L'ENFANT ET LA GUERRE, 2001

7e Séminaire de l'IDE

16 au 20 octobre 2001

INSTITUT INTERNATIONAL DES DROITS DE L'ENFANT

INSTITUT UNIVERSITAIRE KURT BÖSCH

TABLE DES MATIERES

Troisième partie

DE QUELQUES OUTILS DE PRÉVENTION

Préface

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L'ENFANT ET LA GUERRE

« Lorsque l'on fait une guerre..., on peut se demander, selon un calcul rationnel à la lumière des dégâts chiffrés, si l'enjeu en question valait les sacrifices humains et la destruction, la souffrance engendrée chez des millions d'hommes, de femmes, d'enfants. Devant une telle question, on ne peut que constater l'absurdité de l'acte, la barbarie, la stupéfaction et l'incompréhension de la nature humaine, d'autant plus que celle-ci prêche la paix, la tolérance et le bien suprême pour tous les hommes, en même temps qu'elle se montre cruelle (1) ».

Cette citation du Professeur Houbballah, médecin psychiatre libanais qui a connu les affres d'une horrible guerre civile et son cortège de douleurs et qui a étudié les conséquences de ce déferlement de violence sur le psychisme des adolescents, n'introduit, hélas, que trop bien le sujet de l'enfant et la guerre.

Enfant(s) et guerre(s) : deux termes qui ne vont pas ensemble, qui devraient s'exclure d'emblée l'un l'autre et que la langue ne devrait pas permettre d'accoler, tant leur signification est opposée. Le premier est porteur de tous nos espoirs, il représente ce que nous projetons à travers lui, notre futur et recèle les trésors de l'innocence, de la candeur et de la spontanéité ; il appelle notre protection et demeure l'objet de toutes nos attentions. Le second est l'inverse, puisqu'il est synonyme de destruction, de mort et de tortures; il nie l'avenir et base sa tragique réalité sur les notions de puissance, de pouvoir, de calcul, d'extermination, de tyrannie ; il suscite l'incompréhension, le rejet, le non-sens.

Et pourtant, la réalité de ce nouveau millénaire nous met face à une évidence : les enfants sont concernés par la guerre, que celle-ci se nomme guerre traditionnelle, conflit armé, guérilla, révolte, soulèvement, mutinerie, lutte… mais aussi guerre économique à travers les organisations criminelles qui se disputent marchés, territoires, trafics. On connaît bien la position de l'enfant victime des règlements de comptes entre adultes ; les conventions de Genève font une large place à la femme et l'enfant victimes. On se souvient aussi de la première Déclaration de Genève (1924) qui exigeait des Etats membres de la SDN une protection particulière pour l'enfant victime des affrontements armés. Ce que l'on a moins abordé, c'est, bien sûr, la position de l'enfant, lorsqu'il est lui-même impliqué comme acteur des atrocités belligérantes et qu'il manie la machette, le fusil ou qu'il pose les mines qui feront sauter ses frères.

Si ce sujet s'impose, c'est parce que la communauté internationale, à la suite du rapport de Madame Graça Machel pour l'ONU, a réalisé que près de 300'000 enfants étaient impliqués d'une manière active dans les conflits armés, à travers le monde et que ce chiffre n'était probablement qu'une approximation vu le nombre d'Etats ayant reconnu avoir utilisé des personnes de moins de 18 ans dans des activités conflictuelles armées. Cette prise de conscience a incité les Etats et l'Organisation

des Nations Unies à proposer pour signature et ratification un Protocole facultatif à la Convention des droits de l'enfant, à l'effet de pallier la timidité de l'art 38 de la Convention et d'empêcher que des moins de 18 ans puissent être enrôlés dans les armés régulières et les milices. Ce texte connaît un engouement certain et devrait entrer en vigueur début 2002 (2) ; il témoigne de préoccupations légitimes.

Les récents événements du 11 septembre 2001 ont mis en lumière la folie meurtrière des hommes ; ils ont aussi montré combien les fanatismes étaient dangereux et comment ils avaient prise facile sur des enfants et des adolescents, lorsque ceux-ci traversent des crises comme celle de la recherche de leur identité ou des difficultés de caractère familial, économique, culturel, sont en proie à la difficile intégration du fait de leur situation de migrants ou sont en lutte de loyauté à cause de leur double appartenance à des mondes différents, sinon opposés et en quête de modèles ou d'un idéal qui leur échappent. La réponse à ces attaques, sous la forme d'une démonstration de puissance basée sur la technique développée à son point le plus poussé, à l'exemple des « frappes chirurgicales », exacerbe également l'idée de violence et donne aux plus jeunes l'illusion que la loi du plus fort triomphe toujours, à défaut d'être la meilleure. Cette tragédie n'a fait que renforcer l'actualité et l'acuité de ce thème.

Cette fragilité des enfants face aux messages adultes, soit par appel à militer dans les mouvements extrémistes, soit par vénération de la puissance, nous conforte dans l'opinion que l'enfant présente des intérêts non négligeables pour les gourous ou pour les militaires. Cela ne se dit pas ; mais cela se constate (et ce constat est aussi valable malheureusement pour les chefs de gang ou de mafia). Car, à notre avis :

- l'enfant, est tout d'abord, obéissant ; il n'a pas l'habitude de s'opposer aux ordres ou aux consignes et souvent, s'il entendait faire de l'obstruction, il n'en a pas la force ; il est donc très malléable pour l'adulte qui le dirige ;

- l'enfant est dépendant matériellement et immatériellement des plus âgés ; sa faim et sa soif sont comblés par ces derniers ; les nourritures spirituelles viennent des mêmes ; l'enfant est donc particulièrement sensible à toutes les ingestions alimentaires et mentales ; pas étonnant donc, qu'il soit particulièrement réceptif à l'intoxication idéologique ;

- l'enfant constitue une main d'œuvre bon marché, facile, non syndiquée ni revendicatrice (les employeurs d'enfants l'ont compris depuis longtemps) ; dès lors, il est nettement plus « avantageux » que l'adulte, car il ne connaît ni sa valeur, ni le coût réel de ses « services », il est donc un objet idéal pour les recruteurs ;

- l'enfant, dans la plupart des régions où il est enrôlé, souffre de conditions d'existence misérables (pauvreté, famine, chômage) ; ses perspectives se résument à « no future » ; dès lors, la possibilité d'un engagement dans une force armée, une milice ou une organisation para-militaire constitue une aubaine pour l'intéressé, pour sa famille aussi ; le maigre pécule qui l'attend sera le bienvenu ;

- l'enfant, de plus, dans la plupart des cas, se trouve sans éducation, c'est-à-dire sans avoir reçu les moyens qui lui permettraient de dire non à un enrôlement ; il est sans défense face à des adultes qui lui promettent un rôle de caïd, voir un destin de

héros ; comment pourrait-il résister à cette offre qui va lui permettre d'exister au propre comme au figuré ?

Les enfants sont donc des proies faciles que des adultes sans scrupules, et souvent sans beaucoup d'éducation, envoient en première ligne faire le coup de feu et préparer le terrain aux « vrais » militaires, ou utilisent comme porteurs, messagers, machinistes, cuisiniers, ravitailleurs… sans oublier les filles qui servent à des tâches domestiques ou sanitaires, quand elles ne sont pas exploitées pour le repos du soldat. Proies faciles et, pire, consentantes, pour autant que ce mot puissent revêtir une quelconque signification tant le consentement des enfants à subir ce sort est conditionné par le discours des adultes et par des conditions de vie qui ne leur laissent d'autre choix.

Le fait que des enfants ne soient plus seulement considérés comme des victimes de la guerre, mais comme des acteurs de celle-ci, amène aussi à une nouvelle position, celle de l'enfant, impliqué dans des conflits armés et qui se rend auteur, à son tour, d'atrocités vis-à-vis d'autres personnes. C'est l'enfant auteur d'infractions liées à son statut de petit soldat : rapines, dommages, viols et autres tortures, voire complicité de génocide… Il faut alors savoir qui doit le juger de la justice militaire ou de la justice civile, quelle sanction lui appliquer et quelles issues prévoir pour lui redonner un statut plus en accord avec son jeune âge. Ces interrogations sont difficiles et les textes habituels de la législation pour les jeunes délinquants souvent peu adaptés à la réalité des événements survenus et des crimes perpétrés. C'est donc un nouveau défi pour la justice des mineurs que celui de traiter d'affaires très graves, sans tomber dans le réflexe de l'enfermement, tout en sauvegardant les objectifs particuliers d'aide et de (ré)-insertion pour les jeunes prévenus.

Il ne suffit pas de dénoncer des faits, des situations, des crimes ; il faut tout mettre en œuvre pour réussir à démobiliser les enfants qui sont enrôlés dans les armées et les guérillas ou pour sauver les malheureux qui sont pris dans les rêts des organisations para-militaires ou mafieuses. Des programmes de démobilisation ont été mis sur pied à large échelle dans un certain nombre de pays, comme au Sud-Soudan ou en Colombie, par exemple. Ces modèles existent et fonctionnent et il serait bon qu'ils puissent inspirer d'autres régions du globe, d'autres Etats, d'autres ONG. Car ces enfants qui ont été impliqués dans ces violences en gardent des stigmates indélébiles et leur psychisme reste marqué par ce qu'ils ont vécu. Non seulement la guerre constitue un traumatisme en soi, mais surtout elle a privé l'enfant de son enfance et de sa naïveté, elle l'a confronté à des responsabilités qu'il ne pouvait pas assumer et souvent l'a amené à utiliser des produits pour gonfler son courage ou, plus simplement, pour l'aider à s'endormir, sans revivre ses terribles « exploits » ou ceux de ses pairs. Les problèmes de l'avenir sont posés. Quel psychiatre pourra y remédier ? quelle aide psychologique mettre en place ? quelle formation et quelle éducation pour tenter une autre approche ?

« J'étais gamin, curieux, je voulais voir, savoir ce que c'est. Mais je constate maintenant que c'était un sale jeu. Actuellement, j'ai peur de l'avenir parce que je suis au chômage... Je ne suis pas en bons termes avec ma famille… Et puis mes copains de l'extérieur sont tous des toxicos. Je ne sais pas ce qui m'attend… » (3).

Terrible constat que celui rapporté par le psychanalyste Mouzayan Houbballah, lorsqu'il évoque les confidences de son jeune patient, adolescent à peine démobilisé qui s'était engagé par curiosité et non par idéologie, attiré par l'arme, l'argent, le pouvoir, la liberté. « Etre un homme, vite ». Et le voilà face à son tragique destin.

De nombreuses questions sont ouvertes par ce thème ; ce livre n'a pas la prétention de répondre à toutes les interrogations, encore moins de donner une recette toute faite et magique. Cela n'existe pas. Cet ouvrage veut par contre évoquer les problèmes et fournir quelques références. Les textes législatifs sont des balises qui existent et qui devraient fixer des limites à l'activité des humains. Souvent ces normes sont méconnues, mal expliquées, parfois bafouées. C'est notre rôle de les rappeler sans cesse et sans lassitude et de répéter à chacun ses responsabilités.

Les droits de l'enfant, en ce sens, ont un rôle essentiel à jouer et le nouveau protocole facultatif de la CDE, en allant plus loin que le frileux art 38 CDE montre la voie (4). Nous mettons beaucoup d'espoirs sur les droits de l'enfant conçus non seulement comme une addition d'articles précisant une accumulation de droits ; mais surtout sur les droits de l'enfant compris comme une seule entité et dégageant un esprit nouveau.

En ce domaine de la violence et du conflit, les droits de l'enfant devraient être considérés comme un instrument de paix extraordinaire car :

- les droits de l'enfant sont universels,

- les droits de l'enfant prônent l'égalité,

- les droits de l'enfant sont basés sur la non-discrimination,

- les droits de l'enfant ne font ni politique, ni terrorisme, ni démonstration de puissance,

- les droits de l'enfant sont basés sur des principes simples et compréhensibles partout et par tous,

- les droits de l'enfant visent le long terme,

- les droits de l'enfant promulguent l'idée de la compréhension, de la tolérance et du respect.

A notre sens, les droits de l'enfant sont porteurs des espoirs de l'humanité. Ce n'est pas seulement une expression ; ils donnent aux Etats des instruments pour promouvoir une culture de paix. Les valeurs qui sous-tendent ces droits devraient inspirer les législateurs certes, mais devrait aussi inspirer tous ceux qui, à un titre ou à un autre, détiennent des responsabilités en matière de protection, d'aide ou de promotion de l'enfant.

Sion, octobre 2001

Notes

1.Adnan HOUBBALLAH, Professeur à l'Université libanaise : Logique de la Violence et Ordre symbolique in Pourquoi la Violence des Adolescents ?, Erès, Toulouse 2001, page 31
2.Par la ratification du dixième Etat, la Nouvelle Zélande, le 12 novembre 2001, « le Protocole facultatif à la Convention des NU relative aux droits de l'enfant concernant l'implication d'enfants dans les conflits armés » est entré en vigueur le 12 février 2002.
3.Mouzayan HOUBBALLAH, psychanaliste : Le Devenir des Adolescents Combattants in Pourquoi la Violence des Adolescents ?, Erès, Toulouse 2001, page 59
On trouve le protocole facultatif sur www.childsrights.org

ALLOCUTION D'OUVERTURE

BERNARD COMBY
Président de l'Institut Universitaire Kurt Bösch,
Président de l'Institut International des Droits de l'Enfant

"Si nous sommes l'avenir et que nous sommes en train de mourir, il n'y aura pas d'avenir."

Ce cri d'alarme lancé par un jeune adolescent de Zambie doit nous inciter à nous investir encore davantage dans la défense et la promotion des Droits de l'enfant.

Madame l'Ambassadrice d'Autriche à Bogota, Madame la Directrice du cours, Monsieur le Directeur de l'IDE, Mesdames et Messieurs les Intervenants, Mesdames, Mesdemoiselles, Messieurs,

En ma qualité de Président de l'Institut International des Droits de l'Enfant (IDE) et de Président de l'Institut Universitaire Kurt Bösch (IUKB), je vous adresse à chacune et à chacun d'entre vous un très cordial salut.

Je suis très heureux d'ouvrir ce septième séminaire d'automne sur les Droits de l'enfant et la guerre. Je souhaite une chaleureuse bienvenue, à Sion, à l'IUKB à toutes les participantes et à tous les participants qui, pour un certain nombre, ont parcouru un très long chemin pour nous rejoindre à Sion. Votre présence nous honore et nous encourage à poursuivre nos efforts et à nous engager davantage encore pour la promotion efficace des Droits de l'enfant dans le monde.

Nous disons notre vive gratitude à tous les intervenants dans le cadre de ce séminaire et, en particulier, à Mme Renate Winter, Directrice du cours.

Un merci spécial à M. Jean Zermatten, Directeur-fondateur de l'IDE et à toute son équipe d'organisation, qui œuvre depuis des mois à la réussite de cet important colloque.

Inscrit dans le cadre de la première année de la décennie internationale de promotion d'une culture de la non-violence et de la paix au profit des enfants du monde, le thème de ce séminaire prend encore une acuité particulière face aux évènements violents qui frappent notre planète, en ce début d'automne 2001.

En effet, les images de violence et d'horreur, de Manhattan et de Zoug, ont traumatisé le monde entier. Les risques d'une escalade des représailles américaines, des actes de terrorisme, voire de conflits armés, engendrent des réactions légitimes de peur, d'inquiétude et d'angoisse.

Face à cette situation, la spirale infernale de l'intolérance, de la haine et de la vengeance peut à nouveau s'enclencher, ouvrir la porte à tous les excès et à tous les abus et entraîner des individus, des groupes, voire des Etats, à franchir à nouveau la frontière de l'intolérable et de l'insupportable.

Dans ce contexte, la réflexion proposée par ce séminaire se situe, bien malgré nous, en prise directe avec cette réalité très préoccupante pour l'avenir du monde.

Ainsi, entraînés dans ce tourbillon effréné de la violence, les individus les plus fragiles et en particulier les enfants risquent bien de payer à nouveau le prix fort de la folie des hommes. Malheureusement, comme on le sait trop, de tout temps, les enfants ont été pris dans la guerre, mais les dernières avancées des armements et des techniques de guerre ont considérablement accru les dangers auxquels ils sont exposés.

La guerre n'est pas un jeu d'enfants et pourtant, selon l'UNICEF, il y a près de 300'000 enfants-soldats dans le monde. En 10 ans, deux millions d'enfants ont été tués, quatre à cinq millions sont devenus infirmes, douze millions ont perdu leur foyer. Plus d'un million sont devenus orphelins ou ont été séparés de leurs parents, dix millions ont vu tellement d'horreurs qu'ils font des cauchemars qui les empêchent de vivre normalement.

L'augmentation du nombre de victimes enfantines s'explique essentiellement par la proportion grandissante de civils tués dans les conflits. Le prix payé par les civils est d'autant plus lourd que les conflits actuels n'opposent pas seulement des Etats entre eux mais font rage à l'intérieur même des pays.

Que des familles et des enfants se trouvent sous le feu des combattants n'est pas toujours le fruit du hasard. Ils peuvent être visés délibérément, pris en otage, voire utilisés comme moyen de pression. Il ne suffit plus de tuer des adultes, il faut aussi éliminer les générations futures de l'ennemi.

Si la plupart des enfants victimes de la guerre sont des civils, l'un des phénomènes les plus inquiétants de ces dernières décennies est l'utilisation croissante de jeunes enfants comme soldats. Malgré l'article 38 de la Convention Internationale des Droits de l'Enfant, qui précise que les Etats parties s'abstiennent d'enrôler dans leurs forces armées toute personne n'ayant pas atteint l'âge de 15 ans (le Protocole additionnel de la Convention porte même cet âge à 18 ans), des enfants sont enrôlés de force. Isolés, orphelins, terrorisés, frustrés, ils finissent même parfois par choisir de combattre. Ainsi dans plus de 40 pays des enfants sont utilisés comme soldats et participent à des combats. Ils seront à jamais marqués par les violences qu'ils ont vécues ou commises. Ces enfants soldats sont souvent les plus maltraités et les plus exposés au danger.

Pour les pays en développement, avoir à s'occuper de ces jeunes traumatisés physiquement et psychologiquement représente un très lourd fardeau… Que les enfants aient été enrôlés volontairement ou non dans des forces armées, à mon avis, il faut tous les considérer comme des victimes et leur offrir de véritables chances de réinsertion professionnelle et sociale.

Depuis juillet 1998, ce crime d'enrôlement d'enfants dans des groupes armés est condamné par la Cour pénale internationale. Mais dans la pratique, aucun pays n'a encore été sanctionné.

Face à cette situation, face à ces crimes, la dénonciation ne suffit plus. Il faut se mobiliser pour que ces abus soient sanctionnés sévèrement par la Communauté nationale et internationale.

Nous n'acceptons plus que les enfants soient utilisés comme des machines à tuer ou de la chair à canon ! Il faut que ce scandale permanent cesse et que les petits des hommes ne soient plus martyrisés et assassinés !

Dans cet esprit, il ne suffit pas de décréter le droit à la paix. Il s'avère indispensable de prendre des mesures, sur le plan international, afin d'améliorer les conditions de vie et le niveau socio-économique des pays économiquement faibles. En effet, la pauvreté et le désoeuvrement constituent des terreaux privilégiés pour le recrutement d'enfants-soldats. Le renforcement de l'aide aux pays en voie de développement doit être considéré comme une priorité vitale.

Il faut également travailler à changer les mentalités dans le cadre de la vie quotidienne de chacun afin de passer progressivement d'une culture de la violence et de la guerre à une véritable culture de la paix.

A ce titre la médiation, par exemple, peut apporter une contribution originale à la gestion des conflits, qui sont souvent à l'origine de la violence et de la guerre. En effet, la médiation repose sur le respect d'un certain nombre de valeurs, qu'il est essentiel de réinstaurer, afin de créer les conditions d'une recherche de solutions aux conflits. **On peut citer, par exemple, la confiance, le respect de l'autre, la qualité d'écoute et la tolérance.**

Ainsi la démarche de la médiation, quels que soient en définitive les résultats obtenus, contribue en elle-même à une valorisation de la personne, à l'instauration de la confiance en soi et aux autres, au respect mutuel et **peut constituer une véritable pédagogie de la citoyenneté responsable.** En ce sens, elle peut renforcer les personnalités et le tissu social propice à une gestion plus juste, plus équilibrée et plus humaine de la violence et des conflits.

En conclusion, nous souhaitons vivement que les échanges, les témoignages, les observations et les propositions, qui marqueront cette semaine de réflexion, s'inscrivent dans le prolongement de l'importante Conférence de Winnipeg de l'an 2000, consacrée à cette même problématique, **et contribuent à redonner aux enfants victimes de conflits armés quelques nouvelles raisons de croire et d'espérer en l'avenir…**

NIÑOS COMBATIENTES EN COLOMBIA Y LA EXPERIENCIA AUSTRÍACA EN DERECHO JUVENIL

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Résumé
La crise sociale en Colombie et la précarité des infrastructures ont engendré la présence, souvent volontaire, des enfants dans les groupes armés, notamment dans les guerrillas. L'Autriche, au bénéfice d'une législation juvénile modèle et du succès de nombreux projets, a établi l'universalité de sa méthodologie fondée sur le pragmatisme et le travail d'équipe interdisciplinaire. En envisageant l'application de l'expérience autrichienne en Colombie se sont dessinés les éléments suivants : la prévention du recrutement par l'éducation, la création, avec l'aide d'experts autrichiens en justice juvénile, de modèles de réinsertion pour les enfants-soldats démobilisés et la mise en place d'un soutien éducatif et psychologique pour ces enfants ainsi que d'une aide à leur acceptation et réconciliation avec la communauté.

Resumen
La crisis social en Colombia y la precariedad de sus infraestructuras han provocado la presencia, a menudo voluntaria, de los niños en los grupos armados, especialmente en las guerrillas. Austria, país que goza de una legislación juvenil modelo y de reconocimiento por sus numerosos proyectos, ha establecido la universalidad de su metodología fundada en el pragmatismo y el trabajo de equipo interdisciplinario. En el proyecto de aplicación de la experiencia austriaca en Colombia, han sido diseñados los elementos siguientes: la prevención del reclutamiento mediante la educación, la creación, con la ayuda de expertos austriacos en justicia juvenil, de modelos de reinserción para los niños soldados desmovilizados y la puesta en marcha de apoyo educativo y psicológico para estos niños, así como la ayuda en su aceptación y reconciliación con la comunidad.

Summary
The social crisis in Columbia and the precariousness of the infrastructure generated the presence, often voluntary, of children in armed groups, notably in the guerrillas. Austria, with the benefit of implementry legislation for juveniles and the success of other numerous projects, established a universal methodology founded on pragmatism and interdisciplinary group work. The application of the Austrian model in Columbia would lead to : the prevention of the recruitment of children through education and the creation, with the assistance of Austrian juvenile justice experts of re-insertion models for demobilised child soldiers. Also, an educational and psychological support network for children would be created to help children be accepted by society and help them with the reconciliation process.

* * *

Austria le ha dado mucha importancia a la protección de los derechos del niño desde hace mucho tiempo. No fue coincidencia que Austria contara entre los países que firmaron la Convención para los Derechos del Niño el 26 de enero de 1990, primer día en que se presentó la nueva Convención a los Miembros de Naciones Unidas para su firma.

La legislación austriaca en el campo juvenil, considerada ejemplar a nivel internacional, ha sido modelo, entre otras, para la legislación modelo de Naciones Unidas en este campo.

También hace años, Austria presenta anualmente la resolución sobre Justicia Juvenil ante la Comisión de Crímenes de Naciones Unidas en Viena. A mí me tocó personalmente, en mi entonces función de jefe del departamento de drogas y prevención de crímenes del Ministerio de Relaciones Exteriores, negociar la resolución en 1999, cuando conseguimos introducir la problemática de las drogas y su repercusión en la delincuencia juvenil.

Con estos antecedentes, nada más que natural que al llegar a Colombia, buscara formas de vincular el know-how austriaco a la realidad colombiana.

Una de las primeras iniciativas en este campo fue la organización, conjuntamente con Planeación Nacional y con fondos del Banco Mundial, de un workshop sobre justicia juvenil, en el cual participaron expertos austriacos: una jueza juvenil austriaca, el director de una prisión especial para drogadictos en Favoriten, Viena, y un especialista en mediación de conflictos entre víctima y agresor.

Una de las preguntas más frecuentes en el seminario fue, si la experiencia de Austria, un país sin conflictos internos y con un desarrollo del primer mundo, se podía aplicar al caso colombiano.

Cuando nuestros expertos contaron que habían manejado programas y proyectos en el Líbano, Irán, Turquía, Bhután, Tadjikistán, los países Bálticos, Albania, Macedonia, Irak, Sudán, Ruanda, Guatemala, Paraguay, Nigeria, Rusia y Kosovo, el público ya parecía más inclinado a creer en la universalidad de los conceptos y sobre todo en la metodología austriaca.

¿Qué nos hace diferentes? ¿Cuál es la receta del éxito?

Creo que en primer lugar, un pragmatismo ante lo que funciona y lo que no funciona en un contexto real. No tiene sentido introducir los mejores conceptos si no hay posibilidad de aplicación real. En este campo, casi todos los países latinoamericanos pecan por exceso de formalismo jurídico y falta de pragmatismo en cuanto a las posibilidades reales (de recursos financieros, funcionarios preparados, etc.) de implementación, llevando a que cada convención internacional sea ratificada inmediatamente, las leyes nacionales sean modernizadas a veces en tiempo récord, pero falten las medidas de aplicación concreta.

En segundo lugar, un buen trabajo en equipo. El trabajo horizontal, intersectorial, es importantísimo cuando se trata de resolver problemas de niños. Hay que despojarse de los celos profesionales y unirse en torno al objetivo común que son los niños en situación de riesgo, los niños que ya están en situaciones delicadas. El seminario mostró el potencial de conflicto entre los diferentes actores (Justicia, Bienestar Familiar, Trabajadores Sociales, etc.).

Hace parte de la metodología austriaca organizar una serie de seminarios y otros eventos multisectoriales, en que los diferentes actores llegan a conocerse y respetarse. Muchas veces es el no conocer al otro, lo que impide que se realice, que éste tiene un trabajo valioso que podrá dar su aparte a una causa común. Es importante también vincular desde el inicio a las diferentes ONGs, lo que en Colombia ya se está haciendo y donde UNICEF, junta con Bienestar Familiar, han hecho un valioso trabajo.

¿Cuáles son los principales problemas que se presentan en Colombia y que llevan al reclutamiento de niño para la guerra?

Para comenzar, habría que mencionar la grave crisis social que Colombia está enfrentando, y que es a la vez causa y consecuencia del conflicto. El Estado ha estado ausente en grandes partes del país desde hace décadas. El desempleo del país está en torno del 22%, sin embargo, el desempleo juvenil llega, dependiendo de la región, a más del 50%. Hay que decir que este alto desempleo es un fenómeno reciente, ya que a pesar del conflicto, Colombia nunca había experimentado ninguna crisis económica grave, hasta 1998.

No es de extrañarse que los filas de las grupos armados hayan crecido exponencialmente a medida que la crisis del estado se está agravando. Las FARC, de 900 hombres en los años ochenta, han crecido a 12 - 15.000 combatientes a finales de los noventa; en el misma lapso, el ELN aumentó de setenta combatientes a 3.500. Se calcula que actualmente, la guerrilla (FARC y ELN) está presente en seiscientos de las 1.100 municipios de Colombia. En 1985, su presencia solo abarcaba 150 municipios.

Las autodefensas, que en parte remontan a lo que quedó de los ejércitos de escoltas desempleados que dejó el narcotráfico después de que desaparecieron los carteles, especialmente el de Medellín, hoy llegan a 13.000 hombres, organizados coma Autodefensas Unidas de Colombia.

Todos los actores armados reclutan jóvenes menores de 15 años, a veces aún menores; donde el porcentaje es mayor, sin embargo, es entre las FARC. En la batalla de Suratá, Norte de Santander, en diciembre de 2000, de 278 hombres y 90 mujeres de la columna móvil Arturo Ruiz de los FARC, 150, es decir, el 40% de la columna, eran menores de edad entre 14 y 17 años. La gran mayoría había sido reclutada en regiones campesinas, especialmente en los departamentos de Meta y Guaviare y no tenía experiencia de combate. Más de la mitad de los muertos, que llegaban a unos cincuenta, eran niños.

No será coincidencia, que menos de dos meses después de la batalla, una circular del comandante en jefe de las FARC, Jorge Briceño “El Mono Jojoy”, amenazara castigar a los comandantes que tuvieran niños menores de 15 años en sus filas.

El resultado de esta circular fue que muchos niños volvieron a sus familias, lo que abrió nuevos caminos para el programa de Reinserción del Gobierno colombiano (ciertamente, Gloria Quiceno les contará más sobre el asunto), pero también para la comunidad internacional, comenzando por UNICEF.

¿Por qué se alistan los jóvenes? Las tesis a seguir, ciertamente discutibles, son el resultado de mis propias percepciones en entrevistas con jóvenes en los diferentes programas de reinserción y con personas de regiones especialmente afectadas por el problema de los niños combatientes:

1.Me atrevería a afirmar, que la gran mayoría de los jóvenes van a la guerrilla por su propia decisión.

2.Donde es más fuerte el reclutamiento forzoso es en las comunidades indígenas, porque estas se oponen a que sus hijos dejen sus pueblos.

3.El desempleo juvenil es la principal razón para que se alisten o sean reclutados jóvenes y niños. Esto vale especialmente para las regiones agrícolas del país, donde las posibilidades de progresar son mínimas.

4.Obviamente, el desempleo no solamente lleva a los jóvenes a las fuerzas irregulares, sino también a la policía y a las fuerzas armadas (que reclutan a partir de los 18 años). En cuanto a la fuerza pública, sin embargo, un joven campesino no tiene reales perspectivas de ascenso a mandos superiores; la insurgencia da la oportunidad de que se llegue a la comandancia solamente por la valentía y el talento militar.

5.En regiones urbanas a semiurbanas, la guerrilla recluta muchas veces a los miembros de pandillas juveniles para que sean los cobradores de los diferentes impuestos sobre las actividades económicas. Ciertamente, uno de los factores que atraen a estos muchachos es también la perspectiva de ejercer un poder real con el respaldo de una gran organización.

6.Hay también casos de niños que acompañan y crecen con la tropa guerrillera, a cuyas familias el paramilitarismo diezmó por completo y que no tienen a nadie, por lo que se quedan en los campamentos y más tarde se transforman en guerrilleros.

7.Otra motivación es la desintegración de la familia o la violencia intrafamiliar. Frente a la arbitrariedad de un padrastro, se pone la disciplina de un cuerpo armado, la solidaridad de un grupo que llega a sustituir a la familia en muchos casos.

8.En el caso de las muchachas jóvenes, el amor romántico con un comandante u otro miembro de las filas es muchas veces el motivo del alistamiento. Reinserción podrá contar de casos de jóvenes en los programas del organismo, a quienes su amado ,,secuestra” para llevarlas de vuelta al amante, expresión máxima del amor guerrillero. El contraejemplo trágico es el caso de una joven guerrillera (mayor de

edad) fusilada ejemplarmente dentro de un campamento de las FARC, después de un juicio sumario por haber agredido a su compañero infiel y su amante.

9.Muchas veces, la ,,contraopción" para una muchacha que va a la guerrilla es la prostitución. En un reciente encuentro con las FARC en que se levantó el problema de la edad de reclutamiento, una guerrillera nos dijo: ,,Miren lo que nos pasó recientemente: Como no debemos tener niños menores de 15 años en nuestras filas, a una niña a quien le faltaban 2 meses para cumplir los 15 la entregamos a su abuela. A la semana la encontramos en el burdel de la ciudad vecina ¿no habría sido mejor que se quedara con nosotros? "

10.Para los muchachos campesinos de Colombia, la opción de hacer por lo menos un poco más de dinero es de trabajar coma ,,raspachines" en el cultivo de la coca, un trabajo mejor pagado que el de los cultivos lícitos, pero lleno de factores insalubres: la fumigación de los cultivos ilícitos es apenas un factor de riesgo; la exposición a agrotóxicos y precursores químicos es constante, y el ambiente de violencia intolerable.

11.En las autodefensas, el reclutamiento de menores es poco frecuente, sin embargo, en sus estrategias de ocupación territorial, al llegar a una ciudad donde estaba activa la guerrilla, se obliga a los jóvenes simpatizantes de la guerrilla a servir como informantes.

12.Por su política de reclutamiento, las AUC no tienen tanta necesidad de recurrir a niños como la guerrilla, dado que sus propuestas de condiciones laborales son más atractivas que las de la guerrilla: En cuanto al ELN en el Magdalena Medio, por ejemplo, a un nuevo guerrillero se le pagan dos sueldos durante la época inicial de entrenamiento, después se le entrega un fusil y se sugiere que se valga por sí mismo. Las autodefensas pagan sueldos aceptables de 2 a 5 salarios mínimos, dan seguro médico y de vida, así como vacaciones pagadas para que su combatiente pueda llevar una vida familiar. Ante la política de poco empeño en la persecución del paramilitarismo, los combatientes de las AUC pueden llevar una vida completamente normal, como cualquier miembro de la sociedad, a diferencia del guerrillero, que por definición se va para las regiones inhóspitas del país.

Ante el gran número de niños en las filas de las FARC, que ha crecido mucho, pero en número inferior a las autodefensas (estas últimas han conseguido duplicar su número en menos de cinco años, sin tener que recurrir al reclutamiento de niños, y consiguen reclutar en promedio 1000 hombres por año), me atrevería a decir que la guerrilla está en una crisis de reclutamiento. Si hay un recrudecimiento del conflicto, probablemente tendrá que corregir su política de reclutamiento, pagando sueldos mejores. Si los cálculos ventilados por la prensa, de que las FARC recaudarían 360 millones de dólares/ año, de los cuales solamente se gastarían 60 millones para la manutención de la tropa, son correctos, este grupo guerrillero debería tener un ,,colchón" estratégico que le permitiría cambiar su política.

La argumentación principal de la guerrilla a favor del reclutamiento a partir de los 15 años es el derecho internacional humanitario. En este sentido, habría un vasto campo de trabajo para expertos en derecho juvenil para hacer entender a la guerrilla, que la tendencia internacional para el reclutamiento es la edad de 18 años.

Otro argumento es, que en un ambiente campesino, un joven o una muchacha de 15 años son considerados adultos. Si pueden trabajar en el campo, ¿por qué no se irían a la guerrilla?

Por otro lado, se ha visto que el empleo de jóvenes y niños sin experiencia militar ha sido desastroso para la eficacia de los operativos grandes. En los últimos años, las FARC no han sido capaces de inflingir ninguna derrota importante a las fuerzas militares (a diferencia de los años anteriores) y han tenido que soportar importantes pérdidas de combatientes.

¿Dónde se podría aplicar la experiencia austriaca en Colombia?

Ante todo, en un buen trabajo preventivo. Hay dos ONGs importantes activas en Colombia, Hilfswerk Austria, con vasta experiencia en el trabajo con refugiados en los Balcanes, y Aldeas Infantiles SOS, ONG casi legendaria con más de 50 años de actividades en 130 países del mundo.

Aldeas SOS mantiene un centro de atención a niños desplazados en un suburbio de Bogotá; un niño atendido en un ambiente de amor ciertamente no necesita alistarse en las milicia urbanas de un grupo guerrillero.

En Ipiales, en la frontera con el Ecuador, región más afectada por el ,,Plan Colombia", que desplaza a los trabajadores de coca del Putumayo a otras regiones, Aldeas abrirá en breve una aldea infantil con un centro de atención psicosocial a familias.

Aldeas tiene también una granja agroecológica para jóvenes líderes campesinos en Armero-Guayabal, que trata de formar multiplicadores de conocimientos técnicos y de mercado. Este tipo de establecimientos escolares deberían repetirse en regiones del país donde la educación precaria y la falta de visión para la producción agrícola llevan al reclutamiento.

Hilfswerk Austria, a su vez, también mantiene un centro de atención a desplazados del Chocó, en su mayoría de raza negra, en Soacha, en las inmediaciones de Bogotá. Además, nos está ayudando a profesionalizar el trabajo de una escuela en El Dorado, Meta, un municipio tradicionalmente paramilitar, donde, después de una visita mía junto con Reinserción y Naciones Unidas, se abrieron cupos para más de 300 niños de regiones controladas directamente por la guerrilla. Darles a estos niños una educación con visión para el futuro es un reto; si no se les propone educación de calidad, muchos de ellos irán "para el monte". El hecho de que haya una convivencia de niños de dos bandas diametralmente opuestas, hace que el reto sea aún mayor, tratándose de un experimento real de paz.

En el campo de la justicia juvenil, los expertos austriacos, con su experiencia en regiones de conflicto, podrán ayudar en la estructuración de modelos de reinserción - un término no muy apreciado por la guerrilla; tal vez deberíamos renombrarlo como programas de reconciliación.

