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LAMBS INTO LIONS: THE UTILIZATION OF CHILD SOLDIERS IN THE WAR IN IRAQ AND WHY INTERNATIONAL AND IRAQI LAWS ARE FAILING TO PROTECT THE INNOCENT

*Anna-Liisa Jacobson****

I. INTRODUCTION

Children are often the unintended victims of armed conflicts worldwide, and end up suffering far more than those participants in armed conflicts who are fully-grown. They see tragedy at a very young age and their lives are forever shaped by the catastrophic worldview that they develop as children. “In the last decade of warfare, more than two million children have been killed, a rate of more than 500 a day, or one every three minutes, for a full 10 years.”¹ Additionally, twenty-three percent of armed forces worldwide—eighty-four out of three hundred sixty-six total—use children aged fifteen and under in combat.² Eighteen percent of the total armed forces worldwide use children aged twelve and under.³

Although the use of child soldiers in armed conflicts has become a recognized issue throughout the world in recent decades,⁴ much of the focus on child soldiers is centered on African nations. Tragically, the use of child soldiers is occurring in an armed conflict that is hitting much closer to home; the conflict in Iraq. Although more media attention is being devoted to the plight of Iraqi child soldiers, much of their struggle to survive and the appalling consequences of this situation are relatively unknown, and often ignored.

In 2006, CNN issued a news article detailing the report of the United Nations Assistance Mission for Iraq on the use of child soldiers

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¹ P. W. Singer, *Child Soldiers: The New Faces of War*, AM. EDUCATOR, Winter 2005-2006, at 30, available at <http://www.brookings.edu/views/articles/fellows/singer20051215.pdf>.

² *Id.*

³ *Id.*

⁴ *See id.*

in Iraq.⁵ The results of the report are positively shocking, and absolutely heartbreaking. "A boy said to be aged between 10 and 13 years allegedly carried out a suicide bombing targeting the police commander in the city of Kirkuk. Later that month, two boys aged 12 and 13 years reportedly carried out attacks against [U.S.-led forces] in Fal-lujah and Hweeja, respectively."⁶ The report further estimated that twenty percent of the civilian deaths in Iraq were of women and children.⁷

This article discusses the current situation in Iraq regarding the use of child soldiers in armed combat, and provides an analysis of why international and Iraqi laws are failing to protect Iraqi children. The next section addresses the current use of child soldiers in Iraq and provides background on the conflict in Iraq and the prior use of child soldiers in the Iran-Iraq war. The third section discusses the current conditions in Iraq and the effect that these conditions are having on children. The fourth section discusses the Islamic laws providing protection for children and details the development of this area of law. The fifth section addresses the relevant international law provisions protecting children, such as the Convention on the Rights of the Child and the Optional Protocol to this Convention. The final section provides an analysis of why these international provisions are failing to protect Iraqi children from becoming child soldiers, and what can be done to save them.

II. SADDAM'S LION CUBS: CHILD SOLDIERS IN IRAQ

Although much of the attention regarding child soldiers in Iraq is currently focused on the present conflict in Iraq, the use of child soldiers by Iraqi militants has existed for decades. The first modern use of child soldiers in the Middle East actually took place during the Iran-Iraq war in the 1980s.⁸ Today in the Middle East, "[c]hildren are engaged in fighting in Algeria, Azerbaijan, Egypt, Iran (as part of rebel groups now fighting against the regime), Iraq, Lebanon, Sudan, Tajikistan, and Yemen."⁹ Children, often younger than fifteen years old, are involved in the fighting among a number of radical Islamic groups.¹⁰ In Palestine, young teens are at the center of the fighting, comprising seventy percent of the participants in the *intifada*.¹¹

⁵ *UN Reports Children Used as Combatants in Iraq*, CNN.COM, Jan. 19, 2006, <http://www.cnn.com/2006/WORLD/meast/01/18/iraq.rights/index.html>.

⁶ *Id.* (alterations in original).

⁷ *Id.*

⁸ Singer, *supra* note 1, at 32.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

A. *The Iran-Iraq War*

Iranian law, based on the Qur'anic *shari'ah*, "forbids the recruitment of children under 16 into the armed forces."¹² Several years into the conflict between Iran and Iraq however, the Iranian regime began to weaken.¹³ The Iranians opted to forgo their Qur'anic law, and in 1984 Iranian President Ali-Akbar Rafsanjani pronounced that, "all Iranians from 12 to 72 should volunteer for the Holy War."¹⁴ As a result, thousands of children were forced out of their schools, "indoctrinated in the glory of martyrdom, and sent to the front lines only lightly armed with one or two grenades or a gun with one magazine of ammunition."¹⁵ Keys were placed around their necks, which were to symbolize their imminent entrance into heaven. These children comprised the first waves of attackers used to clear paths through the minefields with their bodies and "overwhelm Iraqi defenses."¹⁶ Ayatollah Khomeini, Iran's spiritual leader during this conflict, asserted that these children were helping Iran to achieve "a situation which we cannot describe in any way except to say that it is a divine country."¹⁷

Iraq responded to Iran's use of child soldiers by enrolling children in their own army.¹⁸ Iraqi leader Saddam Hussein created an entire system orchestrated toward pulling children into military conflict.¹⁹ As part of his plan, he developed the *Ashbal Saddam*, or Saddam's Lion Cubs.²⁰ Saddam's Lion Cubs was a paramilitary force comprised of boys between the ages of ten and fifteen, although some sources indicate that children as young as five years old were enrolled in this group.²¹ Boys between the ages of twelve and seventeen were able to attend a month long military training camp during the summer holidays.²² These children received training in the use of small arms and light infantry tactics.²³ They were also trained in hand-to-hand combat and learned how to rappel from helicopters.²⁴ More than 8000

¹² *Id.*

¹³ *Id.*

¹⁴ Singer, *supra* note 1, at 32.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* (quoting KAREN ARMSTRONG, *THE BATTLE FOR GOD* 327–28 (Knopf 2000)).

¹⁸ *Id.*

¹⁹ Singer, *supra* note 1, at 32.

²⁰ *Id.*

²¹ *People's Army/Popular Army/People's Militia (Al Jaysh ash Shaabi)*, GLOBAL-SECURITY.ORG, <http://www.globalsecurity.org/military/world/iraq/militia.htm> (last updated June 22, 2005) [hereinafter *Military*].

²² *Id.*

²³ Singer, *supra* note 1, at 32.

²⁴ *Military*, *supra* note 21.

young Iraqis were members of Saddam's Lion Cubs in Baghdad alone.²⁵

Senior military officers who supervised the camps noted that the children participating in the program were held under the "physical and psychological strain" of training sessions that lasted as long as fourteen hours per day.²⁶ At times there were not enough children to fill all of the vacancies in the camp, and as a result, families were threatened with the loss of food ration cards if they refused to enroll their children in the course.²⁷ Additionally, authorities reportedly withheld school examination results from children unless they registered with the military training camps.²⁸

It is believed that Saddam's Lion Cubs were being trained as young volunteers for Saddam's *Fedayeen* fighters.²⁹ The paramilitary *Fedayeen Saddam*, or "Saddam's Men of Sacrifice," was founded by Saddam Hussein's son Uday in 1995.³⁰ The *Fedayeen* were reportedly composed of 18,000 to 40,000 troops; mainly young soldiers recruited from regions of Iraq loyal to Saddam Hussein.³¹ Within the *Fedayeen* there was an elite group known as the "Death Squadron" who carried out executions, often in the homes of their victims. They operated completely outside of the law with a disregard for political and legal structures.³²

B. Operation Iraqi Freedom

The United States' invasion and subsequent occupation of Iraq began on March 19, 2003, after a report indicated that Saddam Hussein was hoarding "weapons of mass destruction."³³ Specifically, on March 30, 2003 former Secretary of Defense, Donald Rumsfeld stated, "we know where [the weapons of mass destruction] are. They're in the area around Tikrit and Baghdad and east, west, south and north somewhat."³⁴ Relying on this perspective, the United States invaded Iraq.

²⁵ Singer, *supra* note 1, at 32.

²⁶ *Military*, *supra* note 21.

²⁷ *Id.* The Supreme Council for the Islamic Revolution in Iraq confirmed in 1999 that families were being denied food cards if they failed to put their children in the training camps. *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Saddam's Martyrs ["Men of Sacrifice"]*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/intell/world/iraq/fedayeen.htm> (last updated April 26, 2005).

³¹ *Id.*

³² *Id.*

³³ *A Timeline of the Iraq War*, <http://thinkprogress.org/iraq-timeline> (last visited Feb. 20, 2009).

³⁴ *Id.* (alterations in original).

