From Silent Civilians to Violent Victims

The Emergence of Child Soldiers in International Law from the Post-WWII Trials to the Special Court for Sierra Leone

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Abstract

The Special Court for Sierra Leone (SCSL) at turn of the twenty-first century was the first international tribunal to convict individuals for the war crime of enlisting and using child soldiers. It was also the first international tribunal to address the issue of culpability for the atrocities committed by those under the age of eighteen. This thesis examines which conceptions of children in conflict had emerged by the 1990s, and how these conceptions were reflected in the establishment of the SCSL. It finds that while child soldiering is often considered to be a new phenomenon, it has significant historical roots across many different societies, including in the Global North. However, changing Western conceptions of childhood were reflected in developing international law. By the time of the establishment of the SCSL, an epistemic community which viewed child soldiers primarily as victims had emerged. This view clashed with local understandings of childhood and criminal responsibility. While the Sierra Leone Tribunal was massively important for children’s rights, the lack of recognition of the complexities of the child soldier issue reduced the legitimacy of the trials, and furthered a narrative of child soldiers as an ‘African’ problem.
Acknowledgements

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This thesis is a true testament to how useful chocolate and a constant state of panic can be for the writing process. It’s been fun both fun and frustrating, but now I’m really looking forward to a good nap.

I am responsible for any mistakes in this thesis.

Fride Sunde Lavik,
16. May 2019
Table of Contents

Introduction .............................................................................................................................. 1
Defining the terms: Who are the child soldiers? ................................................................. 2
State of the art ......................................................................................................................... 5
Theory and methods .............................................................................................................. 8
Sources ................................................................................................................................... 10
Course of the thesis .............................................................................................................. 11

Chapter 1: A modern phenomenon? Child soldiers in history .......................................... 13
1.1 How far back does it go? Child soldiers in medieval warfare ....................................... 13
1.2 Guns, germs and children: child soldiers in the face of new military technology in the eighteenth and nineteenth centuries ................................................................. 15
1.3 Not with a bang, but a whimper: Child soldiers in the early twentieth century .......... 21
1.4 The long century getting longer: Child soldiers during WWII .................................... 23
1.5 New wars, same old story? Child soldiers in the Cold War era .................................... 25
1.6 Summary ....................................................................................................................... 28

Chapter 2: A brief look at the history of childhood ............................................................ 28
2.1 Inventing childhood ...................................................................................................... 29
2.2 Industrialisation: adolescents and childhood as a stage to adulthood ...................... 31
2.3 War-handicapped children and baby boomers ........................................................... 33
2.4 Children’s rights: protection and agency .................................................................... 35
2.5 Summary ....................................................................................................................... 36

Chapter 3: Child soldiers in international law .................................................................... 38
3.1 Establishing international law in the post-war era ....................................................... 38
  3.1.1 Nuremberg and Tokyo ......................................................................................... 39
  3.1.2 The Geneva Conventions ...................................................................................... 41
3.2 Child soldiers enter international law ......................................................................... 43
  3.2.1 The Additional Protocols .................................................................................. 44
  3.2.2 The 1989 Convention on the Rights of the Child ................................................. 46
3.3 The 1990s: The decade of the child soldier ............................................................... 49
  3.3.1 The ‘straight 18’ position and the creation of a consensus .................................. 50
  3.5.2. Child soldiers in international criminal law ...................................................... 52
List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRC</td>
<td>Armed Forces Revolutionary Council</td>
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<td>APC</td>
<td>All People’s Congress</td>
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<td>CDF</td>
<td>Civil Defence Forces</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
</tr>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>IMT</td>
<td>International Military Tribunal</td>
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<td>NMT</td>
<td>Nuremberg Military Tribunal</td>
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<td>OP</td>
<td>Optional Protocol to the Convention on the Rights of the Child</td>
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<td>RUF</td>
<td>Revolutionary United Front</td>
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<td>SCSL</td>
<td>Special Court for Sierra Leone</td>
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Introduction

“There is in Sierra Leone an entire lost generation of children, lost souls wallowing in a cesspool of physical and psychological torment. No child should be forced into situations that cause them to mutilate, maim, rape, and murder. This lost generation, victim or perpetrator, are overall victims of this joint criminal enterprise that was led by Sesay, Kallon, and Gbao among others. Children will come before you and testify in effect, ‘I killed people! I’m sorry, I didn’t mean it.’”

So opened Chief Prosecutor of the Special Court for Sierra Leone the Prosecution’s case against the infamous Revolutionary United Front (RUF). Although the brutal civil war in Sierra Leone at the end of the twentieth century was home to an “encyclopaedia of violence”, the primary legacy of the Special Court would be its focus on child soldiers. During the course of the trials, the three RUF leaders mentioned in the quotation above would all be convicted for the enlistment and use of children in conflict, as would several members of the Armed Forces Revolutionary Council, and the former Liberian President Charles Taylor. This marked the first time an international war crimes tribunal convicted individuals for the use of child soldiers.

The last fifty years of the twentieth century saw continuous developments in international law. From the Nuremberg and Tokyo trials after the end of the Second World War, to the various humanitarian and human rights treaties in the 1970s and 1980s, and finally to the era of international criminal law and war crimes tribunals from the 1990s onwards, attempts to bring perpetrators of large-scale violence to justice had become an objective of international politics. The developments in international law happened simultaneously with other changes; shifting understandings of childhood, an increased awareness of the experiences of children in conflict, and a changing power balance between the actors in international law.

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(thus neither recognising the role of children as combatants nor their particular vulnerabilities in conflict), the Special Court for Sierra Leone (SCSL) at the turn of the century was not only the first to prosecute defendants for the recruitment and use of child soldiers, but was also the first to specifically address the issue of the potential culpability of child soldiers for war crimes within its statute. The legacy of the Sierra Leone Tribunal has perhaps been its focus on children as victims of armed conflict and the successful prosecution of political leaders for the exploitation of children in war, but this legacy was not necessarily a foregone conclusion at the outset.

The planning and establishment of the Special Court saw states, NGOs and civil society contend over issues such as who bore ‘the greatest responsibility’ for the atrocities committed during the war, whether or not the recruitment of children into armed groups should be seen as a traditional practice and not a war crime, and what responsibility child soldiers bore for the horrors many of them committed. The Special Court for Sierra Leone can in many ways be seen as a culmination of the debates among politicians, lawyers, diplomats, activists and others regarding children in armed conflict, while at the same time being a reflection of the changing understanding of childhood itself.

In this thesis, I will examine which conceptions of children in conflict had emerged by the end of the twentieth century, and how these conceptions were reflected in the establishment of the Special Court for Sierra Leone. In other words, to what extent was the focus on children in the Sierra Leone Tribunal a conclusion of the debates on the role of children in international law over the last few decades, and in what ways did international and local actors contend over issues of children as victims and perpetrators of war in the Sierra Leone Tribunal?

Defining the terms: Who are the child soldiers?

In contemporary discourse shaped by international agencies and humanitarian organisations, war, and particularly civil war, is often portrayed as a brutal, senseless, and barbaric enterprise. The idea of the child soldier seems particularly emblematic of this – the innocent victims who are turned into savage perpetrators. In Western media, it is often a very specific image of the

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4 Matthew Happold, Child Soldiers in International Law (Manchester: Manchester University, 2005); Druml, Reimagining Child Soldiers in International Law and Policy.

child soldier that is conjured up: a young boy, perhaps ten or twelve years old, carrying a weapon that is almost as large as he is. The boy is most likely African, and it goes almost without saying that he is the victim of a set of terrible circumstances, such as abduction, forced drug-use, manipulation, and violent abuse. Child soldiers are framed as children who are robbed of their innocence, agency and future by the militant groups that have recruited them against their own will, and they have in many ways become a symbol of the cruelty and senselessness of modern-day warfare. As one recent article in the New York Times put it:

“There’s probably no more heart-wrenching symbol of war than a child soldier. That little boy, standing on the side of the road and constantly shifting his heavy AK-47 from shoulder to shoulder, represents a society that has imploded. He is the offspring of state failure and intense conflict; the destruction of schools; the manipulation of families; the exploitation of desperate need.”

The reality, however, is much more complex. Questions that arise when contemplating who should be defined as a child soldier include: who is considered a child? Does a child have to carry a gun to be a soldier? Can children who volunteer be considered child soldiers, or is force required? Are children capable of making informed decisions about their role in war? Can ‘international’ ideas about children’s rights be applied to all societies? Is there a difference between official government armies and rebel groups? As will be explored in later chapters, the definition of a child is not universally agreed upon, nor is it removed from time and context. The answer one gets from the question ‘who is a child?’ will vary based on the cultural context,

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10 Kelsall, Culture under Cross-Examination.

11 Happold, Child Soldiers in International Law, 7.
and one might get significantly different answers if one asked for instance a lawyer, a child rights activist, a psychologist, an anthropologist, or a Sierra Leonean fifteen-year-old.

However, it is not only discussions about the biological age of a child or adolescent that make defining child soldiers so problematic, but also the debates about who qualifies as a ‘soldier’. Like ‘child’, the term soldier carries specific connotations. Often the concept will conjure up images of uniformed men who participate in combat and who follow a specific line of command. Soldiering seems to imply participation in a formalised system that is organised and official, with ranks, duties and training. But here, too, one quickly encounters problems of definition. Do members of a military organisation have to participate in combat before they can be considered soldiers? Does the term soldier only apply to members of state forces, or can it be used for members of disorganised armed rebel groups without ties to government or clear chains of command? As both ‘child’ and ‘soldier’ can be understood differently by different people, it should be no surprise that the term ‘child soldier’ is highly problematic. As will be discussed in later chapters, the process of creating a universal definition of child soldier is still not complete, several decades after the issue was first introduced into international law.

This thesis, however, will use the definition put forward in the Cape Town Principles, which is the product of an international conference on the rights of children hosted by UNICEF:

“‘Child soldier’ in this document is any person under 18 years of age who is part of any kind of regular or irregular force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.”

By using this broad definition of ‘child soldiers’, the thesis will be able to explore a fuller range of issues related to the concept, and will reflect the discourse in large parts of the international community. However, although the Cape Town Principles’ definition is useful for analytical purposes, the thesis will make distinctions between ‘children’ up until roughly fourteen years of age, and adolescents, between the ages of fifteen and eighteen. Moreover, while the term ‘child soldier’ will be applied to children and adolescents in a wide variety of roles within a

military group, the term ‘child combatant’ shall refer more specifically to those children and adolescents who are active participants on the battlefield in any given armed conflict.\footnote{This thesis largely follows the definitions used in Wessells, Child Soldiers : From Violence to Protection.}

State of the art

Academic interest in child soldiers is relatively new. The topic has previously been the domain of activists, and, as will be explored in later chapters, international organisations and lawmakers. The first real academic interest emerged around the start of the twenty-first century, primarily among social scientists, anthropologists, and psychologists. Academics have explored topics such as the rationale behind recruiting children, recruitment patterns, tactics used by armed groups to ensure obedience from child soldiers, and issues related to demilitarisation and reintegration of former child soldiers into communities.\footnote{See for instance the works in Scott Gates and Simon Reich, Child Soldiers in the Age of Fractured States, The Security Continuum (Pittsburgh: University of Pittsburgh Press, 2010).}

One of the most influential works on the child soldier issue was the 1996 report by Graça Machel, the then UN Special Representative of the Secretary General on children in armed conflict. The report was the first global compilation of evidence on the impact that armed conflict had on children, and was the product of extensive research over a two-year period. Child soldiers were given a central role in the report, as well as in the book published by Machel a few years later to expand on her findings. Machel argued that the use of children as soldiers was “one of the most vicious characteristics of recent armed conflicts”.\footnote{Machel, The Impact of War on Children, 7.} Importantly, she identified children as the primary victims of armed conflict, and encouraged the UN and governments to take measure to combat the rising trend of child soldiering.

In the years following Machel’s report, literature on child soldiers has grown quickly. The American political scientist Peter Singer has argued that the recruitment of children into armed groups is a practice exclusive to modern warfare. While he makes allowances for some societies having used children for mostly non-combat roles previously, he dismissed the idea that there are any real historical roots to the widespread practice of child soldiering. According to him, “[t]o send children into battle was once not only unconscionable, but also unthinkable”.\footnote{Peter Warren Singer, Children at War (New York: Pantheon Books, 2005), 208.} It was only with the emergence of new types of conflict in the late twentieth century that the practice of recruiting child soldiers became common. The lack of historical
roots was thus the reason why international law was so late in addressing the issue, as “[t]here used to be no need to formally prohibit the use of children as soldiers”. One of his central arguments, and one that has often been accepted by anti-child soldier activists, is that the technological advances that made weapons lighter and easier to use was the major reason behind the transformation. In essence, the proliferation and accessibility of such weapons meant that the incentives for armed groups to recruit children as combatants grew. Children were cheaper and easier to manipulate than adults. Singer argues that “an increasing cast of unscrupulous warlords and power mongers” started taking advantage of children when it became more profitable.

Singer has also questioned the idea that child soldiers are capable of joining armed groups voluntarily. He argues that children’s lack of maturity means they cannot make what he calls mature a decision “[…] to go to war and risk one’s life in an act that has societal-wide consequences is one of the most serious decisions a person can make. This is why the previous four thousand years of leaders left this choice to mature adults.” He also points to forces like hunger and poverty driving children into armed groups, as well as propaganda from the armed groups that gives a misleading representation of what the life of a soldier is like. Thus, according to Singer, a child’s decision to join an armed group cannot be said to be ‘voluntary’, a position also held by many activists and law-makers.

The anthropologist David Rosen, who has contributed extensively to the research on the historical roots of the child soldier phenomenon, takes an entirely different view. Rosen aims to challenge the hegemonic humanitarian discourses around child soldiers, and introduce the ideas of agency and cultural relativity. He has argued that “no simple model can account for the presence of children on the battlefield or the conditions under which they fight”, and takes issue with the conventional portrayals of child soldiers in Western media. Moreover, he argues that the consensus about age and maturity in the West that the humanitarian discourse around child soldiers is built on is non-existent, and argues that the struggle over child soldiers is the struggle over age with “increasingly global dimensions”. In fact, Rosen has argued that the child soldier ‘crisis’ is not entirely based on the realities of modern war. While the issue is

18 Ibid., 209.
19 Ibid.
20 Ibid., 62.
22 Ibid., 133.
supposed to be one of morality, Rosen believes it is actually highly political. “It is not a ‘new’ phenomenon as some would claim; neither is it driven by the peculiar nature of modern warfare. Overall, Rosen calls for ethnographic study of childhood by listening to children’s experiences, something which he believes “unsettles conventional concepts of childhood”. He argues for a more nuance view of child soldiers, and believes that current international law relating to them does a disservice to victims of war.

Mark Drumbl, a legal scholar who specialises in transitional justice, has argued that there is a need to “reimagine” child soldiers and the international legal framework around them. He has shown that the reality of child soldiering is often different from the way it is conventionally portrayed. Drumbl has pointed out that, in fact, the majority of child soldiers in the world today are adolescents rather than young children, and the majority have also joined the military or the armed group voluntarily. Drumbl acknowledges the steps taken by international law to curb the child soldier issue but recognises that it has had limited effect so far. He suggests that the stereotypes that litter the discussions of child soldiers in international law, where the dual role of child soldiers as victims and perpetrators both is often ignored for the sake of a singular focus on victimhood, may have a negative impact on the process of demobilisation and reintegration. In essence, Drumbl takes issue with the idea that child soldiers are inherently apolitical, and that should be treated as if they have or had no agency over their situation. He goes on to point out the ways in which children fall along different points of the victim-perpetrator continuum by showing child soldiers often perceive themselves as having agency and making independent decision on how to act in war and whether to commit certain atrocities. According to Drumbl, this is indicative of international law having embraced a stereotype of child soldiers which is not entirely congruent with the lived experiences of many children in armed groups. Thus, to address the issue, there is a need for revisiting the underlying assumptions of international law on child soldiers.

Michael Wessells has taken a similar approach to Drumbl. He has stressed the importance of not ignoring different subgroups of child soldiers, such as the girls who make up almost half of all modern child soldiers, those born into an armed group, or those who have reached the age of eighteen before they are demobilised. This, Wessells has argued, is particularly important for reintegration processes. Other legal scholars such as Julie McBride, Matthew

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25 Ibid., 86.
Happold, and Gus Waschefort have contributed extensively to the research of child soldiers in international law. Their work has resulted in-depth analyses on the various fields of law relevant to child soldiers, such as humanitarian law, human rights law, international criminal law, international customary law, as well as developments in the UN, and the legal treatment of child soldiers. There have also been a number of interesting studies on the children in the Special Court for Sierra Leone. Noah Novogrodsky has argued that the SCSL’s approach to the child soldier issue was “monochromatic”, something had the possibility of impacting on its potential “remedial functions”, while Tim Kelsall has examined the role of culture and tradition in the trials.

Theory and methods

Theories of childhood as a social and cultural construct will be relevant throughout the thesis. When exploring the history of child soldiers, and when exploring the history of laws and conventions relating to them, the question of what a child is will be central. This will bring me to the heart of the debates surrounding children in war, both within the broader international framework, and within the context of Sierra Leone more specifically – is it possible to talk interchangeably about child soldiers before a certain time period? Is it possible be talk about child soldiers in all countries, or would a child soldier in one country be an adult in the next? These questions come out of the theories of childhood, and will be a framework for the discussion of child soldiers more generally.

The idea of cultural relativity has been an important part of the debates around the universality, and thus the legitimacy, of child soldier recruitment as a war crime. Cultural relativity is also a term that comes up in the trials at the Special Court for Sierra Leone (SCSL). During the trials, several of the leading officers in the pro-government militias argued that in their communities, young people taking up arms against rebels was a traditional practice, and a symbol of honour and strength both for the young person, and for the community as a whole. The argument used by the defence team was therefore that the war crime of recruiting child soldiers had a specifically Western bias, and that it could not be applied to the Sierra Leonean

27 Novogrodsky, "After the Horror", 362, Kelsall, *Culture under Cross-Examination*. 
context. However, this term will have to be problematized, and the idea of Global north–Global south divide will be examined. As I will show, the main opposition to creating international laws to introduce a complete ban on the use of child soldiers throughout the whole period I am examining have been large Western states, such as the U.S., the U.K., and France, as all of these countries recruit people under the age of 18 to military service. On the other hand, the African Union has been the first regional organization to implement a total ban on the recruitment of child soldiers, and African countries have been among the advocates for implementing such a ban on an international level.

Theories of conflict and war could also shed an interesting light on the topic. Mary Kaldor’s theory of new wars as opposed to old wars is particularly relevant here. This theory would suggested that it is not necessarily the understandings of what a child is that has changed, but rather the nature of war and conflict itself. These changes started in the post-World War II era, but by the end of the twentieth century, warfare had changed dramatically in terms of technology, dynamics, strategy, and objectives. One of the major shifts in the nature of war was, according to Kaldor, that conflicts of the post-Cold War age are more fragmented, more brutal, and more likely to impact those that would previously have been considered civilians, children among them. In addition, almost all conflicts in the post-Cold War era have been civil wars, and not inter-state wars. The conflict in Sierra Leone was a perfect example of this, and thus the focus on children in the tribunal, and the evolution of international laws regarding children in war is could be a reflection simply of the new brutality of war, and of the increased ease with which the international community can condemn such conflicts.

