

On the Status of Child Combatants

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ABSTRACT In recent years, international human rights groups have sought the assistance of the United Nations in making the employment of child combatants a violation of international human rights law. At the same time, a number of States who are members of the UN have found themselves engaged in internal civil wars with rebel military groups, who include people classified by international law as children among their ranks. The issue of child combatants has become a political tool, by means of which certain State governments seek international support in their conflict with rebel armies. One consequence of such political action has been an increase in military aid to Government-controlled armies, an escalation of their armed conflict with rebels, and a diminution of humanitarian aid delivered to people in rebel-controlled areas. Youth belonging to the same ethnicity as the rebels, especially youth leaving rebel-controlled areas, are likely to be arrested on suspicion of being rebels themselves. Such developments only encourage youth to stay in rebel territory and join the rebels. Thus, well-intentioned international efforts to protect children and youth from armed conflict have tragically backfired.

This essay describes the project of "targeting child combatants" as this project has been carried out in Sri Lanka over the past five years.

LOVERVIEW

Armed conflict can only take place when two or more armed groups or organizations fight against each other. If an armed aggressor massacres an unarmed group of people, this is not conflict or warfare. A lesson of World War II and the Holocaust is that failure to resist armed aggression, for the sake of avoiding conflict, does not necessarily result in the saving of lives. When the intention of the aggressor is genocidal, failure to resist aggression results in genocide. Many of the so-called ethnic wars of the present entail genocidal intentions on the part of one side, and armed resistance on the part of some members of the target population.

In modern post-colonial States, ethnic differences can easily be converted to ethnic animosi-

ties, if it is in the interest of rulers to do so. Ethnic animosities in turn can be converted into genocidal conflicts in any situation where resources are limited, and members of one ethnic group can be convinced that members of the other ethnic group are unfairly depriving them of resources. A ruling organization can encourage this sense of aggrievement on the part of a majority ethnic group, in the name of modern Democracy, interpreted to the population as sheer majority rule. The ruling organization may also encourage scapegoating of the minority by the majority. It may turn a blind eye when scapegoating escalates to acts of violence against the target minority group. When the minority group engages in armed resistance, the ruling organization then has an excuse to engage in warfare against the target minority, and enrich itself greatly in the process. Resources are poured into building the military, at the expense of civilian society. If military resistance on the part of the target ethnic group is strong, the conflict escalates. Both sides become heavily militarized. As civil society becomes increasingly impoverished, young people of both sides are driven for economic reasons to join the military (on the government side) or the rebels (on the resisting side). The choice to join an armed group for economic reasons is not necessarily cynical. Young people may seek at the risk of their lives to provide for and protect their families. This motivation may become subsumed under the broader goal of protecting one's people (seen as an extended kin group) and redeeming the homeland. In an agrarian society, the need for control of land will be felt acutely. Loss of control of the land means loss of the ability to produce food and eat.

Although both sides in an intra-State ethnic conflict are likely to suffer from the war, they will not necessarily suffer equally, nor be equally impoverished. The official ruling organization, the Government, is likely to have far more

resources at its command. Civilian impoverishment on the government-controlled side results from the channeling of material resources into the "war effort" and the channeling of young men into the military. But on the rebel-controlled side, civilian impoverishment results directly from military aggression against that side, for it is on the territory of the minority that the war is waged. Civilians are killed and injured by bombs and mortars aimed at the rebels. People fleeing the fighting must leave their livestock to starve, and their fields to lie empty. They lose not only their direct source of food, but also their only employment and source of cash income. De facto economic embargoes by the Government against rebel-held territory increase civilian hardship. People are hindered in marketing their produce; medicine and other essentials become scarce. If either rebels or Government forces commit atrocities against civilians, for whatever reason, these atrocities are far more likely to be committed against people in rebel-held territory, or people in Government-held territory who by dint of their ethnicity are believed to be linked to the rebels.

The harm suffered by civilians – including children and youth – is therefore uneven in such a conflict. In a besieged society, rebels cannot afford to ignore able adolescents in their recruitment efforts. This is not necessarily because the rebels are desperate for older recruits, but because adolescents can sometimes be the best fighters.

II. THE POLITICAL SIGNIFICANCE OF CHILD COMBATANTS IN SRI LANKA

The drive to ban child combatants – with children being defined as individuals under eighteen – has been championed by the Government of Sri Lanka, which is fighting a powerful rebel organization, the Liberation Tigers of Tamil Eelam (LTTE). The combatant force of the LTTE contains many adolescents.

By the end of 1996, the conflict between the LTTE and the Government had escalated into a full-scale war, and the Sri Lankan military had expanded in size tenfold, with Army, Navy, and Air Force entirely engaged in fighting the LTTE. By 1998 the combat-ready personnel in the Sri Lankan military numbered over one hundred

thousand, while the LTTE's numbers were estimated at between five and ten thousand. The Government was actively seeking international support for its fight against the LTTE. This quest for military support continues, and has led to charges on the part of Government supporters, that the LTTE manages a global terrorist network and is a threat to international security. Therefore, it is argued, the LTTE should be dealt with outside of Sri Lanka by international police and intelligence operations; countries such as the UK and Canada, where many Sri Lankan Tamil refugees and expatriates reside, have been urged to close down pro-LTTE organizations operating within their borders (Gunaratne, nd, 1998).

At the same time, the Government of Sri Lanka has refused international intervention or third party mediation of its conflict with the LTTE, on the grounds that this conflict is an internal matter.

The attitude of the Government is similarly ambivalent toward the presence of adolescent combatants, both female and male, in the ranks of the LTTE. On the one hand, military commanders and Government supporters have ridiculed the LTTE for being so numerically small and for consisting "mainly" of teenagers. On the other hand, the Government and its supporters constantly stress what a formidable and dangerous enemy the LTTE has proved to be. Because this enemy is so strong, it is argued, more armaments and more combatants are required to fight it.

About a million Sri Lankan Tamils have fled the conflict and many of these have found new homes in the West. Some of those who support the cause of an independent Tamil Eelam have engaged the Sri Lankan Government in a propaganda war conducted largely on the Internet. Sri Lankan newspapers that have gone on line have become part of this propaganda war. While Government supporters demand international aid in destroying the LTTE, pro-Eelam Tamils have concentrated their efforts upon calling attention to the plight of Tamil civilians still caught in the war, and have represented the LTTE as a force providing both moral and military leadership to Tamil people.

