

**International Laws Concerning the Recruitment and Use of
Child Soldiers and the Case of Omar Khadr**

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On January 4, 2002 Sergeant Nathan Ross Chapman became the first United States soldier killed by hostile fire in the War on Terrorism in Afghanistan. The combatant that killed him was a fourteen year old boy (Rosen, 2005:2). Today over 250,000 children under the age of eighteen are serving as combatants around the world, with the average age of these children being twelve (Gates, 2010: 38). However, the use of children in war is not a recent phenomenon. Drummer boys marched with Napoleonic soldiers; the American civil war was in part fought by boy soldiers; and Allied forces fought against underage Hitler Jugend in the last weeks of World War II (Gates, 2010: 93). On the other hand, the protection of children's welfare in the times of war has been a most observed part of the *jus in bello*, the laws of war, since ancient times, from ancient Chinese practice to traditional African tribal societies (Singer, 2006: 4). The notion of a child taking part in the traumatic and callous chaos that is war runs contrary to basic human instinct. The wars of the past kept child soldiering to a minimum while presently the practice of using children in direct and supporting roles in warfare is increasing (Singer, 2006: 6). Today the image of a child bearing arms has become a frequent, though extremely disturbing, part of the media and practice surrounding modern day warfare.

Child soldiering is not an embedded cultural view in certain parts of the world. Different countries with similar ethnic compositions differ drastically in their inclination to use child soldiers. The countries where child soldiers compose a high percentage of troops are spread across the globe (Gates, 2010; see Appendix A). Child soldiers are not just youth who are directly participating in armed conflict by fighting enemy combatants; child soldiers are used as spies, cooks, porters, messengers and sex slaves. They serve in government armies, militias and non-state groups (Wessells, 2006: 6). The movement towards decreasing and criminalizing the recruitment and use of child soldiers is a relatively recent trend and has gained momentum only

in the last few decades. (Rosen, 2005:6). The blatant disregard of moral and human rights and international law that the enlistment of child soldiers represents has resulted in the proliferation of numerous statutes and protocols to curb this development. This has largely been accomplished under the umbrella of the United Nations.

The preamble of the United Nations Charter begins with “[w]e the peoples of the United Nations determined to save succeeding generations from the scourge of war.” (United Nations, 1945). Obviously, the formation of the United Nations and its efforts have not succeeded in bringing an end to warfare. However, the codification of international law that the United Nations has generated has resulted in observed rules that govern warfare (Rosen, 2005: 136). A relatively recent phenomenon that the member states of the UN have propelled forward is the propagation of interests and activity in law and policy relating to children. Provisions and treaties have resulted in legal and policy initiatives that cover child trafficking, labour, prostitution, abduction, imprisonment, health, and education. It is within this context that an increase in attention to children involved in armed conflict has occurred (Kuper, 2005:3). This paper will trace the major international legal instruments concerning the protection and prevention of child soldiers to analyze in what direction the United Nations and the global community are taking this movement. How these legal instruments apply to the case of Canadian citizen Omar Khadr, who was fifteen years old when captured by American forces in Afghanistan, will then be examined.

A leading human rights standard regarding children is that they are entitled to special treatment, namely additional assistance and protection. This entitlement is expressed in the main international human rights legal instruments (Kuper, 2005: 25). It is from these statutes, treaties and protocols that legal elaboration upon the issue of child soldier has arisen. Humanitarian

groups have been enormously influential in shaping the international legal treaties that seek to ban the use of child soldiers. Notably, the International Committee of the Red Cross (ICRC) has played a powerful guiding role in drafting and implementing the most important international treaties that make up the laws of war, which are generally called International Humanitarian Law (Rosen 2007: 296). These laws are articulated in treaties and customs and regulate individual criminal culpability during war time. The most important international laws and standards concerning child soldiers are: the Geneva Conventions (1949), the Protocol Additional I and II to the Geneva Conventions of 1949 (1977), the *Convention on the Rights of the Child* (1989), the Cape Town Principles (1997), the *Rome Statute of the International Criminal Court* (1998), the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (2000) and the Paris Principles (2007).

