

MSc International Politics

Children's Rights: Language of the Powerful

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Acknowledgements

The research that contributed to this work commenced in late 1998 during the height of the 18-year war in Sri Lanka when I spent several months making a video documentary in the Vanni northern war zone on the effect of the conflict on children. I then returned in 2002 for seven weeks during the ceasefire and, in improving on the earlier footage, obtained select interviews for the subject of this paper. I am particularly grateful to all the people during these two trips who made my stay in the Vanni so pleasurable and who went to great lengths to ensure my comfort and security, despite the difficult circumstances and danger to themselves. I also wish to thank the many people there, too numerous to mention by name, who spent the time to share their thoughts, views and experiences with me. I am indebted to my supervisor whose insightful criticism contributed greatly to the evolution of this work.

Abstract

Upholding children's rights is viewed as the most morally compelling imperative with the power to affect policy considerations in the new global order. This is because the moral power of children's rights is said to recognise the dignity and worth of the most innocent and vulnerable members of society. The two principles essential in this are children's rights to protection and children's rights to participation as equals with adults. However, I argue that the moral power of children's rights rests on a compelling illusion that children are behind its invocations but, in practice, powerful actors are the ones who deploy children's rights. After problematising the nature of agency in children's rights, I examine the social, cultural, economic and political context of those who exercise children's rights. I then investigate how this can provide an explanation for the design and the implementation of children's rights in situations of armed conflict. In my case study of the armed conflict between the Sri Lankan state and the Liberation Tigers of Tamil Eelam, I argue that the deployment of children's rights by the powerful has neither protected nor empowered children. Instead it has undermined children's sense of dignity and worth and endangered their lives still further.

Introduction

*Children's rights have become the most morally unassailable phenomenon to emerge from the human rights regime. The global project of rights, ostensibly one of creating a universal society of equal citizens, has homed in on children as the most deserving case for rights because it conceives of them as the most invisible, the weakest, the most vulnerable and the ultimate innocent members of society. The general understanding is that rights provide the remedy for victimisation and oppression because it is assumed that rights empower the right-holder, they "enable us to stand with dignity, if necessary to demand what is our due without having to grovel, plead or beg."*¹ Consequently, it is believed that rights will release the oppressed from their former reliance on the benevolence or compassion of the powerful.²

Nevertheless, despite the morally compelling case of children's rights, there is an apparent failure in transforming proclamations into

¹ Bandman, 'Do Children Have Any Natural Rights?', Proceedings of the 29th Annual Meeting of Philosophy of Education Society (1973), p. 234 at p. 236 cited in Michael Freeman 'Limits of Children's Rights', in Michael Freeman and Philip Veerman (eds.), *The Ideologies of Children's Rights* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992), p. 29

² Michael Freeman, 'Limits of Children's Rights', in Michael Freeman and Philip Veerman op. cit.

practice, most commonly expressed in terms of “a lack of political will to turn verbal commitments and strategies on paper into reality on the ground”, a problem that needs to be confronted by putting “some muscle behind the rhetoric.”³ However, on closer examination we discover what is actually problematic is the issue of agency. If it is true that the power that rights are said to possess is located in the right-holder, then political will on the part of the powerful should, in theory, not be the obstacle to the practice of rights. But, if in rights agency instead represents powerful interests, then this means that rights might only benefit children when these interests are coterminous with furthering children’s well-being. This is, however, not the same as empowering children, it means children are still reliant on the benevolence or compassion of the powerful. Thus we would have no reason to believe that rights enable children to stand with dignity ‘without having to grovel, plead or beg.’ Moreover, if children do not control children’s rights we must also consider the possibility that the power of rights might even be extremely detrimental to children’s welfare and self-empowerment.

³ Melanie Gow, Kathy Vandergrift, Randini Wanduragala, *The Right to Peace*, World Vision, Working Paper No. 2 (March 2000), p. 16.

In this paper, I aim to explore the nature of agency in children's rights and its consequences for children. To do this I will briefly examine the social, cultural, political and economic context of the practice of children's rights. Then I will look in more detail at how this affects the practice of children's rights in 'situations of armed conflict'. I have chosen as my case study the conflict in Sri Lanka, a country which professes to function as a liberal democracy, where the absoluteness of the core human right, the right to life, should have pride of place, but where the intensity of the political concerns of the powerful show otherwise.

Definitions

Whether we take the conception of human rights as deriving from human nature,⁴ or from human reason,⁵ the common understanding of rights is that they are inalienable, non-negotiable and universal possessions of all members of the human family⁶ and

⁴ Universal Declaration of Human Rights (<http://www.un.org/Overview/rights.html> accessed 08/09/02)

⁵ Jack Donnelly, Social Construction of International Human Rights, in Tim Dunne and Nicholas Wheeler (eds.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 85

⁶ Preamble, Universal Declaration of Human Rights, op. cit.

that they have the power to constrain, or even override, the interests of the powerful. It seems peculiar, therefore, that there can be a special category of rights for children because this would suggest that human rights can be up for negotiation on the basis of age, and that all rights are not universal to all members of the human family. Thus the commonly recognised understandings of rights fail to account for even the existence of special rights for children. Furthermore, as rights are considered inalienable possessions of the right-holder, this infers that only children themselves can define the meaning of these rights and exercise them. However, as we shall see in practice, others define and exercise children's rights on behalf of children. Even the definition of who or what is a child is established by others, not children themselves. Therefore, in practice, children's rights do not possess the qualities that are said to be fundamentally intrinsic to rights.

With the rights regime creating special rights for children, there is the problem that without recourse to self-definition, there is no easy way to make the distinction about who or what is a child. Yet the very

nature of the rights regime, driven by the imperative of establishing 'objective standards' to build a moral order for the world's citizens,⁷ requires children to be a definable category. Thus, the foundation from which international legislation takes its stand on children's rights is an imagined universal child, defined as a person under 18, separate from relations with society, for whom it is possible to institute absolute universal standards.

In practice, of course, it has proved impossible for powerful decision-makers to treat all those under 18 as if they were alike. Within the CRC itself there are numerous qualifications to these absolute, universal rights, sometimes with regard to an assessment of a child's changing capabilities. This is because it would be hard in practice to sustain an argument that a child of 4 years old has the same capabilities as a child of 17. But it is also the case that not all children of 17 have the same maturity, capabilities and sense of responsibility as each other. Indeed understandings of who or what a child is change dramatically over time, space and activity. According to Ed Cairns:

⁷ Donnelly, *op. cit.*

[i]n the past children moved from a sort of limbo status to adulthood very quickly – perhaps as young as age 7 or 8. Since then, particularly with the ‘discovery’ of adolescence, the age at which children are thought to become adults has increased.⁸

Within the CRC there is also no uniformity that cuts across all aspects of social life. Allowances are made for national custom, so that in Britain, for example, children of 16 years can have children of their own and be responsible for bringing them up, yet they cannot vote until they are 18. But there are also differences that the CRC does not allow for. For example, children in non-Western cultures tend to have more responsibilities at an early age for taking care of siblings while the parents are absent, or for shouldering the financial needs of the family where the main breadwinner has died. These are experiences which suggest that a more nuanced view of where childhood ends and adulthood begins is needed. Cairns argues that “[i]n South Africa childhood has been generally defined as spanning the period from birth to 10 years old.”⁹ Thus it cannot be said that

⁸ Ed Cairns, *Children and Political Violence*, (Oxford, Cambridge, Mass: Blackwell, 1996) pp. 8-9.

⁹ *ibid.*

there is one universally accepted way to consider what children are, they grow up in differing cultures, some which place greater expectations on children at an early age for certain practices than others. In practice then, children as agents are perpetually negotiating their identities and behaviour within the family and within society at large. We must conclude from this that children's identities and capabilities are shaped by their experiences in particular social and cultural contexts.

