

Children and Armed Conflict

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By

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Dedicated to my late grandparents
Zilfikar Agous and Zilfikar-Alious Dade and my children Peter and Nekija

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ABSTRACT

The book examines international efforts to protect children from the effects of war and armed conflict through the Convention on the Rights of the Child (CRC), especially article 38, and the Convention's Optional Protocol on the involvement of Children in Armed Conflict (OPAC). It charts the evolution of the Convention and the place it occupies in the broader efforts of the UN to provide for human rights. The principal focus of the book is on the machinery the UN has established for implementing the CRC and OPAC, particularly the Committee on the Rights of the Child and the processes the Committee uses to monitor states' compliance with the CRC and OPAC. Detailed examination is made of the extent to which States Parties to the CRC and OPAC submit the initial and periodic reports by the stipulated deadlines, and of how far reports provide the information required by the Committee. The way the Committee deals with the information it receives is also examined. These investigations expose major shortcomings in the monitoring process. The book therefore concludes by examining possible ways in which compliance with the CRC and OPAC might be secured more effectively.

CHAPTER ONE

INTRODUCTION

“The question of children and armed conflict is an integral part of the United Nations’ core responsibilities for the maintenance of international peace and security, for the advancement of human rights and for sustainable human development.”

—Secretary-General Kofi Annan in a speech to the Security Council, 26 July 2000

1.1 Children and Armed Conflict

War and armed conflict have been enduring features of the human condition. For as long as they existed, their victims have included children as well as adults. That is as true of war and armed conflict in the modern age as it has been of previous ages. Indeed, in some respects children are more directly affected by military conflicts nowadays than they have been in the past. During and after conflicts, children remain exposed to the dangers of landmines and millions of pieces of unexploded ordnance – bombs, shells and grenades that fail to denote on impact.

Many of the wars of the previous century continue to the present day, and leave indelible marks on the lives of millions of children. Civilian deaths have far exceeded those of armed combatants. Due to the role that international politics and commercial interests play in initiating, supporting and maintaining these conflicts, we are all in some ways, like it or not, woven into the complex net of complicity and accountability surrounding them. Thus we cannot ignore this ongoing assault on the lives of children.

Armed conflicts affect the development of children from before birth into young adulthood in a myriad of ways, the effects accumulating in interminable civil wars as children grow, and diverting them from normal life pathways in the culture and societies in which they live. The consequences of these childhood experiences will continue to reverberate throughout their lives. Armed conflict also continually violates and undermines the rights of children as they are enunciated in the Convention

on the Rights of the Child (CRC)¹ and in its Optional Protocol on the Involvement of Children in Armed Conflicts (OPAC).²

Children are specifically targeted to create terror and subdue local populations. They are forcibly recruited as “volunteers” in their thousands to fight adult wars. There is overwhelming evidence from recent armed conflicts that children are not only the incidental victims of crossfire and so called “collateral damage”, but also that they are specifically sought out and killed, maimed and abused by warring parties. Youths with guns, rather than defending local communities, are often used to terrorise them. In January 1999, the Ugandan army executed five teenage boys between the ages of 14 and 17 who were suspected of being rebel soldiers.³ When not actively engaged in combat, children are often used to man checkpoints. Adult soldiers tend to stand several metres further back at times of an attack so that, if bullets start flying, the children will be the first victims. And in any conflict where even a few children are involved as soldiers, all children, civilian or combatant, come under suspicion. A military sweep in Congo-Brazzaville killed all rebels who had attained the ‘age of bearing arms’.⁴

Child soldiers are often depicted as victims and casualties of war, and they are indeed exploited, torn from their families, and deprived of their education, and forced into battle. But children are also assailants. Child soldiers are cheap and efficient weapons in asymmetric warfare. Accounts from the field tell of child soldiers who are virtually free to recruit, cheap to feed, and quick to follow orders. They readily learn how to employ brutal tactics. The Revolutionary United Front (RUF), a rebel group operating in Sierra Leone from 1991 to 2002, for example, was notorious for raping and mutilating the civilian population. It was often coerced children, frequently drunk or high on drugs, who perpetrated the acts. The Liberation Tigers of Tamil Eelam, fighting for independence from Sri

¹ Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 in November 1989. Entry into force 2 September 1990, in accordance with article 49.

² Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict. (OPAC). Adopted and opened for signature, ratification and accession by the General Assembly resolution A/RES/54/263 of 25 May 2000. entered into force on 12 February 2002.

³ Alex Obote-Odora, ‘Legal Problems with Protection of Children in Armed Conflict’ *Murdoch University Electronic Journal of Law* 6 (1999).

(http://www.murdoch.edu.au/elaw/issues/v6n2/obote-odora62_text.html#t34, 15 August 2008).

⁴ Ibid.