Ya está en discusión una nueva ley que permitiría que todos los niños combatientes se beneficien de programas estatales de reconciliación. En este momento, el requisito es, en principio, que el combatiente (niño o no) se haya entregado a las autoridades, a pesar de que ha habido ejemplos positivos de una nueva aproximación de las autoridades militares al tema. En la batalla de Suratá, p.e., todos los niños fueron considerados como si se hubieran entregado (lo que no fue el caso), para abrirles las oportunidades de los programas de reinserción, evitando su criminalización.

Habría que sistematizar esta aproximación al problema, y nuestros expertos podrían entrar con la experiencia de muchos alias de trabajo en regiones de conflicto.

Como en el caso de delitos ,,comunes", los casos de niños combatientes necesitan un trabajo activo de reconciliación por fuera de las cortes. Primero, una reconciliación de ellos mismos con la sociedad, que al fin y al cabo fue la culpable para que se fueran a la guerrilla.

Hacer un trabajo psicológico, abrir nuevos horizontes para que ellos puedan aceptar vivir en esta sociedad, reflexionar sobre sus nuevos planes de vida, darles a sus vidas un sentido más allá de la realidad de la guerra, son los retos a los cuales nos enfrentamos.

A su vez, la sociedad, la comunidad donde vivirá el niño ex-combatiente tendrá que entender que éste, a pesar de haber podido cometer delitos, es una víctima del conflicto, de la propia sociedad, y que hay que darle una nueva oportunidad. Se ha demostrado que los centros de ,,tránsito" donde los niños están en la fase de adaptación después de su entrega o captura, han enfrentado una fuerte resistencia de las comunidades vecinas. En estos casos, habrá que hacer un trabajo de concienciación con las comunidades, que no será fácil.

Me parece que los programas que se les ofrecen a los niños no toman en cuenta las experiencias que estos han tenido durante su período de combatientes. Alguien que ha trabajado como enfermero, que ha tenido que someterse a una rígida disciplina militar, tiene cualidades que un niño de la calle, por ejemplo, no puede tener. ¿Por qué no aprovechar estos conocimientos y, en vez de tenerlos durante 2-3 años haciendo su nivelación académica, para poder cursar una profesión, ofrecerles trabajos comunitarios? Se les podría emplear para trabajar con viejos o niños discapacitados y excepcionales, por ejemplo. Estos trabajos les darían automáticamente una utilidad para la sociedad y un sentido para sus vidas, sabiendo que hay personas que los quieren y que dependen de ellos.

En fin, un campo en el que podríamos aprovecharnos de los proyectos implementados por austriacos a nivel internacional. Para citar apenas algunos ejemplos:

En el Líbano, expertos austriacos han ayudado en la formulación de una nueva legislación juvenil, en el proyecto de una prisión especial juvenil con posibilidades de enseñanza profesional, en la creación de una policía especial para el problema juvenil, y el establecimiento de programas de formación para trabajadores sociales y jueces juveniles.

En el Irán, se modernizó la prisión juvenil de Teherán con base en modelos austriacos, se dió formación a 90 jueces juveniles, ya hay muchos fallos de jueces juveniles iraníes inspirados de las dos prácticas iraní y austriaca - p.e. introduciendo modelos de reconciliación entre ofensor y víctima, y se creó un comité para iniciar un nuevo código del menor.

En el Sudán, se hizo un plan para la elaboración de una nueva justicia juvenil, tomando en cuenta la ley tribal existente, y se organizaron seminarios para jueces, abogados y policías, con especial mención de la reintegración de niños soldados. El resultado fue, entre otros, un programa de reinserción para los miles de niños soldados del Sudán.

Se podrían citar decenas de otros ejemplos.

Austria, pero también el país que hospeda esta conferencia, Suiza, se han hecho un renombre internacional en el derecho juvenil no por casualidad - son países pequeños, a los que no se les asocia automáticamente a un bloque económico o político internacional, lo que da a nuestros expertos un tránsito libre con las más diversas fracciones políticas.

Espero que en los próximos años, podamos aumentar esta experiencia también en Colombia. Será importante que los resultados de este seminario nos guíen en nuestro trabajo futuro. ¡Les deseo el mejor de los éxitos para los próximos días!

LES ENFANTS ET LA GUERRE

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Résumé
Le CICR protège et assiste les victimes civiles et militaires de la guerre et promeut le droit et les principes humanitaires universels. Dans le cas des enfants victimes de la guerre, il apporte d'une part sur le terrain soins et secours alimentaires, protège les enfants non accompagnés, promeut le droit à l'éducation, évalue les conditions de détention des enfants et s'emploie à les libérer. D'autre part, il participe au Plan d'action du Mouvement en faveur des enfants touchés par les conflits armés prônant la non-participation dans ces conflits d'enfants de moins de 18 ans, adopte des résolutions et aide les gouvernements à mettre en œuvre le droit international humanitaire et la Convention des droits de l'enfant. Selon le CICR, cette action représente la difficulté majeure de l'aide octroyée aux enfants victimes de la guerre.

Resumen
El CICR protege y asiste a las víctimas civiles y militares de la guerra y promueve el derecho y los principios humanitarios universales. En el caso de los niños víctimas de la guerra, por una parte, aporta sobre el terreno cuidados y auxilio alimentario, protege a los niños no acompañados, promueve el derecho a la educación, evalúa las condiciones de detención de los niños y se encarga de su liberación. Por otra parte, participa en el Plan de acción del Movimiento a favor de los niños afectados por los conflictos armados defendiendo la no participación en los conflictos de los niños menores de 18 años, adopta resoluciones y apoya a los gobiernos en la aplicación del derecho internacional humanitario y de la Convención sobre los derechos del niño. Según el CICR, esta última acción representa la mayor dificultad de la ayuda otorgada a los niños víctimas de la guerra.

Summary
The ICRC protects and assists civilians and military personal who need assistance in war and promotes the universal humanitarian principles of law. Children affected by war are taken care of and given food, non accompanied children are protected, education is promoted and the conditions in which children are detained and released are examined. The ICRC also participates in an Action Plan in favour of children affected by armed conflict supporting the non participation of children under 18 years old. It also adopts resolutions and helps governments put into action international human rights law as well as the Convention on the Rights of the Child.

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Une action globale pour répondre à des besoins spécifiques

Organisation impartiale, neutre et indépendante, le Comité international de la Croix-Rouge (CICR) a pour mission de fournir protection et assistance aux victimes civiles et militaires de la guerre et de la violence interne. Le CICR intervient conformément au mandat qui lui a été confié par les États parties aux Conventions de Genève de 1949 et à leurs Protocoles additionnels de 1977. Il s'efforce également de prévenir la souffrance par la promotion et le renforcement du droit et des principes humanitaires universels. A l'origine du Mouvement international de la Croix-Rouge et du Croissant-Rouge, le CICR fonde son action sur les Principes fondamentaux. Ceux-ci incluent la neutralité, l'impartialité et l'indépendance, qui lui confèrent un caractère unique. C'est en cela notamment que le CICR se distingue des autres organisations humanitaires.

La plupart des conflits contemporains sont internes : ils visent en priorité les minorités ethniques, raciales ou religieuses à l'intérieur des frontières d'un État, les secteurs les plus pauvres de la société étant généralement les plus touchés. L'état de terreur si souvent instauré par les combattants agit comme un moyen de contrôle social; c'est une sorte de guerre totale, qui pénètre tous les tissus de la société – économique, politique, social et culturel – la population civile étant de plus en plus la cible des différentes parties au conflit. Il s'agit parfois d'une stratégie délibérée et nul n'est épargné – les membres les plus vulnérables de la société sont en effet les premières victimes de la violence. Les enfants, comme les femmes et les personnes âgées, doivent donc bénéficier d'une attention particulière.

S’intéresser plus particulièrement au sort des enfants ne signifie pas qu’il faut créer, au sein de la population civile, une catégorie distincte de victimes et aller ainsi à l'encontre de l'un des Principes fondamentaux du Mouvement : l'impartialité. Le CICR agit, sans aucune distinction, en faveur de toutes les victimes de la guerre et de la violence interne, suivant leurs besoins. Il est cependant indéniable que les besoins des enfants diffèrent profondément de ceux des femmes, des hommes ou des personnes âgées. Aujourd'hui encore, les enfants sont souvent considérés comme des adultes en miniature. Ils sont à la merci d'une société ou d'un environnement qui ne sont pas toujours disposés à leur accorder le statut qui est le leur : celui d’adultes en devenir. Mieux comprendre les enfants, c'est simplement leur apporter une aide qui corresponde davantage à leurs besoins en tant qu’individus en développement.

Les enfants ne sont que trop souvent les témoins privilégiés et impuissants des atrocités dont sont victimes leurs parents ou d’autres membres de leur famille. Ils sont tués, mutilés, emprisonnés, séparés de leur famille. Coupés de leur environnement familier, ceux qui parviennent à s’échapper ignorent ce que sera leur avenir et celui des êtres qui leur sont chers. Ils sont contraints de fuir, abandonnés à eux-mêmes, sans identité. Ces enfants souffrent de profondes blessures psychologiques, qui leur semblent incurables mais que des soins appropriés leur permettront peut-être de surmonter. Mieux comprendre les enfants c’est aussi leur donner les moyens de se reconstruire, afin qu'ils ne soient plus les victimes passives – ou actives – de la guerre, mais les acteurs d'un avenir qui leur appartient.

Protéger les enfants victimes des conflits armés est une des priorités du CICR

De nombreuses déclarations du CICR font référence à la protection des enfants touchés par les conflits armés. À l'occasion de l'Assemblée générale des Nations Unies, à New York, le CICR a formulé dans son intervention « tous les vœux pour que la session extraordinaire de l'Assemblée générale, qui sera consacrée au suivi du Sommet mondial pour les enfants, conduise les États à prendre des engagements fermes et concrets. Il tient à réitérer ici sa volonté et sa disponibilité à coopérer dans cette tâche avec les États, les organisations internationales et toutes autres organisations humanitaires ».

Droit international humanitaire : protection générale et protection spécifique

Pour offrir la protection la plus efficace possible à toutes les victimes de la guerre, qu’il s’agisse d’un conflit armé international ou non international, le droit humanitaire ne privilégie aucune catégorie d'individus au détriment d'une autre.

En tant que personnes ne participant pas directement aux hostilités, les enfants bénéficient d’une protection générale qui leur confère des garanties fondamentales. Au même titre que tous les autres civils, ils ont droit au respect de la vie et de leur intégrité physique et morale. La contrainte, les sévices corporels, la torture, les peines collectives et les représailles sont interdits à leur encontre, comme ils le sont à l’égard des autres civils.

Le droit international humanitaire accorde également une protection spéciale aux enfants en tant que personnes particulièrement vulnérables. Plus de 25 articles des quatre Conventions de Genève et des deux Protocoles additionnels concernent spécifiquement les enfants.

Qu’en est-il des enfants-soldats ?

Le nombre des enfants engagés volontaires ou enrôlés de force dans les groupes armés augmente régulièrement dans les conflits actuels en dépit du droit international humanitaire, qui énonce que « les Parties au conflit prendront toutes les mesures possibles dans la pratique pour que les enfants de moins de quinze ans ne participent pas directement aux hostilités, notamment en s'abstenant de les recruter dans leurs forces armées. Lorsqu'elles incorporent des personnes de plus de quinze ans mais de moins de dix-huit ans, les Parties au conflit s'efforceront de donner la priorité aux plus âgées » (Protocole additionnel I, art. 77, par. 2).

Les enfants vivant dans des zones de conflit avec leur famille ou livrés à eux-mêmes – parce qu’ils sont issus de familles pauvres qui ne peuvent pas prendre la fuite, qu’ils ont été séparés de leurs proches ou qu’ils sont marginalisés – sont autant de candidats potentiels à l’enrôlement. Privés de toute protection familiale, d’éducation et de tout ce qui les préparerait à leur vie d’adulte, ces jeunes recrues ne peuvent quasiment plus concevoir la vie sans conflit. Entrer dans un groupe armé est un moyen d'assurer sa propre survie.

Les enfants qui prennent part aux hostilités ne mettent pas seulement leur propre vie en péril. Leur comportement, souvent immature et impulsif, est aussi une menace pour tous ceux qui les entourent.

Le Protocole II additionnel aux Conventions de Genève (art. 4, par. 3 (d)) est plus strict que le Protocole I et s'applique aux conflits armés non internationaux. Il précise que les enfants de moins de 15 ans qui participent directement aux hostilités et qui tombent au pouvoir d'une partie adverse, continuent à bénéficier de la protection spéciale accordée par le droit international humanitaire. La mise en œuvre des dispositions du droit international humanitaire offrant une protection spéciale aux enfants est une responsabilité collective morale. Cette responsabilité incombe aux États parties aux Conventions de Genève, qui se doivent de respecter et de faire respecter les règles du droit international humanitaire.

Les contributions du CICR au perfectionnement du droit

Les Conventions de Genève et leurs Protocoles additionnels accordent une grande importance à la protection des enfants, par le biais aussi bien des dispositions qui couvrent l’ensemble de la population civile, que de dispositions qui leur sont tout particulièrement consacrées. Le CICR a participé à l'élaboration d’autres traités qui assurent une protection similaire, en particulier la *Convention relative aux droits de l'enfant* (art. 38) et son *Protocole facultatif* concernant l'implication d'enfants dans les conflits armés, la *Convention sur l’interdiction de l’emploi, du stockage, de la production et du transfert des mines antipersonnel et sur leur destruction* (traité

d'Ottawa) et le *Statut de la Cour pénale internationale,* dont l'article 8 stipule que la conscription d'enfants de moins de 15 ans est un crime de guerre.

La Convention relative aux droits de l'enfant établit de manière générale qu'un enfant s'entend de toute personne âgée de moins de 18 ans. Lors de son adoption, en 1989, elle fixait à 15 ans l'âge minimum requis pour participer directement aux hostilités. Les différentes dispositions du Protocole facultatif adopté en 2000 remédient partiellement à cette anomalie en fixant à 18 ans l'âge minimum requis pour la participation directe aux hostilités (art. 1), en précisant que l'enrôlement obligatoire des moins de 18 ans dans les forces armées est interdit (art. 2), et en appelant les États parties à relever l'âge minimum de l'engagement volontaire (art. 3). Quant aux groupes armés distincts des forces armées régulières, il leur est interdit d'enrôler et d'utiliser dans les hostilités des personnes âgées de moins de 18 ans (art. 4). Il convient de noter que le Protocole facultatif requiert des États parties qu'ils «coopèrent à l'application du présent Protocole, notamment pour la prévention de toute activité contraire à ce dernier et pour la réadaptation et la réinsertion sociale des personnes qui sont victimes d'actes contraires au présent Protocole, y compris par une coopération technique et une assistance financière. Cette assistance et cette coopération se feront en consultation avec les États parties et les organisations internationales compétentes » (art. 7).

Bien qu'il constitue une avancée considérable, ce Protocole n'est qu'un premier pas dans la lutte contre le recrutement des enfants et leur participation aux hostilités. La première faiblesse de ce Protocole concerne l'âge minimum du recrutement volontaire dans les forces gouvernementales qui n'a pas été fixé à 18 ans. Dans quelle mesure peut-on en effet affirmer qu'un enfant s'est volontairement engagé ? La deuxième touche à l'interdiction qui est faite aux gouvernements quant à la participation directe des enfants aux hostilités. (Mais qu'en est-il de la participation indirecte ?) Enfin, l'article 3 du Protocole, qui prévoit de relever l'âge de l'enrôlement volontaire, ne s'applique pas aux écoles militaires.

Peut-on néanmoins conclure que ces différentes dispositions sont suffisantes pour garantir l'intérêt supérieur de l'enfant ?

Malgré les insuffisances du Protocole, nos efforts doivent se concentrer sur la ratification et la mise en œuvre de tels traités. Les Services consultatifs du CICR se tiennent à la disposition des gouvernements pour les aider dans l'élaboration de lois nationales de mise en œuvre du droit international humanitaire. En outre, ils sont prêts à accorder leur soutien en vue de la mise en place de la Convention relative aux droits de l'enfant (art. 38) et de son Protocole facultatif concernant l'implication d'enfants dans les conflits armés.

Gardien du droit international humanitaire, le CICR a également pour responsabilité de le développer. Faire connaître le droit humanitaire, inciter les États à honorer leurs engagements conventionnels à cet égard – notamment au sein de leurs forces armées – et soutenir les efforts de promotion des Sociétés nationales de la Croix-Rouge et du Croissant-Rouge, sont autant d'activités auxquelles s'emploie le CICR. La diffusion du droit international humanitaire se fait à travers des discussions

organisées, des séminaires et des cours destinés à des publics divers, tels que les forces de police, les forces armées régulières, les autres porteurs d'armes, le grand public, les universités, et bien entendu les enfants eux-mêmes.

Le droit ne protège que dans la mesure où il est respecté et appliqué. Lorsque les gouvernements adoptent des mesures de prévention et diffusent largement le droit international humanitaire, ils contribuent à faire véritablement respecter les enfants. Promouvoir l'adhésion aux traités de droit humanitaire fait également partie de cette tâche collective.

Activités au siège et sur le terrain : un juste équilibre entre la réflexion et l'action

Le CICR puise dans sa grande expérience opérationnelle tous les éléments nécessaires à une analyse permanente qui, à son tour, oriente son action. À travers ses diverses activités, aussi bien au siège que sur le terrain, l'institution recueille des informations, qu'elle interprète, clarifie et développe afin de fixer ses propres règles de conduite. Le CICR peut ainsi être à la fois cohérent dans son action et prévisible aux yeux de ses interlocuteurs.

Le CICR, dont le siège est à Genève, est représenté par ses délégations dans une soixantaine de pays touchés par les conflits armés en Afrique, au Moyen-Orient, en Asie, en Amérique latine et en Europe. Il s'efforce de fournir protection et assistance aux victimes de la guerre et, à ce titre, il est constamment confronté à la situation critique des enfants affectés par ces événements.

Les activités de « protection » visent essentiellement à faire respecter les droits des victimes alors que l'« assistance » concerne plus spécifiquement l'aide matérielle qui est apportée. Le CICR a toujours pour souci d'agir en faveur de toutes les victimes de la guerre et de la violence interne, sans privilégier un groupe au détriment d'un autre. Les enfants sont du nombre des bénéficiaires des activités du CICR sur le terrain.

Que fait le CICR pour aider les enfants, directement ou indirectement ?

- protection des enfants non accompagnés (dans la mesure du possible : identification, recherche de parents ou de proches et regroupement familial; dans d'autres cas, recherche de solutions à long terme), recherche des personnes portées disparues et promotion du droit à l'éducation;

- évaluation des conditions de détention (y compris, séparation des enfants d'avec les adultes, des filles et des garçons; dans la mesure du possible, les enfants sont réunis avec des proches détenus) et efforts en vue de leur libération;

- secours alimentaires et autres formes d'assistance, aussi bien dans les situations d'urgence que sur le long terme (transport, entreposage et distribution de

vivres), réhabilitation agricole et vétérinaire et assistance non alimentaire (distribution de couvertures et de vêtements, construction d'abris);

- soins et santé, prévention des maladies, premiers secours, chirurgie de guerre, ateliers d'appareillage orthopédique, programmes alimentaires et distribution d'eau potable;

À titre d'illustration, en 2000, le CICR a :

- visité un total de 230'590 détenus dans 65 pays, dont 2'650 garçons et filles de moins de 18 ans;

- réuni 2'600 personnes avec leurs familles;

- récolté 510'000 messages Croix-Rouge et en a distribué 480'000.

Le plan d'action du Mouvement en faveur des enfants touchés par les conflits armés

Le Mouvement international de la Croix-Rouge et du Croissant-Rouge se compose du CICR, de la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge ainsi que des Sociétés nationales de la Croix-Rouge et du Croissant-Rouge. Il est guidé et uni par ses sept Principes fondamentaux (humanité, impartialité, neutralité, indépendance, volontariat, unité et universalité). Chacune des institutions précitées mène des activités spécifiques. La solidarité au sein du Mouvement revêt une importance plus cruciale, chaque composante ayant un rôle particulier à jouer.

Les composantes du Mouvement sont aujourd'hui engagées dans différents programmes (parfois communs) en faveur des enfants touchées par les conflits armés. Pour développer ce type d'activités, le Conseil des Délégués du Mouvement, qui réunit tous les deux ans les représentants du CICR, de la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge, et les Sociétés nationales, a adopté à Genève, en 1995, un Plan d'action (« Les enfants touchés par les conflits armés », ou Programme CABAC) en faveur des enfants victimes des conflits armés. Le plan engage le Mouvement à :
1. promouvoir le principe du non-recrutement et de la non-participation dans les conflits armés d'enfants de moins de 18 ans;
2. prendre des mesures concrètes pour protéger et assister les enfants victimes de conflits armés.

La Conférence internationale de la Croix-Rouge et du Croissant-Rouge

La Conférence internationale de la Croix-Rouge et du Croissant-Rouge réunit, en principe tous les quatre ans, les représentants des diverses composantes du Mouvement international de la Croix-Rouge et du Croissant-Rouge, ainsi que ceux des États parties aux Conventions de Genève. Ensemble, ils examinent des

questions humanitaires d'intérêt commun et toute autre question qui s'y rapporte, et prennent des décisions à leur égard.

Plusieurs résolutions ont été adoptées par les récentes Conférences internationales et le Conseil des Délégués en ce qui concerne spécifiquement la protection des enfants confrontés à un conflit armé :

- la résolution 2 C (d) de la XXVI^{e} Conférence internationale, qui s'est tenue à Genève en décembre 1995,

« recommande aux parties au conflit de s'abstenir d'armer des enfants de moins de dix-huit ans et de prendre toutes les mesures possibles pour éviter que des enfants de moins de dix-huit ans ne prennent part aux hostilités »*;*

- la résolution 2 C (g)

« encourage les États, le Mouvement et les autres entités et organisations compétentes à élaborer des mesures préventives, évaluer les programmes existants et mettre en place de nouveaux programmes pour que les enfants victimes des conflits reçoivent une assistance médicale, psychologique et sociale, dispensée si possible par du personnel qualifié et sensibilisé à l'aspect spécifique de telles questions ».

Voir les résolutions 8 et 9 du Conseil des Délégués de 1999.

Dans le cadre de la XXVII^{e} Conférence internationale (Genève, 1999), nombre des États parties aux Conventions de Genève, ainsi que les diverses composantes du Mouvement international de la Croix-Rouge et du Croissant-Rouge, ont réitéré leur soutien à ce Plan d'action en annonçant une série de mesures concrètes, sous forme d'engagements. La Conférence a adopté un plan d'action qui confirme les engagements pris par les États et le Mouvement en vue d'améliorer la situation des enfants pris dans un conflit armé.

Les quatre Conventions de Genève de 1949 et leur 50^{e} anniversaire

Le droit international humanitaire vise à limiter, et dans la mesure du possible, à prévenir les souffrances humaines dans les situations de conflit armé. L'essentiel de ce droit est contenu dans les quatre Conventions de Genève de 1949 et leur Protocoles additionnels, auxquels presque tous les pays du monde sont aujourd'hui parties. Gardien du droit international humanitaire, le CICR s'efforce de faire en sorte que ceux qui le bafouent – délibérément ou par ignorance – le respectent. En effet, comme cela a été souligné plus haut, les États liés par les Conventions de Genève sont tenus de respecter et *de faire respecter* cette branche du droit, conformément à l'article 1 commun aux quatre Conventions de Genève.

En 1999, le CICR s'est interrogé sur la manière la plus adéquate de marquer le 50^{e} anniversaire des Conventions de Genève. L'idée a été alors lancée de réaliser une vaste enquête auprès des combattants et des victimes des guerres qu'ils mènent. Il

s'agissait de demander à des gens « ordinaires », directement touchés par la guerre, ce que signifiait pour eux le slogan « Même la guerre a des limites ! ».

L'obéissance aux ordres, les problèmes liés à l'abus d'alcool et de drogue, ainsi le jeune âge des combattants, ont été fréquemment mentionnés pour expliquer l'immense fossé qui existe entre le droit des conflits armés et la réalité de la guerre. Certaines des personnes interrogées ont parlé de l'expérience qu'elles avaient vécue quand, enfants, elles avaient été recrutées et avaient participé à la guerre : le manque de maturité, qui pousse les enfants à commettre des actes inconsidérés, et le traumatisme indélébile et généralement irréparable, qui persiste longtemps après que les combats ont cessé. Un enseignant afghan a parlé de « culture Kalashnikov »; un civil somalien a estimé que les enfants ne comprenaient aujourd'hui qu'un seul langage, celui de l'effusion de sang. Un soldat somalien a déclaré que les enfants-soldats ne sont pas seulement des victimes : recourant à une force excessive, faisant feu sans raison, ils ne sont que trop souvent inconscients de leurs actes et des souffrances infligées aux victimes.

Conclusion

Étant donné l'ampleur du problème et la terrifiante réalité des conflits contemporains, où même les plus vulnérables ne sont pas épargnés, pouvons-nous conclure que les enfants ne sont pas suffisamment protégés par le droit ? Les dispositions légales en faveur des enfants, et notamment celles du droit international humanitaire, indiquent plutôt le contraire. Il s'agit donc moins de réfléchir à de nouveaux instruments juridiques que de mettre en œuvre les normes existantes. C'est dans cette optique que le CICR s'emploie avant tout et surtout à sensibiliser les forces armées et la communauté dans son ensemble.

Pour ce qui est de la participation des enfants aux hostilités, qu'elle soit directe ou indirecte, volontaire ou obligatoire, les différentes composantes du Mouvement international de la Croix-Rouge et du Croissant-Rouge continuent de plaider unanimement et avec force en faveur d'un âge limite universel de 18 ans. En attendant, tous les efforts doivent porter sur l'application du droit international humanitaire existant, c'est-à-dire le strict respect de l'âge minimum de 15 ans, au-dessous duquel aucun enfant ne devrait prendre les armes.

Les gouvernements et les organisations engagés dans l'aide aux victimes de conflits armés doivent impérativement unir leurs efforts et coopérer dans un esprit de complémentarité et de respect des mandats respectifs. Les mentalités doivent évoluer. Des mesures de prévention des conflits doivent être prises, une assistance psychologique et sociale doit être fournie et des programmes qui facilitent la réintégration de l'individu dans la société doivent être mis en place pour la population civile dans son ensemble et les enfants en particulier. Le CICR, la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge, les Sociétés nationales et les gouvernements doivent agir de concert dans cette optique.

Pour atteindre de tels objectifs, les autorités nationales et les communautés locales de chaque pays concerné doivent se donner les moyens de participer activement à toutes les étapes du processus, de manière à promouvoir le respect des normes garantissant la protection des enfants victimes des conflits, tout en offrant des

options autres que le recrutement et l'enrôlement des enfants. Il faut en outre aider les enfants à réintégrer leurs communautés d'origine et à retrouver un environnement familial et social qui soit propice à leur développement et leur bien-être futurs.

CHILD SOLDIERS : CRIMINALS OR VICTIMS? SHOULD CHILD SOLDIERS BE PROSECTUED FOR CRIMES AGAiNST HUMANITY?

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Résumé
Doit-on poursuivre les enfants soldats pour crime contre l'humanité ? A cette question deux réponses s'opposent : a) les enfants soldats sont avant tout des victimes et ne doivent donc pas être punis, mais rééduqués, b) les enfants soldats commettant des atrocités sont responsables de leurs actes et partant doivent en répondre. L'ensemble de la législation internationale applicable en l'espèce soutient l'attribution de la qualité de victime aux enfants soldats, alors que le besoin de justice, notamment auprès de la population touchée par les actes des enfants soldats, favorise la thèse de leur responsabilité pénale. L'auteur est d'avis que les enfants soldats doivent répondre de leurs actes, uniquement dans un cadre juridique approprié et selon une procédure pénale respectueuse de la Convention des droits de l'enfant et des autres instruments juridiques de protection.

Resumen
¿Deben ser juzgados los niños soldados por crímenes contra la humanidad? Esta cuestión da lugar a dos respuestas opuestas: a) los niños soldados son ante todo víctimas y no deben ser condenados, sino reeducados. b) los niños soldados que cometen atrocidades son responsables de sus actos y por tanto deben responder por ellos. El conjunto de legislación internacional aplicable en este caso concreto sostiene la atribución de la calidad de víctima a los niños soldados, mientras que la necesidad de justicia, particularmente entre la población afectada por los actos de los niños soldados, favorece la tesis de su responsabilidad penal. El autor es partidario de que los niños soldados deben responder por sus actos, únicamente dentro de un marco jurídico adecuado y según un procedimiento penal que respete la Convención sobre los derechos del niño y otros instrumentos jurídicos de protección.

Summary
Should child soldiers be prosecuted for crimes against humanity? Two opposing answers are possible: a) all child soldiers are victims and should not be prosecuted, but rehabilitated. b) Child soldiers who have committed atrocities, are responsible and therefore should be made to answer for their deeds. International law supports the child soldiers victims approach, while the needs for justice, especially among people concerned by the acts of child soldiers, enhances the responsibility approach. The author's position is that child soldiers must respond for their acts only in an appropriate judicial system and according to criminal procedures that respect the Convention on the Rights of the Child and other legal protection instruments.

* * *

The widespread use of children in armed conflicts is one of the most horrendous and cynical trends in wars today. Compelled to become instruments of war, to kill and be killed, child soldiers are forced to give violent expression to the hatreds of adults.

The proliferation of lightweight weapons - requiring no physical prowess or technical expertise to manipulate - has made it possible for very young children to bear and use arms.
Today, over 300'000 young persons under the age of 18 - some as young as seven or eight, girls as well as boys - are taking part in hostilities in over 30 countries. They are often abducted from schools, refugee camps or their homes. Girls are subjected to sexual abuse and rape, often on a systematic basis.
The reasons behind the participation of children in armed conflict - in which they are routinely exposed to injury and death - are many and various.
In protracted conflicts - 40 years of conflict in Colombia, 25 years in Angola, 20 years in Afghanistan - recruitment of adults becomes ever more difficult, as armed groups with no allegiances to central authority seek to exercise their total control over local civilian populations. Children are attractive to the warlords because they are impressionable and can be easily manipulated into becoming ruthless and unquestioning tools of war. Many are abducted. Some join armed forces or groups because socio-economic breakdown has eliminated any viable alternative. Others are lured by the appeal of political, religious or ethnic ideology.
There is abundant evidence that many of the worst atrocities, during conflicts, have been carried out by children. A survey carried out by UNICEF in Rwanda in 1995 found that most people interviewed believed that if a child was able to kill, if a child was able to discriminate between two ethnic groups, to decide who was a Hutu moderate and who wasn't, and was able to carry out murder in that way, then there was no reason why that child should be considered differently from an adult. It was generally agreed that the punishment should be the same. A more recent survey in Rwanda found that that view still prevails. While there is some indication that popular opinion is slowly changing - some of the children are now detained in a separate facility at Gitagata and a few have even been released - there remain many unanswered questions about what should happen to children who participate in the commission of atrocities in internal armed conflict: for example, whether these children may or should be tried and held criminally responsible for their participation and on what basis such decisions should be made.

In my talk to you today I have been asked to answer a simple question: should child soldiers be prosecuted for crimes against humanity? In trying to answer this question I will consider first whether children are criminals or victims. If they are victims then clearly they should not be prosecuted. If we decide they are criminally responsible then we need to consider how and where they might be tried.

I want to argue the case, as it would be in court, presenting first the case against prosecution and then the case for prosecution. I will then attempt to weigh up the evidence and come to a decision based on that evidence. Having listened to the evidence you can decide whether my decision is a fair one or whether you would have decided differently.

THE CASE AGAINST PROSECUTION

CHILD SOLDIERS ARE VICTIMS

Additional Protocols I and II of 1977 to the Geneva Conventions of 1949 both forbid the recruitment of children under 15 to armed forces, and the use of children under 15 in hostilities. Both Additional Protocols emphasise children's special right to care, respect and protection. This was the first time this phenomenon had been regulated.

Article 77 of Protocol I prohibits all types of child involvement in armed conflict in the territories of the states in conflict.

Article 4(3) (c) of Protocol II says that, in non-international armed conflicts,

"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."

This prohibition of participation is total, including even voluntary enlistment. Children are not to be involved in any military operations including transporting ammunition and foodstuffs, or acts of sabotage. The language of the Protocol ascribes responsibility to those who allow children to participate and not on the child him or herself. Protocol II is binding on States Parties as well as armed opposition groups.

Protocol II was intended to expand the scope of protection for victims in internal armed conflicts, but many states have not ratified it. Unfortunately, many states also deny that it applies to the conflicts in which they are involved because they claim that the conflicts are merely internal disturbances. At present there is no international body that can determine which non-international armed conflicts meet the conditions necessary for the application of Protocol II and which do not. Furthermore, both protocols have been criticized for requiring that States use "all feasible means" to protect children from warfare. Such a low standard makes it easier to claim that it was not feasible to avoid involving children in conflict.

As most of the conflicts involving children are internal armed conflicts, as many states have failed to ratify the Second Protocol, and as the relevant norms are not considered part of customary international law, existing standards fail to protect many children. The shortcomings of international humanitarian law, especially with reference to internal conflicts, have been acknowledged in the international community. This has provided the impetus to develop global standards in other arenas.

The Convention on the Rights of the Child (CRC), adopted in 1989, and more widely ratified than any other human rights treaty, includes a provision on the child soldier, namely Article 38:

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.

2. 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.

3. 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 endeavour 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 an armed conflict.

Once again the use of the terms “shall take all feasible measures” and “shall endeavour” makes it easier to claim that it was not feasible to avoid involving children in conflict and/or that the State did endeavour.

A major problem with international standards is the scope of their application. Humanitarian law, in principle, applies to all parties to a conflict, but it can be awkward to impose higher standards on nongovernmental armed forces than on governmental armed forces. Sometimes it can be unclear which side is the government and which side is the opposition. Most of the human rights standards apply only to States Parties (except for the Genocide Convention which constrains non-state actors as well). The CRC is also only binding on States Parties. To what extent non-state actors can be held responsible is part of an on-going debate.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict prohibits absolutely any forced recruitment of children under 18 into the armed forces (Article 2). It allows those under 18 to be recruited voluntarily to state armed forces under certain strict conditions to ensure that such recruitment is voluntary (Article 3). Article 4 states that

“armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”

This is an absolute prohibition. The Optional Protocol, which was adopted by the UN General Assembly on May 25 2000, has so far been signed by 86 states and ratified by eight. The attack on New York on September 11 and the subsequent cancellation of the UN’s special session on children has delayed ratification by other states. The Protocol requires to be signed by 10 States before it comes into effect. It seems likely that this will be achieved early next year.

ILO Convention No.182 of June 1999 on the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour includes the prohibition of forced or compulsory recruitment of children under 18 for use in armed conflict.

Article 22 (2) of the African Charter on the Rights and Welfare of the Child states that all parties

“shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child.”

Article 2 of the Rome Statute makes it a war crime to recruit children fifteen and under to participate in armed conflict, including conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities. The prohibition applies both to government armies and armed opposition groups. During the negotiations on the Rome Statute, it was accepted that “participation” would include direct participation in combat, and military activities linked to combat such as scouting, spying, sabotage, and use of children under 15 as decoys, couriers and at military checkpoints; and also using children for any activities (even transporting food) at the front line.

Doctrine Of Command Responsibility

The message from the international instruments is clear, it is the adults who controlled the child soldiers who committed the atrocities who should be prosecuted and not the child soldiers themselves.

Under the doctrine of command responsibility, commanders are held to be criminally responsible for the actions of their subordinates, where they gave a command to commit atrocities. In cases where no order was given, but the commander was aware that their subordinates were committing war crimes or crimes against humanity (or were about to commit them) but failed to take reasonable and necessary action to stop them or to have them prosecuted, such a commander will also be liable to be prosecuted for the action of the subordinates. The validity of this legal doctrine was confirmed in the Rome Statute.

International Instruments Protect Children in Armed Conflict

On 11 April 2000 Olara A. Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, addressing the Commission on Human Rights said:

"We now have at our disposal a very impressive body of international instruments that provide for the protection of children in situations of armed conflict. Among these are the UN Convention on the Rights of the Child, the Geneva Conventions and their Protocols, Security Council resolution 1261, ILO Convention 182, and, eventually, the new optional protocol to the CRC on the involvement of children in armed conflict and the ICC Statute. I believe that the time has come for us to launch a specific campaign focusing on the protection of children in situations of armed conflict, to develop various activities - awareness-building, exerting concerted political pressure, tapping into relevant local norms within societies - to ensure the application of these norms on the ground".

The Norms Are Not Being Applied

It is quite clear that the norms are not being applied. In May this year UNITA kidnapped 60 children aged 10-18 in attacks on Uige and Bengo (Angola), which left 100 people dead. It is also reported that the Tamil Tigers are currently recruiting children as young as 12 in Sri Lanka.

We Need To Take a Pragmatic Approach

Children should not be involved in armed conflict. But we need to take a pragmatic approach and look at the reality on the ground. Since, for the time being, children do fight in armed conflicts, the international community has to grapple with the question of whether or not child soldiers should be held responsible for their actions.

Children Are Incapable Of Forming The Requisite Intent

One argument is that there is no basis in international law or humanitarian or human rights law to prosecute children, and this is the argument we have been pursuing so far. This position takes as its premise the fact that children could not have formed the requisite intent to commit crimes of genocide, for instance.

