CHILD SOLDIERS AND MILITARY ACTORS:
A VARIATION IN DETENTION POLICIES ACROSS LIBERAL DEMOCRACIES

by

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Dr. Simon Reich and

approved by

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ABSTRACT OF THE DISSERTATION

Child Soldiers and Military Actors: A Variation in Detention Policies across Liberal Democracies

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Dissertation Chair:
Dr. Simon Reich

The professional militaries of Canada, the United States, and the United Kingdom have increasingly recognized that children can become part of opposing forces and face the operational and policy decisions regarding their detention. These Anglo-Saxon, consolidated, liberal democracies demonstrate a high level of similarity, in terms of their shared norms and values, and common security practices. Nonetheless, these three countries have developed distinct policies on the detention of child soldiers. This dissertation addressed the question: what explains the cross-national variation in the development of policies on the detention of child soldiers in Canada, the United Kingdom, and the United States?

In order to answer this research question, I proposed a series of hypotheses to examine the role of three strategic actors in the policy process: military lawyers, government officials, and representatives from non-governmental organizations. I analyzed data that required both quantitative and qualitative methods to test these hypotheses. Specifically, qualitatively, I performed a content analysis of a total of 69 semi-structured interviews; and, quantitatively, I used NVivo 11 coding query tools to generate numerical data to present aggregate results. These methods allowed for comparing the roles
of these three actors in each national context. I utilized the comparative case study method to identify causal patterns across these three countries to offer a second test of these hypotheses.

My dissertation suggested an explanatory relationship between NGOs’ choice of strategies and the policy outcomes in each of these three countries. First, the NGOs’ choice between different types of framing and how to engage in framing contests, during the agenda-setting stage, had far-reaching implications for the policy-making process. It defined the key terms and demarcated boundaries of the issue in a policy domain that abounds with contested elements. Second, the selection of strategies and decision-making venues simultaneously influenced the NGOs’ ability to shape policy outcomes during the policy formulation stage. Third, the application of the strategy of ‘naming and shaming’ during the policy implementation stage remained effective only if the NGOs applied it in combination with other policy instruments, such as the use of domestic litigation. This dissertation hopes to make an empirical contribution to the debate on how policy actors engage and shape outcomes in contested policy domains, which require balancing national security and human rights agendas.
Acknowledgments

The completion of this dissertation would not have been possible without the help of the mentors, friends, and family who supported me through this process.

I am thankful to my committee members Professors Ariane Chebel d’Appollonia, Gregg Van Ryzin, and David Rosen for their advice in security studies, research methodology, and expertise in the field of children and armed conflict, which both shaped this work and my scholarly interests. I would like to extend my deepest gratitude to them for giving their expertise and for serving on my committee.

Most of all, I am profoundly thankful to my committee Chair Professor Simon Reich for always encouraging me to take an extra step in social science inquiries. Dr. Reich’s influence on this project goes back before he graciously agreed to supervise my work. I read Child Soldiers in the Age of Fractured States, of which he acted as an editor, during my studies in the master’s program, which greatly shaped my interest in pursuing a doctorate. Through the last five years, he patiently mentored me on how to recognize the crucial from the trivial and how to develop research questions in the process of scholarly analysis. Dr. Reich always encouraged me and supported me through this project. I did not always make his job as the chair easy, and I owe him for that. I am grateful for Dr. Reich’s detailed and insightful (multiple) revisions of every chapter of this dissertation. This study transformed profoundly as a result of his patience in refining my ideas. I could not have asked for a better advisor and mentor.

My thanks also go to the representatives of the military, government departments, and non-governmental organizations across Canada, the United Kingdom, and the United States, who gave their time to discuss the issues explored in this study. I would particularly
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<td>American Civil Liberties Union</td>
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<tr>
<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>BCCLA</td>
<td>British Columbia Civil Liberties Association</td>
</tr>
<tr>
<td>BQ</td>
<td>Bloc Québécois (Canada)</td>
</tr>
<tr>
<td>CAF</td>
<td>Canadian Armed Forces</td>
</tr>
<tr>
<td>CCR</td>
<td>Center for Constitutional Rights</td>
</tr>
<tr>
<td>CCLA</td>
<td>Canadian Civil Liberties Association</td>
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<tr>
<td>CJIATF-435</td>
<td>Combined Joint Interagency Task Force-435</td>
</tr>
<tr>
<td>CPC</td>
<td>Conservative Party of Canada</td>
</tr>
<tr>
<td>DASD-DA</td>
<td>Office of the Deputy Assistant Secretary of Defense for Detainee Affairs (US)</td>
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<tr>
<td>DND</td>
<td>Department of National Defence (Canada)</td>
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<tr>
<td>DFAIT</td>
<td>Department of Foreign Affairs, Trade, and Development (Canada)</td>
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<tr>
<td>DoD</td>
<td>Department of Defense (US)</td>
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<tr>
<td>DoS</td>
<td>Department of State (US)</td>
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<tr>
<td>DRB</td>
<td>Detainee Review Board</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EU</td>
<td>The European Union</td>
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<tr>
<td>JAG</td>
<td>Judge Advocate General</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>ICRC</td>
<td>The International Committee of the Red Cross</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<tr>
<td>MCA</td>
<td>Military Commission Act</td>
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<tr>
<td>MoD</td>
<td>Ministry of Defence (UK)</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NDP</td>
<td>New Democratic Party (Canada)</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-Operation and Development</td>
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<td>OPAC</td>
<td>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</td>
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<td>PCO</td>
<td>Privy Council Office (Canada)</td>
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<tr>
<td>PMO</td>
<td>Office of the Prime Minister (Canada)</td>
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<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>SIRC</td>
<td>Security Intelligence Review Committee</td>
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<td>Supreme Court of Canada</td>
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<td>Task Force-134</td>
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<td>Five Eyes Intelligence Agreement</td>
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CHAPTER I. INTRODUCTION

Observation

United States armed forces detained Ali Hussein in Iraq when he was seventeen years old.\(^1\) He was subjected to various forms of torture and other cruel, inhuman or degrading treatment during his detention. When the American Civil Liberties Union filed the case on his behalf, “the fact that he was seventeen did not matter”\(^2\) and did not impact the decision of a federal court to dismiss the case. In 2011, D.C. Circuit received another habeas petition from the lawyers of Ali Sher Hamidullah. United States military detained Ali Sher at Bagram Airfield in Afghanistan when he was fourteen years old. The petition claimed that once an alien is determined to be a child, by a habeas court, the military must release him regardless of the threat he could pose. Nevertheless, the Court reaffirmed the government’s policy ruling that the detention authority is contingent not upon the age of a detainee but on their potential threat to the United States or its allies.\(^3\)

The separate fate of an anonymous underage detainee held incommunicado for fourteen months in Camp Bastion, the United Kingdom’s temporary detention facility in Afghanistan,\(^4\) demonstrates the difference in the UK’s approach towards child detainees. Despite statements by the government’s Defense Minister, who suggested that releasing such detainees “could endanger British troops,”\(^5\) the British government agreed to either authorize the release of these prisoners or resume their transfer to Afghan detention facilities.

\(^2\) Representative of the ACLU Human Rights Program, Personal Interview with the Author. June 1, 2016, New York, NY.
\(^3\) Hamidullah v. Gates 1:10-cv-00758-JDB (D.C. Cir. 2011).
\(^5\) BBC, UK Forces Begin Transfer of Afghan Detainees. BBC. June 28, 2013.
Canada, in contrast to both the US and the UK, underwent critical changes in its
policy concerning the detention of child soldiers. From the beginning of the ‘war on terror’
and up until 2017, Canada developed its detention policy on child soldiers in an ad hoc
manner, in response to developments on the ground (e.g., increasing involvement in
combat operations during a military engagement in Afghanistan). This lack of a national
policy has proven problematic: generating a series of fierce debates on whether security
forces should detain and transfer children. However, a series of court hearings and a lack
of progress in the treatment of detainees, including children, prompted Canadian
authorities to halt the transfer of detainees to a range of Afghan security facilities. In turn,
this decision posited a security question for armed forces: how best to handle those persons
detained in transfer facilities, which are only designed for temporary detention? In March
of 2017, Canada adopted the official military doctrine on the engagement of its armed
forces with child soldiers, which included provisions on detention. Canada became the
first NATO member state that established a doctrinal document on the issue, thus varying
further from both the UK and the US in this policy domain.

9 Amnesty International Canada and the British Columbia Civil Liberties Association brought a case before the Federal Court of Canada in 2006. Also, in 2007, the Military Police Complaints Commission announced an investigation into a complaint that at least on 18 occasions detainees had been transferred to Afghan authorities notwithstanding evidence of a substantial risk of torture.
These three countries therefore reflect a variation in their detention policies toward child soldiers.\textsuperscript{11} This dissertation addresses a question: what explains this cross-national variation in the development and application of detention policies concerning child soldiers?

This dissertation’s findings demonstrate theoretical relevance. This study explores the dual status of child soldiers, as victims and perpetrators, within a broader research program on child soldiers. Specifically, this dissertation, through the comparative analysis of policy processes, hopes to provide further evidence that the dichotomous division of child soldiers’ experiences between victim- and perpetrator-hood does not reflect the complex and contested nature of the phenomenon. This complexity involves questions of

\textsuperscript{11} The definition of a “child soldier” remains contested within international law. International Humanitarian Law (Additional Protocol I, Additional Protocol II of Geneva Conventions) defines anyone under 15 years of age, who directly participates in hostilities, as a child soldier. The limitations of the IHL definition and further attempts to contest it has occurred within two domains: 1) the age division of children between those who attained the age of fifteen and those who attained the age of eighteen; 2) exercising prohibition only to direct participation in hostilities. With the adoption and increasing ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the age of 18 has increasingly been recognized as the definition of childhood limit. Concerning the second point, there is a growing recognition that children could serve in armed forces in different capacitates besides participating in combat e.g., IED emplacers, messengers, guards, etc. This becomes particularly relevant in the context of counterinsurgency operations where children perform a multiplicity of roles. The contested nature of the term is reflected in Rome’s Statute definition of a child soldier, which enabled International Criminal Court to charge individuals with a crime of recruitment of child soldiers. Although the Rome Statute adopted the age limit, embedded within the International Humanitarian Law definition, the introduction of the verbiage ‘active participation’ in hostilities allowed attribution of individual responsibility for recruiting and using children not only under conditions of their participation in combat but also with such activities as scouting, spying, sabotage, etc.

national security and protection of children’s rights, generating legal and ethical dilemmas.

This policy domain therefore demands a nuanced approach from policy actors such as non-governmental organizations and military lawyers. These actors retain a range of strategies, which they can apply to shape policy outcomes. This dissertation therefore aims to contribute to two distinct research programs. First, with addressing the question of through which mechanisms NGOs influence policy outcomes (or fail to do so), this study might offer an insight into the debate on the role of NGOs in the policy-making process. Second, this dissertation analyzes questions on how military lawyers engage with public policies that concern armed conflict. It therefore aims to contribute to efforts in bridging international relations and legal scholarship.

This variation also reveals a broader trend: detentions have seemingly become inevitable because professional militaries engage child soldiers with increasing regularity, as they try to ensure force protection, self-defense and/or to collect intelligence in different operational environments, particularly in the Middle East, North Africa, and South Asia. Detention of children involved in armed conflict has been gradually

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recognized as “an emerging aspect of counterterrorism strategy.”\textsuperscript{14} This study's results might bear on relevant policy issues pertaining to perceptions of how to balance the protection of vulnerable populations in conflict zones with the safety of armed forces. This dissertation may offer an empirical contribution to the question of how policy actors might address these dilemmas and complexities. The findings also might pertain to practical issues concerning how provisions of the detention of child soldiers become embedded in military manuals and training materials.

This chapter frames the problem addressed in this dissertation. The first section outlines the policies of Canada, the United States and the United Kingdom on the detention of child soldiers during military operations, demonstrating a sustained variation across these countries. The second part presents three principal converging forces across these three Anglo-Saxon states: common culture and values, shared institutional practices, and general compliance with international law on the standards of the treatment of child soldiers. The section underlies the puzzling nature of the variation in these states’ detention policies on child soldiers. The chapter concludes with a general overview of the proceeding chapters.

\textit{Variation in the Policy across Canada, the United States, and the United Kingdom}

The principal characteristics of current policies on the detention of child soldiers across these three countries (Table 1.1) were each established during 2005-2006, when fundamental changes in practices, specifying a broad detention policy during armed

conflict, were first instituted. These changes, in the respective countries, took place either due to the broader realization of the need to comply with norms of international humanitarian law (IHL), as in the case of the United States, or the increase of combat operations, as in the cases of Canada and the United Kingdom. The cross-national variation also reflects a sustained divergence over time. Each country’s policies have altered since the beginning of the ‘global war on terror’ and yet have remained quite distinct.\(^\text{15}\)

Policy on the detention of child soldiers is a subsystem situated within the broader policy issue of detention during an armed conflict. The former and the latter differ in the levels of protection offered to different groups while sharing key similarities, embedded in the main tenets of international law. The International Committee of the Red Cross (ICRC) defines detention as a deprivation of liberty, when “persons are confined in narrowly bounded places, under control or with the consent of a State or non-State actor, and cannot leave at will.”\(^\text{16}\) A detention policy encompasses issues of capture, rules for the treatment of detainees, transfer of detainees from one authority to another and issues of trial.

This dissertation looks at these four components of detention to demonstrate a cross-national variation across Canada, the United States and the United Kingdom. The variation across these three countries also centers around the criteria that trigger the definition of a ‘child’ and a ‘child soldier’ and basic protections these definitions entail.


Child’s special status endows child soldiers with ‘special protection’ in detention.\(^{17}\) There are, however, inconsistencies between international human rights law (IHRL) and international humanitarian law in the domain of the detention of child soldiers. The contradictions center on such issues as the definition of a child soldier, legal protections for children who were purportedly voluntarily recruited in the armed forces and those who perform supportive military roles.\(^{18}\) These inconsistencies pose direct questions to the development of a policy on the national level and which principles states are to follow in the establishment of that policy.


\(^{18}\) See supra note # 11.
Table 1.1. Cross-National Variations in the Detention Policy on Child Soldiers

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<td>Yes</td>
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<td>Age as a Condition for Detention</td>
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<td>Yes</td>
<td>Yes</td>
</tr>
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<td>Definition of a child soldier</td>
<td>Anyone under age of 18</td>
<td>Distinction between children (under the age of 15) and juveniles (15-18)</td>
<td>Anyone under the age of 15</td>
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<td>Treatment</td>
<td></td>
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<td>Level of Protection</td>
<td>Broad but unspecified level of protection; child soldier detainees classified as POWs</td>
<td>Broad and specific level of protection, stipulated in the Joint Doctrine on the engagement with child soldiers</td>
<td>Broad and specific level of protection, based on IHL and IHRL, stipulated in the Doctrine on Captured Persons</td>
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<td>No</td>
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<td>Specific provisions that children are to be transferred to appropriate host-state facilities</td>
<td></td>
<td>Specific provisions that children are to be transferred to appropriate host-state facilities</td>
<td>Did not execute transfers</td>
</tr>
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<td>Trial</td>
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<td></td>
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<tr>
<td>No</td>
<td>No</td>
<td>System of military commissions</td>
<td></td>
</tr>
</tbody>
</table>
In the domain of capture, as the first sector of Table 1.1 highlights, these three countries demonstrate a broad acceptance that detention of any person, child or adult, is warranted if he/she pose a threat to armed forces. Nonetheless, these countries further diverge in their provisions on whether age could be a condition for detention, as they adopt different definitions of a child soldier. The US asserts that its policy on detention is not contingent on an alleged perpetrator’s age.\(^{19}\) The United Kingdom offers a greater specificity on this question. The UK’s general Doctrine on Captured Persons (JDP 1-10) includes extensive provisions on conditions under which its military forces can detain and interrogate persons under the age of 18. JDP 1-10 distinguishes between children, defined as persons under the age of 15, and juveniles, defined as individuals between 15 and 18 years old. The former cannot be detained or ‘tactically questioned.’\(^{20}\)

In Canada, the provisions on handling detainees were developing under changing operational circumstances, during its engagement in Afghanistan (2001-2014), which contrasts with the approaches to detention policies adopted in the UK and the US. The result was a series of Theater Standing Orders (TSO). While the documents identify a child as a person under the age of 18, they did not specify age as a condition for detention.\(^{21}\) In the Canadian context, the government also succeeded in the adoption of a specific doctrine

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Tactical questioning focuses on the extraction of time-sensitive information from captured persons by trained personnel. Interrogation, in contrast, aims to gather both tactical and strategic information over a longer period of time by trained personnel. The doctrine stipulates that law does not prohibit tactical questioning and interrogation of juveniles. MOD, however, resorts the right to issue operation-specific guidance on whether this is permitted as a matter of policy. Such policy will have to consider juvenile’s age, any special condition and vulnerability.

\(^{21}\) Canada. Department of National Defence and the Canadian Armed Forces, *JTF-Afgh Theatre Standing Order (TSO) 321A* …
(2017) on the engagement of its armed forces with child soldiers, which included specific guidelines on detention.\textsuperscript{22} The doctrine embedded the definition of a child as an individual under the age of 18. The document also specified that children should be detained as a measure of ‘last resort’ thus emphasizing the need to consider age at the time of capture.\textsuperscript{23}

Canada, the United States, and the United Kingdom exhibit a significant level of divergence in the area of treatment of child soldier detainees, which is illustrated in the second section of Table 1.1.\textsuperscript{24} The United States endows children in detention with a minimum level of protection, stipulated with provisions of IHL such as a separation of detainees by age.\textsuperscript{25} International Humanitarian Law, however, leaves unresolved the question of what rights belong to children ages 15 through 18, requiring referencing of the provisions codified in international human rights law. Nonetheless, the United States exhibits great reluctance to apply the relevant provision of the Optional Protocol to the Convention on the Rights of the Child Soldiers (OPAC) extraterritorially while determining the nature of its policy on the detention of child soldiers. Moreover, the US policy concerning the treatment of detainees, including children, remains contingent upon the specific nomenclature of the enemy in the ‘war on terror.’ IHL recognizes two legal

\footnotesize
\textsuperscript{22} Canada. Department of National Defence, \textit{Canadian Armed Forces Joint Doctrine Note 2017-01} …
\textsuperscript{23} Canada. Department of National Defence, \textit{Canadian Armed Forces Joint Doctrine Note 2017-0} …
\textsuperscript{24} The level of protection allocated to child soldiers was assessed according to the countries’ incorporation of key premises of international level as well as articulation in the policy documents on this issue.
\textsuperscript{25} See U.S. Department of Defense, \textit{Directive 2311.01E. DoD Detainee Program} (2014); U.S. Department of Defense, \textit{Law of War Handbook} (2015) The \textit{Law of War Handbook} stipulates that 1) children who have participated in hostilities or been associated with an armed force who are detained might require additional consideration because of their age. For example, rules for the additional provision for their education might be applicable (p. 206). 2) Prohibition of death penalty on persons who were under the age of eighteen at the time of the offense (p. 509). The manual asserts that children who are captured and who have taken a direct part in hostilities in non-international armed conflict remain entitled to the special protections afforded to children. The Manual reiterates provision on the humane treatment that all persons (including those belonging to the State or those belonging to non-State armed groups) who are detained by the adverse party are entitled to the protections of Common Article 3 of the 1949 Geneva Conventions, including humane treatment. Although detainees are afforded humane treatment, they do not receive the POW status.
classifications for participants in armed conflict: combatants and civilians.\textsuperscript{26} The US executive branch defines the third category for non-state actors – as ‘unlawful combatants/belligerents’ despite this universal understanding.\textsuperscript{27} The US government therefore is attempting to deny any recourse to the law – domestic and international – that such persons might otherwise enjoy by designating them as “unlawful.”\textsuperscript{28} In contrast, neither Britain nor Canada stipulate such a categorization of detainees.

The UK’s doctrine recognizes the special status of children detained during armed conflict, thus specifying and codifying their protections in the domain of treatment. The UK offers a broad level of protection, based on both International Human Rights and Humanitarian Law.\textsuperscript{29} The UK’s procedural safeguards emphasize working towards the objective of preventing children from returning to the “social circumstances that contributed to their original capture.”\textsuperscript{30}

\textsuperscript{26} Knut Dormann, “The Legal Situation of “Unlawful/Unprivileged Combatants”. “ Revue Internationale de la Croix-Rouge/International Review of the Red Cross 85(849) (2003), p. 51. Whereas the terms “combatant”, “prisoner of war” and “civilian” are generally used and defined in the treaties of international humanitarian law, the terms “unlawful combatant,” “unprivileged combatant/belligerent” do not appear in them. They have, however, been frequently used at least since the beginning of the last century in legal literature, military manuals and case law. The connotations given to these terms and their consequences for the applicable protection regime are not always very clear. See also David Glazier, “Playing by the Rules: Combating al Qaeda within the Law of War,” Wm. & Mary L. Rev. 51 (2009).

\textsuperscript{27} Instead of removing this category of classifying the enemy, the Obama administration adopted an alternative definition of ‘unprivileged belligerent.’ The definition extended to include individuals who are neither members of enemy armed forces nor civilians directly participating in hostilities in armed conflict against the United States See U.S. Department of Defense, Directive 2311.01E. DoD Detainee Program (2014).


\textsuperscript{29} Specifically, the Joint Doctrine Publication 1-10 cites the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the UN Convention Against Torture and Inhuman or Degrading Treatment as instruments that require humane treatment and proper exercise of command responsibility to prevent abuse. The doctrine allocates officers responsible for the administration of detention facilities with obligations to ensure proper treatment of children ranging from the determination of their age to the provisions of education, skill training and social activities.

\textsuperscript{30} Ibid.
therefore intends to reflect the letter of Article 7 of the OPAC on the importance of the rehabilitation of child soldiers.\(^3\)

In Canada’s case, the policy witnessed evolution since Canada's involvement in the ‘war on terror.’ Commanders developed procedures on the treatment of detainees, including children, on the ground in the absence of a formal written policy during Canada’s military engagement in Afghanistan. The Department of National Defence instructed that “while the age of detainees is sometimes difficult to determine” they are to be treated ‘with special care.’\(^3\)

Canada thus specified that all detainees under the age of 18 were to be treated according to the standards required for prisoners of war, regardless of their status.\(^4\) This policy decision endowed a vulnerable group with the highest level of protection in the context of non-international armed conflict (NIAC), where procedural safeguards for detention remain mostly unregulated.\(^5\) The adoption of the doctrinal document allowed for unifying these ad hoc provisions. The doctrine spelled out specific provisions on the treatment of child soldiers in detention emphasizing the need to facilitate their rehabilitation and ensure separation from adults. It also provided guidelines that would be applicable beyond specific area of operations.

The age of detainees has increasingly become relevant in the domain of their

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\(^3\) Ibid.


\(^6\) A recent ICRC study (2015) acknowledges that in the domain of detention IHL framework applicable to NIAC-related detention is far less developed. Common Article 3 and Additional Protocol II (Articles 4-6) do provide essential protections for detainees, but they are limited in both their scope and specificity compared to those set out in international armed conflict. Common Article 3 covers the treatment “of persons hors de combat (including those deprived of liberty), but makes no mention of either grounds for or procedures applicable to detention.” ICRC, “*Detention in Non-International Armed Conflict: The ICRC’s Work on Strengthening Legal Protection*” (2015), p. 38.
transfer to local authorities. The United States is the only state that does not practice the transfer of detainees among these three allies. It usually constructs long-term detention facilities in zones of military operations. The third sector of Table 1.1 illustrates that the policies of Canada and the UK overlap on this issue.\(^\text{35}\) Canada and the UK stipulate that children must be transferred to appropriate host-state facilities and legally processed according to the Juvenile Criminal Code of the host-state.\(^\text{36}\) Both British and Canadian governments also signed diplomatic assurances with local authorities. These assurances were to allow monitoring the treatment of detainees, including children, who are being transferred.\(^\text{37}\)

These countries also diverge on the issue of accountability mechanisms for child soldiers detained during armed operations, highlighted in the fourth section of Table 1.1. The United States imposed an additional liability for detainees, both adults, and children, with the introduction of the category of ‘unlawful combatancy.’\(^\text{38}\) The US government indicated that unlawful combatants might potentially be a subject to trial by military

\(^{35}\) From 2002 until the end of 2005 Canada had been transferring its detainees to the US Forces. In transferring detainees to the US custody, Canada relied on American assurances that detainees would be treated humanely. When the US government began making statements suggesting that detainees would not be entitled to protections under the Geneva Conventions Canadian government decided to halt transfers to US custody in late 2005. Canada then began transferring detainees to Afghan custody, mainly Afghanistan’s intelligence agency, the NDS. See Omar Sabry, “Torture of Afghan Detainees: Canada’s Alleged Complicity and the Need for a Public Inquiry.” (Rideau Institute of International Affairs, 2015).


\(^{38}\) See supra note # 26.
The system of military commissions in the United States witnessed the trials of child soldiers (e.g., Omar Khadr and Mohammed Jawad). These trials have influenced the development of the policy towards the detention of child soldiers. Neither Canada nor the United Kingdom has instituted the system of trial for children detained during military operations.

This observation demonstrates that these three countries vary in their detention policies on child soldiers across the dimensions of capture, treatment, transfer, and trial. The US asserts that its policy is not contingent on an alleged perpetrator’s age and endows children in detention with the minimum level of protection afforded under IHL. The UK guarantees a broader level of protection for detainees and frames its policy both in accordance with the provisions of IHL and with the articles of IHRL. Canada’s policy demonstrated a transformation from a country with a lack of clear procedural safeguards, as a matter of policy on the engagement with child soldiers, to the one with an established doctrine on the issue. This development further emphasizes a variation across these cases, as Canada became the first NATO member state to institute a doctrinal document concerning child soldiers, which incorporated specific guidelines in relation to their detention. Finally, Canada and the United Kingdom show an overlap in the domains of policy concerning transfer and trial of child soldiers detained during military operations. Yet the policies of these two countries differ from those of the United States. Collectively, Table 1.1 demonstrates a sustained variation across these three countries on the detention policy regarding child soldiers.

Puzzle

These divergent positions on a policy towards the detention of child soldiers stand in contrast to three likely converging factors that should, in principle, lead to comparable policy responses on the detention of child soldiers over time.

Culture and Values: The Role of Rule of Law in Liberal Democracies

The first convergent factor is that all three countries share a set of cultural values. Canada, the United States and the United Kingdom are all “consolidated liberal democracies.” The rule of law is a central feature of any limited government that relies on stable procedures, instead of discretionary political power. The difference between the ‘rule of law’ and the ‘rule by law’ rests not in the nature of law but the distribution of power and material resources within society. In democracies where power is dispersed, no group, therefore “becomes so strong as to dominate the others, and law, rather than reflect the interests of a single group, is used by the many.” Democratic states therefore establish robust safeguards against any arbitrary detention and adhere to the procedural rules for due process.

Scholars also accentuate common trends in juvenile criminal justice across these

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40 This study adopts Robert Dahl’s definition of democracy as polyarchy that needs to attain seven attributes 1) elected officials; 2) free and fair elections; 3) inclusive suffrage; 4) the right to run for office; 5) freedom of expression; 6) alternative information; and 7) associational autonomy. See Robert Dahl, Democracy and its Critics. Yale University Press (1991). In the discussion of the concept of consolidation, O’Donnell asserts that polyarchies are result of “centuries-long processes, mostly in countries in the global Northwest. Despite many variations among these countries, polyarchy is embodied in an institutional package: a set of rules and institutions (many of them complex organizations) that is explicitly formalized in constitutions and auxiliary legislation.” See Guillermo O’Donnell, “Illusions about Consolidation.” Journal of Democracy 7(2) (1996). Also, the range of existent indices that measure different dimensions of democratic societies put Canada, the United States and the United Kingdom in the top tier of rankings, defining them as “free” and “democratic” See Freedom House, “Freedom in the World. 2015” (2015); Democracy Ranking Association, “Global Ranking of Democracy. 2014” (2015).

Anglo-Saxon countries towards more punitive and conservative crime-control models. Since the 1980s, there have been three key developments across Canada, the United States, and the United Kingdom, which emphasize the efficiency of action in repressing delinquency. These developments resulted in “conservative momentum,” leading to the establishment of ‘neo-correctionalist’ youth justice systems in these countries. First, there is a continuing tendency to blur the formerly distinct boundaries between the juvenile court and adult criminal courts. This trend contributes to the increasing adultification of youth.


Stephen Holmes notes that rule by law is dominant when few privileged groups “control the use of discretion in legislative, adjudicative, and law enforcement processes.” See Stephen Holmes, “Lineages of the Rule of Law” in Adam Przeworski and José Maria Maravall (eds.) Democracy and the Rule of Law (Cambridge University Press, 2003), p. 51.

Holmes, Lineages of the Rule of Law, p. 49.

Cavadino and Dignan group the United States and England together in a neo-correctionalist type of youth criminal justice system. Smandych provides an account on the evolution of youth justice system in Canada in comparison to other liberal democracies. Smandych demonstrates how Canada has followed a pattern of legislative change similar to the one in the UK and the US. Canada thus witnessed gradual implementation legalistic and punitive ‘justice’ and ‘crime-control’ models. See Michael Cavadino and James Dignan, Penal Systems: A Comparative Approach (Sage, 2005); Russell Smandych, “Canada: Repenalization and Young Offenders’ Rights” in John Muncie and Barry Goldson (eds.) Comparative Youth Justice Youth Justice: History, Legislation, and Reform (Sage, 2006).

In 1968, Herbert Packer introduced two models of criminal justice i.e., due process, which emphasizes legitimacy of action, and crime control, which stresses efficiency of action. As Philip Reichel summarized, crime control model assumes that freedom is utmost that every effort must made to repress crime. To operate successfully, the crime control model requires a high rate of apprehension and conviction following a process that prioritizes speed and finality.


See Michael Tonry and Anthony Doob, Youth Crime and Youth Justice: Comparative and Cross-National Perspectives (University of Chicago Press Journals, 2004); John Muncie and Barry Goldson (eds.) Comparative youth justice (Sage, 2006); John Muncie, “The Punitive Turn’ In Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA” Youth Justice 8(2) (2008).


Neo-correctionalism is the most punitive and exclusionary approach in Cavadino and Dignan typology. The approach emphasizes the responsibilities that young offenders and defines prevention of offending by young people as its primary objective. See Cavadino and Dignan, Penal Systems, p. 210.
the youth justice system. Second, all three countries have lowered the age of criminal responsibility for children. Third, the focus on preventing offenses and efficient interventionism has been the indicative development across these three countries.

A risk-prevention paradigm replaced traditional attempts to isolate specific causes of crime. Collectively these trends and processes suggest managing the problem of delinquency using ever-harder punishments. Accordingly, these three countries converge in addressing the issue of juvenile crime through the neo-correctionalist type of youth criminal justice system, which is the most punitive and exclusionary approach.

The U.S and Canadian Supreme Courts have demonstrated gradual shifts in the foundations of these countries’ juvenile criminal justice systems on the issue of the criminal culpability of juveniles. A consensus is emerging because of these decisions: that children cannot be viewed “merely as ‘miniature adults’; rather, they are simply different from adult


51 Specifically, the principle of doli incapax was abolished in England and Wales with England’s Crime and Disorder Act of 1998. Similarly, Canada’s Youth Criminal Justice Act of 2003 youth justice reforms are based on the core principle that the protection of society be uppermost. Three countries demonstrate the lowering of the age of criminal responsibility for children: in the UK – the age is ten years; in Canada – twelve; in the United States – the age varies across the states being as low as six in South Carolina and 11 the minimum age for federal crimes. See Russell Smandych, “Canada: Repenalization and Young Offenders’ Rights” in John Muncie and Barry Goldson (eds.) Comparative Youth Justice Youth Justice: History, Legislation, and Reform (Sage, 2006); Don Cipriani, Children’s Rights and the Minimum Age of Criminal Responsibility: A Global Perspective (Ashgate Publishing, 2013).

52 Cavadino and Dignan, Penal Systems: A Comparative Approach, p. 227. See also Smandych, “Canada: Repenalization and Young Offenders’ Rights …”

offenders based on the behavioural and brain development.”

Moreover, international law and legislatures in other countries have been influencing the developments in juvenile justice systems. This trend was evident in the United States Supreme Court’s decision *Roper v. Simmons*.

There is also a growing consensus that processing children as adults is not the best approach to solving even very serious delinquency questions. These cases appear to mark a gradual shift in policy away from the adultification of juveniles and toward a more rehabilitative philosophy. These nascent attempts to reform juvenile criminal justice systems in respective states, importantly, have been taking place parallel to the development of the countries’ policies on the detention of child soldiers.

Canada, the United Kingdom, and the United States demonstrate compatibility in liberal values, especially in the domain of rule of law, which contributes to a growing convergence in policies on juvenile justice. These countries therefore exhibit similar approaches to the youth in conflict with the law in domestic settings. Still, there is an observable variation in detention policies regarding the detention of children during military operations across these countries.

**Shared Institutional Practices**

Shared institutional practices between these three countries in the security domain supposedly represent the second source of convergence. Liberal institutionalists have argued that rational actors establish institutions to develop mechanisms for coordinated

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54 Jones, “Accepting that Children are not Miniature Adults …,” p. 95.
action. International institutions thus address a collective-action problem in a given issue area. The North Atlantic Security Alliance (NATO) is an example of such a security institution. As a formal organization, it constitutes the institutional core of the Atlantic security community. Canada, the United Kingdom, and the United States are all founding members of NATO. The alliance has developed the organizational assets, such as an integrated command structure, that further fostered integration among its members. Multilateral and joint decision-making has shaped its inter-alliance relationship. NATO’s system of information exchange has reduced mutual uncertainty and has increased the predictability of members’ behavior in the case of attack. The effects of international institutions, however, go beyond mere cooperation or compliance. Institutions are also

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57 Institutions establish what Douglas North (1990) identified as rules of the game. Institutions range from conventions to regimes to formal organizations.


59 Pluralistic security community defined as a transnational region comprised of sovereign states that maintain dependable expectations of peaceful change. The members of a community maintain confidence that disputes will be settled without war. See Emanuel Adler and Michael Barnett, “A Framework for the Study of Security Communities” in Emanuel Adler and Michael Barnett (eds.) Security Communities (Cambridge University Press, 1998).

60 Wallander, “Institutional Assets and Adaptability …,” p. 725. Specifically, NATO has the headquarters with planning, logistics, and intelligence staffs, including military personnel who have all planned, trained, exercised, and schooled together for years and developed a deep trust.

61 John Ruggie provides us with definition of multilateralism that rests on three principles: indivisibility, nondiscrimination, and diffuse reciprocity. In the context of NATO, indivisibility is illustrated with the Article 5 of the Washington Treaty that spells out collective security arrangements wherein an attack on one is considered attack on all, diffuse reciprocity implies diffuse reciprocity implies that members of the institution rely on long-term as assurances of balance in their relations. See John Ruggie, “Multilateralism: The Anatomy of an Institution.” International Organization 46(03) (1992).

designed to influence “observable measures of state behavior.” The recognition among members of NATO of the substantial benefits of coordinated participation has fostered convergence in their behavior. The spread of transnational and diffused threats increased the urgency for burden-sharing arrangements between allies.

The military forces of these three countries have engaged in a range of military operations. Specifically, Canadian, US and UK troops confronted “insurgencies in the ungoverned spaces offered by failing states” under the conditions of irregular warfare: when combatants blend in with civilian populations, and the age of fighters is hard to determine. Armed forces of these three Anglo-Saxon countries have conducted missions in North Africa, South Asia, and the Middle East since the intervention in Kosovo (1999), training and operating together in similar environments.

Cooperating in the same theaters of war has increased the pressure for convergence in their rules of engagement, with one overarching theme being the restrictive use of force to minimize civilian casualties. The use of deadly force has become a less attractive

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64 Ibid. p. 3.


67 See supra note # 65.

68 Rules of engagement for ISAF, Operation Enduring Freedom, Multinational Corps-Iraq followed restrictive use of force that required conduct-based engagement based on the fact whether individual committed hostile act or intent. Positive identification (PID) is required prior to engagement to ascertain with a reasonable certainty that the proposed target is a legitimate military target; escalation of force procedures were to be followed if time and circumstances permitted. See U. S. Army, Center for Law and Military Operations. *Legal Lessons Learned from Afghanistan and Iraq. Volume I and Volume II* (2004);
option, as the primary objective is not to kill insurgents, but to influence the population as part of a broader counter-insurgency strategy.\(^6^9\) When a soldier is faced with a choice “to kill, to capture or be killed”\(^7^0\) and a tactical directive states that “the use of excessive force is operating contrary to NATO’s counterinsurgency principles,”\(^7^1\) detention becomes an essential military tactic. In the context, when child soldiers not only actively participate in hostilities but also assist insurgents through a range of activities such as acting as messengers, IED emplacers, and guards, detention becomes an alternative to the exercise of deadly force.\(^7^2\) Canada, the United States, and the United Kingdom recognized the salience of detention policies for the performance of counterinsurgency operations.\(^7^3\)

NATO, in turn, has developed overarching Standard Operating Procedures (SOP-362) on detention operations. SOP-362 included specific provisions on the detention of children and instructed that “extreme care” should “be taken when searching juveniles and children.”\(^7^4\) Furthermore, as members of the Alliance, these three countries have been involved in a continuous effort to develop both a common doctrine and procedures to


\(^7^0\) Federal Court of Canada, Amnesty International Canada and British Columbia Civil Liberties Association V. Chief of the Defense Staff for the Canadian Forces, Minister of National defense and Attorney General of Canada. Affidavit of Steven Noonan May 2, 2007.


enhance the interoperability\textsuperscript{75} of their forces on the battlefield."\textsuperscript{76} NATO members have adopted a series of standardization agreements (STANAG(s)) to define processes, procedures, and conditions for common military policy. NATO has specifically adopted a series of STANAGs on procedures for the handling and administration of captured persons to foster convergence in detention practices.\textsuperscript{77}

Moreover, beyond the goal of security cooperation within NATO, these three countries form part of a coalition composed of Western Anglophone militaries – the ABCA Program (Australia, Britain, Canada, New Zealand and the United States). Although not an official alliance, the ABCA has established specific domains for improving interoperability, e.g., intelligence sharing and joint training exercises.\textsuperscript{78} The use of a common language has become an additional means of enhancing coherence between each country’s military services.\textsuperscript{79} It has further facilitated cooperation within the ABCA, contributing to the convergence of shared concepts and practices.\textsuperscript{80} Additionally, these three countries are members of Five Eyes Intelligence agreement (FVEY).\textsuperscript{81} The nature of this agreement has provided a template for further expansion of intelligence-sharing and

\textsuperscript{75} NATO defines interoperability as the ability of the forces provided to “operate together coherently, effectively and efficiently. The concept is applied in three dimensions: technical (e.g., hardware, systems), human (e.g., language, terminology, and training) and procedural. Each involves the development of common doctrine and procedure


\textsuperscript{78} Kevin Galvin, et al., \textit{Coalition Battle Management Language (C-BML) Study Group Final Report} (Standards Activities Committee, 2006).


\textsuperscript{80} Paul Mitchel, \textit{Network Centric Warfare and Coalition Operations} (iRoutledge, 2009), p. 64.

\textsuperscript{81} FVEY was signed between the United States, the United Kingdom, New Zealand, Australia, and Canada (1948).
further cooperation between allies.  

Canada, the United Kingdom, and the United States demonstrate expanding convergence in the rules of engagement in counterinsurgency operations within a range of institutional settings. This includes the development and dissemination of common procedures in the sphere of detention. Despite these developments, we still observe a cross-national variation in the policies on the detention of child soldiers.

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82 James Cox, *Canada and the Five Eyes Intelligence Community* (Canadian Defence and Foreign Affairs Institute, 2012).
International Laws and National Policies Concerning Child Soldiers

The third source of convergence lays in the general compliance of these countries with international law on the treatment of child soldiers. The relevant research on international law compliance focuses on the impact of laws and the legalization of state behavior. Compliance is defined as the conformity of an actor’s behavior with a specified rule, distinct from its implementation or effectiveness. Harold Koh identifies the internalization of a specific rule in domestic law as the key to a nation’s compliance with international law. Internalization occurs through a process when domestic legal systems debate, interpret, and ultimately internalize international legal rules. Scholars cite enforcement process of the Anti-Personnel Mine Ban Convention (1999) as a successful example of the internalization of the international legal rule.

Canada, the United Kingdom, and the United States have been advancing the

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87 The enforcement process of the Anti-Personnel Mine Ban Convention (1999) is a successful example of the internalization of the international legal rule. Transnational norm entrepreneurs created public pressure for a complete ban on landmines. The process went from the initial stage of the strategic framing of the norm,
international law on the prevention of the recruitment and use of child soldiers. These three countries are signatories to the Optional Protocol to the Convention on the Rights of the Child.\textsuperscript{88} This Protocol pertains specifically to the protection of children involved in armed conflict and extends its protections to “every human below the age of 18 years.”\textsuperscript{89} These three countries have integrated the provisions of international legal instruments in domestic legislatures thus making it enforceable.\textsuperscript{90}

In the United States, the ratification of the treaty generated the adoption of the Child Soldiers Prevention Act (CSPA) (2008) and the Child Soldiers Accountability Act (2008).\textsuperscript{91} These two documents underlined the US’ commitment to curbing the use of child soldiers outside of its territorial jurisdiction.\textsuperscript{92} The Canadian Parliament introduced an

\textsuperscript{88} Notably, in the reservations to the ratifications of the Protocol, Canada, the US and the UK all declared the age of voluntary recruitment into their armed forces to be lower than 18 years old. See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Declarations of Canada, United Kingdom and United States.

\textsuperscript{89} United Nations, OPAC, Preamble, Art. 1.


amendment to the National Defence Act (2000) to entrench the OPAC into Canada’s domestic policy. The amendment’s principal objectives were to ensure that the Canadian Armed Forces will continue to work in reducing the effects of armed conflict on children wherever they operate.93 The OPAC also addresses states’ obligation for the rehabilitation and social reintegration of children, despite the document’s principal focus being on the prevention of the recruitment of children into the armed forces.94 Since 2000, these three countries have vested their efforts and resources for the demobilization and reintegration of child soldiers in conflicts in Africa, South Asia, and Latin America.95

These three countries have also participated in the “Copenhagen Process” (2007-2012). The purpose was to develop shared legal and operational standards for the protection of persons detained during multinational military operations.96 The resulting “Principles

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and Guidelines” included procedures on the treatment of children in detention.\textsuperscript{97} These provisions echoed the main provisions of International Customary Law. They specified that the participation of children in hostilities does not deprive them of ‘special protection’ in the case of detention.\textsuperscript{98} Domestic legal documents have gradually internalized this perspective, primarily through its incorporation into the American, British and Canadian military manuals.\textsuperscript{99}

These three countries have demonstrated a growing convergence in their efforts to comply with international law on the treatment of child soldiers, in a range of areas (Table 1.2), through the internalization of key legal rules in domestic legislature and integration of some provisions in military manuals. In contrast, these three countries continue to vary in their policies on the detention of child soldiers during military operations.

\textsuperscript{98} See note # 17 and 18.
Table 1.2. Areas of Compliance with International Law Standards on the Treatment of Child Soldiers

<table>
<thead>
<tr>
<th>Areas of Compliance</th>
<th>Country</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Canada</td>
</tr>
<tr>
<td>Ratification of the OPAC</td>
<td>Yes</td>
</tr>
<tr>
<td>Domestic Legislation on the Prevention of Recruitment and Use of Child Soldiers</td>
<td>Yes</td>
</tr>
<tr>
<td>Support of Demobilization and Reintegration Programs for Child Soldiers</td>
<td>Yes</td>
</tr>
<tr>
<td>Special Protection of Children During Detention</td>
<td>Yes</td>
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</tbody>
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**Research Question**

Canada, the United Kingdom, and the United States therefore converge in several related areas in the security domain. This could be ascribed to the broad compatibility of these countries’ liberal values and a general propensity to comply with international law. Based on shared norms and values, and a collection of shared security practices, states are involved in the process of integration that has led to the consolidation of the Atlantic security community. Its members “see their security as intertwined, along with the necessity of common action”\(^\text{100}\) to preserve that security. Their efforts at cooperation within established institutional settings increases the need to enhance interoperability between its members in shared theaters of war.\(^\text{101}\) Specifically, Western allies agree in their perception of threats – such as a rise of radical Islamist groups, the threat of weak governance, and

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\(^{101}\) See supra note # 65.
state failures resulting in power vacuums. These countries also increasingly recognize that children can become an integral part of opposing forces; posing ethical and security dilemmas for military actors. This convergence has engendered cooperation in the decision-making processes regarding how to tackle threats.

Comparable forces and similar challenges e.g., the changing nature of threats and armed conflict, questions of the extraterritorial application of international human rights law compelled these allies. All three countries have confronted the same complex problem in the same theaters of war – the practice of detention during military operations among these issues. Their armed forces have faced operational and policy decisions on a range of issues in this domain from the treatment of detainees to the practice of their transfer. The detention of child soldiers has brought additional challenges such as the need for separate facilities to quarter child detainees, equipment, and personnel to determine their age, especially in areas that lack an institutionalized system for birth registration. Nonetheless, despite the array of these convergent pressures, Canada, the United Kingdom, and the United States have developed distinct policies on the detention of child soldiers that have arguably increasingly diverged over time. This divergence is puzzling. Subsequently, this paradox generates a research question: what explains this cross-national variation in the development of detention policy concerning child soldiers?

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102 See supra note # 12 and # 13.
Dissertation Outline

In Chapter II, I present three research programs – on the strategic action of NGOs in policy-making, on the engagement of military lawyers in the policy process and the one that examines the involvement of children in armed conflict – and discuss this dissertation’s potential contribution to these scholarly debates. The research program on child soldiers presents us with a policy domain that demands to balance the protection of vulnerable populations and the security of military members in conflict zones. Moreover, the detention of child soldiers takes place in the increasingly complex legal environment. This requires the involvement of different policy actors, such as non-governmental organizations, which engage in political advocacy on behalf of child soldiers, and military lawyers, who are well positioned to influence policy through legal advising. This chapter details how this study relates and ultimately informs discussions in these three research programs.

In Chapter III, I examine three possible explanations. Each explanation examines previously conducted research on the relative influence of three actors in the policy-making process: military lawyers, government officials and representatives of non-governmental organizations. Each yields a hypothesis which examines the primary role of one of these three key actors in the policy-making processes in Canada, the United Kingdom, and the United States. Chapter III concludes by justifying why the policy design approach, which brings three stages of the policy process (i.e., agenda-setting, policy formulation, policy implementation) into a single model, coupled with comparative case studies best combine as the principal mode of the dissertation’s research design. The chapter also explains the methodological structure, which involved quantitative and qualitative analysis in examining the varied involvement of each of the three actors at each stage of the policy process, in each national context.
In Chapter IV, I present the aggregate data from the semi-structured interviews and discuss their findings and implications. Specifically, this chapter utilizes qualitative data analysis, i.e., coding and collating the data. I then use NVivo 11 matrix coding query tools to generate the numerical data needed to present aggregate results in the form of figures and tables. These methods allow for evaluating the degree of involvement of each of the three actors, in each national context, at each particular stage of the policy process thus offering the first test of three hypotheses examined in this dissertation.

Chapters V, IV and VII build upon this preliminary test through three case studies that provide the second test. Each respectively examines the development of the policy on the detention of child soldiers in these three countries. These chapters identify causal patterns across three national contexts thus allowing to evaluate whether military lawyers, government officials or non-governmental organizations exercise a relatively greater influence on the development of the policy.

Chapter VIII concludes the dissertation. Its first section provides a broad overview of the findings regarding the three cases. The chapter’s second section examines the theoretical, empirical and policy implications of the study and suggests questions for future research.
CHAPTER II. SIGNIFICANCE

The research question of this study, which seeks to explain the variation in detention policies concerning child soldiers in Canada, the United States, and the United Kingdom pertains to issues debated within three broad research programs. The first is a specific one that examines the involvement of children in armed conflict, which looks at the phenomenon from operational, legal and ethical perspectives. The second is a program that surveys the involvement of military lawyers in public policy, specifically concerned with armed conflict. The third is a research program on the role of non-governmental organizations in the policy process, focusing on whether certain strategic choices increase the probability of inducing policy change.

The overarching linkage between these programs relates to the research question of this dissertation. Specifically, this study aims to connect the research program on the policy process, which focuses on the interactions between actors, events, and contexts, with the debate discussing issues concerned with the experiences of child soldiers.\(^\text{104}\) The complex nature of the phenomenon of child soldiers – its technical aspects, such as age assessment, a range of contested definitions, and the varying levels of protection integrated within both international human rights and humanitarian corpora of law – demands the involvement of different policy actors such as non-governmental organizations and military lawyers. These actors retain a different repertoire of strategies, which they can apply to shape policy outcomes. In the following sections, I discuss each research program in detail and how this dissertation may contribute to these scholarly debates.

The Research Program on Child Soldiers

The scholarly debate on the phenomenon of child soldiering addresses a series of issues connected to the distinct experiences of children involved in armed conflict sequentially, from the logic of recruitment105 to the challenges of their reintegration following the end of the hostilities.106 The literature acknowledges that while a child soldier is “an unnatural conflation of two contradictory and incompatible terms,”107 the categories of a victim and a perpetrator are not mutually exclusive. Child soldiers are often caught in “cycle of human rights abuses.”108 They could be both vulnerable to trauma and dislocation and could be perpetrators of crimes.109 The effort to accommodate a child soldier’s dual status generates operational, legal and ethical dilemmas.110

The first element of this research program suggests that, on the battlefield, child


soldiers may constitute a security threat to national or multilateral militaries and their missions.\textsuperscript{111} Romeo Dallaire presents child soldiers as “weapon systems”\textsuperscript{112} used by adults, thus reducing them to an instrumental status.\textsuperscript{113} Peter Singer identifies that children recruited in armed forces could represent “very real threats,”\textsuperscript{114} performing a broad range of roles such as “infantry shock troops, raiders, sentries, spies, sappers, and porters.”\textsuperscript{115} Singer and Dallaire both understand child soldiers as the product of “new wars” and an example of the “chaos and callousness of modern-day warfare.”\textsuperscript{116} David Rosen, however, offers a counterargument to the claim that child soldiers are products of “new wars.” Relying on his analysis of historical cases, Rosen argues that child


\textsuperscript{112} Romeo Dallaire, \textit{They Fight like Soldiers. They Die like Children: The Global Quest to Eradicate the Use of Child Soldiers} (Random House LLC, 2010), pp. 13-15.

