

PROTECTING CHILDREN IN ARMED CONFLICT: HARNESSING THE SECURITY COUNCIL'S "SOFT POWER"

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The United Nations Security Council's recent involvement in the protection of children in armed conflict, particularly by seeking to prevent the recruitment and use of child soldiers, has attracted little attention from international lawyers. However, the process, initiated by Council Resolution 1612, has interesting parallels with non-compliance mechanisms in international environmental law and can be seen as an innovative attempt to harness the Security Council's "soft power" to engage both State and non-State parties to conflicts.

INTRODUCTION

In recent decades, concern about children's participation in armed conflict has grown. Children have always participated in armed conflicts but in recent years changes in warfare and weaponry have meant that their numbers have grown and the roles which they have been called upon to play have multiplied. Although the number of child soldiers cannot be accurately estimated,¹ there are undoubtedly tens, if not hundreds of thousands worldwide.² Children serve in numerous ways, not just in traditional support roles but, increasingly, as fighters participating directly in hostilities.

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¹ For this reason the most recent by the Coalition to Stop the Use of Child Soldiers report does not give a figure. See The Coalition to Stop the Use of Child Soldiers, *Child Soldiers: Global Report 2008*, http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf.

² The most recent figure given by the Special Representative estimated that around 250,000 child soldiers were serving in some 30 "situations of concern" worldwide; see The Secretary General, *Report of the Special Representative to the Secretary-General for Children and Armed Conflict*, para.11, delivered to the General Assembly, U.N. Doc. A/61/275 (Aug. 17, 2006).

Moreover, not only has there been an increased awareness of children's participation in armed conflict but perceptions of the boundaries and dimensions of childhood have changed.³ The 1949 Geneva Conventions, insofar as they considered the point, seem to have seen childhood as ending on a person's 15th birthday,⁴ and this approach was followed in the two 1977 Additional Protocols, which only prohibited the recruitment and use of under-15 year olds.⁵ However, the 1989 Convention on the Rights of the Child 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,"⁶ setting 18 as the standard age of majority. This change in perception cannot be said to have been universal, but it has nevertheless driven much campaigning to end children's participation in armed conflict, particularly at the international level.⁷ Children, by virtue of their physical and psychological immaturity, are seen as unable to withstand the peculiar stresses of warfare.

An initial result of this growth in concern was the development of international standards seeking further to limit the recruitment and use of children by armed forces and groups, in particular ILO Convention 182 on the Worst Forms of Child Labour⁸ and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.⁹ More recently, however, the focus has shifted from standard-setting to ensuring compliance with the already-existing standards.¹⁰ There

³ For discussion of the ways in which conceptions of childhood can differ, see DAVID ARCHARD, *CHILDREN; RIGHTS AND CHILDHOOD* (2d ed. 2004).

⁴ There is no definition of childhood in any of the 1949 Geneva Conventions. However, when an age limit is given in GC IV, the only one of the Conventions to deal specifically with children, it is set at 15: Geneva Convention relative to the Protection of Civilians in Time of War, arts. 14, 23, 24, 38 & 50, Aug. 12, 1949, 75 U.N.T.S. 973 [hereinafter GC (IV)].

⁵ See Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, art. 77, Jun. 8, 1977 1125 U.N.T.S. 3 [hereinafter First Protocol]; and Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, art.4(3), June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Second Protocol].

⁶ Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁷ For further detail, see MATTHEW HAPPOLD, *CHILD SOLDIERS IN INTERNATIONAL LAW* 23-33 (2005).

⁸ ILO, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 161.

⁹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 39 ILM 1285 (2000).

¹⁰ Although standards have continued to be developed: see the (non-legally binding) Paris Principles and Guidelines on Children Associated with Armed Forces and Armed Groups, Feb. 2007 that have been endorsed by 58 States [hereinafter The Paris Principles], [http://www.cicr.org/Web/eng/siteeng0.nsf/htmlall/paris-principles-commitments-300107/\\$File/The-Paris-Principles.pdf](http://www.cicr.org/Web/eng/siteeng0.nsf/htmlall/paris-principles-commitments-300107/$File/The-Paris-Principles.pdf).

has been a call, made initially by the United Nations Secretary-General's Special Representative for Children and Armed Conflict, for "an era of application."¹¹ The rationale for this change, as expressed by the Special Representative in his second report, has been that:

Words on paper cannot save children and women in peril... [T]he time has come for the international community to redirect its energies from the juridical task of the elaboration of norms to the political project of ensuring their application and respect on the ground. This can be accomplished if the international community is prepared to employ its considerable collective influence to that end.¹²

Moves toward an "era of application" have been made in two directions. First, there has been a move toward criminalization; that is, to subject individuals who violate the international rules governing the recruitment and use of child soldiers to criminal sanction. The second, less publicized but, this article argues, just as significant development is the increased involvement of the Security Council in the issue.

Criminalization is based on the idea enunciated by the International Military Tribunal sitting at Nuremberg that: "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."¹³ In contrast, the Monitoring and Reporting Mechanism (MRM) and the Security Council Working Group on Children and Armed Conflict take a rather different route toward ensuring compliance. Indeed, it is a process that largely takes place outside the rules on international responsibility. Although based on the application of legal standards, it seeks to promote compliance with them through political pressure, in particular the application of "soft power," rather than by legal sanction.

I. THE SECURITY COUNCIL AND CHILDREN IN ARMED CONFLICT

Although the involvement of the United Nations, in particular the General Assembly, goes back much further, the Security Council only began to involve itself in the issue of conflict-affected children in the 1990s.¹⁴ At first, the references were specific to

¹¹ See Protection of Children in Armed Conflict; Report of the Special Representative of the Secretary-General on Children and Armed Conflict, paras. 29-30, delivered to the General Assembly, U.N. Doc. A/54/430 (Oct. 1, 1999).

¹² *Id.* para. 30.

¹³ Nuremberg IMT: Judgment and Sentence, *reprinted in* 41 AM. J. INT'L L. 172, 221 (1947).

