

SENDING MIXED MESSAGES ON  
COMBATTING THE USE OF CHILD  
SOLDIERS THROUGH UNILATERAL  
ECONOMIC SANCTIONS:

THE U.S.'S MANIPULATION OF THE CHILD  
SOLDIERS PREVENTION ACT OF 2008

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## INTRODUCTION

Children, in nation-states across the globe, have repeatedly been recruited or forced to serve as child soldiers, aiding governmental or armed rebel groups in furthering their respective objectives within internal armed conflicts. Researchers estimate that “hundreds of thousands of children under the age of [eighteen] serve” as child soldiers in various nation-states across the globe.<sup>1</sup> Countries such as the Democratic Republic of the Congo, Sierra Leone, South Sudan, Yemen, Somalia, and Libya are internationally recognized as ranking among the most salient and worst offenders of the international community’s ban against the use of child soldiers in states’ internal armed conflicts.<sup>2</sup> In efforts to curtail the global proliferation and prolonged use of child soldiers, various nations have resorted to drafting and enforcing multilateral and unilateral sanctions against states that continue to recruit and retain child soldiers. States’ implementation of unilateral sanctions, in particular, raises several questions for the international community. Do unilateral sanctions offend international sovereignty standards? If not, how effective are they? What

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1. See *Facts About Child Soldiers*, HUM. RTS. WATCH (Dec. 3, 2008), <http://www.hrw.org/news/2008/12/03/facts-about-child-soldiers> [hereinafter Human Rights Watch].

2. Office To Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2012: Topics of Special Interest, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm> (last visited Jan. 15, 2014).

factors render unilateral sanctions counterproductive? Why do nation-states such as the United States, a United Nations member state,<sup>3</sup> implement unilateral sanctions when it simply builds in handicap clauses that prevent the sanction from being enforced?

However well intentioned or masterfully drafted, unilateral economic sanctions, in application, often undermine the core original objective they were drafted to achieve. Is this an inherent effect of these sanctions, or can they be fine-tuned to better serve human rights needs across the world? Unilateral economic sanctions are merely one-sided penalties or economically coercive measures that a state exercises against a foreign state when the foreign state has failed to comply with particular rules or orders.<sup>4</sup> First, Part II of this note will provide background information regarding child soldiers, their treatment, factors that make children vulnerable to becoming child soldiers, and lingering effects that often plague former child soldiers. Afterward, Part III of this note will address the United States' connection to the United Nations, the applicable extraterritorial obligations resulting from that connection, and the ways in which the United States may fulfill those obligations. Next, Part IV will provide a general discussion of key criticisms and suggestions on states' use of unilateral sanction. Thereafter, Part V will address the current weaknesses of the United States' Child Soldiers Protection Act of 2008 and recommend amendments that will enable the act to actively reduce the use and retention of child soldiers around the world.

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3. Tracey B. C. Begley, *The Extraterritorial Obligation to Prevent the Use of Child Soldiers*, 27 AM. U. INT'L L. REV. 613, 618, 628-29 (2012) [hereinafter Begley]. The U.S. is one of one hundred and ninety-three countries that are voluntary UN member states subject to the UN's UN Charter, goals, and objectives. *Id.*

4. See BLACK'S LAS DICTIONARY 1671 (9th ed. 2009) (citing the word "unilateral.").

PART I: THE INTERNATIONAL IDENTIFICATION & EXPLOITATION  
OF CHILD SOLDIERS

A. Defining the Term “Child Soldier”

The term “child soldier” is a broad concept that is not generally reserved only to reference children who participate in direct combat.<sup>5</sup> Children who perform actions or services, combat-focused or not, meant for the furtherance of an armed group’s objectives are also considered child soldiers.<sup>6</sup> Child soldiers commonly serve in lesser-acknowledged roles, namely as porters, “lookouts, messengers, cooks, or other routine duties. Girls are particularly vulnerable [as] [t]hey are often forced to serve as sexual slaves.”<sup>7</sup> Child soldiers are also used to generate revenue, which helps armed groups’ finance various activities.<sup>8</sup> Generally, the children generate income by mining for precious natural resources such as oil and diamonds, or by trafficking drugs.<sup>9</sup> The United Nations, referencing The Paris Principles<sup>10</sup>, defines child soldiers as “any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies

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5. Diane A. Desierto, *Leveraging International Economic Tools to Confront Child Soldiering*, 43 N.Y.U. J. INT’L L. & POL. 337, 343 (2011) [hereinafter Desierto].

6. *See id.*

7. Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Child Recruitment: Combat and Support Roles*, UNITED NATIONS, <http://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/child-soldiers/> (last visited Jan. 15, 2014) [hereinafter *U.N. Child Recruitment*]; *see* HUMAN RIGHTS WATCH, *supra* note 1.

8. *See* Desierto, *supra* note 5, at 348.

9. *Id.* at 348-49.

10. *See generally The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, UNICEF (Jan. 30, 2007), <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (defining child soldiers).

or for sexual purposes.”<sup>11</sup> Unfortunately, children’s ability to serve in many varying capacities makes the children targets for recruitment.

### B. The Targeting and Treatment of Child Soldiers

Armed groups view children as easy targets for recruitment, in part, because children experiencing economic and social misfortune in war-torn environments tend to be easier to manipulate.<sup>12</sup> According to Human Rights Watch, “[c]hildren are most likely to become child soldiers if they are poor, separated from their families, displaced from their homes, living in a combat zone[,] or have limited access to education.”<sup>13</sup> In fact, armed groups often facilitate the occurrence of these stigmatizing factors by forcing children to commit heinous crimes against “their own families and neighbors.”<sup>14</sup> In some cases, surprisingly, impoverished parents offer their children to armed groups in exchange for some level of financial relief.<sup>15</sup> Many armed groups also target children simply because they are “young, immature, impressionable, and physically smaller than adults.”<sup>16</sup> Armed groups often kidnap children and force them to serve as child soldiers under threat of violence or death.<sup>17</sup>

Child soldiers are abused and mistreated in just as many ways as they are recruited. The United Nations Security Council has recognized six separate types of violations against children, commonly referenced as “the six grave violations,” which include the “killing or maiming of children[,] recruitment or use

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11. *U.N. Child Recruitment*, *supra* note 7.

12. *See HUMAN RIGHTS WATCH*, *supra* note 1.

13. *Id.*

14. *Id.*

15. Sara A. Ward, *Criminalizing the Victim: Why the Legal Community Must Fight to Ensure That Child Soldier Victims are Not Prosecuted as War Criminals*, 25 *GEO. J. LEGAL ETHICS* 821, 825 (2012) [hereinafter Ward] (citing UNICEF, *Child Soldiers* 1 (July 26, 2000)), available at <http://www.un.org/cyberschoolbus/briefing/soldiers/soldiers.pdf>.

