

Child Soldiers

FRED GRÜNFELD¹

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PART I GENERAL

1. INTRODUCTION

Approximately 300,000 children under the age of 18 currently participate in armed conflicts in about 40 countries; they are called child combatants or child soldiers.² Hundreds of thousands more children, in more than 85 countries, face recruitment or are members of armed forces which are currently not at war.³ Besides that, there are millions of children who are the victims of ongoing wars. According to UNICEF, because of armed conflicts, in the last ten years two million children were killed, four to five million disabled, twelve million left homeless, more than one million orphaned or separated from their families and some ten million were psychologically traumatised.⁴ Being a victim of an armed conflict is thus a much broader category than the child combatants that we will deal with in this chapter.⁵ Moreover, the relationship between ongoing hostilities and the recruitment of child soldiers is obvious. It was written about this aspect⁶ that when hostilities drag on for years, or even decades, the root causes themselves, such as poverty or repression, are exacerbated, galvanising civilian popu-

¹ The author wishes to thank Philip Veerman for his comments during the seminar on 20 November 2001 on an earlier draft of this chapter.

² Global Coalition to Stop the Use of Child Soldiers (formed since May 1998 by NGOs including Amnesty International, Human Rights Watch, the International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office, International Federation Terre des Hommes, Defence for Children International and World Vision International), *Global Report on Child Soldiers 2001*, New York, June 2001, based on extensive research on more than 180 countries: <www.child-soldiers.org/report2001/PRE-OVERVIEW.html>, *NRC Handelsblad*, 12 June 2001. See also <www.child-soldiers.org/news_updates/amman_media_about> and for facts on child soldiers <www.child-soldiers.org/news_updates/amman_facts>.

³ 'Use of children as soldiers,' *Foreign Policy in Focus*, 1999.

⁴ UNICEF, *Voices of youth, Explore Children and war*.

⁵ See for the closely related topic of the rehabilitation of children, and in particular the physical and psychological recovery and social reintegration of the child after the war, chapter 11 in this volume, written by Michela Bertani.

⁶ K. HILTGARTNER, *Internally Displaced Children*, EMA Master thesis 2000, 21.

lations for recruitment into armed groups.⁷ In particular, we have to realise that children in displaced persons' camps are seldom able to carry on with their schooling, and are often subject to forced recruitment in the armed forces, exploitation and sexual abuse.⁸ Accordingly, preventing recruitment of children is as important as demobilisation. Both objectives require a long-term commitment to education, to vocational training, attention to psychosocial needs and to reuniting juveniles with their families.⁹

The impact of war events on a child may differ enormously. It is in any case not easy to present generalisations about this. You cannot state from the outset that the impact will be more severe and wrongful on a child combatant than on a child as war victim in general. For instance, although children may not have taken part in the genocide in Rwanda:¹⁰

'(...) over 95% of the children witnessed massacres, and over a third had seen the murders of family members; almost all believed they would die; and nearly two thirds were threatened with death whereas over 80% had had to hide to protect themselves.'

These are indeed unprecedented levels of exposure to traumatic events. The harm to children in this civil war, as in other armed conflicts, is enormous. The harm to child combatants will in some situations be as disastrous – for instance in the case of Sierra Leone – as in the genocide in Rwanda. In other situations like the Palestinian uprising, called the *Intifada*, it remains to be seen what the psychological consequences are for these children. Perhaps they are proud to be able to take part in their liberation struggle against the occupier. To take part in the fighting may have in that perspective beneficial effects for their development as an optimal person, although they of course may suffer too from the military force and the loss of life of their loved ones in this struggle. This will be the focus of our research in which we will answer the following questions: In what way have the rights of the child been violated while performing military combat activities? How can the different roles of parents, peer groups, governmental and non-governmental authorities be described, assessed (ascertained) and evaluated from an educational perspective? Where is the borderline in the views of these child soldiers from being proud – and in that way promoting development – to being ashamed, and in that way humiliating and destructive to the development of a child? With regard to these questions, I want to describe, analyse and compare four different situations; these are:

⁷ I. COHN & G. S. GOODWIN-GIL, *Child Soldiers*, a study for the Henry Dunant Institute, Geneva, Clarendon Press, Oxford, 1994.

⁸ Amnesty International (AI), *Children's Action 1999 Report*, 14.

⁹ 'A peace and security agenda for children,' Statement of UNICEF Executive Director Carol Bellamy to the Security Council's open briefing on the protection of civilians, New York, 12 February 1999.

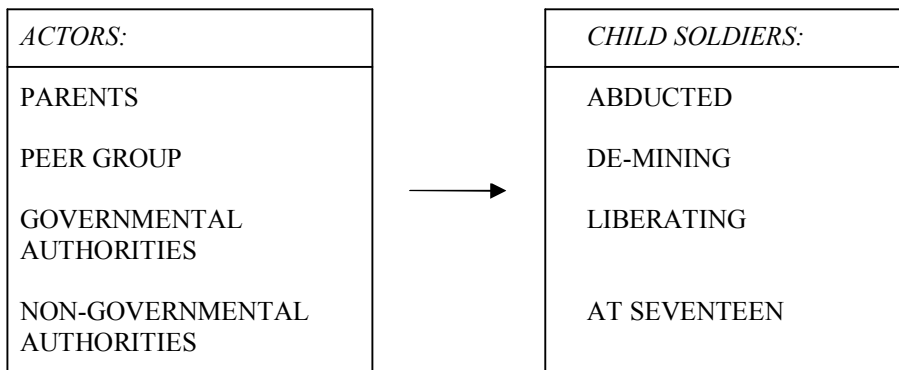
¹⁰ *Ibidem*, UNICEF survey of 3,000 children in Rwanda in 1995.

1. Children who are abducted by armies or rebels and who are forced to take up arms towards others and to commit grave human rights violations. Obviously the fundamental human rights of these children have already been violated but in addition, they are made accessory or accomplice to the violations of their oppressors. In particular their return to 'normal' society will be seriously hindered and their 'healing' made more complicated as they are also excluded from their original kinship and religious or tribal affiliations because of these acts. A distinction between male and female child soldiers will be made because girls are at particular risk of rape, sexual harassment and abuse. Clear examples of these practices are found in Africa, in particular in Sierra Leone, Liberia and Northern Uganda.
2. Children who are obliged to perform activities in a more or less regular army. These actions are often very risky for their own lives. It is seen as their duty and takes place within the official legislation of the state concerned. Children are often used to lay and clear landmines, such as the children in the Iran-Iraq war who had to de-mine the territory of the battlefield by walking in front of the troops.
3. Children who want to participate in the liberation movement in order to promote the independence and statehood of their country. They are trained as soldiers and are confronted in violent clashes with the occupier of their territories. The acts may vary from shooting and killing in guerrilla warlike situations to throwing stones in riots. The *Intifada* with the Palestinian children in the different Palestinian liberation armies in Jordan, Lebanon, Syria and in the Palestinian administered and Israeli occupied territories is the best known example.
4. Children who freely want to join the regular army of their state and who will be trained for combat activities as well. For instance the seventeen years old, able-bodied recruits in The Netherlands.

Although everyone has his own way to deal with these experiences, a general pattern of the coping process with these disasters is presented in three stages.¹¹ The impact phase is the first one, when people are overwhelmed by the terrible events in which some panic and others freeze. The victims are focused on survival. In the second recoil phase they express various emotions such as crying and laughing, they feel sad, anxious or angry and try to absorb and accept the horrible new reality. The third post impact phase afterwards is characterised by denial – to forget what has happened and pretend the event has not happened – and intrusion, that is to face the reality of the disaster while these memories and feelings affect the person. Some common reactions may be: physical (headache, back pains, stomach problems, sleeping problems, nightmares, sweating, trembling, freezing, breathing difficulties, nausea, heart palpitations, general body pains, menstruation problems, forgetfulness or absent-mindedness) and emotional (aggression, anger, irritation, anxiety, apathy, frequent crying, helplessness, restlessness, sadness or grief, concentration difficulties, preoccupation with the

¹¹ P. STERK, 'Trauma and post-war traumatic problems with children,' <www.euronet.nl/~p_sterk/trauma>.

event, feelings of guilt, shame, agitation, eating problems). This occurs often in combination with social and behavioural problems (alcohol abuse, attitude problems, drug abuse, family problems, isolation from people, criminality). These reactions are consequences of the exposure to the horrible events. The impact may differ for each child due to a lot of factors. In this chapter, I am not able to specify these consequences, neither in the different situations nor in general. I have the impression that the role other actors fulfil in the total process of education will also have an impact on the coping behaviour of the events and in the end on the ‘best’ development of the child. To test this hypothesis, I will investigate circumstances which differ in the influence or non-influence of parents, peer group, governmental and non-governmental authorities. For instance in the literature on the *Shoa* (Holocaust), the important role of a parent in the proximity of the child during the period in the camps is underlined as a relevant element for the survival of the child victim. This was, for instance, illustrated in the protective role of the father in screening the daily reality to his child in the movie *La vita è bella*. In this chapter, I will try to investigate the impact of the following four different actors on child soldiers in four different situations.



The proposition will be that the harm to the children will be greater, the more serious is the situation in which they live. The more isolated these child soldiers live from their caregivers, the more seriously they will be hindered in their development towards an optimal person.

2. GENERAL CONTEXT OF CHILD SOLDIERS

The issue of child soldiers is part of broader, more complex issues in international relations. Of course this is directly linked with war and other violent conflicts within and between countries. The results of these conflicts are streams of refugees who flee within their country of origin or to another neighbouring country. In the UN study by Graça Machel on the *Impact of Armed Conflict on Children*, it is suggested that ‘at least half of all refugees and displaced people are chil-

dren.¹² The UN report by Graça Machel then continues:¹³

‘At a crucial and vulnerable time in their lives, they have been brutally uprooted and exposed to danger and insecurity. In the course of displacement, millions of children have been separated from their families, physically abused, exploited and abducted into military groups, or they have perished from hunger and disease.’

In this study we will deal, *inter alia*, with the child soldiers of Sierra Leone. In Sierra Leone, in 2001, there are at least 500,000 refugees – the so-called internally displaced persons, due to the conflict – while another 370,600 refugees fled from Sierra Leone to Guinea.¹⁴ Living in refugee camps, often without their parents, children are easy to ‘recruit’ for military service. Indeed, Machel’s study indicated that ‘[t]he children most likely to become soldiers are those from impoverished and marginalised backgrounds and those who have become separated from their families.’¹⁵ In the military gangs they are able to fulfil some tasks and because of that role they may get a higher self-esteem from which they may benefit in their development. Often they are not able to read or to write and fighting with light weapons, such as Kalashnikovs, is the only thing they can do. This has been described in the novel by Ahmadou Kourouma who wrote:¹⁶

‘What can you do if there is nobody to take care of you on earth. No father, no mother, no brother or sister, and you are a minor in a rotten and barbaric country where everyone cuts someone’s throat. Then you will become a child soldier because you have to eat and you will in your turn start to murder.’

After research in Liberia by Tangelder, she too concluded:¹⁷

‘Many child soldiers preferred war over peace. You came further with a gun than with a school diploma. Children, who belong to the powerless bottom layer of society, had gained esteem as a result of the war.’

¹² *Impact of Armed Conflict on Children*, A/51/306, as quoted in the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 1998 (UNICEF *Handbook* 1998), 523. According to the Secretary General of the UN, ‘[t]he study demonstrates the centrality of these issues to the international human rights, peace and security and development agendas, and should serve to promote urgent and resolute action on the part of the international community to redress the plight of children affected by armed conflicts.’ (UNICEF *Handbook* 1998, 525.)

¹³ UNICEF *Handbook* 1998, 523. ‘Rape poses a continual threat to women and girls during armed conflict, as do other forms of gender-based violence, including prostitution, sexual humiliation and mutilation, trafficking and domestic violence.’ (*Ibidem.*)

¹⁴ *NRC Handelsblad*, 15 March 2001, Profiel Vluchtelingen, source: UNHCR.

¹⁵ UNICEF *Handbook* 1998, 518.

¹⁶ A. KOUROUMA, *Allah n’ est pas obligé* (Prix Renaudot), in: *NRC Handelsblad*, 24 November 2000.

¹⁷ S. TANGELDER, *Spelen met vuur: Kindsoldaten en hun strijdtooneel*, Uitgeverij Jan Mets, Amsterdam & Globe, Gent, 1999, 30.

On the other hand we know that performing these tasks at a young age may be disastrous to these minors for any normal development in the long run. It is now our aim to get a more precise understanding of the social (including psychological, sociological and educational) impact of their experiences as a child soldier on their development. We will do this by analysing the reports of states, international organisations, non-governmental organisations and special rapporteurs, and the literature on this subject. The selected cases for this study are Sierra Leone, Sudan, Uganda, Iraq, Iran, Israel and the Palestinian Territories, and The Netherlands. At the end of this chapter we will review what the remedies are, that were proposed and adopted by the various actors to solve the problem of the child soldiers. The proposals are diverse from very different viewpoints. That is why we are able to show the results of recent years of the United Nations Security Council,¹⁸ the United Nations Committee on the Rights of the Child, including the state reports to this Committee, the United Nations International Children's Emergency Fund (UNICEF), the Criminal Tribunals and many non-governmental organisations who are specialised on this topic. We will mention the Coalition to Stop the Use of Child Soldiers, Save the Children,¹⁹ Defence for Children International (DCI), International Dialogue Foundation and War Child. Because the International Criminal Tribunal is still not in operation and the Optional Protocol to the Convention on the Rights of the Child (CRC) was not yet in force,²⁰ we are not able to scrutinise the monitoring and legal institutions on this matter.

In this chapter we are not able to deal with the root causes of military conflicts and gross human rights violations. But when we discern a close relationship between the problems of landmines and child soldiers or a close link between light weapons and the existence of child soldiers, we will deal with the endeavours to reduce landmines or light weapons. These attempts can be viewed as an indirect way of solving the issue of child soldiers. First, we will present a legal overview on child soldiers in international law.

