

MUNOL 2010



6th Committee 2010

Research Reports

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This document is filled with the research reports of the 6th committee 2010 . It deems necessary to read this document in order to prepare in the most professional manner for the upcoming conference.

Context:

- The status of child soldiers in the Geneva Convention
- The legal status of natural persons in areas where there has been a succession of States
- Question of reproductive cloning of human beings

The status of child soldiers in the Geneva Convention

1. Description of the problem

To enrich the children's psychological and physical development, they are supposed to grow up in a harmonic environment. This is not the case for child soldiers. For decades, brutal regimes have been exploiting young innocent children forcing them to fight in wars all around the world. Fortunately, since the 1970s the international community has agreed on conventions that are to reduce the existence of child soldiers.

The United Nations Convention on the Rights of the Child (UNCRC) is one of those conventions. The UNCRC states that all minors under the age of 15 will not take part in armed conflicts. The Optional Protocol on the Involvement of Children in Armed Conflict (OPICA) further refines this clause by saying that children under the age of 18 cannot be forced into armed conflict. In addition, the Rome Statute of the International Criminal Court (ICC) stated in 2002 that sending children under the age of 15 into armed conflicts is a war crime.

But there are still a number of countries, such as Sudan, Burundi, Democratic Republic of the Congo (DRC), Chad, Guinea, Liberia, Myanmar, Rwanda, Uganda, Ivory Coast and Colombia, that still have a high number of child soldiers. Thousands of them are recruited every year. Children involved in armed conflict are frequently killed or injured during combat or while carrying out other tasks. They are forced to engage in hazardous activities such as laying mines or explosives, as well as using weapons. Child soldiers are usually forced to live under harsh conditions with insufficient food and little or no access to healthcare. They are almost always brutally treated, subjected to beatings and humiliating treatment. Punishment for mistakes or desertion is often very severe. Girl soldiers are particularly at risk of rape, sexual harassment and abuse as well as being involved in combat and other tasks.

2. Definition of key terms

Child Soldiers

Human being under the age of 18 that takes part in armed conflict (both involuntarily and voluntarily).

Optional Protocol on the Involvement of Children in Armed Conflict

This is an annex of the UNCRC obliging all nations to ban forced conscriptions for all children under 18, also banning non-state parties and guerilla groups from recruiting child soldiers.

3. Background / general information

In 2001, twenty-one armed conflicts were reported to be using child soldiers, boys and girls, who are easy to recruit due to their young age and emotional

dependence. In Uganda, about one third of the child soldiers were girls. Compared to boys who directly take part in hostilities, girls are used as spies, messengers and sexual slaves.

The problem is most critical in Africa, where children as young as nine, have been involved in armed conflicts. Children are also used as soldiers in various Asian countries and in parts of Latin America, Europe and the Middle East.

The majority of the world's child soldiers are involved in a variety of armed political groups. These include government-backed paramilitary groups, militias and self-defence units operating in many conflict zones. Others include armed groups opposed to central government rule, groups composed of ethnic, religious and other minorities and clan-based or factional groups fighting governments or each other to defend territory and resources.

Most child soldiers are aged between 14 and 18, a lot of whom enlist "voluntarily". Research, however, shows that such adolescents see few alternatives to involvement in armed conflict. Some enlist as a means of survival in war-torn regions after family, social and economic structures have collapsed or after seeing family members tortured or killed by government forces or armed groups. Others join up because of poverty and lack of work or educational opportunities. Many girls have reported that they enlisted to escape domestic servitude, enforced marriage, violence and sexual abuse. Many of the youths have given the desire to avenge the killing of relatives or other violence arising from war as an important motive.

Poverty and lack of access to educational or work opportunities are additional factors - joining up often promises a livelihood or actually provides one. Coupled with this may be a desire for power, status or social recognition. Family and peer pressure to join up for ideological or political reasons or to honour family traditions may also be motivating factors.

