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The Child Soldier Paradox and the Fragmented Architecture of International Criminal Law

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Abstract

Child Soldiers occupy a fundamentally fraught position in international criminal law. They carry a dual legal identity: they are recognised as victims of unlawful recruitment yet are also prosecuted as perpetrators of international crimes. This 'Child Soldier Paradox' is often framed as a moral dilemma or policy problem. The paper, however, takes a different approach by analysing the child soldier paradox through the legal architecture of international criminal law. It does so by employing a genealogical method that traces the evolution of the legal status of child soldiers from the 1970s to the present to understand how the current legal architecture emerged. The legal genealogy of the child reveals a transformation from a 'participant' to a 'pure victim '–culminating in the modern 'accountable survivor.' Building on this finding, the paper argues that the current architecture of international criminal law is designed to operate within the binary of guilt or innocence and, therefore, struggles to reconcile with the hybrid status of child soldiers. To that end, the paper examines the Ongwen case to illustrate further the act-centric nature of international criminal law and its reliance on the assumption of a liberal subject. It demonstrates how features such as individual responsibility, offence-by-offence adjudication, fixed procedural roles, and temporal segmentation restrain international courts when deciding cases relating to child soldiers. Ultimately, the paper explains why the child soldier paradox persists as a logical outcome of the law's design. The analysis shifts the focus of critique by arguing that the paradox results not from judicial failure or prosecutorial discretion, but from the structural limitations of international criminal law itself.

Keywords: Child Soldier Paradox; Dominic Ongwen; Temporal Segmentation; International Criminal Law; Act-centric Jurisprudence.

Introduction

Children are uniquely shaped by their environment and are particularly influenced due to their youth and limited legal capacity—a reality that underpins their status as among the most vulnerable. The law recognises their vulnerability and often treats them as 'sacred objects of protection.' While this treatment is normatively grounded, a parallel reality exists in which the child transforms from a passive victim to an active participant in hostilities. The law is enacted on the understanding that a child is a victim and therefore needs protection. The same law, however, grapples with the idea that the child could also be a perpetrator of international crimes. It struggles to see the child as 'a whole person'—seeing them instead as a 'bifurcated' legal personality.

International Humanitarian Law primarily treats children as victims and focuses on protecting them, regardless of their involvement in conflict. Article 77(2) of the 1977 Additional Protocol I[1] bans the recruitment of children below the age of 15, and Article 4(3)(c) of the 1977 Additional Protocol II[2] prohibits such children from taking part in hostilities in non-international armed conflict. International Humanitarian Law, therefore, treats children as civilians by default, with additional special protection. Importantly, even if children take part in hostilities, they retain their status and continue to benefit from special protection thereunder.[3]

International Criminal Law **["ICL"]** shifts the focus from 'protecting children' to 'criminalising the recruitment and use of children' in armed conflict. As per Article 8(2)(b)(xxvi)[4] and 8(2)(e)(vii) of the Rome Statute of the International Criminal Court **["ICC"]**, conscripting or enlisting children under 15 years into armed forces constitutes a war crime in both international and non-international armed conflict. ICL, therefore, treats children as victims of such recruitment and deems any person under the age of 18 years to be incapable of international criminal accountability.[5] However, this jurisdictional deeming creates a cliff-edge effect, especially where a child, recruited and trained as a child soldier, is subsequently legally characterised as a perpetrator.

This convergence of conflicting legal identities—where the child is both an object of a war crime and the subject of criminal acts—gives rise to the 'Child Soldier Paradox.'[6] The paradox lies in the fact that the same child may occupy two legally distinct roles at different points in time: one as a victim and another as a perpetrator. The paradox exists because ICL requires these roles to remain strictly separate, by segmenting them at different points in time. The law essentially switches its view of the individual: it treats them as a protected victim prior to the age of eighteen, yet imposes full criminal liability as a perpetrator upon reaching the age of majority. This way, the law bifurcates their legal identities into distinct chronological phases, even though a child soldier occupies both spaces simultaneously. This is not simply a moral dilemma; rather, it is a structural limitation of legal categorisation within the criminal law. The paradox persists not because there is a lack of sympathy towards children; the legal architecture of ICL is itself designed to assess liability offence-by-offence and at specific moments in time. Because of the offence-specific approach and temporally segmented adjudication, ICL is not architecturally built to reconcile the 'dual-status identity' of child soldiers at the same time.

