

Crimes Against Child Soldiers in Armed Conflict Situations: Application and Limits of International Humanitarian Law

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This Article examines the application of international humanitarian law to crimes committed against child soldiers during the ten-year civil war in Sierra Leone. The author suggests that while historically, developments in international law took account of the vulnerability of children in wartime, international humanitarian law maintains dated categories of protection that do not reflect conditions of modern armed conflicts. The author argues that, instead, the experiences of child soldiers suggest that international legal prohibitions on the involvement of children in combat provide vastly inadequate legal protection. The author relies in this respect on research on crimes committed against child combatants in Sierra Leone and the limitations of international humanitarian law in relation to the prosecution of those crimes. The author argues that in order to remain relevant and effective, new developments in the field of international humanitarian law must address dated and inaccurate distinctions, which act to preclude needed legal protection of those among the most vulnerable in wartime.

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I. INTRODUCTION

In modern armed conflicts the recruitment and use of child soldiers is often a rule rather than an exception.¹ Currently an estimated 300,000

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children serve as combatants in conflicts around the world.² Thousands of children have been forcibly recruited to serve as soldiers, spies, porters, servants, and sexual slaves for armed forces and groups.³ Many more have volunteered to participate in hostilities, often driven by economic, social, or ideological pressures.⁴ As yet, international law has not acted as an effective tool to halt wartime recruitment and use of child combatants. Instead, for child soldiers the real force of international humanitarian law may lie in the post-conflict arena: namely, in its ability to address and punish the wartime human rights atrocities they suffer.

This Article examines the application and limits of international humanitarian law, the body of law that *aims to govern and regulate wartime*, in relation to the experiences of child soldiers in armed conflict situations. It argues that international humanitarian law maintains dated distinctions between persons involved in hostilities and persons needing protection from the effects of hostilities, that do not reflect conditions of modern armed conflicts and act to preclude needed legal protection of those among the most vulnerable in wartime, namely child combatants.

The structure of the Article is three-fold. First, it outlines the extensive use of child soldiers in contemporary wars, thus underscoring the relevance of their treatment under international humanitarian law. Second, it examines the status of child combatants and the protections afforded to children generally under the rules and norms of international humanitarian law. Third, it examines specifically the international laws within the jurisdiction of the Special Court for Sierra Leone; in particular, their application and limits in relation to crimes committed against child soldiers during the ten-year civil war in that country.⁵

Sierra Leone serves as a focal point in this Article for two reasons. First, the armed conflict in Sierra Leone was marked for its extensive

1. Colleen Maher, *The Protection of Children in Armed Conflict: A Human Rights Analysis of the Protection Afforded to Children in Wartime*, 9 B.C. THIRD WORLD L.J. 297, 304 (1989).

2. *Children and Armed Conflict: Report of the Secretary-General*, U.N. GAOR, 55th Sess., Agenda Item 112, at 1, ¶2, U.N. Doc. A/55/163 (2000) [hereinafter *Secretary-General's Report*].

3. Amy Beth Abbott, Note, *Child Soldiers—The Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L. REV. 499, 515 n.87 (2000).

4. *Secretary-General's Report*, *supra* note 2, at 15, ¶38.

5. An agreement between the United Nations and the government of Sierra Leone pursuant to Security Council Resolution 1315 (2000) established the Special Court for Sierra Leone. See *Statute of the Special Court for Sierra Leone*, U.N. SCOR, 55th Sess., 4186th mtg., Enclosure, at 21, U.N. Doc. S/2000/915 (2000), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf?OpenElement> [hereinafter *Statute of the Special Court*].

recruitment and use of child soldiers.⁶ It is estimated that over 5000 boys and girls served as combatants during the civil war in Sierra Leone.⁷ In his Report on the Establishment of a Special Court for Sierra Leone, UN Secretary-General Kofi Annan observed that, “although the children of Sierra Leone may be among those who have committed the worst crimes, they are to be regarded first and foremost as victims.”⁸ Many, or most, of these children suffered grave human rights violations while serving under various “masters,” including physical, mental, and sexual abuses ranging from their abduction and forced recruitment, to drug abuse and rape.⁹ Second, the Special Court for Sierra Leone is the first international tribunal specifically mandated to address crimes committed against child soldiers.¹⁰ The Statute of the Special Court incorporates an approach to child-soldiering that is two-fold. First, it allows the possibility of prosecuting child combatants between the ages of fifteen and eighteen¹¹ and second, it encourages the prosecution of those responsible for recruiting children into the hostilities.¹² The Special Court for Sierra Leone thus provides a unique forum in which to examine the application

6. See, e.g., AMNESTY INT’L, SIERRA LEONE: RECOMMENDATIONS ON THE DRAFT STATUTE OF THE SPECIAL COURT 1, available at [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/AFR510832000ENGLISH/\\$File/AFR5108300.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/AFR510832000ENGLISH/$File/AFR5108300.pdf) (observing that the “armed conflict in Sierra Leone has been characterized by widespread killings, amputations and rape, and the extensive use of child soldiers”); Marguerite Feitlowitz, *UN War Crimes Court Approved for Sierra Leone*, Crimes of War Project (Jan. 8, 2002), available at <http://www.crimesofwar.org/onnews/news-sierra.html> (writing that the war “featured the massacre and summary execution of civilians, systematic rape and enslavement of women, and the abduction of children for service as soldiers”); Diane Amann, *Message as Medium in Sierra Leone*, 7 ILSA J. INT’L & COMP. L. 237 (2001) (observing that “Sierra Leone is known for the use of child soldiers, many of whom also were also child victims”).

