10. THE CULTURE OF VIOLENCE
Child Soldiers, Slavery, and the Trafficking of Children*

I. INTRODUCTION

A. Definitions

Children suffer so much in this culture of violence that characterizes the twenty-first century. Very young children are being forced to engage in armed conflict with or without their consent. The prevalent use of children in armed combat is nothing less than a contemporary manifestation of slavery. It is a form of human trafficking that is as serious and as lucrative as the international crimes of trafficking in weapons and drugs.\(^1\) Trafficking is defined as the illegal trade of contraband goods, usually across borders, in order to make a profit.\(^2\) 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\(^3\) or participation in armed conflict. Trafficking in children for their use on the battlefield is a human rights violation that rises to the level of slavery.\(^4\)

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

4. See Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7105 (2000) [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.”

[T]he 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.\(^5\)

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.”\(^6\)

The international definition of the trafficking of child soldiers involves three necessary elements: consent, exploitation, and movement within a country or across a border.\(^7\) 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

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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.

8. See Valentine, supra note 2, at 116–19.
person was not fully informed of the duties involved in the military service.\textsuperscript{9}
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.\textsuperscript{10}

The abduction and employment of children as soldiers is a form of exploitative labor 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”).\textsuperscript{11} 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 servitude and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”\textsuperscript{12}

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.\textsuperscript{13} Child sexual exploitation 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.”\textsuperscript{14} The United Nations Children’s Fund (UNICEF) draws attention to the economic benefits of child sexual exploitation when “a second party benefits, through making

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\textsuperscript{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 http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm [hereinafter ILO Recommendation 190].

\textsuperscript{13} See Uzodinma Iweala, Beasts of No Nation 83–85 (2005) (describing a young boy soldier who is sodomized and forced to engage in sex with his male commander on a regular basis).

a profit or through a quid pro quo, through sexual activity involving a child.”

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.”

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 where they kill). 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 such as dangerous armed combat, this constitutes child trafficking.

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 vulnerable for abduction and forced child soldiering. In 2000, about thirteen million children were displaced as a result of warring conflicts. 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) were abducted and forced to become members of armed groups. 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,

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15. UNICEF, supra note 2, at 27.
21. See MacMullin & Loughry, supra note 19, at 461.
afflicted ten million children with serious psychological trauma, and made
twelve million children refugees.22 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.23 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.”24

Although the participation of children in armed conflict is not new—it
occurred in World War II25—child soldiering today is a widespread phenome-
non, prevalent particularly in developing countries where political, economic,
and social instability are more commonplace and where approximately half the
population are children.26 Save the Children reported that hundreds of thou-
sands of underage soldiers are currently being forced to fight around the world,
despite guidelines set forth ten years ago in the Cape Town Principles27 of 1997
that established eighteen as the minimum age for recruitment.28 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.29 The use

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22. See Udombana, supra note 20, at 67–68.
23. See generally Abigail Leibig, Child Soldiers in Northern Uganda: Do Current Legal
24. Udombana, supra note 20, at 68.
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.
27. UNICEF, Cape Town Annotated Principles and Best Practice on the Preven-
tion of Recruitment of Children into the Armed Forces and Demobilization
and Social Reintegration of Child Soldiers in Africa (1997), 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,
of child soldiers is still occurring in the Western Hemisphere, Europe, Africa, the Middle East, Central Asia, and Asia. Today fighting forces still recruit child soldiers in Afghanistan, Chad, Colombia, Democratic Republic of Congo, Ivory Coast, Myanmar, Nepal, the Philippines, Sri Lanka, Somalia, Sudan, and Uganda. 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

30. See SINTER, 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.

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.

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, Yemen, including children younger than fifteen serving in a number of radical Islamic groups, and Palestine. Sudan has the largest use of child soldiers in the region, and as many as one hundred thousand children have served on both sides of the civil war. See id.

34. See id. at 26–27. The practice of using 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.
speak of deliberate victimization. There are few further depths to which humanity can sink.  

C. Abuses of Child Soldiers

Child soldiers are subjected daily to dehumanizing atrocities. They are often abducted from their own homes, tortured, indoctrinated with brutality, forced to become intoxicated with mind-altering drugs, threatened with death and/or dismemberment if they do not 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 do not 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 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 Columbia,] 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.

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. 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.” Rebels keep the children obedient through frequent beatings, threats of death, and threats of retaliation against the children’s family members.


Young girls are abducted as well; they make up 40 percent of the ranks of armed groups in some countries. In El Salvador, Ethiopia, and Uganda, almost a third of the child soldiers are young girls, 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 Jabelein camp in southern Sudan. Girl soldiers are often used as domestic servants and sex slaves during 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.