A pivotal moment for the United States government came on April 9, 2003 when the regime of Saddam Hussein was toppled.³⁵ On April 15, 2003, Iraqi representatives at a United States-brokered meeting agreed to work towards a new democratic Iraq. In July of 2003, the Iraqi Governing Council (“IGC”) met for the first time, and consisted of twenty-five Iraqi nationals chosen by the United States-led coalition.³⁶ In August 2003, the United Nations’ Baghdad Headquarters was destroyed in a bomb blast, which killed at least twenty people and injured around one hundred. As a result, a number of international agencies elected to remove their staff from Iraq’s capital.³⁷

On October 16, 2003, the United Nations Security Council voted unanimously in favor of a revised United States text laying out Iraq’s political future.³⁸ The resolution maintained the dominant role of the United States administration but asserted that there should be a transfer of both Iraqi sovereignty and government back to the people of Iraq.³⁹ On November 15, the IGC announced that the United States-led coalition would hand over power to the Iraqi transitional government by June of 2004.⁴⁰ One of the responsibilities of this transitional government would be to prepare for a completely sovereign Iraqi government to be developed by 2005, following a general election.⁴¹ On December 30, 2003, Saddam Hussein was captured after hiding in an underground cellar.⁴²

In March 2004, the interim Iraqi constitution was agreed upon by the IGC, and included a bill of rights, and recognized Islam as a source of legislation.⁴³ On May 28, 2004, the IGC named Iyad Allawi Prime Minister of the interim government. After he chose his cabinet, the IGC was dissolved.⁴⁴ The United Nations Security Council unanimously approved the resolution to end the formal occupation of Iraq on

³⁵ *Timeline: Iraq After Saddam*, http://news.bbc.co.uk/2/hi/middle_east/4192189.stm (last visited Feb. 20, 2009).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* Several days later a number of international organizations pledged donations to the “new Iraq.” This two day meeting involved eighty nations and \$13 billion in donations was pledged. *Id.* The United Nations and the World Bank stated that Iraq would need \$56 billion over the next four years. *Id.*

⁴⁰ *Id.*

⁴¹ *Timeline: Iraq After Saddam*, http://news.bbc.co.uk/2/hi/middle_east/4192189.stm (last visited Feb. 20, 2009).

⁴² *Id.* The tribunal that would eventually try Saddam Hussein and other members of the Ba’athist government was set up on April 20, 2004. *Id.*

⁴³ *Id.* The signing of the document was delayed several days due to Shi’a objections. *Id.*

⁴⁴ *Id.*

June 30, 2004, and transfer sovereignty to an interim Iraqi administration.⁴⁵ One month later the Iraqi National Conference selected a one hundred seat national assembly to oversee the interim government until the national elections.⁴⁶ The elections were held on January 30, 2005, and marked the country's first multi-national party election in over fifty years.⁴⁷ In April 2005, the Iraqi Parliament ended weeks of gridlock by electing Kurdish Jalal Talabani as the Iraqi interim President.⁴⁸

On August 28, 2005, the Iraqi draft constitution was approved by Kurdish and Shi'a negotiators, however the Iraqi Sunni leaders rejected the constitution and called upon the United Nations and the League of Arab States to intervene.⁴⁹ The constitution was put to a vote on October 15, 2005, and was subsequently voted on, and adopted, by millions of people.⁵⁰ Although the Sunni Arabs boycotted the elections in January of 2005, they participated in the December elections for the full-term government in large numbers.⁵¹ The Shi'a-led United Iraqi Alliance was announced as the winner of the election even though they failed to garner an absolute majority, taking 128 out of the 275 seats, which was just ten seats short of a majority.⁵² On April 22, 2006, President Jalal Talabani solicited Shi'a politician Nouri Maliki to form the government, following months of political deadlock and with the hope of ending "violent sectarian divisions."⁵³

In August of 2006, Saddam Hussein and his cousin Ali Hassan al-Majid, also known as "Chemical Ali" went on trial for their role in a military campaign against the Kurds in northern Iraq in the 1980s,

⁴⁵ *Id.*

⁴⁶ *Id.* This national assembly had the power to veto legislation and approve the 2005 budget. *Id.*

⁴⁷ *Timeline: Iraq After Saddam*, http://news.bbc.co.uk/2/hi/middle_east/4192189.stm (last visited Feb. 20, 2009).

⁴⁸ *Id.* The election of Talabani was seen as a tremendous victory for the Iraqi Kurdish community which had suffered immensely under the regime of Saddam. *Id.* In June of 2005 Massoud Barzani was sworn in as the regional president of Iraqi Kurdistan. *Id.*

⁴⁹ *Id.* The League of Arab States is a voluntary association of twenty-two member states which work together to strengthen ties between the member states in the Middle East. For more information on this organization and its founding, see http://news.bbc.co.uk/2/hi/middle_east/country_profiles/1550797.stm (last visited Feb. 20, 2009).

⁵⁰ *Timeline: Iraq After Saddam*, http://news.bbc.co.uk/2/hi/middle_east/4192189.stm (last visited Feb. 20, 2009).

⁵¹ *Id.*

⁵² *Id.* Kurdish parties won fifty-three seats and the main Sunni Arab bloc took forty-four. *Id.*

⁵³ *Id.*

killing over 180,000 people.⁵⁴ In September the United States announced that it was handing over some control over the Iraqi naval and air force, and United Kingdom and Italian forces handed over control of the Dhi Qar province.⁵⁵ Saddam Hussein was sentenced to death by hanging on November 5, 2006, after being convicted of crimes against humanity. His sentence was carried out on December 31, 2006.⁵⁶ Although the handover of power has been initiated, the United States in the early part of 2007 approved more United States troops to be sent to Iraq.⁵⁷

Although the United States invasion and occupation of Iraq led to the downfall of Saddam Hussein's regime, the use of child soldiers by militant Islamic groups has not ceased.⁵⁸ Reports from soldiers participating in the occupancy, as well as reports from journalists reporting in Iraq, indicate that child soldiers are active participants in the current conflict.⁵⁹

C. *Child Soldiers in the Current Iraq War*

In the current conflict in Iraq, American forces have encountered Iraqi child soldiers in armed conflicts in at least three cities; Nasariya, Karbala and Kirkuk.⁶⁰ This is in addition to the multitudes of children that were used as human shields by Saddam loyalists during the conflict. As the insurgency gained momentum in the spring of 2003, the rebel leaders aspired to mobilize this "cohort of trained and indoctrinated young fighters."⁶¹ During the months following the flare up of the insurgency, incidents between United States forces and armed Iraqi children became more prevalent. There have been reports of child snipers as well as an incident where a fifteen-year-old threw a grenade into an American truck, resulting in an American Army soldier's leg being blown off.⁶² Additionally, it has been reported that the Iraqi *Fedayeen* paramilitaries used children as human shields during battle.⁶³ A commander from the Royal Scots Dragoon Guards "witnessed at least four or five children, aged between five and eight, being grabbed by the scruff of the neck and held by Iraqi fighters as they

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Singer, *supra* note 1, at 32.

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Singer, *supra* note 1, at 32.

⁶³ Martin Bethman, *Fedayeen Use Children as Shield*, TELEGRAPH, Apr. 2, 2003, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2003/04/02/wfeyad02.xml>.

crossed a road in front of his tank.”⁶⁴ The commander stated that the *Fedayeen* were using the children as human shields, and he was forced to cease fire as he was concerned about striking the children.⁶⁵

As the fighting gained momentum in the spring of 2004, child soldiers were serving not only Saddam Hussein’s loyalist forces, but radical Shi’a and Sunni insurgent groups as well.⁶⁶ In the battle to retake the city of Fallujah in November 2004, U.S. Marines recounted numerous instances of being “fired upon by 12 year old children with assault rifles.”⁶⁷ As a result of children being used by rebel insurgent fighters, British forces in 2005 had detained more than sixty juveniles during their operations in Iraq.⁶⁸ U.S. forces captured more than 107 Iraqi children determined to be “high risk security threats.”⁶⁹ Most of these juveniles were detained at Abu Ghraib prison.⁷⁰

In 2006 the United Nations reported on the disturbing trend of child combatants fighting in the war in Iraq.⁷¹ The report stated that, “[a] boy said to be aged between 10 and 13 years allegedly carried out a suicide bombing targeting the police commander in the city of Kirkuk.”⁷² The report also documented an incident which occurred later that same month, where two boys aged twelve and thirteen carried out attacks against U.S.-led forces in Fallujah and Hawija.⁷³ In addition, the report also focused on general violence against children, estimating that twenty percent of all civilian deaths in the Iraq war are of women and children, and that Iraqi children “are gravely affected by the ongoing violence.”⁷⁴

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Singer, *supra* note 1, at 32.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 32–33.

⁷⁰ *Id.* at 33. Abu Ghraib prison was the location of the now infamous torture of Iraqi prisoners. For more information on the controversy surrounding Abu Ghraib see Seymour M. Hersh, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2005, available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact.

⁷¹ *UN Reports Children Used as Combatants in Iraq*, CNN.COM, Jan. 19, 2006, <http://www.cnn.com/2006/WORLD/meast/01/18/iraq.rights/index.html>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* (“Scores of children have been killed in indiscriminate bombings and by indirect fire Some surveys suggest that a large number of children in Iraq have lost one or both parents as well as close family members to violence.”).

