

THE CHILD SOLDIER IN INTERNATIONAL HUMANITARIAN LAW: FOCUS ON THE MORO ISLAMIC LIBERATION FRONT IN THE SOUTHERN PHILIPPINES

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There is a general consensus in the international legal order against the use of children as combatants. Nevertheless, the incidence of child soldiers has moved to centre stage in modern armed conflicts. In the Philippines, parties to local conflicts have used children as combatants. A case in point is the Moro National Liberation Front, and its breakaway faction, the Moro Islamic Liberation Front (MILF), in the Southern Philippines. In the context of the MILF struggle, becoming a child soldier in the MILF is considered as a very attractive if not the only way out for the impoverished children of the affected Bangsamoro people. It represents their main survival strategy, giving them the means to alter their conditions in a society where they consider themselves neglected, if not abused by the government. The religious undertone of the Moro struggle makes their submission to Allah their measure of victory or defeat. No amount of military action can successfully defeat that. Thus, the government of the Republic of the Philippines must address the root cause of the problem instead of simply dealing with its symptoms through drastic military action. The government must address the factors pushing children and their parents to consider enrolment in the MILF. While the government has to address the economic concerns underlying the conflict, it needs to institutionalise the teaching of international humanitarian law to the troops. The soldiers in full combat gear are at times the only personification of the government that makes a lasting impression. Soldiers conducting themselves in accordance with the law of armed conflict may gain admiration and respect even from the hostile population that they come into contact with. The government should take cognisance of this. Failing in this, the government will only find that revolutionaries may come and go, but the revolutionary struggle will always find fuel to sustain itself.

Il y a un consensus général dans l'opinion publique internationale condamnant l'utilisation des enfants comme soldats. Aux Philippines, la réalité est cependant bien différente. En

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effet, les forces armées, à commencer par celles du Front Moro de Libération Nationale (Moro National Liberation Front, MNLF), et en particulier la faction du Front Islamique de Libération Nationale (Moro Islamic Liberation Front, MILF), sont souvent composées d'enfants de la région du Bangsamoro. Pour eux, l'appartenance à ces groupes armés représente souvent l'unique opportunité d'échapper à la misère et au désintérêt des autorités gouvernementales. En outre, ils sont fortement influencés par la religion islamique de telle sorte que leurs victoires ou leurs défaites ne seront jugées qu'à l'aune de leur fanatisme religieux. Dans ce contexte, le nombre de victoires militaires que les troupes gouvernementales peuvent remporter sur eux n'ont guère d'importance ni de portée véritable. L'auteur souligne que pour être efficace dans la recherche d'une solution pacifique et négociée, le gouvernement de la République des Philippines devrait plutôt concentrer ses efforts sur les raisons qui poussent ces enfants tout comme leurs parents à s'enrôler dans les forces du MILF. Il explique qu'au-delà des raisons strictement religieuses, les comportements excessifs et incontrôlés des troupes gouvernementales souvent contraires aux principes des règles du droit international humanitaire forment le facteur déterminant qui conduit les enfants à rejoindre les mouvements militaires d'opposition.

I INTRODUCTION

Let me drive home the point on this topic by citing a very telling historical event. In 1901, in the town of Balangiga, Province of Samar in the Philippines, Filipino guerrillas attacked the American garrison. The attack prompted United States President Theodore Roosevelt to give orders to pacify Samar. The task fell on General Jacob Smith and he ordered: "I want no prisoners. I wish you to kill and burn. The more you burn and kill, the better it will please me". Orders to shoot down anybody "capable of carrying arms", which meant to include "even boys ten years old", were given. Upon the General's orders, Samar became a "howling wilderness".¹

General Jacob Smith considered children who were capable of carrying arms as potential combatants. He took no chances. And the children of Samar were accordingly dealt with.