16. Begley, *supra* note 3, at 614.

17. *See id.*

of children as solders[,] sexual violence against children[,] attacks against schools or hospitals[,] denial of humanitarian access for children[,] [and the] abduction of children.”<sup>18</sup> Child soldiers often experience abuse in several of the aforementioned areas, which the international community has taken a stand against. For instance, while serving governmental or armed groups, children are often murdered, raped, burned alive, or forced to commit similar acts of violence against civilians or combatants.<sup>19</sup> Researchers are also beginning to notice a rising trend where children are used on war-related suicide missions.<sup>20</sup> In a 2012 interview, Radhika Coomaraswamy, an internationally recognized human rights advocate, stated “[w]e are finding in Afghanistan, Somalia, and Iraq the beginning of the phenomenon of child suicide and victim bombers, where children are being used to detonate bombs on their bodies or people detonating them from afar[,]” identifying the findings of her research as horrifying.<sup>21</sup>

The atrocities that armed groups commit against children are not limited simply to violence, but extend well into other critical areas that are crucial to child development, such as education. Traditionally, armed groups have particularly favored targeting schools as a means to recruit children into their respective regimes.<sup>22</sup> “Armed groups go into schools and forcibly recruit or sometimes entice children to join them. Schools are also used by militaries; they occupy schools and prevent children from attending classes because [they are] the only buildings in town

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18. The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation 3 (United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Working Paper No. 1), available at [http://childrenandarmedconflict.un.org/publications/WorkingPaper1\\_SixGraveViolationsLegalFoundation.pdf](http://childrenandarmedconflict.un.org/publications/WorkingPaper1_SixGraveViolationsLegalFoundation.pdf).

19. Ward, *supra* note 15, at 826.

20. See Fletcher Forum, *Protecting Children in Armed Conflict: A Conversation with Radhika Coomaraswamy*, 36 FLETCHER F. WORLD AFF. 5, 7 (2012).

21. *Id.*

22. *Id.* at 6.

that can be used.”<sup>23</sup> The armed groups’ systematic, predatory behavior of plucking children out of school, therefore, extinguishes any chance for the affected children to receive an acceptable degree of formalized, quality education.

### C. Lasting Impacts on Child Soldiers

While the immediate, negative impact that child soldiering has on affected children is, without question, immense, much of the abuse these children endure is not realized until the warring has ceased or until that child has been extricated from service during the internal armed conflict. Many child soldiers, due to their extended armed service in war-torn environments, face an insurmountable societal detriment at the point of reintegration,<sup>24</sup> or the process by which the children are reincorporated into society as equal citizens.<sup>25</sup> Child soldiers are often limited by lack of education; addiction, whether to alcohol or other drugs; consequential sexual activity, which may include sexually transmitted diseases or teenage pregnancy; insufficient access to healthcare; and by criminal consequences stemming from their service as child soldiers.<sup>26</sup>

#### 1. Physical Displacement

The first and perhaps most immediate issue that a former child soldier will likely face is that he or she is physically displaced. More times than not, service to a governmental or armed group as a child soldier requires the child to be totally disconnected from his or her family and neighbors.<sup>27</sup> If the child’s family unit had not previously been dissolved by

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23. *Id.*

24. See Elisabeth Schauer, *The Psychological Impact of Child Soldiering* 2-3 (2009) [hereinafter Schauer], available at <http://www.icc-cpi.int/iccdocs/doc/doc636752.pdf>.

25. See *Merriam-Webster’s Collegiate Dictionary* 650 (11th ed. 2008) (referencing the (1)(a) listed definition of the word “integration.”).

26. See Schauer, *supra* note 24, at 3-4.

27. See *id.* at 7-8.

poverty, war, or illness, recruiting members of the armed group likely required the child to kill family members or friends.<sup>28</sup> Generally, “[t]he killing takes place in such a way that the whole community knows that the [child] has committed the murder. In this manner[,] the child is effectively barred from returning to the village and per force develops a relationship of dependency upon his [or her] captors.”<sup>29</sup> Also, many war-torn nation-states do not have the means or infrastructure to properly reintegrate former child soldiers into society, which heightens the likelihood of former child soldiers being re-recruited by armed groups.<sup>30</sup>

## 2. *Post-Traumatic Stress Disorder (PTSD)*

Former child soldiers also face a wide range of medical concerns that have the potential to stymie their reintegration into society. As a result of extensive exposure to traumatic occurrences, many former child soldiers develop post-traumatic stress disorder, commonly referenced as PTSD. PTSD, an anxiety disorder, often afflicts “individuals who have experienced or witnessed at least one traumatic event . . . , [which] involve[s] actual or threatened death or serious injury . . . and the subjective perception of intense fear, helplessness [or] horror.”<sup>31</sup> Studies consistently show that post-traumatic stress reactions persist over large periods of time; the effects of PTSD are not generally transitory.<sup>32</sup> Studies also show a positive correlation between those affected by PTSD and negative, hostile behavior.<sup>33</sup> Former child soldiers, by virtue of their age and lack of maturity, often experience debilitating difficulty in

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28. See JA Robinson, *The Right of Child Victims of Armed Conflict to Reintegration and Recovery*, 15 Potchefstroom Electronic L.J. 45, 51-52 (2012), available at <http://papers.ssrn.com/sol3/Delivery.cfm/SSRNID2044549code1435986.pdf?abstractid=2044549&mirid=1>.

29. *Id.* at 52.

30. *See id.* at 83.

31. Schauer, *supra* note 24, at 12.

32. *Id.* at 15.

33. *Id.* at 21.

managing their fits of aggression and in transitioning into a new life, one without violence.<sup>34</sup>

Affected children can suffer from PTSD for over forty years after the initial traumatic event has occurred, and studies indicate “a perfectly linear correlation between the number of traumatic event types experienced and the likelihood of developing post-traumatic stress disorder and other disorders of the trauma spectrum[.]”<sup>35</sup>

In a 2007 study of one hundred and sixty-nine former child soldiers in Uganda and the Democratic Republic of Congo, ninety-two percent of the Ugandan children had witnessed shootings and eighty-nine percent witnessed someone being wounded.<sup>36</sup> Fifty-four percent of the children interviewed reported that they themselves had killed another human being, while twenty-eight percent reported that they had been forced to engage in unwanted sexual activity.<sup>37</sup>

In another 2007-2008 study of over eleven hundred Ugandan child soldiers, forty-three percent reported that they had been abducted; thirty-six percent had been forced to kill another human being; and eight percent were forced to skin, cook, or eat human flesh.<sup>38</sup> Exposure to these and similar experiences undoubtedly heightens the likelihood that child soldiers will experience PTSD or other trauma induced anxiety disorders, which can make reintegration extremely difficult.<sup>39</sup>

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34. *Id.*

35. *Id.* at 15.

36. *Id.* at 10.

37. *Id.*

38. *Id.* at 11.

39. *Id.* at 11-12.

## PART II: THE UNITED STATES' EXTRATERRITORIAL OBLIGATIONS TO THE UNITED NATIONS

### A. Overview on Extraterritorial Obligations

Although sovereign nation-states typically are not subject to the laws of other states and entities, they may voluntarily elect to legally bind themselves to agreements and obligations with other nation-states. Extraterritorial obligations are simply duties that obligated sovereign states must fulfill concerning states that are exempt from the obligated states' legal jurisdiction.<sup>40</sup> Many sovereign states, such as the United States (U.S.), have recognized that globalization virtually necessitates the recognition of extraterritorial obligations amongst sovereign states.<sup>41</sup>

Technological advancements in travel, commerce, medicine, and other areas have intricately interconnected nation-states that can be deleteriously impacted by one another's actions, causing chaos.<sup>42</sup> Extraterritorial obligations amongst states require not only that each state comply with the signed agreement, but also that each state does its best to further the objective of the agreement.<sup>43</sup>

### B. The U.S.'s Extraterritorial Obligation and the UN Charter

The United States, through voluntary, international agreements, has taken on extraterritorial obligations, which it owes to the UN and other nation-states. The U.S. became a United Nations<sup>44</sup> (UN) member state on October 24, 1945. As a

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40. See Begley, *supra* note 3, at 625.

41. See *id.* at 627-28.

42. See *id.*

43. *Id.*

44. *The UN in Brief: How the UN Works*, UNITED NATIONS (2009), <http://www.un.org/Overview/uninbrief/about.shtml> (stating "[t]he United Nations was established on 24 October 1945 by 51 countries committed to preserving peace through international cooperation and collective security").