While many scholars have discussed the 'Child Soldier Paradox', most of the literature often frames the issue as a moral debate on whether child soldiers should be liable or not, a policy question on whether such child soldiers should be prosecuted or rehabilitated, or focuses on the appropriateness of trials conducted by the ICC in select cases concerning child soldiers. On the other hand, comparatively less attention has been paid to how the legal architecture of ICL itself shapes the Child Soldier Paradox—how features such as individual responsibility, offence-by-offence adjudication, fixed procedural roles, and temporal segmentation restrain international courts when deciding a case relating to child soldiers. Therefore, this study shifts the focus from *whether* child soldiers should be made liable to *why* ICL continually struggles to address them. In order to analyse the bifurcated legal identity of child soldiers, the following discussion focuses on the *Ongwen* case.[7] By dissecting this case, it explains how the Court's struggle with the dual status of child soldiers is a symptom of the architectural limitations of ICL.

The paper is structured in five thematic stages: Section I constructs a legal genealogy of a child soldier, tracing the evolution from an 'object of protection' to a 'subject of criminal law'. Section II outlines the contours of individual criminal responsibility under ICL. Section III argues why child soldiers remain an architectural misfit within the legal framework of ICL. Section IV applies this critique to the *Ongwen* case, analysing criminal responsibility of child soldiers through the lens of socialised agency. Lastly, Section V discusses the conceptual limits of the legal architecture of ICL and offers concluding reflections.

The Legal Genealogy of the Child: From Humanitarian Object to Criminal Subject

The Child Soldier Paradox did not happen in a vacuum. It was a result of over a century of legal development. This legal history is a genealogy of how the law's focus shifted from treating children as 'passive' and 'vulnerable' objects to gradually recognising them as legal subjects under ICL. In order to understand the Child Soldier Paradox in contemporary times, one must return to the foundational roots of International Humanitarian Law.

The Humanitarian Taproot: Children as Objects of Protection

The early origins of International Humanitarian Law date back to the Lieber Code of 1863. It is considered to be the first major codification of the laws of war, and it primarily operated on the principle of distinction. Although it did not have specific provisions relating to child protection, it emphasised that "unarmed inhabitants should be unmolested".[8] Notably, the Code assumed that only men of age, who voluntarily join the armed forces, are 'soldiers.' Therefore, by implication, combatancy was reserved for adult men. The law, at the time, could not even conceive of the construct of child soldiers.

The early Geneva Conventions of 1864, 1906 and 1929 predominantly focused on the humanitarian status of the person. Instead of age-based considerations, protection was triggered by vulnerability (being wounded). In these early conventions, children were categorised with the wounded, sick, and aged. Therefore, their protection was framed less as a matter of right and more as a status-based immunity— the soldiers had a 'duty' towards 'weak' objects. More specifically, children were placed in the category of civilians because the law recognised them as vulnerable and lacking full autonomy.

In 1949, the world was reeling from World War II; for that reason, the Fourth Geneva Convention aimed to protect the civilian population. Nevertheless, the drafters did not recognise the child as an independent person, with their own rights.[9] Children had a dependent status— wherein, if the parents were protected, the child was deemed to be protected. In a way, the law's primary concern was that the child belonged to a family, and it viewed children as passive recipients of care.[10] The law overlooked the possibility of a child existing outside of a family structure— such as a child (soldier) within an armed group like the Lord's Resistance Army **["LRA"]**. This inextricable connection between a child and his family created a legal gap no one could foresee at that time. When the law understood children only in the context of their families, it also became blind to situations where armed groups became the sole family for some of them.

