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### Children in Armed Conflict

Mark Drumbl

The Oxford Handbook of Children's Rights Law

*Edited by Jonathan Todres and Shani M. King*

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### Abstract and Keywords

This chapter addresses a particularly vulnerable population of children, namely, children associated with armed forces or armed groups. These children are colloquially known as child soldiers. This chapter begins by surveying the prevalence of child soldiering globally. It then sets out the considerable amount of international law that addresses children in armed conflict, in particular, the law that allocates responsibility for child soldiering and the law that sets out the responsibility of child soldiers for their conduct. The chapter identifies significant gaps between the law and the securing of positive outcomes for former child soldiers, notably when it comes to post-conflict reintegration. The protective impulse that envisions militarized youth as faultless passive victims may not always reflect how youthful fighters see themselves nor necessarily support an emancipatory and empowering vision of how international law should promote the rights of children.

Keywords: recruitment, enlistment, children, atrocity crimes, reintegration, DDR, children's rights, child soldiers

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## 1 Introduction

CHILDREN have been enmeshed in armed conflict throughout history.<sup>1</sup> At times, and for multiplicities of causes both emancipatory and baleful, such children have been seen as heroes. I live in Lexington, Virginia, home to the Virginia Military Institute, whose cadets—many aged fifteen to eighteen—fiercely fought for the Confederacy in the 1864 Battle of New Market. These cadets were credited with the victory over Union forces. The Stonewall Jackson Memorial Hall, situated in the heart of the campus, displays a sprawling mural by Benjamin Clinedinst which lionizes the youthful cadets' battle charge. Among Colombia's national heroes, commemorated in a dynamic monument to *los valerosos e insobornables niños*, is twelve-year-old Pedro Pascasio Martínez, fabled for preventing the escape of a Spanish commander who sought to flee following the Battle of Boyacá—a pivotal event in the country's independence in 1819. These are just two of many examples of memorials, commemorations, and elegies for children that salute them for their martial pride, service to their *patrie*, and political engagement.

## Children in Armed Conflict

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The emergence of international human rights law, international criminal law, and international humanitarian law has, however, shifted public perceptions of children entangled in armed conflict. So, too, have a series of powerful autobiographies and documentaries that have disseminated to global audiences the horrors of the child soldier experience.<sup>2</sup> Such children are increasingly being seen as victims, and the involvement of children in armed conflict is emerging not as untoward and undesirable or a desperate last stand but, instead, as flatly unlawful. The relationship of the child with armed conflict has shifted from one regulated by ethics and morality to one constructed by law and public policy. Many activist and humanitarian groups gravitate to the cause of ending child soldiering. Considerable funds have been deployed in this struggle. The United Nations Security Council, generally fractured, has succeeded in issuing eleven (p. 658) resolutions over the past two decades on children in armed conflict. UNICEF and other UN organs also have been deeply invested in the cause of ending child soldiering.<sup>3</sup>

The child soldier therefore suffuses the international legal imagination. Mostly, this figure evokes imagery of a poor, kidnapped, prepubescent African boy, in dilapidated sandals, barely able to hold his AK-47. This essentialized image nonetheless belies the far greater complexity of *where* children become implicated in armed conflict, *when* (as a matter of age) children become soldiers, as well as *how* and *why* they become implicated. Readers may be surprised to learn: many child soldiers are found outside of Africa; many children fulfill functions that do not involve carrying weapons; most child soldiers world wide are adolescents rather than young children; the most common path to militarized life is not abduction and kidnapping, but for children to come forward with varying degrees of volition and become enlisted; and children may face greater threats from their side than from the enemy. What is more, it is estimated that 40 percent of child soldiers world wide are girls. The invisibility of the girl soldier from the imagery of child soldiering and hence from rehabilitative and reintegrative programming remains deeply disappointing.

Accordingly, in recent decades the well-worn phrase *child soldier* has become disfavored. The 2007 Paris Commitments and Paris Principles,<sup>4</sup> two connected nonbinding instruments endorsed by 108 states,<sup>5</sup> instead normalize different language: “a child associated with an armed force or armed group.” The Paris Principles did so to underscore the diversity of roles children may play in armed conflict. An armed force refers to the national militaries of a state, whereas an armed group refers to a fighting force that is separate from a state, for example, rebel groups such as the northern Uganda’s Lord’s Resistance Army (LRA) and Sri Lanka’s Liberation Tigers of Tamil Eelam (LTTE). According to the Paris Principles:

“A child associated with an armed force or armed group” refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.

## Children in Armed Conflict

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The Paris Principles map onto international child rights law by affirming the chronological divide of eighteen as the transition point between childhood and adulthood. Assuredly, the phrase “children associated with armed forces and armed groups” is somewhat tongue-tying, so UN agencies and international activists have turned to the acronym CAAFAG instead. Yet this, too, is phonetically awkward and creates a bit of an alphabet soup. Hence, in this chapter I tend to deploy the term *child soldier* but always understand the meaning of the term to reflect the definition as provided by the Paris Principles. Although terminology matters, it might also be helpful to revisit the term *soldiering* instead of abandoning it and to recognize that in contemporary conflict it is the act of soldiering itself that could be rendered more definitionally capacious. On this note, it is striking that the most recent set of political commitments on the topic, fostered by the Canadian government in 2017, are expressly titled the Vancouver Principles on (p. 659) Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers.<sup>6</sup> These Principles strive to prevent child recruitment in the context of peacekeeping operations and mandate peacekeepers to receive clear guidance regarding children associated with armed forces or armed groups.