D. Turning Lambs into Lions: The Transformation from "Child" to "Child Soldier"

Although it has been well documented that child soldiers are engaged in battlefields worldwide, including in Iraq, the process on how a child becomes a child soldier varies, with many factors coming into play. International law defines a child soldier as "any person under the age of 18 who is a member of or attached to government armed forces or any other regular or irregular armed force or armed political group, whether or not an armed conflict exists."⁷⁵ Child soldiers perform a variety of tasks ranging from "participation in combat, laying mines and explosives, scouting, spying, acting as decoys, couriers or guards, training, drill or other preparation, logistics and support functions, portering, cooking and domestic labor, and sexual slavery and recruitment for sexual purposes."⁷⁶

The above examples of the activities child soldiers engage in are the by-product of becoming a child soldier, and the road leading to this destination can take a variety of paths. The transformation of a child into a combatant "begins with recruitment, either through abduction or 'voluntary' means."⁷⁷ "Recruitment is rapidly followed by cruel but straightforward methods of training and conversion."⁷⁸ Violence is often utilized within each stage of the transformation, with the ultimate aim of the process being the fostering of a child's dependence on the armed organization, which inhibits their escape. Generally the recruiters are provided with "conscription targets" that change according to the group's needs and objectives.⁷⁹ The decision to carry out the recruitment operations is also based on efforts to maximize recruitment efforts. The normal targets are secondary schools or even orphanages, where children can be collected out of the reach of their parents.⁸⁰

Some children "choose" to become child soldiers, and as a result the groups that they join will claim that since the decision was voluntary no moral codes were broken.⁸¹ It is estimated that nearly two out of every three child soldiers worldwide "have some sort of initiative in

⁷⁵ *Questions and Answers*, COALITION TO STOP THE USE OF CHILD SOLDIERS, <http://www.child-soldiers.org/childsoldiers/questions-and-answers> (last visited Feb. 20, 2009).

⁷⁶ *Id.*

⁷⁷ Singer, *supra* note 1, at 35 ("Case studies indicate that in the majority of conflicts, a widely used method of recruitment of children is some form of abduction.")

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

their own recruitment."⁸² The classification of this voluntary recruitment is deceptive, however, as most children join armed groups because they are driven to do so by forces that are outside the realm of their control.⁸³

Economic motives are especially strong, since hunger and poverty are often rampant in conflict zones.⁸⁴ "Children, particularly those orphaned or disconnected from civil society, may volunteer to join any group if they believe that this is the only way to guarantee regular meals, clothing, or medical attention."⁸⁵ Children may also join armed forces for a sense of protection, because they believe they would be safer in a conflict group with guns of their own rather than trying to survive while being surrounded by violence and chaos.⁸⁶ Children in conflict zones also "may have personally experienced or been witness to the furthest extremes of violence, including massacres, summary executions, ethnic cleansing, death squad killings, bombings, torture, sexual abuse, and destruction of home or property . . . thus vengeance can also be a particularly powerful impetus to join the conflict."⁸⁷ Other times, deceit and false promises are used to goad children into joining armed forces. Finally, some armed groups prey on the fact that adolescents are often at a stage in life when they are seeking to define who they are, and conflict groups can offer them the idea of heroism and also a place of membership or acceptance in a group.⁸⁸ This is especially enticing in areas where children feel defenseless or victimized.⁸⁹

The current economic, social, and political environment in Iraq is providing a fertile atmosphere for children to become drafted into insurgent groups.⁹⁰ Children are living in desolate conditions with little opportunity to obtain essential necessities.⁹¹ For these children, insurgent groups provide shelter, food, and supplies.⁹² Unfortunately,

⁸² *Id.* at 35–36 ("For example, estimates are that 40 percent of the FARC's child soldiers are forced into service, and 60 percent joined of their own volition. Another survey in East Asia found that 57 percent of the children had volunteered. Finally, a survey of child soldiers in four African countries found that 64 percent joined under no threat of violence.").

⁸³ Singer, *supra* note 1, at 36.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Singer, *supra* note 1, at 36.

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² *See id.* at 36.

this comes at the very high cost of participating in an armed group at such a young age.

III. IRAQ'S WASTELAND

One of the most unfortunate by-products of war is the utter devastation that is wreaked upon the invaded country, in social, political, economic, and physical terms. Iraqis are facing distressing living conditions, such as a lack of adequate water, medical care, education, and housing.⁹³ According to an July 2007 Oxfam International report, the living conditions in Iraq have “deteriorated significantly since the U.S.-led invasion in 2003, leaving nearly one-third of the population in need of emergency aid”⁹⁴ In fact, seventy percent of Iraqis lack adequate water supplies compared with fifty percent in 2003.⁹⁵ Additionally, more than four million people have been displaced, with women and children comprising the majority of displaced individuals.⁹⁶ Further compounding the crisis, the funding for humanitarian aid to Iraq has decreased “from \$453 million in 2005 to \$95 million in 2006.”⁹⁷ “Iraq’s civilians are suffering from a denial of fundamental human rights in the form of chronic poverty, malnutrition, illness, lack of access to basic services, and destruction of homes, vital facilities, and infrastructure, as well as injury and death.”⁹⁸ In terms of the destruction of life, it is estimated that as many as 83,783 Iraqi civilians have died since the U.S. occupation of Iraq.⁹⁹

As more Iraqi civilians become physical casualties of the war, the chance for medical care becomes increasingly scarce. Health care facilities are barely able to cope with the mass casualties that pour

⁹³ See Megan Greenwell, *A Dismal Picture of Life in Iraq: Nearly a Third of Population Needs Emergency Aid, Report Says*, WASH. POST, July 31, 2007, at A14, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/30/AR2007073001708.html>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* In addition to the displacement of individuals, two million people have fled their homes for other parts of Iraq, while an additional two million had fled to other countries like Syria and Jordan. *Id.* This issue is particularly problematic among professional workers as it is estimated that “more than 40 percent of doctors, engineers and other highly skilled workers have left the country.” *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* (“Basic indicators of humanitarian need in Iraq show that the slide into poverty and deprivation since the coalition forces entered the country in 2003 has been dramatic, and a deep trauma for the Iraqi people.”).

⁹⁹ FACTBOX-*Military and civilian deaths in Iraq*, Reuters, Nov. 19, 2007, available at <http://www.reuters.com/article/topNews/idUSL1967916220071119> (estimating between 76,895 and 83,783 civilian deaths since March 2003).

into their facilities on a daily basis.¹⁰⁰ Even when medical facilities are available, many people will not go out of fear, because patients and medical staff are frequently threatened and targeted.¹⁰¹ In addition to the medical crisis, there are also food shortages coupled with unemployment and rising poverty levels.¹⁰² As a result, families are forced to rely on government food distributions to cover their needs, as a reported one third of the population lives in poverty, with over five percent in extreme poverty.¹⁰³ The impoverishment of families is often self-inflicted out of fear as families are afraid to leave their homes to look for work or send their children to school, as random violence and kidnapping for ransom are constant threats.¹⁰⁴

When children are left without resources and are abandoned into destitution, they look for outlets for help. When beneficial outlets are in short supply, children can be easily drawn towards paramilitary groups, as discussed in the previous section of this article.¹⁰⁵ “In Iraq, children as young as 3 are out in the streets, shining shoes, washing cars, collecting garbage and selling sweets, water, ice, cigarettes—anything to make some money.”¹⁰⁶ This places children at “immense risk of becoming delinquent, bitter and falling in with extremist organizations for lack of hope or anything to do.”¹⁰⁷ “Children are uniquely vulnerable to military recruitment and manipulation into violence because they are innocent and impressionable.”¹⁰⁸ Whether these children are forced to join armed groups or merely enticed, the fact remains that they are victims and the consequences are incomprehensible.¹⁰⁹ Subjected to abuse and witnesses to death and murder, the long-term psychological consequences are often irreparable.¹¹⁰

¹⁰⁰ INTERNATIONAL COMMITTEE OF THE RED CROSS, CIVILIANS WITHOUT PROTECTION: THE EVER-WORSENING HUMANITARIAN CRISIS IN IRAQ 4 (2007), available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/iraq-report-110407/\\$File/Iraq-report-icrc.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/iraq-report-110407/$File/Iraq-report-icrc.pdf).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See *supra* Section II.

¹⁰⁶ Megha Bahree, *The Child Soldiers: Returning the Youngest Warriors to Normalcy*, NEWSDAY, Jan. 5, 2004, available at <http://journalism.nyu.edu/portfolio/bestof/2004/001427.html>.

