

Response

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I. Introduction: Vulnerability and Promise

The movie *Slumdog Millionaire* (2008), adapted from Vikas Swarup's 2005 novel *Q & A*, tells the story of Jamal Malik, a *vulnerable* orphan and street boy exposed to the misery of the world: extreme poverty, disease, lack of education, violence, murder, prostitution in Cherry Street, police brutality, and other misfortunes. Very painful images, but not without *promise* and determination, show Jamal at five years old, covered in excrement, succeed in reaching the Indian movie star, Amitabah, and receive an autograph. When Jamal starts playing and winning "Who Wants to be a Millionaire," Sergeant Srinivas and other policemen torture Jamal because they cannot understand how this vulnerable lost child is winning the game. Their conclusion: he must be cheating. The film places us into the dialectic of vulnerability and promise. What we can take from it is that the well-being of a child is not a private affair. It is linked to the order of the *economic* and the *political*, with these two words understood in their etymological sense. The fact of being on orphan evokes the *oikos* and miserable life in the streets, as well as the cops' response referring to the order of the *polis*. Jamal Malik's exceptional achievement raises the question of how is this possible? What is the correct answer among the four choices in the film: he cheated, he's lucky, he's a genius, it is destiny? There is a risk of celebrating the idea of heroism in Jamal Malik's character and forgetting the call to protect vulnerable children. Any *promise* is inscribed in a societal project that creates conditions of possibility for the protection and success of children.

Tonderai Chikuhwa, senior advisor at the United Nations, discusses the Roundtable theme of "Children of the World: The Dialectic of Promise and Vulnerability" by focusing on particular situations of children involved in armed conflict and he evokes concrete actions/operations by the United Nations to protect such "child soldiers." The well-being of children has been defined as a "categorical imperative" for the realization of planetary peace and security, which therefore calls for actions from the United Nations Security Council.

II. Child Protection for Planetary Peace and Security

Chikuhwa affirms that, "protecting children in armed conflicts is a new imperative of international peace and security." He suggests that protecting the child exceeds the duty towards the vulnerable populations in a society, but is an imperative for global peace and security. If the protection of children is an end in itself, without reducing it to a means, this end in itself generates another end that is world peace and global security.

Tonderai Chikuhwa's presentation, first of all, inscribes the protection of the child within the deontological ethics that emerge through the notion of the "imperative." But at the same time, if the protection of the child is not realized as a goal, we will not have international security. Thus, a child rights that is linked to the context of the family and the nation finds itself in an international world. We should recall that the implication of the United Nations in the protection of the child has moved the notion of human rights from a pious wish, from a simple declaration of Human Rights, to the domain of international law. It is worth appreciating as well the creation

of the International Criminal Court (ICC), according to the Rome statute. Military operations of the United Nations are no longer on the wishful level of overseeing a ceasefire and putting themselves between two belligerent parties. United Nations soldiers no longer hesitate to engage in combat in order to protect civilian lives. If a “strategic peacekeeping operation” is justified by its goal of protecting human rights, then peace and national security become the stakes of military intervention. As Chikuhwa points out so well, “the Security Council and the United Nations system as a whole recognize that the grave violations being perpetrated against children in the context of war constitute a legitimate threat to the maintenance of international peace and security.” It appears, then, that the protection of the child in armed conflicts has become one of the basic rights, which means it is an essential path to enjoying international peace and security.¹ This shift in the United Nations mandate therefore involves moral and legal considerations.

Tonderai Chikuhwa emphasizes the United Nations’ engagement along four axes:

- The changing character of modern warfare and critical child protection themes;
- Locating children on the United Nations peace and security agenda;
- Children and armed conflict as an operational priority of the Secretary-General and the United Nations Secretariat;
- and, finally, progress in the protection of children.

War increasingly occurs *inside* of states. Such a war leads to a gray zone between spaces of living, or safe zones, and spaces of combat. Chikuhwa reminds us that, “new tactics of war, the absence of clear composition, motivations and character, are complicated matters.” It follows that such a context does nothing to protect a civilian or a child in a “safe” area. This form of total war shakes the core of international humanitarian law, which is based on the distinction between combatants and civilians, as well as the principle of proportionality in the use of force. We observe that terrorism, and paradoxically the war on terrorism, does not spare children. I will return shortly to the question of children in detention.

