to as a form of slavery.<sup>115</sup>

The goals of the TVPA are to prevent human trafficking, to protect trafficked women and children who should be treated as victims and not as criminals, and to punish the perpetrators with a severe criminal sentence of thirty years in jail. Recognizing that human trafficking is an international problem requiring an international solution, the TVPA requires the United States to provide financial and educational assistance worldwide to women and children who are in danger of being trafficked. Under the threat of non-humanitarian sanctions, the TVPA requires nations to draft trafficking laws that meet the minimum standards of protection against trafficking. Similarly, the U.S. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 [“the PROTECT Act”]<sup>116</sup> has extra-territorial effect and punishes U.S. citizens engaging in sex with minors in countries abroad where sex tourism might even be legal. The TVPA and the PROTECT Act protect children all over

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113. Palermo Protocol, *supra* note 5. The Palermo Protocol was preceded by the 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (which made prostitution illegal regardless of any manifestation of consent by the person prostituted). Dec. 2, 1949, 96 U.N.T.S. 271, art. 3(a) (entered into force July 25, 2001).

114. TVPA, 22 U.S.C. § 7105 (2006). The TVPA has been reauthorized twice in 2003 and 2005. See Trafficking Victims Protection Reauthorization Act, Pub. L. No. 108-193 (codified as amended in scattered sections of the U.S.C. (2003)).

115. See Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000*, *supra* note 4, for a detailed discussion of the international dimension of the TVPA and why trafficking is a contemporary form of slavery; also see Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, *supra* note 4.

116. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended in scattered sections of the U.S.C. (2006)) [hereinafter PROTECT Act].

the world who are trafficked into slave-like conditions of forced labor, forced prostitution, or forced soldiering.

Most of the funds allocated for the TVPA and the PROTECT Act have been spent on prosecution of perpetrators. More emphasis should be placed on the prevention of trafficking while maintaining the legislative goals of victim protection and perpetrator punishment. Prevention of human trafficking, and especially the trafficking of children, must become the main focus. However, prevention of child trafficking requires worldwide consciousness raising, the establishment of a political will to eliminate the crime, radical changes in current family value systems, and the eradication of poverty which is at the root of the proliferation of armed conflicts that perpetuate child soldiering.

The increasing employment of children as soldiers is clearly a violation of international labor laws. The International Labour Organization ("ILO") establishes and supervises the application of international labor standards including standards for child labor. Child soldiering is identified as one of the worst crimes under the International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention (No. 182), enacted in 1999<sup>117</sup> and the recommended ILO Convention (No. 190).<sup>118</sup> The Minimum Age Convention of 1973<sup>119</sup> tried to eliminate child labor by requiring the completion of compulsory schooling and setting the minimum age for child labor at fifteen. The ILO Worst Forms of Child Labour Convention 182 defines a child as a person under the age of eighteen and recognizes that forced labor (*e.g.* child soldiering) is a modern variant of slavery.<sup>120</sup>

## B. *International Legal Instruments that Specifically Protect Children*

### 1. The Declaration of the Rights of the Child<sup>121</sup>

Although the Declaration of the Rights of the Child was not a binding instrument, it established aspirational norms and set

117. ILO Worst Forms of Child Labour Convention 182, *supra* note 11.

118. ILO Recommendation 190, *supra* note 12.

119. Convention Concerning Minimum Age for Admission to Employment art. 3, Jun. 26, 1973, 1015 U.N.T.S. 297.

120. ILO Worst Forms of Child Labour Convention 182, *supra* note 11, art. 3(a).

121. Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959).

forth a code for the well-being of every child.<sup>122</sup> The Declaration provided, *inter alia*, that every child should be given opportunities and facilities, by law and by other means, to enable them to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.<sup>123</sup>

## 2. United Nations Convention on the Rights of the Child ("CRC")<sup>124</sup>

The CRC is the most universally accepted human rights instrument in history.<sup>125</sup> The CRC has been ratified by every country in the world except the United States<sup>126</sup> and Somalia. By ratifying the CRC, States and their national governments express their agreement with the principles contained in the treaty and their commitment to protect children's rights by enacting measures to ensure these rights.<sup>127</sup>

The almost universal adoption of the CRC in 1989 is evidence of a profound shift in the world's thinking about children and their inalienable and definable rights.<sup>128</sup> The CRC specifically protects against child trafficking by asserting a child's right to protection from economic exploitation, child military recruitment, and participation in armed conflict.<sup>129</sup> The CRC sets the minimum age for military recruitment of children in armed conflict at age fifteen, and the CRC asks States recruiting those

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122. *See id.* at 19.

123. *See id.*; *see also* Udombana, *supra* note 20, at 79.

124. CRC, *supra* note 93.

125. *See* Rios-Kohn, *supra* note 10, at 140-41.

126. *See* Abbott, *supra* note 83, at 530 for some of the reasons why the United States refuses to ratify the CRC. According to Abbott, the United States is unwilling to change American policy. The United States recognizes that in order to sign the CRC all fifty states must harmonize their laws relating to children. The United States opposes efforts to raise the minimum age of military recruitment from seventeen to eighteen because the United States now allows seventeen-year-olds to enlist. There are other serious reasons why the United States does not want to ratify the CRC, which it believes overly regulates parents, endorses abortion, denies parents their right to inculcate children with their religious beliefs, and other complex objections.

127. *See* CRC, *supra* note 93, art. 44, ¶ 1. "States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights." *Id.*

128. *See* Udombana, *supra* note 20, at 79.

129. *See* CRC, *supra* note 93, arts. 32 & 38.

under eighteen to give priority to the eldest.<sup>130</sup> In order to prevent child trafficking, Article 35 of the CRC requires States Parties to take all appropriate national, bilateral, and multilateral measures to prevent the abduction, sale, or trafficking of children for any purpose or in any form.<sup>131</sup> Article 32 refers indirectly to the forced recruitment of child soldiers by giving children the right to protection from economic exploitation and from performing any work that is likely to be hazardous or will interfere harmfully with a child's education, health or physical, mental, spiritual, moral or social development.<sup>132</sup> But if the child is not below the minimum age allowed for employment, any work that does not interfere with a child's rights to education and development is not necessarily deemed "harmful."<sup>133</sup>

The CRC has certain anomalies and contradictions. By using the age of fifteen as the threshold for its prohibition of recruitment and by precluding only direct participation in hostilities, only those children under the age of fifteen who are conscripted forcibly are protected, and only if they are placed in "direct" combat.<sup>134</sup> Given the problematic nature of informed consent in this context, children between the ages of fifteen and eighteen who appear to have voluntarily joined armed combat as child soldiers will not be protected. The CRC's Optional Protocol for Children in Armed Combat changed the minimum age for conscription to eighteen in order to address this problem.

The general failure to enforce the stipulations of the CRC has eroded the ideological shift that we have seen toward more universal recognition of children's rights. This ideological shift is evidenced by the almost unanimous adoption of the CRC treaty. However, failure to implement the CRC has resulted in the actual diminution of children's rights manifested by an alarming increase in the use of child soldiers. For example, Article 32 of the CRC provides general protection for children from "any work that is likely to be hazardous or to interfere with the child's education."<sup>135</sup> Clearly, the participation of children between the ages of fifteen and eighteen in armed combat is, by its

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130. *See id.* art. 18.

131. *See id.* art. 35; *see also id.* art. 19.

132. *See id.* art. 32.

133. *See* Valentine, *supra* note 2, at 113.

134. *See* Udombana, *supra* note 20, at 81.

135. CRC, *supra* note 93, art. 32(1).

very nature, “hazardous” and thus constitutes a flagrant violation of Article 32 of the CRC. Moreover, the first part of Article 38 of the CRC provides: “States Parties undertake to respect and to ensure respect for the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”<sup>136</sup> In addition, specifically relating to child soldiers, Article 38 of the CRC declares: “States Parties should take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”<sup>137</sup> Even though by the year 2000, 191 States had ratified the CRC and expressed agreement thereby with the terms of Article 38, child soldiering has increased exponentially. Although global treaty ratification signifies ideological agreement that persons under fifteen should not bear arms, perpetrate violence, nor wear the uniform of any combative group in any form of political conflict in the world,<sup>138</sup> the reality on the ground is woefully far from this ideal.<sup>139</sup>

Even though the CRC recognizes a child’s inherent right to life and creates the State’s obligation to safeguard the survival and development of the child,<sup>140</sup> the CRC does not contain enforcement mechanisms, making its implementation dependent upon the domestic laws of each nation.<sup>141</sup> If the CRC is ever to move from a universal charter of idealism and aspiration to a working and implementable agreement, there must be an aware-

136. *Id.* art. 38(1).

137. The United States allows seventeen-year-olds to enlist voluntarily in the American armed forces with parental permission, but bars them from combat training until they reach eighteen years of age. See Julie R. Hirschfeld, *United States Reluctant to Endorse Minimum Age for Military*, DETROIT NEWS, Jan. 21, 1998.

138. See Jo de Berry, *Child Soldiers and the Convention on the Rights of the Child*, 575 ANNALS 92, 93 (2001).

139. *See id.*

140. CRC, *supra* note 93, art 38.

1. States parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in the hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces . . . States Parties shall endeavor to give priority to those who are oldest. 4. . . . States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

*Id.*

141. See Abbott, *supra* note 83, at 524.

ness of the contexts and horrific realities in which children come to fight,<sup>142</sup> and often well below the age of fifteen. In an attempt to strengthen the CRC and to implement the aspirations of the Declaration of the Rights of the Child, two Optional Protocols have been added to the CRC.

### 3. Optional Protocol on the Involvement of Children in Armed Conflict (“Children in Armed Conflict Protocol”)<sup>143</sup>

The Children in Armed Conflict Protocol<sup>144</sup> is the main international legal instrument that specifically addresses the use of children as soldiers, the minimum age for compulsory recruitment, voluntary recruitment, and direct participation in hostilities. The United States signed it on July 5, 2000 and ratified it on December 23, 2002, subject to some reservations, understandings, and declarations. The Children in Armed Conflict Protocol raises the minimum age from fifteen (set forth earlier in the CRC) to eighteen for direct participation in hostilities, compulsory recruitment and any recruitment by non-governmental armed groups.<sup>145</sup> Article 3(3) of the Children in Armed Conflict Protocol obligates States to maintain safeguards with respect to voluntary recruitment by ensuring that such recruitment is genuinely voluntary; by requiring informed consent of the person’s parents or legal guardians; by informing recruits of the duties involved in military service; and by requiring reliable proof of age prior to acceptance into military service.<sup>146</sup>

The Children in Armed Conflict Protocol requires States to take “all feasible measures” to ensure that members of their armed forces under the age of eighteen do not take a “direct

142. See de Berry, *supra* note 138, at 93.

143. Children in Armed Conflict Protocol, *supra* note 94.

144. See Cris R. Revaz & Jonathan Todres, *The Optional Protocols to the Convention on the Rights of the Child and the Impact of U.S. Ratification*, in THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD 293 (2006).

145. Children in Armed Conflict Protocol, *supra* note 94, art. 1. “States Parties shall take all 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”. *Id.*; see CRC, *supra* note 93, art. 4. “Armed groups distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” Children in Armed Conflict Protocol, *supra* note 94, art. 4(1); see also Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INT’L L. 789, 789 (2000).

146. Children in Armed Conflict Protocol, *supra* note 94, art. 3(3).

part in hostilities.”<sup>147</sup> Language of the Children in Armed Conflict Protocol is drawn from Article 38(2) of the CRC and from Article 77(2) of Geneva Protocol I,<sup>148</sup> both of which require States to take all “feasible measures” to ensure that children under the age of fifteen do not take a “direct part in hostilities.”<sup>149</sup> The term “direct participation in hostilities” in the context of treaties relating to the law of armed conflict has been interpreted in the Rome Statute of the International Criminal Court<sup>150</sup> as covering “both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage, and the use of children as decoys, couriers or at military checkpoints.”<sup>151</sup> For children to engage in “direct participation in combat” there has to be a direct causal relationship between the activity engaged in by the child soldier and the harm done to the enemy at the time and place where the activity takes place.<sup>152</sup> According to this standard, the Children in Armed Conflict Protocol does not prohibit indirect participation in hostilities or forward deployment.<sup>153</sup> Unfortunately, the legitimization of indirect participation in hostilities is a crack through which children trafficked for sexual exploitation or child soldiering may fall.

