

CHILDREN AND INTERNATIONAL CRIMINAL JUSTICE CONFERENCE

CONVENING EXPERTS ON CHILDREN AND INTERNATIONAL CRIMINAL JUSTICE

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*Mindful that during this century millions of
children, women and men have been victims of
unimaginable atrocities...and for the sake of
present and **future generations**, [we] establish an
independent permanent International Criminal Court. . . .*

– Rome Statute¹

Children are a central concern of the International Criminal Court. Its first case, concluded in 2014, resulted in convictions for recruitment and use of children in combat² and these child-soldiering crimes also gave rise to

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¹ Rome Statute of the International Criminal Court, preamble, U.N. Doc. A/CONF.183/9 (July 17, 1998) (emphasis added) [hereinafter ICC Statute].

² Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Public redacted Judgment on the appeal of Mr. Thomas Lubanga Dyilo against his conviction (App. Ch. Dec. 1, 2014) (confirming convictions handed down in 2012), available at <https://www.icc-cpi.int/iccdocs/doc/doc1876833.pdf>.

charges in subsequent trials.³ By the terms of the court's 1998 Rome Statute, moreover, prosecutors may pursue other crimes against and affecting children: for example, killings, sexual violence, and other harms perpetrated on children, their families, and their homes; trafficking; and attacks on schools and hospitals.⁴

The court's second Prosecutor, Fatou Bensouda, has urged a comprehensive approach to such offenses. Soon after her election, she declared in a speech in New York: "Our focus should shift from 'children with arms' to 'children who are affected by the arms' in the context of crime of enlisting and conscripting child soldiers."⁵ Indeed, in this 2012 speech she moved beyond that singular context, placing emphasis as well on "the devastating effect that international crimes have on education." Pointing to a UNESCO finding that "28 million children of primary school age in conflict-affected poor countries are out of school," Bensouda asserted that such "children need to be included in the education system as education is the most effective way of reintegrating them back into their communities."⁶ This broader reach was evident in the Office of the Prosecutor Strategic Plan 2012–2015, which pledged, as one of six strategic goals, that the Office would "continue to pay particular attention to . . . crimes against children,"⁷ and also in the 2012 appointment of the first Special Adviser to the

³ See Diane Marie Amann, *Children*, in THE CAMBRIDGE COMPANION TO INTERNATIONAL CRIMINAL LAW 254, 261–67 (William A. Schabas ed., 2016) (describing court's early jurisprudence regarding crimes against children).

⁴ See Diane Marie Amann, *Children and the First Verdict of the International Criminal Court*, 12 WASH. U. GLOB. STUD. L. REV. 411, 412–13 (2013) (listing crimes against children enumerated in the ICC Statute). Throughout this introduction, "crimes against children" is used as shorthand for the longer yet more precise term, "crimes against and affecting children."

⁵ Fatou Bensouda, Prosecutor of the International Criminal Court, *The Incidence of the Female Child Soldier and the International Criminal Court*, June 4, 2012, keynote speech before the Eng Aja Eze Foundation in New York, available at <http://cpcjalliance.org/international-day-african-child/>.

⁶ *Id.* (citing UNESCO, EDUCATION FOR ALL GLOBAL MONITORING REPORT: THE HIDDEN CRISIS: ARMED CONFLICT AND EDUCATION 2 (2011), available at <http://unesdoc.unesco.org/images/0019/001907/190743e.pdf>).

⁷ International Criminal Court Office of the Prosecutor, Strategic Plan June 2012–2015 (Oct. 11, 2013), at 17 para. 3 [hereinafter Strategic Plan 2012–2015], available at https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf. The subsequent plan reaffirmed this emphasis. See International Criminal Court Office of the Prosecutor, Strategic Plan June 2016–2018 (July 5, 2016) [hereinafter Strategic Plan 2016–2018], https://www.icc-cpi.int/iccdocs/otp/070715-OTP_Strategic_Plan_2016-2018.pdf.