Today, the phenomenon of child soldiers has come to the centre stage of armed conflicts. The Greenberg Research, Inc, a research and strategic consulting firm, notes that children are now at the centre of conflict and "[i]n many cases, they have been recruited, or swept up into the battle. ... The child soldier is perhaps the most extreme element in today's war on civilians".²

1 Teodoro A Agoncillo *History of the Filipino People* (8th ed, Garotech Publishing, Quezon City, 1990) 229.

2 Greenberg Research, Inc *The People on War Report. ICRC Worldwide Consultation on the Rules of War* (International Committee of the Red Cross, Geneva, 1999) 9 [Greenberg Report].

II THE GLOBAL NORMATIVE ORDER ON CHILDREN

Children are the only future that humanity has. To secure its future, humankind has provided various legal protections so as not to jeopardise its children. The global sentiment about children, particularly those pertaining to children in armed conflict, is already adequately covered by international agreements.

Trying to be precise and unequivocal in its terminology, the international community has left little doubt regarding the definition of who is a child. The Convention on the Rights of the Child³ clearly provides that a child means "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".⁴ Furthermore, the same Convention urges all parties to refrain from "recruiting any persons who have not attained the age of fifteen into their armed forces".⁵ Moreover, it states that in the process of "recruiting among those persons who have attained the age of fifteen but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest".⁶

While the basic minimum age for recruitment into the armed forces is 15 years of age, the Convention on the Rights of the Child provides a proviso that priority must be given to those who are 18 years of age or older. Clearly, the allowable age of 15 in this context is a compromise arrangement to accommodate specific cultural norms which bestow manhood earlier than the age of 18. Apparently, it is these cultural considerations that have found their way into the wording of the two Additional Protocols to the Geneva Conventions. Additional Protocol I⁷ mandates all parties to the 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 ... refrain from recruiting them into their armed forces".⁸ In the same vein, Protocol II⁹ prohibits the recruitment of children who have not attained the age of

3 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3.

4 *Ibid*, art 1.

5 *Ibid*, art 38(3).

6 *Ibid*.

7 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977) 1125 UNTS 3.

8 *Ibid*, art 77(2).

9 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (8 June 1977) 1125 UNTS 609.

15 years into the armed forces or groups and their participation in hostilities is forbidden.¹⁰

Despite the flexibility in these definitional attempts, many countries in the world, like the Philippines, have defined in their local jurisdiction in no uncertain terms that children are those who are below the age of 18.

Reflecting the universally evolving consensus on the age below 18 as the defining age of who are considered children, the International Labour Organization, in the Minimum Age Convention,¹¹ has clearly provided in Article 3(1) that the minimum age for admission "to any type of employment or work which by its nature or the circumstance in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years." Adding its weight to the age consensus is the African Charter on the Rights and Welfare of the Child. The African Charter defines a child as "every human being below the age of 18 years".¹² It further provides that parties "shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child".¹³

The involvement of children in armed conflicts as combatants is condemned by the international community. The Worst Forms of Child Labour Convention¹⁴ declares forced or compulsory recruitment of children for use in armed conflict as one of the worst forms of child labour.¹⁵ In the context of this Convention, the term "child" applies to all persons under the age of 18.¹⁶

Apart from shielding children from being employed as combatants in armed conflicts or in any other situations which may be harmful to their tender age, the international community likewise is not found wanting on how the children are to

10 Ibid, art 4(3)(c).

11 Minimum Age Convention (ILO Convention No 138) (26 June 1973), available at <www.ilo.org> (last accessed 5 May 2010).

12 African Charter on the Rights and Welfare of the Child (11 July 1990) OAU Doc CAB/LEG/24.9/49, art 2.

13 Ibid, art 22(2).

14 Worst Forms of Child Labour Convention (ILO Convention No 182) (17 June 1999), available <www.ilo.org> (last accessed 5 May 2010).

15 Ibid, art 3(a).

16 Ibid, art 2.

be properly dealt with. The Fourth Geneva Convention¹⁷ is very clear in this regard:¹⁸

The parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

In a similar fashion, the Covenant on Economic, Social and Cultural Rights urges all signatories to protect children and young persons from economic and social exploitation and provides that "[t]heir employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law".¹⁹ Echoing and reiterating the same concern, the American Convention on Human Rights²⁰ declares that every minor "has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state".²¹

This brief perusal of various international legal instruments shows that in as far as legal protection of children is concerned, the world is not found wanting. Across all cultures from Africa to Europe and to the Americas, international instruments are united in the condemnation of the idea of using child soldiers.

