

## COMMENT

### THE CHILD SOLDIERS PREVENTION ACT: HOW THE ACT'S INADEQUACY LEAVES THE WORLD'S CHILDREN VULNERABLE

#### TABLE OF CONTENTS

I. INTRODUCTION .....	234
II. BACKGROUND ON THE PLIGHT OF CHILD SOLDIERS .....	238
<i>A. Definitions, Statistics, and Effects of War on Child     Soldiers</i> .....	238
<i>B. Current U.S. Legislation</i> .....	242
<i>C. International Treaties &amp; Their Inherent Limits</i> .....	244
III. IMPLICATIONS OF THE CHILD SOLDIERS PREVENTION ACT .....	248
<i>A. The CSPA's Efficacy in Eradicating the Use of Child     Soldiers</i> .....	248
<i>B. Trafficking in Persons Report as a Guide to Country     Compliance</i> .....	116
1. <i>Chad</i> .....	120
2. <i>Congo</i> .....	123
3. <i>Sudan</i> .....	257
4. <i>Yemen</i> .....	126
<i>C. Interpretation of the CSPA</i> .....	127
IV. EVALUATING THE CSPA IN THE CONTEXT OF INTERNATIONAL LAW .....	130
V. RECOMMENDATIONS .....	131
VI. CONCLUSION .....	135

*[C]hildren—all children, no matter where they are from—belong on playgrounds, not battlegrounds.<sup>1</sup>*

## I. INTRODUCTION

“William,” an 11-year-old boy in Uganda was forced to kill five people as part of his indoctrination with the [Lord’s Resistance Army], with which he served for [two] years. The first time William killed someone, he, along with other children, were forced to bite to death one child who had attempted to escape from the LRA. After the victim died of blood loss and shock from the biting, William and others were then required to swallow the dead child’s blood. It was a warning to him and others not to try to escape, or they would face the same torture.<sup>2</sup>

The plight of child soldiers has caught people’s attention around the world.<sup>3</sup> It is undeniably painful to visualize a young child carrying an AK-47, prepared to shoot an enemy at a moment’s notice. Stories like William’s open our eyes to the intolerable truth that youths are being forced into wars around the world. Now that these children

---

1. Fortenberry, *House of Foreign Affairs Committee Strengthen U.S. Child Soldiers Policy*, U.S. HOUSE OF REPRESENTATIVES COMM. ON FOREIGN AFF., <http://foreignaffairs.house.gov/news/blog/?2015> (last visited July 15, 2012) [hereinafter Fortenberry, *House of Foreign Affairs*].

2. *Casualties of War: Child Soldiers and the Law: Hearing Before the Subcomm. on Human Rights and the Law*, 110th Cong. 18 (2007) [hereinafter *Casualties of War*] (statement of Joseph Mettimano, Director, Public Policy and Advocacy, World Vision, Washington D.C.).

3. See, e.g., KONY 2012, <http://www.kony2012.com> (last visited Aug. 24, 2012). In 2012, the non-profit agency Invisible Children released a video watched by millions about the atrocities committed by Joseph Kony, the leader of the rebel militia known as the Lord’s Resistance Army. *Kony 2012 Part I*, KONY 2012, <http://www.kony2012.com/watch-the-movie> (last visited Aug. 24, 2012) (discussing the atrocities of Kony’s Lord’s Resistance Army and the plight of child soldiers). Invisible Children’s goal in spearheading the Kony 2012 campaign is to bring awareness to the world about Joseph Kony as a war criminal, in hopes that the global knowledge will help bring about Kony’s arrest and trial in front of the International Criminal Court. See Azry Groth, *The Strategy for Ending LRA Violence*, INVISIBLE CHILD., <http://blog.invisiblechildren.com/2012/04/05/the-strategy-for-ending-lra-violence> (last visited Aug. 24, 2012); see also *Times Topics: Joseph Kony*, N.Y. TIMES (Apr. 30, 2012), [http://topics.nytimes.com/top/reference/timestopics/people/k/joseph\\_kony/index.html](http://topics.nytimes.com/top/reference/timestopics/people/k/joseph_kony/index.html) (describing Kony’s crimes and the international search for his arrest).

have our attention, it is time to give them our help. The United States, as a first-world nation and military superpower, is obligated to help stop this horrid practice. While the wars are fought far from U.S. soil, Americans are intertwined with these children in ways they do not at first suspect. For example, American soldiers encounter child soldiers on battlefields, placing military personnel in difficult ethical predicaments. During the War on Terror, a fourteen-year-old boy killed the first U.S. soldier to die in the war in Afghanistan.<sup>4</sup>

Beyond direct encounters with child soldiers on the battlefields, U.S. foreign policies influence the plight of child soldiers in other nations. Our position as one of the most powerful nations in the world means that other countries often look to us for assistance, seeking military financing, modern weapons, and our highly-valued military training and education.<sup>5</sup> “The United States is the world’s largest arms exporter”<sup>6</sup> and provides military aid, financing, and training to war-torn countries around the globe.<sup>7</sup> Before 2008, it was the U.S. policy to provide military assistance to foreign governments regardless of the human rights violations they committed by forcing children to fight in wars.<sup>8</sup> In 2008, Congress passed the Child

---

4. Rachel Stohl, *Child Soldiers Treaty Enters into Force*, THE WKLY. DEF. MONITOR (Ctr. for Def. Info., D.C.), Feb. 14, 2002 (describing the adoption and ratification of the U.N. Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict) (on file with international law journal).

5. *Casualties of War*, *supra* note 2, at 57 (written testimony submitted by Rachel Stohl, Senior Analyst, Center for Defense Information, Washington D.C.).

6. *Id.* For example, in 2005, “the United States was singlehandedly responsible for 29 percent (\$12.8 billion) of all arms transfer agreements and 46 percent (\$11.6 billion) of all arms deliveries . . .” *Id.*

7. *Id.* at 57-58.

8. *See id.* at 2. In 2007, the State Department identified ten countries whose governments either recruited child soldiers or supported militias that recruited child soldiers. All but one of these countries received U.S. military assistance that year. *Id.* This is despite the fact that the U.S. told the U.N., in its written responses to questions posed by the Committee on the Rights of the Child, that it consistently considers human rights situations when reviewing countries to receive weapons licenses or defense article sales. Comm. on the Rights of the Child, Written Replies by the Government of the United States of America Concerning the List of Issues to be Taken Up in Connection with the Consideration of the Initial Report of the United States of America Under Article 8, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed

Soldiers Prevention Act (CSPA) to stop the United States from handing over taxpayer money to governments that use it to finance child soldiers.<sup>9</sup> The CSPA amended the William Wilberforce Trafficking Protection Reauthorization Act to include a provision on child soldiers.<sup>10</sup> Former President George W. Bush signed the bill into law on December 23, 2008, and it became effective on June 21, 2009.<sup>11</sup> The CSPA prohibits the United States from sending military aid to countries identified as actively recruiting and using child soldiers in their official militaries or government-supported armed forces.<sup>12</sup>

Despite clear Congressional intent that the CSPA would prevent our government from funding militaries that recruit child soldiers, a presidential loophole renders the CSPA ineffective. This loophole allows the President to waive the assistance prohibition if it is in the “national interest of the United States.”<sup>13</sup> Due to this waiver, numerous countries known to recruit child soldiers have continued to receive full or partial assistance for the past two years.<sup>14</sup> Another

---

Conflict, U.N. Doc. CRC/C/OPAC/USA/Q/1/Add.1/Rev. ¶ 74 (June 2, 2008), <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.US.A.Q.1.Add.1.Rev.1.pdf>.

9. *Casualties of War*, *supra* note 2, at 3.

10. 22 U.S.C. § 2370c-1 (2006). The Trafficking Victims Protection Reauthorization Act of 2008 is the third renewal of the original Victims of Trafficking and Violence Protection Act of 2000. *U.S. Laws on Trafficking in Persons*, U.S. DEP’T ST., <http://www.state.gov/j/tip/laws/> (last visited Mar. 27, 2012). It authorizes federal programs and appropriations to combat human trafficking both in the United States and abroad. *Id.*; see also H.R. REP. No. 110-430, at 43 (2007) (House Report on the 2008 reauthorization).

11. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 12 (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164224.htm#2>.

12. 22 U.S.C. § 2370c-1.

13. *Id.*

14. On November 2, 2010, President Obama granted a waiver under the CSPA to Sudan, Chad, Yemen, and the Congo. Lisa M. Ruth, *Obama Grants Waiver on Child Soldier Prohibition in Sudan*, WASH. TIMES (Nov. 2, 2010), <http://communities.washingtontimes.com/neighborhood/lifelisa/2010/nov/1/obama-waiver-child-soldier-prohibition-suda/>; see discussion *infra* Part III.B.1-4. Then, on October 4, 2011, President Obama issued another waiver with respect to Yemen, Congo, and Chad. Avni Patel, *Obama Waives Child Soldier Ban in Yemen and Congo*, ABC NEWS (Oct. 5, 2011), <http://abcnews.go.com/Blotter/obama-waives-child-soldier-ban-yemen-congo/story?id=14663930>; see discussion *infra* Part

provision allows reinstatement of assistance if the country makes changes to comply with the CSPA's terms (including signing an action plan and demobilizing child soldiers).<sup>15</sup> Of the six countries identified by the State Department as having recruited child soldiers,<sup>16</sup> four have received waivers or reinstatement of assistance.<sup>17</sup> The language of the CSPA is short and vague, making it nearly impossible for the President to implement its provisions according to Congress's intent. If Congress wants the Act to help prevent war-torn countries from recruiting child soldiers, the Act must be amended.

This comment argues that while the CSPA seeks to attain crucial goals, the Act fails due its vague, ambiguous, and broad language. Part II of this comment introduces a background to the human rights abuses inflicted on child soldiers. It also discusses the two U.S. statutes regarding child soldiers, and reviews international treaties addressing child soldiers. Part III looks at the CSPA in detail, including a summary of the State Department's identified countries currently receiving assistance. It discusses the legislative history of the CSPA and argues that while Congress criticizes the President for not implementing its intent, the statute is too vague to blame its ineffectiveness on the President. Part IV of the comment analyzes whether the current application of the CSPA comports with the United Nation's Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Last, Part V provides recommendations to improve current legislation and to help cease the use of child soldiers around the globe.

