

CHILD SOLDIERS IN ARMED CONFLICT: WITH  
SPECIAL REFERENCE TO AFGHANISTAN

BY

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## **ABSTRACT**

This study attempts to explore the issue of child soldier recruitment and use in armed conflict in Afghanistan. For this, the researcher has established the position of international and national laws and the standards thereunder on child soldiering. The study also investigates the reasons why virtually all parties to the four-decade-long armed conflict(s) in Afghanistan have recruited and used a large number of child combatants. Along these lines, the researcher has investigated the effects of the chronic incidence of child soldiers in the armed conflict in Afghanistan and has proposed the possible measures that can be adopted to alleviate the malady. The research is doctrinal, and therefore the integrated literature review method is used, to analyse, criticise, synthesise and evaluate the legal positions in international, national and Islamic legal systems as well as to establish whether or not the claims of armed groups of strict adherences to the Islamic legal rulings are conclusive and unchallengeable. The research uses qualitative data found in legal texts, i.e. the International Treaties, the Constitution of Afghanistan, and the existing criminal and military legislations of Afghanistan, other books, articles, and media reports. The research finds that all parties to the long-lasting armed conflict in Afghanistan have systematically recruited scores of child soldiers, thereby disobeying the principles and provisions of international and local laws. Also, the research shows that the large-scale child soldiering in Afghanistan is the result of the constant presence of armed conflict, and a host of social and historical factors, in addition to cases where legal leniency can be blamed. The overall effect of child soldiering on the Afghan society is overwhelming and calls for urgent measure towards alleviation and eradication of the problem. The research recommends several measures to be followed by the Afghan government, state and non-state actors, and the international community, which include the clarification of legal ambiguities under international law, the strengthening of local legislations and legal standards in efforts to realise zero-child soldier recruitment and use in Afghanistan.

## خلاصة البحث

تحاول هذه الدراسة استكشاف قضية تجنيد الأطفال واستخدامهم في النزاعات المسلحة في أفغانستان. ولهذا السبب، حدد الباحث موقف القوانين الدولية والوطنية والمعايير الواردة في اتفاقية تجنيد الأطفال. وعليه فإن هذه الدراسة تبحث في الأسباب التي دفعت جميع الأطراف في النزاع (النزاعات) المسلح المستمر منذ أربعة عقود في أفغانستان إلى تجنيد واستخدام عدد كبير من المقاتلين الأطفال. على هذا المنوال، حقق الباحث في الآثار المترتبة على حدوث الأطفال الجنود المزمين في النزاع المسلح في أفغانستان واقترح التدابير الممكنة التي يمكن اعتمادها للتخفيف من هذه الأمراض. ولكون هذا البحث قانوني، فقد تم استخدام منهج المراجعة المتكاملة لمصادره القانونية، لتحليل وانتقاد وتقييم المواقف في الأنظمة القانونية الدولية والوطنية والإسلامية، وكذلك لتحديد ما إذا كانت دعوى الجماعات المسلحة غير مخالفة لأحكام الشريعة الإسلامية. يستخدم البحث البيانات النوعية الموجودة في النصوص القانونية، مثل المعاهدات الدولية، ودستور أفغانستان، والتشريعات الجنائية والعسكرية القائمة في أفغانستان، والكتب والمقالات والتقارير الإعلامية الأخرى. يخلص البحث إلى أن جميع الأطراف في النزاع المسلح الطويل الأمد في أفغانستان قد جندت بشكل منهجي عشرات من الجنود الأطفال، بما يخالف مبادئ وأحكام القوانين الدولية والمحلية. كما يوضح البحث أن تجنيد الأطفال على نطاق واسع في أفغانستان هو نتيجة الوجود المستمر للنزاع المسلح، ومجموعة من العوامل الاجتماعية والتاريخية، بالإضافة إلى الحالات التي يمكن إلقاء اللوم فيها على التساهل القانوني. وأن التأثير الإجمالي لتجنيد الأطفال على المجتمع الأفغاني سلبي وينبغي بالتالي اتخاذ تدابير عاجلة نحو التخفيف من حدة المشكلة أو القضاء عليها إن أمكن. ويوصي البحث الحكومة الأفغانية والجهات الفاعلة الحكومية وغير الحكومية والمجتمع الدولي باتخاذ عدد من التدابير التي تعين على معالجة هذه المشكلة. وتشمل هذه التدابير توضيح الغموض المتعلق بنصوص القانون الدولي الخاصة بتجنيد الأطفال، وتعزيز التشريعات القانونية المحلية المتعلقة بذلك. ويشير إلى بعض المعايير التي تعين على معالجة مشكلة تجنيد الأطفال في أفغانستان.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Say “Indeed my prayer, my rites of sacrifice, my living and my dying are for Allah, lord of the worlds;”