The Children in Armed Conflict Protocol sets the minimum age for compulsory recruitment at eighteen as distinguished

147. Dennis, *supra* note 145, at 789.

148. See Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, *adopted* June 8, 1977, art. 48, 1125 U.N.T.S. 17512 [hereinafter Protocol I]; see also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *adopted* June 8, 1977, art. 13, § 2, 1125 U.N.T.S. 609 [hereinafter Protocol II].

149. See Working Group on Involvement of Children in Armed Conflict, *Report on Its First Session*, UN Doc. E/CN.4/1995/96, §§ 20-21; see also Second Session Report, §§ 27, 30 & 45.

150. Rome Statute, *supra* note 4.

151. *Id.*

152. See INT’L COMMITTEE OF THE RED CROSS (“ICRC”), COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 516 (Yves Sandoz, Christophe Swinarski, & Bruno Zimmermann eds., 1987) [hereinafter ICRC COMMENTARY]; see also ICRC, Statement on the Draft Convention on the Rights of the Child, UN Doc. E/CN.4/1987/WG.1/WP.4, at 2. “It can reasonably be inferred from the present Article 20 of the Draft Convention [ultimately Article 38] that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.” *Id.*

153. Dennis, *supra* note 145, at 789.

from the age of voluntary recruitment.<sup>154</sup> The Children in Armed Conflict Protocol permits the voluntary recruitment of sixteen to seventeen year olds, provided certain protections are put into place that safeguard their truly voluntary recruitment. Thus, States that permit voluntary recruitment of children under the age of eighteen must maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary; (b) Such recruitment is done with the informed consent of the person's parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military service.<sup>155</sup>

Children between the ages of fifteen and eighteen years of age are not permitted to participate directly in the hostilities.<sup>156</sup>

The Children in Armed Conflict Protocol is not a perfect piece of legislation. It does not define a "child soldier." It merely establishes legitimate parameters within which children can be used in government or non-government armed forces.<sup>157</sup> Earlier in 1997 the Cape Town Principles<sup>158</sup> defined a child soldier as "any person under eighteen years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members." The Cape Town Principles include girls recruited for sexual purposes and forced marriage.

In formulating a definition of a "child soldier" there should be no confusion or identification of that term with the term "combatant." In international humanitarian laws the term "combatant" is frequently contrasted to the term "civilian." Children who are either civilians or combatants have different rights to protection during armed conflict<sup>159</sup> under the international humanitarian laws. The problem is that a child soldier who is not in an official "army" and who is fighting but non-consensually is

154. Children in Armed Conflict Protocol, *supra* note 94, arts. 2 & 3(1).

155. *Id.* art. 3(3).

156. *Id.*

157. *See* Valentine, *supra* note 2, at 115.

158. *See* Cape Town Annotated Principles, *supra* note 27.

159. *See* ALFREDSON, *supra* note 16.



arguably neither a civilian nor a combatant and thus totally unprotected.

4. Optional Protocol on the Sale of Children, Prostitution, and Pornography ("Sale of Children Protocol")<sup>160</sup>

The CRC protects against the illicit transfer of children abroad, their exploitation, and trafficking. Although the CRC is the main legislation regarding the protection of trafficked children, it has been poorly enforced and lacks effectiveness. In an effort to strengthen the CRC, the Protocol on the Sale of Children was adopted by the United Nations General Assembly on May 25, 2000,<sup>161</sup> and it came into force on January 18, 2002.<sup>162</sup> The United States signed it on July 5, 2000 and ratified it on December 23, 2002, subject to certain reservations, understandings, and declarations. It is the first international instrument to define the "sale of children" as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.<sup>163</sup> The Sale of Children Protocol is arguably applicable to the abduction and use of children as soldiers. The Sale of Children Protocol further defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration."<sup>164</sup> Girls abducted into the army are frequently forced into prostitution, sex slavery, and pregnancy. The Protocol on the Sale of Children was intended to provide the means for greater punishment of offenders through the use of cooperative law enforcement mechanisms.<sup>165</sup> For example, the Sale of Children Protocol provides for broad jurisdiction, enabling the extradition of offenders to ensure prosecution regardless of where they are discovered.<sup>166</sup>

The Sale of Children Protocol also criminalizes any action

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160. See Sale of Children Protocol, *supra* note 95.

161. Dennis, *supra* note 145, at 789.

162. One hundred and one instruments of ratification of the Optional Protocol on the Sale of Children were delivered to the Secretariat of the United Nations. The ratification list is available at [http://www.ohchr.org/english/countries/ratification/11\\_c.htm#reservations](http://www.ohchr.org/english/countries/ratification/11_c.htm#reservations) (last visited Aug. 15, 2006).

163. Sale of Children Protocol, *supra* note 95, art 2(a).

164. *Id.* art. 2(b).

165. See Dennis, *supra* note 145, at 789.

166. See *id.*

relating to child prostitution.<sup>167</sup> Article 9 requires parties to strengthen existing laws or create new laws to protect child victims, particularly those who are most vulnerable to trafficking.<sup>168</sup> Articles 8 and 10 of the Sale of Children Protocol further encourage parties to take steps toward multilateral cooperation and to provide assistance to victims and their families.<sup>169</sup> But like many other international human rights agreements, the Protocol for the Sale of Children lacks the enforcement mechanism to ensure adherence to its provisions.<sup>170</sup>

### C. *International Humanitarian Laws and the Protection of Children*

Current international humanitarian law, as defined in the four Geneva Conventions of 1949<sup>171</sup> and the two Additional Protocols of 1977,<sup>172</sup> provides standards for the treatment of persons including children who are members of the civilian population during a state of armed conflict or occupation. Most of the current armed conflicts today are "internal," whereas the Geneva Conventions regulate international conflicts. However, Article 3 common to the Geneva Conventions defines certain rules to be applied in armed conflicts of a non-international character, like a civil war. Protocol II also applies to all non-international armed conflicts taking place in a territory of a State party between its armed forces and dissident armed forces.<sup>173</sup> The Additional Protocols of 1977 combine rules of war with rules protecting civilians, including children.

International humanitarian laws protect children in three ways. Firstly, they recognize the need to provide children with *special* protection because children are persons of particular vul-

167. *See id.* at 794.

168. *See* Sale of Children Protocol, *supra* note 95, art. 9.

169. *See id.* arts. 8 & 10.

170. *See id.* art. 15.

171. Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter First Convention]; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S. T. 3217, 75 U.N.T.S. 85 [hereinafter Second Convention]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Third Convention]; 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. 287 [hereinafter Fourth Convention].

172. *See generally* Protocol I, *supra* note 148; Protocol II, *supra* note 148.

173. Protocol II, *supra* note 148, art. 1.

nerability, which is a norm of customary international law.<sup>174</sup> Secondly, they question the use of children in military operations.<sup>175</sup> Thirdly, they take into account children's immaturity if they commit offenses during armed conflicts.

International humanitarian law distinguishes between combatants and non-combatants.<sup>176</sup> Children who are civilians are protected against inhumane treatment and directed attacks during international and domestic armed conflicts under the international humanitarian laws.<sup>177</sup> Article 1 common to all Geneva Conventions affords children, as members of the civilian population, protection against inhumane treatment and directed attacks during armed conflicts, whether international or non-international. Article 3 of the Geneva Conventions protects persons "taking no active part in hostilities." Arguably, children used as soldiers are not protected under either Article 1 or Article 3 common to all the Geneva Conventions.

Protocols I and II of the Geneva Conventions provide children with special protection and preferential treatment during warfare.<sup>178</sup> Protocol I obligates States to prevent children under the age of fifteen from taking a direct part in international armed conflict, specifically in recruitment efforts, requiring the States to give priority to the eldest children when recruiting persons between the ages of fifteen and eighteen.<sup>179</sup> Protocol II specifically prohibits children in armed conflict under the age of fifteen from both direct and indirect participation in non-international conflicts.<sup>180</sup>

Article 24 of the Fourth Geneva Convention is devoted to children under the age of fifteen who are orphaned or separated from their families as a result of war. Article 51 of the Fourth

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174. See Udombana, *supra* note 20, at 75.

175. *Id.*

176. See *id.* at 74; see also Protocol I, *supra* note 148, art. 48. "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." *Id.*

177. See Abbott, *supra* note 83, at 520.

178. See Protocol I, *supra* note 148, art. 77; Protocol II, *supra* note 148, art. 4 (according children "special respect" and protections "against any form of indecent assault").

179. See Protocol I, *supra* note 148, art. 77; see also Protocol II, *supra* note 148, art. 4.

180. See Protocol II, *supra* note 148, art. 4.

Geneva Convention prohibits forced labor of children under the age of eight. The Fourth Geneva Convention also prohibits the use of the death penalty for persons younger than eighteen.

The international humanitarian laws also prohibit killing civilians for revenge. The Geneva Conventions prohibit murder, torture, mutilation, and any other form of brutality imposed by civilians or military representatives. All these international humanitarian legal protections for civilians, if implemented, should amply protect children from being abducted and mistreated during a war, but they arguably will not cover children if they are deemed voluntary child soldiers or combatants. Thus, children taking part in hostilities lose the protective status of "civilians" and become legitimate military targets under the Geneva Conventions and the Additional Protocols.<sup>181</sup>

Notwithstanding the clarity of the laws of war inscribed in the Geneva Conventions and the Additional Protocols of 1977, participants in a majority of the internal conflicts today blatantly violate international humanitarian laws, especially Common Article 3 of the Geneva Conventions that mandates humane treatment of civilians, including children. The Geneva Conventions fall short of providing a precise definition of a "child,"<sup>182</sup> but they do establish the age of fifteen as the age below which a child must enjoy some special protections. In contrast, the Convention on the Rights of the Child actually defines a child and commits States to respect and ensure the rights set forth in the convention without any discrimination.<sup>183</sup> The African Charter on the Rights and Welfare of the Child<sup>184</sup> defines a "child" as "every human being below the age of 18 years."<sup>185</sup> The continued use of child soldiers in so many countries today illustrates the failure by the international community to protect the world's children<sup>186</sup> or to implement and adhere to the principles inscribed in the international humanitarian laws. The laws of war and international humanitarian laws as implemented simply do not ad-

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181. See Abbott, *supra* note 83, at 523.

182. See Udombana, *supra* note 20, at 73.

183. CRC, *supra* note 93, art. 2(1).

184. African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (entered into force Nov. 29, 1999).

185. *Id.* art. 2.

186. See Abbott, *supra* note 83, at 520.

equately protect children as civilians<sup>187</sup> and certainly do not adequately protect child soldiers.

#### D. *Domestic and International Human Trafficking Laws*

Child soldiers are children who are trafficked into exploitative and dangerous forms of work performed under slave-like conditions. Thus, the laws relating to human trafficking are applicable to the illegal abduction and forcible use of children as soldiers. The U.S. trafficking law, the TVPA,<sup>188</sup> considers children who are trafficked to be “victims of severe forms of trafficking”<sup>189</sup> and therefore eligible for “enhanced benefits.” “Traffickers abuse virtually the entire spectrum of rights protected in the Universal Declaration of Human Rights.”<sup>190</sup> Victims of trafficking are denied the right to freedom of movement, freedom of association, and freedom to have and enjoy a childhood. Traffickers profit mightily from the arbitrary detention, enslavement, rape, and cruel, inhuman, and degrading treatment of children who are deprived of their dignity and equality. Traffickers view their victims as objects, “chattel to be bought and sold as needed.”<sup>191</sup>

#### 1. The United States Trafficking Victims Protection Act (“TVPA”)<sup>192</sup>

In October 2000, Congress enacted the Trafficking Victims Protection Act to prevent trafficking, protect victims and punish perpetrators of trafficking. The TVPA is narrower in scope than the U.N. Palermo Protocol that was passed in November 2000, just one month after the passage of the TVPA. Unlike the Palermo Protocol, the TVPA does not address trafficking for the purposes of exploitative labor, inter-country adoption, organ

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187. *Id.* at 519-20.

188. TVPA, 22 U.S.C. § 7105 (2006). See Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad*, *supra* note 4 for a complete analysis of the TVPA and its provisions.

189. TVPA, 22 U.S.C. 7105(b)(1)(C)(ii)(I).

190. Universal Declaration of Human Rights, *supra* note 99.

191. *The Global Problem of Trafficking in Persons: Breaking the Vicious Cycle on “Trafficking of Women and Children in the International Sex Trade”*: Hearing Before the H. Comm. on Int’l Relations, 106th Cong. 2 (1999) (statement of Harold Koh, Assistant Secretary of State).