---

#### III.B.1-4.

15. 22 U.S.C. 2370c-1(d).

16. See *infra* Part II.A, for a list of these six countries.

17. *U.S.: Don't Finance Child Soldiers—Obama Administration Aid Waivers Undercut U.S. Law*, HUM. RTS. WATCH (Oct. 4, 2011), <http://www.hrw.org/news/2011/10/04/us-don-t-finance-child-soldiers> [hereinafter *U.S.: Don't Finance Child Soldiers*]; see *supra* text accompanying note 14; see *infra* Part III.B.1-4, for a more in depth discussion.

## II. BACKGROUND ON THE PLIGHT OF CHILD SOLDIERS

### A. Definitions, Statistics, and Effects of War on Child Soldiers

Human Rights Watch estimates that there are over 250,000 children exploited as child soldiers around the globe today.<sup>18</sup> The United Nations (U.N.) defines a child soldier as “any person[s] below 18 years of age . . . recruited or used by an armed force or armed group in any capacity . . . used as fighters, cooks, porters, spies or for sexual purposes.”<sup>19</sup>

This U.N. definition includes governmental forces, non-governmental militias, and rebel groups.<sup>20</sup> One expert in 21st-century warfare estimated that “[c]hildren as young as six years old now comprise as much [sic] as 10% of the world’s combatants,”<sup>21</sup> and that “[u]nderage soldiers serve in 75% of the world’s conflicts.”<sup>22</sup> Some of the worst child soldier abuses have occurred in Liberia, Sierra Leone, the Democratic Republic of Congo (“Congo”), Uganda, Columbia, Sri Lanka, and Sudan.<sup>23</sup> Each year, the U.S. State

---

18. Troy D. Green, *Eradicating the Use of Child Soldiers: Is the World Doing Enough?*, 7 REGENT J. INT’L L. 395, 397 (2010). This estimated number is down from 300,000 in 1999. *If U.S. Opposes Child Labor, Why Not Child Soldiers?*, HUM. RTS. WATCH (June 28, 1999), <http://www.hrw.org/news/1999/06/27/if-us-opposes-child-labor-why-not-child-soldiers>. As of May 2012, Human Rights Watch has not issued a more recent estimate of child soldiers around the world. Due to the fluid nature of internal armed conflicts that can start and end quickly, it is extremely difficult to compile accurate statistics on the number of child soldiers used today. Luz E. Nagle, *Child Soldiers and the Duty of Nations to Protect Children From Participation in Armed Conflict*, 19 CARDOZO J. INT’L & COMP. L. 1, 12 (2011) (noting that the Coalition to Stop the Use of Child Soldiers has stopped trying to provide actual counts).

19. U.N. Children’s Fund, *The Paris Principles: The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, ¶ 2.1 (Feb. 2007), [http://childrenandarmedconflict.un.org/publications/ParisPrinciples\\_EN.pdf](http://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf).

20. Green, *supra* note 18.

21. P.W. Singer, *Talk is Cheap: Getting Serious About Preventing Child Soldiers*, 37 CORNELL INT’L L.J. 561, 562 (2004).

22. *Id.*

23. Green, *supra* note 18. Not surprisingly, these identified countries have been involved in some of the world’s bloodiest civil wars, and children are recruited into the ranks of official militaries, government-supported militias, and rebel units. *Id.* During Liberia’s most recent civil war, aid workers estimated that 20,000 children were recruited as soldiers. *Liberia’s Child Soldiers Struggle to Rebuild*

Department issues its official list of countries that have government or government-supported armed forces using child soldiers.<sup>24</sup> Since 2010, the State Department has identified countries such as Burma, Chad, Congo, Somalia, Sudan and Yemen.<sup>25</sup> Further, during the War on Terror, the United States directly confronted child soldiers in Afghanistan and Iraq.<sup>26</sup> Currently, the al-Qaeda terrorist group is known to recruit children as suicide bombers and snipers.<sup>27</sup>

In countries that conscript child soldiers, “[c]hildren are used for front-line combat, often as cannon fodder, and forced ahead of older troops as human mine detectors.”<sup>28</sup> In addition to using them in direct combat, militaries force children to plant or clear mines,<sup>29</sup> smuggle drugs across borders,<sup>30</sup> or serve as medics, guards, spies, or cooks.<sup>31</sup>

---

*Lives*, CNN.COM (Aug. 31, 2003), <http://edition.cnn.com/2003/WORLD/africa/08/31/liberia.child.soldiers.reut/index.html>. The wars have generally ended in Liberia, Sierra Leone, and Sri Lanka. *Questions and Answers*, CHILD SOLDIERS INT’L, <http://www.child-soldiers.org/childsoldiers/questions-and-answers> (last visited Mar. 24, 2012) [hereinafter *Q&A*, CHILD SOLDIERS INT’L]. The cessation of hostilities does not mean the end of struggles for child soldiers; children released from the ranks have faced great adversities in reintegration and rehabilitation. See, e.g., Lorea Russell & Elzbieta M. Godziak, *Coming Home Whole: Reintegrating Uganda’s Child Soldiers*, 7.2 GEORGETOWN J. INT’L AFFAIRS 57, 57-65 (explaining the need for a comprehensive psychosocial approach to reintegration). As old wars cease, new wars arise, which explain the increased use of child soldiers in Chad and Sudan. *Q&A*, CHILD SOLDIERS INT’L, *supra*.

24. See *infra* Part III, for a discussion of the State Department’s complete CSPA lists from 2010 to 2012.

25. *U.S.: Press Allies to End the Use of Child Soldiers*, HUM. RTS. WATCH (June 27, 2011), <http://www.hrw.org/print/news/2011/06/27/us-press-allies-end-use-child-soldiers>.

26. Green, *supra* note 18, at 397-98.

27. *Id.* For example, Omar Khadr was a fifteen-year-old child soldier, suspected of committing terrorist-related activity for al-Qaeda when he was arrested in Afghanistan in 2002. See Charlie Savage, *Child Soldier for al-Qaeda is Sentenced for War Crimes*, N.Y. TIMES (Nov. 1, 2010), <http://www.nytimes.com/2010/11/02/us/02detain.html>.

28. Jo Becker, *Child Soldiers: Changing a Culture of Violence*, 32 HUM. RTS. MAG. 16 (Winter 2005), available at [www.americanbar.org/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol32\\_2005/winter2005/hr\\_winter05\\_childsoldiers.html](http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol32_2005/winter2005/hr_winter05_childsoldiers.html).

29. Nagle, *supra* note 18, at 14.

30. Diane A. Desierto, *Leveraging International Economic Tools to Confront Child Soldiering*, 43 N.Y.U. J. INT’L L. & POL. 337, 349 (2011).

Militaries not only recruit young boys into their ranks, but in 2006, the United Nations University estimated that forty percent of child soldiers were girls.<sup>32</sup> Both male and female child soldiers are subjected to sexual assault and are at high risk for contracting a sexually transmitted disease.<sup>33</sup> Girls are often forced to marry male soldiers and sometimes endure forced abortions.<sup>34</sup>

There is a nexus between a country's internal strife and use of child soldiers that is primarily explained by a shortage of manpower.<sup>35</sup> The perpetual strife in countries constantly intensifies and abates, making it impossible to pinpoint an exact number of child soldiers.<sup>36</sup> Child soldier recruitment is most common in poor countries in which the bloody conflicts have killed many adult men.<sup>37</sup> Militaries can

---

31. Becker, *supra* note 28.

32. Vesselin Popovski & Karin Arts, *Policy Brief: International Criminal Accountability and Children's Rights*, U.N. UNIV. 4 (2006), <http://i.unu.edu/media/publication/000/000/742/international-criminal-accountability-and-childrens-rights-pb4-06.pdf>.

33. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164220.htm>.

34. See Nagle, *supra* note 18, at 12-13.

35. Nancy Morisseau, *Seen But Not Heard: Child Soldiers Suing Gun Manufacturers Under the Alien Tort Claims Act*, 89 CORNELL L. REV. 1263, 1279 (2004).

36. Nagle, *supra* note 18, at 12.

37. See Morisseau, *supra* note 35; see also JIMMIE BRIGGS, *INNOCENCE LOST: WHEN CHILD SOLDIERS GO TO WAR* 41 (2005) (explaining that, "[t]he more adult males who are wounded, killed, or captured, the more youngsters will become the inevitable recruiting pool."). For example, the bloody campaign in Uganda led by the Lord's Resistance Army is one of the most well-known areas of child soldier recruitment; this war began in the 1980s, continued for nearly twenty years, and killed tens of thousands of people. Laura Blue & Jonathan Woodward, *Hope for Uganda's Child Soldiers?*, TIME WORLD (Aug. 14, 2006), <http://www.time.com/time/world/article/0,8599,1226297,00.html>. In October 2011, President Obama issued an order to send U.S. troops to Uganda and surrounding countries to capture or kill the leader of the LRA, Joseph Kony. Jake Tapper & Luis Martinez, *Obama Sends 100 U.S. Troops to Uganda to Help Combat Lord's Resistance Army*, ABC NEWS (Oct. 14, 2011), <http://abcnews.go.com/blogs/politics/2011/10/obama-sends-100-us-troops-to-uganda-to-combat-lords-resistance-army>. As of May 2012, the troops have not found him. Craig Whitlock, *Joseph Kony Hunt is Proving Difficult for U.S. Troops*, WASH. POST (Apr. 29, 2012), [http://www.washingtonpost.com/world/national-security/joseph-kony-hunt-is-proving-difficult-for-ustroops/2012/04/29/gIQAasM6pT\\_story.html](http://www.washingtonpost.com/world/national-security/joseph-kony-hunt-is-proving-difficult-for-ustroops/2012/04/29/gIQAasM6pT_story.html).

recruit children via force, conscription, or consent.<sup>38</sup> Recruiters prey on vulnerable children because they are obedient and naïve,<sup>39</sup> and can easily carry the light-weight arms used in modern conflict.<sup>40</sup> Many children are abducted or physically threatened.<sup>41</sup> Others join out of necessity—children who have lost their families and villages in the war see no other choice because they must join to survive.<sup>42</sup> Therefore, a child providing actual “consent” to be a soldier is dubious at best, given the poverty that many of these children experience when conflict occurs.<sup>43</sup>

A child soldier’s life causes physical and psychological trauma that lasts long after leaving the ranks. Child soldiers are subjected to dangerous environments and provided inadequate training; their fragile bodies sustain far higher casualty and injury rates than their adult counterparts do.<sup>44</sup> In addition, military leaders frequently drug child soldiers with alcohol, narcotics, and hallucinogens to deaden the emotional reaction to killing and maiming, often creating child addicts.<sup>45</sup> In Sierra Leone, commanders actually cut children’s temples and rubbed cocaine into the wounds.<sup>46</sup> One child soldier recounted that “[t]he first time I went into battle I was afraid. But after two or three days they forced us to start using cocaine, and then I lost my fear.”<sup>47</sup>

Beyond the physical injuries and abuse, child soldiers often suffer long-term psychological trauma.<sup>48</sup> Former child soldiers from Uganda exhibited signs of psychological disorders such as insomnia, eating

---

38. Morisseau, *supra* note 35, at 1279.

39. Nagle, *supra* note 18, at 9.

40. Morisseau, *supra* note 35, at 1285. For example, the highly popular AK-47 rifle weighs a mere 7.65 pounds unloaded and 9.46 pounds with a thirty round magazine. KEVIN DOCKERY, *FUTURE WEAPONS* 102 (2007).