\textsuperscript{113} Ibid., p. 109.

\textsuperscript{114} Peter Singer, \textit{Children at War} (University of California Press, 2006), p. 175.


soldiering is not a new phenomenon. Rosen’s study is valuable because it examines military actors’ responses to child soldiers in the context of counterinsurgency in fragile states. The nature of modern conflict impacts the level of protection of child soldiers not because it contributes to the “failure of law” but because it defines new conditions for the legal protection of children captured on the battlefield. Cristina Squire, for example, discusses the growing phenomenon of children “voluntarily” joining transnational terrorist organizations and facing detention under different jurisdictions. These conditions could generate a new label: ‘unlawful juvenile enemy combatant.’ The categorization may lead to the derogation of children’s rights and affect States’ detention policies during military operations. This dissertation aims to offer empirical evidence on how policy actors in liberal democracies, such as Canada, the United States, and the United Kingdom, adapt to these conditions. Specifically, it examines how policy actors address dilemmas, which require balancing security and human rights agendas, when they are faced with children who participate in hostilities – directly or indirectly – and become involved in their detention.

The second element of this research program reflects on the ‘victims/perpetrators’ debate through an analysis of the contested elements within a ‘legal regime’ on child soldiers. Specifically, it contends the legal definition of childhood and the issue of the

120 Ibid.
degree of accountability of child soldiers for their actions. The definition of childhood represents one of the most contentious issues within the debate. Consequently, scholars and legal experts engage in the cultural relativism-universalism debate to answer questions such as ‘who are the beneficiaries of the legal protection?’ and ‘what is a criterion of demarcation between adulthood and childhood?’ In the domain of detention, whether one is defined as a child, at which age childhood ends, often determines procedures for capture and demarcates their rights and protections during detention. The “definitional struggles” therefore “map with political ones.” 122

Cultural relativists argue that childhood cannot be perceived outside of a child’s cultural and societal context. 123 A variance in the perception of childhood is not only a matter of cultural differences but also a reflection of the level of economic and social development of society. Philippe Aries demonstrated how “awareness of the particular nature of childhood was lacking” 124 until the beginning of the 17th century in his historical analysis of the concept of childhood in the West. Children had gradually seized to be seen as “miniature adults,” but have acquired particular needs as children. 125 Arie’s assessment has become increasingly influential in informing “childhood studies” that challenge “universalistic” conceptualizations of childhood. 126 Allison James and Alan Prout

demonstrate that childhood has come to be understood as a social construction.\textsuperscript{127} The plurality of childhoods determined by “exigencies of gender, ethnicity, race, class, location, and more.”\textsuperscript{128}

Proponents of cultural relativism argue against the universalized conception of childhood by focusing on two contested issues. First, there is no fixed chronological age which may indicate the start of adulthood.\textsuperscript{129} Rosen provides ethnographic evidence that shows there is no single age at which young people are found on the battlefield.\textsuperscript{130} This observation gains importance in the context of the detention of child soldiers during military operations, where there is often lack of the established systems of birth registration. Actors, who implement the policy on the operational level, are compelled to assess age on the basis of physical development.\textsuperscript{131} In such contexts, the question arises on whether a detaining authority has the responsibility to determine if someone is over or under eighteen when age is in question. Second, cultural relativists advance a distinct understanding of a child’s agency,\textsuperscript{132} rejecting the conceptualization of childhood as a


\textsuperscript{128} Beier, “Children, Childhoods, and Security Studies …,” p. 4.

\textsuperscript{129} Druml, \textit{Reimagining Child Soldiers} …, p. 46.

\textsuperscript{130} Rosen, \textit{Armies of the Young} …, p. 111.


realm of absolute vulnerability and incompetence.\textsuperscript{133} However, the ultimate focus on agency also posits a salient question, “what happens to vulnerability with so much emphasis on the agency?”\textsuperscript{134} In the context of the child soldiering, the issue of agency complicates dichotomous distinction between victimhood and perpetrator-\textsuperscript{hood}.

The cultural relativist position conflicts with the attempt to reach a universal perception of childhood. Three principles underpin the universalist understanding. First, 18 years is defined as a watershed between childhood and adulthood.\textsuperscript{136} Second, innocence and vulnerability are two other existential characteristics of children, endowing them with a right to special protection.\textsuperscript{137} The Convention on the Rights of the Child (CRC) incorporates this universalist understanding of childhood and the notion that children have no place in conflict.\textsuperscript{138} Third, the universalist view of childhood has generated a paradoxical understanding of the concept of agency granted to children. A child, on the one hand, is recognized as a bearer of rights (economic, social and cultural rights, but not political).\textsuperscript{139} Children, on the other hand, can exercise agency only within a legal and normative discourse by which they can demand attention, but cannot redefine their status.\textsuperscript{140} Child soldiers have even more diminished capacity for moral agency, that “is

\begin{itemize}
\item \textsuperscript{133} Rosen, \textit{Armies of the Young} …. p. 134.
\item \textsuperscript{136} United Nations, \textit{Convention on the Rights of the Child}, art 37 (a).
\item \textsuperscript{139} Ibid., Preamble, Article 4.
\item \textsuperscript{140} Chris Jenks, \textit{Childhood}. (Psychology Press, 2005), p. 124.
\end{itemize}
absent or has been systematically subverted.”141 This understanding of agency has far-reaching implications for the engagement with child soldiers on the battlefield. Jeff McMahan emphasizes the importance of restraint when engaging with child soldiers on the premise of their special “vulnerability to exploitation and loss.”142 The operationalization of the notion of restraint becomes relevant for the development of detention policies of child soldiers, which to account for both an inherent vulnerability of children and the security threat they might pose as combatants.

Transnational and domestic non-governmental organizations in the global North embraced and promoted core elements of the universalist view on childhood.143 Civil society reproduced and amplified “the Anglophone version of childhood and its inherent deviances”144 in advancing the ‘straight-18’ norm on the prohibition of the involvement of children in armed conflict. NGOs’ embrace of universalist perspective has two salient implications for the policy-making process.145 First, non-governmental actors focus their agendas on ensuring the internalization of international norms in domestic legislatures, as actors center on the issues of compliance with international legal instruments. Second, the objective and letter of international legal obligations impact the choice of key issues on the NGOs’ portfolios such as the prohibition of the recruitment of child soldiers and holding perpetrators to account.

This dissertation, which examines the development of the policy on the detention of child soldiers during military operations – the domain in which international law

142 Ibid., p. 36.
stipulates less precise definitions and protections – hopes to contribute to the understanding of how policy actors apply key arguments of the cultural-relativist-universalist debate during the policy-making process.

Another issue, debated within the international law literature on child soldiers, is that of accountability for the commission of crimes while being involved in an armed conflict.146 Matthew Happold stipulates that while international law perceives children, who participate in hostilities as victims, they could (and do) perpetrate acts that invoke criminal liability.147 Endowing children with blanket legal immunity may have far-reaching repercussions, notably inducing the recruitment of children in the “responsibility free”148 age bracket. Nienke Grossman also examines the obligations of states that decide to prosecute children, such as assistance with their rehabilitation and reintegration, and the consideration of age as a mitigating factor.149 Jennifer Hyndman illustrates major dilemmas of the issue of accountability of child soldiers and the ‘fluid’ nature of victimhood when analyzing divergent narratives of Omar Khadr and Ishmael Beah, both of whom, under international law, would be considered as child soldiers.150 The US military commission prosecuted Omar Khadr as an ‘enemy’ combatant (thus classified him as a perpetrator). Ishmael Beah, in contrast, received the “victimized status of a child soldier.”151 Erin Baines

151 Ibid., p. 1.
analyzes the ‘victim-perpetrator’ dilemma in the case of Dominic Ongwen, a former child soldier, who is standing trial at the International Criminal Court for crimes committed as an adult commander in the Lord’s Resistance Army. Ongwen breaks from the established norms regarding victim and perpetrator as being “discrete, homogeneous groups.” The discussion among legal scholars continues to explore the extent to which the rights of children could be derogated if they pose a security threat. Mark Drumbl and Erin Lafayette provide a salient observation that wherein children may be immune from the prosecution by international and some domestic courts but may face trial in other countries. The scholarly debate, however, does not directly explain the variation in the implementation of rules of international law on and the process of accountability towards child soldiers.

This dissertation aims to contribute to the legal debate on the issue in a two-fold way. First, through a comparative analysis of the conditions under which Canada, the

154 Ibid., p. 177.
United Kingdom, and the United States developed their policies, my study might offer insight into the understanding of how international law affects domestic policies. Second, this dissertation examines how domestic actors – such as representatives of non-governmental organizations and military lawyers – interpret, incorporate or decide not to embed key premises of international law, regarding the issue of the detention of child soldiers, into respective national policies. It therefore hopes to contribute to the discussion on the operationalization of international law on the domestic level.

The Strategic Action of Non-Governmental Organizations in the Policy Process

The research program on the involvement of NGOs’ in the policy process increasingly reflects the diversity of their roles in public policy. These organizations act as political advocates as they become involved in the framing of policy issues, legislative processes, defining rules and procedures within the bureaucratic agencies and legal advocacy in courts. The debate demonstrates that political advocacy consists of two determinative characteristics. First, organizations focus on the collective interests of the general public and underrepresented groups, as opposed to the interests of well-organized powerful interests. Second, government institutions and agencies are the main targets of NGOs’

158 Elizabeth Reid, “Building a policy voice for children through the nonprofit sector.” in Carol DeVita and Rachel Mosher-Williams (eds.) Who Speaks for America's Children? The Role of Child Advocates in Public Policy. (The Urban Institute, 2001), p. 344.
advocacy, whose purpose is “to change existing or proposed government policies.” The debate further evolved from documenting NGOs’ involvement in different policy domains and different contexts to grappling with questions on how and through what mechanisms NGOs exert influence on policy outcomes. The policy area on the detention of child soldiers abounds with contested elements such as a range of definitions of what constitutes a child soldier and the protections this nomenclature entails. Policy actors operate with a range of domestic and international legal instruments which set boundaries of compliance for national governments in this policy domain. These characteristics allow NGOs to apply a variety of strategies, contingent upon the stage of the policy process, in their effort to influence the policy outcomes on the detention of child soldiers. This dissertation’s analysis, by “breaking policymaking process into stages,” aims to contribute to the debate on how non-governmental organizations shape agenda-setting, formulation of policy decisions and their implementation in a contested policy domain.

Amber Boydstun and her colleagues argue that it is useful to think about how agenda

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163 I discuss the contested definition of a child soldier in Chapter I. Please see supra note # 11.

164 Supra note # 90 and note # 95.

space is divided not only among items but also in the form of frames. The complexity of the phenomenon of child soldiers, who emerge both as victims and perpetrators, creates grounds for the creation of antagonistic frames during the agenda-setting process. The presence of contested interpretations demands that policy advocates engage in framing contests with other actors involved in the policy process – represented by government officials and military lawyers in the case of this study – in their efforts to determine a definition of the issue and to gain broader attention. This dissertation’s analysis of the role of NGOs during the agenda-setting – the initial stage of the policy process – aims to contribute to the debate on how NGOs engage in issue framing. Specifically, this study hopes to provide empirical evidence on how NGOs become involved in framing contests to advance their interpretation of the problem on the agenda.

Scholarly debate on the effects of issue framing demonstrates how the prevalence of contested interpretations on the policy in question generates framing contests among actors

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167 Derluny, et al., “Victims and/or Perpetrators? …”

168 Sarah Pralle and Jessica Boscarn, “Framing Trade-offs: The Politics of Nuclear Power and Wind Energy in the Age of Global Climate Change.” *Review of Policy Research* 28(4) (2011), p. 325. Frank Baumgartner and colleagues, for example, in their research on the framing of policy in relation to death penalty in the US, demonstrated how advocacy on framing of this particular issue “along a particular dimension (e.g., fairness and innocence)” led to the “the exclusion of alternate dimensions (e.g., morality, constitutionality)” which led to a shift in the discussion on the application of the death penalty and “produced a dramatic decrease in the number of people sentenced to death” (p. 214). See Frank Baumgartner, et al., *The Decline of The Death Penalty and The Discovery of Innocence.* (Cambridge University Press, 2008).

involved in the policy process. Policy-makers and advocacy groups “reframe particular policy issues by emphasizing some aspects of an issue over others.” Framing contests presuppose a varying level of inter-relationship between opposing sides of the policy debate. On the one end of the continuum, NGOs might ignore claims of their opponents and advance their “own interpretations of policy problems.” The use of this tactic results in “dual framing" in which policy opponents offer “simultaneous incompatible frames that present only one side of the debate.” This type of framing exemplifies a “dialogue of the deaf” as policy opponents do not address each other’s claims. On the other end of the continuum, NGOs might actively engage with competing actors in the policy domain. Sarah Pralle, for example, demonstrates how political advocacy groups shift their strategy in response to the strategies of their policy rivals.

Policy actors retain a repertoire of ‘framing moves’ – that is mechanisms, which have varying effects on the policy controversies and resolution of framing conflicts.

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173 Chong and Druckman, “Counterframing effects …,” p. 2.


177 Pralle, Branching Out, Digging In…, pp. 224-226.

178 Abolafia, “Framing Moves …”

Policy actors, on the one hand, may engage in frame polarization. This mechanism compels actors to focus on their framing and reaffirming their definition of the issue. The use of frame polarization in framing contests generates the escalation of the conflict among policy opponents and allows policy controversy to persist. Advocacy groups, on the other hand, may apply mechanisms of incorporation, reconnection, or accommodation of each other’s frames, which involve finding solutions to framing disputes. These mechanisms represent attempts to overcome framing conflicts to achieve a policy consensus.

The framing of the detention of child soldiers involves the debate over two critical dimensions, one of threat reduction and military effectiveness and the other of the protection of vulnerable populations during military operations. This dissertation analyzes how NGOs, in their respective national contexts, addressed this central frame in their efforts to influence policy outcomes. This study therefore aims to contribute to the debate on the process of frame contestations and their implications for the policy process. First, it might provide further evidence on how NGOs’ choice of whether to ignore the claims of their policy opponents or to directly engage in frame contestations affects the processes during the agenda-setting stage. Second, this study hopes to contribute to the debate on how the selection of framing mechanisms has direct implications for resolving or entrenching policy conflicts.

This dissertation also aims to offer insight into the debate on the choice of strategies that NGOs employ to influence the policy formulation process. The initial research on

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182 Dewulf and Bouwen, “Issue Framing in Conversations for Change ….”
183 Dodge and Lee, “Framing Dynamics and Political Gridlock …,” p. 3.
NGOs’ strategies contrasted the use of insider and outsider tactics in their efforts to impact political outcomes. While the former presupposes access to decision-making venues, such as direct lobbying, meeting with legislators, and delivering testimonies, the latter are more confrontational.\(^\text{184}\)

The debate on how NGOs influence policy formulation gradually evolved from the dichotomous perspective that organizations engaging in political advocacy should choose “either insider or outsider strategies.”\(^\text{185}\) The nuanced analysis increasingly demonstrates that a combination of insider and outsider strategies may be more effective contingent upon the context and policy in question. Elizabeth Reid demonstrates that NGOs may apply outsider strategies to gain access to decision-makers’ venues and make sure that their “positions are heard.” They ultimately rely on insider strategies “to implement change.”\(^\text{186}\) Rachel Fyall and Michael McGuire, in their analysis of the advocacy of the Pacific Coast Affordable Housing Network, show how NGOs “identified different purposes for each strategy type.”\(^\text{187}\) This dissertation explores choices of NGOs to engage in insider, outsider, or to pursue both types of strategies simultaneously during the policy formulation stage in their respective national contexts. I specifically examine NGOs’ choices to engage with different actors such as representatives of different branches of government and/or representatives’ bureaucratic agencies in their efforts to shape policy outcomes. This dissertation therefore potentially contributes to the ongoing debate on the conditions under

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187 Fyall and McGuire, “Advocating for Policy Change in Nonprofit Coalitions …,” p. 1284
which choice of strategies determines NGOs’ relative influence on policy outcomes.\textsuperscript{188}

NGOs rely on two strategies during the policy implementation stage. First is ‘naming and shaming.’ NGOs use this instrument to identify examples of non-compliance with international treaty law to pressure states to comply with these standards.\textsuperscript{189} The second strategy involves the use of domestic courts to monitor and enforce implementation of the policy. This dissertation hopes to contribute to the debate on how the application of these strategies, whether individually or in combination, allows NGOs to exert their influence on the implementation and enforcement of policies.

The research on ‘naming and shaming’ demonstrated how advocacy groups use this policy instrument to enforce a state’s behavior in various policy domains\textsuperscript{190} such as women rights,\textsuperscript{191} prohibition of torture,\textsuperscript{192} and human rights abuses.\textsuperscript{193} The debate, however, has substantially focused on how transnational advocacy groups apply ‘naming and shaming’


\textsuperscript{193} Cullen Hendrix and Wendy H. Wong, “When is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses.” \textit{British Journal of Political Science} 43(3) (2013)
to induce policy change “while neglecting domestic actors.” The emerging discussion has been examining the role of domestic actors utilizing the strategy of ‘naming and shaming’ in enforcing human rights standards and treaties. James Franklin, in his study on the effect of ‘naming and shaming’ on the behavior of repressive regimes in Latin America, demonstrates how domestic NGOs become important actors in inducing change. Domestic NGOs also actively apply ‘naming and shaming’ in liberal democracies. Jennifer Schiff examines how Canadian NGOs resorted to this strategy to exhibit how Ottawa failed to implement the right to water within its First Nations communities. NGOs within the European Union member states also used the same strategy to raise concerns over “pervasive non-compliance with EU environmental law.”

Domestic NGOs also highlight and disseminate outcomes of regional courts (such as the Inter-American Court of Human Rights and European Court of Human rights) to demonstrate non-compliance with international (and regional) law treaties. NGOs increasingly use these decisions as “policy talking points” to amplify their strategy of ‘naming and shaming’ on a domestic level. Canada, the UK, and the US ratified the Optional Protocol to the Convention on the Rights of Child and domesticated the treaty in their respective legislations. This allowed domestic NGOs to potentially appeal to

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198 Cichowski, The European Court and Civil Society ..., p. 240.
199 See supra note # 90.
international forums, such as the Committee on the Rights of the Child and the Human Rights Council, to call for their government’s compliance with these and other international legal standards. This dissertation aims to contribute to the debate on the effectiveness of ‘naming and shaming’ through addressing the question on how domestic NGOs further the compliance of their respective national governments with international law.

Domestic litigation is another prevalent strategy, in the NGOs’ repertoire, to influence the implementation of the policy. Domestic courts act as “political battlegrounds” in which opposing interests advance their policy preferences. Policy actors may resort either to “direct litigation or by injecting their perspectives as amici curiae or interveners.” The research documented the increasing use of domestic litigation to impact the implementation stage of the policy process. The existence of a court, however, does not automatically “translate into effective and equitable access to justice.” A key question asked by scholars concerns the “types of conditions that will prompt NGOs to apply this strategy to leverage their influence on the policy outcome.”

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There is a range of legal and institutional factors such as the existing body of laws, cost of litigation, and rules that regulate access to the judiciary, which forms the legal opportunity structure. These factors, on the one hand, provide a general framework for NGO’s actions. The research, on the other hand, also demonstrates “reciprocal influence” between the legal opportunity structure and NGO agency. Lisa Vanhala, in her analysis of the political advocacy of UK environmental NGOs, demonstrates how “a preference for taking policy battles to the courts” may account for groups’ effectiveness even in the hostile opportunity structure. This study examines why some NGOs embrace legal tactics, to enforce implementation of the policy on the detention of child soldiers. It therefore aims to further the debate on how and under which conditions NGOs use litigation as an effective instrument for policy change.

The Role of Military Lawyers in the Policy-Making Process

This dissertation also directly pertains to the research program on the engagement of military lawyers in the policy-making process. David Luban perceives legal advising as “the most important thing that lawyers do, and legal advice, rather than judicial

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208 Ibid.
decisions, defines the law.” Legal advisers become ‘compliance counselors,’ defining the “space in which the client may legally act.” They derive this influence from the “cumulative effect of multiple thousands of routine, day-to-day presentations of fact and deliverances of opinion.” Legal advisers are “skillful legal technicians.” They refer to multiple rules to resolve any legal issue and can take on a particular interpretation depending on the context. Legal advisers also must become experts in their policy domains to be fully effective. When decision makers are confronted with a choice among competing rules, lawyers must evaluate them from some broader normative perspective so that policymakers can make a choice. Legal advisers define what policy-makers can or cannot do by informing policymakers about the social, legal, and ethical consequences of the chosen course of action. Legal advisers, thus, while not themselves “makers” of policy, are strategically positioned to influence it.

Military legal advisers share comparable ethical and professional commitments to their counterparts in government services. Military legal advisers confront analogous

211 Ibid.
217 Ibid., p. 11.
dilemma – “between ‘getting it wrong’ i.e., giving the commander the advice she/he would like to hear, albeit advice which is not in conformity with the law, versus ‘being ignored’” – when providing accurate advice but contrary to the commander’s vision and needs. The analysis of the role of military lawyers directly pertains to an understanding of “models of ethic commitments within public legal roles.” The research question of this dissertation thus potentially contributes directly to two issues in the debate on the role of military lawyers. First, how do military legal advisers act as “agents of compliance?” Second, to what extent do military lawyers influence and shape the policy-making process?

Similar to their civilian counterparts, military lawyers have assumed a key institutional role as agents of compliance in their domain of expertise – international humanitarian law. Military lawyers have increasingly become involved in training, advising and ensuring compliance with international humanitarian law given expansion in the scope, salience and sum total of laws that govern war. Three distinct developments, which defined the “legalisation of the battlespace,” have contributed to the growing expansion of the impact of military lawyers in the decision-making processes. First, current


222 Ibid.
military operations take place in an “environment saturated with law.” Each new development in international law adds a layer of complexity to legally enable operational capabilities of the militaries on the ground. Second, with law shaping the politics, as well as the practice, of war, actors involved in the conduct of military operations speak in legal terms to justify and reinforce the compliance and legitimacy of their actions. Third, there is significantly more information about operational incidents, which leads to the growing involvement of non-governmental organizations. NGOs bring their investigative capacities and express their findings on operational incidents “in terms of law and breaches of the law as a more urgent and expressive means of speaking truth to power.” These developments underpinned an intensification of the relationship between war and law.

Being “used or misused as a substitute for traditional military means to achieve an operational objective,” law has increasingly become a tactic of war. Charles Dunlap defines this nature of law as a “force multiplier,” part of the strategy of ‘lawfare.’ In the context of lawfare, the law could be “wielded much like a weapon by either side in a belligerency.”

On the one hand, law could be utilized to perpetuate a form of asymmetrical warfare by adversaries of unequal power or to constrain violence on the

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227 Ibid., p. 105.

228 Ibid., p. 108.

229 Jones and Smith, “War/Law/Space Notes …,” p. 587.


234 Ibid.
battlefield. In this context, military lawyers have become key actors in developing lawfare tactics, e.g., denying, disrupting, and degrading the enemy’s ability to use lawfare, and delegitimizing the enemy’s lawfare efforts.\textsuperscript{235} Armed conflict “requires a legal armature to secure its legitimacy and organize its conduct.”\textsuperscript{236} Military lawyers therefore have become increasingly positioned to provide advice and to affect the course of military operations.\textsuperscript{237}

Laura Dickinson utilizes organizational theory to analyze the role of military lawyers in ensuring compliance with international law or serve as a source of resistance to policies that deviate from its fundamental premises.\textsuperscript{238} Dickinson notes the ability of military lawyers to create a culture of compliance. This culture of compliance relies on the internalization of norms from the reinforcement of values underlying the law, and the disciplinary systems that can reinforce this behavior.\textsuperscript{239} This last criterion, as Dale Stephens notes, differentiates military lawyers from government lawyers in their capacity to formally enforce compliance through the disciplinary justice system.\textsuperscript{240}

The scholarly debate analyzes the role and influence of military lawyers across different areas of policy, e.g., civilian casualty investigations, targeting processes, prosecution before the US military commissions.\textsuperscript{241} The debate on American detention and

\textsuperscript{237} Stephens, “Behaviour in war …,” p. 770.
\textsuperscript{238} Dickinson, “Military Lawyers on the Battlefield …,” p. 20.
\textsuperscript{239} Ibid., pp. 10–11, 15-16.
\textsuperscript{240} Stephens, “Behaviour in war …,” p. 771.
interrogation policies provides an example of active and influential engagement on behalf of military lawyers. They not only dissented from an overarching administration policy but also rendered advice free from political responsibility or manipulation. Military lawyers thus ultimately influenced the process of policy change.242 They demonstrated that laws of war are something more than an “impractical list laid out by lawyers in Geneva.”243

The debate has not addressed the position and influence of military lawyers in the development of key aspects of the policy on the detention of child soldiers and its implementation. At the same time, military lawyers are positioned to influence the development of this policy. The issue of the detention of children during military operations abounds with contested legal elements thus legal advice retains far-reaching policy implications. Moreover, as discussed before, militaries of these three countries have increasingly encountered and detained child soldiers on the battlefield.244 This dissertation might offer an insight to the research program on the role of legal advising in the military operations, focusing on the role of military lawyers in this particular issue area.

Also, in representing a part of a broader military structure, military lawyers render their influence at both the operational and strategic levels, exerting varying levels of influence on the development of the policy.245 At the strategic level, military lawyers’ clients are involved in the design of regulations, directives and military manuals on a broad range of issues.246 Legal advisers, thus, have an opportunity to directly influence the

243 Carvin, Prisoners of America's Wars ..., p. 227.
244 See supra note #12 and #13.
246 United States adopts following definition of a strategic level as one “at which a nation [...] determines national and multinational security objectives and guidance and develops and uses national resources to accomplish them.” U.S. Department of the Army, Operations, Field Manual 3-0 (Washington, D.C.: U.S. Department of the Army, 14 June 2001), GL-16.
process of policy formulation at different strategic-level organizations.\textsuperscript{247} At the operational level, a legal adviser is assigned to a unit to provide “clear and cogent legal advice to a commander.”\textsuperscript{248} Rob McLaughlin further emphasizes the salience of context and process in rendering advice on the operational level.\textsuperscript{249} This dissertation further examines this dual role of military lawyers in determining the development of the policy on the detention of child soldiers. The study thus might contribute to the debate on the influence of advice contingent upon the position of a lawyer within the military structure and the context of the policy issue.

This dissertation aims to make an empirical contribution to the research program on the role of military lawyers in the policy-making process, focusing on the specific policy issue of the detention of child soldiers. In such a way, my study may directly contribute to what Gregory Shaffer and Tom Ginsburg defined as a conditional theory of international law, which is a midlevel theory that focuses on the mechanisms and conditions under which international law works.\textsuperscript{250} Specifically, addressing the question of the extent to which a state “grants decisional agency to its legal advisors”\textsuperscript{251} in a given issue area may allow me to contribute to conditional international law theory. In this study, I intend to situate international law questions within broader social and political context, thus bridging international relations and legal studies scholarships. Furthermore, as empirical studies on

\textsuperscript{247} The examples of such organizations include Military Departments, Service Chiefs, the Office of the Chairman, Joint Chiefs of Staff and the Secretary of Defense (and Office of the Secretary of Defense). For further analysis see: Kelly Wheaton, “Strategic Lawyering: Realizing the Potential of Military Lawyers at the Strategic Level.” \textit{Army Law} (2007).
\textsuperscript{248} Kramer and Schmitt, “Lawyers on Horseback …,” p. 1416.
\textsuperscript{249} McLaughlin, “Giving Operations Legal Advice …,”
the role of military lawyers in shaping policy remain largely US-centered, this study of the
cross-national variation in detention policies towards child soldiers might bring a
comparative lens to this research program.
CHAPTER III. ALTERNATIVE EXPLANATIONS

This dissertation identifies national policies on the detention of child soldiers as the dependent variable. This chapter proposes three alternative explanations to explain the variation in the development of the policy across Canada, the United Kingdom, and the United States. Each alternative explanation, consequently, derives a hypothesis on the relative influence of principal actors in the policy process. The chapter concludes by presenting the methodology and research design on how to evaluate these hypotheses.

This dissertation analyzes each policy from the perspective of actors and processes, utilizing a framework proposed by Gill Walt and Lucy Gilson. The framework is centrally concerned with the “behavior of actors in formulating and implementing policy.” Each detention policy regarding child soldiers involves diverse actors, specifically government officials representing different agencies, military lawyers and representatives of non-governmental organizations, in each national context. These stakeholders, while mutually interdependent, compete over whose objectives are translated into a governmental policy. These three alternative explanations, in varying ways, examine how these different actors utilize expert power and information in securing their influence.


253 Birkland stipulates that public policy process is driven by arguments about “whether something is a solvable problem, what the potential solutions are, what the costs of those solutions are, and whether the solutions will be effective.” See Thomas Birkland, Introduction to the Policy Process. (ME Sharpe, 2001), p. 21.


256 Ibid.
Each respective detention policy on child soldiers commonly exhibits several conditions that require the utilization of expert-based knowledge in the development of a national policy on this issue. First, technical complexity, areas of insufficient knowledge such as age assessment, and a range of contested definitions characterize this phenomenon. Second, risk and uncertainty are indicative of legal and operational implications, stemming from the practice of the detention of children during armed conflict. Each set of actors, thus, have to consider both the rights and protection of vulnerable populations in zones of conflict as well as the security of their military and the effectiveness of the mission during the development of the policy. Third, competence in policymaking is frequently the object of contestation, both within the government and by non-governmental policy actors. The latter has come to play a vital role in “enriching public understanding and the debate of policy issues.” While representatives of NGOs cannot impose their policies, they can engage in the process of lesson-drawing or policy transfer, acting as policy entrepreneurs.

Under these conditions, the role of expert-based knowledge and information, both from inside and outside the government, gains salience in determining the influence of

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257 Based on French’s and Raven’s stratification of social power, expert power is based on the perception that the influencer has valuable knowledge, information, or skills in the applicable area. The target is expected “to have faith that the influencing agent really knows that is best” (p. 155). See French and Raven, “The Bases of Social Power…”


principal actors in the policy-making process. Military lawyers, government officials, and representatives of non-government organizations retain expert-based knowledge on the issue of the detention of child soldiers. These actors therefore have the potential to exercise a formative role in the development of a policy, one characterized by technical complexity and uncertainty. I build three alternative explanations that systematically highlight their respective importance.

**Alternative Explanation I. The Role of Government Officials**

The first alternative explanation examines the role of government officials as most influential actors in the policy process. Michael Reed suggests that government officials are recognized as an expert group in any policy-making process. As Max Weber first proposed, expert or specialized knowledge is the “foundation for the power of the officeholder,” a process enhanced by the expanding process of bureaucratization. Public servants possess the bureaucratic knowledge, located within the administration or civil service as well as within scientific institutions and government.

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263 Haas, “Introduction: Epistemic Communities.”


is interconnected with administrative and governmental practices, emphasizing the political and strategic use of knowledge. The primary purpose of bureaucratic knowledge is to “guide a specific community of policy actors.” Officials who retain specialized knowledge and skills are part of government departments whose members share varied institutional or collective interests. Contemporary examples of these interests include budget allocation, staff expansion, the noninterference of other public officials in the decision-making process, and the preservation and/or expansion of formal powers. The knowledge of civil servants, and the criteria they apply differ from that of most societal actors. Civil servants have a greater knowledge of both first-order (direct and instrumental) and second-order (unintended) consequences as well as implementation difficulties. It implies that what government officials know – “by seeing, training, expertise, and memory” – allows them to form judgments about the content of societal issues and the effectiveness of the available options for dealing with them. Bureaucratic knowledge and a certain framework of reasoning, along with political pressure and self-interested expediency thus determine the content of their policy preferences. Scholars, for instance, explore the role of knowledge in shaping the preferences of actors, and specifically the bureaucrats, in different policy domains (e.g., the policy on taxation,


Ibid.

Reed, “Expert Power and Control in Late Modernity…,” p. 575.

By establishing the most appropriate organizational setting, an organization can maximize the efficiency of its routine operation, which is determined by bureaucratic principles of division of labor and specialization, and also the effectiveness of its knowledge creation activities. See Ikujiro Nonaka, “A Dynamic Theory of Organizational Knowledge Creation.” Organization Science 5(1) (1994).


Ibid., p. 33.

Ibid., p. 34.

Ibid.
immigration, and the environment in the European Union).\textsuperscript{275}

Government officials within key governmental departments in Canada, the United Kingdom, and the United States rely on and apply expert knowledge in a variety of ways in the policy-making process on the detention of child soldiers. The functions they perform and competing forms of knowledge they provide, thus, become essential in determining public policy responses.\textsuperscript{276} This alternative explanation examines three primary functions of knowledge utilization. Government officials might draw on knowledge to perform legitimizing, instrumental and substantiating function.\textsuperscript{277}

The \textit{legitimizing} function of knowledge relies on the symbolic use of information.\textsuperscript{278} Justifying a decision-making process in terms of information is a way in which a “decision process is symbolized as legitimate.”\textsuperscript{279} If government officials are to rely on this function of knowledge we are to expect “aligning their decision-making styles to expectations about what constitutes legitimate action.”\textsuperscript{280} Government officials intend to enhance the credibility and the legitimacy of an organization, endowing them with ‘epistemic authority,’ through the use of knowledge.\textsuperscript{281} This may involve drawing on


\textsuperscript{280} Boswell, \textit{The Political Uses of Expert Knowledge . . .}, p. 48.

\textsuperscript{281} Susan Herbst, “Political Authority in a Mediated Age.” \textit{Theory and Society} 32(4) (2003), p. 484.
knowledge as a means of signaling their adherence to both domestic and international law, and to professional standards.\textsuperscript{282} The reliance on the legitimizing function of knowledge may engender convergence in policies on the detention of child soldiers across these three countries. Canada, the United Kingdom, and the United States, as discussed in the first chapter of this dissertation, demonstrate general compliance with international law on the treatment of child soldiers through the internalization of key legal rules in respective domestic legislatures.\textsuperscript{283} Government officials, who value knowledge as a source of legitimation, would strive to align their policies with the highest standards of international law thus enforcing them on the national level. This alternative explanation thus explores two other functions of knowledge to discern foundations for the hypothesis, which explains the divergence in policy outcomes.

The \textit{instrumental} function of knowledge emphasizes the ability of expert knowledge to enhance the quality of an organization’s output and deliver its goals.\textsuperscript{284} This view identifies a government official as a “rationally trained expert.”\textsuperscript{285} The use of knowledge is characterized as a problem-solving activity.\textsuperscript{286} Bureaucratic organizations are to be collectively assessed based on their effectiveness and efficiency in achieving predetermined objectives.\textsuperscript{287} The instrumental function of knowledge, however, reduces

\textsuperscript{282} Boswell, \textit{The Political Uses of Expert Knowledge} …, p. 48.
\textsuperscript{283} See section “International Laws and Policies Concerning Child Soldiers” in Chapter I. See supra notes # 90 and #95.
\textsuperscript{285} Weber, \textit{Economy and Society} …, p. 975.
\textsuperscript{286} Nonaka, “A Dynamic Theory of Organizational Knowledge Creation …,” p. 16.
the discretion of government officials and does not allow them to account for their influence in the policy-making process. They therefore implement what Eric Nordlinger defined as state preferences.\textsuperscript{288} This instrumental perspective on the use of knowledge, however, does not address the inherent dilemma in the relationship between a specific bureaucratic agency vis-a-vis central authority and/or other rival agencies. Trade-offs characterize bureaucratic competition for influence between agencies around functional policy areas.\textsuperscript{289} Knowledge could also serve to expand their level of discretion in the decision-making process in relation to central authority.\textsuperscript{290}

Government officials resort to the third function of expert knowledge to substantiate organizational preferences of their respective agencies, which do not solely pursue output-oriented goals.\textsuperscript{291} Expansion and consolidation of their influence – in relation to rival agencies to “justify organizational positions and interests”\textsuperscript{292} – concerns representatives of bureaucratic agencies. Under these conditions, a government official acts as a policy entrepreneur, defined as an advocate, willing to make investments of their resources in return for future policies.\textsuperscript{293} A government official utilizes knowledge as an “instrument of power and political positioning”\textsuperscript{294} within the government. Bureaucratic organizations use knowledge strategically to “justify organizational positions and

\textsuperscript{288} Nordlinger, \textit{On the Autonomy of the Democratic State} …, p. 38.
\textsuperscript{291} Boswell, \textit{The Political Uses of Expert Knowledge} …, p. 78.
\textsuperscript{294} Rein and White, “Policy Research: Belief and Doubt …,” p. 257.
interests” and substantiate organizational preferences. Knowledge can also lend authority to the particular policy positions of an organization and “undermine those of rival agencies in cases of political contestation.” Robert Healy and William Ascher, examining the policy process on the national forest planning in the United States, demonstrate how bureaucratic knowledge contributes to the formulation of routines within the government agencies. These established procedures can pre-empt further pressures from a central authority or groups outside of the government, confining deliberation to experts within a bureaucratic agency. Government officials strive to establish effective control over ‘jurisdictional domains’ of expert techniques and practices relevant to their organizations. This factor further contributes to the competition across professional bureaucracies because an autonomous position of bureaucratic power derives from the expertise.

In the context of the policy-making process on the detention of child soldiers, the Department of State (Foreign and Commonwealth Office (UK) and Global Affairs (Canada)) and the Department of Defense (Ministry of Defence (UK) and Department of National Defence (Canada)) might exhibit diverging preferences. While these departments possess operational, legal and technical expertise on the issue of the detention of child soldiers, they may differ in their visions of suitable policy responses. We expect the defense agencies, on the one hand, to emphasize preferences that ensure the security of armed

297 Ibid., p. 7.
299 Reed, “Expert Power and Control in Late Modernity …,” p. 578.
forces and appropriate operational discretion in the field. The government departments dealing with state’s foreign policy and with ensuring compliance with international treaties, on the other hand, may advance preferences which stress human rights concerns in the policy domain.

This alternative explanation examines different functions of expert knowledge in (bureaucratic) policymaking to evaluate the relative influence of government officials during the policy process. The hypothesis it generates is: As the most influential actors in the policy-making process, government officials endeavor to utilize bureaucratic knowledge to substantiate policy preferences of the governmental agency they represent. The policy on the detention of child soldiers in each country, hence, will result from an interagency competition reflecting the preferences and values of the most influential organization in the bureaucratic system.
Alternative Explanation II. The Role of Military Lawyers

This alternative explanation looks at military lawyers as most influential actors in the development of the policy, examining the dual professional identity of the actors. Military lawyers – as military officers – might advance preferences of the military, and – as legal advisors – act as “agents of compliance” with international law during the policy process. Military lawyers are located at the legal-policy nexus in the interpretation (re-interpretation) and application of International Humanitarian Law. They are assigned to provide legal support throughout different strategic-level organizations. Legal advisers are in a position to influence the development of manuals, directives, and operational handbooks at the strategic level. A military lawyer often “serves as a personal advisor to the commander” at the operational level. A military legal adviser must ensure that the commander receives clear and cogent advice “to conduct operations in accordance with law and policy.”

The first potential role of military lawyers is as representatives of the military. The concept of military influence lies at the heart of what Peter Feaver defines as “civil-military problematique.” The military must be authoritative enough, on the one hand, to achieve success in its core professional task of the “management of violence.” The civilian sector, on the other hand, should ensure control over its military agents. Samuel Huntington’s foundational work in the field of civil-military relations posits that optimal

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301 Dickinson, “Military Lawyers on the Battlefield …,” p. 4.
relations between civilian and military leaders rest on the principle of objective control.\textsuperscript{308} The division of labor between the military and civilians, where the military remains politically weak but retains autonomy within its sphere of operations, provides the foundation for this principle.\textsuperscript{309}

This dichotomous view of a relationship between civilian and military sectors, however, was further contested within the research program.\textsuperscript{310} Morris Janowitz, and later Samuel Finer, defined military influence as a legitimate form of military intervention in an effort to convince civil authorities to integrate its preferences.\textsuperscript{311} The focus on military influence captures the idea that the military, as an institution, may be politically powerful even when it does not seize direct power through the supplementation of civilian authority (e.g., a coup d’etat).\textsuperscript{312} Militaries engage in a diverse set of political activities without ever overtly challenging the rights of civilians to govern. The level military’s influence on the policy-making is situated on the continuum beyond the coups/no-coup dichotomy and provides a rich variation in patterns of civil-military interaction.\textsuperscript{313} The involvement of the military in the decision-making process on questions such as the use of force and fundamental budgetary decisions is well documented in literature on civil-military

\textsuperscript{308} Ibid., p. 84.
\textsuperscript{309} Ibid., pp. 70-71.
\textsuperscript{311} Finer, \textit{The Man on Horseback …}, p. 112; See also Janowitz, \textit{The Professional Soldier} ...
If the military is defined as an influencing agent, and a policy issue is a target of their influence, it is necessary to determine the basis of social power for the military to gauge its influence. The military possesses the knowledge and professional expertise to utilize informational and expert power to impact policy change. Risa Brooks identified five tactics, which the military might employ to exert its influence on the policy-making process. These tactics vary in the degree to which they target specific audiences or focus attention on a particular issue. These techniques range from the involvement of the military in electoral politics to military leaders seeking support for a policy from members of the legislative branch, in a pattern that is consistent with agenda-setting. Eliot Cohen further defined the relationship between the civil and military sectors as a “tense and exhausting dialogue” that is the result of a bureaucratic struggle. Janowitz’s definition of the military as a political pressure group that acts similarly to bureaucratic civil servants therefore becomes useful in the operationalization of the concept of military influence.

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317 Ibid.


319 Morris Janowitz, The Professional Soldier …
Timothy Colton distinguishes between four types of policy issues over which the military exercises influence to varying levels of degree: internal, institutional, intermediate and societal.\(^{320}\)

A military establishment perceives a policy towards child soldiers as an internal issue, based on Colton’s distinction in the scope of participation.\(^{321}\) Policy on the detention of child soldiers thus must be resolved within the boundaries of the military establishment. The military attains two key desiderata while promoting policies, which identify this issue as an internal one. First, it addresses its budgetary concerns and willingness to gauge political influence to divert resources to their apparatus.\(^{322}\) The detention of children in armed conflict engenders budgetary concerns on the selection and development of appropriate detention facilities, on the training regarding issues of child protection, and with the specialized equipment for the age assessment, etc.\(^{323}\) Second, the military develops and promotes standard scenarios as “a hedge against future uncertainty,”\(^{324}\) simplifying the planning process. Specifically, the involvement of children in armed conflict in various capacities (e.g., combatants, IED emplacers, spies, messengers) generates a range of uncertainties for military actors, as children become both victims and perpetrators in conflict zones.\(^{325}\) These dilemmas pose practical and legal questions for the military. These issues include determining the levels of force that are permissible when detaining children,


\(^{321}\) Colton, *Commissars, Commanders, and Civilian Authority*, p. 233.

\(^{322}\) See supra note # 314.

\(^{323}\) Kuper, *Military Training and Children in Armed Conflict* …


responsibilities associated with questioning them, and security arrangements for transferring children over to other detention facilities. As part of the military structure, military lawyers therefore may advance the development of a policy that increases the autonomy of the military to reduce uncertainty in the field.

As military lawyers internalize and seek to operationalize the core values embedded in international law, they also may perform a second potential role within military structures as agents of compliance as defined by Laura Dickinson. David Luban observed that military lawyers become “staunch and the faithful rule of law devotees, possibly to an extent greater than many civilian lawyers.” Military lawyers conceive of law as a prerequisite to the meaningful exercise of power. Law may also contribute to national security, serving as a source of predictability. If law defines the conditions under which to use force or to collect intelligence, then “allies and opponents alike may modulate their behavior accordingly.”

Moreover, lawyers within the military play a significant role in interpreting and applying laws that are constantly evolving. There is a growing recognition that the traditional international armed conflict paradigm, featuring prisoners of war detained until the end of hostilities, has been exposed to a series of challenges. This paradigm is

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328 Richard Schragger, “Cooler Heads: The Difference between the President’s Lawyer’s and the Military’s” Slate (20 September 2006).
complicated even further when children are defined as posing a security threat. As when a civilian who engages in combat loses his/her protected status, so too does a child in this situation. A child, however, does not lose the ‘special protections’ “which is due to all children.”332 There is a range of questions that the Geneva Conventions and its Protocols either fail to address or they narrowly provide answers designed for international armed conflicts. These, however, are difficult to apply “to conflicts with nonstate actors.”333

This set of questions relates to the scope of detention authority, the legal process that a state is to provide to those detained, the obligations of states in connection with repatriating detainees at the end of detention and, in the case of children, with rehabilitation and reintegration. The use of the IHL terminology e.g., ‘direct participation in hostilities’ and ‘feasible measures’ carries not only legal but also policy implications given the ambiguity, legal proliferation, and contestation of definitions.334 The US reservation to the OPAC, for example, adopts a narrow definition of direct participation in hostilities.335 This reservation thus excludes children who act as spies, messengers, and cooks from the definition of a child soldier. The priority is therefore to guard the international legitimacy of policy decisions by reducing the discrepancies between those policies and international legal expectations. The reliance of military lawyers on this identity, however, may lead to convergence across the policy-making processes.

This alternative explanation explores the dual professional identity of military

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334 Kennedy, Of War and Law ..., p. 35.
335 The definition specifies that “immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy.” U.S. Senate. 106th Congress. Foreign Relations Committee, Optional Protocol No. 1 to Convention on Rights of the Child on Involvement of Children in Armed Conflict. Treaty Doc. 106-37(a) § 2(2)(A) and (B) (Jun. 12, 2002).
lawyers. It generates the following hypothesis to explain the cross-national variation in the policy. As the most influential actors in the policy-making process, military lawyers act on behalf of the military’s definition of its interests, thus advancing its specific preferences. In this context, this can succinctly be expressed as promoting policies that address this ambiguity of the law and operationalize its abstract principles into specific advice. The policy of each country thus reflects the preferences of senior military officials.

**Alternative Explanation III. The Role of Non-Governmental Organizations**

The first wave of research on the role of norms in world politics focused on how non-governmental actors (NGOs), organized in transnational advocacy networks, strategically utilized ideas and information in influencing the states’ behavior. These studies demonstrated how transnational networks mobilize collective action to engender normative change. Scholars have examined the evolution of such global norms as humanitarian intervention, the use of anti-personal landmines, civilian protection, and the use of child labor. The recognition that “norms do not float freely” and are promoted by real human agents generated the second wave of the scholarship. Studies focused on the role of domestic NGOs in anchoring international norms in domestic

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338 Price, “Reversing the Gun Sights …”


The NGOs’ primary objective was to promote the elements of the international norms to achieve their internalization in national legislatures. Amitav Acharya, for example, explored the role of local contexts and domestic agents in their responses to the norms of common security and humanitarian intervention in Southeast Asia. This early debate on global norm diffusion has clarified some important connections and dynamics. It failed, however, to recognize the heterogeneity of existing NGOs and the possible contested nature of international norms.

NGOs represent a variety of organizations with diverse goals, ideas, and interests. They have to respond to constraints and opportunities posed by respective domestic sociopolitical contexts. Krista Brumley demonstrates the importance of taking into account the complexity of NGOs’ objectives and local contexts, to explain the variation in NGOs’ strategic action. The ways NGOs interpret the local context influences the use of certain strategies over others. The role of civil society involves the consistent advocacy of certain positions and criticism of other stances through injecting ideas, policy proposals, and expertise into the policy process. NGOs employ different strategies, which vary in their extent of cooperation with decision-makers, in an effort to shape policy outcomes. These strategies range from cooperative – providing advice and expertise to policy-makers – to

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confrontational such as issue framing, mobilizing public opinion, and use of the policy instrument of ‘‘naming and shaming.’  

Domestic NGOs in Canada, the United States, and the United Kingdom, involved in the development of the policy on the detention of child soldiers, differ in their choice of strategies. There are some examples of the main advisory organizations in each national context. These organizations perform an extensive monitoring role and distribute information through the publication of reports on policy issues. They also engage with governmental actors in different decision-making venues through submission of written and oral testimonies to the legislative committees and delivering expert-based research to the executive agencies. Examples of these organizations include the Romeo Dallaire Child Soldiers Initiative in Canada, Human Rights First in the United States, and UNICEF UK in the United Kingdom. There is also a range of human rights organization across these three countries, which widely utilize the outside strategies of ‘naming and shaming’ and/or domestic litigation. These organizations include Human Rights Watch, the American Civil Liberties Union, and Watchlist for Children and Armed Conflict in the United States. In Canada, some key examples are Justice for Youth and Children, British Columbia Civil Liberties Association, and Canadian Coalition for the Rights of Children. In the UK’s context, War Child, Child Soldiers International, Liberty, Defence for Children International apply these strategies.

The ICRC and its national chapters (e.g., ICRC US and Canada, ICRC UK and Ireland) maintain the capacity to wield influence on the development of the policy on the

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348 I discuss these strategies, in detail, in the section on the strategic action of NGOs in Chapter II.
detention of child soldiers.\(^{349}\) The ICRC’s agenda, codified in the Geneva Conventions and its’ Protocols, focuses on providing minimum humanitarian protections during armed conflict as well as “faithful application” and interpretation of international humanitarian law.\(^{350}\) The ICRC’s activities in the domain of protection and assistance focus on ensuring better conditions for those who are actually under enemy control (e.g., detention, occupied territory).\(^{351}\) The issue of the detention and protection of vulnerable populations in zones of armed conflict have been at the core of the ICRC’s work since its inception.\(^{352}\) President of the ICRC defined the objective of the organization in “creating a minimal space for humanity in the midst of conflict”\(^{353}\) as a starting point to establish a more comprehensive security system. The ICRC thus often perceives the broader agenda of other human rights organizations as a challenging one to follow through at the implementation stage of the policy-making process.\(^{354}\) The ICRC views the humanitarian and political spheres as separate. The organization’s core principles of independence and neutrality determine its scope of action and a range of strategies to engage with other actors within a policy domain.\(^{355}\) While the ICRC avoids engagement in politics it becomes involved in a

\(^{349}\) ICRC is a hybrid organization in the sense that it retains characteristics of an NGO being composed of private individuals and not of states/governments. At the same time, it stands on the same footing as intergovernmental organization as it carries out tasks assigned to it by states through international treaties. Also, ICRC has the distinct legal status. It retains a status as Observer to the UN General Assembly and the privilege to decline cooperation with investigative and judicial authorities. See Gabor Rona, “The ICRC's Status: In a Class of Its Own,” The International Committee of the Red Cross Legal Division (2004).


dialogue with government authorities and its representatives at every level.\textsuperscript{356} Specifically, the ICRC engages with military commanders and military lawyers on the operational level and with officials at the strategic level, to persuade members of the armed forces to comply with the letter of IHL.\textsuperscript{357} The ICRC believes that engaging in “quiet conversations”\textsuperscript{358} with the representatives of the government is the optimal strategy to achieve its objectives. The organization utilizes condemnations and warnings, and ‘naming and shaming,’ as instruments of the last resort.\textsuperscript{359} When the ICRC decides to use public pressure it neither lobbies the legislature nor advances its position to the media like other human rights advocacy organizations, which take a more outspoken stance.\textsuperscript{360}

Besides the multiplicity of NGOs’ agendas and strategies, there is a growing understanding of the “internal dynamism”\textsuperscript{361} of norms that may give rise to conflicts over definitions leading to revisions of existing international norms. While the agenda-setting process, and framing of the norm takes place on the international level, implementation ensues on the domestic one.\textsuperscript{362} The ratification of an international human rights treaty “is only one step on a long path to the realization of the rights”\textsuperscript{363} with domestic factors.