¹⁴ For further details, see HAPPOLD, *supra* note 7, at 34-49.

situations with which the Council was seized.¹⁵ Next, it was manifested in a series of presidential statements.¹⁶ In 1999, however, the Security Council adopted its first thematic resolution on the situation of children in armed conflict.¹⁷ Subsequent resolutions have intensified its engagement in the issue, culminating, in 2005, with the establishment of the Council's Working Group on Children and Armed Conflict and the Monitoring and Reporting Mechanism.

Security Council resolution 1261 of August 25, 1999 noted recent efforts to bring to an end the use of children as soldiers in violation of international law and called upon all parties concerned to end such practices. This in itself was groundbreaking, as by passing a thematic resolution on children and armed conflict the Security Council was implicitly stating that children's protection, welfare, and rights in situations of armed conflict were issues affecting or, at least, having the potential to affect international peace and security. Indeed, commenting on the resolution, the Secretary-General wrote that:

Resolution 1261 (1999) ... represents a veritable landmark for the cause of children affected by armed conflict. The adoption of the resolution has finally given full legitimacy to the protection of children exposed to conflict as an issue that properly belongs on the agenda of the Council. The Security Council has now clearly acknowledged in several resolutions and presidential statements that the harmful impact of conflict on children has implications for peace and security.¹⁸

Resolution 1261 requested the Secretary-General to report on its implementation, as did its successor, Resolution 1314 of August 11, 2000. In Resolution 1379 of November 20, 2001, however, the Council also requested the Secretary-General:

¹⁵ See S.C. Res. 1071, U.N. Doc. S/RES/1071 (Aug. 30, 1996) and S.C. Res. 1083, U.N. Doc. S/RES/1083 (Nov. 27 1996), both on the situation in Liberia; and S.C. Res. 1181, U.N. Doc. S/RES/1181 (July 13, 1998) and S.C. Res. 1231, U.N. Doc. S/RES/1231 (Mar. 11, 1999), both on the situation in Sierra Leone.

¹⁶ Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/1999/18 (June 29, 1998); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/1999/6 (Feb. 12, 1999); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2000/10 (Mar. 23, 2000); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2001/21 (Aug. 31, 2001); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2002/6 (Mar. 15, 2002); and Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2002/12 (May 7, 2002).

¹⁷ S.C. Res. 1261 U.N. Doc. S/RES/1261 (Aug. 25, 1999).

¹⁸ The Secretary General, Children and Armed Conflict: Report of the Secretary-General, delivered to the General Assembly and the Security Council, para. 1, U.N. Doc. A/55/613, S/2000/712 (July 19, 2000).

to attach to his report a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council's agenda or that may be brought to the attention of the Security Council by the Secretary-General, in accordance with Article 99 of the Charter of the United Nations, which in his opinion may threaten the maintenance of international peace.¹⁹

In order to determine which armed forces and groups were recruiting and using child soldiers in violation of the obligations incumbent on them, the Secretary-General had to determine what those obligations are. In his third report to the Security Council, when compiling his first list of "parties to international armed conflicts that are in violation of the international obligations applicable to them,"²⁰ the Secretary-General stated that his benchmark for States was the obligations contained in the Convention on the Rights of the Child (CRC).²¹ The relevant provision of the CRC is Article 38, which provides that:

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

As a human rights treaty, however, the CRC binds only States.²² With regard to non-State parties to conflicts, the Secretary-General explained that:

The conduct of non-State armed groups was assessed in accordance with the widely accepted minimum international standard that children under age 15 shall not be conscripted or enlisted into armed forces or groups or used by them to participate actively in hostilities in either international or internal armed conflicts. This standard echoes the Convention on the Rights of the Child, Additional Protocol II to the Geneva Conventions, the Rome Statute of the International Criminal Court, and the Statute of the Special Court

¹⁹ S.C. Res. 1379, para.18, U.N. Doc. S/RES/1379 (Nov. 20, 2001).

²⁰ *Id.* para. 16.

²¹ Report of the Secretary-General on children and armed conflict, delivered to the Security Council, para. 30, U.N. Doc. S/2002/1299 (Nov. 26, 2002).

²² It is widely (if not generally) agreed that international human rights norms bind only States; *contrast* LIESBETH ZEGVELD, *THE ACCOUNTABILITY OF ARMED OPPOSITION GROUPS IN INTERNATIONAL LAW* (2002) *with* ANDREW CLAPHAM, *HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS* (2006).

of Sierra Leone. In States that have ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, non-State armed groups are held to that higher standard, prohibiting all recruitment and use of children under 18. Commitments made in peace agreements or to my Special Representative were also taken into account.²³

Thereafter, beginning with his fourth report to the Council,²⁴ the Secretary-General has included two annexes in his reports: Annex I, listing parties to armed conflict that recruit or use children in situations of armed conflict on the agenda of the Security Council, and Annex II, listing other parties to armed conflict that recruit or use children in armed conflict (that is, in situations not on the Council's agenda).

In Resolution 1539 of April 22, 2004, the Security Council called upon parties mentioned in the Secretary-General's report as remaining in violation of their international obligations to prepare within three months "concrete time-bound action plans" to halt their illegal practices in collaboration with the relevant United Nations peacekeeping missions and UN country teams.²⁵ The Council also requested the Secretary-General to devise his own action plan for a systematic and comprehensive reporting mechanism.

The Secretary-General's fifth report²⁶ included an action plan for the establishment of a mechanism to monitor six grave violations of children's rights and protections:

- The killing and maiming of children;
- Recruiting or using child soldiers;
- Attacks against schools and hospitals;
- Rape and other grave sexual violence against children;
- The abduction of children; and
- The denial of humanitarian access for children.

In Resolution 1612 of July 26, 2005, the Security Council called for the immediate implementation of this Monitoring and Reporting Mechanism in situations in which there were parties named in Annex I of the Secretary-General's reports. It was later extend to countries listed in Annex II, although so far the MRM has only been

²³ Report of the Secretary-General on children and armed conflict, *supra* note 21, para. 31.

