

CHILD-SOLDIERS: CAUSES, EXTENSION OF THE PROBLEM AND THE FRAGILITY OF INTERNATIONAL LEGISLATION

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ABSTRACT

The enrollment of children to use as soldiers is a widespread phenomenon. Africa is the most involved continent of the child-soldiers problem, with more than 100 thousand minors that are being used in wars between different States, even if the biggest army composed of children is present in Myanmar. This issue was faced for the first time in 1977 with the Additional Protocols to the Geneva Convention of 1949, relating to the protection of victims in international armed conflicts. The International Convention on the Rights of Child of 1989 provides that States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In 1996, the report, titled "The impact of armed conflicts on children", has become an official document of the UN. After that, the UN Resolution n. 1261 of 1999 has formally put the problem of children involved in military operations on the agenda of the Security Council because it is a matter concerning the maintenance of peace and international security. But only in 2002, the Optional Protocol to the International Convention on Children's rights has been enacted in relation to the use of children in armed conflicts. It prohibits the use of children and adolescents under 18 in any hostility and requests to the States to bring to eighteen years the age limit for enrollment or direct involvement in conflicts, rising the age for voluntary enrollment above 15 years old like it is today. Also the UN Resolution n. 1612 of 2005 ordered a monitoring and communication activity to the Security Council on the use of child-soldiers and on other abuses inflicted on minors in times of war. Furthermore, article 8 of the Statute of the International Criminal Court includes among war crimes, the conscription and the enrollment of children under 15 years old in armed forces and their active participation in hostilities. Moreover, notwithstanding all these important initiatives, today the legal protection of children involved in armed conflicts remain still fragile and ineffective.

Keywords: UNICEF, International Labor Organization.

INTRODUCTION

UNICEF estimates that there are about 300 thousand children under 18 involved in more than thirty conflicts around the world, of which 40% is represented by girls. However, it is difficult to determine exactly the extent of the phenomenon, due to the fact that the wars are constantly changing.

A child-soldier is any person, male or female, under 18 years of age, belonging to a regular army or any armed group, enrolled voluntarily or by force. Moreover, the term child-soldier doesn't only refer to those who use arms but also those who work as cooks, delivery people, messengers, spies, sex slaves or those forced into marriage. Child-soldiers are an integral part of governmental armies, paramilitary groups, irregular armed factions, as well as groups of rebels and terrorists. Their median age is estimated to be less than 13 years.

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the use of children and adolescents under 18 in any hostility. It is also requests to the States to bring to eighteen years the age limit for enrollment or direct involvement in conflicts, and to rise the age for voluntary enrollment above 15 years old like it is today.

In the same year, the International Criminal Court started to act, its Statute defines, in article 8, that the conscription and enrollment of children under the age of 15 in armies and armed groups, fighting in international and intern conflicts, is considered a war crime.

The International Labor Organization (ILO), with Convention 182, has taken a clear stance on the topic, defining obligatory or forced enrollment of minors in armed conflicts as one of the worst forms of child labor.

In the ONU environment, in July 2005, Resolution n. 1612 was approved, ordering a monitoring and communication activity to the Security Council on the use of child-soldiers and on other abuses inflicted on minors in times of war. The resolution offers the possibility to apply sanctions towards countries responsible for grave violations against children rights. The principal sanctions are the exclusion from any governmental institution of States involved in the violations, the freezing of financial resources or the embargo of armies.

Notwithstanding these progressions in the field of international law and the continuous engagement of non-governmental organizations, such as the International Coalition "Stop the use of child-soldiers", the use of children in armed conflicts is unfortunately not in decline. In certain countries there have been some improvements, whereas in others the situation has remained the same, if it has not gotten worse. In Afghanistan, Angola and Sierra Leone, the end of the respective conflicts has brought by the demobilization of more than 40 thousand children, but more than 30 thousand others have been involved in outbreaks of violence that have bathed Sudan and Ivory Coast in blood.

The Causes behind the Phenomenon

The underlying causes are multiple and interrelated of this extreme and systematic violation of the most fundamental children rights, such as the new nature of war, the spread of light weapons and poverty.