¹⁸ In 1999 the Security Council devoted a debate to the topic of children in armed conflicts and also stressed the importance of supporting internally displaced children, including their resettlement, in its Resolution 1261, recognising the need for further attention to the rights of children affected by armed conflict situations and incorporating a number of concerns that have been the core work of the Special Representative for Children and Armed Conflict. For the first time ever the Security Council has devoted a Resolution to a thematic concern, unrelated to a specific situation or an immediate incident, demonstrating its commitment to the protection of children affected by war. The Secretary General was requested to provide a report by July 2000 on the implementation of the Resolution, signaling that the issue will continue to be of concern. This was done in the *Report on Children in Armed Conflict* of 19 July 2000 (A/55/163 and S/2000/712). We will look to that outcome in referring to Security Council Resolution 1314 of 11 August 2000.

¹⁹ See for website <www.rb.se>.

²⁰ The Optional Protocol on the involvement of children in armed conflict entered into force on 12 February 2002 (see <www.unicef.org/crc>).

3. INTERNATIONAL LAW

In international law the employment of child combatants is strictly prohibited. It is easy to substantiate this statement because all the relevant rules in both international humanitarian law and in international human rights law are very clear on this point. As early as 1959, it was stated in Principle 2 of the Declaration of the Rights of the Child,²¹ and later, in 1966, in Article 10(3) of the International Covenant on Economic, Social and Cultural Rights.²²

The States Parties to the present Covenant recognise that: (...) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The United Nations Convention on the Rights of the Child (CRC) contains a specific article on child soldiers. It forms a direct link between human rights law and humanitarian law. Article 38 contains the following four paragraphs:²³

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 endeavour 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.

Paragraph 1 applies to all armed conflicts and requires that the applicable humanitarian law be respected as a matter of human rights. However, as we will see later, that depends on whether the state involved has ratified the four Geneva Conventions and the two Additional Protocols, in particular Protocol II because only that protocol addresses non-international conflicts. Paragraph 2 provides

²¹ ‘The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.’ (General Assembly Resolution 1386 (XIV) of 20 November 1959.

²² International Covenant on Economic, Social and Cultural Rights, GA Resolution 2200 A (XXI) of 16 December 1966, entry into force on 3 January 1976.

²³ Convention on the Rights of the Child, UN General Assembly, Doc. A/RES/44/25, 20 November 1989.

that States Parties are to take all feasible measures²⁴ to ensure that children under fifteen do not take a direct part in hostilities. As such, it is arguably weaker than the measures set out in humanitarian law regarding child participation in armed conflict. Article 38(2) contrasts with the absolute ban contained in Article 4(3)(c) of the Second Additional Protocol because Article 38(2) CRC only prohibits direct participation and leaves the option of indirect participation open as a possibility. This is relevant because child soldiers are often involved in many forms of indirect participation. The study on the *Impact of Armed Conflict on Children* mentioned supporting roles as cooks, porters, messengers and spies.²⁵ Combined with the paragraph 3 prohibition on the recruitment²⁶ of children under the age of fifteen into armed forces, and its provision to ensure that the oldest children, of those between fifteen and eighteen, are given priority in the recruitment process, this provides a lacklustre defence of children. It does, however, allow the Committee on the Rights of the Child to examine the recruiting practices and policies in relation to children over fifteen to determine whether such priority is given, which is at least something. The Convention as a whole allows the Committee on the Rights of the Child to examine the situation of children in armed conflict and to monitor the compliance of states with the provisions of humanitarian law which protect children (both indirectly as civilians and directly as children).²⁷ Specific guidelines for Initial and Periodic Reports were given to the States Parties by the Committee on the Rights of the Child.²⁸ Paragraph 4 of Article 38 also uses the word ‘feasible’²⁹ in framing the obligation, which makes this provision

²⁴ Most NGOs and some states preferred ‘necessary measures’ instead of ‘feasible measures’ (see S. DETRICK, *A Commentary on the United Nations Convention on the Rights of the Child*, Kluwer International Law, The Hague (etc.), 1999, 657.

²⁵ UNICEF *Handbook* 1998, 518.

²⁶ In the UNICEF *Handbook* 1998, 517, it is rightly observed that ‘Article 38 refers to recruitment rather than to conscription. Article 38, as drafted, permits the recruitment of under-18-years-olds, but conscription is not mentioned and should not form part of State law or practice. Compelling children, at any age, to join the armed forces would amount to a breach of Article 35 (abduction) and Article 32 (forced labour).’

²⁷ The Committee on the Rights of the Child has already stressed in its second session in 1992 the outstanding importance of the issue of children in armed conflicts in the context of promoting and protecting children’s rights. It underlined the complexity of this question and reminded that accordingly it should not be simply reduced to the consideration of a single provision of the Convention. From this meeting it was noted: ‘Specific preventive measures designed to prevent the involvement of children in armed conflicts were also discussed: mention was made of the interdiction of recruitment into the armed forces under a certain age, as well as of the adoption of measures ensuring that children will not take part in hostilities or suffer their effects.’ Moreover, the Committee ‘pointed out that there are some situations in which children did not benefit from the protection of existing standards, as was very often the case in internal strife. There was therefore a need to consider a set of minimum humanitarian standards to be applicable in all situations to all children, without discrimination, in a period of armed conflict, thus filling any possible existing gaps.’ (UNICEF *Handbook* 1998, 516).

²⁸ UNICEF *Handbook* 1998, 512-513.

²⁹ This, like the age limit in Article 38(2), was the subject of great controversy.

weaker than the provisions in the Additional Protocols.³⁰ There it is stated that the state shall provide children with the aid and the care they require, with no mention of any limiting term such as ‘feasible.’

Article 38 is now the subject of an Optional Protocol to the CRC that raises the age of protection to eighteen. That it was set at fifteen in the first place was due to the consensual decision making process of the Working Group of the Convention on the Rights of the Child.³¹ Even allowing for the problems that surround the age at which it ceases to protect children from participation in hostilities, it allows for a great deal of monitoring of the fate of children in armed conflict. Moreover, as it is more widely ratified than the Geneva Conventions, it may be the only protection that children have in armed conflict.³² The Convention entered into force on 2 September 1990 with 191 States Parties at the end of 2000 and with the US and Somalia as the only UN members which have not yet ratified.³³ The Optional Protocol from 25 May 2000 to this Convention was – as mentioned above – signed by 100 States and ratified by 17 States and is in force since 12 February 2002.³⁴ Happold has explained raising the age for minimum recruitment from 15 to 18 in an interesting way. He wrote:³⁵

‘Persons below the age of eighteen are not seen as having sufficient psychological maturity either to make an informed choice whether to participate in hostilities or to stand the peculiar stresses of combat.’

It is this change of perception, he acknowledges, that primarily motivates the recent moves to push the minimum age of recruitment and participation in hostilities to eighteen.³⁶ This addition is in accordance with the International Labour Convention of 17 June 1999 which also prohibits the forced or compulsory recruitment in armed conflict of persons under 18 (defined as children).³⁷ The

³⁰ Articles 77(1) of the First Additional Protocol, and 4(3) of the Second Additional Protocol. See also UNICEF *Handbook* 1998, 515.

³¹ A great many states objected to an age limit lower than eighteen but the declared refusal of one state (U.S.A.) to accept consensus on an age limit higher than those articulated in the Geneva Conventions and Protocols led to the lower age limit being adopted.

³² The UNICEF *Handbook* 1998, 515, also refers to the non-binding GA Resolution 3318 (XXIX): Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

³³ A. BAKER & H. BEN-ARI, ‘The use of children in armed conflict,’ *Justice*, 2000, 8.

³⁴ A/RES/54/263 of 25 May 2002. With the ratification of Spain on 8 March 2002, the number is 17; with the signature of Hungary on 11 March 2002, it has been signed by 100 states within two years (<www.child-soldiers.org>).

³⁵ M.C.E. HAPPOLD, ‘Child soldiers in international law: The legal regulation of children’s participation in hostilities,’ *Netherlands International Law Review*, 2000, 28.

³⁶ *Ibidem*.

³⁷ That prohibition on forced or compulsory recruitment of children for use in armed conflict, is implied in the definition of the worst forms of child labour in Article 3(a) of Convention No. 182, on the Convention concerning the Prohibition and Immediate

Rome Statute for the emerging International Criminal Tribunal has categorised acts of ‘conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities’ as one of the most serious war crimes of international concern.³⁸ This is applicable both in cases of international armed conflicts and in cases of armed conflict not of an international character.³⁹ Because most child soldiers are to be found in Africa, we also refer now to Article 22 of the African Convention on the Rights and Welfare of the Child. There, the rule is stated that no child, thus no person under the age of 18, shall take part directly in hostilities or shall be recruited. This regulation is more protective than the Geneva Conventions as well as the CRC, with the Optional Protocol not yet being in force.

International humanitarian law provides general protection for children as persons not taking part in hostilities.⁴⁰ Moreover the first Additional Protocol regulates the participation of children in armed conflicts by the minimum age of fifteen for recruitment. Recruitment may mean both compulsory and voluntary enrolment. The prohibition of compulsory enrolment is clearly stated in Article 51 of the Fourth Geneva Convention that forbids the occupying power to compel protected persons to serve in its army. In the opinion of Baker and Ben-Ari, ‘the parties to the conflict would also be under a duty to refrain from enrolling children under the age of fifteen, who volunteer to the armed forces.’⁴¹ More particularly, Article 77(2) of the first Additional Protocol provides that children under fifteen should not take a direct part in the hostilities, while in relation to non-international armed conflicts Article 4(3)(c) of Additional Protocol II provides that children under fifteen are prohibited from any type of participation. According to this provision, ‘children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.’ This is until now the strongest regulation on the prohibition of child soldiers for both compulsory and voluntary enrolment. In principle, therefore, children under fifteen should not participate in military conflicts and will receive the general safeguard of protection that has been granted to the civilian population. This obligates the parties in a conflict to distinguish in their military targets between combatants and non-combatants.

The more than three hundred Palestinian children who died in the *Intifada* of 2000-2001 signify that the practice differs from the theory of international hu-

Action for the Elimination of the Worst Forms of Child Labour. See BAKER & BEN-ARI, *Justice*, 2000, 10.

³⁸ *Ibidem*. This had been proposed by many organisations such as UNICEF and the International Committee of the Red Cross, UNICEF *Handbook* 1998, 519-520.

³⁹ Article 8(2)(b)(xxvi) and (e)(vii). See BAKER & BEN-ARI, *Justice*, 2000, 10. See also the Rome Statute of the ICC, 1998, A/CONF.183/9.

⁴⁰ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, plus Protocol I, in particular Article 77(1), and Protocol II of 8 June 1977.

⁴¹ BAKER & BEN-ARI, *Justice*, 2000, 9.

manitarian law. At the same time these child combatants – who were called the ‘generals of the rock’ by Chairman Jasser Arafat – really took direct part in the hostilities, which is also a violation of these international regulations of human rights law and humanitarian law and criminal law. Again the rationale is evident that the authorities should be conscious of the heavy responsibility they are assuming and that they should remember that they are dealing with persons who are not yet sufficiently mature, or even have the necessary judgement.⁴² The purpose is to prevent physical or moral injury to children and to ensure that they develop as normally as possible under the conditions prevailing in armed conflicts.⁴³ These comments from international humanitarian lawyers suit perfectly with our points of departure in this book, which were derived from the CRC.

Interesting too are the proposals from two NGOs (Defence for Children International and the International Dialogue Foundation) and the Dutch UNICEF Committee in the Declaration of Amsterdam.⁴⁴ They propose, for instance, that ‘[t]he rights of children in armed conflict should be fully protected whether the conflict is international or partially or wholly internal,’ which would end the dependency on the Second Geneva Additional Protocol for internal struggles. They add:⁴⁵

‘No child involved in armed conflict should be considered responsible for the consequences of that armed conflict. No child involved in armed conflict shall be placed under an obligation to take revenge for any loss suffered as a result of armed conflict.’

We will deal with this aspect in the case of the tribunal for Sierra Leone. The prohibition of any enrolment is also formulated:⁴⁶

‘Children shall neither be recruited into the armed forces, or other armed groups, nor allowed to take part in hostilities. If children offer their services at their own initiative to military or paramilitary units, such offers shall be refused. Under no circumstances shall a child be armed.’

In particular when we deal with the *Intifada* in Palestinian territories we will refer to this proposition and we will draw some conclusions. The two main aspects of the Optional Protocol are the raising of the age limit for participation in hostilities from 15 to 18 years in Article 1, and the focus on recruitment in Articles 2, 3 and 4.⁴⁷

⁴² BAKER & BEN-ARI, *Justice*, 2000, 10; the authors refer to J. PICTET, *Commentary on the Additional Protocols*, 1987, 901.

⁴³ *Ibidem*; the authors refer to M. BOTHE, K.J. PARTSCH, W.A. SOLF, *New Rules for Victims of Armed Conflicts – Commentary on the Two Protocols Additional to the Geneva Conventions of 1949*, 1982, 476.

⁴⁴ See C. VAN DEN EERTWEGH, *Kindsoldaten; Wat is hun toekomst?* Student thesis Maastricht University, s.a., 33-35.

⁴⁵ *Ibidem*.

⁴⁶ *Ibidem*.

⁴⁷ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, <www.unicef.org/crc/crc.htm>.

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Article 1

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

Article 2

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

Article 3

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

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

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
 - (c) Such persons are fully informed of the duties involved in such military service;
 - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
- (...)

Article 4

1. Armed groups that are 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. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

(...)