7. The total number of children who have been officially disarmed in Sierra Leone is 6904. See *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sierra Leone*, U.N. GAOR, 57th Sess., Agenda Item 111(c), at 5, ¶ 9, U.N. Doc. A/57/284 (2002), available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e801bc8df733a494c1256c5d002e468d/\\$FILE/N0251481.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e801bc8df733a494c1256c5d002e468d/$FILE/N0251481.pdf) [hereinafter *HCHR Report*]. Note also that according to human rights organizations, an estimated 5000 children, but perhaps twice as many, fought in Sierra Leone’s war. See Diane Amann, *Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone*, 29 PEPP. L. REV. 167, 170 (2001).

8. *Report of the Secretary General on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, 52nd Sess., at 2, ¶ 7, U.N. Doc. S/2000/915 (2000), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf?OpenElement> [hereinafter *Special Court Report*].

9. It was revealed that groups of child combatants served under various “masters” during the conflict. See *HCHR Report*, *supra* note 7, at 5, ¶¶ 9-10.

10. The Statute for the Special Court for Sierra Leone is unique in its attention to child soldiers, and this is warranted in light of the extensive recruitment of child soldiers and the conditions of their use and exploitation in the armed conflict. See Amann, *supra* note 7, at 170.

11. See *Statute of the Special Court*, *supra* note 5, art. 7, at 23.

12. See *id.* art. 4(c), at 22.

and limits of international humanitarian law in relation to the experiences of child soldiers in modern armed conflicts.

II. WHY FOCUS ON CHILD SOLDIERS IN INTERNATIONAL HUMANITARIAN LAW?

Children play an increasingly important role within armed forces and groups in today's conflicts.¹³ The first widespread use of children in modern combat dates back to use of child soldiers by the Third Reich and the underground movements fighting with the Nazis in the Second World War.¹⁴ At that time the use of children was viewed as an aberration from the traditional status of children as noncombatants in war.¹⁵ Since then it appears that the status of children in armed conflicts has dramatically changed.¹⁶ There may indeed be a growing preference for children, who are widely considered to make obedient, effective, and cheap soldiers.¹⁷ During the Iran-Iraq War, for instance, children under fifteen years of age were "regarded as a powerful fighting force, as . . . 'they had not fear.'"¹⁸ In Cambodia, the Khmer Rouge likewise saw that after a little time, "the younger ones become the most efficient soldiers of them all."¹⁹ These examples are not unique. Rather, children have proven themselves to be effective soldiers in recent armed conflicts in the Middle East, Latin America, and Africa.²⁰

It is thus unlikely that international laws alone will effectively halt or deter the use of children in armed conflicts. Instead, there may be reason to believe that recruitment of child soldiers will continue to escalate in coming years. The proliferation of small arms, in particular,

13. See Maher, *supra* note 1, at 305-06.

14. See *id.* at 302.

15. *Id.* at 302 n.39 (quoting Howard Mann, *The International Child Soldier*, 36 INT'L & COMP. L.Q. 32, 35 (1987)).

16. See Amann, *supra* note 7, at 171.

17. See *id.*; see also Geraldine Van Bueren, *The International Legal Protection of Children in Armed Conflicts*, 43 INT'L & COMP. L.Q. 809, 813 (1994) (arguing that the perceived efficacy of child soldiers is cause for particular concern, as in a number of states children form the majority of the population); Maher, *supra* note 1, at 309 (noting that at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1978, for instance, many delegates from developing countries acknowledged the fact that children of fifteen and sixteen were physically superior to the adult males in their countries).

18. See Van Bueren, *supra* note 17, at 813 (noting also widespread opinion in Iraq that "an army without fear is the most dangerous in the world").

19. *Id.* (quoting Boothby, *Children and War*, 10 CULTURAL SURVIVAL Q. 28 (1986)).

20. See Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline, and the Law of War*, 86 CAL. L. REV. 939, 975-76 (1998) ("A large proportion of soldiers in many recent wars, from El Salvador and Afghanistan to Liberia and the Intifadah, have been children, often in their early teens, sometimes younger. Much less is manifestly wrongful to a child than to an adult.").

will likely contribute to this phenomenon. With ultra-light automatic weapons, children as young as nine or ten can become deadly combatants: “Due to their small size [small arms] can be used by very young children and are easy to transport. As such, small arms are the weapons of choice in most internal conflicts of today. [T]hey are widely obtainable, relatively cheap, deadly, easy to use and easy to transport.”²¹ The proliferation of weapons suited to their age only serves to continue the abduction and otherwise forcible recruitment of children in armed conflict situations.

Moreover, a majority of child soldiers volunteer to fight or otherwise participate in hostilities.²² Graça Machel, the UN Secretary-General’s Expert on Children in Armed Conflicts, has reported on extensive cultural, economic, social, and security reasons underlying children’s widespread participation in war.²³ A report published by UNICEF similarly cites poverty, propaganda, and ideology as causes contributing to the growing number of children who volunteer to participate in armed conflicts.²⁴ Geraldine Van Bueren, a legal expert on children and international law, finds that

[t]he issue becomes even more complex when children believe the only contribution they can make is to fight in wars of liberation, as occurred among some of the Ugandan child soldiers. Such loyalty is not always due to cynical manipulation by the fighting forces. [C]hildren whose entire family and social structures have been destroyed by the opposing forces may well find that the army provides them with a replacement structure in which they are fed and are given the basic necessities of life such as food and shoes.²⁵

Until the global community addresses these underlying causes, legal prohibitions on the participation of children in hostilities will not effectively prevent the use of child combatants.

21. United Nations Special Representative of the Secretary General for Children and Armed Conflict, *Small Arms*, at <http://157.150.184.6/osrsgcaac/East.cfm?L1=2&L2=5> (last visited Sept. 19, 2003).

22. Abbott, *supra* note 3, at 516.

23. *Impact of Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graça Machel, Submitted Pursuant to General Assembly Resolution 48/157*, 51st Sess., Agenda Item 108, U.N. Doc. A/51/306/Add.1 (1996), available at <http://www.un.org/special-rep/children-armed-conflict/a51306ad.htm> [hereinafter *Machel Report*] (citing, for example: survival, self-esteem, revenge of the death of family members, peer group pressure and coercion by adults and family members, as underlying causes of children’s participation in wars in West and Central Africa).