Since the end of the 20th century, the nature of the armed conflict has changed considerably, to the point of involving children and adolescents in combat. One of the factors that have permitted the increasing use of children as soldiers has been the change of the technical characteristic of the weapons of war. In the past children did not take part in armies because they were protected, but also because in order to use pre-modern weapons, the force of an adult was needed. Today, unfortunately, the technological perfections allow children to actively participate in war, because of the improvements made in manufacturing. Due to the use of plastic parts, weapons have become so light, manageable and cheap that they can easily be used, even by a child of 10 years. The Kalashnikov AK-47 Plevin, A. M. (2019), made by Russia, is made up of nine minor mobile parts, weighs just 3,150 kg and it rarely requires maintenance. A child can learn to use it in about half an hour.

In the world there are about 650-700 million light weapons, worth over 28 billion dollars. The excess of weapons has created a reduction in prices and with the end of the Cold War; an incredible number of light weapons became available at very low prices. More than the low cost and the large availability, the spread of light weapons is due to their easy transport, use and maintenance. They are responsible for about 90% of the casualties in recent wars.

But also the changing of morphology of the conflicts has contributed to the increasing use of minors. However, from the end of the 20th century wars are fed increasingly by the logic of profit and consequently are not characterized as fights between States, but they see themselves opposed, more regular armies, numerous oppositional forces, factions,

paramilitary groups, and bands of rebels that fight for the conquest and control of the territory in order to exploit resources in an intensive way. They are defined as "wars for resources". Victory is not important in these conflicts, but rather the purpose of carrying out profitable crimes. War becomes, then, an end and not a mean.

In Africa, the exploitation of oil, gold, diamonds, rare minerals and fine wood produces bloodshed. Some call this "third generation colonialism" that would be perpetrated by the major economic and financial forces.

In comparison to those of the past, contemporary wars have a longer duration; which produces devastating social consequences. First of all, entire generations do not know what it means to leave in peace. Secondly, a prolonged state of war implies the impossibility to continue economic activities, lack of food, as well as destruction of base infrastructures.

Why Children Instead of Adults?

The new nature of war conflicts has given birth to a sort of "permanent state of war", that asks of recruits to supply to losses, for which governmental armies and armed fringes resort in a major way to the use of children, who represent an alternative to the recruitment of adults and, as such, multiplies the military capacity of groups and armed factions. These groups, relying on children, can, in fact, regenerate easily and quickly replace their losses.

The use of children is considered precious, and furthermore, inexpensive in terms of training and salary, which is minimal, if not non-existent.

Children are precious prey for the recruiters. For armed bands they are a quick, easy, and low cost way to enrich their own ranks. In economic terms, the use of children lowers the access barriers to the conflict. Moreover, due to their physical and emotional immaturity, children are also easily controlled and above all conditionable: through fear they are forced to obey blindly and to commit the most heinous crimes.

More than being more malleable and more receptive to conditioning, children and teenagers have a high level of adaptability to various situations and are less likely to desert.

Even the poverty and the lack of instruction favor recruitment. For a child on the street, a refugee or an orphan, enrolling can represent the only option to improve their condition, and eventually that of their family.

Children can be easily indoctrinated, they do not desert; do not ask for salary and often for them, being in the army represents the only way to eat. Other times the motivations can be ideological, as in Palestine during the two phases of Intifada. There are even numerous amounts of children attracted by the prestige of wearing a uniform and of handling weapons for the need to affirm themselves as individuals. In some cases the army can represent a collective that acts as a substitute for the nuclear family. The use of child-soldiers has devastating consequences on child development. To force a child to be a soldier means interrupting their psychological and moral development, producing negative neurobiological effects on their cerebral development and long term disorders to their personality, that can turn into antisocial conducts and/or post-traumatic stress disorders.

Military Enrollment and Training

The enrollment of children to use as soldiers can occur in a forced way, through the kidnapping, or taking of their consent through technical means of persuasion. Generally, child recruits belong to particular groups, particularly vulnerable, such as children of the street, refugees, exiles or poor children who are kidnapped from orphanages, from mosques, from school, or from raids on villages. Other children enroll "voluntarily", but it must take into account the context in which the decision is made. Poverty, social misery, the lack of means of sustenance, widespread abuses and propaganda transform the use of weapons into

a necessity for survival that, furthermore, gives a status to the child, that of warrior. This is therefore a choice that, being the only possibility of survival, takes on the characteristics of constriction.