The thesis will also explore to what extent the issue of child soldiering was framed by an epistemic community of experts on the child soldier issue by the time the Sierra Leone Tribunal was established in the late 1990s. Peter M. Haas defines an epistemic community as a “network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.” The consensus or shared beliefs of an epistemic community are the results of “human interpretation of social and physical phenomena” – in essence, although the members of such a community may have different backgrounds or work within different fields, their approach to the issue at hand is based on shared values, shared understandings of the problem, and shared

interpretations of what practices are needed to address it. Thus, an epistemic community on child soldiering may consist of experts with various backgrounds, such as international agencies, nongovernmental organisations (NGOs), and governments, among other things. An epistemic community can, over time, establish themselves as authorities in the given field so that decision-makers turn to them for information or to delegate responsibility, thus allowing it to influence policy on a national and international level.

Sources
As the thesis will tie together different areas of research and examine developments over a long period of time, it will be based on a combination of primary sources and secondary literature. The first part of the thesis, which looks at the history of child soldiers, the emergence of childhood as a concept, and the developments within international law between the late 1940s and the 1990s, will draw heavily on secondary literature. As these are areas that have been studied extensively, I will primarily be using secondary literature to draw the different topics together and show how they are interlinked. The exceptions will be when I look at the relevant treaties and convention texts themselves. Here a number of different documents will be useful, for instance; the four Geneva Conventions of 1949, the two Additional Protocols of 1977, the Convention on the Rights of the Child of 1989, and the Optional Protocol to the Convention on the Rights of the Child of 2000.

The second part of the thesis, which will focus in detail on the establishment and proceedings of the Special Court of Sierra Leone, will build more heavily on primary sources. I believe that this will result in a new understanding of the particular tensions, discussions and problems that the Special Court faced, and give a historical context to the trials. In order to get a balanced understanding of the focus on children in the trials, I have identified four main categories of primary sources that I intend to use.

The first set of primary sources I will look at are reports, articles and other kinds of lobbying devices used by the international NGOs before and during the Sierra Leone trials. Particularly the published works of organizations that were members of the Coalition to Stop the Use of Child Soldiers is interesting here. NGOs were the leading voices in the so called ‘straight 18’ view of child soldiers – where any combatant or member of a military organisation under the

31 Ibid., 4.
32 Ibid.
age of eighteen was seen as a victim and not a perpetrator, regardless of how many atrocities they had committed.\textsuperscript{33}

A second category of primary material is made up of documents: UN resolutions, the draft Statute of the Special Court, as well as statements by the UN General Secretary and other relevant officials. It is through these official channels that much of the Sierra Leonean opinions and worries regarding the role of children in the trials are expressed.\textsuperscript{34}

The third category is the contemporary debate among lawyers, legal scholars, and others involved with establishing the Special Court of Sierra Leone. Articles and opinion pieces that address the issue of children in the court published in legal journals and similar during the late 1990s and early 2000s can be considered primary sources for this topic. Particularly the issue of children’s agency and accountability for war crimes was discussed extensively by lawyers, and it is clear that their opinions often clashed with those of NGOs and anti-child soldier activists.

A fourth category of sources is the transcripts and other available documents from the trials of the Special Court of Sierra Leone itself. All non-confidential material is available through the online archives of the Residual Special Court of Sierra Leone. Here I will be able to examine the transcripts of several relevant trials and proceedings. However, there are still large parts of the documents that are classified as confidential for witness protection purposes, and to protect children who were involved with the trials in various ways. I have therefore decided to focus primarily on the debates that took place outside of the court room, and will thus depend mainly on documents from legal debates, NGO activism, and international diplomacy.

Course of the thesis

The first chapter of the thesis will take a step back from the debates about children in war centred on the later twentieth and early twenty-first century and examine the history of child soldiers. The basis for the chapter is that to understand the complexities of the child soldier issue it is important to understand the interplay between age and conflict at various points in history. Child soldiers are all-too-often framed as a new phenomenon, rising out of a specific post-Cold War environment. This obscures valuable insights into an issue with historical roots

\textsuperscript{33} Druml, \textit{Reimagining Child Soldiers}, 3.

\textsuperscript{34} I had originally planned to use opinion pieces and relevant articles in Sierra Leonean national media for this side of the debate, but as very few such publications are available online this did not prove feasible.
across the world. The first chapter will thus use the definition of ‘child soldier’ set out in the introduction and examine the role of children and adolescents in war from medieval Europe, through nineteenth-century conflicts in Africa and America, and finally to the Cold War era.

In the second chapter, the focus will be turned to the concept of childhood itself. What does childhood mean, and what has it meant throughout different historical periods and societies? The chapter will examine how children and adolescents have been treated and understood at different times. As childhood is not a fixed concept, but rather one that had different meanings depending on time and place, examining how these conceptions developed might provide context for the changes in international law and the specific debates surrounding the Special Court for Sierra Leone at the end of the twentieth century.

The third chapter sketches the emergence of children within international law from the end of the Second World War. The chapter will examine how the understandings of issues surrounding children in armed conflict both changed and intensified over time. War-affected children – and particularly child soldiers – moved from international humanitarian law, to international human rights law, and finally to international criminal law within the span of half a century. At the same time, child soldiers emerged as a profound symbol of what was wrong with ‘new wars’. Thus, chapter three both aims to explain the implications for international law of the changing conceptions of childhood set out in chapter three, while at the same time set the stage for the specific debates raised in the Special Court for Sierra Leone in chapter four.

Chapter four, then, starts by giving a brief introduction to the civil war in Sierra Leone, and goes on the analyse the establishment of the Special Court in light of the questions discussed in the earlier chapters. What particular understandings of children and children’s role in conflict were included in the SCSL and why? How did different actors conceptualise those that were both gruesome perpetrators and vulnerable victims in the conflict, and how did the tensions between the local and international understandings play out? The chapter will examine both sides of the child soldier issue; first, child soldier recruitment as a war crime within the SCSL, and secondly, the questions of the culpability of child soldiers in the SCSL.
Chapter 1: A modern phenomenon? Child soldiers in history

It is often taken for granted that child soldiering is a recent phenomenon, one which emerged at the latter end of the twentieth century, primarily in developing or ‘third world’ countries, and one that is especially perverse as it breaks with traditional and ‘natural’ values. While there is certainly a case to be made for the extent and brutality of the practice of using or allowing children in armed groups having increased after the Second World War, simply dismissing the historical context of child soldiering means dismissing valuable insight into a complex issue. Consequently, this chapter will examine the historical roots of the child soldier phenomenon by exploring how children and adolescents have interacted with armies and armed groups in different societies and at different time periods.

1.1 How far back does it go? Child soldiers in medieval warfare

In medieval Europe, boys from noble families were introduced to the military system from an early age. 35 Many were recruited as pages and squires for knights, and they were thus provided with the education needed to advance into knighthood as they got older. 36 Pages were as young as seven years old, and while these boys were not expected to take active part in battle, they still received combat training, handled weapons, and helped prepare the knights for war. Around the age of fourteen, boys could advance to become squires, often described as a knight’s shield bearer. 37 Although their main task would be to care for the knight’s armour and weapons, look after his horse, and carry his flag, they would also be expected to join the knight they were serving on the battlefield. Here they were given the opportunity to prove their skills and bravery in combat, something which in turn could lead to being knighted themselves. In the lack of formal education systems, such military training and service was considered to be a highly regarded apprenticeship. Through the recruitment to a military institution and the experience of warfare, children were trained to become useful and highly regarded members of society. Furthermore, in late medieval England, sons of Dukes or Lords would often join their fathers or other family members on military campaigns, some even from the age of nine. 38

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Instead of being victims without agency (as the modern narrative of child soldiers suggests), children and young people who distinguished themselves in various ways on the battlefield were seen as heroes and patriots; their age was applauded, not frowned upon.

Joan of Arc was seventeen years old when she led the French into the winning battle against the English at the end of the Hundred Year War.\(^{39}\) By modern definitions, she, along with many of her fellow combatants on both sides, would have been considered a child soldier.\(^{40}\) Both contemporaries and historians were quick to brand her as a hero and martyr, and the fact that she was so young was considered particularly admirable. However, Joan of Arc’s story also illustrates another aspect of pre-industrial military culture that should not be left unmentioned, namely that it was an honour system almost exclusively reserved for males.\(^{41}\) Joan is one of only a handful of young women that have gone down in military history or legend as ‘warrior women’. The notoriety of Joan and a select few of her female counterparts is no doubt a product of a military history that has been almost exclusively focused on battles, combatants, and military decision-makers – a history in which women and girls are presented as anomalies and outliers.\(^{42}\) However, this history leaves out the “thousands of nameless sisters” to these warrior women; those who played integral parts to the military systems, but did it from the side lines.\(^{43}\) These women would fill the roles of traders, serving girls in armies, nurses to the wounded, and prostitutes or ‘camp followers’ who provided sexual and domestic services.\(^{44}\) A German knight around the turn from the twelfth to the thirteenth century who remarked on the large numbers of women following armies showed the clear class dimensions in how they were portrayed: “No queens were they; these wenches were called ‘soldier girls’”.\(^{45}\) Thus, not surprisingly, the lives and fates of these girls were largely dismissed by contemporaries and historians both. As the camp followers and ‘soldier girls’ were rarely, if ever, girls belonging to the nobility, the sources are not nearly as extensive as those describing the roles of young noble boys in medieval armies. Moreover, by the time European military history took shape as a discipline around the middle of the nineteenth century, military organisations had been

\(^{40}\) Drumbl, Reimagining Child Soldiers, 28.
\(^{42}\) Although the image of Joan of Arc seems at odds with that of the modern child soldier, it appears that her treatment while imprisoned before her execution has similarities with that of many girl soldiers in armed groups today, as historians have suggested she was subjected to gang-rape and other forms of sexual violence, see Holland Smith, Joan of Arc, 167; Barstow, ”Joan of Arc and Femal Mysticism,” 42.
\(^{44}\) Jeremy Black, War in Europe, 1450 to the Present (London: Bloomsbury, 2016), 150.
\(^{45}\) Hacker, ”Women and Military Institutions”, 644.
significantly restructured, and it would be far less common to see women and girls with armies than it had been in the preceding centuries.\textsuperscript{46} This might have coloured the limited portrayal of women and girls in military history up until today. Due to the lack of sources, it is hard to determine what age these ‘soldier girls’ were – however, based on medieval perceptions of age and maturity, as will be discussed in the next chapter, as well as the fact that young children might travel with their mothers, it would be a fair assumption that at least a significant portion of them would be below the age of eighteen, and perhaps even younger than fifteen. Childhood was thus not inconceivable with participation in military organisations for boys or for girls during the medieval period.\textsuperscript{47}

1.2 Guns, germs and children: child soldiers in the face of new military technology in the eighteenth and nineteenth centuries

The European wars of the early nineteenth century have sometimes been described as the ‘first world war’ in the sense that they were the among first wars to impact every part of society. The Napoleonic wars brought a revolution in the structure of military organisations, as well as profound economic and social upheaval for the growing populations.\textsuperscript{48} In addition to widespread bombardment and starvation of civilian victims in a way that had not previously been seen, it also introduced the concept of conscription into armed forces.\textsuperscript{49} Nonetheless, the concepts of honour and glory were still strongly tied to the military, and dreams about military fame would not have been uncommon for many adolescents. One sixteen-year-old volunteer in the Duchy of Warsaw in 1809 showed how eager he was to join the army: “I jump into the war like a young deer into a meadow full of flowers”.\textsuperscript{50} An idealised image of warfare all too often prevailed.

\textsuperscript{46} Ibid., 645.
\textsuperscript{47} Additionally, in what is perhaps a mirror to tactics in modern conflicts, children were often killed or enslaved by enemy forces, see John Gillingham, "Crusading Warfare, Chivalry, and the Enslavement of Women and Children " in The Medieval Way of War, ed. Gregory Halfond (Farnham: Ashgate, 2015).
\textsuperscript{49} Forrest, Hagemann, and Rendall, "Introduction: Nations in Arms - People at War," 5.
Part of the restructuring of military organisations in the early nineteenth century meant that many of those who had earlier been integral parts of armies – namely soldiers’ wives and children – were excluded from living in barracks and travelling with the military, and army leaders did their best to reduce the numbers of camp followers. The distinctions between civilian life and military life were made clearer, even as the effects of war were felt throughout all layer of society. However, as David Hopkin’s study of female soldiers in the French army shows, adolescent girls continued to take part in military life alongside their male counterparts, often joining their brothers or husbands as followers or as fighters, or as a combination of the two. In fact, after the battle at Waterloo, stripping the dead revealed that several of those believed to have been men were in fact women or girls, and that the girls who disguised themselves to join the armies might have been “quite numerous”. However, the stories of women and girls as part of armies were likely the exceptions that proved the rule; although the sensationalism around the idea of girls in armies was large, the actual numbers were limited.

Some of the most well documented cases of the widespread use of child soldiers before the twentieth century can be found in the American Revolutionary wars and in the US Civil War a century later. Andrew Jackson, who would later become the Seventh American President, served in the revolutionary war at the age of thirteen. Far from being pitied or victimised, Jackson was considered to be a national hero. The image of the thirteen-year-old boy taking a stand against British tyranny was a powerful one in the national imagination, and the reputation as a dedicated and self-sacrificing patriot this gave him lingered long into his adult years and his presidency. However, although Jackson’s young age was celebrated, it was far from unique. Children and teenagers played a regular part of the armed forces during the American Revolution. Although many were drummers, or worked in non-combat roles, there were also a significant number of boy soldiers, and often the boys who did well in other roles advanced quickly to the battlefield where they could prove their courage.

53 Ibid.
55 Ibid.
The participation of young boys in the US Civil War a century later is something that has been explored by a number of historians, mostly due to the abundance of letters and journals that were produced by the young soldiers themselves. Although both the Confederate and Union armies had general age restrictions on new recruits (eighteen years for fighting, sixteen for musicians), young boys still made up large parts of both armies. In fact, the participation of young soldiers was so widespread that the Civil War has sometimes been referred to as “a war of child soldiers”. The majority of these boys would have been between fourteen and seventeen years old, but there are several accounts of children as young as nine serving in the two armies. John Lincoln Clem was accepted into the Twenty-Second Michigan Infantry in June 1861, two months before his tenth birthday. Though he started off as a regimental mascot and drummer boy, it was not long before he was provided with a uniform and sawed-off musket, because, according to him, “I did not like to stand and be shot at without shooting back”. His age does not seem to have hindered his possibilities of advancement; in 1863 he distinguished himself in fighting when he shot a Confederate colonel, and was promoted to sergeant. At age twelve, Clem became the youngest non-commissioned officer to ever serve in the US army. He was an active combatant on the battlefield until the end of the war when he was fifteen years old, suffering injuries twice during that time. However, boys as young as Clem were rarely active combatants, and were more likely to perform various duties associated with drummer boys, such as carrying water, helping with the wounded, burying the dead, drawing maps, and drumming during ceremonies.

There were various reasons for the large number of young boys in the Civil War and the American Revolutionary War: firstly, the age restrictions could be circumvented with parental approval. For many families, allowing or encouraging their male children to sign up for military service was a point of honour – for others, it was a way to make sure their children were fed and cared for during a period of time marked by uncertainty and danger. Thus, it was far from unheard of that parents would bring their children to the recruitment stations long before they were officially considered old enough to join the army. Moreover, as serving in the army was

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56 In 1864, an Act of Congress officially prohibited the enlistment of any person under the age of sixteen, see Bell Irwin Wiley, *The Common Soldier in the Civil War* (New York: Grosset & Dunlap, 1952), 296.
59 Ibid., 298.
seen as honourable and patriotic regardless of age, a significant number of young boys either lied about their age to join, or were accepted by recruitment officials who were not particularly concerned with the age limits. Letters from the young soldiers on the front lines also suggests that some had ideological reasons for participating in the war. Chauncy H. Cook, who was fifteen when he joined the Union army in 1861, had passionate anti-slavery views, and wrote home about how he defended abolition to fellow soldiers, and was thus compelled by more than just an idealised view of military life.\textsuperscript{63}

The exact number of soldiers under the age of eighteen who took part in the Civil War is unclear. Contemporary statistics from the registration of volunteers to the Union army showed that a total of 10,233 were under the age of eighteen (most of these were sixteen or seventeen years old, although several hundred thirteen- and fourteen-year olds were also registered).\textsuperscript{64} As these statistics were based on official records, they likely misrepresent the real numbers, as most children or adolescents would have to lie about their age to be accepted. The fifteen-year-old abolitionist Chauncy H. Cook had lied about his age, and his letters show that many of his peers had admitted to being younger than eighteen after they had already joined the army. In fact, later historical analysis puts the number closer to ten to twenty percent of all recruits, or a total of 250,000-420,000 soldiers between the ages of nine and seventeen.\textsuperscript{65} These boys thus made up large portions of both the Union and Confederate armies, many of them adolescents, but some younger. It is difficult to know how many of them were among the dead during the war, but “a substantial though indeterminable number of boy soldiers paid the supreme price for their patriotism.”\textsuperscript{66} In the words of David Rosen; “applying modern terminology, the war to end slavery was in large part fought by child soldiers [...]”\textsuperscript{67}

In the Civil War era, the perception of the effect war had on children was vastly different from what it is today. Rather than seeing warfare as something that young people should be protected from, the experience of battle, regardless of how horrifying it could get, was understood as having an ennobling effect on children’s lives.\textsuperscript{68} In other words, participating in war gave young boys dignity and a higher status within society, and child soldiers were seen as heroes.\textsuperscript{69}

Poems and literature celebrating the young patriotic boys became embedded in American

\textsuperscript{63} Wiley, \textit{The Common Soldier in the Civil War}, 40.
\textsuperscript{64} Ibid., 299.
\textsuperscript{65} Rosen, \textit{Armies of the Young}, 5.
\textsuperscript{66} Wiley, \textit{The Common Soldier in the Civil War}, 301.
\textsuperscript{67} Rosen, \textit{Armies of the Young}, 5.
\textsuperscript{68} Ibid.
\textsuperscript{69} Happold, \textit{Child Soldiers in International Law}, 5.
popular culture, and was most likely a source of inspiration for the generation of young men who would take part in the First World War only a few decades later.\textsuperscript{70} However, the traumatic effects warfare might have had on these children should not be dismissed. Although there are very few mentions of this in contemporary sources and later literature, I would argue that this can perhaps be attributed to the conceptualisation of warfare as something inherently noble, patriotic, and heroic. Fewer boys might thus have admitted to being negatively affected by what they had experienced.

