

FROM OPPONENT TO ALLY: THE UNITED STATES AND EFFORTS TO END THE USE OF CHILD SOLDIERS

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Abstract:

Since the mid-1990's, United States' policy regarding child soldiers has evolved significantly. The US was initially a strong opponent of efforts to negotiate an international treaty prohibiting the participation of children under age 18 in armed conflict. In subsequent years, it not only ratified the treaty, but adopted groundbreaking legislation that allows the US to prosecute child recruiters on US soil, even if the recruitment took place outside the United States, and that restricts US military assistance to foreign governments that recruit or use child soldiers. Although the Obama administration has invoked national security interests to waive these military sanctions in many cases, the US has stepped up its diplomatic engagement on child soldiers, influencing signed agreements by Chad, South Sudan, and the Democratic Republic of Congo to end child recruitment and demobilize children from their forces.

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INTRODUCTION

Until the year 2000, it was still legal under international law to recruit children as young as fifteen into military forces and

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send them to the front lines of combat.² This standard was an anomaly in international human rights law, as the Convention on the Rights of the Child (CRC) established a wide range of protections for children under the age of 18, including protection from sexual exploitation, child labor, and violence. When the CRC was negotiated, however, governments were unable to agree on 18 as the minimum age for recruitment and participation in armed conflict. Because of this, governments settled on the standard of age 15, previously set by the 1977 Additional Protocols to the 1949 Geneva Conventions.³

Graça Machel's groundbreaking 1996 UN Study on the Impact of Armed Conflict on Children brought new attention to the use of child soldiers.⁴ Studies by the Coalition to Stop the Use of Child Soldiers and its member organizations estimated that approximately 300,000 children under the age of 18 were participating in armed conflicts in as many as 30 countries. Prompted by growing international concern and a recommendation from Machel, governments began negotiating an optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, intended to increase the minimum age for recruitment and participation in armed conflict to 18. Soon, however, these efforts met an unexpected obstacle: the United States.

2. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 77, 1125 U.N.T.S. 3, and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4, 1125 U.N.T.S. 609.

3. Convention on the Rights of the Child art. 38, Nov. 20, 1989, 1577 U.N.T.S. 3 is based on the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 77, 1125 U.N.T.S. 3, and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4, 1125 U.N.T.S. 609 (“[C]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”).

4. Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children, U.N. Doc. A/51/306, 26 August 1996.

United States laws dating back to 1917 allow 17-year-olds to volunteer for the US armed forces with parental permission.⁵ As soon as these young recruits completed their basic and technical training, the armed forces assigned them to operational units, including combat units. In the early 1990s, 17-year-old soldiers fought for the United States in Bosnia, Somalia, and the 1991 Gulf War.⁶ The Pentagon argued that recruiting 17-year olds was essential to maintain troop strength, but separating 17-year olds from their units would damage troop cohesion. In the United States, many students graduating from high school – the time when young people are most likely to consider military enlistment– are still seventeen. Waiting until those students reached the age of 18, the US argued, would reduce enlistment rates, as these youth secured other employment or decided to continue their education.

The United States saw no reason to change its practices, even to promote an international standard designed to reduce the number of child soldiers fighting in armed conflicts. It had an ally in the United Kingdom, which allowed sixteen-year-olds to join the armed forces and serve in combat roles, and compared to the US, had a much larger proportion of soldiers who were under 18. During negotiations on the Optional Protocol in Geneva, both countries opposed setting 18 as either the minimum age for participation in hostilities or for voluntary recruitment. The US argued that the most significant problem was the recruitment of children under 15 in violation of existing international law, and that setting an age of 17 for recruitment and participation in hostilities had “a greater potential to secure consensus among the members of the General Assembly.”⁷ It sent demarches to other capitals, stating that it could not accept 18 as the minimum age

5. 10 U.S.C. § 505(a) (2008).

6. United States Demarche on the Involvement of Children in Armed Conflict, March 1998, author’s files.

7. *Id.*

for either voluntary recruitment or participation in armed conflict.⁸

The vast majority of states participating in the Optional Protocol negotiations supported 18 as the minimum age for participation in hostilities, and many supported 18 as the minimum age for voluntary recruitment as well. They argued that military expediency did not justify adopting lesser protections for children facing the dangers of warfare than for children at risk of other forms of exploitation. However, the opposition from the United States and its allies created an impasse. During the 1998 negotiations, governments were unable to reach any agreement on the Optional Protocol and ended their session three days early.