All thanks and praises be unto the Almighty Allah for His bounties, mercies and blessing showered upon me and my entire family. I testify that Allah alone is worthy of worship and He alone deserves all praises. Without His mercy, I would not have been able to carry on this research.

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American Convention on Human Rights 1978

Convention for the Protection of Human Rights and Fundamental Freedoms 1953

Convention on the Rights of the Child 1989

Declaration of the Rights of the Child 1959

Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea 1949

Geneva Convention Relative to the Treatment of Prisoners of War August 1949

Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949

International Covenant on Civil and Political Rights 1966

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*Prosecutor v Thomas Lubanga Dyilo* ICC Summary judgment pursuant to article 74 of the statute [14 March 2012] ICC-01/04-01/06 2/593

## LIST OF ABBREVIATION

AIHRC	Afghanistan Independent Human Rights Commission
AMLSA	Afghanistan Ministry of Labour and Social Affairs
ANBP	Afghanistan's New Beginnings Programme
CIA	Central Intelligence Agency
CIHL	Customary International Humanitarian Law
CRC	Convention on the Rights of the Child
DDR	Disarmament, Demobilization and Reintegration
DPWCEAC	Declaration on the Protection of Women and Children in Emergency and Armed Conflict
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICRC	International Committee of Red Cross
ICTY	International Criminal Tribunal for former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
LHL	International Humanitarian Law
IHRL	International Human Rights Law
IMTNT	International Military Tribunals of Nuremberg and Tokyo
ISAF	International Security Assistance Force
NAFAC	National Assembly's Foreign Affairs Committee
NATO	North Atlantic Treaty Organization
OEF	Operation Enduring Freedom
OP-CRC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
PIC	Permanent International Court
SCSL	Special Court for Sierra Leone
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nation Development Program
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United National International Children's Emergency Fund
UNSMA	United Nations Special Mission to Afghanistan
UNSR	United Nations Special Representative for Afghanistan
UNWPAY	United Nations World Programme of Action for Youth
USA	United States of America
UNWPAY	United Nations World Programme of Action for Youth
WFP	World Food Programme

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND OF THE STUDY

Children as combatants are cited both as an age-old phenomenon and a recent plague besetting a large number of societies, international community and legal scholars and practitioners in particular.<sup>1</sup> Those who claim that children have long been used for active participation in combat refer to sources that are divided by the span of centuries, and understandably, not as well documented as recent ones.<sup>2</sup> For the purpose of situating this issue within the context of international law in general, and within the frame of International Humanitarian Law (IHL) in particular, the ancient cases of child soldiering are not as significant as the recent cases of systematic recruitment and use of child combatants.<sup>3</sup> This phenomenon being of particular relevance for the research at hand bears direct and deleterious effect on the largest number of underage male and female children, and their number in multiple sources ranges from most frequently cited 300,000 to as high as 800,000 as claimed by some sources of lesser prominence.<sup>4</sup>

Putting aside the dispute over the exact number of child soldiers, the most commonly-quoted figure of 300,000 underage soldiers as active servicemen or support staff is both disturbing and widespread enough to warrant a closer scrutiny from the

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<sup>1</sup> Mary-Jane Fox, "Child soldiers and international law: Patchwork gains and conceptual debates", *Human Rights Review*, vol. 7, no.1 (2005): 28-29.