Although these two American wars can provide us with a large number of sources on adolescents in conflict, it was by no means the only corner of the world in which young boys carried guns for a cause. Age and generation was a large component of the pre-colonial African social structure. Most African societies were both patriarchies and gerontocracies, meaning that power was held by older males. Within male society, no concept of social categories was more important than that of generation.\textsuperscript{71} Indeed, some historians have likened the importance of age within pre-colonial African society to the role of class structures in pre-industrial Europe.\textsuperscript{72} The ability of older men to yield power was contingent on being able to control the labour of younger men. Although pre-colonial African society was thus to a large extent characterised by tensions and conflict between different generations and age sets, these systems were largely maintained due to the promise of advancement for younger men; if younger men were guaranteed that they would receive the status of the elder generation as they grew older (which also included the ability to establish one’s own household and get married), they would have no real incentive to challenge the existing system of power distribution. However, age sets and categories were not fixed, which meant that the power dynamics between different generations could be changed over time.\textsuperscript{73}

In pre-colonial Africa, as in most other parts of the world, warfare and the use of organised violence were closely tied to youth. Indeed, in several African societies, the transition from

\textsuperscript{70} The song “The Drummer Boy of Shiloh”, and later the 1911 film with the same name was inspired by John Clem. See Rosen, \textit{Child Soldiers in the Western Imagination}, 19. American Battlefield Trust; Biography of Jon Clem, visited 25.04.2019, \url{https://www.battlefields.org/learn/biographies/john-clem}.


childhood to maturity was synonymous with achieving a *warrior status*. In such societies, the idea of a ‘child soldier’ would not have been a relevant category, as the very act of using weapons and participating in organised violence would ensure that the soldier in question was no longer considered to be a child. By controlling youth, the older generation thus also controlled the society’s use of organised violence. However, in times of rapid change and uncertainty, young men might start using violence outside of that which was prescribed by society. During the nineteenth century, much of the African continent experienced political and social upheaval due in large part to increased slave trade, Arab advancement from the coast to the inlands, and the dramatic scaling up of European invasion and colonialism. In the Great Lakes region in East Africa (in the regions of present day Uganda and Tanzania) this upheaval seemed to play out in a “crisis of youth”. As societies and the elders in power could no longer guarantee young men the advancements in wealth and status they had been promised, many of them turned to violence in order to improve their situation. This allowed non-traditional leaders and so called “warlords” to exploit the disillusioned youth for their own benefit in a system that is eerily similar to the current child soldier phenomenon. Indeed, Burton and Charton-Bigot argue that “the services rendered by child and youth soldiers to latter-day warlords has its precolonial analogue, when during the slave trade youth in Africa performed a similarly destructive role for equally exploitative elders.”

During the last few decades of the nineteenth century, Mirambo of the Urambo state in present day Uganda rose as the most prominent among these new exploitative elders. Mirambo took control over large areas of land, as well as over much of the East African slave trade, by recruiting so-called *Ruga-Ruga* soldiers. These were young men and boys (the youngest were thirteen or fourteen years old), often the victims of conflict and the slave trade themselves, who used extreme forms of violence both against rival groups, and against civilians. However, it should be noted that most of the accounts we have from Africa in this period come from the works of European explorers, missionaries, and colonists, and the racist tones of these accounts are far from subtle. In the works of the (in)famous explorer Henry M. Stanley, the Ruga-Ruga soldiers were presented as savages, and the local populations as primitive and backwards. It is

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74 Most academic work on African warfare uses the term *warrior* as opposed to *soldier* or *combatant*. This is perhaps indicative of the long history of portraying African warfare and those participating in it as more *primitive* than their European counterparts.


77 Reid, “Arms and Adolescence”, 27.

78 *Warfare in African History*, 11.
therefore difficult to know whether the descriptions of the Ruga-Ruga as abnormally brutal, drugged down, and even cannibalistic have any basis in reality. However, Mirambo’s supposed words to Stanley about his rational for employing Ruga-Ruga soldiers seem very reminiscent of the arguments used by modern day warlords in Africa and elsewhere:

“During the conversation I had with him, he said he preferred boys or young men to accompany him to war; he never took middle-aged or old men, as they were sure to be troubled with wives or children, and did not fight half so well as young fellows who listened to his words. Said he, ‘They have sharper eyes, and their young limbs enable them to move with the ease of serpents or the rapidity of zebras, and a few words will give them the hearts of lions. In all my wars with the Arabs, it was an army of youths that gave me victory, boys without beards. Fifteen of my young men died one day because I said I must have a certain red cloth that was thrown down as a challenge. No, no, give me youths for war in the open field, and men for the stockade village’”.

The historian Richard Reid argues that there are significant parallels between pre-colonial warfare in Africa, and the various conflicts seen on the continent in the last few decades. In the wars during the nineteenth century, there were no clear distinctions drawn between combatants and non-combatants, and the capture of women and children was a common tactic. Moreover, he argues that “child soldiers, abhorrent in our own age, have long been a core element in African armies [...]”.

1.3 Not with a bang, but a whimper: Child soldiers in the early twentieth century.

The First World War is often described as a turning point in the history of warfare. Advances in military technology and the practice of using lethal gases meant that larger numbers of soldiers than ever before died on the battlefield. In Europe, millions of young men flocked to the recruitment stations at the start of the war to offer their services for their country. John Lincoln Clem, who had distinguished himself in the US army at the age of twelve, applauded

79 Henry M. Stanley, *Through the Dark Continent, or the Sources of the Nile around the Great Lakes of Equatorial Africa and Down the Livingstone River to the Atlantic Ocean* (London: Sampson Low, Marston, Searle and Rivington, 1878), 492.
the use of young boys in the military at the eve of the First World War, explaining that “[a]s compared to the adult man, the boy is near a savage.”

For many young men, joining the army was a matter of dignity and pride. As in the American Civil War, military service was closely associated with strength, bravery, and above all, patriotism. In Britain, most of society joined together to praise the young men who went off to war. To incentivise as many recruits as possible, groups of women took it upon themselves to give flowers and favours to soldiers they met in the streets, and to openly humiliate any man who was not wearing a uniform by giving them white feathers as symbols of cowardice. Those targeted included adolescents too young to join, and those who had already been discharged with injuries. Boys as young as fifteen later gave this as a reason as to why they were so eager to join the army as soon as they could. Although it is hard to know how many women took part in this shaming, or how many adolescent boys felt compelled to join the army because of it, the case is indicative of a society which branded any adolescent boy or young man not wearing an army uniform as unpatriotic and cowardly. As this illustrates, it was not necessarily an issue of forced recruitment (the Military Service Act, passed by parliament in 1916, made conscription compulsory only for those over eighteen years of age), but rather adolescents being pressured into extremely dangerous military service in a society that branded any young person not willing to sacrifice their lives for their country cowards. The collective condemnation faced by the adolescent boys reluctant to join the war was staggering. One soldier’s letter from the Western Front after much of his regiment was killed by machine guns as they advanced on the German trenches stressed the youth of those who died:

“It was horrible suspense, as I seemed to be the only man untouched, all around me, and being personally acquainted with each man made matters worse, in fact, it’s all wrong to call them men, as they were mostly mere boys.”

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85 The National Archives, Trenches: ’they were mostly mere boys’, retrieved 03.05.2019 from: http://www.nationalarchives.gov.uk/education/resources/letters-first-world-war-1915/trenches-mostly-mere-boys.
The horrifying reality of the battlefields of World War I led to a shift in opinions. As millions of adolescents and young men were killed in the trenches of Europe, many people came to realise that this was an altogether different war than what they had imagined. Indeed, in the European imagination, the Great War proved to be both devastating and pointless. Towns and villages lost the majority of their young men, and the war lasted year after year. The adolescents who did come home were often severally injured or suffering from shell shock. Moreover, the execution of young boys on the grounds of cowardice became a matter of controversy. During the Great War, the British army executed roughly 300 soldiers for desertion; several of these were only seventeen years old. Often, the members of the firing squads would themselves be under the age of eighteen.

1.4 The long century getting longer: Child soldiers during WWII

Though often overlooked in historical accounts of the period, children and adolescents played a significant role during the Second World War, both in formal military institutions, and within resistance groups. During the Holocaust, large numbers of children and adolescents joined partisan resistance groups. These groups could take the form of underground movements in cities or ‘ghetto groups’, or partisan groups formed in rural areas, often by refugees escaping persecution in the cities. Accounts by former child fighters in the resistance movements show that they saw themselves as a “revolutionary vanguard”. One underground newspaper published by a Jewish youth movement in the Warsaw Ghetto stated that “We the children aged 13 to 18, will be the ones to lead the Jewish masses to a different future, a better future.”

However, child soldiers during World War II were not exclusively tied to informal or non-institutional opposition groups; not only were child soldiers part of resistance movements across Eastern Europe, but Nazism itself was heavily reliant on the control and mobilisation of youth. Both before and during the war, virtually all German children were recruited into Hitler Youth. Though it did not provide systematic military training for its members, the organisation was still inherently militaristic, and had strong ties to the SS. Julie McBride sees the establishment of Hitler Youth as the first major shift towards what she sees as a modern “child soldier culture”. The members of Hitler Youth were subjected to extreme propaganda and

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86 Black, War in Europe, 1450 to the Present, 142.
87 Rosen, Child Soldiers in the Western Imagination.
88 Armies of the Young, 22.
89 Gutman, Israel “Youth movement and the Underground and the Ghetto Revolts”, quoted in ibid.
indoctrination in a way that will seem familiar to many of those studying the techniques used by modern day militia groups that recruit child soldiers.\textsuperscript{91}

In effect, many children and adolescents under the Nazi regime in Germany were part of a paramilitary force. As the war was drawing to an end, the recruitment of young soldiers into different branches of the German army became more common.\textsuperscript{92} By 1943, the Waffen SS (the militant wing of the SS) had started recruiting significant numbers of sixteen-year-olds directly from Hitler Youth, and by 1945, fourteen- and fifteen-year olds were also admitted.\textsuperscript{93} During the last few months and weeks of the war, child recruitment had become one of the main strategies used in the last ditch attempts at saving the Nazi regime. Indeed, the Nazi regime became heavily reliant on the fanaticism and aggression of the indoctrinated youth in the final battles, who “[w]hen cornered [...] frequently fought to the last child”.\textsuperscript{94} As many as 5,000 Hitler Youth members were fighting against experienced Red Army soldiers during the Battle of Berlin. Only 500 of the boys survived.\textsuperscript{95}

It was not only in Europe that children and adolescents were turned into combatants during the Second World War – they were also a notable part of the warfare in the so-called South-East Asian Theatre. Before the start of the war, the Japanese Army conscripted men over the age of twenty for two-year military service. However, as with Nazi Germany, the Japanese Empire became more desperate for new recruits towards the end of the war, so that by 1944, the army was recruiting adolescent boys as young as fifteen. Before the Battle of Okinawa in 1945, school children on the island were given crude weapons and lessons in how to kill American soldiers.\textsuperscript{96} During the battle itself, which claimed the lives of almost a third of the civilian population on the island, as well as several thousand American and Japanese soldiers, adolescent girls who had been recruited as nurses from the local population were issued hand grenades by Japanese officers and instructed to carry out suicide attacks against the advancing

\textsuperscript{91} Margaret Eastwood, "Lessons in Hatred: The Indoctrination and Education of Germany's Youth," \textit{The International Journal of Human Rights} 15, no. 8 (2011).


\textsuperscript{93} Rosen, \textit{Child Soldiers in the Western Imagination}, 78.

\textsuperscript{94} Koch, \textit{The Hitler Youth}, 249.

\textsuperscript{95} Rosen, \textit{Child Soldiers in the Western Imagination}, 78.

Americans, under the threat that they would be raped and killed by American soldiers if they did not.\textsuperscript{97}

The significant number of children involved in various militant roles during World War II did not, however, seem to have much of an impact on the judicial processes at the end of the war, nor was the use of children in war addressed in the Geneva Conventions of 1949. In fact, as will be explored in later chapters, it would be another three decades before the international community sought to address this issue within international law, and longer still before any individuals would be charged and sentenced for the crime of recruiting child soldiers.

1.5 New wars, same old story? Child soldiers in the Cold War era.

Authoritarian regimes’ indoctrination and use of children as soldiers was not unique to Nazi Germany. In the 1970s, the Khmer Rouge regime in Cambodia trained and used tens of thousands of child soldiers during the civil war and genocide that left almost two million people dead.\textsuperscript{98} Children were subject to both forced labour and forced conscription into armed forces. Often, the youngest children were trained to lay landmines and to use small weapons, and by the time they were twelve or thirteen years old would be considered full soldiers. The Khmer Rouge’s rationale behind training and using children and adolescents is reminiscent of the others explored in this chapter, such as the American civil war and Mirambo’s use of Ruga-Ruga soldiers; children were obedient, fearless and brutal. The children were used both to intimidate and terrorise the civilian populations and as combatants against the Vietnamese army.\textsuperscript{99} The indoctrination and violence the children experienced bears strong similarities to the stories of child soldiers in the twenty first century. In fact, it has been suggested that the Khmer Rouge regime was the first widely noted instance of the so-called “child soldier phenomenon” of the late twentieth and early twenty-first century.\textsuperscript{100} Much like the tactics that


\textsuperscript{100} McBride, \textit{The War Crime of Child Soldier Recruitment}, 5.
were seen in later civil wars in countries like Uganda and Sierra Leone, “[c]hildren were given guns and instructed to shoot their parents”.  

However, children and adolescents were also significant to several of the independence movements during the second half of the twentieth century. For instance, the South African anti-apartheid struggle included large numbers of school children and students, many of whom were victims of extreme forms of police violence and killings. From the point of view of the white minority regime and their supporters, these children and adolescents were violent thugs. For the anti-apartheid movement, however, they were freedom fighters and sometimes martyrs for a worthy cause. In Europe, children and adolescents in Northern Ireland were active on both sides of the conflict. The Irish Republican Army had many members under the age of eighteen who were both trained in the use of weapons and saw active combat. One fourteen-year-old boy was killed during an attack on British soldiers in Londonderry, and several children as young as twelve died as a result of explosions or accidental gun discharges during training.

It has been argued that the various conflicts that broke out in the second half of the twentieth century belonged to a new age of war that had not been seen before. According to Mary Kaldor, it was after the end of the Cold War that a real change in the nature of conflict occurred. While the aim of “old wars” was to win battles in order to control specific territory, “new wars” were less about land and more about the control over populations. This should be understood in the context of globalization and the revolution of military affairs. Significantly, however, she argued that new wars were distinct from the guerrilla style warfare that had been so prominent during the Cold War era; while guerrilla groups sought political control of populations by capturing “the hearts and minds” of the people in question, new wars are characterised by the armed groups’ attempts to sow “fear and hatred”. New wars, according to Kaldor, blurred the distinctions between war, organized crime, and large-scale violations of human rights. This included the targeting of civilian populations rather than enemy combatants, extreme forms of violence that were used to instil terror, and often attempts to completely eliminate those with

104 Kaldor, New & Old Wars, 8.
different identities than what was considered acceptable. Kaldor writes that this type of warfare has been particularly prominent in Africa and Eastern Europe over the last few decades, and that while such conflicts are often considered to be internal and have “low intensity”, they always have strong international connections, and they are made up of both state and non-state forces. According to Kaldor, new wars are also characterised by the use of child soldiers. In fact, she points specifically to the civil war in Sierra Leone when making this argument.

However, while it has some salient points, the new and old wars theory has been criticised for being both ahistorical, and ethnocentric. The idea that brutal tactics were hardly used in wars before the twentieth century would be wrong; there are many examples of targeting civilians in the sacking of towns, mass sexual violence, and kidnappings during the time periods explored above. Moreover, there has been a tendency to conceptualise post-Cold War conflicts in the developing world as inherently irrational, in stark contrast to the picture painted of old (European and North American) wars as completely rational and serving a greater purpose that all those fighting were committed to. Not only does this dismiss the various reasons why wars are fought in the post-Cold War era, it also transplants an understanding of the “old wars” of Europe into a setting where it does not necessarily belong. While Kaldor argues that old wars were fought over territories, and therefore made clear distinctions between combatants and civilians, it is difficult to match this understanding with the realities of pre-colonial Africa. As Reid has pointed out, wealth and power in many African societies derived from control over people, not over land. Thus, as mentioned earlier in the chapter, the kidnapping of both children and women by armed groups was a common military practice in parts of Africa long before the twenty-first century, and the participation of children in war was not unheard of. Nonetheless, factors such as the advancements in military technology have in many ways changed how wars are fought, and how long they last. Sara Dezalay argues that it is not only the new types of violence which make ‘new wars’ distinct from earlier forms of conflict, but also the scale and diversity of interventions in internal conflicts. States, international agencies, NGOs, media are shaping “the experience of war and peace”.

\[106\] Black, War in Europe, 48.
\[107\] Reid, Warfare in African History, 176.
1.6 Summary

There is a danger of viewing historical wars with a sort of nostalgia or romanticism that leaves out the more brutal aspects and frames it as a completely different practice than modern day wars. The child soldier phenomenon is an example of this. Although not always recognised in the pertinent literature, children and adolescents have been involved in war in a variety of different roles across the world and in many different time periods. In medieval Europe, boys were both active combatants and squires for knights, while girls were camp followers who provided support for armies. In many parts of pre-colonial Africa, initiation into a military organisation also meant initiation into adulthood, and adolescents were often associated with brutal forms of violence. The European and American wars of the eighteenth and nineteenth centuries saw large numbers of children and adolescents caught up in the idealised image of military life which stressed the patriotism and honour in warfare. This continued into the twentieth century and the First World War, when the large numbers of dead adolescents left on the battlefields of Europe resulted in gradually shifting public opinion on the nature of war. The Second World War saw both heroic juvenile agency in partisan groups, and adolescents being exploited as soldiers by authoritarian regimes in a last-ditch effort to avoid defeat, while the Cold War era saw children and adolescents in state militaries and independence movements both. These are just a few examples of children and adolescents who, by the modern definition used in this thesis, would be considered child soldiers.\footnote{One of the largest challenges when it comes to the study of child soldiers in different historical periods and societies is a lack of information about exact age in the available source.} It is clear that there is little basis for Peter Singer’s claim that the use of children in war was unthinkable until recently, nor does his assertion hold that there was therefore “no need to formally prohibit the use of children as soldiers”.\footnote{Singer, Children at War, 209.} Indeed, before the late twentieth century the idea that recruiting or using children in conflict could be a war crime would have been a foreign one. Consequently, the next chapter will examine how Western concepts of childhood have changed over time from seemingly embracing child soldiers, to being horrified by them.

Chapter 2: A brief look at the history of childhood

The long and complex history of adolescents and children in conflict across the world illustrates that international law’s newfound focus on children is not simply a response to a new crisis but represents a more fundamental shift in how children and childhood are viewed. Consequently, this chapter will examine how the concept of childhood has changed and acquired different
meanings over time. It will look at how children came to be recognised as individuals who had rights which both overlapped with, and were separate from, the ones of adults. The chapter will examine developments within the history of childhood in Europe and North-America, as modern international law to a large degree is reflective of developments in the Western world, which will be explored in chapter three.

There is a difference in speaking about ‘childhood’ as opposed to speaking simply about ‘children’ – while ‘children’ refers to a specific group within society, childhood is a concept which “denotes the state of being or the stage at which one is a child".111 Childhood is something everyone has a relationship to, and has specific ideas about how it should be experienced and lived. As Adam Phillips points out in the introduction to the 1996 edition of Phillipe Ariés’ *Centuries of Childhood*, childhood has come to define all individuals in society.112 The trauma, protection, happiness or challenges one faces during childhood are seen to shape one’s adult life – for better or for worse.113 Childhood is almost considered sacred in modern Western society, particularly within humanitarian and child rights discourse.114 It is so ingrained in how we view ourselves that it is sometimes easy to forget that childhood, at least in the way we know it today, is a construct – a concept that has been created in a particular historical and social context that is both a societal narrative and a completely individual experience.115 And like any other concept, it has a history.