¹⁰⁷ *Id.*

¹⁰⁸ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, <http://www.un.org/children/conflict/english/childsoldiers21.html> (last visited Feb. 20, 2009).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

A. *The Lost Age of Innocence: The Tragic Effects Armed Conflict has on Children*

Although the physical damage done to children who are caught in the crossfire of armed conflicts is traumatic, it is often the mental and psychological wounds which are hardest to heal. "Iraq's conflict is exacting an immense and largely unnoticed psychological toll on children and youth that will have long-term consequences. . . ." ¹¹¹ Many children are murdered in locations that are normally regarded as safe havens for children such as playgrounds, soccer fields, and schools. ¹¹² "Violence has orphaned tens of thousands." ¹¹³

Haider Abdul Muhsin is one of a very few psychiatrists in Iraq who recently began focusing on children after the invasion of Iraq. ¹¹⁴ In a span of six months he treated 280 children and teenagers for a range of psychological problems, and in the span of a year he saw more than 650 patients. ¹¹⁵ Many of these children exhibit symptoms similar to children in other war zones such as Lebanon, Sudan, and the Palestinian territories. ¹¹⁶ They suffer from anxiety, depression, have recurring nightmares, wet their beds, and have problems learning in school. ¹¹⁷

A World Health Organization survey of 600 children aged three to ten in Baghdad reported that forty-seven percent had been exposed to a "major traumatic event over the past two years." ¹¹⁸ Additionally, fourteen percent of the group surveyed exhibited symptoms of post-traumatic stress disorder. ¹¹⁹ Complicating the situation further is the stigma surrounding psychiatrists that is present in Iraq. ¹²⁰ Those who have overcome the stigma and seek help, however, are often unable to get it as they might live in remote or dangerous areas with no access to Baghdad. ¹²¹

¹¹¹ Sudarsan Raghavan, *Iraqi Youth Face Lasting Scars of War: Conflict's Psychological Impact on Children is Immense, Experts Say*, WASH. POST, June 26, 2007, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/25/AR2007062501952.html>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* (noting that most of the children range in age from six to sixteen).

¹¹⁶ *Id.*

¹¹⁷ Raghavan, *supra* note 111.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* As many as 250 children arrive at Sadr General Hospital every day, with only the first twenty children receiving treatment before the medicine runs out. *Id.*

An integral factor playing into the mental health crisis of Iraqi children is the unfortunate fact that many of them have been orphaned or abandoned by parents who can no longer afford to care for them.¹²² The United Nations Children's Fund ("UNICEF") estimated that in the past year, tens of thousands of children lost either one parent or both parents to the conflict.¹²³ "The tragedy is that there's an upswing in number of children who are losing parents, but you see a decrease in the ability of the government, the community and even the family to care for separated and orphaned children because of violence, insecurity, displacement, stress and economic hardship."¹²⁴ Children who are orphaned or abandoned are at the highest risk of becoming conscripted into armed insurgent groups.

As the Iraqi government and the allied forces work to develop Iraq's infrastructure and combat many of the debilitating social, political, and economic issues, their progress is consistently marred by the unrelenting efforts of insurgent groups. As will be discussed below, the insurgents are not only infiltrating the minds of adults, they are also having a strong impact on the minds of children.

B. Uncontrollable Lions: The Insurgency

Much of the destruction occurring in Iraq is not only the result of foreign occupation, but also the much larger issue of inadequate internal security.¹²⁵ "The societal forces defining the security environment in Iraq today are enormously diverse, complex, and violent and they directly affect the stability of the broader Middle East."¹²⁶ The conflicts in Iraq stem from "differences over religion, from historical divides, and from disputes in Iraqi society that were unleashed following the invasion of Iraq in 2003."¹²⁷ The security crisis occurring in Iraq has been caused by the uprising of militant or insurgent armed groups.¹²⁸

The insurgency began in Iraq after the U.S. invasion and the downfall of Saddam Hussein's regime, and was started by the hard-line Arab Sunni Ba-athists.¹²⁹ These Sunni insurgents targeted Coalition forces, Iraqi forces, governmental personnel and sympathizers,

¹²² *Id.*

¹²³ Raghavan, *supra* note 111.

¹²⁴ *Id.*

¹²⁵ See Hamada Zahawi, *Redefining the Laws of Occupation in the Wake of Operation Iraqi "Freedom,"* 95 CAL. L. REV. 2295, 2319–20 (2007).

¹²⁶ James L. Jones, THE REPORT OF THE INDEPENDENT COMMISSION ON THE SECURITY FORCES OF IRAQ 25 (2007), available at <http://media.csis.org/isf.pdf>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 28.

Shi'a Iraqis, and militia members.¹³⁰ The 1920 Revolution Brigades, the Islamic Front of Iraqi Resistance, and the Mujahideen Army are currently the main insurgent groups operating in Iraq and are believed to be responsible for seventy percent of all insurgent attacks.¹³¹ These groups are composed of former soldiers and Sunni Arab civilians led by former Iraqi military officers.¹³² The Sunni insurgent groups have one main goal, which is to restore Sunni rule in Iraq.¹³³

On the opposite side of the insurgency are the Shi'a militias, which contain approximately 80,000 members in Iraq.¹³⁴ Although they were in existence under the Ba'athist regime, they grew rapidly in number after the Coalition invasion of Iraq, "in part to fill the security vacuum left by the sudden collapse of Saddam Hussein's regime, and also to ensure that the Ba'athists would not rise again."¹³⁵ Although the Shi'a make up the majority in Iraq, they remain uncertain about their future role in Iraq.¹³⁶

Approximately 60,000 of the militia members belong to Jaysh al-Madhi, 15,000 belong to the Badr Brigades, and 5000 belong to smaller organizations.¹³⁷ Jaysh al-Madhi controls Sadr City, which is a slum in Baghdad containing over 2.5 million Iraqis, and this group is also increasingly more active in southern Iraq.¹³⁸ Although this group is a critic of the Coalition forces, their leadership has encouraged them to avoid direct confrontation with Coalition forces.¹³⁹ Unfortunately they are struggling to retain control of all of their factions, and increasing Iranian influence over the militant arm is developing.¹⁴⁰ The Badr Brigade is the Iranian-trained military wing of the Supreme Islamic Iraqi Council, which is the largest Shi'a political party.¹⁴¹ This group controls most of the seats in the Iraqi Parliament and governing coalition, and is led by Hadi al-Amiri who is a member of the Iraqi Parliament.¹⁴²

Both of these groups are believed to have infiltrated the Iraqi government's ministries and military forces.¹⁴³ In addition, Iran is be-

¹³⁰ *Id.* at 28–29.

¹³¹ *Id.* at 29.

¹³² Jones, *supra* note 126, at 29.

¹³³ *Id.*

¹³⁴ *Id.* at 30.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Jones, *supra* note 126, at 30.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

lieved to be furthering the insurgency by providing “funding, weapons, ammunition, training, and other forms of support to militia in Iraq”¹⁴⁴ “Iraqi society is being convulsed by sectarianism that if not swiftly and significantly curtailed could contribute to the rapid deterioration of Iraq, with ‘grave humanitarian, political, and security consequences.’”¹⁴⁵

Children caught in the middle of the insurgency are learning to define themselves along divisive lines. “Now, the young students when they enter the school, they ask their classmates whether they are Sunni or Shi’a”¹⁴⁶ Children on the playground engage in play based upon different armed groups. “The child would say: I’ll get the Mahdi Army to take revenge . . . [t]he other kid would say back: My uncle is from the [Sunni] resistance and he’ll take revenge against you.”¹⁴⁷ As children begin defining their identity on such divided lines, they are taught to further the sectarian chasm that is tearing Iraq in two. They are being pulled into the conflict at a dangerously young age, and the damage to them both physical and mentally is irreparable.

IV. ISLAMIC LAW AND JURISPRUDENCE

The effects of the conflict in Iraq on the lives of children are devastating. There are a number of available protections for children however, which can be found in Islamic Law. There are four main sources of Islamic law and jurisprudence: the Qur’an, the *sunnah*, the *ijtihad*, and the *ijma*.¹⁴⁸ The Qur’an is considered the most important of these doctrines, and is the vital starting point for a discussion on Islamic law and jurisprudence.

The Qur’an “is the literal word of God revealed to the Prophet Muhammad over a period of twenty-two years (610 A.D.- 632 A.D.) in Arabic, through the Angel Gabriel.”¹⁴⁹ The Qur’an is taken as the word of God, and therefore is indisputable. In fact, since the revelation of the Qur’an, its text has not been changed “even in the minutest detail.”¹⁵⁰ The Qur’an consists of various elements including parables, ethical pronouncements, general and specific legal rules, and spiritual

¹⁴⁴ *Id.* at 31.

¹⁴⁵ Jones, *supra* note 126, at 34.

¹⁴⁶ Raghavan, *supra* note 111.

¹⁴⁷ *Id.*

¹⁴⁸ Azizah Y. al-Hibri & Raja’ M. El Habti, *Islam, in SEX, MARRIAGE, & FAMILY WORLD RELIGIONS*, 152–154 (Don S. Browning et al. eds., 2006).

¹⁴⁹ Azizah Y. al-Hibri, *Islamic Constitutionalism and the Concept of Democracy*, 24 CASE W. RES. J. INT’L L. 1, 1 (1992), available at http://www.karamah.org/docs/azizah_islamic_constitutionalism.pdf.