UN member state, subject to the Charter of the UN, the U.S. is required to “give the [UN] every assistance in any action [the UN] takes in accordance with the . . . Charter.”<sup>45</sup> Chapter nine of the Charter, specifically Articles 55 and 56, imputes extraterritorial obligations onto the U.S. regarding international economic and social matters.<sup>46</sup> The UN drafted Article 55 of the UN Charter to create stable conditions of well being in order to promote peaceful communication amongst states. It declares that the UN:

shall promote[] higher standards of living . . . and conditions of economic and social progress . . . ; solutions of international economic, social, health, and related problems; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>47</sup>

The U.S., pursuant to Article two of the UN Charter, is therefore required to promote universal respect for human rights whenever and wherever possible.

Additionally, Article 56 of the UN Charter further elaborates on the types of actions that the UN requires of each UN member state pursuant to Article 55.<sup>48</sup> Article 56 requires that “[a]ll [m]embers pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”<sup>49</sup> The U.S., as one of the one hundred and ninety-three UN member states,<sup>50</sup> has contractually obligated itself to act in conjunction with other member states and on its own in order to promote, among other things,

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45. U.N. Charter art. 2, para. 5; United Nations, *supra* note 44 (defining the UN Charter as an international treaty that lays standards for international relations among nation-states).

46. *See* U.N. Charter arts. 55 & 56.

47. *Id.*

48. *See id.* art. 56.

49. *Id.*

50. United Nations, *supra* note 44 (stating that “[t]oday, nearly every nation in the world belongs to the UN[;] membership totals 193 countries”).

universal respect for “human rights and fundamental freedoms for all.”<sup>51</sup> Although not explicitly stated, Articles 55 and 56 of the UN Charter arguably create not only territorial obligations, but also impute extraterritorial obligations to each UN member state.<sup>52</sup>

The contention that the UN Charter imputes extraterritorial obligations to each UN member state is further supported by the very nature and organization of the UN. The UN, structurally, is a multilateral body,<sup>53</sup> which seeks to promote international cooperation among states and encourage the development and codification of international law.<sup>54</sup> Each UN member state is considered part of the Organization’s General Assembly and is allotted one vote for each question discussed within the Assembly’s regular annual sessions.<sup>55</sup> As a function of this multilateral organization, members of the General Assembly are allowed, generally by a majority vote of two-thirds of present and voting member states, to “discuss any questions or any matters within the scope of the present Charter” and to “make recommendations with regard to any such questions to the state or states concerned.”<sup>56</sup> Each time a UN member state casts a vote regarding a human rights related question affecting another state or collection of states, it is recognizing its Article 55 and 56 obligation set forth in the Charter of the UN.<sup>57</sup> The aforementioned member state, by voting, will have participated

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51. United Charter, *supra* note 45, art. 55 & 56.

52. See Begley, *supra* note 3, at 629-30 (stating “[s]ince Article 56 obligates all UN members states to uphold, through whatever means possible, the provisions of Article 55[,] including the universal respect for human rights, it can be argued that this creates an extraterritorial obligation for states to support human rights in other countries”).

53. The term multilateral, in this context, applies to anything that involves or is agreed upon by more than two nation-states. See MERRIAM-WEBSTER DICTIONARY (2013), <http://www.merriam-webster.com/dictionary/multilateral> (referencing the second of multilateral definition listed).

54. See U.N. Charter art. 13.

55. *Id.* art. 18; see *id.* arts. 9 & 20.

56. U.N. Charter art. 11, para. 2.

57. See *id.* arts. 55 & 56.

in a joint action to promote the respect of universal human rights, assuming that the voting member state voted in good faith and in furtherance of the UN's objectives.<sup>58</sup> Therefore, by merely voting in good faith, each UN member state, including the U.S., recognizes and partially satisfies the extraterritorial obligations imputed onto it under Article 55 and 56 of the UN Charter.<sup>59</sup>

While most UN member states acknowledge that the UN imputes multilateral, extraterritorial obligations, in some degree, to each member state, states draw the line when it comes to states imposing unilateral extraterritorial obligations, especially unilateral economic sanctions, on other nation-states.<sup>60</sup> Multiple UN member states such as Argentina, Cuba, and Jamaica emphatically contend that UN membership does not create extraterritorial obligations that authorize member states to promulgate unilateral economic measures on other nations as a means of facilitating political or economic coercion.<sup>61</sup> In fact, several UN member states regard the use of unilateral economic sanctions as adverse to the very objectives of the UN.<sup>62</sup> Each of them, more or less, argue that “[u]nilateral coercive measures adversely affect the prospects for economic development of developing countries, distort trade and investment flows, infringe the sovereignty of [s]tates[,] and create obstacles to the full enjoyment of human rights by peoples and individuals under the jurisdiction of other [s]tates.”<sup>63</sup> These assertions, however, come across as overly broad and misleading. As previously stated,

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58. *Id.*

59. *Id.* arts. 2, 55 & 56.

60. *See* U.N. Secretary-General, *Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries: Report of the Secretary-General*, ¶ 3-8, U.N. Doc. A/60/226 (Aug. 12, 2005).

61. *Id.*

62. *See id.*

63. *Id.* at 8; *see generally* U.N. Secretary-General, *Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries: Report of the Secretary-General*, U.N. Doc. A/62/210 (Aug. 6, 2007) (providing additional examples of UN member states' stances on whether UN membership creates an extraterritorial obligation or right, held by each UN member state, to employ unilateral economic sanctions).

Articles 55 and 56 of the UN Charter not only allow, but require UN member states to take separate actions, in addition to its joint actions, to promote universal respect for human rights.<sup>64</sup> A unilateral economic sanction quite certainly constitutes separate action on the part of the enacting state. Therefore, it is unlikely that unilateral economic sanctions categorically offend the objectives of the UN.

C. The U.S. as a Party to the UN-Adopted Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The U.S., through its continued involvement with the UN, also elected to become a party to other UN-adopted treaties that, themselves, reinforce the UN member states' extraterritorial obligation to carry out separate actions toward the treaties' objectives when feasible.<sup>65</sup> The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC), which is a multilateral treaty that seeks to promote the recognition of universal human rights, is a more recent example of such an agreement.<sup>66</sup> The General Assembly of the UN adopted the OP-CRC in May of 2000, and entered it into force in February of 2002.<sup>67</sup> Shortly thereafter, the U.S. became a signatory to the OP-CRC on July 5,

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64. See U.N Charter arts. 55 & 56.

65. See generally Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Jul. 5, 2000 2173 U.N.T.S. 236-37 (referencing language that requires signatories to work separately and in conjunction with other states and organizations to implement the OP-CRC).

66. See *id.* at 2.

67. Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *The Six Grave Violations, The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation*, UNITED NATIONS 1, 18 (2009), [http://childrenandarmedconflict.un.org/publications/WorkingPaper1\\_SixGraveViolationsLegalFoundation.pdf](http://childrenandarmedconflict.un.org/publications/WorkingPaper1_SixGraveViolationsLegalFoundation.pdf).

2000 and later ratified the agreement on December 23, 2002.<sup>68</sup> The U.S. is one of one hundred and twenty- nine signatories to the international treaty and one of one hundred and fifty-one nations that are parties to the treaty.<sup>69</sup>

Parties to the OP-CRC collectively “condemn[] the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals.”<sup>70</sup> In so doing, each party obligates itself to implement both territorial and extraterritorial actions orchestrated in accordance with and for the furtherance of the objectives enumerated within the OP-CRC.<sup>71</sup> One of the central OP-CRC territorial obligations that each state party must comply with can be found within the first three items of Article three of the OP-CRC, which read as follows:

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

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68. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, *supra* note 65, at 3.