To be sure, children intersect with armed conflict even if they are not part of an armed group or an armed force. Children suffer terribly from conflict-related violence. Hence, this chapter also will discuss children not at all associated with an armed force or armed group as well as children associated with groups, for example, terrorist organizations, when debate arises whether or not that group has the capacity to engage in armed conflict and hence would qualify as an armed group. On a more general note, it has been estimated that 246 million children live in areas riven with armed conflict, of which 125 million are directly affected by conflict worldwide.<sup>7</sup>

This chapter intends to accomplish several goals. First, so as to situate the reader, it offers a concise global survey of children associated with armed forces and armed groups. It then sets out the content of international law when it comes to the regulation of child soldiering. It does so through two steps: assessing the responsibility for child soldiering (i.e., when recruitment of children into armed groups or armed forces is unlawful) and then the responsibility of child soldiers (i.e., the consequences that arise when child soldiers commit criminal atrocities). This chapter explores challenges that inhere in reintegrating these vulnerable populations into civilian life. In conclusion, it posits that an important path forward is to ensure that the best interests of the child principle, situated in Article 3 of the United Nations Convention on the Rights of the Child (CRC), be fully actuated. Respecting best interests means foregrounding the voices of the children themselves. On this note, the protective impulse that envisions militarized youth as faultless, passive victims may not always reflect how youthful fighters see themselves nor necessarily support an emancipatory and empowering vision of how international law should promote the rights of children.

# 2 Practices of Child Soldiering

It is generically estimated that, in recent decades, from two hundred and fifty to three hundred thousand children worldwide are associated with armed forces or armed groups. Child soldiers—as with former child soldiers—exist in each of the world’s regions. States recruit, to be sure, but in 2016 the Office of the Special Representative of the Secretary-General on Children and Armed Conflict found that non-state armed groups constitute fifty-four out of sixty-three parties listed for grave violations against children.<sup>8</sup> Overall, the Special Representative found that in 2016 concerns lingered but progress was made in the Philippines, the Democratic Republic of the Congo (DRC), Colombia, Sudan, Mali, Nigeria, and the Central African Republic; significant challenges were identified in Afghanistan, Somalia (where the number of militarily recruited children doubled in 2016), South Sudan, Yemen, Nigeria, Iraq, and Syria.

**(p. 660)** Child soldiering is a *global* phenomenon that is much more nuanced than might appear at first blush.

Child soldiers have been recruited into the Bolivian armed forces. Children have participated in armed violence in Guatemala and Peru. In Colombia, child soldiers were voluntarily enlisted and were forcibly recruited into armed opposition groups (the FARC and the ELN), where they laid mines and undertook support tasks. The largest pro-government paramilitary group, the AUC, also recruited child soldiers. Peace negotiations in Colombia have demobilized many FARC child soldiers and former child soldiers. Questions persist as to how such former child fighters should be reintegrated and whether they ought to face restorative processes or some element of retributive justice for crimes they may have committed during the armed conflict.

UNICEF estimates more than six thousand cases of child recruitment between 2003 and 2008 by rebels in Sri Lanka. The LTTE—a group of violent secessionists who fought the Sri Lankan government until its defeat in 2009—turned extensively to child soldiers. The Khmer Rouge used youthful cadres in the Cambodian killing fields between 1975 and 1979. Myanmar’s government recruits children through harsh methods. One quarter of its national armed forces (the Tatmadaw) is estimated to be composed of persons under the age of eighteen. Child soldiers also are found within the many non-state armed groups in Myanmar. In Nepal, child soldiers—three thousand of whom were released in early 2010 as part of peace negotiations—participated in Maoist rebel groups. Child soldiers served in pro-Indonesian militia forces in Timor-Leste. Children have furthermore been associated with armed forces or armed groups in Bangladesh, Laos, Pakistan, Thailand, the Philippines, and Jammu and Kashmir.

Children have fought in Iraq and in Iran. Child soldiers have fought, killed, and died in Afghanistan through successive conflicts; children also are recruited into Afghan police forces.<sup>9</sup> In Palestine, the face of the first intifada was youthful: among those arrested, the average age was seventeen.<sup>10</sup> Israel has imprisoned Palestinian children for security offenses and for being associated with an armed group. Conflict in Yemen and Syria en-

## Children in Armed Conflict

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meshes children as participants. This entire region is seeing an escalation in the numbers of children associated with armed forces and armed groups. ISIS now presents one of the most visible cases of child soldiering. Circulated through social media, haunting imagery of beheadings and murders committed by the “cubs of the caliphate” shock the conscience. ISIS also succeeds in recruiting minors, frequently through abductions and brainwashing, but also because youths come forth on their own initiative and wish to enroll. Influenced by social networking and web-interfaces, adolescents have traveled long distances to join ISIS, often but not always under false pretenses. Children have carried out numerous terroristic attacks, including suicide bombings, throughout Iraq.<sup>11</sup> These children tend to be seen less as passive victims by the international community and more as threats to be disabled in counterterrorism programs, in part because of political impulses that treat these children differently from others associated with armed groups. Children associated with groups labeled as terroristic and extremist are therefore among the most vulnerable and poorly served by current policies. Throughout 2017 authorities in Iraq, Kurdistan, and Syria routinely detained and abused children (p. 661) suspected of association with ISIS. The Office of the Special Representative specifically criticizes the detention by states of children for alleged association with such armed groups and, as well, the use by these armed groups of children as human bombs.<sup>12</sup> On this note, Principle 9 of the 2017 Vancouver Principles requires:

To ensure that all children apprehended and/or temporarily detained in accordance with mission-specific military rules of engagement are treated in a manner consistent with international norms and standards, as well as the special status, needs, and rights of children and to ensure that detention is used as a measure of last resort, for the shortest possible period of time, and with the best interests of the child as a primary consideration, and that they are handed over expeditiously to child protection actors and civilian authorities in line with the established policies and guidance.

Virtually all of the multiple sides to endemic conflict in the DRC conscripted, enlisted, or actively used child soldiers. Although the involvement of children in armed conflict in the DRC has attenuated over time, it has not disappeared. Armed conflict in Angola and Mozambique—now quiescent—had directly implicated thousands of children, often forcibly, but also through self-enlistment for ideological or material aspirations.<sup>13</sup> Children actively serve as combatants in conflicts in the Central African Republic (CAR), Chad, and Côte d’Ivoire. The use of child soldiers also is reported in Burundi and Zimbabwe. Evidence of child soldiering among national armed forces recently has emerged in Somalia. Charles Taylor, the former Liberian head of state now jailed by the Special Court for Sierra Leone (SCSL), had initially built an army around child soldiers. Government forces and rebel groups in the Sudan turned to child soldiers throughout internecine conflict, most extensively in the 1990s, though recourse to children still persists. In South Sudan, child soldiering is on the rise. Boko Haram, a group in Nigeria, viciously kidnaps and abuses children. In response, the Nigerian government is currently thought to be detaining thousands of children (as well as adults) who it fears are associated with Boko Haram. Many of the detained have been encountered during military operations, but others—in-

## Children in Armed Conflict

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cluding large numbers of children—appear to have been arrested arbitrarily as they fled from Boko Haram.