2.1 Inventing childhood

It has been suggested that medieval European society did not have a concept of children as a distinct category.116 Instead, children’s lives were completely tied to those of adults, and there were no separate spheres within which children existed. Children were included in the adults’ work and social activities as soon as they were no longer dependent on their mothers or nannies (roughly around the age of seven), and there was thus no clear distinction between adults and children.117 Indeed, the French historian of childhood, Phillipe Ariés, made the case that

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115 Phillips, introduction to Ariés, *Centuries of Childhood*.
116 Ibid., 125.
117 Ibid., 395.
children had only been understood as “small adults”, or even “verbally incompetent adults”, before the seventeenth century.\textsuperscript{118} Furthermore, early researchers on the history of childhood argued that children in medieval society were neglected by adults, and that they in fact were victims of abuse and cruel treatment on a systematic level.\textsuperscript{119} Rather than being seen as in need of protection, children were subject to sexual, emotional and physical abuse by both parents and guardians, and that the life of a child was not seen as particularly important. The attitude of adults towards children was thus marked by “formality, distance and cold indifference.”\textsuperscript{120}

However, the issue is likely more complex than that. As the historian David Archer writes, all societies and cultures have a concept of childhood, but the “conception” of childhood changes over time and space.\textsuperscript{121} Anthropologist Paula Fass suggested that all cultures “more or less tightly swaddles young children in a set of social norms, which is called childhood.”\textsuperscript{122} She pointed to the importance of ritual age ceremonies in many early societies, and the fact that both early Christian and Islamic tradition had rules about treatment of children, and a conception of the child as innocent in comparison to the adult.\textsuperscript{123} Thus, the so-called ‘cruelty thesis’ was quickly rejected by later historians, as there is ample proof that parents cared about their children long before the nineteenth century.\textsuperscript{124} However, while parents certainly had affection for their children, the high infant and child mortality rates meant individual children were not as central to family life as they would be later. Certainly, childhood was not a phase of life marked by romantic nostalgia, but rather one to survive as best one could. Historian Colin Heywood quotes the French cleric Pierre de Bérulle, who in 1666 wrote that childhood “is the most vile and abject state of human nature, after that of death.”\textsuperscript{125} It is difficult to ascertain how universal this belief was for the time period, but Bérulle certainly had a concept of childhood. The \textit{conception} of it, however, seems to have been vastly different from the modern Western interpretation.

\textsuperscript{118} Phillippe Ariès has sometimes been described as the father of research on childhood, as he was one of the first to explore the history of the concept in the 1960s. Much of Ariès’ work has been criticised by later researchers, in part because his findings were based on a very narrow set of sources from amongst the upper-classes of the medieval population (and, indeed, for having quite a loose definition of what “medieval times” constituted).


\textsuperscript{120} Archard, \textit{Children: Rights and Childhood}, 17.

\textsuperscript{121} Ibid., 24.


\textsuperscript{123} Ibid.

\textsuperscript{124} Archard, \textit{Children: Rights and Childhood}, 17.

\textsuperscript{125} Quoted in Heywood, \textit{A History of Childhood}, 9.
2.2 Industrialisation: childhood as a stage to adulthood

Although childhood was not as “rationally planned” in the medieval and early modern period in Western Europe, it certainly existed as a concept separate from adulthood.126 However, the conception of childhood, and the understandings of what exactly the life of a child should be would begin to change drastically around the industrial revolution. In industrialising society and several decades into the twentieth century, the line between childhood and adulthood could be more accurately drawn around the age of fifteen. After fifteen, most adolescents (including those belonging to the working-classes) would have become full members of the labour market and thus would have become part of the adult world.127

Interestingly, however, the law did not seem to reflect the societal understandings of childhood and adulthood. The age of majority in European societies has traditionally been much higher than fifteen, though the specific age has varied through history. Up until 1869, the age of majority in Norway was twenty-five (it was lowered to twenty-one that year).128 This was the age at which someone was considered by law to be in control of their own person and no longer under the legal control of a guardian or parent. However, it should be remembered the issue of majority intersected with other identity markers, such as social class and gender. Regardless, the fact that the age of majority seemed to have little correlation to a person joining adult society is interesting; it goes to show that the transition from childhood into adulthood was more complex than simply reaching a certain age. A young man might have been a member of adult society for years, with the privileges and responsibilities that entailed, but would still be considered incapable of exercising full legal control over himself.

The lowering of the legal age of majority during the second half of the nineteenth and early twentieth century seems to correlate with the solidification of a “longer childhood”. Over time, the legal, cultural and social conceptions of childhood grew more and more in line with each other, so that the distinctions between ‘child’ and ‘adult’ became firmer. Arguments emerged that ‘young people’, those who now spent their days in schools and colleges instead of at work, should be distinguished not only from small children, but also from grown adults. This was reflected in several pieces of legislations and social conventions during the eighteenth century. In the UK, the “Youthful Offenders Act” of 1854 ensured that young people would not be

126 Korsvold, _Perspektiver_, 17.
127 Ibid., 25.
128 Ibid.
treated like adults in courts, and the “Factory Acts” sought to give special protection to workers between the ages of thirteen and eighteen. Increasingly, there were adult areas of life from which those between childhood and adulthood should be excluded and shielded from until they were considered mature enough. As Frank Musgrove stated, “the adolescent was invented at the same time as the steam-engine”.

Additionally, the second half of the nineteenth century saw increased scientific interest in childhood as a ‘stage’ in human development. It was particularly within the field of psychology and biology that major strides in the research on children became apparent, with several books being published from the 1870s onwards about the behaviour and thought process of young children, and infants in particular. These early studies of children categorised childhood as a stage in the development towards adulthood, which itself was not a stage, but a final goal. Thus, children continued to be conceptualised primarily as ‘unfinished adults’.

Over the next few decades, the role of children in society would change drastically, and the cultural understandings of childhood with it. The perceived social value of children went through a significant shift from the mid-nineteenth century until the 1930s; from valuing children based on their usefulness and economic payoff within the family, parents started to cherish their children for their emotional benefits. In the pre- and early industrialised world, children were economic assets to the family; more children meant more labour, both domestic and wage-earning, as children and adolescents had an active role both within and outside of the household as soon as they were able to. However, by the second half of the nineteenth century, major changes were taking place in national legislations regarding children in the Euro-American world. The largest transformation happened with regards to working class children, as they went from being formally employed to being banned from wage-earning work by child labour laws and compulsory education. In fact, the expulsion of working-class children from the labour market was far from uncontentious: while reformers actively supported the changes, the legislations faced harsh resistance from those advocating for a productive

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130 Ibid.
131 Ibid., 33.
133 Ibid., 35.
childhood. As working-class and middle-class families were hit particularly hard by the economic consequences of a reduction in the number of household members who were wage-earners, there was a perception that the new laws were “kicking downwards”. After actively participating in different types of labour, children were excluded from working around the start of the twentieth century. Moreover, not only did this mean a reduction in income for many families, the combination with the rise of universal schooling meant that parents also had extra expenses. Thus, according to the American sociologist Viviana Zelizer, “the twentieth-century economically useless but emotionally priceless child displaced the nineteenth-century useful child.”

2.3 War-handicapped children and baby boomers

The 1930s and 1940s represented a watershed moment for the history of children. Before, during and after the Second World War, European children were displaced on a large scale - both from cities to the countryside, and from one country to the next. It was not primarily out of widespread concern for children amongst the political elite that this happened, but rather that the children were conceptualised as “useless mouths” as they did not contribute to the war effort. However, by the end of the war, about 13 million children in Europe were or had been under threat of destitution. Many children were orphaned during the war, as well as having been the victims of kidappings, abductions and abandonment. Political disagreements about these children, as well as the unaccompanied children that were to be found in displaced persons’ camps, was a sign of the immediate significance of children in the Post-War and early Cold War days. A newfound alarm regarding the fates of the so called “war-handicapped children” was felt within the newly established United Nations, as well as in NGOs and governments. The concern was twofold; firstly, unaccompanied children were identified as particularly vulnerable and in need of protection by both organisations and states, and secondly, there was a growing concern that these children would turn into a generation of delinquents and criminals – there was therefore a double purpose to the national and international efforts to provide homes and education to the children left behind by the war. The recognition of children as a distinct group within society with distinct psychological needs was particularly

135 Ibid., 68.
136 Ibid., 209.
138 Ibid., 275.
interesting to lawmakers. Whereas earlier humanitarian and poverty-alleviating efforts aimed at children had in large parts stemmed from the idea that children were easily malleable both for religious education and for the benefit of the state, the post-war schemes embraced the idea of the child in need of protection. Interestingly enough, although there was a recognition that the war had been especially harmful for children, the loss of contact with family was considered far more damaging for the emotional wellbeing of the child than any acts of violence he or she might have witnessed during the war.139

The post-war era not only saw the emergence of a newfound protectionism towards children on an international level, but also witnessed a sudden growth in the number of children and adolescents. Long periods of institutionalised schooling was now the reality of working-class children as well as their more privileged counterparts, and national legislations sought to protect children from physical punishment. Additionally, in the US young people were increasingly commercialised as advertisers discovered their purchasing power, brought on by the post-war economic boom. This resulted in further changes to the social understandings of youth: where adolescents had been recognised as a separate group in society since the eighteenth century, the category of the teenager only appeared in the 1950s.140

There was a growing preoccupation with, and concern for, children and childhood in Western society in the 1970s.141 Within the context of the post-war economic growth and development of welfare states in Europe, as well as the Cold War, the military arms race and a polarising world, the conception of childhood became more steeped in the idea of innocence and vulnerability. Indeed, the idea that contemporary children were robbed of their “ideal” childhood was created around this time, and that this ideal had little basis in the lived realities of previous generations, but was rather a product of a romanticised image of the past.142 This was also reflected in the increased academic interest in childhood; the history of children and childhood really came into its own as a part of the emerging social history of the 1970s, and was developed further through cultural and identity history in the 1980s and 90s.143 As will be touched on in the next chapter, this was reflected in an increasing presence of children and the

139 Ibid., 276.
140 Korsvold, Perspektiver, 33.
142 Ibid.
143 Fass, Children of a New World, 2.
concept of childhood itself within international law. The post-war era, then, became the period in which the idea of children’s rights took root, and quickly started to grow. I would argue that this was closely tied to the emergence of a human rights discourse that would come to have a deep impact on both the humanitarian field and on international law.

2.4 Children’s rights: protection and agency

It was not until the end of the Cold War in the 1990s that the concept of ‘human rights’ came to mean what it does today – as something fixed, inarguable, inherent to each individual. What was new was the alleged self-evidence of human rights which could not be abrogated to or by the states’ power over their citizens. Children’s rights can be viewed both as an extension of human rights discourse, and as a distinct phenomenon derived from a continuous change in the social conceptions of childhood. As will be explored in the next chapter, the last few decades of the twentieth century saw the emergence of a discourse in which children were not only viewed as need of protection, but also entitled to their own rights, and control over their own lives. According to Michael Grossberg, the twentieth century, and particularly the last two decades of it, saw the emergence of both a ‘caretaking perception of children’s rights’, where, as explored earlier, children were increasingly portrayed as vulnerable, and a ‘liberation’ conception of children’s rights, in which stressed the importance of children’s political voice and agency over their own lives. In America, children’s rights activists “sought a new balance between liberation and caretaking that tilted toward greater autonomy and self-determination for the young”. Indeed, from the 1970s and 80s onwards, childhood research was in large part focused on children as complete human beings with agency and the ability to make decisions to act in their own best interest.

Thus, by the end of the twentieth century, two different children’s rights approaches had developed, which seemed both to inform one another and be contradictory. On the one hand there is the idea that children are vulnerable and threatened, something which means that children require special protection and special care. The focus on victimhood in conflict-situations that I touched on in the introduction to the thesis comes into play here. This ‘protection approach’ assumes that child soldiers are unable to join military organisations of

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144 Hoffmann, "Human Rights and History," 282.
146 Ibid., 23.
their own free will, or to make informed decisions when part of such a group. On the other hand, there is the autonomy approach which views children as individuals with agency and the ability to make decisions for their own good. In this approach, children have full access to the rights afforded to adults, and are recognised for their ability to think and act as self-sufficient individuals.\textsuperscript{147} Archer argues that our contemporary conception of the child is not only based on the lived realities of children in modern society, but also to a large extent informed by a “symbolic ideal of childhood”.\textsuperscript{148} As conceptions of childhood have changed, so too has the image of the ‘ideal’ childhood – understandings of what it should contain and what it should not contain are shaped by a collective imagination.

2.5 Summary

When it comes to who is defined as a child, and who is defined as an adult, biological age is not the most important factor; instead, time period, place, gender, social class, and disabilities, as well as the broader context all interact to shape a society’s view on young people.\textsuperscript{149} In medieval Europe, children occupied the same spheres as adults, and were expected to take part in adult activist as soon as they were able. As shown in the first chapter of this thesis, military life – both in battles and in the camps – was no exception. In industrialising society, children were increasingly excluded from the world of adulthood, and mandatory schooling and child labour laws lay the ground for changing conceptions of childhood. With the awareness of the suffering of children during the Second World War, and new ideas about children’s rights to both protection and participation in the following decades, the concepts of ‘child’ and ‘soldier’ were becoming more and more irreconcilable. As the next chapter will explore, these developments were reflected in the changing face of international law.

In the early 1900s, the Swedish feminist, author and pedagogue Ellen Key declared that the twentieth century would be the ‘Century of the Child’. By the turn of the millennia, children had taken up a more central role within European and North-American society than ever before. At the same time, after two world wars and an era of political polarisation, children and childhood were increasingly conceptualised as under threat. In fact, “[…] the Century of the

\textsuperscript{148} Archard, \textit{Children: Rights and Childhood}, 29.
\textsuperscript{149} Korsvold, \textit{Perspektiver}, 25.
Child seems, in the transition period between the twentieth and twenty-first century, at least partly to have turned into a Century of the Child at Risk."150

150 Dekker, "Children at Risk in History", 35.
Chapter 3: Child soldiers in international law

Although there were certain treaties regulating the rules of war before the twentieth century, international law came into its own during the second half of the century.\textsuperscript{151} The emergence of international law thus to a large extent overlapped with the shifting understandings of children – as international law took shape, children were conceptualised as more vulnerable, more innocent, and more entitled to specialised rights. There are three types of international law that are relevant for war: humanitarian law, human rights law, and international criminal law. Humanitarian law is about regulating the behaviour of states during war. It both establishes rules for what tactics are permissible as part of warfare, and protects those who are not directly involved in hostilities. International human rights law is about the obligations that states have to individual citizens, and it applies in times of peace as well as times of war. International criminal law, unlike the two others, was created to hold perpetrators of atrocities criminally accountable. This chapter will not be a full, in-depth analysis of the different laws, conventions and treaties pertaining to child soldiers over the decades.\textsuperscript{152} Instead, it will give an overview of the major developments, and attempt to contextualise them with regards to the previous two chapters. While many of those who have provided insightful information on this topic previously are legal scholars or political scientists, a historical perspective, I believe, is still largely missing.

3.1 Establishing international law in the post-war era

When Henri Dunant established the International Committee of the Red Cross (ICRC) in 1963, it was in response the apparent lawlessness at the Battle of Solferino a few years earlier. This would represent one of the first attempts to impose universal restrictions and codes on the waging of war.\textsuperscript{153} Both the idealism of Dunant’s anti-war stance and the realisation that new technologies were making wars less governable swept across Europe in the following decades, and it was not long before state leaders were proposing regulations on the waging of war. The

Hague Conventions of 1899 and 1907 represented the first real attempts, but it was not until the 1940s that states would make use of the new rules to try aggressors at war crimes tribunals.

3.1.1 Nuremberg and Tokyo

The international trials that took place immediately following the end of the Second World War have often been described as the beginnings of international criminal law. In 1943, the Moscow Declaration between the Allied parties established “justice” as one of the principal aims of the war effort. This was tied to the idea of the Second World War as a “just war”, where the Allied powers had had no choice but to go to war against the aggressors. As the war was painted as a clear case of a morally wrong versus a morally right side, it was easy to frame the Allied post-war response as a necessary reckoning with the crimes of the Axis powers. While both the UK and the Soviet Union were arguing for summary executions of Nazi officials, voices from the US were calling for a judicial response.

Although the attempts at post-war justice spanned both decades and various national legal systems, the most significant ones would be the International Military Tribunal (IMT) and the Nuremberg Military Tribunals (NMT), both playing out in the German city of Nuremberg, and the International Military Tribunal of the Far East, based in Tokyo. The IMT has been justly celebrated for establishing that individuals, not abstract entities, commit crimes, and that individuals are thus the ones who must be punished. The Tokyo charter was based on the Nuremberg model, and so the types of offenses, as well as the challenges, remained the same. The Tokyo trial, together with the IMT, was the beginnings of the idea not only that war itself could be “illegal act triggering international state responsibility, but also a criminal act allowing for individual criminal responsibility of high state and military representatives.”

The charters of the tribunals made no specific mention of children, neither as victims nor as perpetrators of Nazi and Japanese crimes. Perhaps the closest the post-war tribunals came to

155 Ibid.
158 Waschefort, International Law and Child Soldiers, 53.
specifically addressing crimes relating to child soldiers was as part of the trial of Baldur von Schirach, the former leader of Hitler Youth, although he was eventually acquitted of charges relating to that organisation.\textsuperscript{159} Another interesting case was that of the defendant Julius Streicher, who was known for having spread anti-semitic propaganda and hate in what the Prosecution at Nuremburg argued amounted to “the perversion of youth in Germany”.\textsuperscript{160} In other words, he was charged with having indoctrinated children in the ideology of the Nazi regime. In the end, Streicher was found guilty of crimes against humanity for his role in inciting “murder and extermination” through propaganda, though there was no particular mention of his influence over children or youth in the judgement.\textsuperscript{161}

The Nuremberg Statute made no mention of the age of criminal responsibility, but all the same, no persons under the age of eighteen were prosecuted by the tribunals in Nuremberg or in Tokyo.\textsuperscript{162} The various domestic and military courts throughout Europe in the immediate post-war years, however, saw several sentencings of child soldiers. Two German boys of sixteen and seventeen years old who were captured and tried for espionage in a US military court (held in occupied Germany) were given the death penalty and were executed by an American firing squad in June 1945. In issuing the penalty, the court condemned the use of adolescents as spies by the German military, but the executions were still carried out.\textsuperscript{163} It is an interesting reflection on the nature of the post-war international tribunals that the sentences given to the worst perpetrators of the Nazi and Japanese regimes were often comparable, or even significantly lower, than the ones given to the foot soldiers in the various military and domestic courts, some of whom were children and adolescents.\textsuperscript{164}

Despite the fact that children and adolescents were not present in the defendants’ dock, discourses around children were not wholly absent from the tribunals. In fact, numerous references to children as victims of Nazi crimes were made during the Nuremberg trials, though often as part of a broader category of ‘civilians’ in the company of adults. Such references to child victims were also made during the Tokyo trials. Diane Amann argues that the concept of

\footnotesize{\textsuperscript{159}}Drumbl, \textit{Reimagining Child Soldiers}, 117.  
\footnotesize{\textsuperscript{160}}Eastwood, "Lessons in Hatred", 1292.  
\footnotesize{\textsuperscript{161}}Ibid.  
\footnotesize{\textsuperscript{162}}It should be noted that this was likely due to the fact that no adolescents were among the high-ranking officials that the Allies wished to prosecute, and whether or not any adolescents had committed what amounted to “international crimes” at the time is unclear. Drumbl, \textit{Reimagining Child Soldiers}, 117.  
\footnotesize{\textsuperscript{163}}Rosen, \textit{Armies of the Young}, 81.  
\footnotesize{\textsuperscript{164}}Ibid.}
children, and particularly the vulnerability associated with childhood, played an important role in the discussion on certain Nazi crimes, such as abductions, forced adoptions and the extermination camps. The IMT tied the crimes against children to the broader crime of genocide and race extermination. A witness for the prosecution during the IMT, the French resistance fighter Marie Claude Vaillant-Couturier who had been sent to Auschwitz and Ravensbrück during the war, described the gruesome murders of Jewish children and infants in the concentration camps. Through witness testimonies such as hers, the innocence of child victims of the Holocaust was evoked throughout the trial. Moreover, in his closing remarks, the British Chief Prosecutor Hartley Shawcross described the last moments of a Jewish family, where a young boy and an infant were murdered together with their parents, in what was an emotional reference to the victims.