<sup>2</sup> Ibid.

<sup>3</sup> Joel Olasunkanmi Anwo and Olugbemi Fatula, "Child Soldiers Phenomenon and the Response of International Law", *ISIL YB Int'l Human. & Refugee L.* vol. 7, (2007): 91-94.

<sup>4</sup> Steven Freeland, "Mere Children or Weapons or War-Child Soldiers and International Law", *U. La Verne L. Rev.* vol. 29, (2008): 25-54; See, Cris R. Revaz, "The Optional Protocols to the U.N. Convention on the Rights of the Child on Sex Trafficking and Child Soldiers", *Human Rights Brief*, vol. 9, no.1 (2001):13-15.



point of international law.<sup>5</sup> Children as combatants are recruited by state actors and non-state actors.<sup>6</sup> Moreover, underage soldiers are also allowed to enlist in many countries such as United States (US) where the authorities claim these conscripts are banned from taking part in combat or in peacekeeping missions where their respective army is stationed.<sup>7</sup>

The phenomenon of child soldiers has uninterruptedly featured throughout the various phases of the armed conflict in Afghanistan. The underage recruits have been recruited and sent into combat by all parties to the armed conflict(s) from 1979 to the present.<sup>8</sup> Child soldiers from the ages of well below ten to eighteen were forcefully recruited or otherwise persuaded to fight against whoever happened to be labelled as enemy by armed forces of pro-Soviet Afghan defence forces through a number of national liberation armed groups that came to be known as *mujaheddin*, and later on the Taliban and Northern Alliance.<sup>9</sup>

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<sup>5</sup> Matthew Happold, *Child soldiers in international law*, (Manchester university press, 2005), 6; See, Alexandre J Vautravers, "Why child soldiers are such a complex issue", *Refugee Survey Quarterly*, vol. 27, no. 4 (2008): 96-97; See, Kingsley Banya and Juliet Elu, Banya, "The Dilemma of Child Soldiering in Sub-Saharan Africa", in *Suffer the Little Children: National and International Dimensions of Child Poverty and Public Policy*, edited by Carol Camp Jeanita W. Richardson Yeakey, and Judith Brooks-Buck, (Elsevier Ltd, 2006), 177; See, Leonie Steinl, *Child soldiers as agents of war and peace: a restorative transitional justice approach to accountability for crimes under international law*. vol. 14, (Springer, 2017), 2; See, Theo Farrell, and Olivier Schmitt, *The Causes, Character and Conduct of Armed Conflict, and the Effects on Civilian Populations: 1990-2010*. (UNHCR, 2012), 6; See, Jennifer Plante, "The Children of War", *Topical Research Digest: Human Rights and Human Welfare*, vol. 7, (2008): 22; See, Ilona Topa, "Prohibition of Child Soldiering-International Legislation and Prosecution of Perpetrators", *Hanse L. Rev.* vol. 3, no. 1 (2007): 105; See, Usha Ramanathan, "Child Soldiers: Finding Recognition in International Humanitarian Law", *ISIL YB Int'l Human. & Refugee L.* vol. 2, (2002): 228.

<sup>6</sup> Matthew, 6.

<sup>7</sup> Rose Mukhar, "Child Soldiers and Peace Agreements", *Annual Survey of International & Comp. Law*, vol. xx, (2014): 73-75.