41. Morisseau, *supra* note 35, at 1280.

42. *Id.* at 1280-81.

43. *See id.*

44. Nagle, *supra* note 18, at 15.

45. *Id.* at 10.

46. Monique Ramgoolie, *Prosecution of Sierra Leone's Child Soldiers: What Message is the U.N. Trying to Send?*, 12 PRINCETON U. J. PUB. & INT'L AFF. 145, 148 (2001), available at [www.princeton.edu/jpia/past-issues-1/2001/8.pdf](http://www.princeton.edu/jpia/past-issues-1/2001/8.pdf).

47. Nagle, *supra* note 18, at 10.

48. *Id.* at 15-16.

disorders, and behavioral problems.<sup>49</sup> Child soldiers experience desensitization to violence and pain due to drug use, brainwashing by military leaders, and committing and witnessing horrific acts.<sup>50</sup> Some child soldiers are forced to kill fellow recruits<sup>51</sup> or even their family members upon the threat of death.<sup>52</sup> The killing of family or village members stigmatizes these children so that they cannot return home, which in turn creates a dependency upon their leaders.<sup>53</sup>

In addition to the physical and psychological toll, child soldiers experience a social stigma that makes it hard to reintegrate into society.<sup>54</sup> Children abducted from their homes and communities at such a young age lose the opportunity to attend school or learn marketable skills.<sup>55</sup> The trauma and unhealthy socialization skills that child soldiers retain from combat make it extremely difficult for them to adjust to civilian life if they are released.<sup>56</sup> Inevitably, child soldiers are “[o]stracized by their community, marginalized by lack of education, and unable to find employment . . . [leading them to] pick up arms again and become a threat to their communities.”<sup>57</sup>

### B. Current U.S. Legislation

Congress adopted the CSPA in 2008,<sup>58</sup> as an amendment to the William Wilberforce Trafficking Victims Protection and

---

49. Green, *supra* note 18, at 399.

50. *Id.* at 398-99.

51. Nagle, *supra* note 18, at 11. Commanders use children who attempt to escape or defy instructions as a tactic to keep other child soldiers compliant and fearful. *See id.* at 14 (describing the brutal account of one boy child soldier’s experience of killing another).

52. *See* Green, *supra* note 18, at 398-99.

53. Nagle, *supra* note 18, at 20.

54. *Id.* at 16-17.

55. Becker, *supra* note 28.

56. Nagle, *supra* note 18, at 16.

57. Russell & Godziak, *supra* note 23, at 58.

58. *U.S. Limits Military Aid to Nations Using Child Soldiers*, HUM. RTS. WATCH (Dec. 11, 2008), <http://www.hrw.org/news/2008/12/11/us-limits-military-aid-nations-using-child-soldiers> [hereinafter *U.S. Limits Military Aid*]; *see* *NGO Letter to President Obama regarding waivers to the Child Soldiers Prevention Act*, HUM. RTS. WATCH (Nov. 5, 2010), <http://www.hrw.org/news/2010/11/05/ngo-letter-president-obama-regarding-waivers-child-soldiers-prevention-act>; *see also* William

Reauthorization Act of 2008.<sup>59</sup> The CSPA, which went into effect in 2009, prohibits the U.S. government from providing military assistance (including money, military education and training, or direct sales of military equipment) to countries identified as having government or government-supported forces that recruit and use child soldiers.<sup>60</sup>

The CSPA also requires the U.S. Secretary of State to designate portions of the annual Human Rights Report to the issue of child soldiers.<sup>61</sup> The report must include “trends toward improvement . . . of the status of child soldiers” and “the role of the government” in “engaging or tolerating” the practice.<sup>62</sup> The statute allows the President to issue a “national interest waiver” for countries even if they are in violation of the Act,<sup>63</sup> so long as the President notifies Congress within 45 days of the waiver and justifies his decision.<sup>64</sup> Additionally, the President has the authority to provide assistance if that country has taken “steps” to come into compliance with the law and has “implemented policies and mechanisms to prohibit and prevent future . . . use of child soldiers.”<sup>65</sup>

---

Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (codified as amended at 22 U.S.C. § 2370c-1 (2006)).

59. *U.S. Limits Military Aid*, *supra* note 58. Originally adopted in 2000, the Trafficking Victims Protection Act was reauthorized three times, in 2003, 2005, and again in 2008. *U.S. Laws on Trafficking in Persons*, U.S. DEP'T ST., <http://www.state.gov/j/tip/laws/> (last visited Aug. 20, 2012). It is currently pending reauthorization again, to extend the law for at least two more years. *The Trafficking Victims Protection Reauthorization Act of 2011—TVpra Bill Tracker*, IJM, [www.ijm.org/justice-campaigns/tvpra](http://www.ijm.org/justice-campaigns/tvpra) (last visited Feb. 4, 2012).

60. 22 U.S.C. § 2370c-1(a) (2006). There are several other countries identified as using child soldiers in rebel militias, but the CSPA only addresses child soldier use within government and government-supported militaries because rebel armies do not receive U.S. aid. By enacting this law, Congress hoped to begin a process of “norm-building” so that rebel and paramilitary groups can no longer attempt to justify their use of child soldiers by pointing to the actions of their own governments. *Casualties of War*, *supra* note 2, at 13.

61. 22 U.S.C. § 2370c-2(b).

62. *Id.*

63. *Id.* § 2370c-1(c)(1).

64. *Id.* § 2370c-1(c)(2).

65. *Id.* § 2370c-1(d). It also allows the President to provide assistance to help countries that are “taking reasonable steps” to demobilize, rehabilitate, and reintegrate former child soldiers. *Id.* § 2370c-1(e); *see* discussion *infra* Part V.

In addition to the CSPA, Congress enacted the Child Soldier Accountability Act (CSAA), making it a federal crime to knowingly recruit or use soldiers under the age of 15.<sup>66</sup> The statute makes recruitment of child soldiers a war crime and gives the United States universal jurisdiction over an alleged offender.<sup>67</sup> This means that U.S. courts may prosecute alleged offenders found on U.S. soil, regardless of their nationality or the location of the offense.<sup>68</sup> Both the CSPA and the CSAA seek to promote the Trafficking Persons Protection Reauthorization Act's goals, known as the "3 P's:" prevention, protection, and prosecution.<sup>69</sup>

### C. *International Treaties & Their Inherent Limits*

Outside of the United States, the international community responded to human rights abuses inflicted on children by enacting the Convention on the Rights of the Child (CRC).<sup>70</sup> The CRC was adopted on November 20, 1989 and entered into force on September 2, 1990.<sup>71</sup> Currently, 193 countries have ratified the CRC.<sup>72</sup> Somalia

---

66. 18 U.S.C. § 2442(a) (2006); see Marsha L. Hackenberg, *Can the Optional Protocol for the Convention on the Rights of the Child Protect the Ugandan Child Soldier*, 10 INDIANA INT'L & COMP. L. REV., 417, 429 (2000) (criticizing the CRC for defining a child as under eighteen, while allowing children fifteen years and older to participate in armed combat).

67. 18 U.S.C. § 2442(c) (2006).

68. *Id.*; see *Universal Jurisdiction*, AMNESTY INT'L, [www.amnesty.org/en/international-justice/issues/universal-jurisdiction](http://www.amnesty.org/en/international-justice/issues/universal-jurisdiction) (last visited Feb. 4, 2012), for further information on the concept of universal jurisdiction.

69. Office to Monitor and Combat Trafficking in Persons, *The 3 Ps: Prevention, Protection, Prosecution*, U.S. DEP'T ST., <http://www.state.gov/j/tip/rls/fs/2011/167228.htm> (last visited Mar. 23, 2012). While many governments employ this paradigm in their efforts to combat human trafficking, in 2009, Secretary of State Hillary Rodham Clinton decided to include a fourth "P" – partnership, which she announced will serve "as a pathway to achieve progress on the 3Ps in the effort against modern slavery." *Id.*

70. U.N. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC], available at <http://www2.ohchr.org/english/law/pdf/crc.pdf>.

71. *Id.*

72. *Treaty Status: Convention on the Rights of the Child*, U.N. TREATY COLLECTION, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsgno=IV-11&chapter=4&lang=en> (last visited Mar. 24, 2012) [hereinafter *Treaty*].

and the United States<sup>73</sup> are the only two countries that have signed, but have not ratified the Convention.<sup>74</sup>

Under the CRC, a child is anyone under eighteen years of age.<sup>75</sup> The CRC requires that State Parties “take all feasible measures” to ensure that children under eighteen do not engage in direct hostilities.<sup>76</sup> It further prohibits State Parties from recruiting children under fifteen into the armed forces.<sup>77</sup> The CRC also imposes positive obligations on State Parties to promote “recovery and social reintegration of a child victim of . . . armed conflicts.”<sup>78</sup>

While the international community overwhelmingly accepted the CRC, critics argue that the CRC fails to consider the complexities and environments that contribute to the use of child soldiers.<sup>79</sup> This leads to the practical difficulty of implementing its articles.<sup>80</sup> Indeed, State Parties recently emerging from internal conflict may not have the infrastructure and organizations necessary to address the long-term

---

*Status: CRC].*

73. Some arguments posed to explain why the United States has failed to ratify the CRC include concerns about “sovereignty,” “federalism,” “reproductive and family planning rights,” and “parents’ rights.” See generally Lainie Rutkow & Joshua T. Lozman, *Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 168 (2006) (explaining the concerns U.S. critics have with the CRC and refuting arguments against ratification).