Each side charges the other with violation of the humanitarian laws of war, and of human rights abuses. The Government portrays the LTTE as a

victimizer of children because of its use of "child" combatants. LTTE-supporters retort that the Government is a victimizer of children because of its bombardment of areas of civilian habitation, including schools, the documented instances of gang-rape and murder of Tamil school girls by military personnel, and the Government's de facto economic embargo upon LTTE-controlled areas, leading to malnutrition among children in those areas.

Sri Lanka has obtained international support primarily by portraying the LTTE as evil monsters who threaten to destroy the world. Graphic depictions of deranged LTTE commanders turning babies into bombs may have been more effective than any other rhetoric in convincing the world that the LTTE are bona fide terrorists who must be destroyed.

III. SRI LANKAN RHETORIC ABOUT CHILD COMBATANTS

On Thursday, October 2, 1997, the Sri Lankan Foreign Minister Lakshman Kadirgamar met for 45 minutes in New York with US Secretary of State Madeleine Albright. During this meeting he impressed upon Albright his view that the LTTE are cruel exploiters of children, engaged in vicious warmongering. He wanted Albright to join him in his crusade to save these children, by condemning the LTTE.

Albright reportedly responded favorably to Kadirgamar's initiative, expressing horror at the use of children in war, and comparing the LTTE with Islamic governments that induce child combatants to go to their deaths with promises of a heavenly reward.

On Friday, October 3, 1997, Kadirgamar addressed the United Nations General Assembly about the LTTE's "diabolical practice of sending young children to war." (*Sunday Times* 10/5/97).

"They are committing dastardly, heinous crimes against Tamil children. The LTTE brazenly kidnaps them or lures them to its cause by glorifying and romanticizing war. They are brainwashed into believing in the cult of martyrdom. They swear fanatical allegiance to the leader," he told the General Assembly. (*Sunday Times* 10/5/97, *Sunday Observer* 10/5/97)

"Increasingly, adults are deliberately con-

scripting children as soldiers. Some commanders have noted the desirability of using child soldiers in the war because they are more obedient."

"As adults are killed, up to half the fighters of the LTTE are children, many among them girls," he said. "Many of these children – boys and girls – are no more than ten years of age ... Many of them are transformed into suicide bombers. They are hurled into battle as human bombs."

He "pointed out that children are used in war because of the heartless, deliberate and calculated decisions made by ruthless men, regardless of the loss of innocent lives, relentlessly pursuing their megalomaniac ambitions." (*Sunday Times*, *op cit.*)

He claimed that "the leader of the LTTE, while sending to their deaths thousands of young children – the youngest of the young – brings up his own children in comfort and safety, far from the battlefields, far away from the country itself." (*Sunday Times*, *op cit.*)

Kadirgamar documented his claims by quoting from news reports and UN documents, including the report entitled "Impact of Armed Conflict on Children," by Grac'a Machel, to which extensive reference will be made below.

The *Sunday Observer* reports as follows: "The Foreign Minister regretted that, despite the Machel study which referred to roles that international organizations, NGO's, religious groups can play in preventing the diabolical use of children in war, these organizations which are often quite vocal in their pleas for peace and swift to castigate the excesses on the part of the armed forces, have remained strangely silent."

If the report of the *Sunday Observer* is accurate, Kadirgamar thus conveyed to the UN his view that military defeat of the LTTE was more important than peace.

He continued, "By their [the UN, NGOs, and religious groups] failure to condemn such acts they are surely guilty of a grave dereliction of the duty to uphold the moral and spiritual values of a civilised society. I appeal to the affluent countries in which the LTTE has established offices and raises funds to prosecute its infamous war in Sri Lanka, not tolerate their presence and give them shelter when they engage in the commission of dastardly crimes against children – indeed the children of their own community."

(*Sunday Observer*, *op cit.*; *Sunday Times*, *op cit.*)

The irony of this rhetoric was that, while Kadirgamar verbally lamented the plight of child combatants in the LTTE, he did not call for assistance to rescue these children from the field of combat, but rather called for assistance to defeat the LTTE. He made no note of the fact that efforts to defeat the LTTE militarily would inevitably worsen the plight of children within the LTTE's ranks.

IV. CONSEQUENCES OF RHETORIC AGAINST CHILD COMBATANTS: NO MORE MONEY TO "TERRORISTS"

Although Kadirgamar's claims were exaggerated, misleading, and in some cases patently false, the gruesome imagery evoked by the Sri Lankan Foreign Minister had its effect at the General Assembly, and above all on the United States Secretary of State. On October 9, six days after Kadirgamar's address, the United States Secretary of State designated thirty armed groups, including the LTTE, as terrorist organizations. The law makes it a criminal offense to provide funds, weapons, or any other forms of material support to the organizations on the list. (*TamilNet*, October 9, 1997)

Two years later, on December 9, 1999, the General Assembly of the United Nations adopted a resolution entitled "International Convention for the Suppression of the Financing of Terrorism." On January 12, 2000, Sri Lanka was among the first seven countries to sign this convention, along with the United States, UK and France.

The intent of the Convention is to cut off international funding to terrorist organizations. However, the United Nations does not identify any particular organizations as "terrorist." Instead the convention mandates that signatory countries make it a criminal offense to send money or its equivalent from one country to another with the knowledge or intention that the funds will be used in whole or in part to commit terrorist acts (such acts having been defined by prior treaties), or to cause death or serious bodily harm to a civilian or a person not taking part in hostilities during a war, when the purpose of the act is to terrorize a population, or to compel a government or internal organization to do or abstain

from doing any act. It is also an offense to organize or direct others to commit a terrorist act, or contribute in the knowledge of the intention of the group to commit a terrorist act.

It is unclear to this reader whether the treaty thereby makes it illegal for a company to ship armaments to a foreign Government known to be engaged in committing terrorist acts against its own people.

An equally serious empirical problem, however, shedding doubt upon how effective the convention against financing of terrorism will be in curbing terrorist acts, is that most terrorist acts do not require large quantities of money to carry out. To maintain a regular army and the infrastructure necessary to support it is what takes money. For an army to fight another army is not a terrorist act. Clearly, what the Sri Lankan Government wants most is not to wipe out terrorism *per se*, but to wipe out the LTTE, by incapacitating it militarily. If a person in the United States bought mortars and shipped them to the LTTE, in the knowledge that these mortars would be used only to fight the Sri Lankan Army, would the person who bought and shipped the mortars be defying the UN Convention for the Suppression of the Financing of Terrorism? The answer is unclear to this reader.

More serious still is a clause in the General Assembly Resolution 51/210 of 17 December 1996, cited in the Convention here under discussion, calling upon "all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have a claim to charitable, social or cultural goals..."

