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Challenges in Implementing and Enforcing Children's Rights

Kathy Vandergrift†

It is a privilege and a pleasure to be with you to discuss the topic of child soldiers. This seminar is very timely—even more so than when I accepted the invitation, because at that time I thought today I would be speaking about the challenges of implementing a new Security Council resolution governing child soldiers. Instead, the draft resolution is stuck in a political disagreement within the Security Council. This is an example of the challenges that face the international effort to stop the use of child soldiers.

However, before focusing on the challenges, I would like to highlight a few achievements. In 1996, Graça Machel's UN report entitled *The Impact of War on Children* awakened the international conscience. Since that time we have made progress in three areas: norm-setting, public awareness, and changing attitudes. I will not repeat the list of norms that have changed, because other speakers at this conference have addressed this already. Rather, I would like to remind everyone that focusing on child soldiers was only one of the ten recommendations in Graça Machel's report. Those of us who work in the field referred to as Children and Armed Conflict ("C.A.C.") are keen to implement all ten suggestions, not just this one. The Land Mines Treaty seemed to be an easy first goal, and we have made progress in eliminating the use of land mines, which are particularly destructive to children. Progress has been made on implementing some of the other suggestions as well. For example, significant work is being done to promote education in situations too insecure to use schools. Likewise, those involved in humanitarian efforts are paying more attention to girls and sexual exploitation of girls during armed conflict, in particular.

The focus on child soldiers is part of a larger strategy to improve protection of the security and rights of children. Achieving the Optional Protocol on Child Soldiers and moving to work on its implementation is good progress within a few years. The new norms on protecting children from armed conflict are fairly strong. Additionally, *A World Fit for Children*, the report from the UN Special Session on Children is important because it illustrates a shift. Its predecessor mentioned nothing about children and armed conflict. The current version contains a fairly large section on it with strong commitments by all member nations to improve protection for children. Further, the level of public awareness is higher, as evidenced by the increased media coverage on child soldiers and also more generally on

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the effect of war on children. There has also been some progress in changing attitudes. At the UN Special Session for Children, for example, almost all governments spoke to the question of children in conflict and wanted to see strong action to address this issue. This is progress and a result of focused advocacy.

When we began work on the Optional Protocol, the debate focused on the legitimacy of using child soldiers. Most of the time now, we no longer have to engage in that debate; rather, we focus on how to achieve the goal. The goal itself is widely accepted: Using children in armed conflict should be as unacceptable as using nuclear arms or chemical weapons. At a recent meeting, Olara Otunnu, the UN Special Representative on Children and Armed Conflict, illustrated the progress in changing attitudes thus: Ten years ago, military commanders bragged about the participation of the young as evidence of the attractiveness of their cause. Now, most try to hide their use of underage soldiers. For example, they often release them before peace treaties are signed because they do not want to be known as using child soldiers. The new norm is being established; practice needs to catch up to it.

Next, I would like to address problems of enforcing the Optional Protocol and other international agreements. The nature of contemporary conflicts has changed to make enforcement more difficult: When village streets become battlefields, children easily become targets and participants. It makes sense for warlords fighting for control of land, resources, or power to terrify villages and deliberately destroy the social fabric. Thus, forcing children to kill their own people becomes an effective tool in contemporary conflicts. Experience indicates that children can be effective as soldiers

A second factor is the easy access to small, cheap weapons. We have all seen the image of the child soldier holding the AK-47. These are the weapons of choice in modern warfare because children can learn to use them quickly and they are easy to obtain—in some countries easier to get than textbooks. We can debate endlessly what comes first: easy access to light weapons on the supply side, or a decision to take up arms on the demand side. The two work together, and both are a challenge to control. It also shows that child soldiering is a global program: Western developed countries can no longer say the use of child soldiers is a problem only of developing countries, because the weapons often come from suppliers in industrialized countries.