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), enacted in 1948 and considered customary international law, requires that states provide penalties for persons guilty of certain acts which are

“committed with the intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such.”

There is a presumption that children are incapable of forming the requisite intent to commit genocide.

First, the age of many of the children sheds doubt on whether they understand what genocide is.

Second, many children are traumatised and brutalised so that they can no longer distinguish between right and wrong.

Third, there are reports that the children are formed into youth militias and that some of the militia bands use drugs.

Fourth the role of social norms, which demand obedience, cannot be discounted.

Children Are Not Acting Voluntarily

Due to the nature of the conflicts in which child soldiers are most often used, it will be very clear in many cases that children were not acting voluntarily - in some cases, they were drugged against their will - and therefore may not be criminally responsible. In other cases they were threatened and might be able to assert a defence of duress or to have duress taken into account in mitigation of punishment.

Child Soldiers Should Not Be Held Liable

The logic of this argument is that child soldiers should not be held liable. Instead of a punitive approach, we should turn to rehabilitation as a way of handling the child soldier.

The Focus Should Be On Rehabilitation

The rehabilitation of child soldiers is a paramount concern of international law: Article 6 (3) of the Optional Protocol to the Convention on the Rights of the Child requires that

"States parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilised or otherwise released from service. States parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and social reintegration."

Article 39 of the Convention on The Rights of the Child sets out an affirmative duty to rehabilitate children affected by armed conflicts and by abuse in general.

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self respect and dignity of the child.

UNICEF stresses the need to concentrate on rehabilitating child soldiers to prevent them from drifting into a life of further violence, crime and hopelessness and says there is a need to offer not just respite but also reconciliation. An important part of rehabilitation must be to address the psychosocial damage that children suffer. There will also be a need for education, and vocational training.

THE COUNTER ARGUMENT

Child Soldiers Should Be Made To Answer For Their Actions

The argument against prosecution is strong. In a court of law we have to listen to both sides of the argument and weigh up the evidence for and against. So what are the arguments in support of the view that child soldiers who commit atrocities should be made to answer for their deeds?

The logic of my argument so far supports the view that child soldiers should not be held liable for their actions. But International law's preference for rehabilitative jurisprudence at times runs counter to a more retributive domestic sentiment. We have noted that, in Rwanda, for instance, public opinion seemed to favour holding children responsible. A Save the Children Federation study found support for this attitude. Some Rwandans think that if a child was mature enough to distinguish between a Tutsi and a Hutu and to commit murder, then the child was old enough to be punished. Is this a valid argument?

When the Rwandans call for punishment for those who took an active role in the genodice, should we dismiss this as simply a call for vengeance? Are there social considerations, which need to be taken into account? Could we in fact be setting up children for vigilante type retribution if they are not seen to be dealt with in an appropriate, credible, legitimate fashion? Let us consider the argument supporting the view that child soldiers should be held accountable.

Cultural Differences In The Conceptualisation Of Childhood

One reason why the child soldier is pervasive is cultural differences in the conceptualisation of childhood. A key problem with the implementation of the various international instruments is that the distinction between childhood and adulthood is not clear-cut in many societies. In many countries individuals marry much younger, and are expected to work to contribute to the survival of the family from early ages. It has been argued that defining a child as anyone under 18 is a Western concept. The notion that it is "barbaric" to let young persons fight could be considered ethnocentric.

The child soldier may be a widespread phenomenon also because participation in warfare is a rite of passage in many societies. Children become adults earlier, and boys show their prowess in order to become men. Moreover, it seems unrealistic to expect children not to try to defend their families if they are under attack.

Human rights law provides for a right to work and a right to food. Forbidding children to work when their families depend on the income in the name of protecting children's rights could violate other human rights, if alternatives are not provided. Poverty is a major factor in the recruitment of some young people. Many of those recruited are those working on the streets.

For children in some parts of the world, the army serves as a substitute family. They are drawn to gangs or the military because the social structure in their community has collapsed. In some instances, joining the military is crucial for their survival, as many of them have had their relatives killed in armed conflicts.

Sometimes, there is also a religious motivation: children are told that fighting in a holy war will guarantee them access to heaven.

It is clear, then, that children are not always coerced into joining armed groups. Some join voluntarily.

Here we have a dichotomy between the Western viewpoint, according to which children presumptively lack the capacity to consent, and simply cannot join "voluntarily" and the reality on the ground where many children do make a voluntary choice to join the military. While most child advocates prefer an absolute prohibition of any involvement of children in armed conflict it may be necessary to draw a distinction between forcible conscription and voluntary joining.

It is consistent with this line of argument that all perpetrators of crimes involving serious violations of human rights - genocide, war crimes, and crimes against humanity - should be brought to justice. To do otherwise denies victims their right to reparations, which includes the right to justice. It also contributes to the phenomenon of impunity, that is, those who have perpetrated serious crimes and human rights violations or might consider doing so could be encouraged to commit further atrocities, knowing that the matter will not be investigated, and that they will not be held accountable. It is important to set an example to others that the truth about crimes and human rights violations will be exposed.

The Doctrine Of Command Responsibility

In my argument against the prosecution of Child Soldiers I noted that, under the doctrine of command responsibility, commanders are held to be criminally responsible for the actions of their subordinates, where they gave a command to commit atrocities. In cases where no order was given, but the commander was aware that their subordinates were committing war crimes or crimes against humanity (or were about to commit them) but failed to take reasonable and necessary action to stop them or to have them prosecuted, such a commander will also be liable to be prosecuted for the action of the subordinates. The validity of this legal doctrine was confirmed in the Rome Statute. I went on to argue that it is the adults who controlled the child soldiers who committed the atrocities, that should be prosecuted and not the child soldiers themselves. I believe that this argument is soundly based on international law.

But what happens when the person who controls the child soldiers is a child? The commander who commits atrocities or who orders child soldiers to commit atrocities may be a child solider him/herself.

There may be examples of young commanders of units who committed mass atrocities, including mutilations, murders and rapes, who were clearly willing and acted without coercion, and who may have forced other children to commit such acts.

Where an individual can be held responsible for his/her actions, failure to bring him/her to justice will support impunity and lead to a denial of justice for victims. It may even encourage the use of children to commit atrocities.

It seems to me that it is vitally important that in those cases where persons under 18 acted entirely voluntarily, and were in control of their actions, they should be held to account for their actions in an appropriate setting. In their case, the crime should be exposed, but the identity of the perpetrator should not.

In my previous argument I concluded that child soldiers should be regarded as victims and should not be held liable for their actions. The current argument is leading to the conclusion that children should be prosecuted where there is evidence which suggests that they can be held responsible for their actions. My earlier conclusion was based on the presumption that children are incapable of forming the requisite intent to commit genocide. I now want to add that this presumption should be rebutted in the case of older children.

In considering whether or not a child should be held liable for his/her actions, due weight should be given to age and other mitigating factors, for example, if the child was abducted and brutalised by the recruiters. The assessment of a child's awareness of the choices open to him or her, whether to join the armed groups or to commit atrocities, should be undertaken critically, with due consideration to a child's vulnerability and limited understanding. Such an assessment should contribute to mitigation of the child's responsibility.

***Does international law permit the prosecution of children*?**

In my earlier argument I found that the international instruments support the view of the child soldier as victim. Now that we are considering the other side of the coin we need to ask: does international law permit the prosecution of children?

International law has not addressed directly the issue of whether child soldiers should face prosecution for atrocities they committed during armed conflict.

The statutes of the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda are silent on the subject of whether those under 18 can be tried, or whether a person under 18 could use his or her age as a defence to a criminal charge. Therefore, if allegations of sufficient seriousness were brought against an individual who committed crimes while under the age of 18, the Prosecutor could use her or his discretion.

Similarly, the Chambers of the International Military Tribunals for the Far East and at Nuremberg, Allied Control Council Law No.10 and the Draft Code of Crimes against the Peace and Security of Mankind of 1996 are silent on this issue.

The recent Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict does not contain any specific provisions on whether child soldiers should be prosecuted, or what would be an appropriate age of criminal responsibility.

The Convention on the Rights of the Child Allows Prosecution

The Convention on the Rights of the Child does allow for young people to be prosecuted if the procedure can be fair and take into account the particular needs and vulnerabilities of young people. Article 3 requires that any legal action taken by the authorities must have the best interests of the child as a primary consideration. It is arguable that in certain cases where a child soldier did act with full awareness of what he was doing and with full intent to commit atrocities, then it would be in his best interests to take responsibility for his acts, and the consequences of these acts, through a criminal process specially adapted for children.

The draft Statute for a Special Court in Sierra Leone has specified that accused persons who were between the ages of 15 and 18 at the time of the commission of the crimes may be prosecuted. The UN Secretary-General has indicated that the prosecution of children might occur in exceptional circumstances, and has asked the Security Council to make the final decision on whether the Special Court for Sierra Leone should have jurisdiction over suspects aged between 15 and 18 years.

There appears no good reason to oppose such prosecutions, as long as the court concerned implements fair trial guidelines for children as outlined in the various international instruments.

The Best Interests of the Child

The principle of the best interests of the child requires that any criminal process involving children must have their needs at heart. The well being of the juvenile must be the guiding factor in the consideration of his or her case.

Article 5 of the Beijing Rules states

"the juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence."

Basic Due Process Should Be Applied

Article 6 of Protocol II, which "applies to the prosecution and punishment of criminal offences related to the armed conflict," sets out the basic due process which should be applied, including: (1)

"no one shall be convicted of an offence except on the basis of individual penal responsibility,"

and (2)

"anyone charged with an offence is presumed innocent until proved guilty according to law."

Additionally, Protocol II, Article 6 (4) states that:

"the death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence."

The basic procedural safeguards which apply to adults and which are recognised in existing international instruments such as the International Covenant on Civil and Political Rights, Article 14, apply equally to children.

Fair Trial Provisions

The criminal process should include all the usual fair trial provisions:

- the right to be presumed innocent until proven guilty

- the right to be informed promptly of any allegations or charges

- the right to have legal assistance

- the right to be heard before a fair and independent court

- the right not to be compelled to give evidence against oneself; and

- the right to appeal against any decision.

The CRC Article 40(2)(a) states that

"no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed."

There is a similar prohibition of punishment under retroactive laws in the International Covenant on Civil and Political Rights (ICCPR) from which no derogation is allowed. This would prohibit the prosecution of children below the age of criminal responsibility, the age when a young person can be considered to appreciate right from wrong actions and to have some measure of responsibility for his or her acts; and when therefore it would be appropriate for a criminal investigation into such acts.

Let us consider the fair trial procedures

Arrest and Detention

In my view, child soldiers should not be detained except in those exceptional circumstances where the child is going to be held to account for his/her actions (as outlined above). Where the child carries the stigma of a notorious murderer, rapist or mutilator of innocent civilians, arrest and detention may be the only way to ensure his/her appearance before a court. In the case of those few who are arrested and detained the following rules apply:

Article 37 of the Convention on the Rights of the Child says: States parties shall ensure that:

b. No child shall be deprived of his or her liberty unlawfully and arbitrarily. The arrest, detention, or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

States Parties may well argue that children are not arrested arbitrarily and that the arrests are based on "evidence." The Beijing Rules, which are not legally binding but are "designed to serve as convenient standards of reference," states quite clearly:

"deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases."

The Rules address conditions for juveniles under arrest or awaiting trial, management of juvenile facilities, and personnel.

Conditions of Detention

As already noted, children should only be detained in order to guarantee their appearance before a court.

Article 10 of the International Covenant on Civil and Political Rights (ICCPR) states:

2 (b). Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The ICCPR, however, permits derogation from this article

"in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed."

Detained children have the right to legal advice and care according to their age.

Prosecutions of children should take place in private

The Convention on the Rights of the Child states that prosecutions of children should take place in private. This provision is specific to cases involving children and

acknowledges the special vulnerability of children to publicity and stigmatisation if they are convicted, or even prosecuted. It reflects Article 14 (1) of the International Covenant on Civil and Political Rights which requires public hearings of legal proceedings, except

“where the interest of juvenile persons otherwise requires …”

The “Beijing Rules” expand Article 40 of the Convention on the Rights of the Child 1989 further:

“The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.”

Clearly if a child is labelled as criminal or delinquent in a public forum, the long term effects may be extremely detrimental and will make it extremely difficult for the child to be rehabilitated psychologically and reintegrated into society. However, when deciding whether to close a hearing to the press and the public, the court must take into account the interests of the victim or the victim’s family.

The right to be heard

A defendant must be able to participate in any proceedings with full information and full understanding. If someone who has committed a crime goes through a trial without understanding the procedure and taking responsibility for his or her actions, then the crime will not have been addressed effectively. A child who is prosecuted must be able to understand and participate in any trial if that trial is to be fair, and the court must take into account a child’s age, level of maturity and intellectual and emotional capacities in its procedures.

A child is entitled to receive assistance and rehabilitation

A child defendant is entitled to receive assistance and rehabilitation alongside appropriate criminal sanctions. It is particularly important that children receive this type of help even before trial, and while any criminal trial is continuing. If the provision of such help is withheld until a determination of guilt or innocence is arrived at, then serious psychological damage may be done. Continuing psychological assistance may be vital in helping the child to realise his responsibility for his acts and come to terms with them.

Child’s Sense Of Dignity Is Central To The Criminal Process

Article 40 of the Convention on the Rights of the Child emphasises that a person under 18 who is undergoing a criminal investigation or trial must be treated with dignity and respect, and the aim of the criminal process is to increase the child’s

respect for human rights of others, and to promote his or her reintegration into society.

It is important that the young person realise the gravity of his/her act, acknowledges guilt and makes reparation through apology to the victim(s). This reinforces the child's respect for the human rights of others. The child's sense of dignity is central to the criminal process, which must be consistent with the child's age and understanding.

The Age Of Criminal Responsibility & Use Of Non-Judicial Measures

The Convention on the Rights of the Child specifies two important measures to implement child-centred criminal justice: the setting of a fixed age of criminal responsibility and the desirability of using non-judicial measures wherever possible.

The age of criminal responsibility

In international law there is no presumption that persons under 18 cannot be held criminally responsible. However, the Convention on the Rights of the Child requires states parties to establish

"a minimum age below which children shall be presumed not to have the capacity to infringe the penal law,"

although it does not specify what is an appropriate age.

The Committee on the Rights of the Child has not specified a general appropriate age for criminal responsibility, but has expressed concern that it is fixed at a low level in some states (seven, eight, even fourteen has been considered low) and has welcomed other states' proposals to set the age of criminal responsibility at eighteen.

The Beijing Rules (Rule 4) require that:

"In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age should not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

The fixing of any age should take into account the moral and psychological components of criminal responsibility - that is, whether a child has the discernment and understanding to choose certain acts and therefore be held legally responsible for those acts. A balance must be drawn between attributing responsibility appropriately and protecting children from a process they are too young to understand. The preparatory negotiations for the Rome Statute showed that there is a wide divergence of opinion on the matter among states and experts on children and juvenile justice. It is difficult to see how it would be possible to reach consensus on a minimum age for criminal responsibility.

As well as setting a minimum age, the authorities dealing with criminal justice issues in the domestic and the international setting should also put in place guidelines and safeguards for protecting and rehabilitating children who have committed offences when they were below the age of criminal responsibility. Such children may often be dealt with by social care services or mental health service. Without appropriate safeguards, procedures to review progress and to appeal against decisions, there is a risk that children in the care of social services or the mental health care system may be detained for longer than is appropriate or not receive proper treatment.

Children Should Be Held Accountable In An Appropriate Setting

In this line of argument I have tried to establish that international law does permit the prosecution of children under 18 who acted entirely voluntarily, and were in control of their actions, and that they should be held to account for their actions in an appropriate setting.

What is "An Appropriate Setting"?

Child soldiers, under 15, should be dealt with by the Social Care Services or Mental Health Services. The vast majority of those over 15 should be dealt with under a restorative justice model. A Truth Commission is one such model and would appear to be a popular choice. Any Truth Commission should respect due process, establish the truth, facilitate reparations to victims and make recommendations designed to prevent a repetition of the crimes. Truth Commissions are not a substitute for bringing perpetrators of serious crimes and human rights violations to justice but they could deal with the majority of children accused of serious offences.

However, I have argued that under the doctrine of Command Responsibility, young commanders of units who committed mass atrocities, or who forced other children to commit such acts, could and should be held to account for their actions before a court of law. It is my belief that such children can benefit from a process that ensures accountability for their actions, respects the procedural guarantees appropriate to the administration of juvenile justice and considers the desirability of promoting the child's reintegration into society.

The Trial Of Persons Under 18 Will Be Extremely Rare

Only the most serious cases should be prosecuted and so the trial of persons under 18 will be extremely rare. It is this very small minority that we are focussing on now.

International standards relating to justice for children clearly state that the aim of prosecuting children under 18 must be to rehabilitate them, and their interests should be at the heart of the process.

Any court in which children take part in proceedings must take into account the special needs of persons under 18 who may participate in the trial in any way, as

defendants or as witnesses. International law states that persons under 18 must be prosecuted in an institution which is built around their needs and appropriate to their age, level of education, level of understanding and development, and the possibly traumatic effect of their past experiences in armed conflict. They should not be tried alongside adults.

The International Criminal Court, when it is set up, will not have jurisdiction over children. The Rome Statute states clearly that:

"the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime."

A specialist international court, which is demonstrably independent and fair, should be set up which deals solely with persons under 18. It should be guaranteed that the judges, who should be drawn from an international panel, and all other court staff have specialist training and experience in dealing with child defendants.

Only a special court can determine individual legal culpability, in accordance with internationally accepted standards of evidence and procedure, while ensuring the privacy of the juvenile proceedings and guaranteeing the right to an adequate defence and the right to appeal.

I referred earlier to the vulnerability of children to publicity and stigmatisation if they are convicted or even prosecuted. In my view, the children we are talking about at this point already suffer the stigma of the notorious murderer, rapist or mutilator of innocent civilians. The child is likely to have already been rejected by his/her community. Being held to account for his/her crimes before a court may be the only way to guarantee reintegration.

Where a child is found not guilty on the basis of evidence, which shows he/she acted under duress, then the court should have the authority to pass the evidence on to the International Criminal Court with a view to prosecuting his/her superiors under the doctrine of command responsibility.

The international community must provide the necessary resources to ensure a fair trial for the few exceptional cases which come to this court. It is particularly important that the court has sufficient resources to accord to these child soldiers all appropriate assistance for their physical and psychological recovery and social reintegration.

APPROPRIATE SENTENCES FOR CHILD SOLDIERS

Prohibition Of The Death Penalty

International law specifies that some punishments should not be imposed on children under 18. The prohibition of the death penalty for children is a norm of customary international law.

No Corporal Punishment Nor Life Imprisonment

The Convention on the Rights of the Child obliges states parties to ensure that neither corporal punishment nor life imprisonment without possibility of release will be imposed on a person who committed an offence while under the age of 18.

Imprisonment Shall Not Be An Option For Children Under 18

The Office of the Special Representative of the UN Secretary General for Children and Armed Conflict has recommended that, in the case of the Special Court in Sierra Leone, imprisonment shall not be an option for children under 18. I fully endorse that view.

Care And Rehabilitation Should Be The Main Focus

The CRC states that care and rehabilitation should be the main focus of any order of the court on conviction. The principle of the best interests of the child (in Article 3) should be central.

Appropriate Dispositions

Dispositions might include care, guidance and supervision orders, counselling, foster care, vocational and educational programmes, community service.

Need To Educate And Rehabilitate The Community

In situations where entire communities have been traumatised, particularly where atrocities have been carried out by their own children, there will be a need to educate and rehabilitate the communities affected in order to avoid the rejection of attempts to reintegrate child soldiers guilty of repugnant acts. How this will be done will vary according to the social and cultural context of the country and community in conflict. Some communities have found solace in religious services where the young person has gone through a kind of re-baptism, has publicly confessed his/her sins, received forgiveness and been formally received back into the community.

Conclusion

So what are my conclusions? The question I have been trying to answer is “Should child soldiers be prosecuted for crimes against humanity?”

In cases where there is no legal basis, either domestic or international, for the prosecution of children, trying them is unjust and does not further the goals of the rule of law. Instead, such actions amount to sheer retribution, which makes a mockery of justice in theory and in practice. In addition, such actions appear to be “victor’s justice” and as such would potentially threaten a fragile peace and not serve the ends of reconciliation.

Additionally, and this applies even where there is a legal basis for prosecution, trials of sheer numbers of children not only tax an overburdened, if at all functioning, legal system, but also misplace blame on children whom experience has shown to be traumatized, addicted, and generally unable to make moral choices required to show intent and to a greater extent actual guilt. This fact is demonstrated by the approach of Additional Protocol II, and the Convention on the Rights of the Child, which directly address the situation of children in armed conflicts as regards recruitment. Responsibility is placed on the adult who permits participation and never on the child. Therefore, as a logical extension of this attribution of responsibility, the adult who forces or permits participation of a child should be held responsible for the outcome.

One of the many competing and coexisting goals of criminal law is deterrence. It does not make sense to punish a child who was not considered competent under the relevant international law to make a decision to participate on this basis. Focusing criminal punishment on the adult or adults responsible, rather than the child, serves more of a deterrence purpose. It is highly unlikely that an adult willing to place a child in danger by forcing or permitting participation in armed conflict will be deterred from doing so if he knows that the child, and not he, will be punished.

A general amnesty that is limited in two respects - first, applicable only to children and second, placing the children in a rehabilitative, educational program to enable their reintegration - is both in line with international humanitarian and human rights law as well as a practical, far-thinking approach which takes into account both the resources available after the conflict ends and the implications for the future of a generation of “lost boys” without education or skills. As such, the best answer seems to be one that focuses on rehabilitation and reintegration as an alternative form of justice and one that serves the end of a sustainable civil society.

On an international level, concerned governments and NGOs should work to formalize the legal placement of responsibility on adults for the consequences of children’s participation in conflicts as well as the duty to provide rehabilitation to all child victims of conflicts - including those who may have committed atrocities in the conflict.

Child soldiers should be seen primarily as victims of conflicts. I have argued that, under the doctrine of command responsibility, commanders are held to be criminally responsible for the actions of their subordinates, where they gave a command to commit atrocities, or failed to stop their subordinates committing atrocities. Clearly, there may be examples of young commanders of units who committed mass atrocities, including murders and rapes, who acted willing and without coercion, and who may have forced other children to commit such acts. In these exceptional cases it is in the interests of justice to prosecute these child soldiers. The criminal process should be specially adapted, according to the provisions of the Convention on the Rights of the Child, and other international standards such as the Beijing Rules, to their needs and level of understanding. Even in these exceptional cases the best interests of the child should be the guiding principle in any criminal process.

demobilization - child soldiers in southern sudan

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Résumé
La démobilisation des enfants-soldats de Bahr El Ghazal au Soudan a commencé en 1997 par la mise en place d'un groupe d'action du SPLM et la création de l'école primaire spécialisée Deng Nhial. En juillet 2000, l'UNICEF organisa un atelier-conférence regroupant tous les milieux intéressés, atelier qui se solda par la mise en place d'un plan d'action visant à la démobilisation de tous les enfants-soldats du Sud Soudan et à leur réhabilitation dans la vie civile. Grâce notamment à l'engagement de Mr. Salva Kiir, Président du SPLA, de l'UNICEF et du WFP, en août 2001 plus de 3'480 enfants-soldats démobilisés furent évacués des zones de combat vers Rumbek dans des camps spécialisés pour être préparés à leur réinsertion dans la vie civile avant de rejoindre leur communauté et famille.

Resumen
La desmovilización de niños soldados de Bahr El Ghazal en Sudán comenzó en 1997 mediante la puesta en marcha de un grupo de acción del SPLM y la creación de una escuela especializada, Deng Nhial. En julio del año 2000, UNICEF organizó un taller-conferencia que reagrupaba a todos los medios interesados, taller que tuvo como resultado la organización de un plan de acción para la desmovilización de todos los niños soldados del Sur de Sudán y su rehabilitación para la vida civil. Gracias especialmente al compromiso de D. Salva Kiir, Presidente del SPLA, de UNICEF y del WFP, en agosto de 2001 más de 3.480 niños soldados desmovilizados fueron evacuados de las zonas de combate hacia Rumbek donde, en campos especializados, fueron preparados para su reinserción en la vida civil antes de reunirse junto a su comunidad y familia.

Summary
The demobilization of child soldiers in Bahr El Ghazal in Sudan commenced in 1997 by a group known as SPLM and by the creation of specialized primary schools in Deng Nhial. In July 2000, UNICEF organized a conference with workshops in which an action plan was developed that focussed on the demobilization of all child soldiers in South Sudan and focussed on their rehabilitation into every day life. Thanks to the commitment of Mr Salva Kiir (President of the SPLA), UNICEF and the WFP, in August 2001 more than 3,480 demobilized child soldiers were evacuated from combat zones towards Rumbek in specialized camps before being reunited with their families and their community. The camps helped prepare the soldiers for the re-integration into society.

* * *

BACKGROUND

The SPLM announced in 1996 that it would abide by the CRC and the Optional Protocols. In 1997 the SPLM established a task force to initiate the demobilization of child soldiers, which led to the establishment of the Deng Nhial primary school for

demobilized child soldiers. Since then until around the middle of the year 2000, approximately 600 children were demobilized and about 300 were admitted in this school.

On July 3rd 2000 UNICEF organized a Future Search Conference, aimed at looking at the problem of child soldiers who are used extensively in the conflict in southern Sudan. A variegated conglomeration of stakeholders went through extensive deliberations to look into the causes that led to the use of children in armed conflict. They identify a process, which would lead to the demobilization of children below the age of 18 in the SPLA. They also identify a process that would lead to the childrens reunification with their families. The stakeholders included Humanitarian Organizations, parents of child soldiers, SPLA, SPLM, SRRA, tribal chiefs and some demobilized child soldiers themselves. UNICEF/OLS under the leadership of Dr Sharad Sapra, Deputy Humanitarian Coordinator, OLS and Chief of Operations, UNICEF undertook a voyage of discovery in the strategic depths of South Sudan in Rumbek, still a beating heart of the south and a town which has changed hands many times in the past years. A town razed to the ground and that still continues to bear the consequence of technology in its most destructive form. Meandering on the morass of poverty and despair, the population has gone through the years of deprivation and degradation with quiet dignity, a town once well known for being the seat of learning in South Sudan. The ugly hand of war has lead to the complete obliteration of social institutions, health centres, schools and each building stands testimony to this ongoing conflict, the dereliction and damage.

However from the ashes of tragedy is rising the phoenix of good hope. UNICEF and other NGOs have set up operations in this area of the landscape of South Sudan that until now was a mere point on the map. In Rumbek on July 4th 2000 for the first time an effort was launched by UNICEF to diagnose the malady encumbering the social and demographic structures and the problem of child soldiers, and to find a way out of this tragic situation. One day before the commencement of the workshop, death struck from above by an air raid, killing and wounding innocents who since 1998 had enjoyed a phase of peace and tranquility.

An ancient Chinese aphorism appropriated the week that was producing images conflicting and contradictory. The Yin and the Yang, the passive and the active principles that govern the universe, opposites yet as entwined as Siamese twins. Both the elements - the positive and the negative conspired to drag the events in opposing directions, yet the positive prevailed with the resounding success of the workshop. This was a workshop on peace; it was about demobilizing child soldiers; it was about forgetting and reconciling past animosities and yet during the workshop and animated discussions by the community which were the participants, an Antonov aircraft would be spotted and a sinister, ominous silence would fall over the proceedings, punctuated only by the faint drone of the hostile airplane carrying its arsenal of deadly bombs meant to kill and maim the unsuspecting and the innocent.

The cult of the gun prevails in Sudan. No gun totter, unless the gun toting is socially institutionalized, (as in the case with soldiers in established and disciplined Armies) gives up the gun easily. The gun gives a sense of control and power, a peculiar pleasure, excitement and a mission. Revenge being the utmost consideration. It transcends moral power seducing the wielder into a vortex of violence. Violence in

turn gradually thrives to become an end in itself and with its growth as a factor in influencing dialogue makes way for brutality, anarchy and irrationality. The child soldier has fallen into this precipice of revenge, hostility and indoctrination to live out the Robin Hood image, with a misplaced sense of adventure. The problem of the child soldier in South Sudan is essentially a human problem, a product of human behavior, human intellect, human character and human error. No explanation in terms of geography, climate and broad political or military considerations can possibly do justice to the facts.

The workshop did not treat the theme of child soldiers with pity or compassion, nor was it a glorification of endurance and bravery. It was a saga, an adventure, surreal in its quality, which was meant to explore the human spirit, the spirit of the community to come to terms with the tragedy of child soldiers. Each of the stakeholders ranging from a broad spectrum of the community which included demobilized child soldiers themselves, school children, parents, teachers, religious leaders, NGOs, village and tribal chiefs, and most significantly the local authorities and commanders from the SPLA. The workshop generated enormous discussions. It started with the theme of delving into the past, revisiting their histories as individuals and collectively, and presenting the past by a brief explanation in mixed stakeholder groups. The presentations were rife with emotion and pain. The following day the participants were encouraged to navigate the present and analyze the basic problem plaguing their society relating to child soldiers and to identify the reasons that led to the recruitment of the child soldiers. Once this was done the participants were painted a future scenario and were tasked to come up with an action plan as stakeholders in the community and how each of the stakeholder groups would work towards demobilizing the child soldier and prevent it from happening in the future. Despite the overflying Antonovs, the participants developed a sense of imperviousness to its diabolical presence and chose to continue with their deliberations.

On July 5th 2000 while the workshop was in progress, a remarkable event took place in the near vicinity of the workshop complex. A group of active child soldiers were demobilized by their military commanders and handed back to their parents and village chiefs. Once their military uniforms and AK- 47s assault rifles were removed, suddenly there was a return to innocence, boys who had been turned prematurely into men, were going back to being boys. All those present to witness this momentous event found it hard to keep back the tears, and the silent faces of the boys, told their own stories, their agonies and turmoil, torn away from parents and relations, schools and friends, into the ugly quagmire of a protracted liberation struggle.

The workshop ended on July 6th 2000 and after the presentation of the action plans by each of the stakeholder groups, each walked away with a spring in their feet and a note of self congratulation, a new confidence that the international community cares and with enormous goodwill and gratitude towards this initiative taken by UNICEF. For the human mind in South Sudan where the most modern technology is automatic weapons, to comprehend such spacious vistas of ensuing changes to their lives is a challenge as formidable as the counting of milestones lying between stars, yet UNICEF as the facilitators of this workshop felt manifest satisfaction on the outcome and would energize all possible resources to transform the mission statement of the workshop into an action plan and a foreseeable reality.

Causes that were identified for the large numbers of child soldiers in southern Sudan, were as follows:

a)Forced recruitment by the SPLA to improve its numerical numbers.

b)Parents volunteering their children to the army, particularly due to the famine in Bahr el Ghazal in 1998, hoping the children would be fed, and would not be used by the army on the front lines.

c)Children themselves volunteering for the army due to the lack of choices, due to the complete paralysis of social institutions such as schools and health services, combined by a complete break down of any economic machinery.

d)Children orphaned and spurred by the desire to seek revenge for the loss of their parents and close relations due to the war and famine.

The workshop culminated with an action plan, which would lead to demobilization of all child soldiers in southern Sudan and their rehabilitation in civilian life, and to be productive adults in the future through education and training in vocational and life skills.

On October 14th 2000 Mr. Salva Kiir, the Deputy Chairman of the SPLM demobilized about 200 combatant child soldiers, from the SPLA, and these children were handed over to Deng Nhial primary school and UNICEF. This was the first significant gesture by the senior leadership of SPLM. UNICEF ensured that the school had clean drinking water, sanitation facilities, education kits and seeds for development of a vegetable garden as well was arranged with WFP to provide food for work.

Ms Carol Bellamy, the UNICEF Executive Director, arrived in Khartoum on October 18th 2000 and raised the issue of abducted children and child soldiers with the GOS. On

October 22 th 2000 during a visit to the Deng Nhial School, Mr Salva Kiir confirmed in writing to Ms Carol Bellamy that all child soldiers under the age of 18 in the SPLA would be demobilized and there would be no future recruitment. This event received wide publicity worldwide. This was the trigger, that energized UNICEF into action to ensure that child soldiers demobilized by the SPLA, would be provided with basic services, such as psychosocial care, education, vocational skills and health services, by the establishment of transit facilities, in areas of stability, and then the process of tracing and reunification of these children with their families would commence.

In November 2000 the year 2001 consolidated appeal for Sudan was launched soliciting funds for advocacy and demobilization of child soldiers and their rehabilitation and reintegration into civilian life. This was under the Protection Programme under para three which refers to demobilization being one of the activities. This appeal was of course shared with the GOS in advance and no comments to the contrary were offered by the GOS. As a result of this appeal UNICEF received funds from some donors to demobilize child soldiers.

The process of identification of child soldiers has been ongoing since July 2000 and has been regularly reported in monthly and weekly reports which are shared with the UN Coordinator's office. UN OCHA (Nairobi) has regularly participated in all internal UNICEF discussions on issues related to demobilization of child soldiers.

By January 2001, another 200 child soldiers were demobilized and brought to Deng Nihal Primary School.

In fact the demobilization would have been far more gradual except for the security information that became available to UNICEF by the end of the first week of February. (These fears have now proven true since major fighting is currently started, on March2nd, in the areas from where these children have come). Alarmed by the deteriorating security situation in the area of northern Bahr El Ghazal and the possible escalation of the conflict, a meeting was held between UNICEF and SRRA in early February 2001 and it was agreed that the children serving in the different SLPA garrisons in Northern BEG should be demobilized quickly and removed from the potential areas of conflict on a priority basis. The forum agreed that even if they were demobilized and left in the area of Northern BEG they would continue to be exposed to the conflict. There was also concern that if left in the same area without adequate support, most would go back to the army due to lack of basic services in these areas. It was then decided that these children once demobilized must be temporarily moved to safer areas, and provided with basic services. This was found to be the only viable option in light of the emergent circumstances. In hindsight, this decision was the right one since many of the demobilized children were withdrawn from active conflict for demobilization. Also, as the security reports indicate, heavy fighting has started in some of the areas from where these children have been demobilized.

The SPLM confirmed its commitment to respect the CRC and the Optional Protocols, and was willing to demobilize all child soldiers in the areas of Northern Bahr el Ghazal which includes, Aweil West, Awiel East, Twic and Gogrial counties. They however insisted that all communications about the transportation of child soldiers from these locations be strictly confidential, due to military considerations fearing for the safety of these children, as well as their transit facilities were to be kept confidential, in case of offensive air action being planned against these centres.

AIM

The aim of this operation was to ensure that all child soldiers serving in the front lines of northern Bahr el Ghazal, due to the imminent and incipient situation of conflict breaking out, would be demobilized by SPLA and as unaccompanied children will be moved by UNICEF to transit facilities around Rumbek County, an area which since 1997 has seen relative peace, prosperity, and stability.

COURSE OF ACTION

On February 5th 2001 a coordination and planning meeting was held with NGOs and local authorities to plan for the reintroduction of demobilized child soldiers from northern Bahr El Ghazal and to create an establishment of transit facilities in which

the children will be accommodated for a period of three to four months. During this time, the tracing and the reunification of these children would be carried out to reinforce the existing social institutions, such as schools, water, health facilities and vocational training, in northern Bahr el Ghazal, in the areas where these children come from. It was also decided that since OLS could not transport military personnel, all child soldiers would be demobilized at their barracks in the different parts of northern Bahr el Ghazal before they were transported to different locations.

Three assessment and screening teams from UNICEF were sent to different parts of northern Bahr el Ghazal, in the areas of Twic, Aweil, West and East, Gogrial Counties and the surrounding hinterlands to mobilize transport and manage the unaccompanied minors (demobilized child soldiers) and stage them forward to air strips, or collection points for road transport. Their task was undertaken to ensure that none other than demobilized child soldiers under the age of 18 would be taken to Rumbek. They were also to ensure that all the child soldiers had been demobilized, take over the care of these unaccompanied minors and register them.

Detailed deliberations were held with WFP to plan the movement of all unaccompanied minors to Rumbek. Flight plans and load tables were formalized and presented by WFP to the GOS for necessary clearance as per established procedures. All clearance procedures are followed up by WFP and flights went to locations cleared by GOS. WFP flight officers coordinated all flights both at Loki and Rumbek end.

In the meantime transit facilities were established at different locations in Rumbek where water, food, sanitation and health provisions were made. Caretakers, health workers and teachers were identified to support these facilities. Psychosocial care and trauma management has also been planned for children afflicted by post-traumatic stress disorders. A curriculum for education, vocational skills and sports has also been planned. Each child would receive special displacement kits which includes, a blanket, clothes, soaps, utensils etc.

From February 23th 2001 to February 28th 2001, nearly 2'900 children were flown into Rumbek from different parts of northern Bahr el Ghazal. Around 400 arrived by road from various counties. As of today there are a total of 3300 unaccompanied children which were evacuated from conflict zone in Northern Bahr el Ghazal. Of these, 1'200 came from surrounding areas of West Aweil; 1'500 from Aweil East; 100 from Twic County and 400 from areas of Gogrial, Tonj and Thiet. These children came by road, on foot and by air. They were distributed in 8 transit locations in different payams of Rumbek County.