74. *Id.* Signing a treaty signifies that the country intends to ratify it at some later time. While it does not bind the signing party, it “creates an obligation, in the period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty.” *Participating in Multilateral Treaties*, U.N. OFFICE OF LEGAL AFF., [http://untreaty.un.org/olainterinternet/Assistance/handbook\\_eng/hbframeset.htm](http://untreaty.un.org/olainterinternet/Assistance/handbook_eng/hbframeset.htm) (last visited Mar. 24, 2012) (click “Participating in Multilateral Treaties”).

75. CRC, *supra* note 70, art. 1.

76. *Id.* art. 38(2).

77. *Id.* art. 38(3).

78. *Id.* art. 39.

79. Jo de Berry, *Child Soldiers and the Convention on the Rights of the Child*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 92, 93-94 (2001). Jo de Berry argues that a State Party cannot just implement the CRC on the state level (as a “state-crisis”) but must also consider social relations at the local level when discussing options for peace. *Id.* at 103.

80. *Id.* at 92.

needs of its former child soldiers.<sup>81</sup> Therefore, the international community must act urgently and go beyond merely condemning the practice in principle; it must take the initiative to help countries reintegrate and rehabilitate these children.

In 2000, the U.N. Committee on the Rights of the Child adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>82</sup> This Optional Protocol, entered into force on February 12, 2002, directly addresses the need for extra protections for children involved in armed conflict.<sup>83</sup> Unlike the CRC, the United States ratified the Optional Protocol on December 22, 2002, and is therefore bound by its articles.<sup>84</sup>

The Optional Protocol places more stringent obligations on State Parties than the original CRC. While the CRC requires States to refrain from using children under fifteen in direct hostilities, the Optional Protocol raises this age to eighteen.<sup>85</sup> It also prohibits compulsory recruitment of persons under eighteen into the armed forces.<sup>86</sup> Further, the Optional Protocol directly addresses armed groups not affiliated with a nation's government by prohibiting these forces from recruiting or using soldiers in combat that are under

81. Nagle, *supra* note 18, at 10.

82. Optional Protocol to Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, *opened for signature* May 25, 2000, 2713 U.N.T.S. 222 [hereinafter *Optional Protocol*], *available at* <http://www2.ohchr.org/english/law/crc-conflict.htm>.

83. *Id.* pmb1.

84. *Treaty Status: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en) (last visited Mar. 24, 2012) [hereinafter *Treaty Status: Optional Protocol*]. The United States ratified the Optional Protocol with several "Declarations and Reservations," which are statements that "exclude or modify the legal effect of a treaty provision." Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331. For example, it included notice that under U.S. law, seventeen-year-old children may voluntarily join the military with parental consent, and that by ratifying the treaty it will not subject the United States to the jurisdiction of "any international tribunal, including the International Criminal Court." *Treaty Status: Optional Protocol, supra* (click hyperlink "United States" for Declarations and Reservations expansion).

85. Optional Protocol, *supra* note 82, art. 1.

86. *Id.* art. 2.

eighteen.<sup>87</sup> In addition to the Protocol's prohibitions, this treaty places positive obligations on States to implement measures to demobilize any child soldiers in its forces and adopt national laws to criminalize the practice.<sup>88</sup>

International treaties and instruments, such as the CRC and its Optional Protocol regarding children in armed conflict, are valuable and necessary tools to establish international norms. In addition, they raise awareness, and in turn, the support of the international community to collectively denounce human rights abuses. However, these treaties are limited in scope and nature, and they tend to be idealistic rather than practicable. The U.N.'s mechanisms only bind State Parties that ratify the treaties; it therefore has no authority over countries that are not parties to the Convention or are non-state entities, such as rebel militias recruiting child soldiers.<sup>89</sup> It relies on the State Parties themselves to implement its doctrines and prevent human rights abuses around the world. Therefore, most of the responsibility in preventing such abuses lies with the individual countries themselves.

While the U.N. views its treaties and conventions as binding on State Parties, it has no police power mechanism to enforce its decisions; therefore, the CRC and its Optional Protocol are "limited by the signatories' willingness to comply."<sup>90</sup> The CRC, like other conventions, relies on a reporting system.<sup>91</sup> Each State Party submits a report every five years illustrating how that country has taken measures to implement the CRC's rights.<sup>92</sup> The Committee on the Rights of the Child then disseminates reports back to those countries, which make suggestions and recommendations for improved compliance.<sup>93</sup>

---

87. *Id.* art. 4(1).

88. *Id.* arts. 4(2), 6(1).

89. *Chapter Four: Becoming a Party to the Convention and Optional Protocol*, UNITED NATIONS ENABLE, <http://www.un.org/disabilities/default.asp?id=231> (last visited May 5, 2012).

90. Susan O'Rourke Von Struensee, *Violence, Exploitation, and Children: Highlights of the United Nations Children's Convention and International Response to Children's Human Rights*, 18 SUFFOLK TRANSNAT'L L. REV. 589, 590 (1995).

91. Hackenberg, *supra* note 66, at 429.

92. CRC, *supra* note 70, art. 44.

93. Hackenberg, *supra* note 66. Certain U.N. committees, such as the Human

The CSPA is meant to complement and further the goals of these international treaties. The CRC and its Optional Protocol have inherent limits that make implementing procedures to abolish the use of child soldiers unattainable without local and national efforts. The United States has the ability to convince foreign governments that using child soldiers is not only morally reprehensible but also financially inadvisable if it wishes to be eligible for U.S. military aid.

### III. IMPLICATIONS OF THE CHILD SOLDIERS PREVENTION ACT

#### A. *The CSPA's Efficacy in Eradicating the Use of Child Soldiers*

Although the international community has condemned the use of child soldiers, military recruiters continue to defy these international norms. Moral condemnation or treaties prohibiting child soldiers often fall on deaf ears in countries that are torn by internal conflict, civil war, and poverty. Recruiters "have reached such a state of violence that all standards of moral and ethical conduct cease to exist or hold meaning."<sup>94</sup> Releasing child soldiers may be seen as impractical to a militia embroiled in a civil war, where "replenishing combatants is a constant preoccupation."<sup>95</sup>

The CSPA's inherent value is that its prohibition is set out in economic and political terms, rather than relativistic moral or ethical ideals. The CSPA's prohibition both economically incentivizes and punishes countries that continue to recruit and use child soldiers in its forces. As a global power, the United States exerts great influence over other governments around the world.<sup>96</sup> Countries across the

---

Rights Committee, accept individual complaints from persons whose human rights have been violated. *Human Rights Bodies, Complaint Procedures*, OFFICE U.N. HIGH COMMISSIONER HUM. RTS., <http://www2.ohchr.org/english/bodies/petitions/index.htm> (last visited May 9, 2012). While the CRC and its Optional Protocols do not yet accept such complaints, the Committee has proposed a Third Optional Protocol, which would permit the Committee to receive individual complaints from children. *Committee on the Rights of the Child*, OFFICE U.N. HIGH COMMISSIONER HUM. RTS., <http://www2.ohchr.org/english/bodies/crc/> (last visited May 5, 2012).

94. Nagle, *supra* note 18, at 26.

95. *Id.*

96. *Casualties of War*, *supra* note 2, at 57 (written testimony submitted by Rachel Stohl, Senior Analyst, Center for Defense Information, Washington D.C.).

globe are eager to receive weapons and other military assistance from our government.<sup>97</sup> However, countries that continue to commit human rights abuses should not be rewarded with highly valued military aid because it renders the CSPA ineffective.

*B. Trafficking in Persons Report as a Guide to Country Compliance*

The CSPA prohibits the U.S. government from sending certain types of military assistance to foreign governments that use or support the use of child soldiers. This aid is comprised of Foreign Military Financing (FMF), International Military Education and Training (IMET), licenses for direct commercial sales of weapons, and transfers of excess defense articles.<sup>98</sup> In 2011, in an effort to strengthen the CSPA, Congress proposed an amendment to incorporate Peacekeeping Operation funds into the current prohibition provision.<sup>99</sup>

To determine which countries should be prohibited from receiving the above-specified military assistance, the CSPA requires the State Department to investigate countries alleged to be using child soldiers and include it in its annual Trafficking in Persons Report (“TIP Report”).<sup>100</sup> While the TIP Report addresses a country’s human trafficking situation as a whole, the President uses the report to determine if and how each country is addressing its child soldier problem. To measure a country’s efforts to combat human trafficking abuses, the State Department places each country into a tier.<sup>101</sup> Tier 1

---

97. *Id.*

98. *U.S. Limits Military Aid*, *supra* note 58. Excess defense articles are articles from the Department of Defense and U.S. Coast Guard that the U.S. Armed Forces no longer needs and therefore declares excess. *Excess Defense Articles Program*, BUREAU OF INDUSTRY AND SECURITY, <http://beta-www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/excess-defense-articles-program> (last visited Mar. 30, 2012). The Defense Security Cooperation Agency then offers these articles to foreign governments or international organizations, often to help U.S. allies modernize their military programs. *Excess Defense Articles*, DEF. SECURITY COOPERATION AGENCY, <http://www.dsca.mil/programs/eda/edamain.htm> (last visited Mar. 30, 2012).

99. S. 1259, 112th Cong. § 3 (as introduced in Senate, June 22, 2011).

100. 22 U.S.C. 2151n(f) (2006).

101. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 11 (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164222.htm>.

