

Child Soldiers: Trafficking of Children as a War Crime

Aleksandar Marsavelski, LL.M.

Contents

- I. History of child soldiering
- II. Child soldiering in modern times
- III. Causes of child soldiering
- IV. Reasons to criminalize child soldiering
- V. Child soldiering as a war crime
- VI. Case study: Lubanga's child soldiers
- VII. Effects of war crime prosecutions related to child soldiering
- VIII. Human trafficking vs. war crime
- IX. Future perspectives of child soldiering
- X. Conclusion

I. History of Child Soldiers

Sociological roots

- Boys fighting in wars were viewed through romantic notions of heroism: participation in war used to be seen as a passage into adulthood.

Possible historical evidence in linguistics

- Infantry / Infanterie / infantería / fanteria...
- The word began spreading in 16th century
- Etymology: lat. *infans* – baby

Children's Crusade (1212)

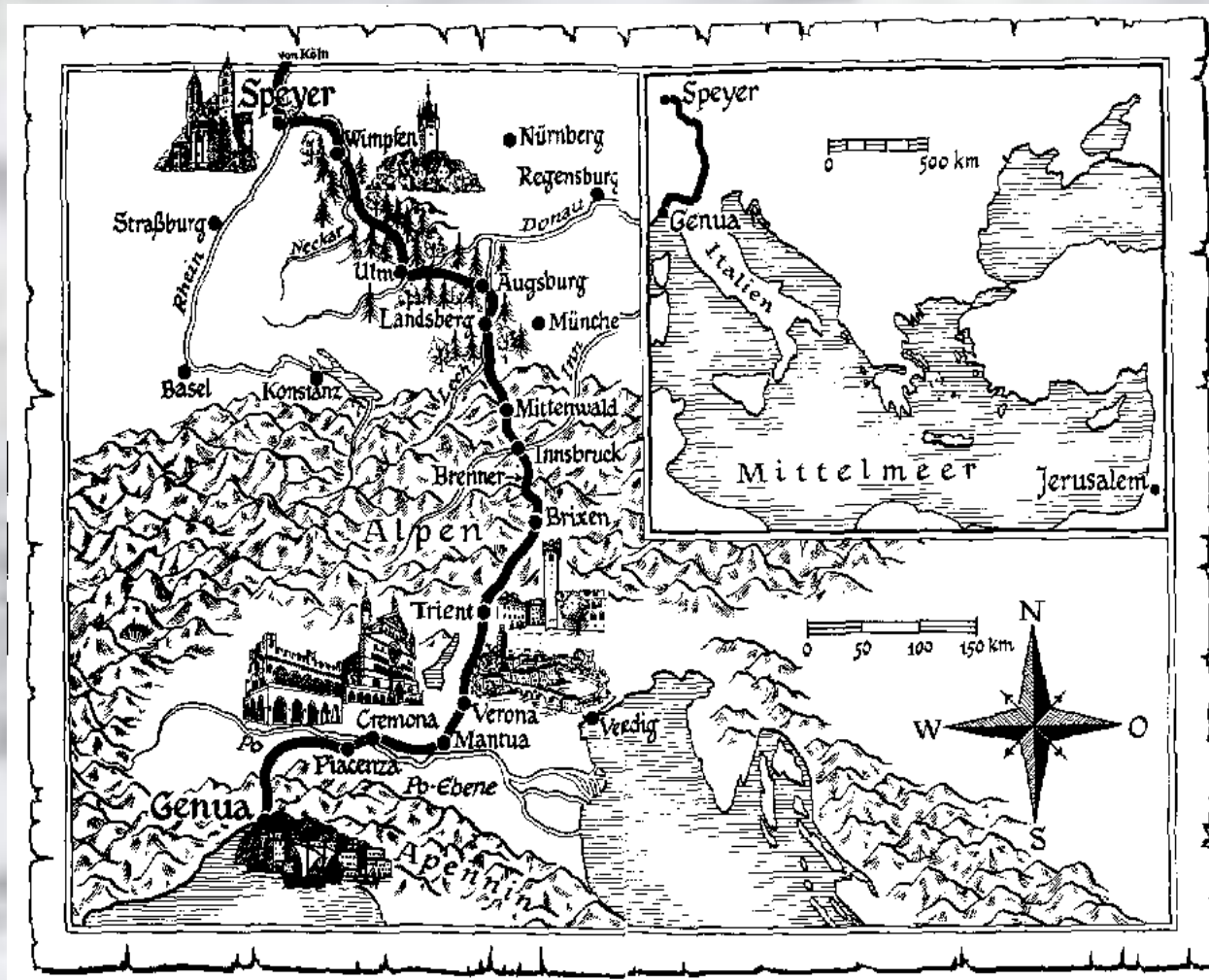


Gustave Doré (1877)