Lanka, relied on children for their suicide bombing missions during their decades-long campaign. At times, they found that children could much more easily penetrate targets than their adult counterparts.⁵ Trained and educated in the ways of guerrilla war, many child combatants grow up in a world where brutality is the norm. In Algeria, many of the killers are young boys under the age of 17.⁶ In one incident, it was reported that some boys, who looked to be around 12 years old, decapitated a 15-year-old girl and played ‘catch’ with her head.⁷ The result is a violent gift that keeps on giving – today’s Taliban leaders reputedly cut their teeth in the field as child soldiers fighting the Soviets. In addition to inducing psychological trauma, a violent childhood reduces healthy educational opportunities, leaving militancy the only viable career path in later years.⁸

Child soldiers also pose unique challenges to professional armies. They are lethal combatants, but they are also victims who have often been forced to fight. For professional soldiers, hesitation out of sympathy may prove fatal. Furthermore, encounters with child soldiers can greatly demoralize professional fighters.⁹

The following examples are just a sample of the roles child soldiers have played in recent conflicts, and in some instances continue to play.

Sri Lanka:¹⁰ The Sri Lankan government estimated that at least 60% of LTTE fighters were under 18.¹¹ The average age of children at the time of recruitment into the LTTE was 15¹², though some recruits were as

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Simon Reich and Scott Gates, ‘Think again: child soldiers’ *Foreign Policy* May 2009 (http://www.foreignpolicy.com/story/cms.php?story_id=4944, 10 June 2009).

⁹ Eben Kaplan, ‘Child Soldiers Around the World’ *Council on Foreign Relations* (<http://www.cfr.org/publication/9331/>, 12 January 2009).

¹⁰ Charu Lata Hogg ‘Child Recruitment In South Asian Conflicts: A Comparative Analysis of Sri Lanka, Nepal and Bangladesh’ (Coalition to Stop the Use of Child Soldiers: Chatman House, 2006): 9.

([http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-794KLM/\\$file/chatham-nov2006.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-794KLM/$file/chatham-nov2006.pdf?openelement), 15 January 2008).

¹¹ UN Doc. CRC/C/70/Add.17, 2002: Second Periodic Report of Sri Lanka to the UN Committee on the Rights of the Child: para.170.

¹² UNICEF, ‘Action Plan for Children Affected By War, Progress Report January – June 2004’ (http://www.unicef.org/videoaudio/PDFs/plan_progress_june04.pdf, 15 February 2008).

young as nine.¹³ The UN Children's Fund (UNICEF) estimated that at least 1,440 children remained in the LTTE as of 30 April 2006. Of these, 859 children were under age at the time of recruitment.¹⁴ Children were reportedly used from frontal assaults in major battles during the Eelam Wars.¹⁵ Estimates of LTTE cadres killed in combat suggest that during the height of the Eelam Wars, at least 40% of the fighting force consisted of children aged between nine and 18. The nucleus of the 'Baby Brigade' was first formed in early 1984 and deployed heavily during the IPKF intervention.¹⁶ The Sirasu Puli ('Leopard Brigade'), one of LTTE's fiercest fighting forces, was composed entirely of children.¹⁷

Uganda: As many as 25,000 children have been abducted by the Lords Resistance Army (LRA) for use as child soldiers, sex slaves and porters since the conflict began in 1986. 7,500 are girls, with 1,000 having conceived children during captivity. An unknown number have been killed.¹⁸ Currently an estimated 30,000 Ugandan children – “night commuters” – walk quietly through the darkness every night, fleeing their homes on the look out for a relatively safe place to sleep in an urban area or in the centre of larger Internally Displaced Persons (IDP) camps – only to return back home in the morning and repeat the trip all over again as night falls.¹⁹

According to Article 1 of the Convention on the Rights of the Child, a child “is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” Also, it is worth mentioning that there is no precise definition of the term ‘child’ in the

¹³ Amnesty International, ‘Children in South Asia – securing their rights’ AI Index ASA 04/001/1998, 22 April 1998.

(<http://www-secure.amnesty.org/en/library/asset/ASA04/001/1998/en/d6b07591-e827-11dd-9deb-2b812946e43c/asa040011998en.pdf> , 18 February 2008).

¹⁴ Under-age Recruitment as of 30 April 2006, monthly statistics provided by UNICEF see UNICEF, ‘Action Plan for Children Affected By War, Progress Report January – June 2004’.

¹⁵ Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers* (Stockholm: Radda Barnen [Swedish Save the Children], 1996).

¹⁶ UN Doc. CRC/C/70/Add.17, 2002, paras.170-1.

¹⁷ N. Manoharan, ‘Child Soldiers III: ‘Baby Brigades’ of the LTTE’, Article No. 1184, 21 October 2003, Institute of Peace and Conflict Studies (IPCS: (http://www.ipcs.org/article_details.php?articleNo=1184 , 6 June 2009).

¹⁸ Amnesty International, ‘UGANDA: Child “night commuters” fear abduction’ AI Index: AFR 59/016/2005, 18 November 2005 (<http://asiapacific.amnesty.org/library/Index/ENGAFR590162005?open&of=ENG-UGA> , 15 June 2008).