In the DRC, in 1997, about 5 thousand children have answered the radio invitation to enroll in the Army: they were all orphaned street boys. Sometimes the parents themselves send their own sons to the soldiers in the hope of having some possibility of survival. It is quite easy to transform a child into a soldier. Generally, the recruitment is followed by cruel methods of training and conversion. In many cases, enrolled minors are intentionally forced to commit acts of extreme violence and murders, often against their own relatives, friends or members of their own community, with the goal of rendering them insensitive to the suffering. They make them; moreover, carry out murders in public in order to impede any possibility of the child returning to his own community.

They almost always resort to using drugs, tranquilizers and/or alcohol, together with blackmail and manipulation of the psyche. Among the most used drugs in Liberia and Sierra Leon is "brown-brown", cocaine or heroin cut with gunpowder in order to make it stronger. When they are finished their training period, the children are sent to the frontlines. The most common tactic is to put the young recruits in platoons of about 40 children under the orders of a few adults. These units act as assault squads that shoot in a burst with their automatic weapons. On the other side, the recruited children are instead assigned specific support tasks, among which are the laying of mines, acts of espionage, of surveillance and of transmission of orders and logistic duties (supply, material transport and cooking). More than fighting, the girls are entrusted also with other tasks linked to military subsistence, to material transport, to getting information, but they are above all exploited as "sexual slaves" and given to the commanders as wives. Many of them are affected by venereal diseases or remain pregnant and are forced to fight before and after childbirth. Sexual violence provokes problems to the girls within their reproductive organs, uterine deformations, menstrual cycle complications, infections, diseases (syphilis, gonorrhea, HIV), premature births, spontaneous miscarriages, sterility or even death. Maternity constitutes a further impediment to the escape or to their reinsertion in their families and in society.

Child-soldiers do not desert because many do not have a home in which to return or they are conscious of the difficulties of being welcomed back, due to the acts of violence for which they were responsible and the physical signs of identification that normally are put on the body (tattoos, marks).

Indoctrination is, furthermore, so strong that children, in many cases, start to feel part of the group. The sense of loyalty towards their companions, the fear of being alone and frequent addiction to drugs keeps them faithful. Moreover, the crucial factor that links children to the group is the fear of punishment following desertion.

A Problem on a Global Scale

Africa is the most involved continent of the child-soldiers phenomenon, with more than 100 thousand minors that are being used in wars between different States. In Sudan, for example, there are 22 thousand child-soldiers distributed between the governmental army and the rebels of the Sudan People's Liberation Army (SPLA). Whereas in Uganda, more than 20 thousand child guerrilla soldiers have been hired by the Lord's Resistance Army (LRA), led by Joseph Kony, who spreads terror with the goal of overthrowing the atheist government of Kampala and establishing a "Kingdom of the Lord", inspired by the Ten Commandments. The rebels kidnap the children in the villages, mainly between 8 and 16 years old. To protect them, the families send them to spend the night in the city, where they find refuge in the

courtyards of hospitals, along the streets, in reception centers. They are defined "Night commuters", who return home in the morning.

In the Democratic Republic of Congo, a State particularly affected by the phenomenon, all of the fighting parties utilize children. According to the estimates, the minors involved in the conflicts would be between 23 and 30 thousand, many of which are only 7 years old, distributed mostly in the region of Ituri. The problem is much larger between the groups of rebels, so much so that contingencies exist composed solely of little children, such as the Union of the Congolese Patriot (UCP), with about 15 thousand child-soldiers. In many factions, such as the Mai Mai, that recruit children with force, 40% of the combatants are made up of boys.

In Sierra Leone almost all of the 10 thousand children who took part in the decennial war that ended with peace in 2002 have been demobilized and reinserted into their families and their communities of origin.

But the phenomenon is common also in other regions of the world such as Latin America. To lead the sad ranking of child-soldiers in this area is Colombia. More than 14 thousand minors (some of only 12 years old) are enlisted in the guerrilla, in illegal armed groups and in paramilitary militias. They enlist to escape from dramatic family situations and poverty. More than a quarter of child-soldiers of the FARC were girls. The use of child-soldiers, in Colombia, is not limited to irregular forces; even though a law prohibits it, in the recent past the Colombian Army has added 800 children less than 18 years old to their ranks.