The four 1949 Geneva Conventions address the legal position and treatment of civilians, prisoners, the sick and the wounded during wartime. They espouse humane treatment of individuals in warfare and seventeen provisions of the Conventions are directly aimed at children. However, none of the provisions directly focus on the recruitment of children into armed forces or groups (Druba, 2002: 272). The 1977 Protocols Additional I and II to the 1949 Geneva Conventions were the first international prohibitions against the use of child soldiers to be codified (Rosen 2005: 140). Article 77 of Protocol Additional I expands and enhances the protection of children in international armed conflicts (United Nations 1997a; see Appendix B). Protocol Additional II concerns non-international conflict (United Nations 1977b; see Appendix C).

There is a clear difference between these Protocols; while Protocol Additional I requires all contracting parties to take “all feasible measures to prevent children under the age of fifteen

from taking a direct part in hostilities” (United Nations, 1977a), Protocol Additional II has stronger language: it absolutely prohibits all forms of direct and indirect participation of children under the age of fifteen (United Nations, 1977b). The choice of language for the protocols was an issue for the drafters as the ICRC wanted Protocol Additional I to state: “take all necessary measures in order that children aged under fifteen years shall not take part in hostilities and, in particular, they shall refrain from recruiting them in their armed forces or accepting their voluntary enrolment” (ICRC 1987: 3204-3208). The final treaty does not touch upon the issue of voluntary enlistment by children (Rosen 2007: 300). Another key issue was the minimum age of child combatants. Proposals were made to have the Protocols increase the age to eighteen but were rejected and in the interest of achieving an agreement, the age of fifteen was agreed upon (Rosen 2005: 144).

The 1989 *Convention on the Rights of the Child* (CRC) was the most quickly and widely ratified international treaty, with more than 190 state signatories (Singer, 2006: 141). Article 38 specifically addresses the use of children in hostilities (United Nations 1989; see Appendix D). Although by this convention a child is defined as a person under the age of eighteen, the issue of at what age children could legitimately become combatants was still a contentious issue, as it was for the Protocol Additional I and II (Kuper 2005: 3). When it came to the recruitment and use of child soldiers, the age of fifteen was maintained despite humanitarian groups lobbying efforts to make it eighteen. This meant that under the CRC, children over the age of fifteen can voluntarily participate in combat as soldiers (Hyndman 2010: 251). Additionally, the weak language of the Protocol Additional I is repeated (Druba 2002: 273). However, at this point the movement towards protecting child soldiers was growing stronger and some countries, like

Sweden and Switzerland, made their own legislation that guaranteed the age of eighteen as the minimum for recruitment into their armed forces (Dorsch 1994: 220).

In 1996, the UN released a report entitled the Impact of Armed Conflict upon Children written by Graca Machel. The Machel Report was a huge factor in motivating UN member states to give a more concerted in effort to eradicate the recruitment and use of child soldiers. The report describes an abandonment of standards in modern warfare and a loss of the distinction between combatants and civilians, a cornerstone of the international laws of war (United Nations 1996). Although this description of modern warfare is quite debatable, it worked in motivating nations to pay more attention to the problem of child soldiering and to devise ways to deal with the problem in a more resolute and efficient nature than had been previously employed (Gates 2010: 37). The report resulted in the establishment of the mandate of a special representative of the secretary-general for children and armed conflict as the foundation for the UN agenda for children affected by warfare (Kuper 2005: 4). The annual reports of the secretary-general on children and armed conflict have become the main source of the protection agenda (Gates 2010: 37).

United Nations Children's Fund's (UNICEF) 1997 Cape Town Principles was a direct response of the Machel Report and the symposium's main goal was to establish eighteen as the minimum age of recruitment (Wessells 2006: 7). Its definition of child soldiers became widely accepted: "any person under eighteen years of age who is part of any kind of regular or irregular armed force or armed group in any capacity" (UNICEF, 1997). The Cape Town Principles also advocated the establishment of a permanent international criminal court that would have jurisdiction to convict individuals of the illegal recruitment of children (UNICEF, 1997).