²⁴ Report of the Secretary-General on Children and Armed conflict, delivered to the Security Council and the General Assembly, U.N. Doc. A/58/546 S/2003/1053, (Dec. 10, 2003).

²⁵ S.C. Res. 1539, para. 5, U.N. Doc. S/RES/1539, (Apr.22, 2004).

²⁶ Report of the Secretary-General on Children and armed conflict, delivered to the Security Council and the General Assembly, U.N. Doc. A/59/695-S/2005/72, (Feb. 9, 2005).

implemented with the consent of the relevant States' governments, which, although it has not yet been refused, has not always been immediately forthcoming.²⁷ In addition, Resolution 1612 also established a Working Group of the Council—the Working Group on Children and Armed Conflict—to which the MRM reports; which reviews progress made by parties in the development and implementation of their action plans; which, in light of the MRM's findings, recommends appropriate action to the Council; and which makes requests to other bodies within the UN system to support the resolution's implementation.

The MRM works through UN task forces in each country listed by the Secretary-General. Task Forces are composed of representatives of the various concerned UN bodies in the country, as well as, in some cases, NGO representatives and, in one case, a representative of a government body (a national human rights commission). UNICEF and the Department of Peacekeeping Operations (DPKO) are the lead institutions, co-chairing around half of all country task forces.²⁸ Task forces monitor violations at the country level and report annually to the Office of the Special Representative of the Secretary-General on Children and Armed Conflict. The Office of the Special Representative is assisted at headquarters level by a steering committee made up of UN agencies and co-chaired by UNICEF and the Office of the Special Representative. Reports are then fed through to the Secretary-General, who presents them to the Security Council Working Group. In addition, a "horizontal note" setting out thematic concerns and describing situations of concern not included in the annexes to the Secretary-General's annual reports but deemed to require immediate consideration, is presented by the Secretary-General at each meeting of the Working Group.

The Working Group was established in 2005. Its membership reflects that of the Security Council. From its establishment until the end of 2008, it was chaired by France, which put considerable resources into the position. Since the beginning of 2009, Mexico has had the chair. The Working Group meets in closed session roughly every two months. It takes decisions by consensus, which in 2008 led to serious delays in its work programme, owing to disagreements between the members over

²⁷ See Security Council report, Cross-Cutting Report No. 1 on Children and Armed Conflict (Apr. 15, 2009), http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.5099181/k.A91/CrossCutting_Report_No_1brChildren_and_Armed_Conflictbr15_April_2009.htm (generally); and Katy Barnett and Anna Jeffreys, *Full of Promise; How the UN's Monitoring and reporting Mechanism can better Protect Children*, Humanitarian Policy Group Network Paper No. 62, September 2008, p. 10 (with regard specifically to Colombia).

²⁸ Barnett & Jeffreys, *supra* note 27, at 7.

Myanmar and over the Group's working methods.²⁹ Country reports generated by the MRM are considered by the Working Group, which then issues conclusions and makes recommendations. Horizontal notes are also received by the Working Group but it issues no published conclusions on them.³⁰

According to Resolution 1614, the purpose of the process is "the protection of children in armed conflict," and all six grave violations of children's rights and protections are subject to monitoring. However, most attention has been paid to only one of the six: the recruitment and use of child soldiers. This has been the "trigger" for listing by the Secretary-General in the annexes to his reports.³¹ Further, the adoption by a listed entity of an approved action plan and its subsequent implementation has been the only way to be "de-listed" by the Secretary-General. A situation not listed by the Secretary-General is not subject to so much scrutiny by the Working Group, as the Group does not receive an annual country report, which it discusses and in respect of which it issues conclusions. An unlisted situation can be mentioned in a horizontal note; but the Working Group does not issue published conclusions of horizontal notes. This concentration on one violation has been the subject of considerable criticism and led to the adoption of Council Resolution 1882 of August 4, 2009 that requested that the Secretary-General also include in the annexes to his reports, parties to armed conflict that engage in the killing and maiming of children, and rape and other sexual violence against children. These are now two additional criteria for listing and de-listing parties. Given, however, that this is a recent development, this Article concentrates on how effective the process has been in reducing the illegal recruitment and use of child soldiers.

The MRM and the Security Council's Working Group have now been in operation for nearly five years, with Resolution 1882 heralding a shift in emphasis of their work. In consequence, now seems a good time to consider how effective the process has been in protecting children in armed conflict and, specifically, preventing or ending their unlawful recruitment and use as child soldiers. In the light of that assessment, it might also be asked to what extent the process can serve as a model for efforts to promote compliance with international humanitarian law and international human rights law applicable in armed conflict.

²⁹ See Security Council Report, *supra* note 27, at 5-6.

³⁰ Indeed, it is unclear whether action has ever been taken in response to a horizontal note, see Barnett & Jeffrey, *supra* note 27, at 7.

³¹ See text adjacent to *supra* notes 19-24.

II. THE APPROACH OF THE WORKING GROUP

Looking at the six “grave violations of children’s rights and protections” which the MRM monitors, it can be seen that no distinction is made between protections which children might enjoy in international humanitarian law and rights which they might possess under international human rights law. Indeed, the Security Council has sought consistently to avoid questions of legal categorization. From Resolution 1539 onwards, it has stressed that the inclusion of any situation on the Secretary-General’s Annexes is not a legal determination that it is an armed conflict and that the listing of any non-State party to a conflict says nothing about the legal status of that party.³² It might be argued that a finding that a non-State party to a conflict is “in violation of the international obligations applicable to”³³ it or “in violation of applicable international law relating to the rights and protection of children” through its recruitment and use of child soldiers is an implicit finding that it is a party to an armed conflict because such rules are only applicable to armed groups in situations of armed conflict.³⁴ However, the wording used shows the Council’s desire to avoid stating any unnecessary legal conclusions.