In El Salvador, 80% of governmental armed forces and 20% of the guerrillas of the Farabundo Marti National Liberation Front (FMLN) that, in the 1980's, fought in the civil war were children. The median age of the adolescents recruited with force by the FMLN was 12 years, but there were children of 10 years old and even younger. In 1992, the conflict ended. In the country, a program was enacted for the recovery of former child-soldiers, but the results were moderate. In 1999, about 70% of these adolescents had not received any help to reinsert themselves into society.

In Asia and particularly in Myanmar, there is the most numerous army of child-soldiers in the world. According to the HRW, there are around 70 thousand children in service of government groups that since 1948, the year of independence from Great Britain, fighting against the separatist movements of various ethnicities.

Moreover, the presence of child-soldiers in the Chechen conflict has been documented since 1996, although no one knows exactly the extent of the phenomenon. Children of 14 years old would be recruited by armed groups of opposition to the Russian power that fights with other rival factions for control of territory.

In the Middle-East, there are thousands of children enlisted in regular armies, in paramilitary or extremist groups. The most worrying situations concern the Occupied Territories of Palestine, Israel and Iraq. In fact, a lot of the States of this region have not signed international treaties for the protection of children in armed conflicts. It is believed that children were enrolled as soldiers in the Iran-Iraq conflict (1980-1989) and in the Gulf War (1991) and in the last conflict that signaled the end of the Saddam Hussein regime. The regime, to strengthen its militias, did not rely only on traditional enrollment, but created a system of schools for training and preparation for young people in the war and for militarization of Iraqi society and culture. These schools were attended by both boys and girls, even at the age of 10, the so-called "Saddam's lion cubs". But even the Kurdish Labor Party (PKK) has adolescents in its ranks, of which 10% is made up of girls. In the prison of Abu Ghraib it has been estimated that there were over 100 minors that were detainees, some of them even of 10 years old, who were submitted to violence and torture.

In Palestine young boys have had a central role in the political resistance to the occupation of Israel. The children that threw stones at the Israeli soldiers have become the

emblems of the first Intifada (1987-1992). There is also the phenomenon of the Palestinian children locked up into prison of Israel, of the age between 12 and 18, who are being judged by Israeli military courts for acts committed against the Israeli presence in the occupied Palestinian territories. The Israeli military courts do not have legislation for minors and the prison sentences vary from a minimum of a few months to a maximum of nine years, in open violation of article 37, Goodhart, M. E. (Ed.). (2016) comma b, of the International Convention of Children Rights that establishes that arrest or the detention or imprisonment of a child must be used only as an extreme measure and for the shortest period possible.

The phenomenon also concerns the countries of the civilized and industrialized West, even if its importance is less than that of Africa, Asia and Latin America, but this does not mean that it is less worrying.

In United States the law is fixed at 17 year of age for enrollment in the army and for participation in war operations. Minors participated, in 2003 and 2004, in military operations in Afghanistan and Iraq. Furthermore, in the United States the Youth Program of Marines, the "Young Marines", that is a program of military education and service for boys and girls starting at the age of 8.

But the most alarming situation in the European environment is that of the United Kingdom, because, even though the age of majority is fixed by the law at 18 years, the government of London is the only one in Europe that sends boys of 17 years of age to combat. The recruitment is made through military schools such as the "Cadet Forces" that enrolls boys and girls between 12 and 13 years old.

The Fragility of International Protection

The problem of child-soldiers was faced for the first time in 1977 with the Additional Protocols to the Geneva Convention of 1949, relating to the protection of victims in international armed conflicts. The 1977 Protocol I establishes that "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest". Additional Protocol II establishes that "[Children] 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".

The most important text of reference-that enunciates children rights and the obligations of States towards them-is represented by the International Convention on the Rights of Children, approved by the UN on the 20th of November, 1989 and ratified by almost all countries Greppi, E. (2012). In this document, children and adolescents are considered titled of universality of their own rights of every human being, but also bearers of particular needs and interests, implying a specific protection. The Convention of 1989 is based on the passage from the concept of protection and that of childhood and adolescence, to that of recognition of autonomous ownership of certain rights in terms of minors. According to the Convention, the States Parties: "1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child Breen, C(2007). States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest. 4. In accordance with their

obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict".