24. See UNICEF, CHILD AND YOUNG ADULT SOLDIERS, HUMAN PROFILE CASES: WHO ARE CHILD & YOUNG ADULT SOLDIERS? (1999), at <http://www.ginie.org/ginie-crises-links/childsoldiers/human.html> (last visited Sept. 19, 2003).

25. Van Bueren, *supra* note 17, at 816.

As participants in armed conflicts, children are often subjected to serious human rights violations.²⁶ Children often are abducted, forcibly drugged, and made to fight under conditions of duress.²⁷ Armed groups often abduct girls, in particular, and subject them to systematic rape, forced prostitution, and sexual slavery.²⁸ In Sierra Leone, for example, thousands of children served alongside adults during the conflict.²⁹ Many of these children suffered grave human rights atrocities, ranging from their initial abduction, to forced intoxication and other forms of physical and mental abuse, and rape.³⁰ Thus, “*rather than appearing on the fringe of the concerns of international humanitarian law, as is often assumed to be the case, the international legal regulation of armed conflicts has particular significance for children.*”³¹ The remainder of this Article, first, outlines the status and treatment of children under international humanitarian law and, second, gives particular attention to the application and limits of international humanitarian law in relation to the wartime human rights abuses suffered by child soldiers in Sierra Leone.

III. INTERNATIONAL HUMANITARIAN LAW AND THE PROTECTION OF CHILDREN IN ARMED CONFLICT SITUATIONS

International humanitarian law establishes a set of rules that seek to limit the effects of armed conflicts by protecting persons not participating in hostilities and by restricting the means and methods of warfare.³² International humanitarian law applies once a conflict has begun and then binds equally all sides of the conflict, including insurgent groups who do not have the legal capacity to sign the Geneva

26. See UNICEF, *supra* note 24, at 5.

27. See Matthew Happold, *Excluding Children from Refugee Status: Child Soldiers and Article 1F of the Refugee Convention*, 17 AM. U. INT'L L. REV. 1131, 1138-39 (2002).

28. Abbott, *supra* note 3, at 505.

29. See Amann, *supra* note 6, at 237.

30. In Sierra Leone, girl children were recruited to serve as both combatants and “bush wives” in rebel forces during the armed conflict. See *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World: Report of the High Commissioner for Human Rights Pursuant to Commission on Human Rights Resolution 2001/20: Situation of Human Rights in Sierra Leone*, U.N. ESCOR, 58th Sess., Item 9 of the Provisional Agenda, at 9, ¶ 29, U.N. Doc. E/CN.4/2002/37 (2002), available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/0f3eab7ba2bd39f0c1256b95004b3aaf/\\$FILE/G0210920.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/0f3eab7ba2bd39f0c1256b95004b3aaf/$FILE/G0210920.pdf) [hereinafter *ECOSOC Report*].

31. Van Bueren, *supra* note 17, at 810 (emphasis added).

32. INT'L COMM. OF THE RED CROSS, ADVISORY SERV. ON INT'L HUMANITARIAN LAW, WHAT IS INTERNATIONAL HUMANITARIAN LAW? (2002), available at [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/707D6551B17F0910C1256B66005B30B3/\\$File/What_is_IHL.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/707D6551B17F0910C1256B66005B30B3/$File/What_is_IHL.pdf?OpenElement) (last visited Oct. 1, 2003) [hereinafter ICRC SUMMARY]; HILAIRE MCCOUBREY, HUMANITARIAN INTERNATIONAL LAW: MODERN DEVELOPMENTS IN THE LIMITATION OF WARFARE 1 (2d ed. 1998).

Conventions.³³ The rules and norms of international humanitarian law may be found in agreements between states, in customary rules based on state practice, and *opinio juris*, and in general principles.³⁴

The core of international humanitarian law is now contained in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 relating to the protection of victims in armed conflict.³⁵ Pursuant to those agreements, international humanitarian law distinguishes between international and noninternational armed conflicts.³⁶ The rules of international humanitarian law applying to noninternational armed conflicts are codified in common article 3 to the four 1949 Geneva Conventions and in Additional Protocol II, which develops and supplements the principles in common article 3.³⁷ The decade-long conflict between government and rebel forces in Sierra Leone is viewed as a noninternational armed conflict.³⁸ The rules of common article 3 to the Geneva Conventions and Additional Protocol II, as well as customary international law govern the conduct of both armed forces and insurgent groups during the war.

The scope of protection afforded under common article 3 and Additional Protocol II reflects an overarching principle of international humanitarian law: namely, the distinction between civilians and com-

33. ICRC SUMMARY, *supra* note 32, at 1; *see also* United Nations Special Representative of the Secretary General for Children and Armed Conflict, *Focusing on Norms and Values: Reinforcing the "Twin Pillars" of Protection*, at <http://208.184.41.83/east.cfm?L1=10&L2=110&R=409> (last visited Oct. 1, 2003) (observing that "Article 3, common to all four Conventions, is the cornerstone for the protection of civilians in internal conflicts and is binding on all parties to a conflict, regardless of their relationship to the State"); Veronica Escobar, Comment, *Reclaiming the "Little Bees" and the "Little Bells": Colombia's Failure to Adhere to and Enforce International and Domestic Laws in Preventing Recruitment of Child Soldiers*, 26 *FORDHAM INT'L L.J.* 785, 847 n.154 (2003) (observing that "international humanitarian law applicable in situations of non-international armed conflicts . . . binds all parties to a conflict, including armed groups, without giving them a legal status").

34. ICRC SUMMARY, *supra* note 32, at 1.

35. *See generally* Secretary General's Report on Aspects of Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, Annex, U.N. Doc. S25704 (1993), in 32 *I.L.M.* 1159, art. 1, ¶ 37, at 1170 (1993) [hereinafter *ICTY Statute*].

36. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, *reprinted in* 75 *U.N.T.S.* 287 (1950), art. 3, at 288-90 [hereinafter *Geneva Convention IV*].

37. *Id.*; Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), 1125 *U.N.T.S.* 609 (entered into force Dec. 7, 1978), art. 1, at 611 [hereinafter *Additional Protocol II*].

38. David J. Macaluso, Comment, *Absolute and Free Pardon: The Effect of the Lomé Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone*, 27 *BROOK. J. INT'L L.* 347, 366 (2001).

batants.³⁹ Persons protected under common article 3 to the Geneva Conventions are those: “Persons *taking no active part* in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause”⁴⁰ Persons guaranteed protection under Additional Protocol II are likewise defined as: “All persons who *do not take a direct part* or who have ceased to take part in hostilities, whether or not their liberty has been restricted”⁴¹ Therefore, persons protected under this dimension of international humanitarian law are those who do not, or who cease to, actively or directly participate in hostilities.⁴²

The rules of international humanitarian law require that civilians and other persons no longer taking active or direct part in hostilities be treated humanely at all times, with no adverse distinction.⁴³ Under common article 3 to the Geneva Conventions, protected persons are guaranteed protection from “violence to life and person” and “outrages upon personal dignity, in particular humiliating and degrading treatment.”⁴⁴ Under Additional Protocol II, protections guaranteed to civilians include protection against “violence to life, health and physical or mental well-being” (article 4(2)(a)); “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” (article 4(2)(e)); “slavery and the slave trade in all their forms” (article 4(2)(f)); and “threats to commit any of the foregoing acts” (article 4(2)(h)).⁴⁵ Persons who take an active or direct part in hostilities fall outside the scope of those protected under common article 3 and Additional Protocol II, thus losing all protections guaranteed under the above provisions.⁴⁶

39. See Matthew Lippman, *The New Terrorism and International Law*, 10 TULSA J. COMP. & INT'L L. 297, 334 (2003) (“The Protocols to the Geneva Conventions . . . [maintain] the integrity of the distinction between civilians and combatants . . .”).

40. Geneva Convention IV, *supra* note 36, art. 3, at 288 (emphasis added).

41. Additional Protocol II, *supra* note 37, art. 4, ¶ 1, at 612 (emphasis added).

42. Active or direct participation in hostilities has been interpreted to mean “‘acts of war which by their nature and purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces,’ and includes acts of defense.” See HUMAN RIGHTS WATCH, SIERRA LEONE: INTERNATIONAL LAW (1999), at <http://www.hrw.org/campaigns/sierra/int-law/htm> (last visited Oct. 1, 2003) (quoting INT'L COMM. OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (1987)).

43. Geneva Convention IV, *supra* note 36, art. 3, at 288, 290; Additional Protocol II, *supra* note 37, art. 4, at 612.

44. Geneva Convention IV, *supra* note 36, art. 3, ¶ 1, § (a), (c), at 288, 290.

45. Additional Protocol II, *supra* note 37, art. 4(2), at 612.

46. See Geneva Convention IV, *supra* note 36, art. 3, at 288 (“Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely.”); Additional Protocol II, *supra* note 37, art. 4(1), at 612 (“All persons who do not take a direct part or who have ceased to

History recognizes children as particularly vulnerable to the effects of war and, therefore, the rules of international humanitarian law guarantee them special protections.⁴⁷ In addition to the general protections provided to civilians, both the Geneva Conventions and the Additional Protocols lay down a series of rules affording special protection to children in armed conflict situations.⁴⁸ Children who take an active or direct part in hostilities lose the general protections provided to civilians under international humanitarian law.⁴⁹ All children, combatant or civilian, however, maintain the special protections guaranteed to them under the rules of international humanitarian law.⁵⁰

The Geneva Convention, relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), incorporates seventeen articles of specific concern to children.⁵¹ These provisions guarantee or encourage special protections relating primarily to the care and education of children, and to the facilitation of their reunion with family members when separated.⁵² The provisions relating specifically to children in Geneva Convention IV do not apply in noninternational armed

take part in hostilities . . . are entitled to respect for their person, honour and convictions and religious practices.”); *see also* Maher, *supra* note 1, at 311 (commenting that “civilians who participate directly voluntarily abdicate their status as a protected class”).

47. *See* Abbott, *supra* note 3, at 519-20.

48. *Id.*; *see also* Maher, *supra* note 1, at 300 (observing that “[t]he desire to protect children through international legal instruments emerged in the 1970s, and was specifically applied to children in the amendments to the Geneva Convention in the Protocols of 1977”).

49. Abbott, *supra* note 3, at 523.

50. *See* MCCOUBREY, *supra* note 32, at 195.

51. *See* Geneva Convention IV, *supra* note 36, art. 14, at 298 (stating that parties may establish safety zones and protect from consequences of war children under fifteen); *id.* art. 17, at 300 (codifying efforts to remove children from besieged or encircled areas); *id.* arts. 23-27, at 302-06 (assuring free passage of medical stores and foodstuffs intended for children; efforts to facilitate maintenance of children under fifteen; facilitating contact and reunion of families; and entitlement of protected persons to humane treatment at all times); *id.* art. 50, at 302, 304, 306 (facilitating care and education of children by occupying power); *id.* art. 51, at 320 (disallowing occupying power to compel protected persons under eighteen years to work); *id.* art. 68, at 330 (stating that the death penalty may not be pronounced against a protected person under eighteen years at the time of the offence); *id.* art. 76, at 336 (listing rights of protected persons accused of offences in occupied territories, with proper regard for the special treatment due to minors); *id.* art. 81, at 338 (stating that parties to a conflict who intern protected persons are bound to provide for the internees’ maintenance and medical attention free of charge, and shall provide support for dependents of any internees); *id.* art. 82, at 338 (allowing families to be lodged together during internment); *id.* art. 89, at 338, 340 (entitling internees to sufficient food and water, and children under fifteen shall be given additional food in proportion to their physiological needs); *id.* art. 94, at 348 (entitling internees to opportunities for physical exercise, sports and other outdoor games, with special playgrounds reserved for children); *id.* art. 132, at 376 (stating that parties to a conflict shall endeavor to release interned children during the course of hostilities).