The response of the United Nations on the protection of the child has taken several faces and has engaged the United Nations through nearly all of its structures. The protection of the child constitutes an essential element of world peace insofar as it engages the capacities and structures of the Security Council. One of the consequences has been eight Security Council resolutions, as well as other measures, such as the entrance of the child within the mandate of peacekeeping operations. We should note as well that the work of monitoring, reporting, and regime compliance can lead to legal sanctions through the International Criminal Court for any act relating to, as outlined by Chikuhwa, the “Killing or maiming of children, recruiting or using child soldiers, attacks on schools or hospitals, rape or other grave sexual violence against children, abduction of children, and denial of humanitarian access for children.”

Finally, in what he calls “progress in the protection of children,” Chikuhwa emphasizes the importance of the ICC institution after the Rome agreement and other international legal systems. The arrest of people accused of using child soldiers is an act that can put an end to the cycle of impunity. The cases presented here are those of Thomas Lubanga Dyilo, Charles Taylor, the Côte d'Ivoire, and the Sudan. Please note that Charles Taylor is being prosecuted by the Special Court for Sierra Leone (and Milosovic was prosecuted by the International Criminal Tribunal for the former Yugoslavia).

III. Means, Ends, and Law

The protection of children as a factor of world peace is a very important step. This relationship makes the protection of children effective. It will be crucial, however, to reconcile the two without either losing its autonomy. What does this mean? If world peace is the goal, the protection of children becomes a means for realizing this goal, yet by this very fact, the child becomes objectified. There is a need to keep the protection of children as an end in itself, making it absolute, autonomous, and independent. Without reducing it to a means, but in generating a new meaning, a new end, children's rights become concrete when they are understood as constituents of world peace and global security. This is important at the moral and the social levels, in spaces of the village or communities where the notion of global peace and security is abstract.

The protection of children is a right in itself and, in a second end, an essential constituent of world peace. In fact, the use of children in the army can also lead to at least two charges: the violation of the rights of the child and an attack on world security.

The term often employed is "child soldier." I prefer "children in armed conflicts," which was well chosen by Chikuhwa, even if he does not explicitly discuss these terms. The designation "child soldier" presupposes the possibility of a child becoming an authentic soldier and thus playing an active role. The term "soldier" also legitimizes any armed group that uses children as a regular army. Instead of the descriptor "child soldier," it seems to me that "abducted child" would emphasize the status of the child as a victim and open up the possibility of extending protection to every child victim in armed conflicts, whether recruited directly or not, and including, among others, cases of detention, rape, and porters. In addition, it could permit the right to asylum currently refused to certain children because they are defined as "having participated in armed conflicts." The codification of Human Rights or of Child Rights is the most efficient way to punish crimes. Law can present certain limits, however, if it is not upheld by other structures and procedures that help protect children. Here, I would like to underline several pitfalls. The first is linked to the criterion of age. In his presentation, Chikuhwa declares that:

While both sexual exploitation and the recruitment of child soldiers under fifteen are prohibited by the Convention, it has a number of weaknesses. The most glaring evidence of its weakness is that while it is the most widely ratified convention of the United Nations, the number of children abducted or recruited to serve as soldiers continues to grow every year. Part of this ineffectiveness must lay in the fact that only those states that have ratified the convention are bound to its rules.

Chikuhwa has good reason to recall that ratification not only links signatory states. It is well known that the United States is not a signatory. In the war on terror, Chikuhwa recognizes that "anti-terrorism measures often also target children, including through arrest and detention of children suspected of having links to terrorist organizations." I would like to illustrate this point with the example of Omar Khadr, arrested at fifteen years of age and currently incarcerated at Guantanamo Bay. At twelve years old, he was implicated in throwing a grenade in Afghanistan that killed an American. The military jury at the American base, considering him a "dangerous terrorist," recommended a prison sentence of forty years during the trial of the young Canadian, but an agreement limiting the sentence to eight years was finally concluded. Omar Khadr, now

24 years old, was supposed to finish his sentence in his home country of Canada beginning in November 2011, but the Canadian government has refused to receive him. What, then, are the mechanisms of the International Criminal Court to obligate the United States and Canada?