192. TVPA, 22 U.S.C. § 7105.

harvesting, or pornography.<sup>193</sup> The stated purpose of the TVPA is to combat trafficking in persons, which it recognizes to be nothing less than a modern manifestation of slavery<sup>194</sup> and one that disproportionately affects women and children. The TVPA prevents the transnational crime of trafficking from spreading by establishing and funding international programs to educate women and children about trafficking.<sup>195</sup> It also grants victims of trafficking permanent residency status and the right to work in the United States if they are willing to assist with the prosecution of their perpetrators.<sup>196</sup> However, the inadequate protection of these witnesses and the fear of retaliation against their families in their native countries remain challenges to the enforcement of the TVPA.<sup>197</sup>

The TVPA is by far the most comprehensive piece of legislation to address the global problem of trafficking in persons, including children. Children trafficked abroad or into the United States from abroad for the purpose of child soldiering are arguably protected under this statute. The Trafficking in Persons Report (“TIP Report”) of 2006 specifically refers to child soldiering in Uganda as an example of one form of human trafficking.<sup>198</sup> While there is no significant incidence of child soldiering occur-

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193. Stacey Mathews, *International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?*, 27 *HOUS. J. INT’L L.* 649 (2005).

194. *See id.* at 675.

195. TVPA § 102(a), 22 U.S.C. § 7101.

196. *See id.* § 107(c)(3), 22 U.S.C. § 7105.

197. *See Global Trends in Trafficking and the “Trafficking in Persons Report”*: Hearing Before the Int’l Relations Subcomm. On Int’l Terrorism, Nonproliferation and Human Rights, 108th Cong. 44 (2003) [hereinafter *Mattar Statement*] (statement of Mohamed Y. Mattar, S.J.D., Co-director, The Prot. Project, Johns Hopkins Univ. School of Advanced Int’l Studies).

198. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 10* (2006), available at <http://www.state.gov/documents/organization/66086.pdf> [hereinafter 2006 TIP REPORT]; *see also* DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2003), available at <http://www.state.gov/documents/organization/21555.pdf> [hereinafter 2003 TIP REPORT]; DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 2* (2002), available at <http://www.state.gov/documents/organization/10815.pdf>, [hereinafter 2002 TIP REPORT]; DEP’T OF STATE, *TRAFFICKING ON PERSONS REPORT 1* (2001), available at <http://www.state.gov/documents/organization/4107.pdf> [hereinafter 2001 TIP REPORT]. *See generally* DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2005), available at <http://www.state.gov/documents/organization/47255.pdf> [hereinafter 2005 TIP REPORT]; DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2004), available at <http://www.state.gov/documents/organization/34158.pdf>, [hereinafter 2004 TIP REPORT].

ring in the United States,<sup>199</sup> the TVPA can help to educate parents in other countries about the dangers of child soldiering and serve as a good model statute for other nations where child soldiering is more prevalent. The TVPA expands U.S. involvement in prevention measures worldwide by increasing assistance and protection available to victims and by enhancing penalties for perpetrators. In other words, it takes the “three P approach”—prevention, protection, and prosecution—and adds the “three R approach”—rescue, rehabilitation, and reintegration—that has been advocated by human rights groups and legal scholars for the past decade.

An important feature of the TVPA is its mandate to compile and publish a yearly report to assess the efforts of governments in meeting minimum standards to eliminate trafficking.<sup>200</sup> This Trafficking in Persons Report is a comprehensive collection of data on trafficking in countries worldwide. Although former Secretary of State Colin Powell accurately described the TIP Report as a diplomatic tool to end modern day slavery, others see it as a form of United States hegemony and American imperialism designed to embarrass other nations.

The TIP Report includes a short narrative of each country describing the scope and severity of trafficking within that country, a brief discussion of the government’s conformity with the requisite minimum standards, and a description of the country’s attempts to prevent the offense, prosecute the offenders, and protect the victims involved in trafficking.<sup>201</sup> Governments that fully comply with the minimum standards set forth in the TVPA are placed in Tier One.<sup>202</sup> Governments that are not in full compliance, but are making significant efforts to comply are placed in Tier Two. In 2003, a new Tier Two Watchlist was added for countries that have a significant amount of trafficking but are making some efforts to comply.<sup>203</sup> Countries that do not fully comply with the minimum standards and are not making signifi-

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199. See Colonel Ann Wright, *Blood Diamonds and Blood Oil*, TRUTHOUT, March 6, 2007 (discussing child and teen soldiers in the United States).

200. TVPA, 22 U.S.C. § 7107(b)(1).

201. See Tiefenbrun, *The Saga of Susannah*, *supra* note 4 for a complete overview of the TVPA, its organization and content.

202. TVPA, 22 U.S.C. § 7107(b)(1).

203. *Id.* § 7107(b)(1)(B). Note that the additional level in Tier Two, called the Tier Two Watchlist, is provided in the Victims of Trafficking Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875.

cant efforts to comply are placed in Tier Three. Tier Three countries are subject to the United States imposing non-humanitarian sanctions and withholding non-trade-related assistance.<sup>204</sup>

The TVPA puts political and economic pressure on countries through the implementation of sanctions. Although sanctions can be used to modify a government's behavior to conform to U.S. and international law standards, sanctions harm women and children in poor countries. The President of the United States can waive the sanctions when necessary to avoid significantly adverse effects on vulnerable populations, including women and children.<sup>205</sup>

The TVPA allows victims of severe trafficking (*i.e.* trafficked children) to receive enhanced benefits and services from the United States.<sup>206</sup> Victims of severe forms of trafficking are defined as people held against their will "for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."<sup>207</sup> Children who are trafficked into the United States have the opportunity to obtain a T-visa permitting them to stay in the country at least through the duration of their captors' prosecution and, perhaps, even permanently, if they are willing to assist in the prosecution of their perpetrators.<sup>208</sup>

Children who are trafficked are considered "victims of severe forms of trafficking" and as such are "not [to] be detained in facilities inappropriate to their status as crime victims."<sup>209</sup> Moreover, victims of severe forms of trafficking are eligible for assistance programs that provide such benefits as housing, living expenses, medical care, and other services to assist the victim in becoming self sufficient and safe from their perpetrators.<sup>210</sup> Before the passage of the TVPA, adequate protection services were not available to victims of trafficking. A woman under the age of eighteen could be held in jail or prison prior to the trafficker's trial rather than being housed in a facility that could appropriately meet her needs. The refugee programs now availa-

204. TVPA, 22 U.S.C. § 7107(b)(1)(C) & (d)(1).

205. *See generally* 2003 TIP REPORT, *supra* note 198.

206. TVPA, 22 U.S.C. § 7105(C)(1).

207. *Id.* 22 U.S.C. § 7102(8)(b).

208. *Id.* 22 U.S.C. § 7105(c)(3).

209. *Id.* 22 U.S.C. § 7105(c)(1)(A).

210. Mathews, *supra* note 193, at 685.



ble to victims provide an infrastructure for people who have suffered from persecution and torture. Often victims have been torn away from their family and from the culture familiar to them. Enhanced assistance, intensive mental health counseling, and specialized foster care programs are offered to child victims of trafficking. All these and similar benefits could presumably apply to child soldiers who should be rehabilitated if and when they escape; however, child soldiers are sometimes treated with Western style therapy that simply does not work for children from Africa, Asia, and other parts of the world.

The U.S. TVPA could serve as a model statute for the establishment of domestic laws in foreign lands against the abduction and use of child soldiers. It is the first U.S. law to penalize a range of serious offenses associated with the trafficking of children. The TVPA advances the prosecution of perpetrators of trafficking through increased punishments and the creation of new criminal offenses. Unfortunately, the TVPA lacks an enforcement arm to reach U.S. citizens engaging in sex acts with minors abroad. That is why President Bush passed the important PROTECT Act.<sup>211</sup>

## 2. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 (“U.S. PROTECT Act”)<sup>212</sup>

The U.S. PROTECT Act has extraterritorial reach and can target individuals—both U.S. citizens who commit sexual crimes against children abroad, and those who enter the United States to traffic children for sexual exploitation illegally. Any U.S. citizen aiding in the abduction of child soldiers for the purpose of performing sex acts could be subject to this Act. The PROTECT Act “comprehensively strengthens law enforcement’s ability to prevent, investigate, prosecute and punish violent crimes committed against children.”<sup>213</sup> Violent crimes are often committed against children by commanders of child soldiers. If U.S. citizens are in any way connected to this activity, they are subject to the PROTECT Act that increases penalties for sex crimes and

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211. See PROTECT Act, Pub. L. No. 108-21.

212. *Id.*

213. Dep’t of Justice, Fact Sheet: PROTECT Act (April 30, 2003), [http://www.usdoj.gov/opa/pr/2003/April/03\\_ag\\_266.htm](http://www.usdoj.gov/opa/pr/2003/April/03_ag_266.htm) [hereinafter Fact Sheet: PROTECT Act].

crimes associated with the trafficking of children. It also modifies the burden of proof requirements for convictions.<sup>214</sup> Harsh punishment applies to anyone who benefits financially from a child trafficking venture.<sup>215</sup> Penalties for the sexual exploitation of children by previous offenders have been increased as well.<sup>216</sup> For example, a person who was previously convicted of any offense relating to the sexual exploitation of children faces increased minimum and maximum sentences, from ten to twenty years and from thirty to fifty years, respectively.<sup>217</sup> Another provision adds aiding and abetting liability such that anyone who, for financial gain, “arranges, induces, procures, or facilitates the travel of a person”—knowing that such a person’s interstate or foreign travel is “for the purpose of engaging in illicit sexual conduct”—can be sentenced up to thirty years in prison.<sup>218</sup> Such a scenario could arise if a U.S. citizen aids and abets the trafficking of child soldiers. Previously, defendants charged with crimes against children were normally granted bail while awaiting trial. Now, the PROTECT Act models its bail determination rules after legislation used for deciding bail in drug, firearm, and violent crimes.<sup>219</sup> The PROTECT Act attempts to fill certain gaps in the TVPA, and thereby strengthens the U.S. government’s ability to prosecute child trafficking offenders.<sup>220</sup> This statute could be used as a model statute for nations whose citizens engage in the recruitment and exploitation of child soldiers from other neighboring countries and who traffic them across a border to engage in direct or indirect hostilities in their own nation.

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214. World Vision, U.S. Congress Passed Sweeping Child Protection Legislation, [http://www.worldvision.org/worldvision/wvusufso.nsf/stable/globalissues\\_childprotection\\_protectact?open&lid=protect\\_act\\_bkgrnd&lpos=day:txt:protect\\_act](http://www.worldvision.org/worldvision/wvusufso.nsf/stable/globalissues_childprotection_protectact?open&lid=protect_act_bkgrnd&lpos=day:txt:protect_act) (last visited Oct. 24, 2007).

215. PROTECT Act, Pub. L. No. 108-21, § 103.

216. *Id.* §§ 103-104.

217. *Id.* § 103.

218. *Id.* § 105(d).

219. Fact Sheet: PROTECT Act, *supra* note 213. There is no statute of limitations for crimes involving the abduction or physical or sexual abuse of a child in the PROTECT Act.

220. PROTECT Act, Pub. L. 108-21, §§ 101-204.

3. The U.N. Convention Against Organized Transnational Crime and Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol")<sup>221</sup>

In December 2000, in Palermo, Italy, the U.N. General Assembly approved and signed the International Convention against Organized Transnational Crime ("Palermo Protocol") and its supplementary protocols on alien smuggling and trafficking in persons.<sup>222</sup> This international trafficking law closely resembles the TVPA and clearly links the crime of child trafficking to international organized crime. The Palermo Protocol defines an organized criminal group as "a structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit."<sup>223</sup> The need for the supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children came from the knowledge that well-established criminal organizations traffic women and children.<sup>224</sup> Clearly stated, the purpose of the Palermo Protocol is:

- a) To prevent and combat trafficking in persons, paying particular attention to the protection of women and children; and
- b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- c) To promote cooperation among States Parties in order to meet those objectives.<sup>225</sup>

The trafficking standards proposed by the Global Alliance against Trafficking Women just prior to the enactment of the Palermo Protocol include eight specific principles that the Palermo Protocol incorporates in its definition of trafficking:

221. Palermo Protocol, *supra* note 5.

222. Press Release, United Nations, More Than 120 Nations Sign New U.N. Convention on Transnational Organized Crime, As High-Level Meeting Concludes in Palermo, U.N. Doc. L/T/4359, Dec. 15, 2000 [hereinafter U.N. Press Release L/T/4359].

