

THE ONGOING BATTLE AGAINST RECRUITMENT OF CHILD SOLDIERS

An evaluation of the international community's attempt to devise a 'carrot and stick' approach for global implementation to stop recruiting child soldiers and questioning the notion that we have moved into an era of application of the agreed norms.

Philip Veerman

1. A diminishing appetite for activism on child soldiers

A recent report from the field (Goma in the Democratic Republic of the Congo) tells us that 'between January and July, about 1,700 child soldiers were part of the UNICEF demobilization and reintegration program. But at the end of July UNICEF condemned the worrying increase of child victims in the ongoing conflict that has rocked North Kivu since fighting broke out in May 2012 between the Congolese armed forces and the M23 rebels'.¹ And a recent report described how armed groups recruiting child soldiers in Mali have 'capitalized on the desperation of impoverished families'.² The report noted that children in Mali were suffering grave violations such as recruitment and use by armed groups, rape and sexual violence, killings and maiming, and attacks on schools. All armed groups in Mali recruited and used child soldiers. Many of the recruited children, according to the NGO *Watchlist* seem to have disappeared with the retreat of the armed groups. The NGO also asks 'where is the international community, specifically the child protection actors with expertise and knowledge for responding to conflicts of this nature? Where are they?'.³ Just two examples to demonstrate that despite some serious efforts to put a halt to recruiting child soldiers, the situation seems to deteriorate. There is a short attention span of policymakers and there seems to be a diminishing appetite for activism on child soldiers.⁴

What does not help is that the United States did not ratify the United Nations (hereinafter: UN) Convention on the Rights of the Child (hereinafter: CRC)⁵ and that the

1 Taylor Toeka Kakala, *DR Congo Armed groups Increase Child Recruitment*, Inter Press Service News Agency, 29 August 2013.

2 Watch List on Children and Armed Conflict, *Where are they...? The situation of children and armed conflict in Mali*, New York, June 2013.

3 Ibid.

4 This was brought to my attention by Ambassador Richard Clarke, the Director of *Child Soldiers International*, who I thank also for reading the draft of this chapter and giving suggestions for rewriting it.

5 Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989, *UN Doc. A/RES/44/25*. That the United States take normally many years before it ratifies a Convention, we see if we look at the ratification process of the 1948 Convention was finally made law by the Senate in 1988, see: L. J. LeBlanc, *the Untried States and the Genocide Convention*, Duke: University Press 1991.

UN Security Council is divided. And there is, as the South African organisation Institute for Security Studies (hereinafter: ISS) noted, ‘The AU’s [African Union] stance against the [International Criminal Court] jurisdiction of the Kenyan cases reflects Africa’s deeper concerns about the court. The relationship between the AU and the ICC has been acrimonious since the court first revealed its intention to charge Sudanese President, Omar al-Bashir, for crimes committed in Darfur. Subsequently, the perception that the ICC is biased against African states has further aggravated this precarious relationship’.⁶ The Kenyan parliament voted on 5 September 2013 to back a call for government to withdraw from the Rome Statute of the International Criminal Court (hereinafter: ICC), passing a motion ‘to suspend any links, cooperation and assistance’ to the court.⁷ Sivu Maqungo, a staff member of the Pretoria based ISS wrote:

‘What is the impact of a Kenyan withdrawal from the Rome Statute likely to be? The Kenyan delegation to the next AU summit is likely to receive little resistance if it campaigns for an African Union decision that African countries withdraw from the ICC. The African Union functions no differently than a labour union – it takes care of its own, in this case current and previous presidents. The challenge will arise when each country has to carry out this decision to withdraw’.⁸

There is a growing resentment of supranational institutions, even in Europe. In the United States the Senate blocked ratification of the UN Convention on the Rights of Person with Disabilities. As Kyl, Feith and Fonte explained ‘opponents were worried about something practical and fundamental: wherever United States laws should be made by politicians held accountable to Americans through the ballot box or by unaccountable officials in multinational organisations’.⁹ The authors note with disgust that ‘in 2002, the UN committee monitoring the UN Convention on the Rights of the Child found that the British government’s budget priorities were at odds with the rights of children. The government of British Prime Minister Tony Blair was told to analyze its expenditures to “show the proportion spent on children” and then create a “permanent body with an adequate mandate and sufficient resources” to implement the UN Convention in line with the views of the monitoring committee’.¹⁰ The authors see this as an example of ‘ideas and approaches of the transnationalist school’ of which they think that it affects both foreign and domestic policy ‘deep into the private sphere of life’.¹¹

After the adoption of the CRC in 1989 by the General Assembly of the UN and the almost universal ratification of the CRC there seems now to be blowing a cold moral

6 Uyo Salifu, ‘AU-ICC relations under the spotlight again’, Pretoria 11 June 2013, www.issafrica.org (search on *AU-ICC relations under the spotlight again*).

7 Sivu Maqungo, ‘Kenya and the ICC: A tale of three mistakes and the cruellest gable’, Pretoria 9 September 2013, www.issafrica.org (search on *Kenya and the ICC: A tale of three mistakes*).

8 Ibid.

9 J. Kyl, D. J. Feith & Fonte, J. ‘The War of Law, How New International Law Undermines Democratic Sovereignty’, *Foreign Affairs*, 2013, July/August, p. 115-125.

10 Ibid.

11 Ibid.

relativistic wind¹² which is not helpful in the fight against the child soldiers phenomenon.

2. A personal introduction: seeing with my own eyes no red line on child use

Santigie, a fifteen year old boy from Sierra Leone, is still often on my mind. I visited him in 1999, when I was the President of Defence for Children International (hereinafter: DCI) in Geneva, in the middle of the Civil War in the capital Freetown where the International Committee of the Red Cross (hereinafter: ICRC) operated a small so-called ‘reconstructing surgical hospital’. Two months before my visit to Sierra Leone the rebels came unexpectedly to his village. His parents and his five brothers and sisters could not run away in time. The rebels drove the family members to their hut and threw gasoline over it, and then put the hut on fire with everybody inside. Santigie was the only one to survive this atrocity because he was on the bottom of the pile of bodies of his family members, which gave him protection against the terrible heat. Nobody in his family survived. He dragged himself out of the smouldering remains of the hut to the bush where he managed to hide while in terrible pain until he was sure that the rebels were gone. Margaret, the Australian nurse of the ICRC who showed Nana Grey-Johnson, our colleague from The Gambia, and Matthias Seisay¹³ the then Coordinator of the new DCI Section of Sierra Leone, and me around the hospital, told us that she had seen a lot of misery in the world (Afghanistan, Mogadishu and a few other places), but that Sierra Leone was until now the place where she had seen the worst human rights abuses. Margaret showed me Santigie’s legs with hardly any skin on them. ‘We cannot perform any operation on him,’ Margaret explained, ‘because he is so undernourished that he will get infections immediately after an operation’. While holding our hands he told us about the ordeal. He cried softly. And so did we. The prognosis was not good. The doctors told us that Santigie would very likely die.

We talked with Margaret about the Armed Forces Revolutionary Council (hereinafter: AFRC) and the Revolutionary United Front (hereinafter: RUF) and what have become their trademarks: cutting off hands and arms with machetes, which are very large and heavy knives. Because the blows with the machetes are delivered on the outside of the arms and hands, the victims normally survive, although terribly handicapped. One example is the six year old Dumra, a girl from the North with whom we talked in Waterloo refugee camp. A year before my visit she and the others in her village heard shooting and they thought it was caused by gunfire from The Economic Community of West African States Monitoring Group (hereinafter: ECOMOG), the West African intervention force. However, it was the rebels entering the village. When they realised this it was already too late to flee. Many villagers, old and young, lost their lives due to machete wounds. Many, including children, were forced to put a hand – sometimes

12 This wind is not a new meteorological phenomenon. Although United States President Woodrow Wilson was one of the initiators of the League of Nations, the Senate (dominated by Republicans playing the tune of *sovereignty*) voted against participation of the United States in the League of Nations. See: A. Scott Berg, *Wilson*, New York: Simon and Schuster 2013.