¹⁵⁰ *Id.* at 3.

guidance.¹⁵¹ The Qur'an consists of *surahs*, which are essentially chapters, and the *surahs* are in turn comprised of *ayahs*, which are comparable to verses.¹⁵² "The Qur'an contains two types of rules, general and specific; the general rules are far more numerous."¹⁵³ The specific rules relate to matters of worship, the family, and commercial or criminal law.¹⁵⁴ Matters in the realm of constitutional law are governed by general rules.¹⁵⁵ General rules require interpretation before they can be applied to a specific context, and as a result are more flexible and open to broader interpretation.¹⁵⁶

A second source of Islamic law is the *sunnah* of the Prophet Muhammad.¹⁵⁷ The *sunnah* encompasses the *hadith*, which are reported sayings of the Prophet, and also his reported actions, and is used to supplement Qur'anic laws, and also help interpret them.¹⁵⁸ The *sunnah* is considered the second most important of the Islamic doctrines.¹⁵⁹ In the early days of the Qur'an, the Prophet forbade the recording of the *sunnah* in order to underline the status of the Qur'an as the only source of divine law. As a result, a significant part of the *sunnah* was not recorded until the ninth and tenth centuries.¹⁶⁰ "For this reason, it became necessary for Muslim scholars to develop, in connection with the *sunnah*, a sophisticated science of attribution in order to minimize the problems associated with hearsay."¹⁶¹

Consequently, claims concerning the behavior or sayings of the Prophet were partitioned into numerous categories "including claims that were judged to be false, weak, truthful or completely trustworthy."¹⁶² All of these claims were gathered into books, which conversed in detail why each claim was judged as it was, and the final decision on these matters was left to the reader.¹⁶³ "The fact that Muslim scholars, while stating their reasoned opinion, left the final decision regarding the *sunnah* to the Muslim reader is a manifestation of the Islamic belief that each Muslim is responsible directly to God for her or his

¹⁵¹ al-Hibri & El Habti, *supra* note 148, at 152.

¹⁵² al-Hibri, *supra* note 149, at 3.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 3-4.

¹⁵⁶ *Id.* at 4.

¹⁵⁷ *Id.* at 4.

¹⁵⁸ al-Hibri, *supra* note 149, at 4.

¹⁵⁹ al-Hibri & El Habti, *supra* note 148, at 153.

¹⁶⁰ al-Hibri, *supra* note 149, at 4. This recording took place during the 'Abbasid rule. *See id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 4-5.

¹⁶³ *Id.* at 5.

own decisions and actions.”¹⁶⁴ Islam, as a result of this notion of personal responsibility, has no clergy mediating the relationship between God and humans, and instead only has *mujtahids*. Additionally the field of *ijtihad*, based on serious scholarship, is open to all Muslims.¹⁶⁵

Sunnah is not composed of all actions or utterances by the Prophet, as some of these were the actions and utterances of a mere layman.¹⁶⁶ “The Prophet was clear about that distinction and pointed it out on more than one occasion . . . in situations requiring nonreligious expertise, he readily deferred to the experts.”¹⁶⁷ Additionally, some of the *sunnah* dealt only with specific situations relating to the Prophet’s time and society and were applicable only within that narrow framework.¹⁶⁸ Other portions of the *sunnah* were general and as a result were applicable to all times and places, as is the case with many of the Qur’anic rules.¹⁶⁹ The failure to draw this distinction can lead to an interpretation that is unnecessarily rigid. The Prophet’s encouragement of scholarship has led to a multitude of religious interpretations, which indicate that each Muslim can adopt the jurisprudence that is best suited to his or her circumstances.¹⁷⁰

The third source of Islamic law and jurisprudence is *ijtihad*, which is subordinate to both the Qur’an and the *sunnah*. *Ijtihad* means “to exert an effort” and is used generally to refer to the jurisprudential activity engaged in by scholars when they seek to interpret the Qur’an and the *sunnah*.¹⁷¹ In essence, a Muslim seeking answers to modern day dilemmas must “refer to the relevant general principles in the Qur’an and relevant incidents or sayings in the *sunnah* that could, perhaps by the use of analogical reasoning, shed light on the issue.”¹⁷² Muslims have been engaging in extensive *ijtihad* for centuries and have accumulated a rich tradition as a result. During the life of the Prophet, this behavior was encouraged as long as it was based on “serious and objective effort.”¹⁷³

¹⁶⁴ *Id.* “A Muslim may rely on the analysis of a scholar, or may discuss the matter at length with other Muslims, but in the final analysis, a Muslim has to take personal responsibility for her or his own actions.” *Id.*

¹⁶⁵ *Id.* For more information on *mujtahids* and *ijtihad*, see United States Institute of Peace, <http://www.usip.org/pubs/specialreports/sr125.html#work> (last visited Feb. 20, 2009).

¹⁶⁶ al-Hibri, *supra* note 149, at 5.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 5–6.

¹⁶⁹ *Id.* at 6.

¹⁷⁰ *Id.*

¹⁷¹ al-Hibri & El Habti, *supra* note 148, at 153.

¹⁷² *Id.* at 154.

¹⁷³ *Id.*

The fourth source of Islamic law is *ijma* or consensus. Other sources of Islamic law listed in treatises are sources of *shari'ah*, although not all Muslims recognize these as legitimate.¹⁷⁴ The two most established sources are *Ijma* and reasoning by analogy (*Qiyas*).¹⁷⁵ Muslim jurists have reached agreement on a number of basic principles of *shari'ah*. The first principle is that laws may change with the passage of time and the change of place or circumstances.¹⁷⁶ "Properly understood, this principle permits a *mujtahid* to examine a specific *ayah* in light of both the attendant circumstances of its revelation as well as its meaning to determine the scope and significance of the *ayah* in general, or with respect to a specific situation at hand."¹⁷⁷ Essentially, a change in law is permitted whenever a custom on which the law is based changes.

The second principle that has been accepted is the principle of necessity/avoidance of harm. "This principle has also been stated in terms of choosing the lesser of two evils."¹⁷⁸ Several Qur'anic *ayahs*, as well as the *hadith*, allow for things that are prohibited out of necessity or in order to avoid harm.¹⁷⁹ The third principle that has been accepted is the principle of cessation of cause.¹⁸⁰ In situations where an Islamic law applies to specific factual situations, the existence of the law itself is reliant on the existence of that factual situation.¹⁸¹ The final principle agreed upon is the notion of public interest. Specifically, Islamic laws must accord with public interest, and if they fail to do so they must be reexamined and reformulated. If the public interest changes, then Islamic laws ought to change accordingly.¹⁸²

A. *Islamic Law and the Family*

Islam sees childhood as an important stage of life, as "progeny" are seen as a gift from God according to the Qur'an.¹⁸³ The *shari'ah*

¹⁷⁴ al-Hibri, *supra* note 149, at 7. "Shari'ah means the body of Islamic law. Originally, it referred only to Qur'anic, then *hadith*-based laws. Now it is also used to refer to laws developed by Islamic jurisprudence on the basis of at least two additional sources, namely, consensus and reasoning by analogy." *Id.* at n.26.

¹⁷⁵ *Id.* at 7.

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* "Some *ayahs* state that God will forgive anyone who breaks the law under duress." *Id.*

¹⁸⁰ al-Hibri, *supra* note 149, at 9.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Children in Islam: Their Care, Development and Protection*, UNICEF 2, available at [http://www.unicef.org/egypt/Egy-homepage-Childreninislamengsum\(1\).pdf](http://www.unicef.org/egypt/Egy-homepage-Childreninislamengsum(1).pdf) (last visited Feb. 20, 2009) [hereinafter *Children in Islam*].

focuses on guaranteeing a wholesome psychological climate for children, and Islam affirms that children should be given a right to health and life; a right to family, kindred, name, property and inheritance; a right to healthcare and proper nutrition; a right to education and acquisition of talents; a right to live in security and peace, and enjoy human dignity and protection under the responsibility of the parents.¹⁸⁴

“Islam places kindness to parents next to the worship of God.”¹⁸⁵ Parenthood is seen as an extension of the Qur’anic view of ideal marital relations. Parenthood is a relationship that should be based on “mercy, affection, and tranquility” and as a result will develop into a cooperative and not hierarchical family life.¹⁸⁶ Children are to be raised by both parents, however emphasis is placed on the role of the mother as caregiver.¹⁸⁷ Many of the legal obligations of parents are rooted in Islamic custom, and in modern society the limitations placed on women have started to be reevaluated. Additionally, a child is entitled to financial support, and is also entitled to a “good name,” meaning that a criminal violates not only societal norms, but also the child’s right to have a good name.¹⁸⁸

Islam also provides that children should be given a protective environment, and inclusive in this environment is the right to have sufficient parental care, the right to have education, the right to healthcare, and the freedom of expression and thought.¹⁸⁹ Additionally, children should have the right to lead a dignified and secured life, with the father carrying the responsibility for maintaining the financial requirements necessary to guarantee the care and safety of children.¹⁹⁰ Children who lack parental guidance are to be protected through sponsorship provided by people acting in the role of parents. *Shari’ah* encourages Muslims to take up sponsorship of a child in need.¹⁹¹

In terms of education, the Qur’an asserts that both men and women should seek education and knowledge.¹⁹² “Once children reach the age of comprehension and learning, parents must provide knowledge that may develop their offspring’s intellectual capabilities.”¹⁹³

¹⁸⁴ *Id.*

¹⁸⁵ al-Hibri & El Habti, *supra* note 148, at 212.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 212–213.