Third, social exclusion creates pools for recruitment. Many recruits come from groups that have been excluded, whether through ethnic tension, old grievances, class struggles, or migrations of people. Also, lack of good choices for adolescents in impoverished countries furthers recruitment. This is a significant portion of the population in many of the countries where child soldiers are an issue. We need to think about that, because we who live in industrialized countries are not used to that demographic profile. Many of us live in countries with aging populations, whereas many of the conflict-prone countries have a large percentage of

adolescents; often the population under the age of eighteen is over 40 percent.

Non-governmental organizations ("NGOs") are also challenged to pay more attention to the particular situation of adolescents, not just young children. For example, we all advocate for primary education. What happens when youth get out of primary school, and there are very few options for employment or further education? The lack of good choices for adolescents to earn a livelihood, to have hope for their future, and to contribute positively to the development of their country is part of what makes enforcement difficult.

So, some might, in fact, say we should focus on youth livelihoods instead of on child soldiers specifically, but I do not think this is an exclusive choice. It is true, however, that those of us who thought that a focus on children in armed conflict would help to bring conflict prevention to the forefront have a long way to go. As someone who has been involved in this campaign for a number of years, it is my biggest disappointment. I understood the need to focus on narrow objectives as a strategy, but I hoped that, by focusing on the impact on children, we would be able to get conflict prevention and early intervention to avoid more violent conflict onto the international agenda—we have not been successful. Even today, we talk mostly about picking up the pieces after conflict. We need to shift the focus to prevention.

There are challenges in the Protocol itself. It is a part of the Convention on the Rights of the Child ("C.R.C."), one of the most universally ratified conventions. There are some advantages and disadvantages to its rights-based approach. A rights-based approach grounds the Protocol in the recognition that children are people with dignity, subjects with rights, not objects to be used by others. This helps to put children on the political and economic agenda. Traditionally, children at risk have been seen as charity cases for humanitarian agencies. However, the reality is that charity approaches alone cannot solve the challenges facing young people. Compassion is not enough. We need to be paying more attention to the impact of political decisions on children. Children need to be visible in political and military decisionmaking arenas.

Using the Protocol, we have been able to put children on the agenda of the Security Council—they were not present in security discussions before. Graça Machel highlighted the importance of changing that paradigm, but we have only just begun to do so. The C.R.C. creates a focus on adolescents, which have otherwise been ignored. It forces us to listen to young people and allow them to participate in decisions. We know from research now that showing children what their rights are helps to make them less susceptible to recruitment.

The C.R.C. combines humanitarian law and human rights law—an uneasy combination, even in the community of NGOs. However, the work on children in armed conflict has brought together human rights and humanitarian NGOs in a very productive way. Even though the C.R.C. has been ratified almost universally, there is still hesitancy about child rights—

and not just in the United States. Of course, it remains a subject of ongoing discussion that the United States signed on to the Protocol though it has not signed on to the C.R.C., the convention to which that Protocol is amended.

The Protocol itself is a compromise. Some of us advocated for the "straight-eighteen" position, according to which no children under eighteen years of age would be allowed to be members of armed groups. I do not believe this question hinges on when a child becomes an adult. In our society, we impose different age limits for different activities. Youth may drive a car at one age and get married without their parents' permission at another age. So, the real question is at what age should people be forced into military service? Some of us feel quite strongly that young people ought not to be forced to defend their country until they reach an age where they are allowed to vote. Democracy is the dominant trend in governing systems and most democracies put the voting age at eighteen, certainly not earlier. Another aspect is that it is easier for a thirteen-year-old to pretend to be sixteen or to be confused with sixteen than with eighteen—we know that from practice. So, even if the goal were to stop the recruitment of the younger ages, not so much the sixteen- and seventeen-year-olds, eighteen would provide a clearer demarcation. As it is, the Protocol embodies a compromise that imposes a higher age limit on compulsory recruitment while allowing younger children to be recruited voluntarily. I think the Protocol might have been more effective without this compromise, but we will never know. One of the problems is that young people can easily be forced to say they joined voluntarily; we witness this in many places. Is it truly voluntary when there are immense pressures to join armed forces and there are few options for those who do not join?