This universal consensus as to the appropriate age for combat duty is reflected in Table 1 below, where 12 countries involving 12,860 respondents were surveyed by Greenberg Research, Inc.

17 Convention (IV) relative to the Protection of Civilian Persons in Time of War (12 August 1949) 75 UNTS 287.

18 *Ibid*, art 24.

19 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3, art 10(3).

20 American Convention on Human Rights (22 November 1969) 1144 UNTS 123.

21 *Ibid*, art 19.

Table 1	
Child Combatants	
Question: At what age is a person mature enough to be a fighter or a soldier?	
Age Group	Percentage Responding
Under 15 years	1 %
15-17 years	6 %
18-21 years	53%
Over 21 years	35 %

Source: Greenberg Research Inc *The People on War Report. ICRC Worldwide Consultation on the Rules of War* (International Committee of the Red Cross, Geneva, 1999) 10.

Despite this general consensus, many respondents spoke of children being forced to go off with combatants or being killed if they tried to resist.²²

III CHILD COMBATANTS IN THE SOUTHERN PHILIPPINES

Most of today's armed conflicts are of a non-international character. In these conflicts, civilians have moved to the centre stage in the theatre of war, in contrast with traditional international armed conflicts, which in the past were fought mainly on the battlefield between soldiers. The fundamental shift in the character of war is illustrated by a stark statistic: in World War I, nine soldiers were killed for every civilian life lost; in today's armed conflicts, it is estimated that ten civilians die for every soldier or fighter killed in battle.²³

In the Philippines, a protracted local armed conflict has been going on for more than four decades. In Mindanao, Muslim groups like the Moro National Liberation Front (MNLF) and its breakaway faction, the Moro Islamic Liberation Front (MILF), have battled to establish an independent Islamic government in a conflict estimated to have left about 50,000 persons dead. Also, the conflict between the communist guerillas of the New Peoples Army (NPA) and the government has claimed at least 40,000 lives.²⁴

22 Greenberg Report, above n 2, ix.

23 Ibid, iii (citing Roy Gutman and David Rieff (eds) *Crimes of War: What the Public Should Know* (WW Norton, New York, 1999).

24 Greenberg Report, above n 2, v.

In these conflicts, children have been used as combatants. UNICEF has estimated that in 2001 alone, three per cent of the approximately 9000 strong NPA fighters were children. The Philippine military also reported that children comprise 20 to 25 per cent of the NPA recruits and the majority of the NPA combatants killed in encounters were inexperienced recruits aged 18 or below. There are no available estimates for the number of child soldiers in the MILF, but it appears that conscripts include children as young as 13.²⁵

A child soldier is defined as any person less than 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity not limited to combatants. In more than 80 countries worldwide, it is estimated that at least 300,000 children under 13 have either willingly or forcibly joined government armed forces and paramilitary and armed opposition groups.²⁶

The following part of this paper will focus on the incidence of child soldiers in the Southern Philippines, with specific reference to the MILF at Camp Masjid in the province of Lanao del Sur. Ten case studies²⁷ on MILF child soldiers are highlighted to gain a deeper insight into the phenomenon of child soldiers. The insights derived from these case studies hopefully will give the government of the Republic of the Philippines a different perspective to meaningfully address the issue.

IV THE MILF CHILD SOLDIERS

Of the ten child soldiers studied, eight are males and two are females. The ages at recruitment ranged from ten to 15 years with the mean age at 12.8 years. At the time the case studies were conducted, their ages ranged from 15 to 18 with the mean age at 17.2 years. They were recruited by the MILF and consequently nine volunteered to join. Interestingly, one was volunteered by his father. The fathers of all these child soldiers are all involved in the MILF in various capacities. The period of active participation of the children in the MILF ranged from three to eight years with the average at 4.5 years. In most cases, these children have gone to

25 See Philippine Coalition to Stop the Use of Children as Soldiers *Armed or Not, They Are Children: A Primer on the Use of Children as Soldiers in the Philippines* (Philippine Coalition to Stop the Use of Children as Soldiers, Quezon City, 2004) 8.