¹⁹ Ibid.

laws of war (humanitarian law) whether customary international law or treaty law.²⁰

An imprecise definition of the term ‘child’ is found in Additional Protocols I & II of 1977 to the four 1949 Geneva Conventions. Article 77 (2) of the Additional Protocol I discourages, but does not prohibit, recruitment of young persons who have not attained the age of fifteen.²¹ Article 77 (3) acknowledges, though grudgingly, that children who take a direct part in hostilities may be taken as prisoners of war.²² Thus, Additional Protocol I tacitly recognises that children will continue to take part in armed conflict. This is a weak prohibition of child participation in armed conflict as none of the above mentioned Protocols actually prohibit the use of child soldiers.²³

Unfortunately, a ‘child soldier’ has received no agreed definition. According to the Cape Town Principles, a child soldier is “any person under 18 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. It does not, therefore, only refer to a child who is carrying or has carried arms.”²⁴ Meanwhile, the United Nations Children Fund (UNICEF) defines a child soldier as “any child—boy or girl—under eighteen years of age, who is part of any kind of regular or irregular armed force or armed group in any capacity.” This age limit on an international scale is relatively new – as the Cape Town Principles have no international

²⁰ Obote-Odora, ‘Legal Problems with Protection of Children in Armed Conflict’, 30.

²¹ Article 77 (2) of the Additional Protocol I of 1977 states: “The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen but have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest”.

²² Article 77 (3) of the Additional Protocol I of 1977 provides: “If, in exceptional cases, despite the provision of [Article 77 (2)], children who have not attained the age of fifteen years take direct part in hostilities and fall into the power of an adverse Party, [Prisoners of War] they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war”.

²³ Obote-Odora, ‘Legal Problems with Protection of Children in Armed Conflict’.

²⁴ Cape Town, South Africa, 27-30 April 1997: The Cape Town Principles and Best Practices: Adopted at the Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilisation and Social Reintegration of Child Soldiers in Africa

([http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) , 15 May 2009).

application – established in 2002 by the Optional Protocol to the Convention on the Rights of the Child. Prior to 2002, the 1949 Geneva Conventions and the 1977 Additional Protocols set fifteen as the minimum age for participation in armed conflict. While some debate exists over varying cultural standards of maturity, nearly 80 percent of conflicts involving child soldiers include combatants below the age of fifteen, with some as young as seven or eight.²⁵

Here are some facts illustrative of how children are affected by armed conflicts in the contemporary world:

- *As of mid-2004, up to 100,000 children—some as young as nine—were actively involved in armed conflict in Africa.*²⁶
- *80 per cent of children aged 8 to 13 in Sierra Leone had suffered the death of a parent, sibling or close relative; 74 per cent had seen somebody being killed or injured with machetes; 68 per cent had seen somebody being burned to death or tortured; and nearly 10 per cent of girls had been gang-raped.*²⁷
- *66 per cent of children in Angola had seen people murdered, and 67 per cent had seen people beaten or tortured.*²⁸
- *55 per cent of children in Sarajevo, Bosnia and Herzegovina had been shot at, and 66 per cent had been in a situation where they expected to die.*²⁹

Children are drawn into armed conflict by both push and pull factors. Push factors include negatives that children escape by joining an armed group. Abuse suffered in the family is a push factor – the child might join an armed group to escape an abusive situation. They may also seek to escape boredom, physical insecurity, extreme poverty, and the humiliation associated with personal or family victimization and shame. These push factors are only partial causes, since most children who have difficult family situations or live in abject poverty do not become child soldiers.

Equally or more compelling are the pull factors, which are the positive rewards or incentives for joining armed groups. Analysts have tended to underestimate the importance of pull factors, probably because the emphasis of much child-soldiering literature has been on protecting

²⁵ Kaplan, 'Child Soldiers Around the World'.

²⁶ Hogg "Child Recruitment In South Asian Conflicts: A Comparative Analysis of Sri Lanka, Nepal and Bangladesh".

²⁷ 'What is Child Soldier? Plan:

(<https://www.planusa.org/contentmgr/showdetails.php/id/2147> , 15 October 2008).

²⁸ Ibid.

²⁹ Ibid.

children from exploitation. Although most analysts view child soldiering as a heinous form of exploitation, children who join armed groups often see soldiering in different terms. Many view it as entering an opportunity space in which they can obtain things they could not obtain otherwise – including a family, power, revenge, wealth, education, and a commitment to a cause. To understand the lure of these incentives, one has to imagine the attraction felt by a child who comes from a very poor family and who has always felt powerless but who now carries a gun and is feared and respected by many.³⁰

No situational influence has greater potency than the family. The profound importance of the family in children's recruitment is most visible in the case of separated children, who are no longer under the care of their parents or primary caretakers.³¹ Separation typically occurs when a village is attacked; in the chaos of people's desperate flight, young children become separated from their parents and are ripped away from their primary supports. Some children's parents are killed, leaving the orphans with little means of protection and in a perilous situation. Separated children are at increased risk of nearly every form of exploitation, whether it involves trafficking, sexual violence, or child soldiering.