Yet, because the rights regime requires the concept of a universal child whose capabilities can be known beyond their relations with society in order to establish universal standards, this sets up a conflict between children in real societies and the ideologies that are constituted in the practice of children's rights. The "Lockean notion of children's primary natures as *tabula rasas*"¹⁰ provides the rights regime with an identity to be used for all children, conceiving of them as being 'above the political divide,'¹¹ unsullied by extensive contact with particular social, political and cultural contexts. On this

¹⁰ Susan Wolfson, 'Children's Rights: The Theoretical Underpinning of the 'Best Interests of the Child'', in Michael Freeman and Philip Veerman, *op. cit.*, p. 7.

¹¹ See Maggie Black, *Children First: The Story of UNICEF, Past and Present* (Oxford: OUP, 1996), p. 46.

conception the child is awarded a “unique moral status”¹² as the purest real life equivalent of the abstractions of the rights regime, thus making children the most coveted objects for rights advocacy. Accordingly it is asserted that, for children’s rights especially, an understanding of specific contexts is unnecessary, indeed undesirable, because it could “regress into an arbitrary and inconsistent relativism”¹³ – a thing inimical to the universalism of rights.

Hence, the practice of rights tends to ignore children’s own negotiations with other members of society about their identities and capabilities and, instead, places the judgement about children’s capabilities with distanced powerful bureaucrats, politicians, lawyers and other paid experts, many of whom directly or indirectly represent the interests of the state, or the organisation of states, who have little understanding of the particular child, his or her environment and needs. Consequently, the powerful interests which rights are said to constrain are all too frequently the very same interests that determine

¹² *ibid.*

¹³ Bob Franklin in ‘The case for children’s rights: a progress report’, in Bob Franklin, *The Handbook of Children’s Rights, Comparative Policy and Practice* (London, New York: Routledge, 1995), p. 8.

‘on behalf of children’ who and what children and their rights are. This pits children’s own decision-making powers about their actions and relationships against the decision-making of the powerful who wield children’s rights.

It might be useful here to discuss briefly which political agents should be included in the term ‘the powerful.’ For the purposes of this paper I will use a broad rather than a narrow definition. I will include in my definition not merely the materially powerful, such as the United States or multinationals, but those who derive their status and resources from holding a position in the structures of power. Thus I will include in the term powerful those who are accountable to, gain their reputations in, and mobilise political will from the social and political circles of the materially powerful, which in turn provides them access to economic power. This definition is juxtaposed with political agents in civil society who are accountable to, gain their reputations in, and mobilise political will from ordinary members of the population and consequently have a greatly reduced economic power. On this conception the institutions of the human rights regime, though they are wont to claim they represent civil society, are more accurately

described as members of the powerful, along with states and the organisation of states. Therefore, the prevailing Anglo-Saxon social, political, economic and cultural structures within which powerful actors form their identities and make their decisions are what concern us here.

Methodology and outline of paper

As the aim of this paper is to understand the nature of agency in children's rights, usually assumed in descriptive accounts, I will adopt an approach which places actors and action in social and political context to understand the environment within which actors make and carry out decisions.¹⁴ In addition I will use the two meanings commonly ascribed to children's rights, that of children's protection and that of children's participation, as analytical tools to distinguish between the proclaimed aspirations of members of the rights regime and their actual deployment of rights.

The paper which follows is divided into four parts. In Part One we examine common assumptions about agency in the CRC. In Part

¹⁴ See Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 2000), p. 139-190.

Two we describe the political and ideational framework of the children's rights regime and its relation to outcomes in the interpretation of children's rights in situations of armed conflict. Part Three is an analysis of empirical evidence to propose an explanation for the direction of the deployment of children's rights in the conflict in Sri Lanka. Part Four is a short conclusion.

The issue of agency in children's rights

The campaign to put children's rights at the centre of policy concerns universally has become one of the most powerful, unassailable lobbies in international affairs. 61 countries signed the Convention on the Rights of the Child (CRC) on the very day it was opened for signature¹⁵ and to date 191 countries have ratified it. Maggie Black remarks that "[n]o human rights treaty had ever gathered so much support so early in its career,"¹⁶ and UNICEF professes it to be "the most universally accepted human rights instrument in history."¹⁷

Derived from the Universal Declaration of Human Rights, the 'gospel'¹⁸ of the CRC has become the most morally impelling component of the human rights regime, presented as the recognition by the powerful of the rights of the weakest and most vulnerable of the world's citizens.

The rights discourse suggests that rights themselves have made a huge difference to the structures of power, indeed that there has been

¹⁵ Black, *ibid.*, p. 25

¹⁶ Black, *ibid.*, p. 25

¹⁷ UNICEF, Convention on the Rights of the Child, Introduction (<http://www.unicef.org/crc/crc.htm>, accessed 18/8/02)

¹⁸ Stuart Maslen and Shazia Islamshah, 'Revolution not Evolution: Protecting the rights of children in armed conflicts in the new millennium', *Development*, vol. 43, no. 1, March 2000, pp. 28-31 (London, Thousand Oaks, CA, New Delhi: Sage), p. 31

a dramatic political revolution whereby the interests of the weak have become more powerful than the interests of the powerful. Jack Donnelly, for example, professes that because “rights place right-holders and duty-bearers in a relationship that is largely under the control of the right-holders”¹⁹ rights are “the language of the victims and the dispossessed.”²⁰ This conception of rights suggests that agency resides with the right-holder; in the case of children’s rights, with children. It suggests that this effects a situation whereby children, because of their rights, have huge power to affect the practices of the powerful.

Consequently, many scholars are of the opinion that the widespread recognition of children’s rights remedies the invisibility of children in world affairs where children were formerly “politically neither seen or heard”²¹ and thus excluded from participation in society. Geraldine van Bueren argues that because rights further children’s participation, placing children’s rights in the mainstream of policy considerations fulfils “a critical precondition for protecting the rights of children” as

¹⁹ Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 1998), p. 19

²⁰ *ibid.*, p. 20

²¹ Black, *op. cit.*, p. 2

“active equal citizens.”²² This position is shared by Thomas Hammarberg, former secretary-general of Amnesty International, who sees the CRC as a major breakthrough because “[i]n order to know what is actually in the interests of the child it is only logical to listen to him or her,” which, he says, is precisely what the CRC effects in Article 12.1:

States Parties shall assure to the child who is capable of forming his or her own views freely in all matters affecting the child, the views of the child be given due weight, in accordance with the age and maturity of the child.²³

The above article is said to provide a remedy for the traditional non-participation of children where children were “denied the right to make decisions about their affairs.”²⁴ But the wording of article 12.1, held up by proponents as the key empowering article in the CRC, does not show that children have the right to make decisions about

²² Geraldine van Bueren, ‘Practising Law using the Convention on the Rights of the Child, 2000 in What Practical Difference Has Been Made by the United Nations Convention on the Rights of the Child?, The Graham Turnbull Essay Competition, 1999/2000, Published by the Law Society, London, June 2000, p. i

²³ Thomas Hammarberg in Bob Franklin (ed.), *The Handbook of Children’s Rights, Comparative Policy and Practice* (London, New York: Routledge, 1995), p. x

²⁴ Franklin, *op. cit.*, p. 10

their affairs, or that children's views will be paramount, or that the child shall even be listened to as Hammarberg claims. Instead the article shows that an adult expert makes the decision about a child's affairs, and will only even consider the views of the child if she or he is deemed 'capable of forming his or her views freely'. Thus it is not the case that the relationship between right-holder and duty-bearer is 'largely under the control of the right-holder' as Donnelly has suggested. Instead, by stating that 'the views of the child be given due weight, in accordance with the age and maturity of the child' the article suggests that the control of the relationship resides with the adult expert who decides how important the views of the child are, and even if they are important at all. Thus we see that even the most empowering of articles in the CRC does not in fact empower children; rather, it gives adult experts power over children. Consequently Donnelly's argument, that rights correct the imbalance of power in favour of the otherwise disempowered, cannot be sustained.