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. 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 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 burning of people alive. The Lord’s Resistance Army (LRA) in Uganda initiates children into its gang by forcing them “to club, stamp or bite to death their friends and relatives,

42. See Leibig, supra note 23, at 6.
43. See Akhavan, supra note 20, at 408.
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.
and then to lick their brains, drink their blood and even eat their boiled flesh.”

The LRA slices off the lips and noses of children it suspects of disloyalty.

The children of Uganda are reportedly so frightened about being abducted and enslaved by the LRA that they do not sleep at home, preferring instead to become “night commuters” who travel alone or in groups every night to “protected villages” where “they sleep on verandas, in bus parks, on church grounds” for safety.

D. Organization of Chapter

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 use of children as soldiers is increasing! This study will examine the complex relationship of human trafficking, slavery, and child soldiering. Part II will examine the root causes of the development and expansion of the use of child soldiers. Part III will examine the international and domestic laws and instruments that attempt to protect against the use of children as soldiers. Part IV will examine some literary representations of the crime of child soldiering in order to raise awareness of the depths of this atrocity. Part V 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.

II. 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

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


49. See Amnesty Int’l, UGANDA: Child “Night Commuters”, AI Index AFR 59/013/2005, Nov. 18, 2005, 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.”); see also Amnesty Int’l, UGANDA: Child “Night Commuters” Fear Abduction, AI Index AFR 59/016/2005, Nov. 18, 2005, 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.”).

50. Akhavan, supra note 20, at 409.
young recruits from the streets, schools, and orphanages. 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. If a child is voluntarily recruited and takes up arms “consensually,” the child 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. 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. Children without schooling are prone to recruitment, as were 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. Children often lack the capacity to determine their best interests, to form opinions, and to analyze competing ideologies. 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 such as 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, sense of power, and acceptance by peers and authority figures.

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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.


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

56. See Udombana, supra note 20, at 63–64.
There are also purely military advantages of using children as soldiers in war. Technological improvements and the proliferation of thin, small, and lightweight weapons such as 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. 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 forces.

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, and 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. Socioeconomic 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 unprecedented numbers of children around the world are undereducated, malnourished, marginalized, and disaffected. 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, which in that order are the three most serious and lucrative international crimes today. 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

57. See Valentine, supra note 2, at 119.
58. See Sinter, supra note 25, at 38.
59. Id. at 38–39.
60. Id. at 39.
that are in the trafficking business for reasons of pure profit.\textsuperscript{61} Thus, the exploitation of the population of child soldiers drives a new “economy of war.”\textsuperscript{62}

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.\textsuperscript{63} Many orphans 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 invariably produce, people and especially children are scrambling for self-protection and a sense of security. For this reason there has been a proliferation in the sale of technologically advanced personal weaponry.\textsuperscript{64} An estimated five hundred million small arms have been sold globally—one small weapon for every twelve persons.\textsuperscript{65} 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 also 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 as long, protracted states of mass violence and disorder.\textsuperscript{66} 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.\textsuperscript{67} Vulnerable, abandoned, and orphan children are now more readily available and easily transformed into willing combatants. Because the leaders of combatants may not concern themselves with public

\textsuperscript{61} See Tiefenbrun, \textit{The Saga of Susannah}, \textit{supra} note 4, at 139.
\textsuperscript{63} See Sinter, \textit{supra} note 25, at 42.
\textsuperscript{64} See \textit{id.} at 45.
\textsuperscript{65} See Charles Cobb, \textit{Africa: Arms and Africa on UN Agenda This Week}, \textit{All Afr.} (S. Afr.), July 9, 2001, \texttt{http://allafrica.com/stories/200107090396.html}.
\textsuperscript{66} See Sinter, \textit{supra} note 25, at 52.
opinion, human rights, or decency, 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. 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 to fill the ranks caused by adult casualties. For example, 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 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.”

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. “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.” 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. 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.

68. See Sinter, supra note 25, at 53.
69. See id.
70. See Udombana, supra note 20, at 71.
73. See Udombana, supra note 20, at 66–67.
74. See Akhavan, supra note 20, at 408.
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 have grown up in a chronic state of conflict in a country constantly at war, and they know no other way of life. They also may be influenced to fight out of a sense of loyalty to their community. Finally, 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. Many of these parents do not understand the danger to which they are subjecting their children by making them join the army. Some parents may encourage their daughters to become soldiers if their marriage prospects are poor.

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.” Many of them are abandoned street children who crave physical protection and relief from abject poverty and loneliness. As with 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. 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.”

J. Economic Reasons for the Use of Child Soldiers

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

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.
and injury.” 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. We may legitimately question whether children living in a war-torn nation have the freedom of choice to go to war. A culture of violence defines their childhood experiences, and the militarization of that culture may incite them to participate “voluntarily.” 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 are coerced by the fear of death to commit atrocities are being arrested and convicted of war crimes. 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. 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. In Colombia, child soldiers are not afforded special legal status or treatment. 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. Yet in a leading neurology law

84. See id.
85. See id. at 517–18.
88. See Valentine, supra note 2, at 128.
89. See id.
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.”