As for the approach that the Security Council has taken to parties to conflicts in violation of their international obligations, in Resolution 1539, which required such parties to adopt action plans, it announced that it would consider the imposition of:

targeted and graduated measures, through country-specific resolutions, such as, *inter alia*, a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan ...³⁵

Such threats have been reiterated.³⁶ However, the Working Group has only called for the imposition of targeted sanctions twice; each time only after a sanctions regime had been already adopted with regard to a particular situation on the Council’s agenda,

³² See S.C. Res. 1539, *supra* note 25, para. 2.

³³ *Id.* art. 5(a) & 6.

³⁴ See *supra* note 30.

³⁵ *Supra* note 32, para. 5(c).

³⁶ See S.C. Res. 1612, para. 9, U.N. Doc. S/RES/1612, (July 26, 2005); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2006/48, (Nov.28, 2006); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2008/6, (Feb.12, 2008); Statement by the President of the Security Council, Security Council, U.N. Doc. S/PRST/2009/9 (Apr. 29, 2009); and S.C. Res. 1882, para. 7(c), U.N. Doc. S/Res/1882, (Aug. 4, 2009).

and has not done so since 2007.³⁷ In Resolution 1572 on the situation in Côte d'Ivoire, the Security Council decided to impose targeted sanctions on individuals "responsible for serious violations of human rights and international humanitarian law in Côte d'Ivoire."³⁸ One individual was designated as subject to targeted measures in part because of his involvement in a group involved in the recruitment of child soldiers. However, it appears that he would have been designated anyway based on other criteria.³⁹ In Resolution 1698 on the situation on the Democratic Republic of Congo, the Security Council specifically included "political and military leaders recruiting or using children in armed conflict in violation of applicable international law" as a category of persons liable to be subject to targeted sanctions.⁴⁰ However, no individuals were designated for that reason until December 2010, when Innocent Zimurinda was added to the DRC sanctions list for multiple human rights violations, including his "direct and command responsibility for child recruitment and for maintaining children within troops under his command."⁴¹

The Working Group has developed its own "Toolkit" of possible actions in response to grave violations against children, which it adopted in September 2006.⁴² Options involve either direct action by the Working Group or recommendations to the Security Council. They fall into five categories: assistance, demarches, enhanced monitoring, improvement of mandate, and "other measures." Although the list is stated to be illustrative and non-exhaustive, it is perhaps indicative of its approach

³⁷ See Security Council Working Group on Children and Armed Conflict: Conclusions on Parties in the Armed Conflict of the Democratic Republic of Congo, U.N. Doc. S/2006/724, (Sep. 11, 2006) (Annex to Letter dated 8 September 2006 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council), and Security Council Working Group on children and armed conflict: Conclusions on Côte d'Ivoire, U.N. Doc. S/2007/93. (Feb. 15, 2007) (Annex to Letter dated 13 February 2007 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council).

³⁸ S.C. Res. 1572, para. 9, U.N. Doc. S/RES/1572 (Nov. 15, 2004).

³⁹ Gerard Mc Hugh, *Strengthening Protection of Children Through Accountability: The Role of the UN Security Council in Holding to Account Persistent Violators of Children's Rights and Protections in Situations of Armed Conflict*, CONFLICT DYNAMICS INTERNATIONAL 13 (2009), http://www.cdint.org/Conflict_Dynamics-UNSC_Actions_CAC_Report_MASTER_March_2009_PR.pdf.

⁴⁰ S.C. Res. 1698, para. 13, U.N. Doc. S/RES/1698 (July 31, 2006).

⁴¹ United Nations Department of Public Information, "Sanctions Committee concerning Democratic Republic of Congo Adds Four Individuals to Asset Freeze, Travel Ban List", December 1, 2010. A press release from the Secretary-General's Special Representative describes Zimurinda as having been added to the list "for four of the six grave violations against children, including recruitment and use of child soldiers, killing and maiming of children, sexual violence and denial of humanitarian access": Office of the Secretary-General's Special Representative for Children and Armed Conflict, "Security Council sanctions DRC Colonel for grave violations against children", December 2, 2919

⁴² Options for possible actions by the CAAC Working Group, see *supra* note 37.

that there is no mention that it might recommend new sanctions regimes.⁴³ Rather, “other measures” included the possibility of recommending to the Security Council that it consider and forward to relevant existing Sanctions Committees information received by and conclusions of the Working Group. In practice, it seems increasingly reluctant even to use the full range of options available in the toolkit; largely, it seems, because of the reluctance of some members to take action against persistent violators. Indeed, the Security Council generally seems divided on the issue.⁴⁴ What this means in practice, is that the Working Group’s response amounts to a campaign of letter-writing—to parties, UN bodies, and other actors—although in 2007 it did begin to issue public statements as well (an action not included in the toolkit).⁴⁵ This has allowed the Working Group to send messages to non-State parties to conflicts, whom, for obvious reasons, it cannot address directly.⁴⁶

The approach of the Working Group can thus be seen as avoiding gratuitous legal determinations and the imposition of sanctions for breach. Rather, the Working Group seems to be concentrating on taking a collaborative approach to parties that recruit children in violation of their international obligations, particularly when they are government parties to conflicts. Indeed, the toolkit specifically states that the Working Group shall proceed “in a constructive way, putting emphasis on dialogue and cooperation.”⁴⁷ The kindest way to analyze this approach is to say that in doing so the Working Group is seeking to harness the Security Council’s “soft power.” The term “soft power” was coined by Joseph S. Nye. According to Nye;

Everyone is familiar with hard power. We know that military and economic might often get others to change their positions. Hard

⁴³ It might be argued that this reflects a recognition that sanctions could not be lawfully applied, as the Security Council may only do so to maintain or restore international peace and security in the face of a threat to the peace, breach of the peace or act of aggression (U.N. Charter, art. 39), and the recruitment and use of child soldiers does not fall into any of those categories. However, it does not appear that such an objection has been specifically raised and, in any case, the Council has been willing to state that the harmful impact of conflict on children has implications for peace and security (see *supra* notes 17, 18). Rather, the difficulty appears to be lack of political will.

⁴⁴ In 2008, it is reported, the USA, the UK, and Belgium were open to using sanctions, but China was firmly opposed, see Security Council Report, *supra* note 27, at 17.