52. *See id.*

conflicts.⁵³ They do not aim to regulate the *participation* of children in hostilities either.⁵⁴ Moreover, from the perspective of child soldiers, the protections guaranteed to civilians (which more expressly provide for their humane treatment at all times) may appear more important than the special protections afforded to children under this Convention.

Additional Protocol I to the Geneva Conventions incorporates two additional provisions offering specific protection to children in international armed conflict situations.⁵⁵ Article 77(1) of Additional Protocol I provides that “[c]hildren shall be the object of special respect and shall be protected against any form of indecent assault.”⁵⁶ Article 77(2) further obliges the Parties to a conflict to “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 prohibits the recruitment of children under the age of fifteen into the armed forces.⁵⁷ Additional Protocol I thus regulates the participation of children in armed conflicts. However, its protections aim primarily to prevent the use of children in war and *not* to expressly regulate their status or treatment once members of armed forces or groups. From the perspective of child soldiers, therefore, the significance of the special protections provided under Additional Protocol I may be limited.

Additional Protocol II extends special protections to children in noninternational armed conflicts.⁵⁸ Article 4(3) of Additional Protocol II establishes that children must be provided with the care and aid they

53. See *id.* art. 2, at 288 (“The present Convention shall apply to all cases of declared war or of any other armed conflict which may arise *between two or more of the High Contracting Parties . . .*” (emphasis added)).

54. See Maher, *supra* note 1, at 309 (observing that “the final draft of the Protocol . . . maintained a strict prohibition against the use of children as members of the combat forces”).

55. See Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), Dec. 12, 1977, 1125 U.N.T.S. 3 (entered into force Dec. 7, 1978) [hereinafter Additional Protocol I]. Article 38 of the 1989 Convention on the Rights of the Child, which has been almost universally ratified, extends the application of article 77 of Additional Protocol I to noninternational armed conflicts. See Convention on the Rights of the Child, art. 38, *in* SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, at xxxviii (1999). Note also that these protections are strengthened by the entry into force of the Optional Protocol to the Convention on the Rights of the Child on February 12, 2002. See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, 54th Sess., Annex I, U.N. Doc. A/RES/54/263 (2000) [hereinafter CRC Protocol]. Though not applicable to the conflict in Sierra Leone, the Optional Protocol now binds State Parties to its terms, which include a prohibition on voluntary recruitment into armed forces for children under the age of eighteen, and a prohibition on all recruitment—voluntary or involuntary—into armed groups distinct from national armed forces for children under the age of eighteen. *Id.*

56. Additional Protocol I, *supra* note 55, art. 77(1), at 39.

57. *Id.* art. 77(2), at 39.

58. See Abbott, *supra* note 3, at 520-21 n.124.

require, guarantees their right to receive an education, and encourages their reunion with family members when separated.⁵⁹ Article 4(3)(c) specifically prohibits the recruitment of children under fifteen years of age and their participation, whether direct or indirect, in hostilities.⁶⁰ The prohibition on the use of children in war under Additional Protocol II is broader than under Protocol I for it prohibits the participation of children in hostilities, whether direct or *indirect*, in noninternational armed conflicts.⁶¹ Last, article 4(3)(d) of Additional Protocol II provides that children under fifteen who take direct part in the hostilities and whom enemy forces capture do not lose the special protections guaranteed under article 4.⁶²

The rules of international humanitarian law thus recognize the vulnerability of children in armed conflicts and establish a series of rules aiming to protect children against the effects of war. The Additional Protocols in particular provide some degree of protection for children during hostilities and regulate, for the first time recorded in international law, their participation in armed conflicts.⁶³ It does not appear, however, that the special protections afforded to children under international humanitarian law adequately recognize their involvement in combat. In particular, neither Additional Protocol clearly establishes minimum humanitarian standards of treatment that ought to apply to children who do participate in conflicts, aiming instead at an arguably unrealistic ban on their participation in war.⁶⁴

Most significantly, despite prohibitions on the involvement of children in hostilities, children who *do* participate in armed conflicts are recognized as combatants and lose the more substantive humanitarian protections afforded to civilians under the framework of international humanitarian law.⁶⁵ Though conditions of modern armed conflicts suggest that child soldiers particularly are vulnerable to serious human rights violations in wartime, their combatant status may significantly restrict a court's application of international humanitarian law to the

59. Additional Protocol II, *supra* note 37, art. 4(3)(a)-(b), at 612.

60. *Id.* art. 4(3)(c), at 612.

61. *Id.* The Statute of the International Criminal Court now reflects this broader prohibition. See *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 dated July 17, 1998, in 37 I.L.M. 999 (1998) [hereinafter *Rome Statute of the ICC*]. The Rome Statute was entered into force on July 1, 2002, categorizing the conscription, enlistment, or use of children under the age of fifteen as a war crime in article 8(2)(b)(xxvi). *Id.* at 1008.

62. Additional Protocol II, *supra* note 37, art. 4(3)(d), at 612.

63. Van Bueren, *supra* note 17, at 812.

64. Maher, *supra* note 1, at 305-06 (arguing that the ban on participation by children in hostilities is unrealistic).

65. See Abbott, *supra* note 3, at 523.

harms committed against them.⁶⁶ The following Part examines the application and limits of international humanitarian law in relation to wartime crimes against child soldiers, with specific attention to the Special Court for Sierra Leone. By examining the international laws within the jurisdiction of the Special Court against the experiences of child soldiers in Sierra Leone, it becomes apparent that the structure of international humanitarian law no longer reflects certain realities of modern armed conflicts. In particular, it is argued that traditional distinctions between civilians and combatants do not reflect the experiences of thousands of children who are situated in the blurred lines between such categories.