Alarmed at the lack of progress, a group of non-governmental organizations came together in 1998 to form the Coalition to Stop the Use of Child Soldiers (Coalition).⁹ The Coalition, including both human rights and humanitarian organizations, launched a global campaign, intended to build public pressure and political will on behalf of a “straight-18” international standard, i.e. 18 as the minimum age for conscription, voluntary recruitment, and any participation in armed conflict. Supported by a small secretariat in Geneva, the Coalition undertook a multi-faceted campaign to influence the course of the negotiations on the optional protocol. It published new research, organized a series of high-profile regional conferences, secured

8. Although the US was the most vocal opponent, a handful of other states initially supported its position. Of the 50 states that participated in the 1998 optional protocol negotiations, seven—Bangladesh, Cuba, Israel, Korea, Kuwait, Pakistan, and the UK – joined the US in supporting a minimum age of 17 for participation in armed conflict. Four of these states, however, stated that they would not block an agreement setting the age at 18.

9. Initial members included Amnesty International, Human Rights Watch, International Federation Terre des Hommes, Jesuit Refugee Service, the Quaker United Nations Office (Geneva), and Save the Children.

media coverage of the issue, and supported advocacy by national coalitions with their individual governments.¹⁰

In the United States, sixty organizations joined the US Campaign to Stop the Use of Child Soldiers. The campaign met with the State Department and Pentagon officials to discuss the US position towards the Optional Protocol, and engaged members of Congress to introduce resolutions, make floor speeches, and write letters to then President Clinton, urging the US not to block the negotiations on the Optional Protocol.¹¹ The campaign publicized Department of Defense data that showed that less than one quarter of one percent of enlisted troops who had completed training and been assigned to units were still under the age of 18.¹² To address Pentagon concerns about military readiness, the campaign organized a letter to President Clinton from thirty-seven retired US military officers, urging the US to end its opposition to the Optional Protocol and stating that excluding 17-year olds from military operations would not hurt US national security.¹³ Simultaneously, US officials within the State and Defense Departments urged a review of the US position, concerned about growing attention to the US as an outlier on the child soldiers issue.¹⁴

10. See Jo BECKER, *Campaigning to Stop the Use of Child Soldiers*, in, *CAMPAIGNING FOR JUSTICE: HUMAN RIGHTS ADVOCACY IN PRACTICE* 11, 11-31 (Stanford University Press, 2013).

11. In January 1998, for example, sixty-three members of Congress wrote to President Clinton, expressing grave concern that the US was blocking progress on the optional protocol and urging the US to either change its position or not stand in the way of negotiations. Congressional resolutions similarly urged the US not to block the negotiations. See, e.g., H.R. Con. Res. 209, 111th Cong. (1999).

12. Office of the Assistant Secretary of Defense, *Population Representation in the Military Service* (1999) (publishing Table A-1. FY 1999 Applicants* for Active Component Enlistment by Age, Service, and Gender with Civilian Comparison Group).

13. Letter to President William J. Clinton, December 1997, author's files.

14. Elizabeth Olson, *U.S. Flights Tide on a Move to Raise the Military Service Age*, *NEW YORK TIMES*, Jan. 15, 2000 (noting that the U.S. found itself with "few allies" on the issue).

In January 2000, government reconvened for a final round of negotiations on the Optional Protocol. During the second week of negotiations, the US changed its position and agreed to join a consensus on setting 18 as the minimum age for direct participation in hostilities. This paved the way for consensus on the final text of the protocol, establishing 18 as the minimum age for direct participation in hostilities, for any forced recruitment or conscription into government forces, and for any recruitment into non-governmental armed groups.¹⁵ The text set a lower age for voluntary recruitment into governmental armed forces, however, requiring states simply to “raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child” (which stipulated 15). It also required states to implement safeguards to ensure proof of age, parental permission, and that recruitment was genuinely voluntary. Although the provision on voluntary recruitment was a disappointment to NGOs, the agreement on 18 for participation in hostilities was considered a huge victory.

Later, it became known that Secretary of State Madeleine Albright had urged the joint chiefs of staff for a top-level review of whether the armed forces could accept an 18-year old limit for combat.¹⁶ Their agreement allowed the US to change its position and support the Protocol. With the Defense Department on board, the US asked for a final provision in the protocol, allowing states that had signed but not ratified the Convention on the Rights of the Child to become parties. Typically, only ratifying parties to a “parent” convention ratify an optional protocol, but as a non-state party to the CRC, the US sought — and secured — an exception.

15. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted May 25, 2000, G.A. Resolution 54/263, Annex I, 54 U.N. GAOR Supp. (no.49) at 7, U.N. Doc. A/54/49, vol. III (2000).

16. Author conversation with US government representative, January 2000.

The shift in the US' position on the Optional Protocol opened the way for much stronger US policies supporting an end to the use of child soldiers. After the Protocol's adoption, President Clinton hailed the new treaty as "a historic achievement to protect the world's children,"¹⁷ and signed the Optional Protocol at a ceremony at the United Nations just a few months later. The United States ratified the optional protocol on December 23, 2002, together with the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography.¹⁸ As of early-2014, these remained the last human rights treaties ratified by the United States. Following the ratification of the protocol, each branch of the armed services issued new policies excluding 17-year old members of the armed forces from combat duties.¹⁹ This was the first time that the US had changed its military practices in order to support a new international standard; in the past, the US had only signed onto treaties that were already consistent with its own policies, or entered reservations stating that it would continue practices otherwise prohibited by the treaty.

In 2002 Congress adopted the Foreign Relations Authorization Act of FY 03 (H.R.1646), which required the State Department's annual human rights reports to include the "nature and extent of the compulsory recruitment and conscription of individuals under the age of 18" by all armed groups in every country.²⁰ The law required the State Department to describe the steps taken by governments to eliminate such practices and to indicate the countries that have ratified the Optional Protocol.

17. Press Release, President Bill Clinton, Office of the Press Secretary (Jan. 21, 2000).

18. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, General Assembly resolution A/RES/54/263 of 25 May 2000.

19. U.S. DEP'T OF STATE, INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, 14 September 2002, *available at* www.state.gov.

20. Foreign Relations Authorization Act of FY 03 (H.R.1646) (2002).

The 2003 report, released in February of 2004, highlighted 28 countries with active child soldiers.

Based on the US' new adherence to the Optional Protocol, advocates began lobbying members of Congress for a new law that would prohibit military assistance to governments that used child soldiers in their armed forces or supported militias or paramilitary groups that did so, in violation of the standards set by the optional protocol.²¹ Research by the Center for Defense Information found that of nine governments involved in child recruitment and use, eight received some form of US military assistance in 2007.²² The advocates argued that US tax dollars should not be used to support the use of child soldiers abroad, and that the US should insist on the same standards for its military allies as it used for its own troops.

They found support from Senator Richard Durbin, a Democrat from Illinois, and Senator Sam Brownback, a Republican from Kansas. In April 2007, the senators introduced the Child Soldier Prevention Act into Congress.²³ With support from both Democrats and Republicans, the bill was adopted into law in 2008 as part of the Trafficking Victims Protection Reauthorization Act.²⁴ The law was groundbreaking. At the time, only one other government had any similar legislation: the Belgian Parliament had adopted a law in 2003 barring arms transfers to forces using child soldiers.

Specifically, the Child Soldier Prevention Act restricts the provision of US International Military Education and Training, foreign military financing, and other defense-related assistance to countries identified in the State Department's annual Trafficking in Persons report as recruiting or using child soldiers

21. The initiative was supported by the U.S. Campaign to Stop the Use of Child Soldiers, and led by World Vision USA, Human Rights Watch, Amnesty International USA, and Rachel Stohl from the Center for Defense Information.

22. CENTER FOR DEFENSE INFORMATION, U.S. MILITARY ASSISTANCE TO COUNTRIES USING CHILD SOLDIERS, 1990-2007 (2007).

23. Child Soldier Prevention Act, S. 1175, introduced April 19, 2007.

24. Title IV, William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.

in government armed forces or government-supported paramilitaries or militias in violation of international standards. The law included a provision allowing the president to waive the sanctions provisions of the law in cases of national interest.²⁵

In 2007, Senator Durbin also introduced the Child Soldier Accountability Act.²⁶ Enacted into law in 2008, the Act makes it a federal crime to knowingly recruit or to use soldiers under the age of 15 and permits the United States to prosecute any individual on US soil for the offense, even if the children were recruited or served as soldiers outside the United States. The law imposes penalties of up to 20 years, or up to life in prison if their action resulted in the child's death. It also allows the United States to deport or deny entry to individuals who have knowingly recruited children as soldiers. The law was used for the first time in 2012, when a New York State immigration judge ordered the deportation of George Boley, a former commander of the Liberian Peace Council, a non-state armed group involved in Liberia's civil war.²⁷