The same clause calls for States to "consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes..." (emphasis added).

Consequence of anti-terrorist legislation: restrictions on humanitarian aid to civilians caught in war

In September 1999, 22 Tamil civilians were killed in an air raid by the Sri Lankan Air Force. The Air Force claimed the bombing was accidental.

A few days after the September bombing, more than 50 Sinhala civilians were killed in a village massacre by suspected Tigers. The massacre was carried out entirely with locally available knives and machetes.

This pair of events simply underscores what I have argued above, namely that it does not take very much money, let alone international financing, to carry out terrorist acts. It does take money to purchase a military airplane. Terrorist acts are committed by exactly those people who do not have enough money to finance a regular war. Even assassinations and violent disasters involving guns and explosives – though they may take careful planning and a kind of courage, or recklessness, or desperation, on the part of those who commit them – do not involve large financial investments.

The United Nations expressed deep concern at the September 1999 massacres of civilians by both the Sri Lankan Air Force and “suspected Tigers”. So did Amnesty International and the ICRC. Kadirgamar expressed outrage that the two incidents should have been reported together, as though they were equivalent. He was quoted as saying that the UN “should be concerned with malaria and mosquitoes and not try to expand its mandate.” He said he would not tolerate the UN commenting on “domestic issues” and added that if he had been in Colombo at the time (he was in New York, attending the General Assembly Meeting) he would have given the UN a “dressing down.” The irony of these comments, in light of the Foreign Minister’s earlier appeals to the UN to assist Sri Lanka in its fight with the LTTE, were not lost on the BBC’s Colombo Correspondent, Susannah Price (BBC News, September 27, 1999).

But despite the UN General Assembly’s knowledge that the Sri Lankan Government has been involved in multiple and severe human rights abuses, no sanctions have been applied against the Sri Lankan Government, as they have been against the LTTE.

Although organizations which favor the LTTE have not been deprived of the freedoms of speech and peaceable assembly, it remains a criminal offense for a person in the United States to send material support to the LTTE, regardless of the nature of this support or how it is to be used.

Humanitarian aid organizations, such as TEEDOR (Tamil Eelam Economic Development Organization) and TRO (Tamil Rehabilitation Organization) which work independently to assist civilians living in LTTE-controlled territory have come under a cloud because of the convention against international financing of terrorism. These organizations do depend upon contributions from overseas to continue their work.

The LTTE claims it has all the armaments, explosives and munitions that it can use. Since the battle of Mullaitivu in 1996, and the subsequent diversion of a shipment of munitions from Colombo to the LTTE, the LTTE have fired mortar shells on the Army in the thousands, as though there were no end of them. The LTTE says it gets these materials from raids upon Army bases. The Sri Lankan Military does not deny that the LTTE has procured arms and ammunition in this way, but the Sri Lankan Government claims that the LTTE is supplied with large quantities of money for armaments by sympathizers in the Tamil diaspora.

People in the diaspora who do send aid – middle class professionals with some disposable income, and with strong motivation not to court legal trouble in their host countries – insist they send aid only to TRO and TEEDOR, strictly for the purpose of providing humanitarian assistance to civilians trapped in the war zone. Jaffna Vellalars, who constitute the most prominent section of the Sri Lankan Tamil diaspora, and perhaps its most successful segment as well, adhere to a form of Tamil Saivism that strictly mandates non-violence and a peaceable way of life. These are people who may have originally deplored the violent methods of the LTTE, but have come to the view the Sri Lankan Army is by far the greater evil. Still, for them, to kill or assist in killing is a sin. It is, in short, unlikely that contributions from the diaspora are what sustain the LTTE militarily. It is far more likely that the LTTE simply capitalizes on corruption within the Sri Lankan military itself. Indeed, the President of Sri Lanka herself has brought to light some serious instances of such corruption, as has one Pulitzer prize-winning Sri Lankan journalist.

In LTTE-controlled territory, the cry is for food, medicine, educational materials and personnel. But under the new anti-terrorist law, food,

blankets, books and other material goods that might be distributed among civilians in rebel-held territory to feed, shelter and educate children and even save their lives, are increasingly restricted. Even the most reputable humanitarian organizations working to assist in relief and peacemaking efforts on both sides have been accused of siding with the LTTE. The Sri Lankan government controls and restricts the passage of goods, including food and medicine, into LTTE territory.

The LTTE insists that the people who suffer from these restrictions are civilians.

V. THE PRESENT SITUATION OF SRI LANKAN CHILDREN AND YOUTH TRAPPED IN THE WAR ZONE

As I write (April 3, 2000) thousands of refugees fleeing a large battle in the Jaffna Peninsula are attended only by seven Catholic priests. Many of the refugees are wounded. The Government has not yet given permission for local authorities to distribute cooked food to them. The refugees have refused dry food rations, and have said that what they want is not food, but to be allowed out of the war zone.

The Sri Lankan Defense Ministry says that if people who live in LTTE-controlled territory want humanitarian aid, they should move out of LTTE-held territory to get it. But to move across the border is to undergo more displacement, for people who have already been displaced many times. Additionally, the Sri Lankan military restricts civilian movement in and out of LTTE-controlled territory, on the grounds that "terrorists" might come among civilians fleeing the fighting. (As I write, five thousand Tamil civilians fleeing the current fighting are reported to have been held up by the SLA until a Vicar could arrive to intervene in their behalf. International Aid agencies, such as ICRC, are so far unable to go even to the town where the refugees are being tended by the priests)

Many civilians crossing the border between LTTE-controlled and Army-controlled territory have been arrested and detained by the Sri Lankan Army, on suspicion of having associations with the LTTE. They may even be jailed for failing to provide information about the movements of the LTTE, even if they are in no way

involved with the LTTE. Therefore it is safer for many rural Tamils – especially youth, who are most under suspicion of belonging to the LTTE – just to stay on the LTTE-controlled side of the border. The problem then is that they must face hunger and other day-to-day privations, unless they join the LTTE.

Any person suspected of having belonged to the LTTE is in great danger outside of LTTE-held territory. It is dangerous for any young Tamil person from the North or East of Sri Lanka to go anywhere else in the country, because under the Prevention of Terrorism Act, a person can be arrested merely on suspicion of having links with the LTTE, and may be detained indefinitely. Spokespeople for the Sri Lankan Government have warned countries like Canada not to accept Sri Lankan Tamil refugees, as they might include "terrorists" in their ranks. Sri Lankan Tamils seeking asylum overseas on the grounds of ethnic persecution are likely to be deported back to Sri Lanka. Upon arrival in Sri Lanka they may be arrested and jailed, under the Prevention of Terrorism Act, and thus they may be subject to torture and "disappearance", as have so many other young Tamils in Sri Lanka. Therefore a young person who wishes to leave the field of combat in Sri Lanka may find himself or herself trapped, with no place to go.