⁴⁵ See Security Council Report, *id.* at 6.

⁴⁶ There are some doubts about the effectiveness of this method of communication; see Security Council Report, *id.* Nevertheless, it is clear that at least some non-State parties are aware of and do respond to monitoring, see, e.g., Press Release No. 02/09, Karenni National Progressive Party, Appeal for the Karenni Army’s Name to be Removed from the List of Non-State Armed Groups Making Use of Child Soldiers in Armed Conflicts, (Apr. 18, 2009), <http://www.genevacall.org/resources/nsas-statements/f-nsas-statements/2001-2010/2009-18apr-knpp.pdf>.

⁴⁷ Options for possible actions by the CAAC Working Group see *supra* note 41, preamble.

power can rest on inducements ("carrots") or threats ("sticks"). But sometimes you can get the outcomes you want without tangible threats or payoffs. ... A country may obtain the outcomes it wants in world politics because other countries – admiring its values, emulating its example, aspiring to its level of prosperity and openness – want to follow it. In this sense, it is also important to set the agenda and attract others in world politics, and not only to force them to change by threatening military force or economic sanctions. This soft power – getting others to want the outcomes that you want – co-opts people rather than coerces them.⁴⁸

The Security Council has "hard power." It can threaten to use force or impose sanctions, at least some of the time (although such threats, when not carried through, as has been the case with regard to entities committing grave violations against children, might be thought to lose their efficacy). It can also provide payoffs for good behavior, such as providing access to financial aid and technical assistance. However, as the one of the principal organs of the United Nations and the one with principal responsibility for international peace and security, it also has soft power. It sets the agenda which, a person or group wants to be seen as a respectable and reliable member of the "international community," it must follow. This agenda now includes the ending of the illegal recruitment and use of child soldiers and other serious violations against children in armed conflict. Indeed, the MRM and the Security Council Working Group appear akin more to a "non-compliance mechanism" than to a system for the sanction of international responsibility.

III. NON-COMPLIANCE MECHANISMS IN INTERNATIONAL ENVIRONMENTAL LAW

Non-compliance mechanisms or procedures are usually thought of in the context of international environmental law, where it is argued that the law of State responsibility is ill-suited to tackling global environmental problems such as global warming or the deletion of the ozone layer.⁴⁹ Despite recent developments, the international law of State responsibility remains largely premised on the bilateral relationship between

⁴⁸ JOSEPH S. NYE JR, *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 5 (2004).

⁴⁹ See UNEP, *COMPLIANCE MECHANISMS UNDER SELECTED MULTILATERAL ENVIRONMENTAL AGREEMENTS* (2007), <http://www.unep.org/dec/docs/Compliance%20mechanisms%20under%20selected%20MEAs.pdf> and Jan Klabbbers, *Compliance Procedures*, in *OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 995 (Daniel Bodansky, Jutta Brunée, & Ellen Hey eds., 2007).

the responsible State and the injured State.⁵⁰ And, in practice, States that have not suffered specific harm are reluctant to initiate dispute settlement procedures, even when they can access a particular forum.⁵¹ Environmental problems often have large aggregate effects, but the harm is dispersed widely, so individual States have insufficient incentive to undertake enforcement action. In addition, the international law on State responsibility has been criticized for being too legalistic (focusing on whether the State has committed an “internationally wrongful act” rather than the extent to which it is implementing its commitments effectively), backwards-looking (seeking the restoration of the *status quo ante*) and formalistic (concentrating on the fact of breach rather than its causes).⁵²

The rationale for non-compliance procedures is that they avoid such approaches. As described by Daniel Bodansky, non-compliance mechanisms in multilateral environmental agreements (MEAs) differ from traditional procedures for the settlement of international disputes in that,

They are political and pragmatic, not legalistic.

They are forward – not backward looking. Their goal is to manage environmental problems in order to achieve a reasonable level of compliance in the future, not to establish legal rights and duties or to rectify past breaches.

They are non-adversarial rather than contentious in nature.

They view compliance and non-compliance as part of a continuum, not in all-or-nothing terms.⁵³

Non-compliance mechanisms appear in numerous MEAs, with a recent survey by the United Nations Environmental Programme giving a non-exhaustive list of 19 such treaties.⁵⁴ The first, and the model for several others, was developed under the Montreal Protocol on Substances that Deplete the Ozone Layer.⁵⁵ Proceedings can be initiated by any party or by the Protocol’s Secretariat. Reports of Parties’ non-compliance are received and considered by an Implementation Committee (the non-compliant Party being given notice of the allegations and an opportunity to respond), which makes recommendations to the meeting of parties to the Protocol. In response, the meeting of parties can authorize a number of measures, including the provision of

⁵⁰ See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 83 U.N. Doc A/RES/56/83 (Jan. 28, 2002), Annex.

⁵¹ An example is the paucity of inter-State complaints brought under human rights treaties.

⁵² DANIEL BODANSKY, *THE ART AND CRAFT OF INTERNATIONAL ENVIRONMENTAL LAW* 247 (2009).

⁵³ *Id.* at 248.

⁵⁴ UNEP, *supra* note 49.

⁵⁵ *Id.* at 74-76.

technical and financial assistance, the issuing of warnings, and the suspension of rights and privileges under the Protocol. The procedure has been used quite frequently. In practice, however, only one warning has ever been issued and no sanctions have been imposed. Non-compliance mechanisms in other MEAs are similar, with a compliance or implementation committee (the members of which usually sit as representatives of their states, not in their individual capacities) reporting to the Treaty's plenary body for its final decision. Submissions can usually be made by any contracting party to the treaty or by the Secretariat, although in practice complaints are rarely made by other Parties. Indeed, there is a considerable amount of self-reporting.⁵⁶ This is perhaps unsurprising, as a frequent result of such proceedings is the provision of technical or financial assistance to bring the Party into compliance and only a few MEAs make any provision for the imposition of sanctions for non-compliance. The idea is not to sanction breach but to promote dialogue to discover the ways in which compliance can best be attained.