The Codified Threshold: Drawing the Line at Age 15

After 1949, the world saw a shift in the nature of war: it was no longer solely a conflict between two professional armies— there was an emergence of wars of national liberation and decolonisation; a shift from State vs State wars to Non-International Armed Conflict (NIAC). In such wars, the entire population is mobilised towards the liberation struggle. This led to a surge in recruitment, including children, to the cause of liberation. Children were no longer merely dependents of a family; they became part of these insurgent groups. Due to this, the traditional binary of 'civilian' and 'soldier' became increasingly strained, and the law could no longer stay silent about children, who were now a part of the revolutionary machine.[11]

In the wake of these developments, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH) took place in Geneva in 1974.[12] The resulting four years of intense debate in Geneva were a clash between the Old World (Western states) and the New World (Newly independent states). In particular, during the sessions of Committee III, the two worlds debated extensively over the definition of a 'child.' The International Committee of the Red Cross (ICRC) and the majority of Western countries, including delegations from the Holy See and Norway wanted an 18-year universal age limit for a child to be recruited into an armed group.[13] According to them, a child below 18 years does not have the requisite psychological maturity to be able to consent to the risks of combat freely; thus, any participation under 18 years was seen as a violation of the spirit of humanitarian principles. Conversely, many African and Asian delegations, including Vietnam and Algeria, argued that, in their liberation movements against the colonial powers, even a 15-year-old individual was a man and a soldier, because in their societies the transition to adulthood occurred significantly earlier than 18 years.[14] According to them, the 18-year limit was a 'western luxury' which they could not afford in their fight against colonialism. The Old World bloc soon realised that if it pushed for the 18-year limit, the New World bloc would refuse to sign the treaties. As a result, they accepted a 15-year limit as a minimum floor so that the treaty could be ratified by all the States.

This 15-year-old threshold created massive legal consequences. By codifying 15 years as the legal limit, the law implicitly made recruitment of a child at 16 or 17 years outside the scope of prohibition. This created a 'legal hybrid'— where a person who may be a child as per domestic law can also be a legitimate target (combatant) under International Humanitarian Law. It also created an arbitrary cliff-edge effect where a child soldier under 15 years was legally treated as a victim, yet if the same child is even a month older, he is legally treated as a rational subject who can be held criminally responsible for war crimes. This 15-year-old age limit was finally codified under Article 77(2) of Additional Protocol I and Article 4(3)(c) of Additional Protocol II. It was even seen as a humanitarian victory at the time— overlooking the fact that it created a cliff-edge effect which instead limited the scope of protection.

The Humanitarian Pivot: Graça Machel and the Archetype of the 'Pure Victim'

Despite the age 15 limit, the world witnessed massive wars in countries such as Sierra Leone, Liberia, and Uganda (the early years of LRA) between 1977 and 1996. With the rise of technology and the proliferation of small arms like the AK-47, the debate over a child's physical maturity became obsolete. Children in conflict-prone areas began carrying light, automatic weapons that killed just as effectively as those of an adult.[15] These children were no longer being trained for a revolution; they were often used as human shields or sent to clear minefields (they were called "expendable resources").[16] Particularly in Southeast Asia (Khmer Rouge) and Africa (the LRA in Uganda), children were used and even manipulated into killing their own parents.[17] The LRA used mass abduction as a tactic to recruit very young children into their insurgent group. As a result, the 1990s saw a stark shift: from treating children as revolutionary assets in the 1970s to treating them as consumable resources in the 1990s.[18] The burgeoning of weapons and the ease of their use by children rendered the '15-year-old maturity' argument from 1977 obsolete. It was realised that owing to the rise in technology, a 10-year-old child may be just as lethal as an adult, yet much easier to manipulate.[19]