26 *Ibid*, 3-4.

27 The ten case studies of child soldiers are taken from Cheryl Teño-Abitona, Lutchie Salvacion Aljas and Nancy Blanche Dignos Paurillo *A Case Study of Children's Involvement in the Revolutionary MILF Group in Camp Masjid, Province of Lanao* (Undergraduate Thesis Presented to the Faculty of the Department of Sociology, MSU-Iligan Institute of Technology, Iligan City, March 2002).

actual combat 2.3 times. This, however, is skewed because three cases, due to their tender ages, actually have had no combat experiences. Hence, if these three cases are disregarded, the average number of times of combat experiences would be 3.28 times.

The families of these children "could hardly support, raise and send their children to school. They (the family) instead ... send them to the MILF revolutionary armed group for these children to be trained, fed, clothed, and be able to attend school".²⁸ In a sense, becoming a child soldier becomes the coping mechanism and survival strategy of both the children and their families.

Once inside the camp (Camp Masjid), the children were provided their basic needs as they underwent training. They were schooled in the *Madrasah School* inside the camp with Arabic as the medium of instruction and Islamic principles forming the bulk of instruction.

Accordingly, their first six months of training involved physical training ranging from jogging, mountain climbing, river crossing, physical exercises, self-defence, urban and guerilla warfare and using and dismantling of various types of armaments. This was followed by another three months of *al bayanulumor* or faith building, which included Islamic teachings and the internalisation of the mission and goals of the MILF. Subsequently, a higher level of training followed as the recruits specialised in their skills, training on specific roles like becoming community organisers, informants, snipers, platoon leaders or bodyguards of high ranking MILF officials. Girl soldiers were reserve combatants, focusing mainly on medical and first aid functions, cooking and running of the camp. The training inculcated in the minds of the child soldiers that *jihad* (holy war) is the greatest expression of "religiosity" through which *sabir* (martyrdom) can be achieved.

When asked why they joined the MILF, the model response was to claim the ancestral land of the Moro people (nine cases), to have an independent Islamic state (seven cases) and to fight for equal rights because the government has neglected the poor (four cases). As to the future, they too dream of having a family, a stable job, a land to till and the like. One noteworthy response common to all ten cases was that they would continue their participation in the MILF group.

Al Haj Murad, a high ranking MILF leader, explained that the main purpose of combat training is not to instill violence in their young minds, but to help them

28 Ibid, 8.

defend themselves. The camp could be attacked at any time by the enemy and "it is more inhuman to let them die without having defended themselves".²⁹

But, why are there children in the MILF camps in the first place? For the MILF, a camp is not the same as a conventional military camp. For them, it is a self-sustaining community with training facilities, schools, a market place, a place of worship (mosque) and the like.³⁰ In such a setting, training of children for combat becomes a necessary part of their socialisation process. This conceptual difference brings to mind the observation made by John Kelsay during the Iran-Iraq war when Iran aimed to "do away with conventional warfare methods in favour of Islamic warfare".³¹ This had crucial implications. Victory was to be defined not by outcomes (destruction of the enemy's military), but by process (the manifestation of faith through self-sacrifice). Human life was not valued in and of itself, but as a manifestation of subjugation (Islam) to Allah (God). This both encouraged self-martyrdom and concluded that those lives not conducted in the spirit of Islam were "inherently disposable".³² Clearly, in this context, military action can never be a solution. MILF camps may be taken over by government troops, but these outcomes are never a measure of defeat or victory for the MILF. Their submission to Allah, manifested by self-sacrifice and martyrdom, is all that matters.

Hence, the real battlefield is in the hearts and minds of the people. With the government as the enemy in their consciousness, a concomitant counter-consciousness should be instilled. This, however, is very difficult if the only manifestation of governmental presence that these people experience is that of a soldier with a gun with very minimal grasp of the appropriate rules of engagement as enshrined in the Geneva Conventions.