Forcible abductions, sometimes of large numbers of children, keep on occurring in some countries. Children as young as nine have been abducted and used in combat.

Demobilization, disarmament and reintegration (DDR) programs specifically aimed at child soldiers have been established in many countries, both during and after armed conflict, assisting former child soldiers to acquire new skills and return to their communities. However, the programs lack funds and adequate resources. Sustained long-term investment is needed if they are to be effective.

Despite growing recognition of girls' involvement in armed conflict, girls are often deliberately or inadvertently excluded from DDR programs, although they mostly are maltreated in more ways than the boys. On top of that, on coming home they often are stigmatized by their home communities. DDR

programs should be sensitively constructed and designed to respond to the needs of girl soldiers.

The Fourth Geneva Convention, signed in 1949, placed children under the category of civilian population. Thus, they were exempt from armed conflict.

Seventeen provisions are provided by the convention for children. These include relief material, food, medical care and family reunification. The convention divides the provisions in four categories, depending on the age group of the children.

Although the Geneva Convention classifies children at the age of 15 as attaining maturity, certain parties at the Diplomatic Conference on the Development of Humanitarian Law would like the bar to be raised to 18 years. Thus, the Convention emphasizes that the priority of recruitment should be given to older people.

Recruiting children seems to have a lot of advantages: First of all they are naïve and don't understand the evils of armed conflict. Furthermore, children are used as soldiers because they are good at carrying light weapons, which are, due to the high standard of technology, more and more available.

A lot of child soldiers have very poor families. Their job as child soldiers guarantees a more or less regular income for their families. For many children, it is impossible to return into their former communities, as for diverse reasons they are not accepted by them anymore.

There is no definite information about the exact number of child soldiers in the world. This is first of all due to the fact that many of them die in combat. Furthermore, children are also sometimes shifted between groups, which make them hard to track.

4. Timeline of key events

August 12, 1949

Protocol II of the Geneva Convention: children under the age of 15 cannot participate in armed conflict.

1989

The United Nations Convention on the Rights of the Child: all nations should take feasible measures to ensure that children under the age of 18 do not participate directly in conflicts.

2000

The Optional Protocol on the Involvement of Children in Armed Conflict: Nations should take legal action and criminalize actions that relate to the compulsory recruitment of child soldiers.

2002

The Rome Statute of the International Criminal Court: The conscription of child soldiers is a war crime.

5. Relevant treaties, UN resolutions and actions taken

In recent years, progress has been made in developing an international legal and policy framework for protecting children from involvement in armed conflict. An increasing number of governments have "ratified" or agreed to become legally bound by a series of international laws banning the use of child soldiers in armed conflict.

The International Criminal Court

The statute of the International Criminal Court (ICC), established in 1998, provides a legal ground for the prosecution and punishment of those found guilty of recruiting children under the age of 15 for armed conflicts. In 2004 the ICC announced that it was initiating investigations into crimes committed in the course of armed conflicts in Northern Uganda and the Democratic Republic of Congo (DRC), where thousands of child soldiers are still being used.

The ICC's first prosecution came in 2006 when Thomas Lubanga Dyilo, the leader of a militia group based in the northeast of the DRC, was transferred to The Hague. He is charged with forcibly recruiting boys and girls under the age of 15 to fight with his militia from July 2002 to the end of 2003. After many delays the trial finally got underway in January 2009. If convicted, Lubanga could face prison for life.

The Special Court for Sierra Leone

The prosecutor of the Special Court for Sierra Leone (established by the UN and the government in 2002) issued its first indictments in 2003. They included charges of conscripting, enlisting or using boys and girls under the age of 15 to participate in hostilities.

In June 2007 the Special Court for Sierra Leone handed down verdicts against three accused men from the rebel Armed Forces Revolutionary Council (AFRC), one of three warring factions during Sierra Leone's 11-year brutal armed conflict, which ended in 2002. The judges found the three accused guilty of war crimes, crimes against humanity, and other serious violations of

international humanitarian law, including the recruitment and use of child soldiers. All three received prison sentences of more than 45 years each.