Against this backdrop, in 1994, the UN Secretary-General appointed Graça Machel to investigate and understand why such crises were happening, despite having codified the 15-year-old age limit in the 1977 Additional Protocols.[20] Machel then presented a detailed report, titled "Impact of Armed Conflict on Children (1996)." The report mentioned harrowing details of millions of children being killed in a decade of war. It argued that war was actively consuming children and moved the debate away from the 15-year-old age threshold.[21] Machel situated the phenomenon within the broader framework of 'social collapse narrative' and presented children, who were forcibly abducted and recruited into armed groups, as a symptom of total social collapse. She argued that child soldiers cannot be held responsible for the systemic failure of the family, schools and the State.[22] This discussion constructed what may be described as 'primary victimhood', which essentially means that a child's status as a victim remains their moral and legal identity, despite the child's actions (irrespective of their involvement in criminal acts).

The Machel Report disrupted the compromises of the 1977 Diplomatic Conference and propounded a protection-driven narrative: that children are psychologically incapable of choosing to fight. This was done to secure absolute protection for children and was even considered a humanitarian masterstroke, as it grabbed everyone's attention and made people care enough to treat this issue with a certain level of gravity.

Nonetheless, this move may be criticised, as it resulted in the erasure of the agency of children.[23] This logic, often critiqued as the 'blank slate argument ', ends up creating a legal binary: where a child is a victim with no agency, and hence needs protection; on the other hand, a perpetrator of international crimes has full agency to commit those crimes, and hence needs to be made liable.[24] The paradox arises when a child (a victim) is socialised into violence (abducted, forcibly recruited and trained) and grows up to commit international crimes. Who does the law look at? Does it look at the child-victim who had no agency to choose to be a part of the insurgent group, or does it look at the 30-year-old adult-perpetrator who has committed international crimes? If the law admits that this person has agency at age 30 and can be punished for his acts, then the blank slate argument becomes difficult to sustain. Conversely, if the law follows the blank slate argument, then the person cannot be punished for his crimes. Therefore, the blank slate argument may have been normatively compelling in the short term, but in the long term, it made the international community legally uncomfortable with the idea that a victim can also be a perpetrator.

In the aftermath of the Machel report, the Convention on the Rights of the Child, 1989[25] and the Optional Protocol, 2000 were enacted.[26] The aim was to gradually elevate the minimum age threshold from 15 to 18 years. This was done to offset the 'cliff-edge effect' caused by the 15-year-old age limit.[27] Consequently, the 1990s humanitarian movement ended up creating a binarised world by framing children as 'pure victims' with no agency of their own. However, if a child is incapable of forming intent and does not have the requisite agency to make such decisions, how can the law try a man for the crimes he committed while under the shadow of that victimhood?

The Codification of Responsibility: Child as a Criminal Subject

The 1970s treated children as objects of protection; the 1990s re-defined their active involvement in armed groups and pushed for the 18-year age limit— the drafting of the Rome Statute in 1998 prompted discussions on whether the ICC should prosecute children, and if so, what should be the minimum age of prosecution.[28] Reflecting this shift, Article 26 was incorporated in the Rome Statute, which excluded the jurisdiction of ICC over children under 18 years of age.[29] The rationale behind such exclusion was to protect children from prosecution and the resulting liability for international crimes. Despite the protective rationale, the law cemented a binary of temporal culpability: at 17 years and 11 months, the child is a humanitarian object (Machel's idea of a victim), and at 18 years and above, the same child becomes a criminal subject and may be prosecuted for international crimes. As a consequence, the Rome Statute did not just create a jurisdictional boundary; it temporally segmented the life of a child (soldier). The law assumes that a child aged 17 years and 11 months is a victim who lacks agency, whereas an individual aged 18 years and above has agency to make rational choices— resulting in structural incoherence, insofar as it ignores continuity.[30] When the law ignores this continuity, it also finds it challenging to accept that long-term violence and socialisation into a rebel group can also shape a voluntary 'adult choice.'

