

# Talk Is Cheap: Getting Serious About Preventing Child Soldiers

P.W. Singer†

*It's a good start to write documents and stuff, but it's time to stop theorizing and start doing work to end this.*

Ishmael Beah, age 13<sup>1</sup>

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## Introduction

On January 4, 2002, Sergeant 1st Class Nathan R. Chapman became the first American serviceman to be killed by hostile fire in the War on Terrorism.<sup>2</sup> A Green Beret, Chapman's mission was to coordinate with local tribal elements in the Paktia province in Afghanistan.<sup>3</sup> Chapman's unit was ambushed, and he was hit by sniper fire.<sup>4</sup> While many Americans expected the War on Terror to claim casualties, one aspect of the battle surprised many: Sgt. Chapman's killer was an Afghani child.<sup>5</sup>

The threat of child soldiers continued in Afghanistan after Sergeant Chapman's death. On July 28, 2002, a grenade fatally injured Sergeant 1st Class Christopher Speer, a special forces medic, while on operations near

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1. Former Child Soldier. Remarks made to the United Nations Special Session on Children, May 8, 2002. *Editorial: Turning Promises Into Practice*, CHILD SOLDIERS NEWSLETTER (June 2002) at 22.

2. Timothy W. Maier, *Children Are Being Used as Soldiers*, INSIGHT, Dec. 2, 2002, available at <http://www.insightmag.com/news/2002/12/10/World/Children.Are.Being.Used.As.Soldiers-331660.shtml>.

3. *Id.*

4. *Id.*

5. *See id.*

the town of Khost in eastern Afghanistan.<sup>6</sup> His killer was a fifteen-year-old Al Qaeda member, originally from Canada.<sup>7</sup>

Little more than a year later, U.S. forces came in contact with child soldiers once again. In April 2003, during the war with Saddam Hussein's government in Iraq, American soldiers were forced to fire on and kill Iraqi child soldiers in at least two separate instances.<sup>8</sup> Some of these child soldiers were as young as ten years old.<sup>9</sup> Incidents with child soldiers continued during the guerilla campaign that followed the invasion.<sup>10</sup> U.S. Army briefings warned of the threat from child soldiers,<sup>11</sup> ranging from child snipers<sup>12</sup> to a fifteen-year-old who tossed a grenade in an American truck, blowing off the arm of an Army trooper.<sup>13</sup>

These incidents, though tragic, should not be surprising. The sad reality is that underage soldiers are now an almost inherent feature of the modern battlefield. Children as young as six years old now comprise as much as 10% of the world's combatants.<sup>14</sup> Underage soldiers serve in 75% of the world's conflicts.<sup>15</sup> They fight in places like Afghanistan, Colombia, Congo, Iraq, Liberia, Myanmar, Sierra Leone, and Sudan and, with the new "war on terrorism," increasingly face off against the United States and other Western armies.<sup>16</sup> Indeed, at least five underage boys suspected of being Al Qaeda terrorists or Taliban fighters have been imprisoned at the U.S. military prison on Guantanamo Bay, Cuba.<sup>17</sup>

6. Colin Nickerson, *Fighting Terror; A Boy's Journey From Canada to Al Qaeda*, BOSTON GLOBE, Mar. 9, 2003, at A1; Joseph Farah, *Family of Canadian Teen Has Extensive Al Qaida Ties*, WORLD NET DAILY, Sept. 6, 2002, available at [http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=28850](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=28850).

7. See Nickerson, *supra* note 6; Farah, *supra* note 6.

8. Matthew Cox, *War Even Uglier When a Child Is the Enemy*, USA TODAY, Apr. 8, 2003, at 1A; Alex Perry, *When Kids Are in the Cross Hairs*, TIME, Apr. 21, 2003, at 57.

9. See Cox, *supra* note 8; Perry, *supra* note 8.

10. Mary Beth Sheridan, *For Help in Rebuilding Mosul, U.S. Turns to Its Former Foes*, WASH. POST, Apr. 25, 2003, at A10.

11. *Enemy Tactics, Techniques, and Procedures (TTP) and Recommendations*, 3rd Corps Support Command Briefing Document, at 27, LSA Anaconda, Iraq [hereinafter Briefing Document].

12. *Report: Marines Wounded in Fighting Late Wednesday in Iraq*, Associated Press, Mar. 26, 2003 [hereinafter *Report*].

13. See Cox, *supra* note 8; Martin Bentham, *Fedayeen Use Children To Shield Them from Tank*, THE DAILY TELEGRAPH, Apr. 2, 2003, at P2.; Briefing Document, *supra* note 11; Joseph L. Galloway, *Hurt Still Arriving at Army Hospital*, CHARLOTTE OBSERVER, Aug. 22, 2003, at 5A; Perry, *supra* note 8; *Report*, *supra* note 12; Sheridan, *supra* note 10; Barbara Slavin, *U.S. Troops Clash with Exile Leader's Militia*, USA TODAY, May 2, 2003, at 4A.

14. P.W. Singer, *Caution: Children at War*, PARAMETERS, Winter 2001-2002, available at <http://www.brookings.edu/views/articles/fellows/20011203singer.pdf>.

15. P.W. SINGER, CHILDREN AT WAR ch. 2 (forthcoming January 2005), Data on Rädä Barmen, CHILDWAR DATABASE; SIPRI YEARBOOK 2002: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY app. IA (Taylor Seybolt ed., 2002); see also P.W. Singer, *Children at War*, VETERANS VISION, Fall 2002.

16. See M. Eriksson et al., *Patterns of Major Armed Conflicts, 1990-2001*, in SIPRI Yearbook 2002, *supra* note 15, at 63-76, app. IA.

17. *National Roundup*, MIAMI HERALD, Apr. 23, 2003, at 14; Bruce Auster & Kevin Whitelaw, *Terror's Cellblock*, U.S. NEWS AND WORLD REPORT, May 12, 2003, at 21; Michelle Faul, *U.S. Defends Detaining Teens*, CHARLOTTE OBSERVER, Apr. 27, 2003, at 7A; Press Release, Human Rights Watch, U.S.: Guantanamo Kids at Risk (Apr. 24, 2003),

The use of children as soldiers heightens both the frequency and savagery of conflict. It makes conflicts easier to start, tougher to end, and more likely to recur.<sup>18</sup> Even worse, the trend appears set only to magnify in the coming years. What then should be the proper response?

This Article looks at potential ways to prevent and deter the practice of child soldiers. To be effective, any effort against the use of child soldiers must seek to realistically understand the doctrine that drives it. Child soldiering stems from a set of deliberate choices and strategies designed to benefit from using children in war. By understanding the causes, as well as the resulting dynamics, one can develop more nuanced strategies that attack the very heart of the practice.

### I. Good Deeds Regardless

At the global level, the underlying causes of the rise of child soldiers include such overarching problems as world poverty, the lack of economic and educational opportunity for many of the world's youth, and the spread of war and disease.<sup>19</sup> Regardless of the presence of child soldiers, powerful reasons exist for tackling these problems. However, the effect of pushing children into the realm of war makes serious action all the more important. Indeed, advocates working in these areas should also contemplate linking their calls for action, now based exclusively on moral concerns, to the broader security concerns engendered by child soldiers. This will not only strengthen the advocates' cause, but also make arguments for findings on new security issues in other fields.

To confront all the varied issues of global distress requires both increased amounts of aid aimed at sustainable development, as well as more effective and efficient responses by the recipients. The United States lags far behind the rest of the developed world in its aid to poorer states. It spends a far lower percentage of its budget on foreign aid, relative to other prosperous states.<sup>20</sup> Indeed, of any industrialized country, the United States gives the lowest percentage of its national Gross Domestic Product (GDP).<sup>21</sup> Among the donors, the United States also has the worst record for spending its aid budget on itself—70% of American aid is spent on U.S.

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available at <http://www.hrw.org/press/2003/04/us042403.htm>. According to Auster and Whitelaw, the ages of the young detainees were thirteen, fourteen, fifteen, and sixteen, and three were released to Afghan authorities in January 2004. Pamela Constable, *An Afghan Boy's Life in U.S. Custody*, WASH. POST, Feb. 12, 2004, at 1. The United States has held an additional number of sixteen- to eighteen-year-old detainees in the general adult population. Interview with Pentagon official, June 2003.

18. Singer, *supra* note 14.

19. *Id.* at 4.

20. See Julian Borger & Charlotte Denny, *War of Pledges Gives Hope to World's Poor*, THE GUARDIAN, Mar. 21, 2002, available at <http://www.guardian.co.uk/debt/Story/0,2763,671171,00.html>. For additional information on this topic, see The Reality of Aid Project: An Independent Review of Poverty Reduction and Development Assistance, at <http://www.devinit.org/realityofaid> (2002).