Not uncommonly, a separated child who encounters an armed group joins because the armed group provides for the child the only hope of food, medical support, or protection from further attack. For example, in Nepal, joining a rebel group brings an enhanced sense of group identity and collective activity among children and confers some privileges by way of free food in households in villages.³²

A Philippine boy who had joined an opposition group at age 14 recounted:

I was 14 when I joined the NPA (New People's Army). I was out of school then. My grandfather and grandmother sent me to school but I did not take my studies seriously. I had a friend who joined the movement. I thought that my life was meaningless because I had no parents to look after me. I

³⁰ Michael G. Wessells, *Child Soldiers: From Violence to Protection* (Cambridge, London: Harvard University Press, 2006): 46-7.

³¹ Rachel Brett and Irma Specht, *Young Soldiers: Why they choose to fight* (London: Lynne Rienner, 2004).

³² Hogg "Child Recruitment In South Asian Conflicts: A Comparative Analysis of Sri Lanka, Nepal and Bangladesh", 23bb.

went along with (my friend) because I thought what the heck my life is meaningless anyway.³³

Child soldiers often include very young children, as young as seven in some situations, as well as older children and teenagers. The upper age of eighteen, as defined in the Cape Town Principles, corresponds to the threshold between childhood and adulthood defined in the Convention on the Rights of the Child. Children may be forced to join armed groups through forced conscription or abduction, though many join ‘voluntarily’ for their own protection and survival. The term ‘voluntary’ should be used cautiously when discussing child soldiers, as joining is often the only option available to children and their action is rarely ‘voluntary’ in any genuine sense.³⁴ Some of the methods used during this ‘voluntary’ enrolment are in fact as simple and brutal as those that were used to fill the ranks of the Janissaries. Armed to the teeth, insurgents supporting a particular ideology or warlord descend on a community. They plunder, pillage, rape and disappear back from where they came with a supply of new recruits destined to become soldiers by menace, threat or other means of coercion³⁵

Children are recruited and used by armed groups around the world – both government and opposition – for a variety of reasons. It is generally easier to abduct, subjugate, and manipulate children than adults. Children are more impressionable and vulnerable to indoctrination. They can learn skills and tasks quickly, and they can be fast and agile on a battlefield. They are more willing than adults to take risks. Children are seen as more loyal and less threatening to adult leadership. It is easier for children to slip through enemy lines unnoticed, making them effective spies and bomb carriers. Children are typically viewed as cheap and expendable labour; they require less food and no payment. In addition, using child soldiers can present a moral dilemma to an army’s enemies: should they kill children?³⁶

³³ Wessells, *Child Soldiers: From Violence to protection*, 47 and UNICEF, ‘Action Plan for Children Affected By War, Progress Report January – June 2004’, 30.

³⁴ Mark Lorey, ‘Child Soldiers: Care & Protection of Children in Emergencies: A Field Guide’, *Save the Children* (<http://www.savethechildren.org/publications/technical-resources/emergencies-protection/ChildSoldiersFieldGuide.pdf>, 10 June 2009).

³⁵ ‘Child Soldiers and Small Weapons of Mass Destruction’ (http://www.achart.ca/publications/child_soldiers.html , 15 June 2007).

³⁶ Lorey, ‘Child Soldiers: Care & Protection of Children in Emergencies: A Field Guide’, *Save the Children “Child Soldiers: Care & Protection of Children in Emergencies: A Field Guide”* Mark Lorey’, 3-4.

In Chad a senior officer in the Chadian National Army (ANT) stated that: “Child soldiers are ideal because they do not complain, they do not expect to be paid, and if you tell them to kill, they kill”.³⁷

The extraordinary increase in the number of child soldiers since the cold war is closely related to the equally large number of small arms flooding the world market, advertised as 'cheaper than dirt' on the internet. The statistics are staggering. According to the Small Arms Survey of 2002 by the Graduate Institute of International Studies, Geneva:

- In 2002, 639m small arms were in circulation world wide; that is one for every 10 people on the planet.
- Forty per cent (255m) of these are in the hands of military formations; the remaining sixty per cent (384m) are held by civilians.
- The estimated annual sale of global small arms was \$21 billion.
- Britain, France and the U. S. A. earned more from the sale of small arms than they provided in aid to the third world.
- Deaths from small arms were 500,000 a year. Of these, 300,000 were slain in armed conflict, 200,000 in domestic disputes. That is nearly one death a minute.
- In 2002, an estimated 16 billion rounds of ammunition were manufactured.³⁸

The proliferation of small arms³⁹, such as handguns, light machine guns, revolvers and rifles has contributed significantly to the use of child soldiers. The widespread availability of these weapons is an important factor that enables children to participate as combatants in armed conflict. Small arms are lightweight, they therefore undo the disadvantage of children's lack of strength. Firearms and guns are also cheap and easy to use. This problem is aggravated by the uncontrolled trade in small arms, with some 640 million small arms and light weapons in circulation around the world, according to a 2003 briefing paper by the Human Security Network.⁴⁰ Weapons availability can intensify and prolong violence and

³⁷ Coalition to Stop the Use of Child Soldiers, 'Voices of Child Soldiers' (<http://www.childsoldiersglobalreport.org/content/voices-child-soldiers>, 15 April 2009).