## 250 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 43

“indicates that a government has acknowledged the existence of human trafficking, has made efforts to address the problem, and meets the [Trafficking Victims Protection Act] minimum standards.”<sup>102</sup> Tier 2 includes countries that have yet to fully comply with Trafficking Victims Protection Act (TVPA) standards but are making significant efforts to do so.<sup>103</sup> Countries on the Tier 2 Watch List have made significant efforts to comply with the TVPA, but are at risk of falling into Tier 3.<sup>104</sup> Tier 3 is the lowest ranking and describes governments that “do not fully comply with the minimum standards and are not making significant efforts to do so.”<sup>105</sup>

In June 2011, the State Department issued its annual TIP Report, which identified the following six governments that are prohibited from receiving U.S. military aid under the CSPA: Burma, Chad, Congo, Sudan, Somalia, and Yemen.<sup>106</sup>

In addition, the State Department categorized Burma,<sup>107</sup> Sudan,<sup>108</sup> and Yemen<sup>109</sup> as Tier 3 countries. The State Department labeled Chad<sup>110</sup> and Congo<sup>111</sup> Tier 2 Watch List countries as they are making efforts to come into compliance with the TVPA but are at significant risk of falling back into Tier 3. It labeled Somalia a “special case” because the country has lacked a central government since 1991.<sup>112</sup>

---

102. *Id.*

103. *Id.*

104. *Id.* Risk factors considered when placing a country on the Watch List include a significant or increasing “absolute number of victims,” a “failure to provide evidence of increasing efforts,” or a mere promise by the country “to take additional steps over the next year.” *Id.*

105. *Id.*

106. *U.S.: Don't Finance Child Soldiers, supra* note 17.

107. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 104 (2011) [hereinafter TIP 2011], available at <http://www.state.gov/j/tip/rls/tiprpt/2011>.

108. *Id.* at 335.

109. *Id.* at 387.

110. *Id.* at 117.

111. *Id.* at 132.

112. *Id.* at 395. In a recent Trafficking in Persons Report, published in June 2012, the U.S. State Department once again categorized Somalia as a Special Case. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 379, 379 (2012) [hereinafter TIP 2012], available at <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> (scroll to “PDF Format”). The report notes that the lack of a unified centralized government makes it extremely difficult for the country to address its human

Of these six countries, all but Burma and Somalia have received otherwise prohibited U.S. military assistance under the CSPA.<sup>113</sup> For example, in 2011 the State Department requested \$35 million in FMF for Yemen.<sup>114</sup> This is only a small portion of the “total military, security and other assistance . . .” provided to Yemen, “. . . which has exceeded \$100 million annually in recent years.”<sup>115</sup> The Human Rights Watch child rights activist Jo Becker argues that the issuance of these waivers “show a lack of leadership and a disregard for U.S. law.”<sup>116</sup>

It may be telling to note that five of the six countries on the State Department’s list have actually ratified the CRC,<sup>117</sup> a step which even the United States has not yet taken. Chad, Congo, and Yemen further ratified the more stringent Optional Protocol on the Involvement of Children in Armed Conflict.<sup>118</sup> Yet, since their ratifications, credible reports cite the use of child soldiers in these countries as recently as 2010.<sup>119</sup> Countries may be motivated to ratify such treaties for public relations reasons, but have little economic or political incentive to adhere to its mandates.<sup>120</sup> In 1999, this occurred in Columbia, where a guerilla force agreed with the U.N. Special Representative to stop recruiting soldiers under age fifteen, but never carried out its promise.<sup>121</sup>

The TIP Reports summarize each country’s progress toward demobilizing and eliminating the use of children in their ranks, and

---

trafficking issues. *Id.* Further, it limits the amount of accurate data that the State Department can collect regarding the trafficking issue. *Id.* However, the report notes that during the reporting period, the U.N. estimates about “[forty-six] incidents of unlawful recruitment and use of soldiers by the T[ransitional] F[ederal] G[overnment] and its allied militia in July and August 2011.” *Id.* at 380.

113. *U.S.: Don’t Finance Child Soldiers*, *supra* note 17.

114. *Id.*

115. Patel, *supra* note 14.

116. *U.S.: Don’t Finance Child Soldiers*, *supra* note 17.

117. *Treaty Status: CRC*, *supra* note 72.

118. *Treaty Status: Optional Protocol*, *supra* note 84.

119. See TIP 2011, *supra* note 107, at 117-19, 132-34, 387-88. Congo ratified the CRC in 2001, Chad in 2002, and Yemen in 2007. *Treaty Status: Optional Protocol*, *supra* note 84.

120. Nagle, *supra* note 18, at 26; see also Desierto, *supra* note 30, at 347.

121. Nagle, *supra* note 18, at 26.

## 252 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 43

the government's role in either combatting or accepting the use of child soldiers.<sup>122</sup> The President uses these reports when he considers applying waivers or reinstatement of assistance to countries.<sup>123</sup> Despite slow progress from these countries (if any at all), President Obama has seemingly ignored the State Department's recommendations, and he has issued waivers and reinstated assistance, even though there is little evidence to indicate that the country should receive such benefits.

In June 2012, the State Department released the 2012 TIP Report, with a few changes from 2011.<sup>124</sup> In particular, seven countries have now been listed under the CSPA as prohibited from receiving military assistance: Burma, Libya, Congo, South Sudan, Somalia, Sudan, and Yemen.<sup>125</sup> Notably, Chad—on the CSPA list in both 2010 and 2011—has been taken off the list, meaning that it is no longer prohibited from receiving assistance.<sup>126</sup> Further, Libya and the newly created South Sudan are on the list for the first time.<sup>127</sup>

On September 28, 2012, President Obama again issued a Presidential Determination with respect to the CSPA of 2008.<sup>128</sup> Of the seven listed countries, President Obama authorized full waivers for Libya, South Sudan, and Yemen (two of which had been on the CSPA list for less than four months before they received waivers).<sup>129</sup> Further, he authorized a partial waiver for Congo.<sup>130</sup> However, while the President's full Memorandum of Justification has been submitted to Congress, it has not yet been published. Therefore, the majority of this paper focuses on 2010 and 2011, years during which President Obama issued waivers and justifications for countries prohibited from receiving U.S. military assistance since the CSPA's inception. The

---

122. 22 U.S.C. § 2370c-2(b) (2006).

123. *See id.* § 2370c-2(c).

124. *See generally* TIP 2012, *supra* note 112.

125. *Id.* at 36.

126. *Id.*

127. *Id.*

128. Presidential Determination No. 2012-18, 77 Fed. Reg. 196, 51509 (Sept. 28, 2012) [hereinafter Presidential Determination 2012].

129. *Id.*

130. *Id.* The partial waiver “allow[s] for continued provision of [IMET] funds and nonlethal Excess Defense Articles, and the issuance of licenses for direct commercial sales of U.S. origin defense articles . . .” *Id.*

following four countries have received military assistance in the past two years, despite their designation as countries utilizing child soldiers.

### 1. Chad

Chad's political instability and violence arises both from civil wars and conflict with neighboring nations.<sup>131</sup> Since Chad established its independence from France in 1960, it has experienced almost constant conflict.<sup>132</sup> In the mid-1960s, a tax revolt in Northern Chad resulted in two competing guerilla factions vying for government control.<sup>133</sup> Violent conflict continued in Chad throughout the 1970s and 1980s, stemming predominantly from ethnic factions between the north and the south.<sup>134</sup> In 1990, the current president, Idriss Déby Itno, rose to power, resulting in intense opposition from ethnic factions and attempts to overthrow the government.<sup>135</sup>

In addition to the civil war, the Sudanese Darfur conflict spilled over into Chad in 2004.<sup>136</sup> Thousands of Sudanese escaped Sudan and sought refuge in Chad, and the Chadian army and Sudanese militias became embroiled in bloody conflict.<sup>137</sup> The border conflict continued until 2010, when Sudan and Chad held peace talks, agreed to cease conflict, and jointly patrol their shared border.<sup>138</sup>

In 2010 and 2011, the TIP Reports have placed Chad on the Tier 2 Watch List.<sup>139</sup> After promising the U.N. that it would release all detained child soldiers in 2008, Chad slowly began the process of

---

131. See CHILD SOLDIERS INT'L, BETTER THAN CURE: PREVENTING THE RECRUITMENT AND USE OF CHILDREN IN THE CHADIAN NATIONAL ARMY 5-7 (2012) [hereinafter BETTER THAN CURE].

132. See *Africa—Chad Profile*, BBC NEWS (Aug. 23, 2012, 4:18 PM), <http://www.bbc.co.uk/news/world-africa-13164690> [hereinafter *Chad Profile*].

133. See *id.*

134. See BETTER THAN CURE, *supra* note 131, at 5.

135. *Id.*; see also *Chad Profile*, *supra* note 132.

136. BETTER THAN CURE, *supra* note 131, at 5; see also *Chad Profile*, *supra* note 132.

137. *Chad Profile*, *supra* note 132.

138. *Id.*; see also BETTER THAN CURE, *supra* note 131, at 5.

139. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 108 (2010) [hereinafter TIP 2010], available at <http://www.state.gov/j/tip/rls/tiprpt/2010/142759.htm>; TIP 2011, *supra* note 107, at 117.

demobilization.<sup>140</sup> The 2010 TIP Report noted that conscription of child soldiers had decreased from the previous year,<sup>141</sup> and the 2011 Report cited no new instances of child soldier recruitment.<sup>142</sup> Most recently in June 2011, the government of Chad signed an action plan with the U.N. to demobilize child soldiers from its ranks.<sup>143</sup> The 2011 TIP Report does not clearly indicate how many child soldiers remain in the Chadian military.<sup>144</sup> The Chadian government has made improvements in the area of abolishing the use of child soldiers, but its Tier 2 Watch List designation likely signifies that it has not made enough efforts to combat other forms of human trafficking.<sup>145</sup>

On October 25, 2010, President Obama issued a full waiver of the CSPA prohibition for Chad because doing so was in the “national interest” of the United States.<sup>146</sup> He justified the full waiver by asserting that the Act’s restrictions would limit the U.S. government’s ability to “reinforce positive trends within the Chadian Government,” including UNICEF-coordinated progress to demobilize children from the ranks of the Chadian National Army.<sup>147</sup> He further argued that the prohibition would harm Chad’s relationship with the United States, as Chad is an ally that continues to cooperate in the efforts to combat

---

140. *Chad, Central African Republic: UN Envoy Welcomes Release of Child Soldiers*, U.N. NEWS SERV. (June 2, 2008), <http://www.un.org/apps/news/story.asp?NewsID=26881&Cr=child&Cr1=&Kw1=COOMARASWAMY&Kw2=&Kw3=#>.