This may be observed as some improvement in relation to the Convention itself but it has some very weak points as well. For instance, the core still contains the limitation in Article 1 to taking direct part in hostilities, and therefore excludes taking indirect part in hostilities. Often child soldiers are used in this indirect way. With regard to the flexibility in the age limit for voluntary recruitment in Article 3, UNICEF made the following comments:⁴⁸

‘In addition, the Protocol requires States to make a declaration, upon ratification, regarding the age at which national forces will permit voluntary recruitment, as well as the steps that States will take to ensure that such recruitment is never forced or coerced. This clause is particularly important because, although the Optional Protocol sets 18 as the minimum age for *compulsory* recruitment, it does not establish age 18 as a minimum for *voluntary* recruitment. For that reason, UNICEF is encouraging all states to ratify the Optional Pro-

⁴⁸ *Ibidem*.

toocol and to make unequivocal statements in their endorsement of 18 as the minimum age at which voluntary recruitment will be permitted. UNICEF had sought consistency on 18 years as marking the point at which adulthood begins and the concern is for the best interests of the child, regardless of where they live or on which side of the conflict they are situated. UNICEF has consistently promoted the position that protection only becomes meaningful if a clear ban is imposed on the direct and indirect participation of children under 18 in hostilities, regardless of whether they have been forced to join, or have voluntarily decided to join the armed forces. In establishing 18 as a minimum age for participation in peacekeeping operations, the United Nations set an important precedent and bolstered the efforts of those pushing for the Optional Protocol to the Convention. The United Nations further recommended that this policy serves as an example for police and military forces world wide.’

The comment of Detrick with regard to Article 3 is also well worth noting; she wrote:⁴⁹

‘It was felt that recruitment was precisely the point at which it was most feasible to attack the problem of preventing the involvement of children in armed conflicts. Many participants [members of the Commission on Human Rights in charge of the drafting, F.G.] considered that what was called “voluntary” recruitment was in fact, in many cases, not a free choice but the result of indoctrination, incitement to vengeance, poverty, destitution, severe pressure, the prospect of physical protection, or simply immaturity. Therefore, it was felt that the minimum age for recruitment into the armed forces in all circumstances should be set at 18 years and without any distinction being applied between compulsory and voluntary recruitment, and regardless of parental consent.’

The Coalition to Stop the Use of Child Soldiers also observed that:⁵⁰

‘(...) voluntary recruitment is often a choice not exercised freely; it is rarely based exclusively on the volition of the child, but tends to be conditioned by factors beyond his or her control. The line between voluntary, compulsory and forced recruitment is often ambiguous in view of various environmental factors that may coerce children to “volunteer.” Children from the poorest, least educated and most marginalised sectors of society are often encouraged to join the armed forces as an economic and employment alternative.’

This NGO is now campaigning for all states to sign and ratify the Optional Protocol without reservations and setting at least 18 as the minimum age for all forms of military recruitment.

Article 4 is very important because it is directed to domestic armed groups engaged in military conflicts within a state. This is filling a gap because the CRC as a whole applies only to States Parties, and as a result armed opposition groups are not generally bound by its stipulations. In reality, however, most under-age combatants serve in non-governmental armed groups in conflicts that take place within a state. Moreover, the responsible states are charged with the accounta-

⁴⁹ S. DETRICK, *A Commentary on the United Nations Convention on the Rights of the Child*, 660.

⁵⁰ See <www.child-soldiers.org/campaigns/crp/cs-report2001.htm>.

bility for these violations, in accordance with traditional international law. With this Optional Protocol to the CRC, non-state actors in internal conflicts are addressed and thus it does not matter anymore whether a state is party or not to the Additional Protocol II to the 1949 Geneva Conventions.⁵¹ This was also made clear during the drafting of this Protocol by the Committee on the Rights of the Child stressing the importance of ‘obliging States Parties to take all possible steps to prevent the recruitment of children by (...) insurgent groups in their territory.’ The Committee ‘(...) also recommended that the terminology of the Optional Protocol should not go beyond that contained in the Protocol II Additional to the 1949 Geneva Conventions.’⁵² An important addition, because nowadays almost all armed conflicts are internal, the so-called intra-state wars.⁵³ In February 2002, UN officials hailed the entry into force of the ‘milestone’ accord on child soldiers.⁵⁴ Mary Robinson added:⁵⁵ ‘We are urging all governments and armed groups to end the military recruitment of children under 18 and to release and rehabilitate those children already in service.’

4. SMALL ARMS AND MINES

Since 1997, the General Assembly of the UN has endorsed recommendations to collect, confiscate and destroy illicit small arms.⁵⁶ With the objective to consolidate international endorsement of these principles, to develop specific international standards and to establish international mechanisms to promote their implementation, a United Nations conference was planned for summer 2001 on ‘Illicit Trade in Small Arms and Light Weapons in All its Aspects.’ Canada, Norway and The Netherlands, more or less like-minded countries that had a seat in the Security Council of the UN, took the initiative.⁵⁷ The aim was to make a legally binding, standard-setting instrument with rules and measures on the reduction of the current number of small weapons and on the prevention of illicit trade in small weapons. During its membership of the Security Council, The

⁵¹ This age limit has been raised too from 15 to 18 in comparison to Article 4(3)(c) of Additional Protocol II to the 1949 Geneva Conventions.

⁵² E/CN.4/1997/WG.13/CRP.1/Rev.1 in UNICEF *Handbook* 1998, 524.

⁵³ Of the 110 conflicts on the World Conflict and Human Rights Map 2000 (PIOOM, Leiden), only 7 are inter-state wars, 94 are intra-state wars while the remaining 9 cases are intra-state wars with foreign intervention.

⁵⁴ UN News Centre of 15 February 2002 (<www.un.org/apps/news/story>).

⁵⁵ Press Release HR/4580, 12 February 2002 (<www.un.org/News/Press/docs>).

⁵⁶ Report of the Panel of Experts on Small Arms (A/52/298 of 27 August 1997) and the Report of the UN Group of Governmental Experts on Small Arms (A/54/528 of 19 August 1999). In 1998, the European Union also undertook some ‘joint action’ on the export of small arms.

⁵⁷ Canada and The Netherlands held membership of the Security Council in 1999 and 2000, whereas Norway was member in 2001 and 2002. Switzerland and South Africa are also involved, and have institutionalised their co-operation in the ‘Forum of Friends’ in order to organise the so-called PrepComs, that are preparatory meetings.

Netherlands was active on this subject.⁵⁸ The aim was to end the proliferation of these small weapons in order to terminate and prevent ethnic conflicts within a state which are fought with these small arms and cause about 90% of all victims in these struggles. Small and light weapons are cheap⁵⁹ and easy to keep in order, to carry, to transport, to use and to hide. This makes these weapons in particular ‘appropriate’ for children. One author described the child soldiers therefore as belonging to the ‘Kalashnikov Age.’⁶⁰ In the recommendations to tackle this issue some reference is made to the ban on anti-personnel landmines for the establishment of assistance service.⁶¹ A worldwide ban on anti-personnel landmines was recommended in the study on *The Impact of Armed Conflict on Children*. The study recommended that States Parties to the CRC should report to the Committee on the Rights of the Child.⁶²

‘(...) on progress in enacting comprehensive legislation, on measures being taken in mine clearance and in programmes to promote children’s awareness of landmines and to rehabilitate those who have been injured.’

The Committee on the Rights of the Child addressed this child related issue too when questioning Belgium and being informed that Belgian legislation ‘prohibited the production and export of mines,’ and when it congratulated France on

⁵⁸ The Dutch, for instance, organised a preparatory conference on this topic. That conference, planned for September/November 2000, could not be held in The Hague because of a lack of support from other countries. However, as many NGOs were enthusiastic, the Dutch decided to organise an alternative conference with only NGOs, because they were seen as crucial as well for any success. Indeed in March 2001, the Ministry of Foreign Affairs organised in co-operation with NOVIB (a NGO on Development Co-operation) a workshop ‘Towards the 2001 Conference and Beyond: A Critical Role for Civil Society’; information from the Dutch Ministry of Foreign Affairs, Security Policy Department, Unit on Arms Control and Arms Exports. This Department took the lead but other divisions within the Ministry of Foreign Affairs, such as the Department of Human Rights and Peace-building and the Department of Africa beneath the Sahara, as well as the Ministries of Defence and Economic Affairs participated. Also, an ‘Expert Workshop on Destruction of Small Arms and Light Weapons’ was organised in collaboration with Hungary in September 2000. Among the experts were members of NGOs as, for instance, Safer World. The proposals and recommendations of this conference have been presented on 30 November 2000 to the United Nations and the Permanent Representatives in New York.

⁵⁹ For example, the price of an AK-47 is in Uganda the same as a chicken and in Angola as a bag of maize; *BZ-blad*, 24 November 2000, 8.

⁶⁰ M. KLARE, ‘The Kalashnikov age,’ *The Bulletin of the Atomic Scientists*, 1999.

⁶¹ Proposals and recommendations of the Expert Workshop on Small Arms and Light Weapons, presented on 30 November 2000 by the Permanent Representatives of Hungary and The Netherlands to the United Nations and the Permanent Representatives in New York, 2.

⁶² UNICEF *Handbook* 1998, 521 (A/51/306, para. 126). See also The Vienna Declaration and Programme of Action of 1993: ‘Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines.’ (UNICEF *Handbook* 1998, 526; A/CONF.157/23, para. 50.)

its contribution to the international campaign on this topic.⁶³ The successful result was the Ottawa Treaty of 3 December 1997, which is in force since 1 March 1999 and is implemented in EU regulations.⁶⁴

With measures in these fields, the protection of child soldiers will be strengthened, the prevention of child soldiers will be enlarged and the measures themselves can be seen as Provision measures which may contribute to the optimal development of – or at least to the prevention of developmental damage to – the child. However, we should realise that this is not the way the issue was put forward in the international debates. There it was predominantly seen from the perspective of peace and security, the non-proliferation of arms and the links between disarmament, development and peace-building without any reference to child combatants. The EU was the exception, this time, as it referred, in the ‘final declaration of the European Union’ to a conference on children in armed conflict in Warsaw in May 2000, to this topic with the words: ‘the issue of children and armed conflict should also be linked to the problem of small arms and light weapons.’⁶⁵

5. SECURITY COUNCIL INVOLVED

The importance of the topic is illustrated with the adoption of three Security Council Resolutions in August 1999, in August 2000 and in November 2001. In Resolution 1261, the Security Council focuses on the protection of children in armed conflicts, but also addresses the recruitment and use of children in armed conflict, the impact of the proliferation of small arms on children and the rehabilitation and reintegration of children used as soldiers.⁶⁶ This was reiterated in Security Council Resolution 1314 that was adopted after the acceptance of the Optional Protocol by the General Assembly. Moreover, the targeting, in armed conflicts, of civilian populations, including children, can be seen as ‘a threat to international peace and security,’ which makes enforcement measures under Chapter VII possible.⁶⁷ Besides this, it considers the special needs and particular vulnerabilities of girls used as child soldiers, the cross-border recruitment and abduction of children and the regional initiatives on the prohibition of the use of child soldiers. Moreover, it asks for the release of children abducted during armed conflict and their family reunification.⁶⁸ In Resolution 1379 this was reiterated. In addition it was stressed that provisions such as child protection ad-

⁶³ UNICEF *Handbook* 1998, 520 (Belgium SR.224, para. 61; France IRCO, Add. 20, para. 10).

⁶⁴ Notitie aan de Tweede Kamer, ‘Standpuntbepaling betreffend EU Mededeling/Ontwerpverordening inzake bestrijding anti-personeelsmijnen’ [Memorandum to the Second Chamber of Parliament, ‘Position on the EU Announcement/Draft Regulation regarding the suppression of anti-personnel mines’], 17 January 2001. For instance, no longer development aid to countries that have not ratified the Ottawa Treaty.

⁶⁵ European Union, *Annual Report on Human Rights 2000*, 69.

⁶⁶ S/RES/1261 (1999), point 13, 14 and 15.

⁶⁷ S/RES/1314 (2000), point 9, in combination with Article 39 of the UN Charter.

⁶⁸ *Ibidem*, points 13, 16c and f, and point 17.

visers should be included in peace-keeping operations. Moreover, a list of countries that recruit or use child soldiers shall be made public. Also, enforcement measures against these countries are made possible.⁶⁹

PART II COUNTRY STUDIES

6. ABDUCTED CHILD SOLDIERS

6.1 Sierra Leone

6.1.1 State report

Sierra Leone admits in its initial state report to the Committee on the Rights of the Child that an estimated 2,500 children have been involved in the civil war as combatants, on both sides.⁷⁰ The NGOs, however, think that some 5,000 child combatants serve among government and opposition forces, and a further 5,000 are estimated to have been recruited for labour among armed groups.⁷¹ Armed groups typically rely on forced recruitment through abduction and drug use, and are responsible for particularly cruel and degrading treatment of children in their camps, often including the sexual slavery of girls.

The Royal Sierra Leone Military Forces Act 1961 allows for the voluntary enlistment into the armed forces of all persons under the age of 17.5 if consent has been given by the parents or guardians or, if not, by the district commissioner. There is no official minimum age, only the provision in the Geneva Convention that children under 15 should not be in the army. However, the report states that rebel forces have used children under the age of 15.

In the Committee it was said that the children of Sierra Leone had been unable to enjoy their childhood and that efforts were being made to provide them with new opportunities, from a rights-based perspective.⁷² Members of the Committee asked about the re-integration of children as they had the impression that some families were reluctant to take their children back because of their psychological scars, and that the children themselves were challenging the role of parents. Were they being reintegrated with their families or in child-care institutions?⁷³ Sierra Leone replied that child combatants were taken to special camps for their disarmament, demobilisation and preparation for their return into society. Indeed, they were being reintegrated into society, but this is extremely difficult.

⁶⁹ S/RES/1379 (2001), point 2 and 16.

⁷⁰ Initial Report of States Parties due in 1992: Sierra Leone, 3 June 1996, CRC/C/3/Add.43, no. 25-28.

⁷¹ See <www.child-soldiers.org/report2001/countries/sierra_leone.html>.

⁷² Summary Record of the 393rd meeting: Sierra Leone, 20 January 2000, CRC/C/SR.593, no. 43.

⁷³ *Ibidem*, no. 52 and 53.

