
Child Soldiers: Legal and Military Challenges in Confronting a Global Phenomenon

P.W. Singer, *Children at War*. New York: Pantheon, 2005.
Pp. 288 [Hardcover \$35 CAN].

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Over the last decade, the existence of child soldiers has been brought to light through a barrage of graphic international news agency articles and human rights reports. Usually, these materials only identify sporadic and often sensationalized cases. What has been less forthcoming is a deeper understanding of what P.W. Singer calls the “child-soldier doctrine”: a calculated and pervasive strategy by armed groups to use children as combatants. *Children at War* is an admirable effort at making this daunting topic accessible to a wider public policy audience, and it provides an interesting non-legal primer on this topic for practitioners of international humanitarian law.¹ However, the book’s insufficient treatment of important legal aspects of the child soldier issue is disappointing given that effective criminal prosecutions are a necessary element to confronting this challenge. In addition, stepped-up prosecutorial activity at the international level has taken place since Singer completed this text, and it also warrants attention.

While conducting interviews with personnel of private military companies from around the world for his earlier publication entitled *Corporate Warriors: The Rise of the Privatized Military Industry*,² Singer was surprised to learn that many of them had faced children in combat. This prompted him to look deeper into the matter, resulting in *Children at War*.³ This book explains the advent of child soldiers in modern armed

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¹ P.W. Singer, *Children at War* (New York: Pantheon, 2005).

² P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003).

³ *Supra* note 1 at ix.

conflict and begins with a discussion of the historical context of children in war. Singer explains that historically well-known instances of the use of child soldiers, from ancient times to the US civil war and the *Hitler Jugend* (Hitler Youth), are exceptions to the millennia-old prohibition on children as combatants.⁴

More recently, however, approximately three-quarters of the armed conflicts around the world have involved armed children, some as young as six years old.⁵ One of the most notable is Sierra Leone, where up to 80 per cent of all fighters in the Revolutionary United Front (“RUF”) are alleged to have been between seven and fourteen years old.⁶ Rebel militias, paramilitaries, terrorist cells and even some state armies have opted to arm children in conflicts in Columbia, Lebanon, Liberia, Kashmir, Kosovo, Sierra Leone, Sri Lanka, the Sudan, and elsewhere. Singer provides a catalogue of many of the major armed groups in various regions of the world that have resorted to child soldiers to achieve their ends: up to 60 per cent of non-state armed groups are said to use child soldiers, and up to fifty states have recruited child soldiers in violation of international and domestic law.⁷ The existence of girl soldiers and their sexual abuse as “soldiers’ wives”, including the atrocities that take place after their inevitable pregnancy, is a particularly troubling problem canvassed in this book.⁸

Three main causal factors are provided for the proliferation of child soldiers. First, social disruptions and failed development in impoverished countries has created a vulnerable “pool” of children who are easy targets for abduction or “voluntary” recruitment. Second, technological gains have made lethal weapons smaller, more accurate and easier to use than ever before. For example, children as young as ten years old use the widely available AK-47, which weighs 10.5 pounds, has just nine moving parts, and requires only half an hour of basic training to fire with reasonable accuracy. This weapon is also cheap and plentiful. In child soldier hotspots like Uganda, a chicken can reportedly be exchanged for an AK-47 on the black market.⁹ Finally, non-state actors in modern conflicts view children as a low-cost and efficient strategy to rapidly expand and project force.¹⁰

Each stage of the recruitment, abuse, training, indoctrination and tactical use of child soldiers on the battlefield is explored in this book, with examples from recent conflicts. Policy-makers and human rights workers should be especially attuned to nuances in the way that children are taken in to armed forces. Singer describes how children in refugee camps are often targeted for recruitment.¹¹ The use of propaganda

⁴ *Ibid.* at 6-15.

⁵ See *ibid.* at 6.

⁶ See *ibid.* at 15.

⁷ See *ibid.* at 30.

⁸ See *ibid.* at 31-34.

⁹ See *ibid.* at 48.

¹⁰ See *ibid.* at c. 3.

¹¹ *Ibid.* at 59.

in conditioning children to accept a role in armed conflict is documented in places like Sri Lanka. In the territory controlled by the Liberation Tigers of Tamil Eelam, school-aged children reportedly sing songs glorifying war and play on playgrounds equipped with toy armaments.¹² A special chapter devoted to child terrorists distinguishes this form of child soldiering because of the use of religious or ideological motivation to recruit and train children.¹³ Readers should be prepared for the often graphic accounts of the atrocities that child soldiers are forced to endure and perpetrate. These narratives are usually interwoven throughout the text in a way that complements the specific issue being explored. They have an inevitable shock effect, but also humanize the face of children in war.