In 1998 the UN adopted the *Rome Statute of the International Criminal Court*, which established the International Criminal Court (ICC), a permanent tribunal to prosecute individuals for war crimes and crimes against humanity. The creation of the ICC was a manifestation of the global community's desire to make individuals culpable for committing war crimes. Under the ICC's jurisdiction individuals can be held culpable for recruiting children under the age of fifteen to participate in armed conflict, both in international and non-international armed conflicts (Singer 2005: 151-152; United Nations, 1998). The first suspect put on trial by the ICC was Thomas Lubango Dyilo, a former leader of a militia group in the Democratic Republic of Congo. He was charged with enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities. Although the trial did not proceed, this was the first case of a person being charged by an international court solely for these crimes (Gates 2010: 5). Charles Taylor, former president of Liberia, was indicted by the ICC on eleven counts of war crimes and crimes against humanity, including conscripting children under the age of fifteen into armed forces. This trial sets an important precedent as it is the first time a former head of state is being indicted for the recruitment and use of child soldiers (Wessells 2006: 238). Recruitment of children is included in the charges against all the individuals who have been indicted by the Special Court for Sierra Leone, a hybrid international and federal court. In March 2006, Major Jean-Pierre Biyoyo became the first person to be convicted in a national judicial process for recruiting child soldiers and was sentenced to five years imprisonment by a military tribunal (Gates 2010: 5). These charges and convictions show the potential legal deterrent the ICC poses for those who recruit and use child soldiers.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000) formally raised the minimum age for conscription and use of

children in armed conflict to eighteen. It expressly bans the recruitment of children by non-state armed groups, volunteers included, which the CRC had allowed. However, it allows governmental forces to recruit volunteers under the age of eighteen (Gates 2010: 95). The protocol calls upon states to “take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices” (United Nations, 2000). It also calls for states to demobilize any children within their jurisdiction who have been recruited and to provide them assistance for their physical and psychological rehabilitation and social integration (United Nations, 2000). This was signed by more than 100 states. The Paris Principles, signed by 60 states in February 2007, builds upon the legal framework set out by the CRC and the Optional Protocol (Hyndman 2010: 251). The principles stipulate that child soldiers who commit crimes are victims, not criminals, and emphasize that “[s]tates bear the primary responsibility for providing security to and ensuring the protection of all children within their jurisdiction...planning for reintegration should inform all stages of the process and should commence at the earliest possible stage” (United Nations, 2007).

An overview of the major international laws and treaties concerning child soldiers over the last few decades highlights the major issues and trends of this global problem. The most evident trend is that the prohibitions are becoming more stringent. The minimum age of a child combatant has increased from fifteen to eighteen. Strong language is now being used to address both non-international armed conflicts and international conflicts, meaning state forces are being seen as just as responsible to end the recruitment of children as non-state forces. The most important legal structure in place to curb the use of child soldiers is the ICC and the fact that the UN has indicted people on that charge is at testament to the increasing willingness to address this problem. In February 2006, Security Council Sanctions Committee for Cote d’Ivoire approved a

list of individuals subject to specific sanction measures that included Martin Kouakou Fofie of Force Nouvelles. Force Nouvelles was one of the parties listed by the secretary-general for recruitment and use of child soldiers in Cote d'Ivoire. The fact that the council is imposing sanction measures for violations against children under the frame of existing sanctions regimes is another example of the UN prioritizing the problem of child soldiers (Gates 2010: 49). Several Security Council resolutions have also been passed that echo the strong language of recent provisions and hold the protection of children in warfare as a part of the larger context of resolving conflict (ibid; United Nations, 2005). Overall, it seems the global community is prioritizing the problem of child soldiers.

While the standards and protections against the use of child soldiers have been in place for decades, only recently have nations begun to apply them. Without this application, there is no way to deter individuals from recruiting and using child combatants. However, since the 9/11 terrorist attacks in the United States, not only have the laws of many nations changed drastically but how international law fits into the wars following the terrorist attacks has become an ever changing landscape and priorities have shifted (Jinks 2003: 2). The case of Omar Khadr shows what this has meant for at least one child soldier.