When the Government military attacks rebel-held territory, civilians are not spared. Young people especially are suspected of being rebels.

Under these circumstances, a young person may consider that she has no choice but to join the rebels, for protection.

Thus, increased "anti-terrorist" activity in Sri Lanka, including arrests of many young "terrorist suspects" and de facto economic embargoes against territory controlled by "terrorists," have led to an increase in the number of young people who join the "terrorists," or in other words, an increase in the number of child combatants.

VI. COMMENTS ON THE MACHEL REPORT

A. Condition of child combatants

In the remainder of this essay, I shall discuss one important document that addresses the situation of children in war, with a view to informing international law and policy with respect to such

children. The document is a report entitled "Impact of Armed Conflict On Children." It was submitted to the United Nations General Assembly by the UN Secretary-General in August 1996. Ms. Gracia Machel was appointed in 1994 by the Secretary-General to prepare the report, pursuant to General Assembly resolution 48/147, entitled "Protection of Children Affected by Armed Conflicts."

The completed report, hereafter abbreviated as IACC, consists of about ninety single-spaced pages, not including a separate set of seven regional reports annexed to the document, and a selected bibliography.

The purpose of my essay is not to attack this report, which is meticulously researched, insightful, and balanced, and certainly should be required reading for everyone concerned about children in the world today, as well as everyone concerned about modern warfare.

My aim is to provide supplementary commentary, from the point of view of an anthropologist who has conducted field research relevant to the topic at hand. My research was conducted in the war zone of Batticaloa, Sri Lanka, between November 1997 and July 1998.

In what follows, I will focus upon five problems raised by IACC, but not elaborated in that document. In the course of my discussion, I hope it will be possible to identify courses of action that can have a positive effect upon the lives of combat-affected children, and also to identify other courses of action that, while appearing to be beneficial, may in fact produce detrimental results.

The key word here is *reality*. I take my cue from recent changes in family court policy in portions of the United States, where social workers and others aiming to do what was "best for the child" in difficult circumstances, learned that what was most beneficial to one or another child varied situationally. It is easy to imagine an ideal life that social consensus deems optimal for an imagined, generic child. But policies of child placement that seek to put a child in whatever available situation best approximates that ideal can have disastrous and sometimes lethal consequences. For instance, the ideal situation for a child, according to American social consensus, entails living at home with loving parents. But if

the parents are not quite so loving, or "loving" in a pathological way, a child returned to their custody may die of neglect or abuse. It might then be said that an ideal home consists of caretakers with no history of psychiatric disorder. But if the choice is between the child moving throughout her life from one tested-safe foster home to another, or living with a mother who is a kindly, non-violent, recovering alcoholic, the reality of what is best for the child might not be so clear.

It is necessary, likewise, to be realistic about war-affected children, especially about children who live in conflict zones. The most seriously war-affected people live in places that are under military attack, where shells can fall in any courtyard or looting armies ravage any home at any time. In such areas, aside from the ever-present danger of violent death, food supplies are seriously depleted, family networks disrupted, and basic services such as medical care are infrequently available.

The IACC notes that the most effective way to protect children from warfare is to prevent warfare itself (253)*. There is no excuse for escalation of a conflict in which children are immediate victims. Certainly the author of the IACC would never have imagined that her document, which is strongly opposed to all armed conflict, would be used as an excuse to escalate such a conflict. Nevertheless, this has happened. The author of the document is not to blame. But it must be acknowledged that the measures proposed in the document may not always be realizable. There will be wars, there will be children and teenagers trapped in the midst of them. As long as this is so, we have only band-aid measures to sustain the victims of warfare, and these measures must be appropriately applied if they are to do any good at all.

The five problem areas that I will discuss in the remainder of this essay are intermingled.

Although I list them separately here, they will be described in relation to one another, and not in separate sections of the essay. Briefly, they are

1. Problematic categorizations, definitions, and images of children. These include
 - (a) the categorization of all under-eighteens as "children"

- (b) the denial of agency to children
- (c) the denial of judgement to children
- 2. Failure to identify and address causes for the growth in the numbers of under-eighteen combatants. These causes include
 - (a) increase in warfare waged directly upon civilian populations
 - (b) proliferation of armaments, including high-powered light weaponry
- 3. Privileging of governments over rebel organizations in matters of human rights and humanitarian concerns during warfare
- 4. Child-protection policies that may be implemented in such a way as to cause damage to children.
- 5. Failure to acknowledge and address situations in which the role of combatant is the best available option for a child or teenager.

Many if not all of these problems may be traced to an open contradiction in the concept of humanitarian laws of war – namely, the fact that warfare is not fundamentally humane. In the matter of child combatants, there is an *a priori* unchallenged assumption that allowing under-eighteens to go into war is unconscionable, but allowing over-eighteens to go into war is not. One argument put forward in favor of this policy is that war is bad for everybody, but since it cannot be ended, at least children should be protected from it.

Unfortunately, having a gun in one's hands and knowing how to operate it is sometimes the best protection against other people with guns. That under-eighteens who live in combat zones are denied this means of self-protection may fly in the face of any resolution aimed at protecting the rights of the child.

By the same token, it must be acknowledged that if participation in combat is bad for a person under eighteen, it is equally bad for a person over eighteen. Small children may be unable to participate in adult activities, and may be endangered by operating a rifle just as they would be endangered by operating a car. But in fact most "child" combatants are adolescents (paragraph 35), a fact that is often overlooked in propaganda excoriating military groups that contain under-eighteens.

A great body of literature, scholarly and otherwise, deplors warfare, the horrors of combat,

and the hypocrisies of commanders and politicians. An equally voluminous body of literature, complemented by songs and movies, glorifies warfare, the thrills of combat, and the honor of serving one's country. The very horrors and hypocrisies of warfare are often highlighted in films (for instance the worldwide popular Rambo series) that nevertheless glorify the heroic combatant.

One may argue that warfare is the scourge of humanity or one may argue that warfare is a necessary evil. Both arguments are advanced by people removed from the field of combat. The situation of the ordinary foot soldier has little to do with these arguments, except insofar as the soldier may find them convincing, or conversely, meaningless. But a soldier fighting a necessary war for a good cause may find himself brutally misused by his commanders, and conversely a soldier fighting for an evil purpose may derive positive benefit from his position as combatant. Armies of all persuasions seek to recruit personnel on the basis of ideologies they expect will be convincing, and benefits they believe will be attractive.