Implementation of the Child Soldier Prevention Act has been problematic. The law went into effect in 2010, following the State Department's finding that six countries -- Burma, Chad, Democratic Republic of Congo, Somalia, Sudan, and Yemen -- were using child soldiers in violation of international standards.²⁸ Of the six, only Burma received no US military assistance, while Somalia received peacekeeping assistance that was outside the scope of the Child Soldier Prevention Act. For the remaining four countries, however, President Obama invoked his authority

25. *Id.* See § 404 (c).

26. Child Soldier Accountability Act, S. 2135, introduced October 3, 2007, enacted into Pub. L. No. 110-340 (Oct. 3, 2008).

27. *Liberian Ordered Deported Over Child Soldier Allegations*, VOICE OF AMERICA (Feb. 7, 2012, 10:35 AM), <http://blogs.voanews.com/breaking-news/2012/02/07/liberian-ordered-deported-over-child-soldier-allegations/>.

28. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2010*, June 2010, at 10.

to issue national security waivers, allowing each to continue receiving US military assistance.²⁹

NGOs strongly condemned the administration's waivers, accusing the administration of undercutting the intent of the law.³⁰ A White House spokesperson defended the decision, saying "We put these four countries on notice by naming them as having child soldiers Our intention is to work with them over the next year to try to solve this problem – or at least make significant progress on it – and reassess our posture towards them next year, depending on the progress they have made."³¹ In response to public criticism, White House officials held a conference call with interested NGOs to discuss the waivers, and began a pattern of twice-yearly consultations to discuss implementation of the Child Soldier Prevention Act.

In 2011, the State Department found that the same six countries were using child soldiers. The administration again issued waivers for Chad and Yemen,³² but withheld approximately US \$1.3 million in foreign military financing from Congo conditioned on certain benchmarks, including signing a UN action plan to end its use of child soldiers, providing UN inspection teams access to military installations, and removing and prosecuting commanders that recruit children. A partial waiver allowed continued US military training to Congolese forces.³³

29. Presidential Memorandum – Child Soldiers Prevention Act, (Oct. 25, 2010), <http://www.whitehouse.gov/the-press-office/2010/10/25/presidential-memorandum-child-soldiers-prevention-act>.

30. Brian Knowlton, *4 Nations with Child Soldiers Keep U.S. Aid*, NEW YORK TIMES, Oct. 28, 2010, <http://www.nytimes.com/2010/10/29/world/africa/29soldiers.html>.

31. Brian Knowlton, *4 Nations with Child Soldiers Keep U.S. Aid*, NEW YORK TIMES, Oct. 28, 2010 (quoting Tommy Vietor).

32. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2011, June 2011. The administration said that the law did not apply to South Sudan, since it became independent after the State Department issued its list in June 2011.

33. Presidential Memorandum – Child Soldiers Prevention Act (Oct. 4, 2011), <http://www.whitehouse.gov/the-press-office/2011/10/04/presidential-memorandum-child-soldiers-prevention-act-2008>.

Although NGOs continued to criticize the waivers, the administration began taking other steps to encourage countries receiving US military assistance to comply with international standards. In particular, it increased diplomatic pressure on Chad, South Sudan, and the DRC to sign action plans with the United Nations to end their use of child soldiers. Chad signed such a plan in June 2011, and South Sudan signed a plan in March 2012. In both cases, UN officials said that US pressure contributed to the agreements.³⁴ In November 2012, US State Department officials traveled to Chad and South Sudan specifically to press the governments to effectively implement the action plans.

In 2012, the administration again issued waivers to Yemen and South Sudan,³⁵ while removing Chad from its list, despite reports that children remained in Chad's forces (Chad was returned to the list in 2013).³⁶ It increased the pressure on the Congo, announcing in September that not only was the US continuing to withhold foreign military financing from Congo because of its use of child soldiers, but in addition, that it would not train a Congolese light infantry battalion until Congo signed an action plan with the UN to end its use of child soldiers.³⁷ At the time, the UN had tried but failed for seven years to get the Congolese government to agree to a plan. In a public statement, Assistant Secretary of State for African Affairs Johnnie Carson said, "[b]y withholding this desired assistance until an Action Plan is signed, we wish to re-emphasize to the Government of the DRC that the Government of the United States takes this

34. Telephone and email communications between UN officials and author, 2012.

35. Presidential Memorandum -- Presidential Determination with respect to the Child Soldiers Prevention Act of 2008 (Sept. 28, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/28/presidential-memorandum-presidential-determination-respect-child-soldier>.

36. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2013*, June 2013.

37. Press Release, Assistant Secretary Johnnie Carson (Sept. 28, 2012), <http://www.humanrights.gov/2012/09/28/statement-by-assistant-secretary-carson-on-child-soldiers-in-the-democratic-republic-of-congo/>.

issue seriously.”³⁸ Just days after the US announcement, the DRC finally signed the plan, agreeing to end all child recruitment, demobilize all children in its forces, and allow UN verification visits to its barracks.

Despite this impact, the United States could do much more. For example, South Sudan was slated to receive over \$60 million in US military assistance in 2012, though only a small fraction could be withheld under the law. The administration could have simultaneously addressed its national interests and done more to protect children with the same approach it used in Congo – by withholding portions of aid and training. Instead, in 2012, Obama gave South Sudan a full waiver under the Child Soldiers Prevention Act, citing national interests.³⁹ The action left the US with little leverage to demand South Sudan’s compliance with its UN action plan.

Similarly, Yemen is the country using child soldiers that receives, by far, the largest amount of US assistance. The administration requested over \$100 million for Yemen for 2013, including over \$20 million eligible for sanctions under the Child Soldiers Prevention Act. Children were used by all sides during the uprising that forced out Yemen’s abusive president in 2012, including in the government’s elite Republican guard.⁴⁰ But for three years in a row, the US failed to sanction even a small amount of US assistance.

At the time of this writing, the State Department had recently increased the number of governments identified as using child soldiers in violation of international standards, listing ten countries: Burma, Central African Republic, Chad, Democratic Republic of Congo, Rwanda, Somalia, South Sudan, Sudan,

38. *Id.*

39. Presidential Memorandum -- Presidential Determination with respect to the Child Soldiers Prevention Act of 2008 (Sept. 28, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/28/presidential-memorandum-presidential-determination-respect-child-soldier>.

40. , *Yemen: Stop Using Children in Armed Forces*, HUMAN RIGHTS WATCH (April 14, 2011), <http://www.hrw.org/news/2011/04/14/yemen-stop-using-children-armed-forces>.

Syria, and Yemen.⁴¹ Of the ten, only Burma, Sudan, and Syria did not receive some form of military assistance sanctioned under the Child Soldier Prevention Act. Although the US has legitimate national security interests in many of these countries, the US' approach of withholding partial assistance from the DRC offers an effective way forward, by balancing perceived national security interests with its stated priority to end the use of child soldiers.⁴²

CONCLUSION

In twelve years, the United States has made a transition from being one of the biggest obstacles to international efforts to end the use of child soldiers, to being an international leader on the issue. The US not only changed its military practices for the first time to support new international standards, it also adopted groundbreaking legislation – the Child Soldier Prevention Act and the Child Soldier Accountability Act – that have almost no precedent. While critics still believe that the United States should be more aggressive in withholding military assistance from governments using child soldiers under the Child Soldier Prevention Act, the US has stepped up its diplomatic engagement on the issue, and in at least three cases, has been instrumental in securing foreign governments' agreement to enter into a UN action plan to end their use of child soldiers. In the case of the DRC, issuing a partial waiver under the Child Soldiers Prevention Act while withholding other assistance prompted the Congo to sign a long-delayed UN action plan to end its use of child soldiers and provided a pragmatic model that allows the US to maintain its military interests and also use its

41. U.S. State Dep't, *Trafficking in Persons Report*, U.S. DEPARTMENT OF STATE DIPLOMACY IN ACTION (2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/210544.htm>.

42. Jo Becker, *Dispatches: US Pushes Some Countries to End Child Soldier Use, but Lets Others Off*, HUMAN RIGHTS WATCH (Oct. 1, 2013), <http://www.hrw.org/news/2013/09/30/dispatches-us-pushes-some-countries-end-child-soldier-use-lets-others>.

leverage to secure concrete action to end the recruitment and use of child soldiers.