This structural tension between victimhood and accountability became a central challenge for the Special Court for Sierra Leone **["SCSL"]**. It was the first hybrid court to deal with the fact that the 'pure victims' of the 1990s were involved in committing horrific atrocities.[31] As a result, Article 7 of the Statute of the SCSL was codified, which gave the court jurisdiction over children between 15 and 18 years of age.[32] The inclusion of Article 7 signalled discomfort with the straight 18-

year limit and suggested that the international community was considering moving the child from the 'protected object' to the 'criminal subject' category. However, the idea of prosecuting children was normatively contentious.[33] Therefore, Article 7 created a specialised version of justice for children: it mandated that if a child were prosecuted, the SCSL must focus on their rehabilitation and reintegration. However, SCSL Prosecutor David Crane refused to consider children as those who bear 'the greatest responsibility' and decided not to invoke Article 7.[34] In a way, Article 7 of SCSL served as a legal test for gauging the international community's response towards child accountability.

Looking back, the evolution of this legal identity can be traced across three distinct periods: In the 1970s, a child was seen as a participant in liberationist movements with limited agency. The 1990s treated a child as a pure victim, with little to no agency, defined entirely by his childhood trauma. The 2000s, however, treat children as 'an accountable survivor'— a legal subject who is shaped by their past yet held accountable for their actions as an adult.[35] In turn, the law has become more compartmentalised in its treatment of children over the years. This is also seen in the way courts pathologise the survivor by acknowledging childhood trauma only as a medical fact.[36] It categorises survivors' experience as pathology like Post-Traumatic Stress Disorder or Stockholm syndrome, and effectively treats it as a static medical fact, rather than a legal defence. Hence, by the end of the genealogy, a child soldier's identity ends up with a legal cul-de-sac: where they are both a victim (who needs to be protected) and a criminal subject (who can be prosecuted) — in a system which is structurally unequipped to deal with their bifurcated identity.[37]

The Individual-Centric Architecture of Responsibility

International crimes constitute serious violations of international law that transcend national boundaries and typically involve perpetrators being prosecuted by international tribunals, such as the ICC.[38] Scholars such as *Mégret* consider such crimes as 'symbiotic', arguing that they are generally organised and structural, involving both individual action and state or group structures.[39] Despite this reality, ICL performs a pragmatic pivot and chooses to displace the collective responsibility from the state or armed group onto individuals. This choice is not accidental and is rather deeply normative and structural.[40] ICL requires identifiable actors, conduct attributable to an individual, and personal culpability. Therefore, choosing to 'individualise' responsibility makes it 'legally legible' to process large-scale violence in a courtroom, since positioning an individual as the subject renders prosecution and punishment less cumbersome and avoids the political and legal messiness of punishing the state or armed groups. This process of individualisation of responsibility is made possible by the law's reliance on a specific philosophical concept.

At its core, the architecture of individual criminal responsibility is built upon the concept of a 'liberal subject'— an ideal person who is rational, independent, and possesses free will.[41] The law, therefore, works with an assumption that the perpetrator can rationally and freely exercise their agency, functionally bracketing factors which may have otherwise influenced the individual's choice, such as their childhood, socio-economic conditions, or environmental pressures— thereby focusing solely on the individual's specific choice and deeming the individual as a self-contained unit.

It is with this understanding that the Rome Statute also enforces the 'individualised' view of responsibility. Crucially, one of the features of individual responsibility under the Rome Statute is that the liability of an individual is determined at the *tempus criminis*[42] (the time of the crime)— as a result, the law looks at their specific 'intent' at a specific 'moment'— making it architecturally difficult to consider the long-term victimisation of the child soldier.