III. 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 exploita-
tive 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.

The first international instrument to address specifically the legal rights of
children was the United Nations Convention on the Rights of the Child (CRC) 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”) and the
Optional Protocol on the Sale of Children, Child Prostitution, and Child
Pornography (“Sale of Children Protocol”). 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 on the theory that the CRC’s
age of fifteen as the standard for recruitment does not adequately protect chil-
dren and in fact appears to have encouraged more recruitment, as evidenced by

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92. See Udombana, supra note 20, at 70–90 for a complete analysis of the laws that cover child soldiering.
96. See Children in Armed Conflict Protocol, supra note 94, art. 1.
the increasing number of child soldiers. 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.”

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, whose nonbinding aspirations were given force in 1966 by the passage of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, all of which condemn slavery. The 1904 International Agreement for the Suppression of the White Slave Traffic was amended by the 1910 International Convention for the Suppression of White Slave Traffic, 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. 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 was adopted in 1956 (“1956 U.N. Slavery Convention”).

97. See Udombana, supra note 20, at 90.
98. Children in Armed Conflict Protocol, supra note 94, art. 1.
Earlier legal instruments such as the United Nations Charter of 1945, the 1948 American Declaration on the Rights and Duties of Man, and the Universal Declaration of Human Rights 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; the 1957 Abolition of Forced Labour Convention; the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 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), and the 2000 U.N. Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Palermo Protocol”).

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) was enacted in October 2000 to eliminate human trafficking, which is referred to as a form of slavery.

106. See U.N. Charter.
108. Universal Declaration of Human Rights, supra note 99, at III.
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; see also
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 to life 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”) has extraterritorial 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 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, and the recommended ILO Convention (No. 190). The Minimum Age Convention of 1973 tried to eliminate child labor by requiring the completion of compulsory schooling and

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

118. ILO Recommendation 190, supra note 12.

by 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.  

B. International Legal Instruments that Specifically Protect Children

1. The Declaration of the Rights of the Child  

Although the Declaration of the Rights of the Child was not a binding instrument, it established aspirational norms and set forth a code for the well-being of every child. 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.


The CRC is the most universally accepted human rights instrument in history. It has been ratified by every country in the world except the United States 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. 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. The CRC specifically protects against child trafficking by asserting a child’s right to protection from economic exploitation, child military recruitment,

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120. ILO Worst Forms of Child Labour Convention 182, supra note 11, art. 3(a).
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.
and participation in armed conflict. The CRC sets the minimum age for military recruitment of children in armed conflict at age fifteen, and it asks States recruiting those under eighteen to give priority to the eldest. 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. 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. 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.”

The CRC has certain anomalies and contradictions. By using age 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. 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 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 as 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.” Clearly, the participation of children between the ages of fifteen and eighteen in armed combat is, by its 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.

129. See CRC, supra note 93, arts. 32 & 38.
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 181.
135. CRC, supra note 93, art. 32(1).
applicable to them in armed conflicts which are relevant to the child.”\textsuperscript{136} 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.”\textsuperscript{137} Even though by 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, or wear the uniform of any combative group in any form of political conflict in the world,\textsuperscript{138} the reality on the ground is woefully far from this ideal.\textsuperscript{139}

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,\textsuperscript{140} the CRC does not contain enforcement mechanisms, making its implementation dependent upon the domestic laws of each nation.\textsuperscript{141} 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 awareness of the contexts and horrific realities in which children come to fight—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”)\textsuperscript{143} The Children in Armed Conflict

\begin{itemize}
\item\textsuperscript{136} \textit{Id.} art. 38(1).
\item\textsuperscript{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. \textit{See} Julie R. Hirschfeld, \textit{United States Reluctant to Endorse Minimum Age for Military}, \textit{Detroit News}, Jan. 21, 1998.
\item\textsuperscript{139} \textit{See id.}
\item\textsuperscript{140} CRC, \textit{supra} note 93, art. 39.
\item 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 take all feasible measures to ensure protection and care of children who are affected by an armed conflict. \textit{Id.}
\item\textsuperscript{141} \textit{See} Abbott, \textit{supra} note 83, at 524.
\item\textsuperscript{142} \textit{See} de Berry, \textit{supra} note 138, at 93.
\item\textsuperscript{143} Children in Armed Conflict Protocol, \textit{supra} note 94.
\end{itemize}
Protocol\textsuperscript{144} is the main international legal instrument that specifically addresses the use of children as soldiers, 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 nongovernmental armed groups.\textsuperscript{145} 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.\textsuperscript{146} 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 part in hostilities.”\textsuperscript{147} 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,\textsuperscript{148} 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.”\textsuperscript{149} The term \textit{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\textsuperscript{150} as covering “both direct participation

\begin{thebibliography}{150}


\bibitem{ChildreninArmedConflict} 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.” \textit{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, \textit{Newly Adopted Protocols to the Convention on the Rights of the Child}, 94 Am. J. Int’l L. 789, 789 (2000).