Jean Pictet proposed Fundamental Principles in 1969, which were proclaimed in Vienna in 1965. The principle of independence defines that “National Societies, while auxiliaries in the humanitarian services of their Governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with Red Cross principles. See International Committee of Red Cross, The Fundamental Principles of the Red Cross: Commentary, January 1, 1979.

\textsuperscript{356} Minear, \textit{The Humanitarian Enterprise} …, p. 74.


\textsuperscript{358} Minear, \textit{The Humanitarian Enterprise} …, p.80.

\textsuperscript{359} Examples of ICRC’s use of public pressure include its public condemnation of the reatment of Palestinians in Israeli detention facilities and the issue of indefinite detention in the Guantanamo Bay Detention Facility. See Forsythe, \textit{The Humanitarians}, p. 298.

\textsuperscript{360} Forsythe, \textit{The Humanitarians}…, p. 152.


\textsuperscript{362} Ibid., p. 107.

defining specific policy options. The acceptance of a norm thus may initiate rather than resolve struggles over its exact content. Domestic actors may reject the frames given to an issue at the international level or “participate in active efforts to ‘translate’ norms for domestic audiences.”  

Antje Wiener and Uwe Puettter emphasize the contested quality of such norms as military intervention, the norm on the prohibition of torture and the norm of environmental sustainability and conclude that implementation on these norms is contingent upon the specific contextual conditions.

The definition of the protection of child soldiers is an example of an international norm that has developed under the involvement of transnational non-governmental organizations. There has been a growing recognition that Article 38 of the Convention on the Rights of the Child (1989), which focuses on the issue of child recruitment, did not address what critics regarded as weaknesses and ambiguities within the existent definition of child soldiering in international humanitarian law. A transnational advocacy network of three human rights and humanitarian NGOs formed The Coalition to Stop Use of Child Soldiers in 1998 to explicitly promote an international standard of 18 as the minimum age of recruitment. The portrayal of child soldiers purely as victims has proved central to the “straight-18 position” campaign and in mobilizing broad support from national governments and international community.

The conceptual narrative of the ‘straight-18’ position rests on three fundamental
principles. The first is to promote the expansion of the definition of a child soldier as a “person under 18 years of age who is part of any regular or irregular armed force or armed group in any capacity.”

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict only partially addresses this agenda. Still, the OPAC has become a key instrument of the “straight-18” platform to pressure state actors to internalize elements of a global norm into national legislature and practice. A second development took place in the area of international criminal law. The language of the Rome Statute (2002) reflected key premises of the “straight-18 position.” The founding document of the International Criminal Court codified a standard that there is no jurisdiction over persons under-18 years of age, thus reinforcing the perception of children as victims. The third approach was to challenge an accepted principle that international humanitarian law serves as a lex specialis to international human rights law in resolving possible conflicts between two corpuses of law. NGOs aimed to advance the principle that international human rights and humanitarian law instruments are co-applicable in times of armed conflict, as an individual does not cease to have basic rights once armed conflict begins.


On the one hand, this document set the demarcation line between adulthood and childhood to the age of 18; on the other, it retained some conditionality of legal protection upon the nature of recruitment (forced or volunteered) and the type of participation in hostilities (direct or indirect). United Nations, Optional Protocol II to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) UN. doc. A/RES/54/263, art 4 (1).

Drumbl, Reimagining Child Soldiers in International Law and Policy, p. 35.

Supra note # 11.

The lex specialis principle holds that when two norms collide, the most specific rule should be applied to provide context for the more general rule. See Nancie Prud'homme, “Lex Specialis: Oversimplifying A More Complex and Multifaceted Relationship?” Israel Law Review 40(02) (2007).

These three elements of the “straight-18” framework on child soldiers formed the potential agenda for domestic NGOs.

Whether domestic NGOs will promote this agenda, and deepen or narrow it, will be contingent on their specific goals, selection of strategies, and the local sociopolitical arena. The nonprofit sector is embedded in the broader political and social developments of a country. This context affects the priorities and strategies of the NGOs’ representatives as well as the ways issues might be framed. Political opportunity structures, which Sidney Tarrow defines as dimensions of the political environment might either encourage or discourage actors from engaging in the policy process.

First, the variation of political systems on the continuum between weak and strong states may ultimately contribute to our understanding of the level of political access to the policy process. Strong states provide fewer opportunities for outside challengers to enter the policy process than more open states, which engage in more extensive bargaining between rival groups. This characteristic of a state could impact NGOs’ choice of strategies. Influence and advisory strategies, for instance, are not likely to impact the

380 Carmin, Hicks, and Beckmann, “Leveraging Local …,” p.705.
governments in closed politics. NGOs therefore might consider resorting to confrontational tactics.\textsuperscript{382} Weak-state societies like the United States, in contrast, are characterized by greater pluralism and a more open relationship between the government and nongovernmental organizations, “potentially including more significant NGO participation in political decision making.”\textsuperscript{383} While NGOs might have disagreements and different visions with government officials over the nature of the policy there is a greater level of receptiveness to NGOs’ propositions and demands. NGOs tend to resort to “institutional approaches and avenues to affect policy”\textsuperscript{384} to foster collaboration with the government. The changes in the sociopolitical environment, in turn, may also alter the degree of NGOs’ access to the political process, leading to a potential shift in NGOs’ strategies.

Second, the institutional structure is another factor that impacts the context within which NGOs try to shape the development of the policy process. Diversity and the richness of “the organizational forms and institutions located between the state and NGO sector”\textsuperscript{385} create a background against which each policy is developed. The key legislative, executive, and judicial institutions and the distribution of powers between them on a specific policy issue define channels of possible influence. They constitute the pressure points at which NGOs can direct their political efforts.\textsuperscript{386} The presence of political opponents and/or allies as well as the influence of other social actors (e.g., media, international organizations, and commercial enterprises) on NGO goals and actions, could also influence the choice of


\textsuperscript{384} Carmin, Hicks, and Beckmann, “Leveraging Local …,” p.706.

\textsuperscript{385} Anheier and Kendall. \textit{Third Sector Policy at the Crossroads}, p. 231.

specific tactics for domestic NGOs.\textsuperscript{387}

Third, “sudden and relatively uncommon”\textsuperscript{388} developments during the policy-making process on the detention policy of child soldiers may present a focusing even, which offers advocates “opportunities to push their solutions, or to draw attention to their special problems.”\textsuperscript{389} NGOs, in their respective national contexts, may utilize these focusing events to recognize new problems or to pay greater attention to existing issues.

This alternative explanation explores the growing role of domestic NGOs as an important actor in the policy-making process with the recognition of diversity in their goals, interests, and positions on a particular norm within respective national contexts. A range of factors – the level of access of NGOs to the policy process, the nature of the relationship between NGOs, government officials and other policy actors, political preferences of policy opponents and allies and occurrence of focusing events – could influence a choice of tactics for domestic NGOs. This generates the following hypothesis: If the most influential actor in the policy-making process, a domestic NGO will promote the policy that is reflective of its defined national agenda and priorities on the detention of child soldiers during an armed conflict. Where domestic NGOs prioritize detention of child soldiers over other related child soldiers’ issues (e.g., recruitment and use of children in armed conflict, protection of child refugees) the resulting policy will more closely approximate international norms. In contrast, where they prioritize other child soldier-

\textsuperscript{387} See Carmin, Hicks, Beckmann, “Leveraging Local …;” Gormley and Cymrot, “The strategic choices of child advocacy groups …;” Levitt and Merry, “Vernacularization on the Ground …;” Brumley, “Understanding Mexican NGOs …”


Thomas Birkland also notes that focusing events highlight a problem in one prominent event that brings public and political attention to policy issue (p. 54). Thomas Birkland, \textit{Lessons of Disaster: Policy Change after Catastrophic Events}. (Georgetown University Press, 2006).
related issues, the resulting policy will not reflect international norms.

**Research Design and Methodology**

This dissertation evaluates the variables that differentiate Canada, the United Kingdom, and the United States in their policies on the detention of child soldiers. I propose a series of hypotheses to examine the role of three strategic actors in the policy process to determine a variation in the policy outcome. I collected and analyzed data, which required both quantitative and qualitative methods to test these hypotheses. Specifically, qualitative research was assembled to collect, transcribe and perform a content analysis of a series semi-structured interviews with strategic actors involved in the policy process on the detention of child soldiers. I have subsequently imported the findings in the NVivo software to generate the numerical data (series of codes) needed to present aggregate results. These methods allowed for comparing the roles and relative influence of three actors at distinct stages of the policy process (discussed in detail in Chapter IV).

This dissertation applies a policy design framework. It allows to understand how, and why, certain kinds of design elements are utilized instead of others, and to recognize the full range of consequences that stem from differences in those designs.\(^{390}\) Policy design is “a purposeful enterprise through which elements of policy are arranged to serve particular values, purposes, and interests.”\(^{391}\) Policy designs involve a range of actors at different points in time, often with different or conflicting aims. The policy design approach brings three stages of the policy process, i.e., agenda-setting, policy formulation, policy implementation, into a single model. This framework allows for perceiving “the

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\(^{390}\) Anne Schneider and Helen Ingram, *Policy Design for Democracy* (University Press of Kansas, 1997).

\(^{391}\) Ibid., p. 3.
actual processes of policy and actors involved at each stage.”\textsuperscript{392} The outcome of the policy on the detention of child soldiers in each country thus becomes contingent upon the configuration of the relative importance of the actors in particular stages of the policy process. This dissertation explores the role of three actors in each specific stage of the policy process: agenda setting, policy formulation, policy implementation and enforcement to compare each of these policy subsystems. These three stages of the policy process will provide the foundation for the coding process during the data analysis.

This dissertation utilizes comparative case studies to offer the second test of these hypotheses. A case study represents an “instance of a class of events,”\textsuperscript{393} referring to a phenomenon of scientific interest. The detention of child soldiers is an example of a policy issue that requires balancing national security and human rights agendas, with implications for the policy process in liberal democracies. This deliberate delimitation of the scope of case studies and subsequent comparison across cases thus may potentially contribute for the development of middle-range theories that address salient problems or puzzles associated with the relationship between human rights and national security.\textsuperscript{394}

The countries examined in this dissertation – Canada, the United States, and the

\begin{flushleft}
\end{flushleft}
United Kingdom – allow for the development of the most-similar research design. As part of the Atlantic security community, these three Anglo-Saxon, consolidated, liberal democracies demonstrate a high level of similarity, in terms of their shared norms and values, their common security practices and general compliance with international law. These similarities allow the analysis to control for a number of key variables. A comparative approach allows for a link between the research question and the research design reducing the complexity of reality and controlling for any variation. These cases do differ in that two nations, the United Kingdom and Canada, operate as constitutional monarchies with a Westminster system of government. They both demonstrate a greater level of similarity with each other than with the United States, which is itself a full presidential democracy. Yet, the variation in the policy on the detention of child soldiers is still evident across all three cases. So, this distinction is clearly not ultimately decisive.

395 I discuss in detail these three convergent forces, which emphasize the similarity across these three cases, in the “Puzzle section” of Chapter I.
397 Paul Pennings, Hans Keman, and Jan Kleinnijenhuis, Doing Research in Political Science: An Introduction to Comparative Methods and Statistics (Sage, 2006), p. 23.
Chapter IV. Data Analysis

This chapter aggregates the analytic data gleaned from a series of semi-structured interviews I conducted in order to initially evaluate the strategies and efforts of the three respective actors – military lawyers, government officials, and the NGOs’ representatives.398

The chapter consists of four sections. The first discusses the primary and secondary sources of data and the process of sampling. The second presents key coding categories, which correspond to major stages of the policy process on the detention of child soldiers. The third section presents the results of the primary data analysis to examine the variation in the involvement of three actors in the development of the policy on the detention of child soldiers across three national contexts. I analyzed these results both quantitatively, using NVivo 11 matrix coding query tools, and qualitatively, by examining the context of the coded text. I drew comparisons across aggregate primary data, to discern the degree of involvement in, and potential strategic choices, of each of the three actors, in each country, at each particular stage of the policy-making process. In the concluding section, I therefore offer inferences about the three hypotheses examined in this dissertation. This section also describes the outline for the chapters that follow.

Data and Sampling

This dissertation analyzes both primary and secondary data. The semi-structured interviews represent the primary source of data. These interviews provided the study with the information necessary to generate a comprehensive picture of the decision-making

process in each country. The interviews also yielded data regarding the role of specific stakeholders, the relationship between key actors in the policy process, and how the policy process was ultimately implemented.\textsuperscript{399} The questionnaire consisted of eleven open-ended questions (Appendix B). I designed questions 1, 2, and 5 to ask respective actors about their roles and the degree of involvement of their organization/agency in the policy process. Questions 4 and 6-9 aimed to understand the conditions, instruments, and techniques, which shaped the policy process. Finally, with questions 3, 10, and 11, I asked interviewees to discuss the role and level of involvement of other stakeholders involved in the policy process.

I also collected a range of secondary data about the positions and attitudes of these actors towards the policy on the detention of child soldiers in each country.\textsuperscript{400} I analyzed legislative records, bills and their drafts, and witnesses’ testimonies in legislative committees that specialize in a selected policy area.\textsuperscript{401} The legislative activity, considered to be one of the most “popular lobbying techniques employed by interest groups,”\textsuperscript{402} is a useful indicator of the involvement of three principal stakeholders in the policy process.


\textsuperscript{400} Also, while archival institutions did not provide public access to documents, which would reveal information on recent developments in the policy-making process regarding the detention of child soldiers, I submitted Freedom of Information Act Requests (FOIA) to a range of agencies. I received responses from the Department of National Defence (Canada), Department of Global Affairs (Department of Foreign Affairs, Trade and Development, Canada) and Ministry of Defence (United Kingdom). Some of my FOIA requests remain unanswered (e.g., United States’ Department of Justice) or established a long period of processing time.

\textsuperscript{401} In Canada, both the House of Commons and the Senate have standing Committees on Foreign Affairs and International Trade, Human Rights, National Security and Defense debated different aspects of detention policy. Similarly, in Great Britain, within both houses of the Parliament, Defense and Foreign Affair Committee discuss policy provisions on the detention during military operations. There is also a Joint Committee on Human Rights within the United Kingdom’s Parliament that sometimes raises concern on the issue. In addition, every five years, Great Britain’s legislature institutes the Select Committee responsible for amendments of Armed Forces Bill. In the United States, both the Senate and the House of Representatives established Committees for Armed Services and Foreign Relations to provide expertise on issues such as a detention policy.

\textsuperscript{402} Birkland, “Focusing Events, Mobilization, and Agenda Setting…,” p. 59.
also analyzed policy memos, emails, notes on meetings, and press releases of the specific bureaucratic agencies pertinent to the policies on the detention of child soldiers in Canada, the United Kingdom, and the United States.\textsuperscript{403} These types of documents became particularly relevant for an evaluation of the role of government officials and military lawyers in the policy-making process. I also identified three types of documents relevant for the analysis of the varying agendas of NGOs and their choices of strategies in respective national contexts.\textsuperscript{404} The first category included reports, statements, witness testimonies delivered to different government agencies as well as the legislative branch of the government. The second group consisted of reports submitted to international bodies, which are responsible for the enforcement of international legal instruments, such as the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Council. The third type were research reports, briefings and press releases, distributed to the general public.

The main policy actors in the development of the policy on the detention of child soldiers – government officials, military lawyers, representatives of non-governmental organizations – in each country constituted the “population of interest” in this study.\textsuperscript{405} I

\textsuperscript{403} In Canada, the principal agencies included Department of National Defence, Department of Global Affairs (Department of Foreign Affairs, Trade and Development, Canada), Canadian International Development Agency (it merged with the Department of Global Affairs in 2013). In the United States, the principal agencies included the Department of State, the Department of Defense, the Department of Justice. In the United Kingdom, the principal agencies included Ministry of Defence and Foreign and Commonwealth Office.

\textsuperscript{404} The first category included reports, statements, witness testimonies delivered to various government agencies as well as the legislative branch of the government. The second group consisted of reports submitted to international bodies, which are responsible for the enforcement of international legal instruments, such as the Committee on the Rights of the Child, the Committee Against Torture, etc. The third type were research reports, briefings and press releases, distributed to the general public.

\textsuperscript{405} The population of interest is defined as “target population that the study aims to understand.” See Dahlia Remler and Gregg Van Ryzin, \textit{Research Methods in Practice: Strategies for Description and Causation} (SAGE Publications, 2010), p. 149.
conducted purposive sampling to perform an inference from this population. Purposive sampling does not provide a sample that is necessarily representative of the population as a whole, but indicates the choice of subjects for the research that “yields the most relevant and plentiful data.”

I interviewed military lawyers, who are currently engaged in the policy process on the detention of child soldiers, in each country. I also spoke to military lawyers, who previously served at both the strategic and operational levels, in the United Kingdom and the United States. I interviewed a representative of the Judge Advocate General Command in the Canadian context. The United States also prosecuted child soldiers in their military commissions’ system (e.g., Omar Khadr and Mohammed Jawad). I spoke to military lawyers involved in these two cases, from both the Defense Council and the Office of the Chief Prosecutor of Military Commissions.

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406 Purposive sampling permits the researcher to limit the number of subjects to be interviewed, recognizing the “intensive, time-consuming character of qualitative data collection and analysis,” allowing for a more “in-depth (thick) description and the selection of cases of theoretical importance.” Remler and Van Ryzin, *Research Methods*, p. 58.

<table>
<thead>
<tr>
<th>Department/Ministry</th>
<th>Canada</th>
<th>The United States</th>
<th>The United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of National Defence</td>
<td>Department of Defense</td>
<td>Ministry of Defence</td>
<td></td>
</tr>
<tr>
<td>Department of Foreign Affairs, Trade and Development (now Global Affairs Canada)</td>
<td>Department of State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department of Justice</td>
<td>Department of Homeland Security</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I selected different government departments involved in the development of the child soldier detention policy, in order to be able to interview government officials in each country (Table 4.1). Doing so allowed me to understand the perspectives of different bureaucratic departments on the development of the policy.
<table>
<thead>
<tr>
<th>Country/NGO</th>
<th>Domestic</th>
<th>‘Transnational (with Domestic Chapter)</th>
<th>Focus on Child Soldiers Detention Policy</th>
<th>Focus on Broader Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CANADA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amnesty International-Canada</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>British Columbia Civil Liberties Association</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canadian Civil Liberties Association</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canadian Coalition for the Rights of Children</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justice for Children and Youth</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Bureau for Children’s Rights</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rideau Institute</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romeo Dallaire Child Soldiers Initiative</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td><strong>THE UNITED STATES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACLU</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Amnesty International-USA</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Bellevue Program for Survivors of Torture</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The ICRC Washington DC Delegation</td>
<td></td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>International Justice Network</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human Rights First</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human Rights Watch</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td><strong>THE UNITED KINGDOM</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amnesty International</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>CAGE</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Child Soldier’s International</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Children’s Society</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Coram Children's Legal Centre</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Liberty</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>War Child-UK</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Quakers in Britain</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>UNICEF-UK</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
I identified key NGOs in each country whose work has focused on either one or a combination of the three following areas: first, the protection of children in armed conflict; second, the broader detention policy during military operations; and third, the detention of child soldiers during armed conflict.\textsuperscript{408}

Table 4.2 demonstrates that I collected a range of interviews with representatives of American NGOs, who work broadly on the detention policy during military operations but also incorporate the issue of the detention of child soldiers in their portfolio (e.g., International Justice Network, Human Rights First, Amnesty International-USA). The three who focused directly on the issue of the detention of child soldiers during military operations were Human Rights Watch (HRW), the American Civil Liberties Union (ACLU), and the International Committee of the Red Cross’ (ICRC) Regional Delegation in Washington DC. Interviews with representatives of these NGOs provided me with an essential perspective for understanding the development of the policy process within the United States. The vast majority of Canadian NGOs involved in the development of the policy on the detention of child soldiers had a broad human rights’ focus in their portfolios (Table 4.2).\textsuperscript{409} The Romeo Dallaire Child Soldiers Initiative (Dallaire Initiative) had a distinct approach from most Canadian NGOs, focusing on the security aspect of the issue. The majority of British NGOs demonstrated no interest in the issue of the detention of child soldiers (Table 4.2). Rather they focused their efforts either on the broader issues of the protection of children in armed conflict or child protection in a domestic context.

\textsuperscript{408} I interviewed representatives of the advocacy or policy sections of these NGOs. The principal role of these actors within organizations focused on the development of instruments and strategies aimed at influencing the development the policy process on the selected issue. 

\textsuperscript{409} These organizations included British Columbia Civil Liberties Association, Justice for Youth and Children, Canadian Coalition for the Rights of Children, Amnesty International Canada.
Table 4.3. Number of Interviews with Military Lawyers, Government Officials, and Representatives of NGOs

<table>
<thead>
<tr>
<th>Sector</th>
<th>Country</th>
<th>Canada</th>
<th>The United States</th>
<th>The United Kingdom</th>
<th>International NGOs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military Lawyers</td>
<td></td>
<td>1</td>
<td>9</td>
<td>5</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Government Officials</td>
<td></td>
<td>5</td>
<td>8</td>
<td>1</td>
<td></td>
<td>14</td>
</tr>
<tr>
<td>Non-Governmental Organizations</td>
<td></td>
<td>8</td>
<td>14</td>
<td>16</td>
<td></td>
<td>38</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>14</td>
<td>31</td>
<td>22</td>
<td>2</td>
<td><strong>69</strong></td>
</tr>
</tbody>
</table>

Source: NVivo-11 Program Interview Findings

I faced some challenges ensuring a response rate and securing access to the subjects in the process of sampling. It was challenging to gain access to both military lawyers and representatives of government agencies in Canada. The fact that the issue of military detention remains a toxic subject in the Canadian political landscape partially explains why. I encountered difficulty in securing the responsiveness from the government officials in the context of both Canada and the United Kingdom. They often cited their inability to be interviewed due to the sensitivity of the subject and certain employment-related confidentiality. Nonetheless, I managed to secure interviews with representatives.

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410 The NVivo-11 program was used to create all the Charts in this chapter.
411 Since 2007, there have been three attempts to inquire into the matter of detention and transfer of detainees during Canada’s military engagement in Afghanistan: before the Federal Court, Investigation by the Military Police Complaints Commission and study by the House of Commons Special Committee on the Canadian Mission in Afghanistan. Still, non-governmental organizations consider these attempts incomplete and continue to call for a new public inquiry into the matter. The latest appeal came in 2016 from NGOs, diplomats, current and former parliamentarians. See David Pugliese, “Calls Mount for Inquiry into Canadian Military’s Treatment of Afghan Detainees” National Post November 2, 2016; Murray Brewster, “E-petition calls on Liberals to hold inquiry into Afghan torture allegations” CBC News. April 16, 2016.
of all three groups across these three countries, conducting a total of sixty-nine interviews. Table 4.3 illustrates the number of interviews, which I held with representatives of each group involved in the development of the detention policy on child soldiers in each national context. I provided a list of departments and positions of military lawyers, government officials and representatives of NGOs interviewed in the course of this research (Appendix D), ensuring the confidentiality of the subjects according to the IRB protocol (Appendices A, C).

**Coding**

This dissertation analyzed data qualitatively for “defining concepts, categorizing different types of attitudes, behaviors, motivations, as well as mapping the range, nature and dynamics of the phenomena.”\(^{412}\) The analysis involved three stages.\(^{413}\) First, I transcribed all the interviews and classified each interview, to organize the data, according to the type of actor: whether government official, military lawyer or NGO representative. The categorization of these subjects sometimes presented a challenge, as they could have held multiple positions during their careers.\(^{414}\) I based the decision to categorize the subject, as a member of one group, or another, on the position he/she held during their involvement in the policy process in these contested cases.

Second, using the NVivo 11 software, I summarized and categorized data through


\(^{413}\) John Creswell identifies of the qualitative data analysis: the preparation and organization of the data, the coding of the data, and finally the presentation of the data in the form of figures and charts. See John Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE Publications, 2013), p. 198.

\(^{414}\) For example, an interview was conducted with a retired US Navy surface warfare officer, however, his relation to the subject of this dissertation stemmed not from his involvement in the US military, but rather considered the expert testimony he provided to the Omar Khadr case, during the military commissions trial. It allowed the research to qualify the subject under the group of the United States’ NGOs.
a coding process. Codes represent “the decisive link between the original ‘raw data,’ such as interview transcripts, and the researcher’s theoretical concepts.” The process of coding entails the use of a series of techniques, which compare and evaluate different subsets of data. I identified some predetermined codes that directly pertain to the research question. I relied on the literature of the policy process to create three key codes: agenda setting, policy formulation, and policy implementation and enforcement.

Two agenda-setting models provided the necessary insight into how policy issues gain salience and maintain a central place, on both public and governmental agendas, for the construction of the ‘agenda-setting’ code. John Kingdon’s ‘streams’ model of agenda-setting articulates how these problems first gain attention and how these issues move onto decision agendas. David Rochefort and Richard Cobb’s ‘problem definition’ framework, alternatively, investigates how stakeholders engage in the process of strategically framing issues to increase their salience. These theoretical propositions helped define the...
principal elements in coding the agenda-setting of a national detention policy towards child soldiers. The code specifically incorporated such elements as addressing the issue as a distinct part of an organization’s portfolio, incorporating the issue of child soldiers into a greater portfolio of the organization and references related to the issue’s framing process.

The policy formulation stage of the policy process involves the development of policy alternatives to address issues on the public agenda and to transform problems and proposals into government programs.\textsuperscript{420} The development of a policy on the detention of child soldiers demands the input of specialized knowledge from policy actors due to its human rights, legal and operational implications.\textsuperscript{421} The code on the policy formulation therefore incorporated references to the specific policy advice on the issue of the detention of child soldiers. The assessment of the age of children detained during military operations has become an example of an issue that requires technical expertise and specialized knowledge. Finally, the treatment of detained child soldiers, their transfer, and their prosecution represent three key areas over which stakeholders debated during the initial policy formulation stage of the policy process.

Laurence O'Toole broadly defines policy implementation as “what happens between the establishment of an apparent intention on the part of the government to do something or to stop doing something, and the ultimate impact this has in the world of action.”\textsuperscript{422} I relied on the bottom-up approach to define the code of ‘policy

\textsuperscript{420} Thomas Dye, \textit{Understanding Public Policy} (Pearson, 2012), p. 42.
\textsuperscript{421} See the introduction to Chapter III of this dissertation for the discussion of reasons why the policy on the detention of child soldiers requires the application of expert-based knowledge.
The bottom-up approach envisions that key policy implementers are political actors in their own right. Lipsky’s concept of the ‘street-level bureaucracy’ and his stress on the relative autonomy of these professionals provided a foundation for the bottom-up approach. I applied this framework to develop the code, which allowed for assessing the central role of actors in shaping the outcomes during the implementation stage of the policy process.

I also incorporated such elements as ‘monitoring’ and ‘enforcement’ into the code. NGOs possess limited “material capabilities relative to” their government counterparts and most treaties concerned with the protection of child soldiers include “feeble enforcement provisions or none at all.” Policy instruments such as ‘naming and shaming’ and the use of domestic courts became attractive for NGOs, in their efforts to influence policy implementation. Policymaking is an interactive process. Policy implementation and policy formulation stages of the policy process therefore continuously inform each other. The key elements of my coding on ‘implementation and enforcement’ thus reflect those outlined in policy formulation and vice-versa. This approach allows for the

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424 Lipsky, *Street Level Bureaucrats* ...


427 I discuss the scholarly debate on how NGOs utilize these two types of strategies in Chapter II.

observation that issues that were contentious during the policy formulation stage (e.g., the issue of age assessment) remained controversial during the following stage of the policy process.

I utilized these definitions of predetermined codes to ‘tag’ responses of military lawyers, and representatives of government and non-government organizations in each country to determine their relative involvement in each stage of the policy process. I specifically identified responses which discussed each actor’s engagement in the policy process and their agencies’ potential choice of strategies in an effort to possibly impact the policy outcomes. I used NVivo 11, a text analysis program, to facilitate coding data. I specifically applied the NVivo 11 matrix coding query tools to quantitatively analyze the results. The matrix coding query allowed for performing a two-fold task. First, it provided the basis for a comparative analysis, which demonstrated “how often different groups report particular experiences or attitudes.”

429 These findings allowed for reporting on the positions of each of the three actors at distinct stages of the policy process relative to each other. 430 Second, the number of coded categories quantitatively illustrated the level of engagement of each actor at different stages of the policy process. I present the results of the quantitative analysis in the form of charts in this chapter.

Comparing the number of coded categories, however, did not describe the complex policy process in each country nor the relative participation of each actor. I therefore also analyzed the substance of the interview text qualitatively to assess the level of involvement of each actor during each stage of the policy process in Canada, the United Kingdom, and

430 Ibid.
the United States. The use of both quantitative and qualitative analysis allowed me to present the varied involvement of each of the three actors at each distinct stage of the policy process, in each national context. The next section details the primary data analysis results within each state’s context.

**Data Findings and Analysis**

*The Policy Process in the United States*

Chart 4.1. The Role of the Key Actors in the Agenda-Setting Stage of the Child Soldiers' Detention Policy in the US

Chart 4.1 illustrates that, of the three set of actors, American NGOs were significantly involved in the agenda-setting stage of the policy process. Military lawyers and government officials provided a minimum input during this phase. The representatives of NGOs contended that they chose to utilize two key strategies to bring the issue of the
detention of child soldiers to the agenda of decision-makers. NGOs’ first strategy was the framing of the issue of the detention of child soldiers based on two notions. First, NGOs’ claimed that the United States’ forces should treat detained child soldiers primarily as victims, by virtue of their age. Second, that detention should be a measure of last resort and advocated for alternatives to detention, which prioritize rehabilitation and reintegration. NGOs utilized a range of tactics to propagate their framing, such as securing media coverage and issuing special reports on the issue. A representative of the ACLU Human Rights Program, for example, in speaking about instruments that the organization used in its advocacy efforts, noted:
Blogs, media reports, talking to the reporters, having, for example, Associated Press write a major story about a number of children who are held in custody those were among our major instruments.\textsuperscript{431}

Chart 4.2. The Issue of the Detention of Child Soldiers on the Agenda of American NGOs

\begin{figure}
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\end{figure}

The formulation of a coalition of NGOs was the second strategy to advance the issue of the detention of child soldiers onto the decision-makers’ agenda. American NGOs claimed to retain a high level of coordination in their activities on the issue of the detention of child soldiers despite NGOs embracing varying positions on the issue (Chart 4.2). There were organizations such as HRW, the ACLU, and the ICRC’s Regional Delegation in Washington that identified the issue as a distinct policy concern. Other organizations defined the issue of the detention of child soldiers just as “a part of the organization’s

\textsuperscript{431} Representative of the American Civil Liberties Union Human Rights Program (ACLU), Personal Interview with the Author, New York, NY, USA, June 1, 2016.
advocacy.” These organizations claimed to use the detention of child soldiers as a mean to draw attention to other problems, such as the detention policy in Guantanamo prison facility, trials undertaken by military commissions and/or the extensive issue of the involvement of children in armed conflict.

Representatives of NGOs recognized the leadership role of Human Rights Watch and its Children’s Division in facilitating the coordination among different organizations. A representative of the ACLU Human Rights Program commented that “there was quite good coordination among the different groups.” HRW retained expertise and resources to perform “the most significant role among NGOs on the aspects of detention that were specifically related to the special cases of juveniles.” The coordination of NGOs’s and the presence of the leadership might have potentially allowed these organizations to formulate an informal coalition despite differences in each NGOs’ portfolios and their working methods.

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432 Senior Counsel at the Human Rights First, Personal Interview with the Author, New York, NY, USA, August 4, 2016. See also supra Table 4.2. It identifies NGOs that classified the issue of the detention of child soldiers as the distinct issue and those that incorporated it in their broader portfolios.

433 Representative of the ACLU Human Rights Program, Personal Interview with the Author. Representatives of different NGOs further recognized the leadership role of Children’s Division of HRW in providing leadership and coordination mechanism for maintaining the coalition among NGOs. Senior Counsel at Human Rights First, Personal Interview with the Author, New York, NY, USA, August 4, 2016; International Legal Director at Human Rights First, Personal Interview with the Author, New York, NY, USA, August 4, 2016; Amnesty International USA Program Manager, Phone Interview with the Author, Washington DC, USA, August 15, 2016.

434 International Legal Director at Human Rights First, Personal Interview with the Author, New York, NY, USA, August 4, 2016. HRW has been involved in the work on the issue of children in armed conflict since 1994. It has become the constitutive member of the Coalition to Stop the Use of Child Soldiers which advocated for the ratification of the OPAC. HRW directed its efforts and resources towards US’ ratification of the OPAC and eventual domestication of the law in such legal documents as Child Soldiers Prevention and Child Soldiers Accountability Act.
US government officials, however, were the most involved during the policy formulation stage of the policy process (Chart 4.3). The interviewees asserted that government officials specifically participated in drafting directives and developing a “uniform-based policy […] to gather all the practices and put them in one place.”

Government officials in specialized agencies, such as the Office of the Secretary of Defense (OSD), brought their expertise to the process. A representative from the OSD, who was a principal drafter of several key Department of Defense (DoD) doctrinal directives, noted, “we wanted to make sure with proper notifications that people up in the

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435 Senior Policy Advisor in the Office of the Secretary of Defense, Skype Interview with the Author, Orem, UT, USA, June 17, 2016.
chain of command were aware of the presence of minors within their facilities.”

Interviewees also pointed out that Department of State (DoS) and Department of Defense (DoD) officials often debated the development of the policy on the issue of the detention of child soldiers. The DoS, for instance, “is more sensitive to treaty implications and the United States’ not following its treaty obligations regarding child soldiers” while the DoD is more concerned with “the issue of force protection.” Nevertheless, as the Legal Advisor for the DoS observed, “our position was the position of the US government.” The debates between departments on the issue of the detention of child soldiers “were not over the rule” but “ensued over the application of the rule in a particular case.” The US agencies while possibly retaining each agency’s distinct perspectives on the issue, thus embraced the overarching position of the government during the formulation stage of the policy process.

Chart 4.3 also illustrates that NGOs nonetheless continued to remain involved during the policy formulation stage. Representatives of American NGOs contended that they principally chose to resort to insider strategies in their efforts during this stage of the policy process. They cultivated relationships with different branches of the government and the varied agencies within the government responsible for the development of a policy. One interviewee, for example, suggested that the ICRC would participate in a confidential dialogue with authorities. The purpose of maintaining communication with government

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436 Ibid.
437 Director of the International Human Rights Law Clinic and Omar Khadr United States Civilian Lawyer, Personal Interview with the Author, Washington DC, USA, June 7, 2016.
438 Department of State Legal Advisor (2009-2013), Phone Interview with the Author, New Haven, CT, June 16, 2016.
439 Ibid.
440 Ibid.
441 Ibid.
officials was to share knowledge and expertise on the issue “to persuade authorities that it is their responsibility to do something.”\textsuperscript{442} The Deputy Assistant Secretary of Defense for Detainee Policy also commented that he regularly met with representatives of the ICRC and other human rights NGOs, such as Human Rights First and Human Rights Watch.\textsuperscript{443} The NGOs also collaborated with other actors such as the defense military lawyers representing child soldiers before the US military commissions. These two actors coordinated their efforts to engender changes in the policy, which established and regulated military commissions, on the legislative level. The Lead Defense Counsel at the US military commissions (2008-2009), who represented Mohammed Jawad, commented on the cooperation with NGOs, “they [NGOs] were active. They arranged lobbying visits with the Senators and Congressmen.”\textsuperscript{444} NGOs, through their cooperation with other actors therefore could have potentially exercised leverage on the formulation of the policy (an issue assessed in the subsequent case study on the development of the policy in the United States).

Chart 4.3 additionally illustrates that military lawyers participated least during the policy formulation stage of the policy process. Yet, information from the interviews suggests that military lawyers, on both the defense and prosecution sides, retained a certain degree of involvement through their engagement in the military commissions; which also involved child soldiers (e.g., Omar Khadr and Mohammed Jawad). This engagement and cooperation with other policy actors might potentially impact the formulation of the policy

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\textsuperscript{442} Head of the ICRC Regional Delegation to the United States and Canada (2004-2009), Skype Interview by the Author, Dublin, Ireland, June 22, 2016, \\
\textsuperscript{443} Deputy Assistant Secretary of Defense for Detainee Policy (2010-2013), The Department’s Rule of Law and Humanitarian Policy, Personal Interview with the Author, Washington, DC, USA, June 6, 2016. \\
\textsuperscript{444} Lead Defense Counsel at the US Military Commissions (2008-2009), Skype Interview with the Author, Mountain Home AFB, ID, May 19, 2016.
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on the issue of accountability mechanisms for child soldiers detained during military operations.

Chart 4.4. The Role of the Key Actors in the Policy Implementation and Enforcement Stage of the Child Soldiers' Detention Policy in the US

Chart 4.4 illustrates that military lawyers were significantly involved in the implementation of a policy on child soldiers in the United States, followed by representatives of NGOs and government officials respectively. The military legal advisers’ primary role was to “ensure compliance with the US law and policy, trusting that it largely comports with IHL [international humanitarian law].” Military lawyers identified their primary role as adapting changes that took place at the strategic level into

445 Staff Judge Advocate U.S. Army, U.S. Central Command, Skype Interview with the Author, Phoenix, AZ, USA, May 19, 2016.
standard operating procedures on the operational level. They, thus, claimed to act as both implementers of the US’ broader policy and agents of compliance with international law.

The data collected through interviews suggests that military legal advisers might have taken primary responsibility for the implementation of the policy at the operational level. NGOs, however, became increasingly involved in the enforcement of the policy. First, representatives of non-governmental organizations claimed to use the instruments of alternative reporting to international forums such as the Committee on the Rights of the Child, the Organization for Security and Cooperation in Europe, the Committee against Torture. They used this instrument to both monitor the government’s implementation of the policy and to reveal instances of government’s non-compliance with international legal standards on the issue. A Representative of the ACLU, in a discussion about the organization’s engagement during this stage of the policy process, commented:

We have used documentation, reporting. One of the things that we have produced in advance of the United States review before the CRC is this report “Soldiers of Misfortune: Abusive US Military Recruitment and Failure to Protect Child Soldiers.”

Second, interviewees disseminated the results of their reports and monitoring activities in their efforts to demonstrate examples of the US government’s non-compliance with the OPAC. This strategic use of information to pressure the government to comply with human rights standards is an example of a strategy of ‘naming and shaming.’

447 Representative of the ACLU Human Rights Program, Personal Interview with the Author.
448 Ibid.
449 See supra note # 189 for the definition of ‘naming and shaming.’
Canadian NGOs demonstrated a high degree of involvement in the agenda-setting stage of the policy process on the detention of child soldiers, with the two other set of policy actors demonstrating a low level of engagement (Chart 4.5). Nevertheless, in their interviews, representatives of Canadian NGOs, presented a different array of strategies than their counterparts in the United States. The key organizations differed in their claims on the issue of detention of child soldiers. Canadian human rights NGOs advanced a ‘victims first’ perspective, which focused on the government’s responsibility to provide rehabilitation and reintegration services for child soldiers in detention. The senior counsel at the British Columbia Civil Liberties Association (BCCLA), referring to the case of Omar Khadr, emphasized key elements of this perspective:
There was also a lot of conflation within the advocacy community about what it means to view a child soldier as a victim under international human rights law versus whether he was innocent of the conduct that he was accused. It was possible that he [Omar Khadr] has done everything that the US government has accused him of doing and it is also equally possible for us to say that he is a victim and that he should be treated differently.\textsuperscript{450}

The Dallaire Initiative, in contrast, claimed to endorse a ‘security’ frame on this issue. It chose to portray child soldiers both as victims and potential security threats, offering strategies on how best to address the issue of child soldiers on the operational level.\textsuperscript{451} I will demonstrate how these differences in the strategies of issue framing – during the agenda-setting stage of the policy process – had potential implications for the development of the policy on the Canadian context.

\textsuperscript{450} Senior Counsel at the British Columbia Civil Liberties Association (BCCLA), Skype Interview with the Author, Toronto, Canada, August 25, 2016.
\textsuperscript{451} Executive Director of Romeo Dallaire Child Soldiers Initiative, Skype Interview with the Author, Halifax, Canada, August 16, 2016.
The majority of Canadian NGOs also said that they identify the detention of child soldiers as a part of their organization’s broader advocacy portfolio. The senior counsel at the BCCLA noted, “the work that we did on child soldiers was a subset of the work that we did more broadly on detainees.” The issue of the policy on the detention of child soldiers thus might have been instrumentalized to reinforce NGO’s broader agenda, such as the practice of detention during military operations or the advancement of government’s compliance with the international legal standards such as Convention on the Rights of Child and its Protocols. The staff lawyer at the Justice for Children and Youth (JFCY), who represented the organization during its intervention on behalf of Omar Khadr at the Supreme Court of Canada (SCC), emphasized that the case was a part of the JFCY’s larger

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452 Senior Counsel at the BCCLA, Skype Interview with the Author.
struggle. The NGO advocated the SCC to “adopt the Convention on the Rights of the Child as a part of the domestic legislation”\textsuperscript{453} and Khadr’s case advanced this general argument. In the Canadian context, the lack of NGOs with a predominant focus on the policy of detention of child soldiers limited opportunities for coordination among organizations. This lack of collaboration among NGOs on the issue, as I will demonstrate, also contrasted with the United States.

Chart 4.7. The Role of the Key Actors in the Policy Formulation Stage of the Child Soldiers’ Detention Policy in Canada

![Chart showing the role of key actors in policy formulation]

Also, in contrast to the United States, Canadian military lawyers positioned themselves as experts and principal contributors to the policy formulation process on the

\textsuperscript{453} Staff Lawyer at Justice for Children and Youth (further JFCY), Skype Interview with the Author, Toronto, Canada, August 26, 2016.
detention of child soldiers (Chart 4.7). The role of military lawyers has been evident in their application of the OPAC – potentially an instrument designed to exercise leverage on the formulation of a child soldier detention policy. Military lawyers “would not go so far as to say that application of the treaty [OPAC] in armed conflict is required as a matter of law.” Some of the document's principles, such as the extension of special treatment to those detained child soldiers who appeared to be younger than 18, were “encapsulated in the policy that eventually developed.” Still, comparable to their American counterparts, Canadian military lawyers claimed that they were not advancing the development of a policy intended to increase the autonomy of the military. Instead, they played “an advisory role in the development of those policies as the lawyers did not develop policies.”

Chart 4.7 also illustrates the diminished participation of Canadian non-governmental organizations during the policy formulation stage. Representatives of NGOs, in interviews, emphasized that the nature of the political system during the Stephen Harper government (2006–2015) may have had an impact on the strategic choices of their organizations during the formulation stage of the policy process. The senior counsel at the BCCLA, for example, noted that the level of interaction between civil society and the government during those years was minimal “to the extent, there was no real interaction, very little back and forth.” The challenge of engaging with government officials encouraged NGOs to pursue confrontational strategies at this stage. The representatives of NGOs identified collaboration with opposition parties in the Canadian Parliament as a

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454 Canadian Armed Forces Deputy Judge Advocate General for Military Justice, Phone Interview with the Author, Ottawa, Canada, September 12, 2016.
455 Ibid.
456 Ibid.
457 Senior Counsel at the BCCLA, Skype Interview with the Author.
458 Manager of the Security and Human Rights Campaigns, Amnesty International Canada, Skype Interview with the Author, Ottawa, Canada, August 23, 2016.
principal strategy in their efforts to induce a policy change. The NGOs’ choice of confrontational strategies may contrast with insider strategies, which were the prevalent *modi operandi* for US NGOs at this stage of the policy process.

Chart 4.8. The Role of the Key Actors in Policy Implementation and Enforcement in Canada

Canadian NGOs were most involved at the policy implementation and enforcement stage (Chart 4.8). Interviews suggest that some NGOs (e.g., BCCLA, Amnesty International Canada, and the Canadian Civil Liberties Association) utilized litigation in federal courts and the Supreme Court of Canada to demonstrate a state’s non-compliance with domestic (Canadian Charter of Rights and Freedoms) and/or international law obligations (Convention on the Rights of the Child and its Optional Protocol). The senior
counsel at the BCCLA defined the litigation as a “blood tool” – that is the instrument of last resort of the policy-making process. The representative of the NGO emphasized the high-cost and time-consuming nature of the tactic in the process of inducing policy change. Other organizations, such as the International Bureau for Children’s Rights (IBCR) and the Dallaire Initiative alternatively emphasized their focus on providing government agencies with advice and training on the issues of child protection and the rules of engagement with child soldiers. The IBCR, as the Director General of the organization noted, developed training for different government departments (e.g., Global Affairs, Department of National Defence) “to better integrate child protection into their work.” These organizations thus claimed to direct their efforts in influencing on how these agencies implement and deliver policies at the operational level.

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459 Senior Counsel at the BCCLA, Skype Interview with the Author.
460 Ibid.
461 Executive Director of Romeo Dallaire Child Soldiers Initiative.
462 Director General of International Bureau for Children’s Rights, Skype Interview with the Author, Montreal, Canada, September 6, 2016.
463 The Joint Doctrine Note (2017-01) on Child Soldiers, adopted by the Canadian Armed Forces in March of 2017, is another example of cooperation between NGOs and Department of National Defence. The Canadian Armed Forces recognized their cooperation with Dallaire Initiative and contribution of the organization towards the development of the document. In Chapter VI, I analyze how specific strategic choices of the Dallaire Initiative allowed this NGO to contribute to changes in the policy. See Canada. Department of National Defence, Canadian Armed Forces Joint Doctrine Note 2017-01; Steven Chase, “Military Prepares for Possible Clashes with Child Soldiers on Future Missions” Globe and Mail. March 2, 2017.
Chart 4.9 illustrates that none of three policy actors chose to identify the detention of child soldiers as a distinct issue during the agenda-setting stage in the UK context. Moreover, the majority of British NGOs did not identify the issue of the detention of child soldiers as part of their organization’s portfolio. This differed from the United States and Canada where NGOs tried to act as leading agenda-setters on the issue during the initial stage of the policy process. The representatives of Child Soldiers International (CSI) noted that while the organization: 464

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464 Child Soldiers International was a founding member of the Coalition to Stop Use of Child Soldiers, formed in 1998, to explicitly promote an international standard of 18 as the minimum age of recruitment and the ratification of the OPAC. It became an independent NGO in 2011, based in London, advocating for raising the age of children’s voluntary recruitment to 18.
[...] looks at the issue of detention of children by armed forces in Africa [...]. CSI has nothing to do with it in the UK. All we are doing in the UK is working exclusively on raising the enlistment age to eighteen [across the UK armed forces].

A representative of UNICEF UK offered a similar appraisal. While the organization “has a clear position globally about the detention and would adhere to it,” UNICEF UK did not address the issue of military detention in the UK context. A rare example of involvement by British NGOs occurred in the framing of a broader campaign to support the application of the European Convention on Human Rights (ECHR) regarding the activities of UK armed forces during an armed conflict. Liberty, also known as the National Council for Civil Liberties, voiced its support for the application of the ECHR in one case, which involved the detention of a child who drowned after he was allegedly forced into the river while in the custody of UK armed forces. The problem of the detention of child soldiers, however, has still not become a distinct component of this organization’s portfolio. Liberty incorporated the issue into its broader campaign of supporting the ECHR in the UK context aimed at holding “the military accountable, which will also include children who were detained.”

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465 Programme Manager and Director of Programmes at Child Soldiers International, Personal Interview with the Author, London, United Kingdom, October 13, 2016.
466 Senior Humanitarian Advocacy and Policy Adviser UNICEF UK, Skype Interview with the Author, London, United Kingdom, October 26, 2016.
467 Policy Assistant at Liberty, Personal Interview with the Author, London, United Kingdom, October 12, 2016.
Like their Canadian counterparts, UK military lawyers became significantly more engaged in the policy formulation stage than the other actors (Chart 4.10). They were involved in the design of the doctrine, specifically JDP 1-10, which addresses the issue of detention. Military lawyers heavily participated in the work of the Defence Doctrine and Concepts Centre at Shrivenham “where lawyers can influence policy.”  

UK military lawyers, like their Canadian and US counterparts, were first and foremost concerned with ensuring that the policy on the detention of child soldiers comports with an overarching national detention policy and “to ensure that everyone in a military uniform met their rights and their legal [domestic and international] obligations.”  

Chart 4.10 also demonstrates the minimal involvement of other actors at this stage of the policy process.
Senior Military Legal Adviser at the Ministry of Defence (1991-2003), Personal Interview with the Author, Farnborough, United Kingdom, October 10, 2016.

Ibid.

468 Senior Military Legal Adviser at the Ministry of Defence (1991-2003), Personal Interview with the Author, Farnborough, United Kingdom, October 10, 2016.
469 Ibid.
Military lawyers also played a key role during the implementation stage of the policy in the UK context (Chart 4.11). The issue of the application of international human rights law to situations of armed conflict was peculiar to the British context as it created “competing obligations and responsibilities” at the operational level. A senior military legal officer at the UK PJHQ, responsible for providing advice to the Chief of Joint Operations on all UK operations, noted:

We ended up in quite a complicated legal paradigm for lawyers, firstly, to understand and, secondly, to explain [the relationship between international humanitarian law and international human rights law] for some soldiers on the ground.