J. Kirchoff (1843)

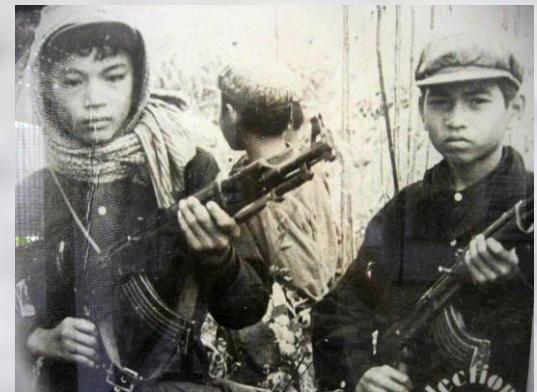
Children's Crusade Route



Source: http://www.mkg-projekte.de/kreuzzuege/Kinderkreuzzg/KinderText/Karte_Kinderkreuzzug_klein.gif

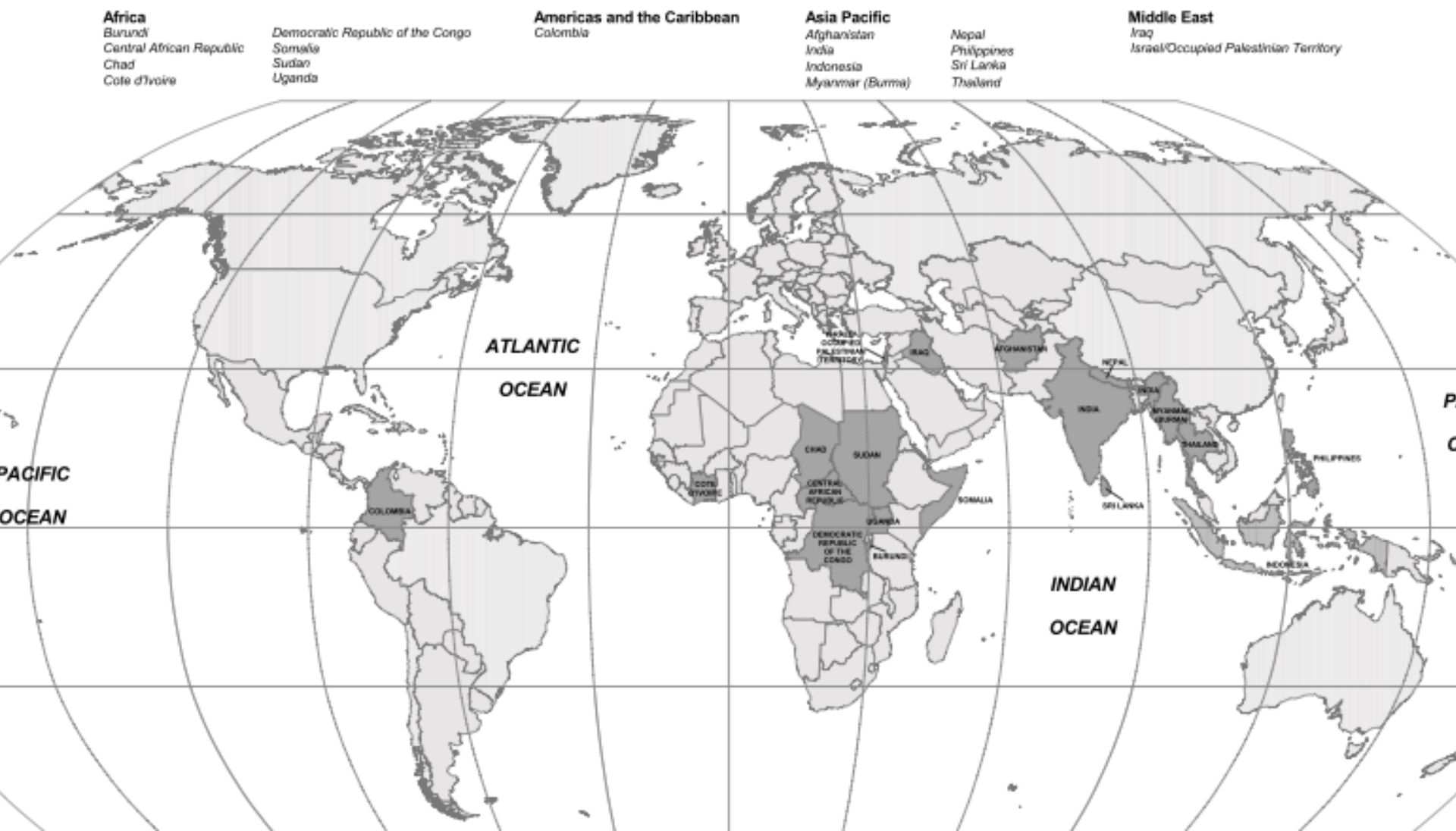
Other historical examples

- Drummer boys & powder monkeys (e.g. American civil war)
- Hitlerjugend
(SS-Panzer Division)
- KhmERE Rouge – brainwashed children participating in Cambodian genocide