21. Tony German & Judith Randel, *Never Richer, Never Meaner*, in THE REALITY OF AID 2002: AN INDEPENDENT REVIEW OF POVERTY REDUCTION AND DEVELOPMENT ASSISTANCE 148 (2002), available at <http://www.devinit.org/ktrends.pdf>.

goods and services.<sup>22</sup> Finally, much of the aid that is pledged is directed at a limited number of strategic middle-income allies, such as Israel and Egypt, rather than the poorest nations of the world.<sup>23</sup> When U.S. aid does go to conflict zones, it often follows the headlines, rather than the need. For example, during the 1990s, sufferers from the war in Bosnia received an average of \$238 in aid per person from the United States.<sup>24</sup> At the same time, The Democratic Republic of Congo (D.R.C.) was suffering from a far more traumatic (over 3 million more deaths occurred in the D.R.C. than in Bosnia), albeit less publicized civil war, but received only \$3 in aid per person.<sup>25</sup> The same dynamic continues today with Iraq garnering most of the international aid, while other conflict zones continue to fester.

The result is that the U.S. government underfunds a number of critical global problem areas. For example, AIDS is a grave disease that threatens to kill tens of millions of people over the next decade, undermine entire societies, and create an entire generation of orphans vulnerable to child soldier recruitment.<sup>26</sup> AIDS also cannot be defeated without the proper amount of resources. Officials estimate that between \$7 billion and \$10 billion per year is needed to fight its global spread, primarily to fund prevention programs around the world.<sup>27</sup> Yet the international community falls far short of that goal. Despite its rhetoric, the U.S. government's response has been insufficient. Thus far, it has pledged approximately \$500 million a year in actual funds.<sup>28</sup> Similar low levels of funding encompass such issues as support for education, refugees, and other aid to needy communities.

On the opposite side of the equation, it is equally appalling that the vast majority of developing states still spend far higher percentages of their national income on their (usually ineffective) militaries than on their own people's critical health and education needs. Many of these funds could be shifted toward the next generation of children and actually make a far greater impact on these countries—alleviating social and economic problems.<sup>29</sup> Donors should make this reallocation a condition of their aid grants.

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22. Borger & Denny, *supra* note 20.

23. *Id.*

24. United Nations Children's Fund (UNICEF), *Children Affected by Armed Conflict: UNICEF Actions*, at 3 (May 2002), available at <http://www.unicef.org/emerg/files/AffectedbyArmedConflict.pdf>.

25. *Id.*

26. Singer, *supra* note 14 at 5. P.W. Singer, *AIDS and International Security*, 44 SURVIVAL 145, 150-52 (2002).

27. See Kofi Annan, Statement at African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, Abuja, Nigeria (Apr. 2001), at <http://www.un.org/News/Press/docs/2001/SGSM7779R1.doc.html>.

28. See Lael Brainard, *The Administration's Budget for Global Poverty and HIV/AIDS: How Do the Numbers Stack Up?* (2003), available at <http://www.brookings.edu/dybdocroot/views/papers/brainard/20030224.pdf>.

29. See United Nations Population Fund, *Giving Priority to Adolescents*, UNPFA STATE OF WORLD POPULATION 2003, at 51 (2003), at [http://www.unfpa.org/swp/2003/pdf/english/swp2003\\_eng.pdf](http://www.unfpa.org/swp/2003/pdf/english/swp2003_eng.pdf).

Another global initiative that mandates action is the proliferation of small arms. Due to post-Cold War surplus, as many as 500 million small arms are floating around the globe. Consequently, small arms are startlingly cheap and easily accessible.<sup>30</sup> Combined with technological innovations that make small arms more lethal and easier to use, this proliferation facilitates the conversion of children into combatants.

Here too, though, the present Bush administration is out of step with the international consensus in seeking to combat the proliferation of small arms.<sup>31</sup> While the international community has worked to clamp down on the *illegal* trade in light weapons, in recent years, the United States worked the opposite end. The saddest illustration of this was the 2001 United Nations (UN) Conference on the Illicit Trade in Small Arms where, following intense lobbying by the National Rifle Association (NRA), the United States worked to counter any efforts to regulate the international trade of small arms.<sup>32</sup>

The U.S. administration and its NRA lobbyists (NRA board member and U.S. Representative Bob Barr even attended the UN conference) have conflated domestic gun control issues with those of international relations.<sup>33</sup> This is completely inappropriate, as none of these global efforts would have impacted U.S. citizens' Second Amendment right to legally own arms.<sup>34</sup> Instead, they would have made the sales of machine guns and rockets to non-state actors, such as rebel and terrorist groups who arm children, more difficult. The fact that the United States was only joined by Communist China and the Arab League in its opposition effort should have been sufficient to set off alarms to reassess its odd position.<sup>35</sup>

In addition to helping make the international weapons trade more transparent, the United States and the international community should make greater efforts to support, with both funding and technical assistance, local initiatives that seek to control or reverse small arms proliferation. One example is through the setup of weapons collection programs in postconflict states and states at risk of conflict. Such pilot programs have enjoyed modest success in Albania and El Salvador and could succeed elsewhere.<sup>36</sup>

Problems of global development and violence, however, are broader issues that merit their own study. The issue of child soldiers additionally

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30. See JASJIT SINGH, *LIGHT WEAPONS AND INTERNATIONAL SECURITY* ix (1995); Editorial, *Missing the Target on Small Arms*, THE JAPAN TIMES, July 25, 2001, available at <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20010725a1.htm>.

31. Editorial, *Missing the Target on Small Arms*, *supra* note 30.

32. See Mei-Ling Hopgood, *U.S. Says: Let World Bear Arms; Bush Won't OK Measures To Ban Guns*, ATLANTA CONSTITUTION, July 10, 2001, at A1.

33. See *id.*

34. See U.S. CONST. amend. II.

35. Tamar Gebelnick, *Small Arms: U.S., "Rogues" Hold Out*, BULLETIN OF ATOMIC SCIENTISTS, Oct. 2001, at 18.

36. See WILLIAM GODNICK & HELENA VAZQUEZ, *SMALL ARMS CONTROL IN LATIN AMERICA* 9 (International Alert, Monitoring the Implementation of Small Arms Control Project, Latin America Series No. 1, 2003), available at [http://www.international-alert.org/pdf/pubsec/SP\\_english.pdf](http://www.international-alert.org/pdf/pubsec/SP_english.pdf).

warrants action on a more specific front. In particular, the norms against child soldiering have been exposed as insufficient. While most efforts have focused on raising awareness of child soldier issues and bolstering the laws against it, they have yet to really dent the popularity of the doctrine. Stigmatization of groups which utilize children as soldiers must be reinforced with real punishments calculated to change their leaders' calculations.

## II. Talk Is Cheap

Recently, in the academic literature that studies international relations, many experts have written about the importance of beliefs about right and wrong in shaping policy. They claim that beliefs shape actions, even when they conflict with one's interests.<sup>37</sup> Such socially directed behavior is described as being guided by a "norm," or what anthropologist Paul Bohannan described as "a rule, more or less overt, which expresses 'ought' aspects of relationships between human beings."<sup>38</sup>

This research about the power of beliefs extends into the military realm. Many have argued that "norms" about what is proper and improper behavior on the battlefield still matter today. They argue, for instance, that norms have limited the use of certain weapons that, while advantageous, are horrific. For example, chemical and biological attacks might have been quite useful in recent wars, but were considered so horrible in World War I that the vast majority of nations have since refrained.<sup>39</sup> Most recently, activists have tried to harness this type of thinking by advocating the outlaw of weapons like the antipersonnel landmine.<sup>40</sup>

However, the word "norm" can have two meanings. It can describe ethical beliefs about proper behavior, but it can also describe the most common practices of behavior, irrespective of ethics.<sup>41</sup> Thus, while people writing about norms in international relations have focused on the positives of how ethics can lead to good behavior in warfare, they have ignored the second aspect. Experts have written little about the darker side of social behavior in warfare—the buildup of new, but malevolent, beliefs and common practices. These new standards prescribe malicious behavior.

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37. See generally JEFFREY LEGRO, COOPERATION UNDER FIRE: ANGLO-GERMAN RESTRAINT DURING WORLD WAR II (1995); RICHARD PRICE, THE CHEMICAL WEAPONS TABOO (1997); WARD THOMAS, EMBEDDED ETHICS IN INTERNATIONAL RELATIONS: NORMS AS CONSTRAINTS ON THE USE OF FORCE (2002); Nina Tannenwald, *The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use*, 53 INT'L ORG. 433 (1999).

38. PAUL BOHANNAN, LAW AND WARFARE: STUDIES IN THE ANTHROPOLOGY OF CONFLICT 45 (1967).

39. PRICE, *supra* note 37.

40. See Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 52 INT'L ORG. 613, 617-19 (1998).

41. For example, in the IT world, a norm is defined as "(from *norma*, Latin for carpenter's level) . . . a model of what should exist or be followed, or an average of what currently does exist in some context, such as an average salary among members of a large group," at [http://whatis.techtarget.com/definition/0,,sid9\\_gci214070,00.html](http://whatis.techtarget.com/definition/0,,sid9_gci214070,00.html) (last visited July 11, 2004).