Prosecutor on Children in and affected by Armed Conflict.⁸ Both initiatives stated that the Office would draft a Policy on Children.⁹ Not unlike the policy on sexual and gender-based crimes that the Office released in 2014,¹⁰ the Policy on Children was expected to outline the regulatory framework and also practices related to the proper treatment of children and children's issues.

This author is honored to be the person whom the Prosecutor appointed her Special Adviser on Children in and affected by Armed Conflict and, as a consequence, to have had the opportunity to convene the "Children and International Criminal Justice" conference that this edition of the *Georgia Journal of International and Comparative Law* chronicles. On October 28, 2014, the *Journal* brought together well over a dozen experts on international criminal law, child protection, and child rights for a two-day examination of issues related to international crimes against children. Academics and practitioners alike, these experts worked at subnational, national, and international levels; they came from as near as Atlanta and as far away as London, Brussels, Doha, and Kinshasa. The event marked a partnership among the *Journal*, the Dean Rusk International Law Center at the University of Georgia School of Law, and the Georgia Law Project on Armed Conflict and Children.

Leading a delegation from the International Criminal Court was Prosecutor Bensouda.¹¹ In her conference keynote speech, the text of which introduces this volume, Bensouda reiterated her commitment to investigate

⁸ See Press Release, ICC Prosecutor Fatou Bensouda appoints Patricia Sellers, Leila Sadat and Diane Marie Amann as Special Advisers (Dec. 12, 2012), http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr861.aspx; see also ICC Statute, *supra* note 1, art. 42(9) (authorizing the appointment of experts on violence against children as advisers to the prosecution).

⁹ See Strategic Plan 2012–2015, *supra* note 7, at 27; see also Press Release, *supra* note 8; Strategic Plan 2016–2018, *supra* note 7, at 17.

¹⁰ See Fatou Bensouda, *Children and International Criminal Justice*, 43 GA. J. INT'L & COMP. L. 591, 596–97 (2015) (describing anticipated contents of policy); see also International Criminal Court Office of the Prosecutor Policy Paper on Sexual and Gender-Based Crimes (June 2014), <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

¹¹ Others present from the Office of the Prosecutor included: Gloria Atiba Davies, Head of the Gender and Children Unit; Shamila Batohi, Senior Legal Adviser and Head of the Legal Advisory Section; Manoj Sachdeva, Trial Lawyer; Sam Shoamanesh, Senior Special Assistant to the Prosecutor; and Yayoi Yamaguchi, Associate Legal Advisor, Legal Advisory Section. This introduction's account of participants is based on the program of the conference, a copy of which is on file with the author.

and prosecute the full range of crimes against children.¹² “We are also committed,” she continued, “to respecting the rights of children with whom we interact in the course of our investigative and prosecutorial work, including their right to be heard and to have their best interests treated as a primary consideration.”¹³ Bensouda thus drew a significant linkage between the work of her Office and provisions of the Convention on the Rights of the Child, a 1989 treaty that enjoys nearly universal membership.¹⁴

Strengthening that linkage was the contribution by Professor Linda A. Malone of the College of William & Mary Marshall-Wythe School of Law, a speaker in the plenary session that preceded Bensouda’s keynote.¹⁵ In her article published in this volume, Malone identifies references to children in the Rome Statute and related instruments.¹⁶ The article then addresses issues that she maintains the Office will need to resolve in its Policy on Children: defining who is a child; balancing child rights and a child’s best interests; and addressing the needs of children with disabilities as well as attacks on schools and education.¹⁷ In another plenary intervention, Professor Mark Drumbl of Washington & Lee University School of Law asked, “Who is a child soldier?” and then demonstrated that the answer to his question eludes easy definition.¹⁸ Like Malone, Drumbl recited multiple challenges related to combatting crimes against children; among them, the need to supplement trials for adult perpetrators of such crimes with other, noncriminal means of restoring justice.¹⁹ In another article, Kerry Neal, a child protection specialist for UNICEF, discusses the challenge of child-witness testimony

¹² Bensouda, *supra* note 10, at 592, 595.