There are also some new challenges in humanitarian law. One of those is that today, young people can easily be labeled terrorists, making it appear legitimate to violate their rights and even kill them. There has not been an authoritative study on this subject yet, but the problems are coming to us in anecdotes from child advocates in many places. The impact of counterterrorism measures on young people is something to be researched, as it will have serious repercussions in the future.

Bigger challenges to the core concepts of child rights have arisen in the middle of this campaign, especially at the time of the UN Special Session on Children, slowing the momentum. Bringing together international norms and local norms for protection of children is one of the challenges of implementation. All cultures do have some norms about protecting children but do not frame the issue in the same language. Here, local community groups have an important role.

One other issue that a rights framework would address and that we all still struggle with is forgiveness and reconciliation. On the one hand there is the issue of forgiving child soldiers for the crimes they commit during the conflict. Various local rituals have been used and the question is which of these are effective and appropriate. However, do the young people not also need to forgive those in authority for the fact that they were not pro-

tected? If we were to truly apply a rights framework to this question, we would have a stronger balance between forgiving children for their actions as members of armed groups and the children forgiving adults who failed to protect them at local, national, and international levels.

The main problem in enforcement, however, is that the enforcement mechanisms of the Convention on the Rights of the Child are incredibly weak. It is ironic that the international law aimed at protecting the most vulnerable group in society has the weakest enforcement—*weaker*, for example, than some of the instruments that protect the civil rights of adults. Consider that the main mechanism for accountability is reporting to the Committee on the Rights of the Child once every five years. In reality, it is more than five years because of procedural delays. Five years is a long time in the life of a child caught up in war. And a report may or may not be taken seriously as an enforcement vehicle by the receiving government.

One child advocacy group at the International Conference on War-Affected Children in 2000 identified the crux of the problem by relaying the following anecdote: They reported having drawn the committee's attention to a serious violation and having received a report. Five years later they returned to report that the violation was still continuing and they received, in substance, the same report, but nothing actually changed for the children. Until we give human rights mechanisms some teeth, we will continue to see the disenfranchised reach for other means to achieve their goals. Some of us are beginning to push for a complaint mechanism under the Convention on the Rights of the Child, but, in the meantime, we turn to the Security Council. There are four resolutions, which were outlined earlier. Each one of them has been stronger than the last one and each of them has enforced an important principle: violations of the security and rights of children are in themselves a threat to international peace and security.

There are three main areas of challenge. First, we lack a robust system for reporting and following up on the violations. While there are general reports from the Secretary General, these do not contain enough detail to trigger meaningful Security Council action. Two recent experiences of the Watch List illustrate these problems in reporting and follow-up: The Watch List on Children in Armed Conflict reports on all violations of children's rights in a given conflict. This addresses some of the weaknesses of just focusing solely on child soldiers and not other children affected by the hostilities. It also takes into account the context in a particular country to prepare appropriate recommendations for action. Recently, I was involved in preparing a Watch List report on the Democratic Republic of the Congo ("D.R.C."), and we were fortunate enough to get it into the hands of the Security Council members just before they went to the D.R.C. In the D.R.C., Council members met with some of the girls who had been subject to rape as an instrument of war. That experience led them to say this must be stopped. However, they also asked why this kind of information about the situation in the D.R.C. came to them through NGOs and not through

the regular reporting system of the UN. Subsequent resolutions on the D.R.C. included measures aimed at helping boys and girls, such as child protection officers in the peacekeeping force. Now there is a research study by Save The Children that documents how NGOs and others are using the Security Council resolutions and child protection officers to help get girls out of the hands of forces. Right now, some of us are using these tools to follow up on reports of girls being disenfranchised in the demobilization process. This illustrates that Security Council resolutions can be used to make the system work to benefit boys and girls on the ground.