Child Soldiers as Disruptive Subjects of Responsibility

The legal logic inherent in individual responsibility is incompatible with the 'process-based reality'[43] of child soldiers. Scholars such as *Drumbl* and *Issa* have consistently argued that ICL focuses on a moment of crime ('act-centric') and is therefore unable to account for the process-based reality of a child's transition from victim to perpetrator.[44] The transformation of a mere child into a soldier is a longitudinal process (one that unfolds over many years). The law, however, chooses to focus solely on the *tempus criminis* (when the crime actually occurs); it treats time as a series of neatly disconnected compartments— where one temporal compartment is victimisation (when the child is abducted), and another is perpetration (when the child soldier commits the crime). The law segments them to remain functional; if it had to assess the entire process, it would be legally challenging to assign a binary verdict of guilt or innocence.[45] However, for child soldiers, both identities (victim and perpetrator) overlap— therefore, it becomes an exacting task for the courts to synthesise a 'hybrid subject' (i.e., the child) in a court within an architecture of law which has room only for a single, segmented identity.

Beyond the temporal segmentation, the law is structured in a way which presumes liberal agency of the perpetrator—that any act committed by them must have been based on their own independent will. This, however, stands in contrast with the reality of coercive socialisation— through which a child soldier's individual will is influenced by or subordinated to, the will of the Commander or the armed group. As *Fisher* observes, child soldiers operate within a 'structurally conditioned agency.' This suggests that in such cases, the agency of child soldiers may not be completely absent, yet it is heavily shaped by group norms, usually under sustained coercion.[46] While it may not be reasonable to argue that all child soldiers lack agency, nonetheless it can be argued that their agency is derivative and not freely constitutive. Scholars generally recognise that it is complex to attribute an unqualified autonomy in such cases.[47] Therefore, the architecture of the law is constrained to assess an independent individual and is not designed to perceive a subject whose actions are inextricably connected to their armed group.

The final layer of this architectural mismatch is the role paradox pertaining to child soldiers: they are victims of unlawful recruitment, but at the same time, they may commit international crimes; therefore, the same individual moves across victimhood and perpetration and these roles overlap in lived experiences. Since criminal trials require fixed procedural roles and a clear distinction between the accused and the victim— the architecture of ICL is also binary. This becomes untenable for child soldiers because they occupy both roles simultaneously. The architecture of ICL insists on role separation at the time of judgment and therefore, the law flattens the hybrid subject and reduces them into a singular role to make them legally legible.[48]

Consequently, the child soldier paradox exposes the limits of the act-centric nature of ICL and the rigidity of individual responsibility. The paradox does not exist because of judicial insensitivity or moral blindness; it exists because of structural features which are essential to the functionality of ICL. This tension becomes more visible when international courts are confronted with real-life cases of child soldiers— serving as a site where these constraints play out in practice.

Jurisprudential Constraints in Practice: The Case of Dominic Ongwen

Dominic Ongwen was abducted as a child and forcibly recruited by the Lord's Resistance Army (LRA), where he went through brutal initiation and socialisation into the LRA. Over the years, he rose through the ranks and eventually became the Commander of one of LRA's four main wings.[49] His case is atypical, not merely because it is morally complex; in fact, its real analytical significance lies in the overlap of his victimisation and later perpetration. Most scholarship regarding child soldiers focuses on children while they are under 18 years of age.[50] *Ongwen's* case is different, because he was prosecuted as an adult for crimes committed after he attained majority— yet his 'adult agency' was manufactured during his childhood victimisation.[51] Theoretically, *Ongwen* poses an ontological challenge to the Rome Statute; he is the point at which the law's strict categorisation of 'victim' and 'perpetrator' collapses into a single person. Despite these complexities, the ICC did not treat his case as an anomaly; it proceeded using its ordinary doctrinal tools.