II. Child soldiering in modern times

Countries/situations where children were recruited or used in hostilities - April 2004 to October 2007



III. Causes of child soldiering

- Children as surviving victims of war:
 - displaced children as a consequence of armed conflicts (UNHCR: >10 million)
 - Children without parents or who lost other family members
- Armed rebel groups acting in certain countries (e.g. DRC: UPC, Uganda: LRA, Colombia: FARC, Sri Lanka: LTTE, Somalia: Al-Shabaab etc.)
- Indoctrination of children (e.g. Talibans use children from religious schools as suicide bombers, Maoist child soldiers in Nepal etc.)
- State policy (e.g. Burma recruits children into its armed forces)

IV. Reasons to criminalize child soldiering

- Children are particularly vulnerable in warfare: easily can get killed
- Children are unaware of laws of war
- Former child soldiers face severe difficulties in integrating back into the society (didn't finish school, PTSD etc.)
- Age limit: 15 or 18?

V. Child soldiering as a war crime

- Introduced in 1977 Protocols I (Art. 77/2) & II (Art. 4/3) to Geneva Conventions – age limit: 15
- 1989 UN Convention on the Rights of the Child (Art. 38/2-3) – age limit: 15
- 1999 ILO worst forms of child labour convention (Art. 3(a))
- 2000 Protocol to the CRC on the involvement of children in armed conflicts – age limit: 18 (only voluntary recruitment is possible under 18)

V. Child soldiering as a war crime

ROME STATUTE (ART. 8/2) - 'war crimes' means: ...

(b) Other serious violations of the laws and customs applicable in **international armed conflict**, within the established framework of international law, namely, any of the following acts: ...

(xxvi) Conscripting/enlisting children under 15 into national armed forces or using them to participate actively in hostilities.

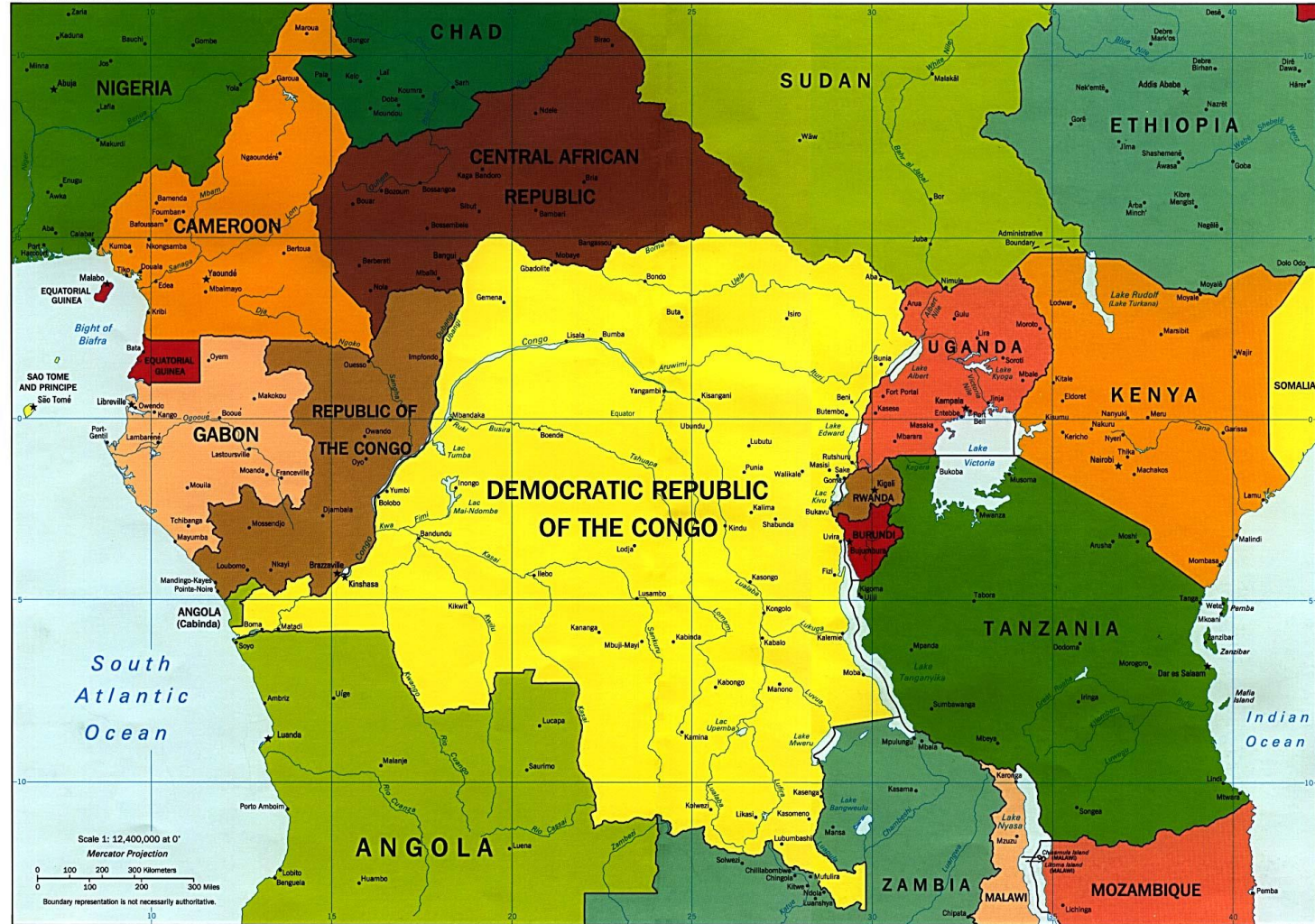
- (e) Other serious violations of the laws and customs applicable in **non-international armed conflict**, within the established framework of international law, namely, any of the following acts:

(vii) Conscripting/enlisting children under 15 into armed forces or groups or using them to participate actively in hostilities;

VI. Case study: Lubanga's kadogos

Conflict in Ituri (DRC, 1999-2007)

Central Africa



VI. Case study: Lubanga's child soldiers

- Lubanga trial chronology:
 - 2004 – Ocampo opens an investigation
 - 2005 – Lubanga arrested in Kinshasa
 - 2006 – OTP indicts Lubanga and initiates arrest warrant
 - 2008 - PTC I confirms the charges against Lubanga
 - 2009 – beginning of trial
 - 2011 – end of trial
 - 2012 – judgment (guilty) + sentencing decision (14yrs) + victim's reparations decision

VII. Effects of war crime prosecutions related to child soldiering

- Cases: -SCSL: Charles Taylor (convicted)
-ICC: Thomas Lubanga (convicted)
+ Ngudjolo (acquitted), Ntaganda (pre-trial)
- Raising global awareness of prohibition of child soldiering (e.g. KONY 2012)
- OTP's strategical principle: *maximising the impact*
- 2010 - 3,000 child soldiers from the Maoist army in Nepal - coincidence? – not a party to Rome Statute
- Victim's reparations decision – general principles on reparations through Trust Fund for the Victims
- Problems:
 - lack of local visibility of ICC trials – local population is mostly unaware of the charges
 - lack of deterrence effect as various rebel groups in Africa still use child soldiers

VIII. Human Trafficking vs. War crime

- 2000 Palermo Trafficking in Persons Protocol (Art.3(a)):
- **Trafficking in children** - recruitment, transportation, transfer, harbouring or receipt of children (<18), by means of:
 - the threat or use of force, or
 - other forms of coercion
 - of abduction,
 - of fraud, of deception,
 - of the abuse of power or of a position of vulnerability or of the giving, or
 - receiving of payments or benefits
 - or any other meansto achieve the **consent of a person having control over another person**, for the purpose of *exploitation*.
- No-consent presumption
- **Exploitation:** forced labour or services, slavery or practices similar to slavery, servitude etc.

IX. Future perspectives of child soldiering

- Changing means of warfare will presumably decrease the use of child soldiers
- Children navigating drones?



Source: Amazon.com

X. Conclusion

- Joining the military is in most countries no longer perceived as a `passage into adulthood` for boys
- ICC should increase the local impact of trials
- Ensure national prosecutions of child soldiering (complementarity principle)
- Tendency of raising the age limit to 18 → making all forms of child soldiering related to armed conflict a war crime
- Necessary to provide more aid/asylum opportunities for the displaced children in armed conflicts (in particular the ones without parents)
- Possibility of using human trafficking statutes for combating child soldiering (at least regarding the age 15-18)

Thank you!

aleksandar.marsavelski@pravo.hr