In contrast, the Watch List report on Sudan was less successful in stemming violations of children's rights. Like the D.R.C. report, it included detailed documentation of egregious violations that nobody was addressing. Unfortunately, in the latest report from the Secretary-General to the Security Council, there is only an inaccurate, inadequate, one-sided short paragraph on the children in Sudan. It is obvious that political considerations still sometimes hinder consistent protection of the security and rights of children at the Security Council. At the UN, nobody has a mandate to investigate reports seriously and ensure proper follow-up—there needs to be such a mandate.

This year, Security Council members indicated that they were prepared to act on specific situations, but they did not get enough specific information to do so. While that is a credible explanation in some cases, the problem is surely not always a lack of information. There are many situations now where nobody disputes the information on what is happening, and yet there is no UN action. The evidence is clear that there must be reporting, follow-up, investigation of reports, and creation of action plans to address confirmed reports.

A review by the Office of Oversight for UN Operations of the UN's handling of the issue of children in armed conflict identifies the same problem and will make recommendations for a more robust system of reporting, follow-up, and accountability. Today, we report on violations of children's rights, but the UN never replies with an explanation on what it intends to do about the situations presented in the reports. Young people who put themselves at risk by reporting what is happening at least deserve a response. It is not surprising that humanitarian NGOs are reluctant to report if there is no confidence that the reports will elicit any response. This is an area where the UN has broad political support. Lack of coordination between UN agencies is often cited as the problem, but I would argue that there is a need to strengthen the system itself in addition to creating better coordination.

The secondary challenge is that enforcement tools available to the Council are limited. Declarations can set standards and encourage compliance, but they need to be followed-up. One missing "follow-up" is leadership by example. For example, several resolutions call on nations to stop the flow of arms to forces that abuse children. Some of the permanent members of the Security Council are the biggest suppliers of weapons in

the world, and do nothing to stop it, undermining the integrity and the authority of their declarations.

Diplomatic pressure can also be used much more than it is. Children's rights are not high on the diplomatic agenda. Recent European Union guidelines that will require diplomats to report on the situation of children are a positive step. I am convinced that concerted diplomatic action would have a positive effect. The improvements in Colombia, for example, resulted from diplomatic pressure, but in situations like northern Uganda, the political and diplomatic agendas get in the way of child protection. The failure to protect children in northern Uganda is a shame on the entire international community.

Listing forces that use child soldiers is another tool. The mechanism of engaging in dialogue with them, asking them to file action plans, and then following up on those action plans, was not implemented after Security Council Resolution 1460. NGOs have advocated the use of incentives as well as penalties to encourage compliance. We hope such a framework will be mandated in the next resolution.

There will be times when all available incentives are applied but violations continued nonetheless. How might we respond to such a situation? General sanctions have been discredited. We think there are targeted measures that could be applied to forces that abuse children, such travel bans for leaders, cutting off the supply of military assistance, and stopping the flow of small arms. We would also like to begin to address the economic actors who supply resources to these forces.

I want to end with one of the dilemmas that is receiving significant attention within our community and to which there is currently no solution—the tension between our own calls for “no impunity” on the one hand and for peaceful negotiations instead of military resolution of conflicts on the other. There are good arguments for ending impunity for those who violate the security and rights of children. However, actions that address impunity often become obstacles for conflict resolution and peace negotiations. We know that rebel leaders and military commanders that hold children are not going to give them up if they anticipate being taken to court. Amnesty for war crimes is unacceptable, but for many local communities, amnesty is an acceptable trade-off for getting their children back and ending a destructive war. Sometimes timing can resolve this dilemma. Over the long term, there is reason to believe that accountability before an international criminal court will have a deterrent effect. There are also local forms of accountability that can be a culturally appropriate way to end impunity.

We also know that we do not get sustainable peace without dealing with the justice dimension. Peace and reconciliation commissions have a mixed record. How we resolve this big dilemma? How do we make the transition from a culture of impunity to a culture of peace with no impunity? This is one of the big challenges that the community is facing. Perhaps you can help us work through this challenge.

