

*House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security*

**PROSECUTING THE USE OF CHILDREN
IN TIMES OF CONFLICT**

The Lost Generation of Sierra Leone

Testimony of

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Introduction

The Scourge of Child Soldiers Must Be Dealt With!

It was a clear hot day. The meeting hall in the school for the deaf located up country near Makeni rippled with the heat of over five hundred persons. I had been speaking to the students, faculty, and others in one of my many town hall meetings I conduct throughout Sierra Leone. The purpose of the meetings are to provide a vehicle for the people of this small and fragile nation to talk to their Prosecutor about the war, the crimes, their pain and other issues related to our work. As I finished answering a question from a student near the front, a shy and small arm was raised in the middle of the hall. I walked back to the student. He meekly stood up, head bowed and he mumbled, loud enough for those around him to hear, "I killed people, I am sorry, I did not mean it." I went over to him, tears in my eyes, and hugged him and said, "Of course you didn't mean it. I forgive you."²

¹ David M. Crane was appointed The Chief Prosecutor, Special Court for Sierra Leone by the Secretary General of the United Nations, Kofi Annan, April 2002. In July of 2005 he stepped down as the founding Chief Prosecutor. He lived and worked in Freetown, Sierra Leone for 36 months.

² The event took place in March of 2004 in Makeni, Sierra Leone. The child was twelve years old and was deaf. The catholic sister who was headmistress told me that this young man had never spoken of his involvement in the civil war, but he had been a behavioural problem, running away, sometimes for weeks. This is just one story from the lost generation that is the children of Sierra Leone in the 1990's.

For the first time in history those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law that took place during the horror that was the conflict in Sierra Leone, have been charged with the use of child soldiers.³ The use of children in armed conflict is an age old issue.⁴ Modern international norms, however, have identified and outlawed their use. The Special Court for Sierra Leone is now on the cutting edge of international criminal law in holding accountable those warlords, commanders, and politicians who turn to children, some as young as six years old, to carry out orders that in some cases result in war crimes and crimes against humanity.

Only in the past ten years has the international community begun to grapple with this international problem.⁵ A report to the Secretary General in 1996 laid out a comprehensive program for immediate action to protect children during the times of armed conflict.⁶ The report in its introduction dramatically declared:

These statistics are shocking enough, but more chilling is the conclusion to be drawn from them: more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such

³ Statute of the Special Court for Sierra Leone, Art. 4c, Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

⁴ The UN Convention on the Rights of the Child states: “For the purposes of the present Convention, a child is every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Convention on the Rights of the Child, Article 1, adopted November 20, 1989 (entered into force September 2, 1990). As to child soldiering, see, generally, Graca Machel, *The impact of war on children: A review of progress*, Hurst & Co., 2001 at 7: “A child soldier is any child—boy or girl—under the age of 18, who is compulsorily, forcibly or voluntarily recruited or used in hostilities by armed forces, paramilitaries, civil defence units or other armed groups. Child soldiers are used for forced sexual services, as combatants, messengers, porters and cooks. Also, the Cape Town Principles, adopted 30 April 1997: “Child soldier...means any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including, but not limited to cooks, porters, messengers and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms. ‘Recruitment’ encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group.”

⁵ Conscripting or enlisting children under the age of 15, or using them to participate actively in hostilities, is a war crime now and is within the jurisdiction of the International Criminal Court (ICC). Rome Statute, article 8(2)(b)(xxvi) and (e)(vii).

⁶ Report of the expert of the Secretary General, Ms. Graca Machel, submitted pursuant to General Assembly resolution 48/157, 27-29 August 1995, *Promotion and Protection of the Rights of Children, Impact of armed conflict on children*.

*unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.*⁷

Though the use of child soldiers is a problem worldwide, this submission will highlight as a case study the ground-breaking efforts by the Special Court for Sierra Leone, hereinafter the Court, to bring to justice those who destroyed a generation of children in that struggling and hapless backwater of a country during the 1990's, thus underscoring **the importance of the United States' leadership in facing down the scourge of using children in combat by enacting into law S2135, *The Child Soldiers Accountability Act of 2007*.**

However, it will first be important to step back and discuss the conflict in general and to understand the role children played in the tragedy that was the civil war in Sierra Leone. We will then discuss the indictments themselves followed by the various charges against the accused currently on trial. From there we will review the current state of the law regarding the use of child soldiers and finish with a look into the haze of an uncertain future. It is respectfully submitted that a clear and unequivocal message by the United States must be sent to the international community that those who recruit, enlist, and use children in armed forces will be brought to justice and/or not be allowed to live in this country.⁸

The Conflict

Sierra Leone sits along the West African coast that stretches from Senegal to Nigeria before turning gently south into Central Africa.⁹ It is a small nugget in a corroded string of nations along this coast linked together by a colonial past, with a history of bad governance, conflict, and disease. The common thread that holds this odd geographic necklace together is varying degrees of corruption.¹⁰

⁷ *Ibid.*, at 5.