69. *Id.* at 1.

70. *Id.* at 2.

71. *See generally id.*

- a) Such recruitment is genuinely voluntary;
- b) Such recruitment is done with the informed consent of the person[']s parents or legal guardians;
- c) Such persons are fully informed of the duties involved in such military service;
- d) Such persons provide reliable proof of age prior to acceptance into national military service.<sup>72</sup>

In sum, items one through three of Article three require that each state party either raise its minimum voluntary military recruitment age to eighteen or provide safeguards that ensure that each recruit (1) joined its armed forces voluntarily and with the permission of his or her legal guardians, (2) acknowledged he or she fully understood his or her duties prior to recruitment, and (3) provided reliable proof of his or her age.<sup>73</sup> The aforementioned portion of Article three undoubtedly deals specifically with territorial obligations; however, Article seven of the UN adopted OP-CRC contains extraterritorial obligations that allow state parties to take unilateral action to further the OP-CRC's objectives.

Article seven of the OP-CRC, on first glance, may appear to mandate territorial obligations, but the Article's language specifically addresses procedure that state parties must follow when taking action to either assist or prevent the actions of other nations states, depending on whether those actions will help or hinder OP-CRC objectives.<sup>74</sup> Article seven contain two items, which read as follows:

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary

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72. *Id.* art. 3.

73. *See id.*

74. *See id.* art. 7.

to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.<sup>75</sup>

The concluding sentence of Article seven, item one requires that each state party to OP-CRC consult with any state party and international organization that may be concerned with, or may have a vested interest in, whether and to what extent the acting state will provide technical or financial assistance to a particular state.<sup>76</sup> If this item were to refer merely to territorial obligations, it would not likely incorporate language regarding other sovereign states, describing those states as “concerned.” Each party to the OP-CRC is a sovereign nation-state and is, by definition, “vested with [the] independent and supreme authority”<sup>77</sup> to implement the requirements of the OP-CRC within its own boundaries. Moreover, it is not likely that a sovereign nation would need to consult with other “relevant international organizations[.]”<sup>78</sup> other than the UN, to implement its own obligations. The provision was likely included as an extraterritorial obligation and as a means by which a state party may influence another nation-state to comply with the objectives set forth by the OP-CRC.

The language of Article seven, item two further supports the contention that the UN- backed OP-CRC does indeed allow state parties to satisfy their extraterritorial obligations through

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75. *Id.* (emphasis added).

76. *Id.*

77. Black’s, *supra* note 4, at 1523 (referencing the definition of the word “sovereign”).

78. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, *supra* note 65, art. 7.

unilateral actions. Item two requires each capable state party to provide the aforementioned technical cooperation and financial assistance through, at minimum, one of three methods— (1) “existing multilateral, bilateral or other programmes[;]”<sup>79</sup> (2) other unspecified means; or (3) “through a voluntary fund established in accordance with the rules of the General Assembly.”<sup>80</sup> Under the first option, the option mentions other programs as distinctly separate from multilateral or bilateral agreements.<sup>81</sup> Therefore, any state party that has a pre-existing, unilateral program capable of satisfying this obligation can apply that program to satisfy this extraterritorial obligation.<sup>82</sup> The second listed option allows state parties to comply by other unlisted means.<sup>83</sup> Item two, prior to listing the third option, used the Latin term, “inter alia,” which, when literally translated, means “[a]mong other things.”<sup>84</sup> This may be another basis by which the OP-CRC allows fulfillment of state parties’ extraterritorial obligation through unilateral state action. Lastly, option three allows compliance through voluntary funds, provided that the funds comply with UN General assembly rules.<sup>85</sup> By virtue of each state party’s sovereignty and the fact that Article seven, item two’s fund creation option is not mandatory per the OP-CRC, any state party that elects to create such a voluntary fund will make the decision to do so unilaterally, despite the fact that the OP-CRC is a multilateral treaty.

Although some UN member states, and perhaps some non-member states, regard states’ use of unilateral economic sanctions as a violation of “public international law principles of

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79. *Id.*

80. *Id.*

81. *Id.*

82. *See id.*

83. *See id.*

84. Black’s, *supra* note 4, at 883 (referencing the definition of the phrase “inter alia”).

85. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, *supra* note 65, art. 7.

non- intervention and territorial jurisdiction,”<sup>86</sup> the fact remains that unilateral economic sanctions do not categorically offend international law or the UN Charter. Both the Charter of the UN and the UN-adopted OP-CRC impute extraterritorial obligations, which allow, and at times encourage, states’ use of unilateral action. In fact, in 1986, the UN’s “principal judicial organ[,]”<sup>87</sup> the International Court of Justice,<sup>88</sup> held that “[e]very [s]tate possesses a fundamental right to choose and implement its own political, economic and social systems. . . . The cessation of economic aid, the giving of which is more of a unilateral and voluntary nature, could be regarded as such a violation only in exceptional circumstances.”<sup>89</sup> Therefore, state imposed unilateral economic actions, like the U.S.’ Child Soldiers Prevention Act of 2008, cannot be fairly branded as categorical violations of public international law principles, especially the principles of nonintervention and territorial jurisdiction.

### PART III: CRITIQUES OF UNILATERAL ECONOMIC SANCTIONS & AMERICA’S USE OF THOSE SANCTIONS

While the use of unilateral sanctions does not categorically offend international law principles, critics, nevertheless, argue that other glaring issues render the practice ineffective and have the potential to create tremendous, unnecessary friction within

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86. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 459-60 (2006).

87. *The Court*, Int’l Ct. of Justice, <http://www.icj-cij.org/court/index.php?p1=1> (last visited Jan. 14, 2013).

88. The International Court of Justice was organized in June of 1945 by the Charter of the United Nations. *Id.* The Court was designed to “settle, in accordance with international law, legal disputes submitted to it by [s]tates and to give advisory opinions on legal questions referred to it by authorized [UN] organs and specialized agencies.” *Id.* The fifteen judges of the Court each serve nine years and are elected by the UN General Assembly and the Security Council. *Id.*

89. *Military and Paramilitary Activities In and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14, ¶¶ 258 & 278 (June 27).

the international community.<sup>90</sup> For example, the use of unilateral sanctions may create an avenue for nation-states to abuse economic sanctions, using them as a means to target certain states and punish them for unrelated matters. Even if states do not generally abuse unilateral economic sanctions in this manner, the documented use of these sanctions often leads to the indirect marginalization of certain human rights of citizens living within the nation-state being sanctioned.<sup>91</sup> Taken together, many critics surmise that the detriments of unilateral economic sanctions greatly outweigh the benefits of the same.<sup>92</sup>

#### A. The Selective Use of Unilateral Economic Sanctions for Personal Foreign Policy Objectives

One of the most salient concerns that critics mention when opposing states' use of unilateral economic sanctions is that states will have the ability to apply their respective sanctions selectively and according to their own political concerns of the given time.<sup>93</sup> The U.S., for example, often cited as "the most active sanctions proponent in the world,"<sup>94</sup> has been accused of "seek[ing] to enforce international norms . . . selectively, subject to the changing priorities of U.S. domestic politics rather than a genuine respect for those norms."<sup>95</sup> The U.S. has used unilateral economic sanctions to promote its own foreign policy objectives on topical matters such as fighting drug and weapon trafficking, discouraging the use and advancement of nuclear weapons, and advancing the concept of democracy throughout the world.<sup>96</sup> It

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90. See Chuang, *supra* note 86, at 458-62.