\bibitem{ChildreninArmedConflictProtocol} Children in Armed Conflict Protocol, supra note 94, art. 3(3).

\bibitem{Language} Dennis, supra note 145, at 789.


\bibitem{RomeStatute} Rome Statute, supra note 4.

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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.” 151 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. 152 According to this standard, the Children in Armed Conflict Protocol does not prohibit indirect participation in hostilities or forward deployment. 153 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 from the age of voluntary recruitment. 154 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 recruitment being truly voluntary. Thus, States that permit voluntary recruitment of children under the age of eighteen must maintain safeguards to ensure, as a minimum,:

(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. 155

Children between the ages of fifteen and eighteen are not permitted to participate directly in the hostilities. 156

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 nongovernment

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 et al. 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.

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

155. Id. art. 3(3).

156. Id.
army forces. Earlier in 1997, the Cape Town Principles 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 under the international humanitarian laws. The problem is that a child soldier who is not in an official “army” and who is fighting nonconsensually is 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”) 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 U.N. General Assembly on May 25, 2000, and it came into force on January 18, 2002. 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. The Sale of Children Protocol is arguably applicable to the abduction and use of children as soldiers. It further defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.” Girls abducted into the army are frequently forced into prostitution, sex slavery, and pregnancy. The Sale of Children Protocol was intended to provide the means for greater punishment of offenders through the use of cooperative law enforcement mechanisms. For example, The Sale of Children

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157. See Valentine, supra note 2, at 115.
158. See Cape Town Annotated Principles, supra note 27.
159. See Alfredson, supra note 16.
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 (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.
Protocol provides for broad jurisdiction, enabling the extradition of offenders to ensure prosecution regardless of where they are discovered.\textsuperscript{166}

The Sale of Children Protocol also criminalizes any action relating to child prostitution.\textsuperscript{167} Article 9 requires parties to strengthen existing laws or create new laws to protect child victims, particularly those who are most vulnerable to trafficking.\textsuperscript{168} 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.\textsuperscript{169} But like many other international human rights agreements, The Sale of Children Protocol lacks the enforcement mechanism to ensure adherence to its provisions.\textsuperscript{170}

C. International Humanitarian Laws and the Protection of Children

Current international humanitarian law (as defined in the four Geneva Conventions of 1949\textsuperscript{171} and the two Additional Protocols of 1977)\textsuperscript{172} 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.\textsuperscript{173} The Additional Protocols of 1977 combine rules of war with rules protecting civilians, including children.

International humanitarian laws protect children in three ways. First, they recognize the need to provide children with special protection because children are persons of particular vulnerability, which is a norm of customary

\textsuperscript{166} See id.

\textsuperscript{167} See id. at 794.

\textsuperscript{168} See Sale of Children Protocol, supra note 95, art. 9.

\textsuperscript{169} See id. arts. 8 & 10.

\textsuperscript{170} See id. art. 15.


\textsuperscript{172} See generally Protocol I, supra note 148; Protocol II, supra note 148.

\textsuperscript{173} Protocol II, supra note 148, art. 1.
international law. Second, they question the use of children in military operations. Third, they take into account children’s immaturity if they commit offenses during armed conflicts.

International humanitarian law distinguishes between combatants and non-combatants. Children who are civilians are protected against inhumane treatment and directed attacks during international and domestic armed conflicts under the international humanitarian laws. 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. 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. Protocol II specifically prohibits children in armed conflict under the age of fifteen from both direct and indirect participation in non-international conflicts.

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 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.\textsuperscript{181}

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,”\textsuperscript{182} but they do establish 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.\textsuperscript{183} The African Charter on the Rights and Welfare of the Child\textsuperscript{184} defines a \textit{child} as “every human being below the age of 18 years.”\textsuperscript{185}

The continued use of child soldiers in so many countries today illustrates the failure by the international community to protect the world’s children\textsuperscript{186} 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 adequately protect children as civilians\textsuperscript{187} and certainly do not adequately protect child soldiers.

\textbf{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,\textsuperscript{188} considers children who are trafficked to be “victims of severe forms of trafficking”\textsuperscript{189} and therefore eligible for “enhanced benefits.” “Traffickers abuse virtually the entire spectrum of rights protected in the Universal Declaration of Human Rights.”\textsuperscript{190} Victims of

\begin{itemize}
\item \textsuperscript{181} See Abbott, \textit{supra} note 83, at 523.
\item \textsuperscript{182} See Udombana, \textit{supra} note 20, at 73.
\item \textsuperscript{183} CRC, \textit{supra} note 93, art. 2(1).
\item \textsuperscript{185} Id. art. 2.
\item \textsuperscript{186} See Abbott, \textit{supra} note 83, at 520.
\item \textsuperscript{187} Id. at 519–20.
\item \textsuperscript{188} TVPA, 22 U.S.C. § 7105 (2000). See Tiefenbrun, \textit{Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad}, \textit{supra} note 4 for a complete analysis of the TVPA and its provisions.
\item \textsuperscript{189} TVPA, 22 U.S.C. § 7105(b)(1)(C)(ii)(I).
\item \textsuperscript{190} Universal Declaration of Human Rights, \textit{supra} note 99.
\end{itemize}
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.”