⁸ The issue of using children in combat should be one of bi-partisan concern. It is hoped my testimony will assist the Committee on the Judiciary in recommending to the House that S.2135 be passed and forwarded to the President for signing into law.

⁹ John L. Hirsch, *Sierra Leone. Diamonds and the Struggle for Democracy*, 2001 at 22-24. See, generally, Talabi Lucan, *A Visual History of West Africa, 1981*; Peter K. Mitchell, *Africa South of the Sahara 2000*.

¹⁰ *Ibid.*, at 25-28.

West Africa, generally, and Sierra Leone in particular, possesses vast natural resources.¹¹ Rich in diamonds, rutile and bauxite, among other minerals, these important commodities are Sierra Leone's curse. It was corruption and diamonds that were the catalysts that ignited a conflict that resulted in the murder, maiming, mutilation, and rape of over a half a million human beings in Sierra Leone.¹²

Living in a failed state, Sierra Leoneans have no faith in their governmental institutions or in the rule of law. Since independence, the leprosy of corruption has eaten the country alive for over forty years, the last decade in the convulsive throes of an internal armed conflict. Currently at the bottom of the human development index, Sierra Leoneans struggle daily just to survive to the end of the week. For many of these citizens there is no hope. It was this very loss of hope that warlords, criminal organizations, and cynical politicians took advantage of as part of their plan to execute the civil war in the 1990's.

Fresh from the terror training facilities and camps in Libya, young ruthless leaders were sent south to begin a decade long campaign to take over politically, by force if necessary, the entire region of West Africa. Lying prostrate before Muammar Gaddafi, the struggling former colonies of France and Great Britain were vulnerable to unrest, conflict, and overthrow. This decade long plan of unrest started in 1990 and 1991. Charles Taylor, an escaped detainee from the United States, slipped quietly into Liberia and began years of civil war there. Along with another graduate of the Libyan terror camps, a former wedding photographer and corporal in the Sierra Leonean Army, Foday Sankoh, Taylor looked west over the border of Sierra Leone to the alluvial diamond fields in the Kono and Koinadugu districts. Diamonds would help keep both his revolution and his bank account well financed.¹³

With backing and planning assistance from Ghaddafi and Blasé Campore, President of Burkino Faso, Taylor assisted Sankoh in launching two strikes into the eastern portion of Sierra Leone in March of 1991. He was admonished by Taylor to vigorously recruit the civilian population to the cause, by terror and force, if necessary. What followed after that day

¹¹ Sierra Leone Country Handbook, USMC at 52-55.

¹² Ibid.

¹³ For an excellent general overview of the conflict within Sierra Leone, see: *Conflict Mapping in Sierra Leone, Violations of International Humanitarian Law from 1991 to 2002*, No Peace Without Justice, 2004.

was a back and forth death struggle that lasted over ten years between various warring factions, each brutalizing civilians, particularly women and children. Never really having a political purpose or goal, this internal armed conflict, started by Charles Taylor and the Revolutionary United Front, evolved into a terror campaign in the hope of gaining and maintaining control of not only the diamond fields, but the entire nation for this joint criminal enterprise.

During this bizarre spectacle pain, suffering, and agony reached new dimensions. The atrocities committed almost defied description in any language. “Believe the unbelievable” is what the chamber responsible for the trial of the leadership of the Civil Defense Force was told by me in the opening statement that began their prosecution. No more horrific a tale is the one just told in the introduction, however this is only illustrative of years worth of using boys and girls as soldiers and support personnel who raped, maimed, mutilated, and murdered their way across Sierra Leone in such military operations as “Pay Yourself” and “No living thing”.

A favourite tactic to induce children to join their force was for the rebels to move in and surround a village. The children were made to kill their parents and then were driven into the bush and forced to serve as soldiers, in many instances for years. The numbers are not fully known, but it was in the thousands. These children, ranging from six to eighteen years of age, roamed the battlefields hopped up on cocaine or marijuana destroying their own country. Over time the various warring factions became their home and their families. All sides to the conflict in Sierra Leone used children.