³⁸ 'Child Soldiers and Small Weapons of Mass Destruction'.

³⁹ Small firearms include revolvers, self-loading pistols, muzzleloaders, sub-machine guns, light machine guns, assault rifles and carbines. Light weapons are larger weapons and include heavy machine guns, hand-held under-barrel and mounted grenade launchers.

⁴⁰ Centre for Humanitarian Dialogue, 'Briefing Paper, Small Arms and Human Security: A snapshot of the humanitarian Impacts' November 2003.

undermine the rule of law. According to the Small Arms Survey 2002, “Where there is an abundance of small arms in today’s wars, there are armed children: where suicide bombers in Sri Lanka, soldiers in Myanmar, guerrillas in Colombia, or militia in Sierra Leone”.⁴¹

The easy availability of small, low-cost weapons enables the arming of factions, creating a context ripe for armed conflict. Children can easily learn to operate these weapons, and many take pride in their skill. A 14-year-old boy from Sierra Leone said:

I knew everything about my rifle – how to take it down, clean it, assemble it, load it. [I could do this] really fast! I could repair it, too. I was the fastest in my company...The commander had me train new soldiers. I liked the training...they looked up to me, and I taught them how to be good with the gun.⁴²

While small-arms misuse may disproportionately affect the most vulnerable groups – women, children, the displaced – men are almost always the buyers, owners and users of guns. In conflict, women and children constitute the majority of combat deaths. The 2004 Small Arms Survey Yearbook observed that armed violence is “an overwhelmingly male phenomenon”.⁴³

Generally speaking, small arms are weapons designed for personal use, while light weapons are designed for use by several persons serving as a crew. Small arms are attractive tools of violence for several reasons. They are widely available, low in cost, extremely lethal, simple to use, durable, highly portable, easily concealed, and possess legitimate military, police, and civilian uses (so are present in virtually every society). These weapons are also relatively light in weight, and so can be used even by children.⁴⁴

(<http://www.hdcentre.org/files/RXbriefing.pdf>, 15 March 2007) and ISN “Child Soldiers: The Use of Child Soldiers”.

⁴¹ International Relations and Security Network, ‘Child Soldiers: The Use of Child Soldiers’: 2.

(<http://www.isn.ethz.ch/isn/content/download/8067/80345/file/01%20Use%20of%20Children.pdf>, 15 May 2009).

⁴² Wessells, *Child Soldiers: From Violence to protection*, 19.

⁴³ “In-Depth: Guns out of Control: the continuing threat of small arms” May 2006 (<http://www.irinnews.org/pdf/in-depth/Small-Arms-IRIN-In-Depth.pdf>, 15 May 2008).

⁴⁴ Undule Mwakasungura, ‘Firearms Proliferation: a real threat to Malawi’s economy’ (<http://www.chrr.org.mw/press%20releases/April%202008/Small%20Arms%20Proliferation%20article.doc>, 15 July 2009).

The origins of the small arms build-up lie in competition during the Cold War and struggles against colonialism and apartheid. More recently, as internal wars have become the predominant form of armed conflict, the influx of new weapons remains a preoccupation. But it is the illicit redistribution and flows of existing stocks from older conflicts which currently raise the greatest concern. Over time, the increased availability of unregulated and uncontrolled light weapons changes social values, making societies and individuals more, not less, insecure and violent. In many countries, such uncontrollable movements of small arms have occurred because peace settlements did not provide for the collection and destruction of surplus weapons. Accumulated weapons stocks became tradable commodities and circulated freely, contributing to continuing violence after the end of war.⁴⁵

Child Soldiers include girls as well as boys. By the year 2000, when the war in Angola was winding down, it became apparent that thousands of girls had been soldiers in the Angolan war. In fact, many UNITA soldiers had two or more girls who had been abducted to serve as workers and sex slaves.⁴⁶ The girls had been invisible to analysts in part because the recruiters had wanted to hide their exploitation of girls. Also, the girls themselves had kept secret their lives as soldiers in order to avoid being stigmatised.⁴⁷

For girls, recruitment may lead to sex slavery. In Uganda, for instance, young girls that had been abducted by rebel forces were commonly divided up and allocated to soldiers to serve as their 'wives'. A case-study from Honduras, prepared for the Machel report, illustrates one child's experience of joining armed groups:

⁴⁵ Virginia Gamba, 'Small Arms Foster Social Turmoil: Illegal Trafficking Disrupts African Communities, Spreads Crime' (<http://www.un.org/ecosocdev/geninfo/afrec/subjindx/121weaps.htm>, 10 January 2008).