13 Mr. Matthias A. Seisay is now a criminologist and lives in Milwaukee, USA where he works at Marquette University.

both – on a tree stump whereupon the hand – or hands – were chopped off. Dumra told us that she and other villagers, including many other children, had to queue up and approach the tree stump where their hands were chopped off. ‘It was bleeding the whole night’, Dumra told us. The atrocities were often carried out by child soldiers.

During my visit to Sierra Leone, I saw many young people with hands, arms and legs cut off. In Waterloo camp (34 kilometres from Freetown) even an association existed for people with amputated limbs. The chairman of this association, Muctarr, introduced me to many children with amputated limbs. ‘I’d like to introduce you to more, but they have gone today to Freetown to beg’, he said.¹⁴

Now, fourteen years after this visit, I still remember vividly the experience. At the time I had to think a lot about my father who in the Second World War was a member of the Dutch-Paris underground.¹⁵ He moved around unarmed across Europe bringing many people to freedom in Switzerland. My father was arrested nine times and escaped from the Nazis eight times¹⁶. He was especially brave, because he was Jewish, although the Nazis didn’t find out the nine times he was arrested. He spent the last year of the war as a Gestapo prisoner doing slave labour in the Harz. I remember going with Matthias Seisay from Freetown to Waterloo Camp to meet the ‘amputees’. The road was not safe and out of the woods RUF soldiers could have come (but they didn’t). I remember feeling fear in my stomach and thinking that my father must have felt this often in the war.

One of the most shocking things is that the civil war in Sierra Leone was also a war of children committing atrocities against children. We interviewed a few youngsters who had been captured by ECOMOG troops and released. They were now in a Don Bosco home of a Catholic charity. Junior K., now eighteen years old, told me that he was captured a few years ago by the rebels and forced to be a carrier, mainly of looted things from civilians. Another boy, John K., now sixteen, who characterised himself as a ‘good fighter’, at first carried weapons for the soldiers and, after a raid on a village, looted things. He lived from searching dead people (I was one of ‘those who went over the money in their clothes’). Mohammed B., now seventeen, was captured by the rebels in 1993, when he and his father were driving the car to the popular diamond mining town of Tongo. ‘Near the Mano junction’, he told me, ‘the rebels shot my father dead. I became a carrier and walked hundreds of kilometres to the Liberian border with rocket launchers. I often had nothing to eat and I was able to keep going because they gave me amphetamine pills’. Before a battle, he was given gunpowder and hashish to smoke.

These days in Sierra Leone motivated me to get involved in fighting the recruitment of child soldiers in the world. Incredible how fast in fourteen years, since I was there in Sierra Leone, there is also progress to report. Not only did the civil war end in Sierra Leone, besides the Special Court for Sierra Leone was established. Furthermore, on the 26th of April 2012, Mr. Charles Taylor (the former President of Liberia, who was indicted while he was still the President of that country) was the first Head of State

14 Ph. E. Veerman, ‘The Children’s Rights Crisis in Sierra Leone’ *The International Children’s Rights Monitor*, 1999, Summer, p 12-15

15 H. Ford, *Flee the Captor*, Nashville, Tennessee: Southern Publishing Association 1966.

16 *Het Parool*, ‘Negenmaal gepakt, achtmaal ontsnapt, Een passeur van den Zwitserschen weg vertelt’, Zaterdag 11 Januari 1947.

to be convicted by an international tribunal since the Nuremberg trials in 1946. The special Court for Sierra Leone (sitting in the Hague) convicted Mr. Taylor, who had planned with the leaders of RUF attacks on Kono, Makeni and Freetown in late 1998 and January 1999, of conscripting, enlisting and using children under the age of fifteen years in hostilities. Prosecutor Hollis:

‘Children were taken from their families, and not only used to fight, but also to commit crimes against their fellow Sierra Leoneans. This robbed these children of their childhood, and the judges have sent a clear message that this will never be tolerated’.¹⁷

Mr. Taylor was also convicted for ‘two principal types of conduct. First, he was convicted on all 11 counts for planning with Sam Bockarie the attacks on Kono, Makeni and Freetown in December 1998 and January 1999 as part of an offensive aptly named “Operation No Living Thing”. The judges found that the crimes committed during these attacks were a direct result of that plan. Second, Mr. Taylor was convicted on all 11 counts for aiding and abetting the AFRC and RUF rebels’.¹⁸ The support (with weapons and ammunition) by Mr. Taylor was critical for the rebels.¹⁹

3. Efforts by the international community to create a momentum for implementation: the UN General Assembly establishes a Special Representative of the Secretary-General

In June 1994, the Secretary-General of the UN appointed an expert to head a study on the impact of armed conflict on children. In 1996, the report by the Mozambican former Minister of Education Graça Machel (the widow of the Mozambican President Samora Machel and the third wife of Nelson Mandela) was released.²⁰ The report would become very influential. The fact that it was written by such an eminent humanitarian and politician helped a lot, I think. The Report *Impact of Armed Conflict on Children* paid attention to child victims of landmines, displaced and refugee children and the psychological effects of war on children. The situation of child soldiers achieved special attention in this Report.²¹

The Report was welcomed by the General Assembly and in a resolution it was recommended that the Secretary-General appoints a Special representative on children and armed conflict.²² After this mandate was created the Secretary-General appointed

17 SCSL, 26 April 2012, SCSL-2003-01-T, Judgement (*The Prosecutor/Charles Ghankay Taylor*) Special Court for Sierra Leone, Office of the Prosecutor, *Press Release: Prosecutor Hollis hails the historic conviction of Charles Taylor*, Freetown /The Hague 26 April 2012.

18 Special court for Sierra Leone, *Press Release: Prosecutor Hollis applauds the people of Sierra Leone following Charles Taylor’s Conviction*, Freetown 14 May 2012.

19 In the fall of 2013 the Appeals Chamber judges uphold Charles Taylors conviction and sentenced him to 50 years in prison, SCSL, 15 October 2013, SCSL-03-01-A (10766-11114).

20 *Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children*, A/51/306, New York, 26 August 1996.

21 Ibid.

22 Resolution 51/77 adopted by the General Assembly of the United Nations on 20 February 1997, 51/77. The rights of the child, *UN Doc. A/RES/51/77*.

in 1998 for the first time Mr. Olara Otunnu (a former Minister of Foreign Affairs of Uganda living in New York) to this post. He undertook some trips to countries where armed conflict was ongoing and negotiated with warlords and members of governments. Mr. Otunnu struggled to get some kind of grip on developments in this big bureaucracy of the UN. His major contributions consisted of a proposal for a compliance regime for the protection of children (2005) and the groundwork for the important Security Council Resolution 1612.²³ In 2006, Ms. Radhika Coomaraswamy (from Sri Lanka) was appointed as the Special Representative of the Secretary-General (hereinafter: SRSG). In 2012, it was Ms. Leila Zerrougui (from Algeria) who was appointed as the SRSG. One of the tasks of the SRSG and his or her Office in New York is 'to be a facilitator and undertake humanitarian and diplomatic initiatives. Another task is to build awareness and give prominence to the rights and protection of children in armed conflict'.²⁴ The three Special Representatives worked hard to create a momentum for implementation.