1. The United States Trafficking Victims Protection Act (TVPA)\(^1\) 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, intercountry adoption, organ harvesting, or pornography.\(^2\) 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—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.\(^3\) 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.\(^4\) 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.\(^5\)

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


\(^{192}\) TVPA, 22 U.S.C. § 7105.

\(^{193}\) See id. at 675.

\(^{194}\) TVPA § 102(a), 22 U.S.C. § 7101.

\(^{195}\) See id. § 107(c)(3), 22 U.S.C. § 7105.

example of one form of human trafficking. Although there is no significant incidence of child soldiering occurring in the United States, the TVPA can help to educate parents in other countries about its dangers 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 have 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. This Trafficking in Persons Report (TIP Report) is a comprehensive collection of data on trafficking in countries worldwide. However, 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 U.S. 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. Governments that fully comply with the minimum standards set forth in the TVPA are placed in Tier One. 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

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

for countries that have a significant amount of trafficking but are making some efforts to comply.\textsuperscript{203} Countries that do not fully comply with the minimum standards and are not making significant efforts to comply are placed in Tier Three. These countries are subject to the imposition by the United States of non-humanitarian sanctions and the withholding of non-trade related assistance.\textsuperscript{204}

The TVPA puts political and economic pressure on countries through sanctions. Although sanctions can be used to modify a government’s behavior to conform to U.S. and international law standards, sanctions can also 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.\textsuperscript{205}

The TVPA allows victims of severe trafficking (i.e., trafficked children) to receive enhanced benefits and services from the United States.\textsuperscript{206} 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 subjecting to involuntary servitude, peonage, debt bondage, or slavery.”\textsuperscript{207} Children 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.\textsuperscript{208}

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.”\textsuperscript{209} 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 victims in becoming self-sufficient and safe from their perpetrators.\textsuperscript{210} Before the passage of the TVPA, adequate protection services were not available to victims of trafficking. For example, 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 available to victims provide an infrastructure for people who have suffered from persecution and torture. Often victims have been torn away from their families and from the culture familiar to

\textsuperscript{203} \textit{Id.} § 7101(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 Stat. 2875.

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

\textsuperscript{205} See generally 2003 TIP REPORT, supra note 198.

\textsuperscript{206} TVPA, 22 U.S.C. § 7105(C) (1).

\textsuperscript{207} \textit{Id.} 22 U.S.C. § 7102(8)(b).

\textsuperscript{208} \textit{Id.} 22 U.S.C. § 7105(c)(3).

\textsuperscript{209} \textit{Id.} 22 U.S.C. § 7105(c)(1)(A).

\textsuperscript{210} Mathews, supra note 193, at 685.
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.211

2. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003 (“U.S. PROTECT Act”)212 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.”213 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 crimes associated with the trafficking of children. It also modifies the burden of proof requirements for convictions.214

Harsh punishment applies to anyone who benefits financially from a child trafficking venture.215 Penalties for the sexual exploitation of children by previous offenders have been increased as well.216 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

212. Id.
216. Id. §§ 103–04.
and from thirty to fifty years, respectively). 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. 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 crime cases. The PROTECT Act attempts to fill certain gaps in the TVPA and thereby strengthen the U.S. government’s ability to prosecute child trafficking offenders. 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.

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”) 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. 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.” 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. Clearly stated, the purpose of the Palermo Protocol is:

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217. Id. § 103.
218. Id. § 105(d).
219. Fact Sheet: PROTECT Act, supra note 213. There is no statute of limitations in the PROTECT Act for crimes involving the abduction or physical or sexual abuse of a child.
221. Palermo Protocol, supra note 5.
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
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.\textsuperscript{225}

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:

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.\textsuperscript{226}  
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.\textsuperscript{227}  
6) Health and Other Services: States shall provide trafficked persons with adequate health and other social services during the period of temporary residence.

\textsuperscript{225} Palermo Protocol, \textit{supra} note 5, art. 2.  
\textsuperscript{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.  
\textsuperscript{227} Child soldiers who return home are frequently rejected by their family and friends (if they are alive). They would be protected under this provision.
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.²²⁸

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.²²⁹ 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.²³⁰ A separate section in the Palermo Protocol on trafficking and children not only highlights the special needs of children, but provides an important forum to advocate States’ adoption of protections designed specifically for child victims of trafficking schemes.²³¹

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.²³² State practice and opinio juris on the issue of slavery and the slave trade are


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


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
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** 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.

