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Child Soldiers & International Law

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JOHN STILL, JUN 21 2011

A recent UK documentary, aired on Channel 4, appeared to shed a new and damning light on the conflict in Sri Lanka between government forces and the Tamil Tigers in 2009. Among the many damning accusations made against both sides was the charge that the Tamil Tigers had recruited child soldiers. Although the use of children in conflict is nothing new, children armed the European knights of the Middle Ages and drummer boys marched ahead of Napoleonic armies, the number of prohibitions currently banning the use of children in armed conflict has increased. Despite these prohibitions in International humanitarian law (the law of armed conflict) it seems Sri Lanka is just one of the many places in the world where they continue to be employed.

In 2000, the UN reported that 36 countries were currently involved in conflict in which child soldiers were taking part. 17 of those conflicts saw the state itself employing children to fight. This trend has not subsided since the report was published. When coalition forces entered Iraq in both 1991 & 2003, they were faced with resistance from Saddam's 'lion cubs', children from an after school club promoted by the Iraqi dictator in which military training, political indoctrination and the torture of animals were promoted in order to turn children into Fedayeen units later in life. Similarly the Taliban employ child soldiers against ISAF forces currently in Afghanistan, either as suicide bombers, spies or regular combatants. Similar incidents have been reported in Libya as Gaddafi stands accused of using children to help conduct the siege of rebel held Misrata in April 2011.

It is clear that employing children to fight gives rebel or government forces some significant advantages. Psychologically, children are easier to manipulate, scare or bully into committing acts of extreme violence while not asking for food, shelter, payment or rest in return. Former inmates of the notorious Toul Sleng prison in Phnom Penh recall with horror the casual cruelty of the teenagers employed as prison guards under the Khmer Rouge. In times of great stress children are more likely to look to the leader of a group as a source of security, and can become fiercely protective over him/her, many of Saddam's 'lion cubs' still professed their 'love' for the dictator after being captured by coalition forces. They can be more easily 'programmed' into feeling little fear or revulsion for their actions and so are often used to commit atrocities, such as the forced amputation of civilian's limbs by child soldiers from the Revolutionary United Front (RUF) in Sierra Leone.

While some are kidnapped or forced into military service many join of their own volition, more easily seduced by the illicit glamour of violence, tales of war and the promise of adventure which recruiters provide. This makes International Law promising to solely target recruiters ineffective as children are used to recruit others like themselves. Many adults will understandably hesitate over killing a child, such as British forces who refused to fire on RUF child soldiers in 2000 and were surrounded and captured as a result. As a result, opposing groups might seek to employ child soldiers pre-emptively lest their enemy begin doing so and they be left without this tactical asset.

Often recruited in areas with high birth rates and low life expectancy, such as sub-Saharan Africa, many children are orphans with little or no other economic opportunities. The promise of loot, pillage and regular payment are often powerful incentives to join voluntarily. The high birth rate also means that casualties are easily replaced, whether through violent or non-violent means. Life as a soldier may even be safer than life as a civilian in conflicts based on ethnicity or tribal affiliation, leading many parents to force their children into armed groups, where at least they will be armed and more able to defend themselves.

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These advantages have led to a systemic preference for using children in armed conflict against which poorly understood, culturally insensitive international laws stand little chance of changing, even more so given the low conviction rate and drawn out process of legal proceedings. The Western response could be best described as hysterical condemnation, which while understandable is also unhelpful. The difficulty in IHL starts when attempting to define a child, in 1997 UNICEF stated that a child was any person under 18, only to be contradicted by the Rome Statue of the International Criminal Court (ICC) in 1998 who stated that the age limit was 15.

While this lack of consensus is damaging in legal terms (also leaving the UK open to the charge of employing child soldiers, when between 2003 and 2005 fifteen 17 year olds were sent to Iraq) it overlooks the fact that the Western concept of a child is inapplicable in many areas where children are involved in conflict. The Western view of children as immature, vulnerable, incapable of assuming responsibility and in constant need of protection is as alien to some other societies as are our concepts of human rights, and as such has had little effect in stopping the recruitment of children for armed conflict.

In parts of Mozambique and Angola, both countries stand accused of using child soldiers in their protracted civil wars, the journey from childhood to adulthood is taken through rituals, ceremonies or rites of passage rather than the passing of their 15th or 18th birthday. An individual may be a child until he or she is able to work, meaning that some are deemed adults sooner than others, depending on the speed of their physical development. Nor is the divide between child and adult as inflexible as it is in the West. An individual may be a child at home, but in times of harvest, or war, he or she is considered to be adult.

Issuing inflexible, inappropriate and poorly understood prohibitions on the use of children in armed conflict is unlikely to have the desired affect when measured against local beliefs and rising insecurity. It is the nature of international law that it must issue blanket prohibitions on certain issues, but as the trend of using children in conflict seems to continue unaffected it is perhaps time to take a different approach.

Working with national and regional agencies more culturally specific laws could be crafted which may go some way to stopping children becoming involved in armed conflict. Although even these laws are likely to be violated by unscrupulous local armed groups who will naturally seek an advantage over the enemy, they stand more chance of deterring would be recruiters than the current laws.

Accepting this, more efforts can be re-directed to rehabilitate former child soldiers, while giving them a platform to speak openly and honestly about their experiences as combatants. The lack of convictions and the question of a child's legal liability reflect a Western hesitance of viewing children as responsible for their actions, a view which may not be held by the community directly affected by the conflict.

While it is obvious that special legal measures should be in place to ensure that children should be treated in light of their young age, and the very real possibility that they were forced to commit horrific acts, a lack of any form of punishment is unlikely to deter further recruitment and may not do justice to the victims of atrocities carried out by child soldiers. This may store up resentment and impede a healing and re-integration process vital to the future of the lives of both perpetrator and victim. Respect for a local sense of justice, the need for adequate educational training programs as well as extensive re-integration and reconciliation efforts should guide the international efforts in dealing with child soldiers which may go some way to healing the wounds caused by war.

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include organisational learning, with a specific focus on isomorphism and hierarchy.