Past decades of warfare have seen the breakdown of moral codes that guided behavior in war. This has increased the savagery toward innocent civilians, generally, and to children, specifically.<sup>42</sup> Yet little of the new literature on norms confronts the issue of a proper response. Likewise, most analysts have incorrectly assumed that non-state actors play a purely positive role in developing the norms that direct common practice.<sup>43</sup> Being separate from the state does not guarantee good behavior. It is true that some non-state actors positively affect policy, such as the actors behind the global campaign to eliminate landmines. However, immoral non-state actors also exist, such as the Lord's Resistance Army in Uganda, whose existence relies on the abduction and enslavement of children.<sup>44</sup>

As the doctrine justifying the use of child soldiers has spread, the most basic ethical injunctions against using children in war have rapidly collapsed. Their failure was influenced primarily by technological and geopolitical changes, with the result that children are now regular actors on the battlefield. This indicates that the durability of ethical norms in the face of external forces is far less powerful than believed. If ethical norms are not sustainable, then their power is limited. Their failure also reinforces the argument that while common behavioral practices are often grounded in moral principles, their strength is influenced by very real contextual factors, such as the environment.<sup>45</sup>

This weakening of constraints may be particularly strong for non-state armed groups, who are less influenced by moral norms. This conjecture is similar to the theory of "realist" international relations scholars, who feel that beliefs have no great role in politics. Instead, realists believe that power and interests can best explain actions.<sup>46</sup>

However, there is one important caveat to the realist argument. While the rise of norms may be due to the power and interests of the strongest

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42. See Singer, *CHILDREN AT WAR* (forthcoming), *supra* note 15, at ch. 1; MICHAEL IGNATIEFF, *THE WARRIOR'S HONOR: ETHNIC WAR AND THE MODERN CONSCIENCE* (Henry Holt and Co. 1998).

43. See, e.g., Price, *supra* note 40; MARTHA FINNEMORE, *NATIONAL INTERESTS IN INTERNATIONAL SOCIETY* 134 (1996).

44. *The Scars of Death*, Human Rights Watch Report (1997), at <http://www.hrw.org/reports97/uganda/2001> (last visited July 11, 2004); Peter Strandberg, *End of a Long Nightmare*, MAIL & GUARDIAN, July 26, 2002; Amnesty International, *Breaking God's Commands*, at <http://web.amnesty.org/library/index/ENGAFR590011997> (last visited July 11, 2004); Stavros Stavou & Robert Stewart, *The Reintegration of Child Soldiers and Abducted Children: A Case Study of Palaro and Pabbo Gulu District*, in *ACT AGAINST CHILD SOLDIERS IN AFRICA: A READER* (2002), at <http://www.iss.co.za/Pubs/BOOKS/ACTblurb.html> (last visited July 11, 2004); *Against All Odds: Surviving the War on Adolescents*, in *WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN REPORT*, July 2001, at 6, at <http://www.womenscommission.org/pdf/ug.pdf> (last visited July 11, 2004).

45. See Michael Desch, *Culture Clash: Assessing the Importance of Ideas in Security Studies*, 23 *INT'L SECURITY* 141-70 (1998).

46. See KENNETH WALTZ, *MAN, THE STATE AND WAR: A THEORETICAL ANALYSIS* (1959); *THE USE OF FORCE: MILITARY POWER AND INTERNATIONAL POLITICS* (Robert J. Art & Kenneth N. Waltz eds., 4th ed. 1993); BARRY BUZAN ET AL., *THE LOGIC OF ANARCHY: NEOREALISM TO STRUCTURAL REALISM* (1993); *THE PERILS OF ANARCHY: CONTEMPORARY REALISM AND INTERNATIONAL SECURITY* (Michael E. Brown et al. eds., 1995).

actors in the system (who receive most of the realists' focus), with the issue of child soldiers, the normative breakdown was caused by the innovations of some of the weakest actors in the international system. In fact, it was because of their weakness that such groups chose to violate the old norms against using children. Just as terrorist groups have revived fears of chemical and biological weapons use, the weaker parties have facilitated a new standard of behavior for using child soldiers in contemporary warfare.

### III. Lost Norms and Child Soldiers

Regardless of where one falls in the debate over the influence of norms, the practice of using child soldiers indisputably violates widely-accepted international beliefs about proper behavior. The human rights abuses involved, which range from abduction and rape to torture and murder, shock the conscience. Moreover, this practice violates the most elementary principles of international humanitarian law. Hence, the challenge is to convert the international consensus against the use of children as soldiers into action that revives the failing norm that children do not belong on the battlefield.

The practice of the last four millennia of warfare, in itself, makes a strong case for customary international law's proscription against child soldiers. Furthermore, the twentieth century featured the signing of numerous treaties that codified international law's norm against the use of children in combat. These treaties include:

- 1924 League of Nations Declaration on the Rights of the Child,
- 1948 UN Universal Declaration of Human Rights,
- 1949 Geneva Conventions,
- 1950 European Convention on Human Rights,
- 1951 Convention and 1967 Protocol Relating to the Status of Refugees,
- 1966 UN Covenants on Civil and Political Rights and Economic, Social and Cultural Rights,
- 1969 American Convention on Human Rights,
- 1977 Additional Protocols to the 1949 Geneva Conventions,
- 1981 African Charter on Human and Peoples' Rights,
- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- 1989 UN Convention on the Rights of the Child, and
- 1990 Organization on African Unity (OAU) African Charter on the Rights and Welfare of the Child.

Of these, the 1989 Convention on the Rights of the Child was the most notable and the most representative of global consensus. Indeed, it was the most quickly and widely ratified international treaty ever, with over 190 state signatories. Article 38 pressured governments to take all feasible measures to ensure that children do not directly participate in hostilities.

Despite international law's strong opposition to the practice, the child soldier doctrine spread widely in the 1990s.<sup>47</sup> The international commu-

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47. Singer, *supra* note 14, at 2.



nity's response, however, was to condemn the practice and codify the use of child soldiers as a specific violation of the law. The United Nations even created an office of the Special Representative of the UN Secretary-General for Children and Armed Conflict to investigate and lobby for children's rights in warfare. Former Ugandan diplomat Olara Otunnu currently holds this position.<sup>48</sup>

The major impetus behind these efforts was a group of geographically diverse NGOs, united under the umbrella of the *Coalition to Stop the Use of Child Soldiers*. The Coalition was formed in May 1998 by several leading nongovernmental organizations (NGOs): Amnesty International, Human Rights Watch, Defence for Children International, International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office in Geneva, International Federation Terre des Hommes, and World Vision International. Over the next few years, it built up a global network of interested NGOs, aid agencies, research institutes, and other linked coalitions willing to stand against the use of child soldiers.<sup>49</sup>

A major part of the Coalition's strategy was to generate consensus and enact treaties against the practice of child soldiering beginning at the state and regional levels. This endeavor was quite successful and eventually led to the mobilization of campaigns in over forty different countries. These efforts resulted in a series of regional agreements that currently encompass much of the globe, including:

- 1996 OAU Resolution on the Plight of African Children in Situation of Armed Conflicts,
- 1997 The Capetown Principles,
- 1998 European Parliament Resolution on Child Soldiers,
- 1999 Declaration by the Nordic Foreign Ministers Against the Use of Child Soldiers,
- 1999 Berlin Declaration on the Use of Children as Soldiers,
- 1999 Montevideo Declaration on the Use of Children as Soldiers,
- 1999 Maputo Declaration on the Use of Children as Soldiers,
- 2000 Organization of American States (OAS) Resolution on Children and Armed Conflict, and
- 2001 Amman Declaration on the Use of Children as Soldiers.

The group successfully pushed for international condemnation of the practice. In 1999, the UN Security Council adopted Resolution 1261, which condemned the targeting of children in armed conflict, including their recruitment and use as soldiers.<sup>50</sup> In 2000, the UN General Assembly adopted an "Optional Protocol to the Convention on the Rights of the Child."<sup>51</sup> This protocol significantly amended the 1989 treaty in order to confront the issue of child soldiers. Principally, it raised the age at which

48. For more information, see [www.un.org/special-rep/children-armed-conflict](http://www.un.org/special-rep/children-armed-conflict) (last visited July 11, 2004).