Though the CRC provides little evidence that rights empower children we must also consider the alternative role of children's rights, as entitlements to protection. But even here we come across similar

problems. While Hammarberg suggests that, article 6.2, the right-to-life article, “goes further than just granting children the right not to be killed; it includes the right to survival and to development”,²⁵ nevertheless, it is clear that agency resides with those who have the power to grant (or withhold) the right not to be killed; though this is obscured by the use of objective language. Thus in the case of children’s protection, children’s rights have not liberated children from dependency on the goodwill of powerful actors who may have different interests. Indeed Alston and Gilmour-Walsh argue, “it has been shown that many of the laws that at face value appeared to protect the rights of the child were actually designed to serve some other interests.”²⁶ Because, therefore, it is the powerful who design, recognise and exercise rights on behalf of children this means we are nowhere more advanced than before the advent of rights where children had ‘to grovel, plead or beg’ to secure their interests.

Therefore, we must conclude that children’s rights have furthered neither the participation of children, nor the protection of children.

²⁵ Thomas Hammarberg, op. cit., p. x.

²⁶ Philip Alston and Bridget Gilmour-Walsh, *The Best Interests Of The Child* (Firenze : UNICEF: Innocenti studies, 1996), p. 3

The power to ensure the best interests of the child remains with the powerful because rights have not affected a transfer of power to the disempowered. Hence the moral power of children's rights rests on a compelling illusion that the voice of children is behind its invocations, whereas in fact it is the voice of the powerful, and real children are more invisible than ever.

Having located agency in the practice of children's rights with powerful decision-makers, I will now consider how they have conceived of and directed children's rights.

Political and ideational framework of children's rights

It may be argued that, even if children themselves do not directly design rights, children's best interests are, nevertheless, furthered by the creation of universal objective standards because these can be used as a tool to eradicate earlier undesirable culturally based notions of children that undermine their dignity and worth. Thus, in assuming a position beyond particular cultures, rights proponents believe they can refashion relations in the world to create a global society where all children would be equal. Bob Franklin argues that the children's rights discourse in recognising "children's abilities as autonomous decision-makers," opposes both the idealised "mythical, cultural construct of the child as the personification of innocence and purity" and the reaction against that idealisation by those who see children as "inherently evil demons who, typifying Britain's declining moral standards, seem incapable of distinguishing right from wrong."²⁷ The rights ideology of promoting children's active participation in society also promises to liberate children from the 'cocoon' they have occupied. For Franklin, the modern conception of childhood has from the sixteenth century "forcefully ejected children

²⁷ Bob Franklin, *op. cit.*, p. 5

from the worlds of work, sexuality and politics, and designated the classroom as the major focus of children's lives. Children were no longer allowed to earn money or to decide how to spend their time; they were forced into dependency on adults and obliged to study or play."²⁸ On this conception the significance of children's rights is that it promises not only to reconceptualise children according to the imagined abstract child of the rights discourse, but also to refashion children's relations with society so that children will no longer be excluded. Thus, not only is the CRC considered the first step in providing children with tools that will empower and protect them, but it is also conceived of as part of a larger project of changing society.

However, because children's rights proponents base their convictions on an imagined child beyond his or her relations with society, by design they can claim rights only to be a product of technocratic excellence. Yet there is no evidence that political culture is amenable to technical solutions. I will suggest, therefore, that not only has the project of children's rights failed to change these dominant Anglo-Saxon conceptions of children, but that the children's rights

²⁸ *ibid.*, p. 7

regime still references these cultural values in designing and implementing these standards for other societies and in conceiving of the global project of children's rights. This also infers that the larger project of societal change envisaged by global children's rights proponents becomes coterminous with the practice of extending dominant social, political, economic and cultural values to other societies, albeit carefully worded as if these values are objectively derived.

We will, therefore, examine the practice of children's rights in situations of armed conflict to see whether there is evidence that Anglo-Saxon conceptions of the child and childhood do indeed provide the cultural context for the design and implementation of children's rights. However, before we do this, we need to consider also the political context of the rights regime. The project to develop a global society in which all the world's citizens will enjoy equal rights places the UN in the role of global manager, supported by the most powerful Western democracies. International children's rights agencies are constituted in this powerful international structure: they are accountable to it, they build their reputations in it and they

mobilise political will from it. Consequently they see their role in relation to the evolution of global management.

But global management in practice is directed through the structure of states. The United Nations (UN), as an organisation whose members are states, not people, must be responsive to states; whereas there is neither the requirement, nor the means for it to be accountable to children. The UN is also an organisation dominated by the interests of the most powerful states, and, in particular, by the values of states such as the US and Britain who claim to be the embodiment of human rights. Thus, the UN tends to extend the dominant powers' preferred social, political, economic and cultural values as a solution to world management problems. Similarly, these political structures provide the context for the constitution and reproduction of the identities and practices of the children's welfare organisations who are dependent on the UN for status and resources. Consequently, the United Nations Children's Fund (UNICEF) attempts to use children, for better or for worse, as a means to manage and develop the world in the interests of the powerful, as the following quote by the then Executive Director, James Grant, shows:

...using children as a cutting edge of human rights generally, and of our many ongoing efforts in diverse fields of development, would contribute more to international peace and security, and more to democracy, development and the environment – more to preventing crises and conflicts – in a shorter period of time and at a far lower cost than any other set of doable actions aimed at remedying global problems on the threshold of the 21st century.²⁹

For Grant, children's rights were tools to remedy problems within the order, not challenge it. This is quite the opposite of Donnelly's description where, to practice human rights is "to attempt to change political structures"³⁰ and thereby redress the imbalance of power in favour of the interests of the weak. Grant's speech shows that children's rights were to be used as part of a project to change society but only in as much as to further dominant values and objectives that had already been conceived of by the powerful before the advent of rights. Thus rights were not deployed for any political revolution, but

²⁹ Jim Grant's speech to the General Assembly of the UN, Armistice Day 1994: (UK Annual Review 1994/1995, UNICEF: 4), cited in Normal Lewis, in Tony Evans, (ed.), *Human Rights Fifty Years On: A Reappraisal* (Manchester and New York: Manchester University Press, 1998). ?????

³⁰ Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 1998), p. 20

they were deployed to promote democracy, development and an end to conflict.

On the face of it these may appear noble goals not inimical to the promises of furthering children's best interests made by rights proponents. But we will now look in more detail, firstly, at how these values have been constituted in the design and interpretation of children's rights and, secondly, how children's rights are deployed to further the goal of prevention of conflict, by focussing on one aspect of the CRC – children in situations of armed conflict.

Children's rights in situations of armed conflict

It has generally been recognised that the majority by far of people killed in conflict in the last 50 years or so are civilians. According to UNICEF since the beginning of the 20th century civilian casualties, of whom children make up a third, have risen from 5 percent to 90 percent.³¹ By contrast children's rights proponents commonly proclaim children to be 'a zone of peace'³² declaring that 'children

³¹ UNICEF, *State of the World's Children*, 1996, 13 cited in Melanie Gow, Kathy Vandergrift, Randini Wanduragala, *The Right to Peace*, World Vision, Working Paper No. 2, March 2000, p. 8

³² Black, *op. cit.*, p. 24

have no part in warfare³³ – abstract imperatives which express the ideational structures of the practice of children’s rights in situations of armed conflict. But these conceptions of children’s ideal position in wartime are not unlike Franklin’s description of the ‘cocoon’ in which children were expected to exist before the advent of the children’s rights ideology. The concept of children as a ‘zone of peace’ suggests that children should be isolated from war. Particularly relevant here is Franklin’s description of the development of the modern concept of childhood which: “forcefully ejected children from the worlds of work, sexuality and politics, and designated the classroom as the major focus of children’s lives.”³⁴ We can compare with this how the concept that children should ‘have no part in warfare’ rhetorically ejects children from the world of war. The principle of excluding children in the practice of children’s rights in conflict situations is, therefore, in direct opposition to the principle that children should be ‘active equal citizens’. We can see from this that the rights regime does not deploy the promised universal objective standards in practice, instead it references particular cultural notions

³³ Gracia Machel, Impact of Armed Conflict on Children, Introduction, A/51/306 26 August 1996 Fifty-first session Item 108; Olara Otunnu, E/CN.4/1988/119, 12 March 1998, Commission on Human Rights, Fifty-fourth session, item 20, 24

³⁴ Franklin, op. cit., p. 7

emerging from dominant societies. This suggests that the practice of children's rights is, in fact, part of a process of extending dominant values to other societies. Thus many rights scholars assume Anglo-Saxon conceptions of the child in their analyses of children's rights, as the following account of children's rights in conflict situations demonstrates.