Omar Khadr, a Canadian-born citizen, was fifteen years old when he allegedly threw a grenade which killed American soldier Sgt. 1st Class Christopher Speer during a firefight and was captured and detained by American forces (Honigsberg 2009: 160). Khadr is said to have received military training from the terrorist group al-Qaeda. Khadr was first taken to the American military base Bagram before being transferred to the infamous Guantanamo Bay detention facility at the age of 16 in October 2002. He was not charged until November 2005, though these were appealed because of judgements about the legality of the military commission

system. His final charges were not laid until April 2007: murder in violation of the law of war, attempted murder in violation of the law of war, conspiracy, providing material support for terrorism and spying. The Khadr case is an extremely complex one with huge implications for the international laws of war and with many controversial issues, especially when discussed in the light of International Humanitarian Law. There are several topics which have great potential repercussions and can be discussed at length: his age; the status of unlawful enemy combatant bestowed upon him by the U.S.; the United States' military commission process; the method of collection of evidence used against him; contradictory and possible corrupted reports as to what actually happened during the firefight; and his being a Canadian citizen. This examination of the Khadr case will focus on his age and what legal standards should apply to him because of his child soldier status.

Along with the international laws discussed above, United States law and Canadian law oblige governments to provide children (those under the age of eighteen) with special safeguards, including legal protections fitting of juvenile status. Children can and should be held accountable for their crimes; however, international law requires that they be treated in a fashion that focuses on rehabilitation and reintegration, and accounts for their relative vulnerability and culpability (Human Rights Watch, 2007: 1). The international treaty law and standards discussed above along with other international protocols and norms regulate the process of dealing with alleged youth offenders. The United States has failed to uphold these standards in several areas of the Khadr case.

The International Covenant on Civil and Political Rights (ICCPR) states that the detention of a child must be used as a last resort for the shortest period of time possible and that the case be resolved as quickly as possible (United Nations 1966). Law experts across the globe

have commented saying that the military commission process being used for Guantanamo detainees is unnecessary when civilian courts can be used to try detainees. Khadr could be tried in the civilian courts of the United States or Canada under terrorism laws (Shephard 2010). Khadr had been detained for three years at the time he was finally charged and he was not sentenced until October 2010, after eight years of detention. The CRC stipulates that every child deprived of his or her liberty is entitled access to legal and other needed assistance without delay (United Nations, 1989). Khadr was not given access to legal counsel until more than two years after he was transferred to Guantanamo and his Canadian lawyers only saw him a handful of times and never without him being unchained (Honigsberg 2009: 162; McKenna 2008). It was also ruled that Khadr did not have the right to a medical or psychiatric evaluation to determine if he was fit to help with his defence (Lenzer 2004: 1066). Furthermore, “[t]he conditions of detention and the legal framework governing the treatment of detainees at Guantánamo Bay have been widely criticized inside and outside the United States as violations of international human rights, international humanitarian law, US military law, the US Constitution, and the rule of law” (University of Toronto).

The ICCPR and the CRC provide that any child detained shall be separated from adults, unless it is not in the best interest of the child (United Nations 1966; United Nations 1989). While a separate camp was set up at Guantanamo for three other juvenile detainees between the ages of thirteen and fifteen, Khadr was not separated from the adult population (Honigsberg 2009: 165). Under the UN Rules for the Protection of Juveniles, detained children have the right to special care and assistance, which includes the right to medical attention, education and recreation (United Nations 1990). Once again, the three children held at the separate camp were given educational resources while Khadr was denied access to any special assistance or

educational materials (Honigsberg 2009: 165). Under the CRC children have the right to contact family. In the eight years since Khadr has been captured, he has been allowed two half-hour phone calls, both of which happened in the last three years of his detention. His family has never been allowed to see him (Shephard 2008: 220). Most importantly, the ICCPR and the CRC both stipulate specialized juvenile justice systems for child offenders, with specially-trained judges, prosecutors and counsel and with a focus on rehabilitation and social reintegration (Human Rights Watch 2007: 3). Khadr is being tried in the same system as adult detainees and no comments have been made by the United States or Canadian governments about his rehabilitation or reintegration into society (Shephard 2008: 108).