More children are slowly trickling in transit facilities on a regular basis. From March 5th 2001 the registration of all the children will be launched simultaneously at all transit facilities. Once the registration of children is complete, it will give an idea as to where these children come from and where school, health, education and water facilities will have to be established so that these children have access to basic services and do not return to army barracks.

Caretakers have been appointed for every 15 to 20 children in each of the locations. These caretakers are responsible for the well being of these children. These

caretakers also undertake registration of these children. Each location also has services of at least two health care workers. Primary Health Care drug kits have been positioned at each of these locations.

Each location has at least one safe water point (bore hole) and adequate water storage facilities. Sanitary latrines at the rate of 1 for every 50 children are being dug at each of the camps.

WFP food rations (Food for Work) have been provided at each of the locations to meet the nutritional needs of all these children.

To ensure their security, at least one policeman is posted at each of the locations. Daily morning and evening attendance and head count has been initiated at each of the locations. A team of elders visits at least each location every day and holds talks with the children and the local community. A school teacher for every 50 children were recruited. Education kits are already pre-positioned at each of the locations.

For the 6 months or so that the demobilized child soldiers were in Rumbek, they were given a range of training from education, vocational skills, life skills, training as health workers and teachers. Regular health checks were carried out and adequate nutrition was ensured.

From June 2001 tracing teams were dispatched to the places of origin of the demobilized children to find their parents and near family. By August 2001, the process of reunification of the demobilized child soldiers commenced, and this was completed by August 25th, 2001 and all the children were reunited with their families and received rapturous welcomes. UNICEF teams along with their partners were located in these areas of northern Bahr el Ghazal along with the counter parts to ensure that all children were safe and did not return to the army. Education and health kits were also provided so that all the children of the community could benefit. Drilling of bore holes also commenced in areas where there was inadequate supply of safe and clean water. Child rights and human rights training was conducted with the SPLA at the garrison level as well as with the communities at large to discourage use of children in the army as well as to have an effective future strategy to prevent children from being recruited to the army. Construction of community centres started as well to provide an integrated package of school, health and water and this is being done with the participation of the communities.

CONCLUSION

The evacuation of demobilized child soldiers has been successfully carried out from the potential combat zones of northern Bahr El Ghazal. This was an operation to ensure that children serving the military were demobilized and removed from harm's way. The SPLM leadership has stood by its commitment of demobilizing their child soldiers in northern Bahr El Ghazal and UNICEF stood by its commitment by ensuring that the children were evacuated to a safe haven, identified as Rumbek. Without WFP's logistical and transport support, this operation would have been inordinately delayed, and as a result defeated the very reasons that these children were being evacuated from the combat zones. WFP's support has been meritorious.

UNICEF along with its consortium partners ensured that these children were rehabilitated and reunited with their families and next of kin, as the fog of war diminished, and this was completed by 25 August 2001. It was felt that drawing board plans needed to be translated into affirmative action by all stakeholders, and it is finally hoped that this event becomes the harbinger for more such demobilization of child soldiers takes place not just in the Sudan, but takes on global proportions. UNICEF will continue to advocate actively that children have no place in the army. They are the future, and should grow into educated and well rounded adults. The fact that these children, who otherwise would have been exposed to the brutality of war, have been safely evacuated into transit facilities, far away from the combat zone should be a cause for manifest satisfaction for all. To date over 3'480 children have been successfully demobilized and reunited with their families, and the process continues. South Sudan has proved unique as a place where during an ongoing conflict UNICEF was able to ensure that children were not made part of the war and used as cannon fodder, as well as raised awareness on this very important issue. In time UNICEF hopes to demobilize the remaining child soldiers and the process is ongoing. We hope to ensure that South Sudan is free of all child soldiers in the very near future.

quelle DÉFENSE et quelle grantie pour les enfants de la guerre : le cas du Rwanda

LAURE DESFORGES
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Résumé
Après un exposé sur le génocide de 1994 au Rwanda, L. Desforges présente le projet « Justice pour Tous » d'Avocats Sans Frontières, dans le cadre duquel les avocats œuvrent à la restauration du système judiciaire, assistent tueurs et victimes et assurent le droit à un procès équitable. Sur les 100'000 prisonniers rwandais, 5'000 mineurs accusés d'avoir participé aux actes de génocide sont détenus, en attente de leur procès et dans l'ignorance de leur droits. L'article 77 du code pénal rwandais diminue de moitié les peines pour les actes commis par des mineurs alors âgés de 14 à 18 ans, et préconise la réhabilitation sociale en lieu et place de sanctions pour les enfants de moins de 14 ans. La garantie d'une défense particulière pour les enfants est cependant limitée par les procès groupés, la récente création de la Gacaca (justice populaire) et par le manque d'une procédure pénale adaptée et de mesures de réhabilitation.

Resumen
Tras realizar una exposición sobre el genocidio de 1994 en Ruanda, L. Desforges presenta el proyecto « Justicia para Todos » de Abogados sin Fronteras, en cuyo marco los abogados trabajan en la restauración del sistema judicial, asisten a los criminales y a las víctimas, y velan por el derecho a un proceso justo. Entre los 100.000 prisioneros ruandeses se encuentran detenidos 5.000 menores acusados de haber participado en los actos de genocidio, a la espera de un proceso y en la ignorancia de sus derechos. El artículo 77 del código penal ruandés rebaja a la mitad las penas por los actos cometidos por menores de edades entre los 14 y los 18 años, y prevé la rehabilitación social, en lugar de sanciones, para los niños de menos de 14 años. Sin embargo, la garantía a una defensa especial para los niños

se halla limitada por los procesos en grupo, por la reciente creación de la Gacaca (justicia popular) y por la falta de un procedimiento penal adaptado y medidas de rehabilitación concretas.

Summary
Following a presentation on the 1994 genocide in Rwanda, L. Desforges introduced a project entitled 'Justice For All' in which lawyers that are part of *Lawyers Without Borders*, focus on restructuring the justice system, assisting victims/accused, and ensuring that there is an equitable process. Out of 100'000 Rwandan prisoners, there are 5'000 minors accused of participating in the genocide who are being detained while awaiting there trial without having any concept of their rights. Article 77 of the *Criminal Code of Rwanda* states sentences for young offenders aged between 14 and 18 years old must be diminished by half and it also advocates a social rehabilitation sanction for children under 14 years old. However, the rights of the child are not properly taken into account by the justice system due to group trials, where children and adults are judged at the same time, by the creation of Gacaca, which is a popular justice system composed primarily of members of the community, by a criminal justice system not adapted for children and the lack of rehabilitation measures designed specifically for children.

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Deux missions de 5 semaines pour ASF (avocats sans frontières) en octobre 2000 et juin 2001 m'ont brutalement confrontée à cette difficile réalité de l'enfant soldat, emprisonné dans les cachots communaux, pour la plupart accusé d'avoir participé au génocide de 1994 au Rwanda et aux massacres de 1993 au Burundi.

De mes précédents séjours en Afrique, j'avais gardé l'image de l'enfant roi, choyé et adulé par les adultes.

Le génocide a fait voler en éclat toutes les structures traditionnelles de la famille africaine. Les enfants n'ont malheureusement pas été épargnés par cette folie meurtrière, tour à tour victimes et parfois même bourreaux. Les génocidaires n'avaient aucune pitié pour leurs victimes, ne faisant aucune distinction entre leur qualité d'homme, femme, enfant et fœtus. Le Tutsi était à éradiquer quel que soit son âge, son sexe, la solution finale commandait de tous les supprimer.

Environ 5'000 enfants sont actuellement détenus; certains ont participé aux massacres, enrôlés de force par les miliciens interhamwe qui recrutaient dans toutes les couches de la population, d'autres sont là sur dénonciation mensongère d'un voisin qui entend s'approprier la terre du mineur. Aucun ne comprend son incarcération.

Autant les adultes que j'ai eu à défendre malgré la gravité des charges qui pesaient sur eux, malgré la peine de mort, malgré les conditions effroyables de leur détention m'ont toujours accueillie de façon étonnamment joviale et confiante, autant les mineurs m'ont tous bouleversée par leur regard totalement désespéré.

Dans ce monde carcéral, privé de leur famille, sans information sur leur procès, ils ont l'impression de vivre un cauchemar dont ils ne sortiront jamais.

Avant d'essayer de répondre à la question « quelle garantie et quelle défense pour les enfants soldats », il est impératif de donner quelques mots d'explication sur le génocide au Rwanda.

Les éléments d'explications que je fournis sont tirés entre autre du remarquable et volumineux ouvrage de « Human Rights Watch » dirigé par Alison Des Forges et publié aux éditions Kartala en anglais et en français, ainsi que le livre « Ebène, aventures africaines du journaliste roumain ».

Le Rwanda est un petit pays, si petit que souvent il n'est signalé que par un point sur la carte de l'Afrique, essentiellement constitué de montagnes « le pays des milles collines », son altitude moyenne oscille à 3'000 mètres.

Raison pour laquelle on le surnomme aussi le Tibet de l'Afrique à cause certes de son relief mais aussi de son originalité, de sa particularité, de ses différences.

Contrairement aux autres pays africains, souvent peuplé de très nombreuses ethnies, au Rwanda, seules trois ethnies sont présentes qui au demeurant partagent la même culture, le même territoire, la même langue et la même religion : les Hutus (85%), les Tutsis (14%) et les Twas (1%).

Déjà au milieu du 20ème siècle, de nombreux conflits ont opposé les deux ethnies.

Le temps ne fera que renforcer les mécanismes de discordes, exacerber le conflit et mènera à des collisions sanglantes pour aboutir à l'apocalypse : le génocide de 1994 qui a fait environ 800'000 morts.

Certains diront à propos de cette tragédie qu'en l'espace de quelques semaines, Satan a régné en maître dans ce petit pays d'Afrique déserté par Dieu.

Il est important de donner quelques mots d'explications sur ce génocide car il implique l'humanité entière. Comme l'a rappelé très justement le procureur américain lors du procès de Nuremberg, la véritable partie plaignante à votre barre est la civilisation.

Certes les Rwandais qui organisèrent le génocide et le mirent à exécution doivent aujourd'hui en assumer l'entière responsabilité.

Dans la mesure où la communauté internationale n'a rien fait pour empêcher et arrêter les massacres, elle partage la honte de ce crime.

Rappel du contexte historique

Le génocide de 1994 fait suite à de nombreux massacres perpétrés depuis le milieu de 20ème siècle, tous restés impunis.

Les Tutsis sont des éleveurs de troupeaux, ils ont longtemps été la caste dominante et leur principale et unique richesse est le bétail qui leur sert de référence universelle et permet de mesurer richesse, prestige et pouvoir.

Les Hutus eux, sont des agriculteurs.

Entre les Hutus et les Tutsi existaient des rapports qu'on pourrait qualifier de féodaux.

Au milieu du 20ème siècle, un conflit dramatique oppose progressivement les deux castes.

Le motif en est la terre.

Le Rwanda est petit, montagneux et peuplé (il ressemble à une forteresse).

Progressivement, avec la poussée démographique, les troupeaux de vaches des Tutsis envahissent la terre qui pour les Hutus, agriculteurs, est leur seule richesse et dont ils tirent encore aujourd'hui la majeure partie de leurs revenus.

C'est dans ce contexte que les Belges entrent en scène au Burundi dans les années 1950.

Parallèlement, une vague d'indépendance se fait jour dans l'ensemble des pays africains.

Les Tutsis, classe la plus éduquée et la plus ambitieuse, aspirent à cette indépendance.

Les Belges vont dorénavant s'appuyer sur les Hutus plus dociles et plus conciliants pour gouverner, renforçant l'antagonisme entre ces deux ethnies.

Les 1ers massacres commencent en 1959 faisant plusieurs dizaines de milliers de morts.

Une telle expérience laisse chez chaque Rwandais, bourreaux comme victimes, une trace douloureuse et durable.

Le drame rwandais est dans l'impasse, exactement comme le drame palestinien.

On se trouve dans l'impossibilité de concilier les causes de deux communautés revendiquant la même terre, trop petite pour les accueillir toutes les deux.

Rappelons que le Rwanda (tout comme le Burundi) a la densité de population la plus forte d'Afrique : 8'000'000 d'habitants sur une superficie de 26'338 km2 (dont environ 18'724 km2 seuls sont utilisables), soit une densité de 303 habitants au km2.

C'est au cœur de ce drame, dans cette impasse que germe la solution finale, au début faible et indéterminée, mais avec les années de plus en plus claire et impérieuse.

Le temps, la politique nationale et internationale ne feront que renforcer les antagonismes, exacerber les conflits pour aboutir en fin de compte à l'apocalypse.

Il serait trop long et hors de propos d'expliquer en détail dans le cadre de cet exposé comment le génocide à pu se dérouler, comment il a été soigneusement préparé, planifié pensé pour impliquer toute la communauté rwandaise, pour que la participation massive au crime fasse émerger un sentiment de culpabilité fédérateur.

Cependant, il est fondamental de savoir que :

Le génocide n'est pas seulement une rivalité ethnique mais également une lutte acharnée entre la dictature et la démocratie.

Parler, penser en catégories ethniques est trompeur et illusoire.

Cela efface et tue toutes les valeurs profondes, celles du bien et du mal, de la vérité et du mensonge en réduisant la réalité à une dichotomie superficielle et secondaire.

Pendant ses années de pouvoir, HabyaRimana, Président Hutu respecté par la communauté internationale (soutenu entre autre par la France qui y voyait un gouvernement démocratique car le Président était issu de la majorité, contrairement au Burundi où les Tutsis sont toujours restés au pouvoir) a érigé en 21 ans de pouvoir une dictature de fer.

A tel point que pour se maintenir en place, quand des dissensions se feront au sein même de son camp (chez les Hutus) il aura, lui et ses proches (le clan des Akazus) l'idée diabolique mais ô combien classique en politique pour ressouder la communauté Hutu, d'exacerber la haine contre les Tutsis, en faisant planer la menace d'un retour en force des Tutsis au pouvoir.

Il est vrai que les Tutsis qui se sont exilés à la suite des massacres de 1959 et d'après, se sont organisés à l'extérieur en formant une armée entraînée : le FPR (front patriotique rwandais) et veulent prendre leur revanche sur ceux qui ont tué les leurs.

En 1990, il y a une 1ère attaque importante du FPR et Habyarimana sauve de justesse son fauteuil présidentiel grâce à l'intervention des français !

La preparation du génocide

Pendant les 4 années qui suivirent, les Hutus vont s'organiser et l'armée passe de 5'000 à 35'000 hommes.

Il est créé une organisation de masse, paramilitaire, portant le nom d'Interhamwe littéralement "frappons ensemble".

Ce mouvement réellement populaire suit une instruction militaire et idéologique.

Les partis politiques prônent la haine raciale (le multipartisme a été introduit sous la pression internationale).

La principale source de propagande est la tristement célèbre « Radio Milles Collines ».

Elle lancera de nombreux appels dont celui ci :

« A mort, à mort, les tombes des Tutsi ne sont pleines qu'à moitié. Dépêchez-vous de les remplir jusqu'au bord ! »

Les tueurs frappèrent avec une rapidité et une sauvagerie qui évoque une aberration de la nature.

Pourtant le génocide fut avant tout la conséquence du choix délibéré d'une élite moderne, d'inciter à la haine et à la crainte pour se maintenir au pouvoir (ils croyaient que la campagne d'extermination rétablirait la solidarité des Hutus et les aideraient à gagner la guerre).

Comme les organisateurs, les tueurs qui exécutèrent le génocide n'étaient pas possédés par le démon, pas plus qu'ils n'étaient des automates poussés par des forces inéluctables; ils avaient choisi de faire le mal.

Des dizaines de milliers d'individus firent ce choix d'autant plus aisément qu'ils étaient mus par la peur, la haine ou l'espoir du profit.

Des centaines de milliers d'autres choisirent avec réticence de participer au génocide, certains ne s'exécutèrent que sous la contrainte ou parce qu'ils craignaient pour leur propre vie.

Les attaques étaient suscitées ou ordonnées par des autorités soit disant légitimes.

Il fut plus aisé pour ceux qui avaient des doutes en croyant ne rien avoir fait de mal, ou en prétendant le croire.

Le réseau serré des hiérarchies administratives et politiques qui caractérisaient le Rwanda depuis des années permit aux chefs du génocide d'établir un contact rapide et facile avec la population, sans pour autant garantir sa participation massive aux tueries.

Les autorités parièrent sur les craintes et l'avidité des gens, et certains d'entre eux prirent en effet leurs machettes et furent prêts à passer à l'acte.

Beaucoup de jeunes gens pauvres répondirent sans hésiter à la promesse de récompenses.

Sur les 60% des Rwandais qui avaient moins de 20 ans, des dizaines de milliers avaient peu d'espoir d'obtenir la terre qui leur permettrait de s'installer, ou le travail nécessaire pour nourrir une famille.

Ce sont ces jeunes hommes, dont de nombreux déplacés par la guerre qui vivaient dans des camps à proximité de la capitale, qui fournirent une bonne partie des 1eres recrues aux milices Interhamwe qui furent entraînées dans les mois précédant le génocide et dans les jours qui suivirent son déclenchement.

Les réfugiés du Burundi, qui avaient fui l'armée de ce pays dominé par les Tutsi, suivirent également un entraînement militaire dans leurs camps et attaquèrent les Tutsis rwandais sans se faire prier, après le 6 avril.

D'autres tardèrent à venir et d'autres encore refusèrent, même au péril de leur vie.

Le role de la communauté internationale

Les dirigeants français, belges et américains ainsi que les nations unies savaient que des massacres de grande ampleur se préparaient, mais ils ne prirent pas les mesures nécessaires pour les empêcher.

Conscients dès le commencement que les Tutsi étaient la cible d'une campagne d'extermination, les principaux acteurs étrangers refusèrent d'admettre qu'il s'agissait d'un génocide.

Une force militaire aurait été nécessaire pour stopper les activités des dirigeants et des fanatiques. Une force relativement modeste aurait suffit dans les premiers temps.

Non seulement, ils n'envisagèrent même pas cette solution, mais ils s'abstinrent en outre, et ce des semaines durant, d'user de leur autorité politique et morale pour contester la légitimité du gouvernement génocidaire, ils refusèrent de supprimer tout financement à l'avenir et de réduire au silence la radio qui incitait aux tueries.

Des mesures aussi élémentaires auraient amoindri la force des autorités favorables aux massacres de grande ampleur et encouragé l'opposition de Rwandais à la campagne d'extermination.

Plutôt que dénoncer le mal et expliquer au public ce qu'il fallait faire pour y mettre un terme, les responsables nationaux comme internationaux insistèrent sur la nature «déroutante» de la situation, le «chaos» et «l'anarchie».

La plupart des journalistes se contentèrent d'exploiter l'horreur sans faire l'effort d'aller au-delà des explications faciles.

Les décideurs étrangers traitèrent le génocide comme une conséquence tragique de la guerre, plutôt que comme un mal qui devait être isolé et attaqué directement.

Habitués à s'occuper de guerres et non de génocides, les diplomates traitèrent à la manière habituelle la partie du problème qui leur était familière, en préconisant un dialogue entre les parties et en tentant d'obtenir un cessez le feu.

Pour accroître leurs chances de succès, ils s'efforçaient de maintenir une position de neutralité entre les parties, ce qui impliquait de ne pas condamner le génocide.

Certains décideurs, notamment en France et en Belgique, s'accrochaient à l'idée qu'une majorité ethnique correspondait nécessairement à une majorité démocratique.

Ils ne pouvaient pas de résoudre à condamner le génocide, car ils craignaient de favoriser une éventuelle victoire du FPR suivie de l'instauration d'un gouvernement dominé par la minorité.

Pendant les premières semaines, lorsqu'une dénonciation ferme du génocide aurait pu sauver des centaines de milliers de vies, les dirigeants de la communauté internationale refusèrent de prendre les initiatives les plus simples, qui n'exigeaient ni force militaire, ni aucune dépense.

Tous complices dans le refus d'employer le terme de «génocide», ils ne dénoncèrent ce mal ni collectivement (ce qui aurait été le plus efficace) ni même individuellement.

Condamner le mal, avertir des conséquences et nommer les autorités apparemment responsables aurait démontré clairement aux Rwandais que ces dirigeants étaient considérés comme des hors la loi par la communauté internationale.

Justice et responsabilité : l'engagement d'ASF

Profondément interpellé par le chaos humain et juridique qui fait suite au génocide ASF (Avocats Sans Frontière) décide d'œuvrer à la restauration du système judiciaire et d'encourager l'exercice de la justice car les coupables doivent être sanctionnés; et les innocents disculpés des présomptions erronées, des culpabilités qui pèsent sur eux.

Il est moralement et légalement justifié, comme il est politiquement sain, de réclamer que justice soit faite.

La paix ne pourra être restaurée au Rwanda et dans la région que si justice est faite.

Etablir la responsabilité des Hutus pris individuellement est aussi le seul moyen de dissiper l'impression de culpabilité collective de tous les Hutus.

L'hypothèse non vérifiée et erronée selon laquelle tous les Hutus ont tué des Tutsi, ou ont d'une manière ou d'une autre au moins participé activement au génocide, est de plus en plus répandue tant parmi les Rwandais qu'à l'étranger.

Si le jugement est nécessaire pour la victime et pour l'ordre international également concerné par le génocide, inculper un peuple entier n'a pas de sens même si le massacre des Tutsis comme celui des juifs ou des cambodgiens peut paraître tristement anonyme.

Des procès équitables ainsi que d'autres mécanismes de manifestation de la vérité, comme des commissions d'enquête, peuvent contribuer à mettre au point une version crédible pour tous les rwandais des événements de 1994, et par conséquent susceptibles de promouvoir la réconciliation, aussi lointaine que puisse être cette perspective.

Face à cette priorité, le Rwanda soutenu par la communauté internationale, a tenté de reconstruire son système judiciaire : des juges, des procureurs ont été formés,

une législation spécifique fut promulguée le 30/08/96 visant la répression du crime de génocide commis au Rwanda.

Cette loi répartit les accusés en quatre catégories en fonction de l'ampleur de leur participation présumée au crime, et instaure la procédure d'aveux.

Mais sans avocat, à quelle crédibilité la justice pouvait-elle prétendre ?

Isolés, trop émotionnellement impliqués pour être capables d'assurer pleinement leur rôle, les avocats rwandais se sont retrouvés dans l'incapacité matérielle de faire face aux procédures, mettant en cause non seulement des milliers de détenus (la plupart incarcérés sur simples dénonciations) mais une infinie multitude de victimes ne disposant d'aucun autre moyen légal pour représenter leurs intérêts et réclamer l'exercice de la justice.

Face à l'importance de l'enjeu, ASF a mis sur pied son projet « Justice pour Tous » au Rwanda, ONG humanitaire qu'on pourrait qualifier de la deuxième génération après l'aide d'urgence.

Une dizaine d'avocats de nationalité différente (dont 50% d'africains) recrutés et formés à la spécificité de leur intervention par l'association, se succèdent chaque mois pour assurer au Rwanda la défense des victimes des génocides et celle des droits de la défense.

Dans un pays où la tradition de l'avocat n'existait pas, où les procès se déroulent au sein d'une population en état de choc, où l'humainement inacceptable réalité du génocide impose son ombre violente, ASF a su s'imposer pour assister tueurs et victimes, faire prévaloir l'idée du procès équitable qui respecte les droits de la défense et refuse l'arbitraire.

Les mineurs en prison

Aujourd'hui le Rwanda se trouve confronté à un phénomène unique dans son histoire, à savoir la présence dans ses prisons de plus de 100'000 personnes, dont environ 5.000 enfants accusés d'avoir participé activement aux actes de génocide.

Aux termes de l'article 77 du code pénal rwandais, les mineurs qui sont compris entre 14 et 18 ans au moment des faits sont soumis à la même procédure, mais bénéficient simplement d'une excuse de minorité qui diminue leur peine en principe de moitié par rapport à celle qui serait appliquée à un majeur.

Par ailleurs, le mineur de moins de 14 ans n'est pas responsable pénalement et relève de la réhabilitation sociale.

Il est évident que les conditions de détention ne remplissent pas les standards internationaux exigés, notamment pour les mineurs.

Ainsi, sur 18 prisons, seules 6 ont des compartiments réservés aux enfants.

Dans les prisons où les enfants et les adultes ne sont pas séparés, les enfants sont très souvent victimes des abus sexuels et des traitements brutaux.

Outre les prisons, il existe des cachots (environ 154) qui sont actuellement dans des conditions d'hygiène déplorable.

Il existe pourtant certains centres de rééducation comme Gitagara, mais les enfants restent malgré tout soumis à une discipline trop rigoureuse et manquent de supports psychologiques adéquats.

Il est évident que ces milliers d'enfants en prison et dans les cachots constituent un problème sérieux à la communauté et au pays en général.

Cependant, force est de constater que très peu de mesures sont prises pour développer une politique préventive de la délinquance juvénile et de la réintégration de ces enfants une fois libérés de ces prisons et cachots.

La procédure pénale en tant que telle ne comporte malheureusement aucune particularité pour les mineurs.

Or, ils sont deux fois plus victimes de la lenteur de la justice car ils ne connaissent pas leurs droits et sont souvent dans l'ignorance totale des charges qui pèsent sur eux.

L'intervention d'ONGs comme ASF, Save the Children, le CICR, RCN (réseau des citoyens) ont permis d'améliorer leur sort.

ASF a obtenu qu'un certain nombre d'entre eux soient libérés du simple fait de leur minorité.

D'autres ont pu voir leurs conditions de détention améliorées.

Enfin, leur recensement systématique a permis de mettre à jour leurs dossiers afin qu'ils soient examinés en priorité.

Dorénavant, dans la plupart des prisons, il est toujours fait mention de la répartition des prisonniers entre femmes, hommes et mineurs.

Pourtant il faut savoir que le Rwanda a ratifié la plupart des textes juridiques internationaux concernant les mineurs et notamment la convention internationale des droits de l'enfant.

Mais le problème des mineurs détenus est quantitativement peu important face aux autre détenus (beaucoup en valeur absolue : 5'000, mais peu en valeur relative : 5% de la population carcérale).

Six ans après les premiers procès, les prisonniers gênent; leur nombre constitue un poids plus lourd que leur emprisonnement.

Le contentieux de génocide est un contentieux de masse où les mineurs ne pèsent pas lourd !

Quand après deux ans d'application, le gouvernement rwandais s'est rendu compte que le rythme des procès ne permettait pas de juger l'ensemble des détenus dans un délai raisonnable, il a mis en place les procès groupés.

C'est ainsi qu'entre 50 et 150 prévenus sont jugés en même temps, dans des procès fleuves qui durent plusieurs semaines.

Dans ces conditions, il est difficile d'assurer une bonne défense, c'est à dire une défense individualisée, et le mineur qui comparait entre les 50 autres prévenus n'est qu'un détenu parmi d'autres : il ne bénéficie d'aucune protection particulière.

Aborder le problème des mineurs en prison est aussi incongru et déplacé que d'aborder l'abolition de la peine de mort actuellement au Rwanda.

En théorie, oui certains magistrats sont conscients qu'il faudrait réserver un sort particulier aux mineurs, mais en pratique le manque de moyen ne permet pas de traitement différencié pour cette catégorie de la population.

Beaucoup de mineurs ont participé au crime de génocide sous la contrainte de l'autorité d'un parent, d'un voisin, d'un milicien.

Aux yeux de la population, il est avant tout un coupable de génocide quelque soit son âge, son manque de discernement, sa responsabilité réelle et ce d'autant plus que lorsqu'il comparait devant ces juges, il s'est écoulé plusieurs années : il est devenu majeur !

Les avocats d'ASF, nourris de principes de droit pénal élaborés, font valoir systématiquement l'excuse de minorité lorsqu'un jeune comparaît devant le Tribunal.

Mais cette garantie perd beaucoup de sa valeur lorsqu'elle n'est pas soutenue par une procédure pénale adaptée au mineur.

Ainsi, quand on juge un mineur plusieurs années après les faits, les années d'incarcération ont souvent altéré considérablement ses chances de réinsertion et meurtri profondément sa personnalité !

De ce point de vue, l'instauration de la Gacaca (se prononce gachacha) votée en octobre 2000, littéralement « La Justice sur le gazon », ne va pas dans le sens de l'amélioration des garanties juridiques des mineurs.

La Gacaca est un système de justice originale, participative, fondée sur des assemblées populaires qui éliront au niveau de chaque circonscription administrative un jury populaire chargé de juger les coupables du génocide, excepté ceux de la catégorie 1 (rappelons qu'elle comprend les instigateurs, organisateurs, planificateurs du génocide ; en clair tous ceux qui ont agi en position d'autorité pour diriger et ordonner les massacres).

Ces jurys populaires qui éliront un président (soit au total 27'000 présidents de Gacaca qui vont être recrutés !) siégeront en l'absence de ministère public et de défenseur.

Le 4/10/2001, les électeurs rwandais ont élu les 250'000 jurés !

L'objectif de la Gacaca dont le but premier est très louable (celui d'épuiser le contentieux dans un délai raisonnable), s'il réjouit les innocents emprisonnés sur la base de dénonciations mensongères, fait craindre le pire en ce qui concerne les mineurs.

Car aucun défenseur, avocat ou autre, ne sera présent pour rappeler à la population qu'il doit bénéficier de l'excuse de minorité.

Il faut espérer que le manuel préparé à l'attention des présidents de juridiction de Gacaca et qui comporte une mention pour les mineurs relative à l'excuse de minorité ne sera pas oublié et sera suffisamment pris en compte.

En plaçant face à face bourreaux et victimes pour que la vérité meurtre soit dite, les instigateurs de la Gacaca espèrent que les rescapés, les ayants droits et les victimes pourront faire leur deuil.

Que les bourreaux solliciteront le pardon.

L'unicité et la réconciliation nationale sont à ce prix.

quelles mesures de RÉHABILITATION pour les enfants traduits devant les instances judiciaires ?

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Résumé
L'auteur part du principe que l'enfant accusé de crimes de guerre ne doit pas être placé en mains de la justice mais doit bénéficier de *mesures de réhabilitation*. *L'appui psychologique* doit être réalisé par des experts parlant la langue de l'enfant, connaissant sa culture et bénéficiant de moyens d'investigations. *L'éducation civique* doit permettre à l'enfant de réapprendre les valeurs fondamentales, tel que le respect et l'égalité, et les droits de l'enfant. *L'éducation*, soit l'apprentissage ou les études librement choisi par l'enfant dans un centre de réhabilitation doit lui permettre de préparer son insertion dans la société. *La réintégration familiale* doit s'effectuer le plus rapidement possible, afin de préparer l'entourage de l'enfant à un encadrement. Finalement, tous les acteurs, juges, enseignants, policiers, assistants sociaux et le public en général doivent être sensibilisés aux droits de l'enfant.

Resumen
El autor parte del principio de que el niño acusado de crímenes de guerra no debe ser puesto en manos de la justicia, pero debe gozar del beneficio de *Medidas de Rehabilitación.*

El *apoyo psicológico* debe ser realizado por expertos que hablen el lenguaje del niño, con un conocimiento de su cultura y gozando de los medios de investigación adecuados. La *educación cívica* debe permitir al niño aprender de nuevo los valores fundamentales, tales como el respeto y la igualdad, y los derechos del niño. La *educación,* ya sea el aprendizaje o los estudios libremente elegidos por el niño en un centro de rehabilitación, debe contribuir a la preparación de su inserción en la sociedad. La *reintegración familiar* debe efectuarse lo más rápidamente posible con el fin de preparar el entorno del niño dentro de un marco. Finalmente, todos los protagonistas, jueces, profesores, policías, asistentes sociales y el público en general, deben estar sensibilizados soben los derechos del niño.

Summary
The author starts from the principle that a child accused of war crimes should not be placed in the hands of justice, but must benefit from *Measures of Rehabilitation*. Experts speaking the language of the child, knowledgeable of his culture and benefiting from means of investigation must carry out *Psychological Support*. *Civic education* must allow the child to relearn fundamental values, such as respect and equality, and the rights of the child. *Education*, be it training or studies chosen freely by the child, in a centre of rehabilitation, must enable him to prepare his insertion into society. *Family Reintegration* must be carried out as soon as possible, in order to prepare the surroundings of the child within a framework. Finally, all the actors, judges, teachers, police officers, social workers and the public in general must be sensitised to the rights of the child.

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Tout comme on peut dire que les mots enfance et guerre devraient s'exclure, je peux aussi affirmer et chacun avec moi, que les mots enfant et juste devraient être associés. Dans le sens de l'homme juste, celui qui n'a pas de malice. L'enfance est le moment de l'innocence par excellence. C'est cette tranche de la vie des hommes et des femmes qui est normalement synonyme de tranquillité ; elle est associée à l'insouciance et à l'espérance infinie. Malheureusement cela est loin d'être le cas de nos jours. Dans de nombreuses régions du monde spécialement. A tel point que l'enfant devient l'objet de justice, de plus en plus et dans des situations de plus en plus inhabituelles.

Certaines situations nous étaient familières, qu'il s'agisse d'ailleurs de la justice donnée ou de la justice déniée aux enfants.

Je me souviens : un jour, au Commissariat de police de la ville de Ouagadougou, des jeunes de 17 ans, attrapés à voler je ne sais quoi au marché, qui étaient enfermés sans jugement depuis des semaines. On trouvait cela dommage et on en discutait entre adultes comme d'une situation déplorable mais pas dramatique. Ils allaient être rendus à leurs parents.

Devant le bureau de poste à Bujumbura, au Burundi, un adolescent s'est emparé d'un sac à main d'une dame en stationnement. Il fut intercepté par une foule en délire, conduit au Commissariat de police où il fut battu, puis laissé pour mort. Il s'en tirera avec une côte cassée. Je ne suis pas certain de ce que les gens pensaient,

mais la plupart probablement n'auraient pas considéré que cela valait une croisade contre le pouvoir.

On entend ici et là – au Brésil, en Colombie, que de petits voleurs à la tire sont abattus par la police sans autre forme de procès.

Ces faits et situations ont incité les praticiens de la protection de l'enfance à se mobiliser pour demander une justice pour les enfants. Leur argumentation est claire et simple :

« Alors que nous sommes tous d'accord que les enfants ont droit à certains droits fondamentaux comme la nourriture, les soins de santé, l'éducation etc., le droit à une justice pour les enfants est plus difficile à faire accepter ».

Ceci dit, la plupart des pays jugent des mineurs et les mettent en prison car les mineurs comme les adultes peuvent commettre des actes répréhensibles et comme les adultes ils doivent répondre de leurs actes. Nous ne pouvons donc pas jouer à l'angélisme. Et je pense que nous serons tous d'accord que le mineur a droit à une justice correcte, voire un système juridique propre, ayant pour objectif de l'aider à retourner rapidement dans la société, à s'y ré-intégrer de manière productive.

Les enfants criminels de guerre

Cependant les enfants ne devraient pas être rendus responsables d'actes que des adultes leur imposent. Et c'est cela ma thèse. Lorsque, en RDC, des enfants sont condamnés à mort par la Cour d'Ordre Militaire, quelque chose va mal dans cette République.

Je viens d'un pays où des milliers de jeunes de moins de 18 ans sont accusés d'avoir participé à un génocide, ou à des infiltrations criminelles.

Au Sri Lanka, des jeunes de 18 ans n'ont connu que la guerre et ont été forcés d'y prendre part; en Angola, en Ouganda, des jeunes sont enlevés et enrôlés de force dans des combats que se livrent les gouvernements et les rebelles. Au Soudan, c'est par milliers que des jeunes sont privés de leur jeunesse et forcés de porter les armes, de tuer y compris les membres de leurs familles ou groupes.

Dans ces guerres, les enfants sont d'abord des victimes : ils sont premièrement arrachés à leur famille et à leur croissance normale pour être jetés dans la violence. Violences dont ils sont les témoins, puis qu'ils subissent avant d'en devenir des acteurs. Même si ce n'est pas nécessairement dans cet ordre, la séquence est pratiquement immuable : les enfants pour commencer sont témoins de violences infligées aux ennemis dans une guerre sans règle, au pire ils sont eux-mêmes personnellement menacés de mort, ne serait-ce que quand ils manifestent quelque résistance. Ils souffrent de faim et de soif, ou sont mal-nourris, ils sont obligés de se déplacer fréquemment et d'affronter toutes sortes de dangers, ils sont sujets à des coups répétés et à des blessures, à des mutilations, etc.. et les filles sont violées ou contraintes à l'esclavage sexuel. Le fait même d'être forcés de tuer ou entraînés à user des armes à feu constitue une violation grave de leur innocence et un gâchis de leur avenir. Ce n'est pas un crime à leur imputer.

Un quadruple désordre

Bien que ce ne soit pas vraiment le sujet de mon exposé, je considère qu'il est important de rappeler quelques vérités qui doivent nous empêcher de nous voiler les yeux en pensant que nous parlons de choses simples. Dans des rencontres comme celle-ci nous avons tendance à rester policés et à traiter tout le monde avec égard. Cela limite notre capacité de distinguer ce qui est normal et sur quoi nous pouvons véritablement agir de ce qui est grave et hors norme.