<sup>8</sup> Vera Chrobok, "Demobilizing and reintegrating Afghanistan's young soldiers: a review and assessment of program planning and implementation/by Vera Chrobok", *Afghan Digital Libraries*, (2005): 16-17; See, Steven A. Zyck, "'But I'm a Man': The Imposition of Childhood on and Denial of Identity and Economic Opportunity to Afghanistan's Child Soldiers", in *Child Soldiers: From Recruitment to Reintegration*, edited by Alpaslan Özerdem and Sukanya Podder, (Palgrave Macmillan, 2011), 160-161; See, Danish Immigration Service, *Report on Fact-finding Mission to Afghanistan (1 November - 29 November 1997)*, (1 July 1998), 35; Rachel Stohl, "Targeting children: Small arms and children in conflict", *The Brown Journal of World Affairs*, vol. 9, no.1 (2002): 288.

<sup>9</sup> Barnett R. Rubin, *The fragmentation of Afghanistan: State formation and collapse in the international system*, (Yale University Press, 2002), 131-132; See, Child Soldiers International, *Child Soldiers Global Report 2001-Afghanistan, 2001*, <https://www.refworld.org/docid/4988061ac.html> (accessed 28 January

In more recent times, widespread recruitment of children for combat in Afghanistan has been perpetrated by state actors namely, Afghan National Army, Afghan National Police, and Afghan Local Police, as well as non-state actors, such as Taliban, *Hizbi-i-Islami*, *Haqqani* Network, Al Qaeda, and some minor groups affiliated with Islamic State of Khorasan and this has been duly noted and presented by the United Nations (UN) and other organizations in their annual reports.<sup>10</sup> Among the all abovementioned armed groups and organizations Afghan Local Police and Taliban forces have recruited the largest number of juvenile combatants.<sup>11</sup>

The long-standing armed conflict in Afghanistan in its various periods, notwithstanding the change of circumstances, can be classified either within the category of International or Non-International Armed Conflict, and is thus, a significant issue to be studied from the perspective of IHL.<sup>12</sup> Armed conflict may be waged between two or more states and between armed groups and government military apparatus within a state or just between two or more rebel groups.<sup>13</sup> Even though the concept of two types of armed conflicts were mentioned in basic treaties of the IHL, such as the Common Article 2 of the Geneva Conventions of 1949<sup>14</sup> and Additional

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2019); See, P. W. Singer, "Talk is Cheap: Getting Serious about Preventing Child Soldiers", *Cornell International Law Journal*, vol. 37, (2004): 561; See, Michael Vinay Bhatia and Robert Muggah, "The politics of demobilization in Afghanistan", in *Security and Post-Conflict Reconstruction: Dealing with Fighters in the Aftermath of War*, edited by Robert Muggah (London: Routledge, 2009), 144.

<sup>10</sup> UN Secretary-General (UNSG), *Children and Armed Conflict: report of the Secretary-General*, A/70/836-S/2016/360, (20 April, 2016), 5-7; See, Child Soldiers International, *Briefing on the situation of underage recruitment and use of children by armed forces and insurgent groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*, June 2015, 1-5; See, UN Assistance Mission in Afghanistan, *Afghanistan: Midyear Update on the Protection of Civilians in Armed Conflict, 1 January to 30 June 2018*, (15 July 2018), 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> Sylvain Vite, "Typology of armed conflicts in international humanitarian law: legal concepts and actual situations", *International Review of the Red Cross*, vol. 91, no. 873 (2009): 70.

<sup>13</sup> Mohammad Naqib Ishan Jan and Abdulrashid Lawan Haruna, *International Humanitarian Law*, (IIUM Press, 2015), 8-9; See, Peter Rowe, "The Obligation of a State under International Law to Protect Members of its own Armed Forces during Armed Conflict or Occupation", in *Yearbook of International Humanitarian Law*, edited by Timothy LY.H. McCorma & Jannk Kleffn 9 (T.M.C. Asser Press, 2006), 9-21.