The United States government has given Khadr the status of unlawful enemy combatant. Although this terminology is new in the laws of war and has posed great problems for the case, criticism from legal experts and great implications for the future state of the laws of war, this shows recognition of Khadr being a child soldier. This binds United States to the international laws it has ratified, which includes the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* and the International Labor Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Human Rights Watch 2007: 4-5). As stated above, the Optional Protocol prohibits the use of children under eighteen in armed conflict by non-state armed groups and obliges states to criminalize such conduct. The International Labor Convention also prohibits the use of children in armed conflict. Both require the United States to help in the rehabilitation of former child soldiers. The Optional Protocol stipulates for states to “take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present protocol are demobilized or otherwise released from service. States Parties shall, when

necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration” (United Nations 2000: Article 6). The Paris Principles espouse that social rehabilitation and reintegration largely means being able to see and correspond with family members and having access to counselling and educational resources (United Nations 2007).

Culpability of child soldiers who have committed war crimes is not addressed in any of the international standards. However, the United States Supreme Court has ruled that juveniles are “categorically less culpable” than adult criminals (*Eddings v. Oklahoma*, 1982). International law does allow for the prosecution of individuals under the age of eighteen. However, the ICC has no jurisdiction over any person who was under the age of eighteen at the time of commission of the war crime or crimes and therefore leaves the issue of criminal liability of children who have committed war crimes unaddressed (Rosen 2005: 145). Precedent is largely what has been used in these situations. Neither the International Criminal Tribunal for the former Yugoslavia nor the International Criminal Tribunal for Rwanda have charged or prosecuted any persons for crimes committed under the age of eighteen. The Special Court for Sierra Leone has jurisdiction over persons who were aged fifteen or older at the time of the alleged crime, but the Prosecutor is told to consider alternative mechanisms, such as Sierra Leone’s Truth and Reconciliation Commission, for dealing with juvenile perpetrators. The Special Court has not prosecuted any individuals for crimes committed before age eighteen. As discussed above, the ICC has indicted individuals for recruiting child soldiers, along with the Special Court for Sierra Leone (Human Rights Watch 2007: 6-7). The court’s focus seems to be on dealing with those who recruit child soldiers, not child soldiers themselves. Thus it is important to note that the first person convicted in the War on Terror by the United States is a child soldier. Omar Khadr is the first child to stand

trial for war crimes since the Nuremburg trials. Another issue that brings up questions is the reasoning behind the Canadian government's consistent decision to not step in to condemn any of the practices at Guantanamo and uphold the legal rights under the *Canadian Charter of Rights and Freedom* and international child protection laws by repatriating Khadr and trying him under Canadian laws.

Khadr's age has played a very minimal role in his case. It was seldom an issue in the media surrounding his case and legally when his attorneys tried to bring the issue to the military commission, the judge immediately declared it a nonissue (Shephard 2008: 116). Omar Khadr and his family are very polarizing figures, especially in Canada. Dubbed "Canada's First Family of Terror", the Khadr's allegedly had very close ties to Osama bin Laden, even living with him at certain points and Omar's father has been accused of using the guise of charity work to finance al Qaeda (Shephard 2008: xii). Omar and his siblings all took part in terrorist camps led by al Qaeda where they received military training (Shephard 2008: 122, 144, 231). This combined with Speer being a member of an elite unit and a medic meant Khadr was not labelled as a child soldier but as a terrorist. While all other nationals at Guantanamo of OECD countries, like United Kingdom and Australia, were repatriated, the Canadian government, under two different political parties, refused to step in, seeing Khadr as illegible for the most basic Canadian citizenship rights granted by the Canadian Charter of Rights and Freedom (Hyndman 2010: 251). The government maintained this stance even after the federal court ruled that

[t]he ongoing refusal of Canada to request Mr. Khadr's repatriation to Canada offends a principle of fundamental justice and violates Mr. Khadr's rights under section 7 of the Charter. To mitigate the effect of that violation, Canada must present a request to the United States for Mr. Khadr's repatriation to Canada as soon as practicable ([2009] FC 405 at para 92).