4. A new Optional Protocol to the CRC and an important UN Security Council Resolution 1612

On 26 July 2005 the UN Security Council adopted Resolution 1612.²⁵ The Resolution was adopted unanimously. This Resolution, mentioned earlier in the text, paid a tribute to 'advances made for the protection of children affected by armed conflict, particularly in the areas of advocacy and the development of norms and standards'. A landmark for these norms and standards had certainly been the adoption of the CRC and its ratification by almost all states of the world.²⁶ However, for the work of protecting children against being used as soldiers the CRC itself is disappointing, because the

23 Resolution 1612 (2005) adopted by the Security Council at its 5235th meeting on 26 July 2005, *UN Doc. S/RES/1612*.

24 See www.childrenandarmedconflict.un.org

25 Resolution 1612 (2005) adopted by the Security Council at its 5235th meeting on 26 July 2005, *UN Doc. S/RES/1612*.

26 Although the United States of America did not ratify the CRC itself, the President at the time (Bill Clinton) signed the CRC in 1995 at the request of American UNICEF director James Grant who was dying. The USA never ratified the Convention however. The USA did ratify the *Optional Protocol [to CRC] on the Involvement on Children and Armed Conflict*, which was adopted by the General Assembly. Somalia signed the CRC in 2002 and has recently (according to the news agency Reuters and quoted by the Children's Rights Information Network in their CRINMAIL 1128, 24 November 2009) announced plans to ratify the CRC, thus leaving the United States soon to be the only State outside the CRC-human rights treaty body mechanism. The BBC (<http://news.bbc.co.uk/2/hi/africa/8370357.stm>) has also confirmed this report about Somalia on 20 November 2009 ('Somalia to 'ratify' UN child pact') and reported that the transitional government (which only controls parts of the capital Mogadishu, because the rest of the country is controlled by warlords and Islamist militants) has announced it will ratify the CRC. The BBC's East Africa correspondent Peter Greste says that 'it is hard to think of a place where children are more at risk than Somalia'.

treaty prohibits the direct participation in hostilities only under the minimum age of fifteen years.²⁷

On the 25th of May 2000 the General Assembly of the UN adopted the Optional Protocol to the CRC *on the Involvement of Children in Armed Conflict* (hereinafter: OPAC).²⁸ The OPAC did raise the age limit of direct participation in armed conflict from fifteen years of age (as the drafters to the CRC agreed in article 38²⁹) to eighteen years although, still permitting voluntary recruitment into national armed forces under the age of eighteen.³⁰ Stricter safeguards were demanded for the voluntary recruitment of children under eighteen years of age. The OPAC has been an advance of standard setting. But both the Coalition against the Use of Child Soldiers (a coalition of non-governmental organizations) and UNICEF concluded in 2002 that ‘the OPAC’s entry into force represents a great achievement on behalf of children, but is not a sufficient response to the human rights abuses suffered by thousands of child soldiers each day. Instead, it should be seen as an important step in a process that includes widespread ratification of the OPAC and its systematic implementation. The ultimate objective is to end the recruitment and the use of child soldiers. There are several key elements that are essential to realizing this objective: close monitoring of, and reporting on, State’s compliance with the OPAC, political leadership, and a strong focus on the rights of all children not only during conflict but also after its end’.³¹ The OPAC recalled ‘the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children’ and without mentioning it by name (probably not to turn the United

27 Ph. E. Veerman, *The Rights of the Child and the Changing Image of Childhood*, Dordrecht, London, Boston: Martinus Nijhoff publishers 1992, p. 206 and 207. I called the issue of the age limit stated for the involvement of children in hostilities ‘the most controversial issue of the CRC’.

28 Optional Protocol on the Involvement of Children in Armed Conflicts adopted by the General Assembly of the United Nations on 25 May 2000, *UN Doc. A/RES/54/263*, (entered into force on 12 February 2002).

29 See S. Ek, *Legislative History of the Convention on the Rights of the Child*, Volume II, (2007, New York and Geneva, Office of the United Nations High Commissioner for Human Rights), p. 775-799. Article 38, paragraph 2 of the CRC: ‘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 3 of this article established that: ‘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 of age, States Parties shall endeavour to give priority to those who are the oldest’.

30 Article 1 OPAC: ‘States Parties take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take part in hostilities’. Article 2: ‘States Parties shall ensure that persons who have not attained the age of 18 years of age are not compulsory recruited into their armed forces’. Article 3.1.: ‘States Parties shall raise the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in article 38.3. of the Convention on the Rights of the Child, taking into account the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection’.

31 Coalition against the Use of Child Soldiers and UNICEF, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*, New York: Unicef 2003.

States against the Resolution) made in this diplomatic language no reference to the ICC in The Hague.³²

Important is that the security Council introduced child protection staff in UN peace keeping and field operations.³³ The then SRSG for Children in Armed Conflict, Otunnu and the staff of his office have been systematically laying out the ground work for the approach to see protection of children in armed conflict as part of comprehensive strategy to resolve conflict, since Otunnu's appointment in 1997. Since 1999, different Security Council resolutions also put the foundation in place for the later more important resolutions (especially resolution 1539 requesting the Secretary-General 'to devise urgently and preferably within three months, an action plan for a systematic and comprehensive monitoring and reporting mechanism').³⁴

Innovative is paragraph 8 of Resolution 1612, which established the Security Council Working Group on Children and Armed Conflict (hereinafter: Working Group) consisting of all members of the Security Council 'to review progress in development and implementation of action plans'. The Working Group can 'make recommendations to the Security Council on possible measures to promote the protection of children affected by armed conflict (...) and address requests (...) to other bodies within the UN system'.

Sarah Field investigated the decision-making processes and related outcomes of the Security Council from the perspective of international law.³⁵ She investigated the extent to which the Security Council is bound – under the Charter of the United Nations – by the CRC. She also investigated the extent to which the Council is in compliance with these obligations. Field found a minimal engagement by the Security Council with the CRC. Field:

'First, the broad objective of the resolutions is compliance with international law relating to children affected by armed conflict. Second, the resolutions have a normative based within international human rights law. The recognition that serious violations of international human rights law *constitute threats to peace* was the premise for the development of the thematic resolutions by the Council on the protection of civilians generally and women and children specifically. (...) further, the decision of the Council to seize itself of the matter of children and armed conflict may be traced directly to recommendations of the Committee on the Rights of the Child. As noted, the latter provided the momentum towards multiple decisions relating to children and armed conflict, inter alia, the appointment of a Special Representative (SRSG). Third, the preceding review of the resolutions

32 In Security Council resolution 1612 (1999) the Council did mention the ICC by name: 'noting recent effects to bring to an end the use of children as soldiers in violation with international law (...) and in the Rome Statute of the International Criminal Court in which conscripting or enlisting children under the age of fifteen into the armed forces or using them to participate actively in hostilities is characterized as a war crime (...)'. Also in Security Council Resolutions 1312 (2000), 1314 (2000), 1379 (2001) and in Resolution 1460 (2003) the ICC is mentioned by name.