The New Zealand Army, for instance, offers many positive benefits. Its television advertisement says: "Arm me with good friends. Arm me with education. Arm me with a career. Arm me with a future!"

In the case of New Zealand, which is not at war with anyone, such promises sound credible. In the case of Sri Lanka, where thousands of soldiers have returned home in body bags, potential recruits appear less convinced.

The point to be made here is that involvement in military activities, even involvement in combat, is not necessarily in all cases detrimental to the involved individual. Women in the United States have fought for the right to be involved in combat. For them, this is a right of choice. We must ask whether the rights of the child – or more specifically, the rights of the adolescent – should also include this choice.

The IACC lists a series of situations faced by real-life child combatants.

1. Most come from impoverished and marginalized backgrounds, whereas those from wealthier and more educated families are at less risk of becoming soldiers (35, 37).

2. Those who are orphaned or have been separated from their families due to displacement are more likely than others to join rebel or government military organizations. (35)
3. Some become separated from their families after joining.
4. Many are driven by economic considerations to join the rebel or government militaries. (39)
5. They may join a military organization for the sake of guaranteeing for themselves regular meals, clothing, and medical care. (39)
6. Some join to defend their families (36) or to alleviate the impoverishment of their families. (39)
7. Some find the military organization they join to be their new family. (41)
8. Some join for the sake of protection against harassing government forces. "Faced with violence and chaos all around, they feel they are safer with guns in their hands." (41)
9. They may be subject to involuntary conscription. (37, 38)
10. They may be physically abducted and forced to work for armed groups. (37)
11. They may experience battle-shock and other psychological disorders as a consequence of involvement in combat. (48)
12. They may become de-sensitized to suffering and prone to violent anti-social acts if they return to civilian society. (48)
13. If they are sent into battle too soon after recruitment, "their inexperience and lack of training leave them particularly exposed." (47)
14. They may be subjected or vulnerable to drug abuse, which renders them oblivious to the perils they face. (47)
15. Some have a natural fearlessness which commanders deliberately exploit. (47)
16. Girls whose marriage prospects are poor may be encouraged to join by their parents. (39)
17. They may join voluntarily because of ideological motivation (43)
18. They may be attracted by militant imagery (43).
19. They may be "lured into cults of martyrdom" and trained to conduct suicide bombings. (43)
20. "However it is important to note that children may also identify with and fight for social causes, religious expression, self-determination or national liberation." (43)
21. They may be maimed or killed in combat.
22. They may be subject to brutal induction ceremonies. (44)
23. They may have to engage in support functions that entail great risk and hardship, and hard physical labor. (44)
24. They may be beaten or killed if they are too weak to carry their loads. (44)
25. Girls may be subjected to sexual abuse. (46)
26. They may be subject to punishment if they seek to leave the militant organization without permission.
27. They may join to obtain power. (42)
28. "In some societies, military life may be the best option." (42)
29. Educational opportunities are restricted for children in war zones (54). For combatant children educational opportunities may be even more restricted. (But in some situations, joining a militant group offers educational opportunities that the child or adult as civilian could not afford.)
30. Sometimes whole families move with armed groups, and children in these families may be indistinguishable from combatants. (39)
31. Even very young children may be killed by government forces "on the grounds that they, too, are dangerous." (44)
32. After involvement in combat, they may have difficulty readjusting to civilian life (51).
33. "A formerly cheerful 12-year-old may return home as a sullen 16-year-old who feels newly assertive and independent." (51)
34. Some commanders have noted the desirability of child soldiers because they are "more obedient, do not question orders and are easier to manipulate than adult soldiers." (34)
35. Mothers may effectively mobilize to keep their children out of war. (59)

The first point I wish to note here is that almost all of these situations apply to adult combatants as well. Adults are also subject to involuntary conscription, forced labor, battle shock, battle mania, economic discrimination, economic enticement, inadequate training for combat, physical abuse during training, sexual exploitation, drug abuse, ideological motivation, attraction to militant imagery, involvement in suicide cults, separation from family, desire for power, punishment for desertion, post-conflict readjustment problems,

disablement, disfigurement, death, and maternal intervention.

A second point is that the imposition of warfare upon a civilian population and all the concomitant hardships – the impoverishment, the displacement, the chronic unpredictable violence, the lawlessness, the lack of protection – are the conditions under which children become combatants. They have not gone to war; the war has come to them.

A third point arising from the list of conditions to which child combatants are subject concerns questionable assumptions about children. For instance the claim cited above (item 34) that children are more obedient, less questioning of orders, and easier to manipulate than adults, deserves serious scrutiny. Children, because of their small size, may be easier to control by brute physical force than are adults. They may be more easily intimidated. But subjection to force and intimidation also renders them more likely to become inured to punishment, to mistrust or defy authority, to get into trouble, to run away. Such people do not make reliable soldiers. Whether a random ten-year-old can be expected to be more obedient than a random thirty-year-old is a question whose answer depends on countless cultural and personal variables.

Conversely, if a cheerful 12-year-old becomes "a sullen 16-year-old who feels newly assertive and independent" (51) the transformation may have nothing to do with combat experience. It may just be a natural part of growing up.

A fourth point is that even IACC, which is intended to show why children should not be subjected to armed conflict, notes that "in some societies, military life is the best option." (28).

B. The most serious effects of warfare upon children

In many respects, children are no different from adults. The moral evaluation of children as special and to be protected may or may not be universal. If the view of the child as to-be-protected were universal in practice, there would be no child abuse in the first place.

Hypocritical postures of concern for child welfare, from the level of individual heads-of-household right up to the level of State governments, are common. The most passionate and

eloquent moral protestations may in fact conceal the most hideous abuses of the young and the very young.

For this reason, appeals to high-minded moral sensibilities may not be the best strategy for those aiming to improve the lot of children, whether locally or globally. An objective, factual analysis, such as that offered by the Machel report, is more likely than sheer moral argument to provide a basis for effective practical action.

To make a strong case for the removal of children (and not adults) from the field of combat, one must point to the ways in which children are different from adults, and the ways in which children are differentially damaged by combat. In other words, a careful consideration of category distinctions must be undertaken.

One must distinguish between children and adolescents. One must recognize that the difference between a five-year-old and a fifteen-year-old is much greater than the difference between a person of age fifteen and a person of age twenty-five.

One must distinguish between people who are sent into war, and people upon whom war is inflicted.