2. **U.N. Slavery Convention of 1956** Subsequently, the United Nations expanded the definition of slavery by adopting a new treaty supplementing the 1926 Convention on Slavery. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery adopted 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 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, 247–49, 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).


234. See *id.* art. 17.
in 1956\textsuperscript{235} 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.

\textbf{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.\textsuperscript{236} 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”).\textsuperscript{237} The Working Group reviews developments on contemporary forms of slavery at the annual session of the Sub-Commission.\textsuperscript{238} 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.\textsuperscript{239}

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

\textsuperscript{235} See 1956 U.N. Slavery Convention, \textit{supra} note 105.


\textsuperscript{238} See Richards, \textit{supra} note 54, at 832.

of Others of 1949. 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, sale of children, child prostitution, child pornography, exploitation of child labor, sexual mutilation of female children, and use of children in armed conflict. 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 U.N. 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. Moreover, the lack of mandatory government participation in the Working Group’s process diminishes the force of its recommendations.

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”) 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:


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


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

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, with 158 countries having ratified it. For a complete list of the States that ratified the ILO Worst Forms of Child Labour Convention 182, see http://www.ilo.org/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.
[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.\textsuperscript{245}

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 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.\textsuperscript{246} Over eight million children are engaged in the so-called \textit{unconditional worst forms of child labor}, including: “slavery, trafficking, and forced recruitment for use in armed conflicts.”\textsuperscript{247} 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.\textsuperscript{248} 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.

\textsuperscript{245} See generally ILO Worst Forms of Child Labour Convention 182, supra note 11.
\textsuperscript{247} Id. at 31–33.
\textsuperscript{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).
2. U.S. Department of Labor Recommendation on Child Labour (190) The U.S. 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 Department recommends a “holistic” approach involving direct interventions, data collection, and partnerships.\textsuperscript{249} Direct interventions should be done to raise awareness, monitor the workplace, create alternative income generation for families, create alternative production processes to make child labor unprofitable 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.\textsuperscript{250} Partnerships consist of working relationships between the ILO and governments, employers, and workers to incentivize the elimination of child labor and offer technical assistance to countries that do eliminate child labor as a national policy.\textsuperscript{251}

Other strategies proposed to eliminate the worst forms of child labor including child soldiering are: legal, educational, market-based, rescue, rehabilitation, and reintegration. 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.\textsuperscript{252}

IV. LITERARY REPRESENTATIONS OF CHILD SOLDIERS

A. Allah is Not Obliged by Ahmadou Kourouma\textsuperscript{253}  
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 the regime, and spent many years in exile. He ended up
becoming a playwright and the author of four novels before dying in 2004.
Kourouma is recognized as one of the major figures of contemporary African
literature.

Allah is Not Obliged 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 cor-
rupation of social values during endless and inhumane tribal warfare. Kourouma
shocks his readers into seeing that even the most humane members of society
can somehow lose their values and be capable of committing unspeakable atroc-
ities. 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”
as his mother and father are already both dead, he cannot personally kill them,
which is the rite of passage to become a prestigious lycaeon). Kourama describes
this serious ethical transformation of the innocent boy 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?254

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.”255 Thus,
Birahima, who grew up in a very religious home, has 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.256 He depicts
the fate of a convent transformed into a brothel257 for the carnal use of the command-
ers, describing 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

254. Id. at 173.
255. Id. at 174.
256. See id. at 134.
257. See id. at 74.
innocent civilians and massacring people, all in the name of humanitarian peacekeeping.”

This sad but insightful tale is told by an innocent ten-year-old boy, Birahima, who is ceaselessly stunned by the horrors of war, sickened by the cruelty and barbarism 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.

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 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.”

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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.

261. *Id.* at 5.
in mystery, magic, and superstition. African society deprived her of her rights as a child and as a woman. She was the victim of a forced and badly executed female genital circumcision and 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. Birahima’s mother also suffered from a festoring, painful ulcer on her amputated leg that was never treated properly 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.” 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’s sake.

When both his father and mother die, Birahima leaves his native village in search of a faraway aunt, hoping to find a family and stability. Birahima and his friend Yacouba, the sorcerer, go off together on this thankless journey. 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.

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 “if 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.

268. Id. at 9.
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.  

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.

Kourouma also describes the significant role that girl child 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.” One of the cruelest girls becomes a general in the group of child soldiers. Another commander girl soldier sexually violates a boy soldier in a surprising and ironic reversal of expectation.