<sup>14</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted on 12 August 1949, entry into force 21 October 1950) 75 UNTS 31 (Geneva

Protocol I,<sup>15</sup> Article 1(4) only mention the term ‘international armed conflict’,<sup>16</sup> and Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II,<sup>17</sup> Article 1(1) mention non-international armed conflict.<sup>18</sup> These references to the two types of armed conflict failed short of the proper definition. The definition of the two kinds of armed conflict was coined in the chambers of International Criminal Tribunal for former Yugoslavia (ICTY)<sup>19</sup> in its landmark case *Prosecutor vs Tadic*.<sup>20</sup> This classification of armed conflict is to be taken into consideration on the example of armed conflict in Afghanistan.

When it is analysed more closely, the armed conflict in Afghanistan can be divided into six periods, each of them being distinct from the others by virtue of its nature. In the first armed conflict taking place in Afghanistan from 1979 to 1989, there

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Convention I); See, Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Adopted on 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Geneva Convention II); See, Geneva Convention Relative to the Treatment of Prisoners of War (Adopted on 12 August 1949, entry into force 21 October 1950) 75 UNTS 135 (Geneva Convention III); See, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Adopted on 12 August 1949, entry into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV).

<sup>15</sup> Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) Geneva, 8 June 1977 (Adopted 8 June, 1977 entered into force 7 December 1979) 1125 UNTS 3 (Additional Protocol I).

<sup>16</sup> Gary D. Solis, *The law of armed conflict: international humanitarian law in war*, (Cambridge University Press, 2016), 150-151; See, Dapo Akande, “Classification of armed conflicts: relevant legal concepts”, in *International Law and the Classification of Conflicts*, edited by Elizabeth Wilmshurst, (Oxford University Press, 2012), 25; See, International Committee of the Red Cross, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?”, *ICRC Opinion Paper*, (2008): 1.

<sup>17</sup> Additional Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Geneva, 8 June 1977 (Adopted 8 June 1977 entered into force December 1978) 1125 UNTS 609 (Additional Protocol II).

<sup>18</sup> Lawrence Hill-Cawthorne, *Detention in non-international armed conflict*, (Oxford University Press, 2016), 76-85; See, Sylvain Vité, “Typology of armed conflicts in international humanitarian law: legal concepts and actual situations”, *International Review of the Red Cross* vol. 91, no. 873 (2009): 75-80; See, Jelena Pejic, “The protective scope of Common Article 3: more than meets the eye”, *International Review of the Red Cross* vol. 93, no. 881 (2011): 189- 204; See, Sandesh Sivakumaran, “Re-envisioning the international law of internal armed conflict”, *European Journal of International Law* vol. 22, no.1 (2011): 223; See, Hitoshi Nasu, “Status of Rebels in Non-International Armed Conflict”, in *International Humanitarian Law – An Anthology*, edited by Louise Dowsald-Beck, Azizur Rahman Chowdhury, Jahid Hossain Bhuiyan (LexisNexis 2009), 10-13.

<sup>19</sup> International Criminal Tribunal for former Yugoslavia, (established by Security Council Resolution 827 of 25 May 1993) (ICTY).

<sup>20</sup> *Prosecutor v. Tadic, Appeal on Jurisdiction*, [2 October 1995], Case IT-94-1-AR72, 35 I.L.M. 32, 54, (1996), para 70.

was, as the bulk of the sources classify it, a clear case of occupation, which means the armed conflict between the Afghan forces of resistance and the Soviet Army in accordance with common Article 2 of the Geneva Conventions was an international armed conflict.<sup>21</sup> In the years between 1989 and the present, there have been five phases of armed conflict. Only in the two-month period from 6/7 October to 5 December 2001, there were two distinct types of armed conflicts. Next, there was an international armed conflict between the US and its allies on the one side and the Taliban government.<sup>22</sup> Meanwhile, in the same period and parallel to it there was a non-international armed conflict between the US-led coalition and Al-Qaeda, an International Terrorist Organization operating at that time in Afghanistan.<sup>23</sup> Simultaneously, parallel to these two types of armed conflicts, there was a third one, fought between the Northern Alliance and the Taliban government, which can be seen as either internal, or perhaps more adequately, a non-international armed conflict, due to the common goal and close links between the Northern Alliance and the coalition forces.<sup>24</sup>