The problems with reintegrating former combatants into their families stemmed partly from the fact that these children often resisted the authority of the parents as they had lived under relative freedom or had been supervisors themselves.⁷⁴ Several institutions in Sierra Leone were collecting data on the situation of sexually abused girls and seeking solutions to this problem. Sexual abuse had been a taboo subject for years, usually dealt with at the family level. However, since the invasion and reports of schoolgirls being abducted and gang-raped, people had become more vocal: efforts were made to encourage people to discuss the subject more openly.⁷⁵ With regard to mental problems, Sierra Leone answered that rehabilitation programmes for children traumatised by the war had been set up with the help of UNICEF. Children taken into care were examined to assess the after-effects from which they were suffering. The process was long and difficult and sometimes resisted by the children. The ultimate objective is to reintegrate them into society once their mental problems have been solved. They added that the war had driven many children into drugs. Before the conflict, drug abuse had been very localised and not very widespread. The chairperson of the Committee welcomed the setting up by the State Party of counselling programmes for children exposed to the war.⁷⁶

The Concluding Observations of the Committee note that many children have been forcibly recruited into the armed forces, even children of five years old. They have been forced to commit atrocities against other people, including other children or members of their family. There have been many incidents of sexual exploitation and abuse, especially in the context of the conscription or abduction of children (mostly girls) by armed persons. All children affected by the war are suffering from severe psychological trauma, including child soldiers, and the Committee is concerned that the government cannot provide sufficient psychosocial assistance to them. There is a recent and rapid increase in drug abuse, particularly among former child combatants.⁷⁷

6.1.2 *Amnesty International report*

The Amnesty International report *Sierra Leone: Childhood – A Casualty of Conflict* refers to UNICEF figures on the number of children involved in Sierra Leone's nine-year internal conflict. More than 5,000 children under the age of 18 have been involved in the war as combatants. Children specifically have been singled out for recruitment by both the armed opposition forces and the forces supporting the government. Most of the children fighting on the side of the rebels have been abducted and forced to fight. Another 5,000 children have been involved in the war although not as combatants: they have been used to carry

⁷⁴ *Ibidem*, no. 56, 61 and 64.

⁷⁵ *Ibidem*, no. 59 and 60.

⁷⁶ Summary Record of the 494th meeting: Sierra Leone, 7 March 2000, CRC/C/SR.594, no. 11, 13 and 14.

⁷⁷ Concluding Observations of the Committee on the Rights of the Child: Sierra Leone, 24 February 2000, CRC/C/15/Add.116, no. 63, 70, 71, 83 and 87.

goods, to collect firewood and to cook. Girls have been forced into sexual slavery.⁷⁸ Child combatants live in constant fear of being beaten and killed. Many children describe being threatened, intimidated and severely beaten. Others recount the killing of friends and companions or describe the killings and mutilations of civilians they had to carry out. If they refused, they risked being beaten or killed.⁷⁹ Amnesty International obtained a lot of information by interviewing former child combatants in June and July 2000 in different interim care centres. The observations are:

Children fighting with the Revolutionary United Front (RUF)

Many child combatants fighting with the RUF were abducted and taken to training camps where they were taught to fight and to handle arms. If they refused or admitted to be scared or exhausted, they were beaten or killed. Many children told how the rebels forced them to take alcohol and drugs (marijuana, amphetamines and cocaine). Some of the children felt brave after taking the drugs or did not feel remorse anymore, which resulted in them killing others easily.⁸⁰ The RUF spokesman openly said: 'When they are five or six, they are far too young to fight. We only use the older boys, from ten or eleven upwards.' The RUF is well known for its abduction and forcible recruitment of children, both boys and girls, for use as soldiers, sexual slaves and forced labour. The RUF commonly abducts children during attacks, going from village to village demanding quota of men and boys, most of whom were forced to join under duress. The RUF admitted that 30% of its forces were under 18. For instance, after the January 1999 Freetown attack, in which an estimated 10% of armed forces were children, more than 4,800 children were reported missing. Of these, about 60% were girls, who are typically forced into sexual slavery. Recent interviews of children staying at transit centres set up in Bo and Kenema as part of the demobilisation programme in 2000, confirmed reports of sexual violence and abuse of children, both boys and girls, by RUF personnel. Three adolescent boys interviewed by a social worker, reported that they had been abducted around the age of 14 and 15, and had been sexually abused by female members of the RUF. They also reported being sexually abused by male RUF members, apparently as a form of punishment. Other forms of abuse included being forced to aid and abet the rape of girls. Rape of girls by RUF members was frequently cited.⁸¹

Children fighting with the Armed Forces Revolutionary Council (AFRC)

The rebels of the AFRC used more or less the same methods as the RUF rebels. They abducted children and sent them to training camps where they were taught to dismantle weapons, use rocket-propelled grenades, as well as how to attack and use arms. They were told not to kill civilians and not to loot, but this happen-

⁷⁸ Amnesty International, *Sierra Leone: Childhood – A Casualty of Conflict*, 31 August 2000, AI Index: AFR 51/69/00.

⁷⁹ *Ibidem*, 4.

⁸⁰ *Ibidem*, 4-6.

⁸¹ See <www.child-soldiers.org/report2001/countries/sierra_leone.html>. SLA/CDF is the alliance of the Civil Defence Forces (CDF) and the Sierra Leone Army (SLA).

ed anyway. They were punished if they disobeyed orders. There was a rule in the AFRC that said: 'If you refuse to kill, you will be killed yourself.' The children were drugged as well.⁸² Girls were taken not only as combatants, but also as the 'wives' of the combatants who captured them and forced them into sexual relations.⁸³

Children fighting with the Civil Defence Forces (CDF)

The children who fought with the CDF, a rebel group in support of the government, were often recruited with the consent of their parents or, if not, their parents did not prevent them from being recruited. These child soldiers often continued to live at home, with their families. They too were trained to fight and they too were beaten if they disobeyed orders, unless their parents paid a fine. The report does not say whether the children were actively involved in the fighting, but it does include stories of children who witnessed executions of captured rebels.⁸⁴ In May 2000, a UN assessment mission observed children between 7 and 14 years old comprising 25 to 30% of the Sierra Leone armed forces (SLA/CDF) in the town of Masiaka.⁸⁵

Since the Peace Agreement of July 1999 until April 2000, some 1,700 former child combatants were liberated and entered the disarmament, demobilisation and reintegration programme. According to estimates by UNICEF, about 800 of them had been reunited with their families or placed in foster care, or had run away, leaving 900 in interim care centres. However, thousands of child soldiers remained in the hands of rebel forces.⁸⁶ This is also stated in another Amnesty report.⁸⁷ The UN, in September 1999, estimated that 5,400 children were awaiting disarmament and demobilisation, and still engaged in combat. Although the CDF demobilised some children, it admitted in November 1999 that about 200 children, aged between 15 and 18, were still in its forces. The children in the disarmament, demobilisation and re-integration programme stayed in camps for five weeks if they had fought with the RUF, the AFRC or the former Sierra Leone Army, or for a shorter period if they had fought with the CDF, as these children had usually not been separated from their families.⁸⁸ Indeed, in accordance with our hypothesis, the children who had not been separated from their parents are in better condition, and thus it will be easier to reintegrate them.

⁸² Amnesty International report, 7-8.

⁸³ A child who was abducted at the age of 15 said: 'I did not want to go; I was forced to go. They killed a lot of women who refused to go with them (...); when they capture young girls, you belong to the soldier who captured you.' (See <www.child-soldiers.org/report2001/countries/sierra_leone.html>.)

⁸⁴ Amnesty International report, 9.

⁸⁵ See <www.child-soldiers.org/report2001/countries/sierra_leone.html>.

⁸⁶ Amnesty International report, 9 and 14.

⁸⁷ Amnesty International Report 2000, AI Index: POL 10/001/00.

⁸⁸ Amnesty International, *Sierra Leone: Childhood – A Casualty of Conflict*, 31 August 2000, 9-10, AI Index: AFR 51/69/00.

At the interim care centres, the former child combatants were provided with medical and psychological care, as both their physical and mental health was affected. During the first few weeks of the programme, the children were often aggressive and violent and showed other forms of behavioural problems. They suffered from nightmares, alienation, outbursts of anger and an inability to interact socially. In a report from Médecins Sans Frontières (Doctors Without Borders) of January 2000, the organisation said that:⁸⁹

‘(...) the psychological impact of actually witnessing horrific events imposes a serious psychological stress. Deliberately or not, witnessing at least once events such as torture, execution, amputation, people being burnt in their houses and public rape often results in traumatic stress or even post-traumatic stress disorder.’

After having observed, and talked to, the children in Makeni (1997) as well as the caretakers in the centres in Freetown (2000), Paul Sterk, a specialist on psychosocial and behavioural problems,⁹⁰ formulated an opinion on what to expect when those children are released from the barracks, and sent to interim care centres and from there, if the family is traced, to their family. He wrote:⁹¹

‘I expect that some of the children are not capable to go back to a normal family life without a special training. Most of the children have been emotionally deprived for a long period. They have to learn to trust adult people again. They must learn to accept and recognise affection and love. I expect some children to start to misbehave when they return to their family, just to find out if they are really welcome. More than a few children will have borderline behaviour and will need special attention and training, many parents will not be able to handle those children. The peer group in the barracks has been functioning as a selfhelpgroup for those children. As long as they are in this group, they will feel safe and (in a way) happy. The moment we take them out of this group, some will decompensate or will find out that their coping skills (which seemed very effective in their peer group) are not effective anymore. In the barracks every child is special in what they have suffered or have done. At home they are very special and draw special attention. Most of the coping behaviour of the children in the barracks has an objective to cover-up all the terrible things. This is easy if everybody does the same, but it will not be effective behaviour in their home-village. Because there is no effective psychotherapeutic referral system in the country, “covering-up” is indeed something the children have to learn, not only in the barracks, but also in other situations. An interim care programme must provide a screening facility and a team that will screen the children on psychological and psychiatric problems (this team must have different inputs from: a social worker, a psychologist and a nurse with psychiatric knowledge). I expect that if some children go home too early, they will become drop-outs, re-enlist in the army or RUF or form street-gangs.’

⁸⁹ *Ibidem*, 10-11, and: Médecins Sans Frontières (Holland), *Assessing Trauma in Sierra Leone*, 11 January 2000.

⁹⁰ See <www.euronet.nl/~p_sterk>.

⁹¹ *Ibidem*. He adds a lot of recommendations. This was based on previous studies, in which he made an assessment on psychotrauma-related problems among child combatants in Sierra Leone. See <www.euronet.nl/~p_sterk>, his reports on interim-care centres, Sierra Leone 1997, Sierra Leone 2000.

After they had been in the programme, efforts were made to reunite the children with their families, often with success. However, some children, especially the younger ones, did not remember their real names and had lost all knowledge of what a family is, as the rebels presented themselves as their family. Others had problems returning to their families and communities if the rebels (including these children) had committed atrocities against them. They were afraid their families or community members would harm them, and that is why they often gave false addresses out of fear of being sent back. Just as in Mozambique, it was made impossible for them to go back to their communities. Efforts have been made to promote reconciliation. Girls faced specific problems as they were often forced to become the sexual partner of adult combatants. Many were pregnant or had children by these men. They did not feel free to go to the disarmament and demobilisation camps and leave the men that abducted them.⁹² The large number of dependants of ex-combatants draws attention to the need to take special protection measures for these women and children. These 'wives' of combatants were in fact abducted, and would most likely not feel free to express their wish to return to their families if not interviewed separately from their 'husbands.'

In May 2000 hostilities renewed. Again, children were being recruited as child soldiers. UNAMSIL (the UN Mission in Sierra Leone) human rights officers observed that some 25% of the combatants were under 18, some even between 7 and 14 years old, and almost all of them were armed. The Secretary General of the UN, in his 5th Report on the UN Mission in Sierra Leone, indicated that both the rebels (now only the RUF) and the armed forces in favour of the government used child soldiers, even in the frontlines.⁹³ In an earlier report he had indicated that there is concern about the fate of those combatants, but especially about those children who voluntarily joined the demobilisation and reintegration programme and who would now (since the renewal of hostilities) be vulnerable to re-recruitment and possible punishment for desertion by the RUF.⁹⁴ The RUF forcibly recruited children who had previously been demobilised and stayed in interim care centres. Also, they went to villages where they demanded certain quota of men and boys and forced families and village leaders to hand children over to them. Many men and boys fled over the border with Guinea in May 2000 because of this.⁹⁵ The government-allied forces also still recruited child combatants, although the government has issued a statement stipulating that 18 years is the minimum age for bearing arms in Sierra Leone and that any person violating this rule and allowing for children to bear arms will be faced with severe disciplinary measures. However, the CDF is still using child soldiers, as has been observed. The problem with the CDF is that it is difficult to tell whether children

⁹² Amnesty International, *Sierra Leone: Childhood – A Casualty of Conflict*, 12-13.

⁹³ S/2000/751, 31 July 2000. See also Fourth Report of the Secretary General on the United Nations Mission in Sierra Leone, 19 May 2000, S/2000/455, no. 45 and 49.

⁹⁴ Fourth Report of the Secretary General on the United Nations Mission in Sierra Leone, 19 May 2000, S/2000/455, no. 27.

⁹⁵ Amnesty International, *Sierra Leone: Childhood – A Casualty of Conflict*, 14-15.

are recruited as child combatants or are initiated into the societies of traditional hunters. Also, it appeared that, when, on 12 June 2000, 135 child soldiers were demobilised, not all of them were actually child soldiers. Instead, they had not been involved in the fighting but hoped to profit from the facilities offered to former child combatants, such as food and education as well as the opportunity to get away to a safer area. Both the children and their parents were attracted to this idea.⁹⁶

6.1.3 *Special tribunal*

On 14 August 2000, the Security Council of the UN asked the Secretary General of the UN in resolution 1315 to create a 'Special Court' to prosecute persons who bear the greatest responsibility for the commission of crimes against humanity,⁹⁷ war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law,⁹⁸ committed within the territory of Sierra Leone.⁹⁹ In contrast to the Yugoslavia and Rwanda tribunals which are located outside these countries in respectively The Netherlands and Tanzania, this court is located in the capital Freetown of Sierra Leone, and will include national judges as well. The Security Council agreed that all recruitment and use of child soldiers be considered a war crime under the Special Court in accordance with the Statute of the International Criminal Court. However, the implementation of the decision to establish this Court was hampered due to a lack of financial resources. The Secretary General of the UN therefore asked member-states to contribute because the Security Council refused to oblige to a compulsory contribution.¹⁰⁰ For instance The Netherlands wants to contribute with funds from development aid, and tries to persuade the EU to contribute as well.¹⁰¹ The so-called other serious violations of international humanitarian law encompass 'abduction and forced recruitment of children under the age of fifteen into armed forces or groups for the purpose of using them to participate actively in hostilities.'¹⁰² A difficult moral dilemma in the opinion of the Secretary Gen-

⁹⁶ *Ibidem*, 17.