⁴⁶ Coalition to Stop the Use of Child Soldiers, 'CHILD SOLDIERS USE 2003: A Briefing for the 4th UN Security Council Open Debate on Children and Armed Conflict, Angola' (<http://www.child-soldiers.org/document/get?id=690>., 16 January 2008).

⁴⁷ Wessells, *Child Soldiers: From Violence to protection*, 85.

At the age of 13, I joined the student movement. I had a dream to contribute to make things change, so that children would not be hungry... later I joined the armed struggle. I had all the inexperience and fears of a little girl. I found out that girls were obliged to have sexual relations 'to alleviate the sadness of the combatants'. And who alleviated our sadness after going with someone we hardly knew? At my young age I experienced abortion... In spite of my commitment, they abused me, they trampled my human dignity. And above all, they did not understand that I was a child and that I had rights.⁴⁸

Although it is impossible to calculate accurately the number of children involved in armed forces and groups, it is clear that there are many tens of thousands of child soldiers. Child soldiers exist in all regions of the world and, almost inevitably, wherever there is armed conflict.⁴⁹

The number of governments that used children in armed conflict has declined in recent years only marginally – down from 10 in the period 2001-2004 to nine in 2004-2007.⁵⁰

The vast majority of child soldiers are to be found in the ranks of non-state armed groups. Dozens of armed groups in at least 24 countries have recruited under-18s and many have used them in hostilities.⁵¹ Although Africa is the continent most commonly associated with the use of child soldiers, Table 1 shows that they are used throughout many other parts of the world.

So for example, in Latin America up to 14,000 children are estimated to be involved with armed political groups and army-backed paramilitaries in Colombia, while in Europe under-18s are believed to be involved in Turkey and a range of armed groups in the Chechen Republic of the Russian Federation, although the numbers are impossible to establish given the lack of information available.⁵²

⁴⁸ 'Impact of Armed Conflict on Children: Children at both ends of the gun' UNICEF (<http://www.unicef.org/graca/kidsoldi.htm> , 15 December 2008).

⁴⁹ 'Child Soldiers : Global report 2008 "Facts and Figures on Child Soldiers"' Coalition to Stop the Use of Child Soldiers (www.childsoldiersglobalreport.org/content/facts-and-figures-child-soldiers, 10 January 2009).

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² 'Frequently Asked Questions' *Coalition to Stop the Use of Child Soldiers* (<http://www.child-soldiers.org/childsoldiers/questions-and-answers>, 11 January 2008).

Table 1.1 Countries that have child soldiers fighting in current and recent conflicts⁵³

Africa	Asia	Middle East	Latin America	Europe
Algeria (p/o)	Afghanistan (g/p/o)	Iran (g/o)	Colombia (p/o)	Russian Federation (o)
Angola (g/o)	India (p/o)	Iraq (g/o)	Mexico (p/o)	Turkey (o)
Burundi (g/o)	Indonesia (p/o)	Israel/Palestine (g/o)	Peru (o)	Yugoslavia (p/o)
Chad (g)	Myanmar (g/o)	Lebanon (o)		
Congo-Brazzaville (g/o)	Nepal (o)			
Congo-Kinshasa (g/o)	Pakistan (o)			
Eritrea (g/o)	Philippines (o)			
Ethiopia (g)	Solomon Islands (o)			
Liberia (g/o)	Sri Lanka (o)			
Rwanda(g/o)	East Timor (p/o)			
Sierra Leone (g/p/o)	Tajikistan (o)			
Somalia (g/p/o)	Papua New Guinea (o)			
Sudan (g/p/o)	Uzbekistan (o)			
Uganda (g/o)				

g=government p=paramilitaries o=armed opposition groups

The issue of child soldiers, nevertheless, arises not only for states characterised by civil conflicts, but for all states, including the most stable liberal democracies. All states, except the small number that have no army, have to confront the question of the age at which they should recruit soldiers. Several already impose an age-limit of 18, but many do not, including many 'Western' liberal democracies. Sixty-three countries permit the voluntary recruitment of under-18s by their armed forces. In Australia, New-Zealand and the United Kingdom calls to raise the

⁵³ Lorey, 'Child Soldiers: Care & Protection of Children in Emergencies: A Field Guide'.