The children described by witnesses and the prosecution were presented as a symbol of innocence that had been harmed. Their stories and experiences were not a primary focus of the trials but provided an emotional backdrop to the crimes at the centre. Thus, in the post-war trials that marked the beginnings of international criminal law, children were ‘silent civilians’. The Nuremberg and Tokyo tribunals did not conceptualise children as specific victims of war, nor as remarkable among the perpetrators. This seems to be consistent with the general Western conceptions of childhood by the middle of the twentieth century, which reflected an emerging concern for the vulnerability of children, but which had not yet conceptualised children as a distinct group in the war-affected population.

3.1.2 The Geneva Conventions

While the trials immediately following the Second World War were largely silent on matters concerning children, it would only take a short while after the Tokyo tribunal wrapped up before children emerged on the stage of international humanitarian law. The immediate post-war era saw a number of interesting developments within international law. The establishment of the United Nations in 1945 happened in the context of the looming Cold War, and the

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166 The idea that the forcible transfer of children from one group to another could be considered genocide was reflected in later conventions on the issue. See; Chamberlain, *Children and the International Criminal Court*, 106.
168 Ibid., 93.
adoption of the Universal Declaration of Human Rights in 1948 set the stage for recognising the rights of the individual, although human rights discourse was still in the early stages of life.\textsuperscript{169} The events of the Second World War shaped the early workings of the new international community. The International Committee of the Red Cross (ICRC), which had been established in 1863, had long been a proponent of bringing “humanity to the battlefield”, and had been an important force behind the 1907 Hague Convention.\textsuperscript{170} In 1949, it was instrumental in the drafting of the Geneva Conventions to regulate the laws of war.\textsuperscript{171} Legal scholar Gus Waschefort has argued that the Geneva Conventions marked a shifting balance in the “laws and customs” of war from a primary focus on military necessity to a growing focus on humanitarianism in the aftermath of the devastation of the Second World War.\textsuperscript{172}

Although the relevance of the Geneva Conventions to the issue of child soldiering has often been dismissed, there were two interesting provisions in Geneva Convention IV. Article 50(1) stated that “[t]he Occupying Power [may not enlist children] in formations or organizations subordinate to it”.\textsuperscript{173} This provision is interesting in light of the mass mobilisation of children and adolescents which took place during the Second World War and seems to have been a direct response to the ideological indoctrination through youth organisations by authoritarian regimes. Furthermore, Article 51 of the same Convention held that “the Occupying Power may not compel protected persons to work unless they are over eighteen years of age”, and that “protected persons” could not be conscripted into enemy forces.\textsuperscript{174} Although these provisions do not directly address the issue of child soldiering, children were protected from recruitment by the occupying power through their status as “protected persons”. Whether this can be considered to be based on a particular concern for children, however, can be questioned. Matthew Happold suggests that these two provisions were rather about a sovereign state’s right to the allegiance and military capabilities of their own nationals.\textsuperscript{175} It is particularly significant that the Conventions specify that it is only enlistment into forces or organisations belonging to

\textsuperscript{171} Anderson, "Who Owns the Rules of War?," 40.
\textsuperscript{172} The four Conventions granted protection to wounded soldiers and sailors, prisoners of war; and civilians.\textsuperscript{173} Waschefort, International Law and Child Soldiers, 54.
\textsuperscript{174} International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Fourth Geneva Convention, (12 August 1949), retrieved 22.02.2019 from: https://www.refworld.org/docid/3ae6b36d2.html, Article 50(1).\textsuperscript{175} Ibid, Article 51.\textsuperscript{176} Happold, Child Soldiers in International Law, 56.
the occupying power which is condemned; children were not protected from conscription into the state forces of their own countries. Thus, this part of the Geneva Conventions seems to reflect and confirm the more traditional laws of war rather than the tentative beginnings of a child rights paradigm. Another gap in the Geneva Conventions was that children were not defined. At various points, the Conventions used the ages of seven, fifteen and eighteen, but did not make it clear exactly who Article 50 was protecting.\textsuperscript{176}

3.2 Child soldiers enter international law

Following the Geneva conventions there was a long period of silence in international law with regards to the issue of children in conflict. The Declaration on the Rights of the Child from 1959 was an important development for children’s rights, with its statement that “mankind owes to the child the best it has to give”, but made no specific mention of children in conflict situations, and no references to child soldiers.\textsuperscript{177} However, awareness around the child soldier phenomenon was slowly starting to grow. Over the next few decades, the Cold War dominated international affairs. This meant battles of ideology and proxy wars between the super powers in Third World countries, and major strides in development of military technology. Additionally, the post-Second World War world was the stage of independence movements and anti-colonial conflicts across the world. As indicated in the first chapter, children and adolescents were significant parts of these movements. The Biafran War in Nigeria at the end of the 1960s shocked the Western world. It was one of the first wars extensively documented by journalists, and the acute suffering of children seemed to define the coverage.\textsuperscript{178} Although the image of the war created by the international press was largely centred around the ‘starving African child’, many NGOs recognised that the sufferings of children were complex. During the course of the war, child soldiers as young as thirteen were recruited into various military forces and militia groups, some as volunteers and some through forced conscription, and this undoubtedly shaped the humanitarian view of the conflict.\textsuperscript{179}

\textsuperscript{176} Ibid.
\textsuperscript{178} Lasse Heerten, \textit{The Biafran War and Postcolonial Humanitarianism: Spectacles of Suffering} (Cambridge: Cambridge University Press, 2018), 152.
For much of the period in question, the International Committee of the Red Cross continued to play a pivotal role in the development of the child protection framework as part of international humanitarian law. Through their self-professed role as the “Guardian of the Geneva Convention”, they were a leading voice within the creation and implementation of international humanitarian law.  

In 1968, the ICRC hosted the International Conference on Human Rights, which passed a resolution requesting the UN General Assembly to “ensure the better protection of civilians and other war victims” through international conventions. The newfound awareness of child combatants was evident when the ICRC stated that the issue was “the most important one since children are becoming increasingly involved in war, being either used to assist irregular forces, or made the subject of military operations”.

3.2.1 The Additional Protocols

The two Additional Protocols to the Geneva Conventions from 1977 were the first international treaties to directly prohibit child soldiering. While the 1949 Geneva Conventions had shifted the balance in international law slightly in favour of humanitarian concerns over military concerns, between 1949 and 1977 this shift became much more pronounced. This increased focus on the protection of individuals in war instead of military necessity has been referred to as the “humanization of humanitarian law”. The Additional Protocols identifies children (as well as women) as “objects of special respect” who are in need of protection. Additional Protocol I refers specifically to international conflicts, and holds that:

“The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not

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181 Ibid.
attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.”184

While the Additional Protocols signalled the attempt to ban outright the use of child soldiers, it was criticised for not going far enough. The vague language of the protocol still allowed for the voluntary enrolment of children under the age of fifteen, and open recruitment of children between sixteen and eighteen as long as the oldest were given priority. Moreover, states were to a large extent allowed to define both ‘all feasible measures’ and ‘direct hostilities’ themselves. The ICRC had initially proposed a treaty draft that contained far more ambitious language than the treaty that was eventually agreed upon. This draft would have required states to take ‘all necessary measures’ rather than all feasible, and would have implemented a complete ban on children under fifteen in state armies, even as volunteers. The consequence of this simple change in words was an article in which military concerns were still given priority over the protection of children. The lack of willingness by states to support the more far-reaching ban was a sign that the idea of prohibiting the recruitment of children into official state forces was hugely unpopular.185

However, Additional Protocol II, which covered internal conflicts, showed significant differences from Protocol I. Article 4(3)c stated that: “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.186 The language of this article is less vague, and incorporates “armed forces or groups”, taking it beyond the scope of Protocol I and placing stricter limits on armed resistance groups than on state forces. McBride argues that the rationale behind this distinction was political; this way, states were giving their own national forces a greater advantage than armed resistance groups by making sure that “their pool of recruits were greater”.187 Rosen holds that political aims were considered more important by states than humanitarian ones from the very beginning, and that a comprehensive ban on child soldiers remained out of reach for that reason. However, as the ban on recruiting children under the age of fifteen was not rational simply from a military perspective, the concern for military advantage seems to have been balanced

186 ICRC, Additional Protocol II, 4(3)c.
out by humanitarian concerns. The fact that children were given special protection in the Additional Protocols speaks to the changing understandings of children and childhood which were increasingly informing international law.

The two Protocols set the precedent for how the child soldier issue would be discussed in international law in the following years. Essentially the Protocols established clear distinctions between the use of child soldiers in international conflicts and in internal ones, and between children under the age of fifteen and those between fifteen and eighteen. However, like the Geneva Conventions, the Additional Protocols offered no clarifications with regards to an international age of criminal responsibility. Interestingly though, the issue did come up during the drafting process of the Protocols, when a representative from Brazil suggested that the Protocols should specify that perpetrators who were under the age of sixteen at the time of the crime committed could not be the objects of criminal proceedings. While it was eventually decided that the issue should be left open for national governments to make their own judgements, it is interesting to note that the topic of the accountability of child soldiers for the crimes they committed was brought up as early as the 1970s.

3.2.2 The 1989 Convention on the Rights of the Child

In the years preceding and following the two Additional Protocols, there was increasing international concern not only for children affected by conflict, but for children’s rights in general. During the 1970s, international discussions started on the possibility of creating a UN Convention on children’s rights as part of international law. Such a convention would demand precise obligations from state parties, something which the Declaration from 1959 was unable to do. Following a suggestion by the Polish government during the International Year of the Child in 1979 (which marked the twentieth anniversary of the Declaration on the Rights of the Child), a working group was appointed to create a draft convention. Up until this point, children’s rights had largely been dismissed as a non-political issue by world leaders. Thomas Hammarberg, the then Secretary General of the Swedish branch of Save the Children, even suggested that politicians had a habit of “sending their wives” to deal with such issues, but by

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191 Hammarberg, "The UN Convention", 98.
the 1980s, support for a binding international convention on children’s rights was widespread.\textsuperscript{192} NGOs took on an active lobbying role towards the working group from the beginning, and a number of prominent NGOs such as the ICRC and Save the Children, as well as UN entities such as UNICEF, gave inputs about child soldiers. In 1980, the Quaker-led NGO Friends World Committee for Consultation proposed to the working group that they should include provisions against “the participation of children in military training and action”.\textsuperscript{193}

The increased concern among NGOs in the late 1980s coincided with a growing public awareness in the West of the issue of child soldiers. During the Iran-Iraq war between 1980 and 1988, the use of child soldiers was widespread. As many as 100,000 boys under the age of sixteen were recruited into the Iranian arm, with some children as young as nine being held in Prisoner of War camps in Iraq.\textsuperscript{194} These youngest children had supposedly been used to sweep mines and for human wave attacks on the Iraqi army.\textsuperscript{195} Moreover, reports of the child soldiers in the Lord’s Resistance Army (LRA) in Northern Uganda reached far and wide. Joseph Kony’s cultish rebel movement would terrorise the local area for decades after it was founded in 1987.\textsuperscript{196} In many ways, the LRA’s child soldier army would become emblematic of how the phenomena was covered in Western media in the following years; the children were abducted, drugged, and forced to commit atrocities against civilians.

The United Nations Convention on the Rights of the Child (CRC) was adopted in November 1989, and quickly became the most ratified human rights instrument, with only two countries not signing it.\textsuperscript{197} The CRC was the first instrument which incorporated international humanitarian law relating to children into international human rights law, which meant that the provisions regarding child soldiers were not only applicable in time of war, but also during times of peace.\textsuperscript{198} Significantly, the Convention explicitly defined who were considered children, as Article 1 stated: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”\textsuperscript{199} Both the Geneva Convention and its Additional Protocols had

\footnotesize{\textsuperscript{192}Ibid., 104.  
\textsuperscript{193}Karl Hanson, "International Children's Rights and Armed Conflict," \textit{Human Rights & International Legal Discourse} 5, no. 1 (2011): 46-47.  
\textsuperscript{194}Happold, \textit{Child Soldiers in International Law}, 106.  
\textsuperscript{196}Reid, \textit{Warfare in African History}, 172.  
\textsuperscript{197}The US and Somalia are still the only two countries to not have signed the CRC.  
\textsuperscript{198}Hanson, "International Children's Rights and Armed Conflict," 4.  
\textsuperscript{199}UN General Assembly, \textit{Convention on the Rights of the Child}, (20 November 1989), United Nations, retrieved 10.03.2019 from: \url{https://www.refworld.org/docid/3ae6b38f0.html}, Article 1}
been vague when it came to defining children, though both seemed to have been working with the age limit of fifteen years.

However, the Convention was a bitter disappointment for those human rights and humanitarian organisations, as well as several states, that had sought a more comprehensive ban on the use of child soldiers. Article 38, which referred to children and armed conflict, allowed adolescents between the ages of fifteen and eighteen to take part in hostilities and be recruited into state forces, even though this group was considered to be children according to the Convention itself. This was the most contentious part of the Convention, and led to an immediate backlash. During the drafting process of the CRC, the delegates were preparing to introduce an outright ban on child participation in armed conflict. This ban would have used the age of eighteen as the limit, in keeping with the rest of the Convention. Several South American states, as well as the Scandinavian delegates were strongly in favour of this. But, by November 1988, only a few months before the completion of the Convention, the drafters came under increasing pressure to drop such a ban. The opposition came primarily from the representatives from the United States, who up until that point had been absent from the discussions, and from the United Kingdom, who argued that enforcing a strict age limit of eighteen would be impossible in times of hostilities. Both the US and the UK had programmes for recruiting adolescents directly from secondary schools, and were consequently opposed to an age limit which was higher than school leaving age in the respective countries. In the end, the Convention on the Rights of the Child simply repeated the wording of the Additional Protocols, essentially creating a loop-hole by which ‘children’ between fifteen and eighteen years of age were left out of the protection the Convention was supposed to offer.

Moreover, the CRC continued the approach of the Additional Protocols with regards to the question of the age of criminal responsibility by simply leaving the issue up to states. It did, however, state that in instances where children were accused of crimes, their treatment should promote “re-integration, and the child’s assuming a productive role in society”, an approach which was eagerly embraced by anti-child soldier activists in the following years. The Convention, however disappointing to humanitarian organisations, represented a starting point


201 The War Crime of Child Soldier Recruitment, 27.

202 The UN, Convention on the Rights of the Child, Article 40.
for international action against child soldiers in certain important ways. Rosen argues that the so-called ‘Straight 18’ position, which became a central issue for those fighting against the use of child soldiers, had its origins in the CRC and its definition of children.\footnote{Rosen, “Child Soldiers, International Humanitarian Law, and the Globalization of Childhood,” 296.}

Although the CRC has often been dismissed in the child soldier literature for the reasons shown above, I would argue that it is still interesting with regards to child soldiers, not because it establishes any revolutionary protective mechanisms for them, but because of the focus on children’s right to participations and expression. As discussed in the first chapter of this thesis, the last two decades of the twentieth century saw an increased recognition of children’s agency and an acceptance of their right to be heard in matters affecting them. The 1989 Convention on the Rights of the Child was important in establishing that children were human beings with equal value to adults, not simply the possessions of guardians.\footnote{Hammarberg, "The UN Convention", 99.}

### 3.3 The 1990s: The decade of the child soldier

Thus, the last decade of the twentieth century started with the momentum created by a new ambitious convention on children’s rights, but with widespread discontent about the provisions relating to child soldiers. This set the stage for the 1990s to become the decade of the child soldier – the battleground on which states, international agencies and non-governmental organisations fought over definitions, age limits and accountability. The CRC had pulled the issue of child soldiers firmly into the spotlight, but the apparent lack of action against the practice galvanized humanitarian and children’s rights organisations into action. Moreover, the 1990s not only saw an apparent increase in the number of child soldiers worldwide (especially in connection to non-governmental armed forces), but also growing media coverage and technological advances which allowed journalists to send pictures and videos directly from conflict zones. By the end of the decade, the young boy with the AK-47, found among other places in Uganda, Liberia and Sierra Leone, was a familiar sight in Western newspapers and TV channels and calls to end the practice were mounting from international organisations and states both. Additionally, the Committee on the Rights of the Child, which was appointed by the UN to oversee and review the implementations of the provisions set in the CRC, was crucial in the efforts of keeping child soldiers as one of the main areas of discussion for children’s rights. It was the Committee which both requested that the UN provide a major study on
children in armed conflict, and which suggested the creation of an Optional Protocol to the CRC that would replace the controversial Article 38 that allowed adolescents to take part in war. By this point, the discourse around children’s rights and child soldiers in international law had fully embraced both the ‘Straight 18’ position and the view that child soldiers were first and foremost victims.

3.3.1 The ‘straight 18’ position and the creation of a consensus

The new push for the recognition of child soldiering as an issue in international law came from several different fronts. Already in 1990, the African Charter on the Rights and Welfare of the Child, negotiated by the member states of the Organization for African Unity (today’s African Union), banned the recruitment and use of children under the age of eighteen in hostilities, becoming the first, and to date only, regional treaty to do so. As the effects of armed conflict on children were becoming more obvious and more pressing in the international humanitarian discourse, the General Assembly of the UN appointed Graça Machel as the first Special Representative on Children and Armed Conflict in 1994. Her 1996 report on children in armed conflict was considered ground-breaking. The introduction of the report is a clear indication of the view the United Nations and humanitarian organisations were embracing on the issue:

“More and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.”

Machel also wrote that “[u]nless those at every level of political and military command fear that they will be held accountable for crimes and subject to prosecution, there is little prospect of restraining their behaviour during armed conflicts”, thus essentially endorsing the

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205 Hanson, "International Children's Rights and Armed Conflict,” 48.
207 Chamberlain, Children and the International Criminal Court, 12.
implementation of the child soldier issue in international criminal law.\textsuperscript{209} For the first time, the topic of child soldiers became a pressing issue within the UN.