91. See Amy Howlett, *Getting "Smart": Crafting Economic Sanctions that Respect All Human Rights*, 73 *FORDHAM L. REV.* 1199, 1199-1202 (2004).

92. *Id.* at 1222-23.

93. Chuang, *supra* note 86, at 457.

94. *Id.*

95. *Id.* at 458 (citing Peter G. Dachin, *U.S. Unilateralism and the International Protection of Religious Freedom: the Multilateral Alternative*, 41 *COLUM. J. TRANSNAT'L L.* 33 (2002)).

96. *Id.* at 457.

has taken hard, political stands against states in the furtherance of its own politics. States such as Cuba, a nation that has been subject to consistent U.S. unilateral economic sanctions for upwards of fifty years, reference the U.S.'s policies as “hostile and aggressive.”<sup>97</sup>

The U.S., for the announced purpose of promoting respect for human rights of citizens in nations around the world, has imposed tough unilateral economic sanctions on Cuba, which have been opposed by the overwhelming majority of the UN General Assembly for approximately twenty years.<sup>98</sup> “[F]or the two decades [that] the Assembly had been calling for an end to the embargo,” says Bruno Eduardo Rodríguez Parilla, Minister for Foreign Affairs of Cuba, “the United States had not heeded to the majority opinion of [UN] Member States.”<sup>99</sup> Just as recently as 2011, the U.S. reasserted its position on its “economic, commercial[,] and financial blockade imposed . . . on Cuba,” despite the General Assembly’s one hundred and eighty-six votes<sup>100</sup> in favor of adopting the “world body’s twentieth consecutive resolution calling for an end to the measures.”<sup>101</sup> The U.S.’s unwavering commitment to ignore twenty consecutive UN General Assembly resolutions encapsulates critics’ concern that unilateral economic sanctions may be manipulated to serve a state’s personal foreign policy objectives rather than that of the international community at large.<sup>102</sup>

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97. U.N. GAOR, 66th Sess., 41st & 42nd plen. mtg., U.N. Doc. GA/11162 (Oct. 25, 2011).

98. *Id.*

99. *Id.*

100. There were only two votes, the U.S. and Israel, in opposition to adopting the resolution to end the U.S.’s sanctions imposed on Cuba. *Id.*

101. *Id.*

102. *See generally id.*

B. The Tendency of Unilateral Sanctions to Undermine Economic, Social, and Cultural Human Rights of Citizens Within Sanctioned States

Some critics remain opposed to states' use of unilateral economic sanctions because the practice has the potential to negatively impact certain classes of human rights, even though the sanctions may positively impact other classes of human rights.<sup>103</sup> As Amy Howlett<sup>104</sup> points out, "[t]he international human rights idea is not monolithic, but rather is subject to deep internal divisions and controversy."<sup>105</sup> States imposing unilateral economic sanctions on other states tend to focus on coercing a positive impact on those foreign citizens' civil and political human rights, which are commonly referenced as negative rights.<sup>106</sup> Negative rights may include rights such as "the right to liberty, freedom of thought, and freedom of expression."<sup>107</sup> When implementing sanctions that focus on advancing foreign citizens' negative rights, the implementing state likely does so "with the assumption that the sanctions will cause severe hardship within the target [state]."<sup>108</sup> This hardship usually manifests through the degradation of foreign citizens' positive human rights, which encompass economic, social, and cultural human rights.<sup>109</sup> For example, positive human rights generally include things such as "the right to food, the right to work, and the right to adequate health care."<sup>110</sup>

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103. See Howlett, *supra* note 91, at 1199-1202.

104. Amy Howlett is the author of "Getting 'Smart': Crafting Economic Sanctions That Respect All Human Rights," a 2004 article published by the Fordham Law Review.

105. Howlett, *supra* note 91, at 1199.

106. *Id.* at 1199-1200.

107. *Id.*

108. *Id.* at 1211 (quotation omitted); see Joy K. Fausey, *Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards?*, 10 CONN. J. INT'L L. 193, 197 (1994) (referencing the fact that economic sanctions are often directed at the collective population of the target state).

109. Howlett, *supra* note 91, at 1199.

110. *Id.*

Unilateral economic sanctions, by design, coerce states to act or not act by negatively impacting the state's economy or financial stability. Amy Howlett, however, in discussing the purpose generally attributed to states' decision to implement unilateral economic sanctions, also sheds light on the effect that states intend for these sanctions to have on the citizens within the sanctioned state.<sup>111</sup> According to Howlett, "sanctions [traditionally] have targeted countries, and thus the expected scenario is that the population-at-large, experiencing severe hardship caused by sanctions, will rise up against its leaders to demand change. In another scenario, the leaders acquiesce to the demands of sanctions out of guilt."<sup>112</sup> Sanctions that are particularly aggressive can often "cause severe human suffering" to citizens within the sanctioned state or states, thereby jeopardizing the positive human rights of citizens living within the state or states.<sup>113</sup> If a sanctioned nation refuses to acquiesce to the wishes of the sanctioning nation for an extended period of time and the sanction has a large impact on the state, the citizens' positive rights will likely suffer to some extent. "Thus, the same sanctions that were imposed to end human rights violations of a civil and political nature [cause] human rights violations of an economic, social, and cultural nature[] in the same country."<sup>114</sup> Based upon this concern, many critics conclude that unilateral economic sanctions are, at best, ineffective, and, at worst, more harmful than beneficial.

C. The Acknowledgement of Unilateral Economic Sanctions as a Means to Effectively Develop International Human Rights Laws & of Ways to Minimize the Practice's Drawbacks

Some critics, albeit not proponents for the use of unilateral economic sanctions, within their respective critiques,

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111. *Id.* at 1200.

112. *Id.* at 1211-12.

113. *Id.* at 1200.

114. *Id.*

acknowledge that the use of unilateral economic sanctions are on the rise and will likely be around for a lengthy period of time, if not in perpetuity.<sup>115</sup> The use of these sanctions, as Janie Chuang<sup>116</sup> writes, is seen as a ““middle road response between diplomacy and military action.””<sup>117</sup> It “has become a common foreign policy tool,” used to “alter state behavior.”<sup>118</sup> Therefore, several of those opposed to the unilateral implementation of economic sanctions, rather than seek to stop states from using them, have chosen to provide recommendations to states, which are meant to maximize the noted benefits—and reduce the potential detriments—of this type of sanction.<sup>119</sup>

Unilateral economic sanctions, though heavily scrutinized within the international community, actually have been credited by scholars with being the spearheading cause for recently “strengthened international human rights law,” insofar as they “foster[] the growth of international human rights norms.”<sup>120</sup> Commentators, such as Sarah H. Cleveland, have concluded that unilateral economic sanctions can serve this important and unique purpose, despite the traditionally acknowledged negatives associated with their method of altering foreign states’ behaviors.<sup>121</sup> Sanctions of this sort may actually “assist[] in the international definition, promulgation, recognition, and domestic internalization of human rights norms.”<sup>122</sup> By merely promulgating unilateral economic sanctions, nation-states are, in effect, “articulating human rights violations as the impetus for imposing sanctions and thereby contributing to state practice” of those norms.<sup>123</sup>

In addition to defining international norms and drawing more attention to those norms, states have the compelling power to

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115. *Id.* at 1220-21.

116. *See generally* Chuang, *supra* note 86.

117. *Chuang, supra* note 86, at 457.

118. *Id.*

119. *See generally* Howlett, *supra* note 91.

120. *Id.* at 1220.

121. *Chuang, supra* note 86, at 461.