29 Ibid, 21.

30 This MILF conception of a camp is confirmed by Professor Rudy Rodil, a known Mindanao historian and an authority on the subject. He was a member of the government of the Republic of the Philippines panel on the peace talks with the MNLF and acts as a consultant on the peace process with the MILF. This writer's conversation with him took place on 24 February 2004.

31 John Kelsay "Islam and the Distinction Between Combatants and Noncombatants" in James Turner Johnson and John Kelsay (eds) *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (Greenwood Press, Westport, Connecticut, 1990) 198, 207-208.

32 James Cockayne "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations" (2002) 847 IRRC 597, 618.

V KNOWLEDGE OF THE GENEVA CONVENTIONS

On the basis of a cross-country survey conducted among 18 countries in the world by Greenberg research, Inc, the Philippines ranks the lowest in as far as having heard of the Geneva Conventions is concerned. Table 2 below is indicative of the urgent need to intensify the dissemination of International Humanitarian Law (IHL) in the Philippines.

Table 2: Geneva Conventions			
Question: Have you heard of the Geneva Conventions?			
Country	Heard	Not heard	Don't know
United Kingdom	86 %	14 %	2 %
United States	66 %	33 %	1 %
France	68 %	30 %	2 %
Russian Federation	51 %	43 %	6 %
Colombia	37 %	54 %	9 %
El Salvador	33 %	63 %	4 %
Philippines	12 %	80 %	8 %
Georgia	18 %	69 %	13 %
Abkhaz	52 %	28 %	20 %
Afghanistan	24 %	62 %	14 %
Cambodia	23 %	72 %	5 %
Bosnia-Herzegovina	80 %	13 %	7 %
Lebanon	56 %	33 %	11 %
Israel	89 %	10 %	1 %
Palestinians	65 %	28 %	7 %
Somalia	42 %	36 %	21 %
South Africa	17 %	71 %	12 %
Nigeria	25 %	64 %	11 %

Source: Greenberg Research, Inc *The People on War Report. ICRC Worldwide Consultation on the Rules of War* (International Committee of the Red Cross, Geneva, 1999) 69.

Although knowledge of the Geneva Conventions does not guarantee that a combatant will abide by them, "it helps set out a behavioural framework for those who take up arms. When faced with morally difficult decisions – concerning civilians, combatants and prisoners – a basic understanding of a legal framework can at least help combatants to set boundaries".³³ *A Contrario*, those less aware of the Conventions are less likely "to help or save a wounded or surrendering enemy combatant" or provide minimal rights to captives.³⁴

VI CONCLUSION

The phenomenon of child soldiers is a global phenomenon today. In the Philippines, becoming a child soldier in the MILF represents a very attractive proposition and, sadly, often the only way out for the impoverished children of the affected *Bangsamoro* people. It becomes their survival strategy.

The religious undertone of the Moro struggle makes submission to Allah their measure of victory or defeat. No amount of military action can successfully defeat that. Thus, the government of the Philippines must address the root cause of the problem instead of simply dealing with its symptoms through drastic military action.

Clearly, a more effective and less costly way (than an all-out war) to address the issue is to tackle the factors pushing children and their parents to take up arms, especially the enrolment of the former as child soldiers. The ten case studies point to poverty as the push factor and the empowerment felt to change one's life and society via religious martyrdom through *jihad* as the pull factor. The government should take cognisance of this. While it has to address the economic concerns underlying the conflict, it has at the same time to professionalize its armed forces. One good way to start would be to institutionalise the teaching of the law of armed conflict to the troops. This is a must because soldiers in full combat gear are at times the only personification of the government that makes the lasting impression. Soldiers conducting themselves in accordance with the rules of war may gain admiration and support even from the combatants of the hostile population that they come into contact with. This move will go a long way. Today's battles can only be won in the hearts and minds of the affected populace.

33 Greenberg Report, search Inc, above n 2, 69.

34 *Ibid*, 19.