Another important step was taken when UNICEF called a conference on child soldiers in Cape Town, which led to the creation of the Cape Town Principles. The Principles included a broad definition of child soldiers which many NGOs and states have supported, and which is the definition used in this thesis. The Coalition to Stop the Use of Child Soldiers, formed in 1998 by six international NGOs and quickly joined by many others, had a major role in the creation of the humanitarian framework around child soldiers, and was significant voices in processes leading up to the Optional Protocols to the Convention on the Rights of the Child and the Rome Statute.\textsuperscript{210} Their work consisted of campaigning, research, and media work among other things, all with the aim of getting as many states as possible to implement the ‘straight 18’ ban. These NGOs were behind a number of conferences and declarations that, while non-binding, helped create a growing international consensus on child soldiers as victims. In turn, this laid the ground for the creation of binding international legal instruments (as was the case with both the ICC and the Special Court).\textsuperscript{211}

In 1998, the International Labour Conference (the annual meeting of the International Labour Organisation) Convention 182 on the \textit{Worst Forms of Child Labour} also weighed in on the child soldier issue. In the drafting process, the African countries in the conference together proposed that the definition of the worst forms of child labour should contain a specific reference to all recruitment and use of children in armed conflict. But again, the representatives from the US government thought this too comprehensive and were only willing to continue the discussions on the convention if it left out a ban on voluntary recruitment. In the end, the ILO Convention 182 prohibited forced or compulsory recruitment of children to armed conflict but made no mention of voluntary enlistment.\textsuperscript{212} McBride argues that the ILO Convention was particularly important because it brought the issue of child soldiers outside the sphere of human rights and humanitarian law, something which brought it more firmly into the spotlight in the international community.\textsuperscript{213}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{209} Ibid, note 22.
\item \textsuperscript{210} The six organisations were Amnesty International, Human Rights Watch, The International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office in Geneva and the International Federation of Terre des Hommes, see Machel, \textit{The Impact of War on Children}, 23.
\item \textsuperscript{211} McBride, \textit{The War Crime of Child Soldier Recruitment}, 32.
\item \textsuperscript{212} Happold, \textit{Child Soldiers in International Law}, 81-82.
\item \textsuperscript{213} McBride, \textit{The War Crime of Child Soldier Recruitment}, 25.
\end{itemize}
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The Optional Protocol to the Convention on the Rights of the Child came only ten years after the CRC itself, and grew out of the widespread dissatisfaction with the latter’s provisions relating to child soldiers. The Optional Protocol presented states with a new opportunity to strengthen their legally binding commitments to end child soldiering. For many NGOs, implementing the ‘straight 18’ became the most pressing issue. The discussions leading up to the creation of the Optional Protocol mirrored those that had led to the Convention on the Rights of the Child ten years earlier; once again, the main debate centred around the issue of universal age limit, and once again, it was the delegations from the United States and the UK, as well as a few others, who were most opposed to a higher age limit than fifteen. The US refused to ratify the final text, and when the UK ratified the Optional Protocol, they made a declaration stating that they interpreted the provision to mean that persons under the age of eighteen could take direct part in hostilities if or when there was a ‘genuine military need’ for it. The UK and France, despite having declined in military significance in recent decades, had sway over discussions on the child soldier issue due to their position as former colonial powers of precisely the countries which now seemed to be suffering from the ‘child soldier crisis’. Authors such as McBride have noted that the focus these states had on preserving the norms which allowed them to recruit sixteen and seventeen-year-olds into their armed forces “overshadowed the use of far younger child soldiers” such as the ones being used in Sierra Leone, Uganda, and Burma.\(^{214}\)

3.5.2. Child soldiers in international criminal law

The 1990s was not only a decade of increased international attention on the issue of child soldiers – it was also a decade for the re-emergence of international criminal law. After the end of the Cold War, lawyers seized the opportunity of reinvigorating transitional justice.\(^ {215}\) Indeed, for the first time since the Nuremberg and Tokyo trials, the world was again trying its hand on international war crime trials. Both the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) were set up in response to terrible atrocities. However, neither the ICTR nor the ICTY included child recruitment as a war crime, despite evidence that child soldiers were heavily involved in both conflicts. Nor did the tribunals offer any guidance regarding the age of criminal responsibility, and neither

\(^{214}\) Ibid.

prosecuted anyone under the age of eighteen. The issue, again, was left to national legal institutions.\textsuperscript{216}

But the international community was embracing transitional justice by the end of the 1990s, and the idea of a permanent international court to try perpetrators of war crimes was gaining momentum. As with the Coalition to Stop the Use of Child Soldiers, the Coalition for an International Criminal Court was created by a large network of NGOs to lobby for the creation of such a court.\textsuperscript{217} International lawyers, so-called “cause lawyers” who were working towards the betterment of society, were instrumental in this newfound focus on international criminal justice. These lawyers were to be found in NGOs, international agencies such as the various UN entities, and in state governments. In 1998, the Rome Conference adopted the Rome Statute, which established the International Criminal Court.\textsuperscript{218} In the drafting process, lobbying by NGOs and UN agencies led to issues of crimes against children being negotiated extensively by the Conference, and the child soldier question was central among them.\textsuperscript{219} In the end, Article 8 of the Rome Statute defined the conscription and enlistment of children under the age of fifteen as a war crime, both in “armed forces or groups” and in “national armed forces”.\textsuperscript{220} The ICC left the issue of child culpability unaddressed as it did not extend its jurisdiction to cover those perpetrators who were younger than eighteen at the time of the alleged crime.\textsuperscript{221} This did not, however, amount to establishing a minimum age of international criminal responsibility.

In the post-Cold War era, international NGOs flourished. Although the numbers of NGOs had been growing steadily since the start of the twentieth century, a growth that accelerated immediately after the end of the Second World War, the 1990s presented a landscape where nongovernmental organisations could exert significant influence over the international community.\textsuperscript{222} During the last few decades of the twentieth century, global humanitarianism increasingly shifted from the sphere of governments to that of nongovernmental organisations. The size and reach of international NGOs grew, as did their claim to moral authority.\textsuperscript{223} In a

\begin{itemize}
\item \textsuperscript{216} National institutions in Rwanda have tried persons under the age of eighteen at the time of the genocide for their involvement therein. The traditional Gacaca courts were designated to deal with perpetrators who were not among the leadership, including many child soldiers, see Drumbl, Reimagining Child Soldiers, 118.
\item \textsuperscript{217} McBride, The War Crime of Child Soldier Recruitment, 46.
\item \textsuperscript{218} Happold, Child Soldiers in International Law, 38.
\item \textsuperscript{220} Happold, Child Soldiers in International Law, 119.
\item \textsuperscript{221} Ilene Cohn, "The Protection of Children and the Quest for Truth and Justice in Sierra Leone," Journal of International Affairs 55, no. 1 (2001): 6.
\item \textsuperscript{222} Vandana Desai, "The Role of Non-Governmental Organizations (NGOs)," in The Companion to Development Studies, ed. Vandana Desai and Robert B. Potter (New York: Routledge 2012), 525.
\item \textsuperscript{223} McBride, The War Crime of Child Soldier Recruitment, 209.
\end{itemize}
world which had been dominated by polarising ideologies throughout the Cold War, the fall of the Berlin Wall left a vacuum for the emergence of new principles. And increasingly, it was NGOs, with their turn towards human rights and international law, which filled the gap. Dezalay argues that for organisations such as Amnesty International and Human Rights Watch, law became the solution to the wars and human rights abuses in the aftermath of the Cold War.\footnote{Dezalay, “Lawyering War or Talking Peace?”, 70.}

The role of NGOs in the development of the crime of child recruitment was significant and manifold. As mentioned above, several large organisations were heavily involved in lobbying in the lead-up to the Optional Protocol and the ICC. Moreover, NGOs were public supporters and critics as the law developed, and were instrumental in spreading information to larger audiences, ensuring that the issue of child soldiering remained prominent in the media. But the role of NGOs and international agencies went beyond that of cheerleaders on the side-line.\footnote{McBride, The War Crime of Child Soldier Recruitment, 209.}

Increasingly, their representatives came to be recognised as experts on the issue, to the extent where they lawmakers and member states of the UN relied on their expertise for the drafting of the new treaties and laws. In fact, reports by NGOs such as Human Rights Watch were used as evidence in international war crimes tribunals. It would seem that, by the 1990s, an epistemic community on the issue of child soldiers had emerged among representatives from NGOs, international agencies and state governments, many of whom where lawyers invested in the idea of an international order governed by law. This was marked by the shared conception of child soldiers as victims, the common understandings of the needed policy developments for “promoting collective betterment”, and a rejection of different conceptualisations of the problems and solutions.\footnote{Haas, “Introduction: Epistemic Communities and International Policy Coordination,” 20.}

Members of the epistemic community were able to establish themselves as an authority on the issue, and wielded considerable influence over decision-makers.

3.4 Summary

At the end of the Second World War, international law in the war crimes tribunals was advancing an image of children as ‘silent civilians. Children’s experiences were used as an emotional backdrop in the trials, but children were not conceptualised as a distinctly vulnerable
category in the war-affected population, nor was their role as perpetrators recognised. By the 1970s, children as combatants were being introduced into international through the Additional Protocols to the Geneva Convention, and by the 1990s, an epistemic community which viewed child soldiers as ‘violent victims’ had emerged. This was reflected in developments within international human rights law, treaties and international labour law, and lastly, international criminal law. During the five decades in question, there was a shifting balance of power in the development of international law. While states (and specifically the victors) had controlled the narrative of the post-war tribunals, by the end of the century non-state actors had taken on a much more active role in the shaping of international law and policy. The decade of the child soldier, in the sense of media and NGO awareness, and the development of an epistemic community, could be said to be the 1990s. By the end of that decade, a consensus on the conceptualisation of child soldiers had been established within the international community. However, the 2000s would prove to be the decade in which the issue of child soldiers would be put on trial; and the first tribunal to do so was the Special Court for Sierra Leone, which is the subject of the next chapter.
Chapter 4: Children and the Special Court for Sierra Leone

By the end of the 1990s child soldiers had become a pressing issue in international law. This culminated in the establishment of the Special Court for Sierra Leone, where for the first time, individuals were brought to justice for having recruited and used children in conflict. But this was not an entirely straight-forward process. The debates over both the recruitment of children as a war crime and of the criminal culpability of child soldiers saw a clear split between international NGOs and Sierra Leonean civil society.227 This chapter will return to the research question of the thesis and examine which views on child soldiers were present in the establishment of the Special Court of Sierra Leone.

4.1 The Sierra Leonean Civil War

Between 1991 and 2002, the West African country of Sierra Leone went through a brutal civil war. An estimated 70,000 people died as a result of the conflict, and another two million were displaced, in a country of less than six million people.228 The legacy of the Sierra Leonean civil war is one of extreme violence and destruction, but there is no consensus on the conflict’s roots. A large number of reasons have been discussed, such as political mismanagement, militarisation of youth culture, opportunism, genuine grievances, outside interference, and the diamonds reserves, among other things.229 In its final report in 2004, the Sierra Leonean Truth and Reconciliation Commission (TRC) stated that “it was years of bad governance, endemic corruption, and the denial of basic human rights that created the deplorable conditions that made conflict inevitable”.230 The Sierra Leonean Ambassador to the UN, however, believed the issue was much more simple. In 2000, he stated that the root cause of the conflict was

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227 The phrase civil society is used in this chapter to refer to the informal network of organisations, community groups, faith-based groups, traditional “tribal” organisations, among other things, that are largely distinct from government and for-profit organisations. The purpose of using this phrase with regards to the Sierra Leonean side of the debate is both to reflect the diversity of different actors, and to stress the local roots of many such actors.

228 Myriam Denov, Child Soldiers: Sierra Leone’s Revolutionary United Front (Cambridge: Cambridge University Press, 2010), 49.


“diamonds, diamonds, and diamonds.” Unlike many other wars in the post-Cold War era, the conflict in Sierra Leone had few ethnic dimensions. While, as will be explored later, some of the factions in the conflict were reliant on traditional networks for their recruitment of members, the war was consistently framed as a political or economic struggle, and ethnic tensions were not the basis for atrocities committed against civilians as they had been in both Rwanda and the former Yugoslavia.

In 1961, Sierra Leone gained independence from the United Kingdom after more than 150 years of colonial rule which Myriam Denov argues left a legacy of “authoritarianism and deference”. Between 1967 and 1991, the country was run by the political party All People’s Congress (APC), first under the presidency of Siaka Stevens, and from 1984 under the presidency of his hand-picked successor, Joseph Momah. The three decades following independence were marked by corruption, economic decline, increased oppression, disenfranchisement, and political violence. Simultaneously, Sierra Leone was steadily becoming dependent on the export of diamonds, something that would have a notable impact on the patterns of the conflict. Several authors have pointed out the significance of the emerging Sierra Leonean youth culture in the lead-up to conflict during the 1970s and 1980s. Young people who were often disaffected, unemployed and ‘semi-criminalised’ were important both for the anti-APC movement, and for those in power who co-opted the youth to support the APC’s political violence.

The war started in March of 1991, when the Revolutionary United Front (RUF) entered Sierra Leone from Liberia, led by Foday Sankoh, and with the backing of Charles Taylor and his Liberian rebel forces. The stated aim of the movement was to overthrow President Momoh and the APC. While the area where the RUF first established itself was notoriously anti-APC, the RUF were not as successful at creating a base of local support as other rebellious movements had been on the continent before them. They also failed to create any consistent political message outside of their initial pledge to overthrow the sitting regime. The RUF in

232 Denov, Child Soldiers : Sierra Leone's Revolutionary United Front, 53.
233 See, Harris, Sierra Leone, 88; Denov, Child Soldiers, 11; Peters, War and the Crisis of Youth in Sierra Leone.
234 War and the Crisis of Youth in Sierra Leone, 19.
235 Examples of more politically and publicly successful movements would be FRELIMO in Mozambique, FLN in Algeria, and the MPLA in Angola, see Reid, Warfare in African History, 159.
236 Harris, Sierra Leone, 93.
many ways functioned like a cult. Observers explained how the members often acted on visions from God, and some commanders claimed that they had magical powers. Moreover, forced or voluntary drug use was common.237

The conflict was fractured, and there were several significant military factions in addition to the RUF. The Civil Defence Forces (CDF) was a network of different pro-government groups with roots in local hunting societies which took up arms largely to protect the civilian population against the rebels. The National Provisional Ruling Council (NPRC) was a faction of the Sierra Leonean Army which ousted President Momoh in 1992. The Armed Forces Revolutionary Council (AFRC), which was another breakaway military faction, took power in through a coup in 1997 and which was allied with the RUF. Additionally, the West Side Boys were also aligned with the AFRC and the RUF. A South African mercenary company and several international peace-keeping forces, as well as a British mission, were other significant actors in the war.238

Like many other conflicts by the end of the twentieth century, the civil war in Sierra Leone had strong international ties. The RUF had significant links with both the Libyan leader Ghaddafi, and with Charles Taylor of the National Patriotic Front of Liberia. Indeed, the Sierra Leonean conflict has sometimes been explained as a spill-over of the Liberian war, and Taylor himself would become the first former President to be found guilty of war crimes in the Special Court for Sierra Leone in 2012.239 Moreover, the UN Security Council played an important role in the ebb and flow of the conflict through resolutions that imposed bans on oil and arms, which forced the military government to step down, and on diamonds, something which crippled the revenues of the RUF.240

There was a lull in the war in 1996, during which time elections were held and a peace deal was brokered, but the terms were quickly violated by the rebels. After another military coup in 1997, and later an brutal invasion of the capital of Freetown by the joint forces of the RUF and the AFRC, the conflict had resurged with extreme violence.241 Finally, the Lomé Peace Agreement of 1999 gave blanket amnesty to all parties to the conflict, laid the foundations for a Truth and Reconciliation Commission modelled on the one that had just been held in South Africa, and provided for UN peacekeeping forces. The agreement was also the first of its kind

237 Kelsall, Culture under Cross-Examination, 29.
238 Ibid., 27.
239 Harris, Sierra Leone, 82.
240 Denov, Child Soldiers, 73.
241 Harris, Sierra Leone, 101.
to account for the specific needs of child soldiers, and to create plans for their demobilisation and reintegration. RUF leader Foday Sankoh was even appointed chairman of the Commission of Strategic Minerals, something which essentially gave him control of the diamond industry. However, this peace agreement was also broken, when RUF rebels kidnapped 500 UN peacekeepers in May 2000, and Sankoh appeared to be plotting another coup, something which led to a British military intervention and a final end to the war.

Sierra Leone in the 1990s would by many be described as the archetype of Mary Kaldor’s ‘new wars’. In addition to the strong international ties and the fractured nature of the parties involved, the war was characterised by the targeting of civilians by all sides. The different factions managed to largely avoid engaging each other in combat, but rather fought for control over land by attacking and terrorizing the civilian population and establishing control over diamond extraction. A new term was invented to describe the ‘predatory nature’ of the conflict, and the phenomenon of the opposing factions apparently collaborating in widespread looting: ‘sobel’ – soldier by day, rebel by night. For most civilians, the distinctions between the anti-government and pro-government groups were insignificant. The horrors the civilian population was subjected to included mutilations, amputations, sexual violence, and mass rapes, as well as widespread killings and massacres. As Kelsall put it, the Sierra Leonean civil war soon became notorious for the “encyclopaedia of spectacularly violent acts” that the population was a victim of. According to estimates by the Truth and Reconciliation Commission, the RUF were behind a total of sixty percent of the atrocities committed during the war, an estimated fifteen percent of which were against children.

4.2 Child soldiers in the Sierra Leonean war

During the ten years the conflict lasted, a whole generation of children were born and raised in the middle of the war-torn country, and the impact on them was devastating. The war in Sierra Leone quickly became synonymous with child soldiering to the outside world. Although it is impossible to say how many children were being used as soldiers by the various armed

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242 Machel, *The Impact of War on Children*.
244 Harris, *Sierra Leone*, 89.
245 Kelsall, *Culture under Cross-Examination*.
246 An estimated 17 percent of the violations were committed by state forces, see Truth and Reconciliation Commission, *Witness to Truth*, vol.2, 34.
groups, numbers by UNICEF suggests that it were at least 10,000, though others have suggested figures as high as 15,000. The majority of the factions in the conflict recruited and used children and adolescents under the age of eighteen, many of them much younger. The RUF in particular was notorious for the forced recruitment of child soldiers, kidnapping them and holding them hostage through violence and threats. However, there was also widespread use of child soldiers in the other factions of the conflict. When the Sierra Leonean Army responded to the initial invasion of the RUF, they recruited among the untrained adolescents of Freetown, many of them uneducated, unemployed and criminalised. Other groups were quick to use both forced and voluntary recruitment of children and adolescents.

The forced recruitment of children and adolescents often took the form of mass kidnappings from schools or from communities that were being targeted for other brutalities like mass rapes, amputations, and massacres. Former child soldiers have told stories of how they were made to commit crimes against family members or others from their communities under threat of death as a way of both terrorising the children, and alienating them from their homes, thus making it close to impossible for them to return. These children were then used to attack new communities and carry out atrocities against civilians, many of whom were children themselves. Those who tried to disobey were severely punished and often killed. A sixteen-year-old boy speaking about the attack on Freetown said, “[w]e were ordered to kill any civilians we came across. Any fighter or children suspected of being reluctant to do the killings were severally beaten. […] It was during this period that people’s hands and limbs were cut off […]”.