Finally, one must distinguish between imagined and real scenarios with which children as well as adults are confronted.

The IACC documents a set of problems of warfare that indisputably impact more seriously upon children (anyone below the age of eighteen, or anyone who has not reached full physical maturity) than upon adults.

The most serious of all these problems is malnutrition, that follows upon food shortage, that follows upon warfare. When crops cannot be cultivated nor animals raised, when sources of income are taken away, and when embargoes are imposed upon certain areas, food shortages arise and people go hungry. The growth of children will be slowed and stunted, very young ones will become more susceptible to disease and death, and in the case of very severe malnutrition, permanent neurological damage may occur.

The second most serious danger of warfare to children is landmines. Landmines are enduring war zones imposed upon local populations. They do not distinguish between when a war is on and when it is over, nor between friend and

foe, combatant and non-combatant. Landmines do, however, distinguish between children and adults, in that a growing child who steps on a mine is more likely to be killed than an adult, and if not killed, is likely to suffer more serious injury (116).

Interruption of education is another consequence of warfare that hits children harder than it hits adults.

Finally, separation from family and caregivers is cited as causing greater danger and harm to children than to adults.

The IACC comments that the differential psychological impact of exposure to armed conflict upon children is still not very well known (168, 169). The report lists a set of responses to stress that children are prone to. But whether children suffer more from the psychological stress of warfare than do adults has not been determined.

With respect to the differential impact of warfare on adolescents, the IACC notes that adolescents who live in conditions of prolonged combat may become unable to conceive of a future for themselves, and consequently may become severely depressed or suicidal (170).

These observations are important because they negate the images that come to the popular mind when we think of children in warfare. Psychological trauma resulting from gory or frightening sights is very low on the list of concerns; in fact, it may not be on the list at all. Doubtless some children (and some adults) are traumatized by witnessing extreme violence. But no evidence is brought forward to suggest that children are more prone to psychological trauma *as the consequence of witnessing or even participating in a violent event* than are adults. Young people might in fact be more able to cope with such experiences than adults, simply because young people are on the whole more adaptable and resilient than their elders. Training from an early age to survive in harsh conditions away from home seems to contribute to such resilience (173). Psychotherapeutic trauma therapy, by contrast, can do actual harm (175).

Far more significant than psychological trauma, in terms of its effect upon children and adolescents, is the so-called collateral damage of warfare: poverty and starvation, exposure to old unexploded ordinance, displacement, separa-

tion from family and loved ones, loss of educational opportunity, and finally, depression at the prospect of having no future.

But these are precisely the conditions that cause a child or adolescent to join a militant organization in the first place. In fact, under such situations, it may be by far the most rational choice for a child or adolescent to join a militant organization - if the organization provides regular nourishing food, protection (through its intelligence system) from unexpected attack, an alternative family with adults who provide some guidance, economic or other benefits to the family left behind, education and training, and the hope of a meaningful future. Many regular armies offer just such benefits. So also do a few rebel organizations, to the extent that they can afford it.

VII. INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAWS

A. International humanitarian law and the problem of defining warfare

In this section, I will outline the facts presented by the IACC, that demonstrate how State organizations are privileged by international law over non-State organizations in respect of their use of child combatants, and how State-run militaries are exempted from certain humanitarian and human rights laws imposed upon non-State militaries.

The consequence of such discrimination is that people who live in rebel territory and are already disadvantaged by poverty and discrimination, are further disadvantaged in respect of their right to act upon their political views, their right to self-protection, and indeed their right to life.

International humanitarian law is another name for the laws of war. This body of law declares what acts are permitted during time of war, and what acts are not permitted.

Each international law is actually a treaty between signatory States. States that do not sign a particular treaty are not bound by it.

If a State engaged in warfare violates international humanitarian law, it may be charged with a war crime, and its agents tried before an international tribunal. If a State is not engaged in

warfare, international humanitarian law does not apply to it during that time.

During the twentieth century, each major war has been followed by a new set of international humanitarian laws. The most famous of the laws of war are the four Geneva Conventions, signed in 1949, at the end of World War II, shortly after the United Nations had come into being.

The first three of these Conventions stipulate that wounded, sick and shipwrecked members of the armed forces (whether enemy or own), and prisoners of war, shall be cared for humanely. The fourth and last convention stipulates the protection of civilians in time of war.

IACC (212) states, "The Fourth Geneva Convention relative to the protection of civilian persons is one of the main sources of protection of civilian persons, and thus for children."

Women constitute a special category in all of these conventions. Each of the first three conventions separately states, "Women shall be treated with all consideration due their sex." The fourth convention states, "Women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

However, "children" do not constitute a special category under the 1949 Geneva Conventions.

International law has not recognized "children" as a distinct category of person until quite recently. Under international humanitarian law, the category distinctions combatant/non-combatant, able/disabled, and female/male are the only salient ones. Children are not protected under international humanitarian law unless they happen to fall into one of the categories: civilian, disabled, or female. Able, male, combatant children are completely unprotected.

Several reasons for the omission of children from the Geneva Conventions as a special protected category suggest themselves. The first and most likely reason is that all regular combatants in the first half of the twentieth century were able-bodied young men. Most signatory States excluded women by law from combat, and boys below a certain size would be excluded as unable to effectively bear arms and fight. A second, related reason may be that signatory countries at the time were more concerned with the "honor"

of their women than they were with the lives of fifteen-year-old boys. A third reason may have been that the category of "child" was defined differently then than now.

Despite its failure to accord special treatment for children, the Fourth Geneva Convention carries great power, because it has been ratified, almost universally, by 186 States. It "prohibits not only murder, torture, or mutilation of a protected person, but also any other measures of brutality whether applied by civilians or military agents." (IACC 212).

The problem is that international humanitarian law, including the Fourth Geneva Convention, does not protect civilians against such measures in times of peace.

Also, this Convention applies only to wars between (recognized) States, and not to wars within such States.

Common Article 3, appended to the four Geneva Conventions, is intended to address armed conflicts that occur within States. This article enumerates fundamental rights of all persons not taking an active part in the hostilities, namely the right to life, dignity, and freedom. It also protects them from torture or humiliating treatment, unjust imprisonment or being taken hostage, and extrajudicial execution.

But Common Article 3 appears almost to be an afterthought, as though wars that took place within States boundaries were the same as those that took place between States.

It is assumed in all the Geneva Conventions, as well as in Common Article 3, that there will be a safe place to which protected persons can be removed, that people "taking part in the hostilities" can be clearly distinguished from those who are not.