Interviewees emphasized that the role of military lawyers became critical at the

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470 British Army's Chief Legal Adviser (2003-2011), Skype Interview with the Author, Sherborne, United Kingdom, December 22, 2016.
implementation stage of the policy process. British Army's Chief Legal Adviser noted that the UK Armed Forces “were in a very indeterminate phase regarding the application of human rights law.”\(^\text{471}\) The availability of military legal advisers “ensured that we [UK Armed Forces] understood our rights and obligations.”\(^\text{472}\) Military lawyers, as principal experts on the military doctrine, retained the potential to influence the development of the policy during its implementation stage.

Government officials also remained involved at this stage because they were responsible “for observing very strictly all the rules, which as a NATO member we had signed up to.”\(^\text{473}\) These rules allowed UK Armed Forces to initially keep detainees for up to 96 hours, with a possible extension of up to 28 days, subject to review from the Minister from Department of Defence. The UK Minister of State for the Armed Forces noted that there were very few cases involving child soldiers that he was aware of during his service at the Department of Defence. He stated, when interviewed, “I think very occasionally we might have discovered we got an under-18-year-old and have released them immediately.”\(^\text{474}\)

British government official also noted that any of their activities “could subsequently be scrutinized or investigated as part of a wider inquiry into procedures during armed conflict”\(^\text{475}\) as a potentially influential factor during policy implementation stage. UK Government officials therefore applied their knowledge and technical expertise to sensitive legal-policy issues, including on the detention of child soldiers, to ensure the

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\(^{471}\) Ibid.
\(^{472}\) Senior Military Legal Adviser to the Chief of Joint Operations, Skype Interview with the Author, London, UK, November 21, 2016.
\(^{473}\) Minister of State for the Armed Forces (2010-2012), Skype Interview with the Author, Devon, United Kingdom October 23, 2017
\(^{474}\) Ibid.
\(^{475}\) Ibid.
government’s behavior was consistent with both regional (ECHR) and international law.

**Conclusion**

The findings from the aggregate data analysis demonstrated different configurations of the participation of three actors in the development of the detention policy in each country, with each actor more intensely involved in different stages of the policy process than others.

The findings from the data analysis show that military lawyers, across three national contexts, alternatively exhibited a great level of involvement during either the policy implementation or policy formulation stages. Legal advisers were willing to contribute their expertise in interpreting international law, the relationship between international human rights and humanitarian law on the issue, as well as on such technical aspects as age assessment. Military lawyers converged in all three countries – in claiming that their objective was to provide legal support and advice regarding the overarching policies of their respective governments, and not to advance the development of a policy that increases the autonomy of the military. The findings also illustrate that government officials were involved in the policy formulation stages in all three countries. They were willing to apply their expertise and resources for the development of legislature and/or a doctrine underpinning the policy.

What seems to stand out from the results of the aggregate data is the variation in the role, the choice of strategies, and relative involvement of non-governmental organizations in the development of the policy on the detention of child soldiers. The data prospectively suggests a possible explanatory relationship between NGOs’ choice of strategies and the policy outcomes in each of these three countries. American non-
governmental organizations, for example, varied in their degree of participation at different stages of the policy process across countries. They presented themselves as strong agenda-setters. Their involvement may have diminished in the policy formulation stage. But representatives of NGOs often reported the use of insider strategies such as building relationships with representatives of the government and other stakeholders involved in the development of the policy in their efforts to maintain leverage during this stage of the policy process. NGOs also reported their use of ‘naming and shaming’ in their efforts to hold respective governments accountable with international legal standards on the detention of child soldiers during the implementation stage of the policy process.

Canadian and British NGOs, however, offer a different pattern of involvement in the policy process. Canadian NGOs like their US counterparts demonstrated significant involvement in the agenda-setting process. Representatives of NGOs, however, reported on the contestation around the framing of the issue among representatives of civil society which might have impacted the ability to set the agenda on this issue. Canadian NGOs, in contrast to their US counterparts, reported being largely excluded from the policy formulation stage, which might have diminished their ability to shape policy outcomes. Nonetheless, Canadian NGOs claimed a great level of participation during the policy implementation stage. Canadian NGOs specifically capitalized upon their access to domestic courts in their efforts to potentially exert an impact on the policy process.

The UK’s NGOs, compared to their US and Canadian counterparts, did not promote the issue of the detention of child soldiers during the agenda-setting stage. This distinct role of non-governmental organizations might have potentially had far-reaching implications for the policy process. The impact and choice of strategies at this initial stage
of the policy process could be determinative for further development of the policy. This phase specifically involves the debate over whether something indeed is a problem, to what extent it is a problem, whom it affects.\textsuperscript{476} The British NGOs also claimed to be largely absent during the formulation and implementation stages of the policy process, unlike their Canadian and US counterparts.

Data analysis thus seems to suggest that NGOs made different choices concerning their degree of involvement and type of strategies to achieve their policy objectives in each national context. This observation may potentially support the third hypothesis of this dissertation that suggests that domestic NGOs will promote a policy that is reflective of its defined national agenda and priorities on the detention of child soldiers during an armed conflict. The following three chapters present case studies. Each case study examines to which extent NGOs’ choice of strategies and their application were consequential to the outcome of the policy process further verifying the third hypothesis of this dissertation. Each case study analyzes ‘how’ and through what processes domestic NGOs determine, apply (or do not apply) their strategies, information, and knowledge. It also examines NGOs interact with other social actors, such as government officials and military lawyers in the development of a policy to understand the variation in the policy processes on the detention of child soldiers. I specifically analyze how NGOs alter their strategies at different stages of the policy process to adapt their actions to different institutional venues that become more favorable for achieving their goals.

Each case study consists of three sections that represent the main stages of the policy process. The section on agenda-setting addresses the fundamental question on how

NGOs achieve agenda access and move the issue from systemic to a decision-making agenda, defined as the “list of items which decision makers have formally accepted for serious consideration.” This stage also allows non-governmental organizations to develop “alternatives” to the existent policy, which they might advance to the next stage of the policy process. The section on policy formulation explores the extent to which NGOs gain support for their issue on a legislative level or with an authoritative government agency. I analyze how NGOs utilized insider strategies, such as cultivating their relationships with representatives of the government, lobbying for change at the legislative institutions, suggesting alternative policies or views to a representative of the government, to gauge their influence on the development of the policy. I examine how key characteristics of political opportunity structures, i.e., relative openness of political system to the participation of new actors, availability of influential allies within the system, evidence of political realignment within polity shape the action of NGOs in their effort to secure favorable outcomes. The section on the policy implementations analyzes the role of NGOs in enforcing the policy. I examine the responses of NGOs when the existent policy deviates from their manifested objectives. This section studies how NGOs utilize access to domestic courts and/or strategies of monitoring and reporting to international bodies on the implementation of national policies on the detention of child soldiers. Each case study concludes with the overall assessment of the influence of NGOs during the policy process.

477 Roger Cobb, Jennie-Keith Ross and Marc Howard Ross, “Agenda Building as a Comparative Political Process.” American Political Science Review 70(1) (1976), p. 126. See supra note # 419 for the discussion of the research program on agenda-setting.
479 Ibid., p. 113.
480 See supra note # 379 for the definition of political opportunity structure.
CHAPTER V. THE CHILD SOLDIERS’ DETENTION POLICY IN THE UNITED STATES

Introduction

This case study analyzes whether and where American NGOs were effective in exercising their leverage on the American government’s policy on the detention of child soldiers. Each stage of the policy process – agenda-setting, policy formulation and policy implementation – constitutes a formative section of the chapter evaluating strategies that NGOs applied in their efforts to exert influence on the policy process. Each section also juxtaposes the influence of the core group of the American NGOs – Human Rights Watch (HRW), American Civil Liberties Union (ACLU), Amnesty International (AI)-USA, Human Rights First, the Regional Delegation of the International Committee of the Red Cross (ICRC) in Washington and Human Rights First – against the role of key policy actors involved in the policy process: government officials and military lawyers.

The agenda-setting section analyzes the ability of American NGOs to promote key aspects of the policy, such as the treatment of children in detention and their prosecution before military commissions, to the decision-making agenda. I explore how the US government, represented primarily by the Departments of Defense, State, and Justice, and the NGOs became involved in framing contests on the issue, and what implications this had for the agenda-setting process. I analyze the choice of NGOs to resort primarily to outsider strategies, which aimed at enhancing the salience of the issue and expanding “the scope of conflict beyond decision makers.”

I further analyze how NGOs applied such tactics as expanding media coverage, bringing attention to focusing events, and the use of

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testimonial knowledge as a part of their framing strategy to ensure the heightened attention of stakeholders on the issue. I examine the legislative records and official documentation from the departments responsible for the development of a policy and how these documents reflected the framing promoted by NGOs to evaluate their success as agenda-setters.

The DoD, as the principal executive government agency responsible for the development of the policy on the issue, and Congress, through the enactment of laws, retained leverage to determine outcomes during the policy formulation stage. The core group of American NGOs undertook efforts to shape decision-making process with the application of insider strategies. I analyze the evolution of doctrinal documents and standard operating procedures within the DoD, and legislation pertinent to the issue of the detention of child soldiers, to evaluate the effectiveness of American NGOs at this stage of the policy process.

The section on policy implementation evaluates the effectiveness of ‘naming and shaming’ as the NGOs’ primary strategy. I analyze how NGOs utilized international venues; first, to monitor any departures from the policy, specifically from international standards and, second, to publicize instances of government’s violations. I also demonstrate key challenges that NGOs encountered in their efforts to make this ‘naming and shaming’ strategy effective in achieving their policy objectives. This section contrasts the role of American NGOs with that of military lawyers who, through the application of their expertise and rendering legal advice, took primary responsibility for the implementation of the policy on the operational level.

The concluding section evaluates the role of NGOs in the development of the policy on the detention of child soldiers in the US context and how the NGOs’ choice of strategies
influences their ability to secure preferable policy outcomes. Specifically, I discuss the potential contribution to the emerging discussion on how NGOs, instead of simply choosing between ‘insider’ or ‘outsider’ strategies, “navigate both sides of the perceived dichotomies.”

**Agenda-setting**

This section analyzes the contention between a central group of American NGOs and key government agencies, which were responsible for the development of the policy (the Departments of Defense, State, and Justice), during the agenda-setting stage of the policy process. Government executive agencies undertook efforts to retain control over the development of key aspects of the policy and to prevent the issue from reaching the decision-making agenda. American NGOs, in contrast, resorted to a range of outsider strategies, such as framing of the issue and coalition building, to promote the issue on the agenda. Military lawyers demonstrated two types of engagement during this initial stage of the policy process. Military lawyers, representing the Office of the Military Commissions, adhered to the official stance of the Department of Defense. Military defense lawyers, representing child soldiers during their trials at military commissions, formed alliances with NGOs. They were willing to render their testimonies and expertise on the issue of the detention of child soldiers. Nevertheless, the overarching influence of the military lawyers, during the agenda-setting stage, was minimal. They were more concerned with the outcome of individual cases rather than systemic changes in the policy process.

The issue entered the American public discourse in 2003, with the first media accounts

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of the detention of child soldiers in Guantanamo. The Advocacy Director of the Children’s Rights Division at HRW noted that “when these reports have become public, the Pentagon realized it had a public relations problem.” Representatives of the US government and NGOs took opposing perspectives on how to control the “scope of the conflict” around this issue. The DoD attempted to restrict the conflict to a singular event of releasing three children who were under fifteen years of age from a detention facility. NGOs, in contrast, argued that “the release of these three children does not end the issue of child soldiers” in US custody. The ACLU, HRW, and AI-USA voiced their concerns about a range of issues including the number of children detained in US detention facilities. The questions included the age that the US government applied in its definition of a child soldier and the protections that authorities allocated to these children. The ICRC also publicly demanded the release of children from the Guantanamo Bay facility, despite its

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485 Advocacy Director for Children’s Division of Human Rights Watch, Personal Interview with the Author.

486 Schattschneider’s study on the policy process emphasized that controlling the scope of conflict around an issue is a key strategy in politics because the amount of attention, mobilization, and conflict surrounding a policy problem affects whether it gets on the agenda and how it is resolved. The more powerful party to a conflict prefers to limit the extent that the audience becomes involved while the weaker party will attempt to socialize the conflict. See Elmer Schattschneider, The Semisovereign People: A Realist’s View of Democracy in America (Holt, Rinehart, and Winston, 1960).


preference for strategies of cooperation with government authorities “for fear of impeding its field work.” One high-ranking representative from the ICRC’s Washington Delegation explained that the matter of children in detention compelled the organization to take a clear position on this issue in their communications with the DoD: “It does not need to be more than one [child] for us to respond.”

American NGOs, as external and weaker actors in the policy process, recognized the importance of expanding the conflict and “breaking up the policy monopoly” of the problem. The expansion of the issue to the larger public often “acts as a prelude to formal agenda consideration.” The elevation of the issue to the decision-making agenda, however, demands the use of specific strategies.

A Framing Strategy

A framing strategy involves diagnostic, prognostic, and motivational components. Diagnostic framing entails systemic explanations for the existence of a problem and attributes blame or responsibility. This first task of the framing strategy occurs primarily through the processes of frame articulation and elaboration. American NGOs cited international treaties such as the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed conflict and the Convention against Torture, to which the US government is a party. They also referred to international legal

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491 Forsythe, The Humanitarians..., p. 19.
492 Head of the ICRC Regional Delegation to the United States and Canada, Skype Interview by the Author.
standards, which elaborate on the minimum rules for the administration of juvenile justice while framing the issue. These documents endorsed the issue framing, one advocated by American NGOs, that the vulnerability and age of child soldiers are the primary factors for determining the conditions of their detention. American NGOs further focused on articulating two aspects of the issue.

The first relates to the procedural dimensions of the policy. Human Rights First, AI-USA, ACLU, and HRW advocated for the US armed forces to detain children as a measure of last resort, for the briefest possible period, and that these children receive ‘special protection’ while in US custody. American NGOs did not assert that the detention of child soldiers is a violation of international law and standards per se. As an Advocacy Officer at Watchlist on Children and Armed Conflict noted, however, they strongly advocated that “proper judicial procedures be applied to them [child soldiers] in the situation of detention.” The second component of the NGOs’ framing involved advocating against criminal prosecution of child soldiers in military tribunals. The AI-USA, ACLU, and Human Rights First, in their publications, for example, argued that the system of military commissions did not prioritize the principles of rehabilitation for detained child soldiers as required under international law and standards.

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498 See AI, Human Dignity Denied: Torture and Accountability in the ‘War on Terror’” (October, 2004); Human Rights First, Behind the Wire: An Update to Ending Secret Detentions (March 2005); ACLU, U.S. Violations of the OPAC: Soldiers of Misfortune (2008); HRW, US: Respect Rights of Child Detainees in Iraq (March 2008); HRW, Locked Up Alone: Detention Conditions and Mental Health at Guantanamo (June 2008); Human Rights First/HRW, USA: Compliance with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (April 2012).
499 Advocacy Officer at Watchlist on Children and Armed Conflict, Personal Interview with the Author, New York, NY, June 20, 2016.
The NGOs’ framing of the issue contrasted with the government’s position, based on a threat assessment approach.\textsuperscript{501} The intelligence files of captured child soldiers demonstrate that the level of threat or intelligence value of a detainee – not their age – determined their continued detention or release.\textsuperscript{502} Documents also indicate the age of a detainee as a potential factor to be exploited during the interrogation process, while mentioning ‘fear of long-term incarceration’ and ‘love of family’ as particular pressure points, in questioning child detainees.\textsuperscript{503} Official statements, press releases, and reports to international bodies from representatives of the Departments of Defense and State reiterated the position of the US government on the issue.\textsuperscript{504}

The DoD and DoS also adhered to a ‘narrow’ reading of the OPAC, contrasting with the NGOs’ interpretation of the treaty.\textsuperscript{505} These agencies considered the treaty to be an

\textsuperscript{501} Authorization for the Use of Military Force (2001), which serves as the primary legal authority for the U.S. operations against Al Qaeda and associated forces, authorized the President to detain “enemy combatants” until the end of hostilities. The text did not include any mention of the age, as a determinant for a threat assessment. The Obama administration did not alter this position in further authorizations of the AUMF. See U.S. 107\textsuperscript{th} Congress. \textit{Joint Resolution to Authorization for the Use of Military Force. AUMF. P.L. 107-40. Congressional Record Vol. 147 (September 18, 2001) S.J. Res. 23; U.S. House. 112\textsuperscript{th} Congress. National Defense Authorization Act for FY2012. NDAA; P.L. 112-81 Congressional Record Vol. 157. (December 31, 2011) H.R. 1540.}


\textsuperscript{503} Ibid.


instrument against the recruitment of child soldiers, but not a mechanism necessarily written with the idea of regulating what happens when US armed forces detain enemy child soldiers. Government officials reiterated this understanding of the treaty at both domestic and international forums. Specifically, they applied this interpretation of the document during the prosecution before the military commissions proceedings and federal courts, which involved child soldiers. The US government also relied on this reading in its submissions on the implementation of the OPAC to the Committee on the Rights of the Child.\textsuperscript{506}

This narrow understanding of the OPAC informed the government’s position on how to proceed with the prosecution of children before military commissions.\textsuperscript{507} The Chief Prosecutor of the Guantanamo military commissions suggested that “nothing in that treaty [OPAC] impacted his decisions” to charge child soldiers.\textsuperscript{508} The Prosecutor noted that it was the US domestic legal framework that largely informed the prosecution’s approach to child soldiers.\textsuperscript{509} The official remarks of government officials from the Departments of Defense and State and the statements of government lawyers from the Department of Justice, during trials involving child soldiers, reinforce these claims.\textsuperscript{510}

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\textsuperscript{507} Ibid.
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\textsuperscript{508} Carol Rosenberg, “New Court Able to Try Six Suspected Terrorists at Once,” \textit{Miami Herald}. February 3, 2008, available at NewsBank, Rec. No. 00802031938KNRIDDERFLMAMIAHM.
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\textsuperscript{509} Ibid.
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\textsuperscript{510} See selected examples of claims from government officials on this issue John Bellinger III, “The Upcoming Trial of Omar Khadr…” CRC, \textit{List of issues to be taken up in Connection with the Consideration of the Initial Report of the United States of America (CRC/C/OPAC/USA/1)}. May 15, 2008; United States of America v. Mohammed Jawad, \textit{Government Response to Defense Motion to Dismiss for Lack of Personal Jurisdiction pursuant to R.M.C. 907(b)(1)(A) (Child Soldier)}. June 24, 2008; United States v. Khadr (Mil.
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Key American NGOs and the US government thus contested in their framing of the issue of the detention of child soldiers.\textsuperscript{511} Representatives from principal government agencies were willing to define the issue through the prism of threat assessment. This framing allowed for containing the development of the policy within authoritative agencies, thus restricting the access of other stakeholders to the policy process. American NGOs therefore pursued “confrontational engagement with opposing frames and framers.”\textsuperscript{512} They applied a range of tactics to strengthen their framing of the issue and expand the scope of the conflict.

\textsuperscript{511} See supra note 169 for the definition and discussion of the concept of framing contests.

\textsuperscript{512} Boscarino, “Setting the Record Straight …, p. 7.
Tactics of the Issue Framing: Media Coverage, Focusing Events, and Testimonial Knowledge

The media became a primary venue “for gauging the influence of advocacy organizations on the public agenda.”\(^{513}\) The first tactic therefore involved an increase in media coverage of the issue. The NGOs’ ability to appeal “to general norms of justice and dignity”\(^{514}\) gained favorable reporting “because juveniles are entitled to special protection.”\(^{515}\) The ACLU, HRW and AI-USA frequently referred to the OPAC in their communication with the media on the issue. They emphasized that the US government has a treaty obligation to reintegrate “child soldiers into society as quickly as possible.”\(^{516}\) These NGOs also pursued media coverage to gain greater transparency in the policy process. The ACLU, for example, reported, in 2008, that as many as 23 detainees were under 18 when they arrived at the Guantánamo facility between 2002 and 2004. This information contrasted with the government’s claim that it detained “no more than eight juveniles with their ages ranging from 13 to 17 at the time of their capture.”\(^{517}\) Ultimately, the DoD did admit to imprisoning a higher number of children in the Guantánamo Bay detention facility.

American NGOs also used focusing events\(^{518}\) to define or redefine the policy

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towards child soldiers as a “situation of injustice.” Framing issues “in the context of dramatic events increases their salience and public attention to them.” The knowledge of the abuse of children in Abu Ghraib was an example of information that “has the power to shock, disrupt, and destabilize.” The coverage on Abu Ghraib led to a confrontation between the Department of Defense and core groups of American NGOs on the issue of the treatment of children in US detention facilities. The DoD framed the scandal as “an isolated case of appalling abuse perpetrated by low-level soldiers.” The American government, across the George W. Bush and Barack Obama administrations, blocked the release of the majority of information related to the abuse of child detainees in Iraqi prisons. Government officials claimed that the disclosure could further incite violence in Afghanistan and Iraq and endanger US troops stationed there.

To counter this, the ACLU, for example, resorted to such instruments as the Freedom of Information Act (FOIA). The NGO used this tactic to disclose classified

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518 See supra notes # 391, # 392 for the definition of the focusing event.
520 Timothy Lytton, “Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law.” Conn. L. Rev. 39 (2006), p. 850. See also supra notes # 390 and #391 for the definition of the focusing event.
information about the inhumane treatment of children detained in the US facility.\textsuperscript{525} One FOIA request disclosed the testimony of Brigadier General Karpinski, former Commander of the Abu Ghraib Prison Facility.\textsuperscript{526} The affidavit revealed that children under fifteen were not separated from adults during their detention.\textsuperscript{527} An ACLU representative, when interviewed, noted that following the scandal “there was an increase in reporting on the detention of child soldiers.”\textsuperscript{528} The media, in turn, disseminated instances of the abuse of children in the Abu Ghraib prison.\textsuperscript{529} The issue of the treatment of child soldiers, thus achieved “visibility to become an active agenda item.”\textsuperscript{530}

The ACLU, HRW, Center for Constitutional Rights, AI-USA, and Human Rights First used testimonial knowledge as another tactic to frame the issue.\textsuperscript{531} Testimonial knowledge becomes a salient tool for the diagnostic framing process as “it frames issues in terms of right and wrong, it can be shocking, and it assigns blame.”\textsuperscript{532} The prosecution of Omar Khadr and Mohammed Jawad provided NGOs with evidence to “dramatize facts by using testimonies of specific individuals to evoke commitment and broader understanding”\textsuperscript{533} of the issue. The representative of the ACLU Human Rights Program

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\begin{enumerate}
\item General Karpinski was demoted to Colonel after the scandal.
\item George Fay and Anthony Jones, \textit{Army Reg. 15-6, Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade. Deposition of Brigadier General Janis Karpinski}. Department of the Army (2004).
\item Representative of the ACLU Human Rights Program, Personal Interview with the Author.
\item Kingdon, \textit{Agendas, Alternatives, and Public Policies}, p. 95.
\item Joachim Jutta, \textit{Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights}. (Georgetown University Press, 2007), p. 36.
\item Ibid., p. 181.
\item Kathryn Sikkink and Margaret Keck, \textit{Activists Beyond Borders: Advocacy Networks in International Politics}. (Ithaca, 1998), p. 220.
\end{enumerate}
\end{footnotesize}
emphasized that these cases were instrumental in raising awareness about the phenomenon of child soldiers and their detention during armed conflicts:

It was important to have a poster child for our advocacy. When you are trying to change public opinion, when you are trying to address people who are making decisions about detention issues, it is not enough to state that there are certain numbers of children in detention or who are in a military custody abroad. It is important to humanize the stories of these people, so not to deal with them as a matter of number, but as a matter of human beings.\(^{534}\)

The footage, showing Omar Khadr testifying about his instances of abuse and inhumane treatment, during his pre-trial detention, provided an example of testimony that garnered the attention of the media and the public.\(^{535}\) The Center for Constitutional Rights, in its media statements, emphasized that Khadr’s testimony illustrated the US government’s disregard for the rights of children.\(^{536}\) American NGOs also relied on information about the treatment of child soldiers, which was disclosed by defense military lawyers during both Omar’s and Mohammed’s trials. The evidence established that these child soldiers were subjected to torture and inhumane treatment while in US custody.\(^{537}\) A core group of American NGOs disseminated these examples of testimonial knowledge across the media to reinforce their framing of the issue.\(^{538}\)

American NGOs further used testimonial knowledge to advocate that the prosecution of these children would set “a precedent for the future treatment of all children

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\(^{534}\) Representative of the ACLU Human Rights Program, Personal Interview with the Author.


involved in armed conflict.”539 This tactic allowed for connecting the conditions of individual child soldiers to an overarching policy on the issue. This instrument allowed American NGOs to ascribe blame to governmental agencies such as the Departments of Defense and Justice. Specifically, NGOs articulated government’s inability to account for the age of child soldiers and their vulnerability, and thus fully comply with the OPAC.540

A Coalition-Building Strategy

American NGOs resorted to the creation of coalitions, as frames and ideas “require resources, organization, and leadership.”541 The core group of American NGOs – Human Rights First, HRW, the ACLU, and AI-USA – demonstrated an ability to form an informal advocacy coalition around the issue of the detention of child soldiers. The informal nature of a coalition entailed “loosely coordinated actions with intermittent communications between groups.”542 American NGOs, for example, coordinated their efforts on a range of tasks including monitoring military commissions proceedings and trials, and advocacy before the Committee on the Rights of the Child.543 The principal objective of the coalition

involved the sharing of information and resources among organizations. Three factors allowed for American NGOs developing and maintaining the coalition: a shared framing of the issue, a prior history of cooperation among these organizations, and leadership on behalf of the Children’s Rights Division of Human Rights Watch.

The ability to link the issue of the detention of child soldiers to related but broader matters – e.g., the controversial aspects of prosecutions before the military commissions, the issue of indefinite detention during armed conflict and the campaign to close the Guantanamo Bay detention facility – further “facilitated strategic alliances among groups”\(^{544}\) that focused on these issues. American NGOs, such as AI-USA and Human Rights First, for example, in their publications on the broad aspects of the detention policy during armed conflict, also addressed the issue of the detention of child soldiers.\(^{545}\) These NGOs thus joined HRW and the ACLU in the adoption of a shared framing of the issue.

Preexisting linkages among organizations is a second important facilitator in the formation of coalitions.\(^{546}\) The existing networks among these groups allow for trust building, thus facilitating the free exchange of information and sharing of resources, upon the creation of the coalition.\(^{547}\) HRW, AI-USA, the ACLU, and Human Rights First, for example, engaged in campaigns on different human rights issues, including children's

\(^{544}\) Pralle, *Branching Out, Digging In…*, p. 20.


rights, such as advocating for changes in the domestic system of juvenile justice\textsuperscript{548} and the rights of unaccompanied minors entering the US.\textsuperscript{549}

Leadership by the Children’s Division of Human Rights Watch was the third factor in assuring the effectiveness of the NGOs’ coalition and ensuring support for the increased attention to an issue.\textsuperscript{550} Representatives of Human Rights First, the ACLU and AI-USA recognized the leadership role of the Children’s Rights Division of HRW, in maintaining the coalition and coordinating its efforts.\textsuperscript{551} The International Legal Director at Human Rights First, for example, stressed that HRW retained the expertise and resources to perform “the most significant role among NGOs on the aspects of detention that were related to the cases of juveniles.”\textsuperscript{552}

The formation of an informal coalition allowed for developing and advancing alternative solutions for the development of the policy.\textsuperscript{553} American NGOs advocated two key changes to the policy on the detention of child soldiers. The first focused on altering the legislation that regulates the Military Commission Act (MCA), regarding the question of jurisdiction over those under the age of 18. The ACLU and HRW, for example, advocated that child soldiers, alleged in criminal activity, “should be dealt with by a regular

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\item \textsuperscript{550} Pralle, \textit{Branching Out, Digging In…}, p. 80.
\item \textsuperscript{551} See International Legal Director at Human Rights First, Personal Interview with the Author; AI-USA Program Manager, Phone Interview with the Author; Representative of the ACLU Human Rights Program, Personal Interview with the Author.
\item \textsuperscript{552} International Legal Director at Human Rights First, Personal Interview with the Author.
\item \textsuperscript{553} Birkland, \textit{An Introduction to the Policy Process…}, p. 167.
\end{itemize}
national court with full and adequate safeguards for juvenile justice.” The second emphasized embedding strong procedural safeguards in military directives, consistent with the letter of the OPAC. The coalition of NGOs utilized the tactic of letter-writing to advance their preferred proposals to different agencies within the government or to individual decision-makers including Secretaries of Defense Donald Rumsfeld and Robert Gates, President-Elect Barack Obama, and Attorney General Eric Holder.

American NGOs invested in a range of outsider strategies during this initial stage of the policy process. The official documentation, from the agencies responsible for the development of the policy, and legislative records demonstrate that the issue of the treatment and prosecution of child soldiers reached the agenda of decision-makers.


These documents describe and debate key concerns that the core group of American NGOs raised during the agenda-setting process. These issues reached the decision-making agenda despite efforts from government officials, specifically from the Departments of Defense, State, and Justice, to promote their framing of the problem and prevent it from reaching a greater audience. American NGOs therefore played an instrumental role in advancing the issue of the detention of child soldiers onto the agenda thus providing the foundation for their participation in the formulation of the policy.

**Policy Formulation**

Government officials, primarily representatives of the Department of Defense, and legislators, through their direct involvement in the formulation of directives and standard operating procedures and the enactment of laws, were principal stakeholders during the formulation stage of the policy process. Nonetheless, the principal attributes of the US political opportunity structure, such as institutionalized separation of powers, allowed for NGOs to engage in the process of the formulation of a policy.557

The availability of decision-making venues provides organizations with an opportunity to seek alternative decision settings where they “can air their grievances with current policy and present alternative policy proposals.”558 This institutional condition encouraged NGOs to pursue their objectives in Congress in their efforts to gauge influence on the policy. Second, the American institutional structure encourages opponents to resolve their disputes through “conventional political means”559 as it institutionalizes “dissent,

bringing political conflict into the government.” American NGOs thus cultivated relationships with representatives of the DoD and offered their policy advice on the issue in an effort to influence the formulation of the policy. Representatives of NGOs such as Human Rights First and HRW also continued their strategic collaboration with defense military lawyers, which they established during the agenda-setting stage. While the support of defense military lawyers was salient for NGOs’ activities, their influence on the policy process was minimal as they were primarily engaged with the outcomes of individual child soldiers’ cases.

**Lobbying Government Agencies**

The Department of Defense is the principal government agency responsible for the development of guidelines on the handling of detainees in US custody. The DoD drafts Department-wide policy directives, on the strategic level, and develops standard operating procedures (SOPs), on the operational level. While the drafting process takes place within the agency, the DoD is open to input from outside actors who offer their expertise and policy advice. The DoD referred to representatives of NGOs (the ICRC’s Washington Delegation, Human Rights Watch and Human Rights First) on the issue of the detention of child soldiers. This government agency, as part of its response to the Abu Ghraib

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560 Ibid.
562 Department of Defense sought the expertise from HRW after first reports on the detention of child soldiers in Guantanamo in 2003. Human Rights First, in 2009, submitted its findings and recommendations on detainee review procedures in Bagram detention facility and that broader detention reforms in Afghanistan to the DoD Office of Detainee Affairs, U.S. Central Command, and the President’s Special Task Force on Detainee Disposition. NGOs also participated in policy forum on children and armed conflict organized by Department of State and United States Institute of Peace. See Department of State’s Bureau of Democracy, Human Rights, and Labor and The U.S. Institute of Peace, *Policy Forum on Children and Armed Conflict*
scandal, instituted the Office of the Deputy Assistant Secretary of Defense for Detainee Affairs (DASD-DA) in 2004. This new agency was to provide a coordinated policy within the department on detainee matters and foster communications with the ICRC and human rights NGOs. Representatives of both the DASD-DA and NGOs indicated that they discussed different aspects of the policy on the detention of child soldiers during their meetings.

The ICRC had been in communication with US government officials, at both the strategic and operational levels, on different aspects of the detention policy since the beginning of the ‘war on terror.’ The key to the ICRC’s approach was to create relationships of trust and confidence with representatives of the Department of Defense “to ensure that decision-makers act on those points of interest.” The ICRC built a constructive relationship with authorities not only because representatives of the organization “were confidential in their communication, but more importantly because they were constructive” in providing their advice on the policy. The issue of the

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563 Christopher Henry, principal deputy undersecretary of Defense for policy, stated that “under this new organization – there will be the single focal point in communicating with the ICRC on behalf of the department.” C-SPAN, Office of Detainee Affairs Announcement, July 16, 2014; Department of Defense, DoD Creates Office of Detainee Affairs. DoD Media Center. July 16, 2004.

564 Senior Policy Advisor in the Office of the Secretary of Defense, Skype Interview with the Author; Department of Defense, Letter to ACLU from Deputy Assistant Secretary of Detainee Affairs Sandra Hodgkinson. February 3, 2010; C-SPAN, U.S. Detainee Policy: Four Former and Present Deputy Assistant Secretaries of Defense for Detainee Affair Talked about the State of Detainee Policy in the U.S. May 13, 2013.

565 Department of State, Cable: Meetings with The ICRC Regarding the Global War on Terrorism, Status of Detainees, Military Commissions. June 19, 2002; Department of State, Memo: Note to the Secretary-Guantanamo Detainee. May 1, 2003; Department of State, Memo: Meeting between Secretary of State Powell and International Committee for the Red Cross (ICRC)President Jakob Kellenberger. May 23, 2003; Department of State, Emails between Cheryl Parker and Others on ICRC Detention Concerns. December 17, 2004; John Rizzo, Email: 8 November 2006 Meeting with ICRC Representatives, November 8, 2006.

566 Ibid.

567 Special Assistant to The Judge Advocate General for Law of War Matters/Chief of the Law of War Branch. Office of The Judge Advocate General, U.S. Army, Skype Interview with the Author, Houston, TX, USA, October 10, 2016. See also Deputy Assistant Secretary of Defense for Detainee Policy (2010-2013),
treatment of children in detention holds a distinct place in the organization’s portfolio.\textsuperscript{568} The ICRC provided both information on the practice of the detention of child soldiers and rendered advice on the application of international humanitarian law to this specific issue.\textsuperscript{569} The ICRC thus contributed to changes in the US’ policy.

The extent to which decision-makers could expect “proffered advice to be more or less congruent with government aims and ambitions”\textsuperscript{570} also amplifies the impact of the policy advice. The shift to the population-focused counterinsurgency (COIN), in 2007-2009, demanded some transformation in detention operations.\textsuperscript{571} US Army General Stanley McCrystal identified the series of best practices in the domain of the detention of child soldiers for reforming detention operations for the purposes of COIN. These included “segregation of juveniles and adults,”\textsuperscript{572} the introduction of de-radicalization, rehabilitation, and educational programs. Moreover, armed forces, engaged in detention operations, also experienced high rates of post-traumatic stress disorder as “they witnessed the destructive effects of armed conflict, especially on children.”\textsuperscript{573} This observation strengthened the need for a shift in the policy on the detention of child soldiers. These developments provided a window of opportunity to advocate for changes in this policy domain.

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\textsuperscript{569} Head of the ICRC Regional Delegation to the United States and Canada, Skype Interview with the Author.


\textsuperscript{572} Ibid.

Standard operating procedures (SOPs) on the operational level were the first to integrate procedural safeguards on the treatment of child soldiers. Task Force 134 (TF-134) in Iraq and the Combined Joint Interagency Task Force 435 (CJIATF-435) in Afghanistan provided detailed provisions on the treatment of children in detention. SOPs of both task forces incorporated requirements that ensured the segregation of children from adults, and the provision of education services.\textsuperscript{574} DoD officials have gradually elaborated the risk-assessment procedures intended to establish whether to hold the individual as a security threat, or a criminal suspect or to release him/her. Both TF-134 and CJIATF-435 initiated a review process, in 2007 and 2009 respectively, which involved a “detainee’s ability to appear and meaningfully challenge his detention.”\textsuperscript{575} American NGOs sought to ensure that detained child soldiers receive procedural safeguards during this process.

The ICRC participated in the drafting of procedures for the review process in Iraq and recommended assigning a legal counsel to the detained children. HRW, whose representative observed the proceedings at the Detainee Review Boards in Afghanistan, also recognized the interest of the US military in incorporating the advice of NGOs about the review process.\textsuperscript{576} The military and NGOs ultimately reached a compromise, entailing the appointment of a military representative, who was not a lawyer, to represent child detainees. The procedures stipulated that individuals under 18 could not waive the


appointment of a personal representative.\textsuperscript{577} The mechanism of the review process, introduced in both Afghanistan and Iraq, with the involvement and advice from the ICRC and human rights NGOs, significantly advanced the process of a judicial review for child detainees. These instruments allowed them to challenge their detention in the US’ custody.

From the perspective of NGOs, such as Human Rights First, HRW, and the ACLU, the mechanism of the review process stopped short of guaranteeing all required procedural safeguards during an armed conflict. Specifically, the implementation of the detainee review boards did not institute the appointment of a legal representative, with ensuing lawyer-client privilege, and having an independent judicial body to review their cases.\textsuperscript{578} The introduction of these measures, however, would have conflicted with the US’ established doctrine on the relationship between international humanitarian law and international human rights law during an armed conflict. American law and policy define IHL as the \textit{lex specialis} for all conduct within the entire zone of armed conflict.\textsuperscript{579} The American government adhered to the position that international humanitarian law determines “procedural constraints on the detention of captured fighters”\textsuperscript{580} during armed conflicts. This stance presupposes that IHL displaces other sources of legal norms, such as the International Covenant on Civil and Political Rights, or the reach of \textit{habeas corpus} protections to areas of hostilities such as Afghanistan.\textsuperscript{581}

\textsuperscript{579} See supra note \#374 for the definition of the principle of \textit{lex specialis} and how it is applied to resolve conflicts between international human rights and humanitarian corpus of law.
\textsuperscript{581} Charlie Savage provides an account on how the US’ approach to handling detainees in Afghanistan have remained consistent through both George Bush and Barack Obama administrations. The government held the view that there was a “principled legal distinction between Guantanamo and Bagram and introduction of
The developments in doctrinal documents demonstrated changes in the treatment of child soldiers on the strategic level. A representative of the Office of the Secretary of Defense (OSD), responsible for the drafting process of the latest Detainee Directive (2014), elaborated on the purpose of the document. It aimed at collecting practices and policies, “that have been developed over the past eight years”\textsuperscript{582} and to formulate “a uniform-based policy.”\textsuperscript{583} It was therefore salient to incorporate elements on the issue of the detention of children in the doctrinal documents. The directive, in its instructions to commanders, raised the previously accepted age threshold on the issue of reporting capturing, detaining, or accepting any person in US custody from the age of 15 to the age of 18.\textsuperscript{584} Importantly, the directive did not directly address the definition of ‘child’ or a ‘child soldier.’ The document remained consistent with the US official stance to adhere to international humanitarian law definition and standards on the issue. The purpose of the specific policy change was to address challenges on the operational level. A Senior Policy Advisor noted that the main lesson learned from “over 14 years of conflict at that point was that, when you have someone under 18, it could potentially become a bigger issue.”\textsuperscript{585} The directive also integrated specific provision on the segregation of detainees based on age.\textsuperscript{586} While the DoD regarded the directive primarily as an intra-departmental document, it also consulted

\textsuperscript{582} Senior Policy Advisor in the Office of the Secretary of Defense, Skype Interview with the Author.

\textsuperscript{583} Ibid.

\textsuperscript{584} Department of Defense, Directive 2311.01E. DoD Detainee Program. (2014). CENTCOM, Criteria and Guidelines for Screening and Processing of Individuals Detained by DOD in War on Terrorism Inside and Outside Afghanistan (August 2003).

\textsuperscript{585} Ibid.

\textsuperscript{586} Department of Defense, Directive 2311.01E. DoD Detainee Program. (2014).
with actors outside of the government such as the ICRC and other human rights NGOs including AI-USA, Human Rights First and HRW.\textsuperscript{587} They, according to an OSD representative, provided comment, which the agency incorporated into the final document.\textsuperscript{588}

The central group of American NGOs thus became involved in continuous and extensive efforts to build constructive relationships with representatives of the DoD as part of their strategy to influence the formulation of policy. The NGOs’ ability to provide expert advice on the issue, and the ultimate shift to the counterinsurgency strategy in US military operations, allowed for a gradual integration of safeguards on the treatment of detained child soldiers, both on the operational and strategic levels.

\textit{Lobbying Congress}

American NGOs also applied their advocacy in the legislative branch during the policy formulation stage. They directed their efforts to argue for changes on the issue of jurisdiction over individuals under the age of eighteen in military commission proceedings. The drafting of the first Military Commissions Act, in 2002, primarily occurred within the executive branch between the White House and the DoD. The process took place without incorporating extensive input from either of the other branches of government or any external actors.\textsuperscript{589} The MCA (2002) also failed to address the issue of the jurisdiction over those under 18 years of age. When interviewed, the First Acting Chief Prosecutor of the Office of Military Commissions confirmed that drafters of the initial military commission

\textsuperscript{587} Senior Policy Advisor in the Office of the Secretary of Defense, Skype Interview with the Author.
\textsuperscript{588} Ibid.
\textsuperscript{589} Department of Defense, \textit{Commission Order No. 1} (2002). The initial Military Commissions Act (MCA) received strong criticism from non-governmental organizations not only for its content but also for executive overreach of constitutional authority. See Timothy Edgar (ACLU, Legislative Council) \textit{Memorandum to Congress on President Bush's Order Establishing Military Tribunals}. November 29, 2001.
order did not address the question of age:

I do not remember extensive conversations about this issue [prosecution of child soldiers]. At initial stages, there were no minors to prosecute that I knew of, so that did not come up as an issue.590

The ACLU, for example, emphasized that the system of military commissions was an inappropriate venue for addressing alleged crimes of child soldiers.591 American NGOs, discouraged from advocating for policy change within the executive branch, explored alternative decision settings, such as Congress.

The consequential Supreme Court decision in Hamdan v. Rumsfeld (2006) shut down the military commissions, prompting re-legislation of the MCA. These developments allowed to shift the decision setting from the executive to the legislative branch.592 This opportunity, however, was fleeting as the efforts to bring any changes to the new legislation, on the issue of jurisdiction over individuals under the age of eighteen in military commission proceedings, proved futile. Then a Republican Congress “authorized many aspects of military commissions regime that the Supreme Court invalidated,”593 with the passage of the MCA of 2006. A representative of the ACLU characterized the reauthorization of the MCA as ‘back to square one.”594

The decision, of then newly-elected President Obama’s administration, to revamp

590 Deputy Assistant Secretary of Defense for Detainee Policy (2010-2013), Personal Interview with the Author.
594 Representative of the ACLU Human Rights Program, Personal Interview with the Author.
military commissions in 2009 created “a lot of hope and opportunity.”\(^{595}\) It brought the issue of the jurisdiction over child soldiers in military commissions back to the legislative agenda. American NGOs formed a strategic alliance, with defense military lawyers and former prosecutors, in their efforts to influence the content of the Military Commissions Act. Specifically, these two policy actors tried to secure the support of key legislators.\(^{596}\) The Lead Defense Counsel for Mohammed Jawad commented that HRW arranged lobbying visits to Senators and Congressmen:

> [...] we went and talked to Senator Durbin’s staff because he was thought to be the one who cared about the child soldiers issue in particular and the one who could be truly influential.\(^{597}\)

These two policy actors also targeted this legislation during the deliberation process, in Congressional committees.\(^{598}\) Defense military lawyers also relied on the expertise of NGOs to substantiate their claims before the legislators.\(^{599}\) The Lead Defense Counsel for Mohammed Jawad – in his congressional testimony on the proposed changes to the MCA – relied on the principal advocacy claims of American NGOs. The military lawyers argued that the US government violates the letter of the OPAC when it does not take into consideration the age of detained children, in its military commissions’ proceedings. American NGOs also secured the support of Darrel Vandeveldt, leading

\(^{595}\) Senior Attorney at ACLU, Personal Interview with the Author. Newark, NJ, USA. June 29, 2016.


\(^{597}\) Lead Defense Counsel at the US Military Commissions (2008-2009), Skype Interview with the Author. The Advocacy Director for Children’s Division of Human Rights Watch also indicated that there have been several conversations with Senator Durbin on the issue of detention of child soldiers.


prosecutor on Jawad’s case, who resigned from his position in opposition to the trial. He testified before Congress, in favor of excluding individuals under 18 years of age from the MCA guidelines. Congress, despite the advocacy efforts of NGOs and military lawyers, “chose intentionally not to put an age limit” on the jurisdiction of the military commission and allow the prosecution of child soldiers, regardless of their age. This decision, after the enactment of the MCA of 2009, was not a question of omission or oversight but a part of an established policy. NGOs expressed their concerns with the legislature’s inability “to prohibit military commission trials of children” and to recognize that children are “less criminally culpable than adults.” They argued that the emphasis instead should be on their rehabilitation rather than their punishment.

Human Rights First, the ACLU, HRW, AI-USA and the ICRC contributed to the integration of safeguards for the treatment of detained child soldiers via developing constructive relationships with government agencies. Their efforts to influence the policy formulation via alternative domestic decision-making venues were instead ineffective. The legislative branch of the government was not willing to restrict the authority of the executive in excluding individuals under 18 years of age from the jurisdictional scope of the MCA. This finding is consistent with research on the policy process in the United States: it remains challenging for NGOs to incorporate their agendas into actual policy,

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601 Lead Defense Counsel at the US Military Commissions (2008-2009), Skype Interview with the Author.
602 Advocacy Director for Children’s Division of Human Rights Watch, Personal Interview with the Author.
despite the permeability of the US’ political system. American government officials here too demonstrated their ability to control the formulation of the policy on the issue.

Policy Implementation

This section contrasts the role and influence of two key policy actors – NGOs and military lawyers – who resorted to different strategies in their efforts to influence the implementation of the policy. Judge Advocates (JAGs), through the exercise of discretion and application of legal advice, shaped policy outcomes on the operational level. Military legal advisors, thus became what the implementation literature defines as ‘street-level bureaucrats.’ American NGOs, lacking direct access to implementation mechanisms on the operational level, employed an outsider strategy of ‘naming and shaming’ which consists of two primary tactics. The first mechanism involved consistent monitoring of policy implementation to identify examples of non-compliance with international treaty law and standards; the second required NGOs to “shame” the US’ policy through publicizing instances of its violation. This section also demonstrates how government officials, mainly representatives of the Departments of Defense and State, successfully resisted the pressure of the ‘naming and shaming’ strategy.

Military Lawyers and the Use of Legal Advice

Judge advocates took primary responsibility for the implementation of policy at the operational level. The US armed forces saw the expansion of detention portfolio and increase in the number of detainees following the involvement in the ‘war on terror.’ This engendered the need for a legal officer with “specialized training and knowledge of the

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international and operational law to assist and advise on matters of detainee operations."\textsuperscript{608}

JAGs performed two key roles in the domain of the child soldier’s detention policy that allowed them to influence the implementation of the policy process on the operational level.

First, through the application of professional knowledge and skills, JAGs delivered legal advice and training, to commanders and other personnel, on how to comport with law and policy on the issue.\textsuperscript{609} The military legal advisors’ principal role, codified in the Joint Publication on Detainee Operations, was to “ensure compliance with the US law and policy.”\textsuperscript{610} JAGs, on the operational level, were to understand the obligations of the American government for child soldiers. Military legal advisers “found themselves providing legal advice and training”\textsuperscript{611} on these issues. Judges Advocates therefore possessed the knowledge, skills, and practices “needed to implement policy faithfully.”\textsuperscript{612} JAGs designed vignettes and scenario-based training for members of the armed forces which provided them with the practical guidance on how to deal with child soldiers in an operational theater.\textsuperscript{613} They, for example, referred to the Convention on the Rights of the Child “for guidance on the treatment of child detainees”\textsuperscript{614} while drafting SOPs. While the US government is not a party to this Convention, Judge Advocates applied their judgment

\textsuperscript{608} Taguba, \textit{Article 15-6 Investigation of the 800th Military Police Brigade}, p. 21.
\textsuperscript{609} Hupe and Hil, “Street-Level bureaucracy …,” p. 285.
\textsuperscript{610} Staff Judge Advocate U.S. Army, U.S. Central Command, Skype Interview with the Author.
to implement certain elements of the document as a matter of policy, thus detailing provisions on treatment for child soldiers in US detention facilities.

JAGs also understood the legal advice a “risk-mitigation mechanism.” They knew that human rights issues, such as handling child detention, are highly susceptible to outside scrutiny and visibility, hence these matters must be addressed with particular care. A US Navy Judge Advocate at the TF-134, when interviewed, reflected on the nature of the legal advisor’s mandate as:

[...]to never let another Abu Ghraib happen again; so, at our [operational] level, we promulgated what we call ‘standard operating procedures’, that nest within Army regulations.

The JAGs’ principal role was to review conditions of detention facilities and personally interview detainees on an unannounced basis. The use of these monitoring mechanisms allowed military lawyers to flag violations of law and policy at the operational level, and thus avoid incidences of detainee abuse.

Military legal advisors also gradually became principal actors in the implementation of Detainee Review Boards (DRBs), established for reviewing detainee status. These changes in the policy required for the inclusion of JAGs to serve as legal advisors to the boards. At DRBs, military lawyers, called “Recorders,” were to retain a neutral status and present different sides of the case, including the issue of the person’s age. The JAGs’ knowledge of law and policy on child soldiers allowed them to advise the DRBs on specific procedures regarding child detainees. Judge Advocates were aware

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615 McLaughlin, “Giving Operations Legal Advice…,” p. 120.
616 Kuper, Military Training and Children in Armed Conflict … p. 46.
619 Human Rights First, Detained and Denied…, p. 9.
that the OPAC imposed “additional considerations concerning the release of child soldiers from detention”\textsuperscript{620} and the United States armed forces were to “prevent a captured child soldier from rejoining the conflict.”\textsuperscript{621} The participation of military legal advisors in DRBs ensured that the review process considered not only the intelligence value of detainees but other factors including their age.\textsuperscript{622} The Judge Advocates therefore applied professional knowledge and skills to exercise necessary judgment for shaping policy outcomes on the ground.