141. TIP 2010, *supra* note 139, at 108.

142. TIP 2011, *supra* note 107, at 117.

143. *Child Soldiers: Commitments Must Now Be Turned to Action*, CHILD SOLDIERS INT’L (Apr. 16, 2012), [http://www.child-soldiers.org/Better\\_than\\_Cure.Press\\_release.16April2012.pdf](http://www.child-soldiers.org/Better_than_Cure.Press_release.16April2012.pdf).

144. TIP 2011, *supra* note 107, at 117-19.

145. *Id.* at 119. The U.S. State Department kept Chad categorized under the Tier 2 Watch List in its 2012 Trafficking in Persons Report, despite removing it from the CSPA list. TIP 2012, *supra* note 112, at 115. The TIP Report cites no new instances of child soldier conscription since mid-2010. *Id.* Chad remains on the Watch List because the “government did not show evidence of overall increasing efforts over the previous year” in addressing its human trafficking and child soldiers problem. *Id.*

146. Presidential Determination No. 2011-04, 75 Fed. Reg. 234, 75856 (Oct. 25, 2010) [hereinafter Presidential Determination 2010].

147. *Id.*

terrorism.<sup>148</sup> Critics of Obama's waivers resounded strong concerns because President Obama seemingly placed combatting terrorism above the need to combat the use of child soldiers.<sup>149</sup>

One year later in 2011, President Obama fully reinstated assistance to Chad and certified to Congress that Chad has taken "actual steps to [comply]" with the Act.<sup>150</sup> By reinstating unrestricted aid to Chad so shortly after it signed the action plan, the President has aroused valid concerns from within the international community. Several human rights activists stated that it was "too early to tell how effective the demobilization efforts will be."<sup>151</sup>

In April 2012, a nonprofit activist group, Child Soldiers International, published a report on Chad's current efforts to combat child soldier recruitment.<sup>152</sup> The report highlights the difficulties the Chadian government has had in implementing widespread policies against the use of child soldiers, and cautions that the "security environment remains conducive to the recruitment and use of children."<sup>153</sup> Chad has taken few concrete steps to implement the action plan since June 2011.<sup>154</sup> For example, it failed to implement effective age-verification procedures for soldier recruitment, criminalize the use of children in armed forces, or hold any members of the Chadian Army accountable for their actions.<sup>155</sup> Chad's lack of progress provides evidence that President Obama may have prematurely reinstated full assistance.

---

148. *Id.*

149. See Michelle Chen, *White House Says Child Soldiers Are Ok, if They Fight Terrorists*, COLORLINES (Nov. 15, 2010), [http://colorlines.com/archives/2010/11/did\\_you\\_get\\_obamas\\_memo\\_white\\_house\\_selectively\\_okays\\_child\\_soldiers.html](http://colorlines.com/archives/2010/11/did_you_get_obamas_memo_white_house_selectively_okays_child_soldiers.html).

150. Presidential Determination No. 2012-01, 76 Fed. Reg. 206, 65928 (Oct. 4, 2011) [hereinafter Presidential Determination 2011].

151. Patel, *supra* note 14.

152. See BETTER THAN CURE, *supra* note 131.

153. *Id.* at 2 (emphasizing the precarious political environment, the report ominously predicts that "any . . . return to violence in Chad could see a renewal of recruitment and use of children in armed conflict.").

154. *Child Soldiers: Commitments Must Now Be Turned to Action*, *supra* note 143.

155. BETTER THAN CURE, *supra* note 131, at 2.

These concerns of premature reinstatement of assistance are compounded by the fact that the State Department removed Chad from the CSPA list in 2012.<sup>156</sup> The 2012 TIP Report continues to categorize Chad as a Tier 2 Watch List country,<sup>157</sup> but the CSPA no longer prohibits it from receiving military assistance. Since the CSPA entered into force, Chad has not been held accountable through the CSPA's prohibition for its child soldier recruitment policies. President Obama issued a full waiver in 2010, reinstated full assistance in 2011, and the State Department removed Chad from the list entirely in 2012. This means that the CSPA's prohibition has never affected Chad, even when it was on the list.

## 2. Congo

Since its independence in 1960, Congo has faced civil war and ethnic violence.<sup>158</sup> Violence in Congo stems from conflict in several African nations. From 1998 to 2003, Congo became embroiled in what some call "Africa's world war," involving Angola, Namibia and Zimbabwe fighting against Uganda and Rwandan rebels.<sup>159</sup> Despite peace agreements among certain rebel armies, sporadic upsurges of violence continue to plague Congo.<sup>160</sup> As a result, Congo's political instability continues to create an environment that fosters human trafficking and child soldier recruitment.

The Secretary of State categorized Congo as Tier 3 in the 2011 TIP Report.<sup>161</sup> Throughout 2010, Congo's government military, the *Forces Armées de la République Démocratique du Congo* (French for the "Armed Forces of the Democratic Republic of Congo") continued to abduct children to serve in their ranks.<sup>162</sup> The Report confirmed, "121 . . . cases of . . . child soldier recruitment" in three months in

---

156. See TIP 2012, *supra* note 112, at 36.

157. *Id.* at 115.

158. *Africa—Democratic Republic of Congo Profile*, BBC NEWS (May 29, 2012, 6:44 PM), <http://www.bbc.co.uk/news/world-africa-13283212>.

159. *Id.*

160. See *id.*

161. TIP 2011, *supra* note 107, at 129. The U.S. State Department has once again placed Congo in Tier 3 in its 2012 Trafficking in Persons Report. TIP 2012, *supra* note 112, at 125.

162. TIP 2011, *supra* note 107, at 129.

2010.<sup>163</sup> Some army commanders continue to prevent the demobilization of children within their ranks, and several commanders identified in previous reports continue to serve in their positions without any investigation or discipline regarding their conduct.<sup>164</sup> Most recently, the 2012 TIP Report indicates that although Congo formed a ministerial committee to create and sign a U.N. action plan regarding child soldiers, no action planned has been signed.<sup>165</sup>

In 2010, President Obama issued a full CSPA waiver for Congo;<sup>166</sup> in 2011, he restricted some funding by issuing a partial waiver that will provide certain types of assistance and sales of some military equipment.<sup>167</sup> To date, the United States has not issued a complete waiver because Congo's government has resisted signing a U.N. action plan, failed to demobilize children, and openly promoted officers known for their recruitment of child soldiers.<sup>168</sup> The President feels that a full prohibition on military assistance would hinder the United States and Congo's ability to professionalize the Congo military and stabilize the country.<sup>169</sup>

### 3. Sudan

Similar to the countries above, Sudan has been plagued by civil war and political unrest.<sup>170</sup> Before the South seceded and became South Sudan in 2011, the North-South civil war killed approximately 1.5 million people.<sup>171</sup> In addition, ethnic violence arose in the western

---

163. *Id.*

164. *Id.* at 130. According to the 2012 TIP Report, several Congolese national army ("FARDC") commanders continued to hold leadership positions throughout the 2012 TIP reporting period, despite accusations they recruited children into their ranks. TIP 2012, *supra* note 112, at 125.

165. TIP 2012, *supra* note 112, at 125.

166. Presidential Determination 2010, *supra* note 146.

167. Presidential Determination 2011, *supra* note 150.

168. *U.S.: Don't Finance Child Soldiers*, *supra* note 17.

169. Presidential Determination 2011, *supra* note 150. In 2012, the President again issued a partial waiver for Congo, allowing the country to receive some types of military assistance, such as IMET funds. Presidential Determination 2012, *supra* note 128.

170. *See Sudan Country Profile—Overview*, BBC NEWS (May 1, 2012, 6:18 PM), <http://www.bbc.co.uk/news/world-africa-14094995>.

171. *Id.*

Sudanese area of Darfur when Arab militias employed ethnic cleansing against non-Arab citizens.<sup>172</sup> The conflict, which began in 2003 and lasted until 2008, is estimated to have killed over 200,000 people.<sup>173</sup> The Darfur conflict impacted not only Sudan, but neighboring Chad, which became involved in border disputes after Darfur refugees spilled into Chad seeking safety.<sup>174</sup>

The 2011 TIP Report lists Sudan as Tier 3.<sup>175</sup> Although Sudan's first civil war ended in 2005, U.N. personnel continued to see children dressed in the government's military uniform, carrying weapons, and participating actively in military-related duties as late as 2010.<sup>176</sup> In the most recent TIP Report, issued in 2012, the State Department noted that child soldiers continue to be conscripted by government security forces and government-supported militias.<sup>177</sup> Some demobilization apparently began after 2005, but efforts are far from complete and the State Department still does not know how many children remain with the Government of Southern Sudan's army.<sup>178</sup> According to the 2012 TIP Report, Sudan's government has not yet signed an action plan with the U.N.<sup>179</sup>

Basing the justification on the 2010 TIP Report, President Obama issued a full waiver of the CSPA for Sudan in 2010, noting that the Sudanese People's Liberation Army promised to prevent recruitment of, and demobilize children from its ranks.<sup>180</sup> Interestingly, the President did *not* include Sudan in its Presidential Determination of

172. *Id.*

173. *Id.*

174. *Id.*; see discussion *infra* Part III.B.1.

175. TIP 2011, *supra* note 107, at 335. In the U.S. State Department's most recent TIP Report, Sudan remains categorized in Tier 3. TIP 2012, *supra* note 112, at 323.

176. TIP 2011, *supra* note 107, at 335.

177. TIP 2012, *supra* note 112, at 323.

178. TIP 2011, *supra* note 107, at 335-36.

179. TIP 2012, *supra* note 112, at 323. This is not to be confused with South Sudan, whose military signed an action plan with the U.N. in March 2012. *South Sudan's Army Signs Pact with U.N. to Release All Children Within its Ranks*, U.N. NEWS CENTRE (Mar. 12, 2012), <http://www.un.org/apps/news/story.asp?NewsID=41512>. However, the State Department listed South Sudan on its 2012 CSPA list of countries that should not receive military assistance under the CSPA. TIP 2012, *supra* note 112, at 36.