When the conflict staggered to its bloody conclusion in 2002, an entire nation lay in ruins. These child fighters found themselves with no families, little to no education, and a society unable to assist them in starting to rebuild their lives. Many were physically and psychologically damaged. The lost generation of Sierra Leone now sits by pocked-marked roads with no hope, waiting for the next “Pa” to lead them back into the only life they know--fighting, raping, pillaging, and murdering their fellow citizens.¹⁴

¹⁴ See *Youth, Poverty and Blood. The Lethal Legacy of West Africa's Regional Warriors*, Human Rights Watch, Vol. 1, No. 5(A), March 2005. The report in its opening paragraph sums up the problem at 1: “Since the late 1980’s, the armed conflicts in Liberia, Sierra Leone, Guinea and Cote d’Ivoire have reverberated across each country’s porous borders. Gliding back and forth across these borders is a migrant population of young fighters—regional warriors—who view war as mainly an economic opportunity.

A forty-two year old secretary told a Human Rights Watch researcher, in an interview on May 20, 1999, about child soldiers used in the invasion and destruction of Freetown in January of that same year: *We feared them. They were cruel and hard hearted; even more than the adults. They don't know what is sympathy; what is good and bad. If you beg an older one you may convince him to spare you, but the younger ones, they don't know what is sympathy, what is mercy. Those who have been rebels for so long have never learned it.*¹⁵

The Special Court for Sierra Leone

The Special Court is an innovative step in the evolution of international war crimes tribunals designed to prevent future atrocities. Even with the establishment of the International Criminal Court, the Court is a model that can work in the future to combat impunity in troubled areas of the world.

The Court is a new kind of “hybrid” tribunal that is independent of the United Nations and any state.¹⁶ It is considered the next generation of war crimes tribunal. Established through an agreement between the United Nations and the Government of Sierra Leone in January 2002, the Court is both international and national.¹⁷ The signing of the treaty was the culmination of a year and a half of discussions started in August 2000 following a United Nations Security Council resolution directing the Secretary-General to enter negotiations to create the Court. The national parliament passed a law to implement the treaty in March 2002.¹⁸

Their military ‘careers’ most often began when they were abducted and forcibly recruited by rebels in Liberia or Sierra Leone, usually as children.”

¹⁵ Human Rights Watch Report, Vol. 11, No. 3(A)-June 1999, *Getting Away with Murder, Mutilation, and Rape*. New Testimony from Sierra Leone at 54. Adama, goes on in the interview, declaring: “Once a rebel, a small boy in full combats, couldn’t have been more than twelve, called everyone out of the house across the street. The papa of the family, Pa Kamara, said, “please my son, leave my family,” but the boy said, “listen, we can do anything we want in Freetown. We don’t have mothers, we don’t have fathers. We can do anything we wanna do.” And that is how Pa Kamara died; the rebel boy shot him, in front of his wife, his children, his grandchildren. They are wicked, those boy soldiers. They spare no human life.”

¹⁶ Security Council Resolution 1315 (2000) of 14 August 2000. See, also, Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000.

¹⁷ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002. See, also, The Special Court Agreement, 2002, Ratification Act, 2002.

¹⁸ Ibid.

The Court's first Registrar, Robin Vincent from the United Kingdom, and the Prosecutor were appointed by the United Nations Secretary-General in April of 2002. He left that post in 2005. The Deputy Prosecutor, Desmond DeSilva was appointed by the Government of Sierra Leone in the fall of 2002.¹⁹ The Court's Chambers are a combination of five international and national justices in the Appellate Chamber and three international and national justices each in the two Trial Chambers. The first eight justices (five in the Appeals Chamber and three for trial chamber one) were sworn into office in early-December 2002. The second Trial Chamber was sworn in January 2005.²⁰

The Court's mandate is to try those who "bear the greatest responsibility" for serious violations of international humanitarian law, including the laws of war; crimes against humanity, including widespread or systematic murder, enslavement, rape, sexual slavery and other forms of sexual violence, torture, and other inhumane acts; and certain crimes under Sierra Leone law.²¹ Cases can be brought against anyone who committed crimes or was responsible for crimes committed in the territory of Sierra Leone since 30 November 1996.²²

Unlike the two existing ad hoc international criminal tribunals, the Court's budget is drawn mainly from voluntary contributions rather than assessments from UN member-states. The entire initial four year budget for the Court, including the construction of a permanent court site, was around \$100 million. Thus far, over 30 countries have generously provided financial or in-kind contributions. With an annual budget of around \$25 million, a tenth of what the other tribunals spend each year, the Court must be more efficient and operate with a leaner staff and less resources.