Not only did the Canadian government not request for Khadr to be sent to Canada, but they also sent CSIS members to interrogate Khadr on different occasions. The information collected from the interrogation was then given to Khadr's prosecutors. The Supreme Court of Canada unanimously condemned this action (Wente 2010). It seems the main reason for the government's lack of concern for Omar has to do with his father, Ahmed Said Khadr, being arrested in Pakistan in the 1990's in connection to a bombing. Prime Minister Jean Chretien intervened and he was released. It was not until years later that his ties with Osama bin Laden were discovered. This proved to be such an embarrassment for the Canadian government in a post-9/11 world that they refuse to discuss the Omar Khadr issue except to say they believe that he is being treated fairly in Guantanamo (Shephard 2008: 54; Hyndman 2010: 248). This along with damaging public comments made by his family contributed to the majority of Canadians being opposed to his repatriation throughout his detention. Now with the verdict recently given and plea bargain settled for an eight year sentence, the government has said they will allow Khadr to return after doing one year of his sentence in Guantanamo, as is stipulated in his plea bargain (Shephard 2010). However, although an eight year sentence was agreed upon, the prosecution asked for a twenty year sentence and the jury gave an astounding forty year sentence. This symbolic sentence and the actual plea bargain brokered could set a precedent that may reverse the work of the advocates of the fight to stop the recruitment against children over the last few decades.

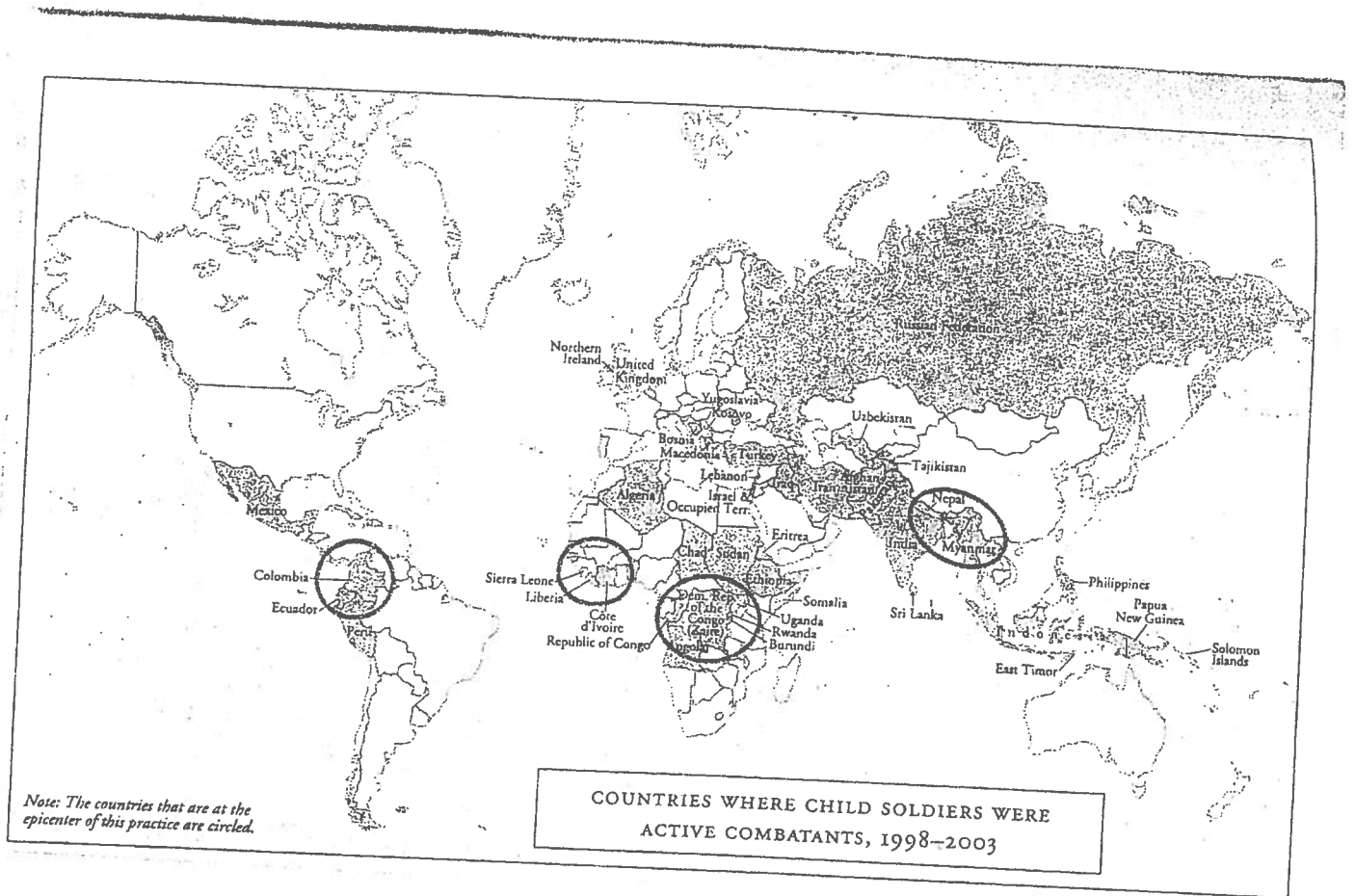
Although the United Nations and countries around the world continue to prioritize the problem of child soldiers, much still needs to be done to reduce the problem in a substantial way. Some clear actions to undertake are to pressure more nations, especially the United States, to ratify all the treaties and protocols aiming to protect children; take into account the rehabilitation