En effet les enfants sont acteurs dans la guerre que se font les adultes dans les pays et les régions qui connaissent un quadruple désordre.

Désordre politique, dans la mesure où le pouvoir n'est pas représentatif de l'intérêt général, où l'accès au pouvoir s'opère le plus souvent par la force et son maintien est assuré par l'élimination de tout contrôle. Les différentes factions qui se disputent le pouvoir n'ont pas d'autres objectifs que le pouvoir. Celui-ci n'a rien de démocratique.

Désordre économique, dans la mesure où les élites qui se font la guerre sont en fait des prédateurs du patrimoine commun qu'ils s'approprient sans vergogne. Leurs Républiques sont des territoires dans lesquels la pauvreté s'est installée de manière généralisée.

Désordre social, dans la mesure où les réseaux sociaux, familiaux notamment, et les chaînes de solidarité sont presque totalement détruites.

Désordre culturel, enfin par l'adoption de modèles de comportement et de vie importés, mal adaptés à la réalité. Ce sont comme des copies illisibles de valeurs oubliées : le partage équitable, le soutien du faible, l'amour de la patrie.

Dans ces conditions, les enfants sont des proies faciles, car pour la majorité d'entre eux, les droits de l'enfant dont nous parlons tant sont inconnus : droit à l'éducation, à la nourriture saine et suffisante, à l'eau potable, à la protection contre l'exploitation par le travail, aux soins de santé. Outre l'inexpérience, les conditions de dénuement dans lesquelles ils vivent dans les pays et régions où l'on les exploite comme soldats, les rendent extrêmement vulnérables.

Je vous donne seulement deux exemples en matière scolaire. Dans l'Est de la RDC, selon l'UNICEF, 9 enfants sur 10 ne sont pas scolarisés. Au Rwanda, en ce début d'année scolaire 2001-2002, il y avait de la place pour uniquement 15'700 sur environ 64'000 enfants pouvant entrer à l'école secondaire, soit un peu plus d'un quart (26%). Tous les autres sont des proies faciles à qui promet le paradis.

Ce n'est donc pas un pur hasard que ce soit dans des pays très pauvres, sous des régimes répressifs et des régions qui connaissent l'instabilité politique et économique que l'on trouve aussi les enfants accusés de crimes. Se pose-t-on jamais la question de savoir pourquoi on parle de la RDC et pas de la Belgique qui fut sa métropole, du Rwanda et pas de la Suisse qui a à peu près la même configuration ethnique ? Simplement parce que la Belgique, la Suisse et tous les autres pays de même niveau social et économique ont depuis longtemps atteint le seuil où tout enfant en âge scolaire va à l'école, où le revenu minimum par famille permet à celle-ci de subvenir

aux besoins de tous ses membres, où le pouvoir est mis sous contrôle par une population éveillée à ses intérêts et quasi-maîtresse de ses destinées. Je veux dire que nous ne sommes pas en face de deux types d'humanités dont l'une serait tarée et l'autre exempte de pulsions aux désordres et à la guerre.

Nous sommes en face de deux mondes dont l'un est tellement dépourvu que les prédateurs font miroiter un hypothétique paradis à des enfants, sachant que ce sont d'excellents soldats, sans peur et très dociles. Ainsi donc, on ne peut pas laisser ces enfants dans cette situation et espérer que le seul appel à partir de Genève, New York ou Copenhague va changer quelque chose. Nous y reviendrons peut-être dans nos recommandations. Car il n'y a pas que l'éducation. Il y a tout ce qui va avec. Prenez par exemple les pays de transition (ex URSS). Le chômage y touche 30% des jeunes entre 15 et 25 ans. Un phénomène que leurs parents n'avaient pas connu sous le régime communiste. Pourquoi l'UCK au Kosovo et ou les autres mouvements de libération n'iraient pas pêcher entre leurs rangs ?

Les mouvements visant à protéger ces enfants ont accompli des progrès remarquables : tentatives sérieuses en vue d'arriver à interdire l'utilisation des mines anti-personnelles; l'importante étude (1996) par Mme Graça Machel sur l'impact des conflits armés sur les enfants ; la Conférence internationale sur les enfants touchés par la guerre qui s'est tenue à Winnipeg (septembre 2000) qui a contribué à sensibiliser les gouvernements, les ONGs et les experts du monde entier sur cette plaie de notre temps.

Mais à aucun moment ces différentes initiatives et appels ne vont au bout de la logique qui est que l'intérêt premier de l'enfant, le traitement de l'enfant en tant que tel NE DEVRAIT PAS ÊTRE NEGOCIABLE.

C'était je crois une erreur de l'histoire et une marque de compromis douteux que d'avoir gardé dans la Convention sur les Droits de l'Enfant, art 38 par 2, que les Etats parties prennent toutes les mesures possibles pour veiller à ce que les personnes n'ayant pas atteint l'age de quinze ans ne participent pas directement aux hostilités.

Depuis lors on court après l'erreur pour la corriger. Le protocole additionnel adopté par l'Assemblée Générale des Nations Unies le 25 mai 2000, grâce aux efforts incroyables des ONGs, pour élever l'âge à 18 ans (qui correspond à la définition de l'enfant dans la Convention) est un bon progrès. Mais outre que dans les faits on est loin du compte, que les Etats traînent les pieds pour ratifier ce protocole, il est simplement dramatique que les responsables, soient-ils des Etats ou des groupes armés, les protagonistes dans les combats d'aujourd'hui en soient venus à considérer la valeur combattante des enfants comme une donnée de la guerre que l'on peut aménager au gré des âges et des conventions.

Ainsi on en arrive au point où, pour la première fois dans l'histoire, des enfants sont accusés d'avoir commis des crimes contre l'humanité. Plus de 4'000 au Rwanda se sont retrouvés en prison sous cette accusation. Leur catégorie se répartit de part et d'autre de l'âge de responsabilité criminelle qui est de 14 ans accomplis. C'est à dire que l'on trouve des enfants accusés de participation avant d'avoir atteint cet âge et ceux qui étaient entre 14 et 18 ans (l'âge de maturité). Ceci est une aberration. Ces enfants ne sont pas objet de la justice mais demandent d'être repris et rendus à leur

jeunesse et à leur innocence. La justice devrait les relâcher afin qu'ils bénéficient de mesures d'accompagnement qu'ici nous appelons les mesures de réhabilitation.

Toute poursuite en justice impliquant des enfant-soldats doit se faire dans un optique réparatrice, garantissant la guérison morale et physique ainsi que la réinsertion.

Appui psychologique

Au sortir de l'horreur, le jeune enfant a d'abord droit à être écouté, encouragé à raconter ce qu'il a vécu afin de pouvoir l'évacuer. J'ai devant les yeux cet homme dans un centre psychiatrique de Ndera au Rwanda qui, après le génocide, se promenait dans les corridors et le jardin la main sur la tête disant qu'il portait le cadavre de sa victime. Il faut éviter à l'enfant de porter ses victimes, son fardeau, pour tout le reste de sa vie. Il faut l'aider à exprimer ce qu'il a vécu en lui assurant une écoute bienveillante et sans jugement.

Mais cela est plus vite dit que réalisé. Car de quelles ressources humaines et de quels outils méthodologiques dispose-t-on ? La réhabilitation psychologique n'est pas comme des soins de santé. Elle fait appel à des éléments personnels et culturels qu'il faut bien maîtriser. On est aussi face à des enfants donc à une dynamique psychologique plus difficile à traiter.

En terme de ressources humaines, dans la plupart des cas ce sont des experts venus d'ailleurs qui sont chargés d'accompagner la cure. Pas mal d'experts improvisés, souvent ne parlant pas la même langue que les jeunes et donc obligés de recourir à l'aide d'interprètes. Comment donner la parole quand soi-même on ne l'a pas ?

Les moyens d'investigation font également défaut. Les praticiens même expérimentés en sont réduits à inventer la manière d'accéder au secret qui dort dans l'esprit meurtri du jeune. Il est donc nécessaire de former des intervenants locaux. Ce qui ajoute aux difficultés et requiert une course contre le temps.

On pourrait aussi envisager de recourir à des méthodes non verbales. Par exemple le dessin. Cette technique a été utilisée avec succès pour des enfants réfugiés de la violence dans un centre d'accueil en Grèce. Avec un praticien facilitateur, face à des encadreurs de leur propre groupe, les enfants s'expriment dans leur propre langue, racontent et se racontent les événements et les évoquent ensuite sous forme de dessins. Ceci peut exiger quelques exercices d'apprentissage du dessin. C'est une sorte de jeu pour maîtriser les techniques élémentaires portant sur les objets le plus souvent évoqués dans l'expression orale. Puis ces dessins sont commentés toujours dans le propre dialecte des enfants.

Le résultat a donné lieu à une exposition d'une véracité extraordinaire dépeignant avec acuité les faits et les sentiments de l'histoire, je devrais dire « du drame » de ces enfants. Le fait que l'exercice était collectif et sous forme d'un accompagnement d'apprentissage n'enlève rien à son caractère curatif au niveau individuel. Les peurs enfouies, les traumatismes subis, les rancœurs accumulées et les frustrations sur l'avenir y apparaissent avec clarté. Alors on peut aller en profondeur et ramener le passé en surface afin de pouvoir le conjurer

L’éducation civique

Il convient de prendre conscience que des enfants qui ont été forcés de commettre les horreurs peuvent prendre goût au pouvoir que confèrent les armes, croire au droit du plus fort qui est ici le droit du plus fou, que toutes les valeurs sont jugées à l’aulne des idéologies qui inspirent la guerre ou la guérilla. Mais ce sont aussi des enfants éveillés à la réalité et au discours de la politique.

Il faut donc avec eux revenir à l’humain, au respect de l’autre, à la compassion, au respect de ce qui est respectable, à l’influence du libre arbitre éclairé, aux notions d’égalité, de respect de l’autre.

Les enfants soldats démobilisés ont besoin de trouver un moment d’isolement pour ré-apprendre les valeurs qui fondent la vie commune. Ils doivent aussi apprendre les droits de l’enfant : l’enfant qu’ils ont été et qu’ils doivent autant que possible continuer à être, les droit des enfants qui seront les leurs afin que leur sort soit différent. Ceci peut se faire dans des camps de solidarité comme un service militaire à la manière des scouts, pour cimenter les liens entre eux qui ont partagé le même parcours. Dans ces camps, la discipline et la conscientisation vont de pair.

On peut aussi utiliser des exemples de ce que font les autres enfants dans d’autres lieux et d’autres environnements. Les enfants sont de parfaits imitateurs et s’identifient facilement à d’autres enfants.

Un autre dessein de vie

Le lieu de réhabilitation doit être aussi un lieu pour reformuler avec l’enfant un autre dessein de vie. Recueillir en même temps ses confidences au sujet des traitements qu’il a subis, des difficultés rencontrées et l’aider à reformuler un projet d’avenir.

Il semble que la plupart des enfants désirent étudier. Le désir d’étudier n’est pas nécessairement séparé de celui de faire carrière, mais il vise indirectement le souci de rentrer dans le cycle de l’enfance normale.

Pour que ce projet de vie soit autre chose que le rêve d’un moment il faut l’inscrire dans un effort global de réhabilitation sociale et économique. On a parlé de chercher vers un enseignement technique débouchant réellement sur le désenclavement personnel. Mais pour sortir des remèdes cosmétiques, il faut véritablement redéfinir les priorités sur le plan national et dans la coopération internationale. A ce propos, des propositions comme l’initiative 20/20 du Sommet sur le Développement social (Copenhague) devraient sortir des rapports et se traduire dans la réalité. Je rappelle que cette initiative demande aux pays en développement d’abord de faire eux-mêmes une autre échelle de priorités en consacrant 20% de leurs budgets nationaux aux services de base tels que la santé et l’éducation. Elle demande parallèlement aux pays donateurs d’allouer 20% de leur aide à ces mêmes services. Cette aide peut commencer par les enfants dont nous parlons.

Pas plus tard qu’il y a quelques mois le Secrétaire d’Etat aux affaires sociales du Rwanda me disait qu’elle ne trouvait pas de moyens de s’occuper de quelque 600

enfants accusés de génocides ou d'infiltration actuellement en instance de réhabilitation. Or une aide destinée à cette catégorie de citoyens n'est pas seulement un acte humanitaire mais une contribution à la stabilisation de la situation dans un pays qui sort d'une crise grave. C'est un apport à la paix pour l'avenir. C'est un investissement pour un développement équitable.

Donner un autre horizon à ces enfants c'est casser le cycle du désespoir. Car comme on l'a dit et on doit le répéter, les enfants vont joindre les criminels parce que leurs propres horizons sont bouchés. Vivant dans la misère et sans perspectives, ils se disent que c'est la mort de toute façon. Ou bien je m'y casse ou bien j'aurai la chance de m'en tirer avec les futurs nouveaux maîtres s'ils gagnent.

Les enfants doivent bénéficier d'encadrement autour d'activités intéressantes, favorisant le renforcement du sentiment d'auto-estime, le sens de responsabilité, et ouvrant sur de nouvelles connaissances objectives et utiles. Je pense qu'il faut ici laisser le choix aux responsables et ne pas toujours dicter les métiers qui seraient plutôt mieux indiqués que d'autres. En étant d'abord à l'écoute de ces jeunes, on peut arriver à identifier des orientations de formation qui seront poursuivies à la fin de la période intensive dans un centre de réhabilitation.

Le droit à l'éducation c'est d'abord le droit à préparer son insertion dans la société pour y jouer un rôle productif, pour soi-même. Dans bien des cas, le choix est dicté par la possibilité ou non de trouver le personnel d'encadrement (spécialisé) et un débouché sur le marché. Il faudrait sans doute penser autrement : trouver le personnel spécialisé en fonction du projet de formation envisagé et des options réelles pour le travail après.

La réintégration dans la famille,

la communauté et la société

Le recrutement des enfants dans les armées ou les milices et leur entraînement dans les violences atteste également de la faillite de l'institution familiale. Soit qu'ils ne peuvent pas ou ne savent pas, les parents ne jouent plus leur rôle de rempart. Mais qu'à cela ne tienne. Le séjour des enfants accusés de crimes dans des centres de rééducation ou autres lieux de réhabilitation doit être limité dans le temps. Le plus vite possible il faut retrouver les parents les préparer, ainsi que leur entourage, à reprendre le jeune et l'encadrer. A ce niveau, les solidarités familiales qui se sont distendues avec le temps et les agressions d'autres cultures peuvent être restructurées en faisant appel aux leaders dans la communauté, aux réseaux des églises, à la vigilance de l'administration locale.

Cependant il ne faut pas perdre de vue que les familles elles-mêmes sont souvent dans un état de délabrement total. Vingt-cinq de guerre en Angola. Que reste-t-il aux familles pour réintégrer leurs enfants ?

Sensibiliser tous les acteurs aux droits de l'enfant

Parallèlement on doit trouver le moyen d'apprendre le droit des enfants à ceux qui sont chargés de s'en occuper. C'est incroyable ce que beaucoup de gens parlent des droits de l'enfant alors qu'en dehors des rencontres comme les nôtres la plupart de nos concitoyens en ont une connaissance tronquée, celle que véhiculent les grosses manchettes de journaux à certaines rares occasions.

Par exemple, la seule tentative que je connaisse de vulgarisation du texte de la Convention sur les Droits de l'Enfant en Afrique noire, jusqu'à il y a trois ans, c'est l'adaptation qu'en a faite une assistante sociale togolaise. Dans les milieux que je fréquente en Afrique, peu de gens savent plus que l'intitulé de cette convention.

Mais les juges, les enseignants et éducateurs, les policiers, surtout ceux qui ont donc à côtoyer ces jeunes devraient recevoir des briefings appropriés.

Une question qui empoisonne souvent l'approche sympathique aux enfants accusés de crimes, c'est le doute possible sur leur âge. On a surtout insisté sur le besoin de vérifier l'âge.

L'acharnement judiciaire ou policier autour de cette question peut trouver une réponse seulement lorsque l'un des droits fondamentaux des enfants sera rempli, à savoir : avoir une fiche de naissance.

J'ai été surpris en bien lorsqu'un des groupes qui fait de la promotion des droits de l'enfant s'est embarqué sur un projet visant l'enregistrement des enfants dans une région d'Asie. La justification tournait autour de ce problème de l'enrôlement dans les armées ou les milices. Et le gouvernement suisse comme l'UNICEF ont généreusement soutenu cette initiative. Imaginez-vous que, à côté de ceux qui dépensent beaucoup d'énergie pour assurer soins de santé de base et vaccinations, on trouvait beaucoup d'autres qui assurent que tous les enfants du monde soient enregistrés à la naissance, afin que, entre autres raisons il n'y ait jamais d'équivoque sur leur âge.

Je n'aimerais pas terminer sans faire allusion à tous ces enfants de la violence qui frappent à nos portes. L'un des défis que nous devons relever si notre discours est crédible, c'est celui des enfants mineurs non-accompagnés qui fuient les zones de violence et arrivent en Europe.

Sommes nous capables de leur assurer l'appui psychologique, l'encadrement éducatif, le reconstruction d'une identité sociale et le sentiment de sécurité pour l'avenir ?

Sommes-nous capables de les préserver de traitements traumatisants de la part de nos systèmes ? y compris systèmes judiciaires ? Sommes-nous capables de commencer par eux afin de pouvoir aller transférer nos connaissances sur d'autres dans les pays d'origine ? Sommes-nous disposés à recueillir leurs opinions et à les prendre au sérieux ?

Nous pourrons ainsi donner l'exemple de la haute estime dans laquelle nous tenons les enfants et nous pourrons exiger que d'autres suivent cet exemple.

the icrc study women facing war and its impact on girl children

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Résumé
Une étude a été effectuée a cours de ces trois dernières années par le Comité International de la Croix-Rouge (CICR) afin de déterminer l'impact des conflits armés sur les femmes. Les besoins des femmes durant la guerre, la protection qui leur est accordée par le droit international et les activités du CICR lors d'opérations globales ont été présentés. La fille lors de conflits armés souffre d'abus psychologiques et physiques et l'absence d'hommes à la maison fait que certaines tâches domestiques lourdes lui incombent.

Resumen
Un estudio ha sido elaborado por el Comité Internacional de la Cruz Roja (CICR) a lo largo de estos tres últimos años con el fin de determinar el impacto de los conflictos armados sobre las mujeres. Las necesidades de las mujeres en tiempo de guerra, la protección otorgada por el derecho internacional y las actividades del CICR durante las operaciones globales fueron objeto de la exposición. La niña durante los conflictos armados sufre abusos psicológicos y físicos y la ausencia de hombres en el seno del hogar hace que determinadas tareas domésticas pesadas le sean asignadas.

Summary
A study has been carried out by the International Committee for the Red Cross (ICRC) in order to determine the impact of armed conflict on women. The needs of women during war, protection accorded to them by international law and ICRC activities in favour of women during global operations were presented. Female children, during armed conflict suffer from many psychological and physical abuses due to the absence of men around the household, heavy domestic work is assigned to them entirely.

* * *

Before I explore this theme permit me to give a short introduction to the ICRC work and its' work for those of you who are not overly familiar with the organisation.

The ICRC is an international humanitarian organisation which endeavours to bring protection and assistance to the victims of armed conflict and internal tension. The ICRC is impartial, its only criterion for action is the need of the victims. The ICRC is neutral and remains detached from all political issues related to the conflict and endeavours to promote dialogue in situations of internal violence and armed conflict with a view to finding solutions for matters of humanitarian concern.

The ICRC is active in 80 countries in the world and with delegations in 56 of these countries. Among other activities the ICRC is carrying out detention, protection and tracing activities, medical and relief programmes and dissemination of international humanitarian law.

In striving to better understand the impact of armed conflict on women, the ICRC has been carrying out a study over the last 3 years. The study: Women facing War, released to the public just yesterday looked at the needs of women in war, the protection accorded to them by international law and ICRC activities in favour of women in ICRC's global operations. The aim was to increase the understanding of the way on which women are affected by armed conflict by drawing lessons from past and current experiences to improve the quality, relevance and impact of ICRC services.

It is important to note that in focussing specifically on women and not those of men, the study in no way intends to negate the particular needs of men and men's suffering in wartime or to infer that women hors combat suffer more than their male counterparts. The scope of the study Women facing War primarily extends to civilian women and those no longer taking part in the hostilities, as such the question of girls was not the main focus of this study. However, the notion of adult and/or child may differ from one country to another and even within communities, no reference has been made to the specific issues of girls in the general framework of the study, however many findings and conclusions of this study may be of relevance for the situation of girls in armed conflict.

Looking at some aspects which might influence the situation of girls in armed conflict;

Women and girls, like man and boys, have a multidimensional role and are impacted by armed conflict in different ways because of their sex and gender.

In conflict, women, boys and girls, are far from being spared from the horrors of war. As members of the civilian population boys and girls, like their mothers and fathers are subjected to innumerable acts of violence. They often suffer the direct or indirect effects of the fighting, enduring indiscriminate bombing and attacks as well as a lack of food and other essentials needed for a healthy survival.

During armed conflict the life of every individual, the family and the community changes when the men, fathers and even sons, have left to fight, are interned or detained, missing or dead, internally displaced or in exile.

The very fact that the men folk are absent often heightens the insecurity and danger for women and children left behind and exacerbates the breakdown of traditional support mechanisms. Children's, especially girl's workload generally increases in situations of armed conflict as girls are expected to lend greater assistance to their mothers. Where such assistance entails work in the fields or grazing animals, searching for firewood and collecting water and wild food stuffs, they are more exposed to dangers of injury from landmines or of attack and sexual abuse. Figures from the Hargeisa hospital in Northern Somalia show that nearly three-quarters of mine victims are children between five and fifteen years of age.

Sometimes girls have to take up the entire responsibility for the family, because the mother are sick, died in an attack, lost her life due to an illness or while giving birth and the father went to fight, is detained, missing or dead. Let us listen to a story of a girl in Afghanistan.

In some countries, conflicts have raged for so long that children have grown into adults without ever knowing peace.

Some children and especially girls have a heavy burden to bear during armed conflict. They are taking up responsibilities with which their parents and/or other adults have themselves had difficulties to deal with and for which they are not prepared.

Physical and psychological abuse, heavy workload and reproductive health problems are specific problems that befall countless numbers of girls throughout the world and these continue or are exacerbated further during armed conflict. In addition prostitution invariably increases wherever military forces are to be found and often involves children, especially young girls.

Increased insecurity and fear of attack often cause women and children to flee and to become displaced or refugees. Children may experience displacement differently than adults. Studies in displaced and refugee populations have suggested that there are gaps in the age distribution of children between 3 and 6 years, and the evidence indicated that these age groups tend to get lost or left behind during the flight. These children are at risk of falling into the hands of unscrupulous people who use them as cheap labour and/or for sex trade.

Another worry during armed conflict is the number of children recruited and voluntarily enlisted in armed groups and armed forces. While it is often reported that boys tend to be more involved in warfare than girls, girl soldiers also exist. Moreover, girls are not only recruited to actively participate in hostilities, but also to serve as sex- slaves or to be forced into marriage with commanders and other soldiers. It thus is of utmost importance that all forms of participation or involvement of children in hostilities be prevented and eliminated. With regards to the age of recruitment and participation in hostilities, recent work by the UN, NGOs as well as the International Red Cross and Red Crescent Movement has attempted to develop the law in relation to children. For example Article 38 of the Convention of the Child calls upon States to ensure that children under the age of 15 (the age cited in the Geneva Convention) do not take a direct part in the hostilities and that children should not be recruited into armed forces.

There are permissible means and methods of warfare and there are rules brought into being to protect women as well as girls, men and boys, hors de combat. Since they are both women and children, girls are entitled not only to general protection but also to the specific protection responding to their specific needs accorded by the four Geneva Conventions and their 2 Additional Protocols.

The different components of the International Red Cross and Red Crescent Movement are engaged in a wide range of activities on behalf of children affected by armed conflict. A common plan of action Concerning Children in Armed Conflict had been endorsed and is promoted in the course of the Movement’s work..

The ICRC continues its efforts to protect unaccompanied minors, trace their families and to promote the respect for the right to education; to monitor the conditions of detention of children and carries on with efforts to bring about their release. To supply

medical assistance to health services to maintain and preserve children's health and bring in tents, plastic sheeting, blankets and cooking material etc. to improve their living conditions.

To conclude, if children have to bear so many of the tragic effects of armed conflict, it is not primarily because of any shortcomings in the rules protecting them, but because those rules are not observed. The general and special protection to which children are entitled must become a reality. Constant efforts must be made to promote knowledge of and compliance with the rules of international humanitarian law among as wide an audience as possible and using all available means. Everyone must be made responsible for improving the plight of children in times of armed conflict.

the icrc's communication programmes for young people

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Résumé
Le CICR a créé des « programmes de communication » pour familiariser les jeunes avec les principes du droit international humanitaire et le travail du CICR. Ces programmes sont mis en oeuvre en collaboration avec les gouvernements qui en assurent leur développement. Les principaux programmes sont : le « MiniEduc » qui, à travers les manuels scolaires, transmet aux enfants entre 10 et 17 ans les principes du droit humanitaire ; le programme « Exploration du Droit Humanitaire » qui forme les enseignants et met à leur disposition le matériel nécessaire pour intégrer le droit international humanitaire au cursus scolaire secondaire ; enfin, le programme « Exploitation de la Violence » composé d'une vidéo sur les enfants-soldats et le travail des enfants ainsi qu'une brochure explicative à l'attention des enseignants.

Resumen

El CICR ha creado diversos "programas de comunicación" para familiarizar a los jóvenes con los principios de derecho internacional humanitario y el trabajo del CICR. Estos programas han sido organizados en colaboración con los gobiernos que garantizan su desarrollo. Los principales programas son: el "MiniEduc" el cual, mediante manuales escolares, transmite a los niños entre 10 y 17 años los principios del derecho humanitario; el programa "Exploración del Derecho Humanitario", el cual forma a los profesores y pone a su disposición el material necesario para integrar el derecho internacional humanitario en el curso escolar de secundaria; por último, el programa "Explotación de la Violencia" compuesto de un video sobre los niños soldados y el trabajo de los niños, así como un folleto explicativo para los profesores.

Summary
The ICRC created 'communication programs' to familiarize children with the principles of international human rights law and the work that the ICRC has undertaken. These programs were put into place with the collaboration of governments to ensure their development. The main programs are: the 'MiniEduc', which through school manuals, transmit to children between the ages of 10 and 17,

the principles of international human rights law: the ‘Exploration Humanitarian Law’ program trains teachers and places to their disposal the necessary material to integrate international human rights into a degree: and finally the ‘Exploitation of Violence’ program is made up of a video on child soldiers, child labour, as well as a explanatory brochure for teachers.

* * *

Introduction

By ratifying the Geneva Conventions, a State obliges itself to promote international humanitarian law (IHL) especially among military personnel but also among the civilian population at large. While the International Committee of the Red Cross (ICRC) has a long tradition of assisting governments in the promotion of IHL among its military and security forces, it had only sporadically targeted adolescents. In 1994 the Executive Council of the ICRC decided to step up its efforts to promote IHL among young people.

The basic aim of the ICRC's communication programmes is:

x to introduce young people to the basic rules and principles of IHL and with the nature and work of the International Red Cross and Red Crescent Movement;

x to familiarise young people with the notion of human dignity as an inviolable quality that must be respected in times of peace as well as in times of armed conflict.

Since its decision to broaden the scope of its dissemination activities and include young people as a target audience, the ICRC has developed several concrete programmes, the three main ones I would like to introduce to you today. The first large scale programme is the so-called "MinEduc Programme" for secondary school pupils, which was taken on in 1995 in seven countries of the former Soviet Union. Based on the experience gained with this programme, the ICRC started in 1998 to work on a world wide project called "Exploring Humanitarian Law" (EHL). EHL is a teaching module that can be adapted to the context in which it is to be utilised. But unlike the "MinEduc Programme", which has evolved differently in every country, EHL offers a more unified approach and message.

A smaller educational module was initiated in 1999 together with UNICEF. It is a pack called "The Exploitation of Violence - the Violence of Exploitation", consisting of a videocassette with two clips of 13 minutes each, one on child soldiers, the other on child labour. The video cassette is accompanied by a booklet that gives teachers and animators the necessary background information on legal and historical aspects, and on a variety of questions that can be investigated with the children.

In all its activities aiming at the promotion of IHL, the ICRC endeavours to act in close conjunction with the ministries concerned. While the ICRC acts as a catalyst, the sustainability of the teaching of IHL depends on the respective governments of States that have signed and ratified the four Geneva Conventions of 1949. Wherever possible, the National Red Cross and Red Crescent Societies play a major role in the process.

1. The MinEduc Programme

1.1. Background

Since 1995, the ICRC in cooperation with Ministries of Education and the National Societies of the Red Crescent and Red Cross have been running educational projects in seven countries of the former Soviet Union: in the Russian Federation (the whole country), the South Caucasus (Azerbaijan, Georgia and Armenia) and Central Asia (Uzbekistan, Tajikistan and Kyrgyzstan). As I said before, the objective is to make secondary school students aware of the principles and rules that form the basis of international humanitarian law, and to make them familiar with the world wide Movement of the Red Cross and Red Crescent.

The most obvious and efficient means to do this was found to be through the developing of school manuals. Rather than offering exhaustive information on IHL, the manuals emphasise the principles underlying IHL: humanity, the respect of human dignity, and compassion. Wherever possible, interactive teaching methods were introduced in order to enhance a critical and analytical debate among the pupils. This way, humanitarian principles can be explored rather than merely memorised.

The school manuals and the teachers' guides that go with it were developed by local experts together with delegates of the ICRC. The manuals emphasise local humanitarian traditions, thereby making links between the region's culture, its history and literature and modern international humanitarian law. To date, more than seven million manuals have been produced. The target population consists not only of secondary school pupils, but also students of colleges (especially military colleges) and lyceum. Depending on the country, the pupils are between 10 and 17 years of age.

1.2. Implementation

The implementation of a country programme engages a network of trainers, regional coordinators, contact persons within the Ministries of Education and representatives of the National Red Cross or Red Crescent Society. In order to train the teachers' trainers (and as high a number of teachers as possible) biannual or annual seminars are conducted all throughout the respective countries. Such seminars are also an opportunity to contact local authorities and local representatives of the National Society and to strengthen their commitment to the programme. Local and national media regularly cover the events. To date, more than 800 seminars have been conducted directly by the ICRC, and thousands of seminars by ICRC trained trainers.

After several internal evaluations focusing on distribution and utilisation of the manuals, a large scale evaluation (quantitative and qualitative aspects) was conducted by external consultants in 2000 in the Russian Federation, Georgia and Uzbekistan. The evaluation report underlines two major trends: a) the broad support of the programme by pupils, teachers, authorities, and the National Red Cross and Red Crescent Societies, and b) a clear increase of knowledge and comprehension of

humanitarian issues by youngsters who studied with the manuals as compared to a control group.

In order to ensure the sustainability of the teaching of humanitarian principles, a number of proposals have been worked out to incorporate IHL into the State educational standards and the course curricula. Furthermore, successful attempts were made in most contexts to include IHL modules into in-service teachers training, and in some contexts into courses at pedagogical universities for future teachers.

In every country, various side activities have emerged that strengthen the Mineduc programme and emphasise its humanitarian message. In Uzbekistan all of the approximately 8'000 secondary schools participated in 2001 in the second edition of a nation-wide contest on issues dealt with in the school manual, activities of the Uzbek Red Crescent Society, and the world wide Red Cross and Red Crescent Movement. In several countries theatre productions were initiated, and TV and radio spots were produced. Teachers in all contexts confirmed their pedagogical creativity and enthusiasm by developing a great number of activities with their classes, and often by using elements and themes of the manuals in other classes.

With the publication of the most recent manuals in 2002, the ICRC will start handing over the programmes to the Ministries of Education. Wherever possible, the National Red Cross or Red Crescent Society will remain (or become) a driving force of the programme. The ICRC will continue to monitor the further development of the programmes and assist with its expertise where required. As for the re-edition of the manuals, partners with a mandate in education are being sought. Of all manuals either an English or a French language version is available.

2. The "Exploring Humanitarian Law" Programme

2.1. Background

Exploring Humanitarian Law (EHL) is an educational programme for young people that was developed by the International Committee of the Red Cross in close association with the Educational Development Center Inc. (EDC) and with the active participation of 15 countries from all parts of the world.

Building upon the experience of programmes such as MinEduc, EHL was designed in a way that allows the adaptation of its themes to diverse cultural, social and educational contexts. By the end of 2001, 51 education experts from 29 countries and regions were trained as "Master Trainers" in three international workshops organised by the ICRC in Geneva.

The programme is designed to provide educators with learning resources that may be integrated into secondary school curricula as part of a number of subject areas or in non-formal educational programmes. Making use of interactive teaching methods, EHL strengthens communication skills, critical thinking and problem solving. Its primary intention is to help young people embrace the principles of humanity in their daily lives and in the way they assess events at home and abroad. In particular, EHL seeks to prepare young people to:

- understand the need to respect life and human dignity, especially in times of violence and armed conflict;
- acquire knowledge of humanitarian norms applicable in times of armed conflict;
- counter indifference and feelings of helplessness with regards to situations of violence;
- apprehend current events from a humanitarian point of view;
- engage actively in community activities in order to promote solidarity and prevent or defuse violence.

2.2. Course Content and Resource Materials

The resource pack is comprised of five core modules each of which takes approximately academic hours to work through. The modules are devised to enhance the exploration of the following subject matters:

1. Module: the nature of the humanitarian act and the role of bystanders;

2. Module: the need to regulate armed conflicts and the basic rules of IHL;

3. Module: the implementation and enforcement of IHL, the question of responsibility;

4. Module: the need to try and punish perpetrators of violations;

5. Module: the need for and the requirements of humanitarian action in times of armed conflict.

The resource materials, which are presently available in English and French, and by the middle of 2002 in Arabic and Spanish as well, includes:

- a binder of teacher and student materials representing over 20 hours of learning activities (including lesson plans, background information, source references, case studies, photo collages, texts, worksheets, media pages, extension activities, etc.);

- a student videocassette containing seven short clips (total viewing time: 60 minutes);

- a methodology guide including a framework for teacher training workshops;

- a teacher training videocassette (total viewing time: 60 minutes);

- an implementation guide describing the content and showing how the materials can be used in various educational settings;

- a glossary.

2.3. Implementation

The EHL programme will be implemented by Ministries of Education, and wherever possible, in co-operation with national Red Cross and Red Crescent Societies. Youth organisations can also make use of the programme in informal settings. A key to the sustainability of the EHL programme is that the modules are made compatible with the respective national or regional education strategies, standards and curricula of the implementing entities.

The ICRC will continue to render technical and academic support to partners involved and contribute to the capacity building of trainers. In addition, it will facilitate the exchange of information and experiences between implementing countries, organisations, and other stakeholders. As of January 2002, implementation has been initiated in more than 55 countries and regions.

3. The "Exploitation of Violence" Teaching Module

In 1999 the ICRC and UNICEF jointly published an education module entitled "The Exploitation of Violence - the Violence of Exploitation". The module, which exists a French and an English, consists of a videotape with two 13 minutes films - one on Child Soldiers and one on Child Labour - and background information for teachers and animators. Both films evidence situations of extreme violence which represent the daily fare of tens of thousands of children in all four corners of the world, despite international conventions drawn up specifically to protect their dignity. It is not uncommon for the very same children to be involved in both forms of violence, because children who are forced into abusive labour in peacetime are more likely to become child soldiers in wartime.

The module was developed for educators and aims at rising awareness among young people in the West regarding the causes and extent of the exploitation of children in different contexts. The goal of the teaching module is to strengthen the conviction that the best interest of the child must always prevail, and that children are always victims before they are culprits. Both the films and the pedagogical material point out parallels between the phenomenon of violence and exploitation in the developing world and in industrialised societies.

The module provides a basis for discussion and offers opportunities to explore the provisions against the abuse of children as codified in IHL and the Convention on the Right of the Child. The module also highlights a number of activities undertaken by international organisations and groups in civil society to prevent or put an end to the abuse of children and to alleviate the consequences.

Organisations or individuals who are interested in any of the ICRC's educational programmes for young people may contact the ICRC in Geneva under the following address: Mr Ruiter or Mrs Dorais-Slakmon c/o ICRC / COM_EDUC_YOUTH / 19 Ave de la Paix, 1202 Geneva / Switzerland (telephone: 0041-22.730.23.68). Background information can also be found on the worldwide web under: www.icrc.org.

education on peace : example in Bosnia and Herzegovina

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Résumé
Suite à la guerre dans les Balkans, la criminalité des enfants et des jeunes a fortement augmenté, d'où la nécessité d'élaborer un nouveau système de droit pénal pour les mineurs en Bosnie-Herzégovine. Les grandes lignes de ce nouveau système entré en vigueur sont l'action préventive, l'application des traitements adéquats et la resocialisation des mineurs. Des réponses alternatives à la délinquance obéissant au principe de l'intérêt supérieur de l'enfant, ont été adoptés, telles que des recommandations "correctionnelles" éducatives, des programmes de transfert favorisant la réintégration du mineur dans la société ou des sanctions spécifiques.