The actual combat use of children is considered in some detail in this book. Singer's strength in military-strategic analysis shines through in a section on "Child Soldier Tactics" and the ominously titled chapter "Fighting Children".¹⁴ Singer makes a compelling case that Western militaries and peacekeepers are dangerously ill-prepared to face the reality of coming up against child soldiers in battle. In 2000, a squad of the Royal Irish Regiment was taken hostage by a group of child soldiers in Sierra Leone, known as the West Side Boys, when the Irish commander refused to fire on "children armed with AKs". In 2003, Germany declined to send troops to the Democratic Republic of the Congo ("DRC") out of concern they would face child soldiers.¹⁵ A UN peacekeeper that was deployed in the DRC had troubling words to say about the experience of facing child soldiers: "Every time I look at them, I think of my son. They are so small. Sometimes, when I am here, I put myself in God's hand."¹⁶ Singer's advocacy of non-lethal weapon alternatives and carefully tailored rules of engagement in fighting children are commendable ideas but seem at odds with his earlier assertions of the ferocity and effectiveness of child soldier units.¹⁷ Laudably, Singer proposes an agenda for how to respond to the child soldier doctrine largely from his perspective as a political science analyst, ranging from prevention to demobilization to rehabilitation and reintegration efforts.

The main disappointment in *Children at War* is its cursory treatment of international humanitarian law, especially given Singer's own belief that criminalization may be an effective response to the use of child soldiers. Singer lists the relevant international and regional instruments, discusses their evolution in broad terms, and provides a copy of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* in an appendix.¹⁸ He also recognizes that multiple serious breaches of international humanitarian law are

¹² See *ibid.* at 68-69.

¹³ *Ibid.* at c. 7.

¹⁴ *Ibid.* at 83-93, c. 9.

¹⁵ See *ibid.* at 163-64.

¹⁶ *Ibid.* at 167.

¹⁷ See *ibid.* at 173-74, 178.

¹⁸ *Ibid.* at 37, 140-43, 213.

likely to arise where child soldiers are found: “Where child soldiers are present, respect for the traditional rules of war will not be likely. Instead, soldiers should expect false surrenders, hiding among civilians, and POW executions.”¹⁹ Most notably, Singer does not consider the necessary elements of the war crime of conscripting or enlisting child soldiers, nor does he sufficiently consider the requirement that children actively participate in hostilities in order for criminal responsibility to be attracted. Important means of participation in the offence such as the doctrine of command responsibility and the difficulties associated with proving a superior-subordinate relationship in non-formal militaries is also ignored. These important legal issues are at the crux of bringing those most responsible for the atrocities associated with child soldiering to justice, and warrant attention.

The assertion in *Children at War* that “despite working on the issue [of child soldiers] since 1996, the United Nations and the broader international community have yet to take one single formal action beyond condemnation of known child soldier recruiters and users”²⁰ is false. Singer appears to have overlooked several landmark developments at the Special Court for Sierra Leone (“SCSL”), which is currently prosecuting cases of persons indicted for conscripting or enlisting children under the age of fifteen. Persons on *all* sides of the conflict have been indicted for the use of child soldiers²¹ under article 4(c) of the *SCSL Statute*, which criminalizes “[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities”.²² For example, the opening statement of SCSL Prosecutor David M. Crane in the case against the leadership of the Armed Forces Revolutionary Council (“AFRC”) described the harrowing nature of evidence that would be presented in a case related to child soldiers:

A child soldier will come before you and give evidence that when he was just twelve years old, he was captured by the AFRC/RUF in the bush and forced, along with numerous other abducted Sierra Leoneans, to travel with them carrying loads of weapons and ammunition. During the march, the witness will declare, that he had “AFRC” carved into his chest with a razor blade. This child soldier will give evidence that during the advance on Freetown he saw many killings of civilians, rapes, amputations, and incinerations or burnings. He heard the AFRC combatants declare that they should blame Kabbah for what had happened. The witness saw women and girls taken into the bush as so-called “wives”.

...

¹⁹ *Ibid.* at 168.

²⁰ *Ibid.* at 146.

²¹ See e.g. *Prosecutor v. Norman*, Indictment (3 March 2003), Case No. SCSL-03-I (Special Court for Sierra Leone) at paras. 2, 16, 24, online: SCSL <<http://www.sc-sl.org/normanindictment.html>>. Summaries of the charges against the RUF and AFRC are also available online: SCSL <<http://www.sc-sl.org/RUFcasesummary.html>> and <<http://www.sc-cl.org/AFRCcasesummary.html>>.