and reintegration of child soldiers in peace treaties; to do more research and ground work on the causes behind the recruitment of children into armed conflict, especially focusing on children who are not coerced but voluntarily join armed forces; and to punish more individuals who commit these grave violations of rights against children through the ICC (Druba 2002: 274; Gates 2010: 37). In recent years the media has also played a great role in increasing awareness and pressure on nations to act on this problem. This awareness and pressure is the driving force causing the UN to act and keep children's rights and especially child soldiering a priority on its agenda (Gates 2010: 41).

The Omar Khadr case proves there is much work to be done. The fact that the jury in the military commission gave a sentence of forty years for a crime committed by a fifteen year old is a chilling reminder that many more steps need to be taken by the United Nations and the global community to increase awareness about the recruitment and use of child soldiers. Even more worrisome is that the government and citizens of Canada showed very little concern for a child soldier of their citizenship, as Canada is a country who not only has and continues to lead the fight towards seeing children's rights become a norm across the globe but is also a key country in the movement addressing the use of child combatant. When prosperous nations like Canada and the United States will not comply with international standards, it is up to the other nations of the world to reprimand their lack of action to ensure not only that the issue of child soldiers remains at the top of the agenda in all backdrops, but that international law itself is seen as completely binding.

Appendix A

Countries Where Child Soldiers Were Active Combatants, 1998-2003



Source: Singer, P. (2005). *Children at War*. p. 17.

Appendix B

Protocol Additional I to the Geneva Conventions of 12 August 1949 and Relating to the Protections of Victims of International Armed Conflict – Article 77

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

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

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed (United Nations 1977a).

Appendix C

Protocol Additional II to the Geneva Conventions of 12 August 1949 and Relating to the Protections of Victims of Non-International Armed Conflict – Article 3

Children shall be provided with the care and aid they require, and in particular:

- (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
- (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
- (c) 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;
- (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph (c) and are captured;
- (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being (United Nations 1977b).

Appendix D

Convention on the Rights of the Child – Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict. (United Nations 1989).

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