223. Palermo Protocol, *supra* note 5.

224. See generally Christopher Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & L. 221 (1999); Becki Young, *Trafficking of Humans Across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 GEO. IMMIGR. L.J. 73 (1998).

225. Palermo Protocol, *supra* note 5, art. 2.

- 1) Principle of Non-Discrimination: States shall not discriminate against trafficked persons in substantive or procedural law, policy or practice.
- 2) Safety and Fair Treatment: States shall recognize that trafficked persons are victims of serious human rights abuses, protect their rights notwithstanding any irregular immigration status, and protect them from reprisal and harm.
- 3) Access to Justice: The police, prosecutors and court shall ensure that their efforts to punish traffickers are implemented within a system that respects and safeguards the rights of the victims to privacy, dignity and safety. An adequate prosecution of traffickers includes prosecution where applicable, for rape, sexual and other forms of assault (including, without limitation, murder, forced pregnancies and abortions), kidnapping, torture, cruel, inhuman or degrading treatment, slavery or slavery-like practices, forced or compulsory labor, debt bondage, or forced marriage.<sup>226</sup>
- 4) Access to Private Actions and Reparations: States must ensure that trafficked persons have a legal right to seek reparations from traffickers as well as assistance in bringing such actions, if necessary.
- 5) Resident Status: States shall provide trafficked persons with temporary residence visas (including the right to work) during the pendency of any criminal, civil or other legal actions and shall provide trafficked persons with the right to seek asylum and to have the risk of retaliation considered in any deportation proceedings.<sup>227</sup>
- 6) Health and Other Services: States shall provide trafficked persons with adequate health and other social services during the period of temporary residence.
- 7) Repatriation and Reintegration: States shall ensure that trafficked persons are able to return home safely, if they so wish, and when they are able to do so.
- 8) State Cooperation: States must work cooperatively in order to ensure full implementation of these standards.<sup>228</sup>

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226. Girls who are abducted as child soldiers are frequently victims of rape, sexual assault, sex slavery, forced pregnancy and marriage. They would be protected under this provision.

227. Child soldiers who return home are frequently rejected by their family and friends, if alive. They would be protected under this provision.

228. Trafficking Standards proposed by Global Alliance Against Traffic in Women, Human Rights Standards for the Treatment of Trafficked Persons, <http://www.hrlawgroup.org/site/programs/traffic.html> (last visited Oct. 24, 2007).

#### 4. Palermo Protocol and Provisions Specifically for Trafficking in Children

Mary Robinson, the former U.N. High Commissioner for Human Rights, advocated that a separate section for children be added to the Palermo Protocol.<sup>229</sup> Such a section would help clarify the special problems and needs of children who are victims of trafficking. The Palermo Protocol does include a subsection that provides in particular that the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in the aforementioned definition of trafficking in persons.<sup>230</sup> A separate section in the Palermo Protocol on trafficking and children not only highlights the special needs of children, but it provides an important forum to advocate States’ adoption of protections designed specifically for child victims of trafficking schemes.<sup>231</sup>

#### E. *International Laws Relating to Slavery*

The prohibition against slavery and the slave trade is a well-established rule of customary law that has been elevated to the status of *jus cogens* in international law.<sup>232</sup> State practice and

229. U.N. General Assembly, Ad Hoc Comm. on the Elaboration of a Convention Against Transnational Organized Crime, *Informal Note by the United Nations High Commissioner for Human Rights*, ¶ 13, U.N. Doc. A/AC.254/16 (Jun. 28 – July 9, 1999).

230. Palermo Protocol, *supra* note 5, art. 3(c).

231. Le Roy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT’L L. REV. 227, 246 (2003).

232. For a definition of *jus cogens*, see A. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law*, 39 VA. J. INT’L L. 303, 311 (1999). Certain customary international rules are elevated to the status of *jus cogens*—rules that cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The concept of *delicta juris gentium* or general wrongs against international society takes four forms:

(1) breach of *jus cogens* or high illegality; (2) cases where international law recognizes general competence to exercise jurisdiction to apprehend, irrespective of nationality (like piracy); (3) acts that harm states indiscriminately (like nuclear testing); and (4) acts infringing principles of law creating rights the beneficiaries of which do not have legal personality or means of protecting (*i.e.*, non-self-governing peoples).

See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 3 (2d ed. 1979). *Jus cogens* is defined in Article 50 of the Vienna Convention on Treaties which states: “A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent

*opinio juris* on the issue of slavery and the slave trade are unequivocal—almost every State has prohibited institutionalized slavery and the slave trade. Nevertheless, human trafficking and the forced use of children as soldiers are contemporary forms of slavery that exist and that blatantly contradict State obligations set forth in international treaties outlawing slavery.

### 1. Slavery Convention of 1926<sup>233</sup>

The 1926 Slavery Convention is the first important attempt made by the League of Nations to fight against slavery and the first international legal instrument to define slavery:

- (1) Slavery . . . [is] the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised . . . (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves.<sup>234</sup>

### 2. U.N. Slavery Convention of 1956

Subsequently, the United Nations expanded the definition of slavery, adopting a new treaty supplementing the 1926 Con-

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norm of general international law having the same character." See Vienna Convention on the Law of Treaties, art. 50, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679; *Draft Articles on the Law of Treaties*, [1966] II Y.B. Int'l L. Comm'n, 247-9, 261, 266, art. 50. Despite its universal acceptance, "more authority exists for the category of *jus cogens* than exists for its particular content." Specific human rights are often cited to as *jus cogens*—the least controversial examples being the prohibition of aggressive war, the law against genocide, and the rules prohibiting trade in slaves and slavery. For example, in the Barcelona Traction Case, the International Court of Justice recognized that *jus cogens* were obligations, *erga omnes*—owing to the entire legal community—and that they derive "from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." *Barcelona Traction*, 1970 I.C.J., at 32. The International Law Commission cites as an example of a violation of *jus cogens* "a treaty contemplating or conniving the commission of acts, such as trade in slaves, piracy or genocide. The most well-established *jus cogens* as human rights are the prohibitions against slavery, genocide, torture and other cruel, inhuman and degrading treatment." OSCAR SCHACTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 343 (1991).

233. See 1926 League of Nations Slavery Convention, *supra* note 104.

234. See *id.* art. 7.

vention on Slavery. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery was adopted in 1956,<sup>235</sup> and it includes certain practices in the definition of slavery: debt bondage, serfdom, and any other institution or practice whereby a woman or a child may be transferred by a person to another. The abduction, transport, and forcible use of children as soldiers is arguably within this definition of slavery.

### 3. Working Group on Contemporary Forms of Slavery

Although the Slavery Conventions of 1926 and 1956 outlaw slavery, they fail to create a permanent international body to evaluate and pursue information about governmental violations that are tantamount to slavery.<sup>236</sup> In place of a formal mechanism to monitor and implement States' obligations to abolish slavery, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities ("the Sub-Commission") created the Working Group on Contemporary Forms of Slavery ("the Working Group").<sup>237</sup> The Working Group reviews developments on contemporary forms of slavery at the annual session of the Sub-Commission.<sup>238</sup> In order to focus on specific issues pertinent to modern forms of slavery, the Working Group established the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Special Rapporteur on Violence Against Women.<sup>239</sup>

The United Nations Working Group consists of independent experts who study current problems regarding slavery and who make recommendations for future action. Its official man-

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235. See 1956 U.N. Convention on Slavery, *supra* note 105.

236. For more detail, see United Nations Working Group on Contemporary Forms of Slavery, 24th Session Statement by David Weissbrodt on the Working Paper he prepared in association with Anti-Slavery International and Recommendations for the Working Group (June 1999), available at <http://www.antislavery.org/archive/submission/submission1999-02Conven.htm>.

237. In the early 1970s, the group was known as the "Working Group on Slavery." In 1989, it became "The Working Group on Contemporary Forms of Slavery." U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Report on the Forty-Fourth Session, Supp. No. 2*, at 102, U.N. Doc. E/CN.4/1988/88 (Feb. 1 – Mar. 11, 1988).

238. See Richards, *supra* note 54, at 832.

239. See Bertrand Ramcharan, Acting High Comm'r for Human Rights, Opening Statement of the Twenty-Eighth Session of the Working Group on Contemporary Forms of Slavery (June 16, 2003), available at <http://www.unhchr.ch/hurricane/nsf/0/CD157D7658D8E0D6C1256D480025F878?opendocument>.

date is to review developments in the field of slavery and the slave trade in all their variant forms of practices and manifestations, including the slavery-like practices of apartheid and colonialism, the traffic in persons, and the exploitation of the prostitution of others as they are defined in the League of Nations Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery of 1956, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949.<sup>240</sup> This list should also include the use of child soldiers as victims of slavery and exploitative labor. The U.N. Working Group is the primary body responsible for interpreting the slavery and trafficking conventions. Over the years, the Working Group has integrated a wide range of exploitative practices under its ambit such as sex tourism, the sale of children, child prostitution, child pornography, the exploitation of child labor, the sexual mutilation of female children, and the use of children in armed conflict.<sup>241</sup> Therefore, the practice of using child soldiers has been specifically linked to contemporary forms of slavery and trafficking studied by the U.N. Working Group.

Despite repeated requests from the Working Group and from the United Nations' Secretary General, governments continually fail to provide information on measures taken to implement the relevant slavery and trafficking conventions and the Working Group's recommendations.<sup>242</sup> Moreover, the lack of mandatory government participation in the Working Group's process diminishes the force of its recommendations.<sup>243</sup>

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240. See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317(IV), Supp. No.1, at 25, U.N. Doc. E/5544 (Dec. 2, 1949).

241. See Richards, *supra* note 54, at 832.

242. U.N. Comm'n on Human Rights, Sub-Comm'n on the Promotion and Protection of Human Rights, *Report of the Working Group on Contemporary Forms of Slavery, Sub-Commission Resolution 1999/17*, E/CN.4/SUB.2/RES/1999/17 (Aug. 26, 1999) [hereinafter *Report of the Working Group*], available at [www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/378b8b630886d40c802567ed005027a6?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/378b8b630886d40c802567ed005027a6?Opendocument).

243. See Richards, *supra* note 54, at 835.



F. *International Labor Conventions and Child Soldiers*

1. The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (“ILO Worst Forms of Child Labour Convention 182”)<sup>244</sup>

The ILO Worst Forms of Child Labour Convention 182 includes the trafficking of children for their use as child soldiers within the definition of child slavery:

“[A]ll forms of slavery or practices similar to slavery, such as the sale and trafficking of children, . . . including forced or compulsory recruitment of children for use in armed conflicts.”<sup>245</sup>

The use of child soldiers is linked to human trafficking, child labor violations, and slavery. The definition of child soldiering in the ILO Worst Forms of Child Labour Convention 182 underscores the link between the trafficking of children and their abduction and illegal employment as child soldiers and as slaves. Child soldiers, especially girls, often lead dual lives acting as combatants by day and sex slaves by night. Children are trafficked and used by other soldiers and commanders for sexual exploitation and as child soldiers for combat in direct hostilities.

According to the ILO, approximately 180 million working children between the ages of five and seventeen are engaged all over the world in the worst forms of child labor, as defined above in the ILO Worst Forms of Child Labour Convention 182.<sup>246</sup> Over eight million children are engaged in the so-called

244. ILO Worst Forms of Child Labour Convention 182, *supra* note 11. The General Conference of the International Labour Organization adopted the Convention in June 1999, and it entered into force on November 19, 2000. 158 countries have ratified it. For a complete list of the states that ratified the ILO Worst Forms of Child Labour Convention 182, see <http://www.ilocarib.org.tt/childlabour/c182.htm> (last visited Oct. 24, 2007). Article 22 of the ILO Constitution states that:

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

*Id.*; see also ILO Recommendation 190, *supra* note 12.

245. See generally ILO Worst Forms of Child Labour Convention 182, *supra* note 11.

246. See generally INTERNATIONAL LABOUR OFFICE, A FUTURE WITHOUT CHILD LABOUR (2002), available at [http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—declaration/documents/publication/kd00130.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/kd00130.pdf).

*unconditional worst forms of child labor*, including: “slavery, trafficking, and forced recruitment for use in armed conflicts.”<sup>247</sup> However, this figure has to be treated with caution, considering the hidden and illegal nature of such activities.