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,

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269. Id. at 90.  
270. Id. at 46.  
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.
and vivid descriptions of atrocities. The author shocks the readers by making outrageous but ironic proclamations such as:

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.\(^\text{274}\)

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, such as Charles Taylor, Foday Sankoh, and Prince Johnson. Despite rumors about the good life of child soldiers,\(^\text{275}\) 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 starving\(^\text{276}\) 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.”\(^\text{277}\) The drugs make them strong and fearless: “We were dying to fight, we all felt as strong as bulls from all the hash. . . .”\(^\text{278}\)

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.

\(^{274}\) 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 \textit{Walahe! Walahe!} I want to go to Liberia. Right now this minute. I want to be a child-soldier, a small soldier. \textit{Id.}

\(^{276}\) “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.” \textit{Id.} at 81–82.

\(^{277}\) Id. at 107.

\(^{278}\) Id. at 109.
Uzodinma Iweala’s Harvard thesis developed into a very beautiful and informative work of fiction that effectively illustrates how child soldiers become trafficking victims. 

*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 via abduction, forced enlistment, and trafficking.

*Beasts of No Nation* paints a close-up portrait of a traumatized child soldier who was victimized, just like the three hundred thousand child soldiers today who are begging for help to escape from enslavement and the fear of death. These child victims 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 he is 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 Commandant and rewarded with extra food scraps and a dry place to sleep.

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279. *Iweala, supra* note 13.

280. *Id.* at 36.


The unnamed West African nation provides the setting for this unsettling story of the life of a child soldier. 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 nonfiction doesn’t.” The reality is that Beasts of No Nation could be the life story of any child soldier in any country afflicted by hatred, mistrust, and civil war.

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.” Through its impressionistic narration, the exotic singsong cadence of its style, and the narrator’s peculiar use of tense, the book enables its readers to observe with disbelief the human rights violations and horrifying experiences Agu is forced to endure: rape, denial of education, utter despair, development of his own desire for revenge, constant starvation, use of serious weaponry, exposure to and forced intake of drugs that make him fight fearlessly. His experience fosters self-hate, a lingering sense of hopelessness, and the impossibility of his escape from his 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) 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, a form of torture, 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

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284. See generally Kachka, supra note 281.
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.
made into a sex slave by the Commandant. 290 In this maddening world of tribal warfare, sexual violence is equated with manliness in the mind of the child 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.” 291 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. 292

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.” 293 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. 294

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. 295

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.” 296

Additionally, child soldiers who are survivors of family massacres experience “survivor’s guilt,” and are filled with anger and desire for revenge. 297 Iweala’s responses to his own family massacre demonstrate the concept of “survivor’s

290. See IWEALA, supra note 13, at 84–85.
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.
297. BRETT & MCCALLIN, supra note 72, at 61–63.
“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 . . .”

**C. Soldiers But Not Real Soldiers: Prosecutor v. Thomas Lubanga Dyilo**

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. In *Beasts 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).

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*. 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 Libération 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 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 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).

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.

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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.


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. Article 8(2)(e)(vii) 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 there was 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. The Chamber further concluded that the terms *conscription* and *enlistment* 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. 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, or “domestic help in an officer’s married accommodation”). But acting as a bodyguard would fall within the “active participation” standard. 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.

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307. *Id.* art. 51(3).
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.” The Chamber concluded that the term national armed forces was not limited to the armed forces of a State. Thus, the Rome Statute permits Lubanga to be prosecuted for conscripting or enlisting child soldiers into the FPLC, which is a nongovernmental force, during both the non-international and international phases of the conflict.

D. Child Soldiers: Civilians or Combatants
The distinction between civilians and combatants is related to the issue of whether a paramilitary or nonnational 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 nongovernmental 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 is not wearing a uniform and not working for State armed forces, but rather is acting against his 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 treated 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, often volunteer to join any group if they believe it is the only way to guarantee regular meals, clothing, or medical attention. But Agu remains hungry most of the time that he is with the other child soldiers. 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.”

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

309. Id. at ¶¶ 280–85.
310. SINTER, supra note 25, at 62.
311. IWEALA, supra note 13, at 117–18.
312. See id. at 37.
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 knowing that he cannot escape his enslavement.\(^{313}\)

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.\(^{314}\) The special names the child soldiers give themselves (such as “Rambo”),\(^ {315}\) the guns themselves, and the drugs\(^ {316}\) 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.\(^ {317}\) 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 U.N. Group of Experts on Small Arms is a welcome development.\(^ {318}\)

Article 38 of the CRC states that persons under age fifteen\(^ {319}\) should not bear arms, perpetrate violence, or wear the uniform of any combative group in any form of political conflict in the world. Yet even though 191 States have ratified the CRC, many nations violate this provision and forcibly recruit children younger than fifteen.\(^ {320}\) “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.”\(^ {321}\) Iweala shows, 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.”\(^ {322}\)

\(^{313}\) *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.


\(^{318}\) *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, 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.