According to Tonderai Chikuhwa, the element posing a problem regarding the criterion of age stems from the fact that this law does not apply to the United States, which is not a signatory to either the Convention on the Rights of the Child or the Rome Statute. It seems, nonetheless, that the weaknesses of the age criterion exceed the stakes of ratification. The International Criminal Court considers as a war crime the enlistment of children younger than fifteen years of age and their use during hostilities in armed or international conflicts. Since the term “child soldiers” applies to the use of soldiers under eighteen years of age in armed conflicts, a state that has signed the Convention can abduct children aged sixteen or seventeen years without infringing upon the law.

IV. Justice, Local Peace, and Elections

The case of Thomas Lubanga Dyilo in the Democratic Republic of the Congo rests on the question of the capacity of the right to protect children and to ensure peace and security. Thomas Lubanga was the chief of the Hima militia in armed conflict against the Lendu militia led by Floribert Njabu. Lubanga was arrested in 2005. His case constitutes the first arrest relative to the protection of children. The armed conflict in the province of Luturi appears to have cost the lives of 60,000 people and displaced more than 600,000. Lubanga and Njabu both made use of child soldiers. What explains the selective arrest? The conflict had implicated two armed ethnic groups, Hima and Lendu. One might ask how the law contributes to peace. The Congolese signatories of the Sun City Accords had agreed to integrate the armed groups into state structures. The arrest of Lubanga, on the other hand, refers to crimes before the Accords, crimes before 2002. Nonetheless, insofar as Floribert Njabu did not stop his practices, the impression for the Hima was that the international community took sides in the conflict; which is to say that the respect of the law seemed unjust and above all kept intact the hotbed of tension between the two groups. We thus have here a case in which the pursuit of international peace ignores the stakes of local peace and security. As explained by Congolese Minister of Justice and International Security Emmanuel-Janvier Luzolo in a press conference: “[I]n the judicial practice of any state, there are moments when the demands of peace override the traditional needs of justice.” Etienne Tshisekedi and Vital Kamerhe, presidential candidates in the Democratic Republic of Congo and opponents of President Joseph Kabila, visited Jean-Pierre Bemba and Thomas Lubanga to solicit their support during the Congolese presidential elections.

Tonderai Chikuwa also cited the case of Charles Taylor and that of the former Côte d'Ivoire rebels. Why is Prince Johnson's recruitment of children and other numerous crimes not the object of international criminal pursuit? Prince Johnson has been described as a “Kingmaker.” He could not support Winston Tubman, who was ready to bring him and others to the ICC for war crimes. He made it clear that his endorsement of Ellen Johnson Sirleaf was to avoid the recommendations of the Liberian national commission that called for his arrest and banning Sirleaf from politics for thirty years. What fate is reserved for the Ivory Coast's *Forces Nouvelles* of Guillaume Soro, who is today in a position of power? Except for the Sudanese al-Bashir case, one gets the impression that the ICC applies the “law of the jungle” by only judging those who are not in power.

V. The Law of the Jungle

I would like to come back to one of the two seminal principles of international humanitarian law: the separation of combatants from civilians. The presenter has shown us how the use of children in armed conflicts shatters both principles. It seems that the international forces do not respect the operations of international humanitarian law. For example, the principle of the separation of civilians from combatants is reinforced by the idea of “peace zones.” The weapons engaged in war by the United Nations or “international community” suggest to the contrary that these “peace zones” actually exist, but that they have been displaced. In a war such as those in Iraq, Afghanistan, or Libya, the fact that bombs indiscriminately kill both civilians and combatants indicates that the effective zone is between the space of combat (Iraq, Libya, Afghanistan) and Western countries (the safe zone). The distinction between civilians and military combatants has become the distinction between the citizens of the North and the population of those locked in bombing zones.

There is no doubt that the success of the International Criminal Court has helped to determine accountability. Nevertheless, the ICC remains biased in the sense that it has never tried to arrest any of the Western leaders involved in war crimes. Therefore, the Rome initiative seems to lose its moral and universal legitimacy to serve as a solution to child protections. The ICC and the Western countries that have signed and ratified the Rome statute seem to operate through the sovereign’s ability to judge and condemn others by a law that his leaders and citizens are not subjected to in reality.

The United States never ratified the Rome treaty. In fact, in 2002, the U.S. Congress passed an American Service members’ Protection Act, containing many provisions prohibiting the U.S. from cooperating with the ICC and authorizing the president to use “any means necessary” to secure the release of U.S. military personnel before anyone holding them has a chance to turn them over to the ICC.²

Recognizing the limitations of the legal system does not mean undermining its legitimacy. We should lead states to recognize international law and sign and ratify conventions and treaties. It is important to bridge international decisions and local concerns.