IV. THE RESOLUTION 1612 PROCESS AS A NON-COMPLIANCE MECHANISM

Parallels between non-compliance procedures in MEAs and the mechanisms established by Security Council Resolution 1612 are immediately obvious. The Security Council Working Group is a political body, composed of governmental representatives. From the beginning its approach has been premised on the idea that: "the implementation of the monitoring and reporting mechanism ... will be undertaken only in the context of and for the specific purpose of ensuring the protection of children affected by armed conflict,"⁵⁷ rather than sanctioning violators of the relevant international rules. And, as described above, it has sought to co-opt, rather than to confront, governments and armed groups using child soldiers.⁵⁸

However, there are also important differences. The first is that MEA non-compliance procedures address States, whereas the Working Group seeks to engage with parties, including non-State parties, to armed conflicts. Why this is so is obvious and does not, in itself, seem to be problematic. Much recruitment and use of child soldiers is undertaken by non-State parties. This gives rise to a number of

⁵⁶ See Klabbers, *supra* note 49, at 997-98.

⁵⁷ S.C. Res. 1612, *supra* note 36, para. 4.

⁵⁸ For example, the actions plans agreed with parties to the conflict in Côte d'Ivoire avoided explicit acknowledgement that the parties had engaged in the illegal recruitment and use of child soldiers in the first place; see Barnett & Jefferys, *supra* note 27, at 8.

legal difficulties. In the first place, there exists a lack of clarity regarding the legal obligations incumbent on such groups. Although it is generally agreed that non-State armed groups have duties under international law, and although various more-or-less-satisfactory explanations have been put forward justifying the application of international law to them, the manner in which they become legally bound remains unclear.⁵⁹ Whereas it is generally agreed that they have obligations in international humanitarian law,⁶⁰ it remains disputed whether they are bound by international human rights law, which can be relevant, in particular, when the situations in which they operate fall in the murky zone between war and peace.⁶¹ Moreover, the secondary rules regarding such groups' international responsibility remain uncodified, making it more difficult to determine when they have breached their obligations. And finally, there exist no mechanisms by which they can be held legally accountable. By stepping out of the paradigm of breach and sanction, therefore, Resolution 1612 can be seen as an innovative way of seeking to ensure such groups' compliance with international law.

Yet, the application of the MRM to non-State groups has a further, more significant, implication. States' submission to compliance monitoring under MEAs is based on their consent expressed as a party to the treaty. Non-State parties to conflicts subjected to scrutiny by the MRM and Working Group have given no such consent.⁶² State parties, by contrast, as members of the United Nations, can be seen as having consented, albeit rather remotely, to the Security Council's actions. Indeed, the MRM has only been extended to Annex II countries with the specific consent of their governments. Given the importance placed on the non-adversarial, collaborative nature of non-compliance procedures, this distinction might be seen as significant. However, to see it as relevant in all cases would be a mistake.

Many of the criticisms of the mechanism mirror criticisms made of non-compliance procedures in international environmental law by those who see them as undermining the normativity of international law.⁶³ As Jan Klabbers has written, although non-compliance procedures have a number of advantages, there is a price to be paid:

⁵⁹ See Sandesh Sivakumaran, *Binding Armed Opposition Groups*, 55 INT'L & COMP. L. Q. 369 (2006).

⁶⁰ See Common Article 3 to the 1949 Geneva Conventions (*supra* note 4), as well as the Second Protocol (*supra* note 5).

⁶¹ See *supra* notes 23 & 24.

⁶² Indeed, one can go further and say that non-State parties have not consented to the rules with which the process seeks to induce compliance.

⁶³ See Martti Koskenniemi, *Breach of Treaty or Non-Compliance? Reflections on the Enforcement of the Montreal Protocol*, 3 Y.B. INT'L ENV. L. 123 (1992).

By creating a highly political, diplomatic way of inducing compliance, the law may end up rendering itself superfluous, and if the law is no longer a viable option then neither is the rule of law, giving those who wield political power eventually a blank cheque to do as they see fit.⁶⁴

It is not formal consent to the procedure which is important but willingness to cooperate. Absent such willingness, there exists considerable scope for obfuscation and delay.⁶⁵ Indeed, this is a problem with non-compliance mechanisms generally, which are premised on a view that non-compliance tends to be inadvertent, based on ignorance or lack of capacity, rather than willed.⁶⁶

V. THE SECURITY COUNCIL AND THE RECRUITMENT AND USE OF CHILD SOLDIERS

There is general agreement that Security Council engagement in the issue has led a number of armed forces and groups to cease, or, at least, reduce, their recruitment and use of child soldiers. In two cases—Côte d'Ivoire in 2007 and Burundi in 2010—this has led to parties being removed from Annex I to the Secretary-General's reports on children and armed conflict.

In Côte d'Ivoire, conflict broke out between the *Forces nouvelles* and the Ivorian government in 2002. Both the *Forces nouvelles* and four pro-government militias⁶⁷ were listed as recruiting and using child soldiers in the Secretary-General's 2005 report on children and armed conflict. In November 2005, the *Forces nouvelles* submitted an Action Plan to the UN Task Force in Côte d'Ivoire. The four militias also agreed on action plans. The Secretary-General's 2007 report found that all parties

⁶⁴ Klabbers, *supra* note 49, at 1008.

⁶⁵ This is particularly the case as regards government parties, the representatives of which have the right to participate in the discussions at the Working Group's meeting to examine the Secretary-General's report on their country. See, e.g., the Secretary-General's reports U.N. Doc. S/2007/666, (Nov. 16, 2007) and U.N. Doc. S/2009/278 (June 1, 2009)) and the Working Group's conclusions: U.N. Doc. S/AC.51/2008/8 (July 25, 2008) and U.N. Doc. S/AC.51/2009/4, (Oct. 28, 2009)) on children and armed conflict in Myanmar.

⁶⁶ For description of some of the difficulties the Montreal Protocol non-compliance procedure has encountered, see Jacob Werksman, *Compliance and Transition: Russia's Non-Compliance Tests the Ozone Regime*, 56 ZaöRV 750 (1996).

