Child Soldiers and International Law

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The Child Soldier Problem

- 300,000 children < 18 actively engaged in conflict in > 20 countries
- Another ~500,000 ‘conscripted’ into military, paramilitaries, militia, guerilla groups in 65 countries
  - ‘direct’ and ‘indirect’ roles
- Uganda > 20,000 children abducted by the Lords Resistance Army
- Democratic Republic of Congo > 30,000 children in the various militia
- Sierra Leone 20,000 - 30,000 children involved in the conflict
- Other countries from all corners of the globe - including Colombia, Burma, Chad, Sri Lanka, FRY countries etc

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What is a ‘Child’ Soldier

- International Law looks solely to the age of a person

- 1989 Convention on the Rights of the Child (CROC)
  - any person <18 years is a ‘child’
  - relatively weak restrictions on recruiting children between 15-18 years
  - ‘feasible measures’ to ensure <15 do not take ‘direct part in hostilities’

- But....
  - how old is a ‘child’?
  - is age the determinant factor?
  - ‘rites of passage’
Regulation of Child Soldiers under International Law

- **Prohibition / Restriction of Recruitment of Children**
  - directed towards States

- **Criminalization of Recruitment of Children**
  - directed towards individuals

- **Criminalization of Actions of Child Soldiers**
  - directed towards individuals
Prohibition / Restriction of Recruitment of Children

• 1977 Additional Protocols to the Geneva Conventions
  – First time international law dealt directly with issue
    • International armed conflicts
      – no recruiting <15
      – ‘feasible measures’ for <15 not to take ‘direct’ part
      – ‘exceptional circumstances’
    • Non-international armed conflicts
      – <15 - no recruitment or participation in hostilities

• 1990 African Charter on the Rights and Welfare of the Child
  – Only ‘regional’ instrument that directly addresses issue
  – Sets the highest standards of all international treaties
  – Yet still major problem in continent of Africa
    • ‘all necessary measures’ - no <18 recruited / take part in hostilities

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Prohibition / Restriction of Recruitment of Children

- **1989 Convention on the Rights of the Child**

- **1999 International Labour Organization Convention**
  - Child = <18
  - ‘immediate and effective measures’ - eliminate ‘worst forms of child labour’
  - includes forced / compulsory recruitment for use in armed conflict

- **2000 Optional Protocol to CROC**
  - in force 2002
  - missed opportunity
    - ‘feasible measures’ - no <18 taking ‘direct part’
    - no ‘compulsory’ recruitment <18
    - BUT ...
    - voluntary recruitment <18 still possible
    - interpretation of ‘feasible measures’? - subject to ‘military considerations’?
    - what is ‘direct’ / ‘indirect’ participation

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Criminalization of Recruitment of Children

- **International Criminal Court**
- **Established by Treaty (Rome Statute) - 105 States Parties**
- ‘most serious crimes of concern to the international community’
- to ‘put an end to impunity’
- ‘to contribute to the prevention of these crimes’
  - Genocide
  - Crimes against humanity
  - War crimes
  - [Aggression]

- **War Crimes**
  - conscripting / enlisting / using to participate ‘actively’ <15
  - transitional provision

- **Crimes Against Humanity**
  - enslavement
  - imprisonment
  - rape, sexual slavery, enforced prostitution

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International Criminal Court

- Democratic Republic of Congo
  - The Prosecutor v. Thomas Lubanga Dyilo
    - charged with war crimes
      - enlisting
      - conscription
      - using to participate actively
    - in custody
    - charges confirmed
    - trial late 2007 / early 2008?

- Uganda
  - The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen
    - charged with
      - crimes against humanity – incl enslavement
      - war crimes - enlisting
    - arrest warrants issued
    - ongoing Ugandan peace negotiations
Criminalization of Recruitment of Children

- Special Court for Sierra Leone
- Established by agreement b/w UN and Sierra Leone
- Events since 30 November 1996
- Various crimes
  - Crimes against humanity
  - Violations of common article 3 Geneva Conventions
  - Other serious violations of IHL
    - conscripting / enlisting / using <15
  - Certain offences under national law
    - violations of Prevention of Cruelty to Children Act
Special Court for Sierra Leone

- **The Prosecutor v. Sam Hinga Norman**
  - Former Deputy Defence Minister and later Minister of Internal Affairs
    - Various charges incl conscripting / enlisting / using children <15
    - Died before judgment
    - May 2004 – recruitment of child soldiers <15 a crime under customary international law prior to November 1996 (majority) or by June 1998 (minority)

- **The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu**
  - Senior officials of Armed Forces Revolutionary Council
    - Charged with
      - serious violations of IHL incl conscripting / enlisting / using children <15
      - crimes against humanity incl sexual slavery, enslavement
    - June 2007 – found guilty on 11 counts
      - Sentenced to 50, 45, 50 years imprisonment

- **The Prosecutor v. Allieu Kondewa**
  - High Priest of the Civil Defence Forces
    - August 2007 – guilty of conscripting / enlisting / using children <15
    - To be sentenced late September 2007

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Criminalization of Actions of Child Soldiers

- Very complex / difficult issue

- Often commit acts of violent brutality
  - Largely due to circumstances / coercion / intimidation / lack of understanding / drugs etc
  - Prosecution only when absolutely warranted and in very limited situations - very rare if ever
  - But ... what if no extenuating circumstances?
    - viewpoint of victim
    - acceptance of prosecution of minors in national jurisdictions for violent crimes

- Rome Statute - ignores the issue
  - no jurisdiction over person <18
  - adverse consequences?

- Special Court for Sierra Leone
  - jurisdiction over persons 15 and over
  - accused 15 - 18 ‘treated with dignity’
  - emphasis on reintegration / rehabilitation
Concluding Comments

• Need for political will at all levels
  - treaty standards too weak
  - enforcement

• Some progress in international courts - but reliant on State cooperation

• Much more needs to be done
  - otherwise children will remain ‘attractive’ soldiers
  - another 800,000 children will replace those currently used

• (some possible) Strategies for progress
  - develop effective reintegration / rehabilitation programs
  - ‘upgrade’ international law
  - set and enforce rigorous and consistent standards
  - address entire context of conflict - social / geopolitical / economic / geographical / development / equity etc
  - address root causes of involvement of children
  - provide realistic alternatives to joining and participating in armed conflict

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