33 Resolution 1314 (2000), adopted by the Security Council at its 4181st meeting, on 31 July 2000, *UN Doc. S/RES/1314*.

34 Resolution 1539 (2004), adopted by the Security Council at its 4948th meeting on 22 April 2004, *UN Doc. S/RES/1539*.

35 Sarah M. Field, 'UN Security Council Resolutions Concerning Children Affected by Armed Conflict: In whose "Best Interest"?', *International Journal of Children's Rights*, (21) 2013-1, p. 127-161.

illustrates that the rights in the CRC provide a framework for *informed* decision-making about preventing and removing threats to peace, arising from serious violations of international human rights and humanitarian law relating to children. Thus positioned there is no apparent conflict between the Council's legal obligations under the CRC and its legal obligation under the Charter: the former provides a process for identifying the rights violations contributing to the threat to peace and the development of related prevention responses'.³⁶

5. From the pilot of five countries to a new reporting machinery

For a good understanding of resolution 1612 the report of the UN Secretary-General from 2005 to the Security Council and the General Assembly is important.³⁷ It was this report which created the framework of resolution 1612. The Secretary-General's report introduced six violations which can be monitored. As part of this process of monitoring and reporting part of the UN itself reports have to be submitted to the Working Group. The six grave violations which are monitored are: (a) killing and maiming of children, (b) recruiting or using child soldiers, (c) attacks against schools or hospitals, (d) rape and other grave sexual violence against children, (e) abduction of children and (f) denial of humanitarian access for children.³⁸ In March 2009 strengthening the monitoring and reporting on rape and other grave sexual violence against children was proposed.³⁹

The Working Group consists of fifteen Security Council members and meets in close sessions. As a pilot of this new monitoring and reporting mechanism not only the six grave violations described above were chosen, but also five countries where armed conflict was raging were chosen for the first report. The countries of this original first 'pilot' were Burundi, the Democratic Republic of the Congo (hereinafter: DRC), Ivory Coast, Somalia and the Sudan. Already by October 2008 the situations in Afghanistan, the Central African Republic, Chad, Georgia, Haiti, Iraq, Lebanon, Myanmar, Nepal, the Occupied Palestinian territory and Israel were added and even situations of concern which were at the time not on the agenda of the Security Council (Colombia, the Philippines, southern border provinces of Thailand, Sri Lanka and Uganda).

Specific recommendations for each context are made. Concrete actions towards parties to the conflict are made via the Chairpersons of the Working Group and the Council. In addition to these country-specific reports, the United Nations Secretariat also submits for consideration of the Working Group at its bimonthly meeting a so called 'horizontal reporting note' that highlights relevant developments in all situations of concern for children. The 'horizontal reporting note' is another tool to flag critical emerging situations and to give updates on developments of concern relating to children.

36 Ibid., p. 159-161.

37 Secretary-General, *Children in armed conflict*, Report to the Security Council and the General Assembly, fifty-ninth session, agenda item 101, 9 February 2005 New York, *UN Doc. A/59/695-S/2002/72*.

38 Ibid., Sub C, par. 68, p. 16.

39 Secretary-General, *Children and armed conflict*, Report to the Security Council and General Assembly, Sixty-third session, agenda item 60 (a), 25 March 2009 New York, *UN Doc. A/63/785-S/2009/158*.

6. Child Protection Advisors enter the field

In the providing of information to UN headquarters which is supplying the Working Group with information (after headquarters has found it reliable) Child Protection advisors (hereinafter: CPAs) play increasingly an important role. The CPAs' task consists, however, not only of reporting, but also of mainstreaming child protection issues, capacity building, and so on.

The CPAs' work with peace keeping missions is of great importance in this respect. In most of the original 'pilot countries' there are now CPAs⁴⁰ who have an important role in the monitoring and reporting task to UN headquarters, which resolution 1612 required.⁴¹ Resolution 1612 requested the appointment of the CPAs. The CPAs often do much of the drafting of the reports. In Somalia, where after the unsuccessful UNOSOM II operation⁴², there is at present no UN mission (yet) and therefore no CPAs, other ways of contributing to the reporting process are found.

The CPAs were introduced already by resolution 1539 (2004). The Security Council (by adopting resolution 1612 in the year 2005) decided 'to continue the inclusion of specific provisions for the protection of children in the mandates of United Nations peacekeeping operations, including deployment, on a case-by-case basis, of Child Protection Advisors (CPAs)'. The Council then requested the Secretary-General 'to ensure that the need for the number and roles of CPAs are systematically assessed during the preparation of each United Nations peacekeeping operation'. The idea of not giving this task to the UNICEF is that UNICEF's main partners are governments. Therefore, expressing concern (which can be expressed in the reports to UN headquarters) can make the work of UNICEF difficult from that time on. However, obviously, good cooperation between UNICEF staff working in the country and government officials is also a key element in good monitoring and reporting.

Like no other UN staff member on the ground, CPAs contribute to the reporting process to UN headquarters. A UN Task Force reviews the information collected on a country level before it is sent to New York and a Task Force at the UN headquarters level reviews all the information.⁴³ The Task Force in New York (in which the Office of the SRSG on Children and Armed Conflict plays a leading role) makes the information available to the Working Group and digests it all into an annual global report on chil-

40 There are also CPAs in countries like Ethiopia, Eritrea, Haiti, Nepal and Sri Lanka.

41 In some countries the CPAs use *Guidelines on Terminology and a Minimum Data Set, Monitoring and Reporting of Grave Child Rights Violations in Conflict Areas* (December 2005, New York). This document is the product of meetings of an inter-agency group which met in New York in April 2005 to launch a process of developing a common terminology with respect to the six categories of violations identified by the Secretary-General's report of 2005 and to identify a minimum data set that would be periodically transmitted to the headquarters level. While the group sought to identify what type of data be collected, they did not identify specific indicators. The document was put together in order to guide the implementation of the monitoring and reporting mechanism established pursuant to Security Council Resolution 1612. But the document did of course not try to change elements or definitions of resolution 1612.

42 This period became well known and many remember the book by M. R. B., *Black Hawk Down: A Story of Modern War*, Signet Books 1999 and the film based on this book.

43 At the country level the Task Force is chaired jointly by the Deputy Special Representative of the Secretary-General of the United Nations (the 'DSRSG') and the UNICEF representative. The national government does not play a role in this national Task Force.

dren and armed conflict by the Secretary-General and bi-monthly reports on children and armed conflict in some countries. All relevant UN agencies are also participating in the Task Force in New York. More and more paperwork is now produced on children and armed conflict, but the reports can lead to program responses and also to actions by the Security Council. Reliable information is needed for the Security Council to take informed decisions.

7. Differences in approach between the CRC Committee, the Security Council (Working Group) and the ICC

States are reporting on the implementation of the CRC and the implementation of the OPAC to the UN Committee on the Rights of the Child (hereinafter: CRC Committee) The CRC Committee reviews the State Parties' reports.

Apart from this, the CRC Committee has designed a mechanism for NGO input. The reports from the NGOs are sometimes called 'alternative reports'. The CRC Committee prefers information from a Coalition of NGOs in a country in order not to get dozens of NGO reports on one country. The information provided by NGOs is used by CRC Committee members merely as a background to formulate questions to the delegation of the State Party when their representatives come to Geneva. Also UN agencies can provide background material to members of the CRC Committee in countries, but normally this just remains 'background material' from which CRC Committee members will not quote. The State Parties' reports remain the center of the 'constructive dialogue' with the representatives of the State Party who have made the trip to the Palais Wilson in Geneva. The constructive dialogues of delegations of States with the CRC Committee can lead to recommendations for review of the legal system, harmonizing of the laws, so called concluding observations, and recommendations to UN agencies for financial support and can be called the 'carrot approach'.

The Working Group reviews information gathered by the UN, instead of information provided by States. This mechanism is completely different from the method used by the CRC Committee. The Security Council's method is more action oriented. Task Forces led by the UN are monitoring the conduct of all parties. They transmit regular reports to a central Task Force at UN headquarters in New York. The Working Group will review reports and action plans, and consider targeted measures against offending parties, where insufficient progress has been made. On the basis of this information the Working Group can take direct action. This is unprecedented in the history of the United Nations. Already the six grave violations, which were mentioned earlier in this Chapter, were studied. They were first reviewed by the Working Group in only a few areas of conflict (the idea was that ultimately all areas of conflict would be covered and slowly this process is happening).

Recommendations by the Security Council are binding, the concluding observations of the CRC Committee are not. In addition, the Security Council can deal with non-State actors and could in principle 'target' individuals (like announcing travel restrictions on leaders and recommending their arrest for trial in The Hague by the ICC). The CRC Committee might ask tough questions during the dialogue with the delegation of the State Party, but 'naming and shaming' is mostly a method used by human

rights organizations such as Amnesty International or Human Rights Watch and is not the ‘language’ of a UN human rights Treaty Body.