⁶⁷ The *Fronte pour la libération du grand ouest* (FLGO), the *Alliance patriotique du peuple Wè* (APWE), the *Union patriotique de résistance du Grand Ouest* (UPRGO) and the *Mouvement ivoirien de libération de l'ouest de la Côte d'Ivoire* (MILOCI).

were implementing their action plans and de-listed them.⁶⁸ However, the situation in Côte d'Ivoire was particularly favorable for inducing compliance.⁶⁹ By the time the Security Council required action plans, fighting had ended and a peace process had commenced. There was a UN mission (UNOCI) operating in the country.⁷⁰ The Security Council threatened, and in some cases imposed, targeted measures against individuals, and there was also discussion of referring the situation to the International Criminal Court.⁷¹ In addition, the action plans and their implementation can be criticised. There was no formal demobilisation process for child soldiers. Implementation was monitored by verification visits. Moreover, only "fighters" seem to have been demobilized, not all children associated with the relevant armed groups, contrary to the internationally accepted definition of who is a child soldier.⁷² Finally, although the recruitment and use of child soldiers was ended, other grave violations against children in Côte d'Ivoire, in particularly sexual violence, have continued. Similarly, the ending of child recruitment and the release of child soldiers in Burundi took place in the context of a peace process.⁷³

More general assessments come to the same conclusion. Although the MRM has encouraged parties to conflicts listed in the Secretary-General's reports on children

⁶⁸ The Secretary General, Report of the Secretary-General on Children and Armed Conflict, para. 33-37, delivered to the General Assembly and the Security Council U.N. Doc. A/62/609-S/2007/757, (Dec. 21, 2007). The situation continues to be raised in the Secretary-General's horizontal notes.

⁶⁹ For detailed examination of the process, see McHugh, *supra* note 39, at 13-15.

⁷⁰ Established by S.C. Res. 1528 U.N. Doc. S/RES/1528 (Feb. 27, 2004). See also S.C. Res. 1609 and U.N. Doc. S/RES/1609 (June 24, 2005) and S.C. Res. 1739 U.N. Doc. S/RES/1739 (Jan. 17, 2007).

⁷¹ In 2005, Côte d'Ivoire accepted the jurisdiction of the International Criminal Court with respect to crimes committed on its territory since September 19, 2002, see Press Release, International Criminal Court, Registrar Confirms that the Republic of Côte d'Ivoire has Accepted the Jurisdiction of the Court, ICC-CPI-20050215-91, (Feb. 15, 2005). At about the same time it was reported that the UN had drawn up a list of persons accused of human rights abuses in Côte d'Ivoire who could eventually face trial, see Press Release, Côte d'Ivoire: UN Confirms Existence of Blacklist of Human Rights Abusers, (Jan. 31, 2005), <http://www.irinnews.org/report.aspx?reportid=52848>.

⁷² See The Paris Principles *supra* note 10, art. 2.1 that define

[a] child associated with an armed force or armed group ... [as]... any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.

See also UNICEF, the Cape Town Principles and Best Practices, adopted at the symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Cape Town, South Africa (Apr. 27-30, 1997).

⁷³ See Secretary-General, Report of the Secretary-General on Children and Armed Conflict, delivered to the General Assembly and the Security Council, U.N. Doc. A/64/742-S/2010/181 (April 13, 2010).

and armed conflict to cease recruiting and using child soldiers, it has had little impact on other grave violations of children's rights and protections. As one recent survey concludes: "Unfortunately, there appears to be little evidence that inter-agency monitoring and reporting of grave violations under the MRM has had a direct impact on reducing the incidence of grave violations other than recruitment by armed forces and groups."⁷⁴

In addition, reputational incentives to parties to cooperate tend to be effective when conflicts move from a military to a political phase. When fighting resumes, considerations of military advantage may trump parties' desire for respectability, as was the case in Sri Lanka (an Annex II situation not on the Security Council's agenda).⁷⁵ Although the Tamil Tigers were initially successfully engaged, an action plan developed and child soldiers demobilized, increasing military pressure from the Sri Lankan Government saw renewed recruitment by the group in an (ultimately unsuccessful) attempt to bolster its position.

Finally, however, it should be noted that the 1612 process has had effects internal, as well as external, to the United Nations. The MRM and the engagement of the Security Council has contributed to the further entrenchment and mainstreaming of issue children and armed conflict within the United Nations system. This can be seen in relation to disarmament, demobilization and reintegration programmes, peace agreements, peacekeeping mandates and the personnel assigned to them, in particular as regards the number of child protection advisers.

VI. THE WAY FORWARD?

Various solutions have been proposed to increase the process's effectiveness. Indeed, as has already been mentioned, two other grave violations have been added as triggers for listing and de-listing by the Secretary-General. It is submitted, however, that its major weakness lies in the nature of the Working Group itself. It is a working group of the Security Council. This has two implications. In the first place, at least some members of the Security Council have been unhappy to undertake action against parties to conflicts not on the Council's agenda. This means that the attention a situation is likely to receive is determined not only by the nature and extent of the grave violations of children's rights and protections that are occurring there, but also by whether the

⁷⁴ Barnett & Jeffreys, *supra* note 27, at 19.

⁷⁵ For details, see McHugh, *supra* note 39, at 22-23.

Council has decided that the situation, as a whole, is a threat to international peace and security. Indeed, thus far the MRM has only been implemented in Annex II countries with the consent of the relevant governments. More generally, however, the Security Council is a political body. It has been argued that what is needed is to insulate the Council's humanitarian objectives from its political ones,⁷⁶ but it is difficult to see how this could work. Even were such a decoupling to take place at the policy level, it seems unlikely that individual Council members would cease to seek to promote their own political interests. The disruption caused to the work of the Working Group in 2008 as a result of disagreement over how it should deal with Myanmar is a clear example of this.