Their second principle role involved practical operational matters, such as how to assess the age of detained child soldiers, thus allowing Judge Advocates to exercise a certain degree of discretion during the implementation of the policy.\textsuperscript{623} Military legal advisors also possessed a certain level discretion in applying their knowledge and expertise, which is a necessary characteristic of street-level bureaucrats.\textsuperscript{624} The changes in the policy, in 2008 and 2009, required a greater sensitivity to the age of detainees. The policy instructed the segregation of children from adults. It was operational actors, however, who were to develop specific mechanisms on how to ensure the implementation of this procedure. The lack of detailed guidance on the issue also provided a useful degree of flexibility for military lawyers, “who were dealing with issues on a day-by-day basis,”\textsuperscript{625} for developing procedures best suited to the circumstances.

Steven Maynard-Moody and Michael Mush observe that “proliferation of rules –

\textsuperscript{621} Ibid., p. 78.
\textsuperscript{622} Bovarnick, “Detainee Review Boards in Afghanistan....,” p. 17.
\textsuperscript{624} Hupe and Hill, “Street-Level bureaucracy ....,” p. 281.
\textsuperscript{625} Bill, “Detention Operations in Iraq ....,” p. 421.
often contradictory rules – requires matching the context to the rule, and this process requires discretion\textsuperscript{626} from implementers on the ground. The Deputy Assistant Secretary of Defense for Detainee Affairs, when interviewed, noted that advice from actors on the operational level influenced the implementation of the policy, on the segregation of children from adults in US custody. Specifically, the policy instructed to segregate adults from individuals under 18 years old. Emerging security concerns of the recurrent abuse between older and younger children, however, compelled actors on the ground to recommend reducing segregation age to 16.\textsuperscript{627} The SOPs, reaffirmed these operational considerations, instructing on the need to separate children at the age of 16.\textsuperscript{628} The JAGs also advised on practical issues such as age assessment. This issue presented a particular challenge for the detaining authority in areas of operations where the system of birth registration has not been institutionalized.\textsuperscript{629} The Deputy Legal Advisor in Afghanistan (2010-2011) reflected on his experience in addressing the issue:

I had a problem with calculating ages in both Iraq and Afghanistan. They have no birth certificates. Trying to identify a military age male was not always easy.\textsuperscript{630}

The lack of available procedures on the issue provided operational actors with an opportunity to further exercise discretion. Military legal advisers, from both TF-134 in Iraq and CJJATF-435 in Afghanistan, contributed to the development of extensive provisions on age assessment, reflected in the SOPs. The SOPs instructed combatant commanders on

\textsuperscript{627} Deputy Assistant Secretary of Defense for Detainee Policy (2010-2013), Personal Interview with the Author.
\textsuperscript{629} Kuper, \textit{Military Training and Children in Armed Conflict}, p. 46.
\textsuperscript{630} Deputy Legal Advisor in Afghanistan (2010-2011), Phone Interview with the Author. November 8, 2016.
procedures, such as the use of evidence-based science, with a retinal and bone scan, when they are “unable to determine accurately whether a detainee is age 15 or younger.”\textsuperscript{631} The SOPs stipulated that JAGs were to review every segregation request and thus to ensure proper assessment of the age of each detainee.\textsuperscript{632} A Deputy Legal Advisor in Afghanistan noted that the approach to the age assessment witnessed significant improvement:

I think the [ability to assess age] has not been as sophisticated in the early stages. But we, in Task Force-435, got more sophisticated in identifying individuals as juveniles and not juveniles.\textsuperscript{633}

The evolution in procedures of age determination is further observable when we compare the SOPs from 2009-2010 with those issued in the prior stage of ‘war terror’ (2003-2004), which lacked specific guidelines on age assessment.\textsuperscript{634}

Judge Advocates, through the use of discretion, inherent in the implementation process, and providing firsthand expertise on the legal and practical implications of detaining children in zones of armed conflict, became key actors in shaping the policy during its implementation stage.

NGOs and the Strategy of ‘Naming and Shaming’

American NGOs faced challenges on the domestic level during the policy formulation stage. They also lacked direct access to the implementation mechanisms on the operational level. NGOs therefore shifted their activities to international venues at this


\textsuperscript{633} Deputy Legal Adviser in Afghanistan (2010-2011), Phone Interview with the Author.

stage of the policy process. The Committee on the Rights of the Child (henceforth the Committee) became the key forum for monitoring the compliance of the US government with the OPAC. Human Rights First, HRW, the ACLU, AI-USA were among the American NGOs that submitted alternative reports to the Committee in their efforts to exert influence on the implementation of policy. The Committee “invites and encourages” NGOs to submit alternative reports to provide complementary information and fill “many of the voids in the official government reports.” The central group of American NGOs presented written materials on the situation of child soldiers in US custody to the Committee. These organizations also met with the representatives of the Committee during the pre-sessional meetings, to discuss information about the government’s policy on the issue.

The record of the Committee’s sessions corroborates that its members cited information, provided by the NGOs, to question the representatives of the US government on its implementation of the policy on the detention of child soldiers. Specifically, the Committee inquired about the degree of government’s compliance with the OPAC on the

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638 See AI-USA Program Manager, Phone Interview with the Author; Representative of the ACLU Human Rights Program, Personal Interview with the Author; Advocacy Director for Children’s Division of HRW, Personal Interview with the Author.
issue. Moushira Khattab, a Committee member from Egypt, for example, used a report from HRW on the number of children in the custody of the US armed forces, and their treatment in detention facilities.

The Advocacy Director of the Children’s Rights Division at HRW provided a specific account of the NGO’s efforts to influence the outcome of the Committee’s report through the strategic use of information. HRW learned, before the pre-sessional meeting, for example, about a detainee who was 16 years old, held in Guantanamo. The American government did not define him as a child – and thus did not provide him with special treatment, such as segregating him from adults. The HRW representative delivered this information to members of the Committee before the session reconvened. A summary of records demonstrates that the discussion of this case led to the debate about concerns with the policy on the detention of child soldiers. Members of the Committee called on US authorities to “consider giving minors the benefit of the doubt or presumption of innocence with respect to their age.” During the session, Sandra Hodgkinson, then Deputy Assistant Secretary of Detainee Affairs admitted to the HRW statistics, on the number of children detained in US custody. She also disclosed that Department’s records did not list that particular detainee, “as a juvenile at the time he was transferred” to the Guantanamo detention facility. Rosa Ortiz, the Committee’s representative, concluded that the American position was inconsistent. She commented that “United States military was so concerned about the determination of age, yet lacked the ability to determine who were

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639 CRC Summary of Records of the 1321st meeting. Fort-Eighth Session…
640 Ibid.
641 CRC, Summary of Records of the 1321st meeting. Fort-Eighth Session…, p. 11.
642 Ibid.
minors and not.\textsuperscript{643}

NGOs’ alternative reports do not necessarily provide information that is “more truthful or more factual”\textsuperscript{644} than that submitted by the government. These reports, however, present information on the “issues that may be left out or ignored by the government.”\textsuperscript{645} The initial report of the US government to the Committee (2007) did not address the matter of the prosecution of child soldiers under the system of military commissions.\textsuperscript{646} The alternative reports from NGOs – based inter alia on the organizations’ monitoring of proceedings – provided a detailed account how US government disregarded key principles of the OPAC in prosecuting detained children. The Committee’s concluding observation included recommendations against the prosecution of children before the system of military commissions. This, in turn, served as a “leverage for subsequent NGOs’ action at the national level.”\textsuperscript{647} American NGOs further utilized these recommendations in their efforts to influence the policy process.\textsuperscript{648}

American NGOs also referred to other international venues to demonstrate US government’s non-compliance with international standards on child soldier’s detention. The ACLU, for example, addressed the Organization for Security and Co-operation  

\textsuperscript{643} Ibid.  
\textsuperscript{644} Peter Baehr, Non-Governmental Human Rights Organizations in International Relations. (Springer, 2009), p. 88.  
\textsuperscript{645} Ibid., p. 89.  
session that focused on the protection of human rights while countering terrorism. ACLU, in its statement, asserted that the issue of the detention of child soldiers “belongs to any place, where human rights records of the United States are being discussed.” American NGOs also secured the support of the UN’s Office of the Special Representative for Children in Armed Conflict (OSRSG) and relied on its authority in their communication with US authorities. Radhika Coomaraswamy, the Special Representative for Children in Armed Conflict (2006-2012), for example, spoke against the trial of child soldiers before military commissions. She sent a letter to members of military commissions before Omar Khadr’s sentencing, invoking the OPAC.

American NGOs ultimately utilized this evidence of support from the representatives of international organizations and forums. They were willing to publicize the US government’s non-compliance with international law and standards on the issue. The shaming component of the strategy involved the instrument of ‘rhetorical entrapment.’ This mechanism emphasizes the discrepancy between “the behavior of the government that they have committed to and their actual behavior.” The degree of rhetorical entrapment is contingent upon two factors. The first is the depth of the government’s commitment to the norm, reflected in the extent to which a state has a history of support of a certain norm.

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649 ACLU, “Statement Submitted to the OSCE Review Conference by the American Civil Liberties Union on: Unfair Military Commissions at Guantánamo.” OSCE Conference. Working Session: Rule of Law (Warsaw, 2010); Representative of the ACLU Human Rights Program, Personal Interview with the Author.
The second involves the specificity of the norm, demonstrated through the process of embedding the norm in domestic legislation.\footnote{Ibid., pp. 113-114.}

American NGOs went to great length to demonstrate that the US government had both been involved in championing the norm on the protection of child soldiers and had extensive domestic legislation on the issue. HRW, for example, asserted that, on the one hand, the US government recognizes child soldiers as victims in countries around the world and promotes programs geared toward their rehabilitation.\footnote{HRW, \textit{US: Improve Treatment of Children in Armed Conflict}. June 6, 2008.} Yet, the government’s policy toward children detained during armed conflict was inconsistent with these premises.

The ACLU seized another opportunity to demonstrate a degree of hypocrisy in the existent policy. The US Congress criminalized the recruitment and use of child soldiers, with the passage of Child Soldiers Accountability Act (2008), thus further institutionalizing the OPAC domestically. Nonetheless, the ACLU warned that the US government’s policy failed to protect child soldiers. The government continued to detain children “without recognizing their juvenile status or observing relevant international juvenile justice standards.”\footnote{Jamil Dakwar (ACLU), “Do as We Legislate, Not as We Do.” \textit{ACLU}. October 6, 2008.} The ACLU largely relied on the CRC’s Concluding Observations to support its critique of the government’s action.\footnote{Ibid.}

The research on ‘naming and shaming’ suggests that for the strategy to be effective, “targeted governments must care about their international image – they must aspire to belong.”\footnote{Friman, “Introduction…,” p. 18. See also Thomas Risse and Kathryn Sikkink, \textit{The Persistent Power of Human Rights: From Commitment to Compliance}. (Cambridge University Press, 2013).} A representative of the HRW indicated that the US government respected the reviews of the CRC, “bringing large delegations from different government agencies” to
review the implementation of the OPAC. A Legal Adviser for the Department of State also noted that the Department was concerned with complying with the treaties and the “submission of reports to the UN Committees was part of the compliance mechanism.”

The three US periodic reports (2007, 2011 and 2016) demonstrated that certain aspects of the US government’s policy on the detention of child soldiers did not change despite the Committee’s recommendations to account for the age and vulnerability of detained children. Several factors could explain the ability of the government to resist the effects of a strategy on the second aspect of the policy. First, the US authorities used a compelling counter-norm of anti-terrorism to justify its authority to detain and potentially prosecute individuals regardless of their age. The US government, in its reports to the Committee on the Rights of the Child, elaborated on how the conditions of the ‘war on terror’ define the policy on the detention of child soldiers:

[…] a conflict where terrorists recruit and exploit children to send them into harm’s way deliberately, which often leads to their death, the detention of juveniles becomes an unavoidable necessity and burden.

The national security imperative also justified trial before military commissions, regardless

658 Advocacy Director for Children’s Division of Human Rights Watch, Personal Interview with the Author. The records corroborate that US delegations, during all three reports to the Committee, included US Permanent Representative to the United Nations, Deputy Assistant Secretary of the U.S. Department of Defense for Detainee Affairs, senior representatives from the Department of Justice and Homeland Security.

659 Department of State Legal Advisor, Phone Interview with the Author.

660 Kathryn Sikkink’s analysis on the US’ implementation of the Convention Against Torture is informative to the case of the policy on the detention of child soldiers and efforts to use the OPAC to ensure the government’s compliance with international standards. Sikkink demonstrates that the US, on the one hand, was instrumental in propagating the CAT and bringing about the normative taboo against the torture. The Convention further received full support in the US Senate and was domesticated in US law. The US government, however, following the beginning of the ‘war on terror’ resorted to and instituted practices that were later recognized as torture. This backlash “against the domestic legitimacy of human rights norms” put questions on how such factors as the vulnerability of aspirations of belonging and treaty ratification could offset a noncompliant behavior. See Kathryn Sikkink, “The United States and Torture: Does the Spiral Model Work?” in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.) The Persistent Power of Human Rights: From Commitment to Compliance (Cambridge University Press, 2013).

661 CRC, United States of America: Second Periodic Report..., p. 45.
of an alleged offender’s age because these tribunals allow:

[…] for the protection of sensitive sources and methods of intelligence-gathering and the presentation of evidence gathered from the battlefield that cannot always be effectively presented in federal courts.\textsuperscript{662}

Second, the mere public exposure of ‘hypocrisy’ “has rarely been independently sufficient to alter political outcomes in the complex decision-making environment.”\textsuperscript{663}

American NGOs identified the US government’s departure from recognized international standards in its implementation of the policy on the detention of child soldiers. This allowed exposing the gap between the government’s rhetoric and action. The NGOs, however, lacked the leverage to impose “concrete material/political costs”\textsuperscript{664} by naming and shaming the existing policy. It thus prevented the naming and shaming strategy from being effective at this stage of the policy process.

\textbf{Conclusion}

In this case study, I attempted to demonstrate the variable influence of American NGOs, at each of the three stages of the policy process. American NGOs were strong agenda-setters during the initial stage of the policy process, despite the efforts of the US government authorities, primarily the DoD. Their influence, during the policy formulation stage, became contingent upon the NGOs’ ability to secure relationships with other actors in the policy process, who retained access to principal decision-making venues. The strategy of ‘naming and shaming’ was the principal instrument in the NGOs’ efforts to enforce the implementation of the policy on the detention of child soldiers. The application of this strategy, however, did not contribute to significant shifts in the government’s policy.

\textsuperscript{662} Ibid., p. 47.
\textsuperscript{663} Busby and Greenhill, “Ain’t that a Shame? ...,” p. 106.
\textsuperscript{664} Ibid.
This chapter therefore illustrated the distribution of NGOs’ influence in the US at different stages of the policy process. The NGOs’ choice of strategies and their level of adaptability, to institutional roadblocks within the US’ political opportunity structure, determined the level of the NGOs’ influence, during each particular stage of the policy process.

American NGOs used a confrontational strategy of issue framing to advocate for their definition of the issue, one based on the vulnerability of children and their diminished responsibility, during the agenda-setting stage of the policy process. The presence of policy opponents such as the Department of Defense, which adopted their framing based on threat assessment of detained children, further encouraged American NGOs to strengthen their frames. The confrontational position of American NGOs, on key aspects of the policy such as the treatment of child soldiers in detention and their prosecution in military tribunals, ensured the expansion of the issue by “broadening its political relevance, and by suggesting that a problem implicates important values and belief systems.” I also demonstrated the NGOs’ ability to form and sustain an informal coalition on the issue as another determining factor for the success of American NGOs in the early stages of the policy process. This finding may provide empirical evidence to the debate on how the ability of NGOs to work in coalitions allows for the consolidation of their resources and the advancement of their political activity. This engagement in coalitions therefore becomes an instrument to influence the policy-making process.

665 See Boscarino, “Setting the Record Straight …”; Dodge, “Crowded Advocacy …”; Pralle, Branching Out, Digging In….
666 Pralle, Branching Out, Digging In…, p. 17.
The developments, during the policy formulation stage on the detention of child soldiers, demonstrated two distinct outcomes and the varied effectiveness of insider strategies. This case study showed how NGOs, contributed to gradual improvements of procedural rights and conditions of the treatment of child soldiers in US custody. Specifically, NGOs engaged in collective action with the DoD representatives and provided their expertise on the issue of the detention of child soldiers. The Department of Defense was looking to transform detention operations for counterinsurgency warfare, and further comport with the premises of IHL. American NGOs were willing to present their actions and advice as complementary to the department’s mission. The choice of insider strategies, however, proved ineffective when NGOs’ undertook efforts to influence the legislative branch of the government. The issue of the prosecution of child soldiers nested deeply in the realm of national security. Congress was not willing to restrict the authority of the executive on this issue. The representatives of principal domestic institutions stressed the importance of retaining the authority to punish alleged threats regardless of their age. The inability of American NGOs to adapt their strategies, to the closed nature of domestic decision-making venues, on certain aspects of the policy and possibly embrace a different repertoire of strategies, could partially explain the variation of their influence during policy formulation stage.

NGOs’ lack of flexibility in their choice of strategies became especially evident.

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during the policy implementation stage. This case study demonstrated that the American NGOs applied ‘naming and shaming,’ an outsider strategy, as a primary policy instrument to enforce US’ policy on the detention of child soldiers. The effectiveness of ‘naming and shaming,’ as research demonstrates, often remains contingent upon the ability to use it “in tandem with other enforcement techniques.”

The latter remained limited to NGOs, in the US context, as the government remained largely impervious to pressure from international forums. There was also a very limited possibility of any sanctions on the issue. NGOs, at the same time, did not undertake efforts to collaborate with Judge Advocates, who were key implementers of the policy on the operational level. The use of insider strategies and collaborations with military lawyers remained a largely untapped resource for the American NGOs, in exercising their leverage during the implementation stage.

This case study may contribute to the debate on the understanding of strategies through which NGOs shape a policy-making process. The activity of the American NGOs in the policy domain on the detention of child soldiers resonates with emerging scholarship that calls to reconsider the dichotomous choice between insider and outsider strategies, American NGOs demonstrated that “insider tactics do not preclude the use of outsider instruments” and vice versa. Their ability to apply both types of strategies, contingent upon the stage of the policy process and decision-making venue, offered more


opportunities to influence the policy process. When American NGOs exhibited their inability to adapt or shift their strategies to the demands of political context this case study demonstrated their lack or diminished influence on policy outcomes.
CHAPTER VI. THE CHILD SOLDIERS’ DETENTION POLICY IN CANADA

Introduction

This case study analyzes the role and influence of non-governmental organizations on the Canadian government’s policy on the detention of child soldiers. I examine three constitutive stages of the policy process: agenda-setting, policy formulation, and policy implementation. The vast majority of domestic NGOs focused on the human-rights approach in their political advocacy on the issue.\textsuperscript{671} The Romeo Dallaire Child Soldiers Initiative (Dallaire Initiative), in contrast, defined itself as a security-oriented organization. These NGOs, on the one hand, agree upon the definition of a child soldier, embedded in the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and specific obligations that the treaty bestows on the Canadian government. These organizations, on the other hand, differ in their prioritization of goals related to their advocacy concerning Canadian policy on the detention of child soldiers as well as in their choice of institutional allies and decision-making venues. The human rights-oriented NGOs largely refer to international legal and normative framework in developing their advocacy at the national level.\textsuperscript{672} The Dallaire Initiative frames the issue of child soldiers as a security concern. The NGO advocates for the inclusion of the security sector as an important actor in the development of the policy on the issue of child detention.\textsuperscript{673}

\textsuperscript{671} These NGOs include the British Columbia Civil Liberties Association (BCCLA), the Canadian Civil Liberties Association (CCLA), Justice for Children and Youth (JFCY), Amnesty International Canada (AI-Canada), the Canadian Coalition for the Rights of Children (CCRC).
\textsuperscript{672} Druml, \textit{Reimagining Child Soldiers in International Law and Policy}, p. 32-35.
This case study examines Canadian NGOs’ selection of strategies in their efforts to shape policy outcomes in the policy domain on the detention of child soldiers during armed conflict. The convergence across liberal and conservative administrations, from 2003 to 2015, on two key factors (Table 6.1) further highlights the importance of NGOs’ choice of
strategies in the analysis of the policy-making process. The first is the nature of the relationship between NGOs and the Canadian executive branch; the second is the government’s policy relating to child soldiers, including their detention. Table 6.1 also demonstrates that positions on these two issues, exhibited by the liberal (2003-2006) and conservative (2006-2015) administrations, differed from the one embraced by both previous and successive governments.

The executive agencies, during the premiership of Jean Chrétien (1993-2003), relied heavily on the input from NGOs during the policy-making process. This relationship intensified under the tenure of the Minister of Foreign Affairs Lloyd Axworthy (1996-2000). He perceived NGOs as a “force multiplier.” Axworthy invited NGOs to participate in foreign policy conferences, on issues such as human security and prohibiting the use of antipersonnel landmines. Canada also embraced the leadership on the agenda of children’s involvement in armed conflict. It became the first country to sign and ratify the OPAC. The Canadian government also promoted the treaty both on the international and domestic levels. Most importantly, it invested its efforts and resources for the demobilization and reintegration of child soldiers across different geographical contexts.

Since 2003, first, under the Prime-Minister Paul Martin (2003-2006), and then under the conservative cabinet of Stephen Harper (2006-2015), the collaboration between the executive branch and NGOs began gradually diminishing. During this period NGOs also witnessed curtailment in their funding. The Harper administration further

675 Ibid.
676 See supra note # 95.
emphasized the importance of controlling both “the rhetoric and substance of the policy,” restricting access of NGOs to the decision-making venues, which led to a confrontational relationship between the two policy actors. The period from 2003 to 2015 also signified a shift in the policy on the detention of child soldiers. The Canadian government had gradually prioritized national security and threat reduction in its approach to policy development.

The nature of the relationship between the incumbent liberal government (2015-present) and NGOs is an area for in-depth future evaluation. There is, however, emerging evidence of a gradual shift to a collaborative relationship between these two policy actors. Specifically, Justin Trudeau’s administration demonstrated its intention to engage with NGOs in policy reviews and consultation, including on the country’s budget. The current liberal government also engaged in a series of transformational shifts in a policy domain concerning the detention of child soldiers. It is focusing both on the need to implement recently adopted military doctrine on the issue and ensuring compliance with international human rights treaties. This case study details how the NGOs’ choice of strategies influenced these outcomes.

The first section of this case study explores how key Canadian NGOs and

\[678\text{ Ibid., p. 34.}\]
\[679\text{ The comparison of budget documentation across Stephen Harper and Justin Trudeau’s administrations illustrates that the former excluded NGOs from budget negotiations, thus precluding them to access the decision-making process; while the latter explicitly mentions broad consultations with NGOs in the development of the document.}\]
\[678\text{ See selected examples: Department of Finance Canada, }\textit{Strong Leadership: Budget 2014} (2015); Department of Finance Canada, }\textit{Building Strong Middle Class: Budget 2017} (2016).\]
\[679\text{ See also Luke Stocking, Melissa Matlow, and Nikki Whait, “Canadian NGOs are Back” }\textit{Why should I care and Toronto Branch of the Canadian International Council} (May 2016); Canadian Council for International Co-operation, }\textit{Civil Society and Government Converge on Priorities for Canada’s Global Development Cooperation} (December 2016); Canadian Council for International Co-operation, }\textit{Canada’s International Assistance Policy is a Bold New Vision for Advancing Gender Equality} (June 2017).\]
government officials – representing executive agencies such as the Department of Foreign Affairs, Trade and Development (DFAIT), Department of National Defence (DND), Public Safety Canada, Office of the Prime Minister (PMO) and Privy Council Office (PCO) – grappled with two issues during the agenda-setting process. The first issue involved the extent of the obligations of the Canadian government under international treaty law in dealing with child soldiers. The second question entailed debate over the need for the development of doctrine concerning engagement with child soldiers during armed conflict. The section also examines the role and position of the official opposition (Liberal Party, New Democratic Party (NDP), Bloc Québécois (BQ)) during the government of Stephen Harper (2006-2015). I demonstrate how a unified position among these parties, on the issue of the detention of child soldiers, allowed Canadian NGOs to ally with them during the agenda-setting stage. The remainder of this section examines doctrinal documents from executive agencies, such as DFAIT and DND, and parliamentary records such as debates and minutes of proceedings, evidence, and reports of committees. This analysis demonstrates the extent to which NGOs were successful in promoting these two issues to the decision-making agenda.

The second section, on policy formulation, compares the strategic actions of human rights and security-oriented NGOs. First, I examine the degree and forms of engagement

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680 The Department changed its name to Global Affairs Canada in 2015. I consistently use the designation of DFAIT throughout this chapter.
681 While both PMO and PCO are “major influences in cabinet policy-making” it is important not to confuse the functions of these two agencies. Prime Minister Office is a central executive office, organized by the prime minister to advise on the development of the policy process. Privy Council Office is the prime minister’s government department responsible for coordination across the government on all matters of policy interest to the prime minister. John McMenemy described a useful functional difference between these two agencies: while PMO is “political arm” of the prime minister” PCO serves as “administrative arm” (p. 21). See John McMenemy, The Language of Canadian Politics: A Guide to Important Terms and Concepts. (Wilfrid Laurier Univ. Press, 2006), pp. 291-292, 295-296.
of human rights NGOs and three opposition parties in the drafting process of counter-terrorism legislation. I analyze the variation in the levels of support for NGOs’ advocacy across three opposition parties at different stages of the legislative process. I specifically examine implications for NGOs’ ability to secure preferred policy objectives in ensuring protections of children detained for alleged participation in terrorist activities. Second, I evaluate how the Dallaire Initiative, collaborated with military lawyers and representatives of the DND. I examine the extent to which the choice of different institutional allies and decision-making venues allowed this NGO to contribute to the adoption of a military doctrine on the engagement with child soldiers.

The third section, on policy implementation, explores how human rights NGOs applied a combination of domestic and international strategies to exert influence on executive agencies, such as the Departments of Justice, Public Safety, and Foreign Affairs. I examine how these NGOs utilized a strategy of legal intervention in Canadian domestic courts. I also study their use of the ‘naming and shaming’ on the international level, as a complementary strategy to amplify the effect of domestic enforcement mechanisms.

The concluding section evaluates the role of the Canadian NGOs in the policy process. It evaluates how this case study contributes to the three research programs discussed in chapter two. First, I demonstrate how the Canadian case is instructive in the emerging discussion on dilemmas resulting from the participation of children in terrorist activities within the broad research program on child soldiers. Second, how this case relates to the debate on the relevance and influence of military lawyers in shaping public policies. Finally, I discuss how it contributes to a debate on the strategic action of NGOs in the policy process.
Agenda-Setting

Two issues dominated the agenda-setting stage in the Canadian policy process on the detention of child soldiers. The first issue concerned the degree of the obligation of the Canadian government to child soldiers detained for alleged involvement in terrorist activities. BCCLA, JFCY, AI-Canada, CCRC, CCLA and the Dallaire Initiative, representing both human rights and a security-oriented NGO, involved in a confrontational relationship with representatives of the Canadian government to promote this issue on the agenda. This core group of Canadian NGOs also undertook efforts to form alliances with then current official opposition – Liberal Party, New Democratic Party (NDP), Bloc Québécois (BQ) – under the Stephen Harper administration (2006-2015).

The second issue concerned the development of a separate doctrine aimed at developing specific guidelines on how to engage with child soldiers, including their treatment in detention of Canadian Armed Forces (CAF). The human-rights oriented and a security-oriented NGOs applied different strategies in promoting this issue to the decision-making agenda.

Framing Contests: Canada’s Compliance with International Human Rights Law on the Detention of Child Soldiers

The capture of 15-year old Canadian citizen Omar Khadr, in Afghanistan, his subsequent detention at the Guantanamo Bay detention facility, and further prosecution before military commissions in the United States became a cause célèbre in Canadian political discourse. His status as a child soldier compelled domestic NGOs to engage in

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The fact of Khadr being a child soldier was among other issues that polarized Canadian public such as refusal of the Canadian government to repatriate Khadr and the complicity of the government in maltreatment of Khadr in Guantanamo when it sent its agents to interview Omar in the US detention center.
advocacy concerning the Canadian government’s obligations under international law in its
treatment of children allegedly involved in terrorist activity. Before Khadr’s case and
Canada’s involvement in the ‘war on terror,’ the Canadian government – reflected in the
actions of DFAIT and the Canadian International Development Agency – positioned itself
as a promoter of the norm on the protection of children in armed conflict.683 The
government of Canada also played an “active role in the negotiations”684 of the OPAC and
became the first country to ratify the document. A senior counsel at the BCCLA, when
interviewed, noted that the case of Omar Khadr:

[...] generated the discussion about child soldiers and about what was
appropriate treatment of child soldiers, whether they should be treated as
victims or whether they should be treated as soldiers.685

The shift in the government’s position on Omar’s status as a child soldier took place
following his capture in 2002. The initial statement from the DFAIT made special note of
Khadr’s status as a child soldier.686 A representative of the DFAIT commented that the
original messages to their counterparts in the US Department of State requested, “not to
send Omar to Guantanamo because of his age.”687 A week later, Coleen Swords, the Legal
Advisor to the DFAIT, issued a memo to all government agencies that they should “claw

and shared fruits of interrogation with the ally. See Craig Forcese, “Twelve Points about Khadr Saga.”
683 Government of Canada, “Protection and Assistance in Peace Time and Armed Conflict. Women and
Children in Armed Conflict.” Follow-Up to the 28th International Conference of the Red Cross and Red
Crescent. (October 2007) Among other events, Canada held Winnipeg Conference on Children and Armed
Conflict (2000) that brought together NGOs, experts, international organizations and governments to discuss
the issue. The results of the conference laid the ground work for the development of the OPAC. See UN
684 Government of Canada, “Protection and assistance …”
685 Senior Counsel at the BCCLA, Skype Interview with the Author.
686 Allan Tompson, “Canada 'Pressing' for Access to Teen - Still no Contact with 16-Year-Old at
687 Director General of the Consular Affairs Bureau (Retired), Skype Interview with the Author, July 25,
2016.
back on the fact that [Omar] is a minor.”

Since the release of Sword’s memo, the government’s position across different bureaucratic agencies, such as the Departments of National Defence, Foreign Affairs, Public Safety, Justice, and the Privy Council Office, adhered to a unified and consistent position. They refused to recognize Khadr’s special status as a child soldier. The executive branch of the Canadian government, neither under the liberal administration of Paul Martin nor the conservative cabinet of Stephen Harper, requested the repatriation of Khadr (Table 6.1).

Selected public statements from officials, representing different executive agencies, further demonstrate government efforts to downplay Khadr’s status as a child soldier. Vic Toews, the Public Safety Minister under the Harper administration asserted that Omar Khadr was not acting as a child soldier at 15 years of age “in the sense that he was somehow misled.” Following Khadr’s guilty plea under the US military commissions system and his subsequent transfer to Canada, Toews stated “the evidence is very clear. He was a convicted murderer; he’s a terrorist.”

Judith Butler notes that framing presupposes decisions or practices that leave substantial losses outside the frame. The definition of a child soldier renders a detained child with a range of protections, as well as the right to rehabilitation and reintegration. Representatives of the Canadian executive agencies, however, called into question certain aspects of this definition. A representative of the DFAIT, when interviewed, noted a dominant narrative of addressing a terrorist threat “left

691 Ibid.
little room to interject any other factors such as age” in consideration of the government’s policy on the issue.

The core group of Canadian NGOs employed a counter-framing strategy to advocate that the OPAC applies to all detained child soldiers, regardless of their involvement in terrorist activities. A General Counsel of the CCLA described the approach of these NGOs:

The strategy of the government was always to identify him [Khadr] as a terrorist and never as a child soldier. Our strategy was to use the language of child soldiers’ rights and commitment to international law.

Framing contests between key government agencies and the Canadian NGOs took place primarily in the media domain. Canadian NGOs all called on the government to fulfill its obligations as a signatory to both the CRC and the OPAC. Alex Neve, the Secretary-General of AI-Canada, questioned the government’s “strategy of delay and avoidance” in recognizing Khadr’s status as a child soldier. The CCLA also stated that Khadr’s

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693 Director General of the Consular Affairs Bureau (Retired), Skype Interview with the Author, July 25, 2016.
694 General Counsel for the CCLA, Skype Interview with the Author, Ottawa, Canada, September 7, 2016.
695 I analyze the perspectives of NGOs and representative of the Canadian government in major Canadian media outlets such as The Globe and Mail, The Toronto Star, The National Post and regional papers such as The Hamilton Spectator and The Ottawa Citizen among others to demonstrate two distinct framing of the issue. I also refer to media analysis from Natalie Kouri-Towe and Sonia d’Angelo. These accounts show how media distinguished between concepts of a child terrorist and a child soldier in the depiction of Omar Khadr. See Natalie Kouri-Towe, “National (in) Security and the Shifting Affective Fields of Terror in the Case of Omar Khadr.” Norma (2017); Sonia D’Angelo, “To what World am I being Released To? Canadian National News Discourse and the Anticipated Repatriation of Omar Khadr.” Social Identities 22(6) (2016).
treatment does not “comply with the legal obligations of Canada.” The JFCY, as its representative commented, relied heavily on the tactic of letter writing. The NGO also circulated petitions to garner “media attention and get everyone involved.” The BCCLA and CCLA also applied these tactics in advocating for compliance with international treaties, concerning child soldiers detained for alleged involvement in terrorist activities.

The Dallaire Initiative emphasized that the government’s position – in not recognizing Khadr’s status as a child soldier – could influence Canada’s position internationally on the issue of child soldiers. After Khadr’s repatriation in 2012, the NGO urged the executive to provide him with the same government-funded rehabilitation that Canada allocates to children involved in armed conflict, regardless of Khadr involvement in terrorist activity.

The Canadian NGOs also secured support for their framing of the issue, among representatives of Canada’s three opposition parties, during the premiership of Stephen Harper. The statements of the representatives of the Liberal Party, NDP and Bloc Québécois in the parliament and the media demonstrate their allied position on the issue during the agenda-setting stage. MPs from these three parties, for example, voiced their

699 Staff Lawyer at JFCY, Skype Interview with the Author. See also JFCY, Newsletter. (Winter 2008).
support for Omar Khadr, and specifically for the need to account for his status as a child.\textsuperscript{703} These parties issued a joint statement (2008) stating that Khadr “was a child victim” and calling for the provision of rehabilitation services, however, “unpopular and unpalatable his case may appear to be.”\textsuperscript{704} The leaders of these parties together addressed Barack Obama, then the current President of the US, during his visit to Canada in 2009. They called on Obama to assist in the release of Khadr, considering his status as a child soldier.\textsuperscript{705}

The unified support and heightened attention from the opposition parties, which had access to the legislative decision-making venue allowed to further promote the issue of the detention of child soldiers to the agenda. The Canadian Parliament increasingly discussed the case of Omar Khadr through the prism of the government’s compliance with the CRC and the OPAC.\textsuperscript{706} The interest of policy-makers on the issue, however, was not


\textsuperscript{705} MacCharles, “Harper Rejects Pleas…”


\textit{Collaborative Framing: Bringing a Doctrine on Child Soldiers onto the Agenda}

Human rights and security-oriented NGOs differed in their choice of strategies on how to promote the need for a doctrine regarding engagement with child soldiers, including their detention. Human rights-oriented NGOs, such as the BCCLA, CCLA CCRC, and AI-Canada, applied outsider strategies to bring attention to this issue. The revelations that Canadian Armed Forces transferred detained child soldiers to Afghan security forces, despite the substantial risk that these children would be subjected to torture, presented a “focusing event”\footnote{See supra notes # 388 and # 389 for the definition of the focusing event.} for Canadian NGOs.\footnote{Documents disclosed during Military Police Complaints Commission (2008-2012) investigation, and records, obtained through the Freedom Information Act (2010), demonstrated that the Canadian government detained and transferred children during its involvement in armed conflict in Afghanistan. Military Police Complaints Commission, \textit{Final Report (2008-042) Concerning a complaint by AI-Canada and BCCLA.} June 2008; CBS News, “Canada's Handling of Young Afghan Detainees Queried.” \textit{CBS News} November 28, 2010.} Focusing events “make policymakers aware of the severity of a particular problem”\footnote{Jutta, \textit{Agenda setting, the UN, and NGOs …,} p. 24.} and question the efficacy of the existent policy. These types of events may play a major role in agenda setting by “creating opportunities for advocates to promote their policy alternatives.”\footnote{Michael Mazarr, “The Iraq War and Agenda Setting.” \textit{Foreign Policy Analysis} 3(1) (2007), p. 8.} Disclosed information, obtained through the Freedom of Information Act, demonstrated that Canadian officials, from the
DFAIT, Privy Council Office, and the DND openly discussed the topic of “child detainees, meaning those under the age of 18.” The lack of transparency further exacerbated the issue. The ages of child detainees remained redacted in all disclosed detainee files, thus making it impossible to determine the number of children transferred from Canadian to Afghan custody. The BCCLA and AI-Canada, following the disclosure of this information, wrote a letter (2010) to the Minister of Defense, Peter McKay, who served under Prime Minister Stephen Harper. They called on the DND to “ensure that the approach is taken to the arrest, detention, transfer, and release of children” is consistent with Canada’s obligations under international law. An NDP member of the Parliament, in 2010, noted, “as we started to receive reports from NGOs that children were being detained and handed over [to Afghan security forces], the issue became our working focus.”

The revelation detailing the transfer of detained children created a window of opportunity for advocacy groups to advance the issue onto the policy agenda. Records from the Question Periods in the House of Commons demonstrate that parliamentarians from the three opposition parties and the government party, engaged in a debate over the issue of specific procedures on the treatment of detained child soldiers. Attention to the issue, however, remained short-lived. Most importantly, the issue of the specific rules and procedures for the treatment and transfer of detained child soldiers did not advance to

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713 Ibid.
715 NDP Member of Parliament and Chair of the All-Party Parliamentary Group for the Prevention of Genocide and Other Crimes Against Humanity, Skype Interview with the Author, Ottawa, Canada, September 21, 2016.
specific legislative committees such as National Defence in the House of Commons or National Security and Defence in the Senate. It also did not reach the agenda of the executive agencies, such as the DND. Human rights NGOs and three opposition parties largely utilized the issue of the detention child soldiers to focus on the broader matter of the transfer of detainees to the Afghan security forces. A Counsel at the BCCLA noted:

“We would highlight the issue of the detention of child soldiers during armed conflict as part of our ongoing concerns about the detention practices by Canadian Armed Forces.”

Human-rights oriented NGOs, however, did not focus their efforts on promoting the need for specific guidelines on the rules of engagement with child soldiers on the agenda.

In contrast, the Dallaire Initiative used a collaborative insider strategy with both representatives of the DND and specific parliamentary committees to promote the need for a separate doctrinal document on the rules of engagement with child soldiers. The Dallaire Initiative advocated in favor of a shared framing of the issue of the detention of child soldiers during armed conflict before the representatives of the DND. This framing emphasized that the dearth of specific guidelines and training on how to engage with child soldiers at the operational level may have “psychological impacts for the personnel” and create “a challenging moral dilemma that has an impact on the overall success of their mission.”

The Dallaire Initiative also stressed the salience of the rehabilitation of detained child soldiers. It also advocated that the core principles of international law, such as the segregation of children from adults during their detention, be integrated into the

717 Senior Counsel at the BCCLA, Skype Interview with the Author.
standard operating procedures of the Canadian military. The success of this advocacy was also contingent on the ability of the NGO to focus solely on the operational advantages of adopting the doctrine in its communication with the DND. The NGO, for example, did not bring the issue of the age for voluntary recruitment to the CAF, which remains at the age of 17, to the discussion table with the DND.

The Dallaire Initiative also advocated among members of the Parliament for the need of a doctrine on the engagement with child soldiers. When the drafting process on the doctrine was underway, General Romeo Dallaire, as a founder of the NGO, advanced its salience before the Senate Committee on the National Security and Defence. Dallaire argued that changes in training and doctrine would influence the abilities of armed forces to face the threat that is “being sustained by the use of children in every conflict.” This argument gained further attention among both decision-makers and the media when an incumbent liberal administration (2015–present) decided to consider engaging in a peacekeeping operation in Mali. This focusing event created a window of opportunity for the Dallaire Initiative to promote the issue on the agenda. The potential engagements between CAF and child soldiers became a topic of debate in the House of Commons, from December of 2016 until the adoption of a doctrine in March of 2017.

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720 Executive Director of the Romeo Dallaire Child Soldiers Initiative, Skype Interview with the Author, Halifax, Canada, August 16, 2016.
Initiative’s advocacy of a shared problem definition and its collaboration with the representatives of the DND and parliamentarians allowed it to promote the issue of the doctrine on the decision-making agenda.

**Policy Formulation**

The Canadian system of government is “dominated by the executive”\(^{725}\) combined with strict party discipline as established “by convention and written constitution.”\(^{726}\) These institutional characteristics allow government agencies to maintain a high degree of influence during the policy formulation process. Furthermore, Canada’s executive branch adopted a confrontational attitude towards the non-governmental organization. This approach was evident across both liberal and conservative governments of Paul Martin and Stephen Harper respectively during the period from 2003 to 2015.\(^{727}\)

The representatives of Canadian NGOs, such as BCCLA, AI-Canada, and CCLA, when interviewed, also described the intensification of confrontational relations with the executive agencies and the lack of access to the policy process during the Harper premiership (2006-2015). The Director of the CCRC commented that NGOs could not “get access to the table with officials”\(^{728}\) and thus did not engage in the discussion about the development of the policy between 2006 and 2015. A representative for AI-Canada also stressed that it “was hard to have an actual conversation with the government”\(^{729}\) on the policy concerning the detention of child soldiers during this period.


\(^{726}\) Ibid.

\(^{727}\) Please see Table 6.1 and detailed discussion in the Introduction section of this chapter.

\(^{728}\) Chairperson, Board of Directors, CCRC. Skype Interview with the Author, August 17, 2016.

\(^{729}\) Manager of the Security and Human Rights Campaigns, AI-Canada, Skype Interview with the Author.
This lack of access to the policy process prompted NGOs to resort to alternative
decision-making venues such as the Canadian Parliament. The legislature has three roles
allowing it to leverage the policy formulation process. The first function is a legislative one
when members of the Parliament engage in the drafting process of laws through their
participation in relevant committees.\textsuperscript{730} During the committee stage, representatives of
NGOs can access the policy process and submit their expert testimonies on the issues under
consideration. The second function involves holding government accountable by allowing
parliamentarians to question representatives of its “decisions, policies, and
performance.”\textsuperscript{731} Opposition parties, in particular, resort to this function “to impose
political costs on the government.”\textsuperscript{732} Importantly, the Canadian legislators, in contrast to
its British and American counterparts, involve in a reactive rather than an intrusive type of
oversight in relation to national security matters.\textsuperscript{733} Canadian opposition parties, which do
not have access to classified information, demonstrated a tendency to openly criticize the
government rather than perform informed oversight of national security policies.\textsuperscript{734} The
third function entails conducting investigations on behalf of relevant parliamentary
committees into actions of the executive branch. As result of their studies, the committees
can publish reports that offer policy recommendations to the government. The official
opposition in the Parliament therefore presented a potential institutional ally for NGOs.

\textsuperscript{730} Stairs, “Debating the Proper Role of Parliament …,” p. 27.
\textsuperscript{731} Ibid., p. 30.
\textsuperscript{732} Ibid.
\textsuperscript{733} Intrusive oversight relies on the conduct of investigations based on classified information with the ultimate
objective of enhancing policy influence. Legislators, who engage in reactive oversight, seek vote-seeking
preferences. Reactive oversight involves reliance on open source information, media reports, and witness
testimonies in an effort to produce “aggressive investigations and hearings into potential wrongdoing.” (p.
122). Philippe Lagassé and Stephen Saideman, “Public Critic or Secretive Monitor: Party Objectives and
\textsuperscript{734} Ibid.
They shared a common interest in serving as a ‘watchdog’ in holding the executive branch accountable. I analyze the degree of cooperation between NGOs and opposition parties. I also examine the extent to which they were unified in supporting representatives of NGOs during policy formulation stage.

This section also demonstrates how the ad hoc nature of the policy, on the detention of child soldiers, allowed military lawyers to position themselves as the principal contributors to the policy formulation. I further analyze the strategic choice of the Dallaire Initiative to cooperate with military lawyers and representatives of the DND, on the formulation of the doctrine on the engagement with child soldiers; despite the confrontational nature of the relationship between the government and NGOs between 2006 and 2015.

Coalition-Building with the Official Opposition in the Canadian Parliament

Canadian NGOs engaged in a range of tactics to capitalize on the investigative, legislative and accountability functions of the Canadian Parliament. First, I explore how these NGOs offered their expertise on the issue of the detention of child soldiers to members of the Subcommittee on International Human Rights (SDIR). Second, I analyze how the cooperation between NGOs and the three opposition parties impacted the drafting process on anti-terrorism legislation in 2012 and 2015. Specifically, I examine the extent to which these respective bills incorporated the protections for children detained for alleged involvement in terrorist activities. Specifically, I demonstrate how varying degrees of unity among opposition parties during the committee stage and third (final) reading of the

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legislation influenced NGOs’ ability to influence the formulation of the policy.

The parliamentary Subcommittee on International Human Rights initiated a review of the detention and prosecution of Omar Khadr in 2008. Representatives of the CCRC, AI-Canada, and the Dallaire Initiative extensively participated in meetings of the Subcommittee, rendering their witness testimonies. Kathy Vandergrift, representing the CCRC, reminded the parliamentarians that Khadr “was under 18 at the time he was associated with fighting forces.” She called on the Committee to apply “the best interest of the child” as a primary principle while investigating the case. Hillary Homes, a representative of AI-Canada, and Romeo Dallaire, together with Ms. Vandergrift, appealed to the Canadian government to prioritize rehabilitation and reintegration in their policies towards detained child soldiers over that of prosecution.

The OPAC largely informed the position of these NGOs. Representatives from three opposition parties represented the majority of the committee and were receptive to recommendations from these NGOs. The final report of the Subcommittee cited the opinions of the NGOs’ representatives, asserting that Khadr should be considered “a child involved in armed conflict.” The Subcommittee also recommended the government to provide the special protections embedded in international treaties, of which Canada was a signatory. The report also emphasized that Omar Khadr’s case was not unique, but concerned compliance with Article 7 of the OPAC – on the rehabilitation of former child soldiers.

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738 Ibid.
739 Ibid.
soldiers. The Conservative Party of Canada (CPC) issued a dissenting opinion, which reflected the government’s position on the issue. The CPC opinion cited a reluctance to interfere with US military commission tribunals, regardless of Khadr’s status as a child soldier.

The Subcommittee’s recommendations, however, do not have a binding force on executive agencies. The SDIR’s influence therefore remained “contingent on the executive’s sense of the politics of the situation or its willingness to heed advice.”

Canadian executive agencies such as Departments of Justice, Foreign Affairs, and Public Safety, largely disregarded the Committee's recommendations and adhered to government’s policy on the issue. Prime Minister Harper, commenting on the Parliament’s report, stated that Khadr does not qualify for the protection required for child soldiers, due to his alleged involvement in terrorist activities.

Canadian NGOs therefore failed to achieve a favorable outcome through their engagement in the investigative work of the parliamentary committee, on the case that exemplified the government’s disregard for the rights of children allegedly involved in terrorist activities.

Despite this setback, the CCRC, AI-Canada, and CCLA broadened their involvement in advocacy before the Canadian Parliament. Canadian NGOs engaged in the debate and drafting process of anti-terrorism legislation: Bills S-7 (2012) and C-51 (2015).

The Senate introduced Bill S-7 to create new terrorism offenses, such as prohibiting individuals from attempting to leave Canada to commit terrorist crimes. The proposed

legislation would be applied equally to both children and adults; thus, classified as a law of general application. Representatives of NGOs voiced their concerns that Bill S-7 lacked stipulations for the protection of those children detained for alleged involvement in terrorist activities. These NGOs advocated for amendments to the bill to ensure its compliance with international human rights treaties on children’s rights. The Department of Justice adopted a different perspective on this issue. Representatives of this agency argued that the application of the Youth Criminal Justice Act (YCJA) “would provide sufficient guidance”\(^744\) on how to best ensure the protection of the rights of children detained for alleged involvement in terrorist activity.

Canadian NGOs advanced their proposals during the debate in the Senate Committee on Anti-Terrorism, with support from the representatives of three opposition parties. Liberal Senator Romeo Dallaire, citing the OPAC’s definition of a child soldier, argued that was “a possibility for youth recruited into terrorist activities to be considered child soldiers.”\(^745\) Bill S-7 therefore had the potential to contradict the letter of the OPAC because it introduced provisions to hold child soldiers accountable for their engagement in armed conflict. It was therefore the obligation of the Canadian government, as a signatory to the OPAC, to ensure that “we do not violate other rights or other conventions that we have agreed to participate in or even helped draft.”\(^746\) Bloc Quebecois Senator Serge Joyal also argued to incorporate a counsel for children into the final draft of the bill “because the

\(^744\) Canada. Senate. Special Committee on Anti-Terrorism. Evidence. “Catherine Kane (Department of Justice)” 41\(^{st}\) Parliament, 1\(^{st}\) Session, May 14, 2012. See also Canada. Senate, Special Committee on Anti-Terrorism. Evidence. “Glenn Gilmour (Department of Justice)” 41\(^{st}\) Parliament, 1\(^{st}\) Session, March 26, 2012; Canada. House of Commons, Standing Committee on Public Safety and National Security. Evidence. “Rob Nicholson (Department of Justice)” 41\(^{st}\) Parliament, 1\(^{st}\) Session, November 19, 2012.

\(^745\) Canada. Senate, Debates. 41\(^{st}\) Parliament, 1\(^{st}\) Session, Vol. 150. March 8, 2012.

\(^746\) Ibid.
youth does not know the system and procedures.” Kathy Vandergrift, a representative of the CCRC, and Shelly Whitman, from the Dallaire Initiative, called on the parliamentarians to include “specific provisions related to children.” The representatives of these NGOs called for these provisions to reflect Canada’s obligations under the CRC and the OPAC. They also cited the case of Omar Khadr as an example of the inability of the Canadian government to ensure the protection of a child soldier faced with terrorism charges.