Usually young boys are employed as messengers or spies because of their ability to penetrate enemy lines. Boy children may also be used as porters to carry provisions and munitions while engaging in direct hostilities. Girls are exploited as cooks and sexual slaves for soldiers, and they may be forced to engage in combat and in direct hostilities as well. These children are exposed to injuries and death. Even if they survive, they will forever bear the traces of the physical and psychological violence they suffered during their captivity. Girls who have been victimized by gender violence have difficulty reintegrating in society without special assistance.<sup>248</sup> The ILO finds an identity of circumstances for “the sale and trafficking of children, and forced or compulsory recruitment of children for use in armed conflicts” as well as “other forms of slavery”. Thus, there is a direct link between child trafficking, child slavery, and child soldiers.

## 2. U.S. Department of Labor Recommendations on Child Labor (190)

The United States Department of Labor recommends the implementation of certain initiatives to stop the increase in the illegal use of child labor for the purposes of engaging in direct or indirect hostilities. To change this horrible trend, the U.S. Department of Labor recommends a “holistic” approach involving direct interventions, data collection and partnerships.<sup>249</sup> Direct interventions should be able to raise awareness, monitor the workplace, create alternative income generation for families, create alternative production processes to make child labor un-

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247. *Id.* at 31-33.

248. For example, Special Rapporteur on Violence Against Women, Ms. Radhika Coomaraswamy states that “[c]orruption in the police seems to be a significant problem in all the countries of the region, especially in the area of trafficking.” U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, 4, U.N. Doc. E/CN.4/2001/73/Add.2. (Feb 6, 2001).

249. ELAINE L. CHAO, U.S. SECRETARY OF LABOR, *FACES OF CHANGE: HIGHLIGHTS OF U.S. DEPARTMENT OF LABOR EFFORTS TO COMBAT INTERNATIONAL CHILD LABOR*, available at [http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1148&context=key\\_workplace](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1148&context=key_workplace) [hereinafter *FACES OF CHANGE*].

profitable and unnecessary, and establish affordable and accessible education for children and families. Data collection establishes the basis for selecting and shaping the direct intervention. ILO-IPEC's Statistical Information and Monitoring Program on Child Labor ("SIMPOC") has central statistical offices in several countries to conduct household surveys that yield national estimates on the number of working children.<sup>250</sup> Partnerships consist of working relationships between the ILO and governments, employers, and workers in order to incentivize the elimination of child labor and offer technical assistance to countries that do eliminate child labor as a national policy.<sup>251</sup>

Other strategies proposed to eliminate the worst forms of child labor including child soldiering are: legal strategies, educational strategies, market-based strategies, rescue, rehabilitation, and reintegration strategies. Any of these approaches requires a willingness and capacity of the society to find and help these children. The key to the implementation of these strategies is the identification of children in the worst forms of child labor, awareness raising of the society, and implementation of capacity-building measures.<sup>252</sup>

### III. LITERARY REPRESENTATIONS OF CHILD SOLDIERS

#### A. Allah Is Not Obligated by Ahmadou Kourouma<sup>253</sup>

This short but powerful book about the life of a child soldier in Liberia and Sierra Leone won the two most prestigious literary awards in France: the Prix Renaudot and the Prix Goncourt. The book is written by Ahmadou Kourouma, an African man who was born in the Ivory Coast in 1927, fought in the French colonial army in Indochina, and later studied science in France. Ahmadou Kourouma eventually returned to the Ivory Coast, worked in insurance, was put in jail because he opposed

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250. *Id.* at 3.

251. *Id.*

252. See ELAINE L. CHAO, U.S. SECRETARY OF LABOR, ADVANCING THE CAMPAIGN AGAINST CHILD LABOR, VOLUME II: ADDRESSING THE WORST FORMS OF CHILD LABOR, U.S. DEPARTMENT OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS 9 (2002), available at [www.dol.gov/ILAB](http://www.dol.gov/ILAB).

253. The French title of this book is *Allah n'est pas obligé* (Editions du Seuil, 2000), translated into English by Frank Wynne and published in London (William Heinemann, Random House Group Limited: London 2006) [hereinafter ALLAH IS NOT OBLIGED], available in French and English.

the regime, and spent many years in exile. He ended up becoming a playwright and the author of four novels. He recently died in 2004. Kourouma is recognized as one of the major figures of contemporary African literature.

*Allah Is Not Obligated* is more than just a book about child soldiers. It is a tale about the utter despair of children victimized by decadence in Africa and the corruption of social values during endless and inhumane tribal warfare. Kourouma shocks his readers into seeing that even the most humane members of society who have somehow lost their values are capable of committing unspeakable atrocities. The brutality of a child soldier's life experience can make even innocent young children become professional killers. For example, at the end of the book the young narrator is saddened because he cannot ever become an evil "lycaeon". Since his mother and father are already both dead, he can't personally kill them, which is the rite of passage to become a prestigious lycaeon. Kourouma describes this serious ethical transformation of the innocent ingenu into an evil killing machine through the effective symbolic metaphor of the lycaeon:

[L]ycaeons are wild dogs that hunt in packs. They gobble everything; mother, father, all and everything. When they finish sharing a victim, every lycaeon goes off to clean his self. If one comes back with blood on his fur, even one drop of blood, they think he is wounded and he's gobbled up by the others right there. That's what it is. Got it? They have no mercy. Your mother alive?<sup>254</sup>

The narrator adds that "[t]o be a brave young lycaeon of the revolution, you must first kill with your bare hands . . . one of your own parents."<sup>255</sup> Thus, Birahima, who grew up in a very religious home, has had his ethics and social values totally transformed by the devastating experience of being a child soldier.

In the spirit of Voltaire and through the extensive use of irony and sarcasm Kourouma debunks the power of religion to purify man's soul.<sup>256</sup> He depicts the fate of a convent transformed into a brothel<sup>257</sup> for the carnal use of the commanders.

254. *Id.* at 173.

255. *Id.* at 174.

256. *See id.* at 134.

257. *See id.* at 74.

He describes the Mother Superior Marie-Beatrice as “a saint who made love like every woman in the universe.” Mother Superior Marie-Beatrice turns out to be one of the most superior fighters in this topsy-turvy world where good is evil and evil is good. Kourouma accuses the U.N. Peacekeepers of “slaughtering innocent civilians and massacring people, all in the name of humanitarian peacekeeping.”<sup>258</sup> This sad but insightful tale is told by an innocent ten-year-old boy, Birahima, an ingenue who is ceaselessly stunned by the horrors of war, sickened by the cruelty and barbarism<sup>259</sup> of his own people, and educated into the power structures and customs that fuel Africa’s bitter tribal wars. For example, he stuns the readers by revealing Sierra Leone’s leader of the Rebels, Foday Sankoh, and his unique solution to stop democratic elections that might vote him out:

Someone with no arms couldn’t vote. All Foday Sankoh had to do was cut off the arms of as many people, as many of the citizens of Sierra Leone as possible. Every Sierra Leone prisoner had his hands cut off before being sent back into the territory occupied by government forces. If a woman showed up with a baby on her back, the woman’s hands were amputated and the baby’s hands too . . . because they’ll be voters some day.<sup>260</sup>

This is the kind of madness that Birahima witnessed as a child soldier and that ultimately transformed him into a killer.

Birahima grew up in the Ivory Coast in a matriarchal family

258. *Id.* at 126; *see also id.* at 140-41. “The peacekeeping forces didn’t keep the peace, they didn’t take any unnecessary risks. They weren’t bothered about details, they just fired shells at random, they fired shells at the people doing the attacking and at the people being attacked. They bombed every part of the town. . . .” *Id.*

259. *See id.* at 132-33.

Prince Johnson . . . took Doe by the ear and sat him down. He cut off his ears, the right ear after the left . . . . The more the blood flowed, the more Johnson laughed, the more delirious he became. Prince Johnson ordered that Samuel Doe’s fingers be cut off, one by one, and with this torture victim squealing like a suckling calf, he had his tongue cut out. Through the torrent of blood, Johnson hacked at the arms, one after the other. When he tried to hack off the left arm, the victim had had enough: he gave up the ghost (“give up the ghost” means “die”).

Later Kourouma narrates that Johnson ordered Samuel Doe’s heart to be removed, and “one of the officers ate some human flesh to make himself look more cruel, more brutal, more barbarous and inhuman—real, genuine human flesh. Samuel Doe’s heart was put to one side for the officer so he could make a delicious kebab out of it.” *Id.* at 133.

260. *Id.* at 165.

with a crippled mother, a feisty grandmother, and an absentee father who traveled all the time. Birahima was a “fearless, blameless kid” who “slept anywhere [he] wanted and stole all kinds of stuff to eat”.<sup>261</sup> Birahima loved his long-suffering mother who was always crying because she, like her son, was a victim of a failed society caught up in mystery and magic<sup>262</sup> and superstition.<sup>263</sup> African society deprived her of her rights as a child and as a woman.<sup>264</sup> She was the victim of a forced and badly executed female genital circumcision<sup>265</sup> and a sacrificial ceremony of excision where the most beautiful girl is killed by the *djinn* (magical creature) of the forest who keeps her as his sacrifice.<sup>266</sup> Birahima’s mother also suffered from a festering, painful ulcer on her amputated leg that was never treated properly<sup>267</sup> because she was a black African native who did not have the same privileges as the black African Americans. Birahima remembers that “sometimes, I’d fall on to Maman’s ulcer and she’d howl with the pain. The ulcer would start bleeding. Maman would howl like a hyena with its paws caught in the teeth of a wolf trap.”<sup>268</sup> Birahima’s mother dies literally rotting to death, like the corrupt African society that will soon capture Birahima and force him into a child soldier’s life of murder for murder sake.

261. *Id.* at 5.

262. *Id.* at 24. “My maman died because Allah wanted her back. The imam said that a devout Muslim isn’t allowed to criticize Allah or say anything bad about him. Then he said that my mother didn’t die of magic, she died of her ulcer.” *Id.*

263. An example of this superstition is the belief that “[i]f you truly loved the Lord God and Jesus Christ, bullets wouldn’t hit you; they’d kill other people instead, because it is God alone who kills the bad guys, the arseholes, the sinners and the damned.” *Id.* at 70.

264. *See id.* at 26. “Everywhere in the world a woman isn’t supposed to leave her husband’s bed even if that husband curses her and punches her and threatens her. The woman is always wrong. That’s what they call women’s rights.” “On account of women’s rights, the two children were taken from their mother and given to their father.” *Id.*

265. *See id.* at 11.

266. *See id.* at 14.

267. *See id.* at 17.

The nurse said that what maman was suffering from was not a *toubab* disease, it was a Black Nigger African Native disease. A disease that the medicine and the science of the white man could not cure. “Only the grigris of an African healer can heal your wound. If the captain operates on your leg, you will die, absolutely die, you will die like a dog.” Said the nurse who was also a major. The nurse was a Muslim and could not tell a lie.

*Id.*

268. *Id.* at 9.

When both his father and mother die, Birahima leaves his native village in search of a far-away aunt, hoping to find a family and stability. Birahima and his friend Yacouba, the sorcerer, go off together on this thankless journey in search of stability. They cross the border into Liberia and are soon captured by a rebel force. They are then recruited into military service as child soldiers where they learn to terrorize and murder civilians in Liberia and Sierra Leone. In these countries people are not protected by civil order, and these child soldiers have no choice but to struggle for survival.

One of the most vivid examples of why children become child soldiers is the story Birahima tells of a young boy named Kik whose village is attacked during the tribal wars:

Kik ran into the forest. And the kids stayed in the forest all the time they could hear the gunfire from the village. Kik stayed in the forest. It was only the next morning when there was no more noise that the children dared to go back to their family huts. Kik went back to his family hut and found his father's throat cut, his brother's throat cut, his mother and his sister raped and their heads bashed in. All of his relatives, close and distant, dead. And when you've got no one left on earth, no father, no mother, no brother, no sister, and you're really young, just a little kid, living in some fucked-up barbaric country where everyone is cutting everyone's throat, what do you do? You become a child-soldier of course, a small-soldier, a child soldier so you can have lots to eat and cut some throats yourself, that's all your only option.<sup>269</sup>

The narrator describes how the children are captured and recruited:

The kid, the child-soldier, who's about as tall as an officer's cane, chats to the guys on the motorbike protecting the convoy. They get to know each other a bit, laughing and joking as if they drank beer together every night. Then the kid whistles, then he whistles again. Then a four-by-four truck comes out of the forest all covered in camouflage leaves. A four-by-four full of kids, child-soldiers, small soldiers. Kids about this tall . . . as tall as an officer's cane.<sup>270</sup>

Kourouma also describes the significant role that girl child

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269. *Id.* at 90.