²² *Statute of the Special Court for Sierra Leone*, 14 August 2000, art. 4(c), online: SCSL <<http://www.sc-sl.org/scsl-statute.html>> [*SCSL Statute*].

Some of them [child soldiers] killed civilians, some raped women, women old enough to be their mothers. They amputated hands and feet of civilians. They burnt houses and they looted worldly possessions from civilians.²³

The SCSL has jurisdiction to prosecute persons responsible for certain crimes related to the use of child soldiers, both under international humanitarian law and under domestic law. Article 5 authorizes prosecutions under Sierra Leonean law that could relate to girl soldiers, including their abuse and abduction “for immoral purposes”.²⁴ Despite authority to do so under article 7 of the *SCSL Statute*, the SCSL prosecutor has not indicted any child soldiers themselves as perpetrators.²⁵ With trials underway and a new prosecutor, the SCSL will continue to be a focal point for international prosecutions related to the child soldier issue.

Prosecutorial activity has also been initiated at the International Criminal Court (“ICC”) regarding child soldiers. Similarly to the SCSL, the ICC has jurisdiction to prosecute persons responsible for “[c]onscripting or enlisting children under the age of fifteen years into the national armed forces, armed forces or groups or using them to participate actively in hostilities.”²⁶ However, unlike the SCSL, the ICC does not have jurisdiction to prosecute anyone below the age of eighteen years of age—excluding the possibility of child soldiers themselves being indicted before the ICC.²⁷ The first two situations referred to the ICC by states parties, in which an investigation has been initiated by the prosecutor, involve allegations of conscription or enlisting

²³ Transcript of the 7 March 2005 hearing in the case of *Prosecutor v. Tamba Brima* (2005), Case No. SCSL-2004-16-T (Special Court for Sierra Leone, Trial Chamber I), online: SCSL <<http://www.sc-sl.org/Transcripts/AFRC-030705.pdf>> at 21-22, 41.

²⁴ *Prevention of Cruelty to Children Act* (Sierra Leone) 1926, c. 31, s. 12, online: SCSL <<http://www.sc-sl.org/preventionofcrueltytochildren.html>>. See also *SCSL Statute*, *supra* note 22, art. 5.

²⁵ See *SCSL Statute*, *supra* note 22, art. 7:

1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

²⁶ *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 U.N.T.S. 3, Can. T.S. 2002 No. 13 (entered into force 1 July 2002), art. 8(2)(b)(xxvi) [*Rome Statute*]. See also art. 8(2)(e)(vii).

²⁷ *Ibid.*, art. 26: “The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.”

child soldiers. Human rights organizations have documented the extensive use of child soldiers in the conflicts in Northern Uganda and the Ituri district of the DRC, and the ICC has recently announced the indictment of Joseph Kony, chairman and commander-in-chief of the Lord's Resistance Army in Uganda, including, *inter alia*, two counts of enlisting of children constituting war crimes.²⁸ By the time that any ICC judgments related to child-soldier allegations in these cases are made, the SCSL will already likely have promulgated important jurisprudence on this issue.

The first referral of a situation by a state to the ICC was made by the government of Uganda in December 2003 on a confidential basis, and was made public on 29 January 2004. Uganda sought an ICC investigation into the Lord's Resistance Army ("LRA"), which operates mainly in Northern Uganda. After determining that there was a reasonable basis for an investigation, the chief prosecutor gave notice to states parties on 28 July 2004.²⁹ Singer fails to mention these developments but discusses the LRA throughout his book. The LRA is "accused of massacring and kidnapping thousands of children and turning them into sex slaves and child soldiers."³⁰

With a recent ceasefire declared between Uganda and the LRA, the government appears to want to halt the ICC investigation in favour of alternative reconciliation measures such as traditional tribal rituals. President Museveni has made assurances that could result in a showdown between the prosecutor and Uganda. An editorial in a Ugandan newspaper explained:

At the weekend *President Museveni indicated that he would negotiate with the International Criminal Court ... to drop charges against the LRA leadership if they agreed to come out of the bush.*