The inclusion of child-specific provisions were to specify “means to rehabilitate and assist former child soldiers or children who are used in terrorist acts.” These NGO representatives, also emphasized that these stipulations meant to prevent “another Omar Khadr case.” The Committee on Anti-Terrorism recognized NGOs’ input at the report stage. The final report endorsed the need for “a detailed analysis of the bill's provisions by the Department of Justice.” The purpose was to ensure that the bill’s provisions stand in accordance with Canada’s international legal obligations regarding the rights of children. The committee, however, did not introduce any amendments to the bill before presenting it to the House of Commons for the final reading.

The representatives from the three opposition parties endorsed NGOs’ propositions to amend the bill at the committee stage of the drafting process. The official opposition, however, split in its advocacy during the third reading of the legislation in the House of Commons. The NDP and the BQ, on the one hand, continued their support for the NGOs’ proposals. The Liberal Party, on the other hand, silenced its opposition to the legislation.

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749 Ibid.
and sided with the CPC in its support of the bill.

The Liberal Party was in a difficult position given its responsibility for the drafting and passing of the original Anti-Terrorism Act under the leadership of the Jean Chretien government in 2001.\textsuperscript{751} The Liberal Party and individual MPs, who enacted the original legislation, faced “the prospect of a damaged reputation if they voted against the extension.”\textsuperscript{752} Should they vote in favor of the government’s legislative initiative, however, their ability to criticize its actions would be inhibited. In parliamentarian democracies with strict party discipline, such as Canada, “enhancing the party's reputation becomes the most efficient means”\textsuperscript{753} to secure votes especially in general elections.

The Liberal Party ultimately sided with the government in favor of the extension. The NDP and the BQ faced no such dilemma as they opposed Canada’s anti-terrorism legislation from the outset. Members of these opposition parties, during the third reading of the bill, continued to advocate for specific provisions on the protection of children detained for alleged involvement in terrorist activities.\textsuperscript{754} The MPs also referred to the NGOs’ statements given during the Senate committee hearings. Pierre Jacob (NDP) raised the testimony of Kathy Vandegrift to alert MPs that without amendments the bill “would

\textsuperscript{751} Philippe Lagasse and Patrick Mello provide an analysis of the vote on the extension of the Canadian mission in Afghanistan in 2006 as another example of the importance of reputational costs in legislator’s decisions. See Philippe Lagassé and Patrick A. Mello, “The Unintended Consequences of Parliamentary Involvement: Elite Collusion and Afghanistan Deployments in Canada and Germany.” \textit{British Journal of Politics and International Relations} (2018).

\textsuperscript{752} Ibid., p. 10.


violate international obligations regarding the protection of children's rights." Charlie Angus (NDP) voiced his concern that parliamentarians largely ignored propositions from the NGOs “to ensure that children would be taken into special consideration.” Helen LeBlanc (NDP) concluded that, despite experts’ testimonies, the government “turned a deaf ear” and ignored their recommendations. Members of the NDP also voiced their disapproval to the Liberal Party for their support of legislation that “does not have breakout provisions to ensure that children are not going to be subject to unfair detention.” The final draft of the law did not reflect any child-specific measures despite the extensive involvement of Canadian NGOs during the committees’ stage and continuous support from two opposition parties.

The drafting process of new anti-terrorism legislation further demonstrated the decline in NGOs’ ability to influence the formulation of the policy through their involvement in the legislative decision-making venue. The Department of Public Safety proposed far-reaching amendments to the national security laws with its draft of Bill C-51 in 2015. This legislation aimed at restructuring the Canadian Security Intelligence Service (CSIS) and broaden the agency’s “disruption powers to reduce all security threats.” Steven Blaney, the Minister of Public Safety, asserted that the legislation was meant to

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757 Ibid. (Helen LeBlanc, NDP).
“ensure that our intelligence officers can intervene upstream in a radicalization process.”

These proposed changes would allow the CSIS to execute preventive detention of individuals under 18, suspected of terrorist activity. Representatives of the Department of Justice and Privy Council Office argued, during both Parliament sessions and hearings in the Senate and House of Commons committees, that these changes were imperative for Canadian national security.

The involvement of NGOs in the drafting process of Bill C-51 differed from previous anti-terrorism legislation, such as Bill S-7, in two ways. First, there was a lack of testimonies from representatives of the NGOs with expertise on the issue of children in armed conflict such as the Dallaire Initiative, CCRC, or JFCY. Representatives of AI-Canada, the CCLA, and BCCLA who provided their statements before the parliamentary committees focused on the broader effect of Bill C-51 on individual privacy, transparency, and accountability. Carmen Cheung, a representative from the BCCLA, spoke against the proposed amendments to the CSIS Act, proposed with the new legislation that would apply to both adults and children:

[...] this threat reduction power is a policing power; and, by giving the CSIS the ability to engage in threat disruption, Bill C-51 blurs the line between spying and policing.

Testimonies from these NGOs did not directly pertain to the question of how this

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761 Ibid.
762 These committees included House of Commons. Committee on Public Safety and National Security and the Senate Committee on National Security and Defence.
765 Ibid (Carmen Cheung (BCCLA)).
legislation would affect children differently than adults. They also did not discuss international and national legal instruments that would compel parliamentarians to advocate for these amendments.

Second, distinguished academics such as Professors Kent Roach and Craig Forcese, with expertise on national security and terrorism, substantially contributed to the work of the Senate Committee on National Security and Defence and the House of Commons Committee on Public Safety and National Security. They developed a detailed analysis and criticism of the bill. Roach and Forcese called for the committees not to expand CSIS’s powers toward individuals under the age of 18.

The contribution of these experts had the potential to fill the void left by the lack of testimonies from child-centered NGOs. Furthermore, the representatives of the three opposition parties also raised the importance of introducing amendments to the bill during the committee stage and second reading of the bill at the House of Commons and the Senate. Senator Jean-Guy Dagenais (BQ), questioned the proposed bill on its approach to the issue of children who may be becoming radicalized. He argued that the law did not address the causes of radicalization. Liberal Senator Grant Mitchell referenced the case of Omar Khadr – “a 15-year-old child soldier [...] whose rights have been abused to varying degrees of intensity” to demonstrate that the bill does not properly safeguard

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children’s rights. The members of the NDP were the most outspoken in their opposition to the legislation. The representatives of the party stated that C-51 constitutes an unnecessary extension of powers for law-enforcement agencies.770 The leader of the NDP, Tom Mulcair, noted that “CSIS already has the mandate to investigate any threat to Canada's security.”771

Despite the efforts of the opposition parties and support from experts in relevant committees in the House of Commons and the Senate, the draft of the bill did not include any amendments on the issue of the protection of the rights of children detained for alleged involvement in terrorist activities.772

The three opposition parties, however, divided over the legislation during the final readings of the bill. The Liberal caucus silenced its opposition to the proposed legislation. The impending elections, scheduled for October 2015, further reinforced the rationale of the Liberal Party. The party’s leader, Justin Trudeau, emphasized that the “conversation might be different if we weren't months from an election campaign.”773 Trudeau claimed that the party’s position on the bill “was meant to counter potential government’s claims about our stance on terrorism.”774 The Liberal party was willing to overlook “gaps” in the bill and voted for its support.775 The NDP, in contrast, positioned itself as a party committed

772 Canada. Senate. Committee on National Security and Defence, Report “Observations on National Security and Defence (Bill C-51).” May 27, 2015. The sixty two amendments proposed from the three opposition parties were voted down and the bill ultimately included only three technical amendments proposed from the CPC.
to opposing legislation that infringed upon the rights and freedoms of Canadians. The NDP MPs criticized the position of the Liberals for “giving a “blank cheque” to the Conservative government.” Similar to the drafting process on Bill S-7, the opposition to the legislation, on behalf of smaller parties and experts, was insufficient to ensure that the final draft of the bill incorporated amendments on the protection of the rights of children detained for alleged involvement in terrorist activities.

All three Canadian opposition parties supported the introduction of amendments at the drafting stages of anti-terrorism legislation in both 2012 and 2015. When the drafting processes reached the final readings of these bills, however, the opposition split in its support of the legislation. The Liberal party ultimately supported the legislative initiatives of the executive, without major amendments. The issue of the protection of the rights of children detained for their participation in terrorist activities was left to smaller opposition parties such as the NDP and BQ. Despite their advocacy, and cooperation with NGOs, these parties did not have enough leverage to impact the policy formulation process. The choice of opposition as an institutional ally, on the one hand, allowed for NGOs accessing the policy process and engaging in the drafting process of the Canadian anti-terrorism legislation. NGOs, on the other hand, did not account for the difference in preferences of the opposition parties. Their influence did not extend beyond the committee stage of the legislative process. They therefore did not impact how these laws addressed the protection of the rights of children detained for alleged involvement in terrorist activities.

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776 The short-term outcome of NDP’s calculations was its rise in national polls and surprising electoral win in Alberta. See Aaron Wherry, “The Long and Short of C-51.” *MacLean’s*. June 25, 2015.

Building Alliances with the Department of National Defence

The Dallaire Initiative pursued collaboration with representatives from the Department of National Defence on the formulation of the doctrine regarding engagement with child soldiers. The commanders and judge advocates attained substantial influence in the formulation of the detention policy during Canada’s military engagement in Afghanistan (2001-2014). The leadership in Ottawa increased the level of discretion\textsuperscript{778} – compared to previous instances of Canada’s participation in NATO operations – for commanders and judge advocates, to bring their input to the formulation of the policy.\textsuperscript{779}

A Former Minister of Defense, in a confidential interview, further corroborated that military legal advisers “exercised a great deal of discretion”\textsuperscript{780} and “disseminated knowledge and advice to the Canadian Forces’ commanders serving in Afghanistan.”\textsuperscript{781} In the absence of a formal written policy, judge advocates and commanders of the CAF developed procedures to guide the detainee policy of the mission on the ground, known as Theater Standing Orders.\textsuperscript{782} The Military Police Complaints Commission Investigation (2007-2012) discovered that a closed group of commanders, political adviser (J9s) and judge advocates discussed and determined the detainee policy.\textsuperscript{783} Major LaFlamme, during his cross-examination, defined this circle as “groupe slectifé” and emphasized their centrality in the development of the detention policy. LaFlamme further noted that judged

\textsuperscript{778} I follow Catherine Durose’s definition of discretion. See supra note # 623.
\textsuperscript{780} Minister of National Defence. Canada, Skype Interview with the Author. Toronto, Canada. September 26, 2016.
\textsuperscript{781} Ibid.
\textsuperscript{782} Canada. Department of National Defence and the Canadian Armed Forces, *JTF-Afgh Theatre Standing Order (TSO) 321A*…
advocates were the actors who “looked into the questions related to youth.”  

The Deputy Judge Advocate General for military justice, when interviewed, commented that military legal advisers would advise commanders on how “to determine whether somebody could be a juvenile or not.” They also rendered their advice on the application of international human rights law in situations that involved the detention of child soldiers. A representative of the Judge Advocate Corps explained that Canada follows the *lex specialis* principle in the interpretation of the relationship between international human rights and international humanitarian law. IHL requires applying special treatment only to those children who are under the age of fifteen. Canadian judge advocates, however, advised extending the protection of international law and treatment to those who “appeared to be younger than eighteen.”

Under conditions where the age of children is difficult to determine, judge advocates were willing to apply international human rights law as a matter of policy. These guidelines on the detention of child soldiers, however, remained ad hoc and applicable only to the specific area of operation. The lessons learned from Canada’s engagement in Afghanistan, together with the ensuing litigation in practices of the Canadian government and armed forces in the country, as well as increasing the attention of the Parliament to

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785 Canadian Armed Forces Deputy Judge Advocate General for Military Justice, Skype Interview with the Author.

786 See supra note #374 for the definition of the principle of *lex specialis* and how it is applied to resolve conflict between international human rights and humanitarian corpuses of law.

787 Ibid.

788 The efforts to investigate the practice of the Canadian Armed Forces in Afghanistan took place in federal courts (lawsuit brought forward by Al-Canada and BCCLA in 2007 against the Government of Canada) and investigation by the Military Police Complaints Commission. The House of Commons Special Committee
the issue ultimately compelled the DND to consider revising elements of its doctrine on detention. The Dallaire Initiative was eager to cooperate on the development of a doctrinal document that was “not country-specific but would provide overarching principles to military personnel.” The NGO applied a range of tactics to demonstrate its expertise on the issue before the DND, given that insider strategies heavily rely on persuasion. The Dallaire Initiative further promoted a shared framing among the representatives of the DND. The NGO argued that the adoption of a doctrine on child soldiers would not only result in the protection of children during armed conflict but also in ensuring the overall success of CAF missions. The Dallaire Initiative also demonstrated its expertise in the development of training materials for the military. The NGO’s training handbook provides a set of scenarios involving child soldiers that members of CAF might encounter during armed conflict. These scenarios include “do’s and don’ts,” designed in a similar format as Rules of Engagement cards, on how to address the situation of the detention of a child soldiers. These included contacting a Child Protection Officer immediately after child has been detained, taking into account needs of girls detained, not detaining a child longer than 48 hours and not interrogating children without the Protection Officer.

The NGO also organized roundtables with representatives from the DND to

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introduce these training tools on engagement with child soldiers.\textsuperscript{794} The Dallaire Initiative also advised the DND on how to address the issue of the involvement of children in various types of operations, such as combating maritime piracy and engaging with child soldiers during peacekeeping operations.\textsuperscript{795} The NGO also disseminated lessons learned from military engagement with child soldiers in the Canadian and international context, including Somalia, Sierra Leone, and Nigeria.\textsuperscript{796} This knowledge allowed the NGO to advise the DND that “the use of children by terrorist organizations”\textsuperscript{797} will present particular challenges for detention. The NGO hence advocated that the doctrine was to incorporate provisions on how to address the detention of child soldiers during military operations.

This established expertise allowed the Dallaire Initiative to advise the DND on the development of a doctrinal document that was to “provide operational and tactical considerations”\textsuperscript{798} in different areas and types of operations. The Dallaire Initiative, ultimately, collaborated with the DND for almost two years in the drafting process on the development of the doctrine.\textsuperscript{799} A representative from the Judge Advocate Corps, when

\begin{itemize}
\item \textsuperscript{796} Ibid.
\item \textsuperscript{797} Shelly Whitman, Darin Reeves and Dustin Johnson, “Addressing the Gaps in Security Sector Training: The Detention of Child Soldiers” in \textit{Protecting Children Against Torture in Detention}. (Center for Human Rights and Humanitarian Law, 2016).
\item \textsuperscript{799} The National Post, “Canadian Military First in World to Issue Guidelines on Dealing with Child Soldiers.” \textit{The National Post}. February 6, 2017. See also Kassam, “React First …”
\end{itemize}
interviewed, commented that the Dallaire initiative “has been very much a leader in the development of the doctrine on the issue [of child soldiering].” 800 The document also addressed the issue of the detention of child soldiers, as Commander Roy McLay commented, based on two principles – separation and rehabilitation – “to try to get these kids into a rehabilitated state and back to their families.” 801

The window of opportunity to promote the adoption of a doctrine opened during the discussion of deploying a Canadian contingent to the UN peacekeeping operation in Mali in February of 2017 and the possibility of CAF members encountering child soldiers there. The DND and the Dallaire Initiative, sharing the framing and policy solution on the issue, seized this opportunity. 802 The DND approved the doctrine in March of 2017. With the adoption of the doctrine, Canada transformed itself from a country with an ad hoc policy on the engagement with child soldiers to the first NATO member with the doctrinal document on the issue. In its announcement, the DND acknowledged the contribution of the Dallaire Initiative in the development of the doctrine.

Two factors allow us to understand how the NGO attained a certain level of influence. First, the Dallaire Initiative chose an institutional ally that was “in a position to reform policies” 803 on this issue. The DND was the executive agency concerned with both the development of the doctrine and the deployment of missions. Second, the objective of achieving the agency’s effectiveness motivated representatives of DND, not the vote-seeking incentives. The Dallaire Initiative demonstrated a willingness to engage in strategic

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800 Canadian Armed Forces Deputy Judge Advocate General for Military Justice, Skype Interview with the Author.
802 See Kingdon Agendas, Alternatives, and Public Policies; Baumgartner and Jones, The Politics of Attention ...
action to show that the adoption of the doctrine on the engagement with child soldiers will contribute to the effectiveness of the department, such as an increase in the safety of the CAF and success of the DND missions.
Policy Implementation

This section explores how the confrontation between the representatives of the Canadian government, primarily the Departments of Justice and Foreign Affairs, and Canadian human rights NGOs, such as the BCCLA, AI-Canada, CCLA, and CCRC, shaped the policy implementation process on the detention of child soldiers. First, these NGOs and representatives of government agencies opposed each other at domestic judicial forums. Government lawyers endorsed the executive’s vision of the policy. Canadian NGOs used domestic litigation. They argued for the Canadian government to comply with international human rights treaties, concerned with the rights of child soldiers in detention. Human rights NGOs also supplemented their involvement at the domestic level with advocacy at international forums such as the Committee on the Rights of the Child and the UN Human Rights Council. Importantly, these NGOs used ‘naming and shaming’ as a complementary strategy, as opposed to a primary tactic. I examine the short and long-term consequences of the NGOs’ application of these strategies. The immediate consequences involve an increase in transparency around the policy issue, thus signaling key government agencies, such as the CSIS and the DND, to recognize the policy changes.\(^\text{804}\) The second type of change is incremental in nature, possibly entailing the government articulating their policies or changing them.\(^\text{805}\)

*Domestic Litigation and ‘Naming and Shaming:’ The Complementarity of Strategies*

Canadian human rights oriented NGOs, through the submission of briefs to domestic courts, applied the mechanism of third-party intervention to influence the

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\(^{805}\) Ibid., 594.
implementation of the policy. These briefs allow interested entities, who are not direct parties to the litigation, to “inform the court of their interest in the case, take a position as to its outcome, and present persuasive argumentation supporting their preferred position.”

The increase in participation of interest groups in the activities of the courts has characterized Canada’s political context since the 1980s. A representative of the BCCLA observed that “judicial intervention is a prevalent model” for Canadian NGOs that lack conventional means for influencing the policy process. The adoption of the Charter of Rights and Freedoms (1982) provided interest groups with additional leverage to “present rights-based claims.”

Canadian courts cannot be independently enforced international human rights treaties. The Charter thus became a primary document in the effort to hold the state and its actors accountable. Representatives of the BCCLA, CCLA, and AI-Canada emphasized the importance of the Charter in bringing claims concerning compliance with international human rights treaties, on the protection of children’s rights, during Omar Khadr’s case in the Supreme Court of Canada (SCC). An AI-Canada Program Manager stated, “you can't make a pure international law argument in a Canadian court; you have to tie it to the Charter argument.”

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806 Intervener is a third party, who supports one of the litigants upon the start of the lawsuit. In Canada, as Tania Abbiate defines “third-party interventions are regulated by Rules 55-59 of the Supreme Court, which establish that any interested person or group get the motion to intervene, if the submissions of the intervener can be useful to the Court, are different from the ones presented by the parties, and if the intervener has an interest or credibility to argue the case.” See Tania Abbiate, “Mechanisms Available to NGOs in Order to Protect Human Rights in Front of Constitutional Courts” IYRCL: Human Rights in 21st Century.
809 Senior Counsel at the BCCLA, Skype Interview with the Author.
810 Abbiate, “Mechanisms Available to NGOs …,” p. 72.
811 Manager of the Security and Human Rights Campaigns, AI-Canada, Skype Interview with the Author.
concerned with the “question of whether or not we can claim that the Charter has the extraterritorial application.”

The case of Omar Khadr, which resulted in three Supreme Court cases (Khadr 2008, Khadr 2010, Khadr 2015), provided a litmus test for the extraterritorial application of human rights treaties concerning the rights of child soldiers in detention. The first SCC case (2008) was to address the question of whether Canadian officials, through their involvement in Khadr’s interrogation, participated in the US’ violations of his rights. The ruling was to decide whether the Canadian government had to produce the results of Khadr’s interrogation. The University of Toronto Human Rights Clinic (UTHC) – third-party intervener – stressed “given Omar’s age we will focus our submissions on the CRC.” They assessed the legality of the conduct of the Canadian officials based on key human rights treaties. The intervener’s brief asserted that “Canada’s obligations under both the CRC and ICCPR [International Covenant on Civil and Political Rights] were triggered when it took the positive step of interrogating Omar.” The submission details how, in their interrogation, Canadian officials did not make the “best interests of Omar their primary consideration.”

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812 Senior Counsel at the BCCLA, Skype Interview with the Author.
814 Ibid.
816 A range of NGOs such as CCLA, BCCLA, CCRC, and AI-Canada submitted their briefs to the Supreme Court cases in support of Omar Khadr. Still, only one or two briefs was to focus on Canada’s compliance with the letter of the CRC and OPAC. The ground rule of the third-party intervention requires parties to “provide information that is relevant and non-duplicative” (p. 387) to that supplied by other interveners. See Benjamin Alarie and Andrew Green, “Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance.” Osgoode Hall LJ 48 (2010).
818 Ibid., p. 4.
819 Ibid., p.6.
gathering and law enforcement, thus failing to follow the letter of the CRC.\textsuperscript{820}

Government lawyers, representing the Department of Justice, undertook efforts to strike down the submission from the UTHC and parts of the BCCLA intervention, where it raised the broad question of Canada’s violation of international human rights.\textsuperscript{821} The SCC dismissed these requests from the Department of Justice. The Supreme Court ruled that “interveners must have some latitude to approach the legal argument from different perspectives”\textsuperscript{822} to fulfill the requirement in presenting new and different perspectives before the court.

In its judgment, the SCC adjudicated that Khadr was entitled to the disclosure of the information CSIS agents provided to the US authorities.\textsuperscript{823} The ruling compelled CSIS to release the documents and recordings of Khadr’s interrogation.\textsuperscript{824} The immediate result of the Khadr case (2008) was increased transparency on the issue. A representative of the BCCLA commented that, as result of the court’s ruling, “we would be able to get access to documents that we could eventually make public.”\textsuperscript{825} The SCC decision – and increased transparency on the CSIS practices – prompted an investigation into actions of the agency from the Security Intelligence Review Committee (SIRC).

The SIRC is an independent and external body that performs oversight of the CSIS. The executive appoints its members, but “on the advice of other parties in parliament.”\textsuperscript{826} The Committee therefore operates “outside both the executive and legislative branches of

\textsuperscript{820} Ibid., p. 5.
\textsuperscript{823} Canada (Justice) v. Khadr. S.C.C. No. 28, 2 S.C.R. 125.
\textsuperscript{825} Senior Counsel at the BCCLA, Skype Interview with the Author.
Most importantly, the SIRC has full access to all records of the CSIS to investigate its actions, similar to its congressional counterparts in the US. The SIRC investigation into the CSIS’s role “in the matter of Omar Khadr” examined not only the specific case but also the broad policy of the agency towards detained child soldiers.

The report criticized the agency for failing to consider human rights issues related to Khadr's age. It focused solely on the intelligence gathering purposes of its mission. The SIRC report provided recommendations for CSIS to develop:

[...] a policy framework to guide its interactions with youth [...] and ensure that these interactions are guided by the same principles that are entrenched in Canadian and international law as they relate to youth.

The SIRC recommendations were only limited to the practices of the CSIS. The overarching government policy on the issue was outside of the committee’s mandate. The unwillingness of the executive branch to undertake changes prompted further litigation on the domestic level and a greater involvement on behalf of NGOs.

The second case, addressing the issue of Khadr’s repatriation, reached the Supreme Court in 2010. This case grappled with the question of the extraterritorial application of the CRC and OPAC outside of Canada. The litigation began when Federal Court Justice James O'Reilly challenged the government’s refusal to seek his repatriation from the Guantanamo detention facility. O’Reilly’s ruling was groundbreaking in two ways. First, he relied on international human rights instruments: the Convention Against Torture, the CRC, and most importantly, the OPAC. The Justice also invoked the principle of the

829 Ibid.
831 Khadr v. Canada (Prime Minister), 2009 FC 405, 341 F.T.R. 300 at para 22.
“duty to protect” the child from all forms of violence. O'Reilly referred to the OPAC Preamble stressing that “Khadr, being a child, was vulnerable to being caught up in armed conflict.” Canada, as a state party to the treaty, had to offer him rehabilitation and social reintegration. The case reached the SCC when the Federal Court of Appeals supported O'Reilly’s decision.

Government lawyers dedicated a significant portion of their factum for the SCC to argue against the extraterritorial application of international human rights treaties in the Khadr case. A government lawyer from the Department of Justice stated that the Canadian government did not consider Khadr’s status of a child soldier as “a significant factor” while some interveners “sought to make it so.” Canadian NGOs filed a total of nine briefs to highlight different aspects of the case. Justice for Children and Youth, together with the CCRC, focused on compliance with the CRC and OPAC in their intervention. The brief aimed at demonstrating the extraterritorial application of these international human rights treaties to the action of the Canadian government, and its agents. These NGOs referred to Justice O'Reilly’s application of the principle of duty to protect. NGOs cited international legal instruments, to call on the Canadian government to fulfill its “duties to rehabilitate and reintegrate” a child soldier.

The SCC, in its ruling, established that the executive “participated in a process that

836 Chief General Counsel, Department of Justice, Written Responses to the Questions.
837 Ibid.
838 Canadian Coalition for The Rights of Children, CCLA, BCCLA, National Council for Protection of Canadian Abroad, AI-Canada, Criminal Lawyers Association, Canadian Bar Association were among the interveners.
was contrary to Canada’s international human rights obligations,” including those related to the rights of children involved in armed conflict. Yet, the nature of the court’s ruling remained declaratory. The SCC abstained from imposing any specific remedial obligations on the government, including the requirement to request Khadr’s repatriation. The conservative nature of the ruling lay in the Court’s understanding of an executive prerogative over foreign relations and the limitations of the Court’s institutional competence.

Canadian NGOs such as AI-Canada and the CCRC were willing to complement their domestic level initiatives with the application of the ‘naming and shaming’ strategy on an international level. These organizations resorted to international venues, such as the Committee on the Rights of the Child and UN Human Rights Council, to expose the lack of compliance with international human rights treaties by the Canadian government. The CCRC submitted an alternative report on the implementation of the Convention on the Rights of the Child to the respective Committee in 2012. The NGO cross-referenced rulings from Khadr’s SCC cases (2008 and 2010) to demonstrate Canada’s “lack of compliance with the treaty” on the treatment and rehabilitation of former child soldiers. It emphasized the potential impacts of the case “for the implementation of the OPAC” internationally. The Canadian government, through the participation of high-ranking representatives from agencies such as DFAIT, actively engaged in meetings of the

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Committee. Elissa Golberg, Canadian Ambassador and Permanent Representative to the UN, asserted that Canada had “no extraterritorial obligations under the OPAC.”

Canadian government therefore presented a stance contrary to that of the NGOs.

The Committee called on the government to extend “extraterritorial jurisdiction under the OPAC” when “the victims or perpetrators had a link with Canada.” An executive representative from the CCRC confirmed that strong recommendations from the Committee on the Rights of the Child were instrumental in compelling the government to repatriate Khadr. The Committee, however, did not only focus on one specific case in its concluding observations. The recommendations, citing rulings from the Supreme Court of Canada, called upon the executive branch to align its policy towards detained children with that of international human rights law. NGOs engaged in further domestic court action to promote the implementation of the OPAC. A representative of the CCRC noted, “there was a need for political pressure along with support from these [international] venues to make progress.”

After Omar Khadr’s return to Canada, Canadian NGOs were willing to ensure that he was afforded proper treatment according to the CRC and the OPAC. The Department of Public Safety, in contrast, asserted that Khadr should serve an adult sentence in a federal detention facility. This resulted in the third Supreme Court case (2015). NGOs advocated for the designation of Khadr’s sentence as a youth sentence. They also endorsed his transfer to a provincial correctional facility due to Khadr’s status of a child soldier at the moment.

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846 Ibid., p. 6.
847 Ibid.
848 Chairperson, Board of Directors, CCRC. Skype Interview with the Author.
849 Ibid.
of his capture in 2002.

AI-Canada, in its brief to the SCC, emphasized that Khadr’s status as a child soldier has direct implications at all stages of his detention. The CCLA emphasized diminished moral “blameworthiness of young people.” The NGO called on government agencies to interpret Khadr's sentence with consideration of his reintegration into society. The ruling of the SCC confirmed the order of the lower court. It affirmed Khadr’s as a youth sentence to be served in a provincial correctional facility. The SCC ruling also officially acknowledged Khadr’s status “as a juvenile offender in determining his sentence.”

NGOs also complemented domestic litigation tactics with a ‘naming and shaming’ strategy internationally. AI-Canada issued a comprehensive report to the UN Human Rights Committee. The NGO discussed the Canadian government’s refusal to recognize Khadr as a child soldier and provide him with necessary protections and rehabilitation services. AI-Canada widely cited SCC rulings in its report to illustrate that, “Canadian officials were complicit in violating Mr. Khadr’s rights.” This engagement at the UN Human Rights Committee allowed for further publicizing the executive’s non-compliance with the policy.

In July of 2017, Prime Minister Justin Trudeau accepted the Supreme Court’s determination, issued in 2010, regarding the violation of Khadr’s rights. The government offered Khadr “a meaningful remedy” and an apology. Trudeau also commented on the broader implications of the decision, “this is not about the details or merits of the Khadr

854 AI-Canada, Submission to the UN Human Rights Committee. (June 2015), pp. 15-17.
case. When the government violates any Canadian's Charter rights, we all end up paying for it."856 Stephanie Carvin noted that the settlement showed that the Canadian government had to acknowledge and compensate for its “failure to uphold international legal norms.”857

The three rulings from the SCC played an instrumental role in reaching the decision, as they demonstrated that “the executive is not exempt from constitutional scrutiny.”858 Canadian NGOs, such as AI-Canada, also recognized the broader implications of the redress. Alex Neve, its Secretary General, noted that government’s compensation and apology “send a message that Canada will not tolerate disregard for human rights in our approach to national security, and there will be consequences for breaches.”859 The CCRC also commented that the apology and settlement in the Khadr case demonstrated the importance “of recognizing and protecting the rights of all children”860 and fulfilling Canada’s obligation of rehabilitating child soldiers.

**Conclusion**

This case study analyzed the development of the Canadian policy on the detention of child soldiers, through the varying strategies of NGOs, vis-à-vis military lawyers and government officials. Human-rights oriented NGOs capitalized on their collaboration with the official opposition to gain access to the decision-making venues. NGOs, however, did not impact how anti-terrorism legislation addressed the protection of the rights of children detained for alleged involvement in terrorist activities. They failed to account for the varied

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858 Macklin, “Comment on Canada (Prime Minister) v. Khadr …,” p. 319.
preferences of the opposition parties. In contrast, the Dallaire Initiative engaged in collaboration with representatives of the Department of National Defence. First, they developed a shared framing on the issue. Second, the NGO influenced the formulation of the military doctrine, which provided specific guidelines on how to engage with child soldiers, including their treatment in detention. The adoption of the document changed the previously ad hoc nature of country’s policy on the issue. It also allowed for Canada to become the first NATO member with a doctrinal document on the issue.

NGOs also applied domestic litigation as an accountability strategy during policy implementation stage of the policy process. In contrast to their American counterparts, they used ‘naming and shaming’ on the international level as a complementary policy instrument – not as a primary strategy – to amplify effects of the domestic enforcement mechanisms. Canadian NGOs cross-referenced findings from domestic judicial bodies at international forums to further expose instances of the government’s non-compliance with international law.861 Canadian NGOs showed that the integration of domestic and international strategies might provide a powerful tool for human rights actors in influencing the implementation of public policies. This concluding section discusses the potential contribution of my findings to debates within three research programs: a broad research program on child soldiers, the role of military legal advising in armed conflict, and the strategic action of NGOs in the policy process.

This case study may contribute to the emerging debate on the dilemmas that arise from children’s participation in terrorist activities. The notion of a child terrorist is a

861 Duffy, “Human Rights Litigation and the ‘War on Terror’…”
historical phenomenon. The implication of children’s involvement in terrorist organizations, however, have gained urgent attention with the recruitment and use of children in armed conflict in the ungoverned and fragile territories of the Middle East, South Asia, and North Africa. In the Canadian context, NGOs and representatives of the executive agencies engaged in framing contests to determine the extent to which children detained for alleged participation in terrorist activities retain their protections as children. The government attempted to frame child soldiers as terrorists and denote them as a threat to national security. This had the potential to create categories which would exist outside of legal protection. This framing could weaken the norm on the protection of children involved in armed conflict.

This case study demonstrated a strong pushback from Canadian NGOs against this approach, across three stages of the policy process. The sharp divisions between NGOs and government officials, however, only reinforced the dichotomous and ambivalent understanding of a child soldier, divided into the polarizing categories of victim and perpetrator. Policy responses often demand nuanced approaches. These are to account for the agency of former child soldiers, elaborate on accountability mechanisms that go beyond criminal responsibility, and pay attention to reconciliation mechanisms. The development of such responses requires “moving beyond the binary distinction between victim- and perpetrator-hood” from both the government officials and NGOs.

As scholarship also demonstrates, these shifts in interpretations of innocence and

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862 David Rosen, in his publications, discusses historical examples of the recruitment and use of child soldiers in terrorist activities such as the recruitment of children during the final days of WWII and the use of children as suicide bombers in the Israeli-Palestinian conflict. Rosen, Armies of the Young pp. 121-127; David Rosen, Child soldiers in the Western Imagination: From Patriots to Victims. Rutgers University Press, 2015, p. 81.
864 Derluyn, et al., “Victims and/or Perpetrators? …”
865 Ibid.
guilt also lead to conflicts between international and national legal systems.\textsuperscript{866} The international legal framework aimed at preventing and punishing child recruitment and use in hostilities. International Law, however, does not differentiate between “child soldiers and child soldiers associated with terrorist groups.”\textsuperscript{867} Moreover, the existing international legal framework views criminally prosecuting child soldiers “as inappropriate and undesirable.”\textsuperscript{868} Still, Noelle Quenive notes, that international law does not put a blanket prohibition on the prosecution of children, for violations of the laws of war.\textsuperscript{869} This analysis of the Canadian case demonstrates how the government “made use of this permissive, though constrained, international legal framework”\textsuperscript{870} to criminalize activities of children who voluntarily or forcibly join terrorist ranks.

This case study may also contribute to the debate on the intensification of the relationship between law and war.\textsuperscript{871} The research demonstrates the proliferation of legal institutions and agents, such as judge advocates, and their increasing influence on public policies concerned with armed conflict.\textsuperscript{872} This case study contributes to an emerging analysis on how military lawyers could find themselves in a position when they act as


\textsuperscript{868} Drumbl, \textit{Reimagining Child Soldiers …}, pp. 102-103.

\textsuperscript{869} Quénivet, “Does and Should International Law Prohibit the Prosecution of Children for War Crimes? …,” p. 436.

\textsuperscript{870} Ibid.

\textsuperscript{871} The debate demonstrates that law may perform not only a “proscriptive function, but frequently serves as a strategic resource for belligerents that can be legitimating and enabling” (p. 585). Jones and Smith, “War/Law/Space Notes …”

“more than merely advising commanders” in the field. Canadian judge advocates, despite the official government’s policy of lex specialis, advised on the application of the international human rights law definition of a child soldier and the fundamental protections associated with it as a matter of policy.

The conclusions from this case study resonate with findings from other contexts. Craig Jones’ analysis, on the role of military lawyers in the development of the Israeli targeted killing policy, demonstrated that judge advocates actively expanded the definition of what constitutes a ‘lawful target.’ Nicola Perugini and Neve Gordon analyze how military lawyers participated in the redefinition of such categories as civilian and combatant, to address high civilian casualty rates in drone operations. Stephanie Carvin provides an account of how judge advocates applied their leverage on the strategic level to influence detention and interrogation policies in the United States. Finally, the influential role of military lawyers allowed for framing the issue of the detention of child soldiers as a ‘legal’ (not only an ethical or political) problem, which then needs to be solved by experts. This allowed, to a certain extent, for the avoidance of the polarizing victim/perpetrator debate, during the drafting process of the doctrine on the engagement with child soldiers, while still addressing specific operational and human rights concerns. Moreover, this de-politicization of the issue allowed for seeking collaboration with non-governmental organizations who offered their expertise on the issue. This case study demonstrated that fruitful cooperation between NGOs and government officials resulted in

874 Jones, “Lawfare and the Juridification …”
876 Carvin, Prisoners of America’s wars …
877 Jones, “Lawfare and the Juridification …,” p. 16; See also Kennedy, Of War and Law …, pp. 158-159, p. 89.
the ultimate adoption of the Canadian doctrine on child soldiers.

Third, this case study also may contribute to the debate on the strategic action of NGOs in the policy process. The nature of the relationship between NGOs and the government shifted from cooperative to confrontational during the premiership of Stephen Harper. Nevertheless, NGOs wielded varied levels of influence on policy outcomes during that period. This case study may offer further empirical evidence to the discussion on how NGOs’ choice of strategies and decision-making venues is interconnected.\(^{878}\)

I demonstrate how Canadian NGOs strategically selected venues “in a government system that provides multiple access […] to support an advocate’s policy preferences”\(^{879}\) and the implications of these choices on policy outcomes. Canadian human rights-oriented NGOs collaborated with the official opposition as their primary institutional ally to gain access to legislative decision-making venues. The lack of coherence among the opposition parties, however, weakened the chances of the NGOs to influence the policy formulation process. These findings also resonate with the emerging discussion on whether access to policy-makers allows for achieving “shift policy outcomes in their favour.”\(^{880}\) The Dallaire Initiative, in contrast, chose the Department of National Defence as its primary decision-making venues. This NGO successfully argued before the DND representatives that the development of the doctrine on the engagement with child soldiers would ultimately increase the effectiveness of their department, thus capitalizing on preferences of the department’s representatives. This case study therefore may offer insight into the

\(^{878}\) See supra note \# 188 for the discussion of the debate on this issue.


discussion on how the preferences of policy opponents and allies shape decisions of advocacy groups. It therefore hopes to further advance the debate on the question regarding conditions under which NGOs might be influential.  

The study on the policy process, on the detention of child soldiers in Canada, is an instructive case of a liberal democracy grappling with choices on how to address dilemmas of children involved in armed conflict; including those who become involved in terrorist activities. This case study demonstrates that the victim/perpetrator dilemma does not address the key issues of this policy domain, which is of ensuring national security, accountability, the protection of children’s rights, and recognizing a child’s agency. The dilemmas and complexities of this issue call for increased involvement of experts such as military lawyers and non-governmental organizations in the policy process.

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CHAPTER VII. THE CHILD SOLDIERS’ DETENTION POLICY IN THE UNITED KINGDOM

Introduction

This case study analyzes how the development of a policy on the detention of child soldiers, in the UK context, became an example of a ‘policy without publics’ as defined by Peter May. First, I demonstrate how the disengagement of British NGOs from the policy process resulted in a lack of involvement from interest groups. This lack of engagement contributed to the shifting of the issue to an environment best characterized as apolitical. Second, I analyze how the gradual involvement of military lawyers at the Ministry of Defence (MoD) led to these experts dominating the formulation and execution of the policy. In doing so, I examine three constitutive stages of the policy process: agenda-setting, policy formulation, and policy implementation.

The first section, focusing on the agenda-setting stage, analyzes the reasons of the non-emergence of the issue of the detention of child soldiers on the advocacy portfolios of those British NGOs whose work broadly engages matters of children in armed conflicts. I examine these NGOs’ advocacy documents, which include their annual and financial reports, their press releases, and their website statements. My purpose is to question whether the issue’s innate characteristics, the level of media attention, or their funding

882 Peter May introduced the definition of policies without publics as “a contrasting political world” to policies with publics. The latter exhibits involvement of varied interest groups such as NGOs, governmental officials, and citizens “who have a stake in a given set of issues” (p. 203). There is a limited development of interest groups in policies without publics. Their development is usually restricted to expert communities. Publics surrounding the issue are not extensive, and policy communities are weakly developed (p. 194.). May defines publics as “identifiable groupings who have more than a passing interest in a given issue debate or are actively involved in an issue debate” (p. 190). See Peter May, “Reconsidering Policy Design: Policies and Publics.” Journal of Public Policy. 11(2) (1991).

883 These NGOs included: Child Soldiers International (CSI), Quakers in Britain, Save the Children UK, War Child UK, and UNICEF UK.
preferences determined these NGOs’ strategic decision not to adopt the issue as part of their advocacy campaign.

I further analyze how three concurrent and interrelated developments compelled military lawyers to engage in agenda-setting process on the issue. The first involved addressing the need to incorporate the results of military adaptation on the operational level into a broader policy framework. The second required developing responses to a public inquiry into the detention practices of British Armed Forces. The third entailed contending with the increased involvement of the MoD in the judicial proceedings concerning the application of international human rights law in situations of armed conflict. I examine a range of doctrinal documents, as well as recommendations from the Baha Mousa Inquiry (2008-2011) and judgments from the European Court of Human Rights. Specifically, I analyze how military lawyers gradually became agenda setters on the issue of the detention of child soldiers.

The second section examines how the policy formulation process became confined to only a group of experts within the MoD. I evaluate a range of documents from the doctrinal, through the operational, and down to tactical levels. I demonstrate how military lawyers, as representatives of the MoD, applied their expert knowledge to institute essential changes in the policy framework. I also analyze how military lawyers, as part of the broader military structure, enhanced the overarching influence of the MoD on the policy issue of the detention of child soldiers.

The third section on the policy implementation stage explores the roles of legal advisers and the Military Provost Staff, who exercised a certain level of discretion in

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translating policy into practice. This section also explores potential limitations of ‘policies without publics,’ where implementation and oversight of a policy remain limited to a group of experts.\textsuperscript{885} I examine how, on the one hand, international and national human rights bodies engage in efforts to monitor the UK’s policy on the detention of child soldiers.\textsuperscript{886} This section, on the other hand, demonstrates how the lack of involvement from domestic NGOs limits the effectiveness of these enforcement activities.

Finally, the concluding section evaluates the development of a policy on the detention of child soldiers in the UK’s context. It examines how this case study contributes to the three research programs discussed in chapter two of this dissertation. First, I consider how the involvement of experts could potentially develop the debate on how to address policy issues involving child soldiers, which are fraught with practical and legal complexities. Second, I discuss how this case study relates to research on the influence of military lawyers in shaping public policies. Finally, I consider how this case study contributes to the debate on issue emergence (or non-emergence) on the NGOs’ advocacy portfolio.

\textsuperscript{885} Ibid., p. 201.
\textsuperscript{886} These include the Committee on the Rights of the Child and Human Rights Committee. I also examine the role of National Prevention Mechanism, a domestic monitoring institution that oversees the implementation of Optional Protocol to the Convention against Torture.
Agenda-setting

This section examines the explanations for the non-emergence of the issue of the detention of child soldiers on the advocacy agenda of the British NGOs and its broader implications for agenda-setting dynamics.\textsuperscript{887} I further demonstrate how the need to adapt to the changing nature of modern armed conflicts and the ensuing legal environment compelled military lawyers at the MoD to become agenda-setters on this issue. I conclude the section with the comparison of the agenda-setting dynamics in the UK’s context with those of the US and Canadian case studies. This allows to further highlight key factors for the non-emergence of the issue on NGOs portfolio and how the detention of child soldiers got confined to the group of experts within the MoD.

\textit{Detention of Child Soldiers during Armed Conflict and Domestic NGOs: The Non-Emergence of the Issue}

The choice of an NGO to “embrace an issue as an advocacy priority”\textsuperscript{888} entails committing resources to the advocacy of the issue. This can include referencing a problem on the organization’s strategic plans and websites. It also involves highlighting it consistently in its advocacy materials such as press releases, newsletters, research papers, and submissions before the legislature. The available data demonstrates that the British NGOs concerned with the agenda of children and armed conflict did not embrace the issue of the detention of child soldiers as a priority. Instead, these organizations prioritized other

\textsuperscript{887} Charli Carpenter examined the rationale and implications of the issue of non-emergence for transnational advocacy networks on children and armed conflict; specifically, those that prioritized the issue of child soldiering over issues on the children and armed conflict agenda, such as particular needs of girls and orphan children born of war rape. Carpenter’s analysis becomes applicable for the analysis of the non-emergence of the issue of detention of child soldiers in the context of British NGOs on the national level.

issues within the agenda of children and armed conflict.

Child Soldier’s International (CSI) has been advocating for raising the age of children’s voluntary recruitment in the UK armed forces to 18 since its foundation as an independent NGO in 2011. As representatives of the CSI commented, “in the UK context, we are working exclusively on raising the enlistment age to eighteen. It is our entire campaign.” Quakers in Britain, as part of their advocacy on peace education and anti-militarism, also advocate for the ending of voluntary recruitment of children under the age of 18 into UK armed forces. UNICEF UK, Save the Children UK, and War Child UK primarily focus their advocacy on the protection of children in an emergency – such as protection from violence, providing relief, and education. The work of these organizations concerning children involved in armed conflict concentrated primarily on issues of rehabilitation and reintegration of former child soldiers. Senior Humanitarian Advocacy and Policy Adviser UNICEF UK commented that:

We have not advocated specifically on the issue of military detention. I would say it’s not the issue that we dealt with. We have a clear position on ending immigration detention, but that is different from military detention.

The representatives of War Child UK and Quakers in Britain, in their interviews, also

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890 Programme Manager and Director of Programmes at Child Soldiers International (CSI), Personal Interview with the Author, London, United Kingdom, October 13, 2016.
891 Quakers in Britain, “Quakers Oppose Expansion of Cadets in State Schools (July 2015); Quakers in Britain, Unseen March: Take Action (2015); Quakers in Britain, Petition Questions Militarism in Scottish Schools (September 2016); Ellis Brooks, “Taking Action on Militarism” Quakers in Britain (October 2017).
concurred that the issue of the detention of child soldiers did not become an integral part of their advocacy agenda.\textsuperscript{894}

Three possible explanations could account for this issue’s non-emergence on the advocacy portfolio of the British NGOs. First is the issue’s “innate attributes”\textsuperscript{895} such as the exposure of the vulnerable population to “bodily harm and discrimination.”\textsuperscript{896} The United Nations agencies extensively reported that Afghanistan security forces subjected children, including those transferred from the UK detention facilities, to torture and other cruel, inhuman, or degrading treatment from 2008 until 2015.\textsuperscript{897} Reports also indicated that there were lack of facilities to hold child detainees and existing facilities ranged “from rented houses to facilities where juveniles are mixed with adult convicts.”\textsuperscript{898} These specific attributes of the issue, however, did not compel British NGOs to incorporate the issue of the detention of child soldiers as part of their advocacy campaigns.

Besides the “objective needs or urgency”\textsuperscript{899} regarding this issue, donor preferences and media attention to the issue could explain the choices of the advocacy priorities among

\textsuperscript{894} See Head Policy and Advocacy War Child UK, Skype Interview with the Author, London, United Kingdom, October 20, 2016; Assistant General Secretary QPSW Quakers in Britain, Personal Interview with the Author, London, United Kingdom, October 17, 2016.


\textsuperscript{896} Margaret Keck and Kathryn Sikkink discuss the importance of the issues’ characteristics to demonstrate the effectiveness of the advocacy of transnational NGOs. See Keck, and Sikkink, \textit{Activists Beyond Borders} ...\textsuperscript{897}


\textsuperscript{898} UNSC, \textit{Report of the Secretary-General on Children and Armed Conflict in Afghanistan} ..., p. 8.

British NGOs. NGOs and government agencies engage in a collaborative relationship in the UK context. This relationship, on the one hand, consists of government funding of NGOs’ activity through a system of contracts. NGOs, on the other hand, commit “to policy engagement” by applying this funding to public policy needs. Policy initiatives such as *Compact* (1998) established principles to regulate relations between government and the NGO sector. *Compact* is a formal agreement that outlines the way every department and agency of government collaborates with voluntary organizations. Importantly, these mechanisms allowed British NGOs to maintain their independence. They were free to challenge government policy without jeopardizing their ability to obtain government funding.

A review of the annual financial reports of Save the Children, UNICEF UK, and War Child demonstrates that these organizations receive substantial income from charitable activities through their partnership with the UK government. Specifically, these three organizations extensively partner with the UK Department for International Development (DFID). This government agency is responsible for the distribution of financial aid for the protection of children in zones of armed conflict in fragile and failing states. The UK government doubled official development assistance from 2000–2006. It rose to 0.5%

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905 See supra note # 892.
of national income, in 2006, and expanded to 0.7% by 2015. The issue of the detention of child soldiers was outside of the DFID functional policy area. The organization largely focused on humanitarian responses and poverty-reduction initiatives. These involved issues such as access to education, response to humanitarian emergencies, and addressing violence against women and girls. NGOs, in turn, expanded their activities in this area, which were supported by their applications for this available funding.

The representatives of NGOs emphasized the importance of the relationship with government agencies for their advocacy work. The Head of Policy, Advocacy, and Campaigns at War Child commented:

> We focused on having a direct bilateral relationship with the DFID, as far as possible. [...] As opposed to working in a huge coalition, we decided to try to reach out to the Ministry directly. And we managed to have a huge success with that approach. We actually started advising to them.

Senior Humanitarian Advocacy and Policy Adviser at the UNICEF UK noted, in their interview, how funding from the UK government influenced the choice of issues for NGOs’ advocacy:

> Since the UK government and particularly the DFID is our big donor, we develop a partnership relationship. It sometimes limits what you can select and where you think there is enough political leverage for your advocacy. Our advocacy focused on what the UK government could do about the issue.

NGOs retain their independence and ability to criticize the government. An organization that wishes to obtain new contracts needs to prioritize an issue that also corresponds to the goals of funding agencies.

Child Soldiers International, in contrast, does not receive any funding from the UK.