In August 2007, Allieu Kondewa, a former leader of Sierra Leone's Civil Defence Forces Militia, was found guilty on five counts, including the recruitment of child combatants under the age of 15. He received a prison sentence of eight years.

These were the first convictions by a UN-backed tribunal for the crime of recruiting and using child soldiers, a ground-breaking step toward ending impunity for commanders who exploit hundreds of thousands of children as soldiers in conflicts worldwide.

Former Liberian president Charles Taylor was indicted by the Special Court in 2003 on 11 counts, including the use of child soldiers. In 2006 he was arrested and transferred to the Special Court in The Hague, Netherlands, under an agreement with the International Criminal Court. The trial began in January 2008 and the prosecution rested its case in February 2009.

In February 2009, Issa Hassan Sesay, Morris Kallon and Augustine Gbao, the most senior surviving commanders of the Revolutionary United Front (RUF) were found guilty of various war crimes and crimes against humanity, including the recruitment of child soldiers, during the 1991-2002 civil war. They received jail terms of between 25 and 52 years.

The United Nations

The UN Security Council has issued a series of resolutions condemning the use of child soldiers and proposing measures to stop child recruitment. These include dialogue with parties to armed conflict aimed at the immediate demobilization of children; and targeted measures to sanction those who continue to recruit and use them as soldiers. Such measures could include the suspension of military aid or assistance, weapons or travel bans or asset freezing.

The UN General Assembly, the UN Commission on Human Rights, the African Union (formerly the Organization for African Unity), the European Union, the Organization of American States and the Organization for Security and Cooperation in Europe have all condemned the recruitment and use of child soldiers.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: This was adopted by the UN General Assembly on 25 May 2000 and came into force on 12 February 2002. The protocol sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments. States may accept volunteers from the age of 16 but must deposit a binding declaration at the time of ratification or accession, setting

out their minimum voluntary recruitment age and outlining certain safeguards for such recruitment.

Rome Statute of the International Criminal Court (1998): This establishes a permanent court to try persons charged with committing war crimes, crimes against humanity, and genocide. In its definition of war crimes the statute includes "conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities" (Article 8(2) (b) (xxvi)); and in the case of an internal armed conflict, "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities" (Article 8(2) (e) (vii)).

When drafting the treaty, delegates agreed that the terms "using" and "participate" would prohibit not only children's direct participation in combat, but also their active participation in military activities linked to combat such as scouting, spying, sabotage, and the use of children as decoys, couriers, or at military checkpoints. Also prohibited is the use of children in "direct" support functions such as carrying supplies to the front line. The statute also defines sexual slavery as a crime against humanity (Article 7(1) (g)). The treaty came into force and the court came into being on 1 July 2002.

ILO Minimum Age Convention 138: This convention was adopted on 26 June 1973 and came into force on 19 June 1976. States ratifying the convention are bound to: pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons (Article 1).

ILO Worst Forms of Child Labour Convention 182: This convention was adopted on 16 June 1999 and came into force on 19 November 2000. It commits each state which ratifies it to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency". The term "child" applies to all persons under the age of 18 years and the worst forms of child labour include: all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (Article 3a).

Additional Protocols to the four Geneva Conventions of 1949 (1977): The protocols set 15 as the minimum age for recruitment or use in armed conflict. This minimum standard applies to all parties, both governmental and non-governmental, in both international and internal armed conflict.

Article 77 of Additional Protocol I, applicable to international armed conflicts, states: The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct

part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.

In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest (Paragraph 2). If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this article, whether or not they are prisoners of war (Paragraph 3).

Article 4(3)(c) of the Additional Protocol II, applicable to non-international armed conflicts, states: 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.

Convention on the Rights of the Child (1989): Although the Convention on the Rights of the Child generally defines a child as any person under the age of 18, Article 38 uses the lower age of 15 as the minimum for recruitment or participation in armed conflict. This phrase is drawn from the two Additional Protocols to the four Geneva Conventions of 1949.