In addition to these, upon the inauguration of the Karzai government, there occurred an armed conflict between the government forces and a host of armed groups, the primary ones being Taliban guerrilla and the remnants of Al-Qaeda, which can be

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<sup>21</sup> W. Michael Reisman and James Silk, "Which law applies to the Afghan conflict", *The American Journal of International Law*, vol. 82, no. 3 (1988): 485-486.

<sup>22</sup> Françoise J. Hampson, "Afghanistan 2001-2010", in *International law and the classification of conflicts*, edited by Elizabeth Wilmshurst (Oxford University Press, 2012), 251; See, Laurie R. Blank, "Debates and Dichotomies: Exploring the Presumptions Underlying Contentions About the Geography of Armed Conflict", in *Yearbook of International Humanitarian Law*, vol. 16, edited by Terry D. Gill, (Cambridge University Press, 2013), 309-310; See, Chris De Cock, "Counter-Insurgency Operations in Afghanistan. What about the 'Jus ad Bellum' and the 'Jus in Bello': Is the Law Still Accurate?", in *Yearbook of International Humanitarian Law*, vol. 13, edited by Michael N. Schmitt, (Cambridge University Press, 2010), 111.

<sup>23</sup> Siobhan Wills, "The legal characterization of the armed conflicts in Afghanistan and Iraq: implications for protection", *Netherlands International Law Review*, vol. 58, no. 2 (2011), 191.

<sup>24</sup> Yutaka Arai-Takahashi, "Disentangling legal quagmires: the legal characterisation of the armed conflicts in Afghanistan since 6/7 October 2001 and the question of prisoner of war status", *Yearbook of International Humanitarian Law*, Vol. 5, (Cambridge University Press, 2002), 69.

categorized as non-international armed conflict.<sup>25</sup> It is highly important to reiterate at this point that even though this phase of the Afghan armed conflict was mainly of internal character, the armed conflict and its actors were bound by Additional Protocol II and Common Article 3 of the Geneva Conventions.<sup>26</sup> Finally, the armed conflict fought between the International Security Assistance Force (ISAF) and various groups inimical to the internationally recognized government poses quite a few difficulties with regard to its proper categorization due to the ISAF's acting along the recommendations derived from the Security Council resolutions 1386 of 20 December 2001,<sup>27</sup> and Security Council resolution 1413 (2002).<sup>28</sup> In accordance with the aforesaid, the armed conflict between the ISAF and the Taliban government was initially an international armed conflict, whereas the armed conflict between the ISAF and Al Qaeda was a non-international armed conflict.<sup>29</sup>

The international treaties that deal with IHL thus clarify the legal position on the terms of international and non-international armed conflict.<sup>30</sup> These key terms are further elucidated by the specific cases where these armed conflicts break out, such as the armed conflict in Afghanistan. Moreover, IHL treaties cover the phenomenon of child soldiers worldwide. The position of international law on child soldiers can be inferred from its treaties. A close reading and analysis of international law reveals that it provides clear provisions for the protection of child soldiers through the prohibition

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<sup>25</sup> Françoise, 249.

<sup>26</sup> Ibid., 256-258; See, Geneva Conventions, Common Article 3; See, Additional Protocol II, Article 1 (1).

<sup>27</sup> UN Security Council, *Security Council resolution 1386 (2001) [on the situation in Afghanistan]*, 20 December 2001, S/RES/1386 (2001).

<sup>28</sup> UN Security Council, *Security Council resolution 1413 (2002) [on the situation in Afghanistan]*, 23 May 2002, S/RES/1413(2002).

<sup>29</sup> Françoise, 256.