An organization using naming and shaming as a method for change in this field is the Watch List on Children and Armed Conflict. The group was established in 2001 by several human rights and humanitarian organizations and collects and disseminates information on children and armed conflict. No State likes a critical tone used in the ‘concluding observations’ of the CRC Committee and to some extent the fear of being shamed in this way by the CRC Committee (even though in diplomatic wordings) can play a role to get improvements going of the situation of children’s rights in a country. The CRC Committee often mentions in the concluding observations first the positive developments. Only after this, a (mild) critique is expressed. But mostly, criticism is accompanied with suggestions for technical assistance, harmonizing laws, etc. The tone is often soft.

Robert Drinan wrote that ‘there is no one pattern or force that prompts nations to be just’.⁴⁴ It is in my opinion that one needs an approach chosen by the CRC Committee *and* the traditional approach by human rights organizations *and* new tactics⁴⁵ in order to get improvements *and* a threat to end up in the Hague. The Security Council (Working Group) and the Secretary-General in his report on children and armed conflict can name and shame governments and non-State actors (like armed groups not connected with the government) for instance for using child soldiers. The Secretary-General did set the tone for this in his report of 9 February 2005.⁴⁶ The Working Group does not have many limits and could for instance also propose that certain individuals be arrested and brought to The Hague for a trial at the ICC.

The use of this option, for instance, helped heads of armed groups in Ivory Coast to sign a plan of action on demobilization of ‘children who came to be with armed forces’ on the 14th of February 2006. In this action plan submitted by the armed groups to the government and the UN, resolution 1612 was mentioned. What might have contributed to get the armed groups to submit such a plan of action, was that the ‘generals’ could have been aware of the case brought by the Prosecutor of the ICC against Thomas Lubanga Dyilo, who was accused of the mere recruitment of child soldiers. The ICC might have been a deterrent here.

Another difference between the Security Council and the CRC Committee is that the latter has more the approach of the ‘carrot’, with the possibility of help from UNICEF and/or the World Health Organization upon the CRC Committee’s recommendations, while the Security Council can use a ‘stick’ approach, next to a ‘carrot’ approach.

In my opinion, obviously the ICC will use mainly a ‘stick’ approach, although the former Prosecutor has interpreted the concept of complementarity as an opportunity to help States and to facilitate changes in national judicial systems. I wrote that ‘this approach deserves admiration’, but that ‘the International Criminal Court should not be a development agency. However it can serve as a prod and provide moral support to

44 R. F. Drinan, *The Mobilization of Shame, A World View of Human Rights*, New Haven and London: Yale University Press 2001, p. 194.

45 The New Tactics in Human Rights Project, *New Tactics in Human Rights, A Resource for Practitioners*, Minneapolis: the Center for Victims of Torture 2004, www.newtactics.org

46 Report of the Secretary-General of 9 February 2005, Annex I and Annex II, p. 36-39.

development agencies and NGOs willing to undertake work in post-conflict situations. Since the ICC is not the United Nations Development Programme (UNDP) or an International Development Agency, it is the right approach of the prosecutor to encourage as many NGOs as possible in a country like the DR Congo might maximize the impact of an intervention there of the International Criminal Court, since it can only bring a few accused of war crimes and crimes against humanity to the Hague'.⁴⁷

8. An interview with the immediate Past-Chairman of the CRC Committee

On the 22nd of August I met Jean Zermatten, the Director of the International Institute on the Rights of the Child (*Institut International des Droits de L'Enfant*)⁴⁸ in Sion, the capital of the small Swiss Canton of Valais (about a two hour train ride along the Lake Geneva). He is a juvenile judge and received a honorary doctorate from the University of Fribourg. I wanted to see him because he was elected in 2005 as a member of the CRC Committee and he had just stepped down as its chairman. My hope was that Jean could speak more freely (now he was not the chairman anymore) about the different processes. Dr. Zermatten is a very quiet and very thoughtful man. Jean Zermatten:

'This process of resolution 1612 of the Security Council and of the work of the Special Representative is a very political process. We had asked to exchange information because we have States Parties to OPAC and we also have therefore a lot of information. We have a lot of information from States Parties and NGO's and reports from the field. And I believe that all this material is not used by the Security Council, which is a pity. We also received not much information from the Special Representative who was travelling and she had all this direct contact with States Parties and armed groups, but it was hard for us to exchange information. It was easier with the other Optional Protocol: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC).⁴⁹ We prepared together with UNICEF's Innocenti Research Centre for instance a Handbook for the OPSC.⁵⁰ Together with Dr. Nevena Vučković-Šahović (a former member of the CRC Committee from Serbia) I was guiding the process of the Handbook. I was very involved in this process and it took a lot of time, but with good results. The Special Representative on Children and Armed Conflict expressed an interest in the same process for such a Handbook, but we were never able to realize it.'

I asked Dr. Zermatten how he looked at the different parallel processes (the CRC Committee, the Special Representative, the work of the Security Council and the ICC). Zermatten:

47 Ph. E. Veerman, 'Should the International Criminal Court also be a Development Agency?', *Crime and Justice International*, (21) 2005-87, p. 17-20.

48 More information about Mr. Zermatten's Institute is available on the website www.childrights.org

49 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography adopted by the General Assembly of the United Nations on 25 May 2000, *UN Doc. A/RES/54/263*.

50 UNICEF, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, Florence: UNICEF Innocenti Research Centre 2009.

‘The Security Council and the Special Representative are in the arena of political processes, we have more a technical and children’s rights approach. Ms. Radhika Coomaraswamy (who was the Special Representative from 2006-2012) did not use the information we could have given her. And I met her successor, Ms. Leila Zerrougui, when I was doing my yearly rounds of meetings in New York and we discussed exchange of information and to work together on a Handbook of the OPAC. But the UN system is so compartmentalised. The process in the UN can be compared with the United Nations Human Rights Council in Geneva (which is political) and the different Treaty Bodies overseeing the different international human rights Treaties, which is more technical. But here there is a better exchange of information. But that there is more cooperation here is probably because we are (almost) all in Geneva and this is maybe the difficulty that the Office of the Special Representative and the Security Council are in New York and we in Geneva. Our system is so fragmented...’.

Dr. Zermatten is right to say that the whole system is very compartmentalised. We did not discuss it, but when I returned home from Sion I read in the report of a Workshop held on 7-8 February 2013, recommending to establish better communications with the ICC: The Working Group should encourage ‘the continued exchange of information between the Prosecutor and the Special Representative of the Secretary-General for Children and Armed Conflict’.⁵¹ The Working Group is also encouraged to ‘transmit conclusions of the Working Group to the International Criminal Court Prosecutor’. I think that Dr. Zermatten will agree with me that the CRC Committee should not be left out here.

9. Regional organizations

In paragraph 13 resolution 1612 welcomed ‘recent initiatives by regional and sub regional organizations and arrangements for the protection of children and armed conflict (...) and the development of peer review and monitoring and reporting mechanisms’. The resolution referred to the African organization the Economic Community of (15) West African States ECOWAS, which did establish a child protection unit and which task it is, among other things, to strengthen protection of children in armed conflict in West Africa.

European Union Guidelines on Children and Armed Conflict⁵² are from 2003 and precede the UN Security Council Resolution 1612 from 2005. But, they are part of the same process which the SRSG and his staff helped to set in motion. What is interesting is that the same process which led the UN to the new monitoring and reporting process was played parallel in organizations as the European Union (and EU member States are of course also member of the UN). One can see that it is the same process when

51 *Report of the Workshop Children and Armed Conflict: How to deal with Persistent Perpetrators?*, 7 and 8 February 2013, Princeton University, United States of America (Annex to the letter dated 13 March 2013 from the Permanent representative of Liechtenstein to the UN, addressed to the Secretary-General, *UN Doc. A/67/794, S/2013/158*).