Most importantly, the Special Court sits in the country where the violations occurred. This is exactly the right place for the Court to be – in the heart of Sierra Leone, delivering justice directly for the people who

¹⁹ In May of 2005, Mr. DeSilva was appointed by the Secretary General of the United Nations to succeed David M. Crane as Prosecutor for the Special Court for Sierra Leone. He served until the fall of 2006.

²⁰ Article 11, Organization of the Special Court, Statute of the Special Court for Sierra Leone.

²¹ Art. 1, para. 1 Statute of the Special Court for Sierra Leone: The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

²² Ibid.

suffered during the civil war. The courtroom is open to the public. An ambitious outreach and public information program is in place to keep Sierra Leoneans informed and engaged in the work of the Court. This is, first and foremost, their Court.

The Court hopes to make a lasting contribution to promoting accountability and the rule of law long after its work has finished. Thus, capacity-building and legacy activities constitute an important part of our work. Courtroom facilities will be turned over to the people of Sierra Leone at the conclusion of the trials. In addition, the Court hired a high percentage of Sierra Leonean professionals and it has reached out to the local legal community to design initiatives to bolster legal reform in the country. These include facilitating scholarship opportunities and training programs in international humanitarian law, as well as a fruitful partnership with the local law school.²³ The trials may end, but the Special Court will never truly leave Sierra Leone.

The Indictments and the Charges

As the Prosecutor, I arrived in Sierra Leone early-August 2002. Criminal investigations began two weeks later according to plan.²⁴ On March 3, 2003, eight indictments were signed.²⁵ These indictments were confirmed by a trial chamber judge in London on March 7th. At noon on Monday, March 10 – just seven months after his arrival -- members of the investigations team, along with the Sierra Leone Police launched “Operation

²³ The Legacy Program for the Office of the Prosecutor (OTP) for 2005/2006 consists of putting various Sierra Leonean Legal texts on DVD and distributing them to the law school and the bar association; a monthly lecture series for the local bar given by members of the OTP; a street law program teaching high school students key aspects of Sierra Leonean criminal law; and a codification project of customary law. The major legacy initiative started back in 2004 that continues to this day is the innovative witness management program. This program trains Sierra Leonean Police (SLP) the nuances of caring for, protecting, and monitoring witnesses’ pre-trial, trial, and post trial. The unit formed in the OTP will be transferred in total to the SLP and become a first-ever organization caring for witnesses within the jurisdiction of the SLP.

²⁴ The Prosecutor developed a general prosecutorial strategy in May of 2002 which he presented for the first time at a roundtable sponsored by the United States Institute of Peace that same month. While doing this he also developed a ten-phase plan that detailed the milestones and sequence of critical events that would take place in the set-up, investigation, indictment, pre-trial, and trial stages of the Court’s mandate. Currently they are in phase ten and have started executing a “phase 11” called the exit strategy.

²⁵ In a moving ceremony in the office of the Chief Prosecutor eight indictments were signed in front of all of the investigators and trial counsel. I recall saying to them in a short opening before I signed the indictments that “the ghosts of a 100,000 people stand with us in this room today.” Some of my staff were weeping openly. Beethoven’s “Ode to Joy” was being played on my stereo as we signed the indictments one at a time.

Justice,” taking down simultaneously all the indictees who were in Sierra Leone at the time, including the now deceased Minister of Interior, Samuel Hinga Norman. A total of 13 indictments have been issued. The six indictees arrested in March 2003, plus three more over a period of several months, are in a detention facility at the Court compound in Freetown having faced three joint criminal trials. The leadership of the Armed Forces Revolutionary Council and the Civil Defense Forces have been convicted of war crimes and crimes against humanity, to include the unlawful recruitment of children under the age of 15 into an armed force. They have been sentenced and their cases are currently on appeal. The joint criminal trial against the Revolutionary United Front is finishing. Former President Charles Taylor is also being tried for his complicity in Sierra Leone on an 11 count indictment, to include the recruitment of child soldiers.²⁶

We have been encouraged by the response to the indictments by the people of Sierra Leone. The peace has held and many have spoken out in support of our work. According to polls, over two-thirds of the population believe the Special Court is necessary, with another two-thirds believing it will deter future conflict.²⁷

²⁶ As mentioned, most of the indictees have been jointly and severally charged with and convicted for the use of child soldiers among other international crimes. The extent of that involvement was widespread and systematic. Each of the indictees had command responsibility of the combatants that they led, to include child soldiers. The various combatants over the period of the conflict had small boy units (SBU's). Some of these SBU's had specific duties to perform. In the burning of Freetown, January 1999, children were part of squads specifically ordered to mutilate, to burn, and to pillage. Child soldiers were seen throughout the three weeks of occupation carrying burlap bags full of body parts, trailing blood along the way. They were required to bring the bags to their commanders.