270. *Id.* at 46.

soldiers play in these tribal wars. "The funniest thing is that there's girls, genuine girls with real AK-47s showing off. But there aren't too many girls. Only the cruel ones: only the one's who'd stick a live bee right in your eye."<sup>271</sup> One of the cruelest girls actually becomes a General in the group of child soldiers.<sup>272</sup> Another Commander girl soldier actually sexually violates a boy soldier in a surprising and ironic reversal of expectation.<sup>273</sup>

The book is a mixture of fact and fiction as the author tries to debunk traditional beliefs about African society through a blend of irony, sarcasm, humor, and vivid descriptions of atrocities. The author shocks the readers by making outrageous but ironic proclamations like:

Child-soldiers are the most famous celebrities of the late twentieth century, so whenever a child-soldier dies, we have to say a funeral oration. That means we have to recount how in this great big fucked-up world they came to be a child-soldier.<sup>274</sup>

The book appears to be factual because Kourouma provides detailed information about the life of child soldiers and the bestial conduct of corrupt criminal despots and warlords of various West African countries, like Charles Taylor, Foday Sankoh, and Prince Johnson. Despite rumors about the good life of child soldiers,<sup>275</sup> Birahima is amazed that he is given only a gun, very little food, scant wages, and plenty of hash to fight in a civil war with other child and adult soldiers who are also constantly starv-

271. *Id.* at 47.

272. *Id.* at 102. "General Onika was a small woman, lively as a nanny-goat whose kid has been taken from her. With her general's stripes and her AK-47, she ran the whole show." *Id.* "The son had married three wives and all three wives were commanders in charge of the three most important divisions: finance, prisons and child-soldiers." *Id.* at 103.

273. *Id.* at 104.

274. *Id.* at 83.

275. *See id.* at 37.

He said they had tribal wars in Liberia, and street kids like me could be child-soldiers. Small soldiers had every-fucking-thing. They had AK-47s. AK-47s are Kalashnikov guns invented by the Russians so you can shoot and keep shooting and never stop. With the Ak-47s the small-soldiers got every-fucking-thing. They had money, they even had American dollars. They had shoes and stripes and radios and helmets and even cars that they call four-by-fours. I shouted *Walahe! Walahe!* I want to go to Liberia. Right now this minute. I want to be a child-soldier, a small soldier.

*Id.*



ing<sup>276</sup> and constantly pumped up on drugs. He refers to the child soldiers as “the drugged-up child-soldiers,” “the child-soldiers [who] were fucked up on drugs.”<sup>277</sup> The drugs make them strong and fearless: “We were dying to fight, we all felt as strong as bulls from all the hash . . . .”<sup>278</sup>

Birahima recounts what he sees in this chaotic world of war through the eyes of a naïve ten year old and in the fresh idiom of a child who is just learning French. Thus, with the use of four dictionaries, he writes in passable French mixed with *malinke* and pidgin English, giving parenthetical explanations of the most basic terms, as if he is speaking to an audience of children. The immediacy of Kourouma’s style and language and the gripping details of his narration add authenticity to his depictions of death, torture, amputations, fear, superstition, and madness that surround him on this journey through the hell of war. When the book comes to an end, Birahima finally escapes and the tale is brought full circle to where it began, like the classical pattern of inevitable tragic repetition.

#### B. Beasts Of No Nation by Uzodinma Iweala<sup>279</sup>

“All we are knowing is that, before the war we are children and now we are not.”<sup>280</sup>

Uzodinma Iweala’s Harvard thesis developed into a very beautiful and informative work of fiction that effectively illustrates how child soldiers become trafficking victims.<sup>281</sup> *Beasts of No Nation* is a novel written in the urgency and immediacy of the present tense in order to highlight the severity of the related crimes of child abduction for the use of soldiering and child sex trafficking. Iweala’s novel is a realistic slice of life that portrays in vivid pictures the human rights principles and laws relating to child enslavement by abduction, forced enlistment, and trafficking.

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276. “With all the hash, we got hungrier and hungrier. Hash isn’t good when you’re hungry. So we ate all the fruit we could find and after that we ate roots and after that leaves. And even after all that Yacouba still said Allah in his infinite goodness never leaves empty a mouth he has created.” *Id.* at 81-82.

277. *Id.* at 107.

278. *Id.* at 109.

279. IWEALA, *supra* note 13.

280. *Id.* at 36.

281. See generally Boris Kachka, *Young Gun*, NEW YORK, Nov. 28, 2005, at 41.

*Beasts of No Nation* paints a close-up portrait of a traumatized child soldier who was victimized, just like the 300,000 child soldiers today who are begging for help to escape from enslavement and the fear of death. These children and their parents or caretakers do not know that laws actually exist to protect children. Iweala portrays one of these desperate children, Agu, who tells his tragic tale in pidgin English bristling with repetition, adjectival verbs, metaphors, similes, and capitalized exclamations that reveal his youth and the depth and intensity of his pleas for help from the international community.

Agu is the precocious, gentle son of a village school teacher and a religious mother who is dragooned one day into the madness of a West African nation's civil war. Despite his youth, he is forced through rigorous indoctrination to shoulder a soldier's heavy burden. Agu is very soon molded into a hard fighting man by his demented guerrilla leader who forces him to witness his father's savage slaying. After his father's murder, Agu is left all alone in the world and driven by an unrelenting need to belong to a group or a family. When he is captured and indoctrinated by the armed group, Agu soon becomes a killer, plagued by a muddled sense of revenge and guilt. He butchers a mother and her daughter when his ragtag unit raids a defenseless village. Starved for both food and affection, Agu is frequently sodomized by his Command and rewarded with extra food scraps and a dry place to sleep.<sup>282</sup>

The unnamed West African nation provides the setting for this unsettling story of the life of a child soldier.<sup>283</sup> Iweala's fiction represents the "countless victims whose names remain unknown." When asked by New York Times writer Boris Kachka, "Why fictionalize it at all?" Iweala responded, "In non-fiction there is still that distance: 'This is not happening to me.' . . . but in fiction, it allows you to transport yourself in the way that non-fiction doesn't."<sup>284</sup> The reality is that *Beast of No Nation* could be the life story of any child soldier in any country afflicted by ha-

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282. Jolisa Gracewood, *I am Hearing Screaming*, NZ LISTENER May 13-19, 2006, available at [http://www.listener.co.nz/issue/203/artsbooks/6060/i\\_am\\_hearing\\_screaming.html](http://www.listener.co.nz/issue/203/artsbooks/6060/i_am_hearing_screaming.html).

283. See Renee Graham, *In Beasts Lambs are Forced to Lead the Slaughter*, BOSTON GLOBE, Dec. 5, 2005.

284. See generally Kachka, *supra* note 281.

tred, mistrust, and civil war.<sup>285</sup>

The story grips the reader by its brutality and unremitting intensity. Iweala is a trafficked child who is deprived of the most basic human rights and prevented from “develop[ing] physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”<sup>286</sup> Through its impressionistic narration, the exotic singsong cadence of its style, and the narrator’s peculiar use of tense,<sup>287</sup> the book enables its readers to observe with disbelief the human rights violations and horrifying experiences Agu is forced to endure: rape, the denial of education, utter despair, the development of his own desire for revenge, constant starvation, the use of serious weaponry, exposure to and forced intake of drugs that make him fight fearlessly, the fostering of self-hate, and a lingering sense of the hopelessness of his situation and the impossibility of his escape from this dreadful captivity and enslavement.

### 1. Rape

Agu participates in massacres and rapes of an ill-defined enemy. The International Criminal Tribunal of the Former Yugoslavia (“ICTY”) and the International Criminal Tribunal in Rwanda (“ICTR”)<sup>288</sup> have made major strides in deciding cases involving the systematic use of rape as a method of warfare. Rape is not only a war crime, but also a crime against humanity<sup>289</sup> and a form of genocide. When rape is inflicted on or by children, it is even a more heinous crime. Agu rapes women indiscriminately but he is himself made into a sex slave by the Commandant.<sup>290</sup> In this maddening world of tribal warfare, sexual violence is equated with manliness in the mind of the child

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285. See generally Graham, *supra* note 283.

286. Declaration of the Rights of the Child, *supra* note 121, princ. 2; see also CRC, *supra* note 93, art. 27.

287. See generally IWEALA, *supra* note 13.

288. See generally Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment (Sept. 2, 1998).

289. Statute of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), art. 5(g), reprinted in 32 I.L.M. 1159, 1194 (1993) (noting that crimes against humanity include rape); see Janet Halley et al. *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 342-47 (2006) (discussing the role of ICTY and International Criminal Tribunal for Rwanda (“ICTR”) in developing law on rape and sexual violence of women).

290. See IWEALA, *supra* note 13, at 84-85.

soldiers, even though Agu is personally repelled by the act of having sex with his Commandant. Agu refers frequently to his penis as “my soldier”.<sup>291</sup> When the Commandant sodomizes him, Agu is in pain and fear:

He is telling me, take off your clothe(sic). I do not want to be taking off my clothe but I am not saying so because Commandant is powerful more than me and he is also sometimes giving me small favor like more food . . . But me, I am not struggling because I am knowing that he will be killing me if I am struggling and since I am not wanting to die, I just let him to be moving back and forward even though it is hurting me so much.<sup>292</sup>

## 2. Denial of Education

Agu’s life represents flagrant violations of CRC Article 32 that protects children from “any work that is likely to be hazardous or to interfere with the child’s education.”<sup>293</sup> Before Agu was abducted into the rebel army, he was like any typical little boy receiving a compulsory education in a small village schoolhouse. His abduction into armed combat deprived him of an education. Wars actually forced the schools to close in Uganda and in other African countries.<sup>294</sup>

I am learning how to read very early in my life from my mother and my father. . . . I was the smartest person in my class, so smart that the only thing I am having to learn is writing. . . . But these thing are before the war and I am only remembering them like dream.<sup>295</sup>

## 3. Helplessness and the Desire for Revenge of “Lost Children”

Agu describes the state of helplessness and revenge experienced by children, like himself, who are victims of family massacres and who volunteer to become soldiers once they are abducted: “If you are staying with me, I will be taking care of you and we will be fighting the enemy that is taking your father . . . . So I am joining. Just like that. I am soldier.”<sup>296</sup>

291. *Id.* at 95-96.

292. *Id.* at 83-85.

293. CRC, *supra* note 93, art. 32(1).

294. *See* IWEALA, *supra* note 13, at 29.

295. *Id.* at 24-28.

296. *Id.* at 11.

Additionally, child soldiers that are survivors of family massacres experience “survivors guilt,” and are filled with anger and desire for revenge.<sup>297</sup> Iweala’s responses to his own family massacre demonstrate the concept of “survivor’s guilt”:<sup>298</sup> “Commandant is saying that she is enemy, she is stealing our food, and killing my family, because she is enemy. . . . I am liking the sound of knife chopping KPWUDA KPWUDA on her head and how the blood is just splashing . . . .”<sup>299</sup>

C. *Soldiers But Not Real Soldiers: Prosecutor v. Thomas Lubanga Dyilo*<sup>300</sup>

Children who are abducted by a group that engages in armed combat see themselves as “soldiers,” but they also know that they are not “real soldiers” because they have no uniform.<sup>301</sup> In *Beast of No Nation*, the narrator’s fine distinction between soldiers and real soldiers refers to a very important and controversial legal issue regarding the nature of “national armed forces or groups,” as set forth in the Rome Statute of the International Criminal Court (“ICC”).

Recently, the ICC Pretrial Chamber I (the “Chamber”) decided this very question when it issued its decision on the confirmation of charges in the case of *Prosecutor v. Thomas Lubanga Dyilo*.<sup>302</sup> In that case, the Chamber confirmed that there were substantial grounds to believe that Lubanga (the President of the *Union des Patriotes Congolais* (“UPC”) and the Commander-in-Chief of its former military wing, the *Forces Patriotiques pour la Liberation du Congo* (“FPLC”)) is responsible for committing war crimes in the Ituri region of the Democratic Republic of the Congo (“DRC”) in 2002 and 2003. The Chamber confirmed that there was substantial evidence to believe that Lubanga was responsible, as co-perpetrator, for the conscription and enlistment of children under the age of fifteen years into the FPLC

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297. BRETT & MCCALLIN, *supra* note 72, at 61-63.