It might therefore be argued that the first five years of the operation of the MRM and the Working Group on Children and Armed Conflict do show the limitations of the Resolution 1612 process as well as its successes. On the other hand, it might also be asked whether looking at the process in isolation is the best way to analyze its efficacy. It might be better to compare the impact of the MRM and the Working Group with that of other international mechanisms purporting to protect children in armed conflict, in particular international criminal justice processes.

International criminal justice mechanisms have been the subject of considerable attention in recent years. The recruitment and use of child soldiers was first expressly defined as a war crime in the 1998 Rome Statute of the International Criminal Court.⁷⁷ It also appears as a war crime within the jurisdiction of the Special Court for Sierra Leone.⁷⁸ Moreover, child recruitment has increasingly been criminalized in States' national law, not just by parties to the Rome Statute.⁷⁹ Thus far, however, there have only been a handful of intentional prosecutions. These include all the defendants before the Special Court for Sierra Leone⁸⁰ and three defendants, all from the Democratic

⁷⁶ See, e.g., *id.* at 26.

⁷⁷ Rome Statute of the International Criminal Court, art. 8(2)(b)(xxvi) & 8(2)(e)(vii), 2187 U.N.T.S. 90 (1998).

⁷⁸ Statute of the Special Court for Sierra Leone, Article 4(c), Annex, Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002. The provision is identical to Article 8(2)(e)(vii) of the Rome Statute.

⁷⁹ See, e.g., the Child Soldiers Accountability Act of 2008, Pub. L. No. 110-340 (U.S.).

⁸⁰ Six out of the eight defendants whose cases have thus far concluded have been convicted of child recruitment, see *Prosecutor v. Brima, Kamara and Kanu* (the AFRC case), Case No. SCSL-04-16-T, (June 20, 2007) (convicting all three defendants of child recruitment); *Prosecutor v. Fofana and Kondewa* (the CDF case), Case No. SCSL-04-14-T, judgment of the Trial Chamber, (Aug. 2, 2007) (convicting Kondewa and acquitting Fofana of child recruitment); *Prosecutor v. Fofana and Kondewa* (the CDF case), Case No. SCSL-04-14-A, judgment of the Trial Chamber, (May 28, 2008) (upholding Kondewa's appeal against his conviction for child recruitment); and *Prosecutor v. Sesay*,

Republic of Congo, before the International Criminal Court.⁸¹ Prosecutions on the national level also appear to have been sparse, whilst claims about the deterrent effect of prosecutions before international courts and tribunals hardly rise above the level of anecdote.⁸² In comparison with criminal prosecutions for child recruitment, the Resolution 1612 process has had tangible gains: Many child soldiers have been demobilized and other children have avoided recruitment.

Issues regarding the legal responsibilities of non-State groups and the lack of fora for enforcing them have already been mentioned.⁸³ "Piercing the veil" and focusing the leaders of armed groups as individual perpetrators is one way around the problem but it fails to provide a complete solution. Child recruitment is a particularly good example of "group criminality," involving various members of the group in children's recruitment and use in armed conflict, and requiring that they accept or, at least acquiesce in, the practice's legitimacy. To reflect this aspect, the group, as well as its leaders, needs to be targeted; otherwise, new leaders will simply replace the old and continue with their practices. Moreover, the fact that whilst international law imposes obligations on armed groups it grants them no legal status gives rise to a problem of legitimacy. Such groups might well ask why they should consider themselves bound, when the law alleged to constrain them has been created by their adversaries (governments) for the latter's benefit.

It is in this context that the form of the Resolution 1612 process can be seen to have advantages. Action Plans entered into by parties to conflicts can be seen as unilateral acts showing such groups' opinion as to the legitimacy and binding nature of the rules, which by accepting they internalize. A parallel might be drawn with the work undertaken by Geneva Call, an NGO which seeks to engage armed non-State actors towards compliance with the norms of international humanitarian law and

Kallon and Gbao (the RUF case), Case No. SCSL-04-15-T, judgment of the Trial Chamber, (Mar.2, 2009) (convicting Sesay and Kallon and acquitting Gbao of child recruitment). The trial of the last defendant before the Court, Charles Taylor, has not yet finished.

⁸¹ See Prosecutor v. Lubanga, Case No. ICC-01/04-01/06-803, Pre-Trial Chamber, Decision on the confirmation of charges, (Jan.21, 2007); and Prosecutor v. Katanga and Ngudjolo Chui, Case No. ICC-01/04-01/07-717, Pre-Trial Chamber, Decision on the confirmation of charges, (Sep.30, 2008). Both trials are continuing. Other persons have been indicted for, inter alia, the recruitment and use of child soldiers but have not (yet) appeared before the ICC.

⁸² See MARK A. DRUMBL, ATROCITY, PUNISHMENT AND INTERNATIONAL LAW 16-17, 169-73 (2007); and Immi Tallgren, *The Sensibility and Sense of International Criminal Law*, 13 EUR. J. INT'L L. 561 (2002).

⁸³ See *supra* notes 59-61.

intentional human rights law, in particular by seeking to persuade such groups to sign up to Deeds of Commitment.⁸⁴

The United Nations is more restricted in what it can do than Geneva Call, as it can only work with non-State parties to conflicts with the consent of the relevant government party. And it is true that the Resolution 1612 process undoubtedly works best when other factors (“sticks and carrots”) are present such as United Nations country missions, sanctions regimes, ICC jurisdiction (or the possibility thereof), movement from the military to the political stage of conflict. However, one can say the same about many other mechanisms, including international criminal justice processes. The criticism points only to the importance of a holistic approach, to which everyone already agrees. Nonetheless, given the difficulties of holding armed opposition groups, who form the main recruiters and users of child soldiers and are legally responsible, the Resolution 1612 process may be the least bad alternative for ensuring their compliance with international law.

⁸⁴ For information on Geneva Call, see www.genevacall.org. Having succeeded in persuading some 39 non-State actors to commit to a total ban on the use of anti-personnel mines and to cooperate in humanitarian mine action, Geneva Call has now begun to advocate on the protection of women and children in armed conflict.