49. See generally <http://www.child-soldiers.org> (discussing the founding of the Coalition).

50. S.C. Res. 1261, U.N. SCOR, 4037th mtg., U.N. Doc. S/RES/1261 (1999).

51. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, 54th Sess., U.N. Doc.

direct participation in conflict is legally permitted from fifteen to eighteen years old.<sup>52</sup> It also banned compulsory recruitment of any child younger than eighteen years old, and explicitly included non-state actors within its coverage.<sup>53</sup> With intense lobbying, the treaty was quickly adopted and entered into force on February 12, 2002. As of February 2004, the treaty had been signed by 115 parties and ratified by 62.<sup>54</sup>

Thus, as a result of the *Coalition to Stop the Use of Child Soldiers* and other international actors, a series of international regimes have buttressed the ethical norms against child soldiering. The UN Special Representative, Olara Ottunu, has also directly attempted to convince conflict groups to stop using children. He personally met with rebel group leaders in over twenty countries to negotiate the end of the practice. In January 2003, the treaty was followed up by UN Resolution 1460, which called on a list of specific child soldier groups in five countries (Afghanistan, D.R.C., Burundi, Liberia, and Somalia) to halt the practice and provide the Security Council with a report of the steps they have taken.<sup>55</sup>

Ethical norms are clearly important in providing the standards that are intended to guide behavior. Proponents of the legal effort against child soldiering point to five key strengths of this activism: (1) it established an international standard on the employment of child soldiers; (2) codified legal norms; (3) set minimum age requirements that are more difficult to fabricate; (4) encouraged states to implement the laws; and (5) raised public awareness, both in the West and in areas where the child soldier groups were active—potentially empowering greater activism.<sup>56</sup>

One should not, however, confound ethical norms with actual behavior or enforcement. Unfortunately, all of the international attention and condemnation of child soldiers has not translated into an end to the practice. Throughout the process, the use of child soldiers on an international scale did not diminish, but instead spread further still. Indeed, many of the same countries that signed the various treaties continue to flout their obligations. This is evidenced by the fact that while there are over 100 signatories, child soldiers still exist in roughly 85 countries.<sup>57</sup> Indeed, some of the largest known users of child soldiers, such as the various child soldier groups fighting in Myanmar, Colombia, and Uganda, were not even on the specific Resolution 1460 list released by the UN in early 2003.<sup>58</sup>

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A/RES/54/263 (2000), available at <http://www.unhchr.ch/html/menu2/6/protocolchild.htm>.

52. *Id.*

53. *Id.*

54. See UNICEF, Convention on the Rights of the Child, at <http://www.unicef.org/crc/crc.htm> (last visited July 11, 2004).

55. S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003).

56. Rachel Stohl, *Children in Conflict: Assessing the Optional Protocol*, 2 J. CONFLICT, SECURITY & DEV. 137 (2002), available at <http://www.cdi.org/document/attachment/Stohl.pdf>.

57. Singer, CHILDREN AT WAR (forthcoming), *supra* note 15, at ch. 2.

58. S.C. Res. 1460, U.N. SCOR, 4695th mtg., U.N. Doc. S/RES/1460 (2003).

Moreover, the new protocol and the meetings with Mr. Ottunu have failed to sway the rebel groups from using child soldiers. Typically, after a period of public denial, these groups would pledge to stop using children as soldiers, in an effort to garner international goodwill and aid. However, they would not change their actual practices. For example, despite multiple meetings with the United Nations, a ceasefire process, and multiple public pledges to stop, the Liberation Tigers of Tamil Eelam (LTTE) has continued to conscript children younger than seventeen years old.<sup>59</sup> Similar discrepancies between pledges and practices have occurred with União Nacional para a Independência Total de Angola (UNITA) in Angola, the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army (ELN) in Colombia, the Kamajors in Sierra Leone, Lal Sena in Nepal, the D.R.C. government and its rebel opponents in the Congo, and the Taliban in Afghanistan.<sup>60</sup> For instance, one rebel group in the D.R.C. pledged not to use child soldiers in February 2001. Just a few weeks later, it celebrated its recent military training graduates and over 1,800 of the new graduates were between the ages of twelve and eighteen.<sup>61</sup> In fact, over the next two years the reported rate of child soldier recruitment actually accelerated in some provinces of the D.R.C.<sup>62</sup>

Indeed, the only change for some groups resulting from this lobbying effort against child soldiers was simply to try to better hide the practice. For example, when they first entered the Afghan civil war in 1994, the fundamentalist Taliban primarily recruited young Afghan refugees attending Pakistani madrassahs. Following international pressure, the leader of the Taliban, Mullah Omar, made a public decree in 1998 that any of his followers who had not yet grown a beard were too young and should leave the force. Omar declared that he would punish any commander who used child soldiers. Just one year later, the UN reported that Taliban offensives were using between 2,000 and 5,000 children bused over from the religious schools, many preadolescent.<sup>63</sup> Likewise, Renamo in Mozambique steadfastly denied its use of children throughout its war with the government. At the war's end, though, many of its marchers in demobilization parades were children, including one sixteen-year-old who had been fighting since he was eight.<sup>64</sup>

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59. Amy Waldman, *Sri Lanka Young Still Forced To Join in Endless Rebellion*, N.Y. TIMES, Jan. 6, 2003, at A1; *Amnesty Slams Sri Lanka Rebels on Child Soldiers*, REUTERS, Feb. 15, 2002, available at <http://global.factiva.com/en/arch>; *S. Lankan Tamil Rebels Abduct More Children To Be Soldiers: Truce Monitors*, XINHUA, Oct. 12, 2003, available at <http://global.factiva.com/en/arch>; *Sri Lanka: Child Recruitment Continues Despite Ceasefire*, CHILD SOLDIER NEWSLETTER, Mar. 2002.

60. Singer, *CHILDREN AT WAR* (forthcoming), *supra* note 15, at ch. 8.

61. Interview with human rights expert from D.R.C. (June 2002).

62. Rory Carroll, *Sham Demobilisation Hides Rise in Congo's Child Armies*, THE OBSERVER, Sept. 9, 2003, at 15.

63. International Rescue Committee, WATCHLIST ON CHILDREN AND ARMED CONFLICT NEWSLETTER, Nov. 2001, at [www.theirc.org](http://www.theirc.org).

64. Jacky Mamou, *Soldier Boys and Girls*, LE MONDE DIPLOMATIQUE, Sept. 2001, at [www.monde-diplomatique.fr/2001/09/13soldiers](http://www.monde-diplomatique.fr/2001/09/13soldiers).

Other groups carry out token child soldier demobilizations for public relations purposes. For example, in 2001 the Congolese Rally for Democracy (RCD) Goma group in the Eastern Congo set up a “commission” on the demobilization and reintegration of child soldiers. However, only the most sickly or difficult recruits were released.<sup>65</sup> In 2003, it again promised the UN that it would release its estimated 2,600 child soldiers. However, when it came time to demobilize, only 104 child soldiers (less than 5 percent) were actually released.<sup>66</sup> Most recently, the group has moved its training camps to less accessible regions to minimize even the token interference from outside observers. Similarly, the Sudan People’s Liberation Army (SPLA) had a large public ceremony in 2001, releasing 3,500 claimed child soldiers to great fanfare before the UN and international media. Of course, most of the children were later reported to have not been child soldiers (the real underage fighters were elsewhere) and the organization soon admitted having close to another 10,000 still within its ranks.<sup>67</sup> Perhaps the most bizarre example of this denial strategy is the Lord’s Resistance Army in Uganda (LRA). A quasi-religious cult group, the LRA is fighting to revive respect for the biblical Ten Commandments, and whose practices includes the torture, rape, and killing of children, the use of sex slaves, and the prohibition of bicycles.<sup>68</sup> With a core of 200 believers, but fielding a force of up to 12,000 abducted children, the LRA almost single-handedly exists through its use of child soldiers, but now has a website that denies the practice.<sup>69</sup>

Consequently, while most groups no longer publicly extol their recruitment of children, the doctrine behind the use of child soldiers has continued to spread. Counterefforts have meant that the recruitment of children is no longer a source of pride (for example, the now defunct Farabundo Marti National Liberation (FMLN) in El Salvador once complained that it was excluded from an article in *Time* magazine about child soldier groups).<sup>70</sup> All the same, however, groups continue to use children as soldiers.

#### IV. Turning Outrage into Action

Several simple actions can be taken that would make the practice of using child soldiers more difficult. These include support for expanding the availability of birth records to help children and families become better able to document ages (many children are abducted because they cannot

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65. *Child Soldiers in the Congo: Business as Usual*, REFUGEES INTERNATIONAL, Apr. 1, 2001; *Child Soldiers in Eastern Congo*, REFUGEES INTERNATIONAL, Apr. 30, 2001.

66. Interview with human rights expert (June 2003).

67. Interview with human rights expert (June 2002).

68. *Breaking God’s Commands*, *supra* note 44.

69. See [www.spacegroove.com/jospehkony](http://www.spacegroove.com/jospehkony) (last visited July 11, 2004). It has a message of greeting from Kony and also a page on “Why democracy will tr[u]mp under Maj. Gen. Joseph Kony’s powerful[ ] leadership of LRA and it’s [sic] powerful[ ] Political System.”