IV. ADDRESSING CRIMES AGAINST CHILD SOLDIERS AT THE SPECIAL COURT FOR SIERRA LEONE

In 2001, the UN Security Council called upon all Member States to [p]ut an end to impunity, prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against children and exclude, where feasible, these crimes from amnesty provisions and relevant legislation, and ensure that post-conflict truth-and-reconciliation processes address serious abuses involving children.⁶⁷

On August 14, 2000, the United Nations and the Government of Sierra Leone signed an agreement establishing the Special Court for Sierra Leone.⁶⁸ The Special Court has jurisdiction over persons alleged to 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.”⁶⁹ It is expected that approximately twenty people will be prosecuted for masterminding the brutalities of the civil war waged in Sierra Leone for almost a decade.⁷⁰ The object in the remainder of this Article is to examine the constituent elements of each of the international laws within the jurisdiction of the Special Court, considering in particular whether they facilitate or hinder the prosecution of atrocities committed against child soldiers during the war.

66. See Maher, *supra* note 1, at 311.

67. U.N. SCOR, 66th Sess., 4423rd mtg., at 3, ¶ 9, U.N. Doc. S/RES/1379 (2001).

68. *Statute of the Special Court*, *supra* note 5, at 21.

69. See *id.* art. 1.

70. Feitlowitz, *supra* note 6, at 1.

A. *Crimes Against Humanity*

Article 2 of the Statute of the Special Court for Sierra Leone establishes its jurisdiction over crimes against humanity.⁷¹ Crimes against humanity are not specifically defined in international conventions or treaties.⁷² Rather, these crimes evolved as a matter of customary international law and the respective statutes of the courts at which such crimes are prosecuted define them.⁷³ The Charter of the International Military Tribunal of Nuremberg (1945) first defined crimes against humanity, and they were first prosecuted at the Nuremberg trials of major Nazi war criminals.⁷⁴ More recently, crimes against humanity have been tried at the UN International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.⁷⁵ Article 2 of the Statute of the Special Court for Sierra Leone incorporates and defines crimes against humanity as follows:

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture;
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;

....

71. See *Statute of the Special Court*, *supra* note 5, art. 2, at 21.

72. Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 AM. J. INT'L L. 97 n.5 (1999).

73. Gennady M. Danilenko, *The Statute of the International Criminal Court and Third States*, 21 MICH. J. INT'L L. 445, 480 (2000) ("Crimes against humanity, although defined by the Nuremberg Charter and statutes of the recent *ad hoc* criminal tribunals, are generally binding only as customary international law.").

74. See M. Cherif Bassiouni, "*Crimes Against Humanity*": *The Need for a Special Convention*, 31 COLUM. J. TRANSNAT'L L. 457 (1994) (citing Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, Aug. 8, 1945, 82 U.N.T.S. 279 (entered into force Aug. 8, 1945) [hereinafter London Charter]); Jeana Webster, Note, *Sierra Leone—Responding to the Crisis, Planning for the Future: The Role of International Justice in the Quest for National and Global Security*, 11 IND. INT'L & COMP. L. REV. 731, 744 (2001); see also London Charter, *supra*, art. 6(c), at 286, 288 (defining crimes against humanity).

75. See *ICTY Statute*, *supra* note 35, art. 5, at 1170; *Statute of the International Criminal Tribunal for Rwanda*, art. 3, U.N. SCOR 955, 3453rd Mtg., Annex, U.N. Doc. S/RES/955 (1994), reprinted in 33 I.L.M. 1598 (1994).

i. Other inhumane acts.⁷⁶

The constituent elements of crimes against humanity are three-fold. First, crimes against humanity must be committed in the event of an “attack” that is either “widespread or systematic.”⁷⁷ Thus crimes against humanity have a “quantitative dimension” and do not include acts carried out for purely personal motives or those crimes committed outside of a broader policy or plan.⁷⁸ Second, crimes against humanity must be perpetrated against a “civilian population.”⁷⁹ Third, perpetration of crimes against humanity must be by commission of one or more of the acts listed under article 2 of the Statute.⁸⁰

Several of the crimes committed against child soldiers during the conflict in Sierra Leone satisfy the constituent elements of crimes against humanity and should be prosecuted as such. It is widely reported that both government and rebel forces routinely kidnapped children and compelled them to become soldiers under conditions of duress, terror, and forced intoxication.⁸¹ During the one-month assault on Freetown in January 1999, rebel forces seized approximately 4000 children for participation in the hostilities.⁸² While children who participate in combat lose their civilian status under international humanitarian law, their initial abduction and forced recruitment can, and should be, characterized as a widespread and systematic attack on a civilian population satisfying the threshold of crimes against humanity.⁸³

In addition, it is reported that more than half of the children abducted during the January 1999 attack on Freetown were girls who then were subjected to sexual abuse.⁸⁴ Some of these girls are reported to have served as both combatants and “bush wives” during the hostilities,

76. *Statute of the Special Court*, *supra* note 5, art. 2, at 21.

77. *Id.* The attack need not be a military attack. Rather, customary international law, as codified in article 7 of the Rome Statute of the International Criminal Court, now understands an attack for the purposes of crimes against humanity as “a course of conduct involving the multiple commission of acts . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack.” *See Rome Statute of the ICC*, *supra* note 61, art. 7(2)(a), at 1005.

78. Crimes against humanity “are not isolated crimes, and will in practice only be prosecuted when planned or committed on a large scale.” *See WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT* 24 (2001).

79. *Statute of the Special Court*, *supra* note 5, art. 2, at 21.

80. *Id.*

81. *See, e.g., Amann*, *supra* note 6, at 237-38; *Abbott*, *supra* note 3, at 515; *Macaluso*, *supra* note 38, at 347.

82. *Amann*, *supra* note 7, at 170.

83. *See Statute of the Special Court*, *supra* note 5, art. 4(c), at 22.