Resumen
Tras la guerra de los Balcanes, la criminalidad entre los niños y los jóvenes sufrió un aumento considerable dando lugar a la necesidad de elaborar un nuevo sistema de derecho penal para los menores en Bosnia-Herzegovina. Los puntos principales de este nuevo sistema en vigor son la acción preventiva, la aplicación de tratamientos adecuados y la resocialización de los menores. Así mismo, han sido adoptadas respuestas alternativas a la delincuencia en cumplimiento del principio del interés superior del niño, tales como recomendaciones "correccionales" educativas, programas de transferencia que favorezcan la reintegración del menor en la sociedad o sanciones específicas.

Summary
Following the war in the Balkans, the level of criminality among children and young increased to such a degree that there came a need to formulate a new system of criminal law for the minors in Bosnia-Herzegovina. The main points of this new system aim at preventive action, the application of adequate treatment and the re-socialisation of minors. Alternative answers to delinquency while obeying the principle of the best interest of the child were adopted, such as educational correctional recommendations, programs of transfer supporting the rehabilitation of a minor in society or specific sanctions.

* * *

1. Introductory remarks

This report represents in the context of the country that I come from, a search for answers to issues dealt with at this year's conference: a child and war. My approach to this topic is characterized by emphasizing two aspects: **children - victims of war and children - victims of peace**. Naturally, debating on these issues is exceptionally complex because it concerns young persons who are growing up and maturing in compound surroundings.

The war and war devastation in Bosnia and Herzegovina turned the international standard "children before everything else" into the principle "children after everything

else". In the period from 1992 to 1995 which was characterized by a large scale of devastation and the most horrendous crimes against humanity and the international humanitarian law, all rights of children were violated - personal, social, economic, educational, cultural, healthcare... Not only that, children were murdered, imprisoned and tortured, forced to prostitution, expelled from their homes... Thus, the right to life, childhood, home, family, school, games, happiness, had been forever lost in war. Children were, therefore, the victims of war hardship, both physical and mental.

Today, personal and family traumas, broken families, violence and conflicts, poverty, refugees, the failure to integrate into a new community drive and increasing number of children and minors to different forms of asocial behaviour. The causes of socially unacceptaable behaviour of children and minors and reasons for their conflict with the law are therefore the consequences of negative postwar circumstances in which they have been living, as well as of their emotional and physical deprivation. It is necessary to note that the wave of socially unacceptable behaviour of children and minors comprises commitment of criminal acts, vagrancy, bagging, running away from home, absence from school, affinity to fights and violent behaviour, prostitution, alcohol and drug addiction.

As it can be expected, the connection between social changes and social disorganization in particular induces the growth of number of children and minors as perpetrators of criminal acts. Because of the aforesaid, I would like to speak about **juvenile delinquency** and its structure, causes and trends. The purpose of this approach is to provide an answer to the question: does juvenile delinquency in Bosnia and Herzegovine have a specific postwar character? If it does, which processes of social, economic and political changes influence that? What are strategies of the administration of juvenile justice system in Bosnia and Herzegovina in regard to children and minors who are in conflict with the law?

2. Causes and Forms of delinquency of children and adolescents in Bosnia and Herzegovina

In postwar period in Bosnia and Herzegovina the transformation of social, political, economic and legal system is reflected in a decline of standard of living and an increased number of unemployed people, broken families, a large number of children-refugees, and a rise of certain forms of adult crime - problems of juvenile delinquency and juvenile justice are on one side, extremely **pronounced,** and on the other side, **neglected**. In Bosnia and Herzegovina, as in other countries in transition, the focus is put on the organized crime, corruption, money laundry or other phenomena occurring as consequences of significant social and economic changes. This is why it can be freely concluded that adult crime is "**pushing**" aside juvenile delinquency. This represents a serious problem for the society, since it is often forgotten that by prevention of juvenile delinquency we can prevent crime in general!

In the last ten years the trend in children's and juvenile's delinquency in Bosnia and Herzegovina indicates that the number of children and adolescents in violation of the law is on the rise. A growing tendency of juvenile delinquency in Bosnia and Herzegovina compared to the prewar period (before 1992) is marked by extremely high figures. Statistical data pertaining to the war and postwar times call for growing

concern over juvenile delinquency. The situation in Bosnia and Herzegovina encourages the rise of juvenile delinquency; thus this problem is becoming more complex, both in terms of suppressing juvenile delinquency and attenuating negative consequences of this phenomenon.1 Based on some recent research studies2 we can distinguish the following: **1.** Considerable rise of a number of juvenile perpetrators of criminal acts and repeat offenders amongst adolescents **2.** Concerning growth of violent crime rate amongst adolescents **3.** Adolescents who commit their first crimes as children (before the age of 14).

In the mentioned time period children and adolescents in Bosnia and Herzegovina appear to be as perpetrators to the largest extent, in criminal offences concerning property (aggravated larceny and larceny, violent robbery and robbery, fraud) and to a lesser degree as perpetrators of criminal offences against persons (for example, serious bodily injuries or aggravated assaults and simple assaults, participation in fights, murders), criminal acts against security of people and property (for example causing general and apparent danger), criminal offences against public order (for example, violent behavior, carrying arms and explosive materials) and criminal acts against dignity of a person or moral or sexual offences (for example rape). Besides the aforesaid, a continued growth of criminal activities related to drug abuse is observed as well. What calls for particular concern is the fact that in most cases it concerns repeat offenders, or multiple repeat offenders, and that execution of criminal acts is accompanied by violence which was not the case before. In addition to that, commission of criminal offences is often planned by adults, who frequently organize children and adolescents to offend criminal acts3. Evidently, the problem of juvenile delinquency is particularly apparent.

An increase in juvenile delinquency in Bosnia and Herzegovina is easily recognized, as well as occurrence of criminal acts which previously were not committed by children and adolescents and new forms of execution of traditional crime.4

3. Status of children and juveniles in criminal law system in Bosnia and Herzegovina

In Bosnia and Herzegovina, the status of adolescents in conflict with the law is regulated by **separate (specific) legal norms** within substantive, procedural and executive criminal law. What does it exactly mean by “separate (specific) legal norms”? It means the following: there are differential norms in the current criminal substantive law, criminal procedural law and the law on execution of criminal sanctions. These norms determine the status of juvenile offenders in criminal law and criminal proceedings, giving prevalence to measure of assistance, education, correction and social integration of adolescents. Furthermore, these norms accentuate separation of adolescent from adult perpetrators of criminal acts in order to prevent negative influence of adult delinquents. In other words, juvenile delinquents are treated separately from adult perpetrators of criminal offences in the administration of criminal justice system in Bosnia and Herzegovina.

This normative model of the status of juvenile delinquents has been perceived from the aspect of international standards on protection of the rights of child and adolescents. Namely, certain international documents of the United Nations and the

Council of Europe have been accepted in Bosnia and Herzegovina.5 These international legal documents have become the instruments for the protection of human rights and freedoms in Bosnia and Herzegovina as well. They have legal force of constitutional provisions, take priority over domestic laws and are directly administrated in Bosnia and Herzegovina. Thus in Bosnia and Herzegovina, at normative level, building up of a special treatment of juvenile delinquents is being promoted. The principle "the best interests of the child" has been accepted as a basic principle in treatment of juvenile delinquents.6

The juvenile criminal law in Bosnia and Herzegovina (specific provisions of substantive, procedural and executive criminal law on adolescents) is related to the age of adolescents, both at the time of perpetration of a criminal act and the time of actual criminal proceedings. The age for holding an adolescent criminally responsible is 14 years. Criminal sanctions against an adolescent who at the time of perpetration did not reach the age of 14 cannot be enforced. Therefore, criminal legislation is not administrated against the child, because at the time of perpetration of a criminal act *(tempore criminis*) he/she had not reached a certain age. It is evident from this that the perpetrator of criminal acts until certain age is not included in the system of administration of juvenile justice system.

Adolescents are divided into age groups: younger adolescents who at the time of perpetration of crimes reached the age of 14 but not the age of 16 years and older adolescents who *at tempore criminis* reached the age of 16 years but not the age of 18. Corrective measures may be ruled against the young adolescent,7 and juvenile prison sanctions against the older adolescent as well. The purpose of correction measures is to provide protection and assistance to adolescent perpetrators of criminal acts, supervision over them, vocational training and raising of personal responsibility, to provide education and re-education, and to foster their integration into society. Sentencing of the juvenile perpetrator to imprisonment is conditioned not only by his/her age but also by the severity of a criminal act (if he/she committed a criminal offence for which prescribed punishment is more than 5 years), by consequences which ensued and a high degree of criminal responsibility. Besides provision of protection and assistance to juvenile perpetrators of criminal acts, supervision, their vocational training and raising of their personal sense of responsibility, education or re-education, and correct up-bringing, the purpose of juvenile imprisonment is to exert intensified influence upon juvenile offenders not to commit criminal acts in the future, as well as to other adolescents against committing criminal acts.

Concerning juveniles who commit criminal acts there is also a set of elaborated and adapted rules of a specific criminal procedure and rules on the execution of specific criminal sanctions.

A specific criminal procedure against adolescents comprises international standards related to the status of a juvenile offender of criminal acts, containing expressed aspirations to protect procedural guarantees and the rights of adolescents. Giving up a criminal procedure against a full-age perpetrator of a criminal acts is done on the account of the personality of a juvenile delinquent. In another words, this special group of procedural rules should provide for a such procedure in which the rights of a juvenile as a procedural subject are protected, removing negative effects of

conducting a procedure against an adolescent and realize objectives of providing assistance and re-education to adolescents.

Corrective measures as specific criminal sanctions for adolescents should be effectuated within the same system of protection and assistance. This framework calls for treatment of adolescents in accordance with their age and characteristics, by applying modern educational, pedagogical, psychological and other rules. In the course of execution of a corrective measure, the adolescent in question has to be integrated in educational system and health care should be provided for him/her. Supervision over execution of these measures is carried out by a juvenile court judge who passed on the measure in question. A juvenile court judge should visit the family of the adolescent in question, collect reports on his/her behavior from social welfare service, review reports on re-socialization of the minor in question, decide on the change of adolescent's status (the decision on cessation of execution of measure or the change of one measure with another).

The above described bases for application of specific norms of juvenile criminal law are focused on attenuation of stigmatization of juvenile delinquents and encouragement of their positive social integration.

4. Correctional recommendations as alternative forms of response to juvenile delinquency

The existing model of the status of juveniles in criminal law system in Bosnia and Herzegovina is characterized by other specifics aimed at contributing to protection, care, assistance and supervision over juvenile delinquent. It concerns **correctional recommendations**.8

Generally, correctional recommendations join modern criminal-political efforts to give prevalence **to out-of-court forms of intervention** in response to criminal behavior of the youth, imposition of criminal sanctions to be retained for situations when influence on adolescents cannot be established by other means or when the severity of a committed criminal act requires it. The application of correctional recommendations against a juvenile perpetrator of a criminal act represents an alternative to criminal prosecution and a criminal procedure. This model re-directs a juvenile perpetrator of (less severe) criminal act to other out-of-court forms of resolution of the conflict. The purpose of correctional measures is to avoid stigmatization of adolescents because of a committed criminal act, prevention of retroactive negative effects of a criminal procedure to the personality of an adolescent and his/her future, and in respect of the view that deviations which occur at adolescent age reach their climax at the age of maturity. Correctional recommendations point out to the necessity of differentiated reactions by the society against juvenile delinquency and adult delinquency. Also, children and adolescents require treatment to be individualized, guiding and educational.9 In addition to this, these alternative measures contribute to reduction of work load of the organs of administration of criminal justice, especially courts, i.e. their engagement in complex and most severe forms of criminal acts perpetrated by juvenile persons.

According to positive regulations the purpose of correctional recommendations is to **"remove**" a criminal procedure against an adolescent who committed a criminal act for which a pecuniary sanction or an imprisonment sanction is prescribed up to three years and to **exert** influence on an adolescent not to commit criminal acts. Correctional recommendations are applied on adolescents who demonstrate willingness to cooperate, i.e. acceptance of this form of social reaction to their deviation. Conditions for application of correctional recommendations are: admission of guilt for criminal acts on behalf of an adolescent and his/her readiness to reconcile with the victim of a crime.

The list of educational recommendations contains nine items pointing to different directions. When selecting a correctional recommendation the interests of the adolescent and the injured party have to be taken into account, as well as care has to be taken not to jeopardize regular education or work of the adolescent in question.

The quantity and the diversity of correctional recommendations makes their presentation necessary. In the first place two correctional recommendations should be noted (personal apologies to the injured party and compensation to the injured party) claim to represent communication (direct or indirect) between an adolescent perpetrator and the victim of criminal acts. In the course of this process, a learning process takes place as well, both with the adolescent and the victim of a criminal acts. The adolescent would, namely, in his encounter with the victim (once again) see and experience consequences of his/her acts, the victim would be given an opportunity to express his/her feelings which have acquired new qualitative and quantitative features after the perpetration of a criminal act.

The second group of correctional recommendations relates to work for humanitarian organizations or a local community. Such correctional recommendations may be designated as standard alternative measures pronounced against an adolescent. Thanks to these educational-pedagogical recommendations an adolescent perpetrator of a criminal act can be integrated into a wider and local social communities.

The third group of correctional recommendations are reflected in educational-pedagogical, working and therapeutic components. These educational-pedagogical recommendations underline in particular: - duty to regularly attend school and education in the domain of traffic regulations, - acceptance of employment commensurate with qualifications and training of an adolescent and - taking medical treatment in appropriate health institution (for example, treatment of alcohol and or drug addiction), as well as visiting and taking part in pedagogical, educational, psychological and other counselling centers.

Correctional recommendations, based on a previously established scheme, are pronounced by the public prosecutor and a juvenile court judge, who are obligated prior to reaching the decision on initiating a criminal procedure for the stated criminal acts to review the possibility of pronouncing correctional recommendations. If a correctional recommendation is pronounced, it means that criminal proceedings against a juvenile delinquent will not be initiated. Selection and application of correctional recommendations are carried out in cooperation with parents and caretakers of adolescents, and social welfare centers. A correctional

recommendation may be abolished or replaced by another correctional recommendation in the course of this process.

The aforesaid indicates that correctional recommendations carry the necessary social integrative factor and those criminal-political values which are needed today in fight against crime.

5. Concluding remarks

In the introduction of this work it was pointed out that children are the victims of war and post-war circumstances and significant changes in the society. Of course, it is not possible to draw a clear distinguishing line between the two fields. This is collaborated by reality in Bosnia and Herzegovina and bring us to **a paradoxical situation**: we have been trying to adequately treat juvenile delinquents within the framework of administration of juvenile criminal justice and through various alternative measures to direct them to organs of social care and other services to render adequate assistance, protection and re-education. On the other side, there is no possibility to execute correctional-educational recommendations as alternative measures nor correctional measures as specific criminal sanctions against juveniles. In other words, there are no adequate correctional institutions, juvenile facility, homes, disciplinary centers, institutions for education of handicapped adolescents and counselling centers to execute pronounced measures. The failure to conduct adequate treatments has extremely negative effects since it brings into question the outcome of assistance rendered to an adolescent.

As we have reminded earlier, delinquent behavior has been observed with children as well. As children under domestic legislation, are not responsible for criminal acts, an correctional measure cannot be pronounced against them, nor can they be placed on a program of educational recommendations. It is only possible to establish contact with a social welfare center. The social welfare center shall collect data on the child in question and his/her living conditions or personality in order to provide protection and assistance and undertake adequate measures to remove causes of unacceptable and unbecoming behavior of the child (educational and re-education). However, as a results of shortage of qualified staff (social-care and medical workers, therapists, pedagogues, psychologists, clinical psychologists, psychiatrists), lack of space for accommodation of such children, absence of adequate treatments (educational and re-educational) such children most frequently become repeat offenders of criminal acts.

Evidently due to **the absence** of legally provided instruments, adequate preventive action and application of adequate treatments in re-socialization of children and juvenile delinquents are missing. Furthermore, in spite of good intentions and good legislative solutions socially unacceptable behavior of children and adolescents in Bosnia and Herzegovina is on the rise, causing concern and frustration with children, adolescents, members of their families, participants in administration of criminal justice system, as well as a wider community. Based on the above it can be concluded that the situation in Bosnia and Herzegovina concerning protection of the rights of the child and adolescent has deteriorated. It is a result of the lack of systematic care of competent state authorities and coordination in resolution of outstanding issues of protection of the rights of this category of population.

The observed trend of rise of juvenile delinquency and limited resources in the society call for new strategies and public demonstration of views on this matter in order to tackle this problem. Many actors in Bosnia and Herzegovina have been dealing with the issue of juvenile delinquency and form their proposals for the fight against increasing juvenile delinquency and for more effective administration of juvenile criminal justice. The problem of juvenile delinquency is thus not only the problem in the domain of delinquency only, but it is also a problem which has its economic, social, political and other roots and consequences.

Therefore, a multi-disciplinary approach is required for resolution of the problem of juvenile delinquency. This is the only way in which a wider social community can arrive at a solution to put socially unacceptable and deviant behavior of children and adolescents into acceptable social framework. Based on positive experience and international standards on protection of the rights children and adolescents it is necessary to elaborate a national program within the system of administration of juvenile justice system and fight against juvenile delinquency.

Up-to-date experience in Bosnia and Herzegovina indicates that competent institutions and state organs are “closed” within their respective “zones of responsibility”, as a result of current process of decentralization of responsibilities pertaining to care of the young in new social, economic, political and social relations. In Bosnia and Herzegovina, as in other countries in transition, new relations are being established in society, politics and the economy. The focus is on democratization of society and establishment of market economy, ways are being changed and redefined, as in other societies, but causing in turn social disorganization. Children and juveniles are also affected by these changes.

children and war : CANADA’S INVOLVEMENT AND PREVENTION TOOLS

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Résumé
L’exposé qui suit présente le point de vue du Canada sur le problème des enfants touchés par la guerre et les différentes mesures de prévention entreprises pour en améliorer la situation. La première partie, intitulée “l’enfant touché par la guerre” examine la situation et les divers problèmes dans différents pays. La deuxième partie dévoile les mesures de prévention que le Canada a adoptées ces dernières années en soutenant la législation internationale et en amendant sa législation nationale. Enfin sont examinées les initiatives pratiques que le Canada a récemment entreprises, telles qu’accueillir une conférence internationale, organiser des consultations annuelles, octroyer des fonds pour des projets culturels et admettre des réfugiés.

Resumen
La siguiente presentación está basada principalmente en la posición de Canadá sobre el problema de los niños afectados por la guerra y las diferentes medidas de prevención adoptadas para mejorar la situación. La primera parte, cuyo título es “el niño afectado por la guerra”, analiza la situación en diferentes países y los diversos

problemas que se plantean. La segunda parte, desvela las medidas de prevención adoptadas por Canadá en los últimos años apoyando la legislación internacional y adaptando su legislación nacional. En último lugar son presentadas las iniciativas prácticas que Canadá ha emprendido, tales como la organización de una conferencia internacional, la realización de consultas anuales, la entrega de fondos para proyectos culturales y la admisión de refugiados.

Summary
The following research is based primarily on Canada's perspective on children affected by war and the different preventative measures that it has undertaken to improve the situation. The first part, entitled "children affected by war", globally examines the situation in different countries and the various problems. The second part outlines the preventative measures that Canada has committed to in recent years in supporting international legislation and amending its national legislation. This is then followed by an examination of practical initiatives that Canada has undertaken in recent years such as hosting an international conference, organizing annual consultations, funding cultural projects and accepting refugees.

* * *

In many countries in the world there are children who are still actively participating in wars. Children who should benefit from the same fundamental freedoms that we benefited from are taken from their homes or sometimes even encouraged by their families to join rebel groups. They are forced to commit atrocities and act contrary to human nature and soon, they no longer look like young children but they look like soldiers that have fought many wars. Because young children are easier to manipulate and to control, they are a perfect subject group for militias. The very young children may not even realise the severity of their actions which can have lasting emotional consequences. The international community, in accepting the *Geneva Conventions* and the *Additional protocols* has accepted that it is prohibited to recruit a child that is under 15 year old in the armed forces. However, even if it is clearly indicated in both *protocols*, there are still many countries in which children participate in armed conflict. Canada on the other hand has been a leading country in the area of international human rights. This research will examine Canada's perspective on children affected by war and the different preventative measures that Canada has suggested in order to improve the situation. The first part of this research entitled children affected by war will outline the current situation and highlight the various problems in different countries. The second part will examine the preventative measures that Canada has undertaken in supporting international and national legislation. This will then be followed by an examination of the practical initiatives that Canada has undertaken in recent years.

Children Affected By War

Still today, there are countries in which children are participating in armed conflict. Human Rights Watch has declared that children under 18 are still being used in Afghanistan, Columbia, Angola, Sierra Leone, Sri Lanka just to name a few.

In Afghanistan it was estimated that at least 108'000 children were involved in Fighting. Also, Graça Machel indicated that in Afghanistan, with '90% of children

having no access to schooling, the proportion of child soldiers has risen from roughly 30% to at least 45% in the past years.' She also reported in her case study on Afghanistan, in 1995, that the youngest soldier in the 20-year war was 13 years old but that other sources indicated that even younger children were members of armed group. 'A UN official who visited the country in the fall of 1996 said there were many children, as young as 13 years of age, among the Taliban.'

Children have either been taken from their schools or from their homes to join rebel groups. For example The Lords Resistance Army (LRA) in Uganda would take children directly from their homes and from their schools. Even, in some cases families encourage their children to join.

For many groups child soldiers are the ideal participants because they are easy to influence and manipulate. A rebel commander in the Democratic Republic of Congo, believes that children think that their role in armed conflict is a game, and that is why they are good combatants, because they are not afraid. He stated that "[children] make good fighters because they're young and want to show off. They think it's all a game, so they're fearless."

It is hard to believe that children who are trained to kill become fearless. Perhaps, they become desensitised and instead are fearful for their lives and feel that they have no choice but to commit the atrocities so they themselves do not become the victims.

When a child is too young to hold a weapon they may be forced to act as a spy. One rebel commander from Africa declared the benefits in having a young child act as a spy in stating: "They're very good at getting information. You can send them across enemy lines and nobody suspects them [because] they're so young." Children are then used as soldiers when they are able to handle light weapons. One former child soldier from Burundi stated that: "We spent sleepless nights watching for the enemy. My first role was to carry a torch for grown-up rebels. Later I was shown how to use hand grenades. Barely within a month or so, I was carrying an AK-47 rifle or even a G3."

Even if the young children are not directly involved in the conflict and act as spies for rebel groups, they also risk being tortured or killed. Furthermore, other children that are not involved with rebel groups are also in danger because they may be mistaken as working with the rebels. Thus, the whole community is at risk.

The question that we must then ask ourselves is what kind of prevention measures can be taken? This will be examined in four sections. The first will touch on Canada's support for existing International legislation and National legislation. This will be followed by conferences and discourse as a prevention tool. We will then examine cultural initiatives and finish with Canada's leadership role in accepting child refugees.

Prevention Measures and Initiatives by Canada

a) Support of Legislation: International and National

Prevention measures such as supporting international legislation is the first step in making a difference in conflict prevention. It binds the state parties but also creates an international awareness of what is acceptable and what is not acceptable.

The *Geneva Convention and the Additional protocols* have been greatly accepted and promoted by Canada as a tool of protection for children and civilians involved in conflict. It is a widely accepted instrument for the protection of human rights.

Canada has also signed and ratified the *Rome Statute of the International Criminal Court* and supports Article 8(1)b) (xxvi) on July 7, 2000, which states that recruiting children under 15 years is a war crime.

In addition, Canada was the first Country to sign and ratify the *Optional Protocol to the Convention on the rights of the child* in July 7, 2000.

ARTICLE 1 OF THE *OPTIONAL PROTOCOL* SETS 18 AS THE MINIMUM AGE FOR DIRECT PARTICIPATION IN HOSTILITIES. ARTICLE 2 OF THE *OPTIONAL PROTOCOL* STATES THAT COMPULSORY RECRUITMENT INTO THE ARMED FORCES IS NOT PERMISSIBLE IF THE CHILD IS UNDER 18. CANADA ALSO, ACTIVELY SUPPORTS ARTICLE 3 OF THE *OPTIONAL PROTOCOL* THAT STATES THAT SIGNATORIES MUST RAISE THE MINIMUM AGE LIMIT FOR VOLUNTARY RECRUITMENT IN THEIR ARMED FORCES TO 15 AND THEY MUST RECOGNIZE THAT CHILDREN ARE ENTITLED TO SPECIAL PROTECTION AS STATED IN THE *CONVENTION ON THE RIGHTS OF THE CHILD* AT ARTICLE 38 (3) .

The federal government also decided to amend its internal legislation because it wanted it to conform to the *Optional Protocol* and to conform to Canada's long-standing policies. Thus, Section 34 of the *National Defence Act* precludes any persons under 18 years from being deployed into hostile operations.

Pursuant to article 3 (2) of the *Optional Protocol to the Convention on the Rights of the Child* Canada reserved the right to recruit children under 18 with the consent of a parent or legal guardian, allowing 16 and 17 year olds to join the arm forces. As of 1 March 2001, the Department of National Defence found that there was a total of 421 individuals between the ages of 16-19 serving in the armed forces. Children as young as 12 in the Army Cadets, approximately 55'000 members, can participate in optional training activities which include rifle shooting. The question that should then be asked is whether the guidelines for volunteering that are currently in place are proper and whether a 12 year should really be learning how to handle a rifle.

Mr Art Eggleton, Minister of National Defence, believes that the armed forces can teach children who volunteer many things that can be useful to them later on in life. He says that the armed forces serve as an educational means for young volunteers.

However, some may argue, to the contrary, that 18 should be the minimum age for voluntary recruitment.

b) Conferences and exchanges on the issue

i) The Winnipeg Conference

Conferences and exchanges at the International and National level can also be considered as tools of prevention. Through these means we can listen, learn and make solutions to improve existing problems.

Canada hosted from September 10-17, 2000 the first International Conference on War-affected Children in Winnipeg. Canada hosted over 800 delegates with 132 participating countries.

One of the objectives of the conference was to have youth from around the world participate and to voice their stories and propose solutions.

Some of the key themes that emerged from the conference were: the importance of education, rehabilitation of war affected children, the important role that youth must play in peace building.

At the conference, Minister Maria Minna, the Minister of International cooperation declared that over the next 5 years the Canadian government plans to spend over 122 million dollars on child protection, which includes children affected by war.

As for prevention tools, the minister stated that education plays an important role in conflict prevention. She stated that if children become educated about global issues, it could instil values about human rights.

Another conflict prevention tool to prevent future conflict and instability within the society would be to help in the rehabilitation process of the children who are victims of war. However in doing so, we must remember to be supportive of local solutions such as traditional cleansing rituals or other types of healing rituals when trying to help in rehabilitation.

A few solutions that were proposed by our Minister of International cooperation at the conference were to:

- eradicate poverty because it is the root of conflict

- educate everyone who works with war-affected children about children's rights and see that they meet their obligations under International law

- press national governments to pass legislation so that all parties to conflict will be held accountable for their actions

- create a greater role for children and young people especially at the international level.

ii) Canadian Peace Building and Security Division Consultations

Aside from having held an International Conference in Winnipeg, the Canadian government is also interested in proposing solutions on a smaller scale. Often, there is not enough emphasis placed on prevention methods but rather emphasis is placed on the problem once it has already developed. It is time to react and to create useful solutions to prevent further violations against children. With proper prevention tools in place, perhaps, we can affect change.

In March 2000, The Peace Building and Security Division at the Department of Foreign Affairs held their fourth annual consultation in which prevention measures were discussed.

The first prevention measure that was proposed was the creation of proper infrastructure before the conflict arises. With a proper infrastructure in place, children will be able to seek refuge during the conflict and be sheltered. Other examples that were proposed were the creation of youth groups and community centres for peace-building. Public awareness is needed to establish child protection networks.

The second tool was the improvement in early warning of conflict; to improve the ability of identifying conflict prone zones and to plan ahead. Special attention should be given to women and children in zones in which there is a promotion of hatred, where there is tension among adolescents and in areas which have problems of arms trade.

The third prevention tool that was proposed was educating youth. Conflict-resolution can be part of the curriculum at a young age because it empowers children with skills and helps them deal with violence. An anti-racism educational initiative programs could help address issues of hatred.

The fourth proposal was to place a higher priority on adolescents in conflict-prone countries and to encourage them to continue their education. In many conflict-prone countries school often ends at a primary level, and due to the lack of training or employment opportunities, youth join rebel groups in order to financially support themselves and their families.

Implementing the *Convention on the Rights of the Child* was also highlighted as a prevention tool to prevent future violations. It was noted that dealing with the perpetrators and listening to the victims could help the healing process. Also, it was suggested that in conflict prone areas a Child Rights Monitor, should report to the Security Council more often than every 5 years in order to encourage early intervention.

Lastly, it was also suggested that Embassies could work with NGO’s to maintain the rights of the Child.

c) Cultural Initiatives for War-Affected Children in Canada

Another tool of prevention is creating programs in which youth can participate, learn and have an exchange of ideas. Through these means, youth will be better educated on the issue of children affected by war and will be prepared to influence policy in the future.

In July 1998, the Minister of Foreign Affairs announced funding for the *Cultural Initiatives for War-Affected Children.* The goal of this project is to raise awareness about children in armed conflict by promoting activities at the international level.

Senator Landon Pearson, who is the advisor of Children's rights to the Minister of Foreign Affairs, announced in 1998 that 14 projects would be funded for a total of $223,000 Canadian dollars. The projects also acts as a form of art therapy for children.

For example one of the projects funded is called *Children of the Wind.* It presents 'stories and images created by children from across Canada and other countries including Bosnia, Ethiopia, Guatemala, Nicaragua, South Africa, Sri Lanka and Uganda. The pictures and stories depict how they see themselves, how war affects them and how they see the future.'

Through these programs of education perhaps the numbers of child soldiers will diminish and conflict will be lessened by the will and influence of a new generation.

d) Canada's leadership in accepting child refugees

The United Nations High Commissioner for Refugees has reported that at the end of 1999, there were 123'000 refugees and 24, 730 asylum seekers in Canada. According to Article 22 of the *Convention of the Rights of the Child,* Canada and other state parties have 'a duty to take measures to ensure that a child who is seeking refugee status or who is considered a refugee receives appropriate protection of humanitarian assistance. Under Article 39 of the convention, Canada also has a responsibility to take all appropriate measures to promote the physical and psychological recovery of refugee children.

Although, it can be argued that Canada has shown great leadership in adopting the *Optional Protocol to the Convention of the Rights of the Child*, some war-affected youth who attended workshops sponsored by the Canadian Centre for Foreign Policy Development in Canada in June and July 2000, believe that Canada can do more. The recommendations included creating more programs in Canada for war-affected youth by educating through schools, using educational programmes to raise awareness about refugees, landmines and the effect that economic sanctions can have on children.

In conclusion, we have seen that prevention tools come in many different forms. Accepting international legislation is a form of prevention because it is a mechanism for states to come together and to decide what is acceptable and what is not

acceptable. Adapting national legislation in accordance to international legislation is equally important because it demonstrates a strong commitment. Prevention is also about hosting international conferences because it is a forum in which we can learn, exchange ideas and propose solutions to existing problems. Not only experts should participate, but hearing and learning from children is also important. Also, consultations within the government of a country can be beneficial because it permits for exchanges at the national level that can then be proposed to other states and organizations. Finally, the education of youth through different means and creating programs for youth is the way to influence future policy.

During times of conflict, children must be respected and they should never participate or be forced to participate in wars. The effects of war can leave many psychological scars leaving an imprint for life. In these last few days, we have seen that even if there is international legislation in place there are still numerous children fighting and being affected by war.

So, the questions that we should ask are: What can we do as individuals? How can we make changes? What can we gain from this conference?

What we have gained is a more profound understanding of the problem of children and war. We have had different exchanges on more personal levels that have also educated us on the different policies that exist in each of our countries. This is the first step in effecting change.

I believe that through the funding of different NGO's, and maintaining close relations with other countries, changes will come. I believe, that it is through educating youth and investing in youth, that changes will come. However, changes will come, only when we realise that children represent the future and in helping them, we are not only protecting the present but we are also setting in place a stepping stone for the protection of future generations.

THE INVOLVEMENT AND PROTECTION OF CHILDREN IN TRUTH AND JUSTICE-SEEKING PROCESSES: THE SPECIAL COURT FOR SIERRA LEONE*

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Résumé
Le projet d'une Cour Spéciale pour les criminels de guerre du Sierra Leone composée de juges et procureurs locaux et internationaux a été lancé par les Nations Unies en accord avec le gouvernement du Sierra Leone. La présence d'enfants-soldats soulève un délicat dilemme: faut-il les poursuivre pour des crimes qu'ils ont été forcés de commettre et si oui, comment? Le modèle envisagé par M. Corriero se divise en deux phases: l'établissement des faits i.e. de la conduite de l'enfant contraire aux standards de comportement, et le jugement de l'enfant après son audition par le juge pour permettre à celui-ci de prendre les mesures adéquates à sa réhabilitation. L'équilibre entre sentiment de justice pour la communauté, culpabilité de l'enfant et intérêt de l'enfant devrait être respecté par la Cour.

Resumen
El proyecto de un Tribunal Especial para los criminales de guerra de Sierra Leona compuesto por jueces y fiscales locales e internacionales ha sido lanzado por las Naciones Unidas con el acuerdo del gobierno de Sierra Leona. La presencia de niños soldados plantea un delicado dilema: ¿deben ser juzgados por crímenes que han cometido contra su voluntad?, y si deben serlo, ¿cómo?. El modelo previsto por M. Corriero está dividido en dos fases: el establecimiento de los hechos, esto es, de la conducta del niño contraria a los estándares de comportamiento, y el juicio del niño después de la audición de éste por el juez para permitirte adoptar las medidas adecuadas para su rehabilitación. El equilibrio entre el sentimiento de justicia de la comunidad, culpabilidad del niño y el interés superior del niño debe ser respetado por el Tribunal.

Summary
The project for the special tribunal for war crimes in Sierra Leone, composed of judges and lawyers, both from the local and international sphere, was launched by the United Nations in collaboration with the government of Sierra Leone. The presence of child soldiers raises a dilemma: Should children be prosecuted for crimes that they were forced to commit and what method of prosecution should be used? The model that Mr Corriero envisaged is divided in two phases: A fact finding phase i.e. the actions of the child contrary to standard behaviour and a dispositional phase. The dispositional hearing enables the judge to take appropriate measures for the rehabilitation of the child. A balance between justice in the community, feelings of guilt of the child and the best interest of the child are all factors that should be taken into account by the court.

* * *

Sierra Leone is at a critical point in its history as it emerges from a ten year civil war. The country is struggling to come to terms with its violent past while simultaneously grappling with the enormous social, political and economic upheaval which accompanied the civil strife.

One of the significant challenges confronting Sierra Leone in the aftermath of the war is the problem of reintegrating into society former child soldiers used by all sides in the civil war. It is estimated that over 5'000 children between the ages of 7 and 18 were conscripted into the warring armies during the ten year period since 1991.

CONDITIONS IN SIERRA LEONE

Abass Bundu, Former Foreign Minister of Sierra Leone, in his book, *Democracy by Force?* (A study of international military intervention in the civil war in Sierra Leone from 1991-2000) states:

“Sierra Leone has been at war with itself since March 1991. Today, most of the country lies in ruins, a mere shadow of its former self. The physical destruction of life and property aside, the citizens were made to see their next door neighbors as their worst enemy, routinely tearing each other apart and making the environment probably the worst place for children. In ways that are unprecedented in the history of the country, the conflict has fostered a culture of blame, not of accountability; of

hate not of harmony; and of dependency not of self-esteem. A mosaic of thirteen different ethnic groups that once lived in harmony, interweaving with each other through marriage, has been rent apart, and it will take years to heal the wounds and mend the rifts..." (Supra, Preface xii).

"Estimates vary, but it may not be an exaggeration to put the casualty figure at 50,000 dead, more than one half of the entire population displaced internally and more than half a million turned into refugees.

Unashamedly, abuses of human rights and international humanitarian law were rampant bordering on the cruellest of conduct. They ranged from extra-judicial killings to mutilations of civilians of all ages to torture, rape and hostage taking. To a degree, they disconnected Sierra Leone from modern civilization and reconnected her to a dark age of anarchy.

No belligerent party is immune. Unarmed civilians became their targets, viewing their protection as less than sacred. Accused of collaborating with the enemy, they almost routinely became soft targets for reprisals. Women and children, in particular, fared worst. While the former were pressed into service as porters and sex slaves, the latter were almost invariably conscripted as fighters and forced to commit horrendous atrocities against even their own families. Not surprising that most of them ended up being severely traumatized." (Supra, p. 198).