Children suffered terribly in the 1994 Rwandan genocide. Hutu extremists targeted Tutsi children, even infants, for elimination. Many children witnessed graphic violence. Minors also became perpetrators. Some manned the barricades that identified the Tutsi “cockroaches” to be eliminated. Youths—many of them teenagers—also became central to the effort to oust the genocidal government. These youths staffed the ranks of the Rwandese Patriotic Army (RPA), the only military force actually to intercede to halt the genocide.

In Northern Uganda, a recurrent estimate puts the number of children abducted by the rebel Lord’s Resistance Army (LRA) at between twenty-five and thirty-eight thousand.<sup>14</sup> At some points, minors constitute 90 percent of LRA forces. Nearly all have escaped or surrendered, and the LRA has been massively weakened. Notwithstanding having been indicted by the International Criminal Court (ICC) in The Hague, LRA (p. 662) leader Joseph Kony remains at large, though a lower-level commander, Dominic Ongwen (himself a former child soldier brutally kidnapped into the LRA at the age of nine), is currently on trial there. Ongwen faces seventy-one counts of crimes against humanity and war crimes (the largest number of charges ever brought against anyone by an international court or tribunal).

Thousands of children were associated with all sides of the conflict that raged in Sierra Leone from 1991 to 2002. Although children were recruited by force, significant numbers willingly joined. Among Sierra Leone’s child soldiers, commission of atrocities (including amputations of the hands and feet of civilian populations), resocialization into violence, and compelled drug use all were widespread. Most child soldiers remained low-level auxiliaries, but some over the age of fifteen became generals.<sup>15</sup>

Children have served as fighters in recent conflicts in Chechnya, Croatia, Bosnia and Herzegovina, and Serbia. Many states—including the United Kingdom, the United States, China, India, the Netherlands, Canada, France, New Zealand, Germany, and Australia—permit voluntary recruitment of minors into national armed forces, albeit largely under strict conditions.

### 3 Legal Responsibility for Child Soldiering

The CRC affirms that states “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 hostilities.”<sup>16</sup> CRC Article 38(3) provides that “States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces ...” The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, which was adopted in 2000, entered into force in 2002.<sup>17</sup> As of 2017, 167 states are parties thereto. The Optional Protocol aims to remedy some of the CRC’s perceived inadequacies. It specifies that states “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.”<sup>18</sup> On the one

## Children in Armed Conflict

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hand, the Optional Protocol reflects an incremental move, in that the language “all feasible measures” does not plainly read as imperative. On the other hand, the Optional Protocol has been interpreted as “elevating the minimum age for combat participation to 18.”<sup>19</sup> A firmer ban emerges in Article 2, which provides that states “shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.” Optional Protocol Article 3(1) then somewhat nebulously adds:

States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the [CRC], taking account of the principles contained in that article and recognizing that under the [CRC] persons under the age of 18 years are entitled to special protection.

(p. 663) Article 3(1) mandates that states increase the threshold age for the voluntary recruitment of persons into their national armed forces beyond fifteen—ostensibly, then, at the very least to sixteen. The Optional Protocol *stricto sensu* permits recruitment of sixteen- and seventeen-year-olds into national armed forces. Their recruitment, however, is to be genuinely voluntary and carried out with the informed consent of the recruit’s parents or legal guardians; in addition, such recruits are to be fully informed of the duties involved in service and must provide reliable proof of age.<sup>20</sup>

The Optional Protocol requires each state party to deposit a binding declaration upon ratification or accession that sets forth its minimum age of voluntary recruitment as determined under national law. Among states that have filed declarations, approximately three-quarters list minimum ages of voluntary recruitment of eighteen or older (a large majority within this group declare eighteen).<sup>21</sup> A generalized practice, therefore, is emerging (at least if the metric is to undertake a head count of states). Examples of states that, as of August 2018 declare ages lower than eighteen, include: seventeen-and-a-half years (Malaysia); seventeen years (Australia, Austria, Azerbaijan, Cabo Verde, China, Cuba, France, Germany, Guinea-Bissau, Israel, Netherlands (as military personnel on probation), New Zealand, Saudi Arabia, and United States); the “1st January of the year they become 17 years old” (Brazil, for military service); sixteen-and-a-half years (Singapore); and sixteen years (Bangladesh, Belize, Canada, Egypt, El Salvador, Guyana,<sup>22</sup> India, and the United Kingdom). It is noteworthy that certain of these states have large armed forces.

The Optional Protocol is more restrictive in cases of armed groups. These groups “should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”<sup>23</sup> What is more, pursuant to Article 4(2), states agree to take “all feasible measures” to criminalize such practices. State responsibility therefore arises, at least in theory.

Other international and regional instruments also address recruitment of children into armed forces or armed groups. The International Labor Organization’s Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor defines a child as a person under the age of eighteen.<sup>24</sup> This convention ex-



## Children in Armed Conflict

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explicitly links “forced or compulsory recruitment of children for use in armed conflict” to “slavery or practices similar to slavery” and obliges ratifying member states to “take immediate and effective measures to secure the prohibition and elimination” thereof.<sup>25</sup> The African Charter on the Rights and Welfare of the Child, which came into force in November 1999, defines a child as “every human being below the age of 18 years” and requires parties to “take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.”<sup>26</sup>