84. *Amann*, *supra* note 7, at 170.

thereby losing their civilian status under international humanitarian law.⁸⁵ However, any girl children who were abducted by armed groups and did not take an active or direct part in hostilities should be considered civilians for the purposes of international humanitarian law. This approach is consistent with the distinction between combatants and protected persons under the Geneva Conventions and Additional Protocols, discussed above, and would permit prosecution of those responsible for the widespread rape, forced marriage, and sexual slavery of girls abducted during the conflict. These atrocities clearly fall within the scope of acts listed under articles (2)(c), (g), and (h) of the Statute, satisfying the threshold of crimes against humanity.⁸⁶

The threshold of crimes against humanity, however, will preclude prosecution of many human rights violations perpetrated against children during the conflict in Sierra Leone. In particular, widespread atrocities were committed against children who participated directly in hostilities, thereby losing their civilian status and falling outside the scope of crimes against humanity.⁸⁷ For instance, there is evidence that both government and rebel forces used drugs to ensure the “ferocity and allegiance” of child soldiers.⁸⁸ Such forced intoxication was widespread and systematic, and constitutes physical and psychological abuse grave enough to fall within the scope of article 2(h) (“other inhumane acts”) of the Statute.⁸⁹ Yet, it appears that the jurisdiction of the Special Court under article 2 excludes such crimes (and any other widespread abuse of children participating directly in hostilities) because child soldiers (whether recruited by force or voluntarily into armed groups) who participate

85. *ECOSOC Report*, *supra* note 30, at 9, ¶129. Note that forced marriage, rape, and other forms of sexual violence against girls who also participated directly in hostilities may be addressed and punished under Sierra Leonean domestic criminal laws. *See, e.g.*, Offences Relating to the Abuse of Girls Under the Prevention of Cruelty to Children Act, 1926 (Cap. 31) as cited in *Statute of the Special Court*, *supra* note 5, art. 5. However, this Article examines only the application and limits of international humanitarian law in relation to experiences of child soldiers.

86. *See Statute of the Special Court*, *supra* note 5, art. 2, at 21.

87. *See* Abbott, *supra* note 3, at 523 (“[C]hildren taking part in hostilities lose the protective status of civilians and become legitimate military targets under the Geneva Conventions and the Additional Protocols.”).

88. Amann, *supra* note 7, at 170.

89. *See* Larry I. Palmer, *Genetic Health and Eugenics Precedents: A Voice of Caution*, 30 FLA. ST. U. L. REV. 237, 260 (2003) (“The prototypical crimes against humanity used by the Nazi Doctors involved the use of powerful drugs and x-rays on Russians, Poles, Jews and other groups.” (emphasis added)).

directly in hostilities are not "civilians" for the purposes of international humanitarian law.⁹⁰

The requirement that crimes against humanity be committed against a civilian population reflects the distinction between combatants and protected persons underlying all of international humanitarian law. Under international humanitarian law civilians are deemed vulnerable and in need of protection and combatants are viewed as persons who must restrain military objectives and methods in order to minimize the humanitarian effects of warfare.⁹¹ Combatants receive specific humanitarian protections when falling under the power of enemy forces, as hostages or prisoners of war.⁹² Thus, combatants do not lose all entitlement to humane treatment by virtue of their participation in hostilities.⁹³ Rather, the protections afforded to combatants under international humanitarian law reflect dated conditions of warfare: namely, that if a human rights atrocity was to occur against a combatant, it would likely occur when he was captured and under the power of enemy forces. The experiences of child soldiers in Sierra Leone suggest that, from the perspective of child combatants in modern armed conflicts, distinctions between enemy and friendly forces may no longer be so distinct.

Indeed, the categorization of persons entitled to protection under international humanitarian law appears to reflect the prevailing conditions of armed conflicts during the period preceding and including the World Wars, during which much of international humanitarian law was codified.⁹⁴ The experiences of child soldiers in modern armed conflicts suggest that the realities of war have since evolved.⁹⁵ Thus, it may be that international humanitarian law requires certain evolutions in order to remain relevant and effective to those who are vulnerable and in need of humanitarian protections during hostilities. In this case, children

90. See MCCOUBREY, *supra* note 32, at 178 (observing that, for purposes of international humanitarian law, "a 'civilian' is any person who is not a member of the belligerent armed forces").

91. See *id.* at 1; see also Abbott, *supra* note 3, at 499.

92. See Michael P. Scharf, *Protecting Minorities: The Lessons of International Peacekeeping*, 91 AM. SOC. INT'L L. PROC. 437, 440 (1997). See generally Geneva Convention IV, *supra* note 36, art. 3(1), at 288.

93. See Government of the Solomon Islands, *Written Observations on the Request by the General Assembly for an Advisory Opinion*, 7 CRIM. L.F. 299, 351 (1996) ("In the case of treaties of a humanitarian character . . . combatants as well as non-combatants . . . [are] entitled to the minimum standards of humanitarian protection guaranteed by international law."):

94. It was during this period that organizations such as the League of Nations, the United Nations, and the first War Crimes Tribunals were created.

95. See Abbott, *supra* note 3, at 520.

act as both combatants *and* victims of serious human rights violations in armed conflicts. Just as the Additional Protocols were added to reflect evolutions in warfare between 1949 and 1977, there may now be cause to establish minimum standards of protection applicable to children who do participate directly or actively in armed conflicts. Arguably, evolutions in international humanitarian law, in order to reflect realities on the ground, must occur “for justice to keep up with the imagination and inventiveness of war criminals.”⁹⁶

B. Violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II

Article 3 of the Statute of the Special Court for Sierra Leone defines the Court’s jurisdiction over serious violations of common article 3 to the four Geneva Conventions and Additional Protocol II, as follows:

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

....

e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

....

h. Threats to commit any of the foregoing acts.⁹⁷

As discussed previously, common article 3 and Additional Protocol II generally restrict the class of protected people to the civilian population or to those who do not, or have ceased to, take an active or direct part in hostilities.⁹⁸

The initial abduction or recruitment of children into armed groups, as well as any atrocities committed against children who are recruited

96. SCHABAS, *supra* note 78, at 42.

97. *Statute of the Special Court*, *supra* note 5, art. 3, at 21.