THE CHILDREN

"Children have been the worst hit by this war. Deprived of childhood, thousands of them were recruited - many through abduction and conscription - as front-line combatants. In November 1998, UNICEF estimated that there were at least 4'000 child soldiers, some as young as seven years old. Other estimates have put the figure at over 5'000, divided between pro-Government forces and RUF rebels. They were used as porters, messengers and spies, but more alarmingly as combatants and sex slaves. Prized by commanders for their fearlessness and bloodlust, the warring parties found them to be more obedient, unquestioning and easier to manipulate than adults. Patrick Zangalaywah, a *kamajor* field commando, for example, admitted that: 'In Kailahun District alone, we have 3,000 child *kamajors*. These kids are very brave on the frontline.' They were also found to be "unadulterated" and extremely obedient to rules. 'We don't trust adults quite as much because many have breached the rules governing our militia and so they get killed by the enemy,' he added. In other words, child soldiers were cheap, less careful about their own safety and follow orders more readily than adults and children from poorer homes were by far the most vulnerable." Supra p. 235-23

Two other Sierra Leone authors described the involvement of children in this manner:

"The insurgency against the Sierra Leone state, characterized by guerrilla warfare, has inevitably resulted in substantial civilian deaths and injuries, extensive damage to health and education systems, and substantial movement of refugees and displaced persons. Like child soldiers in other war-ravaged countries, those in Sierra Leone have personally experienced or witnessed extremes of violence including summary executions, torture, and the like. Some have been coerced into

joining an armed group, or have volunteered to join out of desperation. Orphans, the displaced, and young heads of households have been forced to join as a way of surviving. In other words, the young are susceptible to recruitment by rebel factions because of the promise of future rewards and the belief that "those with guns can eat." Forcible conscription of the very poor and young, indoctrination, and drugging are the preferred strategies of Sankoh's RUF. Some argue that in the absence of formal state education, conscription offers the young an alternative 'bush education' which teaches many survival skills". *Sierra Leone at the End of the Twentieth Century*, Earl Conteh-Morgan & Mac Dixon-Fyle at pgs. 133-134.

Olara Otunnu, The Special Representative of the United Nations Secretary-General for Children and Armed Conflict, visited Sierra Leone from May 26 to 29, 1998; Abass Bundu quotes Otunnu, who said at that time:

"that it was part of the objective of warfare (to target unarmed civilians), not just undiscipline on the part of fighters. Their aim was to humiliate, wreak suffering, teach them a lesson and to demoralize as a tool of war." *Democracy by force?,* Supra p. 198.

RATIONALE FOR THE SPECIAL COURT

In a report prepared for the Security Council, 56th Session of the General Assembly, United Nations Secretary General, Kofi Anan presented the rationale for a Special Court to adjudicate cases of children involved as participants in war crimes:

"Member States, the UN system, and many international NGOs now explicitly agree that, to help construct a foundation for post-conflict peace and stability, and to begin to redress the suffering of the victims, those responsible for war crimes and other grave abuses must be exposed, held individually accountable, and if possible or appropriate punished for their actions. Moreover, mechanisms intended to reveal truth and impart justice should contribute to the design of reparations programs for victims and structural reforms to ensure that such events do not recur. The international community and concerned States must consider which processes or mechanisms might be best suited to achieve these outcomes. When children are involved as victims, witnesses or perpetrators of these terrible crimes, very special consideration must be given to the manner in which such experiences are documented and portrayed; whether the children themselves might be involved in truth and justice-seeking processes; and what redress these processes will bring for traumatised children, their families and societies.

The Security Council's commitment to combating impunity for egregious child rights abuse in the context of armed conflict has been most visible this past year in the case of Sierra Leone. At the request of the Security Council, a Special Court for Sierra Leone, which will seek to prosecute those bearing the greatest responsibility for crimes against humanity and war crimes, including those involving children, is being established by agreement between the UN and the Government of Sierra Leone. A Truth and Reconciliation Commission (TRC), called for by the Lome peace agreement of 1999, is in the process of formation and will seek to establish a historical record of egregious human rights violations during the conflict, and pay particular attention to the experiences of children. Previous and existing truth commissions or war crimes tribunals have not directly addressed these experiences.

In August 2000, as drafting got underway on an agreement with the Government of Sierra Leone to create the Special Court, it became apparent that the way in which the Court's statute would address gross abuses perpetrated against and by children would be a matter of contention and international concern. The Security Council strongly endorsed the proposal that the Court be empowered to prosecute the war crime of child recruitment or use, under age fifteen, by armed forces or groups. Hence, the Special Court should help to consolidate consensus around the definition of the war crime of recruitment in international criminal law. Moreover, the prosecution of child recruiters should highlight the complexities of the issues around the use of children as soldiers and, ideally, deter such criminal conduct in the future.

International organisations, child rights advocates and NGOs disagreed, however, on whether, and how, children who participated in the commitment of war crimes while serving with armed groups should be dealt with in judicial proceedings. The possible prosecution of children, and young adults who were children at the time of the crime, brought the issues of culpability, justice and impunity, and individual and social healing, into focus for the national and international community and compelled an important debate.

The Security Council, after much deliberation and consultation, agreed that should any person who was between 15 and 18 years of age at the time of the alleged commission of the crime come before the Court, he or she shall be treated with dignity and a sense of worth, and in accordance with international human rights standards. In the disposition of his or her case, imprisonment shall not be an option, but rather the Court shall determine which alternative programme or service is most appropriate. The parameters of juvenile justice have thus been retained...

The TRC and the Special Court have distinct but mutually supporting functions and both should help to achieve accountability, and shed light on the context in which the most serious crimes have been perpetrated against, and sometimes by, children in Sierra Leone. Recent events have revealed, however, that little is known at the international level about the ways in which juvenile justice or truth-telling procedures can help heal children exposed to or involved in armed conflict. The Office of my Special Representative for Children and Armed Conflict, UNICEF, NGOs and individual experts are joining forces to address the outstanding questions in need of urgent attention if the positive potential of truth commissions and war crimes tribunals is to be harnessed for the benefit of war-affected children in Sierra Leone and elsewhere." pars. 62-67

In May of 2001, I was invited by the Office of the Special Representative of the United Nations Secretary-General for Children and Armed conflict to participate in an informal discussion focusing on the role of truth and justice -seeking processes in the lives of young children who had committed very serious crimes in armed conflict settings. The aim of the meeting was to explore the lessons learned at local and national levels regarding interventions intended to promote young offenders' rehabilitation and reintegration into society, and to examine similar unprecedented efforts taking shape at the international level. Consideration was to be given to the proposed extension of personal jurisdiction over persons who were juveniles, under the age of 18 at the time of the commission of serious violent crimes, as part of a special International War Crimes Tribunal for Sierra Leone. That meeting provided

the genesis for this report. The invitation prompted me to learn more about Sierra Leone and the application of international law to child combatants. In preparation for the meeting, I thought about how my experience presiding in New York City's Youth Part - a special court for children accused of serious crimes - may be of value.

THE YOUTH PART

New York State is a jurisdiction that prosecutes children as young as 13, 14 and 15 years of age for their participation in serious crimes in the adult Criminal and Supreme Court. Since 1992, I have presided over the "Youth Part" in the borough of Manhattan in New York City. The Youth Part is a court within the Criminal Term of the New York State Supreme Court. The Part was created to adjudicate all cases involving 13, 14 and 15 years old charged as adults pursuant to New York's "Juvenile Offender" law, due to the serious violent nature of the charges.

For the past nine years, I have had the opportunity to grapple with many issues affecting children accused of violent crimes. Many of these children come from the poorest neighborhoods in New York City. These are children born into dysfunctional families and into neighborhoods saturated with drugs and guns.

Professor Jeffrey Fagen, a professor of criminology at Columbia University, has interviewed many children from New York's toughest neighborhoods. He states that these children often describe their existence in terms of living in "war zones", where life and death confrontations occur daily with "strangers", who most children assume are armed.

A significant number of cases I see involve acts of calculated, random and even ritual violence; for example, children accused of murdering a homeless man by dousing him with gasoline and setting him on fire while he was sleeping on a park bench; two fifteen year old children accused of murdering their fourteen year old mentally handicapped friend by torturing and mutilating him and then throwing him down an elevator shaft; a 14 year old slashing another youth with a razor from ear to chin as part of a gang initiation. However, the vast majority of cases are robberies involving multiple defendants, multiple levels of maturity and multiple levels of involvement.

Children accused of a "Juvenile Offender" offense, such as murder, rape, robbery, kidnapping, assault and other serious crimes, are automatically prosecuted in the adult court in the identical fashion as adults. They are accorded the same due process rights of adult criminal defendants, including the right to a jury trial. Upon conviction of a juvenile offender offense, a child is subject to mandatory imprisonment and a criminal record as a felon. A judge does have circumscribed discretion to adjudicate a child a "youthful offender". A youthful offender adjudication is a special classification. It permits the court to impose a sentence of probation instead of mandatory imprisonment and it does not constitute a criminal conviction. Furthermore, all records of a youthful offender adjudication are deemed confidential. Therefore, the determination of whether an eligible youth is to be granted youthful offender status as opposed to letting the conviction stand as a felony conviction has serious, lifelong implications. For example, a convicted felon loses specific civil rights such as the right to vote and hold public office. A felony conviction can also severely restrict employment opportunities.

If a youth is not otherwise precluded from youthful offender eligibility by statutory criteria such as age or a prior record, the court has an *affirmative* duty to exercise its discretion, that is, to proceed to a consideration of whether youthful offender adjudication is appropriate in a given case, and to announce that determination at the time of sentence. While there is no specific statutory formula which a judge must follow in exercising that discretion, factors to be considered include the gravity of the crime and manner in which it was committed, mitigating circumstances, defendant's prior involvement with the law, *defendant's attitude toward society and respect for the law, and the prospect for rehabilitation and a future constructive life*.

Consequently, in order to determine whether or not youthful offender treatment is appropriate in any given case, a judge is required to carefully analyze the nature of the crime and the offender, to evaluate the potential of the child and the appropriate effective judicial response.

In the Youth Part we developed a process to assist us in making that decision. The process is carried out in stages: When the case first appears in the Part, we gather as much information as possible about the youth. A pre-pleading report as well as a mental health evaluation is usually ordered from the Probation Department. These reports document a youth's family, school and social history, and any history of psychiatric or emotional problems. The youth's background and support network are carefully evaluated. An assessment is made concerning the extent of the youth's involvement in the underlying crime. When a juvenile's background and involvement in the crime permit the court to consider an alternative to incarceration, a plan is developed to test the willingness of the youth to modify his behavior. For example, a child will be permitted to plead guilty to the charges with certain conditions, such as compliance with a curfew and participation in an Alternative to Incarceration program. The ultimate sentence will be deferred while the youth participates in the program. Successful completion of the program will result in a sentence of youthful offender treatment and probation. Failure to comply may mean a sentence of imprisonment and denial of youthful offender status, resulting in a felony record.

Validation of the youth's compliance with the terms of his plea agreement is an important part of the process. In the Youth Part, the child's performance is carefully monitored. Youth Part staff (the Judge's Law Clerks and private secretary) are in weekly contact with the child's program counsellor, and every three weeks the child must appear in the Part for a formal program report.

Since 1991, we have resolved the cases of approximately 1,200 juvenile offenders. Approximately sixty percent of the children have been placed in Alternative to Incarceration programs. The overwhelming majority of those placed have successfully completed the program and received youthful offender treatment.

The decision to give a child an opportunity to earn youthful offender treatment is a difficult one. The reports submitted to document a child's background are, of course, helpful, but in the final analysis, the decision rests on the judge's impression of the child and the nature of the offense.

I have sought guidance in making these decisions from the example of an American judge who lived at the turn of the century and who presided over one of the first

juvenile courts in America - Judge Ben Lindsey of Colorado. He set the quintessential style for judges dealing with children. He behaved and acted in such a manner as to create a rapport and intimacy with the children who came before him, so that he could act as a catalyst for change in their behavior. He stated:

"This should be accomplished as a wise and loving parent would accomplish it, not with leniency on the one hand or brutality on the other, but with charity, patience, interest and what is most important of all, a firmness that commands respect, love and obedience, and does not produce hate or ill-will."***

One hundred years later, these words and the sentiments they represent may seem out of place when the brutality of juvenile crime and the extent of atrocities allegedly committed by children as combatants has shocked the international community. On the other hand, the concept of the judge as a formidable force in shaping the lives of the children appearing before him is perhaps even more compelling now than it was a century ago.

While the issues confronting us in the Youth Part do not precisely parallel those facing the proposed Special Court for Sierra Leone, the community of Sierra Leone has sought to bring its adolescent soldiers to the courts. The community thus expects that the court will deal with these children swiftly, effectively and constructively. I believe that certain aspects of the approach we take in the Youth Part can be adapted to the administration of the Special Court. If we agree that children deserve to be treated differently from adults, that because of their youth they are malleable, and therefore less committed to their misconduct and more susceptible to positive influence, then a judge can act as a formidable force in their lives, provided that the judge functions in a system that is designed to provide him with the tools necessary to craft a sentence that will aid in the development of a child's character and rehabilitation.

Looking at the proposal for the establishment of the Special Court from my perspective, I must confess to a certain ambivalence. On the one hand, the concept of a quasi- international juvenile justice tribunal, whose goal is rehabilitation of child soldiers rather than punishment is intriguing. On the other hand, the idea of prosecuting children under 18 as war criminals seems repugnant to principles of justice that require children to be treated differently from adults. Moreover, the citizens of Sierra Leone, if possible, should be primarily responsible for "judging" the behavior of its children. Childhood and adolescence are essentially stages of cultural assimilation and reaction by children. Evaluation of a child's culpability and maturity are matters best left to those familiar with a child's social context. Only those who grew up in Sierra Leone could know first hand the effect of such an experience. Outside jurists would be at a great disadvantage in evaluating the culpability of children born into a society torn apart by civil and political strife.

The proposal also raises other questions. Why implement a judicial mechanism for "prosecuting" children in the first place, if the goal is to identify, heal and reintegrate these children into society? What is the value of assigning "legal culpability", if such assignment would lead only to educational and rehabilitative measures, which the government of Sierra Leone and NGO's seem already willing to provide? Wouldn't a less formal "civil" process designed to "identify" children in need of services be more

productive? Why risk stigmatizing these children with prosecution in a War Crimes Tribunal? Furthermore, wouldn't the creation of a Truth and Reconciliation Commission (TRC) suffice to address the needs of the society to heal?

Shouldn't the full weight of the resources of the War Crimes Tribunal, however limited, be brought to bear on those adults most responsible for recruiting and leading these children? Wouldn't this position send a clear and powerful message that the very act of recruiting children for war is a greater threat to international standards of humanity than the acts of those children who were used as "tools" to commit atrocities?

Olara Otunnu, in an informal briefing note submitted to the Security Council, acknowledged the dilemma posed by the Special Court's treatment of child combatants:

"Moral dilemmas instinctively attach to the idea of prosecuting young people for egregious acts that they were often forced, or compelled by circumstances, to commit. But upon closer examination of the particular circumstances of Sierra Leone and the role of young people in the armed conflict there, these dilemmas appear less acute. *The courts's statute very appropriately promotes rehabilitation and rejects punishment as an objective for young offenders*. Former child combatants will not be imprisoned or rounded up from rehabilitation centers or demobilization sites. *The rehabilitation and reintegration of the youngsters is the first priority and will not be jeopardized*. While some young people - still children as defined by the Convention on the Rights of the Child - were among those who committed the worst crimes, they are first and foremost victims." *Juvenile Justice and the Special Court for Sierra Leone*, informal briefing note by Olara A. Otunnu, for the Security Council Delegation to Sierra Leone 6 October 2000.

In support of the establishment of the Special Court Otunnu posits three arguments:

First: It is reasonable to presume that some young people failed to exercise their evolving capacity to determine right from wrong, and were among those individually responsible for the worst acts of brutality in Sierra Leone;

Second: The special court will help to ensure that the most recalcitrant and feared young offenders, those perhaps least likely to seek programmatic and therapeutic support, are brought into a credible system of justice that will result in guided, supervised access to rehabilitation and ensure opportunities for reinsertion into productive civilian life;

Third: Public opinion in Sierra Leone supports a process of judicial accountability for child combatants. (See Informal Briefing Notes supra)

Consequently, accepting the establishment of the court as a *fait accompli*, I submit this report in the hope of calling attention to issues raised concerning the legal culpability and responsibility of child soldiers, and to suggest techniques that the Court can employ to achieve its goal. Perhaps if the Court is properly structured, staffed and implemented, it can serve as a model for future tribunals, setting international standards and codes of conduct with respect to children in conflict. The

experiences gained from the work of the Special Court could lay a foundation for an effective system of decriminalizing the conduct of child soldiers, and bring a sense of order, fairness and dignity to those aggrieved. The existence of the Court could also represent an explicit acknowledgement that “trying” children accused of serious atrocities is a better option than “vengeance”.

THE TASK OF ASSESSING CULPABILITY

The proposal for the Sierra Leone Juvenile War Crimes Tribunal raises some significant questions of culpability. Specifically, how should one assign, or, for that matter assess responsibility for acts committed by children, not of their own initiative, but under the direction of adults?

The purpose of the Special Court, as stated in the Secretary General’s Report to the Security Council, supra, is to prosecute those bearing "the greatest responsibility for crimes against humanity".

Who bears the greatest responsibility? The adult leaders who gave orders, or the child soldiers who followed the orders? Perhaps recognition of childrens’ diminished capacity to understand the full import of their behavior, especially under combat situations, provides the key to understanding why rehabilitation should be the overriding rationale in addressing the problems created by a child’s involvement in the atrocities of war.

In determining a child’s culpability, we must also inquire as to precisely what we can expect of children, who have been used as combatants, subjected to psychological and physical abuse, that has literally transformed them from victims into perpetrators. How can we, in the true sense of justice, hold them accountable, blameworthy under these circumstances? The principle of justice presupposes that the party to be punished has an undiminished capacity to exercise his free will to choose between right and wrong. This, in turn, presupposes that the party to be punished has a fair opportunity to learn and be exposed to accepted standards of behavior and the morality of his culture. Putting aside issues of criminal responsibility for a moment, addressing a larger issue that emphasizes moral questions over empirical ones: How do you exact conformity with a specific moral code of a society, when children may be unaware of its existence, such as in Sierra Leone, where the fabric of a society has broken down? Sierra Leone was at war for ten years. During that time, very young children were conscripted into warring armies. It can be reasonably argued they never had an opportunity to learn a positive moral code; the code with which they were indoctrinated was that of a combatant, a soldier whose responsibility was to follow orders. Disobedience was often at the risk of death. How can you rehabilitate children who have never been “habilitated”? How can you reintegrate children into a society who were never “integrated” into that society to begin with? In this context, what is the viability of a standard suggested by Olara Otunnu, that purports to hold children accountable for their failure “to exercise their evolving capacity to determine right from wrong ”?

Notwithstanding the above concerns, the arguments for establishment of the court represent a pragmatic solution to a difficult problem; in that sense they are persuasive. Assuming Sierra Leone public opinion is as it is represented, the very

existence of the court might promote a sense of healing. Certainly it is in the interest of promoting civil order that those children who are resisting efforts to give up the life style of a child combatant be brought under the jurisdiction of the Court. The issue of culpability, however, remains complex and problematic.

THE CHALLENGE

Sierra Leone's efforts to socialize its children were interrupted by a brutal ten year civil war. The challenge facing Sierra Leone today is that of absorbing back into the community a large number of children who have witnessed or caused death, destruction and despair. How can the United Nations and Sierra Leone, through a Special Court, develop a system of juvenile accountability that would meet that challenge?

I believe that the answer lies with education, and with the development of a process of accountability that nurtures a sense of humanity. The French philosopher Andre Compte-Sponville, in his book *A Small Treatise on the Great Virtues,* re-examines the classical human values to help us understand "what we should do, who we should be, and how we should live." He states:

> "Now a principle of Kantian ethics is that one cannot deduce what one should do from what is done. Yet the child in his early years is obliged to do just that, and it is only in this way that he becomes human. Kant himself concedes as much. 'Man can only become man by education', he writes. 'He is merely what education makes him, and that process begins with discipline, which changes animal nature into human nature'" (p.10)

However, before one can "educate" children involved in atrocities, one must "identify" the children, the conduct, and the extent of culpability. This must be done by a fair process; the adjudication process itself must incorporate the theses of rehabilitation and reconciliation.

THE COMPOSITION OF THE SPECIAL COURT

The Special Court for Sierra Leone will be created by treaty between the United Nations and the Sierra Leone government. It will be under joint UN-Sierra Leone jurisdiction. The Special Court will neither be a UN body along the lines of the International Criminal Tribunals established for the former Yugoslavia and Rwanda, nor a Domestic Tribunal. Rather, it will be a hybrid court jointly administered by the United Nations and the Sierra Leone government. Significantly, it will apply local and international justice. As such, it represents an entirely new model for bringing war criminals to justice.

Security Council Resolution 1315 sets forth the essential characteristics of the Special Court that the Secretary General was asked to negotiate into existence with the government of Sierra Leone.

The text of Article 7 of the proposed statute for the creation of the court reads as follows:

1)The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was, at the time of the alleged commission of the crime, between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

2)In the Trial of a juvenile offender the Court shall, in the disposition of his or her case, order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

The Special Court will be staffed with both local and international judges and prosecutors. The Secretary-General will appoint a Chief Prosecutor, while the Sierra Leone government, in consultation with the UN, will appoint a Deputy. Although the Deputy will have some input in deciding whether to indict in a particular case, the Chief Prosecutor will make the final decision. Security permitting, the Court will be located in Sierra Leone.

A SUGGESTED MODEL FOR THE SPECIAL COURT

The Special Court should strike a balance between the community's sense of justice, the child's culpability, and the best interests of the child.

There are three broad steps in this effort:

First, the enabling statute should develop and implement a prosecution strategy that accurately and precisely identifies those children who engaged in the most egregious atrocities and who are most resistant to rehabilitative measures, as opposed to those who have been exploited by war and are solely in need of social services and rehabilitation. This strategy can be accomplished by way of a hearing, preliminary to a determination as to whether a child is to be prosecuted by the Special Tribunal. A judge at such preliminary hearing should determine whether a child combatant is: (a) suitable for further prosecution in the Special Court; or (b) suitable for referral to the Truth and Reconciliation Commission; or (c) suitable for court direction to receive continued outside educational and rehabilitation services without judicial intervention.

The court as presently constructed grants the prosecutor wide discretion in determining which cases should be brought before the Special Juvenile Tribunal and which referred to the Special Commission on Truth and Reconciliation. Theoretically, only the most egregious cases of brutality would be referred to the Special Court; the remainder would be referred to the Truth and Reconciliation Commission.

In my view, the question of referral should fall within the judicial, not prosecutorial realm. That is, it should not be a unilateral decision of a prosecutor. The decision regarding referral should be a judicial decision, made after a hearing where the child

is afforded the full panoply of due process rights, including the right to counsel. This would be a fair and precise way of identifying children most in need of formal prosecution in the court. If it is ultimately determined that such a child should be prosecuted in a more formal setting because the child is considered a danger to the community or because the allegations concerning the conduct are so serious that a decision not to prosecute the child in the formal court would undermine public confidence in the Tribunal, then formal prosecution should proceed. The process of determining suitability for formal prosecution should be flexible enough to recognize and accommodate those juveniles who have the capacity to change their behavior without formal prosecution by entering or continuing to participate with a rehabilitative agency. The Court should be invested with wide discretion in determining who is to be formally prosecuted. The rehabilitation of the child soldier is the paramount consideration, and the court should be a body independent of any political agenda, recognizing, of course, that the community must believe and observe that justice is served.

Second, an infrastructure of high quality, adequately staffed rehabilitation and reintegration programs must be in place. The development of an effective court is an important goal for Sierra Leone. To accomplish this, the Special Court must have the capacity to educate and rehabilitate the children coming before it. The provision of adequate resources for such programming is crucial and should be in place before the Court convenes. One of the advantages of locating this quasi-international court in Sierra Leone is that it enhances the capacity of the court to work with the local community. Its proximity to societal and cultural institutions, although considerably destabilized by the civil war, will provide an opportunity to rebuild such institutions around the work of the court. The court can become a focal point for cohesion and coordination of the social services needed to reintegrate these children into society. The court can play a supervisory role in insuring that social services agencies provide the child with education and the necessary skills and services to become a contributing member of society. An additional advantage of locating the Court in Sierra Leone is that citizens will have access to proceedings, where appropriate. The Court's location will also facilitate the exchange of legal knowledge between international and local judicial officials, which will assist in rebuilding the country's judicial system.

Third, for those child combatants who are ultimately prosecuted in the court, there must be a mechanism to remove the stigma that will attach to such prosecutions. One way in which this can be accomplished is to use participation in the Truth and Reconciliation Commission as the final stage of a child's rehabilitation plan. For such youth, reconciliation with his community can be facilitated by voluntarily appearing before the Commission. In this way the TRC can serve as a mechanism to publicly permit the child to express remorse for his conduct and seek reconciliation with those harmed by his acts. An appearance before the TRC can constitute the final phase in a child's rehabilitation program. Caution, however, should be exercised to emphasize that such an appearance by the child would be strictly voluntary. Truth telling experiences for children who witnessed, suffered as victims, or participated in acts of brutality should be a very delicate undertaking. Children should not be cavalierly required to divulge the identities of others with whom they may have acted. Such requirement could further traumatize an otherwise willing participant prepared to divulge his own conduct, but not that of others. In many cultures, the role of the

informer causes as much shame as adheres to one who has himself performed brutal acts.

In addition to appearance before the TRC, there should be other ways of absolving and welcoming children back into the society. Perhaps there should be a formal declaration by the court upon the child's successful completion of a rehabilitation program, that he is restored to full status as a member of society and that no impediment to his success will flow from his appearance before the Special Court.

THE FORMAL ADJUDICATION PROCESS

The formal adjudication process that I envision will be composed of two phases: a fact finding phase before an impartial panel and a dispositional phase.

In the fact finding phase, the prosecutor will present evidence of conduct that violates humane standards of behavior. The prosecutor should be prepared to specifically identify the child alleged to have participated in that conduct. Once the identification of the specific child and the conduct has been established by due process standards, guidelines for which can be found in the United Nations Convention on the Rights of the Child, the Court should then proceed to a dispositional hearing.

THE DISPOSITIONAL HEARING

Not long ago, I wrote an article entitled: "*Sentencing Children Tried and Convicted as Adults"*. Some of my comments are relevant to this discussion:

"All judicial sentences are based on cultural and individual assumptions about the nature of life and the values of our society. Even though retribution has gained favor as the dominant sentencing rationale for adults in recent years, and "accountability" is a familiar refrain for youthful miscreants, the pragmatic realization that children convicted of serious crimes will return to society as still relatively young men and women, lends critical support to the goal of rehabilitation as the underlying rationale for juvenile sentences. There are many critics of the "rehabilitative ideal", however, who argue that it is an unattainable illusion, given the present state of our knowledge about criminal behavior. I do not agree that rehabilitation is unattainable. The idea that the ultimate goal of sentencing juveniles ought to be rehabilitation is surely a value preference. The law speaks of rehabilitation of children because it is desirable to proceed as if it were possible. The rehabilitative approach, however, is not merely a theoretical preference. Rather, it is based on the common sense belief that children are developmentally different than adults. Children are malleable and less committed to their misconduct and more susceptible to the impact of positive influence than are adults. Consequently, in my view, it is possible for a judge to influence a child's behavior. If we consider rehabilitation, therefore, not as "curing" an illness, or "changing" character but instead, as a process that enables a child to "develop" character, then we will be able to craft a juvenile sentence in a constructive way. It is, therefore, appropriate for a judge to maximize his interaction with the youths who appear before him as a means of deterrence and rehabilitation. For this reason, the juvenile sentencing proceeding, as an interactive process, may

acquire greater emotional and dramatic overtones than an adult sentence proceeding." (New York State Bar Association Criminal Justice Journal, Vol. 7, No. 1, Summer 1999 at p. 49.)

If we analyze the process of creating a special court from the perspective of rehabilitation - i.e. establishing a process that helps a child "develop" character and fosters reintegration into society- then I envision such a dispositional proceeding as a dynamic, interactive process which serves as a guide for the child's rehabilitation. It should be educational and motivational.

The judge's role, in addition to presiding over a process that identifies the conduct of the child with precision and accuracy, should be to help the child understand the behavior that brought him to this moment in his life, and to give him the opportunity to explain any mitigating circumstances regarding his behavior. It should be used as an opportunity to advise the youth of his responsibilities to society. The hearing should reflect the judge's attempt to initiate change in the child's behavior by assisting that child to recognize and understand the claims of society. A youth should be told what is expected of him to regain his status in the community at the moment of sentence, or in the future. The proceeding should be designed to give the youth encouragement and strength to begin his maturity.

In sum, the dispositional phase should be a restorative process - a process of reconciliation of the child with society, a process of soul awakening instead of soul debasing. It should be consciously designed to create an atmosphere that permits an assessment of the child's moral character, demonstrating the values of truth and integrity within the justice system.

For those children who are ultimately tried and convicted, or admit their involvement, the court must be able to monitor their progress toward rehabilitation and reintegration, such as by periodic appearances before the court for the purpose of validating their progress. In the absence of the threat of imprisonment, this will be a difficult undertaking. What leverage would the Court have to insure compliance with a rehabilitative program?

I suggest that the only leverage available in the context of the dispositional phase is the influence of the court (judge) over the child. This influence will be contingent upon the ability of the judge to develop a rapport with the child which fosters a relationship such that the child will want to please the court and by doing so, conform his behavior to law and society's expectations.

This involves a willingness on the part of the judiciary to engage in a proactive problem solving approach to the resolution of these cases. The ideal judge for such a court would be one raised in the culture of Sierra Leone. If this is not feasible, then the court should be permitted to consult with lay advisors, who would perform a role similar to that of South African Lay Advisors. These individuals sit with the court as representatives of the community, advising the court on local tribal customs, norms and sanctions. These lay advisors, in appropriate cases, can play a unique role in the development and administration of imaginative, productive, non-incarceratory sanctions for child misconduct, that promote the healing process and social reintegration. They can serve as a valuable link to the community, a link that provides

insight into the pulse of life beneath the official version of events. Indeed, they can help answer the question of how can we heal these children and welcome them back into society.

ATELIERS

SyNTHESE DES TRAVAUX EN ATELIERS

Atelier I : LA JUSTICE DES MINEURS ET LES ENFANTS

CRIMINELS DE GUERRE. FORMES, PROCÉDURE, MESURES DE RÉINSERTION

Methods – Proceedings and Measures of Rehabilitation

We agreed that the subject of concern to the workshop is children under the age of 18 years of age who take part in hostilities as child soldiers or are accused of war crimes, or crimes against humanity.

There was an agreement that we do not retain any specific categories such as “under 15 years or the most responsible child”.

There was an agreement that children accused of war crimes or crimes against humanity should be made to recognize their responsibility and wrong doings.

I Methods

There was an agreement on the actual process, whether it should be a formal court setting or some alternatives like “Truth Commission”.

We noted a range of different approaches as they are used in areas like Uganda, Mozambique, Kosovo and Burundi.

We agreed that whatever system is used, the purpose of the intervention should be conciliation, reintegration, rehabilitation, justice for the victims, and that it should not be punishment, i.e. death penalty, (life) imprisonment and we recommend that detention should not be used in any circumstances.

II Proceedings

We agreed that there should be a formal proceeding, although we did not agree on the exact type of the procedure to be used:

- Court Commission or otherwise.

We agreed that the proceedings should use a multi-disciplinary approach and take advice from :

- Psychologists

- Psychotherapists

- Psychiatrists

- Social Workers

- Educators

We agreed to leave each category to be dealt with case by case. We underlined that the aim should be rehabilitation, reintegration… and not punishment.

We agreed that we believe that the proceedings should be governed by international rather that national law.

III Measures of Reintegration

1) We noted the following options that can be combined:

- Education Programmes

- Skills development which should be adapted to the local conditions and opportunities

- Physical rehabilitation for young people who may have been injured

- Psychological rehabilitation for the treatment of traumas.

2) We agreed that there was a need to educate the community in order to:

- Accept the reintegration of the child

- Consider/develop/explore ways forward which do not involve further

conflict

We discussed the possibility of monitoring including international monitoring and suggested that while it might be desirable to involve one or more international judges there are practical questions that need to be addressed to make this a workable proposal.

We suggested that international NGOs may be asked to oversee the process and act as guarantor for trainers.

It was recommended that an “observatory” could be required to release information to the media so as to make the debates and decisions as transparent as possible.

The group was wide-ranging and drawn from many different countries and backgrounds. This made the discussions different because each person had different views as to how their particular situations might be best resolved.

We'd like to thank everyone for their contribution that has made the discussions extremely enriching. We thank everybody for their dedication over the two sessions.

The need for interpretation and translation slowed the process down; but we believe that we achieved a lot and we'd like to thank the group members for all their hard work.

And if we have left out anything that must be brought/added, I invite the other members to please come forward with their comments and additions.

Atelier II : NOUVEAUX PROBLEMES,

NOUVELLES STRATEGIES;

VERS UNE CULTURE DE LA PAIX

A- Problématique:
La question de l'éducation à la paix avant, pendant et après le conflit

B- Methodologie:
Deux niveaux ont été retenus: Pendant et Après la guerre

C- Plan de travail :
Population cible
Thèmes /sujets
Moyens

Pendant la guerre

Population cible	**Thèmes /sujets**	**Moyens**
Enfants : (1-2-3-4-5) **F**amille : 1-2-3- 4-5 **A**cteurs : Travailleurs sociaux, enseignants, dirigeants de la communauté, médias, militaires (1-2-3-4-5-6)	1- **P**as de violence 2- **R**ésolution de conflit par des moyens non violents 3- **T**olérance / Acceptation 4- **D**ialogue	**E**cole (création et adaptation des établissements scolaires à la situation de sécurité dans les régions : sous terrains, en déplacement, sous les tentes…) **E**ducation de base pour les adultes **E**ducation au travers des structures de la communauté. **M**edias… **C**ompagnes de sensibilisation **A**ctivité de loisir sous le thème de la non violence (théâtre, concert, sport…)

	5- **D**roits humanitaires 6- **C**ode de conduite pendant la guerre	

Après la guerre

Population cible	Thèmes /sujets	Moyens
Enfants : (1-2-3-4-5-6) **F**amille : 1-2-3-4-5-6 **A**cteurs : Travailleurs sociaux, Psychologues, enseignants, dirigeants de la communauté, médias, Gouvernements (1-2-3-4-5-6)	1- **T**olérance / Respect 2- **R**éconciliation 3- **D**roits humains (Education civique : justice…) 4- **P**rojet de vie 5- **P**révention et gestion des conflits - Causes et racines du conflit - Conséquences de la violence - Alternatives à la violence 6- **T**raitement post- trauma.	**E**cole formelle (manuels scolaires) **E**ducation informelle **A**ctivités communautaires **M**edias… **I**ntégration progressive **C**oopération et coordination entre les acteurs **L**ivre commun d'histoire **A**ctivités artistiques, de loisir et créatives **V**olontariat **T**ravail d'intérêt général

Difficultés et challenges

§ Accès à l'éducation
§ Besoins de base essentiels (nourriture, maison…)
§ Adapter ces propositions au milieu socio-culturel et la situation des pays.
Croire en une possibilité de changements :

ESPOIR
RÊVE
OPTIMISME

Atelier III : L'ACTION DES ONG ? COMPETITION,

COLLABORATION, COORDINATION ?

1. Définition

1. Il est primordial voire capital qu'une ONG soit une organisation sans but lucratif.

2. Les ONG devraient avoir des plans d'action s'inscrivant dans une perspective à long terme avec comme objectif le renforcement des potentialités et des capacités des communautés locales.

2. Relations entre ONG

1. Tous les participants s'accordent sur la nécessité de collaboration entre ONGs, qu'elles soient internationales ou nationales au sein des structures comme les coalitions, les réseaux ou les "umbrellas" (parapluies) afin de mieux coordonner leur action sur un terrain commun. Il est recommandé que les ONGs internationales (généralement plus nanties) se reposent sur l'expertise du terrain des ONGs locales (ou nationales) pour jeter les bases de cette collaboration en vue d'éviter les duplications d'actions en faveur des même bénéficiaires (exemples de la Côte d'Ivoire, Guinée et Uganda).

2. Les ONGs nationales et internationales peuvent mettre sur pied les structures collectives selon leur domaine d'intervention commun à elles toutes (e.g. ONGs oeuvrant en faveur des enfants en situation de conflit armé).

3. Au sein du même réseau ou "umbrella", les ONGs plus importantes, en termes de moyens et souvent internationales, ne devraient ni faire de l'ombre aux ONGs plus modestes, souvent locales; ni utiliser le réseau pour promouvoir leurs programmes respectifs, mais profiter de ce cadre pour exercer un lobbying plus efficace en faveur des enfants.

4. La mise en place d'un réseau ou "umbrella" ne doit pas être un moyen de filtrer les financements, mais plutôt un moyen de se partager la tâche pour plus d'efficacité (e.g. de grosses ONGs qui s'approprient le gros du financement aux dépens des petites ONGs).

5. La mise en place de réseau ou "umbrella" devrait être perçue comme un potentiel pour le renforcement des capacités de la société civile et non comme une source de conflits.

