

# "Child Soldiers" and International Efforts (I): @PKO

## Now! No.16

---

The thoughts and views expressed in this column belong solely to the author and do not represent those of the Secretariat and the Government of Japan.

Masako Shimo  
Program Advisor  
February 15, 2013

### Introduction

At the end of the Cold War, civil wars broke out in various parts of the world and affected untold numbers of civilians<sup>1</sup> and caused major casualties. Children were not an exception. Many were dragged into street fighting, some were displaced and became refugees or IDPs, and others lost parents and ended up being street children.

Among those children affected by armed conflicts, "child soldiers" are a group of children recently attracting attention from the world. Even under armed conflicts, ordinary children can be protected by international treaties<sup>2</sup> as being "civilians" and "children". "Child soldiers", however, cannot benefit from most of such protection<sup>3</sup> because they are "children" but "soldiers". There are those who are kidnapped and forced to become soldiers while there are those who have no other way to survive but to become soldiers. It is, therefore, very important to stop this depraved practice of recruiting, enlisting and using child soldiers.

This article is the first of three series on the theme of how the international community has been fighting against the use of child soldiers, including efforts to ban it altogether. This article focuses on the legal aspects of these efforts, while the second edition will deal with initiatives taken by the United Nations, and the third article will focus on girl soldiers and their association with the UN Peacekeeping Operations (such as DDR). (Note: The second article will be posted as vol. 23, 7 September 2012; the third article will appear in vol. 29,

19 October 2012.)

## **Legal Framework**

We could find some efforts to protect children from armed conflicts in the development of International Human Rights Law and International Humanitarian Law. The first and the second additional protocols of Geneva Convention of 1949 (effective since 1978) ban enlisting and recruiting as well as use of child basically under fifteen years of age by states and armed groups<sup>4</sup>.

The Convention on the Rights of Child (effective since 1990) stipulates broad rights that children possess, rights not limited to those under armed conflict. It is also famous as the most widely ratified human rights treaty. (Note: There are three countries which have not yet ratified the Convention; the United States, Somalia, and South Sudan.) This treaty also bans enlisting, recruiting, and using children under 15 years old as soldiers, which is not in line with Article 1 of the Convention, which defines children as those under 18 years old. It was not until the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entry came into force in 2002 that the banning age was raised from 15 to 18.

## **Internationalized Criminal Courts**

Although International Humanitarian Law and International Human Rights Law prohibit child soldiering, there remains the practice of enlisting, recruiting, and using child soldiers by states and other armed groups. Yet, at the same time, there has been an active move to criminalize child soldiering in internationalized criminal courts. The statutes of the Sierra Leone Special Court and the International Criminal Court (hereinafter referred to as ICC) define enlisting, recruiting and using child soldiers as war crimes<sup>5</sup>. In fact, high officials of Sierra Leone as well as one prominent warlord<sup>6</sup> in the Democratic Republic of Congo (hereinafter referred to as DRC) were found guilty<sup>7</sup> in these courts.

We need to watch closely whether such a move could deter child soldiering by states and

armed groups. In addition to the case above, the ICC prosecutor has requested an arrest warrant for a different case in the same DRC situation<sup>8</sup> to continue prosecuting those who are suspected of enlisting, recruiting, and using child soldiers.

## End Notes

---

<sup>1</sup> "Civilians", in general, refer to those who are not military personnel. For a more detailed definition in International Law, please refer to Article 50.1 of the Protocol I to the Geneva Conventions of 1949 relating to the protection of victims of international armed conflicts.

<sup>2</sup> The Geneva Conventions of 1949 and their Protocols I and II.

<sup>3</sup> Yamashita, Yasuhiro. Buryoku funsou ni okeru kodomo no hogo-kodomo no kenri joyaku sentaku giteisho no seiritsu- (Protection of Children in Armed Conflicts-Adoption of the CRC optional protocol-), Fukuoka Daigaku Ronso 2000, Vol.45(2), p.87-127.

<sup>4</sup> Article 77 of the Protocol I and 4.3.c. of the Protocol II to the Geneva Conventions of 1949.

<sup>5</sup> Article 8.2.b (xxvi), e (vii) of the Rome Statute of the International Criminal Court (hereinafter referred to as the Rome Statute.)

<sup>6</sup> This indicates Thomas Lubanga Dyilo of "Lubanga case" in the DRC situation. As to the usage of "case" and "situation", please refer to note 8 below.

<sup>7</sup> At the Sierra Leone Special Court, the defendant claimed that enlisting and recruiting child soldiers had not been criminalized at the time of the incident. The court, however, recognized that the International Customary Law had been already established and dismissed the defendant's claim. (For details, please refer to Inazumi, Mitsue, Kodomo Heishi ni Kansuru Senso Hanzai-Nooman Jiken Kankatuken Hanketsu (Shiera reone tokubetsu saibansho) (War Crime Regarding Child Soldiers-the Decision over the Jurisdiction of the Norman Case (the Sierra Leone Special Court)) Kanazawa Hogaku, 2005, 48(1): A77-A-107.

<sup>8</sup> At ICC, a territory (state or area) within its jurisdiction is called "situation", and an individual incident is called a "case".