122. *Id.*

123. *Howlett, supra* note 91, at 1222.

directly enforce their economic sanctions against states that violate international human rights norms and laws. The General Assembly of the UN does not have this power.<sup>124</sup> Albeit influential and widely respected, the United Nations General Assembly is “empowered to make only non-binding recommendations to States on international issues within its competence.”<sup>125</sup> Therefore, General Assembly resolutions, much like the aforementioned twenty consecutive resolutions against the U.S.’s continued use of unilateral economic sanctions against Cuba, are not binding against UN member states.<sup>126</sup> So, “[w]hile the [UN] views its treaties and conventions as binding on [s]tate [p]arties, it has no police power mechanism to enforce its decisions; [UN treaties] are ‘limited by the signatories’ willingness to comply.”<sup>127</sup>

This limitation, which negatively impacts the effectiveness of UN-adopted treaties such as the OP-CRC, “make[s] implementing procedures to abolish the use of child soldiers unattainable without local and national efforts.”<sup>128</sup> Heather L. Carmody, capturing this frustration in a 2012 article, writes,

Although the international community has condemned the use of child soldiers, military recruiters continue to defy these international norms. Moral condemnation or treaties prohibiting child soldiers often fall on deaf ears in countries that are torn by internal conflict, civil war, and poverty. Recruiters [may] have reached such a state of violence that all standards of moral and ethical conduct cease to exist or hold meaning. Releasing child soldiers may be seen as impractical

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124. See *Background Information: Functions and Powers of the General Assembly*, UNITED NATIONS, <http://www.un.org/ga/61/background/background.shtml>.

125. *Id.*

126. *See id.*

127. Heather L. Carmody, Note, *The Child Soldiers Prevention Act: How the Act’s Inadequacy Leaves the World’s Children Vulnerable*, 43 CAL. W. INT’L L.J. 233, 247 (2012).

128. *Id.* at 248.

to a militia embroiled in a civil war, where replenishing combatants is a constant preoccupation.<sup>129</sup>

Many scholars recognize this limitation of the United Nations General Assembly's resolutions and similarly structured multilateral agreements, citing the lack of police power as one major hindrance to getting state offenders of international norms to respect and follow those norms.<sup>130</sup>

Andrew Philip of Amnesty International, commenting on child soldier commanders of the Democratic Republic of Congo, once stated that such commanders "know it's a war crime, but they seem to believe they'll never be brought to justice. There is a sense of rampant impunity."<sup>131</sup> The U.S. and other influential states, on the other hand, may implement unilateral economic sanctions that create a direct incentive for sanctioned states to observe and comply with international human rights norms, which are codified by international entities like the UN. Plainly stated, unilateral economic sanctions go a step beyond emphasizing the usual moral and ethical implications of a state's violation of international human rights law; they target states' economic stability, which has arguably accelerated offending state's willingness to comply with international human rights laws.<sup>132</sup>

Some scholars, in light of both the known benefits and drawbacks associated with unilateral economic sanctions, have proposed that the U.S. and other nation-states refine the drafting process of their future, respective unilateral economic sanctions.<sup>133</sup> In order for the U.S. to simultaneously strengthen both negative and positive human rights through the use of these

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129. *Id.* (quoting Luz E. Nagle, *Child Soldiers and the Duty of Nations to Protect Children from Participation in Armed Conflict*, 19 CARDOZO J. INT'L & COMP. L. 1, 26 (2011) (internal quotations omitted).

130. *See, e.g.*, P.W. Singer, *Talk is Cheap: Getting Serious About Preventing Child Soldiers*, 37 CORNELL INT'L L.J. 561, 575 (2004).

131. *Id.* at 575 (citing Rory Carroll, *Sham Demobilisation Hides Rise in Congo's Child Armies*, THE OBSERVER, Sept. 9, 2003, at 15).

132. *See* Chuang, *supra* note 86, at 461.

133. Howlett, *supra* note 91, at 1232-34.

sanctions, it should only implement smart sanctions, or sanctions that are “narrowly tailored to minimize civilian suffering through measures such as visa denials and the freezing of assets.”<sup>134</sup>

Essentially, unilateral economic sanctions simply lack balance when they ignore the positive human rights of citizens within the sanctioned state. The thoughtful drafting of sanctions, which take into account the entire spectrum of foreign citizens’ human rights, will likely garner more support from the international community. Furthermore, the U.S. should document and condemn international human rights violations in an even-handed, uniform manner.<sup>135</sup> Unilateral economic sanctions that reflect the application of these recommendations may help to promote the full spectrum of foreign citizens’ human rights and reduce the potential for sanction to undermine the goal of promoting global respect for international human rights law. Sanctions that fall short of contemplating all of these recommendations, like the Child Soldiers Prevention Act of 2008, need to be amended in order to best promote international human rights norms.

## PART V: THE CHILD SOLDIER PREVENTION ACT OF 2008

### A. The Promulgation & Purpose of the CSPA

On December 23, 2008, the U.S. Congress amended the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 and included Title IV, which is now known as the Child Soldiers Prevention Act of 2008 (CSPA). The CSPA, given full effect in June of 2009, is a unilateral, legislative act that bars the U.S. government from providing, among other things, financial assistance to another nation-states’ government “that is clearly identified . . . for the most recent year . . . as having governmental armed forces or government-supported armed groups . . . that recruit child

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134. *Id.* at 1233.

135. Chuang, *supra* note 86, at 462.

soldiers.”<sup>136</sup> Section 405 of the CSPA also requires the U.S. to go on international excursions, conduct thorough investigations into any reports of child soldier use, and prepare reports that document the U.S.’s findings.<sup>137</sup>

### B. Noteworthy Strengths of the CSPA

The CSPA, albeit flawed, has several positive attributes. These positive attributes, when coupled with smart reformation of the CSPA, could allow the Act to become an excellent tool for the advancement of the international community’s interest of promoting global respect for and observance of international human rights norms. The CSPA’s definition of the term “child soldier,” for example, is appropriately representative of international principles, as it is consistent with the OP-CRC’s definition. The term extends to:

(i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;

(ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;

(iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or

(iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state; and

(B) includes any person described in clause (ii), (iii), or (iv) of subparagraph (A) who is serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or sex slave.<sup>138</sup>

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136. Child Soldiers Prevention Act of 2008, Pub. L. No. 110-457, § 404, 122 Stat. 5044 [hereinafter CSPA].

137. *Id.* at § 405.

138. *Id.* at § 402(2).

The CRC's definition of the term "child soldier," by following the UN-adopted OP-CRC's definition, is in essence promoting international human rights norms established by the UN. The definition specifically outlines exactly who the international community deems to be a child soldier, which, thereby, standardizes the concept and provides a uniform basis to judge whether or not a state has indeed violated international human rights norms regarding the use of child soldiers.

Additionally, section 403 of the CSPA,<sup>139</sup> which embodies Congress's legislative intentions or what the CSPA references as the "sense[s] of Congress," incorporates the U.S.'s human rights extraterritorial obligations found within both the Charter of the UN and the OP- CRC. Among other enumerated duties, Congress requires:

(1) the United States Government . . . condemn the conscription, forced recruitment, or use of children by governments, paramilitaries, or other organizations;

(2) the United States Government . . . support and, to the extent practicable, lead efforts to establish and uphold international standards designed to end the abuse of human rights described in paragraph (1); [and] . . .

(7) [the] United States diplomatic missions in countries in which governments use or tolerate child soldiers [to] . . . develop strategies, as part of annual program planning—

(A) to promote efforts to end such abuse of human rights; and

(B) to identify and integrate global best practices, as available, into such strategies to avoid duplication of efforts.<sup>140</sup>

Section 403(1) of the CSPA plainly condemns the use of child soldiers by any state or armed group,<sup>141</sup> which candidly aligns

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139. *Id.* at § 403 (describing "Sense of Congress").