⁹⁷ Enumeration of list of crimes included in the Statutes of the International Tribunals for the Former Yugoslavia and for Rwanda.

⁹⁸ Some children were held as rebel suspects and detained, but the government has released them. According to Sierra Leonean law, children above 10 can be held criminally responsible, and although imprisonment is a punishment of last resort, it is a legal punishment according to that law, Initial Report of States Parties due in 1992: Sierra Leone, 3 June 1996, CRC/C/3/Add.43, no. 33, 34 and 88.

⁹⁹ S/RES/1315 (2000), S/2000/915 of 4 October 2000, Report of the Secretary General on the Establishment of a Special Court for Sierra Leone, 1.

¹⁰⁰ *NRC Handelsblad*, 4 July 2001.

¹⁰¹ Response to questions by Members of Parliament Van Oven and Koenders on a tribunal in Sierra Leone, 2 May 2001, *Handelingen Tweede Kamer 2000-2001*, nr. 1124.

¹⁰² S/2000/915, 4 October 2000, 4; and Article 4(c) of the Statute of the Special Court for Sierra Leone, S/2000/915, 22 in reference to Article 4(3)(c) Additional Protocol II

eral was the possible prosecution of children for crimes against humanity and war crimes. He continues:¹⁰³

‘More than in any other conflict where children have been used as combatants, in Sierra Leone child combatants were initially abducted, forcibly recruited, sexually abused, reduced to slavery of all kinds and trained, often under the influence of drugs, to kill, maim and burn. Though feared by many for their brutality, most, if not all, of these children have been subjected to a process of psychological and physical abuse and duress which has transformed them from victims into perpetrators.’

The government of Sierra Leone and representatives of the civil society wished to see a process of judicial accountability for child combatants. Amnesty International also supports the prosecution of former child soldiers in certain cases: if the child was in control of his/her actions (so not drugged/coerced), or if it became a child soldier voluntarily and committed crimes voluntarily. Some have served as commanders of units that committed crimes. Amnesty International, when saying that it supports prosecution in these cases, recognises the need of victims for justice and accountability. However, it does want these former child soldiers to be tried according to international standards for fair trial of children, that place the best interest of the child as a priority and recognise the special needs and vulnerability of children. It feels that it is unlikely that such prosecutions will stigmatise all former child combatants, as only the most serious cases will be tried and they will be very few. Also, the above mentioned international standards require that the children’s privacy be respected during trial. Because of Amnesty’s recognition of the needs of the victims, it is not in favour of using non-judicial measures, such as a national truth and reconciliation commission as Amnesty feels these are not a substitute for justice. Amnesty does not take a position on whether children should be tried before the Special Court only, or if they could be brought before a domestic court too. However, they do insist on the use of the international standards for fair trial of children, and they think the domestic courts do not meet these standards.¹⁰⁴

The international non-governmental organisations responsible for childcare and rehabilitation programmes were unanimous in their objection to any kind of judicial accountability for children below 18 years for fear that the entire rehabilitation programme would be placed at risk.¹⁰⁵ Human rights lawyers have advocated that the 5,400 child soldiers of Sierra Leone – in particular from the Revolutionary United Front – should not be put to trial because they were forced to take arms and to commit cruelties.¹⁰⁶ The Secretary General of the United Nations, on the other hand, was of the opinion that they should be prosecuted by the

of 1977, CRC Article 38(3) and the Statute of the ICC.

¹⁰³ *Ibidem*, 7.

¹⁰⁴ Amnesty International, Verbal Responses for Press Officers towards questions on the Special Court, 12 October 2000, 2-5, AI Index: AFR 51/79/00.

¹⁰⁵ S/2000/915, 4 October 2000, 7.

¹⁰⁶ *NRC Handelsblad*, 17 January 2001.

international tribunal because of the committed atrocities but that they have the right to protection, assistance and rehabilitation as well. The fifteen members of the Security Council preferred to bring them to a truth and conciliation commission in stead of criminal prosecution.¹⁰⁷ The comprise is to be found in Article 15(5).¹⁰⁸

In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child rehabilitation programme is not placed at risk, and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Another guarantee is that the judges should have some experience in juvenile justice and the staff of the office of the prosecutor should be experienced in gender-related and juvenile justice as well. These are very special child-related provisions, which was not the case in Rwanda.¹⁰⁹

6.2 Sudan

6.2.1 Introduction

A first general observation of the Committee on the Rights of the Child was that the different groups involved in the conflict in the south of Sudan have often disregarded the best interests of the child.¹¹⁰ In Southern Sudan abductions of women and children have occurred. Since May 1999, a Committee for the Eradication of Abduction of Women and Children (CEAWC) is established by the Sudanese government. The Committee co-operates with UNICEF and Save the Children Fund UK in order to trace these children and to reunite them with their families. The European Union and The Netherlands support these actions, which have resulted in 400 reunifications of the 1,200 documented cases,¹¹¹ financially in an indirect way by means of UNICEF and SCF UK.

¹⁰⁷ *NRC Handelsblad*, 27 December 2000. S/RES/1315(2000), 14 August 2000. The main accused – like Foday Sankoh who was the leader of the RUF – will be put on trial but the minor ones are intended to be presented to the truth and reconciliation commission, *NRC Handelsblad*, 4 July 2001.

¹⁰⁸ S/2000/915, 4 October 2000, 8 and 26.

¹⁰⁹ During the genocide in Rwanda, the children took active part in the atrocities. Some were not older than ten years but nevertheless some children had a leadership role, and that is why there is nowadays a strong pressure in society to bring them to trial. A specialised court has been established to deal with these minors of whom 4,400 are still imprisoned in 2000. Often the parents do not live anymore and about 60,000 families merely exist as children, in total 300,000, mostly led by girls who are in need of some protection. Again child soldiers are recruited, compulsorily this time, for the war in the Democratic Republic of Congo. Rwanda did not report to the CRC for the last five years. (BZ, *Ambtsbericht, Rwanda*, 16 March 2001, 22 and 23.)

¹¹⁰ Sudan IRCO, Add. 10, para. 8 in UNICEF *Handbook* 1998, 521.

¹¹¹ Questions by Members of Parliament Van Middelkoop and Van Dijke on the trade in slaves in the Sudan, 1 March 2001. Reply of 12 March 2001.

6.2.2 UNICEF's relief force

In a spectacular action of five days more than 2,600 child soldiers were released from Southern Sudan in February 2001. This airlift, carried out with the invaluable support of the World Food Programme, involved ferrying 100 children at a time on a pair of Buffalo aircraft operated by WFP as part of Operation Lifeline Sudan. The children were taken to reception centres in the Lakes area, behind the front lines, where local and international NGOs greeted them with medical check-ups and other basic care. These children, aged eight to eighteen, participated in the Sudan People's Liberation Army (SPLA). It was last year in October that the SPLA leader promised the Director of UNICEF to release these children.¹¹² Most of these children have lost their parents. They were recruited and got – according to the SPLA – the necessary protection in their army base. After their release they will stay in a reception camp during four months. Over the next four to eight months, UNICEF and its partners – including local authorities in southern Sudan – will be engaged in a thorough family-tracing process with each child. This process is aimed at returning all the children to their families and their communities of origin.¹¹³

This process will take time. For some children, the rehabilitation period will be quick and locating family and community will be straightforward. For others, especially those who have lived through combat and other traumatic experiences, it will be a longer process. Some of these children are orphans. In their cases attempts will be made to reunite them with extended family or their larger communities of origin. While the tracing process unfolds, the children will be given schooling, life skills training and psychosocial care. A majority will also be trained in a vocation that they can take back to their communities with them.

The UNICEF director called this situation a true milestone, a marker of the growing global recognition that children should never be made instruments of adults' conflicts and violence. Taken together with the 163 child recruits recently released into UNICEF's care in Uganda and the ongoing success of demobilisation efforts in Sierra Leone and elsewhere,¹¹⁴ we are seeing some real progress. In particular for boys it will be difficult to find a way out, so that they do not return to the army. For girls this seems to be easier in Sudan because they can have housing from relatives in the expectation that when they marry they obtain the cattle from the family-in-laws.¹¹⁵ UNICEF said that the children evacuated in the

¹¹² *De Volkskrant*, 28 February 2001. In 1996, UNICEF did the same during 'Operation Lifeline Sudan' (C. VAN DEN EERTWEGH, 23).

¹¹³ Remarks by UNICEF's Executive Director, CAROL BELLAMY, 'Announcing the UNICEF airlift of child soldiers from Sudan combat zones,' Geneva, 27 February 2001, <www.unicef.org/exspeeches/01esp08>.

¹¹⁴ UNICEF was also active in Liberia in the demobilising of child soldiers in this region, followed by education projects in the reception camps, which included psychological help for coping with past experiences (C. VAN DEN EERTWEGH, 23).

¹¹⁵ *NRC Handelsblad*, 28 February 2001.

airlift fall into two general categories: those who received military training but never saw combat, and those who lived through combat and other traumatic experiences. According to UNICEF, the former group could be expected to be reunified with family and communities in three to four months. The latter group will require more time, perhaps as long as nine months, and will be given more formal vocational training. UNICEF said that children for whom no family members can be traced will remain under the long-term care of local authorities and non-governmental organisations – supported by UNICEF – as close as possible to their communities of origin.¹¹⁶

For UNICEF it is indeed evident that the traumatic events are more severe for child soldiers who were engaged in combat activities than for those child soldiers who participated in an indirect way in the hostilities. That is why the psychological recovery of the child soldiers who were directly active in combat activities takes at least twice the time compared to the other child victims of war.

6.3 Uganda

A very well known story is that of the 10,000 abducted children from Northern Uganda who were forced to slavery-like practices in the so-called Lord's Resistance Army. They were sent to camps in Sudan and forced to commit atrocities and to become sexual slaves. Children who attempted to escape, who resisted, who could not keep up or who became ill, were killed.¹¹⁷ The summary of the Human Rights Watch is as follows:¹¹⁸

'In northern Uganda, thousands of children are victims of a vicious cycle of violence, caught between a brutal rebel group and the army of the Ugandan government. The rebel Lord's Resistance Army (LRA) is ostensibly dedicated to overthrowing the government of Uganda, but in practice the rebels appear to devote most of their time to attacks on the civilian population: they raid villages, loot stores and homes, burn houses and schools, and rape, mutilate and slaughter civilians unlucky enough to be in their path.

When the rebels move on, they leave behind the bodies of the dead. But after each raid, the rebels take away some of those who remain living. In particular, they take young children, often dragging them away from the dead bodies of their parents and siblings.

The rebels prefer children of fourteen to sixteen, but at times they abduct children as young as eight or nine, boys and girls alike. They tie the children to one another, and force them to carry heavy loads of looted goods as they march them off into the bush. Children who protest or resist are killed. Children who cannot keep up or become tired or ill are

¹¹⁶ Press release UNICEF: 'Airlifts over 2,500 demobilised child soldiers out of Sudan combat zone,' <www.unicef.org/newsline/01pr22.htm>.

¹¹⁷ See <www.child-soldiers.org/report2001/PRE-OVERVIEW.html>.

¹¹⁸ See <www.hrw.org/hrw/reports97/uganda> and H. STEINER & PH. ALSTON, *International Human Rights in Context*, Oxford University Press, Oxford, 2000, 531-533. See also: E. DE TEMMERMAN, *De meisjes van Aboke: Kindsoldaten in Noord-Oeganda*, Uitgeverij Globe, Gent, & De Kern, Baarn, 2000.

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killed. Children who attempt to escape are killed. Their deaths are not quick – a child killed by a single rebel bullet is a rarity. If one child attempts to escape, the rebels force the other abducted children to kill the would-be escapee, usually with clubs or machetes. Any child who refuses to participate in the killing may also be beaten or killed.

The rebels generally bring their captives across the border to a Lord's Resistance Army camp in Sudan. In the bush in Sudan, a shortage of food and water reduces many children to eating leaves for survival; deaths from dysentery, hunger and thirst are frequent. Living conditions in the Lord's Resistance Army camp are slightly better, because the Sudanese government supplies the Lord's Resistance Army with both food and arms in exchange for assistance in fighting the rebel Sudanese People's Liberation Army (SPLA).

Those children who reach the Lord's Resistance Army camp are forced to serve the rebels. Smaller children may be made to run errands, fetch water or cultivate the land; girls as young as twelve are given to rebel commanders as "wives." All of the children are trained as soldiers, taught to use guns and to march.

The Lord's Resistance Army enforces discipline through a combination of violence and threats. Children who do not perform their assigned tasks to the rebels' satisfaction are beaten. Children who flout rebel orders are beaten or killed, often by other abducted children. Failed escape attempts continue to be punished by death, and successful escape attempts lead to retaliation: if one sibling escapes, the rebels often kill the other sibling, or return to the child's home village and slaughter any surviving relatives. In effect, children abducted by the Lord's Resistance Army become slaves: their labour, their bodies and their lives are all at the disposal of their rebel captors.

Once they have been trained (and sometimes before being trained), the children are forced to fight, both in Uganda and in Sudan. In Sudan, the children are forced to help raid villages for food, and fight against the Sudan People's Liberation Army. In Uganda, the children are also made to loot villages, fight against Ugandan government soldiers, and help abduct other children. When the rebels fight against the Ugandan government army, they force the captive children to the front; children who hang back or refuse to fire are beaten or killed by the rebels, while those who run forward may be mown down by government bullets.

The Lord's Resistance Army's use of children as combatants is an extreme example of a troubling worldwide trend toward increased reliance on child soldiers in conflicts of all sorts.

It is hard to know how many children have been abducted by the rebels. Most estimates suggest that three to five thousand children have escaped from captivity during the past two years. UNICEF estimates that an equal number of children remain in captivity, and an unknown number are dead.