<sup>30</sup> Marco Sassòli, *International Humanitarian Law: Rules, Solutions to Problems Arising in Warfare*, (Edward Elgar Publishing, 2019), 204.

of their recruitment and use in combat.<sup>31</sup> This conspicuous protection and prohibition of the recruitment and use of underage soldiers is found in all three branches of international law, namely, IHL, International Human Rights Law (IHRL), and Rome Statute of the International Criminal Court.<sup>32</sup> The Additional Protocol I, Article 77 considers only persons younger than fifteen as child soldiers.<sup>33</sup> Furthermore, the Additional Protocol II, Article 4(3) prohibits the conscription of children under fifteen,<sup>34</sup> and recommends the proper steps towards unification of children and their families, or removal of children from war zones with the consent of their parents or guardians.<sup>35</sup> Two aspects of these views vis-à-vis the definition of juvenile combatants pertain to the fact that the use of child soldiers below the age of fifteen is prohibited.<sup>36</sup>

In addition to the treaties of IHL, several treaties from IHRL cover the issue of child soldiers. For instance, Convention on the Rights of the Child (CRC),<sup>37</sup> Article 38(2) prohibits recruitment and use in direct hostilities of all persons under the age of fifteen.<sup>38</sup> Furthermore, the Optional Protocol to the Convention on the Rights of the

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<sup>31</sup> David M. Rosen, "Child soldiers, international humanitarian law, and the globalization of childhood", *American anthropologist*, vol. 109, no. 2 (2007): 300-301.

<sup>32</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute of the International Criminal Court); See, Iuliia Kononenko, "Prohibiting the Use of Child Soldiers: Contested Norm in Contemporary Human Rights Discourse", *Nordic Journal of Human Rights*, vol. 34, no. 2 (2016): 90-91.

<sup>33</sup> Rachel Harvey, "Children and armed conflict", *A guide on international humanitarian and human rights law. Montréal/Essex: International Bureau for children's rights/The children and armed conflict unit*, vol. 32, (2002): 9-10; See, Ilona Topa, "Prohibition of Child Soldiering-International Legislation and Prosecution of Perpetrators", *Hanse L. Rev.* vol. 3, no. 1 (2007): 111-112; See, Additional Protocol I, Article 77; See, Volker Druba, "The problem of child soldiers", *International Review of Education* vol. 48, no. 3 (2002): 272.

<sup>34</sup> Jean Pictet, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, edited by Yves Sandoz· Christophe Swinarski Bruno Zimmermann, (Martinus Nijhoff Publishers, 1987), 1377; See, Additional Protocol II, Article 4 (3).

<sup>35</sup> Lilian Peters, "War is no Child's Play: Child Soldiers from Battlefield to Playground", *Geneva Centre for the Democratic Control Armed Forces*, vol. 6, (2005): 5.

<sup>36</sup> Trevor Buck, *International child law*, (Routledge, 3<sup>rd</sup> edn, 2010), 391-393.

<sup>37</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

<sup>38</sup> Timothy Webster, "Babes with arms: international law and child soldiers", *Geo. Wash. Int'l L. Rev.* vol. 39, no. 2 (2007): 237-239.

Child on the Involvement of Children in Armed Conflict (OP-CRC),<sup>39</sup> Article 2 forbids compulsory recruitment and use in combat of persons younger than eighteen.<sup>40</sup> This treaty obviously makes a significant attempt towards clarifying the position of the international law on the recruitment of children by unequivocally lifting the recruitment age from fifteen to eighteen years.<sup>41</sup> Here, the signatory states are required to apply strict rules so as to prevent persons below the age of eighteen enter the army service. Moreover, armed groups are prohibited by the same document from recruiting those younger than eighteen for any type of combat activities.<sup>42</sup> Finally, another branch of international law treaty, namely the Rome Statute of the International Criminal Court Article 8 (2)(b)(xxvi) shed light on the issue of child soldiering from the perspective of criminal law by classifying conscription of persons younger than fifteen by armed forces as a war crime. Moreover, the same act by armed groups is sanctioned in the identical manner in Rome Statute of the International Criminal Court's Article (2)(e)(vii).<sup>43</sup>

Moving from the international legal field to the Afghan laws, from 1979 to 2014, there were only provisions about the age limit for recruitment of persons into national armed forces in the Military Law, and the age limit was always eighteen or higher.<sup>44</sup> In

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<sup>39</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222 (OP-CRC).