Françoise Krill states that the reason for the hugely disproportionate numbers of civilians killed in conflict is "the use of new, indiscriminate methods and means of warfare".³⁵ While noting that advances in warfare technology have led to the development of the means to destroy large numbers of people simultaneously while distancing the soldier from his victim, this is not in itself something that the children's rights regime advocates against. The prevailing structures within which the rights regime operates does not challenge the state's monopoly over the legitimate means of violence, nor does it seek to constrain 'development' where the state wields the most advanced and destructive weaponry. Instead in Krill's argument it becomes

³⁵ Françoise Krill, 'The Protection of Children in Armed Conflicts', in Michael Freeman and Philip Veerman, *op. cit.*, p. 348

clear that she considers children to be the problematic 'indiscriminate' method and means of warfare:

the most prevalent type of recent conflict – regular troops pitted against guerrilla forces – has too often seen young adolescents brandishing weapons and ready to use them indiscriminately. The participation of children in hostilities puts not only the children themselves in mortal danger but also those who become their targets.³⁶

The concern here is not that children should be empowered to participate in society, but that they should be prevented from participating if that society is at war. This is because if children were to participate they would 'put themselves in mortal danger', which suggests that children are irrational and do not know what is in their best interests. Furthermore, by Krill's use of the word 'brandishing' she infers that children are irresponsible, and in her use of 'indiscriminately' that they do not know right from wrong and thus are incapable of acting justly. However, as Freeman argues, conceiving

³⁶ *ibid.*

of children as irrational, incapable and irresponsible is precisely the reason given by children's rights *opponents* for why children should *not* be entitled to rights.³⁷ Indeed Krill's argument has strong parallels with the characterisation, antithetical to children's rights, of children as 'inherently evil demons... incapable of distinguishing right from wrong.' Thus we must conclude that the children's rights regime does not in practice deploy a universal conception of the child beyond society. Instead the rights regime practitioners view the world through the lens of the dominant social, political and cultural order.

We will now examine how these particular cultural notions of the child and the dominant political context of the children's rights regime are constituted in the design of article 38 in the CRC. Article 38.2-3 states that parties shall 'ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities,' and that parties shall 'refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.'³⁸ In the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict,

³⁷ Freeman, *op. cit.*, p. 35

³⁸ Convention on the Rights of the Child (1989) cited in Brownlie (ed.) *Basic Documents on Human Rights*, 3rd Ed (Oxford: OUP, 1992), p. 196

the age both for direct participation in hostilities and for compulsory recruitment has been raised to 18. However, though states are still permitted to accept those who enrol voluntarily to their national armed forces under 18, non-state parties are not so permitted. These laws show that even in the design of children's rights children are *required* not to participate in society by bearing arms, on the basis that this constitutes "an abuse of children."³⁹ The underlying inference of the non-voluntary nature of this right is that children are considered more susceptible to making bad decisions than adults.

But, if the proclaimed advance in the new protocol comes down to the fact that it excludes even more young people than before, this means progress has been interpreted as conceiving of even older children as incapable. Yet if we compare this to article 12, which suggests that children should increasingly be considered capable enough to participate as they get older, the additional protocol should be seen as a regression. Thus, despite these being presented as children's rights in the CRC, the laws for children in situations of armed conflict

³⁹ The Coalition to Stop the Use of Child Soldiers, <http://www.child-soldiers.org/> accessed 31/08/02

cannot easily be read as rights. They are, in effect, outright prohibitions on children's activity. Furthermore, because children's own aspirations are unequivocally considered to be irrelevant, they even undermine children's self-empowerment.

This appears all the more perverse when we understand this exclusion of children means children do not have the moral and legal right of self-defence which, under most national legislations, is considered common to all human beings. In the Preamble to the Universal Declaration of Human Rights, for example, it acknowledges "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."⁴⁰ But the prohibition on children bearing arms means children have no 'last resort' against tyranny and oppression. Thus article 38 of the CRC should be read as a denial of rights that everyone else is said to possess. Consequently this children's right immensely disadvantages children in relation to adults, in particular in relation to the powerful: those who have defined and those who exercise these enforcements, as well as

⁴⁰ Universal Declaration of Human Rights, *op. cit.*

those whose military aggression children may wish to defend themselves from. Thus, the allocation of special rights for all children by the powerful does not in practice mean that children's best interests are more likely to be advanced but rather it can mean that the inequalities between children and adults existent in the values of dominant societies are enforced and extended to other societies.

We have just shown that the rights regime's use of children's rights in conflict situations is read in terms of cultural values that are antithetical to the professed meanings of children's rights. Later I will also suggest there is evidence that dominant political conceptions of how to prevent conflict also provided the context for the prohibition on children bearing arms. But though children were required to stop fighting adults this did not necessarily mean that adults were also to be stopped from fighting children. This fact was further implied in the design of the remaining part of article 38, as I shall now explain.

According to Grac'a Machel: "[m]illions of children are caught up in conflicts in which they are not merely bystanders, but targets. Some fall victim to a general onslaught against civilians; others die as part

of a calculated genocide.”⁴¹ Given the high number of children killed in conflict we should expect the CRC to include in its provisions a re-assertion of children’s right to life in Article 38 as it is the only article to deal specifically with children’s rights in situations of armed conflict. However Krill argues that the CRC weakens earlier international humanitarian law on this point considerably merely using the wording: “States Parties shall take *all feasible* measures to ensure protection and care of children who are affected by an armed conflict.”⁴² She notes that what is particularly disappointing here is that it fails to “include the rule prohibiting attacks on civilians and a *fortiori* on children,”⁴³ irrespective of the fact that in the Geneva Conventions there is an absolute ban on attacks against the civilian population.⁴⁴ Significantly this point, according to van Bueren, was brought to the attention of the drafters and the states representatives, but the result was that they did not concede to include it in the CRC.⁴⁵

Thus, I suggest that because they identified dominant interests with the deployment of children’s rights they refrained from explicitly

⁴¹ Grac'a Machel, op. cit.

⁴² Convention on the Rights of the Child, op. cit., Article 38.4

⁴³ Françoise Krill, op. cit., p. 353

⁴⁴ CRC Optional Protocol I, Article 51, para. 2, (<http://www.unicef.org/crc/crc.htm>, accessed 18/8/02)

⁴⁵ Geraldine Van Bueren, *The International Law on the Rights of the Child* (The Hague, Boston, London: Martinus Nijhoff Publishers, 1998), p. 342

prohibiting powerful actors from attacking children, even while they prohibited children from bearing arms for self-defence, context of genocide notwithstanding. Consequently, in designing the text of children's rights, powerful decision-makers failed to ensure children's protection while simultaneously undermining children's self-empowerment, effectively putting children in situations of armed conflict in extreme danger.

These preferences in designing children's rights in conflict situations were also reflected in the implementation of children's rights. Van Bueren remarks that, while the majority of children caught up in armed conflicts are civilians "it is rather strange that a disproportionate percentage of the world's attention appears to be focussed on child soldiers."⁴⁶ In 1998, for example, The Coalition to Stop the Use of Child Soldiers was launched by a selection of international organisations, which were directed by the UN to mount a major campaign against 'child soldiers.' Conversely, the children's rights regime did not undertake any major campaigns, either against the use of the technologically advanced means of warfare that had

⁴⁶ *ibid.*, p. 340

increased the capacity of powerful actors to kill large numbers of people indiscriminately, or against the deliberate targeting of civilians, despite these issues commonly figuring in preambles to studies concerned with children in situations of armed conflict.

Thus in identifying their own interests and values in the practice of children's rights, actors have not employed understandings that children's rights should promote the protection and participation of children. In fact, while using the moral power derived from children's identities the practice of children's rights has not furthered the well being of children, instead it has endangered the lives of real children. The following case study shows how this use of rights affected children targeted by genocide in Sri Lanka.