52 European Union, General Affairs Council, *EU Guidelines on Children and Armed Conflict*, Brussels 4 December 2003, *Doc. 15634/03*.

one takes a look at paragraph 10 of the EU Guidelines on Children and Armed Conflict where a similar reporting process is mentioned, including violations and abuses against children to be reported by EU Heads of Mission, heads of EU Mission of civilian operations and EU military Commanders, as well as EU Special Representatives. The six violations which were found to be monitored well and were found in the Security Council Resolution 1612 (2005) were brought forward here also. The tone is: cooperate with UN agencies for adequate monitoring and reporting. It seems that one considers the UN system to be more effective. Elsewhere⁵³ it is recommended that ‘the EU should cooperate closely with UN bodies in taking forward the (UN) Security Council’s request to the (UN) Secretary-General to implement the monitoring and reporting mechanisms provided for in Security Council resolution 1612. EU Heads of Missions in countries named in the annexes to the Secretary-General’s report of 9 February 2005 should meet the UN bodies responsible for implementation locally to discuss how best to provide support’, it is suggested⁵⁴. Of course there is a Charter on the Rights and Welfare of the African Child (1990) which established also an African Committee on the Rights and Welfare of Child in Addis Abeba, almost a copy of the Committee on the Rights of the Child in Geneva.

10. Justice in The Hague: the first cases and charges of recruiting child soldiers

On March 17, 2006, Thomas Lubanga Dyilo (from the DRC and alleged founder and leader of the UPC, the militia *Union des Patriotes Congolais* operating in the East-Congolese region Ituri) became the first person arrested on an ICC warrant and transferred to the prison wing of the ICC in Scheveningen (in the municipality of The Hague, the Netherlands).⁵⁵ ICC investigators and intermediaries were in the DRC looking for proof (or rather witnesses who dared to come to The Hague) that Mr. Lubanga had ordered the killing of peacekeepers in February 2005 and other war crimes (sexual violence, torture and murders). However, Mr. Lubanga was charged ‘only’ with enlisting and conscripting children in 2002 and 2003 under the age of 15 years and using them to participate in hostilities in the DRC.⁵⁶ On March 21, 2006, the electric curtain went up covering the glass between the public gallery of the ICC courtroom. I (at the public gallery) could see the Judge (Claude Jorda) and the accused and the rest of the courtroom. Lubanga spoke with a soft voice and said that his profession was that of

53 European Union, Council of the European Union, Implementation Strategy for Guidelines on Children and Armed Conflict, note from the Working Party on Human Rights to the Committee for Security Policy (PSCV), Brussels 25 April 2006, *Doc.* 8285/1/06. REV.1.

54 The Organization of American States or the Organization for Security and Cooperation in Europe are also of importance in this respect, but are not reviewed in this Chapter.

55 The warrant of arrest was issued under seal on 10 February 2006 and was unsealed on 17 March 2006.

56 ICC 14 March 2012, ICC-01/04-01/06 (*The Prosecutor/Thomas Lubanga Dyilo*). Some of the children were recruited by force but it seems that many voluntarily reported to the UPC. Some of them needed food and shelter, others might have done it out of feeling of revenge because their parents were killed by (one of) the other armed group(s).

a politician.⁵⁷ I wondered if this was now my ‘Hannah Arendt-moment’.⁵⁸ It was certainly history. Finally this enormous legal machinery had somebody in the dock.

The trial of Thomas Lubanga Dyilo was the first trial ever before the ICC, and marks a fundamental step in the fight against impunity. . For children’s rights it was important, but it was – in my feeling – also overshadowed by the fact that the six years before the arrest of Lubanga about 60.000 people had been killed in a horrible way in Ituri and that the charge sheet could not be extended with other crimes. It felt strange, like finally having Al Capone in court on tax evasion (although the horrible crime of recruiting children cannot be compared with tax evasion). In a way it also harmed a bit (in my feeling) the credibility of the court. A Dutch consultant working often in Africa sent me an e-mail that year from the DRC:

‘personally I am not so happy of the action of the ICC because they only have now Thomas Lubanga. It is probably somebody who deserves punishment, but it is strange that he is the only one who is now in The Hague from that area. Lubanga’s direct opponent chef Lendu, is certainly not less bad and here and there in Congo I can mention more such men. If child soldiers are really so important, why not bring charges against all Mayi-Mayi, RCD recruiters, the Congolese President Kabila, Mr. Bemba and leaders in Uganda? Almost all of them are also guilty of murders, mass rapes, torture and so on’.⁵⁹

In January 2009 the then Prosecutor (the Argentinean Luis Moreno-Ocampo) showed in court a video of Mr. Lubanga stepping in a car followed by a truck full of soldiers, most of them clearly children. He also addressed young boys praising them that they were now part of the army. Important evidence in a case where there is no ICC police and evidence has to be obtained through intermediaries because for representatives of the ICC it is often not safe to come to the area of conflict to question witnesses. The Judge was critical of the use of intermediaries and it almost led to the release of Mr. Lubanga, as Tjitske Lingsma observed.⁶⁰ On the 14th of July 2009 the Prosecution concluded the presentation in the case against Mr. Lubanga.

On 24 November, 2009 finally a new case opened in The Hague against two other men from the DRC.⁶¹ One man (Germain Katanga) was the alleged commander of the Patriotic Resistance Force in Ituri (*Fore de résistance patriotique en Ituri*) and the other man (Mathieu Ngudjolo Chui) was the alleged leader of the National Integrationist Front, the FMI (*Front des nationalistes et intégrationnistes*). They were both accused of three crimes against humanity (murder, sexual slavery and rape) and seven war crimes (using children under the age of 15 to take part in hostilities as one of them, the

57 Interesting is that Mr. Lubanga has a university degree in psychology. Education in psychology (as it did in the case of the Bosnian-Serbian leader Radovan Karadzic, who was trained as a psychiatrist and who is at present on trial in The Hague at the Yugoslavia Tribunal) must have made the accused, if found guilty, even more aware of what he was doing in my opinion.

58 H. Arendt, *Eichmann in Jerusalem: Ein Bericht von der Banalität des Bösen*, München: 1986. In July 2008 Jean-Bemba was handed over to the ICC.

59 Personal communication on 2 November 2006 from Hans Romkema.

60 T. Lingsma, ‘In de rechtszaal van het Internationaal Strafhof: ‘All rise’’, *De Groene Amsterdammer*, 26 september 2013, p. 32-37.

61 *The Prosecutor/Germain Katanga and Mathieu Ngudjolo Chui*.

others are deliberately directing an attack on a civilian population as such or against individual civilians or against individual civilians not taking direct part in hostilities, willful killing, destruction of property, pillaging, sexual slavery and rape).