As discussed in the previous section, the law chooses to focus on the *tempus criminis*, and the Rome Statute also employs temporal segmentation while deciding on crimes committed by child soldiers. To this end, the Trial Chamber treated the victimisation of Ongwen during his childhood as a temporally prior event.[52] It chose to focus on the temporal compartment of *Ongwen's* perpetration. The rationale behind the Court's choice was that it must isolate legally relevant moments, i.e., *the tempus criminis*. If they assess the whole life of the perpetrator, the chain of causation would become infinite. If *Ongwen* is not responsible for his actions because of his abduction and forced recruitment by Joseph Kony, is Kony responsible because of his own past? The law, therefore, uses the 'cliff-edge' of 18 years to break this infinite loop of causation. This explains why, in the determination of guilt, temporal precision becomes highly critical.[53] The Court does not entirely ignore the childhood victimisation, but procedurally brackets it by treating it as legally external to the crimes charged. In this light, temporal segmentation is structurally necessary for the Court to preserve the possibility of punishment; otherwise, responsibility becomes indeterminate. This temporal bracketing ultimately influences the application of specific legal defences as well.

Even though 'duress' and 'mental incapacity' are recognised defences under criminal law, they are structurally limited in addressing the chronic coercion undergone by child soldiers. As per Article 30 of the Rome Statute, an individual is said to have a requisite level of intention to commit a crime when that person has *"means to engage in conduct and means to cause the consequence or knowledge that it will occur in the ordinary course of events."*[54] It mirrors the assumption of a liberal subject and therefore presumes that the perpetrator must have made a clear, rational choice out of their own volition— essentially, this is where the architecture's limitation becomes relevant with respect to child soldiers. When a child's 'choice' has been influenced and re-shaped by years of forced training and normalisation of violence, it is challenging to argue that their 'intent' at the time of the crime is truly their rational and free 'choice.'[55] Arguably, the law is architecturally ill-suited to take into account a child soldier's long-term psychological shaping, effectively imposing a legal fiction of total autonomy upon them.

The defence in the *Ongwen* case argued that he suffered from a 'mental disease or defect' because of his childhood trauma. The Trial Chamber, however, held that even if Ongwen had suffered from a mental disease or defect, it did not reach the level of absolutely destroying his mental capacity to understand the unlawfulness of his conduct. In essence, the court looked for a complete breakdown of the rational mind at the *tempus criminis,* because Article 31 of the Rome Statute assumes a sharp threshold, where capacity is either present or absent.[56] It demonstrates that the law only recognises a mind that is either completely broken or rationally free; leaving no space for considering a 'conditioned' or 'socialised' mind. The law only has two watertight conceptual slots, and *Ongwen* fits neither clearly because even though his rationality may be intact, his moral compass has been heavily influenced due to long-term trauma and socialisation into violence— which does not easily fit in this model.

An argument may be made that in cases of child soldiers, 'duress' as an exception could be used as an escape valve; however, it can only be invoked in instances of *"threat of imminent death or of continuing or serious bodily harm."*[57] The rationale behind insisting on 'imminence' as an important element of duress is to prevent abuse of the said exception. Moreover, imminence ensures that only voluntary actions are considered as the baseline. Having said that, it also assumes that threats are episodic, rather than ambient or structural.[58] Such a requirement of 'imminence' is therefore challenging to match with the chronic threat under which a child soldier lives for years. This happens because these doctrines are designed for acute threats, not long-term socialisation into violence. Accordingly, the Trial Chamber rejected the defence of duress based on the reasoning that *Ongwen* had freedom of movement and opportunities to escape ('agency to leave') due to his high rank in the LRA.[59] This kind of reasoning presumes liberal agency on the part of *Ongwen* and equates physical distance from a threat with the mental freedom to disobey. It is important to understand that *Ongwen* was abducted and recruited into the LRA at a very young age and his entire development occurred within the armed group. Therefore, he does not have a 'pre-war' identity to return to.[60] Furthermore, the Court assumes that his agency to leave for an 'outside world' was a safe alternative. For *Ongwen,* the outside world consisted of the Ugandan Government or the civilian life— neither of which may have accepted him. Accordingly, an argument can be made that staying in LRA was his survival choice, made by a conditioned mind— a reality that challenges the Court's assumption of *Ongwen's* agency to leave.