180. Presidential Determination 2010, *supra* note 146.

waivers for 2011<sup>181</sup> or 2012.<sup>182</sup> The 2012 TIP Report concluded that Sudan's militias and security forces continued to conscript child soldiers and failed to sign a proposed action plan with the U.N.<sup>183</sup>

#### 4. *Yemen*

Conflict in Yemen increased in 2011, after an uprising inspired by the Arab Spring caused "hundreds of death and rising chaos" in efforts to overthrow the authoritarian president.<sup>184</sup> After the uprising, 2011 brought a change of leadership, as well as increased attacks by an al-Qaeda group, that has struggled for power since it had to close its bases in Afghanistan and Pakistan.<sup>185</sup> The Yemeni government continues to struggle against al-Qaeda factions, who align with Yemeni rural tribes in the outskirts of the country.<sup>186</sup>

Yemen dropped from the Tier 2 Watch List to Tier 3 in the 2011 TIP Report.<sup>187</sup> Despite a Yemeni law stipulating that persons must be at least eighteen to serve in their armed forces, credible reports have surfaced that government armed forces and government-allied militias continue to conscript children.<sup>188</sup> The report states that "a local NGO estimated that children under . . . 18 may make up more than half of some tribes' armed forces."<sup>189</sup> In the 2012 TIP Report, the State Department states that "[t]he number of child soldiers [recruited into the government armed forces, government supported militias, and rebel militias] reportedly increased" during the 2011-2012 reporting period.<sup>190</sup> While President Obama acknowledged Yemen's human

---

181. Presidential Determination 2011, *supra* note 150.

182. Presidential Determination 2012, *supra* note 128.

183. TIP 2012, *supra* note 112, at 323.

184. *Topics—Yemen*, N.Y. TIMES (Aug. 6, 2012), <http://topics.nytimes.com/top/news/international/countriesandterritories/yemen/index.html> [hereinafter *Topics—Yemen*].

185. *Yemen Profile—Overview*, BBC NEWS (Sept. 12, 2012 5:43 PM), <http://www.bbc.co.uk/news/world-middle-east-14704852>.

186. *Topics—Yemen*, *supra* note 184.

187. *Compare* TIP 2010, *supra* note 139, at 352, *with* TIP 2011, *supra* note 107, at 387.

188. TIP 2011, *supra* note 107, at 387.

189. *Id.* This estimate was repeated in the 2012 TIP Report for Yemen. TIP 2012, *supra* note 112, at 374.

190. TIP 2012, *supra* note 112, at 374.

rights abuses regarding child soldiers, he issued full national interest waivers to Yemen in both 2010<sup>191</sup> and 2011.<sup>192</sup> He justified these waivers by citing the Yemeni government's vital cooperation in counterterrorism operations against al-Qaeda.<sup>193</sup>

### C. Interpretation of the CSPA

It is clear that the Legislature intended the CSPA to be more effective than it has proven to be in reality. Congressman Jeff Fortenberry, one author of the CSPA, issued a press release in June 2011 that urged President Obama to seriously enforce the statute because the countries that were granted the 2010 waivers made insufficient progress in combatting their use of child soldiers.<sup>194</sup> It is further obvious that the authors of the statute are exasperated because the President is not effectuating Congress's intent in implementing the law. After the 2011 waivers, Congress tried to enhance the CSPA by proposing an amendment that would require the President to provide Congress a report no later than fifteen days before issuing another waiver.<sup>195</sup> The report is to specify "what credible and verifiable steps" violating countries are taking to prevent further recruitment of child soldiers and how it is demobilizing current child soldiers.<sup>196</sup> The proposed amendment also adds Peacekeeping Operation Funds to the list of prohibited military assistance.<sup>197</sup>

---

191. Presidential Determination 2010, *supra* note 146.

192. Presidential Determination 2011, *supra* note 150. In 2012, the President again granted a full waiver to Yemen. Presidential Determination 2012, *supra* note 128. Presumably, his reasons for doing so are the same as in 2010 and 2011, due to the ongoing counterterrorism efforts of the United States; however, the President's Memorandum of Justification has yet to be released to the public.

193. Presidential Determination 2010, *supra* note 146; Presidential Determination 2011, *supra* note 150.

194. Fortenberry, *Author of Child Soldiers Prevention Act, comments on 2011 Human Trafficking Report*, CONGRESSMAN JEFF FORTENBERRY (Jun. 28, 2011), [http://fortenberry.house.gov/index.php?option=com\\_content&task=view&id=3541&Itemid=300032](http://fortenberry.house.gov/index.php?option=com_content&task=view&id=3541&Itemid=300032).

195. H.R. 3589, 112<sup>th</sup> Cong. (as introduced in the House of Representatives, Dec. 7, 2011).

196. Fortenberry, *House Foreign Affairs*, *supra* note 1.

197. *Id.*

The above amendment, while improving the statute's enforceability to some degree, will not completely fix the flaws in the statute's wording. A *prima facie* reading of the statute illustrates that the fault predominantly lies with the severely brief and vague language that comprises the prohibition and its limitations. The statute purports to establish a general ban on certain military assistance to governments identified as recruiting child soldiers, with a national interest waiver. While Congress argues that the waiver was intended to be "rare and temporary,"<sup>198</sup> the statute's language does not evidence this restricted use. The waiver's language in its entirety states that "[t]he President may waive the application to a country of the prohibition in subsection (a) if the President determines such waiver is in the national interest of the United States."<sup>199</sup> Read on its face, the statute gives the President absolute discretion to determine what constitutes a situation that is in the "national interest of the United States."<sup>200</sup>

Congress's assertion, that the President is failing to implement the CSPA according to their intentions, begs the question, what *did* Congress intend when it authored the statute? It is extremely difficult to ascertain the legislators' intent, on the statute's face, because the "plain meaning"<sup>201</sup> of the language leaves much to be desired. The statute fails to define "national interest," or explain what "steps" a country must complete to have assistance reinstated. Nor does the statute indicate what constitutes "*reasonable* steps to implement *effective* measures to demobilize child soldiers. . . ."<sup>202</sup> It would seem, therefore, that the same body who issues the waivers, the executive branch, has discretion to define these vague terms.

A review of the legislative history sheds little light on legislative intent regarding the CSPA. The Committee on the Judiciary of the United States Senate held a hearing on the child soldier issue in early

---

198. *Id.*

199. 22 U.S.C. § 2370c-1(c)(1) (2006).

200. *Id.* § 2370c-1(c)(1).

201. A legal term of art, "plain meaning" means "[t]he meaning attributed to a document . . . by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent." BLACK'S LAW DICTIONARY 1069-70 (9th ed. 2009).

202. 22 U.S.C. § 2370c-1(e)(1)(A) (emphasis added).

2007, when the CSPA was first being developed.<sup>203</sup> This hearing illustrated Congress's general intent to implement a law that would prevent further use of child soldiers by using the United States' influence as a military superpower.<sup>204</sup> Congress did not want U.S. taxpayer dollars funding militaries that recruit children, and therefore found that withholding much-needed military aid from these governments would pressure these countries into complying with international human rights standards.<sup>205</sup>

Beyond the general intent of Congress's goals in developing the CSPA, the rest of the legislative history is decidedly silent, especially regarding the interpretation of specific terms used throughout the statute. A review of the Congressional Reports, records, and both House and Senate versions of the proposed statute reveal that it passed with relatively little debate and change. Upon a final review of the CSPA, before being sent to the President, Congressman Howard Berman explained to the House that both the House and Senate versions were "substantially similar."<sup>206</sup>

One change was made to the enacted statute that differed from the earlier versions; this may proffer some evidence of Congressional intent regarding what are valid justifications that allow the President to issue a "national interest waiver." In the House Committee's version of the bill, the House included an exception to the prohibition regarding countries that assist the United States in combatting international terrorism.<sup>207</sup> This exception would have allowed the President to provide a foreign government with otherwise prohibited military assistance "if the purpose of the assistance is specifically designed to further cooperation between the United States and the foreign government to combat international terrorism."<sup>208</sup> However, Congress removed this provision before enactment and it is not found in the current CSPA text.<sup>209</sup>

---

203. *Casualties of War*, *supra* note 2.

204. *Id.* at 2 (opening statement of Hon. Richard J. Durbin).

205. *Id.* at 3.

206. 154 Cong. Rec. 10905 (2008) (statement of Congressman Howard Berman).

207. H.R. Rep. No. 430-110, at 43 (2007).

208. *Id.*

209. *See* 22 U.S.C. § 2370c-1 (2006).

While Congress may have considered including a “combatting terrorism” exception, its exclusion implies that Congress did not wish to give the President this discretionary exception. Despite the fact that the current CSPA lacks this provision, President Obama has repeatedly used “cooperation in combatting international terrorism” to justify waivers.<sup>210</sup> This contravenes Congressional intent, which indicates that the President cannot validly justify waivers based on a country’s cooperation in combatting international terrorism. Without these justifications, the President’s rationale for issuing the waivers weakens, and illustrates a clear need for these countries to better comply with the CSPA and international standards regarding the treatment of children.

#### IV. EVALUATING THE CSPA IN THE CONTEXT OF INTERNATIONAL LAW

Congress enacted the CSPA to further comply with the Optional Protocol.<sup>211</sup> In addition to mandating that each State Party prevent the use of child soldiers within its respective territories, the CSPA also places positive obligations on states to help implement the protocol by preventing activities “contrary” to it.<sup>212</sup> To comply with this mandate, the United States described, in its initial report to the Committee on the Rights of the Child, how it was cooperating internationally by providing humanitarian aid to help demobilize and reintegrate child soldiers. While these efforts are laudable and certainly helped demobilize child soldiers, the President’s actions through the CSPA waivers directly contravene the statute’s intended goals.

---

210. See, e.g., Presidential Determination 2010, *supra* note 146 (stating that the prohibition “could . . . harm the cooperative relationship [the U.S.] currently hold[s] with Chad in combating terrorism . . .” and that Yemen needs the funding to “conduct special operations and counterterrorism missions . . .”); see also Presidential Determination 2011, *supra* note 150 (“Yemen is a key partner in counterterrorism operations against al-[Qaeda] . . .”).