140. *Id.* at § 403(1), (2), & (7).

the interests of the U.S. with the interests of the United Nations as outlined in Chapter 9, Articles 55 and 56 of the UN Charter.<sup>142</sup> As previously stated, Article 56 of the UN charter requires the U.S., as a UN member state, “to take . . . separate action. . . for the achievement of the purposes set forth in Article 55,”<sup>143</sup> which requires the UN to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>144</sup> Sections 403(2) and 403(7) of the CSPA, while also showing the U.S.’s commitment to promoting respect for foreign citizens’ human rights, specifically prioritize the promotion of international human rights standards or norms over the U.S.’s own domestic standards, insofar as they may differ.<sup>145</sup>

Also, Congress seemingly promotes uniformity in the application of the CSPA by requiring the Secretary of State to produce and publish an annual report that describes “the use of child soldiers in each foreign country”<sup>146</sup> and by requiring the Secretary of State to “formally notify any government identified” as in violation of the CSPA.<sup>147</sup> By requiring an annual report including information as to a foreign nation-state’s use of child soldiers, the U.S. will be armed with data and, in theory, will be better able to apply its unilateral economic sanctions consistently and fairly according to each foreign state’s progress or lack thereof. Also, the state being sanctioned will be given notice that it is in violation of international human rights standards, which puts the nation on direct notice of its non-adherence to accepted international human rights standards. Furthermore, this reporting mechanism also provides other nation-states with an opportunity to see how they each are perceived by the U.S. and within the international community in regard to human rights concerns.

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141. *Id.* at § 403(1).

142. *See id.*; U.N. Charter, *supra* note 45, art. 55 & 56.

143. U.N. Charter, *supra* note 45, art. 56.

144. *Id.* art. 55.

145. CSPA, *supra* note 136, at § 403(2), (7).

146. *Id.* at § 405.

147. *Id.* at § 404(b)(2).

Lastly, the unilateral sanctions that may be applied to foreign states under the CSPA are appropriately limited to financial aid and assistance designated for the development of each eligible foreign state's military.<sup>148</sup> The Act "prohibits the following forms of assistance to governments that are identified in the list: international military education and training, foreign military financing, excess defense articles, section 1206 assistance, and the issuance of licenses for direct commercial sales of military equipment."<sup>149</sup> Therefore, the CSPA does not prohibit the U.S. from providing non-military-related humanitarian aid to citizens of a nation, whose government has violated the CSPA.<sup>150</sup> Based upon these aforementioned strengths, the CSPA has a relatively sturdy foundation, which squares well with international human rights standards held by organizations such as the UN.<sup>151</sup>

### C. Salient Weaknesses of the CSPA

The CSPA, albeit drafted in accordance with international human rights standards, tells a very different story when it comes to the manner in which the U.S. has applied the legislation.<sup>152</sup> Frankly, the Act just does not appear to be applied evenly in the interest of promoting global respect for human rights, but seems rather to be applied in accordance with the U.S.'s own domestic, political objectives and foreign policy interests.<sup>153</sup> Furthermore, the CSPA lacks specificity and does not provide key benchmarks or measures on which the U.S. may base its determination as to whether a foreign state is actively doing enough in its mission to refrain from using children in armed conflicts.

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148. Carmody, *supra* note 127, at 243; *see* CSPA, *supra* note 136, at § 404(a), (e).

149. Office to Monitor and Combat Trafficking in Persons, *supra* note 2.

150. *See generally* CSPA, *supra* note 136 (suggesting that the U.S. may provide, for an example, either a passport or a passport card for humanitarian reasons).

151. *See generally* CSPA, *supra* note 136; U.N. Charter, *supra* note 45, art. 55 & 56.

152. *See* Chuang, *supra* note 86, at 458-59.

153. *See id.*

### I. *The National Interest Waiver*

The national interest waiver, or section 404(c) of the CSPA, allows the President to unilaterally waive the CSPA's application to a nation-state "if [he] determines that such waiver is in the national interest of the United States."<sup>154</sup> Any 404(c)(1) waiver of funds pursuant to the CSPA will likely occur as a result of a nation-state's human right violations, outlined within the annual Trafficking in Persons Report (TIP Report).<sup>155</sup> As acknowledged by the U.S. Department of State, "[t]he CSPA requires publication in the annual TIP Report of a list of foreign governments identified during the previous year as having governmental armed forces or government-supported armed groups that recruit and use child soldiers, as defined in the Act."<sup>156</sup>

In 2012, the CSPA cited seven countries whose governments have offended the CSPA.<sup>157</sup> Burma, Libya, South Sudan, Somalia, Sudan, Yemen, and the Democratic Republic of the Congo were the offending countries listed within the TIP Report.<sup>158</sup> Of the seven nation-states listed within the 2012 report, four were receiving funds under the CSPA at and prior to the time that the report was released.<sup>159</sup>

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154. CSPA, *supra* note 136, at § 404(c)(1).

155. *See News: 2012 Trafficking In Persons Report Release*, HUMANRIGHTS.GOV, (June 19, 2012), <http://www.humanrights.gov/2012/06/19/tip-2012/> (stating "[a]s required by the Trafficking Victims Protection Act (TVPA), the TIP Report assesses governments around the world on their efforts to combat modern slavery").

156. Office To Monitor and Combat Trafficking in Persons, *supra* note 2 (stating "[t]he determination to include a government in the CSPA list is informed by a range of sources, including firsthand observation by U.S. government personnel and research and reporting from various United Nations entities, international organizations, local and international NGOs, and international media outlets").

157. *Id.*

158. *Id.*

159. *See* Memorandum for the Secretary of State on the Child Soldiers Prevention Act of 2008, THE WHITE HOUSE; OFFICE OF THE PRESS SECRETARY (Sept. 8, 2012), *available at* <http://www.whitehouse.gov/the-press->

President Barack Obama's continued, selective choice to waive the CSPA's applicability to certain violating foreign states seems to offend the Act's explicit priority, which is to "support. . . and, to the extent practicable, lead efforts to establish and uphold international standards designed to end the abuse of human rights."<sup>160</sup> Currently, three of those four nation-states, which include Libya, South Sudan, and Yemen, continue to receive full funding otherwise prohibited by the CSPA due to President Obama's waiver of the Act's application to those states.<sup>161</sup> President Obama has also allowed the fourth nation-state, the Democratic Republic of the Congo, to receive partial funding by exercising his waiver authority.<sup>162</sup>

The waiver provision, in itself, is not necessarily problematic; however, the CSPA's lack of clarity as to when the President should be able to invoke the waiver is, indeed, a concern. The "issue for debate," writes Liana Sun Wyler,<sup>163</sup> "is the extent to which the waiver option should be exercised and whether extensive use of the waiver option can have a negative effect on international commitments against human trafficking."<sup>164</sup> For the past three years, the President has by and large waived the

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office/2012/09/28/presidential-memorandum-presidential-determination-respect-child-soldier (evidencing President Obama's election to waive application of the CSPA to four nations in September of 2012); Memorandum for the Secretary of State on the Child Soldiers Prevention Act of 2008, (Oct. 4, 2011) PRESIDENTIAL DETERMINATION 2012-01, *available at* <http://www.whitehouse.gov/the-press-office/2011/10/04/presidential-memorandum-child-soldiers-prevention-act-2008> (evidencing the four nation application waiver in October of 2011); Memorandum for the Secretary of State on the Child Soldiers Prevention Act, PRESIDENTIAL DETERMINATION 2011-4 (Oct. 25, 2010), *available at* <http://www.whitehouse.gov/the-press-office/2010/10/25/presidential-memorandum-child-soldiers-prevention-act> (evidencing the four nation application waiver in October of 2010).