¹³ *Id.* at 592.

¹⁴ Convention on the Rights of the Child, arts. 3, 12, Nov. 20, 1989, 1577 U.N.T.S. 3; see U.N. Treaty Collection, *Convention on the Rights of the Child*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last visited Mar. 21, 2016) (listing 196 parties, including every U.N. member state except the United States, plus two nonmembers, the Holy See and Palestine).

¹⁵ Plenary speakers in addition to Professors Malone, Drumbl, and Mr. Neal, both discussed in the text, were Alec Wargo II, Program Officer for the Office of the Special Representative to the U.N. Secretary-General for Children & Armed Conflict, and Jo Becker, Advocacy Director, Children’s Rights Division, Human Rights Watch. Professor Charles C. Jalloh of Florida International University School of Law moderated.

¹⁶ Linda A. Malone, *Maturing Justice: Integrating the Convention on the Rights of the Child into the Judgments and Processes of the Rights of the International Criminal Court*, 43 GA. J. INT’L & COMP. L. 599, 604–09 (2015).

¹⁷ See *id.* at 610–21.

¹⁸ Mark Drumbl, *Children, Armed Violence and Transition: Challenges for International Law & Policy*, 43 GA. J. INT’L & COMP. L. 623, 625 (2015).

¹⁹ *Id.* at 627–28.

and what procedural mechanisms the Court and the OTP could use to protect children.²⁰

Such challenges fueled discussions in the closed-door breakouts that rounded out the Georgia Law conference.²¹ As described in accounts prepared by *Journal* members who served as rapporteurs, in these sessions the assembled experts discussed legal doctrines, field research, and policy options with regard to the regulatory framework,²² witnesses,²³ and the global child.²⁴

Considered in full, the volume presents a case study that promises to aid understanding of international crimes against children long after the release of the Office of the Prosecutor Policy on Children. Such understanding is essential. To quote Bensouda's keynote at Georgia Law:

A crime against a child is an offense against all of humanity; it is, to be sure, an affront to our basic tenets of human decency.

While wars may be inevitable, we have an obligation to curb the destructive impact human conflicts can have on children.²⁵

²⁰ Kerry L. Neal, *Children Protection in Times of Conflict and Children and International Criminal Justice*, 43 GA. J. INT'L & COMP. L. 629 (2015).

²¹ Among those who took part were Houda Abadi, Carter Center, Atlanta; Véronique Aubert, Save the Children, London; Virginie Ladisch, International Center for Transitional Justice, New York; Sharanjeet Parmar, Conflict Dynamics International, Kinshasa; Mark Richmond, Education Above All Foundation, Doha; L. Alison A. Smith, No Peace Without Justice, Brussels; Robert M. Young, International Committee of the Red Cross, Ottawa; Rachelle Carnesale, Chief Assistant District Attorney in Cherokee County, Canton, Georgia; Georgia State Law Professor Jonathan Todres; Dr. Tamara A. Callands and Dr. Nathan B. Hansen, both from the University of Georgia College of Public Health; and Georgia Law Professors Harlan G. Cohen and Andrea L. Dennis.

²² Ashley Ferrelli, Eric Heath, Eulen Jang & Cory Takeuchi, *Expert Workshop Session: Regulatory Framework*, 43 GA. J. INT'L & COMP. L. 639, 645 (2015).

²³ Chelsea Swanson, Elizabeth Devos, Chloe Ricke & Andy Shin, *Expert Workshop Session: Child Witnesses—Testimony, Evidence, and Witness Protection*, 43 GA. J. INT'L & COMP. L. 649 (2015).

²⁴ Haley Chafin, Jena Emory, Meredith Head & Elizabeth Verner, *Expert Workshop Session: The Global Child*, 43 GA. J. INT'L & COMP. L. 659 (2015).

²⁵ Bensouda, *supra* note 10, at 592, 597.