298. See Gracewood, *supra* note 282.

299. IWEALA, *supra* note 13, at 51.

300. Prosecutor v. Dyilo, Doc. No. ICC-01/04-01/06, Decision on Confirmation of Charges (Jan. 29, 2007). The charges of this important case in the International Criminal Court (“ICC”) will be discussed in this section of the paper, especially with regard to the distinction made between national armed forces and other paramilitary groups.

301. See IWEALA, *supra* note 13, at 33-34.

302. Prosecutor v. Dyilo, Doc. No. ICC-01/04-01/06.

from the beginning of September 2002 to June 2, 2003 in violation of Articles 8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute; and from June 2, 2003 to August 13, 2003 in violation of Articles 8(2)(e)(vii) and 25(3)(a).<sup>303</sup> The *Lubanga* case is only the second major international criminal proceeding to focus on the use of child soldiers, following the decision of the Special Court for Sierra Leone in the case of *Prosecutor v. Sam Hinga Norman* in 2004.<sup>304</sup>

The Prosecutor in the *Lubanga* case, Luis Moreno-Ocampo, charged Lubanga under Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute with the war crimes of (1) conscripting children into armed groups, (2) enlisting children into armed groups, and (3) using children to participate actively in hostilities.<sup>305</sup> Article 8(2)(e)(vii) of the Rome Statute provides that “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” during a non-international armed conflict constitutes a war crime. Article 25(3)(a) of the Rome Statute provides for individual criminal responsibility for anyone who “commits . . . a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.”

The Chamber concluded that between July 2002 and June 2, 2003 there existed in the Ituri region an international armed conflict and between June 2, 2003 and August 13, 2003 a non-international armed conflict.

The Chamber then examined three material elements of the crime. It looked at the terms “conscription or enlistment,” and noted that these terms in the Rome Statute do not carry the same meaning as “recruiting,” which is the term used with respect to the prohibition against child soldiers in Article 77 of Additional Protocol I to the Geneva Conventions.<sup>306</sup> The Chamber further concluded that the terms “conscription and enlist-

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303. *See id.*; *see also* Jason Morgan-Foster, *ICC Confirms Charges Against DRC Militia Leader*, ASIL INSIGHTS, Mar. 9, 2007, available at <http://asil.org/insights/2007/03/insights070307.html>.

304. *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2004-14-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (May 31, 2004).

305. *See generally* *Prosecutor v. Dyilo*, Doc. No. ICC-01/04-01/06, Document Containing the Charges (Aug. 28, 2006).

306. *See* Protocol I, *supra* note 148, art. 77(2).

ment” are distinct from each other. Conscription is “forced recruitment” whereas enlistment is “voluntary recruitment”. It is important to note that the Chamber concluded that “consent of the child” is not a valid defense to a charge of “conscription or enlistment.” Hopefully, this decision will finally put to rest the problematic necessary element of “consent” with regard to the distinction between trafficking of persons and smuggling.

The Court then examined the phrase “using them to participate actively in hostilities” as distinguished from the controversial phrase “take a direct part in hostilities” found in Article 51(3) of Additional Protocol I of the Geneva Conventions.<sup>307</sup> The Chamber placed limits on this “participate actively” standard holding that any activity that is “manifestly without connection to the hostilities” would not fall within the prohibition (*e.g.* food delivery, “domestic help in an officer’s married accommodation”). But acting as a bodyguard would fall within the “active participation” standard.<sup>308</sup> However, girl soldiers who are employed against their will as domestic help in the armed camp and forced into becoming the “wife” of a commander will no longer be protected under this finding.

The Chamber then compared the language of Article 8(2)(b)(xxvi) with Article 8(2)(e)(vii) noting that Article 8(2)(b)(xxvi) of the Rome Statute regarding child conscription in international conflict uses the language “into the *national armed forces*” whereas Article 8(2)(e)(vii) of the Rome Statute, under which Lubanga was actually charged, uses the language “into *armed forces* or *groups*.” The Chamber held that if the term “national” refers only to “governmental” that would contravene the very purpose of the Rome Statute which is to make sure that “the most serious crimes of concern to the international community as a whole must not go unpunished.” Therefore, the Chamber concluded that the term “national armed forces” was not limited to the armed forces of a State.<sup>309</sup> Thus, the Rome Statute permits Lubanga to be prosecuted for conscripting or enlisting child soldiers into the FPLC, which is a non-governmental force, during both the non-international and international phases of the conflict.

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307. *Id.* art. 51(3).

308. *See* Prosecutor v. Dyllo, Doc. No. ICC-01/04-01/06, ¶¶ 261-263.

309. *Id.* ¶¶ 280-85.

### D. *Child Soldiers: Civilians or Combatants*

The distinction between “civilians” and “combatants” is related to the issue of whether a paramilitary or non-national armed group is a real “army” and whether the persons serving in this armed group are real “soldiers”. According to the finding in *Prosecutor v. Thomas Lubanga Dyilo*, the leader of the Congolese militia can be prosecuted for conscripting or enlisting child soldiers into a non-governmental force during both the non-international and international phases of the conflict. Does this hold true for the soldiers in this armed group? Is a child soldier a civilian or a combatant if he or she is not wearing a uniform, not working for a State armed forces, but is acting against his/her will as a soldier in an armed group? The distinction between combatants and civilians is critical to the protection of the rights of a child soldier. Civilians and combatants are protected differently under the Geneva Conventions and under other laws of war. If Agu is a soldier, he is not a civilian. But if he is not a “real” soldier, does that mean he is eligible for civilian protection during wartime? Or worse, is he not protected under either category?

#### 1. Starvation

Children, particularly those orphaned or disconnected from civil society, may volunteer to join any group if they believe it is the only way to guarantee regular meals, clothing, or medical attention.<sup>310</sup> But Agu remains hungry most of the time that he is with the other child soldiers.<sup>311</sup> Iweala says: “On the ground he is writing HUNGRY and I am wanting to say to him I am hungry too. I am hungry too, but the word are not coming out of my mouth.”<sup>312</sup>

#### 2. Slavery

The children who are abducted and used as child soldiers are abused badly and enslaved, especially because they are not permitted to leave or return home to the comforts of their family. Agu realizes very soon after he joins the ranks of the young soldiers that he is in fact a slave. He has a deep sense of despair

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310. SINGER, *supra* note 25, at 62.

311. IWEALA, *supra* note 13, at 117-18.

312. *See id.* at 37.



knowing that he cannot escape his enslavement.<sup>313</sup>

### 3. Use of Weaponry

Agu and the other child soldiers are powerless and alone. That is why they are especially impressed with the power of the small guns they are given.<sup>314</sup> The special names the child soldiers give themselves, like “Rambo,”<sup>315</sup> the guns, and the drugs<sup>316</sup> they are forced to take (appropriately called “gun juice”) all give these young soldiers a false but effective sense of power.

Regrettably, there is presently no universal treaty addressing small arms and light weapons proliferation. Most of the laws that exist in this area are nation-specific and lack international coordination.<sup>317</sup> However, the ongoing elaboration of a draft Protocol on the Illicit Manufacturing, Circulation, and Proliferation of Small Arms and Light Weapons and Illicit Trafficking in Firearms, Ammunitions and Other Related Materials by the United Nations Group of Experts on Small Arms is a welcome development in this regard.<sup>318</sup>

Article 38 of the CRC states that persons under fifteen-years-old<sup>319</sup> should not bear arms, perpetrate violence, nor wear the uniform of any combative group in any form of political conflict in the world. Even though 191 States have ratified the CRC, many nations violate this provision and forcibly recruit children younger than fifteen years of age.<sup>320</sup> “Commandant is saying that I am too small to be carrying gun because small person is not holding gun well and just bouncing up and down when they are shooting. Instead he is giving me knife.”<sup>321</sup> Iweala shows,

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313. *See id.* at 41-42.

314. *See id.* at 31.

315. *Id.* at 43.

316. Agu calls his drug “gun juice.” *Id.* at 43-44.

317. *See* GRADUATE INST. INT’L STUDIES, SMALL ARMS SURVEY 2001: PROFILING THE PROBLEM 123-26 (2001) (outlining various national approaches to the problem of illegal arms transfers).

318. *See* Udombana, *supra* note 20, at 67. The Protocol relating to small arms traffic, when adopted, will supplement the Convention Against Transnational Organized Crime, signed at the High-Level Political Signing Conference in Palermo, Italy in Dec. 2000.

319. Note that the age is now eighteen years, pursuant to the Children in Armed Conflict Protocol, *supra* note 94.

320. *See* CRC, *supra* note 93, art. 38.

321. IWEALA, *supra* note 13, at 43.

through a powerful child's-eye view, how disposable especially the smallest child is to the commanders of these armies of children: "[I]f I am throwing gun away, then Rambo will be throwing me away because gun is more important than me."<sup>322</sup>

#### 4. Exposure to and Forced Intake of Drugs

Another human rights violation affecting child soldiers and trafficked children is the forced use of drugs to numb the experience of warfare. Drugs such as cocaine and marijuana are often given to child soldiers to alleviate their fears and enhance their capacity in battle.<sup>323</sup> However, the use of drugs also destroys a child's ability to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.<sup>324</sup> "[E]verybody is getting gun juice. Everybody is always wanting gun juice because it is drug and making life easy easy."<sup>325</sup>

#### 5. Fostering of Self-Hate

In Iweala's novel gruesome depictions of random killings alternate with Agu's confused sense of guilt: "I am not bad boy. I am not bad boy. I am soldier and soldier is not bad if he is killing."<sup>326</sup> They feel guilty because they have survived and others are dead due to their inability to fight against the leader's commands. The children have lost their autonomy and self-control.

#### 6. Autonomy

"He (Commandant) is taking my hand and bringing it down so hard on top of the enemy's head. I am vomiting everywhere. I cannot be stopping myself."<sup>327</sup> Children recruited into war have no choice but to obey orders and commit atrocities or die themselves. The more people they kill, the better they are accepted by their commanders and peers:

If they are ordering me KILL, I am killing, SHOOT, I am

322. *Id.* at 129.

323. See Machel Report, *supra* note 36, ¶ 47; see also David Ott, *Under Age and Under Arms*, *HERALD* (Glasgow), Jan. 12, 1999, at 11 (revealing that leaders give children drugs to make them more efficient killers).

324. See Udombana, *supra* note 20, at 79.

325. IWEALA, *supra* note 13, at 43.

326. *Id.* at 22.

327. *Id.* at 21.

shooting, ENTER WOMAN, I am entering woman and not even saying anything even if I am not liking it. I am killing everybody, mother, father, grandmother, grandfather, soldier. It is all the same. It is not mattering who it is, just that they are dying.<sup>328</sup>

### 7. Inability to Escape

Once abducted, children must comply with their captors or die.<sup>329</sup> The ultimate aim of the process is to foster a child's dependency on an armed organization and prevent escape.<sup>330</sup>

I am not wanting to fight today because I am not liking the gun shooting and the knife chopping and the people running. I am not liking to hear people scream or to be looking at blood. So I am asking to myself, why am I fighting? Why can I not just be saying no? Then I am remembering how one boy is refusing to fight and Commandant is just telling us to jump on his chest, so we are jumping on his chest until it is only blood that is coming out of his mouth.<sup>331</sup>

Agu represents children who are hopeless victims of war.<sup>332</sup> "Hope is dying, just burning up in the fire of bomb that is hitting truck."<sup>333</sup> The use and abduction of child soldiers is one of the most horrifying forms of child slavery and trafficking that must be stopped before we raise a whole generation of deprived and hate-filled children who populate the world and proliferate more conflict. Agu understands this when he says, "I am knowing I am no more child."<sup>334</sup>

## IV. CONCLUSION AND SOME PROPOSALS FOR SOLUTIONS

### A. *So Many Laws*

Despite a profusion of domestic and international laws that prohibit the use of child soldiers, this inhumane and widespread practice continues today and is likely to increase in the future due to the economics of war. Considering that the use of child

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328. *Id.* at 135.

329. See SINGER, *supra* note 25, at 61.

330. See *id.* at 57.

331. IWEALA, *supra* note 13, at 42.

332. See GRAHAM, *supra* note 283.

333. IWEALA, *supra* note 13, at 119.

334. *Id.* at 93.

soldiers is “rooted in the endemic competition for economic resources”<sup>335</sup> and fueled by the huge profits from the traffic in drugs, weapons, and human beings, any proposal to eradicate child soldiering must necessarily involve economic solutions in order to effectuate real change in this hideous practice and to firmly re-establish traditional ethics relating to the protection and preservation of children’s rights.