Article 38(1) of the CRC requires that states “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.” How does international humanitarian law approach children? The Fourth Geneva Convention, which concerns civilian persons, grants a number of special protections to children.<sup>27</sup> These protections, which may begin at different ages (twelve, fifteen, or eighteen), include barring the occupying power from (p. 664) compelling persons under the age of eighteen to work. In 1977 two Additional Protocols were added to the Geneva Conventions (one for international armed conflict (I), the other (II) for non-international armed conflict). Article 77(1) of Additional Protocol I mandates for parties to a conflict that “[c]hildren shall be the object of special respect and shall be protected against any form of indecent assault.”<sup>28</sup> Article 77(2) states that “Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces” while also specifying that “[i]n recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavor to give priority to those who are oldest.” Article 77(3) addresses what a party is to do when it captures enemy fighters who, despite the requirements of Article 77(2), are under the age of fifteen. In such situations, such captured persons “continue to benefit from the special protection accorded...., whether or not they are prisoners of war.” Furthermore, pursuant to Article 77(4), “If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.” Additional Protocol I also accords children priority in the distribution of relief consignments and restricts the ability of a party to the conflict to evacuate children other than its nationals to a foreign country.<sup>29</sup>

Additional Protocol II, which covers non-international armed conflict, asserts in Article 4(3)(c) that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”<sup>30</sup> This prohibition is firmer than its counterpart for international armed conflict in Additional Protocol I. Article 4(3) of Additional Protocol II, which generally requires that “children shall be provided with the care and aid they require,” makes specific (though not exclusive) reference to education, family reunification, and the temporary removal of children from areas plagued by hostilities to safer areas. Similarly to Additional Protocol I, in Article 4(3)(d) Additional Protocol II extends special protection to children below the age of fifteen even

## Children in Armed Conflict

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“if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured.”

In international and non-international armed conflict, the conscription, enlistment, or use of children under the age of fifteen to participate actively in hostilities is a war crime to which individual criminal responsibility attaches. The unlawfulness of illicit recruitment thereby expands to include both state responsibility as well as individual penal culpability in the case of children under the age of fifteen. This proscription is both conventional and customary. A fundamental precept underpinning this war crime is that “[r]esponsibility is placed on the adult who permits participation and never on the child.”<sup>31</sup> Prosecutions have occurred at the SCSL and ICC.

In fact, the ICC issued its very first conviction solely on three counts of child soldier crimes, precluded in non-international armed conflict by Rome Statute Article 8(2)(b) (xxvi) (a different but identically worded provision, Article 8(2)(e)(vii), addresses international armed conflict).<sup>32</sup> In *Prosecutor v. Lubanga*, a rebel leader in the DRC was (p. 665) sentenced to fourteen years’ imprisonment. Jurisprudence from these two institutions has clarified important aspects of this war crime. For example, in *Prosecutor v. Brima, Kamara, and Kanu* (the AFRC case), a SCSL Trial Chamber defined conscription as implying “compulsion” and as encompassing “acts of coercion, such as abductions and forced recruitment.”<sup>33</sup> It defined enlistment as “accepting and enrolling individuals when they volunteer to join an armed force or group,” which it immediately qualified by adding: “Enlistment is a voluntary act, and the child’s consent is therefore not a valid defence.”<sup>34</sup> The bottom line is that enlistment of children under the age of fifteen is impermissible regardless of circumstances. Consent of the child is no defense. In another case, the SCSL Appeals Chamber assessed the required nexus between a defendant and the moment at which a child had actually been enlisted into the CDF. This court understood enlistment to mean “any conduct accepting the child as part of the militia” but added that “there must be a nexus between the act of the accused and the child joining the armed force or group”; “knowledge on the part of the accused that the child is under the age of 15”; and knowledge that the child “may be trained for combat.”<sup>35</sup> In *Prosecutor v. Sesay, Kallon, and Gbao*, the SCSL found that active participation in hostilities included committing crimes against civilians, engaging in arson, guarding military objectives and mines, and serving as spies and bodyguards.<sup>36</sup> In *Prosecutor v. Lubanga*, the ICC judges followed similar understandings to those of the SCSL. Enlistment was understood to mean “to enroll on the list of a military body,” while conscription means to “enlist compulsorily.”<sup>37</sup> In terms of using children to participate actively, the *Lubanga* judgment underscored the need for a case-by-case approach to establish the link between the activity for which the child is used and the combat in which the armed group or armed force is engaged. Another accused, Katanga, was acquitted in a subsequent case of child soldiering charges because of a lack of nexus between him and the illicit practices of child soldiering in the DRC. In terms of sentencing, it has been noted that crimes against or affecting children should be regarded as particularly grave given that children enjoy special recognition and protection under international law.

## Children in Armed Conflict

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The SCSL also has addressed crimes against humanity that may disproportionately affect children. SCSL Statute Article 2(i) proscribes “other inhumane acts,” which the *AFRC* appeals judgment interpreted as including acts of forced marriage perpetrated against girls. Certain other Rome Statute proscriptions bear on violence that may disproportionately, though certainly not exclusively, harm children. In terms of war crimes, one example is intentionally attacking buildings dedicated to education provided they are not military objectives; the crimes against humanity of enslavement, sexual slavery, and enforced prostitution also come to mind; as do the crimes of forcible transfer of children and child trafficking.<sup>38</sup> Furthermore, Rome Statute Article 6(e) includes, within the definition of *genocide*, the forcible transfer of children of one enumerated group to another enumerated group.

The Rome Statute also permits reparations to victims, including children under the age of eighteen. The ICC may make a reparative order directly against a convicted person, though such individuals are generally impecunious; it also can order the reparative (p. 666) award to be made through a separate trust fund for victims.<sup>39</sup> To date, this trust fund has allocated funds derived from voluntary grants by states to inter alia a number of projects in Uganda and the DRC. Beneficiary projects include programs for child soldiers and abductees as well as programs geared to communities, war victims, victims of sexual violence, teenage mothers, orphans, and also programs to support services, agricultural initiatives, and communications. The *Lubanga* case has established principles and practices for the distribution of reparations.

Individual penal responsibility for illicit recruitment of children is also entering national criminal jurisdictions. As the age of unlawful recruitment inches towards eighteen, it may also be that the scope of individual criminal responsibility for such recruitment moves upward to eighteen.