Moreover, as soon as the possibility of an intra-State war is officially recognized, a whole new set of questions comes up. For instance, how does one distinguish a genuine armed conflict from a battle, or even an organized ongoing conflict, between police, as agents of the State, and armed civilians fighting the State? How does one distinguish people involved in hostilities from people who are not? What about intra-State conflicts in which one or the other or both sides are aided by foreign States?

Such wars are commonly waged today, and

international law has yet to catch up with them. Among the efforts to catch up are more recent conventions acknowledging that the battlefield is not in all cases separate from civilian habitation.

Hence two additional protocols to the Geneva Conventions were signed in 1977.

Protocol I requires that fighting parties distinguish at all times between combatants and civilians and that the only legal targets of attack should be military in nature.

Protocol I, Article 77 stipulates that children shall be the objects of special respect, not subject to "indecent assault" and should be provided with the care and aid they require. (IACC 215)

Protocol I applies only to conflicts between States. Also in this protocol, children are still assumed to be non-combatants.

Protocol I has been ratified by only 144 States. US, UK, France and Iraq are among those who have not ratified (217)

Protocol II applies to conflicts within States and supplements common article 3. Like Protocol I, it stipulates that children be provided with the care and aid they require.

However, Protocol II applies only to a restricted category of internal conflicts: they must involve conflicts between the armed forces of a High Contracting Party and dissident armed forces and other organized armed groups. According to this criterion, it can be argued that Protocol II would not apply to the majority of current civil wars. The reason is obvious: few Governments (High Contracting Parties) are likely to concede that any struggle within their borders amounts to an armed conflict. (IACC 216)

Why would a Government obviously engaged in a civil war and in need of help be reluctant to concede that it has a war on its hands? Because if the Government did concede this – aside from whatever loss of face it might suffer – it would then be obliged to afford its own civilians the rights that enemy civilians are supposed to be afforded in times of war. That is, it would have to abide by humanitarian international law with respect to its enemies in the internal conflict. As long as it does not concede that it has a war, it may act with relative impunity.

In light of this Protocol, it is clear why the

Government of Sri Lanka has insisted that what it has is not a war but a "terrorist problem." This law may also have been among the factors mostly engaged in hostilities. If the former, the child must be spared; if the latter, she or he may be killed on sight.

In general, humanitarian law represents a compromise between humanitarian considerations and military necessity. This gives it the advantage of being pragmatic. It acknowledges military necessity yet it also obliges armed groups to minimize civilian suffering and, in a number of articles, requires them to protect children. *However, these articles cannot be considered adequate to ensure the safety and survival of children trapped in internal conflicts.* (IACC 218) (emphasis added).

Graca (author of IACC) further notes that – especially with respect to children in war – it is necessary for international humanitarian law to close ranks with human rights law.

At present, they are two separate bodies of law. But as the boundary between "war" and "not-war" becomes increasingly blurred, the necessity of rendering the two bodies of law consistent with one another becomes more urgent.

B. Human rights law and the problem of enforcement

Human rights law establishes rights that every individual should enjoy at all times, during both peace and war. (IACC 219)

In formal legal terms, the primary responsibility for ensuring human rights rests with States, since they alone can become contracting parties to the relevant treaties. It follows that opposition groups, no matter how large or powerful, cannot be considered directly bound by human rights treaty provisions. It is significant, however, that the situation is precisely the opposite in relation to the application of international humanitarian law to non-State entities in internal conflicts. This relative inconsistency between the bodies of law is further ground for insisting that non-State entities should, for all practical purposes, be treated as though they are bound by relevant human rights standards. (IACC 220)

The claim in the first and second sentences above is that States are at a legal disadvantage with respect to rebel militant groups, because

States, as signatories to human rights law, must abide by human rights law whereas rebel militant groups are not bound by such law.

The third sentence above is ambiguous. In fact States are not bound by international humanitarian law in internal conflicts, unless the internal conflict is clearly a full-scale war. But armed rebel groups are bound by international humanitarian law if the State against which they are fighting has signed it. It is unclear whether rebel groups are bound by this law if war is not officially declared.

Human rights law is weaker, in that it is harder to enforce, than international humanitarian law, but it applies to all human beings, in peace as well as in war. International humanitarian law is stronger in that strong international sanctions and penalties can be applied against those who have violated it (as in Kosovo recently), but it is weaker in that it does not apply in situations that are not recognized as "war."

For instance, if, during a declared war, a soldier rapes a civilian woman who belongs to the enemy side, he and his superiors may be held guilty of a war crime, or even of a crime against humanity. But if a soldier rapes a woman belonging to a nationality with which his government is not officially at war, then he will only be subject to whatever local laws apply. Similarly, if a soldier batters a civilian of his own State during peacetime, he will only be subject to local laws governing assault. But if he batters a civilian of the "enemy" side during wartime, the international sanctions will be much more severe.

Not all human rights treaties are signed by all States. Hence a State may refuse to sign a treaty making rape a violation of human rights, and may allow rape to be carried out with impunity. Or a State may sign a treaty agreeing that rape, torture and murder are violations of human rights, and it may pass laws forbidding these acts, but simply turn a blind eye, or deny responsibility, when its own agents engage in these acts.

As long as it is not officially at war with another recognized State, external sanctions, other than verbal reprimands – or economic sanctions, which damage only civilians – cannot be applied.

C. The UN Convention on the Rights of the Child

The situation of children and others caught

in the midst of warfare, declared or undeclared, might be addressed and ameliorated by strong international human rights laws providing protection to such children. The United Nations Convention on the Rights of the Child seemed that it might go a long way toward helping children who are victims of warfare.

This convention was adopted by the UN General Assembly 1989. Only six States have not signed: Cook Islands, Oman, Somalia, UAE, Switzerland, USA. *It is the most widely ratified of all human rights treaties.* (226) (emphasis added).

The IACC summarizes this convention as follows:

The Convention (on the Rights of the Child) recognizes a comprehensive list of rights that apply during both peacetime and war. As stressed by the Committee on the Rights of the Child (A/49/41) these include protection of the family environment; essential care and assistance; access to health, food and education; the prohibition of torture, abuse or neglect; the prohibition of the death penalty; the protection of the child's cultural environment; the right to a name and nationality; and the need for protection in situations of deprivation of liberty. States must also ensure access to, and the provision of, humanitarian assistance and relief to children during armed conflict. (IACC 227).

Signatory States are responsible for ensuring all these rights to all children under their jurisdiction. It should follow that any signatory State engaged in internal warfare against rebels representing a minority population, or containing children in its ranks, should be compelled to curtail its military activities severely, so as to meet its obligations under this Convention. We must ask, then, how signatory States will be expected to manage the problem of child combatants.