The leadership of the Revolutionary United Front are charged in Count 12 of their amended indictment for the recruitment and use of child soldiers, specifically conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities. Similarly, the leadership of the Armed Forces Revolutionary Council are charged in their further amended indictment in Count 12, as well. The dreaded leadership of the Civil Defense Forces are charged in Count 8 of their indictment.²⁶ The former President of Liberia, Charles Taylor is charged with the recruitment and use of child soldiers and so is the fugitive indictee, Johnny Paul Koroma. The deceased indictees Foday Sankoh and Samuel Bockerie were likewise charged.

All of the indictees we alleged, are individually criminally liable for the use of children in times of armed conflict both under the aiding and abetting theory, Article 6.1 of the Statute of the Special Court for Sierra Leone (hereinafter the Statute) or in the alternative command responsibility, Article 6.3 of the Statute. Each of the indictees is charged with the recruitment and use of children during all times relevant to the indictment. As Charles Taylor had directed Foday Sankoh in Liberia in February of 1991, children were rounded up early to bulk up the forces in Sierra Leone. Later in the conflict the Civil Defense Force, particularly the Kamajors, initiated children into their ranks. Children served on all sides throughout the conflict that lasted 10 long years.

²⁷ An informal poll taken by an NGO, June 2003.

The various charges in the indictments stemmed from the enumerated crimes within the Statute. The specific crime on the use of child soldiers can be found in Article 4 of the Statute, other serious violations of international humanitarian law. This provision allowed the Prosecutor to indict a person for three international crimes that range from intentionally attacking civilians (Article 4a), various crimes against peacekeepers or humanitarian assistance workers (Article 4b), and the recruitment and use of child soldiers (Article 4c). The Prosecutor used all three in the various joint criminal indictments.

The Challenges to this New International Crime

During the pre-trial phase, in the summer of 2003, several of the indictees made various jurisdictional challenges to the charges in the indictments and to the Court itself. On 26 June 2003, one of the indictees, Hinga Norman, specifically challenged the charge against him relating to the use of child soldiers as not being a crime at the time of its alleged commission. Another indictee intervened as well. This preliminary motion was referred to the Appeals Chamber pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court (hereinafter the Rules) after the response by the Prosecutor which was filed on 7 July 2003. Various amicus briefs were allowed to be filed by the University of Toronto, International Human Rights Clinic, as well as inviting UNICEF to submit an amicus curiae brief. An oral hearing was held on 6 November 2003, with a follow on post hearing submission by the Prosecutor on 24 November 2003.²⁸

On 31 May 2004, the Appeals Chamber of the Court issued the decision on the preliminary motion based on lack of jurisdiction (child recruitment) dismissing the motion. The Appeals Chamber held that child recruitment had crystallized under customary international law by the time

²⁸ Amicus Curiae Brief of University of Toronto International Human Rights Clinic and interested International Human Rights Organizations, 3 November 2003. Also, Amicus Curiae Brief of the United Nations Children's Fund (UNICEF), 21 January 2003. "State practice demonstrates full awareness and abhorrence to the practice of recruiting children, and a firm commitment to ensuring that those responsible for such recruitment are held liable under criminal law. The prohibition on recruitment and use of child soldiers below 15 has been universally recognized. Most States have enacted legislation for the implementation of their minimum age for recruitment and use of children in hostilities. Some States have explicitly criminalized child recruitment. The prohibition was therefore well established and its violation considered a criminal act. [...] and demonstrates opinio juris in the acceptance by States that this norm is legally binding."

frames relevant to the indictment, thus protecting the legality and specificity principles questioned by Norman. For the first time in legal history a high court had ruled that the recruitment of child soldiers was a crime under international law.²⁹

The State of the Law

The decision by the Appeals Chamber correctly reflects the state of the law.³⁰ The case of children in warfare is not a new phenomenon. Children have followed armies for centuries as support personnel—pages, water carriers, and as musicians, particularly as drummers. In navies throughout Europe children were seconded to warships by nobility to learn a trade and careers as officers, and others were pressed into seamanship.