How far can a handful of criminal trials for adult recruiters go in terms of prevention? Cause for skepticism arises in terms of the deterrent value of such trials.<sup>40</sup> One major gap in the enforcement network is state responsibility for the use of children in armed forces. The conduct of the United States is a telling example. In 2008, the US passed the Child Soldiers Protection Act. This legislation forbids the US from giving military aid to any foreign government that systematically uses children in its armed forces. Yet the law also permits a waiver even for delinquent countries. Beginning in 2010 and for six years thereafter, then-President Barack Obama allocated over \$1.2 billion in military assistance and arms to governments that use child soldiers while only withholding \$61 million.<sup>41</sup> He did so, he said, in the US “national interest.”

One tough issue remains. May child fighters be targeted during armed conflict? If so, how and under which circumstances? International law affirms a duty to respect and protect children in armed conflicts along with a duty to promote the best interests of children. Overcoming the presumption of civilian status might therefore require more than would be the case for an adult. In addition, even if a child is deemed targetable, the allowable means and methods must reflect the protected status of children in international law.<sup>42</sup>

Provisions establishing a special duty to respect and protect children may tip the balance in favor of a duty to capture, where feasible. A new doctrine—described as the first of its kind—adopted by the Canadian Armed Forces in 2017 reflects a balance between security concerns and human and child rights concerns in the specific context of underage fighters.<sup>43</sup> On the one hand, this document accords armed forces personnel the right to use force to protect themselves from the threat of serious injury or death. It recognizes that children may pose as grave a threat as adults. On the other hand, this doctrine states that Canadian troops should “seek to de-escalate confrontations with child soldiers.” If forced to engage child soldiers, the doctrine states that armed forces personnel “seek to engage adults within the group first,” under the assumption that if the adult leader is eliminated or removed, then the armed group might dissolve. The doctrine adds that, if captured, underage fighters should be confined separately from adult detainees and that consideration should be given to grouping the children themselves according to their ages. Child detainees must then be turned over to nongovernmental organizations as soon as possible for purposes of counseling, rehabilitation, and family reunification.

### **(p. 667) 4 Penal Responsibility of Child Soldiers**

Child soldiers suffer crimes, and child soldiering is a crime, but child soldiers also may commit crimes—including grievous atrocities. The victims of violent acts by child soldiers may include children as well as adults.

Although criminally prosecuting child soldiers for their alleged involvement in acts of atrocity is technically permissible under international law, such a move increasingly is viewed as inappropriate and undesirable.

The CRC nonetheless permits the “arrest, detention or imprisonment of a child” but requires that these measures “shall be used only as a ... last resort and for the shortest appropriate period of time.”<sup>44</sup> The CRC precludes the death penalty and life imprisonment without parole as sentences for children who are convicted of offenses. The CRC requires that “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.”<sup>45</sup> It specifies a minimum level of due process protection for children subject to criminal proceedings but also encourages the development of enhanced frameworks attuned to their specific needs. The CRC does not favor incarceration, preferring instead rehabilitation and reintegration. That said, the CRC does not bar incarceration. Article 40(3)(a) of the CRC requires parties to seek to promote the establishment of “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law” but sets no such age. That said, the Committee on the Rights of the Child, which helps monitor state compliance with the CRC, has considered fourteen as a low age for criminal responsibility and “has welcomed ... proposals to set the age of criminal responsibility at eighteen.”<sup>46</sup>

What is the general practice within national jurisdictions when it comes to minors who commit ordinary common crimes? A sampling of baseline ages of criminal responsibility over the past decade include: seven (Switzerland, Nigeria, South Africa); ten (Australia,

## Children in Armed Conflict

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New Zealand); twelve (Canada, Netherlands, Uganda); thirteen (France); fourteen (Japan, Germany, Austria, Italy, Russian Federation, Sierra Leone); fifteen (Sweden, Norway, Denmark); sixteen (Spain, Portugal), and eighteen (Belgium, Brazil, Peru).<sup>47</sup> It is not uncommon for states to adjust these ages, and the trajectory of such moves is upward. National ages of criminal responsibility may be gradated. This means that jurisdictions establish an age of criminal responsibility and a separate age of adult criminal responsibility.

Turning to international humanitarian law, Article 68 of the 1949 Fourth Geneva Convention precludes imposing the death penalty on “a protected person who was under eighteen years of age at the time of the offence,” as do both of the 1977 Additional Protocols. Consequently, the Fourth Geneva Convention and both Additional Protocols contemplate that minors can incur responsibility for war crimes. These instruments bar only the harshest punishments.

**(p. 668)** In 1996, pursuant to a UN General Assembly resolution, Graça Machel of Mozambique submitted a ground-breaking report entitled “Impact of Armed Conflict on Children” (widely known as the Machel Report).<sup>48</sup> The Machel Report was a front runner in sensitizing the international community to the hazardous effects of violent conflict on children, including child soldiers. It has had tremendous social constructivist influence. In light of the Machel Report’s recommendation, for example, the Office of the Special Representative on Children and Armed Conflict was established within the UN system.

The Machel Report identifies child soldiers as victims and targets and, also, “even” as perpetrators.<sup>49</sup> That said, it didactically presents acts of atrocity perpetrated by child soldiers as the product of coercion or manipulation by adults. The Machel Report recognizes the complexities of “balancing culpability, a community’s sense of justice and the ‘best interests of the child’.”<sup>50</sup> It does not explicitly disclaim the penal responsibility of child soldiers, but neither does it encourage child soldiers to become subjects of criminal prosecutions. Paris Principle 8.6 flatly states that “[c]hildren should not be prosecuted by an international court or tribunal.” The Paris Principles also address truth-seeking and reconciliation mechanisms:

8.15 All children who take part in these mechanisms, including those who have been associated with armed forces or armed groups should be treated equally as witnesses or as victims.

8.16 Children’s participation in these mechanisms must be voluntary. No provision of services or support should be dependent on their participation in these mechanisms.

The approach of the Paris Principles to preclude international criminal trials and dissuade national criminal trials is to be welcomed. So, too, is the Paris Principles’ commendation of truth-seeking and reconciliation mechanisms and support (albeit quite cursory) of traditional rituals. That said, the Paris Principles shrink the ability of such mechanisms to ex-

plore fully the multidimensionality of child soldier returnees, notably their roles as perpetrators. Accordingly, the application of such mechanisms thins and becomes superficial.