¹⁸⁹ *Children in Islam*, *supra* note 183, at 8.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* It is stated that the Prophet himself advocated the rights of orphaned children. *See id.*

¹⁹² al-Hibri & El Habti, *supra* note 148, at 218.

¹⁹³ *Children in Islam*, *supra* note 183, at 10.

Because seeking knowledge is a religious duty in Islam, parents are expected to provide education to their children, and failure to do so compromises the parental responsibility. Failure to lay this early foundation for children can derail the further education and prosperity of children.¹⁹⁴ Additionally, education is obligatory for both males and females. Islam also regards teachers as “the pillars of the educational process and highlights the significance of their roles and influence over children.”¹⁹⁵

Although these rights are set forth through the Qur’an and *shari’ah* law, it is the state’s role to support and protect the rights of children.¹⁹⁶ Although parents are the main foundation in place to protect children, the state has to make laws guarding children against dangerous hazards such as violence and exploitation, and also must make laws protecting education and caring for those children who have become orphaned.¹⁹⁷

B. *The New Iraqi Constitution*

Although protections for children can be found within the general provisions of Islam, it is also important to address the rights given to individuals, including children, through the new Iraqi Constitution developed after the United States occupation of Iraq. One of the positive byproducts of the United States’ invasion and subsequent occupation of Iraq was the development of a new Iraqi Constitution. The constitution was voted on, and approved, by the Iraqi people on October 15, 2005.

Article 1 of the Constitution states that “the Republic of Iraq is a single, independent federal state with full sovereignty. Its system of government is republican, representative Parliamentary and democratic. This Constitution is a guarantor of its unity.”¹⁹⁸ Article 2 establishes Islam as the official religion of the State and asserts that Islam is the fundamental source of legislation. Furthermore, it declares that, “no law that contradicts the established provisions of Islam may be established.”¹⁹⁹ Additionally, it is stated that no law can be established which contradicts principles of democracy or which contradicts the rights and basic freedoms stipulated in the Constitution.²⁰⁰ Although these first two articles lay down the foundation of

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 11.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ IRAQ CONST., art. 1, available at <http://www.msnbc.msn.com/id/9719734/>.

¹⁹⁹ *Id.* art. 2.

²⁰⁰ *Id.*

the governing principles of Islam, there are additional provisions through which protection for children can be gleaned.

The first relevant provision can be found in Article 15, which states, "every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority."²⁰¹

Article 29 provides that "family is the foundation of society . . . and the state guarantees the protection of motherhood, childhood and old age[,] and shall care for children and youth and provide them with the appropriate conditions to further their talents and abilities."²⁰² This article also prohibits the economic exploitation of children; and all forms of violence and abuse in the family, at school and in society, are also forbidden.²⁰³

The next article, Article 30, asserts that the state must guarantee to both the individual and the family, particularly women and children, social and health security and the "basic requirements for leading a free and dignified life."²⁰⁴ This article also accounts for those who are orphaned and states that "the state guarantees the social and health security to Iraqis in cases of . . . orphanage . . . and shall work to protect them from ignorance, fear and poverty . . . [t]he state shall provide them with housing and special programs of care and rehabilitation . . . organized by law."²⁰⁵

Education is also accounted for in Article 34, which provides that "[e]ducation is a fundamental factor in the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees to eradicate illiteracy."²⁰⁶ Free education is also to be guaranteed for all Iraqis at all stages of life, and private and public education shall be regulated by law.²⁰⁷

In terms of children living in conflict zones, specifically the current situation in Iraq, Article 33 is especially relevant as it provides that "[e]ach individual has the right to live in a safe environment."²⁰⁸ Moreover, Article 35 also contains provisions which are relevant to children in conflict zones, and also to children who have become child soldiers in armed conflict. Article 35 generally asserts that "[t]he liberty and dignity of man are safeguarded." More specifically, the arti-

²⁰¹ *Id.* art. 15.

²⁰² *Id.* art. 29.

²⁰³ *Id.*

²⁰⁴ IRAQ CONST., art. 30., available at <http://www.msnbc.msn.com/id/9719734/>.

²⁰⁵ *Id.*

²⁰⁶ *Id.* art. 34.

²⁰⁷ *Id.*

²⁰⁸ *Id.* art. 33.

cle also provides that “[a]ll forms of psychological and physical torture and inhumane treatment shall be prohibited. Any confession coerced by force, threat, or torture shall be prohibited.”²⁰⁹ This article also provides that the state is the guarantor of protections of individuals from intellectual, political and religious coercion. Furthermore, “[c]ompulsory service (unpaid labor), serfdom, slave trade (slavery), trafficking of women and children, and the sex trade is prohibited.”²¹⁰ Finally, Article 37 states that it “is prohibited to force any person to join any party, society or political entity or force him to continue his membership in it.”²¹¹

These provisions of the new Iraqi Constitution provide safeguards that are outstanding in terms of protecting children from the consequences of living in war-torn conflict zones and also in preventing the drafting of children as child soldiers. The fact remains however, that although these protections are in place, there seems to be a disconnect in actually enforcing them against those who are abusing these newly established freedoms.

V. INTERNATIONAL LAW PROTECTIONS

A. *The Development of the Convention on the Rights of the Child*

While specific Islamic law provisions protecting the rights of children have been addressed above, it is imperative to look at the doctrines within the larger international law community, as there are a number of very important documents providing fundamental human rights to all individuals generally, and also to children specifically. The first international instrument recognizing the rights of children was the Declaration of the Rights of the Child, which was unanimously adopted by the League of Nations in 1924.²¹² This document, which was also commonly known as the Declaration of Geneva, stated that, “mankind owes to the child the best that it has to give.”²¹³ The five main principles of this doctrine would later serve as the groundwork for all future international human rights documents pertaining to children’s rights. The five provisions are as follows:

- I. The child must be given the means requisite for its normal development, both materially and spiritually;
- II. The child that is hungry must be fed, the child that is

²⁰⁹ *Id.*

²¹⁰ IRAQ CONST., art. 33., available at <http://www.msnbc.msn.com/id/9719734/>.

²¹¹ *Id.* art. 37.

²¹² DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROGRESS 41 (3rd ed.). This document was drafted by the Save the Children International Union with the goal of improving the plight of children worldwide. *Id.*

²¹³ *Id.*

sick must be helped: the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored; III. The child must be the first to receive relief in times of distress; IV. The child must be put in a position to earn a livelihood and must be protected against every form of exploitation; V. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.²¹⁴

In 1959 the United Nations Declaration of the Rights of the Child recognized that the rights and special needs of children are valid in both times of peace and conflict.²¹⁵ Additionally this new document, consisting of ten principles, asserted that the rights of children need to be protected against discrimination based on race, color, sex, language, religion, national, or social origin, property and status.²¹⁶ This document also introduced the right of the child to "name and nationality and to social security legislation."²¹⁷ Although the above revisions were made, the changes failed to incorporate any protections against engaging children in armed conflict.²¹⁸

In 1978, which was declared the International Year of the Child, Poland began working on the development of a draft of children's rights to be incorporated into a treaty. Initially the Polish drafts gathered little or no support, particularly by western nations which viewed the draft as "an Eastern Bloc project focusing mostly on economic, social and cultural rights; rights which are considered by many governments as not beings rights at all but merely 'good social policy.'"²¹⁹ The Working Group, established in 1979 to craft a convention on the rights of the child, reported in 1985 on the progress of the drafting.²²⁰ Although the Polish draft did not contain any provisions relating to child soldiers, a proposal of the governments of the Netherlands, Belgium, Sweden, Finland, Peru, and Senegal was created dealing with child soldiers, however this document was not among the fifteen documents discussed by the Working Group.²²¹ The relevant provisions which were omitted from the Working Group's discussions are as follows:

²¹⁴ INTERNATIONAL DOCUMENTS ON CHILDREN 3 (Geraldine Van Buren, ed., 1993).

²¹⁵ WEISSBRODT ET AL., *supra* note 212, at 42.

²¹⁶ *Id.*

²¹⁷ Declaration of the Rights of the Child, G.A. Res 1386 (XIV) (Nov. 20, 1959).

²¹⁸ WEISSBRODT ET AL., *supra* note 212, at 42.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children. 2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.²²²

The Working Group created to draft the convention on the rights of the child was open-ended in that it was open to states and non-state actors such as international governmental organizations ("IGOs") and also non-governmental organizations ("NGOs").²²³ Agreement was reached through consensus rather than formal vote-taking procedures. The most controversial topic debated at the Working Group meetings was how much, if any, protection should be afforded to children in cases of armed conflict. Two of the governments that actually submitted proposals were the Islamic Republic of Iran and Iraq, both of whom were engaged in war in which young boys were used in battle.²²⁴

The Iraqi proposal focused narrowly on children and affirmed that "the protection of children must be ensured by the parties to the armed conflicts; that the parties must take every possible measure to ensure that children do not participate directly in hostilities and are not sent to combat areas."²²⁵ Additionally it was stated that if children were captured by adversaries they should continue to enjoy the rights affirmed by the convention, and be separated from adult prisoners.²²⁶ Eventually in 1986, an accord was reached regarding Article 38 of the convention, which provides:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into the armed forces. In recruiting among those persons who

²²² *Id.* at 43.