<sup>40</sup> Jean Chrysostome K. Kiyala, *Child soldiers and restorative justice: Participatory action research in the eastern Democratic Republic of Congo*, (Springer, 2018), 10-11.

<sup>41</sup> Leonie, 8.

<sup>42</sup> Lilian, 241-242.

<sup>43</sup> Knut Dormann, *Elements of war crimes under the Rome Statute of the International Criminal Court: sources and commentary*, vol. 31, (Cambridge University Press, 2003), 375-381; See, Kai Ambos, "The first judgment of the International Criminal Court (Prosecutor v. Lubanga): A comprehensive analysis of the legal issues", *International Criminal Law Review*, vol. 12, no. 2 (2012), 131-133.

<sup>44</sup> Law on the Public Obligation of the Recruitment, Official Gazette, Issue No: 472, (10 January 1981) (Law on the Public Obligation of the Recruitment 1981), Article 12 stipulates that the minimum age for recruitment into the armed forces is twenty. See, Law on the Public Obligation of the Recruitment, Official Gazette, Issue No: 644, (25 August 1987)(Law on the Public Obligation of the Recruitment 1987), Article 9 provides the age of eighteen as the minimum age for recruitment. See, Law on the Public Obligation of Recruitment, Official Gazette, Issue No: 725, (23 September 1991)(Law on the Public

2014 the Government of Afghanistan drafted and ratified the Law on Prohibition of Juveniles Recruitment in Military Units.<sup>45</sup> Article 2(1) of this law defines the child as any person below the age of eighteen. Moreover, this is the first law in Afghanistan specifically using the term ‘child soldier’. Articles 4, 5 and 6 of this law provides for the penalties of persons found responsible for the recruitment of children.<sup>46</sup> The details about the provisions of this law are mentioned in Chapter Six.

The question of reasons behind the presence of a large number of child soldiers in Afghanistan does not have a concise and simple answer. However, a significant part of the answer has to do with administrative problems and lack of implementation of the existing laws.<sup>47</sup> Regarding the administrative loopholes, there is ample evidence for lack of transparent procedure with regard to registration of newly-born children, subsequent issuance of identity cards and other documents appear to be seriously flawed and contributing to the recruitment of children for combat. In reference to the legal issues, there is a problem of relatively mild penalties provided and stipulated only in the last four years.<sup>48</sup> A host of other factors, not least the economic ones such as poverty and lack of economic opportunities; insufficient education along with socio-cultural and demographic traits with high proportion children and adolescents among the total population and drug abuse, psychological trauma and physical injuries.<sup>49</sup> All of these

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Obligation of the Recruitment 1991), Article 7 mentions the age of eighteen as the lower age for recruitment of persons into the armed forces.

<sup>45</sup> Law on Prohibition of Juveniles Recruitment in Military Units, Official Gazette, Issue No: 1146, (8 September 2014)( Law on Prohibition of Juveniles Recruitment in Military Units).

<sup>46</sup> Ibid, Articles 2(1), 4 and 5.

<sup>47</sup> A more detailed treatment of the administrative and legal issues is provided in chapter six of this study.

<sup>48</sup> Roos Haer, and Tobias Böhmelt, “Child soldiers as time bombs? Adolescents’ participation in rebel groups and the recurrence of armed conflict”, *European Journal of International Relations*, vol. 22, no.2 (2016): 408-436.

<sup>49</sup> Ibid.