A fugitive leader of the Congolese militia group M23, Mr. Bosco Ntaganda, was taken into custody at the ICC on 22 March, 2013. The Coalition for the International Criminal Court (a NGO in the Hague and the United States) explains why:

‘Ntaganda has been wanted by the ICC since 2006 for the war crimes of enlisting, conscripting and using children under the age of 15 to participate actively in hostilities in the DRC’s Ituri region in 2002-2003. In July 2012, a second ICC arrest warrant was issued for Ntaganda for the crimes against humanity of murder, persecution based on ethnic grounds and rape/sexual slavery, as well as the war crimes of intentional attacks against civilians, murder, rape/sexual slavery and pillaging during the same period in Ituri’.⁶²

On March 14, 2012, Trial Chamber I in The Hague issued a judgment in the ICC’s first case, *The Prosecutor/Thomas Lubanga Dyilo*, convicting Lubanga of the war crimes of conscripting and enlisting children under the age of fifteen, and using them to participate actively in hostilities, according to the Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute, from early September 2002 to 13 August 2003 (Judgment).⁶³ The trial Chamber of the ICC concluded that ‘while all 129 victims claimed they had suffered harm as a result of the enlistment or conscription of children under the age of 15, or their use to participate actively in hostilities, many also alleged they had suffered harm as a result of other crimes, such as sexual violence and torture or other forms of ill treatment, which are not the subject of the charges against the accused’.⁶⁴ The ICC has reached 111 member States and according to the Coalition for the Criminal Court the ‘system has yet to be truly universal; the court has come far in investigating and prosecuting, but needs to be strengthened and reinforced; some perpetrators are tried before national courts, but most are not; the voice of victims are sometimes heard, but often silenced’.⁶⁵ What is important is that in the ICC the voices of victims can be heard and that this fact itself might have a healing effect.⁶⁶

11. New ways of recruitment

For many centuries children were recruited into the different armies of the world. The word *infantry* stems from this (infant means boy). The American Civil War has some-

62 Coalition for the International Criminal Court, media Advisory, *DRC Militia leader Ntaganda in ICC Custody*, The Hague, 22 March 2013.

63 ICC 14 March 2012, ICC-01/04-01/06-2842 (*The Prosecutor/Thomas Lubanga Dyilo*).

64 Ibid. par. 16.

65 C.a Nilsson-Kleffner, *Statement of the Coalition for the International Criminal Court*, The Review Conference of the Rome Statute, 1 June 2010, Kampala Uganda.

66 J. Mertus ‘The War Crimes Tribunal: Triumph of the “International Community”: Pain of Survivors’, *Mind and Human Interaction*, (8) 1997-1, p. 47-57

times been called the ‘boys war’.⁶⁷ Reeder explains that in the confusion of the battle and with all the noise a series of drumbeats represented a certain order. Young boys were also recruited as drummer boys (according to Michael Smith often as young as nine⁶⁸) or in the navy as ‘powder monkeys’ (to help the gunners reload the guns). Many boys told that they were over eighteen and were subsequently recruited. The Revolutionary United Front (RUF⁶⁹) in Sierra Leone and the Lord Resistance Army (LRA) of Joseph Kony⁷⁰ ‘recruited’ many children by kidnapping them. And they were forced to kill others, often their own family members. Many were given drugs.

A new phenomenon of the 21st century is religious inspired groups who recruit young people on the internet as fighters. The Dutch newspaper *NRC* reported for instance on a sixteen year girl who was arrested in the spring of 2013 for being on her way to Syria to join the fight against President Bashar al-Assad.⁷¹ The Dutch National Coordinator of the Fight Against Terrorism reported that nine minors were recruited for the fight. The Belgian Minister of Interior Affairs, Joelle Milquet, had some proposals on how to deal with Belgian minors who want to fight in Syria. One was to withdraw their identity card. According to the newspaper *Gazet van Antwerpen* however, this seemed not practical.⁷² Proposed was to focus on prevention and the fight against radical networks of recruiting. John de Wit (also in de *Gazet van Antwerpen*) quoted the Belgian federal prosecutor, Mr. Johan Delmulle, who states that in Belgium alone there are 5.000 internet sites who call powerfully for *jihād* and there are sites on how to make bombs.⁷³ They cannot be brought to justice because they do not call for a specific crime or do something against one specific person. Howell has tried to calm us down with saying that not every young person will immediately be a suicide bomber:

‘It would be a mistake, in my view, to assume that all of the human resources that al-Qaeda and similar terrorist groups have developed constitute an unlimited supply of committed, self-directed operatives willing to pilot aircraft into skyscrapers and other civilian targets. Martyrdom has a significant history in some streams of Islam, but it is by no means a universal aspiration. As a consequence, I suspect that al-Qaeda also includes, around the

67 C. Reeder, ‘Drummer boys played important roles in the Civil War, and some became soldiers’, *The Washington Post*, 21 February 2012.

68 M. Smith, ‘End of an era for little drummer boys and the powder monkeys’, *Telegraph*, 29 March 2002.

69 M. Denov, *Child Soldiers: Sierra Leone’s Revolutionary United Front*, Cambridge University Press 2010.

70 It is amazing with the new technology of drones and satellites that Joseph Kony is not yet in the prison in Scheveningen near the Hague for his trial at the ICC. A group called *Invisible Children* made a short film (KONY2012) and started an internet campaign to bring Kony to the ICC. They brought back attention of the media and the general public (it seemed that 60 million people watched the video) to this leader of the LRA. It is claimed that Kony and his LRA kidnapped 30.000 children. This information I base on a Op-Ed in *de Volkskrant*. K. Verdel, ‘Kritiek op Kony 2012 is onterecht: we jagen op een oorlogsmisdadiger’, *de Volkskrant*, 13 maart 2012.

71 B. van der Bol, ‘Meisje van 16 jaar wilde strijden in Syrië’, *NRC Handelsblad*, 17 May 2013.

72 *Gazet van Antwerpen*, 19 April 2013.

73 J. de Wit, ‘Federaal parket evalueert terrorismewet’, *Gazet van Antwerpen*, 4 February 2009.

hard core of “true believers”, a larger cadre of angry, alienated young men who cannot be counted on to pursue their hatred to the point of wilful self-destruction’.⁷⁴

Though it is not new that young people in an identity crisis are pulled towards charismatic leaders, seeing films and websites on the internet is a new way of recruitment.

12. The sad conclusion: in spite of everything child soldiers remain the rule, not the exception

The CRC Committee was formed in 1991 to monitor all the different rights of the child which have to be implemented by the States Parties to the CRC. The States which are party of the Convention are sending representatives to the CRC Committee in Geneva to present (at first an *initial report* and then later *periodic*) reports on how the Convention is implemented in the country. The CRC Committee also monitors the implementation of the OPAC (which gives the most specific prohibition of child soldiers to date under international law). The CRC Committee follows with respect to the implementation of Optional Protocols to the Convention the same methodology as with the monitoring of the Convention itself.

A problem for the work of the CRC Committee is that the majority of child soldiers is associated with non-State actors and that increasingly adolescents under eighteen are used in political conflict and terrorist acts (including suicide attacks).⁷⁵ For the agenda setting on children and armed conflict the report of Ms. Graça Machel in 1996 was an important first step and now the Security Council is doing further groundbreaking work.⁷⁶ More work needs indeed to be done to consolidate progress for children and ‘to guarantee that the Security Council’s work to protect children ultimately leads to tangible impact on the ground’.⁷⁷ The UN Secretary-General has observed that ‘on the one hand, clear and strong children and armed conflict prevention standards and important concrete initiatives, particularly at the international level, have been developed. On the other hand, atrocities against children and impunity for violators continue largely

74 W. N. Howell, ‘Killing in the Name of God: motif and motivation’, *Mind and Human Interaction*, (12) 2001-3, p. 146-155.

75 C. W. Greenbaum, Ph. E. Veerman & Bacon-Shnoor, N. *Protection of Children in Armed Political Conflict: A multidisciplinary Perspective*, Antwerp: Intersentia Publishing House 2006.

76 Secretary-General, *Impact of Armed Conflict on Children*, Report of the expert of the Secretary-General, Ms. Graça Machel, Fifty-first session, agenda item 108, 26 August 2006 New York, *UN Doc. A/51/306*.