\(^{322}\) *Id.* at 129.
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.\footnote{See Machel Report, supra note 36, ¶ 47; see also David Ott, Under Age and Under Arms, Herlad (Glasgow), Jan. 12, 1999, at 11 (revealing that leaders give children drugs to make them more efficient killers).} However, the use of drugs 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.\footnote{See Udombana, supra note 20, at 79.} “[E]verybody is getting gun juice. Everybody is always wanting gun juice because it is drug and making life easy easy.”\footnote{Iweala, supra note 13, at 43.}

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.”\footnote{Id. at 22.} 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.\footnote{Id. at 21.}

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.”\footnote{Id. at 21.} 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 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.\footnote{Id. at 135.}

7. Inability to Escape Once abducted, children must comply with their captors or die.\footnote{See SINTER, supra note 25, at 61.} The ultimate aim of the process is to foster a child’s dependency on an armed organization and prevent escape.\footnote{See id. at 57.}

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 Commander 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.331

Agu represents children who are hopeless victims of war.332 “Hope is dying, just burning up in the fire of bomb that is hitting truck.”333 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.”334

V. CONCLUSION AND 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 and a worldwide culture of violence. Considering that the use of child soldiers is “rooted in the endemic competition for economic resources”335 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 reestablish traditional ethics relating to the protection and preservation of children’s rights. Moreover, to eradicate the misuse of children as soldiers, we need to change cultural values. People must learn to see the value of children and the need to provide for their health and safety.

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 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

331. Iweala, supra note 13, at 42.
332. See Graham, supra note 283.
333. Iweala, supra note 13, at 119.
334. Id. at 93.
335. Udombana, supra note 20, at 107.
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, new anti-trafficking and anti-child soldiering legislation, and dangers of child soldiering. States should publicize information widely through the media about children’s rights and recruitment guidelines 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 the life of a child soldier provides security and stability.

Awareness about the use of child soldiers can be raised by holding and widely publishing international conferences on child soldiering such as the “Free Children from War” Conference that just took place in Paris on February 6, 2007. African nations participating in that conference 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 nongovernmental 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.” 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); the documentation available on these children (including their names, ages, and photographs) enabled UNICEF and the U.N. Humanitarian

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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 Apr. 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.

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

339. Id.
Coordinator in Angola to launch an international publicity campaign that prompted the release of children to a Catholic mission after twenty days.340

States must show support for nongovernmental organizations as well as for 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.341 However, in the past many of the nongovernmental organizations, groups, and the international coalition342 created to stop the use of child soldiers have been distracted or misdirected by anti-American sentiment that thwarts their mission.343 The international community must put these distractions aside to help create the political will to eradicate child soldiering by shaming government leaders into implementing legislative protection of children.

C. Protection of Child Victims

To eliminate child soldiering, the global community must address the protection of the child victims by strengthening compliance and implementation344 of international humanitarian laws, human rights norms, slavery conventions, trafficking conventions, international criminal laws, and fair labor laws applicable to children’s rights and child soldiering. Implementation starts by abolishing the general perception of impunity for crimes related to child soldiering.345 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 in the U.S. federal courts under the Alien Tort Claims Act.


341. See Sinter, supra note 25, at 146.

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.
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 underage recruitment.\textsuperscript{346}

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

\textbf{D. Economic Solutions}

Shaming States and engaging in a universal moral outcry are 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.\textsuperscript{347} 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.”\textsuperscript{348}

U.N. Resolution 1612\textsuperscript{349} 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, 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.

\textbf{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

\textsuperscript{346} See Sinter, supra note 25, at 146.
\textsuperscript{347} See id. at 160.
\textsuperscript{348} Udombana, supra note 20, at 105.
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. The referral was an attempt by Uganda to engage an “otherwise aloof international community” 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 engaging in 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.” Criminalizing the practice could be accomplished by prosecuting former leaders of groups that use child soldiers in ad hoc international tribunals such as 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 fund limitations.

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. Children implicated in 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 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 often themselves the victims.

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. In addition, the rules of the ICC might be

350. See Akhavan, supra note 20, at 403.
351. Id.
352. Sinter, supra note 25, at 149.
353. Id. at 155.
354. Id.
355. Id. at 151.
modified to allow children to testify before the court 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.” 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 reestablish 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. 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 U.N. envoy for children and armed conflict, stated “We’ve come a long way. Ten years ago this was an invisible issue.” 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 to do more to eradicate this crime, funds must be found and steps 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. 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 the poverty that is at the source of many of the armed conflicts producing and perpetuating the use of child soldiers as a military strategy. The fact is that children are devalued, viewed as expendable, and serve as a convenient natural resource

356. Id. at 153.
357. See generally S.C. Res. 1612, supra note 349.
359. Id.
for economic efficiency during war. Public condemnation of this kind of
pervasive 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 who 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 com-
community, these children could become a lost generation of migratory professional
killers who perpetuate conflict and war.