The so-called training of child soldiers often consisted of extreme violence and threats. Witnesses during the trials described how children and adolescents had routinely been subjected to beatings and floggings, had been threatened with amputation and murder, and had been forced through physically exhausting activities. One fourteen-year-old boy, interviewed by Amnesty International, who had been with the RUF for three years, said that, “I had to go through the training and learn to fight, otherwise the RUF people would beat me and kill me”. The same boy had witnessed one of his friends being killed after complaining about being tired.

249 Kelsall, Culture under Cross-Examination, 29.
250 Denov, Child Soldiers, 66.
252 Ibid.
Forcing the children and adolescents to use drugs and alcohol before committing atrocities was also common, supposedly to dull their senses and make them more fearless. Witnesses told of being cut by blades so that the drugs could be absorbed quickly into their systems, and sometimes, as in several RUF cases, children would have letters carved into their skin as a way of showing who they belonged to.\(^{253}\)

Rape and other forms of sexual abuse of children were also common in the various factions. Although both boys and girls were subject to this, a larger number of girls were victims of sexual slavery, forced marriages, and forced pregnancies by members of the different groups. Witness testimonies describe how schoolgirls, some as young as ten years old, were abducted and raped by members of the armed groups, often being abused by large numbers of people, or being “married” to a commander. The UN’s Special Representative of the Secretary General for Children and Armed Conflict stated that out of the 4000 children who were abducted by the RUF as part of their incursion into Freetown in January 1999, 60 percent were girls, “the vast majority of whom have been sexually abused”.\(^{254}\) The girls who were victims of forced marriages and pregnancies faced additional vulnerabilities both within the armed groups and during the demobilisation and reintegration processes, as communities in different parts of Sierra Leone often rejected girls who had been married or who had given birth while abducted.\(^{255}\)

There is no doubt that the treatment many child soldiers experienced was absolutely horrendous. However, some observers have pointed out that several of the factions might not have been as reliant on forced recruitment as has been suggested. Although the large numbers of very young children in groups like the RUF were more likely than not victims of abduction, there is evidence to suggest that many of the older children and adolescents, and particularly the older boys, joined voluntarily.\(^{256}\) In a war-torn country, and particularly a worn-torn country where the civilian population was routinely targeted, membership of an armed force represented a level of security that many adolescents were hard-pressed to find elsewhere. When livelihoods, education, and employment were stripped away, such groups could offer


\(^{255}\) Aptel, "Unpunished Crimes", 356.

\(^{256}\) Harris, *Sierra Leone*, 95; Aptel, "Unpunished Crimes", 352.
both a chance of survival and a political purpose or a chance to feel powerful.\textsuperscript{257} The ability of Sierra Leonean children to make informed decisions about their course of action is consistent with the children’s rights paradigm focused on not on children as passive objects, but as individuals with agency.

Particularly among the Civil Defence Forces, large numbers of adolescents and even children younger than fifteen enlisted themselves and were supported in their decision by their families.\textsuperscript{258} The CDF was unique among the different factions in that it originated as a response to the violence of both government forces and rebels. It was built on traditional practices of kamajors, which meant hunters, but was essentially men who defended the community. Devon points out that traditionally, the practice required kamajors to be at least thirty years old, but during the civil war, many children and adolescents were recruited, some as young as twelve years old.\textsuperscript{259}

It is particularly interesting to note that the conceptions of childhood in Sierra Leone, and specifically in Southern Sierra Leone, were decidedly different from those embraced by the international community which had informed the development of the anti-child soldier position within international law. In fact, among the Mende people of Southern Sierra Leone, where the CDF had a strong presence, infants and young children, far from being the “innocents” that NGOs portrayed them as, were seen as being tied to the world of spirits which they had inhabited before being born.\textsuperscript{260} Childhood was seen as a dangerous phase, both because the child might decide at any moment to leave the world of the living in favour of the spirit world, and because children functioned as channels for malicious spirits who wanted to cross between the two worlds. In order to grow into full humans, Mende children had to go through hardships such as corporal punishments or being denied food. Kelsall also writes that the fostering of children outside the home was common from the age of seven or eight, often among distant relatives for whom the child would work and perform domestic services.\textsuperscript{261}

Moreover, initiation rites were a vital factor in the culturally understood transition from childhood to adulthood. The initiation rites included periods of seclusion from society at the time of puberty before being reborn as full humans, as well as ritual killings of animals and

\textsuperscript{257} Harris, \textit{Sierra Leone}.
\textsuperscript{258} Denov, \textit{Child Soldiers}, 66.
\textsuperscript{259} Ibid., 69.
\textsuperscript{260} Kelsall, \textit{Culture under Cross-Examination}, 151.
\textsuperscript{261} Ibid., 152.
circumcisions of both boys and girls.\textsuperscript{262} The brutality of such rituals has led some to argue that child soldiering was only an extension of traditional initiation rituals, and that even the forced abduction of children by armed groups shared similarities with the practice. Denov, for instance, points out that the seclusion from the communities could sometime last for years, and was not so different from the extended stays with armed military groups.\textsuperscript{263} The ties between recruitment to the CDF and initiation rites was particularly strong, to the extent where the ritual initiation into the group “became a vehicle for transition into adulthood.”\textsuperscript{264}

Furthermore, Kelsall points to the links between the reality of the child soldiering practices during the war and common patron-client relationships. Child soldiers often felt extreme loyalty to the commanders, and the commanders would view themselves as protectors of the children. This might not be adequate to describe the child soldier-commander relationships in the RUF, but it could certainly be used with regards to the CDF. There were even cases where parents would offer up their children to armed groups, likely in attempts to protect them. Traditionally, boys who carry arms on behalf of the community have been subjects of respect. This might help explain both why so many adolescents and even children joined military groups, particularly the CDF, and why there was no widespread condemnation of such practices in the relevant communities. For the local populations who were being terrorised by various armed groups, the fact that children and adolescents joined what essentially started out as a “self-defence militia” was likely a “natural response to insecurity.”\textsuperscript{265}

4.3 The establishment of the Special Court for Sierra Leone

The 1990s saw the resurgence of international law and transitional justice. Sierra Leone was among a handful of countries selected to be home to a post-conflict tribunal.\textsuperscript{266} In August 2000, the United Nations Security Council adopted Resolution 1315, which requested the Secretary General to start negotiations for a post-war court.\textsuperscript{267} This was done after Secretary General Kofi Annan received a request from the Sierra Leonean president Kabbah for help from the international community to establish a court “powerful enough to bring justice to his country”.

\begin{thebibliography}{9}
\bibitem{262} Denov, \textit{Child Soldiers}, 58.
\bibitem{263} Ibid.
\bibitem{264} Kelsall, \textit{Culture under Cross-Examination}, 154.
\bibitem{265} Ibid.
\bibitem{266} Harris, \textit{Sierra Leone}, 133.
\end{thebibliography}
President Kabbah’s request referred specifically to the crimes committed by the RUF, including the kidnapping of peacekeepers, and did not ask for those affiliated with the government to face justice. Some have suggested that the purpose behind the request from President Kabbah was to secure a long-term UN presence in Sierra Leone, which included UN peacekeepers and international funding, and not to establish Sierra Leone as a new centre for international law. In any case, the UN Secretary General then presented the Security Council with a report and a draft Statute for the new Special Court for Sierra Leone (SCSL), sometimes called the Sierra Leone Tribunal or simply the Special Court.

The Special Court was finally established in 2002 through a treaty between the UN and the Sierra Leonean government. According to the Statute, it would prosecute;

“[…] those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace process in Sierra Leone.”

Importantly, contrary to President Kabbah’s suggestion, the court not only prosecuted those connected to the RUF, but representatives from all sides of the conflict, even the leader of the CDF, Samuel Hinga Norman, who was widely regarded as a hero and had become Kabbah’s Minister for Internal Affairs and National Security. The statute represented a mixture of international laws, often taken directly from the ICTR or the ICTY, or from the Rome Statute of the ICC, and of national Sierra Leonean laws, such as the 1926 “Prevention of Cruelty to Children Act” (first adopted under British colonial rule and continued after independence). Although both the UN and the Sierra Leonean government had initially planned for the temporal jurisdiction of the Court to extend to the beginnings of the war in 1991, it was thought that this would overburden the prosecution. As a result, the start date was set to the 30th

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269 Ibid.
272 The Prevention of Child Cruelty Act and the Malicious Damages Act, both crimes under Sierra Leonean law, were ultimately left out of the indictments. See Kelsall, *Culture under Cross-Examination*, 31.
November 1996, a day which marked a changing point in the war, as it was when the first peace agreement was concluded.\textsuperscript{273}

The SCSL was a hybrid Court, composed of both international and national aspects. This distinguished the Sierra Leonean Tribunal from the ICTR and the ICTY, which were both UN entities. The Court was designed to be cheaper than the two previous tribunals, relying on voluntary contributions, combining local and international staff, and prosecution a limited number of cases.\textsuperscript{274} Additionally, as the Court seemed to represent an alternative to the ICC (which was being established at roughly the same time), the SCSL could rely on the much-needed support of the US, who were opposed to the ICC but not to individual tribunals which could not prosecute any American citizens. The SCSL would also be the first of the modern war crimes tribunals to take place in the country where the conflict had happened. It was thought that this would make it easier for the people who had been affected by the war in various ways to follow the proceedings, and there was also a hope that Sierra Leoneans would have a feeling of ‘ownership’ over the trials that would be helpful in the reconciliation process.\textsuperscript{275} In 2003, the court indicted thirteen individuals from different factions of the war; the RUF, the AFRC, the CDF, and later on the Liberian President Charles Taylor.\textsuperscript{276} Three of the indicted died either before or during the trials, among them the RUF commander Sankoh and the leader of the CDF, Hinga Norman.\textsuperscript{277}

4.4. The recruitment of children under the age of fifteen as a war crime in the Special Court for Sierra Leone

The Special Court for Sierra Leone was the first international tribunal to include the recruitment and use of children as a war crime in its statute. The statute of the SCSL stated that the Court should have the power to prosecute those responsible for “[c]onscripting or enlisting children under the age of 15 into armed forces or groups using them to participate actively in hostilities.”\textsuperscript{278} The draft statute by the Secretary General had been phrased differently. In that

\textsuperscript{273} This peace agreement was broken soon afterwards, see Ellen Emilie Stensrud, ”Transitional Justice and the Problem of Legitimacy : A Study of the Mixed Courts in Cambodia and Sierra Leone” (University of Oslo, 2015), 166.
\textsuperscript{274} Harris, \textit{Sierra Leone}, 133.
\textsuperscript{275} Denov, \textit{Child Soldiers}, 77.
\textsuperscript{276} Harris, \textit{Sierra Leone}, 133.
\textsuperscript{277} Stensrud, ”Transitional Justice and the Problem of Legitimacy”, 167.
\textsuperscript{278} UN, \textit{Statute of the Special Court for Sierra Leone}, Article 4.
proposal, only “abduction and forced recruitment” of those under the age of fifteen would have
been considered a war crime, thus essentially allowing for the voluntary enlistment of children
and adolescents. However, this proposal was followed by fierce opposition from both NGOs
and UN entities. Organisations such as Human Rights Watch, Amnesty International and Save
the Children argued for the this to be changed to reflect the Rome Statute, which categorised
any type of recruitment of children under the age of fifteen, forced or not, and regardless of
purpose, as a war crime. The Secretary General had been reluctant to use this definition of the
crime because of its “doubtful customary nature”, which would open up the debate over
retroactive justice.279 To counter this view, Human Rights Watch pointed out that that Sierra
Leone was party to the Additional Protocols of 1977, the Geneva Convention of 1989, and the
Statute of the International Criminal Court, and argued that there was therefore no reason not
to criminalise all types of child recruitment.280 Amnesty International went even further, and
claimed that “[t]hus, the armed forces and armed groups in Sierra Leone should have been
aware that any recruitment (whether forced or voluntary) was illegal, as international
humanitarian law requires states parties to inform their population about its provisions.”281 The
Security Council was persuaded by such arguments, and the draft Statute was modified to
reflect the language of the Rome Statute.282

From the outset, Chief Prosecutor David Crane, an American lawyer appointed by the UN,
made it clear that child soldiering would be a central issue in the Special Court. In a statement
from 2003, he said "[t]wo of the most egregious uses of children are sexual slavery and
conscription of children into armed conflicts. Sierra Leone's conflict was characterized by both,
and we hope to establish a strong precedent that these abuses must end."283 However, as the
Secretary General of the UN had feared, the question of retroactive justice was brought up in
the trials. The defence in the CDF trial argued that even though there had been international
treaties condemning the use of children under the age of fifteen in hostilities before 1996, the
use of child soldiers had not been a punishable crime under international law until the

279 United Nations Security Council, Report of the Secretary-General on the Establishment of a Special Court
for Sierra Leone, 4. October 2000), retrieved 12.04.2019 from:
280 Human Rights Watch, Letter to the UN Security Council Members on the Statute of the Special Court for
security-council-members-statute-special-court-sierra-leone.
281 Amnesty International, Sierra Leone: Recommendations on the draft Statute of the Special Court, (14.
283 Special Court for Sierra Leone, Office of the Prosecutor, Honouring the Inaugural World Day against Child
establishment of the International Criminal Court, and the conviction of the defendants for that crime would thus amount to retroactive justice.

As shown above, it was common for both international NGOs and the prosecution itself to argue that as Sierra Leone was party to international treaties that had clear guidelines regarding the treatment and rights of children, including the African Charter on the Rights and Welfare of the Child which banned the recruitment of those under the age of eighteen, different cultural practices could not be considered. However, there are two important counterarguments to this view. Firstly, this idea hinges on an expectation that all states “exercise a sovereign authority and ideological legitimacy” over their territories, something which does not match the reality of most states, particularly not in a post-colonial Africa where statehood has often been legitimised more by external recognition than internal cohesion. 284 Thus, the declared principles of the respective government often do not coincide with domestically accepted practices. Secondly, it should not be forgotten that for developing states, signing up for international treaties and conventions is often a matter of realpolitik. Many African states, including Sierra Leone, are highly dependent on international support through loans, aid, investments, among other things, which are often only given to those who are seen to comply with a certain paradigm. 285 The extent to which ratifications of such treaties can be seen as real commitments to the issue at hand is therefore up for debate, and it cannot be assumed that such treaties would have any significance or recognition nationwide. 286

In 2007, the AFRC trial resulted in three of the leaders being found guilty of conscripting children under the age of fifteen, thus resulting in the first convictions for this crime. 287 This was followed by convictions of two prominent RUF leaders, and later still by the conviction of Charles Taylor on the same grounds. In the CDF trial, only one member of the leadership was convicted by the Trial Chambers for the crime of enlisting children under fifteen, but this was overturned in the Appeals Chamber. 288 The main difference between the charges against the CDF leadership and the leadership of the other armed groups seems to be that the evidence in the CDF trial came down to a few cases of seemingly voluntary initiation of children into the

286 Kelsall, *Culture under Cross-Examination*, 158.
287 Aptel, "Unpunished Crimes", 344.
288 Ibid.
group, as opposed to the forced recruitment that the other groups were charged with. Even though the statute of the court had established, after pressure from NGOs, that both forced and other forms of recruitment of children would be considered a war crime, it seems that the final verdict reflected the view that the recruitment methods of the CDF were, at least according to local populations, more legitimate.

Although the defence argued that the recruitment of children amounted to a traditional practice, and that the enlistment of children could not be said to have been a war crime by 1996, the Appeals Chamber did not agree. In May 2004, it declared that the recruitment and use of children under the age of fifteen in hostilities “had crystalized into a norm of customary international law between 1994 and November 1996.”\(^{289}\) This ruling reflected the views of international NGOs, several of whom had submitted responses to the arguments set up by the defence. In its judgment, the Appeals Chamber stated that “[c]itizens of Sierra Leone, and even less, persons in leadership roles, cannot possibly argue that they did not know that recruiting children was a criminal act in violation of international humanitarian law.”\(^{290}\) However, despite this clear language, the ruling by the Appeals Chamber was not unanimous. In a dissenting opinion, one of the judges argued that the non-forcible recruitment of children into armed forces had not been explicitly criminalised by states before the establishment of the ICC, and that the use of children to perform tasks for an armed group not connected to combat was not criminalised in international law.\(^{291}\)

4.5 Children as perpetrators in the Special Court for Sierra Leone

As a result of the brutality of the conflict, and the large number of atrocities carried out by child soldiers, the question of the criminal culpability of children and adolescents was perhaps inevitable. In his report to the Security Council on his negotiations with the Government of Sierra Leone for the implementation of the Special Court, the Secretary General viewed the question on whether to prosecute perpetrators under the age of eighteen a “moral dilemma”.\(^{292}\) This moral dilemma was, in the end, left up to the Chief Prosecutor, who decided against


\(^{290}\) Ibid, note 52.

\(^{291}\) Aptel, “Unpunished Crimes”, 344.

\(^{292}\) The UN, *Report of Secretary-General*, 7.
prosecuting anyone who had been under the age of eighteen when the alleged crimes were committed.

Nonetheless, the debates leading up to the establishment of the Statute were fierce. The question over child soldier culpability was one which saw two sides clashing; one side was made up primarily of Sierra Leonean civil society and officials, another largely of international organisations and Western states. In his report, the Secretary General wrote that

“The Government of Sierra Leone and representatives of Sierra Leone civil society clearly wish to see a process of judicial accountability for child combatants presumed responsible for the crimes falling within the jurisdiction of the Court. It was said that the people of Sierra Leone would not look kindly upon a court which failed to bring to justice children who committed crimes of that nature and spared them the judicial process of accountability.”

In Sierra Leone, resentment towards former child soldiers was widespread by the end of the conflict, and the idea that these children (many of whom had become adults during the war) would not face justice and would be treated as victims was hugely unpopular. For local communities who had suffered atrocities at the hands of children and adolescents, children were rarely accepted as innocent. A statement by a former child soldier recorded by Amnesty International illustrated the issue: “I don’t want to go back to my village because I burnt all the houses there. I don’t know what people would do, but they’d harm me. I don’t think I’ll ever be accepted in my village.” Although the Statute of the SCSL promised to prosecute “those who bear the greatest responsibility” for war crimes, something which was interpreted by the UN and the Court itself to mean the top commanders, for Sierra Leoneans the real perpetrators were the foot-soldiers (often children and adolescents) who had committed the atrocities in question. As Amann argues, the wish to see child soldiers punished for war crimes or crimes against humanity was understandable.

Thus, the draft Statute’s inclusion of an article that would allow the Special Court to prosecute adolescents between the age of fifteen and eighteen, as well as the Secretary General’s proposal

\[293\] Ibid.
\[296\] Nkansah, "Justice within the Arrangement of the Special Court for Sierra Leone Versus Local Perception of Justice", 106.
to the Security Council that a juvenile chamber should be established to try such cases seemed to indicate an acceptance of the Sierra Leonean view. For human rights organisations, such a proposal was at odds with the accepted view that all participants in the conflict under the age of eighteen were victims, and they feared that the prosecution of adolescents could weaken the rehabilitative programmes aimed at the former child soldiers. In Freetown, UNICEF, together with international organisations such as the International Rescue Committee, Save the Children, and Cause Canada, as well as a representative of the Ministry of Social Welfare had set up the National Child Protection Committee. As a response to the Secretary General’s proposal, the Committee sent a letter to the Sierra Leonean Attorney General, in which they expressed “deep concerns about the intention to prosecute child ex-combatants between 15 and 18 years.” Their main worry was that the potential for prosecution would have negative consequences for the efforts of such organisations of rehabilitating former child soldiers, as it might lead to increased stigmatisation and trauma, and make communities less willing to allow reintegration. The Secretary General recognised the debates his report to the Security Council:

“The international non-governmental organizations responsible for childcare and rehabilitation programmes, together with some of their national counterparts […] were unanimous in their objection to any kind of judicial accountability for children below 18 years of age for fear that such a process would place at risk the entire rehabilitation programme so painstakingly achieved. While the extent to which this view represents the majority view of the people of Sierra Leone is debatable, it nevertheless underscores the importance of the child rehabilitation programme and the need to ensure that in the prosecution of children presumed responsible, the rehabilitation process of scores of other children is not endangered.”