With the advent of the various Hague rules governing weapons in war in the late 19th and early 20th centuries, the rules of warfare began to take on a universal status, and coupled with the Red Cross movement the role of the combatant became a legal term of art. The status of the non-combatant also began to take shape.³¹

Yet the specifics as to the age of combatants were not well defined early in the regulation process. The focus of the international community was more on the regulation of weapons that would cause unnecessary suffering and the types of targets combatants could engage.³²

²⁹ Prosecutor against Sam Hinga Norman (Case No. SCSL-2004-14-AR72(E)), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004: *Therefore, child recruitment was criminalized before it was explicitly set out in treaty law and certainly by the time frame relevant to the indictments. The principle of legality and the principle of specificity are both upheld.* Justice Gelaga King wrote a separate concurring opinion and Justice Geoffrey Robertson, dissented stating that the crime of child recruitment did not enter into international criminal law until the Rome Treaty [for the International Criminal Court] in July 1998, thus declaring that the applicant should not be prosecuted for any offense of enlistment before that date. For an interesting point of view related to the Norman decision, see A. Smith, *Child Recruitment and the Special Court for Sierra Leone*, *Journal of International Criminal Justice* 2 (2004), 1141-1153.

³⁰ See, generally, Alison Smith, *ibid*, at 1141-1153. See also, the 1977 Protocols Additional, Geneva Conventions of 1949, the 1989 Convention on the Rights of the Child and its Second Optional Protocol of 2000, the 1998 Rome Statute for the International Criminal Court and the 1999 ILO Convention No. 192 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

³¹ Hague Convention No. III Relative to the Opening of Hostilities, 18 October 1907; Hague Rules No. IV Respecting the Law and Customs of War on Land, 18 October 1907; Annex to Hague Convention No. IV embodying the Regulations Respecting the Laws and Customs of War on Land, 18 October 1907; Hague Convention No. V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907.

³² For a general review of the history of the development of the laws of armed conflict, see: Leon Friedman, *The Law of War—A Documentary History*, Vol. II (23 October 1962); Lothar Kotsch, *The Concept of War*

After World War I and into World War II, the shift away from universal rules relating to weapons and targets began, and by the end of the horrors of these two world wars the focus was now rightfully on non-combatants. With the founding of the United Nations (UN) in 1945, there was now a permanent body that could be a voice for non-combatants, particularly for children.

Shortly after the founding of the UN, with its broad charter to assist mankind in peace and security, the universal rules began to narrow and define in more specific terms the special status of non-combatants. The cornerstone to these rules became the Geneva Conventions of 1949, which by their nature, were devoted to persons who are “out of the combat”—prisoners of war, the shipwrecked, and civilians.³³ It is here that we begin to see that children become protected under international law. Also, by this time the international commitment to the principles of human rights were laid out in the Universal Declaration of Human Rights, which echoed the fundamental principles of the dignity of human beings found in the Geneva Conventions as well.³⁴ The world plunged then into the Cold War with a new standard of protection of the rights and status of non-combatants in times of war.

However, the tragedy of the cold war was the third world “flashpoints” that resulted in various conflicts. Children were once again the victims. In the middle of the Cold War many colonies became independent and the long process of having these new emerging nations, struggling just to feed their populations, review, debate, and adapt the universal principles related to the governing of armed conflict began in third world capitals.

in Contemporary History and International Law (1956); Julius Stone, *Legal Controls of International Conflict* (1954); John Norton Moore, *National Security Law* (1990); L. Oppenheim, *International Law Vol. II Disputes, War and Neutrality* (7th ed. 1952); Gerhard von Glahn, *Law Among Nations* (1992); Michael Walzer, *Just and Unjust Wars* (1977); Dept. of Army, Field Manual 27-10, *The Law of Land Warfare* (18 July 1956).

³³ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949; Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949; Geneva Conventions Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

³⁴ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. The first clause of the Preamble to this important document declares: “Whereas the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world...”

In the 1970's the world paused long enough to reconsider the Geneva Conventions of 1949, to shape them to reflect the realities of modern armed conflict. The debate was significant and the results important, as it brought into the fold much of the third world by their agreeing to the two new protocols.³⁵ Once again the bar had been identified and, indeed, it had been raised. Most of the Nations of the world agreed to the new standards.³⁶

In the protocols we see the specific prohibition of the use of children in armed conflict. The criminality of the act of using children in conflict, however, is not specifically laid out; yet the implication is that the violation of the Geneva Conventions related to civilians as non-combatants, coupled with the protocols additional, implies a grave breach when using children in combat. Such breaches impose a duty to investigate and prosecute upon all the signatories to the conventions and the protocols.³⁷

The subsequent Convention on the Rights of the Child (CRC) began to highlight the prohibition against the use of children in armed conflict.³⁸ The CRC appears to criminalize the concept of child recruitment. By this time one certainly could argue that the act of child recruitment as a crime had crystallized into customary international law.