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908 Ibid.
909 Head Policy and Advocacy War Child UK, Skype Interview with the Author.
910 Senior Humanitarian Advocacy and Policy Adviser UNICEF UK, Skype Interview with the Author.
government. It instead relies on contributions from foundations and smaller donations from international government donors, such as Norway, Lichtenstein, Luxembourg, and regional organizations such as the European Commission.\textsuperscript{911} CSI’s narrow focus on ending the voluntary recruitment of children under the age of 18 to armed forces, in its domestic advocacy, allowed the NGO to achieve a two-fold objective. First, CSI aligned its domestic advocacy with the global campaign, supported by the states and the UN Security Council, on the adoption of the straight-18 ban on child recruitment.\textsuperscript{912} The NGO targeted the UK government because it was a “major military and political power with one of the lowest enlistment ages in the world.”\textsuperscript{913} CSI therefore assumed responsibility for the implementation of the global and recognized norm on the ending the recruitment of child soldiers on a domestic level. The issue of the detention of child soldiers in armed conflict, in contrast, remains in the nascent stage of norm development.\textsuperscript{914} Second, the specific focus of the CSI’s advocacy distinguished it among other NGOs working on “children and armed conflict, their use in hostilities and subsequent rehabilitation.”\textsuperscript{915} As Charli Carpenter observed, “organizations that have branded themselves within a particular issue area”\textsuperscript{916} have a greater chance securing funding in that issue area. Representatives of CSI, in their interviews, concurred, saying “we were trying to make sure we don't duplicate the work of


\textsuperscript{913} Ibid., p 13.

\textsuperscript{914} At present, the group of transnational NGOs with the support of international organizations involved in extensive the extensive study of the issue. The United Nations General Assembly, in 2014, commissioned an in-depth global study on children deprived of liberty. The purpose of the study was to collect data on children in detention and examine good practices that can shape more effective policies for dealing with this issue. The study looks specifically at children detained for their protection, or for national security reasons. Global Studies often serve as crucial points in the development of a specific norm such as children affected by armed conflict (Machel Study, 1996) and violence against children (Pinheiro Study, 2006). See: \url{https://childrendeprivedofliberty.info/}


\textsuperscript{916} Carpenter, “Vetting the Advocacy Agenda …,” p. 74.
other NGOs.” The ability of CSI to narrowly define its advocacy profile allowed it to tap into funding sources outside of the UK. At the same time, this specificity limited the NGO from expanding its activity to other issues such as the UK policy on the detention of child soldiers.

The issue of the detention of child soldiers also did not receive heightened media attention. The reporting focused on the broader matter of detention during UK military operations in Iraq and Afghanistan. The issues that arose from judicial proceedings in domestic and regional courts and public inquiries investigating the handling of detainees in the custody of UK armed forces dominated the media coverage. The issue of the detention of unaccompanied children in asylum-seeker centers in France further demonstrates a case of the importance of media attention for the adoption of the issue as an advocacy priority. As a representative from the UNICEF UK commented, “Europe’s Refugee Crisis was on the front pages of the papers. We wanted to insert ourselves into that issue in a way that would be useful for children's rights.”

Save the Children, War Child along with the UNICEF UK capitalized on the heightened national media attention.

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917 Programme Manager and Director of Programmes at CSI, Personal Interview with the Author.
918 I examine articles from The Daily Mail, The Daily Mirror, The Daily Express, The Times, The Guardian to ensure a balance between broadsheet and tabloid newspapers. I selected these newspapers because they represent a range of political allegiances, with The Guardian and The Daily Mirror backing the Labour Party and The Times, The Telegraph, The Daily Mail and Daily Express supporting the Conservative Party.
920 Senior Humanitarian Advocacy and Policy Adviser UNICEF UK, Skype Interview with the Author, London, United Kingdom, October 26, 2016.
to this problem.\textsuperscript{921} These NGOs applied their advocacy tools such as community outreach, press releases, education campaigns, and lobbying the legislature to advance the issue on the agenda of the UK Home Office.\textsuperscript{922} Their efforts were successful in ensuring the transfer of some unaccompanied asylum seeking and trafficked children from France to the UK.

The lack of media attention on the issue of detention of child soldiers, combined with the funding considerations, led to disengagement of the British NGOs from the agenda-setting stage of the policy process on child detainees. NGOs did not advocate for this issue in the UK Parliament and its committees, or with executive agencies, such as a Ministry of Defence or Foreign Office. As Christopher Green-Pedersen and Jesper Krogstrup note, “political parties do not pay attention to non-existent problems.”\textsuperscript{923} Parliamentarian records demonstrate extensive advocacy of NGOs on their strategic priorities concerned with the agenda of children and armed conflict. CSI and Quakers in Britain promoted the need to ban voluntary recruitment for persons under age 18.\textsuperscript{924} And Save the Children UK, War

\begin{footnotesize}
\begin{enumerate}
\item See selected examples of the advocacy in the UK Parliament: Select Committee on Armed Forces, Memorandum from the UK Coalition to Stop the Use of Child Soldiers (January 2006); Human Rights Joint Committee, Memorandum submitted by the UK Coalition to Stop the Use of Child Soldiers (November 2008);
\end{enumerate}
\end{footnotesize}
Child UK, and UNICEF UK established strong advocacy on issues related to the protection of children in situations of armed conflict.\textsuperscript{925} None, however, pursued the issue of the detention of child soldiers in the Parliament. The Minister of State for the Armed Forces (2010-2012), under David Cameron’s premiership, noted:

“NGOs did not come knocking at my door on the child detention issue, neither during my tenure as the Liberal Democrat Defence Spokesman\textsuperscript{926} nor as the Minister [of State for the Armed Forces]. I heard plenty from NGOs about British Army practices of recruitment at 16 and so on, but I have no recollection about the issue of detaining Afghans below a certain age.\textsuperscript{927}

The decision of British NGOs not to engage in the policy process on the detention of child soldiers contributed to the lack of attention to the issue from “interest groups or elected officials,”\textsuperscript{928} which is the main characteristic of “policies without publics.” These kinds of policies are advanced by technical experts “acting on their sense of the public interest, not by interest groups or elected officials acting on behalf of public demands for improved policy.” I further analyze how the agenda-setting process on the issue of the detention of child soldiers became largely confined to the group of experts within the Ministry of Defence.


\textsuperscript{926} The interviewee previously served as Former Liberal Democrat Defence Spokesmen (2007-2010) under the administration of Gordon Brown.

\textsuperscript{927} Minister of State for the Armed Forces (2010-2012), Skype Interview with the Author, Devon, United Kingdom October 23, 2017.

\textsuperscript{928} Birkland, “Focusing Events …,” p. 68.
Military Lawyers at the Ministry of Defence: Experts as Agenda-Setters

Experts within the MoD, such as military lawyers, promoted the issue of the detention of child soldiers on the agenda, via a “low politics route.” This avenue is primarily a technocratic one, where issues arise as a result of “professional concerns among people working in the same issue area.” These policy experts operate as an ‘epistemic community.’ In contrast to government officials or NGOs, military lawyers recognized the detention of child soldiers as a distinct policy issue in their interviews. A Senior Military Lawyer to the Commander of UK Armed Forces in Iraq and Afghanistan commented, “that the age of detainees increasingly became a matter policy” following the UK’s involvement in the 'war on terror.' The British Army's Chief Legal Adviser (2003-2011), for example, noted, in a confidential interview, that UK Armed Forces were preparing to face children in combat after its invasion of Iraq. Legal Adviser stated “we were told that Saddam put weapons in the hands of young children.” Instead, “arresting

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930 Ibid., p. 1121.
931 Peter Haas defines an ‘epistemic community’ as “a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that issue-area.” (p. 3). Susan Herbst further notes that epistemic authority is derived “through expertise in a bounded domain” (p. 484). Haas, “Introduction: Epistemic Communities …;” Herbst, “Political Authority in a Mediated Age …”
932 See British Army's Chief Legal Adviser (2003-2011), Skype Interview with the Author, Sherborne, United Kingdom, December 22, 2016; Senior Military Lawyer to the Commander of United Kingdom’s Forces in Iraq and Afghanistan, Skype Interview with the Author, Nairobi, Kenya, October 23, 2016; Senior Military Legal Adviser to the Chief of Joint Operations, Skype Interview with the Author, London, UK, November 21, 2016.
933 Senior Military Lawyer to the Commander of United Kingdom’s Forces in Iraq and Afghanistan, Skype Interview with the Author.
934 British Army's Chief Legal Adviser, Skype Interview with the Author.
Before its military engagements in the Middle East and South Asia, the British Armed Forces experienced encounters with child soldiers in combat, during the conflict in Sierra Leone. A group calling themselves the “West Side Boys” that was largely composed of child soldiers, took members of the Royal Irish Regiment as hostages in 2000. The anti-hostage operation resulted in freeing the hostages, but at the cost of the lives of child soldiers and casualties among British personnel. See Andrew Dorman, “The British Experience of Low-Intensity Conflict in Sierra Leone.” *Defense and Security Analysis.* 23(2) (2007).
combatants who were under the age of 18.” became a more pressing issue for British armed forces following the occupation of Iraq in 2003.

The issue of the detention of child soldiers posited both technical challenges – such as verification of the age of detainees – and legal dilemmas – such as questions of the interrelationship between international human rights law (IHRL) and international humanitarian law (IHL) in areas of armed conflict. Since the onset of the ‘war on terror’ and British involvement in counterinsurgency operations in Iraq (2003-2009) and Afghanistan (2002-2014), three parallel developments compelled representatives from the MoD to gradually advance the issue of the detention of child soldiers to the decision-making agenda.

First, the increasing need to adapt to the demands of counterinsurgency warfare required the MoD to institute changes in their detention policy. The UK armed forces, on the one hand, were relatively successful in this form of conflict based on its experience of a legacy from the colonial era, “reinforced during the Troubles in Northern Ireland and later in the peace support operations of the 1990s.” British armed forces, on the other hand, faced novel challenges during its campaigns in Iraq and Afghanistan. They therefore had to “relearn counterinsurgency principles.” As Robert Folley and colleagues observe, “significant flaws in British operations in Iraq were evident by late 2005 and manifested...”

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935 British Army’s Chief Legal Adviser, Skype Interview with the Author.
by 2006.” Operations in Afghanistan from 2006 onwards magnified these problems, “owing to confusions regarding the purpose of the mission, a flawed intelligence picture, and deficiencies in troop levels, as well as tactical mistakes.”

These challenges convinced the representatives of the MoD to revise its counterinsurgency practices. The British military gradually demonstrated their ability to adapt to these challenges on the operational and tactical levels. As the Minister of Armed Forces, in a confidential interview noted, “there has been a lot of learning from our own mistakes and improving of standards.” The results of this “bottom-up military adaptation” called for translating lessons into doctrinal changes. The MoD introduced necessary organizational reforms to the lessons-learned system, which lacked a formal process prior 2006, to ensure the “dissemination of operational lessons.”

Specifically, the Ministry tasked the Development Concept and Doctrine Centre (DCDC), described as a MoD independent ‘think tank,’ to establish a committee for

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941 Minister of State for the Armed Forces, Skype Interview with the Author.
942 Farrell, “Improving in War” p, 590.
945 The DCDC existed as the Directorate General of Doctrine and Development from 1994 to 2006. The Development, Concepts, and Doctrine Centre (DCDC) is the body responsible for the development of concepts and doctrine, synthesizing operational lessons and identifying of future trends. See Ministry of
reviewing the doctrine on a regular basis. The Land Warfare Development Group (LWDG) became responsible for the Army’s lessons-learned process. It also provided recommendations for land operations while remaining coherent with joint doctrine and concepts. As part of this lessons-learned process, the MoD initiated the review of its detention policy to address the situation when “improved practice on the ground has moved ahead of the doctrine.”

In 2009, the DCDC issued the project proposal recommending revisions to the *Joint Doctrine Publication of Prisoners of War, Internees, and Detainees* (JDP 1-10). The DCDC issued its first edition of the JDP 1-10 in 2006. The project proposal therefore stipulated that “the review of such recent publication would not normally be due.”

Existing doctrine, however, required changes because the UK armed forces in Iraq and Afghanistan “faced practical difficulties.” Military lawyers at the DCDC also promoted the issue of the detention of child soldiers to the agenda during the drafting process of the new edition of the JDP 1-10 in 2010-2011. The first edition of the doctrine included only general guidance on the issue. The drafting process of the second edition of the JDP 1-10, in contrast, addressed specific questions on the issue of the detention of child soldiers during military operations. These involved procedural safeguards allocated to children from their point of capture to their release or transfer to national security forces as well as

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948 Ibid.

technical matters such as the age assessment.\textsuperscript{950}

The DCDC project proposal cited another critical and parallel development that further precipitated the elevation of the issue on the agenda. This involved a public inquiry into the death of Baha Mousa, a detained Iraqi national, in British custody in Basra (Iraq) in 2003. The death of Baha Mousa and the mistreatment of nine other men detained with him precipitated a damaging scandal involving the British Army.\textsuperscript{951} The failings of the military justice system such as poor investigation, prosecution and, as Judge Advocated stated during the proceedings, “‘a more or less obvious closing of ranks.’”\textsuperscript{952} These factors compelled the MoD to announce a public inquiry “to get to the bottom of matters.”\textsuperscript{953} A retired High Court Judge Sir William Gage headed the exhaustive public inquest (2008-2011). It provided “the first detailed insight into the British Army’s treatment of prisoners and detainees”\textsuperscript{954} since the onset of the ‘war on terror.’\textsuperscript{955}

In addition to investigating the details of the detention, treatment, and questioning of Baha Mousa, the inquiry considered what lessons were to be learned from the incident. The Inquiry subsequently produced extensive recommendations on the need to review existent doctrine and training on captured persons. Gage’s report to the House of Commons acknowledged that “changes to policies, doctrine, and training have been significant”\textsuperscript{956}


\textsuperscript{952} Ibid.


\textsuperscript{954} Ibid., p. 212.


\textsuperscript{956} Gage (Sir), \textit{The Baha Mousa Public Inquiry Report}. (Vol. III), p. 1157.
since Baha Mousa’s death. At the same time, the Inquiry’s recommendations emphasized
the need for “improved training and doctrine” on prisoner’s handling. The Counsel to
the Inquiry, when interviewed, commented on the value of investigation in urging the MOD
to institute changes in its detention policy:

Inquiries could help when you have a forward-looking process. It was no way
that we would make our recommendations upon the situation as of 2003. MoD
had already learned significant lessons […] We put their [MoD] current
doctrine and training under the microscope and exposed some aspects that still
needed further work.958

Junior Counsel to the Inquiry noted that the inquest did not simply aim “to allocate blame
to a particular individual.”959 The Inquiry instead sought to examine varying levels of
responsibility “across the chain of command and how soldiers get trained on detainee
handling practices.”960

The Inquiry resulted in a series of reviews on the detainee policy that further
emphasized the need for changes in the current version of the JDP 1-10. The Army
Inspectorate’s Review (2010), citing findings from the Baha Mousa Inquiry, urged the
Permanent Joint Headquarter to provide specific guidance for the armed forces with
regard to the handling of detained children.961 The review observed that when soldiers on
the ground engage in the detention of persons under 18 years of age, they face “legal, moral
and ethical judgments.” The Review therefore concluded “the clearer the guidance they
[UK Armed Forces] can be given, the better.”962 These recommendations further advanced

957 Ibid.
958 Counsel for the Baha Mousa Inquiry (2008-2011), Personal Interview with the Author, London, October
16, 2016.
959 Junior Counsel for the Baha Mousa Inquiry (2008-2011), Personal Interview with the Author, New York,
NY, USA, October 5, 2016.
960 Ibid.
961 MOD. Army, Army Inspectorate Review …
962 Ibid., p. 15.
the issue on the agenda of the MoD to revise the policy.

The third development concerned the increasing involvement of the MoD in a series of judicial proceedings in the domestic courts and the European Court of Human Rights. These cases contended with two interrelated issues. The first concerned the UK government’s approach to the application of international human rights law in armed conflict. The second involved government’s interpretation of the relationship between international human rights and humanitarian law.963 There was a lack of comprehensive guidance on critical issues such as the precise grounds for detention, procedural safeguards, and length of security detention.964 The need to address these issues required a “process of adaptation, norm by norm, issue by issue.”965 The acceptance of this complexity and the prospect of litigation “served as another impetus”966 for the MoD, and military lawyers specifically, to re-examine existing policies on detention. In their interviews, military lawyers recognized the need to adapt to the new legal environment. Senior Military Legal Adviser to the Chief of Joint Operations asserted “we [British Armed Forces] have not

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963 These cases arose from UK’s obligations under the European Convention on Human Rights as incorporated into UK domestic law by the Human Rights Act 1998 (HRA). Yuval Shani notes the European Court of Human Rights held in the Al-Jedda case (2011) that UK’s detention policy in Iraq had to incorporate relevant IHRL standards. UK Court of Appeals in Serdar Mohammed case rejected the claim that IHL authorizes security detention in non-international armed conflict and held that such detentions must be justified under other legal norms and comply with relevant IHRL standards. Yuval Shany, A Human Rights Perspective to Global Battlefield Detention: Time to Reconsider Indefinite Detention. US Naval War College International Law Studies 93(1), p.3.


applied the humanitarian law in the age of human rights law before our engagements in Iraq and Afghanistan.”

A Senior Military Lawyer to the Commander of UK Armed Forces in Iraq and Afghanistan further noted, in a confidential interview, that military lawyers had to constantly grapple with a range of questions when they involved in the detention of child soldiers.

Both IHL and IHRL incorporate protections for child soldiers detained during armed conflict. The interaction between these two corpora of law, however, can conflict when applied to the same facts. These two bodies of law have gradually diverged on their definition of a child and a child soldier. IHL and IHRL also differ on the level of protection for children who were purportedly voluntarily recruited into armed forces and those who perform supportive military roles (i.e., do not participate directly in hostilities). Military lawyers at the MoD were willing to advance the need for specific guidelines on the agency’s agenda to achieve greater clarity on these issues.

The promotion of the issue of the detention of child soldiers onto the agenda was an outcome of evolving learning processes among experts within the Ministry of Defence, rather than the struggles of external political actors such as NGOs and government officials. These agenda-setting dynamics in the UK case contrast with those that occurred in Canada and the US. The analysis from these two cases further highlights how the issue’s

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967 Senior Military Legal Adviser to the Chief of Joint Operations, Skype Interview with the Author.
968 Senior Military Legal Adviser to the Commander of United Kingdom’s Forces in Iraq and Afghanistan. Skype Interview with the Author, 2016.
969 I discuss how these two bodies of law, through foundational treaties, protocols and principles, define different levels of protections of children detained in armed conflict in Chapter I of this dissertation.
ability to attract media attention and fit the objectives of NGOs’ broad advocacy, as well as funding considerations, ultimately, impacts the process of issue emergence on the NGOs’ portfolios.

In contrast to the UK, the detention of Omar Khadr – a Canadian citizen and a child soldier – and his prosecution before the US system of military commissions, generated heightened media attention to the issue in the US and Canada. In the US case, broad media reporting surrounding the abuse of child detainees in the Abu Ghraib Prison Facility in Iraq (2003) further drew media attention to the issue. Clifford Bob emphasizes that media is not only a target of NGOs’ activity but a “crucial vehicle” for determining the direction of organizations’ advocacy in the first place. In the US and Canadian contexts, the media presented “compelling images” and pinpointed “places in gravest distress” thus furthering the issue on NGOs’ portfolios. In contrast to their British counterparts, the factor of government funding had a lesser impact on defining the issue selection for American and Canadian NGOs. American NGOs did not receive any public funding to support their activities and relied on a combination of contributions, private donations, and grants as a source of their financing. In Canada, NGOs witnessed a significant curtailment of

government funds since 2003 and sought other funding opportunities. Finally, NGOs in these two national contexts, while continuously referring to the international norm on the protection of child soldiers, promoted a policy that was reflective of their respective national agendas and priorities on the detention of child soldiers.

The issue of the detention of child soldiers also aligned with the broad advocacy missions of organizations in their respective national contexts. In Canada, for example, the issue of compliance with international human rights treaties dealing with child soldiers compelled a variety of human rights advocacy organizations to advocate for the issue. In the US context, the detention of child soldiers carried a direct effect on other key issues such as indefinite detention without charge or trial, a military commissions’ system, and the future of Guantanamo detention facility. Human Rights First and Amnesty International-USA, for example, incorporated the issue of in their broader portfolios. The issue of the detention of child soldiers did not present an obvious fit with the British NGOs’ strategic objectives. NGOs either focused on the specific area of advocacy, as in the case of Child Soldiers International and Quakers in Britain, or had a specific thematic portfolio, as in the case of War Child UK, Save the Children UK, and UNICEF UK. The comparative perspective allows to further emphasize the importance of strategic and organizational factors in the process of issue selection in relation to the problem of the detention of child soldiers.

The role of UK military lawyers as agenda-setters contrasted with their counterparts

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976 These include British Columbia Civil Liberties Association, the Canadian Civil Liberties Association, Amnesty International Canada, and the Canadian Coalition for the Rights of Children.
in Canada and the US, who assumed minimal involvement during this initial stage of the policy process. Military lawyers, in these three national contexts, recognized the increasing importance of international human rights law. The difference in the positions of their respective governments on extraterritorial application of human rights law during armed conflict and the question of the interrelationship between international human rights and humanitarian law influenced their degree of involvement in the policy process. When it comes to the resolution of conflict between IHL and IHRL, the United States adopts the *lex specialis* principle, which holds that when two legal rules collide, the most specific rule should be applied to provide context for the more general rule. The United States defines international humanitarian law as the *lex specialis* for all conduct within the entire zone of an armed conflict. Moreover, US armed forces are not subject to the jurisdiction of any regional or international human rights regime, which makes the government an outlier in the international context. This framework was meant to provide a framework for resolving potential legal conflicts during military operations. The US case study demonstrated that military lawyers rendered their advice on specific instances of conflict between two corpora of law during both the policy formulation and policy implementation stages. Canada’s approach, to the relationship between IHL and IHRL, differs from both

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977 See supra note #374.
International Covenant on Civil and Political Rights (ICCPR) has been one of the key treaties on which the US has persistently argued against its extraterritorial application. In the US argument, the ICCPR does not apply not only to occupied territories but also with regard to leased territories, foremost among them Guantanamo and to its bases in Iraq and Afghanistan. This restrictive reading of the ICCPR becomes salient in the formulation of the policy on the detention of child soldiers.
the United Kingdom and the United States. Canadian government adopts “the specificity rule” approach to choose between two rules that are the most specific to the situation on the ground, when two bodies of law are in conflict.\textsuperscript{980} Under these conditions, military lawyers gain their influence during the policy formulation stage, when they have to advise their commanders on the application of IHRL during military operations. In the UK context, the intensification of litigation and legal scrutiny, on both domestic and regional levels, prompted by deployments in Iraq and Afghanistan, compelled military lawyers to involve in the early stages of the policy process. Military lawyers engaged in advancing the issue of the detention of child soldiers on the agenda as it required “clarity and foreseeability”\textsuperscript{981} of the application of international law.

This section also demonstrated the importance of focusing events in facilitating engagement of military lawyers during the agenda-setting process. The Baha Mousa Inquiry differed in both scope and nature from the investigations that took place in Canada and the United States, as far as response to the allegations of detainee abuse. In Canada, the investigation into alleged abuses of detainees, transferred from Canadian into Afghan custody, took place within the Military Police Complaints Commission. This probe fell short of an independent judicial Commission of Inquiry into the actions of Canadian officials.\textsuperscript{982} In the United States, investigations into the abuse of detainees, which took place in detention centers in Iraq, Afghanistan, and Guantanamo Bay, followed the so-called “a few bad apples narrative.”\textsuperscript{983} The approach assumes that the abuse of detainees


\textsuperscript{982} Sabry, “Torture of Afghan Detainees . . . .”, p. 6.

results from the action of a “relatively small number of low-ranking military and civilian officials who went beyond the limits of the law but not the result of official policy.”984 The investigation, in the US context, took place only within the military justice system, failing to establish a chain of command responsibilities for alleged war crimes.985 In contrast, the investigation into the death of Baha Mousa was an independent inquiry and provided a broad set of recommendations. The inquest urged experts within the MoD to revise its detention policies, including those concerning child soldiers.

As a result of the agenda-setting dynamics, the UK’s policy on the detention of child soldiers became the prerogative of the group of experts within the MoD such as military lawyers. They became responsible for the formulation of the policy on the issue. Experts within the MoD responded to the demands of military adaptation on the operational level, the need for changes in detention policy, and the department’s attempts to adapt to the increasingly complex legal environment.986

984 Ibid., p. 219.
Policy Formulation

The Ministry of Defence produced a *Strategic Detention Policy* in March of 2010.987 The document “reflects the UK’s legal obligations towards detainees.”988 This document represented a “generic statement of intent.”989 It required the development of joint doctrine and standard operating instructions for specific areas of operations. These elements of the policy provided a “greater granularity and detail to a high level and necessarily more general strategic level document.”990 This section examines the extent of the influence of military lawyers within the Ministry of Defence in the drafting process of these elements of the policy.991 The focus on the influence of military lawyers within the MoD allows for analyzing how these actors, as representatives of the military, engaged in political activity without challenging the rights of the civilian leadership.992

*The Doctrinal Level*

Legal advisers, who collaborate in the DCDC in Shrivenham, are in a position to influence the development of manuals and directives at the doctrinal level.993 The DCDC in-house lawyers provide “advice and input to all products and work across the full spectrum of the DCDC business.”994 The British Army's Chief Legal Adviser (2003-2011)

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990 Ibid.
992 Samuel Finer and Morris Janowitz defined military influence as a legitimate form of military intervention in an effort to convince civil authorities to integrate its preferences See supra note # 310.
commented that “the DCDC is where military lawyers can influence the policy.” The application of the expert knowledge allowed representatives of the MoD to leverage influence “vis-à-vis the policy community and the political leadership” in the domain of the detention of child soldiers. Senior Military Legal Adviser at the Ministry of Defence described that the drafting process of the doctrine on the handling of captured persons (JDP 1-10), specifically how it addressed the issue of detention of child soldiers, benefited “from the input of military lawyers.” The Senior Military Legal Adviser to the UK’s Chief of Joint Operations, who was involved in the drafting process of the second edition of the JDP 1-10 at the DCDC, observed:

The processes [were] meant to amend the doctrine. We wanted to capture and to reflect on those lessons that we learned. As a result, there were a lot of changes that appeared in the document in 2011.

These changes included extensive amendments to provisions that specified conditions under which the UK armed forces can detain, and question underage captured persons and how they should handle these children during their detention. The revised doctrine also provides a set of provisions for situations when the age of children is uncertain. The JDP 1-10 stipulates that the detention authority is to consider a person to be a child if a member of armed forces is in doubt about their age “before more detailed checks can be made.” The second edition of the JDP 1-10 distinguishes between children (those under the age of 15) and juveniles (those between the ages of 15 and 18).

This distinction was crucial. The doctrine defined different types of treatment for

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995 British Army’s Chief Legal Adviser, Skype Interview with the Author.
997 Senior Military Legal Adviser at the Ministry of Defence (1991-2003), Personal Interview with the Author, Farnborough, United Kingdom, October 10, 2016.
998 Senior Military Legal Adviser to the Chief of Joint Operations, Skype Interview with the Author.
1000 Ibid.
persons under the age of 18 in detention. Children, on the one hand, “should not be held in
captivity unless captured to prevent imminent danger”1001 to UK armed forces. Juveniles,
on the other hand, could be detained and were to be accommodated separately from both
children and adults.1002 The doctrine also applies the distinction between children and
juveniles to the guidance on questioning of persons under-18 in detention. The JDP 1-10
stipulates that children “are not to be tactically questioned or interrogated.”1003 The
doctrine, however, does not legally prohibit UK Armed Forces from questioning juveniles.
The differentiation in the nomenclature was meant to address the central question, noted
by British Army's Chief Legal Adviser (2003-2011), “as to where you draw a line and as
to whom you treat as a child.”1004 This question also directly related to a broader issue on
how the policy on the detention of child soldiers is “to conform with [international] human
rights law and the humanitarian principles of the Geneva Conventions.”1005

Military lawyers at the MoD adopted the complementarity approach in their efforts
to address the question of the interrelationship between IHL and IHRL regarding the
question of the detention of child soldiers. This method stipulates that these two corpora of
international law can influence and mutually reinforce each other.1006 Human rights law
can be “interpreted in the light of international humanitarian law and vice versa.”1007 First,

1002 Ibid.
1003 Ibid., Chapter 2, p. 15. Tactical questioning focuses on the extraction of time sensitive information from
captured persons by trained personnel. Interrogation, in contrast, aims to gather both tactical and strategic
information over a longer period of time by trained personnel.
1004 British Army's Chief Legal Adviser, Skype Interview with the Author.
1006 Noelle Quenivet, “The History of Relationship Between International Humanitarian Law and Human
Rights Law” in Roberta Arnold and Noelle Quenivet (eds.) International Humanitarian Law and Human
1007 Droege, “Interplay Between International Humanitarian Law and International Human Rights Law …,”
p. 337.
human rights law may provide particular tools for implementing IHL provisions due to the lack of enforcement and accountability mechanisms in IHL. Second, IHRL may fill gaps in IHL, particularly, when IHL rules are unclear or only pertain to certain situations. This gap-filling approach uses human rights to “construe the absence of individual rights under IHL as a legal lacuna.” The revised JDP 1-10, for example, adopts relevant provisions from IHRL in its discussion of the question of rehabilitation and reintegration of detained child soldiers. The doctrine states that it is important to prevent detained children from returning, “to the social circumstances that contributed to their original capture.” The detention authority therefore should rely on help from “governmental and non-governmental agencies in designing and delivering” rehabilitation and resettlement programs for detained children.

The method of complementarity, however, cannot solve the inconsistency between contradicting rules. The doctrine’s application of the definition of a child, as someone under 15, directly conflicted with some international human rights treaties that applied to detention in situations of armed conflict. These included, for example, the International Covenant on Civil and Political Rights (ICCPR). In reports to the UN Human Rights Committee the UK government, upon the recommendations of the MoD, consistently argued to preserve general reservation to the ICCPR articles on the segregation of persons under the age of 18 in detention. The MOD claimed that the possible impact on the

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1008 Quenivet, “The History of Relationship …,” p. 23.
1011 Ibid.
1012 Reservation is a unilateral statement by a country upon ratification that modifies or even excludes its legal obligations. The full reservation reads: “where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United
operational effectiveness of the UK Armed Forces and “exigencies of service life”\textsuperscript{1013} may make it impossible “to segregate juvenile [ages of 15 to 17] offenders.”\textsuperscript{1014} The application of the reservation to ICCPR, on the one hand, allowed for the incorporation of minimal standards of protection to children under the age of 15 into the UK doctrine on captured persons. The differentiation in the levels of protection, on the other hand, among different groups of detained children, based on their age, did not resolve questions about the conflict between these two bodies of international law. It also did not identify a specific legal framework for procedural safeguards for detained children between the ages of 15 to 17. Moreover, this differentiation introduced further practical and legal questions that arise in specific situations in-theater. The operational instructions and tactical directives were intended to provide answers to these questions and bring greater clarity for actors on the ground.

\textit{The Operational and Tactical Levels}

Changes on the doctrinal level dictated the need to introduce amendments to standard operating instructions (SOI).\textsuperscript{1015} A Senior Military Legal Adviser to the UK's Chief of Joint Operations, in Iraq and Afghanistan, noted that military lawyers “employ the doctrine immediately,”\textsuperscript{1016} as changes take place on the operational level. The purpose

\begin{thebibliography}{99}
\bibitem{1014} Ibid.
\bibitem{1015} UK Standard Operating Instructions are equivalent of Standard Operating Procedures (SOPs) in the context of US or NATO operations.
\bibitem{1016} Senior Military Legal Adviser to the Chief of Joint Operations, Skype Interview with the Author.
\end{thebibliography}
of SOIs is to design guidelines to implement doctrinal provisions on the operational level and address key concerns for specific areas of operations. The MoD introduced extensive changes to the operational instructions, which were to cover then ongoing detentions operations in Afghanistan (SOI J-39), following amendments on the doctrinal level in 2011.\textsuperscript{1017} The original SOI J3-9, issued in 2006 and amended in 2009, included a dearth of instructions concerning the handling of child detainees, age verification and how to approach tactical questioning of persons under the age of 18.\textsuperscript{1018} The amended operational instructions incorporated major provisions of the revised JDP 1-10 on how to address the detention of child soldiers in situations of armed conflict.\textsuperscript{1019} Operating instructions, however, imposed stricter constraints upon UK armed forces, regarding the questioning of detained children. SOI J3-9, as a matter of policy, went beyond the doctrinal provisions and placed a blanket prohibition on the tactical questioning of all persons under the age of 18. The application of the international human rights law definition of a child, in the drafting process of this specific part of the SOI, is an example of an effort to mitigate possible legal risks to UK Armed Forces. A British Army Chief Legal Adviser commented on how risk-mitigation influenced military lawyers’ rationale in the development of guidelines on the operational level:

\begin{quote}
We do not go for the lowest possible option but always go for the highest. One of the jobs [of military lawyers] is to keep the Army out of trouble legally, so you would adopt the safest position in law you possibly can.\textsuperscript{1020}
\end{quote}

SOI also addressed specific operational concerns such as the transfer of persons under the

\begin{footnotes}
\footnotetext{1017}{MOD. Permanent Joint Headquarters, \textit{Stop, Search, Question and Detention Procedures in the Herrick JOA}. (last amended September 2012).}
\footnotetext{1018}{MOD. Permanent Joint Headquarters, \textit{Stop, Search, Question and Detention Procedures in the Herrick JOA} (2009).}
\footnotetext{1019}{Ibid.}
\footnotetext{1020}{British Army's Chief Legal Adviser, Skype Interview with the Author.}
\end{footnotes}
age of 18 to host nation detention facilities and the responsibilities of the British armed forces following the transfer.¹⁰²¹

SOI J3-9 also included a Detention Aide Memoire (DAM) – an analog of Rules of Engagement Card – that specified the “do’s and don’ts” in detention operations on the tactical level.¹⁰²² Commanders distribute the DAM to soldiers in support of particular operations and include essential elements of standard operations instructions. The DAM specified that children who appear to be under the age of 15 are not to be detained or searched.¹⁰²³

The policy formulation process on the detention of child soldiers represented what British Army Lieutenant General (Ret.) Sir Philip Trousdell defined as “a successful cascade from the policy doctrine level through the operational standard instructions level down to the tactical.”¹⁰²⁴ At the tactical level, these instructions form the basis of pre-deployment directives and “serve as a reference when operations are being planned and implemented.”¹⁰²⁵ Military lawyers contributed to the formulation of these specific, technically-sound proposals on the detention of child soldiers. They rendered their knowledge in order to apply expert power to impact policy change.¹⁰²⁶ Military lawyers, as a part of the military structure, also enhanced the overarching influence of the military to define the issue as an internal one, based on Timothy Colton’s distinction in the scope

¹⁰²¹ MOD. Permanent Joint Headquarters, Stop, Search, Question and Detention Procedures in the Herrick JOA. (last amended September 2012).
¹⁰²² Detention Aide Memoire in “Stop, Search, Question and Detention Procedures in the Herrick JOA” (last amended September 2012). These are “pocket size waterproofed handbooks designed for use by soldiers when operating in the field. Documents are introduced during the pre-deployment training and are used extensively during training and development.” (p.3).
¹⁰²³ Ibid.
¹⁰²⁵ Ibid.
¹⁰²⁶ French and Raven, “The Bases of Social Power ….”

**Policy Implementation**

The identification of the detention of child soldiers as an internal issue allowed for addressing the main questions of policy implementation within the boundaries of the military establishment. These policy changes also resulted in an increased level of discretion for actors on the ground during this stage of the policy process.\footnote{I follow Catherine Durose’s definition of discretion. See supra note # 623.} For example, in the context of Afghanistan, the perceived “validity of the reasons for detaining someone”\footnote{Bennett, “The Baha Mousa Tragedy …,” p. 221.} were regularly reviewed in-theatre. The MoD would get involved only when there was a need for the authorization to extend the detention beyond 96 hours. The Minister of State Armed Forces (2010-2012), under the David Cameron administration, in a confidential interview, noted:

> My involvement began with the question of approving detention extension up to twenty-eight days. So, I suspect in the case of juveniles and child soldiers, the only circumstances that I, at the Ministerial level, would get involved [with the issue] would be beyond 96 hours. But, by that time all the doctrinal and operational policy was to be applied in the field.\footnote{Minister of State for the Armed Forces, Skype Interview with the Author.}

The policy framework on the detention of child soldiers also recognized “the need for ‘informal’ discretion”\footnote{Philip Catney and John Henneberry, “(Not) Exercising Discretion: Environmental Planning and the Politics of Blame-Avoidance.” \textit{Planning Theory and Practice} 13(4) (2012, p. 551.}} thereby creating space for the actors on the ground to exercise flexibility in the execution of the policy. Specifically, provisions in the doctrine and
operational instructions left areas of uncertainty regarding how to institute processes for age verification, develop educational and reintegrations programs for detained child soldiers, deliver mission-specific training on the issue, and perform oversight of detention practices. This required actors on the operational and tactical levels to exercise individual discretion in the interpretation of the written policy. Maintaining varying degrees of professional discretion can be a “useful political strategy.”

This scenario, on the one hand, grants a certain level of autonomy to the actors on the ground to perform their task; discretion, on the other hand, also allows the incumbent political leadership to shift responsibility in the case of the failure of the policy. In contested policy areas, policymakers often design policies that contain indeterminate language, incorporate conflicting policy objectives and develop procedures that remain open to interpretation. This policy ambiguity and failure to cover all contingencies allow policymakers “to distance themselves from consequences of their strategic goals.” Directives on both doctrinal and operational levels authorized Provost Marshal (Army) and its staff – the Military Provost Service (MPS) – and legal advisers as key actors to manage matters

1034 Ibid.
related to children and juveniles in the theater of operations.\textsuperscript{1037} This section examines how representatives of the MPS and legal advisers, through the exercise of discretion, interpretation of the contested elements of the policy and how that shaped the “actions at the frontlines of policy implementation.”\textsuperscript{1038}

The section also analyzes the impact of the monitoring activities of international human rights bodies such as the UN Committee on the Rights of the Child and UN Human Rights Committee. I also explore the role of the UK National Prevention Mechanism, a domestic instrument that monitors the implementation of the Optional Protocol to the Convention Against Torture, in its efforts to establish external accountability of the UK detention policy. I analyze how the lack of involvement from external actors such as domestic NGOs influenced the effectiveness of these international and national monitoring bodies and the implementation of the UK’s policy on the detention of child soldiers.

The Military Provost Service and Legal Advisors: Implementation of the Policy on the Ground

The changes in the UK’s detention policy framework led to the overhaul of the role and functions of the Provost Marshal (Army) (PM(A)) and its staff. The Senior Military Legal Adviser at the MoD (1991-2003) commented on the nature of this change:

One of the things that have come out of the events from 2000 - 2010 is the role of the military provost service. Before the changes in the detention policy, they had a minor part in the military policy. They have expanded dramatically and now considered experts on detainee policy.

PM(A) Oliver Forster-Knight, noted that the MPS has two central duties in the implementation of this policy. The first is the provision of mission-specific training on detention operations and the second is exercising the oversight over the UK detention policy. The role of the “field force trainer” enabled the MPS staff to reinforce “regulations governing operational detention.” This mission-specific training also provided necessary details to overarching policy guidance and “focuses on practical aspects of detention.” This role also required the development of training materials, such as theater-specific scenarios on how to handle detained persons from the point of capture to their release or transfer to the host nation detention facilities.

These training materials incorporate specific instructions on how to treat child
detainees. For example, training on search procedures specified that children should be “guarded by a minimum of two soldiers and by female troops.” Tactical questioning training also included specific guidelines for the interrogation of detainees under the age of 18. The Army Inspectorate Review (2012) reported that lessons from the policy process “are continuously incorporated into training” as a result of the MPS’ involvement.

The second function of the PM(A) involves oversight of all detention facilities. The regular inspections of detention facilities take place outside of the “normal in-theater chain of command to provide additional assurance.” These inspections involved monitoring of the handling of persons under 18 in detention and an assessment of “education and rehabilitation/reintegration” services provided to detained children. The PM(A) designates the Force Provost Marshal (FPM) as an overarching “detention subject matter expert” within a specific detention unit. The FPM provides “day-to-day oversight” and acts as a key point of reference for commanders, including on the issue of child detainees.

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1053 Ibid.
The Legal Adviser (LEGAD), as a member of the Detention Review Committee, also has the authority to advise on the implementation of the policy on the detention of child soldiers. The LEGAD’s doctrinally defined role is to ensure that UK Armed Forces conduct operations in “a legal and justifiable way.”\(^{1054}\) The Senior Military Legal Adviser to the UK's Chief of Joint Operations noted that having a legal adviser on the ground “ensured that we understood our rights and obligations.”\(^{1055}\) The LEGAD was the point of reference on addressing questions involving potential conflicts between IHL and IHRL and the application of international human rights law to specific situations during armed conflict.\(^ {1056}\) A Senior Military Lawyer to the Commander of UK Armed Forces, in Iraq and Afghanistan, commented that legal advisers on the ground had to address a range of legal questions that involved “children and juveniles.”\(^ {1057}\) These questions included but were not limited to:

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\text{[...]} \text{ whether we are bound by the rules of responsibility of the host state or arresting state; whether there are other international treaties, international human rights treaties, which might affect the situation, and whether it matters if those treaties bind host state or not.}^{1058} 
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\(^{1055}\) Senior Military Legal Adviser at Permanent Joint Headquarters, Skype Interview with the Author.

\(^{1056}\) Legal advisers, as part of their specialized mandatory operational law training at the Directorate of Army Legal Service, received training on the relationship between these two bodies of law including on the issue of the detention of child soldiers. See University of Nottingham, \textit{Law of Armed Conflict Course: Course Outline} (July 2010); LtCol Grant Davies, \textit{The European Convention on Human Rights and its Effects on UK Military Operations: PPT} (September 2011); University of Nottingham, \textit{Advanced Laws of War Course} (July 2014).

\(^{1057}\) Senior Military Lawyer to the Commander of UK’s Forces in Iraq and Afghanistan, Skype Interview with the Author.

\(^{1058}\) Ibid.
In the domain of child detention, the LEGAD addressed practical issues such as age verification. The joint doctrine and operational instructions demonstrate that defining a detainee as a child or a juvenile could have far-reaching implications for procedural rights during detention. In the context of Afghanistan, the operational instructions recognized that “even with medical evidence, it is extremely difficult to determine age with certainty.”\textsuperscript{1059} SOI J3-9 provided the necessary discretion for operational actors to ensure the proper process of age verification.\textsuperscript{1060} The Senior Military Lawyer to the Commander of UK Armed Forces in Iraq and Afghanistan, in a confidential interview, commented that, in their procedures on age verification, they went beyond medical assessments:

Medical means for age verification, including bone density and dental maturity, are heavily influenced by diet and circumstances in which those children grow up. Puberty could be delayed or advanced depending where you live. So, these are not very exact techniques. We used other means, including interviewing people asking them how long they were born, seeing what they do remember, what they could not remember.\textsuperscript{1061}

The military provost service and legal advisors, operating at the final stage of the policy process and exercising a certain level of discretion, had the ability to interpret and transform policy guidelines. These actors, either through pre-deployment training, exercising oversight of detention policy, or delivering legal advice, shaped the implementation of the policy.

The restriction of this policy implementation to a limited group of actors within the military establishment also revealed the limitations of ‘policies without publics.’ UK

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\textsuperscript{1060} Ibid

\textsuperscript{1061} Senior Military Lawyer to the Commander of UK’s Forces in Iraq and Afghanistan, Skype Interview with the Author.
domestic NGOs, consistent with their organizations’ advocacy, disengaged from oversight of the implementation of the UK policy on the detention of child soldiers. NGOs such as UNICEF UK, Save the Children UK, and Quakers in Britain, for example, focused on issues relevant to their organizations’ agenda in the submission of alternative reports to the Committee on the Rights of the Child.\textsuperscript{1062} The representatives of these NGOs commented that their organizations focused on a range of issues in their most recent submissions to the Committee on the Rights of the Child (2016). These included rights of unaccompanied migrants,\textsuperscript{1063} urging the UK government to lift the age of voluntary recruitment in its Armed Forces to the age of 18,\textsuperscript{1064} and criticizing the government “for the lack of peace education and disproportionate influence of the military in the state school system.”\textsuperscript{1065} These alternative reports, however, did not address the UK’s detention policy on child soldiers.

Still, the Committee on the Rights of Child, in its concluding observations on the UK’s government implementation of the CRC and OPAC (2008, 2016), criticized some aspects of British policy on the detention of child soldiers. Specifically, the Committee noted that “only children under the age of 15 years benefit from special protection”\textsuperscript{1066}

\textsuperscript{1062} I discuss why the Committee on the Rights of the Child presents as a key forum for monitoring the compliance of states with key international human rights treaties concerned with the treatment of children in detention during armed conflict such as Convention on the Rights and its Optional Protocol in Chapter V of this dissertation. I also demonstrate how domestic NGOs use instruments of alternative reports in their efforts to ensure compliance of their governments with these treaties. See selected submission from British NGOs’ rights coalitions, \textit{UK implementation of the Convention on the Rights of the Child Optional Protocol on Armed Conflict (May 2008)}; UK Coalition to Stop the Use of Child Soldiers, \textit{Submission to the UN Committee on the Rights of the Child concerning the Initial UK Report on the OPAC (May 2008)}; Child Soldiers International, \textit{Alternative report to the Committee on the Rights of the Child on the occasion of the UK’s Fifth Periodic Review report. (July 2015)}; Quakers in Britain, \textit{Peace Education or Militarisation? Submission to the 72nd session of the UN Committee on the Rights of the Child (April 2016)}.

\textsuperscript{1063} Senior Humanitarian Advocacy and Policy Adviser UNICEF UK, Skype Interview with the Author.

\textsuperscript{1064} Programme Manager and Director of Programmes at CSI, Personal Interview with the Author.

\textsuperscript{1065} Assistant General Secretary QPSW Quakers in Britain, Personal Interview with the Author.

\textsuperscript{1066} Committee on the Rights of the Child, Concluding Observations the Initial Report of the United Kingdom of Great Britain and Northern Ireland to the Convention on the Rights of the Child on the Involvement of
under the UK policy. The Committee therefore urged the MoD to implement procedural safeguards for or all children under 18 years of age in accordance with the letters of both the CRC and OPAC. The UN Human Rights Committee, responsible for the monitoring of the ICCPR, also issued a series of recommendations to the UK government (2008, 2015). The monitoring body urged the government’s departments, such as the MoD, to reconsider their general reservation to the treaty. The Human Rights Committee called upon the government to ensure the proper segregation of all children, including juveniles (age 15-17) from adults, detained during armed conflict.1067 These international human rights monitoring bodies issued their concluding observations, both before and after MoD’s revisions of its detention policy framework.

The UK government and Ministry of Defense, however, did not act upon these recommendations. The effectiveness of the concluding observations was contingent upon the decision of domestic actors such as NGOs “to take up and lobby”1068 these recommendations, so “the government cannot easily get away with ignoring”1069 their implementation. In the domain of the detention of child soldiers, there was a lack of domestic interest groups that were willing to advocate in favor of the enforcement of recommendations related to the policy on the issue.


1069 Ibid.
The Optional Protocol to the Convention Against Torture (OPCAT), which the UK ratified in 2003, presents another potential instrument for monitoring the implementation of the government’s policy on the detention of child soldiers in armed conflict.\textsuperscript{1070} The provisions of the OPCAT require its parties to designate a national preventive mechanism (NPM). It is an example of a national human rights instrument, which is granted its powers “directly through an international human rights treaty.”\textsuperscript{1071} The UK NPM was established in 2009, with a specific mandate to carry out visits to places of deprivation of liberty within the state’s jurisdiction and to provide reports and recommendations to the authorities.\textsuperscript{1072} Her Majesty’s Inspectorate (HMI) for Prisons, as the head of the NPM, therefore strives to secure access to all places where detention takes place.

The HMI for Prisons has been involved in unsuccessful efforts to define a legal framework and secure independent authority to conduct visits to UK’s military detention facilities overseas.\textsuperscript{1073} Importantly, the Baha Mousa Inquiry (2011), in its final recommendations, urged the MoD to engage the HMI for Prisons in executing external and independent inspections of operational detention facilities.\textsuperscript{1074} Sir Adam Roberts, Professor

\textsuperscript{1073} NPM annual reports demonstrate that Her Majesty Inspectorate had an ability to carry out visits to military detention facilities on the territory of the UK including those that held persons under 18 in their custody. HMI reported. See other annual reports here: NPM, \textit{Annual Reports} \url{https://www.nationalpreventivemechanism.org.uk/publications-resources/} Accessed December 10, 2017.
\textsuperscript{1074} Gage (Sir), \textit{The Baha Mousa Public Inquiry Report …, Volume III}, p. 1235-1236.
of international law, in his submission to the Inquiry, commented that “external monitoring of detention facilities and practices is a vital safeguard against many kinds of abuse that occur only too easily in such situations.” The MoD, however, remained resistant to these recommendations. The Ministry cited the existence of “triple inspection regime,” consisting of the Provost Marshal (Army), the Army Inspector, and the ICRC, as “fit for purpose and does not require further amendment.” The HMI for Prisons unsuccessfully argued that the ICRC are “clear that their visits do not provide any guarantee of conditions.” Moreover, the MoD inspections regime did not provide “guarantees of independence as required by OPCAT.” As a result, the UK government currently lacks an independent oversight regime for detention policy during armed conflict, including its practices concerning child soldiers.

The implementation of the policy on the detention of child soldiers remains confined to a group of experts within the military establishment. External enforcement, however, remains essential for the development of policies concerned with issues involving the protection of human rights of vulnerable populations during armed conflict. Furthermore, the involvement of interest groups potentially encourages policy learning because it “involves the constant questioning of assumptions and existing policy outcomes” by competing stakeholders. Any learning through the processes of

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1077 NPM, Submission to the UN Human Rights Committee’s Seventh Periodic Review of the United Kingdom at the Committee’s (July 2015).
facilitated dialogue, collaboration, and consensus among multiple interests enhances the
development of the policy process.\textsuperscript{1079} An input from outside groups also guards the policy
process against “biases and technical frames”\textsuperscript{1080} of the expert groups from which these
policies emerge.

\textsuperscript{1079} Samuel Brody, “Are we Learning to Make Better Plans? A Longitudinal Analysis of Plan Quality
\textsuperscript{1080} Princen and Rhinard, “Crashing and Creeping …,” p. 1122.
Conclusion

The development of the policy on the detention of child soldiers in the UK context provides an example of an evolution of a ‘policy without publics.’ The issue of the detention of child soldiers reached the decision-making agenda as a result of initiatives within the Ministry of Defence.1081 NGOs prioritized other issues on their portfolios and disengaged from the policy process on the issue of child detainees. Military lawyers, representing a group of experts within the MoD, became the agenda-setters on the issue. These agenda-setting dynamics influenced further developments during the policy process. Military lawyers rendered their expert advice on the issue to influence the formulation of the policy. Their influence was apparent throughout the policy framework in doctrinal documents, operational instructions, and tactical directives. Representatives of the military exercised institutionalized discretion in implementing the policy on the operational level.