minimum recruitment age to 18 have been resisted on the grounds of manpower requirements. In the USA, following a dramatic number of under-18s joining the military, and general requirement bonuses, increased enlistment bonuses were introduced and educational standards for recruitment lowered. Elsewhere, safeguards to ensure that minimum recruitment ages were respected were undermined by inadequate measures to determine the age of recruits. In countries such as Bangladesh, Botswana, Ethiopia, Guatemala, Guinea, India, Kenya and Zambia, the risk of inadvertent underage recruitment was created by low birth registration levels. In Paraguay, lack of birth registration facilitated forced conscription of children as young as twelve years old. In countries such as Afghanistan and Yemen, inadequate verification procedures to determine the age of new recruits meant that under-age soldiers were likely to be serving in security forces.⁵⁴

1.2 International Action for the Protection of Children

As long as there are wars and other forms of armed conflict, children will be amongst their victims. Even so, just as the international community has adopted rules designed to curb some of the worst excesses of war, so it has taken steps to try to provide some protection for children against the consequences of war and armed conflict. The earliest measures were adopted in the 1920s and thereafter greater protection for the rights of children was provided through developments in human rights law and international humanitarian law. The most comprehensive provision for children's rights now in existence is the UN's Convention on the Rights of the Child (CRC), the drafting of which began in 1979. The Convention was finally adopted in 1989. All but two states have ratified it: Somalia⁵⁵ and USA⁵⁶.

The CRC recognises rights relating to very many aspects of children's lives, including education, health, forming his or her own views and freedom of expression. It also recognises rights of children relating to their involvement in armed conflict. The most relevant article of the CRC in this respect is article 38, which includes rights limiting the recruitment of

⁵⁴ 'Child Soldiers: Global report 2008 "Facts and Figures on Child Soldiers".'

⁵⁵ Somalia is currently unable to proceed to ratification as it has no recognised government.

⁵⁶ The United States examines and scrutinises all treaties before ratification. In particular when the laws of several U.S. states are authorising execution of persons between the ages of 16 and 18 at the time of commission of the crime has been a major barrier to the USA's ratification of the Convention.

children into armies and armed groups. Articles 22 and 39 are also relevant. Article 22 applies to all children that have been affected by war or conflict and seek a refugee status, while Article 39 looks at the physical and psychological recovery of a child victim of armed conflict amongst other cruel, inhuman and degrading treatment.

While the CRC was a major advance in the international protection afforded to children, many of those who were party to the Convention thought it should have been more ambitious in its provision for war and armed conflict. Hence, in 1993 the first moves were made to draft a new document, which eventually became the Optional Protocol on the Involvement of Children in War and Armed Conflict (OPAC), adopted in 2002. The Optional Protocol goes a good deal further than the CRC in the protection it provides for children, including raising the minimum age for recruitment into the military from 15 to 18 years of age. At the time of writing, 110 states have ratified OPAC.

A major feature of the CRC and its Optional Protocols is the machinery that was established to monitor State Parties' compliance with the Convention and its Protocols. The task of monitoring compliance falls to the Committee on the Rights of the Child. States Parties to the Convention are under an obligation to report to the Committee at regular intervals and the Committee assesses their compliance with the CRC and its Protocols and makes recommendations to them.

The primary purpose of this thesis is to examine how well the CRC's machinery works. Clearly, states' pledging themselves to respect children's rights is worthless if they do not honour their pledge. The machinery established to monitor compliance with the CRC represents a significant effort by the UN to ensure that states honour the treaty obligations they have undertaken. The powers of the Committee in relation to States Parties are modest, in part because states are willing to go only so far in subjecting themselves to the authority of an external body. Nevertheless, it still matters whether the processes the UN has established for monitoring states' compliance actually achieves what they are designed to achieve.

The thesis focuses on the rights of children in relation to war and armed conflict for a number of reasons. First, the CRC is a very wide-ranging document and it would be impossible, within the scope of a single PhD thesis, to examine how its implementation machinery worked in relation to all of the rights set out in the Convention. Secondly, the rights relating to war and armed conflict are especially urgent. They concern life and death issues. The failure of states to comply with and to uphold these rights has much more dire consequences for children than their failure

with respect to some other rights in the CRC. Thirdly, some of the rights in the CRC are stated in very general and imprecise terms and that often makes it difficult to judge whether a state has honoured them. The provisions in article 38 and in OPAC are rather more precise and that makes it easier for states to know what their obligations are and for others to judge how fully they are meeting their obligations. Finally, a focus upon children's rights in relation to war and armed conflict takes in OPAC as well as the CRC. This has two advantages. OPAC is a rather more detailed, precise and demanding document than article 38 of the CRC and therefore enables a more rigorous testing of states' compliance and of the Committee's monitoring of their compliance. Secondly, because OPAC is an optional addition to the CRC, one might expect a higher level of compliance from those states who have opted to be signatories to the Protocol. Thus, focusing on the case of war and armed conflict enables us to examine the working of the CRC's machinery in relation to two different parts of the Convention.

Chapter 2 explains the evolution of human rights from natural rights and, in particular, how during the 20th century the language of human rights replaced that of natural rights and the role that UN played in that development. Since the UN consists of states, this chapter also looks at the factors that affect states' willingness to commit and comply with the various human rights treaties that now exist. The analysis of these factors makes use of Beth Simmons' typology of states. Finally this chapter looks at the development of the role of NGOs over the years and the extent to which they have influenced the various human rights committees.