Case study: the conflict in Sri Lanka

History

Since Sri Lanka's independence in 1948 the elites of the majority Sinhalese population, have monopolised political and military power and defined the country's identity as exclusively Sinhalese-Buddhist. Thus, Sinhalese make up more than 99% of the armed forces⁴⁷ and permanently run the government, notwithstanding regular elections which enable the two main parties to alternate in power. The government has pursued a variety of means to persecute the Tamils, who make up almost a third of the country's population. The weakest and poorest of the Tamils, the plantation workers, were the first to be affected when the government took away their citizenship and, with it, all their political rights. Over time the government's campaign of genocide spread to the entire Tamil population of the island. As part of this campaign in 1956, 1958, 1977 and 1983 pogroms were carried out against the Tamils. Several thousands of Tamils were killed as each pogrom resulted in larger and larger casualties. For example, in

⁴⁷ Bacre Waly Ndiaye, E/CN.4/1998/68/Add.2, 12 March 1998, Commission on Human Rights, Fifty-fourth session, Item 10

1977 when the Tamils voted in unison for an independent state for Tamils, the response by the state was a far bigger pogrom than what had occurred previously. In 1979 the government permanently sent the army in to occupy Jaffna, the cultural capital of the Tamil homelands in the north and the centre of political resistance to the state. By 1983 the Tamils' armed resistance in Jaffna, the Liberation Tigers of Tamil Eelam (LTTE), had grown and made its first attack on the military forces, killing 13 soldiers in the north. The retribution was an even more massive state-sponsored pogrom against the unprotected Tamils in the south. Eyewitness accounts told of how thugs, operating with the help of government forces and the Buddhist clergy, threw children into vats of burning tar and smashed the limbs of others with stone grinders. Young girls were raped in front of their families and then chopped to pieces or set alight. Tamils were dragged out of buses and stabbed to death. Cars and houses with Tamils trapped inside were set on fire.⁴⁸ From that moment the official war by the government armed forces was launched, ostensibly against the LTTE, but in practice against the Tamil population.

Civilians were gunned down, tortured to death, burnt alive, cut to

⁴⁸ see Satchi Ponnambalam, *Sri Lanka: National Conflict and the Tamil Liberation Struggle* (Thornton Heath: Tamil Information Centre, 1983), and E. M. Thornton and R. Nithiyanandan, *Sri Lanka, Island of Terror* (Middlesex: Eelam Research Organisation, 1984)

pieces and bombed at. They were killed in hospitals, schools, universities, churches, and buses, on the streets and in their homes.⁴⁹

The knowledge structures of children's rights agencies

Rights proponents have generally blamed 'lack of political will' for evidence that rights have not actually resulted in the end of persecution for the majority of victims. But I argue that political will was not the issue with Sri Lanka. Rather it was more the case that because the powerful, not the victims, could be agents in the practice of rights, the way the powerful conceived of the use of children's rights was quite distinct to how victims conceived of it.

Sri Lanka had far more than the powerful norms of state sovereignty on its side to insist that its behaviour towards people within the country was an internal affair – norms which, in any case, human rights were said to 'trump'.⁵⁰ It was both a 'friendly' liberal free-market democracy, as well as being often proclaimed a model of Third World

⁴⁹ see US State Department report 2001 (<http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8241.htm> accessed 18/8/02) Amnesty International reports (<http://www.amnesty.org>, accessed 18/8/02) and Tamil Centre for Human Rights, Appeal to The United Nations Commission on Human Rights, reports 1996 – 2001.

⁵⁰ Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1979), p. xi.

education and health. Thus with the metanarrative of rights declaring liberal democracy to be the ideal conditions for furthering human rights, and with children's welfare organisations primarily concerned with these very social indicators that 'proved' development and, therefore, welfare, Sri Lanka was valued highly by the children's agencies that had adopted the imperatives of children's rights in their structures of knowledge. In addition Arve Ofstad, former UN Resident Coordinator in Sri Lanka, states that what aid donors primarily considered in countries undergoing severe internal conflict was "how the volume as well as the orientation of the program can influence a peace process."⁵¹ For Sri Lanka, he comments, "[t]he main [consideration] was, of course, the support by the donor countries to the government's struggle against the LTTE."⁵² Thus both the political economy of the children's rights agencies, where donor considerations were significant in providing resources and in motivating agencies' profile-building activities; and the agencies' own conceptions of a desirable world order, one where development, democracy and free-market economics were paramount, shaped how

⁵¹ Arve Ofstad, 'Countries in Violent Conflict and Aid Strategies: The Case of Sri Lanka', *World Development*, Vol. 30, No. 2, pp. 165-180, February 2002, p. 165

⁵² *ibid.*, p. 169

they conceived of the use of children's rights to remedy the conflict. Consequently, notwithstanding the fact that the Sri Lankan Government was secretly considered responsible by Amnesty International for killing at least 98% of the 60,000 or more civilians who had died since the war began in 1983,⁵³ UNICEF, nevertheless, did not once speak out against the direct targeting of civilians nor against the government forces' violations of children's right to life.

However it was not the case that agencies' beliefs became obstructions to attempts to uphold the rights of victims, indeed the agencies took a very active approach in deciding the use of children's rights. According to Ofstad, "all donor countries supported or accepted the [Sri Lankan] government's policy line," a fact that agencies with a "human rights approach" were influenced by.⁵⁴ They repeatedly conveyed the impression in their reports that the government forces, rather than persecuting the Tamils, were instead protecting the Tamils against the violence of the LTTE, as if they were in collusion with the government's war propaganda.⁵⁵ Furthermore

⁵³ see Sreetharan's analysis of the letter to the *Boston Phoenix* by Joshua Rubenstein, Northeast Regional Director, Amnesty International, Boston: 'Amnesty admits Sri Lankan forces responsible for 98% of conflict's civilian deaths?' *Tamil Guardian*, Saturday 25 April 1998, p. 8

⁵⁴ Ofstad, op. cit., p. 168

⁵⁵ Vasantha-Rajah's account as former Chairman of Sri Lankan state television, Rupavahini, and earlier

they issued press releases expressing outrage at violence the government alleged to be perpetrated by the LTTE at the same time as largely ignoring the government's own violations.⁵⁶ In 1994, the ascent to power of Western-educated Chandrika Bandaranaike Kumuratunga, was appreciated by international community, because, as Ofstad remarks, unlike previous regimes, "the Kumuratunga government emphasized human rights as part of its political platform."⁵⁷ Understanding how to use rights language to elicit international support and claiming this was 'a war for peace,'⁵⁸ meant that the government could increase the ferocity of its war, which in turn meant an increase in the scale of human rights violations.⁵⁹ Thus, as Ofstad explains, "[d]espite continuous human rights problems after 1994...human rights became a low-profile issue and

former senior producer in the BBC World Service, is interesting in its remarks on international perceptions in relation to government strategy, see Vasantha-Rajah, *Tamil Exodus and Beyond* (London, 1996). This particular strand in international reporting was quietly dropped after the mass uprisings (Pongu Tamil) of Tamil civilians living in army controlled territory in support of the LTTE which started in 2000 in full view of the Sri Lankan press and the increasing international disillusionment with the Kumuratunga government's failure to resolve the conflict militarily.

⁵⁶ For a comparison see press releases on the following websites: Amnesty International: <http://www.amnesty.org>; International Committee of the Red Cross: <http://www.icrc.org>; Save the Children: <http://www.savethechildren.org>; Special Representative for the Secretary-General for Children and Armed Conflict: <http://www.un.org/special-rep/children-armed-conflict>; UNICEF: <http://www.unicef.org>

⁵⁷ Ofstad, op. cit.

⁵⁸ see interview by Zain Verjee broadcast on CNN cited in *Tamil Guardian*, 7 November 2001, p. 5

⁵⁹ During the Kumuratunga administration disappearances were reported to increase significantly and throughout the period Sri Lanka remained the country with between the first and second largest number of non-clarified cases of disappearances in the world according to the UN Commission on Human Rights Working Group on Enforced or Involuntary Disappearances. See <http://www.ahrchk.net/hrsolid/mainfile.php/2000vol110no05/483/> accessed 08/09/02.

most donors preferred a constructive rather than a negative approach.”⁶⁰ This constructive approach meant that UNICEF concluded in its country programme recommendation for Sri Lanka that “[t]he major programme strategy should be to increase the Government’s capacity.”⁶¹ Consequently far from challenging severe rights violations, organisations that claimed to be furthering the best interests of the child actively campaigned for greater support for the violators of children’s right to life.