This case study also demonstrated the inherent limitations of a ‘policies without publics’ approach. The extensive participation and input from experts in the development the policy process allowed for the formulation of technically sound proposals. The lack of engagement from other interested groups such as domestic NGOs, however, led to limited external oversight of the policy. In this section, I discuss how this case study could contribute to the debate within three research programs: a broad research program on child soldiers, the role of military legal advising in the policy process, and the strategic action of NGOs engaged in the policy process.

The analysis of the role of British NGOs in the development of a policy on the detention of child soldiers contributes to the question of the role of NGOs in the process of

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issue emergence (or non-emergence) in a twofold way. First, this expanding research program examines the rationale behind the emergence of varied issues such as statelessness (or a lack of legal nationality in any country), access to patented medicines in developing countries, environmental sustainability certification, and the adoption of LGBTQ prisoners of conscience as part of advocacy agenda. These studies predominately focus on the role and strategic action of transnational advocacy networks. Melanie Ram demonstrated how the issue of Roma inclusion, which “is not critically important to states and have not engendered substantial activism,” emerged on the World Bank’s agenda. Ram’s investigation illustrates the potential in looking beyond the role of transnational NGOs in the debate on the issue emergence.

This case study’s analysis – on the non-adoption of the issue on the advocacy portfolio of UK NGO – potentially furthers the current debate on the process of issue emergence in the context of the action of domestic NGOs. The research program also analyzes conditions that determine “why some issues gain more prominence than others.” Margaret Keck and Kathryn Sikkink emphasized the importance to account for issue attributes in the process of issue emergence. The findings from this case study provide further evidence that either “the severity of the issues or grievances themselves”

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1082 Kingston, “A Forgotten Human Rights Crisis” …
1083 Morin, “The Life-Cycle of Transnational Issues …”
1087 Ibid., p. 567.
1088 Keck and Sikkink, Activists Beyond Borders …; See also Price, “Reversing the Gun Sights …”
do not determine issue emergence on NGOs’ portfolios. The debate further draws attention to the importance of factors such as the “issue’s ability to be framed and marketed in order to attract attention”\textsuperscript{1090} and funding.\textsuperscript{1091} This case study may contribute to the discussion of strategic factors such as media attention to the issue and the impact of government funding on the NGOs’ action and strategies.

This case study also might contribute to the debate on how military representatives engage and influence the policy process, without overtly challenging the rights of civilians to govern.\textsuperscript{1092} First, the research program analyzes the involvement and the extent of influence of the military in the decision-making process on questions such as the use of force and fundamental budgetary decisions.\textsuperscript{1093} This case study potentially expands the debate surrounding how military lawyers become engaged in the policy process. Specifically, it examines how military lawyers address issues that involve human rights and security concerns and demand, while contending with legal and technical complexities. Second, research on the influence of military lawyers has expanded. Deborah Perlstein, for example, demonstrated how US Judge Advocates integrated expert military guidance to influence policy on detainee treatment and interrogation techniques during the ‘war on terror.’\textsuperscript{1094} This debate and emerging research trend, however, remains largely US-

\textsuperscript{1090} Kingston, “‘A Forgotten Human Rights Crisis’ . . . ,” p. 77.


\textsuperscript{1092} Risa Brooks, “Militaries and Political Activity in Democracies” in Suzanne Nielsen and Don Snider (eds., \textit{American Civil-Military Relations: The Soldier and the State in a New Era}. (JHU Press, 2009), p. 218. See also supra note # 310.

\textsuperscript{1093} See supra note # 314.

centered. This case study, through the analysis of how UK military lawyers applied their expert power to impact policy change, affords an opportunity to potentially consider this debate beyond the US context.

This case study may also contribute to a broad research program on child soldiers. It potentially informs the debate on the development of other policies involving child soldiers, which remain similarly fraught with technical and legal complexities. The debate on the issue of accountability of child soldiers alleged to have committed atrocities while recruited by armed forces has gained increasing attention.\textsuperscript{1095} Francesca Capone, for example, observes that liberal democracies such as Canada, Germany, the United Kingdom, and the United States have not developed consistent policies on the question of accountability towards children who decide to join terrorist groups.\textsuperscript{1096} Government authorities often favor the retributive model of prosecuting former child soldiers, particularly those alleged to be involved in terrorist activity.\textsuperscript{1097} This approach to detention policies, however, ignores two key factors. First, international human rights law requires providing measures for the reintegration of former child soldiers into society. Documented

\textsuperscript{1095} The ongoing International Criminal Court trial of Dominic Ongwen, a former child soldier in International Criminal Court and return of children who both are coerced into and volunteer to join terrorist organizations such as ISIS further increased the relevance of the debate See Windell Nortje, “Victim or Villain: Exploring the Possible Bases of a Defence in the Ongwen Case at the International Criminal Court.” \textit{International Criminal Law Review} 17(1) (2017); The Soufan Center, \textit{Beyond the Caliphate: Foreign Fighters and the Threat of Returnee} (October 2017).

research findings from different contexts such as Colombia, Sierra Leone, and Uganda demonstrate that children recruited into armed (or terrorist) groups, even voluntarily, appear to be socially and psychologically resilient. This research further discusses alternatives to the retribution model such as community-based programs, mediation, and restorative justice practices. Findings from this case study showed that the formulation of a more nuanced policy requires the involvement of experts during all three constitutive stages of the policy. The issue of accountability of child soldiers may require engagement from experts with a grasp of international humanitarian and human rights law. It also entails understanding of the development of security policies and knowledge on the implementation of DDR programs.

This case study illustrated the value of ‘specialized knowledge’ in the development of the policy process involving child soldiers. Military lawyers were responsible for securing the human rights of vulnerable populations in zones of conflict, the security of their military, and the effectiveness of the mission in providing their expertise on the policy on the detention of child soldiers. This case study also emphasized the need for a greater engagement of external interest groups such as NGOs to ensure a higher level of accountability and innovation in the policy area.

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1100 Blattman, and Annan, “The Consequences of Child Soldiering …”
CHAPTER VIII. CONCLUSION AND IMPLICATIONS FOR FUTURE RESEARCH

This chapter first provides a summary of the dissertation’s purpose and its key findings across each case study. Second, I examine how my dissertation contributes to three distinct research programs: on the strategic action of NGOs in the policy process, on the involvement of military lawyers in public policy concerned with effects of armed conflict, and finally, the program that examines the involvement of children in armed conflict. Third, I also consider the policy implications of this study. I conclude the chapter with a discussion of the recommendations for future research.

Summary of Key Findings

This dissertation sought to explain the conditions that determine the variation in national policies on the detention of child soldiers during armed conflict across Canada, the United Kingdom, and the United States. As stalwarts of the Atlantic security community, these three Anglo-Saxon, consolidated, liberal democracies historically demonstrate a high level of similarity, in terms of their shared norms and values, and common security practices. Nonetheless, Canada, the United Kingdom, and the United States have developed distinct policies on the detention of child soldiers. This dissertation proposed three hypotheses on the role of three strategic actors in a policy-making process – government officials, military lawyers and representatives of non-governmental organizations – to explain this variation. I collected and analyzed data that required both quantitative and qualitative methods to test these hypotheses. Specifically, qualitatively, I conducted and performed content analysis of a total of 69 semi-structured interviews; and, quantitatively, I used NVivo 11 matrix coding query tools to generate the numerical data
to present aggregate results. These methods allowed for comparing the roles and relative influence of these three actors in each national context. This dissertation also utilized comparative case studies to offer a second test of these hypotheses, identifying causal patterns across Canada, the United States, and the United Kingdom.

The findings of my dissertation suggest an explanatory relationship between NGOs’ choice of strategies and the policy outcomes in each of these three countries. NGOs, conducting their advocacy across the three stages of the policy process (i.e., agenda setting, policy formulation, and policy implementation), influenced the development of a national policy on the detention of child soldiers in three ways. First, the NGOs’ choice between different types of framing and how to engage in framing contests not only influenced their ability to advance their preferred definition onto the decision-making agenda. The variation in NGOs’ choices of framing mechanisms, from frame polarization to frame accommodation, also had implications for further stages of the policy-making process. It defined key terms and demarcated boundaries of the issue in a policy domain that abounds with contested elements. Second, the NGOs’ selection of strategies (how) and decision-making venues (where) simultaneously influenced their ability to shape policy outcomes during the policy formulation stage. Third, the application of the strategy of ‘naming and shaming’ during the policy implementation stage remained effective only if NGOs applied it in combination with other policy instruments, such as the use of litigation in domestic courts.
Table 8.5. NGOs’ Influence on the Policy-Making Process in Canada, the United Kingdom, and the United State

<table>
<thead>
<tr>
<th></th>
<th>Canada</th>
<th>The UK</th>
<th>The US</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategy</strong></td>
<td>Use of frame accommodation (security-oriented NGO) v. frame polarization (human-rights oriented NGO)</td>
<td>Pursued alternative agenda</td>
<td>Use of frame polarization Organized an informal coalition</td>
</tr>
<tr>
<td><strong>Key Outcomes</strong></td>
<td>Promoted the issue to the agenda of legislative bodies and governmental agencies</td>
<td>No input</td>
<td>Promoted the issue to the agenda of legislative bodies and governmental agencies</td>
</tr>
<tr>
<td><strong>Level of Influence</strong></td>
<td>High</td>
<td>No influence</td>
<td>High</td>
</tr>
<tr>
<td><strong>Strategy</strong></td>
<td>Collaboration with the opposition parties in lobbying legislative venue Collaboration with the DND</td>
<td>Pursued alternative agenda</td>
<td>Collaboration with military lawyers in lobbying legislative venue Collaboration with representatives of the DOD</td>
</tr>
<tr>
<td><strong>Key Outcomes</strong></td>
<td>No input on the issue of protection of children detained for participation in terrorist activities Shaped the adoption of the distinct doctrine on the issue</td>
<td>Formulation of the policy got confined to the group of experts within the MOD</td>
<td>No input on the issue of the prosecution of child soldiers Contributed to the adoption of some departmental guidelines on the issue</td>
</tr>
<tr>
<td><strong>Level of Influence</strong></td>
<td>Low in legislative venue High in governmental agencies</td>
<td>No influence</td>
<td>Low in legislative venue High in governmental agencies</td>
</tr>
<tr>
<td><strong>Strategy</strong></td>
<td>Combination of domestic litigation and ‘naming and shaming’</td>
<td>Pursued alternative agenda</td>
<td>‘Naming and shaming’</td>
</tr>
<tr>
<td><strong>Key Outcomes</strong></td>
<td>The government reinforced commitment to international human rights treaties concerning the issue Financial settlement and official apology to Omar Khadr</td>
<td>British Armed Forces became implementers on the operational level</td>
<td>Exposed instances of the government’s non-compliance with international law</td>
</tr>
<tr>
<td><strong>Level of Influence</strong></td>
<td>High (over time)</td>
<td>No influence</td>
<td>Low</td>
</tr>
</tbody>
</table>
Table 8.1 illustrates the varying degrees of influence of NGOs across the three stages of the policy process in each national context. The table also compares their impact on the policy outcomes across Canada, the United States, and the United Kingdom. In the Canadian case, NGOs proved instrumental in facilitating two key changes in the state’s policy on the detention of child soldiers. First, the Dallaire Initiative, a security-oriented NGO, applied insider strategies to develop a shared framing and forge strategic cooperation on the issue with the Department of National Defence. This enabled the adoption of a military doctrine on the engagement of the Canadian Armed Forces with child soldiers, including their detention. Canada transformed from a country with an ad hoc policy on military engagement with child soldiers to the first NATO member with a doctrinal document on the issue. Second, the NGOs’ combined long-term engagement in domestic litigation with the use of a ‘naming and shaming’ strategy on the international level. These mechanisms compelled the executive branch of the Canadian government to articulate its position on its compliance with international human rights law on the detention of child soldiers.
The case of the United States demonstrated how NGOs retained varying degrees of influence at different stages of the policy process. Similar to the Dallaire Initiative in Canada, American NGOs developed a collaborative relationship with government agencies. They established themselves as a source of expertise on the issue. This enabled NGOs to contribute to the integration of some procedural safeguards for the treatment of detained child soldiers. American NGOs, however, were unable to adapt their strategies to the closed nature of domestic decision-making venues. This resulted in futile efforts to restrict the jurisdictional scope of military commissions over the prosecution and trial of child soldiers. The implications of the NGOs’ choice of strategies on the policy outcomes was evident during the policy implementation stage. American NGOs, in contrast to their Canadian counterparts, relied on ‘naming and shaming’ as a primary strategy in enforcing the government’s policy. The lack of additional accountability mechanisms prevented American NGOs from imposing concrete costs on the government’s non-compliance with international and domestic standards on the issue. This inhibited their effectiveness at this final stage of the policy process.
British NGOs, in contrast to their US and Canadian counterparts, did not promote the issue of the detention of child soldiers at the agenda-setting stage. My findings highlighted the salience of strategic and organizational factors in the process of issue’s emergence on the portfolios of advocacy organizations in the UK case. These attributes included media attention to the issue, the issue’s ability to fit with the objectives of the NGOs’ broad advocacy, and funding considerations. This distinct role of non-governmental organizations had far-reaching implications for the policy process in the UK context. Deliberation about the policy on the detention of child soldiers was largely confined to a group of experts within the Ministry of Defence, such as military lawyers, who shaped the formulation and implementation of the policy on the operational level. The UK’s policy on the detention of child soldiers, on the one hand, benefited from extensive participation by and input from experts. The lack of engagement from domestic NGOs, on the other hand, led to a limited external oversight of the policy.

The analysis of the policy-making process in these three countries demonstrated a variation of NGOs’ influence on the development of a policy – ranging from non-engagement to an observable impact on policy outcomes – and their use of strategies to exert leverage to shape policies in their respective national contexts.

**Significance of the Findings**

The findings of my dissertation are significant because they may contribute to three research programs in order of potential significance. This study explores the dual status of child soldiers, as victims and perpetrators, generating operational, legal, and ethical dilemmas for the actors involved in the development and implementation of national security policies. In summary, first, my dissertation may contribute to the debate on the
role and influence of NGOs in the policy process. Second, this study is possibly relevant to the research program on the engagement of military lawyers in the policy process, as the detention of child soldiers takes place in a complex legal environment. Third, my dissertation also clearly contributes to the broader research program on children’s involvement in armed conflict. I now examine all three in greater detail.

**The Strategic Action of Non-Governmental Organizations in the Policy Process**

This dissertation potentially contributes to the research program on the role of NGOs in the policy process.

First, this study demonstrates how NGOs apply strategies of issue framing and engage in framing contests to promote an issue to the agenda. In the Canadian and US contexts, this study demonstrated how the policy domain on the detention of child soldiers became what Mark McBeth and his colleagues define as a “political battlefield,” with NGOs using framing as a strategy to influence agenda-setting. This study provides further empirical evidence suggesting that advocacy groups interested in the expansion of the conflict cannot ignore the claims of their policy opponents. Instead, they “willingly engage in framing contestations,” confronting and challenging opposing frames. I also demonstrated how American and Canadian NGOs actively shifted their strategies to address the claims of their policy opponents and engage in efforts to discredit those opposing frames. In the US context, for example, NGOs, engaged in the formation of an informal coalition to counter the government’s dominant frame on the issue. The

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103 Boscarino, “Setting the Record Straight …,” p. 23; See also Fisher, “Before the Wedding Dance …”
104 See Pralle, *Branching Out, Digging In …*; Dodge, “The Deliberative Potential of Civil Society Organizations …”
Canadian NGOs undertook efforts to disseminate and secure support for their framing among representatives of Canada’s three opposition parties during the premiership of Stephen Harper. The findings reinforce the argument that framing contests are an interactive process that “generates evolving debates about policy issues.”

Further, related to the debate on how NGOs engage in issue framing, this study offers possible insights into how the choices between different framing mechanisms ranging from frame polarization to frame accommodation influence policy outcomes. Threat reduction and military effectiveness versus the protection of vulnerable populations during military operations is central to the framing debate in the policy domain on the detention of child soldiers. The selection between different framing mechanisms, in such contested policy domains, enhances our understanding how policy actors shift from “prolonged policy controversy” to policy consensus and vice versa. The frame polarization mechanism involves policy actors amplifying differences to reaffirm their preferred frames. The choice of this framing tactic – as a principal interaction mechanism – leads to the divergence in the perspectives in policy solutions among key policy actors. This ultimately results in the intensification of “the intractability of policy controversies,” which inhibits the resolution of framing contests. A frame accommodation mechanism, in contrast, suggests that policy actors could avoid policy controversy. Frame accommodation

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allows for the integration of opposing frames to “arrive at a common policy definition”\textsuperscript{1109} and produce a dominant frame that guides policy decisions. Frame accommodation may allow to reduce potential conflicts in the policy area of the detention of child soldiers. Policy actors may apply this strategy to integrate both human rights and national security concerns and address disputes over the issue definitions.

American NGOs and human rights-oriented Canadian NGOs engaged in frame polarization through a range of tactics such as media coverage, blame allocation, and the use of focusing events. They also invoked key premises of international law to indicate government’s possible non-compliance with these standards and further endorse their framing of the issue. These tactics facilitated elevating the issue to the agenda and securing access to decision-making venues. Frame polarization, however, “revealed disputes over underlying assumptions.”\textsuperscript{1110} These conditions hindered potential collaboration between policy-makers and NGOs, in respective national contexts, at the latter stages of the policy process. The Dallaire Initiative, in contrast, applied a convergent framing mechanism in its collaboration with representatives of the Department of National Defence (DND). The NGO articulated the view that the doctrine would contribute to the effectiveness of the department, such as an increase in the safety of the Canadian military and the success of the DND’s missions. The Dallaire Initiative also stressed that the set of guidelines would enhance the protection of vulnerable populations in conflict zones. The issue was therefore first defined as a security issue and then transformed into an operational issue. The DND and the Dallaire Initiative, through the mechanism of frame accommodation, engaged in efforts to overcome framing conflicts to arrive at a policy consensus. Frame

\textsuperscript{1109} Dodge and Lee, “Framing Dynamics and Political Gridlock …,” p. 4.
\textsuperscript{1110} Ibid.
accommodation efforts produced a shared frame on the issue. It guided policy decisions and had a direct influence on policy outcomes, such as the adoption of a doctrine regarding engagement with child soldiers, including their detention.

Second, this dissertation also demonstrated how the strategic choices of proper decision-making venues impact the ability of NGOs to secure desired policy outcomes. The debate shows how “approaching different venues expands advocates’ participation and potential influence.” American and Canadian NGOs pursued policy goals on the detention of child soldiers, in different policy venues. NGOs did resort to different forms of insider strategies during the policy formulation stage. This study demonstrated that this variation resulted in a corresponding difference in their influence on the policy outcome.

The collaboration of both Canadian and American NGOs with each states’ defense agencies, for example, resulted in observable changes of policies on child soldiers. In contrast, the attempt of NGOs in these two countries to cooperate with their national legislatures did not affect the policy outcomes. In the case of the US, the legislature was unwilling to restrict the authority of the executive regarding the issue of the prosecution of child soldiers in military tribunals, because it is deeply nested in the realm of national security. The lack of coherence among Canadian opposition parties, due to their differing electoral interests, combined with the executive’s majority in the Parliament, weakened the chances that NGOs could influence the policy formulation process. This study presents further empirical evidence on how NGOs perform venue selection and the implications of these choices. Sarah Pralle, for example, argues that different venues “offer both costs

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1112 See also Pralle Schmid et al. (2008) Nicholson-Crotty Buffardi, et al., “Shopping or Specialization?
and benefits”1113 – that is the ability of policy advocates to align with a favorable venue may impact the extent of NGOs’ influence on the formulation of the policy. This study also shows that accounting for preferences of policy opponents and allies – such as legislators and/or representatives of bureaucratic agencies – might shape the NGOs’ choice of strategies and the extent of their influence on policy outcome.1114

Third, this dissertation may contribute to the debate on the effectiveness of a ‘naming and shaming’ strategy during the implementation stage of the policy process. Its findings suggest that the effectiveness of ‘naming and shaming’ is contingent upon the ability to use it “in tandem with other enforcement techniques.”1115 Canadian NGOs, in contrast to their American counterparts, applied this policy instrument as “one element of a multi-pronged approach”1116 in their effort to ensure accountability of the government. NGOs, in the Canadian case, prioritized domestic litigation as an “accountability strategy.”1117 While the tactic of domestic litigation demanded a long-term engagement from NGOs its ultimate impact lies in “gradual contribution to social change.”1118 Canadian domestic courts “stigmatized the status quo”1119 policy on the detention of child soldiers, clearing the way for a redefinition of the relationship among policy actors. The case of Canadian NGOs thus illustrated that the integration of domestic and international enforcement strategies might provide a powerful tool for proponents of human rights actors

1113 Pralle, Branching Out, Digging In …, p. 219.
1114 Holyoke, “Choosing Battlegrounds …;” See also Buffardi, et al., “Shopping or Specialization? …;” Fyall, “Power of Nonprofits …”
1115 Schultz, “Caught at the Keyhole …,” p. 38. See also supra note # 669.
1118 Duffy, “Human Rights Litigation and the ‘War on Terror’ …,” p. 596. See also supra note # 204.
seeking to influence the implementation of public policies.\textsuperscript{1120}

\textit{The Role of Military Lawyers in the Policy-Making Process}

The findings of this dissertation may also contribute to an emerging debate regarding how military lawyers become important actors in shaping public policies concerning armed conflict and the interpretation of international law.\textsuperscript{1121} These advisers possess “specialized legal training, education, and experience”\textsuperscript{1122} and render advice on what international law allows and/or prohibits in the domain of the detention of child soldiers. I thus presented empirical evidence about how military lawyers can potentially influence policy outcomes.\textsuperscript{1123} American, Canadian and British military lawyers – to differing degrees – were all involved in the policy-making process on the detention of child soldiers. In Canada and the US, military lawyers contributed their expertise on how to comport with law and policy on the detention of child soldiers during armed conflict. They addressed contested questions in this policy domain that related to the relationship between international humanitarian and human rights law and the application of international human rights law to situations of armed conflict. They also rendered their advice on technical aspects of the policy, such as age assessment, during the policy formulation and implementation stages. They acted as “agents of compliance”\textsuperscript{1124} and applied legal advice as a “risk-mitigation mechanism”\textsuperscript{1125} – that is integrating their advice as a principal component of planning and execution of military operations.\textsuperscript{1126}

\textsuperscript{1120} Franklin, “Human Rights Naming and Shaming …,” p. 60.
\textsuperscript{1121} See supra note # 209.
\textsuperscript{1122} Wheaton, “Strategic Lawyering …,” p. 2.
\textsuperscript{1123} Jones, “Frames of Law …”
\textsuperscript{1124} Dickinson, “Military Lawyers on the Battlefield …,” p. 19.
\textsuperscript{1125} McLaughlin, “Giving Operations Legal Advice …,” p. 120.
\textsuperscript{1126} See also Geoffrey Corn, “War, Law, and the Oft Overlooked Value of Process as a Precautionary Measure.” \textit{Pepp. L. Rev.} 42 (2014); Sahr Muhammedally, “Minimizing Civilian Harm in Populated Areas:
The British case further illustrated how military lawyers operated as a part of an ‘epistemic community’ of experts within the Ministry of Defence. They provided their knowledge and professional expertise to utilize expert power to influence the development of the policy process. The evidence demonstrated how American, British and Canadian military lawyers, through their nuanced assessment of aspects on the detention of child soldiers, transformed abstract aspects of international law into the specific guidelines of operational law. It therefore demonstrates how international law is “operationalized,” allowing us to further understand the mechanisms and conditions under which international law works in practice.

The Research Program on Child Soldiers

Finally, this dissertation may contribute to an emerging discussion that questions the victim/perpetrator distinction within a broader research program on child soldiers. Scholars from the fields of human rights, anthropology and legal studies demonstrate that this dichotomous understanding of child soldiering does not address the key issues of this policy domain. The complexity of the phenomenon involves questions

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[1131] Eleni Coundouriotis, “The Child Soldier Narrative and the Problem of Arrested Historicization.” Journal of Human Rights 9(2) (2010); Rosen, Child Soldiers in the Western imagination ...
of national security, the protection of children’s rights, and is concerned with ensuring accountability and recognizing a child’s agency. Ilene Derluyn and her colleagues called for “dialogue among disciplines”\textsuperscript{1133} in order to understand “the victim-perpetrator dynamic in relation to child soldiers.”\textsuperscript{1134}

This dissertation demonstrated significant opportunities exist in connecting the research program on the policy process with another program debating issues concerned with the experiences of child soldiers. The findings of this study may thus offer insights into how policy actors identified strategies that allowed them to move beyond this perceived dichotomy. The transformative shifts in the policy took place when key actors involved in the policy process re-examined their binary perspectives on the issue. The findings from the US and Canadian cases, for example, emphasize that the input from experts such as military lawyers allowed, to a certain extent, an avoidance of the polarizing victim/perpetrator debate on child soldiers. These actors addressed the specific legal, operational and human rights implications concerning the engagement of armed forces with child soldiers. At the same time, as the UK case illustrated, the confinement of the issue only to experts potentially limits the oversight of the issue from external actors. It therefore emphasizes the importance of the involvement of NGOs in the development of the policy. This dissertation provided further evidence that the design of policies requires policy actors to acknowledge the dilemmas and complexities of the policies in question.

The study also demonstrated the evidence for the need for the engagement of policy participants with different areas of expertise - such as NGOs, military lawyers, and government officials. These actors can bring distinct expert knowledge and perspectives

\textsuperscript{1133} Derluyn, et al., “Victims and/or Perpetrators? …,” p. 2.
\textsuperscript{1134} Ibid.
into the policy area that addresses a contested and complex issue. The findings from this study may potentially be generalizable to other policy areas concerning child soldiers, those which lack well-developed policies. The examples of policy domains include issues such as accountability of child soldiers for crimes that they committed while being recruited into armed forces (or terrorist groups), the development of transitional justice mechanisms, and demobilization, reintegration and rehabilitation programs.

**Policy Implications**

This dissertation also has possible direct policy implications. First, the findings of this study pertain to practical issues about how the provisions of detention policies concerning child soldiers during military operations become embedded in military manuals, standard operating procedures, and training materials, as well as what factors are involved in their design, as professional militaries increasingly engage with children in armed conflict.

Second, the issue of child detention for reasons of ‘national security’ increasingly demands coherent policy responses. On a global level, a group of transnational NGOs - with the support of international organizations – are currently researching an in-depth study, commissioned by the United Nations General Assembly, on children deprived of liberty. The study looks specifically at children detained for their protection, or for national

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security reasons. The study hopes to bring “global attention to critical issues” relating to the issue and provides legal, policy, and practical recommendations to national governments.

Additionally, the question on how to operationalize the procedures for children detained during the UN peacekeeping operations is becoming an issue of greater policy concern. The representatives of national governments, their militaries, and NGOs, for example, discussed this issue during the UN Peacekeeping Defence Ministerial Conference in Vancouver in November of 2017. This resulted in the Vancouver Principles, which included specific provisions on the detention of child soldiers, and received endorsements from 58 countries. The implementation of the recommendations from these initiatives, and their transformation into specific policies, remains the responsibility of policy actors on the national level. This study’s findings may offer an insight into the mechanisms through which policy actors can increase the effectiveness of the policy-making process in their respective national contexts. Specifically, this dissertation provided empirical evidence for increased engagement and cooperation between experts such as military lawyers and representatives of non-governmental organizations in the policy process. The findings of this dissertation may be useful for policy advocates, government officials, and


1138 Global Study on Children Deprived of Liberty, Implementing the UN Global Study on Children Deprived of Liberty. (October 2017).

those who implement child detention on the operational level.

**Implications for Future Research**

I have identified three possible areas for future research as a result of these findings. First, to strive for generalizability in explaining the conditions under which policy actors influence outcomes in contested policy domains. This will entail expanding beyond this dissertation’s selection of cases to include other countries, both those that are similar to and those that are different from Canada, the United States, and the United Kingdom. The possibilities might include looking at other geographical areas to perceive whether findings of this dissertation hold true in different national and regional contexts grappling with the issue of detention of child soldiers. These opportunities might involve looking at policies of other NATO countries, beyond the cases of Anglophone members states, to draw generalized conclusions about the practice of the Alliance and its members on the issue. There is also an increasing need for the in-depth analysis of the policy-making process in countries such as Afghanistan, the Democratic Republic of Congo, Iraq, Nigeria, Somalia, and Syria. These countries demonstrate an observable increase in the detention of individuals under the age of 18 as perceived security threats.1140 Moreover, these states represent a variation in regime types. Future research therefore might explore the extent to which strategies, explored in this study, will be effective in contexts other than liberal

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democracies.

Additionally, future research might apply findings from this dissertation to those other related policy domains which concern balancing the protection of vulnerable populations and issues of national security. This may include those related to unaccompanied minors, children alleged to be involved in terrorist activities, and the protection of civilians in conflict. The ability to evaluate the development of policy, not only across these countries but also across issue areas, may determine if some of the mechanisms identified in this study are more pervasive than others. Further analysis is likely to reveal additional mechanisms.

Second, my future research may explicitly examine the influence of military lawyers in contested policy areas in order to further link legal and international relations scholarship. This study showed that military lawyers are located at the nexus of legal and military regimes, and they increasingly become involved in the “mobilization of the law in the waging of war.” Building upon Craig Jones’ and Michael Smith’s concept of the

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“war-law-space nexus,” which characterizes the relationship between war and law as dynamic, and emphasizes how law can enable armed conflict, future studies could offer insight into how military lawyers define ‘spaces’ where law is operationalized.

Third, in addressing these and other questions, I could use additional methodologies, such as surveys, which facilitate the engagement with a broad set of interest groups, is necessary to truly disentangle the relationship between actors and to further increase the generalizability of any study. Using surveys to gather data allows the collection of information on types of strategies and can quantify the frequency with which these groups have access to decision-making venues. Comprehensive surveys provide an opportunity to study the “frequency of contacts across different group types in different national settings.” The use of mixed methods such as surveys, comparative case studies, and semi-structured interviews will allow us to further assess the influence of actors in shaping policy outcomes in contested policy domains.

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1145 Jones and Smith, “War/Law/Space Notes …,” p. 587.
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Appendix A: IRB Approval Notices for the Research Project

May 24, 2017

Iulia Kononenko

Dear Iulia Kononenko:

Protocol Title: “The Role of Military, Civilians and NGOs in the Development of Detention Policy”

This is to advise you that the above-referenced study has been presented to the Institutional Review Board for the Protection of Human Subjects in Research, and the following action was taken subject to the conditions and explanations provided below:

Approval Date: 4/17/2017
Expiration Date: 4/16/2018
Expedited Category(s): 8c
Approved # of Subject(s): 69
Currently Enrolled: 69

This approval is based on the assumption that the materials you submitted to the Office of Research and Sponsored Programs (ORSP) contain a complete and accurate description of the ways in which human subjects are involved in your research. The following conditions apply:

- **This Approval** - The research will be conducted according to the most recent version of the protocol that was submitted. **This approval is valid ONLY for the dates listed above;**
- **Reporting** - ORSP must be immediately informed of any injuries to subjects that occur and/or problems that arise, in the course of your research;
- **Modifications** - Any proposed changes MUST be submitted to the IRB as an amendment for review and approval prior to implementation;
- **Consent Form(s)** - Each person who signs a consent document will be given a copy of that document, if you are using such documents in your research. The Principal Investigator must retain all signed documents for at least three years after the conclusion of the research;
- **Continuing Review** - You should receive a courtesy e-mail renewal notice for a Request for Continuing Review before the expiration of this project’s approval. However, it is your responsibility to ensure that an application for continuing review has been submitted to the IRB for review and approval prior to the expiration date to extend the approval period;

Additional Notes:

- Continuation with Amendment Expedited Approval per 45 CFR 46.110(b)(2), on 4/17/2017 for increase in enrollment of 9 subjects for a total of 69;
- IRB Approval Has Been Provided For Data Analysis Only. PI Is To Contact The IRB Prior To The Recruitment Of Additional Subjects Or Further Interactions/Interventions With Subjects.

Failure to comply with these conditions will result in withdrawal of this approval.

Please note that the IRB has the authority to observe, or have a third party observe, the consent process or the research itself. The Federal-wide Assurance (FWA) number for the Rutgers University IRB is FWA00003913; this number may be requested on funding applications or by collaborators.

Respectfully yours,

[Signature]

Acting For--
Beverly Tepper, Ph.D.
Professor, Department of Food Science
IRB Chair, Arts and Sciences Institutional Review Board
Rutgers, The State University of New Jersey

cc: Simon Reich
May 2, 2016

Dear Juliana Kononenko:

Protocol Title: “The Role of Military, Civilians and NGOs in the Development of Detention Policy”

This is to advise you that the above-referenced study has been presented to the Institutional Review Board for the Protection of Human Subjects in Research, and the following action was taken subject to the conditions and explanations provided below:

Approval Date: 4/18/2016  Expiration Date: 4/17/2017
Expedited Category(s): 6,7  Approved # of Subject(s): 60

This approval is based on the assumption that the materials you submitted to the Office of Research and Sponsored Programs (ORSP) contain a complete and accurate description of the ways in which human subjects are involved in your research. The following conditions apply:

- This Approval-The research will be conducted according to the most recent version of the protocol that was submitted. This approval is valid ONLY for the dates listed above;
- Reporting-ORSP must be immediately informed of any injuries to subjects that occur and/or problems that arise, in the course of your research;
- Modifications-Any proposed changes MUST be submitted to the IRB as an amendment for review and approval prior to implementation;
- Consent Form(s)-Each person who signs a consent document will be given a copy of that document, if you are using such documents in your research. The Principal Investigator must retain all signed documents for at least three years after the conclusion of the research;
- Continuing Review-You should receive a courtesy e-mail renewal notice for a Request for Continuing Review before the expiration of this project’s approval. However, it is your responsibility to ensure that an application for continuing review has been submitted to the IRB for review and approval prior to the expiration date to extend the approval period.

Additional Notes:
- Expedited Approval per 45 CFR 46.110
- HSCP Certification will no longer be accepted after 7/1/15 (including for anyone previously grandfathered). CITI becomes effective on July 1, 2015 for all Rutgers faculty/staff/students engaged in human subjects research.

Failure to comply with these conditions will result in withdrawal of this approval.

Please note that the IRB has the authority to observe, or have a third party observe, the consent process or the research itself.

The Federal-wide Assurance (FWA) number for the Rutgers University IRB is FWA00003913; this number may be requested on funding applications or by collaborators.

Respectfully yours,

[Signature]

Acting For--
Beverly Tupper, Ph.D.
Professor, Department of Food Science
IRB Chair, Arts and Sciences Institutional Review Board
Rutgers, The State University of New Jersey

cc: Simon Reich
Appendix B: Interview Protocol

ATTACHMENT SEVEN

INTERVIEW QUESTIONS

Principal Investigator: Iuliia Kononenko
Project Title: The Role of Military, Civilians and NGOs in the Development of Detention Policy

Interview Questions

This is a preliminary list of the questions I intend to ask subjects and is subject to revision, for which, at that time, an Institutional Review Board application amendment will be submitted.

1. What role did your organization play in the development of the policy on the detention of child soldiers?

2. Please name the job titles of up to 5 individuals within your agency/department/organization with whom you interacted on the development of the child soldiers’ policy. How would you evaluate the frequency of these interactions: rarely, a few times a month, weekly, daily?

3. On a scale from “0” to “10” how will you evaluate the influence of the following actors in the policy making process: a) military lawyers; b) government lawyers; c) non-governmental organizations?

4. Please describe the process through which your agency/department/organization has influenced the development of the policy on the detention of child soldiers.

5. What interests/beliefs/obligations have driven the involvement of your agency/department/organization in shaping the policy on the detention of child soldiers?

6. How does agency/department/organization define the term child soldier? What specific protections in cases of detention during military operations should be provided to child soldiers?

7. What instruments or techniques did your agency/department/organization use to impact this policy?

8. What role did information play in the policy-making process? What information did the agency/department/organization utilize in defining its stance on the issue?

9. What role did international law play in the policy-making process?

10. Did your agency/department/organization interact with other agencies/departments/organizations in the process of shaping policies on the detention of child soldiers? If yes, what were those agencies and what was the nature of their interaction?

11. Please name the job titles of up to 5 individuals outside of your agency/department/organization with whom you interacted on the development of the child soldiers’ policy. How would you evaluate the frequency of these interactions: rarely, a few times a month, weekly, daily?
Appendix C: Approved Consent Forms

ATTACHMENT FIVE

Principal Investigator: Iuliia Kononenko
Project Title: The Role of Military, Civilians and NGOs in the Development of Detention Policy

ORAL CONSENT FORM

You are invited to participate in a research study that is being conducted by, myself Iuliia Kononenko, a graduate student in the Division of Global Affairs at Rutgers University. The purpose of this research is to explain the variation in the policy-making process across three liberal democracies, Canada, the United States, and the United Kingdom on the issue of the detention of child soldiers.

Approximately 60 subjects will participate in the study, and each individual’s participation will last approximately forty-five (45) minutes.

The study procedures include responding to approximately 11 semi-structured questions, which are related to the objectives of this research. Please feel free to expand on the topic or talk about related ideas. Also, if there are any questions you would rather not answer or that you do not feel comfortable answering, please say so and I will stop the interview or move on to the next question, whichever you prefer. Following the completion of the interview, no further participation will be required on your part.

This research is confidential. Confidential means that the research records will include some information about you and this information will be stored in such a manner that some linkage between your identity and the response in the research exists. Some of the information collected about you includes such as your job title and type of employer. Please note that we will keep this information confidential by coding the data, limiting individual’s access to the data and keeping it in a secure location.

The research team and the Institutional Review Board at Rutgers University are the only parties that will be allowed to see the data, except as may be required by law. If a report of this study is published, or the results are presented at a professional conference, only group results will be stated.

The data from the interviews will be stored at my private account on a secure server at www.box.com, the server that encrypts its documents. My personal account at www.box.com is protected with a high-protection password. All paper data will be disposed by way of burning. All audio data will be disposed of by erasing it from the digital recorder on which it will be stored. All email correspondences will be deleted from my Inbox as well as from the Trash folder, permanently removing it from the account. All study data will be kept three years after the completion of this study, and then it will be destroyed.

There are no foreseeable risks to participation in this study.

Participation in this study may not benefit you directly. However, the information and knowledge I may obtain from your participation may better the understanding policy-making process across three liberal democracies, Canada, the United States, and the United Kingdom on the issue of the detention of child soldiers.

Your participation in this study is voluntary; you may decline to participate at any time without penalty to you. In addition, you may choose not to answer any questions with which you are not comfortable. If you decide to participate, you may withdraw from the study at any time without penalty and without loss of benefits to which you are otherwise entitled. If you withdraw from the study before data collection is completed your data will be removed from the data set and destroyed.

APPROVED

APR 19 2016

Approved by the Rutgers IRB

EXPIRES

APR 17 2017

Approved by the Rutgers IRB
If you have questions at any time about this research or the procedures, you may contact myself, the Principal Investigator, Iuliia Kononenko, at iuliia.kononenko@rutgers.edu, or the Co-Investigator/Dissertation Supervisor, Dr. Simon Reich at reichs@rutgers.edu. If you have any questions about your rights as a research subject, you may contact the Sponsored Programs Administrator at:

Institutional Review Board  
Rutgers University, the State University of New Jersey  
Liberty Plaza / Suite 3200  
335 George Street, 3rd Floor  
New Brunswick, NJ 08901  
Phone: 732-235-9806  
Email: humansubjects@orsp.rutgers.edu

Do you consent to be interviewed?  

AUDIO ADDENDUM TO ORAL CONSENT FORM

You have already agreed to participate in a research study entitled: Military, Civilian and NGO Attitudes towards the Issue of Detention of Child Soldiers conducted by myself, Iuliia Kononenko. You are asked for your permission to allow me to audiotape (sound) as part of that research study. You do not have to agree to be recorded in order to participate in the main part of the study. The recording will last approximately forty-five (45) minutes.

The recording will be used for analysis on behalf of the Principal Investigator for the purposes of the research design. Because this interview is confidential, the recording itself will not include any information regarding your name or employment, but will include the date and time of the interview. The recording will be coded and stored on a secure encrypted server on my personal account at www.box.com, which is protected with a high-protection password. The recording will be retained for a minimum of three years before being destroyed. If you say anything that you believe at a later point may be hurtful and/or damage your reputation, then you can ask the interviewer to rewind the recording and record over such information OR you can ask that certain text be removed from the dataset/transcripts.

The investigator will not use the recording for any other reason than those that I, the Principal Investigator, have stated.

Do you consent to having your interview recorded?

**YOU WILL BE PROVIDED WITH A COPY OF THIS FORM FOR YOUR OWN RECORDS**
Appendix D: List of Departments/Organizations and Positions of Policy Actors Interviewed for the Research Project

<table>
<thead>
<tr>
<th>Organization/Department</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Canada</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Non-Governmental Organizations</strong></td>
<td></td>
</tr>
<tr>
<td>Amnesty International-Canada</td>
<td>Manager of the Security and Human Rights Campaigns</td>
</tr>
<tr>
<td>British Columbia Civil Liberties Association</td>
<td>Senior Counsel</td>
</tr>
<tr>
<td>Canadian Civil Liberties Association</td>
<td>General Counsel</td>
</tr>
<tr>
<td>Canadian Coalition for the Rights of Children</td>
<td>Chairperson, Board of Directors</td>
</tr>
<tr>
<td>Justice for Children and Youth</td>
<td>Staff Lawyer</td>
</tr>
<tr>
<td>International Bureau for Children's Rights</td>
<td>Director General</td>
</tr>
<tr>
<td>Montreal Institute for Genocide and Human Rights</td>
<td>Executive Director</td>
</tr>
<tr>
<td>Rideau Institute</td>
<td>Human Rights Researcher</td>
</tr>
<tr>
<td>Romeo Dallaire Child Soldiers Initiative</td>
<td>Executive Director</td>
</tr>
<tr>
<td><strong>Government Officials</strong></td>
<td></td>
</tr>
<tr>
<td>Department of Foreign Affairs, Trade, and Development (now Global Affairs Canada)</td>
<td>Director General of the Consular Affairs Bureau (Retired)</td>
</tr>
<tr>
<td>Department of Foreign Affairs, Trade, and Development (now Global Affairs Canada)</td>
<td>Career Diplomat (1981-2011) Deputy Director for International Communications/Director of Strategic Communications Services; and, Senior Advisor, Strategic Policy and Planning</td>
</tr>
<tr>
<td>Department of Justice</td>
<td>Chief General Counsel</td>
</tr>
<tr>
<td>Department of National Defence</td>
<td>Minister of Defence</td>
</tr>
<tr>
<td>Parliament of Canada</td>
<td>Member of the Parliament (2006-2015), Chair of the All-Party Parliamentary Group for the</td>
</tr>
<tr>
<td>Prevention of Genocide and Other Crimes Against Humanity</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td></td>
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</tbody>
</table>

**Military Lawyers**

<table>
<thead>
<tr>
<th><strong>Canadian Armed Forces</strong></th>
<th>Deputy Judge Advocate General for Military Justice</th>
</tr>
</thead>
</table>

**United Kingdom**

**Non-Governmental Organizations**

<table>
<thead>
<tr>
<th><strong>Amnesty International-UK</strong></th>
<th>Legal Adviser</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amnesty International-UK</strong></td>
<td>Researcher</td>
</tr>
<tr>
<td><strong>CAGE Advocacy UK</strong></td>
<td>Research Director</td>
</tr>
<tr>
<td><strong>Children's Society</strong></td>
<td>Policy Officer</td>
</tr>
<tr>
<td><strong>Child Soldiers International</strong></td>
<td>Programme Manager and Director of Programmes</td>
</tr>
<tr>
<td><strong>CORAM Center</strong></td>
<td>Director of Research and International Programmes</td>
</tr>
<tr>
<td><strong>UK Defence Academy Advisory Board</strong></td>
<td>Member (2003-2015)</td>
</tr>
<tr>
<td><strong>Liberty</strong></td>
<td>Policy Assistant</td>
</tr>
<tr>
<td><strong>Quakers in Britain</strong></td>
<td>Assistant General Secretary QPSW</td>
</tr>
<tr>
<td><strong>UNICEF-UK</strong></td>
<td>Senior Humanitarian Advocacy and Policy Adviser</td>
</tr>
<tr>
<td><strong>War Child-UK</strong></td>
<td>Head of Policy and Advocacy</td>
</tr>
</tbody>
</table>

**Government Officials/Lawyers**

<table>
<thead>
<tr>
<th><strong>Ministry of Defence</strong></th>
<th>Minister of State for the Armed Forces</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Baha Mousa Public Inquiry</strong></td>
<td>Counsel (2008-2011)</td>
</tr>
<tr>
<td><strong>The Baha Mousa Public Inquiry</strong></td>
<td>Junior Counsel (2008-2011)</td>
</tr>
</tbody>
</table>

**Military Lawyers**

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>The British Army</strong></td>
<td>Chief Legal Adviser (2003-2011)</td>
</tr>
<tr>
<td><strong>U.K. Royal Navy</strong></td>
<td>Legal Adviser, Senior Military Lawyer to the Commander of the United Kingdom’s Forces in Iraq and Afghanistan in (2006-2007)</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>U.K. Royal Navy/Permanent Joint Headquarters and Joint Force Headquarters</strong></td>
<td>Senior Military Legal Adviser to the Chief of Joint Operations (2002-2005)</td>
</tr>
</tbody>
</table>

**United States of America**

**Non-Governmental Organizations**

<table>
<thead>
<tr>
<th>American Civil Liberties Union</th>
<th>Director of Human Rights Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Civil Liberties Union</td>
<td>Senior Attorney</td>
</tr>
<tr>
<td>American Bar Association</td>
<td>Chief Prosecutor for the Special Court for Sierra Leone</td>
</tr>
<tr>
<td>Bellevue/NYU Program for Survivors of Torture</td>
<td>Staff Psychologist</td>
</tr>
<tr>
<td>Amnesty International-USA</td>
<td>Program Manager</td>
</tr>
<tr>
<td>Human Rights First</td>
<td>Senior Counsel</td>
</tr>
<tr>
<td>Human Rights First</td>
<td>International Legal Director</td>
</tr>
<tr>
<td>Human Rights Watch</td>
<td>Advocacy Director for the Children’s Division</td>
</tr>
<tr>
<td>International Human Rights Law</td>
<td>Director/Civilian Member of the American Defence Team during Omar Khadr’s Trial (2004 – 2007)</td>
</tr>
<tr>
<td>ICRC Regional Delegation to the United States and Canada</td>
<td>Head (2004-2009)</td>
</tr>
<tr>
<td>ICRC Regional Delegation to the United States and Canada</td>
<td>Deputy Legal Advisor</td>
</tr>
<tr>
<td>Watchlist on Children and Armed Conflict</td>
<td>Advocacy Officer</td>
</tr>
<tr>
<td>International Justice Network</td>
<td>Executive Director/Founder</td>
</tr>
<tr>
<td>Government Officials</td>
<td></td>
</tr>
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</tr>
<tr>
<td><strong>Department of Homeland Security</strong></td>
<td>Policy Advisor, Human Rights Violators and War Crimes Unit</td>
</tr>
<tr>
<td><strong>Department of Defense</strong></td>
<td>Senior Attorney, Office of the Chief Defense Counsel</td>
</tr>
<tr>
<td><strong>Department of Defense</strong></td>
<td>Senior Policy Advisor, Office of the Secretary of Defense (2008–2014)</td>
</tr>
<tr>
<td><strong>Department of Defense</strong></td>
<td>Deputy Assistant Secretary of Defense for the Detainee Policy (2010-2013)</td>
</tr>
<tr>
<td><strong>Department of State</strong></td>
<td>Department of State Legal Advisor, Office of the Legal Adviser</td>
</tr>
<tr>
<td><strong>Department of State</strong></td>
<td>Foreign Affairs Officer, Bureau of Democracy, Human Rights, and Labor (2013-2015)</td>
</tr>
<tr>
<td><strong>Department of State</strong></td>
<td>Assistant Legal Adviser for Political-Military Affairs, Office of the Legal Adviser (2010-2012)</td>
</tr>
<tr>
<td><strong>Department of State</strong></td>
<td>Special Advisor, Office of Security and Human Rights</td>
</tr>
</tbody>
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<tbody>
<tr>
<td><strong>U.S. Air Force</strong></td>
<td>Judge Advocate (Col.) Chief Prosecutor of the Guantanamo Military Commissions</td>
</tr>
<tr>
<td><strong>U.S. Army, U.S. Central Command</strong></td>
<td>Staff Judge Advocate</td>
</tr>
<tr>
<td><strong>U.S. Army</strong></td>
<td>Judge Advocate Chief of the Law of War Branch, Office of The Judge Advocate General</td>
</tr>
<tr>
<td><strong>U.S. Army</strong></td>
<td>Judge Advocate (Col.) Deputy Legal Advisor in Afghanistan (2010-2011)</td>
</tr>
<tr>
<td><strong>U.S. Army</strong></td>
<td>Chief Legal Advisor for the International Security Assistance Force (ISAF), Afghanistan (2008-2009)</td>
</tr>
<tr>
<td><strong>U.S. Army</strong></td>
<td>Judge Advocate (Lt. Col.) Defense Counsel, Military Commissions</td>
</tr>
<tr>
<td><strong>U.S. Marine Corps</strong></td>
<td>Judge Advocate (Major)</td>
</tr>
<tr>
<td>U.S. Navy</td>
<td>Defense Counsel, Military Commissions</td>
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</tr>
<tr>
<td></td>
<td>Judge Advocate (Cmdr. Ret.)</td>
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<td></td>
<td>Legal Advisor to the Commanding General of the Chief of</td>
</tr>
<tr>
<td></td>
<td>Detention, Judicial, and Legal operations of the Multi-</td>
</tr>
</tbody>
</table>

**International NGOs/Independent Experts**

| Defence for Children International | Advocacy Director |
| Children's Commissioner for England | |
| European External Action Service | Political Adviser |