The only time childhood victimisation is considered relevant by the court is during sentencing, when it is used as a factor in mitigation. Childhood victimisation is specifically excluded from the determination of guilt. This strict separation is intended to preserve doctrinal clarity and reflects the discomfort of placing a hybrid subject within an architecture designed for strict binary distinctions. This is a cardinal practice in criminal law because the sentencing stage is considered more flexible— allowing more moral nuance and even the consideration of the background of the perpetrator. Conversely, the stage of guilt determination must remain rigid to yield a single outcome (either guilt or innocence). This way, the architecture of individual responsibility also remains intact during the verdict, and complexity or moral nuance is allowed only after responsibility is fixed. Paradoxically, in the same judgment, the Trial Chamber found *Ongwen* guilty of conscripting children under the age of 15 years— highlighting the rigid legal distinction between children as victims recruited by LRA and the adult *Ongwen,* who was once the very same child.[61]

The trial of *Dominic Ongwen* demonstrates how temporal segmentation, fixed procedural roles, and offence-by-offence responsibility play out as structural limitations of ICL. The ICC complied fully with the Rome Statute and its rules of evidence, making the trial a procedural success. Fundamentally, individual criminal responsibility is designed to enable the determination of guilt or innocence, as opposed to a determination of victim or perpetrator. Since child soldiers hold these two statuses at different points of time during their life, the current design of ICL— which is fundamentally act-centric— finds it challenging to process them simultaneously.[62] By isolating the criminal act from the perpetrator's history through the temporal boundary, antecedent factors such as their abduction, forced training, and exploitation are ultimately considered as external and legally inconsequential to the crime committed. This is not an error on the part of the judges; rather, the architecture of ICL is designed to prioritise punishment; to give a clear verdict, it has to simplify the narrative. Eventually, the law necessarily gives primacy to structural consistency over the messy reality of the victim-perpetrator.

Conclusion

The paper analysed the child soldier paradox through the lens of the legal architecture of ICL. It explains how the paradox arises as a logical outcome of the act-centric design of the law, as a tension produced by how ICL must operate. The *Ongwen* case illustrates how the ICC recognises victimisation during childhood, yet procedurally brackets it during the stage of determining the guilt, and ends up re-introducing it during the sentencing stage. In doing so, the courts act in consonance with the architecture of the law and thereby preserve doctrinal clarity; nevertheless, it fragments the lived experience of child soldiers. This fragmentation is the culmination of the legal genealogy traced in this paper, resulting from the law's historical attempt to compartmentalise a child into distinct categories—notably, the persistent tussle between the identity of a victim and that of a perpetrator.

The child soldier paradox exists because ICL requires an offence-by-offence approach, fixed procedural roles, and temporal segmentation. This temporal segmentation creates a binary subject shaped by a past they cannot escape, yet held accountable for a future that is often directed by a socially manufactured adult agency (the "accountable survivor"). For this reason, it is difficult to truly resolve the paradox within the existing framework of ICL. The paper, therefore, clarifies why tensions like these recur and seeks to delineate the structural limitations of ICL. While misplaced critiques tend to focus on the reasoning of judges or the discretion exercised by the prosecution in such cases, this paper redirects attention to the structural constraints and architectural limitations of ICL.

Endnotes

1. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)* 1125 UNTS 3, art 77(2).
2. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)* 1125 UNTS 609, art 4(3)(c).
3. AP I (n 1) arts 51(3), 77; AP II (n 2) art 4(3); Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Vol 1: Rules* (CUP 2005).
4. *Rome Statute of the International Criminal Court* (last amended 2010) 2187 UNTS 3 (Rome Statute) art 8(2)(b)(xxvi).
5. Rome Statute (n 4) art 26.
6. See Mark A Drumbl, *Atrocity, Punishment, and International Law* (CUP 2007) 25–29; Gus Waschefort, *Child Soldiers and International Law* (Hart Publishing 2015) 54.
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