The actions of the Lord's Resistance Army violate the most elementary principles of international humanitarian law. In particular, the rebels stand in blatant violation of Common Article 3 of the Geneva Conventions of 1949, which establishes the minimum rules binding on all parties in internal armed conflicts. Common Article 3 states that people taking no active part in an internal armed conflict (including combatants who are wounded, or who have surrendered or been captured) must be treated humanely, and in particular, it forbids the taking of hostages, the use of murder, mutilation, cruel treatment, torture, and humiliating and degrading treatment.

Escape is rarely the end of an abducted child's ordeal, for those children who escape often find that they have nowhere to go. Their villages may have been destroyed by the rebels; their parents may have been killed or may have fled the countryside for the comparative safety of the towns. Even those children with homes to return to may hesitate to do so, fearing rebel reprisals against them or their families, and ostracism by community members who blame the children for complicity in rebel atrocities. There are few safe havens for these children: two non-governmental organisations (NGOs) provide live-in trauma counselling centres for escaped abductees, but the centres cannot possibly take in all of the children.

Even those children not captured by rebels suffer the effects of the conflict. The frequent rebel attacks have destabilised the countryside in northern Uganda, destroying the region's agricultural base and wreaking havoc on education and healthcare. Hundreds of village schools have been burned, and scores of health clinics have been raided by rebels desperate to get their hands on medicines. As a result, northern Uganda today faces an acute humanitarian crisis. The two northern districts of Gulu and Kitgum, the homeland of the Acholi people, have been hardest hit; the violence and instability have displaced more than 200,000 northern Ugandans from their rural homes.

The Ugandan government has established a number of "protected camps" near Ugandan army installations, in order to decrease the vulnerability of civilians living in isolated rural areas. Tens of thousands of displaced people have fled the countryside and set up temporary homes in the camps, but crowded conditions and lack of food and sanitation facilities have rendered the population vulnerable to death from malnutrition and disease. Thousands die every month, and despite the nearby military presence, the camps remain targets for rebel attacks.

There is no end in sight. The Lord's Resistance Army's rebellion is deeply rooted in Uganda's troubled history of ethnic conflict, and the war has now dragged on for more than ten years. The last two years have seen a great increase in the scale of the fighting, as a result of Sudanese government support for the Lord's Resistance Army. The Ugandan government army has been unable to combat the rebels effectively, and the prospects for a negotiated peace are bleak.

Children who have escaped from the rebels wake screaming in the night from dreams of pain and death: their dreams are of deaths feared, deaths witnessed, and, all too often, deaths participated in. Perhaps some day, if peace comes, the scars of death will begin to fade. But they will never fully heal.'

Officials of the UN made contact, in February 2001, with 164 child soldiers in a camp for military training in Uganda. The children, between the age of 9 and 17, originated from the neighbouring state: the Democratic Republic of Congo.¹¹⁹ The total group consisted of 694 persons from the Congo to which UNICEF got access to inspect these child soldiers who will receive psychological aid and education before they are returned to their country of origin. In February 2001, representatives from UNICEF, the United Nations High Commissioner for Refugees, the United Nations Development Programme, Save the Children Alliance and select non-governmental organisations were given full and unlimited access

¹¹⁹ *NRC Handelsblad*, 21 February 2001.

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to the training camp. The Government of Uganda intends to hand over the children to UNICEF.

UNICEF will insure the protection of the children until they can be safely reunited with their families and has already established a task force to cover all aspects of the release and reunification, including assessment, tracing and resettlement. UNICEF thanks the donor community and the European Union, which played key roles in supporting the negotiations with the Government of Uganda.¹²⁰

Since 11 September 2001 the LRA has been listed as a terrorist organisation by the USA. In 2002 the Sudan and Uganda promised to no longer support the rebels in each other's country. The Sudan did not protest against the Ugandan military intervention in the Sudan on 27 February 2002, when the LRA camps in the South of the Sudan were bombarded by the airforce of Uganda. Nonetheless, the LRA continues to abduct children for the army. On 23 February 2002 they kidnapped 80 civilians, mainly children.¹²¹

7. DE-MINING CHILD SOLDIERS

Sometimes children are used as mine detectors. The government of Chad for instance, has been forcibly recruiting children – mainly under thirteen – for use as mine detectors in the front line.¹²² The most well known example was during the Iraq-Iran war in the eighties. In the early 1980s, thousands of Iranian children, many straight from school, were sent to the frontline with popular militias. They were often given a symbolic key to the paradise promised to them as martyrs. More recently, during the border war with Eritrea in 1999-2000, Ethiopian government forces reportedly press-ganged thousands of secondary school students from marketplaces and villages, some of whom were used in human wave attacks across minefields. In Myanmar, civilians, including children as young as ten, are forced to porter (carrying food and ammunition) for the military and are even used as human shields and minesweepers: the International Labour Organisation reported in 1999, that children had been forced to sweep roads with tree branches or brooms to detect or to detonate mines.¹²³

7.1 Iraq

In its initial report to the Committee on the Rights of the Child the Iraqi government stated that the Iraqi armed forces have taken (precautionary) measures to ensure that children are not exposed to any harm during armed conflicts. For

¹²⁰ Press release 'UNICEF applauds agreement with Uganda on child soldiers,' <www.unicef.org/newsline/01pr12>.

¹²¹ *NRC Handelsblad* 28 February 2002.

¹²² Save the Children Sweden's newsletter on child soldiers: *Children of War*, 2000, 8 (<www.rb.se>).

¹²³ See <www.child-soldiers.org/report2001/PRE-OVERVIEW.html>.

instance, they evacuated the inhabitants of the villages that were in the scene of armed clashes during the war with Iran of 1980-1988 and provided them with all facilities needed for a normal life.¹²⁴ No reference was made to child soldiers during the consideration of this report.¹²⁵ Iraq explicitly told the Committee that during the war with Iran, Iranian soldiers of less than 15 years old were taken as prisoners, but that all Iraqi soldiers were at least 18 years old.¹²⁶

Although some attention was given to mine-clearance operations, the use of children to detect them was not mentioned.¹²⁷ The Iraqi Abdulridha answered the Committee that voluntary enlistment into the armed forces was indeed possible from the age of 14, with volunteers under the age of 18 requiring paternal consent. It was not possible to join the army before the age of 18, but the difference between volunteering into the army and joining the army was not explained.¹²⁸ In its Concluding Observations the Committee expressed merely its deep concern with the early minimum age for voluntary enlistment into the armed forces.¹²⁹ The Coalition to Stop the Use of Child Soldiers reports that:¹³⁰

‘(...) in Iraq, thousands of school children aged 10 to 15 participate in the Ashbal Saddam (Saddam Lion Cubs) youth movement formed after the 1991 Gulf War. Training reportedly includes small-arms use, hand-to-hand combat and infantry tactics.’

7.2 Iran

In Iranian Law a child is every person that has not yet attained maturity.¹³¹ The age of maturity was not defined in its Initial Report to the Committee on the Rights of the Child, but during the meeting it was said that the age of maturity for girls was 8 years and nine months, and for boys at 14 years and seven months.¹³² On the other hand it was written that the minimum employment age or the purpose of receiving military training is 16.¹³³

¹²⁴ Initial Reports of States Parties due in 1996: Iraq, 9 December 1996, CRC/C/41/Add.3, no. 148 and 149.

¹²⁵ Summary Record of the 482nd meeting: Iraq, 13 April 1999, CRC/C/SR.482.

¹²⁶ Summary Record of the 483rd meeting: Iraq, 30 September 1998, CRC/C/SR.483, no. 37.

¹²⁷ Summary Record of the 484th meeting: Iraq, 27 November 1998, CRC/C/SR.484, no. 5 and 19.

¹²⁸ Summary Record of the 483rd meeting: Iraq, 30 September 1999, CRC/C/SR.483, no. 37.

¹²⁹ Concluding Observations of the Committee on the Rights of the Child: Iraq, 26 October 1998, CRC/C/15/Add.94, no. 15.

¹³⁰ See <www.child-soldiers.org/report2001/PRE-OVERVIEW.html>.

¹³¹ Initial Report of States Parties due in 1996: Iran (Islamic republic of), 23 July 1998, CRC/C/41/Add.5, no. 2.

¹³² Summary record of the 617th meeting: Iran (Islamic republic of), 14 July 2000, CRC/C/SR.617, no. 44.

¹³³ Initial Report of States Parties due in 1996: Iran (Islamic republic of), 23 July 1998, CRC/C/41/Add.5, no. 172.

No mention was made of child soldiers in general or of children who are used to detect landmines, nor did the Committee comment on the possible involvement of children in war¹³⁴ as it did in the case of Myanmar.¹³⁵ It is interesting to note that what we missed in the Concluding Observations from the Committee was expressed in a meeting of Arab countries in Amman in 2001. At this conference, eighteen Middle Eastern states and numerous human rights groups and non-governmental organisations called on regional governments to outlaw the use of children in combat.¹³⁶ In a declaration issued at the end of this conference in Amman on child soldiers, some 110 delegates urged all armed forces and rebel groups to ‘end the recruitment and use of children under 18, including girls.’ Delegates singled out the Palestinian Authority, Algeria, Sudan and Iraq among other countries, and said.¹³⁷

‘We are all responsible for guaranteeing the security and the lives of children, ensuring that they do not participate in the cruel wars that belong to the grown-up world. They should be left on school benches.’

Adherence to the Optional Protocol on children’s rights passed by the UN General Assembly in May 2000 was urged.

8. CHILD SOLDIERS IN THE LIBERATION STRUGGLE

8.1 Israel and the Palestinian Territories

8.1.1 Introduction

During the first *Intifada* from December 1987 until September 1995, the Israeli army killed 260 Palestinian children.¹³⁸ In an extensive report the role of child soldiers and the impact of that role on them and the social structure in the Palestinian territories was described. We will now refer to that report.¹³⁹ In terms of

¹³⁴ Concluding Observations of the Committee on the Right of the Child: Iran (Islamic republic of), 28 June 2000, CRC/C/15/Add.123.

¹³⁵ With regard to Myanmar the Committee made public its ‘grave concern of the numerous reported cases of forced and underage recruitment of child-soldiers’ and it ‘strongly recommends that the army of the State Party should fully refrain from recruiting underaged children, in the light of existing international human rights and humanitarian standards. Forced recruitment of children should also be in all cases abolished, as well as their involvement in forced labour.’ (Myanmar IRCO, Add. 69, paras. 22 and 42, in UNICEF *Handbook* 1998, 518.)

¹³⁶ *Jerusalem Post*, Israel line, 11 April 2001 (<www.mfa.gov.il>).

¹³⁷ Amman Conference on the use of child soldiers, 8-10 April 2001 (<www.child-soldiers.org>).

¹³⁸ PH. E. VEERMAN & B. GROSS, ‘Implementation of the United Nations Convention on the Rights of the Child in Israel, the West Bank and Gaza,’ *The International Journal of Children’s Rights*, 1995, 295-332, at 325, based on data from B’Tselem, the Israeli centre for human rights in the occupied territories.

¹³⁹ S. GUNDLE & R. LEVY, *Palestinian Children’s Active Involvement in the Intifada*; A

international humanitarian law you may consider the Palestinian children as non-combatants in the Israeli-Palestinian conflict. They are primarily civilians. Because of their direct participation in the military confrontations, they will be categorised as child soldiers in this chapter. Children have been involved in the *Intifada* from the very first moment. It is estimated that up to 73% of the Palestinian children participated in the confrontations against the military forces.¹⁴⁰ These children were not formally recruited. They participated on a voluntary basis, and were mostly not integrated into the armed forces. This is due to the nature of the conflict, which still involves a whole population rising against the Israeli occupation. It can be said that voluntary participation amounts to recruitment, and that undoubtedly children below 18 years of age are actively involved in an armed conflict, and therefore the Article 38 CRC applies.¹⁴¹

The children taking part in the confrontations were assigned tasks according to their age. The youngest children, between seven and ten, were assigned tasks such as the burning of tyres in the middle of the road. Children between eleven and fourteen years old had to place large stones on the road to create road blocks or to slow down the traffic, and use home made slingshots. The fifteen to nineteen year olds mainly threw stones at passing cars. They were often masked with *kufiyahs* (traditional head-cloth). Those that are over nineteen had key positions, leading the entire team. They decided on the moment of a counter charge, which was carried out with loud screams (including the message as to whether the Israeli army used rubber bullets or real bullets) and a shower of stones. The order in the provocation of the Israeli army was that the youngsters usually went in front, facing the fire, and they did not hesitate to do so. They blocked the army's central route.¹⁴²

Although the *Intifada* is not considered to be a traditional armed conflict, the confrontations between Palestinian children and the Israeli military sometimes resembled real battles, in which the children's protests took organised and violent forms.¹⁴³ Many Palestinian children were killed or injured. In the first two years of the *Intifada* alone (1987-1989), 21% of the people who had died were children, and their average age was ten. Gunfire was the prevalent cause of death among children who participated in that period, and most of them had not been involved in stone-throwing demonstrations. One third of the children were not

Report for the Quaker United Nations Office, Defence for Children International Israel, 1995, 93.

¹⁴⁰ *Ibidem*, 3-4.

¹⁴¹ *Ibidem*, 5-6; for the second *Intifada*, see 'Children at risk in Israel/Palestine,' *Children of War*, 2000, 1-3.

¹⁴² D. PERETZ, *Intifada, the Palestinian Uprising*, Westview Press, Boulder/San Francisco/London, 1990, 83-87 (based on D. KUTTAB, 'A profile of the stonethrowers,' *Journal of Palestine Studies*, 1988).