211. U.S. DEP’T OF STATE, COMMITTEE ON THE RIGHTS OF THE CHILD, OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD INVOLVEMENT OF CHILDREN IN ARMED CONFLICT: PERIODIC REPORT OF THE UNITED STATES AND U.S. RESPONSE TO RECOMMENDATIONS IN COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008, 18 (Jan. 22, 2010) [hereinafter CRC Periodic Report], available at <http://www.state.gov/documents/organization/136023.pdf>.

212. Optional Protocol, *supra* note 82, art. 7.

In the United States' periodic report, the Committee on the Rights of the Child expressed significant interest in the CSPA legislation.<sup>213</sup> After receiving the periodic report, the Committee recommended that the United States cease providing FMF to countries "where children are known to be—or may potentially be—recruited or used in hostilities, *without the possibility of issuing waivers.*"<sup>214</sup> It is evident that the Committee finds the issuance of CSPA waivers inconsistent with the goals of the CRC Optional Protocol. The United States responded by merely reiterating the current CSPA language; it failed to address why it needed to issue such expansive waivers.

The CSPA's goals clearly espouse the international norms delineated in the CRC and its Optional Protocol and with improvements, it would strengthen and enhance current international laws and norms that are inherently limited in their enforcement power. However, with the CSPA's present flaws, the U.S. government's current actions fail to implement both national and international standards regarding the treatment of children.

#### V. RECOMMENDATIONS

The current CSPA fails to enforce its own standards because of its vague language and broad presidential discretion. If Congress wants to effectively enforce the CSPA, the Act needs significant revision. Primarily, the language of the statute's national interest waiver should explicitly limit its scope. Congress needs to clearly define what constitutes a national interest and what does not. At a minimum, Congress must insert a provision prohibiting justification based on the nation's efforts in the War on Terror. As argued earlier, Congress did not intend this to be a valid justification, and it sends a message to the international community that Americans are willing to sacrifice children to further anti-terrorism efforts.<sup>215</sup>

Nonetheless, merely limiting the waivers will not solve the whole problem. If and when a waiver is issued, the President and State Department should be held accountable for where that aid goes. In his 2010 Presidential Determination, the only assurance President Obama

---

213. CRC Periodic Report, *supra* note 211, at 51-52.

214. *Id.*

215. *See, e.g.,* Chen, *supra* note 149.

gave the State Department for ensuring that funding would not end up in the hands of child soldier recruiters was that “the age of individuals proposed for training” would be checked prior to receiving that training.<sup>216</sup> This may be more difficult than it sounds for several reasons. First, children may have incentive to lie about their age if they join the military as a means of survival.<sup>217</sup> Second, military officials often lack the appropriate documentation of their soldiers.<sup>218</sup> Last, some countries do not have a birth registration system that allows for age verification.<sup>219</sup>

Further, President Obama’s assurance that ages would be verified only addressed the issue of military *training*. He did not elaborate on how the United States would prevent money or weaponry from falling into the hands of child soldier recruiters or child soldiers themselves.<sup>220</sup> In fact, in his 2011 Presidential Determination, he did not explain how he would prevent any type of aid from being used by child soldiers or their recruiters.<sup>221</sup> While the State Department could require the President to submit a detailed plan for preventing the use of funding by child soldier recruiters, the challenges of doing so may make the requirement ineffective. The inability to track how countries use U.S. assistance is the exact reason why waivers need to be rare and limited in scope.

In addition to limiting waivers, the CSPA should be enhanced by providing detailed steps outlining when a country qualifies for reinstatement of assistance. As it stands, reinstatement is permitted when a country implements “an action plan and actual steps to come into compliance with the [foregoing] standards. . . .”<sup>222</sup> The CSPA also requires that countries implement policies to prevent child soldier use.<sup>223</sup> When President Obama reinstated assistance to Chad, he noted that Chad signed a U.N. action plan, but vaguely explained that,

---

216. Presidential Determination 2010, *supra* note 146.

217. Green, *supra* note 18, at 412.

218. *Id.*

219. *Id.*

220. See generally Presidential Determination 2010, *supra* note 146; Presidential Determination 2011, *supra* note 150.

221. Presidential Determination 2011, *supra* note 150.

222. 22 U.S.C. § 2370c-1(d)(1) (2006).

223. *Id.* § 2370c-1(d)(2).

“some portions of the action plan are still underway.”<sup>224</sup> These “steps” are limited to holding meetings on the action plan, appointing officials to help effectuate the plan, and training military officials on child rights.<sup>225</sup>

Despite signing the action plan, the Chadian government is still in the infancy stages of complying with the CSPA. The President’s full reinstatement of assistance occurred a mere four months after the Chadian government signed the action plan. While it is important to recognize Chad’s accomplishments, it is troubling that the reinstatement occurred so quickly. To ensure that a country intends to stand by its international proclamations regarding child soldiers, funding should be reinstated in stages or after a waiting period.

Also, while it is important to recognize the steps Chad has taken to eliminate the use of child soldiers, this recognition loses emphasis when considering the fact that Chad received a full waiver last year, before it ever signed or implemented the action plan. If Congress wants to incentivize countries to promote the demobilization of child soldiers and their reintegration into the community, the CSPA’s language must both restrict waivers and only reinstate assistance after the country can provide concrete evidence of its efforts.

The CSPA does not prohibit funding for rehabilitating former child soldiers or professionalizing the military. The CSPA’s overarching goal is to help these children by ensuring that the aid does not fall into the wrong people’s hands. The fifth subsection of the CSPA actually allows certain types of military education and non-lethal supplies to be sent to countries to help the government in its demobilization efforts.<sup>226</sup> The only conditions set on this assistance provision is that the country must be “taking reasonable steps to implement effective measures” and that the aid will target military professionalization.<sup>227</sup> The fact that the United States chooses not to use this exception and instead issues blanket waivers is evidence that the majority of assistance sent to these countries is being used for other purposes. But if the United States is to send aid to these

---

224. Presidential Determination 2011, *supra* note 150.

225. *Id.*

226. 22 U.S.C. § 2370c-1(e)(1).

227. *Id.*

countries, it should be to assist that country in coming into compliance with international standards.

President Obama and other critics of the CSPA argue that imposing sanctions on these countries is not going to solve the problem.<sup>228</sup> Rather, the President argues that the aid is needed to help professionalize the countries' militaries.<sup>229</sup> For example, in his 2011 partial waiver to Congo, he emphasized that the IMET funds are necessary to train soldiers on "human rights, the rule of law, and civilian control of the military."<sup>230</sup> But many of the proponents of the CSPA do not condemn that type of assistance.<sup>231</sup> Indeed, the point of the CSPA is to help countries stop their use of child soldiers, and training is a valid part of that goal. It is the President's other, less justified uses of military assistance that causes concern and frustrates legislators.

Lastly, the CSPA is not a complete solution to preventing military aid from falling into the hands of child soldier recruiters. The CSPA can only regulate U.S. government funds and military articles, and can only control that assistance in regards to other foreign governmental entities. The Act does not monitor the private sales of arms or assistance, whether legal or illegal. Nor does it address rebel group's use of child soldiers. Therefore, the U.S. government must broaden its efforts by implementing effective monitoring and regulating mechanisms for private manufacturers within the United States.<sup>232</sup> While an in-depth discussion is beyond the scope of this article, small arms proliferation has been attributed to the ongoing problem of child soldier recruitment.<sup>233</sup> The CSPA must be strengthened if the United

---

228. Ruth, *supra* note 14.

229. *Id.*

230. Presidential Determination 2011, *supra* note 150.

231. See, e.g., *Casualties of War*, *supra* note 2, at 3 (opening statement of Hon. Richard J. Durbin).

232. There is a dearth of international and national laws concerning the sale and exportation of weapons, leaving significant loopholes and a lack of regulation in this practice. Morisseau, *supra* note 35, at 1273-1274. This lack of regulation presents significant difficulties for the United States to prevent its private citizens and corporations from directly or indirectly supporting the use of child soldiers in other countries.

233. Comm. on the Rights of the Child, Written Replies by the Government of the United States of America Concerning the List of Issues to be Taken Up in Connection with the Consideration of the Initial Report of the United States of

States is sincere about its aspirations to protect children from armed conflict.

## VI. CONCLUSION

Child soldier recruitment presents a complex problem and requires a complex solution. The United States can be part of that solution. It has the military and political power to provide countries incentives to comply with human rights standards. Congress recognized that ideology and morality may not be sufficient to persuade governments to cease using child soldiers, and thus it enacted the CSPA with the hope that economic and political incentives would be more effective. It is still possible, but the Act must stringently regulate the military aid provision. With revisions to strengthen the CSPA's enforceability, the United States can help protect children's health and safety. It is imperative that the United States takes action to help the world's children be children, and not miniature soldiers embroiled in adults' wars.

*Heather L. Carmody\**

---

America Under Article 8, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. Doc. CRC/C/OPAC/USA/Q/1/Add.1/Rev. ¶ 74 (June 2, 2008), <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.SA.Q.1.Add.1.Rev.1.pdf>; *see also* U.N. Comm. on the Rights of the Child, Initial Report of the United States of America Under the Optional Protocol on the Involvement of Children in Armed Conflict, U.N. Doc. CRC/C/SR.1321 (May 22, 2008); *see, e.g.*, Morisseau, *supra* note 35 (discussing the ramifications of the small arms and light weapons trade on the child soldiers global epidemic).

\* J.D./M.S.W. Candidate, California Western School of Law and San Diego State University 2013; B.A., State University of New York at Buffalo, 2008. Thank you to Professor Ruth Hargrove; I am indebted to your wisdom and dedication to the written word. This article would not be what it is today without your guidance and feedback. I would like to also thank Colleen Lambert, a fellow J.D./M.S.W. candidate who graciously volunteered to read and critique numerous drafts of this comment. Thank you to the *California Western International Law Journal* staff, who worked diligently in preparing this comment for publication. Finally, I dedicate this comment to my family and Justin Chow, for their continued support and faith in me as I pursue my dreams.