6. Le réseau ne devrait pas être utilisé pour accomplir des objectifs politiques ou économiques. Les ONGs nationales devraient donc bénéficier du droit à ne pas intégrer ces structures.

7. Mettre à profit la liste des participants aux séminaires remis à chacun pour échanger entre les uns et les autres les expériences et les informations.

Cependant le groupe V est resté sur un point de dilemme à l'issue des échanges en ce qui concerne l'indépendance des ONGs. A cause des diverses contraintes liées au financement et à la recherche de fonds, une ONG doit-elle rester pauvre et indépendante ou devrait-elle se compromettre, voir se trahir au profit du financement ? La situation idéale serait justement de garder son indépendance sans que cela remette en cause sa crédibilité pour bénéficier du financement.

Enfin, l'atelier rappelle la grande importance accordée par le Comité des Droits de l'Enfant de l'ONU, à Genève, aux rapports périodiques des coalitions nationales. Ces rapports représentent un complément tout simplement irremplaçable au rapport officiel du gouvernement. Les ONGs sont fréquemment les seules à pouvoir fournir des informations cruciales que le gouvernement lui-même ignore.

Atelier IV : MINES ET ARMES LEGERES

1. Introduction au theme
Jürgen Dubbers

I.

Konventionnen verpflichten die Unterzeichner-Staaten völkerrechtlich (bekannte Beispiele: die Europäische Menschenrechtskonvention oder die Wiener Vertrags- und Konsularkonventionen). Aber: manche Staaten lehnen manche Konventionen ab. Manche Staaten lehnen fast alle Konventionen ab (Beispiel: die UN-Kinderschutzkonvention von 1989, abgelehnt durch die USA, die sie – neben Somalia – als einziges Land der Welt nicht unterzeichnet haben und bekämpfen). Manche Staaten versuchen sogar, Konventionen zwischen anderen Staaten durch Druck auf diese zu verhindern (Beispiel: die UN-Konvention von Rom von 1999 über den Internationalen Strafgerichtshof – ICC – und die USA. Sie ist bisher von 139 Staaten unterzeichnet worden, aber nicht ratifiziert z.B. von Griechenland, Großbritannien und den USA.)

Die von heute 90 Staaten ratifizierte Wiener UN-Vertragsrechtskonvention von 1969 (die so genannte Konvention der Konventionen, in Kraft seit 1980) ist bisher z.B. nicht von Luxemburg und von den USA ratifiziert worden.

Und manche Staaten unterzeichnen *und* ratifizieren Konventionen, respektieren sie aber nur, wenn es ihnen nützlich erscheint (Beispiel: Internationaler Gerichtshof für Staatenklagen in Den Haag und die USA etwa im Verfahren Nicaraguas gegen die USA wegen Verminung nicaraguanischer Häfen – „*Conally-Vorbehalt*“).

Schwierigkeiten gibt es derzeit vor allem bei folgenden Verträgen und Konventionen:

- Atomteststoppvertrag von 1996 (Comprehensive Test Ban Treaty, CTBT), blockiert von den USA

- UN-Konventionsentwurf zur Kontrolle der Einhaltung der Konvention von 1972 zum **Verbot biologischer Waffen**, blockiert von den USA

- UN-Konvention gegen Kleinwaffen, blockiert 2001 von den USA

- Klima-Rahmenkonvention von Kyoto (Rio de Janeiro 1992, Kyoto 1997), blockiert von den USA

- ABM-Vertrag von 1972 (Anti Ballistic Missiles Treaty), trotz Unterzeichnung heute von den USA mißachtet

- Amerikanische Menschenrechtskonvention von 1978 – ratifiziert von 23 der 31 Mitgliedstaaten, nicht jedoch von den USA

- (...)

Es gibt derzeit nahezu ein halbes Hundert internationaler Konventionen, die von den USA abgelehnt, verhindert, ignoriert oder offen missachtet werden. Und es gibt inzwischen zahlreiche UN-Sicherheitsratsentschließungen, denen die USA zuwider handeln, z.B. zu Palästina. Das frühere sowjetische „Njet!“ ist durch das US-amerikanische „No“ ersetzt worden. Die Folgen sind bekannt.

Der uralte Grundsatz „pacta sunt servanda“ und der hierauf gründende Artikel 36 der Wiener Vertragskonvention (von den USA nicht ratifiziert) drohen Opfer von nationalem Egoismus zu werden.

Ist die Erwähnung eines solchen vertragsfeindlichen Verhaltens in diesen Zeiten nach dem 11. September 2001 „pietätlos“? Immerhin befinden wir uns derzeit im sogenannten „Nato-Bündnisfall“. Aber der Bündnisfall darf nicht auch noch zu einem Denk- und Diskussionsverbot führen.

Das schon in den sechziger Jahren von dem amerikanischen Senator William Fulbright als „Arroganz der Macht“ bezeichnete Verhalten einer Großmacht droht die Welt wieder in den Zustand vor Inkrafttreten der UN-Charta zurück zu werfen, in die Zeit vor 1945.

II.

Trotz aller Widerstände gibt es inzwischen die **Antipersonenminen-Konvention** (Mine Ban Treaty) von Oslo vom 18. September 1997 (in Kraft seit 1. März 1999). Sie ist von 118 Staaten ratifiziert und von 22 weiteren Staaten unterzeichnet worden (aber z.B. nicht von Griechenland, Litauen, Polen und den USA). Wie erfolgreich diese Konvention schon heute ist, zeigt der Landmine Monitor Report 2001.

III.

Eine **Konvention gegen Kleinwaffen** (small arms) fehlt noch.

Aufgrund einer Initiative der Vereinten Nationen hat im Juli 2001 in New York eine UN-Konferenz zur internationalen Kontrolle von Kleinwaffen statt gefunden. Sie ist am Widerstand der USA gescheitert. (Auch Pakistan, Russland, China und andere Staaten bremsen oder agieren lustlos. Zu den größten Herstellern gehören Bulgarien, China, Deutschland, Italien, Pakistan, Russland, die Ukraine und die Vereinigten Staaten.) Washington hat lediglich eingewilligt, die nächste UN-Konferenz hierzu für das Jahr 2006 in Aussicht zu nehmen.

IV.

Fazit

Konventionen entstehen meist sehr mühsam und langsam. Den rechtlichen und humanitären Anliegen der Weltgemeinschaft stehen häufig die ökonomischen oder militärischen Interessen einzelner Staaten oder Firmen entgegen. Doch sind Konventionen trotz allen Widerstands geeignet, internationalen Konsens über wichtige Fragen zu erzielen und damit internationale Standards zu erreichen. Aus diesen Standards können sich im Laufe der Zeit allgemein anerkannte Grundsätze des Völkerrechts entwickeln. Ermutigende Beispiele: die Genfer Rotkreuz-Konventionen von 1949 oder die Konvention über den Internationalen Strafgerichtshof (International Criminal Court - ICC) von 1999. Der Schutzgedanke der Childs Rights Convention (CRC) könnte nun im ICC-Statut von Rom zur Strafbarkeit des Einsatzes von Kindersoldaten führen.

Drängende internationale Themen (z.B. child soldiers, antipersonnal mines, small weapons, war crimes, corruption, terrorism) können entsprechenden Konventionsentwürfen große Kraft verleihen und den schließlich entstandenen Konventionen zu weiterer Dynamik verhelfen.

Das so entstehende Völkerrecht regelt primär zwischenstaatliche Beziehungen. Es stellt ein eigenständiges Rechtssystem dar. Innerstaatlich ist das Völkerrecht nicht unmittelbar anwendbar. Aber es kann Bestandteil des innerstaatlichen Rechts werden. Beispiel USA: die dortige Jurisprudenz ist der Ansicht, Völkerrecht sei „das Recht des Landes“. Die deutsche Verfassung erklärt in Artikel 25 die „allgemeinen Regeln des Völkerrechts“ zum Bestandteil des deutschen Rechts. Und im Friedensvertrag von Arusha sind die internationalen Konventionen zu innerstaatlichem Recht Ruandas erklärt worden.

V.

Was können wir selbst tun?

- unsere eigenen Regierungen auffordern, das Thema weiter zu verfolgen

- von den eigenen Regierungen verlangen, Entwicklungshilfe und sonstige finanzielle Hilfe nur noch im Falle von „Good Governance“ zu leisten

- Medienarbeit

- das Netzwerk „Menschliche Sicherheit“ (Regierungen und NGO’s) unterstützen Betreuung der offiziellen Web-Site durch Kanada: www.humansecuritynetwork.org

- gegenüber den USA Überzeugungsarbeit leisten. Gerade jetzt verlangen sie Solidarität. Das erwarten wir auch von ihnen, zum Beispiel beim Thema Antipersonen-Minen und leichte Waffen (...).

2. travail de l'atelier

Le thème de cet atelier a été divisé en deux parties :

- les mines

- les armes légères

1. les mines

La Convention d'Interdiction des Mines de 1997 et le mouvement d'interdiction dans son ensemble ont eu un impact considérable à l'échelle planétaire. Les preuves de ces avancées sont :

- le recul de l'utilisation des mines ces dernières années

- la diminution du nombre de nouvelles victimes

- la chute de la production

- l'arrêt quasi total du commerce

- la destruction accrue des stocks

- l'accroissement des fonds consacrés au déminage humanitaire

- l'extension des surfaces déminées

Seules les mines antipersonnelles sont interdites par le traité d'Ottawa. Celui-ci ne porte ni sur les mines anti-chars, ni sur les mines anti-véhicules.

Dans le contexte actuel d'enfants affectés par les mines, les recommandations suivantes ont été prises :

- amener tous les Etats à ratifier les Conventions Internationales

- prendre très au sérieux l'action des groupes rebelles dans la conception et la production des engins explosifs qui peuvent avoir autant d'effet que les mines antipersonnelles

- accroître la technologie dans le domaine du déminage

- amener les pays à détruire très rapidement les stocks des mines antipersonnelles

- instaurer des programmes nationaux d'éducation et de sensibilisation en faveur des enfants dans les pays affectés par les problèmes des mines

- instaurer les programmes de déminages et de destruction des munitions non-explosées

- sensibiliser l'opinion publique et les gouvernements sur les opérations militaires mettant en commun les troupes des Etats parties et des Etats non-parties au Traité d'Ottawa

- encourager les gouvernements à mettre les moyens militaires au déminage humanitaire

- combiner le déminage militaire et le déminage humanitaire

- former les populations au déminage humanitaire

- mettre l'accent sur l'assistance aux enfants victimes des mines

- que l'utilisation des mines soit considérée comme un crime de guerre par les statuts de Rome

II. les armes légères

Une arme légère est définie comme une arme qui peut être portée par une, deux ou trois personnes.

Ces armes estimées à un demi-milliard attisent les conflits dans le monde et peuvent transformer n'importe quel conflit local en massacre général. Peu onéreuses et faciles à utiliser, les armes légères permettent aux jeunes enfants de devenir des soldats.

Des recommandations ont ainsi été arrêtées pour limiter l'effet des armes légères :

- contrôler la production et l'exportation des munitions

- les Etats devraient établir des codes de conduites relatifs aux transferts d'armes

- les stocks d'armes et de munitions en excès doivent être détruits

- à l'exemple de la campagne internationale pour interdire les mines antipersonnelles (ICBL), une campagne mondiale doit être mise en place pour s'occuper de la question des armes légères

- l'Union Européenne pourrait servir de plate-forme pour la constitution d'une campagne internationale sur les armes légères

- développer l'éducation d'une culture de la paix dans les écoles et pendant les loisirs (sports, théâtre)

- que les recommandations du rapport Machel de 1996 relatif à l'impact des conflits armés sur les enfants soient prises en considération

- que les nombreuses initiatives prises actuellement pour fixer des limites plus strictes à la disponibilité des armes légères et leurs munitions soient prises en considération.

Parmi ces initiatives, on note :

§ le Moratoire sur la production, l'importation et l'exportation d'armes légères par les membres de la Communauté Economique des Etats de l'Afrique de l'Ouest, proposé par la République du Mali

§ la Convention sur la lutte contre le trafic illicite des armes et des explosifs adoptée par l'Organisation des Etats Américains en 1997

§ le programme de l'Union Européenne de prévention et de lutte contre le transfert d'armes illicite

§ des propositions spécifiques dans le cadre des Nations Unies pour le contrôle des armes portatives et armes légères, sur la base de considérations d'ordre humanitaire, relative à la sécurité et à la lutte contre la criminalité

§ une législation nationale visant à réglementer les transferts d'armes dans un certain nombre de pays qui les produisent et les exportent

§ un nombre croissant d'initiatives dynamiques non-gouvernementales ou émanant de communautés locales ayant pour but de traiter les problèmes posés par la disponibilité des armes, les transferts d'armes portatives et le contrôle des armes à feu.

SYNTHESE finale

RENATE WINTER
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1. Introduction

The first time I came across the problematic of children affected by war, was in Iran where I visited a cemetery in the south of the country. There I found some 20'000 graves of children killed during the war between Iran and Iraq. 20'000 children killed being child soldiers, killed during bomb attacks, killed while running through the mine fields, some as young as five, some as old as nineteen years of age. 20'000 children are buried there, none of them got a chance even to try to grow up to have a decent life, 20'000 children who did not know why they had to die.

The second time, when I was involved in dealing with child soldiers, I interviewed some twenty girls, age eleven to thirteen in Bogota, where they lived, being released from rebel groups. All of them have been trained to kill, not all of them had killed, but all of them have had to perform "sexual services", many of them forced to abortion. All of them were traumatized and without education.

The next encounter took place in Southern Sudan, where released child soldiers take part in a special program put in place by UNICEF. They slowly adapt to "normal" life and some of them make even plans for a future within their families, or extended families imploring the international support staff to find out about their whereabouts.

Now I see children with guns again, this time in Kosovo. They proudly shout, what they have been indoctrinated to shout, they proudly transport arms, as they are told that they are heroes. Many of them have just basic education and are thought to hate. The graves of children, who have been killed recently are still fresh…

2. What are the problems?

The Secretary General of the United Nations stated in a report (A/55/163-S/2000/712) on Children in Armed Conflict, that children have increasingly been victimised as both the targets and perpetrators of violence; that almost half the world's 21 million refugees are children, another 13 million are displaced within the borders of their own countries; that the number of children under the age of 18 who have been coerced or induced into taking up arms as child soldiers is generally thought to be in the range of 300'000 (the number increased lately to half a million). If we consider all these numbers we come up with a rough sum of approximately 35 million children affected by war.

Between the years 1986 until 1996 2 million children have been killed in armed conflicts, 6 million have been severely wounded or handicapped for life, 10 million lost at least one parent according to a study done by Graça Machel, special reporter of the UN.

What are now the problems of war-affected children we should deal with if we want to integrate or reintegrate those children into society again?

a) Child Soldiers

There are first of all those children who take part as soldiers in armed conflicts. As said above it is believed that around 500 000 under the age of 18 are fighting

currently in countries such as Sierra Leone, Liberia, East Timor, Sri Lanka, Angola, Burma, Uganda, just to mention a few.

Experience shows, that the longer a conflict lasts the younger the children fighting in armed formations become. Many of those children are coerced into the army or into rebel groups, sometimes it occurs that a family has to give one son to the army or militia and another one to a rebel group to be able to survive in the combat zone. In other countries children voluntarily join the army because it is the only possibility for them to get something to eat or to support their family with the money they "earn". Those children don't have a childhood at all. They do not learn how to solve a conflict peacefully, they do not learn how to live in a given society except one ruled by martial law, they very often do not even learn how to read and write. They learn how to kill, sometimes under the influence of alcohol and drugs, administered at them by their superiors.

b) Girls

The situation of girls in zones of armed conflict is especially dramatic. In some countries they are used at a very young age as servants for the military, later on, when they grow up, the soldiers sexually abuse them. Especially in countries where a girl has to be protected by her family in order to lead a correct life, those girls regularly end up as prostitutes if they survive their "services" during armed conflict. Often pregnant girls are forced to abortion, in many cases the babies, and very often the mothers as well, do not survive.

c) Internally displaced children

The huge amount of children, displaced in their own region, makes it very difficult for war-torn countries, which lack the facilities and resources to provide for the most basic needs of those children. There are no housing facilities available, no medical support, not to mention the lack of schools, education and jobs. Diseases such as tuberculosis and HIV/AIDS are rampant.

d) Abducted Children

Children, who have been abducted, especially if this happened during their very early age, do very often not even know where they are from and where their parents or family may live currently. Furthermore, these children are heavily affected by almost a total lack of self-esteem as they very often have been treated as slaves.

3. What do we have?

a) The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child mentions in its Article 38 that

“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”.

It furthermore states in Paragraph 2 of the mentioned Article that

“State Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take direct part in hostilities”.

Paragraph 3 continues, saying that

“State Parties shall refrain from recruiting any person who has not attained the age of 18 years, State Parties shall endeavour to give priority to those who are oldest”,

Article 39 states, that

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of… (among others) armed conflicts. Such recovery and social reintegration shall take place in an environment which fosters health, self-respect and dignity of the child”.

If one takes into consideration Article 3 of the Convention which mentions that the best interest of the child shall be a primary consideration, if one considers furthermore Article 6 which mentions that State Parties shall insure to the maximum extent possible the survival and development of the child, that Article 19 mentions, that State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, one should believe, that this Convention, correctly implemented, would put an end to the abuse of children in armed conflicts. This is not the case.

Let alone the fact that the Convention sets the minimal age for child soldiers very low, it addresses the problems of war affected children in a rather vague way. It would for instance be possible for a member state to declare that children are used in armed conflicts only as “labour” or “workers” when they are in reality used to clear up mine fields just by letting them run through mined territories in front of the army.

b) Convention 182 of the ILO on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

Therefore the Convention 182 of the ILO on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour tried in June 1999 to prohibit, inter alia, forced or compulsory recruitment of children for use in armed conflict.

c) ICC

Furthermore the adoption of the Rome Statute of the International Criminal Court included in particular the conscription or enlistment of children under the age of 15

years or the use of them to participate actively in hostilities in both international and non-international armed conflicts among war crimes.

d) Optional Protocol to the Convention on Rights of the Child on the involvement of children in armed conflicts adopted and opened for signature, ratification and accession by General Assembly resolution (18 member States ratified the optional Protocol up to now, it therefore entered into force, February 12th 2002)

This Optional Protocol finally has a lot of very specific dispositions concerning children in armed conflict.

The most important of these articles concerning the subject discussed are:
Article 1, which states that no one under the age of 18 should take direct part in hostilities,
Article 2, which states that no one under the age of 18 years should be recruited compulsorily into the armed forces,
Article 3, which states that children under the age of 18 are entitled to special protection, that the State Parties have to set forth the minimum age at which voluntary recruitment is permitted and a description of the safeguards, that such recruitment id not forced,
Article 4, which states that armed groups, which are not the armed forces of a State, should as well respect the Optional Protocol,
Article 6, which states that children recruited or used in hostilities have to be demobilized.
The optional Protocol is a binding instrument such as the CRC.

4. What do we need?

As one can see it is not another international instrument, which is needed. The Optional Protocol in connection with the Rome Statute of the International Criminal Court provides safeguards for children in armed conflict as well as for children suffering the consequences of armed conflicts and provides furthermore even sanctions for those who violate the dispositions mentioned above. The problem consists only in the fact that the ICC is not functional as yet. This means that one has to find other measures as well to protect children concerned by armed conflicts on a national basis until the ICC as well gets functional.
One of the most pressing issues in the impact of sanctions of the State on released child soldiers. It does not make sense at all and is very detrimental to a child, if it is released from armed service or liberated after abduction and then transferred to penal justice. It would be most important to grant amnesty or find some other solutions, that a child having committed crimes during his military service might not be brought to justice and sent to prison. Furthermore provisions have to be abolished which foresee punishment, especially incarceration for children who might have

become beggars or vagabonds after demobilization. Provisions for integration of demobilized child soldiers, liberated abducted children and prostitutes freed from "service to military" have to be installed.
On the other hand, it would be most important for concerned states to provide national dispositions to fight the impunity of those, who recruit children, misuse them, force them to commit atrocities or abuse them in any other way.

5. An example: Kosovo

The current situation in Kosovo shows very clearly the problems of children in war-like situations. All the armed rebel groups use children under the age of 18 for military purposes. They are included in the actions taking place in the combat zones, the younger ones are used for support services such as storage of weapons or food and clothes supply, those among the children who killed an "enemy" are celebrated as war heroes. If caught, they will be sent to custody and have to face trial. This means that the child soldiers in Kosovo are caught between the national interest of their political parties on the one hand and the international justice system on the other. The future of those children seems very dark. The only ones who would provide them a job and an income in the future after their release from prison are the leaders of organized criminality. They are looking for cheap, willing, non-demanding, obedient labour and killers.
As a result of all the considerations as set out above I would like to conclude in urging to ratify and implement the already existing International Instruments instead of creating new ones**,** to adapt national legislation to the international level, to urge parties who misuse children in armed conflicts to set them free, to find solutions using a positive approach for reintegrating these children into society again and to bring to justice those, who recruit them.

annex 1: optional protocol to the convention on the rights of the child on the involvement of children in armed conflicts

Article 1
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
Article 2
States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.
Article 3
1. States Parties shall 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, 1 taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into national military service.
4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United

Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

annex 2: joint action of 17 december 1998 adopted by the council on the basis of article j.3 of the treaty on the european union's contribution to combating the destabilising accumulation and spead of small arms and lights weapons

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular Article J.3 thereof;

Having regard to the general guidelines of the European Council held on 26 and 27 June 1992, which identified the areas falling within the security sphere which could, as from the entry into force of the Treaty on European Union, be the subject of joint actions;

Whereas the excessive and uncontrolled accumulation and spread of small arms and light weapons (hereafter referred to as "small arms") (1) has become a problem of great concern to the international community and that this phenomenon poses a threat to peace and security and reduces the prospects for sustainable development in many regions of the world;

Footnote (1): See Annex.

Whereas the European Union welcomes the adoption and declaration of a moratorium on the importation, exportation and manufacture of light weapons in ECOWAS Member States by the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) at its 21st session;

Whereas the UN Security Council adopted unanimously on 19 November 1998 Resolution 1209 (1998) on the situation in Africa, illicit arms flows to and in Africa;

Whereas the UN General Assembly addressed, in particular in Resolutions 52/38J on Small Arms and 52/38G on consolidation of peace through practical disarmament

measures, the problems caused by the destabilising accumulation and spread of small arms;

Whereas the Group of Governmental Experts on Small Arms has been reestablished by the Secretary-General in accordance with Resolution 52/38J, to continue the work already accomplished under the Panel of Governmental Experts on Small Arms;

Whereas the UN Economic and Social Council recommended that States work towards the elaboration of an international instrument to combat the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition within the context of a United Nations convention against transnational organised crime;

Whereas the International Criminal Police Organisation (INTERPOL) is actively pursuing its efforts in the fight against the criminal use of firearms;

Whereas in the spirit of the "Brussels call for action" and in the interest of upholding State responsibility to protect citizen security within a framework of good governance and integrated approach to security and sustainable development it is required to take comprehensive measures for the elimination of uncontrolled circulation of small arms;

Whereas the present initiative builds on, and is complementary to already existing EU initiatives, in particular the EU programme for preventing and combating illicit trafficking in conventional arms adopted by the Council on 26 June 1997 and the EU code of conduct on arms exports adopted by the Council on 8 June 1998;

Whereas the European Community has supported actions of demobilisation and reintegration of former combatants and of weapons collection in the context of its humanitarian aid, reconstruction and development cooperation policy,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

1.The objectives of this Joint Action are:

to combat and contribute to ending the destabilising accumulation and

spread of small arms,

to contribute to the reduction of existing accumulations of these weapons

to levels consistent with countries' legitimate security needs, and

to help solve the problems caused by such accumulations.

2. This Joint Action entails the following elements:

building consensus on the principles and measures referred to in Title I;

making a multifaceted contribution as referred to in Title II.

TITLE I : Principles on preventive and reactive aspects

Article 2
The European Union shall enhance efforts to build consensus in the relevant regional and international forums (e.g. the UN and OSCE) and among affected States on the principles and measures set out in Article 3 and on those set out in Articles 4 and 5 as the basis for regional and incremental approaches to the problem and, where appropriate, global international instruments on small arms.

Article 3
In pursuing the objectives set out in Article 1, the European Union shall aim at building consensus in the relevant international forums, and in a regional context as appropriate, for the realisation of the following principles and measures to prevent the further destabilising accumulation of small arms:

(a) a commitment by all countries to import and hold small arms only for their legitimate security needs, to a level commensurate with their legitimate self-defence and security requirements, including their ability to participate in UN peacekeeping operations;

(b) a commitment by exporting countries to supply small arms only to governments (either directly or through duly licensed entities authorised to procure weapons on their behalf) in accordance with appropriate international and regional restrictive arms export criteria, as provided in particular in the EU code of conduct, including officially authorised end-use certificates or, when appropriate, other relevant information on end-use;

(c) a commitment by all countries to produce small arms only for holdings as outlined in (a) above or exports as outlined in (b) above;

(d) in order to ensure control, the establishment and maintenance of national inventories of legally-held weapons owned by the country's authorities and the establishment of restrictive national weapons legislation for small arms including penal sanctions and effective administrative control;

(e) the establishment of confidence building measures, including measures to promote increased transparency and openness, through regional registers on small arms and regular exchanges of available information, on exports, imports, production and holdings of small arms, and on national weapons legislation, and through consultations between the relevant parties on the information exchanged;

(f) the commitment to combat illicit trafficking of small arms through the implementation of effective national controls, such as efficient border and customs mechanisms, regional and international cooperation and enhanced information exchange;

(g) The commitment to challenge and reverse "cultures of violence", by enhancing public involvement through public education and awareness programmes.

Article 4
In pursuing the objectives set out in Article 1, the efforts of the European Union shall aim at building consensus in the relevant international forums, and in a regional context as appropriate, for the realisation of the following principles and measures to reduce existing accumulations of small arms:

(a) the assistance as appropriate to countries requesting support for controlling or eliminating surplus small arms on their territory, in particular where this may help to prevent armed conflict or in post-conflict situations;

(b) the promotion of confidence-building measures and incentives to encourage the voluntary surrender of surplus or illegally-held small arms, the demobilisation of combatants and their subsequent rehabilitation and reintegration, such measures to include compliance with peace and arms control agreements under combined or third party supervision, respect of human rights and humanitarian law, the protection of the rule of law, in particular as regards the personal safety of former combatants and small arms amnesties, as well as community-based development project and other economic and social incentives;

(c) the effective removal of surplus small arms encompassing safe storage as well as quick and effective destruction of these weapons, preferably under international supervision;

(d) the rendering of assistance through appropriate international organisations, programmes and agencies as well as regional arrangements.

Article 5
The Member States will promote, where appropriate, in the context of resolving armed conflicts,

(a) he inclusion of provisions with regard to demobilisation, elimination of surplus weapons and integration of ex-combatants into peace agreements between the parties to the conflict, into mandates of peace-support operations or other relevant missions in support of the peaceful settlement,

(b) he consideration of the possibility of making necessary provision for measures ensuring the removal of small arms in the context of demobilisation by the UN Security Council in case the country or parties concerned are not in a position to comply with the relevant obligations.

TITLE II : Contribution by the European Union to specific actions

Article 6
1.The Union will provide financial and technical assistance to programmes and projects which make a direct and identifiable contribution to the principles and measures referred to in Title I, including relevant programmes or projects conducted by the UN, the International Committee of the Red Cross, other international organisations and regional arrangements and NGOs. Such projects might include, *inter alia*,

weapons collection, security sector reform and demobilisation and reintegration programmes as well as specific victim assistance programmes.

3.In providing such assistance, the EU shall take into account in particular the recipient's commitments to comply with the principles mentioned in Article 3; their respect of human rights; their compliance with international humanitarian law and the protection of the rule of law; and their compliance with their international commitments, in particular with regard to existing peace treaties and international arms control agreements.

Article 7
1.The Council shall decide on:

the allocation of the financial and technical contribution referred to

in Article 6,

the priorities for the use of those funds,

the conditions for implementing specific actions of the Union, including the possibility of designating, in certain instances, a person responsible for its implementation.

2.The Council shall decide on the principle, arrangements and financing of such projects on the basis of concrete and properly-costed project proposals and on a case-by-case basis, without prejudice to Member States' bilateral contributions and operation of the European Community.

3. The Presidency shall, under the conditions set out in Article J.5 (3) of the Treaty:

ensure liaison with the United Nations and any other relevant organisation involved;

establish, with regional arrangements and third countries, the contacts needed to implement the Union's specific actions.

It shall keep the Council informed.

Article 8
The Council notes that the Commission intends to direct its action towards achieving the objectives and the priorities of this Joint Action, where appropriate by pertinent Community measures.

Article 9
1.The Council and the Commission shall be responsible for ensuring the consistency of the Union's activities in the field of small arms, in particular with regard to its development policies. For this purpose, Member States and the Commission shall submit any relevant information to the relevant Council bodies. The Council and the Commission shall ensure implementation of their respective action, each in accordance with its powers.

2.Member States shall equally seek to increase the effectiveness of their national actions in the field of small arms. As far as possible, actions taken pursuant to Article 6 shall be coordinated with those of Member States and of the European Community.

Article 10
The Council will review annually the actions taken in the framework of this Joint Action.

Article 11
This Joint Action shall enter into force on the day of its adoption.

Article 12
This Joint Action shall be published in the Official Journal.

Done at Brussels, 17 December 1998
For the Council
The President
W. MOLTERER
Source: Official Journal of the European Communities L9/1, 15 January 1999

Annex

The Joint Action shall apply to the following categories of weapons, while not prejudging any future internationally agreed definition of small arms and light weapons. These categories may be subject to further clarification, and may be reviewed in the light of any such future internationally agreed definition.

a)Small arms and accessories specially designed for military use

-machine-guns (including heavy machine-guns),

-submachine-guns, including machine pistols,

-fully automatic rifles,

-semi-automatic rifles, if developed and/or introduced as a model for an armed force,

-moderators (silencers).

b)Man or crew-portable light weapons

-cannon (including automatic cannon), howitzers and mortars of less than 100 mm calibre,

-grenade launchers,

-anti-tank weapons, recoilless guns (shoulder-fired rockets),

-anti-tank missiles and launchers,

-anti-aircraft missiles/man-portable air defence systems (MANPADS).

1 Kosovic J.: Juvenile Delinquency as a Social Phenomenon. In: Causes of Socially Unacceptable Adolescent Behavior, Sarajevo, 1998, pp. 71.

2 Two research studies of this year are particularly significant. One study was published within a research project of the Association for Criminal Law and Criminology, UNICEF and Soros Foundation, and another one was conducted for the requirements of the International Conference "Children - Victims of War and Peace".

3 Groups of adolescents are, for example, used for commission of criminal offences related to drug trafficking, because members of the organised crime deliberately choose adolescents because the system of criminal law treats them differently.

4 It should be noted that the data causing concern are not specific for Bosnia and Herzegovina only. They are true for other countries as well. This was collaborated at the Balkan Conference on the Administration of Juvenile Justice held in November 2000. See Cajner Mraovic, I./Stamatel, J. P.: Juvenile Delinquency in Croatia: Trends of War, "Americanisation" or "Globalisation". Croatian Annual of Criminal Law and Practice, Vol. 7 - No. 2 (2000), pp. 505 - 540.

5 It concerns the following documents in particular: Universal Declaration on the Rights of Man (1948), International Agreement on Civil and Political Rights (1966) with additional protocols (1989), Convention on the Rights of the Child (1990), United Nations Rules for the Administration of Juvenile Justice /the Beijing Rules/ (1985), United Nations Rules for the Protection of Juveniles Deprived of Their Liberty /the Havana Rules/ (1990), United Nations Guidelines for the Prevention of Juvenile Delinquency /The Riyadh Guidelines/ (1990), European Convention of the Exercising of the Rights of the Child (1995).

6 More extensively: Sijercic-Colic, H.: An Overview of the Criminal Procedure Legislation in the Federation of Bosnia and Herzegovina. In: Commentary on the Law on Criminal Procedure, Sarajevo, 1999, pp. 758 - 759 and Sijercic-Colic, H.: Approximation of the Criminal Law System of the Federation of Bosnia and Herzegovina to the International Human Rights Law – a Separate Survey of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina. The European Journal of Crime, Criminal Law and Criminal Justice. Vol. 7 (1999) No. 3, pp. 289 - 299.

7 There are the following types of correction measures: **1.** disciplinary measures (court reprimand and sending to disciplinary juvenile centre) **2.** measures of increased supervision (on behalf of parents, foster parents or custodians in another family, or – on behalf of competent social care authorities) **3.** institutional measures (sending to a juvenile correctional institution, - correctional homes or – other juvenile institutions).

8 Renate Winter, a UN expert, assisted in elaboration of a new criminal legislation system in Bosnia and Herzegovina (during 1997 and 1998). Credit goes to her in particular for incorporation of alternative measures in domestic criminal legislation.

9 Filipcic K.: Treatment of Juvenile Delinquents: Comparative Aspect. Ljubljana, 1998, p. 16.

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* For an excellent discussion on the Proposal for a Special Court see, *The Protection of Children and the Quest for Truth and Justice in Sierra Leone* by Ilene Cohn, Journal of International Affairs, Fall 2001, 55, No. 1.

** Special thanks to my staff Mollie Faber, Valerie Pels, Ludwina Normil for their assistance in the preparation of this report.

*** This quote has been attributed to Judge Lindsey, although research has not revealed its source. For further information, see Charles Larsen, *The Good Fight: The Life and Times of Ben B. Lindsey* (1972)

Die USA bedrohen diejenigen Staaten mit Sanktionen, die mit dem Internationalen Strafgerichtshof

zusammen arbeiten wollen, und begründen damit auch den Zahlungsrückstand ihrer UN-Beiträge

geregelt in der UN-Charta - Statut in deren Anhang

Conally-Amendment. Danach sollen solche Streitigkeiten mit den USA von der Zuständigkeit des Internationalen Gerichtshofes ausgenommen sein, „die sich auf Angelegenheiten beziehen, die nach der Auffassung der Vereinigten Staaten von Amerika ihrem Wesen nach zur internen Zuständigkeit der Vereinigten Staaten von Amerika gehören". Die USA wollen hiermit selbst über die Zuständigkeit des Gerichtshofes entscheiden. Der Gerichtshof hat allerdings in der Verminung nicaraguanischer Häfen keine innerstaatliche Angelegenheit der USA erkennen mögen und deshalb seine Zuständigkeit bejaht.

Die Frankfurter Allgemeine Zeitung schrieb am 6. August 2001 (Seite 6): „Damit befindet sich die amerikanische Regierung ... zunehmend in der Gesellschaft von Ländern, die sie selbst als „Schurkenstaaten" bezeichnet." (Beispiel: wie die USA haben folgende angebliche „Schurkenstaaten" die Wiener Vertragsrechtskonvention von 1969 nicht ratifiziert: Afghanistan, Iran, Iraq, Jemen, Korea Nord (und Süd) und Libyen. Der angebliche „Schurkenstaat" Sudan dagegen hat sie 1990 ratifiziert.

Diesen zu beenden bedarf es übrigens eines einstimmigen Natobeschlusses – den die USA also wiederum verhindern könnten.

das sollen Waffen sein, die, je nach Definition, von bis zu zwei oder drei Mann transportiert werden können

ICC Article 8 - **War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of

   a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:

   (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against

   persons or property protected under the provisions of the relevant Geneva Convention:

…(xxvi) **Conscripting or enlisting children under the age of fifteen years into the national armed**

forces or using them to participate actively in hostilities.

Mitgliedschaft und Ursprung des Netzwerkes "Menschliche Sicherheit"

Dem Netzwerk gehören derzeit die **Außenminister von 13 Staaten** an, und zwar von Chile, Griechenland, Irland, Jordanien, Kanada, Mali, Niederlande, Norwegen, Österreich, Schweiz, Slowenien und Thailand, sowie von Südafrika als Beobachter. Das Netzwerk wurde 1999 aufgrund einer Initiative des kanadischen Außenminister Axworthy und des norwegischen Außenminister Vollebaek in Bergen/Norwegen ins Leben gerufen. Nach dem ersten Treffen der Außenminister in

Bergen und einem zweiten Minister-Treffen des Netzwerkes in Luzern, Schweiz (2000), fand vom 11.-12. Mai 2001 in Petra, Jordanien, das dritte Außenminister-Treffen des Netzwerkes statt.

Inhaltliche Schwerpunkte

Inhaltlicher Schwerpunkt der Arbeit des Netzwerkes ist es, jene Politikerfordernisse zu identifizieren, die auf die Sicherheit des Menschen abzielen, d.h. die Freiheit der Menschen von Bedrohungen ihrer Rechte, ihrer persönlichen Sicherheit. Schwerpunkte:

- **Anti-Personenminen**
- **Kleinwaffen**
- **Kinder und menschliche Entwicklung, insbesondere in bewaffneten Konflikten**
- **Humanitäres Völkerrecht und Menschenrechte/Menschenrechtsbildung**
- **Konfliktverhinderung**
- **Menschliche Entwicklung und Menschliche Sicherheit**