¹⁴³ S. GUNDLE & R. LEVY, *Palestinian Children's Active Involvement in the Intifada; A Report for the Quaker United Nations Office*, Defence for Children International Israel, 1995, 6.

near any confrontation, and another two-fifth, although present at a confrontation, were not involved in actual stone throwing when shot.¹⁴⁴ Many children have been detained in connection with the *Intifada*, and their human rights have been violated frequently.¹⁴⁵

There are four primary factors that led to the involvement of Palestinian children in the *Intifada*. First of all, they were pressed by community and family values to participate. Palestinians who have died in the *Intifada* are honoured as martyrs in the whole Arab world. Children who are arrested or detained increase in status as well. Although parents were generally stimulating their children to participate, and were proud of their involvement, they were also afraid that something might happen to them. This led to ambivalent signals towards the children. Secondly, the children were motivated by peer pressure. Social recognition by peers was in direct relation to the extent of the child's involvement. Thirdly, they were motivated by feelings of revenge, for instance for the killing of fellow villagers. It appears that the more traumatic experiences a child has, the more likely it is he or she will become involved in the *Intifada*. Fourthly, the children were driven by feelings of helplessness and vulnerability. Such feelings may stimulate them to join an armed group in order to regain control over their lives. Nationalistic feelings have a very important influence on the development of children in refugee camps. Therefore, they may see the recovery of their homelands as a mission, a purpose in life that might relief them from their feeling of hopelessness.¹⁴⁶

A result of the children's involvement in the *Intifada*, was a shift in family structures. Like the abducted children in Sierra Leone, the children in the occupied territories questioned the authority of their parents. The inability of many parents to protect their homes further weakened their authority, as children did not feel safe anymore at home. The peer group became central to the children's development and self-image. Peer pressure to join in confrontations and show one's courage and commitment to the community became more important than parental authority. Children were also treated with more respect by their parents.¹⁴⁷ Children who had actively participated tended to perceive themselves in a powerful role, not only because they were involved in confrontations, but also due to the social support and high esteem they received from their environment.¹⁴⁸

It does not seem that the children are unaware of what they are doing. Children have told that their mothers tried to keep them at home, but that they participated anyway. Many had already been beaten or shot once, so they knew what could happen and this reduced their fear. Instead, they felt very committed due to the

¹⁴⁴ *Ibidem*, 22-27.

¹⁴⁵ *Ibidem*, 28-34.

¹⁴⁶ *Ibidem*, 11-13, 51.

¹⁴⁷ *Ibidem*, 49-53.

¹⁴⁸ *Ibidem*, 60.

moral and spiritual support they received from society.¹⁴⁹ But while children may have appeared to be fearless, their fears came out at night through nightmares and bed wetting. They also suffered from stress symptoms such as general nervousness, restlessness and difficulties in concentration. A 1983 study¹⁵⁰ found that 90% of the children constantly feared that something bad would happen to them, or to their parents, and that 77.5% felt unsure of doing the right thing. Some children became aggressive due to the conflict.¹⁵¹ However, some are of the opinion that the war and violence in the Palestinian children's lives also had positive influences. It strengthened their social behaviour and moral development. It may also have enhanced their ability to plan in order to pursue goals, such as the solution of problems or leadership in initiating activities.¹⁵²

The second *Intifada*, which started in September 2000, resembles, with regard to child participation, the first *Intifada* but the use of force by Israeli soldiers is more excessive, resulting in huge losses of life. One third of all the victims are children, and if one realises that 53% of the population in the occupied territories is below 18, it is clear that children are involved in this struggle again.¹⁵³ In March 2002, about one fifth of the Palestinians who have been killed are children (200 out of 1,000). At the same time at least 300 Israelis have been killed, including at least 200 civilians, among whom over 50 children.¹⁵⁴

Moreover, it was reported that thousands of Palestinian children from age ten and older have been receiving military training in camps organised by Al Fatah.¹⁵⁵ Hundreds of Palestinian children, for instance, are currently undergoing training in the use of automatic rifles and other military-style weaponry at five camps in the Palestine controlled Gaza Strip.

As in the first *Intifada*, not all Palestinian adults are in favour of involving children in the conflict. It was mentioned that many families do all they can to keep their children away from confrontations with the Israelis. For instance, many boys are simply locked up after coming home from school. It was Mary Robinson who said, after visiting the area, that indeed Palestinian parents had been deeply hurt at the repeated suggestions that they had pushed their children into the frontline. On the other hand, about 90% of the Palestinian families have had direct negative experiences with the Israeli authorities, thus a kind of children's

¹⁴⁹ *Ibidem*, 52.

¹⁵⁰ R. L. PUNAMAKI, 'Psychological reactions of Palestinian and Israeli children to war and violence,' in: M. KAHNERT, D. PITT & I. TAIPALE (eds.), *Children and War; Proceeding of Symposium at Siunto Baths, Finland*, Peace Union Finland, 1983.

¹⁵¹ S. GUNDLE & R. LEVY, *Palestinian Children's Active Involvement in the Intifada; A Report for the Quaker United Nations Office*, Defence for Children International Israel, 1995, 54-57.

¹⁵² *Ibidem*, 7-8 and 64.

¹⁵³ 'Children at risk in Israel/Palestine,' *Children of War*, 2000, 1-3.

¹⁵⁴ Amnesty International news release, 8 March 2002.

¹⁵⁵ *Ibidem*, 2, and *New York Times*, 2 August 2000.

heroism is also highly appreciated.¹⁵⁶ In an interview with the leader of the Gaza community centre on mental health, the observance was mentioned of the classic symptoms of trauma and stress among the children, such as loss of concentration, aggressiveness, eating and sleeping disturbances, bed wetting etcetera.¹⁵⁷ This results also in a lot of quarrels between children and parents, and parents start hitting their son of eleven years again, for instance. In the view of these children, neither their parents nor the Palestinian authorities can protect them against the violence which stimulates them to continue in the fighting.

8.1.2 Suicide bombing

A special group among the child soldiers consists of those children who, as part of their struggle, commit suicide. These so-called suicide bombings are acts by suicidal terrorists who can be considered as a human bomb launched to kill as many persons as possible, and be killed themselves at the same time. In Sri Lanka young Tamil girls have been systematically recruited and trained as suicide bombers.¹⁵⁸ Palestinian organisations such as the Hezbollah and Hamas made use of these minors in their *Jihad* ('holy struggle') against Israel. An interesting study observed that these children do not resemble ordinary suicidal persons because they have no mental disease, apart from a very small minority who indeed suffer from psychiatric illness.¹⁵⁹ To understand their behaviour you should not (only) study their individual characteristics but analyse them at group level.¹⁶⁰ The suicidal terrorists have been analysed from five different theoretical perspectives: the psychoanalytic, the behavioural, the cognitive, the biological and the socio-cultural. From each perspective, you may get a different view on this phenomenon.¹⁶¹ The recruitment is structured by looking for persons who have once said to be willing to sacrifice their life for an ideal, followed by an intensive private conversation. Then, the point of no return is reached by letting them write farewell letters to their families and record videotapes with the same message. Social psychologists call this act of distributing the message a way to create maximal commitment in accordance with the free act of the person concerned. From that moment on, he (or she¹⁶²) has changed into a 'living martyr' for whom

¹⁵⁶ *Ibidem*, 3. The Liberal International for instance condemned the recruitment and involvement of children in this violence, 50th Congress of the Liberal International in Ottawa, *Israel Nieuwsbrief*, 30 November 2000.

¹⁵⁷ *NRC Handelsblad*, 29 May 2001; interviews with Jamal Ganan and Husam El Nou-nou.

¹⁵⁸ See <www.hrw.org/campaigns/crp/cs-report2001.htm>.

¹⁵⁹ *NRC Handelsblad*, 31 March 2001; A. Apter, University of Tel Aviv, Department of Psychiatry.

¹⁶⁰ *NRC Handelsblad*, 31 March 2001; A. Merari, University of Tel Aviv, Department of Psychiatry (research among Lebanese, Palestinians and Ceylonese).

¹⁶¹ Genie O. LENIHAN, Eastern Illinois University, Department of Psychology, 'Suicide and the terrorist: Self-sacrifice or pathology?' Lecture at Maastricht University on 21 February 2002.

¹⁶² Thus far, only two suicide bombers in the Israeli-Palestinian conflict were women

the organisation takes care and plans the attack. This is done in a very sophisticated way in order to minimise the risk that they will escape, by not confronting them with the technical preparations of the attack. Another important aspect of their behaviour is their conformity to the peer group. They want to belong to that group of 'hero's,' and they will be admired by their peers because the norm is that suicide for these higher aims is good. So far, the role of these Palestinian organisations and the peers is clear in stimulating these youngsters to carry out these acts. The role of the parents is not clear but more and more it is observed that they will oppose these acts of their children. In the less extreme case of the Palestinian minors throwing stones and taking part in the fighting, the parents often tried to discourage them taking part. The peers and Palestinian organisations on the other hand stimulated their active part in the struggle. Moreover in a recent public opinion survey in the Palestinian territories 76% of the respondents supported the suicide bombing against Israel.¹⁶³

9. CHILD SOLDIERS AGED SEVENTEEN: THE NETHERLANDS

In its initial report to the Committee on the Rights of the Child it was stated that until 1993 the Dutch army consisted of conscripted and voluntary military personnel. The minimum age for conscription was 18 years, although it was possible to enlist voluntarily for military service at the age of 17, with the permission of a parent or guardian. Voluntary entrance into the armed forces was possible for the navy from the age of 15 and 8 months and for the army and airforce from the age of 16 onwards, and also required the permission of a parent or guardian for persons under the age of 18.¹⁶⁴ Upon ratification of the Convention on the Rights of the Child, The Netherlands raised the age at which personnel could be drafted into the armed forces in wartime to 18 years.¹⁶⁵ The Netherlands made a declaration upon ratification of the Convention stating:¹⁶⁶

'With regard to Article 38 of the Convention, the Government of the Kingdom of The Netherlands declares that it is of the opinion that States should not be allowed to involve children directly or indirectly in hostilities and that the minimum age for the recruitment or incorporation of children in the armed forces should be above 15 years. In times of armed conflict, provisions shall prevail that are most conducive to guaranteeing the protection of children under international law, as referred to in Article 41 of the Convention.'

Military service was not completely abolished in 1993. Instead, conscription has been suspended, and in times of emergency it can be reinstated. In 1996 the min-

(NRC *Handelsblad* 28 February 2002).

¹⁶³ INEZ POLAK in *De Limburger* and *Trouw* of 9 June 2001; the survey was conducted on June 2, 2001.

¹⁶⁴ D.W.J. VINKES & K.F. MUSSE, 'Bescherming van minderjarigen in het gewapende conflict,' *Militaire Spectator*, July 1998.

¹⁶⁵ Initial Report of States Parties due in 1997: The Netherlands, 24 July 1997, CRC/C/51/Add.1, no. 317.

¹⁶⁶ See <www.child-soldiers.org/reports_europe/netherlands>.

imum age for recruitment was raised from 16 to 17; and the minimum age for posting abroad, both for military operations and for peacekeeping and other international operations in areas in which hostilities are taking place, was raised to 18.¹⁶⁷ Thus the age for participation in hostilities is 18, and although The Netherlands every year recruits about 800 to 900 young persons under the age of 18, they cannot be sent abroad to take part in military operations,¹⁶⁸ which happens in the United Kingdom.¹⁶⁹ The argument for the government is that it wants to attract school-leavers for military service. About 10,000 children of sixteen years old every year are in this situation in The Netherlands. In 1997, 100 students followed at 16 years a military orientation, and 82% of them indeed entered the army.¹⁷⁰

A question was raised in the Committee on the Rights of the Child as to the minimum age for voluntary enlistment in the armed forces. The minimum age is now 17; will the government raise this to 18?¹⁷¹ The Netherlands representative answered that the government has no intention whatsoever to raise the minimum age for joining the armed forces from 17 to 18.¹⁷² Then a question was raised if, given the fact that the minimum age for joining the armed forces in The Netherlands was 17, the Dutch government intended to ratify the new ILO-Convention, since that contains provisions that prohibit the recruitment of child soldiers and their use in armed conflicts. It was answered that the Dutch government is considering the ratification of ILO Convention No. 182.¹⁷³ Finally, the Committee urged The Netherlands to set the recruitment age at 18 years.¹⁷⁴

¹⁶⁷ Initial Report of States Parties due in 1997: The Netherlands, 24 July 1997, CRC/C/51/Add.1, no. 318 and 319.

¹⁶⁸ See <www.child-soldiers.org/reports_europe/netherlands>. Thirteen out of nineteen NATO members recruit minors into their armed forces. (*Global Report on Child Soldiers 2001*, New York, June 2001.)

¹⁶⁹ The UK routinely sends children under the age of 18 into armed conflict. A third of the total intake were under 18s in Great Britain and for instance a 17 year old child returned 'totally broken' from the Gulf war. Amnesty International report: *United Kingdom: U-18s: Child soldiers at risk*, November 2000.

¹⁷⁰ These are the so-called 'voorschakeltrajecten' and do not imply the signing of an labour contract.

¹⁷¹ Summary record of the 578th meeting: The Netherlands, 16 November 1999, CRC/C/SR.578, no. 41.

¹⁷² Summary record of the 579th meeting: The Netherlands, 8 October 1999, CRC/C/SR.579, no. 7.

¹⁷³ Summary record of the 580th meeting: The Netherlands, 18 November 1999, CRC/C/SR.580, no. 19.

¹⁷⁴ Concluding Observations of the Committee on the Rights of the Child: The Netherlands, 26 October 1999, CRC/C/15/Add.114, no. 24. Sweden was in a more or less similar situation, and the Committee expressed its concern by noting that 'although persons under 18 in Sweden do not enjoy full legal capacity, they may yet be subjected to military service and that a person aged 15 or over can be accepted in the Home Guard defence' (Sweden IRCO, Add.2, para. 8 from UNICEF *Handbook* 1998, 518).