98. See Geneva Convention IV, *supra* note 36, art. 3, at 288 (“Persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely”); Additional Protocol II, *supra* note 37, art. 4(1), at 612 (“All persons who do not take a direct part or who have ceased to take part in hostilities . . . are entitled to respect for their person, honour and convictions and religious practices”); see also Maher, *supra* note 1, at 311 (commenting that “civilians who participate directly voluntarily abdicate their status as a protected class”).

into armed groups but who do not take an active or direct part in hostilities (for instance, girls recruited for sexual enslavement), can and should be prosecuted as serious violations of the laws of war under article 3. However, as in relation to crimes against humanity, a traditional application of the civilian-combatant distinction in common article 3 and Additional Protocol II will preclude prosecution of certain crimes committed against child combatants (for instance, forced intoxication, conditions of duress, and other instances of physical or psychological abuse suffered by children) under this provision as well.⁹⁹

C. Other Serious Violations of International Humanitarian Law

Article 4 of the Statute of the Special Court for Sierra Leone is the final article incorporating jurisdiction over violations of international humanitarian law and provides as follows:

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

. . . .

c. Abduction and forced recruitment of children under the age of 15 years into armed forces or groups for the purpose of using them to participate actively in hostilities.¹⁰⁰

The Special Court Report that accompanies the Statute illustrates that article 4(c) of the Statute was intended to include the following crimes:

- (a) abduction, which in the case of the children of Sierra Leone was the original crime and is in itself a crime under common article 3 of the Geneva Conventions;
- (b) forced recruitment in the most general sense . . .
- (c) transformation of the child into, and its use as, among other degrading uses, a "child-combatant."¹⁰¹

Article 4 of the Statute does not appear to significantly expand the Court's jurisdiction because forcible recruitment and the use of child combatants under the age of fifteen are already included in the Statute

99. That is, unless such abuses are included as serious violations of article 4(3) of Additional Protocol II, which provides that "children shall be provided with the care and aid they require." Additional Protocol II, *supra* note 37, art. 4(3), at 612. Reference to the special protections afforded to children under Additional Protocol II would significantly expand the Special Court's capacity to address and punish those responsible for crimes during the conflict. However, prosecuting a failure to provide children "with the care and aid they require" arguably fails to adequately name the harm done to children who have suffered more grave forms of physical and psychological abuse. *Id.*

100. *Statute of the Special Court*, *supra* note 5, art. 4, at 22.

101. *Special Court Report*, *supra* note 8, at 4, ¶ 18.

under article 3, as serious violations of common article 3 to the Geneva Conventions and Additional Protocol II.¹⁰² However, article 4 of the Statute deserves comment as it reflects the Court's specific mandate to prosecute those responsible for the recruitment of children into armed groups, as well as those otherwise responsible for the use of children as active participants in hostilities. While certain human rights atrocities committed against child combatants during the conflict may fall outside the scope of articles 2 through 4 of the Statute, article 4 expressly makes criminal the act of using any child under the age of fifteen as a combatant.¹⁰³

V. CONCLUSION

The Special Court should apply the international laws within its jurisdiction to the prosecution of crimes suffered by child combatants to the fullest extent possible. A detailed and robust treatment of the human rights violations committed against child soldiers will have at least two benefits. First, it will challenge the law's emphasis on banning, rather than regulating, the participation of children in hostilities. It has been argued above that this emphasis is unrealistic and fails to adequately address the vulnerability of children who do, by force or by choice, assume a direct role in armed conflicts. Second, it will allow the details of their physical and psychological abuse to be told, heard, and recorded in the historical record of the civil war. Thereby, the Special Court may more effectively contribute to the public's understanding of the conditions under which children became killers, fostering its contribution to reconciliation and the reintegration of child soldiers in the post-conflict period.

Though focused on the use of child soldiers and post-conflict criminal justice in Sierra Leone, this Article has broader implications. The use of child soldiers is but one example of the ways in which warfare has evolved during the post-World Wars period.¹⁰⁴ Clear distinctions between civilians and combatants, or between belligerent and friendly forces, are becoming increasingly blurred. As women and children join the ranks of combatants, there may be cause to extend certain humanitarian protections guaranteed under international humanitarian

102. See Geneva Convention IV, *supra* note 36, art. 3, at 288.

103. *Statute of the Special Court*, *supra* note 5, art. 4(c), at 22.

104. See Maher, *supra* note 1, at 302 (noting that the first widespread use of children as soldiers occurred during the Second World War).

law beyond traditionally defined categories of protected persons.¹⁰⁵ From the perspective of many children caught in the midst of hostilities around the world, international humanitarian law may not adequately reflect the conditions of modern armed conflicts. In sum, it appears that the norms of international humanitarian law may be ill-equipped to fully and accurately address the experiences of those among the most vulnerable participants in today's hostilities. While a core purpose underlying international humanitarian law is to minimize and address the humanitarian effects of war, dated distinctions between those who are, and those who are not, in need of protection now restrict its ability to fulfill this purpose.

105. International humanitarian law affords women and children civilians special protections, recognizing their particular vulnerability to physical and sexual abuse in armed conflict situations. See Judith Gardam & Michelle Jarvis, *Women and Armed Conflict: The International Response to the Beijing Platform for Action*, 32 COLUM. HUM. RTS. L. REV. 1, 53 (2000). When serving as combatants, they are likewise particularly vulnerable to such abuse. See *id.* at 42. Thus there may be cause to extend certain protections to combatants, in order that international law reflects the realities of modern conflicts, and the actual experiences of participants therein.