70. JON LEE ANDERSON, *GUERRILLAS* 56 (1992).

legally prove that they are underage). Moreover, aid to local religious and community leaders and NGOs can help such advocates appeal against the practice on the basis of local values and customs. Aid agencies and NGOs can also help distribute the aforementioned international agreements throughout child soldier zones to help spread the word that the international community condemns this illegitimate practice. Another avenue is to reach out to particular at-risk groups, such as refugees and street children, to counter the propaganda that often manipulates them into volunteering. Customary efforts aimed simply at spreading the news of treaties have been and will continue to be insufficient.

The crux of the problem is that groups deciding to adopt the child soldier doctrine have never been ignorant about whether it was the ethical thing to do or confused as to what exactly was allowed under international law or norms of proper behavior. The codes against using children as soldiers have existed for thousands of years. Groups who have brought children into warfare know that they are violating a moral code. As just one illustration, the LTTE has one of the most systemized approaches in its execution of the child soldier doctrine—ranging from sophisticated recruiting strategies using computer databases to a complicated structure of training camps and deployment strategies.<sup>71</sup> However, even this group pointedly omits the dates of birth on the headstones of its child soldiers, knowing that history will harshly judge their exploitation of these children.<sup>72</sup>

Those who use child soldiers are, by definition, willing to ignore and transgress longstanding ethical norms and will likely be unswayed by new ones.<sup>73</sup> Those who abduct children, send them into battle, and force them to commit rape and murder are simply unlikely to be persuaded by moral appeals. One cannot shame the shameless.

Governments and groups interested in preventing the use of child soldiers must realize that the employment of children as soldiers reflects the use of a well-planned doctrine, resulting from conscious and deliberate decisions. Unless the international community can alter the real calculations and conditions that led to this choice, the prohibitions against child soldiering will be as empty and continually violated as the new, largely symbolic prohibitions against landmines. Groups will continue to use child soldiers. In short, making laws is not the same as finding ways to enforce them.

This realization may be sobering to the global activist movement, but all is not hopeless. Indeed, there are a number of feasible steps that could turn the ethical norms against child soldiers back into standard practice. Each represents a true possibility within the realm of policymaking; in general, they only lack the requisite level of attention and political will, which can be mobilized.

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71. Rohan Gunaratna, *LTTE Child Combatants*, JAMES INTELLIGENCE REVIEW, July 1998.

72. Waldman, *supra* note 59, at A6.

73. Singer, *CHILDREN AT WAR* (forthcoming), *supra* note 15, at ch. 4.

The first feature of a program to weaken the practice of child soldiers is that it must be smart and judicious. Any effort to stop a global practice inherently faces an uphill battle. Thus, if possible, a program must try to make the biggest difference in children's lives. One aspect of this is to focus on the worst abuses, as a shrewd use of the limited political capital and attention at hand. While all uses of children under the age of eighteen as soldiers are wrong, not all are equal.

The groups working to stop the use of child soldiers are motivated by noble ideals but too often have been distracted by other political agendas. Thus, they have often squandered their valuable energy and capital. This lack of focus has hampered efforts and often backfired. For example, while an international coalition has been built, anti-American prejudices too often misdirect the underlying mission to stop the use of children as soldiers.

In particular, 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. If the group had been more strategic in its thinking, these global powers could have been among its leading supporters. The crux of the dispute was over the presence of a small number of seventeen-year-old recruits in their forces (00.24% of the U.S. military), who had volunteered with parental permission. While this practice may not be agreeable to all of the varied members of the coalition, it is certainly not the same as the LRA abducting children and forcing them to slaughter their own families. Despite this, the group made the U.S. policy a focus of its lobbying efforts. Its annual report listed the two practices (the U.S. policy and the LRA abductions) as equivalent abuses under the same heading.<sup>74</sup>

If the underlying intent is to aid those children most in need, such verbal jabs at the United States and Britain were completely wasteful and ineffective. The groups created instant opposition among those in the policymaking establishment that are most capable of helping and wasted the groups' limited political capital. The result was that the coalition developed an adversarial relationship with the U.S. government, the Defense Department in particular. Consequently, the United States delayed ratification of the treaty until the end of 2002. More importantly, the groups damaged the cause's long-term relationship with the world superpower.

Sadly, this feud was unnecessary. U.S. law is already so protective of parental rights that the various treaties changed little. For example, of the 1,400 U.S. military personnel who were under eighteen years old and

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74. The Coalition's annual report also compares sexual crimes that are not equivalent. It likened the FARC's "sexual freedom" policy, which includes forcing young girl soldiers to wear interuterine devices and even killing a 15-year-old who got pregnant regardless, with a single incident in 1997, when an intoxicated British Army drill instructor raped a recruit (the drill instructor was later imprisoned for the crime). While both actions are inexcusable, there is a distinct difference between the overall policy of an entire organization and the deviant behavior of an individual within an organization, who is then properly punished. COALITION TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS: AN OVERVIEW (2001).

assigned to active units in 2002, only 45 were assigned to units overseas. The essential reason is that while seventeen-year-olds may join the U.S. military upon their high school graduation, by the time they make it through boot camp and then advanced skills training, they will have aged past eighteen.<sup>75</sup> A compromise has since been worked out (the small number of underage soldiers actually overseas are now prohibited from entering into combat and pulled out from their units before deployments), but valuable time was lost. Given the increasing U.S. involvement in issues surrounding child soldiers, relations with the U.S. military community needs to be reaffirmed.

The focus of groups working to stop the use of child soldiers should turn from standard-setting and borderline issues to the heart of the matter. If the advocacy community hopes to ultimately make a difference, it must seek to change the present practices of the most offensive abusers. To accomplish this, it must move from moral exhortation to changing the political and economic calculations that actually lead to the exploitation of children. In military parlance, if it wants to defeat child soldier users, it must infiltrate their "decision cycle."<sup>76</sup>

## V. The Legal Angle

Groups do not accidentally choose to use child soldiers, nor are they motivated by pure malice. They have underlying interests and have deliberately set up special processes for the recruitment, indoctrination, and utilization of child soldiers because they believe they will draw certain advantages from the practice.<sup>77</sup> These calculations must be altered in order to defeat the overall habit of using child soldiers.

One strategy is to criminalize the practice. The legal transgressions involved in child soldiering are almost too numerous to make an exhaustive list. The use of child soldiers has violated the laws of war for over four millennia. Indeed, as one expert notes of child soldier commanders in the D.R.C., "[t]hey know it's a war crime, but they seem to believe they'll never be brought to justice. There is a sense of rampant impunity."<sup>78</sup> The problem is that, so far, these commanders have been correct.

Given the number of treaties and legal compacts that this practice violates, there is no need for additional international law in this arena. Rather, the full measure of international law needs to be applied to eliminate the sense of impunity enjoyed by those leaders who use child soldiers.

Two legal pathways offer hope in this area. Both entail treating the use of child soldiers as a war crime in and of itself and prosecuting the leaders

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75. Vince Crawley, *17-Year-Old Soldiers Can't Be 'Trigger Pullers,'* ARMY TIMES, Mar. 18, 2002, at 25.

76. This philosophy is known as the Boyd or OODA (Observation–Orientation–Decision–Action) loop, first established by Col. John Boyd. See GRANT T. HAMMOND, *THE MIND OF WAR: JOHN BOYD AND AMERICAN SECURITY* (2001).

77. Singer, *CHILDREN AT WAR* (forthcoming), *supra* note 15, at ch. 4.

78. Carroll, *supra* note 62 (quoting Andrew Philip of Amnesty International).

responsible for the explicit recruitment and use of children. Both involve setting a legal precedent that punishes the practice.

Treating the practice itself as a war crime would also lower the bar for prosecution. That is, the widespread presence of child soldiers within an organization would be fairly easy to prove, as compared to the current high legal burden of proof that leaders must be aware of individual acts by their soldiers. For example, leaders of the Revolutionary United Front (RUF) or LRA may successfully distance themselves from certain massacres by saying they were elsewhere or didn't know of the actions committed by their subordinates. However, they could never claim ignorance of the fact that the majority of their soldiers were underage.

Moreover, the criminalization of the practice would make it binding on other states to turn over any leaders who have escaped across state boundaries. This would also apply to their assets, which might have been acquired through the use of child soldiers. Notably, non-state groups do not escape the jurisdiction of these laws. Like all governments, they are bound by the basic principles of international law and required to respect all four Geneva Conventions, even in internal conflicts.

The first means for carrying out such a program is through the establishment of ad hoc international tribunals in response to egregious conflicts, such as the most recent war crimes tribunal in Sierra Leone.<sup>79</sup> Prosecuting former leaders of the RUF and the Civil Defence Forces (CDF), who are now in custody for various war crimes, including the specific crime of recruiting and using child soldiers, is an important first step.

As with many woefully underfunded international initiatives, these ad hoc courts also merit greater support from the donor community. The Sierra Leone Court's budget has already been reduced from its originally estimated needs of \$114 million to a much smaller amount of \$57 million.<sup>80</sup> The donor community should increase its support of the Court, with the proviso that the court uses its special position to break new ground in the battle against child soldiers. The Court may also consider prosecuting foreign facilitators of the child soldier practice in Sierra Leone, including now exiled Liberian leader Charles Taylor, as well as those who dealt with him. Any amnesty offers for such leaders in the interests of peace must be balanced against the costs of reinforcing the leaders' sense of impunity.