²⁸ See *Situation in Uganda*, Decision Assigning the Situation in Uganda to Pre-Trial Chamber II (5 July 2004), Case No. ICC-02/04 (International Criminal Court), online: ICC <http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/Decision_on_Assignment_Uganda-OTP_Annex.pdf>; *Situation in the Democratic Republic of Congo*, Decision Assigning the Situation in the Democratic Republic of Congo to Pre-Trial Chamber I (5 July 2004), Case No. ICC-01/04 (International Criminal Court), online: ICC <http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/Decision_on_Assignment_DR_Congo.pdf> [*DRC Decision*]; *Situation in Uganda*, Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as amended on 27 September 2005 (27 September 2005), Case No. ICC-02/04-01/05 (International Criminal Court) at 13, 15, online: ICC <http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-53_English.pdf>. See also Maggie Gardner, "In Uncharted Waters: Seeking Justice Before the Atrocities Have Stopped; The International Criminal Court in Uganda and the Democratic Republic of the Congo" (N.p., 2004), online: Citizens for Global Solutions <http://www.globalsolutions.org/programs/law_justice/icc/resources/uncharted_waters.pdf> at 7, 17 [Gardner, "Uncharted Waters"].

²⁹ See the inset on page 7 of the August 2004 issue of the ICC Newsletter, entitled "OTP Opens Second Investigation", online: ICC <<http://www.icc-cpi.int/about/newsletter.html>>. The first actual investigation opened was for the DRC, which did not formally refer the situation before March 2004. On 21 June 2004, after the prosecutor concluded there was a reasonable basis for an investigation, one was formally opened. See *DRC Decision*, *supra* note 28.

³⁰ "Sierra Leone Lawyer Assigned Kony's Case" *Africa News* (1 November 2004) (Lexis).

He said that the ICC is primarily interested in accountability, in tracking down war criminals where states are too weak or reluctant to bring them to justice. Traditional rituals could be carried out by clan leaders in Acholiland to cleanse the LRA leaders of the blood shed during the rebellion.

This form of accounting and reconciliation should be sufficient to satisfy the ICC if the Uganda government intervened on their behalf, Museveni said.

... The prospect of prosecution by the ICC may have pressured the LRA leadership to negotiate an end to the war but it also discourages them from finally ending the conflict unless their safety is assured.³¹

Invoking the language of the admissibility rules in article 17 of the *Rome Statute*, President Museveni has recently said that if tribal reconciliation takes place, Uganda would not pursue a case against LRA leaders, and the ICC would be barred from intervening because Uganda is neither unwilling nor unable to act.³² Whether this statement is legally accurate is the subject of some debate. The ICC prosecutor has met with leaders of the Acholi community to continue dialogue on the issue, but no definitive resolution has yet been announced.³³ The situation is quickly becoming an early test of the ICC's complementarity regime.

The situation in the DRC is also problematic. While Ugandan President Museveni was pleased to use the ICC against the LRA, he has made threats to UN Secretary-General Kofi Annan that Uganda will resume its war with the DRC unless the UN issues an "order [to] the International Criminal Court ... to suspend investigations into cases of violence perpetrated in Ituri District."³⁴ In the DRC, there have also been serious allegations of war crimes involving child soldiers:

Children make up a large percentage, sometimes even a majority, of soldiers in armed groups; the [Union des Patriotes Congolais] force, for example, has been described as "an army of children" and includes boys and girls as young as seven. Reports of mutilation and ritualistic cannibalism are also growing.³⁵

For some time, Uganda, the DRC, Sudan and Rwanda have allegedly been "supporting each other's rebel groups"³⁶ in proxy wars, often relying on child soldiers. The issue of child soldiers is now in the crosshairs of international criminal prosecutions in Sierra Leone and Uganda, making works like *Children at War* all the more important in informing global understanding of this complex and pervasive

³¹ "Uganda Conflict is Now Ending", Editorial, *The New Vision* (Uganda) (16 November 2004), reproduced in "Ugandan Newspaper Optimistic After Cease-Fire Offer to Rebels" *BBC Worldwide Monitoring: Africa* (16 November 2004) (Lexis) [emphasis added].

³² See "ICC May Drop LRA Charges" *Africa News* (15 November 2004) (Lexis).

³³ See ICC, Press Release, No. ICC-OTP 2005.042-EN, "Statements by ICC Chief Prosecutor and the Visiting Delegation of Acholi Leaders from Northern Uganda" (18 March 2005), online: ICC <<http://www.icc-cpi.int/press/pressreleases/96.html>>.

³⁴ "Uganda President Threatens to Resume War with DR Congo" *BBC Worldwide Monitoring: Africa* (20 October 2004) (Lexis).

³⁵ Gardner, "Uncharted Waters", *supra* note 28 at 17 [footnotes omitted].

³⁶ "Uganda to Sign Peace Treaty Soon" *Africa News* (6 October 2004) (Lexis).

problem. The legal and military challenges posed by Singer's "child-soldier doctrine" will be with us for some time to come.