²²³ *Id.*

²²⁴ WEISSBRODT ET AL., *supra* note 212, at 45.

²²⁵ *Id.*

²²⁶ *Id.* at 45-46.

have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.²²⁷

Although the age limit is set at fifteen in Article 38, there was much discourse during the Working Group sessions on what the appropriate age limit should be. Many nation states believed that the convention would adhere to the definition in Article 1 of the convention, which states that a child is a person below the age of eighteen.²²⁸ Some nation states were not pleased with the decision to make the age fifteen and worked to raise the age limit.²²⁹

Interestingly, all Muslim countries have embraced the Convention on the Rights of the Child.²³⁰ By ratifying this human rights instrument, countries are held to a code of obligations for children. The rights of children are placed at the forefront of the global struggle for human rights, "to be ensured [by] adult society as a matter of legal obligation, moral imperative, and development priority."²³¹

B. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts

Many children's rights advocates were dissatisfied with Article 38 of the Convention on the Rights of the Child, and petitioned for a higher minimum age of recruitment and participation in armed conflict. Specifically, they wanted the minimum age to be raised from fifteen to eighteen years.²³² At the second session of the Committee on the Rights of the Child in 1992, the Committee proposed to draft an Optional Protocol to the Convention to further restrict the participation of children in hostilities.²³³

In 1993, one of the Committee members was appointed to prepare a preliminary draft Optional Protocol raising the minimum age to

²²⁷ *Id.* at 46.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Investing in the Children of the Islamic World*, UNICEF, available at http://www.unicef.org/publications/files/Investing_Children_Islamic_World_full_E.pdf.

²³¹ *Id.*

²³² TINY VANDEWIELE, *A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: OPTIONAL PROTOCOL—THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS* 19 (Martinus Nijhoff Publishers 2006).

²³³ *Id.*

eighteen. A year later in 1994, the Commission on Human Rights formed an open-ended working group to negotiate an optional protocol. The working group concluded its work in 2000, and the United Nations formally adopted the Optional Protocol on May 25, 2000.²³⁴

On February 12, 2002 the Protocol received its first ten ratifications, which were necessary in order to make the document legally binding.²³⁵ As of September 4, 2004, seventy-seven states were parties to the Protocol.²³⁶ As of December 1, 2006, 122 countries were signatories to the Optional Protocol, however Iraq is not among those nations.²³⁷ The Islamic Republic of Iran ratified the Optional Protocol on September 26, 2007.²³⁸

Despite the Protocol's good intentions, the age of eighteen has not been set as a minimum threshold for all recruitment and deployment practices. States can still recruit children under the age of eighteen when they voluntarily join the armed forces, so the notion of a "straight-eighteen rule" has yet to be fully accomplished.²³⁹ Although the "straight-eighteen rule" has not been incorporated into the Optional Protocol, there are many relevant provisions that protect against children becoming child soldiers.

The Optional Protocol has thirteen articles, all of which center around preventing the compulsory involvement of children in armed conflicts. The most relevant articles in terms of protecting children in conflict zones are presented as follows. Article 1 asserts that, "States Parties shall take all feasible measures to ensure that members of their armed forces who have not reached the age of 18 years do not take direct part in hostilities."²⁴⁰ Article 2, which is extremely pertinent to the situation in Iraq, asserts that, "States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces."²⁴¹

Additionally, section 1 of Article 4 deals with armed groups falling outside the classification of a State's armed forces and states that, "[a]rmed groups that are distinct from the armed forces of a State

²³⁴ *Id.*

²³⁵ *Id.* at 19–20.

²³⁶ *Id.* at 20.

²³⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263 (May 25, 2000), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=3ae6b39518> [hereinafter G.A. Res. 54/263].

²³⁸ Office of the United Nation's High Commissioner for Human Rights, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=136&chapter=4&lang=en> (last visited Feb. 20, 2009).

²³⁹ VANDEWIELE, *supra* note 233, at 20.

²⁴⁰ G.A. Res. 54/263, *supra* note 237.

²⁴¹ *Id.* art. 2.

should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”²⁴² Section 2 of Article 4 places the responsibility of preventing recruitment of children into these armed groups on the State and indicates that it might be necessary to adopt legal measures that would “prohibit and criminalize such practices.”²⁴³

Under Article 6, section 1, States are also responsible for the general implementation of the provisions of the Optional Protocol through any necessary “legal, administrative and other measures.”²⁴⁴ Section 2 of Article 6 takes a step further and asserts that States have to “make the principles and provisions of the present Protocol widely known and promoted by appropriate means to adults and children alike.”²⁴⁵ Most importantly, section 3 of Article 6 provides that, “States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service.”²⁴⁶ This section also places the responsibility of providing assistance for the physical and psychological recovery and social reintegration of children who have been involved in armed conflicts, on the State.²⁴⁷ Article 7 presents several means through which support can be provided to former child soldiers, such as multilateral or bilateral programs or through a voluntary fund established in accordance with General Assembly rules.²⁴⁸

Although these articles are extremely beneficial to the protection of children involved in armed conflict, they are only advantageous if actually employed. Although Iran signed the Optional Protocol in September of 2007, Iraq has yet to follow their lead and become a signatory. As Iraq strives to develop its new democratic government, it should consider becoming a signatory to the Protocol, especially in light of the situation occurring within its borders involving child soldiers in armed conflict.

C. *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (“UDHR”) was adopted by the United Nations General Assembly in 1948, and articulated the “importance of rights which were placed at risk during the decade of the 1940s: the rights to life, liberty, and security of person;

²⁴² *Id.* art. 4 § 1.

²⁴³ *Id.* art. 4 § 2.

²⁴⁴ *Id.* art. 6 § 1.

²⁴⁵ *Id.* art. 6 § 2.

²⁴⁶ G.A. Res. 54/263, *supra* note 237, art. 6 § 3.

²⁴⁷ *Id.*

²⁴⁸ *Id.* art. 7 § 2.

freedoms of expression, peaceful assembly, association, religious belief, and movement; and protections from slavery, arbitrary arrest, imprisonment without fair trial, and invasion of privacy."²⁴⁹ The UDHR also includes provisions protecting social, economic and cultural rights.²⁵⁰ The force of the UDHR is limited however, due to broad exclusions and the "omission of monitoring and enforcement provisions."²⁵¹ Despite some of its shortcomings, the UDHR is effective in laying out the essential rights that human beings worldwide should be guaranteed.

The UDHR has several provisions that are relevant to the issue of child soldiers in Iraq, and the denial of the rights contained in these provisions is the denial of fundamental human rights. Article 3 provides that, "[e]veryone has the right to life, liberty and the security of the person."²⁵² Arguably, children who are compelled to be child soldiers are denied their right to liberty, and often their right to life, as many child soldiers are killed at a very young age.

Article 20, section 2 further speaks to the issue of child soldiers by stating that, "[n]o one may be compelled to belong to an association."²⁵³ Additionally, in terms of the situation present in the current Iraq conflict zone, Article 25, section 1 provides that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."²⁵⁴

Article 26 also advocates the necessity of education and declares that, "[e]veryone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory . . ."²⁵⁵ The necessity of providing education in war-torn countries is vital to protect children from being conscripted as child soldiers.²⁵⁶ Education is also crucial in ensuring that children are given a future, and this becomes especially important in conflict zones as opportunities for advancement become scarce.

Because Iraq is a United Nations member state, and has been since 1945, they are bound by the UDHR, which is recognized as being customary international law.²⁵⁷ As Iraq continues its transition into a

²⁴⁹ WEISSBRODT ET AL., *supra* note 212, at 9.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *See supra* Section II.

²⁵⁷ WEISSBRODT ET AL., *supra* note 212, at 9.

democratic state, it is important that it adheres to the UDHR, especially in light of the devastating living conditions, and lack of basic fundamental services, that Iraqi citizens are facing.

D. Islamic Response to the Universal Declaration of Human Rights

Although the Universal Declaration of Human Rights was intended to apply “universally,” members of the Islamic community felt that the provisions were defined in a manner that was strictly “western.”²⁵⁸ The rights and morals set forth by the UDHR were written with western culture in mind, and as a result, Islamic nations believed an additional declaration was necessary.²⁵⁹ In 1981, at the thirty-sixth session of the United Nations General Assembly, the Iranian representative asserted that “the Universal Declaration of Human Rights represented a secular interpretation of the Judeo-Christian tradition, which could not be implemented by Muslims; if a choice had to be made, he said, between its stipulations and ‘the divine law of the country,’ Iran would always choose Islamic law.”²⁶⁰ Iran has been one of the leading countries advocating for reform of the UDHR.²⁶¹

In addition to the efforts of Iran, the Organization of the Islamic Conference (“OIC”) has also worked towards developing international human rights doctrines utilizing an Islamic perspective. The OIC, which was established in 1969, is an intergovernmental organization composed of fifty-seven states whose goal is to “speak with one voice to safeguard the interest and ensure the progress and well-being of their peoples and those of other Muslims in the world over.”²⁶² In response to the concerns of a lack of Islamic perspective in the UDHR, the Universal Islamic Declaration of Human Rights (“UIDHR”) was proclaimed in 1981 at the United Nations Educational, Scientific and Cultural Organization (“UNESCO”).²⁶³ The UIDHR Preamble establishes that the human rights contained in the document are defined by the tenets of Islam.²⁶⁴ The UIDHR sets forth a variety of rights in twenty-two articles, and contains provisions regarding the right to life, right to freedom, protection against torture, and the right to free asso-

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ David G. Littman, *Human Rights and Human Wrongs: Sharia Can't Be an Exception to International Human-Rights Norms*, Jan. 19, 2003, <http://www.nationalreview.com/comment/comment-littman011903.asp>.