Additionally, the extent to which an adolescent could be held responsible for war crimes at all was questioned. Human Rights Watch recommended that the SCSL refrained from trying anyone under the age of eighteen, and in their letter to the Security Council on the draft of the Special Court, wrote:

“Although we believe that children should be accountable for their offenses, in light of their inherent immaturity as well as the subjection of many child combatants to forcible abduction, brutalization and other forms of coercion, we recommend that the Special

298 Ibid., 167.
300 The UN, Report of the Secretary-General, note 32, p.7.
Court's limited resources would be far better used in pursuit of justice for adult offenders, rather than children.”

The position by a majority of international NGOs was thus informed by the view that no one under the age of eighteen should be held responsible for the war crimes they had committed, and that by the nature of their youth and the circumstances of the war, such adolescents and children were the real victims. Novogrodsky argued that “[t]his is ultimately a form of bystander justice in which neutral outsiders develop an authoritative history of the conflict and assign preordained roles to victims and perpetrators alike.” Interestingly, Amnesty International had a different view. After establishing that the majority of child soldiers in Sierra Leone were forcibly recruited, and were the victims of threats, violence, and often forcibly drugged, it stated:

“It is vitally important, however, in cases where a person under 18 did act entirely voluntarily, and was in control of his or her actions, that they should be held to account for those actions in an appropriate setting, with due weight given to their age and other mitigating factors. There may be examples of young commanders of units who committed mass atrocities, including murder, mutilation and rape, who were clearly willing and who acted without coercion, and who forced other children to commit such acts. Where an individual can be held responsible for his or her actions, failure to bring them to justice will perpetuate impunity and lead to a denial of justice to the victims.”

Amnesty International representatives did, however, state that the Prosecution should have clear guidelines for when a child could be deemed to have committed atrocities voluntarily: “A balance must be drawn in any judicial system between attributing responsibility appropriately and protecting children from a process which they are too young to understand.” Moreover, they were only in favour of prosecuting those between ages fifteen and eighteen if the possibility of a death penalty or life imprisonment was excluded.

Amnesty International’s assertion that it was important to bring adolescents to justice for war crimes in the cases where they had acted voluntarily was supported by legal scholars such as

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302 Novogrodsky, "After the Horror", 372.
303 Amnesty International, Sierra Leone: Recommendations on the Draft Statute of the Special Court, 16.
304 Ibid, 18.
Diana Marie Amann (who would later become Special Adviser on Children and Armed Conflict to the Prosecutor of the ICC). She argued that the Secretary General’s proposal for the prosecution of juveniles was evidence of a “constructive, pluralistic approach to the child-soldiering problem”.\textsuperscript{306} Indeed, Amann suggested that the prosecution of those adolescents who had committed the worst crimes was a way of making sure the law was able to reflect a complex and multidimensional problem that was often reduced to a simple victim-perpetrator dichotomy. Moreover, she argued that trials for juveniles could contribute to the process of reconciliation and “provide a modicum of redress for the victims of Sierra Leone’s war”, and that contrary to the common NGO position on the issue, doing so would “not require abandoning fundamental principles of justice”.\textsuperscript{307}

Although the lobbying by NGOs towards the UN Security Council and the Secretary General was substantial, they were not successful in changing the positions of the relevant states, nor of the UN officials who were eager for a compromise between the two stances.\textsuperscript{308} Article 7 of the final Statute of the Special Court for Sierra Leone read:

“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 desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international humanitarian standards, in particular the rights of the child.”\textsuperscript{309}

Additionally, the Statute of the Special Court made provisions for what the Court could order in the case of juvenile offenders, such as:

“[..] 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”.\textsuperscript{310}

\textsuperscript{306} Amann, "Calling Children to Account", 168.
\textsuperscript{307} Ibid., 179., 182.
\textsuperscript{308} Druml, Reimagining Child Soldiers, 123.
\textsuperscript{309} The UN, Statute of the Special Court for Sierra Leone, Article 7(1).
\textsuperscript{310} Ibid, Article 7(2).
This was an attempt to accommodate both views as far as possible; adolescents could be prosecuted, but their treatment and subsequent punishment could not be the same as for those over the age of eighteen. Their sentences would be focused on rehabilitation, education, trauma prevention, and reintegration into society.

In the end, however, it would be up to the Prosecutor to decide what to do about the article permitting the prosecution of those between fifteen and eighteen. As controversial as the proposal of a juvenile chamber was, the fierce debates between NGOs and Sierra Leonean civil society ended when the Prosecutor of the Special Court, David Crane, made it clear that he had no intention of indicting any children. Speaking to a group of Sierra Leonean secondary school students, many of whom had been child soldiers, he announced; “The children of Sierra Leone have suffered enough both as victims and perpetrators. I am not interested in prosecuting children. I want to prosecute the people who forced thousands of children to commit unspeakable crimes.”

Thus, the Prosecutor went in the direction pushed by international organisations, rather than the one tentatively suggested by the UN Secretary General, or the one many Sierra Leoneans wanted. Interestingly, the Prosecutor spent time before the start of the Court travelling the country and speaking to local leaders, civil society and former child combatants in order to “hear from his clients: the people of Sierra Leone”, and thus likely met with opinions that differed greatly on the issue of child soldiers.

The decision not to prosecute adolescents regardless of the atrocities committed or their degree of willingness should perhaps not be seen as an complete embrace of the idea of child soldiers as victims; given the limited number of perpetrators the Court would be able to indict, as well as the mandate to prosecute those “who bear the greatest responsibility”, child soldiers would likely not have been high on the list of potential defendants anyway. And, as Aptel argues, even if they had been included, it would have been close to impossible for the trial to create a complete picture of the complex situation children had found themselves in. The Prosecutor was able to sidestep the issue of culpability and agency by focusing on the top leaders of the various factions and passing the adolescents on to the Truth and Reconciliation Commission and rehabilitative programmes run by international NGOs. However, whether the

312 Ibid.
313 Aptel, "Unpunished Crimes", 353.
314 This put an increased burden on a TRC which was already designated to deal with the vast majority of perpetrators and victims but lacked adequate funds and resources to do so. These issues came on top of the fact...
Prosecutor’s decision not to include any adolescents in the definition of “those who bear the greatest responsibility” was based on actual assessments he made of the available evidence, or if it was an assumption “based on personal and cultural values and informed by a conception of children being primarily victims” can still be questioned, particularly in light of the fact that he made the decision before the work of the Special Court had really started. Indeed, the prevailing views of the epistemic community made up of human rights experts and lawyers seems to have been entrenched in the SCSL from the start, and there was little room for opposing views on the treatment of child soldiers.

4.6 Summary

The civil war in Sierra Leone in the 1990s became infamous around the world due to a plethora of atrocities committed against the population by the different factions, not least the abduction and use of children in hostilities. While the recruitment of adolescents into armed groups had roots in traditional practice and many of them joined voluntarily, there is no doubt that child soldiers were subjected to terrible forms of abuse. The child soldier issue was a complex one: although young children had become victim to physical and sexual violence, manipulation, forced drug use and more, many of them were also perpetrators of atrocities. In the establishment of the Special Court for Sierra Leone, international and domestic opinions clashed over whether or not children and adolescents could be held accountable for such crimes, and over how to respond to those who had recruited children. The Sierra Leonean government made clear to the UN that there was a wish to see child and adolescent perpetrators brought to justice, and some Western lawyers supported this view. However, as established in chapter three, representatives from NGOs and international agencies had formed an epistemic community by the 1990s that embraced the ‘straight 18’ position which viewed child soldiers primarily as victims, regardless of their crimes or level of agency. The debates were, in a way, between the dual children’s rights paradigm which had developed by the 1990s: while one side stressed children’s vulnerability, the other stressed agency and accountability. In the end, the protectionist view of children won out, and anyone under the age of eighteen was labelled as victim. The legacy of the Sierra Leone Tribunal would be the convictions of individuals,

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that the TRC was unwanted by much of the Sierra Leonean population who were looking for justice and accountability, not a reconciliation process that had little foothold in traditional processes. See, Rosen, *Armies of the Young*, 148.

315 Aptel, "Unpunished Crimes", 351.
including a former president, for the crime of enlisting and using children under fifteen in hostilities. This legacy seems like a culmination of the developments within Western understandings of childhood and international law relating to child soldiers. The SCSL was a tribunal of its time – a product of reinvigorated international criminal law, in a context in which the horrors of child soldiering had been pulled into the spotlight of Western media, and reflecting a new consensus on the position of child soldiers as victims. Its role in establishing the use of child soldiers as a war crime was revolutionary for international children’s rights.
Conclusion

In recent decades, the issue of child soldiers has received considerable attention from humanitarian NGOs, media, and lawmakers. The discourse on child soldiers is often shaped by the assumption that it is a new practice, stemming from the changing nature of war, and, consequently, that it is inherent to non-Western conflicts. Although there is a consensus among international NGOs that ‘child soldier’ refers to anyone under the age of eighteen who are combatants or who have other roles within armed groups, the prevailing image in Western media coverage is that of a young African boy with a gun. Such images are often used to illustrate the newfound ‘crisis’ of child soldiering in modern wars.

But child soldiering is not new. As this thesis has shown, children and adolescents have had various roles in armed groups in many different societies long before the late twentieth century. In medieval Europe, young boys served both as squires for knights or took active part in combat, while young girls provided support for armies as camp followers. In the American Revolutionary War and later US Civil War, boys as young as nine years old joined the two armies, often spurred on by notions of glory and honour tied to warfare, and were later praised for their patriotism. The thesis further demonstrates that children and adolescents often made informed decisions to take up arms, and rarely conceptualised themselves as passive victims. However, the thesis has also explored how abductions and extreme forms of violence have been used both against and by children and adolescents, as with the Ruga-Ruga soldiers in nineteenth century East Africa. Although this brutality was met with shock, the age of the young Ruga-Ruga soldiers was interpreted by locals more as a reason for their brutality than as a contrast to it. Moreover, in many African societies the passage from childhood to adulthood was tied to initiation into military organisations. Adolescents were part of the trench warfare of the First World War as well as the resistance movements and paramilitary youth organisations which were an integral part of the Second World War. The thesis has also shown that the practice of child soldiering continued into the Cold War-era, when children and adolescents took part in independence movements and were used by authoritarian regimes. This coincided with the changing dynamics of warfare, as new technologies made child soldiering easier, and internal wars fought by non-state factions were becoming the norm. It has therefore been established that the participation of children and adolescents in conflict is not a new practice, but one which gained increasing attention in the late twentieth century.
Although the terms ‘childhood’ and ‘war’ are seen as contradictory by children’s rights activists in the twenty-first century, this thesis clearly demonstrates that earlier conceptions of children, and indeed, of warfare, meant that these concepts were not always incompatible. In medieval Europe, children and adults occupied the same social spheres, and children were not sheltered from things such as war and death. Although there was certainly a concept of childhood, the conception was vastly different from modern understandings. Childhood was not romanticised, nor were children considered to need special protections and rights. In the course of the nineteenth and twentieth centuries, children in the ‘Global north’ started being barred from full-time work and from adult public life and schooling became an integral part of childhood for all social classes. As a result, a concept of a ‘long childhood’ emerged, together with the idea of the adolescents as separate from both children and adults. The Second World War brought the suffering of children into the spotlight of the international community. The idea that children had been robbed of their childhood by the war, and particularly those children who had been orphaned or separated from their parents, was widespread. In effect, a protectionist view of children and childhood had emerged. Moreover, the thesis has shown how, during the 1970s and 1980s, the newfound human rights discourse stressed not only children’s right to protection, but also their agency and right to participation. Thus, by the end of the century, there was a duality in the children’s rights paradigm; while children’s vulnerabilities were to be acknowledged, so too were their responsibilities and right to political participation.

The developments in the Western understandings of children and childhood were reflected in the developments within international law. In the mid-twentieth century, against the backdrop of the tribunals in Nuremberg and Tokyo children were conceptualised mainly as “silent civilians”, i.e. unfortunate, passive victims of war. The fates of children were used in the trials to describe an innocence which had been harmed, but children were not given centre stage, neither through their experience as victims, nor through their role as soldiers in resistance groups and state forces. The view of children as civilians was also reflected in the letters of the Geneva Conventions immediately after the war. However, awareness around the issue of child soldiers was growing as media coverage of conflicts improved. At the same time, international humanitarian law, which regulated the rules of war, was slowly moving from a concern for military necessity to a concern for the victims of war. A push towards banning the recruitment of children in war led by the ICRC resulted in the Additional Protocols to the Geneva Convention, which stressed that the recruitment of children under fifteen should be avoided.
By the 1980s, NGOs were lobbying actively against child soldiers, and when the Convention on the Rights of the Child simply repeated the wording of the Additional Protocols, it was a disappointment to many. As this thesis has shown, the view that child soldiers were first and foremost victims regardless of the atrocities they might have committed, had, by the 1990s, emerged within international law through an epistemic community of experts. These experts worked within NGOs, international agencies, and in governments, but they all had shared values on child soldiers and an understanding of what the necessary practices were to end what they identified as the problem. Increasingly, the epistemic community was shaping the narrative around child soldiers, the conceptions of child soldiers in international treaties, conventions and declarations, as well as the emerging framework of child soldiers in international criminal law. The development of international law had, in many ways, gone from being solely the domain of states, to being co-opted by international NGOs and agencies. Thus, when the Special Court for Sierra Leone was being negotiated by the early twenty-first century, international organisations were hugely influential.

The civil war in Sierra Leone was brutal and devastating. The widespread use of child soldiers, both those who volunteered and those who were abducted and abused by armed groups, was a defining characteristic of the conflict. The Special Court for Sierra Leone was established to try those who bore ‘the greatest responsibility’ for the war, although from the beginning of the negotiation process there were disagreements about who should be included in such a definition. Domestic voices stressed the culpability of those child soldiers who had committed atrocities, and international lawyers argued that the prosecution of certain adolescents could be beneficial for the transitional justice process in the country. International NGOs argued that the child soldiers were first and foremost victims, and that those who had committed atrocities should not be prosecuted by the Special Court, but rather be handled by rehabilitative programmes and the Truth and Reconciliation Commission. In the end, this conceptualisation of children as vulnerable, propagated by the epistemic community on child soldiers, became hegemonic. The Sierra Leonean civil society response seems in many ways to reflect the other side of the dual children’s rights paradigm, namely of children and adolescents as autonomous, responsible and capable of exercising agency over the situations they were in. Thus, perhaps paradoxically, the tension around the child soldier issue in the SCSL – its preparations more than in the actual proceedings – did not only play itself out in a debate between international and domestic voices, but also between the two contrasting sides of children’s rights; that of protection, and that of agency.
The Special Court for Sierra Leone was, ultimately, a contingent product of a specific time and context. As this thesis has shown, by the 1990s, child soldiers had been framed by lawyers, NGOs and international agencies primarily as “violent victims”, and it seemed to be only a matter of time before the practice would be banned by international criminal law’s expanding statutory law. Coupled with the turn to transitional justice at the end of the twentieth century, as well as the large numbers of child soldiers in the Sierra Leonean conflict whose experiences were broadcasted around the world, the focus on child soldiers in the Special Court for Sierra Leone was a conclusion to several processes that had converged at the turn of the century.

When Chief Prosecutor David Crane said in his opening statement in the RUF trial that “this lost generation, victim or perpetrator, are overall victims of this criminal enterprise”, he was reflecting an understanding of child soldiers which had been firmly established among NGOs and international agencies by the late 1990s, and which would dominate the proceedings of the Special Court for Sierra Leone. When it came to both the convictions of individuals for the war crime of recruiting children under the age of fifteen, and the decision not to prosecute anyone under the age of eighteen (although the Statute would have allowed for it), the paradigm of child soldiers as victims won out. This was despite the view by many Sierra Leoneans that the adolescents and children who had committed atrocities were among the worst perpetrators of the conflict, and the wish by locals as well as some international lawyers to see them prosecuted. The legacy of the Sierra Leone Tribunal would be that of the child protection framework; children were “violent victims” – vulnerable, impressionable, and ultimately, innocent.

The fact that children and adolescents have been involved in armed conflict in many societies across the world and at different time periods has not always been recognised by policymakers and activists. Legal research and investigative material published by NGOs often refer to child soldiering as a new phenomenon, as a crisis of the late twentieth century that erupted as the Berlin Wall fell. The recognition that child soldiering has a long history in many parts of the world will likely not have an impact on the goals and views put forward by such organisations and policymakers, nor is that the intention of this thesis. Yet, the discourse around child soldiering that had become dominant through an epistemic community by the start of the twenty-first century can easily become polarising, a-historical, and even infantilising. Indeed,

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316 The Prosecution, *Opening Statement in the RUF Trial*, Special Court for Sierra Leone.
the child soldier issue has become increasingly “Africanised”, as the picture painted of the young boy with the AK-47 in the introduction to this thesis indicates. 317

This discourse assumes the form of contrasting worlds; of civilisation versus the uncivilised world, as primitive versus advanced and as irrational versus rational. Even where historical perspectives are included in the analysis (as in the CDF trial during the SCSL), it is often as a question about whether a specific African society has had a tradition of child soldiering, not as a recognition that children and adolescents have been integrated into different aspects of warfare in most parts of the world. By removing or downplaying the historical context, the Western world disappears from the narrative as anything other than a patronising, correctional force which sets out to halt the irrational and primitive problems of the Third World. Thus, although the widespread condemnation of child soldiering among international NGOs, many states, and increasingly international law itself is far from misplaced, there is a danger of advancing a narrative that is unhelpful in the process of establishing legitimacy for international law and post-war tribunals. Furthermore, placing the issue of child soldiering into a larger historical context would allow for the recognition of children’s own experiences. A recognition of the historical realities of child soldiering could go a long way towards creating a deeper understanding of the child soldier phenomenon.

317 Drumbl, Reimagining Child Soldiers, 10.
Bibliography

Books and Articles


Stanley, Henry M. . *Through the Dark Continent, or the Sources of the Nile around the Great Lakes of Equatorial Africa and Down the Livingstone River to the Atlantic Ocean*. London: Sampson Low, Marston, Searle and Rivington, 1878.


Official Documents and Reports


Special Court for Sierra Leone, Appeals Chamber: *Prosecutor v. Sam Hinga Norman, Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment).* Special Court for Sierra Leone. 31 May 2004. Available through: https://www.refworld.org/cases,SCSL,49abc0a22.html.


**Online Newspaper Articles**


**Websites**


The National Archives. *Trenches: ‘they were mostly mere boys’*. Visited 03.05 2019. Available through: http://www.nationalarchives.gov.uk/education/resources/letters-first-world-war-1915/trenches-mostly-mere-boys/.