Article 39 foresees, furthermore, that States are engaged to adopt measures in order to facilitate psychophysical recovery and social reinsertion of every child victim of an armed conflict. Moreover, the fixation, in a non-binding form, of the minimum age for the recruitment at 15 years is incoherent in respect of the principle of the Convention itself, for which minors are all of the subjects with an age less than 18 years Sainz-Pardo, P. V. (2008) (art. 1), and with the principle of non-discrimination which says: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, [...]".

The UN Resolution n. 1261 of 1999 Happold, M. (2000) has formally put the problem of children involved in military operations on the agenda of the Security Council because it is a matter concerning the maintenance of peace and international security.

Furthermore, as anticipated, the ICC Statute, art. 8, includes among war crimes, the conscription and the enrollment of children under 15 years old in armed forces and their active participation in hostilities Bisset, A. (Ed.). (2020). In consequence, the responsible ones can be criminally prosecuted by an international jurisdiction.

At the same time the UN has developed a system of monitoring the application and the violation of such norms, even though the production of annual reports that illustrate to Security Council, and to the public, the situation of several countries in the world. Noteworthy in the process of sensitization is the study conducted by Graça Machel (former Ministry of education in Mozambique and wife of former South-African President Nelson Mandela). The report, titled "The impact of armed conflicts on children", which has become an official document of the UN, was presented in August, 1996 Cataleta, M. S. (2022). In the years following the publication, there were activated programs and allocations of resources intended for demobilization, rehabilitation and reintegration of minors involved in armed conflicts. Tinta, M. F. (2008) The recommendations contained in the Report were fundamental to sanction the importance of the defense of childhood in the world through the creation of the Office of the Special Representative of the Secretary General for children in situations of armed conflict, finalized to update the international community on the violations of children rights during conflicts and to promote the adoption of new legal norms.

As previously stated, the Convention 182 Sainz-Pardo, P. V of the International Labor Organization "for the elimination of the worst forms of child labor", qualifies the forced recruitment of minors of 15 years for their involvement in armed conflicts as a form of slavery. Bisset, A. (Ed.). (2020) for the first time in an international treaty, recruitment in armed groups is considered a form of child labor. Article 1 of the Convention binds the States Parties to take all immediate and effective measures to guarantee the prohibition and the elimination of the worst forms of child labor, with urgent procedure.

However, it is the additional Protocol, approved by the General Assembly of the UN in 2000, to give an answer to the thorny question of the minimum age of the enrollment of minors raised by article 38 of the Convention of children's rights that fixed it at 15 years. But the extent of the important element of innovation introduced by the Protocol, represented by the rise to 18 years of age minimum to the forced enrollment and to direct participation in conflicts, Van Bueren, G. (2021) is in fact emptied by the fact that States are allowed the possibility of voluntary recruitment in regular armed forces of minors over 16 years, if their consent is "genuinely voluntary", or it is verified that minors have full consciousness of the duties coming from the military function.

The Protocol establishes, furthermore, that the States adopt all the measures possible to ensure that minors of 18 years do not directly take part in conflicts and register a binding

declaration on the ratification or adhesion to the Protocol that establishes the minimum age to start from, that this State will allow voluntary recruitment in the national army, together with a description of safeguard measures created to ensure that this recruitment does not happen in a forced manner. The document foresees that each state gives information on the measures adopted for the application of the Protocol and asks the cooperation between ratifying countries to demobilize, demilitarize and reintegrate child-soldiers

CONCLUSION

Notwithstanding the developments of the international law in this subject, that has come to codify the use of children as combatants as a specific violation and to condemn this practice, a lot of work still needs to be profuse, mainly for which concerns the application of norms, the respect of obligations assumed by States, the consolidation of the system of jurisdictional protection of minors and related control mechanisms. Moreover, it is essential to keep raised to 18 years the age limit for voluntary enrollment because maintaining the age at 15 years means to consider, paradoxically, a minor of 18 years immature for peace and mature for war.

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