Thus far, the ad hoc tribunals have been geographically-centered, focusing on conflicts in Sierra Leone, Rwanda, and the former Yugoslavia. However, the reach of the tribunals transcends state borders. For example, the tribunals have indicted war criminals who took refuge outside the

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79. Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, available at <http://www.sc-sl.org>.

80. *War Crimes Tribunal in Sierra Leone*, CHILD SOLDIERS NEWSLETTER, Mar. 2002, at 20, available at [http://www.child-soldiers.org/cs/childsoldiers.nsf/0/9ca132295e19c57d80256b7e002f240e/\\$FILE/CSNewsletterMarch2002.doc](http://www.child-soldiers.org/cs/childsoldiers.nsf/0/9ca132295e19c57d80256b7e002f240e/$FILE/CSNewsletterMarch2002.doc).



countries where their crimes originally took place.<sup>81</sup> This provides the potential for a new mode in the use of ad hoc tribunals. One idea that merits exploration is the UN Security Council convening a new issue-centered tribunal that would tackle the international child soldier problem. The structure of such a tribunal would resemble previous tribunals, but the new version would seek out offenders regardless of where the crime was committed. Admittedly, such a new direction for ad hoc tribunals would be highly controversial. The new tribunals would likely only be approved if the crime was widely agreed upon and met with incontrovertible proof. International opprobrium against the use of child soldiers and the prior investigative evidence gathered by the UN could provide such an opening.

The second avenue for constructing legal deterrents against the use of the child soldiers would be to make the structure of the International Criminal Court (ICC) more permanent.<sup>82</sup> Signed by 139 countries, the Court seeks to establish a global system of punishment for those that violate the laws of war and go unpunished by their own countries. In particular, the Court has jurisdiction over the use of child soldiers in both international<sup>83</sup> and noninternational armed conflicts.<sup>84</sup>

Unfortunately, the United States, with unlikely allies of Iraq and China, decided to withdraw from the treaty that set up the Court.<sup>85</sup> It has also worked diplomatically to undermine the court's authority and set up a series of bilateral agreements that exclude its own citizens from coverage; countries which refuse to sign are threatened with the loss of aid.<sup>86</sup> Some Americans were concerned that the international court would somehow overrun U.S. law and that American soldiers might be targeted for politicized prosecution for war crimes.<sup>87</sup>

Within the United States, this concern has been greatly overblown and reflects a minority's general suspicions of international institutions. Their

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81. See, e.g., Indictments of Ratko Mladic & Radovan Karadzic, IT-95-5/18-I, The International Criminal Tribunal for Former Yugoslavia, available at <http://www.un.org/icty/cases/indictindex-e.htm> (last visited July 12, 2004).

82. See *Rome Statute of the International Criminal Court*, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF.183/9\* (July 17, 1998), available at <http://www.un.org/law/icc/statute/rome fra.htm>.

83. *Id.* art. 8(2)(b)(xxvi) ("Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.").

84. *Id.* art. 8(2)(e)(vii) ("Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.").

85. Seven countries voted against the treaty, including the USA, China, and Israel. *Rome and Pre-Rome*, available at <http://www.iccnw.org/romearchive.html>.

86. Under the American Service Members' Protection Act of 2002, U.S. military assistance is to be cut off from countries that sign the ICC, unless the President waives the requirement for national security reasons, or the President waives the requirement because they have concluded a bilateral immunity agreement with the U.S. P.L. 107-206, Title II, § 2007, 116 Stat. 905 (Aug. 2, 2002), 22 USCS § 7426 (2004); see also *Bilateral Immunity Agreements*, Human Rights Watch, June 20, 2003, available at <http://www.hrw.org/campaigns/icc/docs/bilateralagreements.pdf>.

87. Lee A. Casey, *The Case Against the International Criminal Court*, 25 *FORDHAM INT'L L.J.* 840 (2002).

mistaken view is that international law is about capturing and punishing evil leaders who would otherwise escape, rather than about putting pressure on soldiers performing their duties. The United States, however, could play a key role in selecting the ICC judges and prosecutors. In addition, a number of procedural standards in the Court's bylaws would make politically-motivated prosecutions nearly impossible.<sup>88</sup> Respect for domestic laws is at the basis of all of the court's bylaws, such that as long as a nation followed its own laws in the investigation of suspected crimes (which the United States would surely do), the international court would not possess the power to intervene.

American opposition to the prosecution of war crimes is shortsighted and runs counter to the traditional strategic goals of American foreign policy. The United States once sought to build international institutions as a means of extending global justice, peace, and stability. Now it seeks to tear them down. Benjamin Ferencz, one of the last surviving American military prosecutors at the Nuremberg trials, is among those who worry about the loss of the ideals that won the Second World War. Speaking at the opening of the ICC, he noted, "The current leadership of the United States seems to have forgotten the lessons that we tried to teach the rest of the world."<sup>89</sup>

Without U.S. support, the Court will likely be doomed, just as the absence of the world's leading power doomed the League of Nations.<sup>90</sup> Given the benefits of establishing accountability and ending the impunity of war criminals, the United States should reconsider its abandonment of international legal institutions. These establishments will not only help ensure that those who abuse children are punished, but also return the United States to its noble, decades-long tradition of leading international institutions, rather than undercutting them because of the overblown fears of a few conspiracy theorists.

The United States, as well as other members of the international community, should also support modifications to the ICC that will convert it into a more effective tool to combat the use of child soldiers. For example, the Court's rules might be amended, in order to allow children to testify before the Court, to allow direct sufferers to bring the practice to the fore. Another possibility would be to convene a tribunal to indict and prosecute those presently using child soldiers around the globe, not just address the aftermath of specific wars. The international community should not wait for the termination of a war crime before prosecuting those responsible. The ICC could start by indicting the leaders of twenty-three warring groups that have been found by the UN Secretary-General to be using child soldiers. Targeting the global child soldier practice might be an excellent

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88. For instance, it can only act where states are themselves either unable or unwilling to do so, and the Prosecutor can only proceed with a full investigation after seeking the approval of a pre-trial chamber. See Rome Statute, *supra* note 82.

89. *World Criminal Court Launched*, REUTERS, Mar. 11, 2003, available at <http://www.cnn.com/2003/WORLD/europe/03/11/warcrimes.court.reut>. (last visited July 12, 2004).

90. For a discussion of this episode in history, see J.M. COOPER, *BREAKING THE HEART OF THE WORLD: WOODROW WILSON AND THE FIGHT FOR THE LEAGUE OF NATIONS* (2001).

*Marbury vs. Madison* for an already besieged Court seeking to establish its credibility and standing.

The purpose of this program of criminalization would be to affect the decisional calculus behind the use of child soldiers. The use of children as a weapon of war would become like the use of chemical or biological weapons—simply unacceptable to the entire world, under any circumstances. Those groups that consciously choose to transgress international law would then open themselves up to the risk of prosecutions, sanctions, and asset seizures. Such prosecution must be judicious enough to limit their focus to those who were in leadership positions, either politically or militarily, and not waste time and effort on followers. The idea behind criminalization and prosecution is not revenge, but deterrence.

The tribunals and the ICC face a particularly difficult question in deciding whether to prosecute children who committed mass atrocities while serving in a conflict. Many of these children were abducted, abused, and often forcibly put under the influence of drugs.<sup>91</sup> When determining punishment for criminal behavior, it is generally recognized that, as expressed by Florida Governor Jeb Bush (brother of the current U.S. President), “There is a different standard for children. There should be some sensitivity that a 14-year-old is not a little adult.”<sup>92</sup> Likewise, the U.S. Supreme Court has ruled that capital punishment is not an option for those under the age of sixteen (unless a state statute specifies otherwise), as they lack the proper judgment skills to be held accountable as adults.<sup>93</sup>

This ruling should also be considered as the United States seeks to determine the status of the underage detainees being held at Guantanamo Bay. At least five young boys between the ages of thirteen and sixteen have been captured by U.S. forces in the War on Terror.<sup>94</sup> They are housed in a special wing of the detainee facility at Guantanamo Bay, Cuba, entitled “Camp Iguana.”<sup>95</sup>

While the United States may have found these child soldiers to be “illegal combatants,” the United States should follow the spirit of the pertinent laws in their treatment and punishment. For example, Secretary of Defense Donald Rumsfeld has stated that “these are not children” and thus can be treated in the same manner as the rest of the adult detainees.<sup>96</sup> However, this position is contrary to national and international law, as well as general public sentiment.

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91. Singer, *supra* note 14.

92. Jessica Reaves, *Should the Law Treat Kids and Adults Differently?*, TIME, May 17, 2001, available at <http://www.time.com/time/nation/article/0,8599,110232,00.html>.