To understand further how UNICEF’s own structures of knowledge informed its behaviour in this political context we must also understand the identity of UNICEF itself. UNICEF officers on the ground had to accept “a relatively narrow set of child health objectives established in far-away New York,”⁶² where it was decreed that the organisation’s “primary purpose was the delivery of services to children.” This was interpreted as “running health campaigns – against diarrhoea and undernutrition, for immunization and breastfeeding ... because they were motivating and it was possible to

⁶⁰ Ofstad, op. cit., p. 171

⁶¹ UNICEF Country Programme Recommendation – Sri Lanka. E/ICEF/1996/P/L.33/Add.1 11 July 1996, United Nations Children’s Fund, Executive Board, Third Regular Session 1996, 16-19 September 1996, Item 3

⁶² Black, op. cit., p. 39

mobilize around them...delivering some tangible and measurable results.”⁶³ Thus the priorities of children’s needs were not conceived of in relation to children being ‘enabled to stand with dignity’ but rather according to tactical considerations about the organisation’s capabilities, and its identity.

This was reflected in how UNICEF put into practice the proclamations that it derived from the children’s rights agenda. In situations of conflict the notion that children were ‘a zone of peace’ meant UNICEF obtaining an agreement between warring parties for ‘days of tranquillity’ in order to accomplish the mass immunisation of children within three days or so. This, UNICEF claimed, might “help to create the preconditions for an overall reduction in hostilities,” and would at least “etch in the international consciousness an acceptance that children could – and should – be treated as a ‘zone of peace’.”⁶⁴

While UNICEF presented this as evidence that it was upholding the protection of children, it could also be argued that this was, in effect, little more than another ‘public relations extravaganza’ that donors

⁶³ *ibid.*, p. 38

⁶⁴ *ibid.*, p. 251

were wont to accuse the children's organisations of.⁶⁵ For the remaining 362 days of the year children were still as vulnerable to being killed in the war, and all their other medical treatment, including complex surgery, had to be performed under war conditions. No doubt it would have made little difference to children if vaccinations were conducted in similar ways to other medical needs. For UNICEF, identifying children's rights with its own interests meant it could further its profile-building and funding needs.

However, it was not that the prerogative to use children's rights to life for some purposes and not others did not entail complications. In fact UNICEF executives considered that "[t]he growing clamour surrounding the loss of children's lives in emergency situations was becoming a distraction from the main task UNICEF had set itself for the decade: of helping countries develop and realize national programmes of action in the wake of the Children's Summit."⁶⁶ Thus, UNICEF found itself in a position of having to resist children's rights while advocating for them. Thus the imperatives of rights did not have the moral power to override other concerns, even when it came to the

⁶⁵ see for example, *ibid.*, p. 26

⁶⁶ *ibid.*, p. 266

right to life of children being the core human right of the most morally deserving. It was clear that UNICEF's position that the right to life was 'a distraction', prevailed in its choice of activities.

In understanding the social, cultural, political and economic structures within which children's rights agencies were embedded we can provide a better explanation for their activities. Roger Botralahy, UNICEF Programme Officer, for example, hedged in his answer to a question on the targeting of civilians by the Sri Lankan armed forces. He was working in the field when the military attacked the defenceless town of Oddusuddan wiping it clear of all civilian life before turning it into a military complex. It was one attack that even the Sri Lankan media questioned the need for when there had been no LTTE presence in the town. Nevertheless Botralahy inferred that the direct attack on civilians was nothing more than civilians being caught in the crossfire, despite visible and verbal evidence to the contrary:

The war is going on, you ask me if the war is targeting

civilians. That is putting the, it's very difficult to answer that no? The shelling, both sides are shelling to each other, people happen to be in that area so they have to move, they cannot stay there. So, is that to be interpreted as the war is targeting civilians?⁶⁷

UNICEF's officers claimed then, and subsequently, that they could not publicly answer more probing questions because of political 'sensitivities'; and the testimonies of the people who were injured in the attack or who had witnessed the killings were deemed "unconfirmed" because no UNICEF officer was an eyewitness to the slaughter.⁶⁸ Thus, though children's rights advocates declare children's rights to mean that children will be listened to, in practice, as we saw in our analysis of the wording of the CRC, UNICEF was the powerful agent which could use its own judgement to decide when to listen and when not to. However, while the CRC references the capacity and maturity of the child as a basis for this judgement, in practice UNICEF officers saw their decisions through particular

⁶⁷ Roger Botralahy, UNICEF Programme Officer, Malawi, Sri Lanka, March 1999, interview with author, and informal discussions with UNICEF officers, Malawi, Sri Lanka, July 2002.

⁶⁸ *ibid.*

political, cultural, economic and social structures. In this decision children's best interests clearly did not predominate and real children were as invisible as ever in the policy decisions of the powerful.

While children's rights institutions did not advocate on behalf of children's entitlements to protection in the face of attacks on civilians by government forces, they did mobilise to enforce children's non-participation in the conflict. It was an opportunity to build the moral power of the CRC in its project to change societies in the creation of peace – it fitted the concept of 'a constructive approach' because it could be deployed to further the donors' desired outcome to the conflict, that of supporting the government's struggle with the LTTE. The Coalition to Stop the Use of Child Soldiers was conceived of to promote precisely these kinds of scenarios, as is evidenced in the Coalition's declaration that, the "emerging international consensus against the recruitment and use of any under-18s will be an important – and persuasive – tool in convincing armed opposition groups that the political cost of using children as soldiers is simply too high."⁶⁹ The realisation that this would work to

⁶⁹ The Coalition to Stop the Use of Child Soldiers, Q&A (<http://www.child-soldiers.org/> accessed 31/08/02)

the advantage of the government had been seized upon by Sri Lanka's Foreign Minister, Lakshman Kadirgamar in mid-September 1997 when he launched his campaign in the UN against the use of child soldiers by the LTTE.⁷⁰ In conceiving of children's non-participation as a means to discredit the LTTE he had opened up a new chapter in the government's war propaganda methods, bringing about a far more morally powerful collaboration with the international community, through the children's rights regime, than anything that had been done previously.

The historical evolution of children's images in government propaganda was telling. For some years previously the government had tried to depict the LTTE as made up merely of 'baby brigades': "to bolster Sinhalese morale, to ridicule and thereby diminish the challenge posed by the LTTE...[t]he defence establishment trumpeted that the armed forces would make mincemeat of 'baby brigades'."⁷¹ With the

⁷⁰ see UTHR(J) report, 11th October 1997(<http://www.infolanka.com/org/srilanka/issues/ut15.html> accessed 31/08/02)

⁷¹ S. Sathananthan, Secretary, TAGOT, (http://www.sangam.org/NEWSEXTRA/tagot_press_release_15_nov_98.htm accessed 31/08/02)

government trying to delude the Sinhalese public and the armed forces into thinking that they would win because they were fighting incapable children, the LTTE answered with evidence that their victories had been won by the military expertise of their soldiers, who, therefore, could not be children.⁷² However as the children's rights discourse began to focus on the issue of child soldiers, the government changed tack. It used its earlier propaganda to entice rights activists campaigning against the use of child soldiers in Africa to enlarge their focus to include the LTTE. For rights organisations this was an attractive proposal that had enormous potential for raising their profiles in powerful circles while directly campaigning for children's rights. This time UNICEF did not consider upholding this children's right to be too much of 'a distraction' from its other tasks because it took on the role of publicly challenging the LTTE and providing data, which we shall discuss later, of children's participation that would support evidence fabricated by the government's 'human rights' outlets. Thus there were various motivations constituted in the common action to uphold children's right not to be allowed to enrol into the LTTE forces. But because it was not children themselves

⁷² Pulee Devan, Political Wing Head Office, LTTE, in discussion with author, Killinochchi, Sri Lanka, June 2002

who decided children's rights these actions did not protect children. It did show, however, that children's rights could be adopted by any actor that could unite their own interests with powerful interests, regardless of their motivations.