In the aftermath of the Second World War, the International Military Tribunal (IMT) and a variety of other institutions, including the Nuremberg Military Tribunals (NMTs), concerned themselves with the crimes of Nazi Germany. No mention was made in the Nuremberg Statute, Control Council Law No. 10, or Control Council Ordinance No. 7 of the age at which criminal responsibility began; in any event, no minor was charged under any of these instruments. Although the IMT prosecuted Baldur von Schirach for inter alia his use of the Hitler Youth, it did not address crimes committed by the youth themselves. The constitutive statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993) and the International Criminal Tribunal for Rwanda (ICTR, 1994) similarly offer no guidance regarding the age of criminal responsibility. The Rome Statute of the International Criminal court has no jurisdiction over any person who is under the age of eighteen at the time of the alleged commission of the crime.<sup>51</sup>

(p. 669) The SCSL Statute limited the SCSL's jurisdiction to defendants who were fifteen years of age or older at the time of the alleged offense.<sup>52</sup> The SCSL Statute gave special considerations to "juvenile offenders," that is, defendants under the age of eighteen at the time of the alleged offense and exempted them from incarceration.<sup>53</sup> Instead, the SCSL "shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies."<sup>54</sup> The SCSL's first chief prosecutor promptly and unequivocally stated that he would never prosecute children under the age of eighteen, including child soldiers, inter alia, because they do not bear the greatest responsibility.<sup>55</sup> Indeed, none were prosecuted.

But these international institutions can prosecute and incarcerate former child soldiers who committed crimes as adults. Currently, as noted above, Dominic Ongwen faces prosecution in The Hague on many counts of horrific crimes.<sup>56</sup> Ongwen himself was a violently abducted and abused child soldier. Ongwen came of age in the LRA. He rose through the ranks from nothing to a brigadier commander. He fled the LRA in his early forties, surrendered to US Special Forces, and was transferred to the ICC. Questions persist as to whether, and if so to what extent, his background as an abducted child matter in terms of penal liability. Indications thus far are that this background matters little, though it could, perhaps, emerge as a mitigating factor in sentencing in the event Ongwen is convicted.

## 5 Reintegration and Homecoming

I did step on the egg, it broke beneath my foot and I moved into the compound. She was crying all this time. As if that wasn't enough, she had to carry me on her back as if I was a two year old kid. She took me to the house, never asked me anything about the bush.<sup>57</sup>

## Children in Armed Conflict

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This is how Alex Olango, a formerly abducted child soldier, discusses his return home from years of brutalities in the LRA. He describes the process of *mato oput*, practiced in northern Uganda, to welcome those from afar who are filled with bad spirits, *cen*, spirits of war. Extensive deployment of *mato oput* has facilitated a significant depletion of the LRA's ranks. On a general note, many child soldiers return to their communities of origin through disarmament, demobilization, and reintegration programs. Principle 12 of the Vancouver Principles, in fact, calls for child soldiers to be included as a priority in such programs. Disarmament involves the collection of weapons. Demobilization means the discharge of individuals from fighting forces. Reintegration is the step through which the former fighter transitions to a civilian role. Of considerable concern is the sidelining of transitional justice initiatives from post-conflict programming to reintegrate former child soldiers. The phrase *transitional justice* designates the range of processes by which societies come to terms with histories of widespread violence, how they reckon with (p. 670) terrible human rights abuses, and how people within afflicted constituencies come to live together again. Processes commonly associated with transitional justice include criminal trials, civil liability (for example, private tort actions, restitutionary claims, and public reparations), lustration, community service programs, truth and reconciliation commissions, ceremonies, rites, rituals, public inquiries, and restorative initiatives. These processes vary considerably inter se regarding how, to whom, and to what degree they allocate responsibility for acts of atrocity. They nevertheless share the pursuit of social repair through a framework that recognizes the pain wrought by the violence. This does not necessarily mean that perpetrators have to confess or atone. Many ceremonies, for example, do not contemplate such methods. *Mato oput* in Uganda, referenced above, is such an example—once the egg is stepped on, the time in the bush is no longer discussed—as evidenced by Alex Olango's mother.

I believe these processes can promote the reintegration of child soldiers. I have argued elsewhere, however, that atrophying the three-dimensionality of child soldiers (victims, witnesses, and actors) into a safer two-dimensionality (only victims and witnesses) weakens the place of transitional justice in DDR (disarmament, demobilization, and reintegration) frameworks and hence hinders reintegration, notably for two of the most vulnerable groups of former child soldiers, namely, (1) children associated with acts of serial atrocity and (2) girl soldiers who have endured crimes (including endemic sexual assault) committed by other child soldiers.<sup>58</sup>

Another challenge for child soldiers is epistemological. From where do we *know* what we know about child soldiers? In terms of the development of the law, best practices, and policy, two sources of knowledge have exerted considerable influence. These are child psychology and trauma studies, on the one hand, and reports published by transnational pressure groups, NGOs, activists, and UN agencies, on the other.

Other disciplines and their literatures have not resonated with the international legal imagination. Thus, contributions from other fields remain untapped, which is unfortunate since many hail from the Global South. Examples of undervalued contributions include ethnographic participant observation, anthropological studies, qualitative research, sur-

## Children in Armed Conflict

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vey data, and feminist theory. Another is adolescent developmental neurobiology, which focuses on the social category of adolescents as distinct from young children. Although not monolithic, these literatures tend to perceive child soldiers neither as crushed nor as succumbing, but rather as traversing, surviving, coping, and making what they can out of bad circumstances not of their own doing. These literatures voice a more dynamic account of child soldiers as interacting with, instead of being overwhelmed by, their environments. These literatures also tend to place children, adolescents, youth, and adults along a broader continuum that is less rigidly stratified by chronological age demarcations.

On this note, persons under the age of eighteen associated with armed forces or armed groups largely get there in one of three ways: (1) they are abducted or conscripted through force or serious threats; (2) they present themselves, whether independently or through recruitment programs, and become enlisted/enrolled; or (3) they are born into forces or groups. The first two paths, which are the most common, are not always capable of firm demarcation. However, they are distinguishable and, moreover, should be distinguished.