Article 38 states that: 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 (Paragraph 2). States Parties shall refrain from recruiting any person under the age of fifteen years into their armed forces. In recruiting persons who have attained the age of fifteen years but have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest (Paragraph 3).

African Charter on the Rights and Welfare of the Child: The charter is the only regional treaty in the world which addresses the issue of child soldiers. It was adopted by the Organization of African Unity (now the African Union) and came into force in November 1999. It defines a child as anyone below 18 years of age without exception. It also states that: "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child" (Article 22.2).

The **UN Security Council** has passed a series of resolutions condemning the recruitment and use of children in hostilities. These are resolutions 1261 (1999), 1314 (2000) 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005) on children and armed conflict.

The Paris Commitments and Principles (2007)

A major international conference entitled "Free children from war" was held in Paris on 5 and 6 February 2007. The meeting, co-organized by the French Government and UNICEF, was attended by 58 countries, including dozens of government ministers, donors, the heads of UN agencies and many non-governmental organizations.

At the meeting, the 58 governments endorsed and pledged to respect the principles contained in two documents. The 'Paris Commitments' consists of a set of legal and operational principles needed to protect children from recruitment or use in armed conflict. It complements existing legal and political mechanisms already in force. The "Paris Principles" is a more detailed document which sets forth a wide range of principles relating to the protection of children from recruitment or use in armed conflict, their release and successful reintegration into civilian life. The principles also address the need for long term prevention strategies in order to **definitely** end children's involvement in armed conflict.

The meeting was the culmination of an 18-month process to review the "Cape Town Principles and Best Practice on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa", adopted by non-governmental organizations at a conference in Cape Town in 1997.

The review process was led by UNICEF and drew upon a wealth of experience gained by UN field staff, NGOs and other practitioners in this field.

6. Positions of major countries involved

Uganda

The Lord's resistance Army has recruited almost 30 000 child soldiers (boys and girls) by abducting them.

Somalia

The Organization Coalition to stop the use of Child Soldiers stated that since 1991, about 200,000 children have possessed arms and joined the country's various militias.

Burma

Although the State Peace and Development Council stated that all its soldiers are over 18, the Human Rights Watch has said that over 70 000 young boys serve in the army. Children as young as 11 are forcibly recruited off the streets.

Palestine

A handful number of children believe that by going on suicide missions they will achieve martyrdom. Therefore, they are recruited by a lot of Palestinian militant factions to serve in their ranks. In addition, the First Intifada was mainly composed of young children throwing stones and Molotov cocktails at their aggressors. However, the Coalition to Stop the Use of Child Soldiers said that there is no systematic way of recruiting child soldiers in Palestine.

7. Useful sources and links

Fontana, Barbara. "Child Soldiers and International Law." Institute for Security Studies. 1997. African Security Review, Web. 6 Dec 2009. <<http://www.iss.co.za/Pubs/ASR/6No3/Fontana.html>>.

"Military Use of Children." Wikipedia. 05/12/2009. Wikipedia, Inc., Web. 6 Dec 2009. <http://en.wikipedia.org/wiki/Military_use_of_children>.

Coalition to Stop the Use of Child Soldiers. 2007. Coalition to Stop the Use of Child Soldiers, Web. 6 Dec 2009. <<http://www.child-soldiers.org/home>>.

See www.childsoldiersglobalreport.org for lists of countries where child soldiers were recruited and used during the four years 2004-2007.

<http://www.child-soldiers.org/childsoldiers/questions-and-answers>

<http://www.cdi.org/program/issue/document.cfm?DocumentID=580&IssueID=108&StartRow=1&ListRows=10&appendURL=&Orderby=DateLastUpdated&ProgramID=>

<http://www.hrw.org/en/news/2006/11/26/un-security-council-must-punish-users-child-soldiers21&issueID=108>

<http://www.watchlist.org/>