In considering how children's rights were implemented in terms of children's protection and children's participation, we shall now look more closely at two important human rights documents that were produced for the UN after unprecedented visits to Sri Lanka by the experts concerned in 1998. The first was by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye to the Commission on Human Rights. The second was by Olara Otunnu, the UN Secretary-General's Special Representative of Children in Armed Conflict to the General Assembly.

Ndiaye, in a rare and damning report, accused the government forces of committing widespread torture and rape with massacres "so numerous, frequent and serious over the years" as to have become

“an almost ubiquitous feature of daily life.”⁷³ While Ndiaye dutifully reproduced the usual condemnation of the LTTE for perpetrating violence against Tamils he considered whatever the substance of these claims they did not warrant the behaviour of the government:

Military operations leading to the death of civilians include indiscriminate bombing of civilian settlements and armed incursions into villages during which victims are said to be killed on the spot or abducted to extract information. Often, the civilians killed during such operations are later presented to the public as terrorists who died in combat with guns and grenades placed in their hands.⁷⁴

Ndiaye’s report, however, did not command any mobilising power in the rights regime. It failed to resonate with prevailing policy on Sri Lanka. Thus it was a report, with no powerful structures backing it, that was quietly filed. However Otunnu’s submission proved quite the opposite.

⁷³ Bacre Waly Ndiaye, E/CN.4/1998/68/Add.2, 12 March 1998, Commission on Human Rights, Fifty-fourth session, Item 10

⁷⁴ *ibid.*,

Just two months after Ndiaye's report, Otunnu visited Sri Lanka at the behest of Kadirgamar in May 1998. Though Otunnu's title suggested he was concerned with all of children's rights in situations of armed conflict he made no reference to the government's atrocities against children, but instead considered his trip as primarily important in the campaign to stop child soldiers. This was seen in the publicity surrounding his visit which appeared to reduce children's rights in wartime to the single issue of preventing children from bearing arms.⁷⁵

Otunnu obtained a series of verbal commitments separately from both the Government and the LTTE to uphold children's rights, which were heralded as a victory for children's rights. The LTTE had already undertaken not to allow children under 15 into its organisation when it signed the Geneva Conventions in 1989. In the commitments made to Otunnu the LTTE raised its age requirement for enrolling new members to 17, in advance of the enactment of the additional

⁷⁵ see the following websites: Special Representative for the Secretary-General for Children and Armed Conflict: <http://www.un.org/special-rep/children-armed-conflict>; UNICEF: <http://www.unicef.org>

Optional Protocol to the CRC that would raise the age requirement on recruitment for all states. For Otunnu this meant that the UN would now have the moral authority to push for all states to sign up to the proposed new law. For youngsters this meant that the prohibition on participation would extend to even more of them.

The commitments, however, also meant to children that they were not to expect the international community to protect them from the government. When Otunnu presented the commitments to the UN later that year there was evidence of the position the international community had chosen to take in its use of children's rights. Though it was generally assumed that both sides had made equal commitments, a closer reading revealed they were in fact quite unequal. In the submission to the UN General Assembly⁷⁶ it was stated that the LTTE had made a commitment not to target civilians in its operations, but there was an absence of any similar commitment by the Sri Lankan government. It was not clear if it was the government that had refused to agree to this commitment, or if it was Otunnu who had not asked the government to commit itself to this.

⁷⁶ Olara Otunnu, A/53/482 – 12 October 1998, Fifty-third session, item 106, UN General Assembly.

The fact that the commitments extracted by Otunnu from the government deliberately made no mention of the killing of Tamil children by the government's armed forces suggested that there was indeed collaboration between the children's rights regime and the government about the need for silence over the military's atrocities.

Whatever the motivations for Otunnu's actions they conformed with the prevailing view that children's rights should be implemented in a way so as not to undermine the government. This implied that the government would be unlikely to be scrutinised or held accountable by the international community for killing children in its war.

The direct effect of children's rights on children

After the publicity surrounding Otunnu's visit UNICEF was approached by parents who realised they could force their children, who had left home to join the LTTE, to come back.⁷⁷ In constructing a database of these allegations it was not a case of UNICEF listening to children, according to the undertaking in article 12, but rather UNICEF listening to parents, the database was not even designed with space for young people's views. In investigating these and other similar

⁷⁷ Parents and community members, discussions and interviews with author, Dec 98 – Apr 99, Jun – Jul 02, in Killinochchi, Puthukudiruppu, and Malawi, Sri Lanka

cases this author found that the claims by children's rights agencies that the LTTE was recruiting underage people relied on a clear misrepresentation of the facts. Instead what did transpire from this investigation was that young people themselves were rebelling against their rights.

The investigation included interviews with several of the young people who had joined the LTTE and who had been sent home because they were underage, and also interviews with their parents. The evidence emerged that in every case the youngster concerned had felt compelled by the genocide to lie about his or her age to be allowed to join the movement. According to one mother who had gone to retrieve her son:

Children join the LTTE by falsifying their age. Many of them are sent back, but some have managed to stay there by adamantly refusing to go back. So a lot of children who remain are educated by the LTTE to the extent that some become lawyers

and judges. They are studying all kinds of things.⁷⁸

While some children were previously unaware of the age requirement and were sent back immediately their details were taken down, other children who had heard beforehand that they would not be accepted because of their age chose to lie. These were the 'cases' that UNICEF and other international organisations claimed as proof of the LTTE's recruitment of children. By stripping out the real stories of parents, children and the context of their lives, and recording merely the details of each child's name, date of birth, place of recruitment and section into which he or she was recruited, the international organisations felt they were able to claim there was evidence for their campaign. Presented in such a technical way it was hard to refute. But it was also devoid of any of the essence of rights, that is, respect for the child's own views. Thus it had very little impact on the political culture of children. Children had their own rationale that, for them, overrode these details:

Witnessing all these atrocities have compelled us to feel that it

⁷⁸ Vinayakarmoorthy Janaki, interview with author July 2002, Malawi, Sri Lanka

is only through armed struggle that we can have a free life of our own. Living under enemy occupation means there is no security for us. If we want to live in freedom, first we have to fight and get an independent country of our own. We can never be free under military occupation. It is not a question of whether we can carry weapons or not. From the very beginning I knew that children below the age of 18 would not be admitted into the LTTE. Despite of being aware of that I had my own feelings. When we see suffering we naturally also get the feelings to fight back. So I decided that age should not come in the way of me joining the LTTE. When I joined the LTTE, at the beginning I falsified my age.⁷⁹

These sentiments were common to many of the child interviewees. It showed that children did not consider the law on recruitment to be a right that was theirs to claim. Instead they saw it as a barrier to their own sense of independence, and to their aspirations and activities. In spite of the law, they considered themselves responsible and capable enough to participate in the resistance movement. Thus, their own

⁷⁹ Jeyanthi, interview with author July 2002, Malawi, Sri Lanka

actions were more in keeping with the ideals of the children's rights narrative that had promised children the rights to be 'active equal citizens' than those who had the power to draft and implement children's rights.

However, it was also clear that children did not consider that their rights were universal standards that could be framed from a position beyond society because the particular context of genocide in which the youngsters made these decisions was stated to be the important factor. Tharma was a student of Nagarkovil school in Jaffna when the Sri Lankan Airforce bombed it, killing 35 children, in September 1995. Having survived the attack she tried to join the movement the very next day.

I thought whichever the school we study in bombs would fall there too. One way or another we are going to be killed, so why die in vain? That made me think that it's better to destroy our enemies so that our sisters and brothers can live freely. With that judgment in my mind I tried to join the LTTE. Then [the LTTE officer-in-charge] told me that I was too young to be in the

LTTE and asked me to go back and study. I kept on refusing to go home. They tried to tell me that I was too small to carry the weapons and I wouldn't be able to withstand the training. I still refused. Then they talked to me in a strict voice and finally persuaded me to go home.⁸⁰

The Optional Protocol thus could not further the best interests of children because it failed to consider the particular context of war on children's lives. It had the effect of criminalising what could, arguably, be considered admirably responsible aspirations of youngsters, to fight for the future well being of other younger children.