**(p. 671)** Readers may find it surprising, but most child soldiers are neither abducted nor forcibly recruited.<sup>59</sup> The international legal imagination, nevertheless, heavily emphasizes this path to militarization. Doing so exposes this horrific aspect of the phenomenon of child soldiering. This emphasis, however, also leads to the under-theorization and under-exploration of youth volunteerism. The international legal imagination cannot just wish away the fact that significant numbers of children join armed forces or armed groups in the absence of evident coercion and, in fact, exercise some—and at times considerable—initiative and maturity in this regard.

The international legal imagination is remiss to neglect the prevalence and relevance of children who volunteer for military service. To be sure, cases arise where determinations of volunteerism would be specious. Children may be offered up—like chattel—by family members or local leaders. They may be tricked into joining. They may come forward to serve as a cook, only to be given an automatic weapon and placed on the front lines. Some children may rashly present themselves for service because of excessive impulsivity. That said, many children, notably older adolescents, come forward intentionally to join armed forces or groups. Environmental factors and situational constraints—which include poverty, insecurity, lack of education, socialization into violence, and broken families—certainly inform their decisions to enlist. Children's engagement with these factors can be more usefully understood as interactive and negotiated processes of negative push and affirmative pull. In joining armed forces or groups, children may simply be pursuing paths of economic advancement, inclusion in occupational networks, pursuit of political or ideological reform, and professional development. Although assertions of volunteer service made by child soldiers should not be immunized from contextual analysis, I believe it is wrong to dismiss them summarily. Young people may understand volunteerism within the context of their lives and apply it fairly to themselves.



Dismissing what adolescents have to say contrasts sharply with assumptions of juvenile capacity and autonomy that animate other areas of law and policy. For example, when it comes to bioethical debates regarding consent to medical treatment and access to reproductive rights and technologies, in many jurisdictions adolescents tend to be presumed competent. International human rights law highlights that adolescents can exercise rights of freedom of association and expression. So, too, does international family law. This chapter argues that protective policies predicated upon children being constructed as enfeebled before and during conflict may counterproductively result in children persistently being treated as enfeebled after conflict.

## 6 Conclusion

This chapter argues that a more nuanced, and less didactic, account of child soldiering is a more accurate one. As the late British historian Eric Hobsbawm famously intoned, sometimes the point “really is not so much to change the world as to understand it.”<sup>60</sup> In this instance, understanding the scourge of child soldiering, and understanding it accurately, is in fact key to changing the world in that such an understanding better helps to deter the practice and to reintegrate those children caught up in it.

### Notes:

- (1.) This chapter draws from, and materially updates and expands, sections of my book *Reimagining Child Soldiers in International Law and Policy* (New York: Oxford University Press, 2012).
- (2.) See, e.g., Faith J. H. McDonnell and Grace Akallo, *Girl Soldier: A Story of Hope for Northern Uganda's Children* (Grand Rapids, MI: Chosen Books, 2007); Ishmael Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (New York: Farrar, Straus and Giroux, 2008); Alex Olango *Scars of a Boy Soldier: A Boy Soldier's Story in His Own Words* (London: New Generation Publishing, 2016); Dave Eggers, *What Is the What: The Autobiography of Valentino Achak Deng* (New York: Random House, 2007); *War Child* (2008, documentary film, dir./prod. Karim Chrobog).
- (3.) For example, the Children, Not Soldiers campaign, launched in 2014 with UNICEF, to end and prevent the recruitment of children by government security forces. This campaign ended in 2016.
- (4.) Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (February 2007), <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>, adopted together with the Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups. These principles and commitments build upon the 1997 Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa.

## Children in Armed Conflict

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- (5.) Watchlist on Children and Armed Conflict, “‘Protect Children from War’—10th Anniversary of the Paris Commitments and the Paris Principles on Children Associated With Armed Forces and Armed Groups,” <http://watchlist.org/protect-children-war-10th-anniversary-paris-commitments-paris-principles-children-associated-armed-forces-armed-groups> (accessed Sept. 6, 2019).
- (6.) Government of Canada, “Principles of Vancouver” (launched Nov. 15, 2017), [http://international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/principles-vancouver-principes.aspx?lang=eng](http://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes.aspx?lang=eng). As of January 18, 2018, fifty-nine states had endorsed the Vancouver Principles as founders.
- (7.) See Embassy of France in Singapore, “‘Protecting Children from War,’ Conference 21, February 2017,” <https://sg.ambafrance.org/Protecting-Children-from-War-Conference-21-February-2017-Paris> (accessed Sept. 6, 2019).
- (8.) UN General Assembly, “Children and Armed Conflict: Report of the Secretary-General,” A/72/361-S/2017/821 (2017), annual report summary, <https://reliefweb.int/sites/reliefweb.int/files/resources/N1726811.pdf>.
- (9.) Josh Rogin, “Obama’s Failed Legacy on Child Soldiers,” *Washington Post*, September 25, 2016.
- (10.) Ilsa M. Glazer, “Book Review,” *Anthropological Quarterly* 79, no. 2 (2006): 373–384, 382.
- (11.) Morris Loveday, “Islamic State, Losing Fighters and Territory, Increasingly Turns to Child Bombers,” *Washington Post*, August 22, 2016.
- (12.) UN General Assembly, “Children and Armed Conflict.”
- (13.) Alcinda Honwana, *Child Soldiers in Africa* (Philadelphia: University of Pennsylvania Press, 2006), 7, 29, 54.
- (14.) Phuong N. Pham, Patrick Vinck, and Eric Stover, “The Lord’s Resistance Army and Forced Conscription in Northern Uganda,” *Human Rights Quarterly* 30, no. 2 (2008): 404–411.
- (15.) Pacifique Manirakiza, “Les Enfants Face au Système International de Justice: à la Recherche d’un Modèle de Justice Pénale Internationale pour les Délinquants Mineurs,” *Queen’s Law Journal* 34 (2009): 719–768, 761.
- (16.) UN Convention on the Rights of the Child (CRC), G.A. Res. 44/25, Annex, UN Doc. A/RES/44/25 (1989), art. 38(2).
- (17.) Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (2000).
- (18.) Optional Protocol, art. 1.