In the drafting process of the Optional Protocol, The Netherlands opposed a proposal to raise the age for military training and instruction from fifteen to eighteen because persons who are sixteen years or older are free in The Netherlands in their choice for a job or study, including military training.¹⁷⁵ The Netherlands has agreed with the compromise codified in Article 3 of the Additional Protocol. In parliament the Dutch minister of Defence announced in 1996 an intention to raise the age limit for voluntary recruitment to 17 years in order to facilitate the negotiations in Geneva on this topic.¹⁷⁶ However, the son of the present author received in 2000, at the age of 16, his enrolment to do his military service.¹⁷⁷ In November 1999, it was reported that there was a majority of the Dutch parliament in favour of setting 18 as the national minimum age for recruitment, and for advocating a 'straight-18s' approach in the negotiation of the Optional Protocol.¹⁷⁸ The government, however, refused in Geneva to agree to the raising of voluntary recruitment to 18.¹⁷⁹ UNICEF deplored this Dutch position in an official statement.¹⁸⁰ A motion was adopted by the Dutch parliament.¹⁸¹ After some months, the Dutch parliament asked the government to change the practice of recruitment in accordance with the straight-18 rule, which should be realised within two years.¹⁸² The government so far is not willing to accommodate its policy, and that is why members of parliament are now preparing an initiative to legislate the minimum age of recruitment to be 18 years.¹⁸³ In this way a centre-left majority in parliament tries to force the government to adopt the straight-18 rule in two years. The government does not see the necessity for this rule and fears it may cause a shortage of recruitment. In 2001, 1,836 youngsters of 17 years old entered the army. This number, which forms a considerable proportion of the army, is still increasing. As a concession to Parliament the government proposed to give these youngsters the status of aspirant military, but refused to adopt the straight-18 rule.¹⁸⁴ A majority in parliament is of the opinion that the attitude to child soldiers of The Netherlands is no longer credible and gives the wrong signal to the world when the government does not change its own policy on recruitment.¹⁸⁵ This argument has no direct relation to the possible harm that recruitment may inflict on the development of children in The Netherlands, but focuses

¹⁷⁵ C. VAN DEN EERTWEGH, 50, and E/CN.4/1996/102, 7, no. 33-34.

¹⁷⁶ C. VAN DEN EERTWEGH, 56; from: *Trouw*, 'Leeftijdsgrens leger hoger,' 15 October 1996.

¹⁷⁷ Letter no. 830410127 from the Minister of Defence to Samme Grünfeld on 8 February 2000.

¹⁷⁸ See <www.child-soldiers.org/reports_europe/netherlands>.

¹⁷⁹ *Algemeen Dagblad* 18 January 2000.

¹⁸⁰ *De Volkskrant* 15 January 2000.

¹⁸¹ Zijlstra (PvdA) and Van 't Riet (D'66), 26 800 X, nr. 22, 14 December 1999.

¹⁸² Harrewijn (Groen Links) 26 900 nr. 15, 14 February 2000.

¹⁸³ In particular Van 't Riet (D'66), <www.child-soldiers.org/report2001/countries/netherlands.html>.

¹⁸⁴ Letter of the Defence Department to Parliament, 1 March 2002.

¹⁸⁵ Interview on the phone with R. Batenburg de Jong from D'66 parliamentary fraction on 9 July 2001.

on general human rights policy. Domestic legislation should be in line with international human rights law. Moreover, in the Third World the distinction between recruitment and participation in the fighting is not clear. Because these boundaries are often blurred, The Netherlands should adopt the universal prohibition of the recruitment of children.¹⁸⁶

10. CONCLUSIONS

Child soldiers are currently a ‘hot item,’ garnering a lot of media attention. Much information can be found on abducted child soldiers. However, since similar information is often copied by others and since this multiplication sends a political message, it precludes an analysis of the issue.¹⁸⁷ With regard to the situation of the de-mining child soldiers, hardly any information is available. It is for this reason that we are not able to draw conclusions for this specific category. The same holds true – remarkably – for the seventeen years old child soldiers in The Netherlands. NGOs urge a prohibition of the recruitment of these ‘seventeens,’ but it has not been substantiated with any empirical evidence that such recruitment and training harms the holistic development of these children.

In order to draw some conclusions we will refer to the three P’s in the literature on children’s rights, the P’s of Provision, Protection and Participation.¹⁸⁸ Participation is not only the direct participation of the child but also includes rehabilitation, reintegration and compensation in the sense of participation in society after gross human rights violations have occurred. A fourth P, the P of Prevention, encompasses the other three.

The overall characteristic of legislation with regard to child soldiers is the element of protection. Protection from forced labour is specified for child soldiers in many treaties and conventions. This protection is difficult to distinguish from the prevention rules on this topic. More precisely, we were aware that the rules of protection were not effective, and this is why more specific and more focused legislation has been endorsed. The Optional Protocol is an example of how to tackle the problem of recruitment and of how to address the non-state actors in this regard. Both elements are missing in the Convention, and thanks to the combined efforts of the NGOs on human rights, children and the monitoring organs improvements were made and measures adopted in order to prevent the phenomenon of child soldiers.

In situations where child soldiers have been liberated the rescuers have done their utmost to diminish the chance that the children would be recruited again,

¹⁸⁶ Dutch Coalition to Stop the Use of Child Soldiers, Press release, 6 March 2002.

¹⁸⁷ For instance the story of the abducted child soldiers in Northern Uganda by the rebels of the Lord’s Resistance Army has been repeated countless times. It is based on interviews with 14 escaped child soldiers but it is presented as a generalisation of the overall situation of child soldiers. The same holds true for Sierra Leone.

¹⁸⁸ See also chapter 4, by Jan Willems, in this book.

and in order to prevent such a relapse a lot of provisions were offered, in particular in the field of education and psychological help. The aim of preventing recurrence is manifest in these actions and is illustrated by the cases of Uganda and Sudan in this chapter, where we underlined the relief activities of UNICEF. You may see this as participation in the sense of rehabilitation, and reintegration in particular, as outlined above.

We have mentioned in the case of Sierra Leone the important role the peer-group may fulfil in the process of reintegration. Moreover, we observed that the process of reintegration is, in general, more difficult in the absence of any special training after exposure to terrible events and combat activities (*e.g.* Sudan) of these child soldiers. Gender plays a role as well in this respect.

Another important way to prevent the phenomenon of child soldiers in the future has to do with the prohibition of anti-personnel mines and stopping the proliferation of illicit small weapons. This may be an effective indirect way to tackle a major cause of the phenomenon of child combatants. We have seen in the paragraph on this issue that the NGOs in this field have made the decision-makers aware of the close link between small weapons and child soldiers, and that they were in some way effective in stimulating the adoption of new conventions. The most recent result is the special meeting of the General Assembly of the United Nations totally oriented towards the prohibition of the export trade in small weapons in July 2001.¹⁸⁹ The increase in the number of child soldiers is also to be seen as a manifestation of the evolution of warfare. The following reasons were enumerated by Miljard:¹⁹⁰ the total and civil wars of nowadays erase long-held distinctions between civilians and combatants; and the end of the Cold War reduced military funding to regional military proxies, which moved the parties towards the employment of smaller light weapons, which increased the use of child soldiers. These small firearms are inexpensive and they do not require extensive training. The author adds:¹⁹¹

‘The specific features of the socio-psychological development of children are an additional factor influencing their employment in active combat. In this respect, studies on child development and psychology have shown that children are more willing to put themselves at risk. Children are also more easily [moulded] and disciplined, and are more loyal and docile than adults. Moreover, children are more impressionable ([by] ideology and religious beliefs) and can be turned into fierce fighters who are willing to fight under unfavourable conditions.’

¹⁸⁹ UN Conference on Small Arms and Light Weapons from 9-20 July 2001, *NRC Handelsblad*, 10 July 2001; Dutch Minister of Foreign Affairs in his speech to the UN on 9 July 2001: ‘Often, a child is behind the trigger: more than 300,000 children are involved in the world’s armed conflicts.’

¹⁹⁰ ANANDA S. MILJARD, ‘Children in armed conflicts: Transcending legal responses,’ *Security Dialogue*, vol. 32, no. 2, June 2001, 187-200.

¹⁹¹ *Ibidem*, 195.

In an extraordinary way we were confronted in this study with the situation in Sierra Leone where the child soldiers can be seen as the perpetrators of the gross human rights violations, and not only as the victims thereof. This has led to a difference in views of the NGOs on children and human rights, on the one hand, and the local communities, who prefer to put them on trial, on the other. The outcome was that priority was given to the latter option, but provisions have been made to encourage the healing process of these children. Both the aim to promote the development of the child and the prevention aspect were important in the forming of the clause that the prosecutor shall ensure that the child's rehabilitation programme be not placed at risk. As a matter of fact, the aspect of participation in the sense of rehabilitation is of central importance here. Moreover, another guarantee that we may see as an extra child-oriented provision was introduced by requiring the judges to have some experience in juvenile justice, and that the staff of the office of the prosecutor should be experienced in gender-related and juvenile justice as well. Again, this is an interesting development where the interest of establishing justice to society at large takes priority over child protection, but where specific provisions were created in order to protect the children (victims/perpetrators) nonetheless.

We have also seen the failing of the governmental authorities that were unable to protect their civilians from rebel forces, as in the case of Sierra Leone, or of the Palestinian authorities that permitted their youth to participate in the military struggle. Looking at the Palestinian children, we realise the limited significance of legal regulations, and we are confronted both with the violations of the Israeli army who killed these children, neglecting the international humanitarian law regulations, and with the attitude of the Palestinian authorities that did not prohibit the enrolment of these children in the struggle. Their peers, of course, also stimulated more or less their participation in the liberation struggle for Palestine. They received or expect to receive admiration, which plays a role certainly in those cases where these children are abused as martyrs. Often parents do not agree at all with the involvement of their children in this military combat. As outlined above, the role of the parents is undermined as a result of the Israeli suppression of the *Intifada*. The authority of the parents has been enormously reduced, and parents are no longer able to prevent their children from participating. This does not seem to constitute voluntary participation of children, which would promote optimal development. On the contrary, these activities most likely harm the personality development of these children. Dehumanisation and decompartmentalisation are the processes which take place in these cases. These processes are comparable to the training of perpetrators of torture and genocide in the past. In any situation of child soldiers – except the fourth category of the seventeen years old in The Netherlands – the children cannot be said to be operating of their free will. Others impose their motives upon the child soldiers for their own objectives which have nothing whatsoever to do with the optimal development of the child.

At the end of this study I will answer the question in the introduction, on the impact of the different actors in different situations on the child soldiers. The harm inflicted on the children is most serious in the situation of the abducted children

– in the case of Uganda – who are isolated from their parents and who are forced to take part in the military fighting.¹⁹² Children in a similar situation – in the case of Sierra Leone – but who can live with their parents, are in a better situation than those isolated from their parents, and their reintegration is faster.¹⁹³ The kidnapped children – in the case of Sudan – who performed the not directly war-related tasks like cooking and carrying goods are in a better position than those who were forced to kill. Their rehabilitation takes more time in comparison with the first group.¹⁹⁴ Moreover, in this category of abducted children the harm is more serious and their reintegration into society is more difficult when they were forced to commit atrocities against members of their own community. It is hardly possible for them to return to their families and to have an ordinary life again. Within this group the girls who were used for sexual slavery practices are in particular in a very bad position. According to a study on Mozambique, forcing children to participate in war and acts of violence against their own communities was intended to prevent them from returning home, where they feared rejection. This practice was aimed at breaking down the social structure of the communities from which children were ‘recruited.’¹⁹⁵

The de-mining child soldiers – the second category – were acting under the direct responsibility of the governmental authorities with the so-called consent of their parents. Ayatollah Khomeini had declared that parental permission was unnecessary for those going to the front, that volunteering for military duty was a religious obligation, and that serving in the armed forces took priority over all other forms of work and study.¹⁹⁶ Boys as young as nine were reportedly used in human wave attacks and to serve as mine sweepers in the war by Iran against Iraq. Nine out of ten Iranian child soldiers were killed! They were given ‘keys to paradise’ and promised that they would go directly to heaven if they died as martyrs against the Iraqi enemy.

This is also promised to the Palestinian suicide bombers whose families are not aware of their fate.¹⁹⁷ Contradictory feelings and sentiments are their part after

¹⁹² See the Lord’s Resistance Army in Uganda, *supra* para. 6.3.

¹⁹³ See the comparison of the child soldiers in the hands of the CDF and the RUF in Sierra Leone, *supra* para. 6.1.

¹⁹⁴ See UNICEF’s observations on the child soldiers of the Sudan, *supra* para. 6.2.

¹⁹⁵ ANANDA S. MILJARD, ‘Children in armed conflicts: Transcending legal responses,’ *Security Dialogue*, vol. 32, no. 2, June 2001, 196.

¹⁹⁶ See <www.chil-soldiers.org/report2001/countries/iran.html>.

¹⁹⁷ ‘[P]aradise is described as a place of “rivers of milk and wine (...) lakes of honey, and the services of seventy-two virgins,” where the martyr will see the face of Allah and later be joined by seventy chosen relatives. The pleasures of sex and alcohol (forbidden to Muslims on earth) are permitted in the after life. Moreover they win not just paradise for members of their families but earthly financial support for those left behind (...). Their families can receive as much as 5,000 Euros, equivalent to four years of a laborer’s wages. When a suicide bomber dies, his portrait is posted all over the city and sweets are handed out, in contrast to the bitter coffee served at a normal

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the loss of their sons. In public they often appear to be proud but in private the sadness is remarkable as well. There is no agreement in legal literature whether these Palestinian children and their peers in the struggle on the streets should be viewed as child soldiers. As we remarked, almost the whole of Palestinian youth is exposed to the military violence which takes place in these territories. Mostly these children voluntarily participate in this struggle on an *ad hoc* basis. Their pride on the one hand is countered by the clear psychological harm they have to endure as a consequence of the events in which they are directly involved. Most actors (Palestinian and non-governmental authorities, their peers) stimulate them whereas their parents mostly have an ambiguous attitude.

Finally, the last category of the seventeen years old in Western European armies who are recruited by governmental authorities with the consent of their parents and themselves. There are no indications with regard to inflicted harm as long as they are not obliged to participate in fighting, which was the case in Britain, but which is prohibited in The Netherlands. The opposition to this practice is motivated by the idea that human and children's rights practice at home should be in accordance with the rules you promote for the outside world.

wake.' (Genie O. LENIHAN, Eastern Illinois University, Department of Psychology, 'Suicide and the terrorist: Self-sacrifice or pathology?' Lecture at Maastricht University on 21 February 2002.)