93. Amnesty International, *On the Wrong Side of History: Children and the Death Penalty in the USA*, AMR 51/058/1998 (Oct. 1, 1998), available at <http://web.amnesty.org/library/index/engamr510581998> (citing *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

94. Auster & Whitelaw, *supra* note 17, at 21. There is an unknown added number between sixteen and eighteen years old that the United States has held in the general adult population, contrary to both U.S. and international law. *Id.*

95. Nancy Gibbs, *Inside “The Wire,”* TIME, Dec. 8, 2003, at 40.

96. Faul, *supra* note 17.

Regardless of their crimes, children younger than eighteen years old are different than adults on a wide range of emotional, physical, social, political and legal levels. Consequently, these children should be held in separate areas until the courts can determine their guilt and punishment. More pertinently, the question of holding children in prison simply does not fall under either the job description or expertise of the Secretary of Defense. Likewise, while the U.S. military has treated these young prisoners well (the juvenile detainees at Camp Iguana live in a compound set on the beach, complete with a TV room to watch videos—*The Call of the Wild* and *White Fang* being reported favorites—and a sports playing area),<sup>97</sup> the business of running a youth prison is not good for the U.S. military.<sup>98</sup> The best solution is to turn these children over to the governments of their home states, with arrangements in place to ensure their rehabilitation and to prevent their re-recruitment by terrorist groups.

The same considerations are true when dealing with horrible war crimes. The goal of deterrence is secondary with child soldiers. The needed factors of intent and awareness of the consequences are not the same for child soldiers themselves or for future recruits.<sup>99</sup> International legal norms also find that criminal responsibility may be excluded in cases where there is duress caused by threats of harm or death or where there is the influence of intoxication,<sup>100</sup> all of which occur often with child soldiers.<sup>101</sup>

The strategy recently adopted in Sierra Leone toward child soldier perpetrators seems best suited both to serve the interests of the victims and also to promote long-term stability and societal recovery. While the statutes of the Special Court do allow for the prosecution of those between the ages of fifteen and eighteen, the prosecutor has not yet taken such action, instead focusing his efforts on the adult leaders.<sup>102</sup> Children implicated in particularly heinous crimes are given hearings in special closed juvenile chambers (to keep their identity secret) and receive psychological counseling and other forms of assistance. Rather than having to serve sentences in prisons with adult perpetrators, they are placed in special custody, rehabilitation or demobilization programs, and foster care.<sup>103</sup> This response adequately recognizes the unique nature of child soldiering—where the perpetrators are also the victims.<sup>104</sup>

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97. Gibbs, *supra* note 95, at 43.

98. *Id.*

99. Christina Clark, *Juvenile Justice and Child Soldiering: Trends, Dilemmas, Challenges*, CHILD SOLDIERS NEWSLETTER, Mar. 2003, at 6, available at <http://www.child-soldiers.org/cs/childsoldiers.nsf/fffd058ae1d99d80256adc005c2bb8/40dd438a0868fcb480256cdf0058f3d8?>

100. *Id.* at 7 (citing the Rome Statute of the International Criminal Court art. 31).

101. Ismene Zarifis, *Sierra Leone's Search for Justice and Accountability of Child Soldiers*, 9 HUM. RTS. BRIEF 18 (2002).

102. Agreement, *supra* note 79.

103. The Special Court for Sierra Leone, *The Special Court Made Simple*, available at <http://www.sc-sl.org>.

104. Amnesty International, *Child Soldiers: Criminals or Victims?* (Dec. 2000).

## VI. Taking Action, Indirectly but Effectively

Building a system of deterrence, including criminalization of the overall practice, produces a greater menu of indirect, yet still tangible, actions that can be taken against those who use child soldiers. Criminalization also allows activists to use domestic courts to pressure countries to adhere to their own legal standards. It further pressures the UN to disallow agreements with states that are known to use child soldiers.

First, criminalization renders less tenable the contradictory policies toward children and war that many states now have. A number of states which do not directly use child soldiers supply aid and weapons to those groups and states that do entertain such practices. These include many signatories to the treaties banning child soldiers. One example is the military and economic support that China, Malaysia, India, and Canada give to Sudan.<sup>105</sup> Another example is the military training and assistance that Rwanda and Uganda give to endemic child soldier users such as the RCD group in Congo.<sup>106</sup>

Establishing the practice itself as a war crime would make such policies more difficult to support because states would be less willing to associate themselves with war criminals, either directly or indirectly. The removal of these support structures could provide a valuable mechanism to convince groups and governments that it is no longer advantageous to utilize children in combat.

Criminalization would also provide a new impetus to limiting the small arms trade to non-state actors. The easy availability of weapons and their low cost makes the use of child soldiers possible.<sup>107</sup> In many cases, this will involve simply targeting illicit arms dealers, who are often well known to authorities.<sup>108</sup> Other priorities relating to enforcement include the destruction of surplus small arms and the improved management of stockpiles.

Of particular note is that the United States is both a signatory to the various legal regimes against child soldiers and has often sought to aid child victims of war. For example, the United States provides millions of dollars in aid to displaced children and war victims in places like Afghanistan, Angola, Congo, Croatia, Mozambique and Uganda; since 1995, it has spent another \$230 million to fight international child labor practices.<sup>109</sup> However, at the same time, it has often turned a blind eye toward the use of child soldiers by its military trading partners. During the 1990s, it aver-

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105. See HUMAN RIGHTS WATCH, *SUDAN, OIL, AND HUMAN RIGHTS* 510-51, 605-25 (2003); Katy Salmon, *Fueling the Killing Fields*, GLOBAL INFORMATION NETWORK, July 2002, at <http://www.indiatogether.org/humanrights/articles/sudan-ongc.html>.

106. Sam Kiley, *Chaos and Cannibalism Under Congo's Bloody Skies*, THE OBSERVER, Aug. 17, 2003, at 22.

107. Singer, *supra* note 14.

108. Brian Wood & Johan Peleman, *The Arms Fixers*, PRIO REPORT, Mar. 1999, at 1; Jakkie Cilliers & Christian Dietrich, *Angola's War Economy*, INSTITUTE FOR SECURITY STUDIES REPORT, 2000.

109. U.S. Department of Labor Conference on Child Soldiers, *Children in the Crossfire* (May 2003), available at <http://www.childsoldiers.us/factsheet.html>.

aged an annual transfer of a quarter of a billion dollars of military weapons and training to state armed forces that used children sixteen and under and another quarter of a billion dollars in foreign and commercial military sales; these erring partners ranged from Colombia to Rwanda.<sup>110</sup> The war on terrorism has expanded military aid, likely increasing these figures. In 2004, Colombia alone is slated to receive nearly \$750 million in U.S. aid.<sup>111</sup>

In the United States, activists already possess the necessary legal means. To remain in compliance with the Leahy Amendment, American military training is withheld from those foreign units found to abuse human rights.<sup>112</sup> It must be ensured that the human rights screening required by the Leahy Amendment includes monitoring and prohibiting the use of child soldiers.

Fair labor laws may be another indirect means to alter the decisional calculus of child soldier groups. The International Labor Organization (ILO) has long considered child soldiering to constitute one of the worst forms of child labor and lists it as a form of slavery over abducted children. In 1973, the ILO Minimum Age Convention provided that eighteen years old was the minimum age for participation in hazardous labor, which certainly includes serving as a soldier.<sup>113</sup> The 1999 ILO Worst Forms of Child Labour Convention prohibited forced or compulsory recruitment of anyone under the age of eighteen.<sup>114</sup>

110. Stohl, *supra* note 56.

111. The Center For International Policy's Colombia Program, *U.S. Aid to Colombia Since 1997*, available at <http://www.ciponline.org/colombia/aidtable.htm>.

112. None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.

*The Leahy Law*, Foreign Operations Appropriations Act, 2001, P.L. 106-429, § 563, available at <http://www.ciponline.org/facts/leahy.html>.

113. Minimum Age Convention 138, June 26, 1973, art. 3.1, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138> ("The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.").

114. Art. 2: For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Art. 3: For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

Groups that use child soldiers should be treated in the same manner as any other international actors that violate these most basic labor standards. Activists should stop pressing for the formation of new international agreements and start seeking to exact real costs on violators based on the existing ones. Activists should emulate the antiapartheid and antichild labor movements, and explore the strategies of stigmatization and boycott.

One tactic would be to target the trading partners of states and groups that follow such practices. Indeed, the problem of child soldiers is often most acute in countries that possess rich natural resources. Moreover, the practice is often driven by groups that seek to exploit the trade in these resources to gain riches. Examples include Charles Taylor's takeover of the timber and rubber trade in Liberia and the RUF's attempts to control the Sierra Leone diamond trade during the West African wars.<sup>115</sup> During this period, French, Belgian, Chinese, Taiwanese, and Turkish businesses conducted a lucrative trade that fueled the fighting and the continued use of child soldiers.<sup>116</sup> A significant portion of this trade eventually reached U.S. markets.<sup>117</sup> Similarly, some eighty-five Western corporations are thought to have been involved in the illegal trades connected to the war in the Congo.<sup>118</sup>

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(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Art. 7:

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
  - (a) prevent the engagement of children in the worst forms of child labour;
  - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; [and]
  - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour . . . .

Worst Forms of Child Labour Convention 182, June 17, 1999, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

115. Emmanuel Kwesi Aning, *Regulating Illicit Trade in Natural Resources: The Role of Regional Actors in West Africa*, 95 REV. AFR. POL. ECON. 99, 101, 104 (2003).

116. *Id.* at 101.

117. See Emmanuel Kwesi Aning, *Regulating Illicit Trade in Natural Resources*, GHANAIAN CHRONICLE, Nov. 24, 2003; *How UN Has 'Rewarded' President of Liberia*, FINANCIAL TIMES, July 1, 2003, at 14; William Kistner, *Timber, Taylor . . . Guns and Money*, CHRISTIAN SCI. MONITOR, July 23, 2003, at 9. Just as an illustration, French and Chinese companies imported \$13 million worth of illicit Liberian timber from Taylor in the period from January to June 2000. Aning, *supra* note 115. In turn, it is thought that 15% of two species of wood used in American flooring products came from Liberia. Kistner, *supra*.

118. Declan Walsh, *UN Cuts Details of Western Profiteers from Congo Report*, THE INDEPENDENT, Oct. 27, 2003, at 10.

Given that the leaders of groups that use child soldiers are unconcerned with morality, they will be unaffected by any ethical appeals. Instead, the international community should focus on their trading partners, upon whom such leaders depend for their riches. In these zones, external economic actors such as multinational corporations often influence both state and local armed factions. They are also often complicit in paying for protection from groups with child soldiers.<sup>119</sup> As the revised practices of such corporate giants as Coke, Gap, and Nike illustrate from the child labor and apartheid boycotts, businesses might be more vulnerable to outside pressure than governments. As opposed to governments, companies are often more concerned with negative public exposure and the underlying threat of lawsuits and global boycotts.

To realistically confront the practice of arming children, the community must recognize that nonstate groups are less amenable to external or legal pressures than are government-sponsored armies. However, even such organizations are vulnerable to certain measures that can change their calculations of the costs and benefits of using child soldiers. Under international law, all nonstate groups must respect the codes of warfare, including the prohibition of the use of child soldiers, regardless of whether they signed the initial agreements. Nonstate group leaders are, therefore, liable to the same legal prosecution and stigmatization as state leaders. These include not only indictment as war criminals but also the use of targeted sanctions against them and their business associates. These sanctions include the freezing of bank accounts or visa restrictions.<sup>120</sup> Given the profit motivations fueling these nonstate groups,<sup>121</sup> trade prevention is critical to crippling their tendency toward child exploitation. Such impediments should proscribe not just weapons transfers, as in most UN embargoes, but also the secondary and often illicit trade in valuable resources that are used to fund illegal arms.

Those armed groups that refuse to acknowledge and follow the prohibition of child soldiers violate one of the most basic tenets of international law, and accordingly, they should be denied recognition and legitimacy within the international community. This sense of legitimacy and respect is something that is surprisingly craved by many such warlords. International connections offer a boost to the leaders' egos and offer a means to distinguish themselves from their peers and deter subordinates and potential competitors.<sup>122</sup>

In the 1990s, the United Nations, state governments, corporations such as Unocal,<sup>123</sup> and even NGO leaders like Pat Robertson<sup>124</sup> sought to

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119. Nicol Degli Innocenti, 'About 800,000 Children' Used as Soldiers, *FIN. TIMES*, June 13, 2001, at 10.

120. See generally MEGHAN O'SULLIVAN, *SHREWD SANCTIONS* (2003) (discussing the use of sanctions on states which support terrorism).

121. Singer, *supra* note 14, at 4.

122. Author interview with expert on D.R.C. (June 2003). See also WILLIAM RENO, *WARLORD POLITICS AND AFRICAN STATES* (Lynne Reinner 1992).

123. Daniel Fisher, *Kabuled Together*, *FORBES*, Feb. 4, 2002, available at <http://www.forbes.com/global/2002/0204/020.html> (last visited July 12, 2004); Brooke Shelby



profit by treating child soldier users like Charles Taylor, Mullah Omar, and Laurent Kabila as reputable and sovereign leaders.<sup>125</sup> Such shameful acts should not occur again. Likewise, the urge to rehabilitate former “rogue states” like Libya must take into account their role in supporting child soldier users elsewhere, in full violation of international law (such as Libya’s support to the RUF in Sierra Leone and Charles Taylor in Liberia).<sup>126</sup> Finally, the rewards to child soldier groups that make only token demobilizations, such as the elevation of warlords in the Eastern Congo to statesmen, must end. Instead, the burden of proof must fall on these child soldier users and abettors to prove their compliance with international law, before they are accepted as legitimate players in the international arena.

NGOs and interested state governments should lobby and pressure the international community to withhold recognition and all the benefits that accrue (ranging from seats at the UN to international aid and trade) to any groups that seize power through the use of child soldiers or to those that aid them. This would send an effective message to other groups that they will not be able to achieve their aims if they continue to use child soldiers. Otherwise, humanitarian organizations should also hold them at a distance—as they would treat those who are actively engaged in ethnic cleansing or genocide. They should also pressure other groups and states to act similarly. NGOs and interested states might provide further incentives by connecting such efforts to proposals to broker agreements that connect the flow of aid to the ending of child recruitment.

These efforts may prove insufficient, because the decisional calculus of some child soldier groups, such as predatory groups and warlords, is driven by nonpolitical rationales. These groups will require other action to sway them. The payoffs of using children should be limited by proscribing trade with such groups, targeting corporate bodies and other trading links. Research has shown that the majority of “war economies” that reward local predators and warlords are linked to the global economy.<sup>127</sup> The current international campaign against the market for “blood diamonds” from Sierra Leone and Angola provides a blueprint showing how to target these profits.<sup>128</sup>

The international community should also target its external support structures. Many such groups rely on donations and support from expatriate support groups. For example, the LTTE has supporters in the expatri-

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Biggs, *Pipe Dreams*, MOTHER JONES, Sept.-Oct. 2001, available at <http://www.motherjones.com/news/feature/2001/10/pipedreams.html>.

124. Colbert I. King, *Pat Robertson’s Gold*, WASH. POST, Sept. 22, 2001, at A29; Abraham M. Williams, *Pat Robertson Engages in Illegal Mining Operation in Liberia*, THE PERSPECTIVE, Dec. 4, 2001.

125. See generally Phillip van Niekerk, *Making a Killing: The Business of War*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS, Oct. 28, 2002, available at <http://www.publicintegrity.org/bow/report.aspx?aid=147>.

126. Singer, CHILDREN AT WAR (forthcoming), *supra* note 15, at chs. 2, 5.

127. See generally Paul Collier & Anke Hoeffler, *Greed and Grievance in Civil War*, WORLD BANK POLICY RESEARCH PAPER NO. 2355, at 2000; RENO, *supra* note 122.

128. See generally Global Witness, *Conflict Diamond Project*, at <http://www.globalwitness.org/campaigns/diamonds/index.php> (last visited July 12, 2004).

ate Tamil communities of Australia, Canada, France, India, Norway, and the United Kingdom, who provide critical monetary and logistical backing.<sup>129</sup> These outside enabling groups should be targeted for lobbying and stigmatization efforts.

Finally, while they may be nonstate actors, many ultimately depend on the backing of certain states. An example was the LRA's use of Southern Sudan as a training refuge or the RUF's basing in Liberia,<sup>130</sup> the equivalent of hiding a criminal in one's garage. The support or presence of such groups that use child soldiers should also render host states violators of the international law. This liability would open the host state up to outside pressure, including sanctions and asset seizures, which may indirectly hinder the practice of nonstate groups employing child soldiers.

### Conclusions

While certainly well-intentioned, the present strategy of raising awareness and shaming child soldier users will only partially eliminate the exploitation and abuse of children as soldiers. For the practice to end, an additive of deterrence is required. Groups seeking to end the use of child soldiers need a new strategy. They no longer need to convince the international community that using child soldiers is ethically wrong. Instead, they must change another belief, the common thinking of many conflict group leaders that the benefits of using child soldiers outweigh the costs. By directly responding to the doctrine itself and its underlying political and economic rationales, groups seeking to end the use of child soldiers stand a far better chance of affecting the calculus of would-be child soldier users.

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129. Anthony Davis, *Tiger International: How a Secret Global Network Keeps Sri Lanka's Tamil Guerrilla Organization Up and Killing*, ASIA WEEK, July 18, 1996.

130. Singer, CHILDREN AT WAR (forthcoming), *supra* note 15, at chs. 5, 8.