160. CSPA, *supra* note 136, at § 403(2).

161. *Id.*

162. *Id.*

163. See Liana Sun Wyler, CONG. RESEARCH SERV., R42497, TRAFFICKING IN PERSONS; INTERNATIONAL DIMENSIONS AND FOREIGN POLICY ISSUES FOR CONGRESS (2013) *available at* <http://www.fas.org/sgp/crs/row/R42497.pdf>.

164. *Id.* at 17.

applicability of the CSPA to offending nation-states subject to its prohibition.<sup>165</sup> More troubling than his consecutive execution of these waivers is the vague terminology he uses in order to do so. Each of his presidential memorandums pertaining to a waiver of the CSPA lack specificity and seem to elevate the U.S.'s own foreign policy above the human rights norms of the international community at large.<sup>166</sup> In 2012, for example, the great majority of the President's terse Presidential Determination merely stated:

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (CSPA) (title IV, Public Law 110-457), I hereby determine that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Libya, South Sudan, and Yemen; and further determine that it is in the national interest of the United States to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo, to allow for continued provision of International Military Education and Training funds and nonlethal Excess Defense Articles, and the issuance of licenses for direct commercial sales of U.S. origin defense articles; and I hereby waive such provisions accordingly.<sup>167</sup>

This excerpt taken from President Obama's 2012 Presidential Determination makes a sweeping, conclusory statement, asserting only that the waiver "is in the national interest of the United States."<sup>168</sup> While there may very well have been valid reasons for the President to exercise his waiver option, he did not provide substantive facts to support his decision.<sup>169</sup> The text lacks context for its assertion and does not indicate what criteria the President used in order to reach his decision.<sup>170</sup> Furthermore, the two previously released Presidential Determinations, issued in October of 2010 and 2011, also

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165. See *Presidential Memorandum*, *supra* note 159.

166. See *id.*

167. See *id.*

168. See *id.*

169. See *id.*

170. *Id.*

neglect to identify what criteria the President used in coming to his decision to waive the application of the CSPA.<sup>171</sup>

Moreover, President Obama seems to be applying the act in a less than even manner.<sup>172</sup> For instance, the President selectively waived the Act's application to Libya, South Sudan, and Yemen, yet "for the second year in a row, with[held] portions of U.S. military assistance from the Democratic Republic of [the] Congo."<sup>173</sup> Critics, such as Bryana Johnson of the Washington Times, have begun to draw attention to the U.S. for its selective application of the Act.<sup>174</sup>

Johnson, in a scathing Washington Times article, writes,

Every now and then, some absurdity enacted behind closed doors in Washington is uncovered which should leave the people of the US with the uncanny feeling that all is not as it appears to be. . . . Unfortunately, the bitter truth is that the majority of our nation's leaders allow pragmatism to eclipse their ideals on most occasions when the two come into conflict. Principles are only good until they get in the way of allowing the US to take action. If Libya is working to overthrow Gadhafi and our leaders don't like Gadhafi, they are going to back his attackers regardless of whether they employ child soldiers or not.<sup>175</sup>

Johnson also notes that the Obama administration, after using the waiver in 2010, referenced the waivers as "one-time deal[s]."<sup>176</sup> Yet, the President has continued to implement subsequent waivers.<sup>177</sup> Ultimately, the CSPA's silence as to what

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171. *Id.*

172. Jo Becker, *The U.S. Can Do More to Keep Children off the Battlefield*, HUFFINGTON POST (Oct. 4, 2012), [http://www.huffingtonpost.com/jo-becker/the-us-can-do-more-to-kee\\_b\\_1940067.html](http://www.huffingtonpost.com/jo-becker/the-us-can-do-more-to-kee_b_1940067.html).

173. *Id.*

174. See Bryana Johnson, *President Obama Turns His Back On Child Soldiers Again*, WASH. TIMES, <http://communities.washingtontimes.com/neighborhood/high-tide-and-turn/2012/oct/3/obama-turns-child-soldiers-again/>.

175. *Id.*

176. *Id.*

177. See *Presidential Memorandum*, *supra* note 156.

national interests trump the application of the CSPA has rendered the President's waiver authority overly broad. The President's use of this overly broad waiver authority undermines the U.S.'s ability to fulfill its extraterritorial obligations to the UN.

In order for the CSPA to be effective in promoting global respect for international human rights norms, Congress must amend the CSPA, eliminating much of the ambiguity surrounding the applicability of the national interest waiver. Congress must incorporate explicit criteria, which require the President to base his decision as to whether he may or may not exercise his authority to waive the Act's application on solid factors or standards. As it stands, the President's unchecked ability to exercise his waiver authority stymies any positive impact that the Act could have toward promoting respect for and observance of international human rights laws. Without this crucial adjustment, the Act's impact will likely be all but nonexistent.

## 2. *The Annual Report to Congress*

The CSPA, itself, seems to include provisions that will phase out some of the President's obligations to report his future use of waivers to congressional committees.<sup>178</sup> Section 405(c), in part, requires the President to "submit a report to the appropriate congressional committee" if a 404(c)(1) waiver is granted "during any of the [five] years following the date of the enactment of th[e] Act."<sup>179</sup> Therefore, this requirement to report will no longer be applicable once the remaining balance of the five years has lapsed.<sup>180</sup> The lifting of this requirement will relieve the President of his duty to provide crucial information to Congress, information that will show whether the Act is being

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178. CSPA, *supra* note 136, at § 405(c).

179. *Id.* at §405(c)(1); *see id.* at § 404(c)(1).

180. CSPA, *supra* note 136, at § 405(c).

applied in accordance with international human rights standards.<sup>181</sup>

Sections 405(c)(1) through (c)(4), listing the information that the report must include, requires the President to provide:

- (1) a list of the countries receiving notification that they are in violation of the standards under this title;
- (2) a list of any waivers or exceptions exercised under this title; (3) justification for any such waivers and exceptions; and
- (4) a description of any assistance provided under this title pursuant to the issuance of such waiver.<sup>182</sup>

Congress simply must amend this portion of the Act by removing the five-year limitation placed on the President's obligation to report his use of the CSPA to Congress. Not requiring the President to provide justification for withholding funds from or waiving the Act's application to a particular nation-state gives too much unchecked power to the President, which exponentially increases the likelihood that the Act will be manipulated to serve the interests of the U.S. as opposed to the interests of the international community at large.

## CONCLUSION

Albeit a practice highly scrutinized by members of the international community, nation-states' implementation of unilateral economic sanctions can actually serve to strengthen international human rights norms. Sanctions like the CSPA, when drafted or amended appropriately, comport with international human rights norms, satisfy UN member states' extraterritorial obligations to promote the observance of international human rights, and help to define, promote, and increase global adherence to those standards. The U.S.'s CSPA

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181. *Id.*

182. *Id.* at §405(c)(1)-(4).

has excellent potential, as its stated objectives and definitions comport with international human rights standards. However, the Act will not be effective in strengthening global respect for international human rights standards unless Congress further limits the Act's national interest waiver and removes the five-year life-span placed on the President's obligation to report his use of the CSPA to Congress. The CSPA, as is, grants the President excessively broad authority, which must be curtailed by Congress. Until that time, the CSPA, sadly, cannot aid the U.S. and UN in their global objective to permanently eradicate the use and retention of child soldiers in armed conflicts around the world.