77 Watchlist on Children and Armed Conflict, *UN Security Council Resolution 1612 and Beyond: Strengthening Protection in Armed Conflict*, New York May 2009.

unabated on the ground'.⁷⁸ First steps here and there have been taken to end impunity and to hold accountable those recruiting children.⁷⁹

The slow enormous legal machinery of the ICC, which has been described as 'the most innovative and exciting development in international law, since the creation of the United Nations' finally started to work.⁸⁰ The fact that there is a conviction and that several men are now in the dock in The Hague and recruiting child soldiers is on their charge sheets, started already to have an impact. However, impunity for those who recruited children and used children in hostilities remains widespread. Some hardened criminals like Joseph Kony (the leader of the Lord Resistance Army), seem not to be deterred by the ICC and they go on to kidnap children, train and use children as child soldiers. The Coalition against the Use of Child Soldiers has pointed out that 'the struggle against impunity has been undermined by the appointment to positions in government or national armed forces of individuals who are implicated in child soldier recruitment and use'.⁸¹ The work of the ICC to bring to trial suspects of recruiting child soldiers is not yet enough supported throughout the world and in (post)conflict areas their population seems not to find it a priority to bring perpetrators to justice.⁸²

In general there is a lot of truth in the observation of the Swiss scholar of international relations and journalist Pierre Hazan who wrote that 'international tribunals function in the context of *realpolitik* and that therefore their work is often a haphazard activity'.⁸³ The concept of *complementarity*⁸⁴ in the Rome Statute of the ICC did a lot to make the ICC more acceptable for many States and to bridge the gap between those States which were in favor of the absolute autonomy of national systems and those in favor of international systems of criminal justice. Tensions between different world views, but also the interaction between international law and the diversity of national systems can be felt daily in The Hague at the ICC.

78 Report of the Secretary-General of 9 February 2005, p. 15.

79 *In this respect one should not only look at the work of the ICC, but also at the Special Court for Sierra Leone where five former members of armed groups have been convicted for conscripting, enlisting or using in hostilities minors under 15 year old in the country's civil war of 1991-2002. Child soldiers in Sierra Leone (often under the influence of drugs) had to chop of hands or feet of innocent civilians. The Special Court was set up in 2002. In the civil war 50.000 people were killed. In Sierra Leone I interviewed former child soldiers and visited a camp of 'amputees' and reported about this in: Ph. E. Veerman, 'The children's rights crisis in Sierra Leone', *International Children's Rights Monitor*, (12) 1999.*

80 W. A. Schabas, *An Introduction to the International Criminal Court*, Cambridge: Cambridge University Press 2004.

81 Coalition to Stop the Use of Child Soldiers, *Letter to Ambassadors of the Security Council*, London 20 April 2009. The Coalition is now called Child Soldiers International.

82 P. Malcontent & D. Taylor, 'Internationaal Strafhof: ideaal en barre werkelijkheid', *Internationale Spectator*, (63) 2009-6, p. 299-301.

83 P. Hazan, *Justice in Time of War; The True Story behind the International Criminal Tribunal for the Former Yugoslavia*, Texas A. and M. University Press 2004.

84 On the concept of complementarity see for instance: B. S. Brown, 'Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals', *Yale Journal of International Law*, (23) 1998, p. 383, M. Benzing, 'The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity', in: A. von Bogdandy and R. Wolfrum (ed.) *Max Planck Yearbook United Nations Law*, Leiden: 2003, vol. 7, Brill, and J. T. Holmes 'Complementarity: National Courts versus the ICC', in: E. Casese (et al.), *The Rome Statute of the International Criminal Court: A Commentary*, Oxford: 2002, p. 667.

The work by the ICC of bringing to justice in the Hague those who recruited child soldiers needs to be studied further, but it has to be understood that the ICC is not an isolated laboratory. This becomes clear when we look at the ICC through the lens of some researchers who have tried to understand how ‘the formation of international criminal justice is a phenomenon anchored in power, yet simultaneously capable of transcending it’.⁸⁵ A few times already now this complicated acrobatic act of transcending has been set in motion.

This Chapter did not want to be complete and include all principles. The Paris Principles were for instance not reviewed.⁸⁶ Conflicts in many countries were not given attention and also protection of children during political demonstrations was not reviewed here.⁸⁷ I felt that in a book on human dignity *child soldiers* and the different attempts to fight the phenomenon of recruiting children as soldiers, should not be forgotten.⁸⁸ Especially in modern conflict⁸⁹ child soldiers are still there, just like in the time of the drummer boys. We might have advanced technology now like drones, but in most of the conflicts children are fighting. According to Richard Clarke (the Director of Child Soldiers International)⁹⁰ there are plenty of subsidiary reasons for that: the ICC justice is slow moving and too limited in numbers and too remote geographically and culturally to make enough impact nationally. Monitoring Reporting mechanism and the Security Council Resolution 1612 are ‘not offering much carrot’. Listing is painful to governments, but not painful enough to stop them recruiting. There is no systematic use of ‘national carrots’ – development assistance, security sector reform, military assistance – to lure perpetrators back to good behavior. And there are not enough resources in the UN system devoted to the child soldiers issue and children in general.

13. A possible remedy: to put more barriers in place to stop recruitment of child soldiers

The UN Secretary-General wrote in a report on children and armed conflict⁹¹ (of February 2005), which laid the groundwork for Security Council Resolution 1612, that ‘the proposed actions, taken together, are designed to create a critical mass of response to ensure compliance and bring about the *era of application*’.⁹² Indeed the Security Council Resolution 1612 has created additional possibilities for application of chil-

85 F. Mégret, ‘The politics of International Criminal Justice’, *European Journal of International Law*, (13) 2002-5, p. 1261-1284.

86 *The Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, Februari 2007.

87 Greenbaum, Veerman & Bacon-Shnoor 2006.

88 I like to thank Ambassador Richard Clarke, director of Child Soldiers International in London and Mr. Matthias A. Seisay a criminologist originally from Sierra Leone (now at Marquette University in the United States) for their feedback on the draft of this Chapter.

89 See for instance the latest report: *Children and Armed Conflict*, Report of the Secretary-General, General Assembly and Security Council, 15 May 2013, *UN Doc. A/67/845 – S/2013/245*.

90 Personal communication.

91 The UN Secretary-General has pointed out in his report of 9 February 2005 that ‘there is no universally applicable definition of “armed conflict” in general’.

92 Report of the Secretary-General of 9 February 2005, Sub III, paragraph 59, page 14.

dren's rights. An 'era of application' sounds too much like utopia, though. Resolution 1612, however, should not be considered as 'just another Security Council resolution on children and armed conflict', because the resolution is action oriented and comes from the most powerful body within the UN and such action can have enormous impact. There is at least this potential.⁹³

However, *application* means going back to the original preventive purpose of the OPAC. In addition there is too much emphasis on response, on detaching children from armed forces and not enough in putting barriers in place. The organization Child Soldiers International is calling for a new practical policy effort on prevention for State and State-linked forces, but also non-state armed groups. I support these efforts warmly. The SRSG said in Geneva recently:

'We must strengthen our collective action to respond to the plight of conflict-affected children. If we fail to protect their rights, their schools and ultimately their future, we call into question our common and longstanding commitment to uphold human rights and international humanitarian law. We must do more to translate these commitments into action and to spare children from the scourge of conflict'.⁹⁴

The momentum of States to implement has to come from the United Nations (the SRSG has now launched a campaign to end State use by 2016). But the donor community can also do a lot. And this means mainstreaming child protection and child soldiers into all of the assistance programs.⁹⁵ In other words: we still have a long battle ahead of us to get rid of the child soldiers phenomenon.

93 The author likes to thank Mr. Boubecar Dieng, Chief, Child Protection Section of the UN in Ivory Coast and Mr. Massimo Toschi, Child Protection Advisor and Chief of the Child Protection Unit of MINUSTAH (The UN Stabilization Mission in Haiti) for the valuable suggestions for this article and making me enthusiastic about options set in motion by Security Council Resolution 1612.

94 L. Zerroughi, SRSG, Statement at the Human Rights Council in Geneva, 10 September 2013.

95 Also brought to my attention by Richard Clarke.