Peacekeeping operations seem to be justified by a moral obligation. In certain situations, a moral language is (mis)used to justify a military intervention. The conciliation between the local and the international will depend on the principle of “right intention” in action. Some powerful states push the U.N. to make resolutions in the name of humanitarian intervention, with no genuine humanitarian concern at all. This brings us to the fundamental question of James Burk: “Given that we live in the world in which peacekeeping operations are likely to occur, how can we know whether any particular operation is justified?”³

Ismael Beah, from Sierra Leone, was forced to become a “soldier” at the age of thirteen in a war that started in 1991. During the United Nations’ First International Children’s Parliament, held in New York, Ismael Beah shared his experiences with other children from various countries. These recollections have been incorporated into his memoir, *A Long Way Gone*:

I joined the army really because of the lost of my family and starvation. I wanted to avenge the deaths of my family. I also had to get some food to survive, and the only way to do that was to be part of the army. It was not easy being a soldier, but we just has to do it. I have been rehabilitated now, so don’t be afraid of me. I am not a soldier anymore; I am child.⁴

VI. Toward Structures of Promise?

To conclude, there is no doubt that the shift made by the United Nations to consider the protection of children as a constituent element of world peace is one more step in the development of structures of promise. Jamal Malik's story, which I used to introduce my response to Chikuhwa's report on the positive role of the U.N., reveals the tension between the dreams of a child and the social structures of vulnerability that young people come up against. My intentions are predominantly concentrated on the place of the International Criminal Court as a result of the simple fact that it has been presented as fundamental to "progress in the protection of children." This tribunal, without a doubt, has succeeded in translating what is conveyed in the Declaration of Human Rights into reality through positive law. It has also reinforced the notion of universal rights and has brought to justice dictators—war criminals who believed themselves to be invincible. A crime, committed in Africa or elsewhere, touches every person, every power, and every right in the world.

My reservations, therefore, do not concern the implementation of the ICC and other international legal systems as such, but derive instead from the necessity to make rights applicable to everyone so that justice does not appear to be an injustice or an ideological device of Western domination. There is also a need to rethink the necessity of regional or national enforcement of the Convention against the use of child soldiers.

My overall argument is that the protection of children from abduction and coercion into combat requires "right intention" and equality in the present international legal regime. It also shows that the protection of children (such as that related to the idea of world peace) requires other support outside of a tribunal. War criminals who employ children, cited in the Chikuhwa report, pursued or not by the ICC, have become the allies of presidential candidates in the Democratic Republic of the Congo, just as in Liberia. These criminals sadly represent ethnic communities who identify with them and consider them to be "heroes." In this context, the notion of peace resting on the protection of children is only as effective as the measure to which it is lived and accepted by local communities. This idea presupposes peace between communities and ending the solidarity with war criminals. In addition, there will be a necessity to ban the solicitation of support for war criminals during elections. Promise structures in the protection of children have a social resonance. This does not mean to protect children as individuals detached from the rest of the world. We must stand up to the family and political and economic situations that leave children vulnerable. Ishmael Beah's meditation shows that the armed group operates as a structure of substitution. Preventing child soldiering requires, then, the task of building the foundation of a new system that breaks the logic that has welcomed various structures of violence. Children who grow up in war circumstances—as orphans, poor, marginalized—are at risk of abduction. Indeed, the "broken child" milieu operates as a receptacle of child soldiering.

Notes

1. For Henry Shue, a basic right is the right to have rights. According to him, a right is basic when its enjoyment "is essential to the enjoyment of all other rights." Two criteria determine a basic right: (1) Everyone has right to something, and (2) Some other things are necessary for enjoying the first as a right. The author considers, for example, security, subsistence, and liberty as basic rights. It seems to him that a right is to enjoy something else. In other terms, a basic

right is a right that allows having rights. See H. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1996, reprint), pp. 11–87.

2. Online at state.gov/t/pm/rls/othr/misc/23425.htm.

3. James Burk, “What Justifies Peacekeeping?,” *Peace Review: Children and War, and other Features*, Vol. 12 (2000): 467.

4. Ismael Beah, *A Long Way Gone* (New York: Sarah Crichton, 2007), p. 199.