I would like to propose some solutions that might make the practice of using child soldiers more difficult and thus pave the way towards its eradication. Stated differently, I believe we need to destabilize the cost/benefit ratio and decrease the economic benefits of child trafficking by increasing the business costs and the legal risks.

### B. *Prevention*

The key to the elimination of child soldiering and trafficking is prevention, which can be accomplished by raising public awareness of the extent of this international crime and its impact on the society at large. Consciousness raising can be done by education, effective use of the media, State support for NGOs, publicity about international conferences, and publications that disseminate information widely about the following issues: children’s rights, recruitment guidelines,<sup>336</sup> new anti-trafficking and anti-child soldiering legislation, and the dangers of child soldiering. States should publicize information widely through the media about children’s rights and recruitment guidelines<sup>337</sup> in order to educate the public at large. Governments and people must be made aware of children’s rights and the international agreements that protect children against their endangerment and enslavement as child soldiers. Education of the most vulnerable children such as refugees and street children must be made more available so that parents and children can avoid being duped into thinking that the life of a child soldier provides security and stability.

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335. Udombana, *supra* note 20, at 107.

336. For example, The Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, adopted in April 1997, provide a strategy to address the factors that contribute to the use of children as soldiers. See generally CAPE TOWN ANNOTATED PRINCIPLES, *supra* note 27.

337. *Id.*

Awareness about the use of child soldiers can be raised by holding and widely publishing international conferences on child soldiering like the "Free Children from War" Conference that just took place in Paris on February 6, 2007.<sup>338</sup> African nations participating in that international conference on child soldiers pledged to do their utmost to prevent children from being used as fighters, although the commitment is not legally binding. This conference was hosted by France and UNICEF and included delegates from nearly sixty nations, other U.N. agencies and thirty non-governmental organizations, all of whom vowed "to spare no effort to put an end to the illegal use and recruitment of children by groups of armed forces."<sup>339</sup> This Conference should have been picked up by the media, televised on C-SPAN, and covered by CNN International to disseminate the message that our children are in danger worldwide.

The international community must raise awareness worldwide of the extent and impact of the crime of child soldiering in order to create the political will to eradicate the crime and to shame government leaders into implementing legislative protection of children. The media can and should draw more attention to the plight of children in armed conflict. For example, in May 2001, sixty Angolan children were abducted by the National Union for the Total Independence of Angola ("UNITA"), and the documentation available on the abducted children, including their names, ages, and photographs, enabled UNICEF and the United Nations Humanitarian Coordinator in Angola to launch an international publicity campaign that prompted the release of children to a Catholic Mission after twenty days.<sup>340</sup>

States must show support for non-governmental organizations as well as religious and community leaders who do work on the ground to educate the public. NGOs can change values and influence ethics by appealing to the people to adhere to local values and to customs that validate children and their basic human rights.<sup>341</sup> However, in the past many of the non-govern-

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338. See generally *AFRICA: Fighting for Children*, *supra* note 41.

339. *Id.*

340. See Amnesty Int'l, *Innocent Victims of Angola's Cruel War*, WIRE, Nov. 2001, available at <http://web.amnesty.org/wire/November2001/Angola>; see also Justin Pearce, *UNITA Attack East of Luanda*, BBC News, May 22, 2001, <http://news.bbc.co.uk/2/hi/africa/1345364.stm>.

341. See SINGER, *supra* note 25, at 146.

mental organizations, groups and the international coalition<sup>342</sup> created to stop the use of child soldiers have been distracted or misdirected by anti-American sentiment that thwarts their mission to stop the use of child soldiers.<sup>343</sup> The international community must help create the political will to eradicate child soldiering by shaming government leaders into implementing legislative protection of children.

### C. *Protection of Child Victims*

In order to eliminate child soldiering, the global community must address the protection of the child victims by strengthening compliance and implementation<sup>344</sup> of international humanitarian laws, human rights norms, slavery conventions, trafficking conventions, international criminal laws, and fair labor laws that are applicable to children's rights and child soldiering. Implementation starts by abolishing the general perception of impunity for crimes related to child soldiering.<sup>345</sup> The Rome Statute of the International Criminal Court established child soldiering as a war crime in 2002. The international *ad hoc* tribunals and the permanent International Criminal Court should prosecute individuals and States Parties engaging in child soldiering and widely publicize the outcome of its cases. Foreign victims of child soldiering should be informed that they can also file lawsuits under the Alien Tort Claims Act in the U.S. federal courts.

In order to protect the child victims, the international community must support the availability of birth records. This would better document the age of children and avoid inadvertent un-

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342. *See id.* at 148. "The Coalition to Stop the Use of Child Soldiers has wasted its political capital by engaging in a long-drawn-out public relations war with the U.S. and British governments." *Id.*

343. *Id.*

344. If a State is not a party to the relevant treaties protecting children, they may be obligated to enforce the provisions anyway because the provisions have become part of international custom. *See* Vienna Convention on the Law of Treaties, *supra* note 232, art. 38. "Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such." *Id.*

345. "The referral of LRA leaders to the ICC by the Ugandan Government provided the first experiment of the ICC's ability to suppress impunity. In December 2003, the Ugandan Government referred the LRA atrocities committed in Northern Uganda to the ICC Prosecutor." Udombana, *supra* note 20, at 102.

derage recruitment.<sup>346</sup>

States should provide rescue missions, financial aid, health and psychological assistance, meaningful rehabilitation to child victims of war, and carefully planned reintegration programs so that abducted children can live again in the community that once welcomed them as children.

#### D. *Economic Solutions*

Shaming States and engaging in a universal moral outcry is necessary and helpful, but the most effective form of deterrence is linked to economic solutions affecting trade and international aid that do not negatively impact women and children. The international community should limit small arms trade to non-State actors and target trading partners of States engaging in child soldiering. States should withhold recognition and financial benefits to any groups that seize power through the use of child soldiers or to States that aid them.<sup>347</sup> States should reduce international aid and trade or implement divestiture policies in countries engaging in child soldiering. "International aid donors should make compliance with the CRC Protocol a condition for development assistance."<sup>348</sup>

U.N. Resolution 1612<sup>349</sup> requires States to monitor and report on the recruitment and use of child soldiers, and any State engaging in child soldiering could be subject to a ban on the export and supply of small arms and light weapons and other military equipment. States should also develop a policy that targets the external support structures providing donations to the groups or States that engage in child soldiering. Any State engaging in human rights violations such as the use of child soldiers could be deprived of their Most Favored Nation status in the General Agreement on Tariffs and Trade and the World Trade Organization, pursuant to the Jackson-Vanick amendment. Other effective measures to eliminate child soldiering might include taking away seats at the United Nations for States engaging in or aiding and abetting this crime.

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346. See SINGER, *supra* note 25, at 146.

347. See *id.* at 160.

348. Udombana, *supra* note 20, at 105.

349. S.C. Res. 1612, ¶ 9, U.N. Doc. S/RES/1612 (Jul. 26, 2005).

*E. Prosecution of Perpetrators*

The next step in the process of eliminating child soldiering is effective prosecution of the perpetrators. Governments should be held accountable for their deliberate decision to use children as human shields and combatants. States must establish and implement laws that criminalize perpetrators with a severe sentence of imprisonment for thirty or more years for anyone who employs child soldiers. This increased sentence would act as a deterrence measure and provide victims with a sense of justice and retribution. For example, on December 16, 2003, Uganda referred the situation concerning the Lord's Resistance Army to the prosecutor of the International Criminal Court.<sup>350</sup> The referral was an attempt by Uganda to engage an "otherwise aloof international community"<sup>351</sup> to stop this inhumane practice and to address the moral outrage of using children as soldiers. The prosecution of perpetrators of child soldiering with a severe sentence would increase the risk and thus the cost of doing the business of child soldiering.

Leaders may know that child soldiering is a war crime, but they seem to believe they will never be brought to justice because of a sense of "rampant impunity."<sup>352</sup> Criminalizing the practice could be accomplished by prosecuting former leaders of groups that use child soldiers in *ad hoc* international tribunals like the war crimes tribunal in Sierra Leone or in the permanent International Criminal Court. Local communities should increase their level of financial support for the *ad hoc* tribunals that are plagued by limited funds.

One of the problems associated with implementing accountability for atrocities associated with child soldiering is the possibility that child soldiers themselves will be prosecuted unfairly. The prospect of prosecuting children for war crimes is controversial. Sierra Leone seems to have found a good solution to this problem. The Statute of the Special Court of Sierra Leone does allow for the prosecution of children between the ages of fifteen and eighteen, but the prosecutor has not taken such action yet, focusing instead on the adult leaders.<sup>353</sup> Children implicated in

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350. See Akhavan, *supra* note 20, at 403.

351. *Id.*

352. SINGER, *supra* note 25, at 149.

353. *Id.* at 155.



these crimes are given hearings in special closed juvenile chambers so that their identity is not disclosed. Children are also given psychological counseling and other assistance. Moreover, children are not sentenced to prison with adult perpetrators but rather they are placed in special custody and rehabilitation/demobilization programs, as well as foster care. This kind of response recognizes that child soldiering is a unique crime because perpetrators are oftentimes themselves the victims.<sup>354</sup>

In view of the uniqueness of the crime of child soldiering, the U.N. Security Council should consider establishing a new *ad hoc* tribunal specifically centered on the crime of child soldiering.<sup>355</sup> In addition, the rules of the ICC might be modified to allow children to testify before the court<sup>356</sup> and thereby create a more accurate historical record that should be publicized widely.

Three years after the CRC Protocol on Children in Armed Combat entered into force, the U.N. Security Council expressed deep concern “over the lack of overall progress on the ground, where parties to conflict continue to violate with impunity the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict.”<sup>357</sup> The use of children as soldiers in armed combat is nothing less than a contemporary form of slavery that must be eradicated by carefully implemented measures to re-establish ethical norms that valorize children.

Hope is not dead in this campaign against the enslavement of child soldiers. Recently, fifty-eight countries and nongovernmental agencies signed a treaty to free current and potential child soldiers from peril.<sup>358</sup> On January 29, 2007, the International Criminal Court forged ahead with its first war crimes prosecution targeting the leader of the Congolese militia with charges of recruiting child soldiers. The act was declared a war crime when the International Criminal Court was established in 2002. Radhika Coomaraswamy, the United Nations envoy for children and armed conflict, stated that “We’ve come a long way.

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354. *Id.*

355. *Id.* at 151.

356. *Id.* at 153.

357. See generally S.C. Res. 1612, *supra* note 349.

358. See Ann O’Neil, *Stolen Kids Turned Into Terrifying Killers*, CNN, Feb. 12, 2007, <http://www.cnn.com/2007/WORLD/africa/02/12/child.soldiers/index.html>.

Ten years ago this was an invisible issue.”<sup>359</sup> Last summer groups in Burundi, Ivory Coast, Myanmar, the Democratic Republic of the Congo, Sudan and Somalia were referred to the U.N. Security Council for possible sanctions related to their use of children as soldiers. Individual commanders are being held responsible for their war crimes.

But in order to do more to eradicate this crime, funds must be found and steps must be taken to restore normal life to the children victimized by this atrocity. Many of these children need rehabilitation and serious counseling in improved rehabilitation and transit centers.<sup>360</sup> Many of the escapees who return home are rejected by their own families (if they are still alive) and shunned by villagers who view them as killers. Changing community and family norms to safeguard the reintegration of these victims is no easy task and can only be done by a widespread information and education campaign, as well as a serious attempt to eradicate poverty which is at the source of many of the armed conflicts that produce and perpetuate the use of child soldiers as a military strategy. The fact is that children are devalued, viewed as expendable, and a convenient natural resource for economic efficiency during war. Public condemnation of this kind of perverse thinking and of the leaders who recruit children into armed combat can help to reduce future recruitment. Imposing sanctions on corporations that trade with leaders of groups that use children as soldiers is more effective than punishing women and children by imposing sanctions on the State as a whole. Without the moral outcry and the effective intervention of the international community, these children could become a lost generation of migratory professional killers who perpetuate conflict and war.

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359. *Id.*

360. See Naomi Cahn, *Poor Children: Child “Witches” and Child Soldiers in Sub-Saharan Africa*, 3 OHIO ST. J. CRIM. L. 413, 442 (2006).