²⁶¹ *Id.*

²⁶² *OIC in Brief*, ORG. OF THE ISLAMIC CONF., <http://www.oic-oci.org/>.

²⁶³ Littman, *supra* note 260. For more information on UNESCO, see http://portal.unesco.org/en/ev.php-URL_ID=29008&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Feb. 20, 2009).

²⁶⁴ WILLIAM M. SULLIVAN & WILL KYMLICA, *THE GLOBALIZATION OF ETHICS* 247 (Cambridge Univ. Press 2007).

ciation, among many others.²⁶⁵ In addition to the UIDHR, the OIC in 1990 developed the Cairo Declaration on Human Rights in Islam (“CDHRI”).²⁶⁶ The CDHRI contains twenty-five articles, which set forth, in similar fashion to the UIDHR, a set of fundamental human rights under Islam, which are to be interpreted according to Islamic *shari’ah*.²⁶⁷ Specifically, the CDHRI protects the rights to life, human dignity, freedom, family, and education.²⁶⁸

In addition to the above general human rights doctrines protecting individuals of all ages, the OIC also developed a Covenant on the Rights of the Child in Islam.²⁶⁹ This doctrine was developed with the goal of continuing the advancement of protections for children set in motion by the United Nations Convention on the Rights of the Child in 1989.²⁷⁰ This doctrine contains twenty-six articles and among many other provisions, advocates equality, life, personal freedom, education and child protection (including protecting children from becoming involved in armed conflict), as well as justice.²⁷¹

One of the introductory provisions of this doctrine states, “that children, as part of the vulnerable sector of society, bear the burden on the greater suffering as a result of natural and man-made disasters leading to tragic consequences, such as orphanage, homelessness, and exploitation of children in military, harsh, hazardous, or illegitimate labor”²⁷² This provision further states that states parties must consider, “the suffering of refugee children and those living under the yoke of occupation or languishing or displaced as a result of armed conflicts and famines thus fostering the spread of violence among children and increasing the number of physically, mentally, and socially disabled children.”²⁷³ These provisions acutely speak to the issue of children who are left in poverty as a result of armed conflicts, like the situation in Iraq. Although these Islamic human rights doctrines exist, and protect individuals using Islamic religious standards, they are ineffectual at protecting children involved in armed conflicts if they

²⁶⁵ *Id.* at 250–51, 253.

²⁶⁶ Littman, *supra* note 260.

²⁶⁷ See Cairo Declaration on Human Rights in Islam, U.N. GAOR, 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (Aug. 5, 1993), available at <http://www.unhcr.org/cgi-bin/txis/vtx/home/opendoc.htm?tbl=RSDLEGAL&page=research&id=3ae6b3822c>.

²⁶⁸ *Id.*

²⁶⁹ Covenant Organization of the Islamic Conference, *Covenant on the Rights of the Child in Islam*, OIC/9-IGGE/HRI/2004/Rep.Final (June 2005), available at <http://www.unhcr.org/refworld/docid/44eaf0e4a.html>.

²⁷⁰ See *id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

are not utilized. As mentioned above, as Iraq works towards its new democracy it should seek to incorporate enforcement measures to give these international human rights documents stronger effect.

VI. ANALYSIS: WHAT CAN BE DONE TO PROTECT THE LAMBS?

The crisis of child soldiers engaging in combat in Iraq is not the result of a failure of tangible written documents protecting the rights of children. Scores of documents exist; even documents developed by Iraq and other Islamic organizations, which provide protection for children. The problem lies instead in the realm of enforcement of these documents and in the physical situation facing Iraqi children living in the conflict zone.

While multiple international doctrines have been examined in this article, it is clear that doctrines existing without enforcement are mere skeletons lacking the strength to protect the innocent. Although this article is not intended to be a political discourse on how to solve the situation in Iraq, it is important to discuss the failure of the new Iraqi government, and its many international allies, to control the situation in Iraq. The Iraqi government is floundering not only because of the rising insurgency but also because of political gridlock. In fact, military commanders have recently announced that the key threat facing U.S. efforts in Iraq is the Iraqi Shiite-dominated government, and not al-Qaeda terrorists, Sunni insurgents or Iranian-backed militias.²⁷⁴ Part of this concern stems from the failure of Iraq's government to "capitalize on sharp declines in attacks against U.S. troops and Iraqi civilians."²⁷⁵ Additionally, Iraqi politicians are criticized for being out of touch with everyday citizens, because "[t]hey don't know what the hell is going on on the ground."²⁷⁶

One solution that has been proposed to crack the deadlock of the Iraqi government is to hold provincial elections, which could either cause the situation to become more turbulent or provide the various ethnic factions with a voice.²⁷⁷ As Coalition forces plan for a rapid decline in numbers over the coming months, the pressure will be on Iraq security forces and the Iraqi government to take control of the country, which has been an unsuccessful effort thus far.²⁷⁸ In terms of

²⁷⁴ Thomas E. Ricks, *Iraqis Wasting an Opportunity, U.S. Officers Say; With Attacks Ebbing, Government Is Urged to Reach Out to Opponents*, WASH. POST, Nov. 15, 2007, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/14/AR2007111402524.html>.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

protecting the citizens, and especially the vulnerable children of Iraq, the Iraqi government needs to take control.

Specifically, the Iraqi government needs to focus more attention on the societal issues plaguing the country in conjunction with strengthening security. If the focus is only on battling armed insurgents and not on building and protecting the infrastructure for municipal services, what will remain is simply more death and destruction, with no outlets for safety, health, and hope. Schools are needed along with medical care and safe-havens and orphanages for children who are at risk of being pulled into insurgent groups or simply killed in the crossfire. The children of Iraq are the future of the newly developed democratic state, and if they are not protected and given a chance at adulthood, then what hope is there for Iraq? The unfortunate truth of the situation is that the divide between the Sunni and Shi'a only worsens the government's inability to take control, as it is impossible to unite towards a common cause with so much division in thought. Additionally, the strife between these groups also undermines national unity. For positive change to come in Iraq, the Iraqi government needs to provide a more equal voice for both groups in order for the country's citizens to thrive.

The inability of Iraq's government, and the allied forces, to take control of the dire situation in Iraq is tragic, as the consequences are felt worst by those who have the least power; the children. The situation has become so grave that the International Crisis Group has classified Iraq as a failed state, as it is a "country whose institutions, and with them, any semblance of national cohesion, have been obliterated."²⁷⁹ The violence is simply breeding more violence, not necessarily out of political or religious conviction, but out of necessity.

In the midst of all this destruction however, there is an opportunity for international organizations to band together to provide humanitarian aid to Iraq. UNICEF has already established a fund for emergency aid to benefit the children of Iraq by providing clean water, sanitation, immunization, and educational opportunities.²⁸⁰ Additionally, the European Commission, USAID, the United Nations, the International Rescue Committee, and many other international organizations are providing funding and resources to aid the Iraqi people living in the crisis zone, and the refugees who have fled Iraq. The continuance of this humanitarian aid is an absolute necessity, as the

²⁷⁹ International Crisis Group, *Middle East Report No. 67* (June 25, 2005), available at <http://www.crisisgroup.org/home/index.cfm?id=4914&l=1>.

²⁸⁰ See UNICEF, UNICEF IRAQ: UPDATE FOR PARTNERS ON THE SITUATION OF CHILDREN IN IRAQ (2008), available at http://www.unicef.org/infobycountry/files/Iraq_Update_for_Partners_First_Quarter_08.pdf.

people of Iraq, especially the children, are struggling to survive in a country that is falling apart before their eyes.

VII. CONCLUSION

Although a significant number of international, Islamic, and even Iraqi doctrines exist to protect the fundamental human rights of children in Iraq, these doctrines are mere pieces of paper without government enforcement. Iraq is the only country that can truly bring about change within its borders, and as difficult as the road ahead is for Iraq, the Iraqi government must break through the gridlock and take action. It must reach out to both sides of the insurgency and search for common ground, otherwise the only future for Iraqi children is to grow up alone and impoverished in a brutally dangerous and permanently damaging war zone. These children are suffering and will continue to do so, unless change can save them from a future lifetime of violence, despair and hopelessness. Providing humanitarian aid, although it will not fix the political, economic, and social problems in Iraq, is essential to protect the people of Iraq and provide Iraqi children with the chance to have a future.