However, the Optional Protocol, as envisaged by The Coalition to Stop the Use of Child Soldiers, did raise the costs of the LTTE in fighting for freedom from Sri Lanka. This was because, to obtain political recognition for an independent state for Tamils, which promised a Tamil solution to the government's atrocities, the LTTE was bound, in the process of moral legitimation engendered by the rights discourse, to uphold the standards of the international

⁸⁰ Tharma, interview with author July 2002, Killinochchi, Sri Lanka

community. But the process of securing international legitimacy was quite distinct from that of domestic legitimacy. In implementing these standards the LTTE had to struggle with the wishes of those to whom it was accountable. It was not, in fact, true that the younger volunteers were ‘too small to carry the weapons or withstand the training,’ as the earliest members of the LTTE had been as young. But the interviews with children revealed that this was a reason that was considered to be more readily accepted by young people than an explanation of children’s rights – though in Tharma’s case even that was not persuasive.⁸¹ Thus the technocratic imperatives of children’s rights had no moral appeal for children because it undermined their opportunities to participate and it also undermined the solution that they had endorsed to end their persecution.

The genocide that could be intensified under the Kumuratunga government because it ‘emphasized human rights’ drove more youngsters to take the decision to join the LTTE. At the same time, the age requirement banning children was raised firstly from 15 to 17, with the commitments made by the LTTE to Otunnu, and then from

⁸¹ *ibid.*

17 to 18, with the LTTE incorporating into its practices the new requirements of the Optional Protocol when it came into force. Consequently, the numbers of young people who wished to join the LTTE but did not qualify for enrolment greatly increased and thus the numbers of 'cases' eligible for UNICEF's database on child recruitment also increased. This appeared to justify the claims by the agencies that child recruitment was indeed a problem, and they felt they could seek more resources and more publicity to pursue more children – the needed 'muscle behind the rhetoric' to counter the lack of political will. Thus the deployment of children's rights in the service of powerful interests in spite of, or even because of, being in direct conflict with children's own reality and aspirations had a tendency to engender and feed off its own dynamic.

Conclusion

In this paper I have examined the nature of agency and its implications in the practice of children's rights. By locating agency with the powerful I have described how the practice of rights is socially, politically, culturally and economically embedded. I have argued that children's rights permit powerful actors, with a variety of motivations, to use the moral power of children in relation to their own world view and in service of their own interests. This means that the practice of children's rights has often failed to either protect or empower children and has resulted in very different outcomes to those assumed by many scholars. In my argument I have shown, for example, that the practice of children's rights did place the issue of 'child soldiers' in the mainstream of policy considerations, but converse to Van Bueren's expectations, this did not fulfil a 'critical precondition for protecting the rights of children as active equal citizens.' I have concluded, therefore, that children's rights have not enabled children 'to stand with dignity,' rather that children's rights can and have been deployed in a manner that does great harm to children.

Bibliography

Newspapers

Guardian Weekly
Tamil Guardian
The Island

Web-sites

Asian Human Rights Commission: <http://www.ahrchk.net>
Amnesty International: <http://www.amnesty.org>
Association of Tamils in Eelam & Sri Lanka in the US:
<http://www.sangam.org>
Human Rights Watch: <http://www.hrw.org>
International Committee of the Red Cross: <http://www.icrc.org>
Save the Children: <http://www.savethechildren.org>
Special Representative for the Secretary-General for Children and
Armed Conflict:
<http://www.un.org/special-rep/children-armed-conflict>
TamilNet: <http://www.tamilnet.com>
The Coalition to Stop the Use of Child Soldiers
<http://www.child-soldiers.org>
UN: <http://www.un.org>
UNICEF: <http://www.unicef.org>

Interviews

Botralahy, Roger: UNICEF Programme Officer, responsible for UNICEF field operations in the Vanni war region.
Pulee Devan: Political Wing Head Office, LTTE.
Jeyanthi: Attempted to join the LTTE by lying about her age and was sent home when she confessed

the truth.

Tharma: Currently a member of the LTTE's television station. Attempted to join the LTTE in 1995 but was sent home, succeeded in joining when she was 19.

Vinayakarmoorthy Janaki: Mother of underage boy who had joined the LTTE under false pretenses.

Publications

Alston, Philip and Bridget Gilmour-Walsh, *The Best Interests Of The Child* (Firenze : UNICEF: Innocenti studies, 1996).

Black, Maggie, *Children First: The Story of UNICEF, Past and Present* (Oxford: OUP, 1996).

Brownlie, Ian, (ed.) *Basic Documents on Human Rights*, 3rd Ed (Oxford: OUP, 1992).

Cairns, Ed, *Children and PoliticalViolenc*, (Oxford, Cambridge, Mass: Blackwell, 1996).

Donnelly, Jack, *International Human Rights* (Boulder: Westview Press, 1998).

Donnelly, Jack, 'Social Construction of International Human Rights', in Tim Dunne and Nicholas Wheeler (eds.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999).

Dworkin, Ronald, *Taking Rights Seriously* (London: Duckworth, 1979).

Franklin, Bob, in 'The case for children's rights: a progress report', in Bob Franklin (ed.), *The Handbook of Children's Rights, Comparative Policy and Practice* (London, New York: Routledge, 1995).

Freeman, Michael, 'Limits of Children's Rights' in Michael Freeman and Philip Veerman (eds.), *The Ideologies of Children's Rights* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992).

Gow, Melanie, Kathy Vandergrift, Randini Wanduragala, *The Right to Peace*, World Vision, Working Paper No. 2 (March 2000).

Hammarberg, Thomas, 'Preface', in Bob Franklin (ed.), *The Handbook of Children's Rights, Comparative Policy and*

Practice (London, New York: Routledge, 1995).

Krill, Françoise, 'The Protection of Children in Armed Conflicts, in Michael Freeman and Philip Veerman (eds.), *The Ideologies of Children's Rights* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992).

Lewis, Norman, 'Human rights, law and democracy in an unfree world', in Tony Evans, (ed.), *Human Rights Fifty Years On: A Reappraisal* (Manchester and New York: Manchester University Press, 1998).

Machel, Grac'a, *Impact of Armed Conflict on Children*, A/51/306 UN General Assembly, Fifty-first session, 26 August 1996, Item 108, www.unicef.org/graca/

Maslen, Stuart and Shazia Islamshah, 'Revolution not Evolution: Protecting the rights of children in armed conflicts in the new millennium', *Development*, vol. 43, no. 1, March 2000, pp. 28-31 (London, Thousand Oaks, CA, New Delhi: Sage).

Ndiaye, Bacre Waly, E/CN.4/1998/68/Add.2, 12 March 1998, Commission on Human Rights, Fifty-fourth session, Item 10.

Ofstad, Arve, 'Countries in Violent Conflict and Aid Strategies: The Case of Sri Lanka', *World Development*, Vol. 30, No. 2, February 2002, pp. 165-180.

Ponnambalam, Satchi, *Sri Lanka: National Conflict and the Tamil Liberation Struggle* (Thornton Heath: Tamil Information Centre, 1983).

Tamil Centre for Human Rights, reports to the Sub-Commission on the Promotion and Protection of Human Rights 1998 - 2000

Thornton, E. M. and R. Nithiyanandan, *Sri Lanka, Island of Terror* (Middlesex: Eelam Research Organisation, 1984).

Wendt, Alexander, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 2000).

Wolfson, Susan A., 'Children's Rights: The Theoretical Underpinning of the 'Best Interests of the Child'', in Michael Freeman and Philip Veerman (eds.), *The Ideologies of Children's Rights* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992).

Vasantharajah, *Tamil Exodus and Beyond* (London, 1996)

Van Bueren, Geraldine, 'Practising Law using the Convention on the Rights of the Child, 2000' in *What Practical Difference Has Been Made by the United Nations Convention on the Rights of the Child?* The Graham Turnbull Essay Competition, 1999/2000, (London: Law Society, June 2000).

Van Bueren, Geraldine, *The International Law on the Rights of the Child* (The Hague, Boston, London: Martinus Nijhoff Publishers, 1998).