Despite this political and legal recognition by states that child recruitment was a universal crime, child recruitment went on unabated. Millions of children died in the 1980's and 1990's, mostly in Africa where children played a significant role in various armed conflicts.³⁹ In 1996, the already cited Marcel Report stunned the United Nations, highlighting the full

³⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 10 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, 19 June 1977.

³⁶ The United States, for example, has not ratified either of the protocols.

³⁷ The obligation to prosecute grave breaches of the laws of armed conflict or extradite can be found in the Geneva Conventions of 1949: Wounded and Sick (GWS), art.49, cl.2; GWS Sea, art. 50, cl.2; Prisoners of War (GPW), art. 129, cl.2; Civilians, art. 146, cl. 2. Universality of jurisdiction over those who commit grave breaches of the customary principles of the laws of armed conflict has been around even prior to 1949. See *Israel v. Eichman*, Israel District Court of Jerusalem, Dec. 12, 1961, reprinted in II Leon Friedman, *The Law of War: A Documentary History* 1627, 1631-35 (1972); see also William B. Cowles, *Universality of Jurisdiction over War Crimes*, 33 Cal. L. Rev. 177-218 (1945).

³⁸ The 1989 Convention on the Rights of the Child and its Second Optional Protocol of 2000.

³⁹ Recently it was revealed that women and children some of them around eight years of age were part of a force that attacked and killed several dozen fellow Congolese in the Ituri Province of the Congo. Wilma Stassen, AP.

extent of the problem throughout the world. There were calls for action and a plan began to evolve to monitor the recruitment of child soldiers.

In the late 1990's the world once again sat down together and began to develop a mechanism to prosecute war crimes and crimes against humanity. The Rome Statute created the International Criminal Court which is now mankind's attempt to stamp out impunity wherever it rears its ugly head. The Rome Statute specifically states that the recruitment of children under the age of 15 is an other serious violation of international humanitarian law.⁴⁰

At the same time the Rome Statute was being drafted, the President of Sierra Leone was reaching out to the UN for help in punishing those who committed atrocities in the conflict that had ravaged his country in the 1990's. Children had played a special and tragic role in the conflict. They were recruited or conscripted under great duress to fight as soldiers or act as support personnel. Many committed war crimes, some of them unimaginable for a child. The people of Sierra Leone lost an entire generation of children.

As stated earlier, the international treaty that created the world's first hybrid war crimes tribunal listed in Article 4 the now universally recognized crime of child recruitment. It mirrors the Rome Statute. Again, all of the indictees were charged and convicted of the crime of recruiting child soldiers. It is an historic first, indeed.

Conclusion--The Future

Despite the assertion that the recruitment of child soldiers is an international crime, even today, the tragedy continues worldwide, particularly in Africa. Forty-two armed groups in eleven countries were specifically singled out in a February of 2005 report. The United Nations Secretary General's special envoy for children in armed conflict, Olara Otunnu, stated that these groups should be punished for war crimes or crimes against humanity for what they have done to children.⁴¹ S. 2135, The Child

⁴⁰ International Criminal Court, UN doc. ICC-ASP/1/3, Art. 8(2) (e) (vii).

⁴¹ Otunnu's office was set up after the Machel report of 1996. The issue of child soldiers has been on the United Nation's Security Council's agenda since 1998. Otunnu is quoted in a Reuter's report, 10 Feb.2005: "...atrocities against children and impunity for violators continue largely unabated on the ground." Otunnu estimated that "there are 300,000 child soldiers around the world". Kofi Annan, Secretary General of the United Nations who declared this year that there is a need to "transform words into deeds, protective

Soldiers Accountability Act would be a logical domestic step for the United States in support of this recommendation.

The *Norman* decision by the Appellate Chamber of the Special Court for Sierra Leone will certainly assist in the advancement of the jurisprudence in the area of child recruitment. The International Criminal Court, which has an identical provision in its statute related to the recruitment of children under the age of 15, as is found in the Special Court's Statute, will look upon the groundbreaking work of the Special Court for Sierra Leone as the cornerstone in their charging of cynical warlords, politicians, and governments who continue to ignore the clear prohibition for this criminal conduct.⁴²

Between 1986 and 1996 over two million children were killed in armed conflict.⁴³ There have been countless more killed since then, many of them in places such as Sierra Leone. Only when the rule of law is enforced will abusers of children be held accountable at the international level (and hopefully the domestic level) thus assisting in making the perpetration of this horrific crime diminish. It is time for the United States to assist in making this happen.