## Children in Armed Conflict

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(19.) Michael Wessells, *Child Soldiers* (Cambridge, MA: Harvard University Press, 2009), 234.

(20.) Optional Protocol, art. 3(3).

(21.) Some states parties do not have armed forces and, hence, have nothing to declare (although they may make declarations regarding national police, customs, gendarmerie, etc). Some states, to be clear, set higher ages. Afghanistan, for example, permits voluntary recruitment of persons aged twenty-two to twenty-eight; several states list the age of nineteen. Chile (in 2008), Paraguay (in 2006), Poland (in 2013), and Luxembourg (in 2013) adopted the minimum age of eighteen for voluntary recruitment, thereby amending their earlier declarations.

(22.) On November 18, 2010, Guyana raised its declared minimum age to sixteen from the previous benchmark of fourteen.

(23.) Optional Protocol, art. 4(1).

(24.) ILO Convention No. 182: Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 38 ILM. 1207 (1999; entered into the force June 17, 1999). Recommendation 190 accompanying this convention encourages the criminalization of forced or compulsory recruitment.

(25.) ILO Convention No. 182, arts. 1, 3(a).

(26.) African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990; entered into force Nov. 29, 1999) arts. 2, 22(2).

(27.) Convention (IV) Relative to the Protection of Civilian Persons in Time of War 75 UNTS 287 (Aug. 12, 1949), arts. 14, 17, 23, 24, 38, 50, 51, 68, 82, 89, 94, and 132.

(28.) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3 (June 8, 1977).

(29.) Protocol I, arts. 70(1), 78.

(30.) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609 (June 8, 1977).

(31.) Chen Reis, "Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict," *Columbia Human Rights Law Review* 28 (1997): 629-655, 654.

(32.) Rome Statute of the International Criminal Court (Rome Statute), 2187 UNTS 90 (1998; entered into force July 1, 2002).

## Children in Armed Conflict

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(33.) Prosecutor v. Brima, Kamara, and Kanu, Case No. SCSL-04-16-T, SCSL Trial Chamber (June 20, 2007) ¶ 734 (hereinafter AFRC Trial Judgment).

(34.) AFRC Trial Judgment, ¶ 735.

(35.) Prosecutor v. Fofana and Kondewa, Case No. SCSL-04-14-A, SCSL Appeals Chamber (May 28, 2008) ¶¶ 141, 144. If the child “is allowed to voluntarily join ..., his or her consent is not a valid defence” (¶ 140).

(36.) Prosecutor v. Sesay, Kallon, and Gbao, Case No. SCSL-04-15-T, SCSL Trial Chamber (March 2, 2009), ¶¶ 1712–1731. Domestic chores, farm work, and conducting food finding missions were however found not to constitute active participation in hostilities (¶¶ 1739, 1743).

(37.) Prosecutor v. Lubanga, Case No. ICC-01/04–01/06, ICC Trial Chamber I (March 14, 2012) ¶ 608.

(38.) Rome Statute, arts. 7(1)(c), 7(1)(g), 7(1)(k), 7(2)(c), 8(2)(b)(ix), 8(2)(b)(ix), 8(2)(e)(iv), and 8(2)(e)(iv). The Office of the Special Representative has identified attacks on schools and hospitals as “one of the most disturbing trends documented in 2016.” UN General Assembly, “Children and Armed Conflict,” 3.

(39.) Rome Statute, art. 75(2).

(40.) Mark Drumbl, *Reimagining Child Soldiers in International Law and Policy*. (Oxford: Oxford University Press, 2012), 162–166.

(41.) Rogin, “Obama’s Failed Legacy on Child Soldiers.”

(42.) René Prevost, “Targeting Child Soldiers,” *EJIL: Talk!*, January 12, 2016, [www.ejiltalk.org/targeting-child-soldiers](http://www.ejiltalk.org/targeting-child-soldiers).

(43.) Stephen J. Thorne, “Doctrine on Child Soldiers Is First of Its Kind,” *Legion: Canada’s Military History Magazine*, March 15, 2017, <https://legionmagazine.com/en/2017/03/doctrine-on-child-soldiers-is-first-of-its-kind>.

(44.) CRC, art. 37(b) (also requiring that “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily”).

(45.) CRC, art. 37(c).

(46.) Amnesty International, *Child Soldiers: Criminals or Victims?*, AI Index No. IOR 50/02/00 (Dec. 22, 2000), 15.

(47.) Drumbl, *Reimagining Child Soldiers*, 104 (for detailed sources of these compilations).

## Children in Armed Conflict

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- (48.) Report of the Expert of the Secretary-General, "Impact of Armed Conflict on Children," UN Doc. A/51/306 (Aug. 26, 1996), [http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf) (hereinafter Machel Report).
- (49.) Machel Report, para. 24.
- (50.) Machel Report, para. 250.
- (51.) Rome Statute, art. 26.
- (52.) Statute of the Special Court for Sierra Leone, 2178 UNTS 145 (2002), art. 7(1) (hereinafter SCSL Statute).
- (53.) SCSL Statute, arts. 7(2), 19(1).
- (54.) SCSL Statute, art. 7(2).
- (55.) Special Court for Sierra Leone, Public Affairs Office, "Special Court Prosecutor Says He Will Not Prosecute Children," press release (Nov. 2, 2002).
- (56.) The International Crimes Division of the Ugandan High Court, sitting in Gulu, also is prosecuting another former child soldier, Thomas Kwoyelo, who also became a commander in the Lord's Resistance Army.
- (57.) Olango, *Scars of a Boy Soldier*, 67.
- (58.) Drumbl, *Reimagining Child Soldiers*, 192-206.
- (59.) Drumbl, *Reimagining Child Soldiers*, 13.
- (60.) Tony Judt with Timothy Snyder, *Thinking the Twentieth Century* (New York: Penguin, 2013), 79. (Hobsbawm inverted a well-known saying by Karl Marx).

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