Chapter 3 examines how international recognition and provision for children's rights developed during the twentieth century. The story is a long one, beginning in 1922 with the International Convention for the Suppression of Traffic in Women and Children and 1924 with the League of Nation's Declaration of the Rights of the Child. Once the UN was established and human rights became internationally recognised, provision for the rights of the child was a natural consequence of the UN's developing provision for human rights, though one that took some decades to emerge. However, provision for children's rights, especially in armed conflict, also developed through international humanitarian law. The CRC and its Optional Protocols can be seen as the culmination and coming together of uneven processes of development in human rights law and humanitarian law. However, things have not stood still since the establishment of the CRC and the Chapter catalogues several important developments that have taken place since 1989.

Chapter 4 moves from general provision for children's rights to specific provision for those rights in war and armed conflict. The article in the CRC that provides most directly for children in war and armed conflict is article 38. The Chapter analyses the content of the article and examines quite what it does and does not prohibit, along with the debates and disputes that surrounded the drafting of the article. The Chapter also explains the origins of OPAC and why many states thought that its provisions were a necessary supplement to the CRC. Finally, the Chapter examines the machinery the UN has established to monitor states' compliance with the CRC and OPAC. It examines the constitution, membership and powers the Committee on the Rights of the Child, the obligations of States Parties in respect of the Committee, and how the machinery established to monitor compliance with the CRC and OPAC compares with that established for other Human Rights Treaties.

States Parties that are signatories to the CRC have an obligation to submit an initial report to the Committee on the Rights of the Child two years after they have signed the Convention. The report should indicate the ways in which and the extent to which that State Party complies with the CRC. Thereafter the State Party is obliged to submit further 'periodic' reports every five years. Signatories to OPAC have similar reporting obligations. Chapter 5 examines States Parties' performance in submitting these reports. It provides data on how many states submit their reports by the required deadlines and, for those that fail to meet the deadlines (which includes the great majority), data on how late their reports are. The data reveals a large degree of variation in states' performance. The Chapter goes on to examine how far variations in performance correlate with geographical differences and with differences in types of regime and in the income levels of states.

Chapter 6 turns to the actual content of States Parties' reports. The Committee on the Rights of the Child provides guidelines for the content of States Parties' reports, including for article 38 of the CRC and for OPAC. These guidelines are reasonably specific and provide criteria against which the adequacy of States Parties' reporting can be judged. Chapter 6 examines how far states report on article 38 in their reports on the CRC and, of those that do report, how adequately they follow the Committee's guidelines. Once again, the data reveals a large degree of variation in the performance of States Parties and, as in Chapter 5, an analysis is provided of how far variations in reporting correlate with geographical differences and with differences in types of regime and in the income levels of states. Chapter 6 also examines the use the Committee makes, in relation to article 38, of its 'Lists of Issues', through which it

requests additional information from states, and its 'Concluding Observations'.

Chapter 7 conducts a similar evaluation of states' reporting in relation to OPAC. Since reporting on OPAC has to be much more detailed than on article 38, a three-point scale is used to grade the quality of states' reporting on the provisions of OPAC. This Chapter, like Chapter 6, reveals a high degree of variation in the adequacy of states' reports. It also examines how far the Committee has used its Lists of Issues and its Concluding Observations to comment on, and to seek remedies for, shortcomings in states' reports.

The machinery for implementing the CRC is unique amongst the UN's Human Rights Committees in making provision for NGOs to submit reports as part of the formal monitoring process. Chapter 8 examines how far NGOs have taken advantage of the opportunity to submit reports to the Committee and how far their reports have dealt with issues relating to Article 38 and OPAC. It also examines the quality of information provided by NGOs on the issue of child soldiers and the impact that information seems to have had upon the Committee.

Chapters 5, 6 and 7 provide evidence of extensive failings and shortcomings in the existing process for monitoring and implementing the CRC and OPAC. Chapter 8 shows that, while NGOs have made positive contributions to the monitoring process, their contributions have been too sporadic to correct the failings and shortcomings of the process. That evidence inevitably raises the question of how the existing process might be reformed so that it functions more satisfactorily. The CRC and OPAC are part of a larger set of Human Rights treaties, all of which have similar machinery for monitoring and assessing States Parties' compliance with their treaty obligations. The UN authorities have expressed dissatisfaction at the way in which much of this machinery works and have commissioned several reports on how the performance of Human Rights Treaty Bodies might be improved.

Chapter 9 examines the reform proposals in those reports that are most relevant to the concerns of this thesis and assesses which of several proposed changes are likely to result in significant improvements. However, the Chapter makes this assessment in light of the political realities of the current world and of the limited powers the UN can wield over its member-states. These realities limit the means the UN might use to police the conduct of its own members.