The report by the United Nations called for monitoring and reporting of children in armed conflict to ensure that the law is complied with worldwide. This is spelled out in the action plan of the report.⁴⁴ It highlights six "grave violations" that should particularly be monitored.⁴⁵ The report also lays down standards that constitute a basis for monitoring, the types of parties whose activities should be monitored, and the responsibilities of who is to gather, vet, and compile information at the country level.⁴⁶ This will mainly be done by the field teams in the various countries where the United Nations is located.⁴⁷

instruments and standards into enforcement on the ground, and condemnations into accountability." Inter Press Service News Agency 15 Feb. 2005.

⁴² See Amicus Curiae Brief of the United Nations Children's Fund (UNICEF), related to the Fourth Defense Preliminary Motion on Lack of Jurisdiction (Child Recruitment), The Prosecutor against Sam Hinga Norman, SCSL-2003-08, 21 January 2004 at 8.

⁴³ The Machal Report at 5. A/51/306, 26 August 1996, *Impact of Armed Conflict on Children*.

⁴⁴ *Children in armed conflict*, Report of the Secretary General, A/59/695-S/2005/72, 9 February 2005 at 14.

⁴⁵ *Ibid* at 16. The grave violations are: killing and maiming of children; recruiting or using child soldiers; attacks against schools or hospitals; rape or other grave sexual violence against children; abduction of children; and, denial of humanitarian access to children.

⁴⁶ *Ibid* at 16-17.

⁴⁷ *Ibid* at 18.

Certainly there is an increasing awareness of the scourge of child soldiers and a shift internationally towards action. The United States must be in the forefront of this effort, as should the United Nations Security Council to take swift and decisive action when confronted with the issue. International courts will have to aggressively charge this crime in future indictments or the practice of using child soldiers will not stop. Children need to play and grow in a nurturing environment so that they will “strike terror no more”.⁴⁸

S. 2135, The Child Soldiers Accountability Act of 2007, is a correct step in this direction as it seeks to prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, and to allow the deportation of persons who recruit or use child soldiers.

As I declared to the tribunal in Sierra Leone in the summer of 2004 in my opening statement against the leadership of the infamous Revolutionary United Front:

I will close with another tragedy in this 10-year long tale of horror...

It involves a child. He lived in a village in the Kono district. They were told that the rebels were going to attack. The witness will testify that he fled into the bush with his parents and brother, but were caught by the RUF. The rebels took his younger brother and himself to Kaiama along with thirteen other boys. The rebels lined the fifteen children up and offered them a choice: Join one line if they wanted to be a rebel, another line if they wanted to be freed and allowed to go home. All fifteen of these boys, and they were just boys, joined the line for freedom. It was the wrong choice. They were accused of sabotage to the revolution. To keep them from escaping each was held down, screaming, and one-by-one had AFRC and/or RUF carved into their chests with the blade of a sword. The witness was now just marked property and treated as such. He will be in this very chamber to tell

⁴⁸ For further reading on children and armed conflict, see, generally: *Amnesty International, In the firing line: War and children's rights*, 1997; Patrick J. Braken and Celia Petty, *Rethinking the trauma of war*, Save the Children, UK, 1998; Rachel Brett and M. McCallin, *Children, the invisible soldier*, Radda Barnen, Grafiska, Punkten, 1996. Graca Machel, *The impact of war on children: A review of progress since the 1996 United Nations report on the impact of armed conflict on children*, Hurst&Co., 2001; *International Criminal Justice and Children*, No Peace Without Justice and UNICEF, Sept. 2002.

his horror story and show you his scarred chest that to this very day bears the letters: A-F-R-C R-U-F.

What took place in SALONE marks the limits of our language to communicate and falls outside the realm of expression. However, we will attempt to do so, one witness at a time, by the dozens, to show how the beast of impunity fed on SALONE.⁴⁹



⁴⁹ David M. Crane. The Opening Statement against the Leadership of the Revolutionary United Front in an Amended Joint Indictment, Case No. SCSL—2004-15-PT, Prosecutor versus Sesay, Kallon, Gbao, delivered 5 July 2004 at 15.