A series of provisions in the Convention purport to address this problem.

Article 38 of the Convention on the Rights of the Child:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct

part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Thus any person under fifteen is prohibited from taking "a direct part in hostilities." What this means is not clearly defined. However, for the purposes of those who desire to protect children against involvement in warfare, the provisions of Article 38 appear reasonable. The onus, so far, remains upon the State to avoid recruitment of children, and to ensure that all children affected by armed conflict will be protected.

But the following recommendation of the IACC may have been shortsighted:

As with other human rights treaties, the Convention on the Rights of the Child can only be formally ratified by States. Nevertheless, it is well worth encouraging non-State entities to make a formal commitment to abide fully by the relevant standards. Many non-State entities aspire to form governments and to invoke an existing Government's lack of respect for human rights as a justification for their opposition. In order to establish their commitment to the protection of children, non-State entities should be urged to make a formal statement accepting and agreeing to implement the standards contained in the Convention on the Rights of the Child. (IACC 230)

In this way, pressure may be placed upon rebel organizations to reduce their military activities in exchange for the hope (not the promise) of international goodwill.

But if rebel organizations make a blanket formal commitment to the Convention on the Rights of the Child, then they release the State from responsibility for the rights of children who live in the territories under rebel control. It may become a matter of dispute whose responsibility it

is to provide food, education, et cetera to those children.

If it is illegal to provide any form of material assistance to a particular rebel group, then the rebel group may have great difficulty feeding and clothing the children who live in its territory.

In sum, a movement which began with the intention of protecting children from armed conflict, now threatens, as though by a vise, to intensify the hardships faced by those very children. The first step was to create a blanket international law protecting children from serious harm, in declared or undeclared warfare, in peace or the semblance of peace. The second step was to prohibit States from recruiting children into combat. The third step was to encourage rebel organizations to do the same.

The fourth step, the final turn of the screw and the closing of the vise, is in a document under discussion this year.

D. United Nations Draft Optional Protocol on the Involvement of Children in Armed Conflict

This optional protocol was adopted by consensus 21 January 2000, when it was signed by 26 States. It will not become law until it has been submitted to the General Assembly. It will become binding only upon those States who choose to sign it after this point.

At the time of this writing (April 2000), this draft protocol is just being discussed by the UN Commission on Human Rights, at its fifty-sixth session in Geneva, and has not yet been approved. If it is approved by the Human Rights Commission, it will then be submitted, through the Economic and Social Council, to the General Assembly for final adoption.

Excerpts of the draft protocol follow. The sections this author deems to be of special note appear in *italics*.

PP4: Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals.

PP5: Noting the adoption of the Statute of the International Criminal Court, in particular the inclusion of conscripting or enlisting children under the age of fifteen years or using them to participate actively in hostilities as a war crime in

both international and non-international armed conflicts.

PP11: Condemning with gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard.

PP12: Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law.

PP16: Mindful also of the necessity to take into consideration the economic, social and political root causes of the involvement of children in armed conflicts.

Article 1

State Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

States Parties shall raise the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in Article 38(3) the Convention on the Rights of the Child, taking account of the principles contained in that article and recognize that under the Convention persons under 18 are entitled to special protection.

Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol which sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

States Parties which permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that: such recruitment is genuinely voluntary; such recruitment is done with the informed consent of the person's parents or legal guardians; such persons are fully informed of

the duties involved in such military service, and such persons provide reliable proof of age prior to acceptance into national military service. The requirement to raise the age in paragraph 1 does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with Articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups, distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. State Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

NOTE: Articles 3 and 4 above allow States to recruit volunteers under the age of eighteen. But non-State forces (rebels) may not even voluntarily recruit under-eighteens, and may be criminalized by the State for doing so.

Moreover, Article 3 permits States Parties to maintain military schools for children of any age. In other words, military recruitment and training of children of any age is allowed, as long as this training is done by States Parties. In PP11 above, "armed groups distinct from the armed forces of a State" are strongly condemned for recruitment and training of children, together with deployment of children in combat. Thus, they are forbidden from employing under-eighteens in non-combat situations, and for training under-eighteens for military service, even if the intention is not to deploy them in combat until after the cut-off age.

If rebel organizations were to follow this rule, the consequence would likely be a shortening of the training period, a consequent lessening of preparedness for combat, and exacerbation of the vulnerability of combatants to damage or death in the field.

No minimum age is set in this document for voluntary recruitment into a State military.

Article 6

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery, and their social reintegration.

This article may encourage subjection of demobilized children to forced psychological reconditioning, even when the children suffer no psychological disorders. Under this protocol, States parties may be allowed to engage in "social reintegration" of children by re-educating them in whatever manner the State sees fit.

CONCLUSION

International humanitarian law and human rights conventions are intended to discourage nation-States from causing needless suffering to innocent human beings. Governments maintain militaries to protect themselves, their territory and their citizens from attack by other militaries. But when a Government employs its armed forces to subjugate a portion of its own citizenry, that citizenry may have no recourse but to take up arms, or to appeal to the international community for justice. In the case of internal conflicts, if human rights laws allow State-run militaries to engage in practices forbidden to rebel militaries, then there is a danger that human rights law will become another weapon that States and coalitions of States can wield against stateless nations.

In international law, the contradiction between the way combatants are allowed to be used and the way children are supposed to be protected grows more vexing as more children enter the field of combat, and as the distinction between combatant and non-combatant, war and not-war, grows more blurred.

This contradiction has been resolved in favor of States engaged in internal warfare through the creation of human rights laws that forbid the voluntary participation of persons under eighteen in armed conflict, unless those persons are fighting on the side of the State.

Thus, in internal conflicts, States Parties are empowered to denounce rebel organizations as criminals for employing people under eighteen in combat, even though the State itself is permitted by international law to employ under-eighteens in combat, and even though, in the larger picture, the State itself may be fully responsible for creating the conditions in which young people are driven to join military organizations.

A more rational and productive approach to the problem of child combatants would be to enforce those sections of the Convention on the Rights of the Child that mandate provision of food, health care, education, clothing and housing to each child; freedom of expression, thought, conscience, and religion to each child; freedom of access to information for each child; and protection of each child from all forms of physical or mental abuse, neglect or negligent treatment, irrespective of race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status.

Article 6 of the Convention should be held foremost:

1. States Parties recognize that each child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

If all States that have signed the Convention adhere to these laws, there will be no child combatants.

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