

ORIGINAL ARTICLE

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Between the utopian imaginaries of literature and international law: The question of the insurgent child in international legal discourse and Kris Montañez's *Youth*

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Abstract

This article argues that international law and the literature of civil war, specifically the narratives from the Philippine communist insurgency, present two visions of the child. On the one hand, international law constructs a child that is individual and vulnerable, a victim of violence trapped between the contending parties. Hence, the child is a person who needs to be insulated from the brutality of the civil war. On the other hand, the article reads Filipino writer Kris Montañez's stories as revolutionary tales that present a rational child, a literary resolution of the dilemmas of a minor's participation in the world's longest-running communist insurgency. Indeed, the short narratives collected in *Kabanbanuagan* (Youth) reveal a tension between a minor's right to resist in the context of the people's war and the juridical right to be insulated from the violence. As their youthful bodies are thrown into the world of the state of exception, violence forces children to make the choice of active participation in the hostilities by symbolically and literally assuming the roles played by their elders in the narrative. The article concludes that while this narrative resolution appears to offer a realistic representation and closure, what it proffers is actually a utopian vision that is in tension with international law's own utopian vision of children. Thus, international law and the stories of youth in *Kabanbanuagan* provide a powerful critique of each other's utopian visions.

Keywords: child soldiers; children's rights; civil war; literary approaches to international law; utopia

1. Introduction

In the late twentieth century, international society turned its eyes on children¹, proclaimed their rights in treaty form, and denounced the participation of minors in bloody wars. The child became a bone of contention in the raging civil wars as contending parties would use the child in their attempts to diminish each other's political capital. Hence, state agents have, for instance, not wasted time in presenting before the public children seized from guerrilla fronts, who could assemble M16 rifles as fast as professional soldiers. This presentation of children as if they were

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¹M. Freeman, 'Introduction', in M. Freeman (ed.), *Children's Rights: Progress and Perspectives* (2011).

some ventriloquists' dummies in a fiesta carnival would be deemed proof of the rebels' drive to recruit child soldiers in violation of international law.²

Indeed, the idea of the child is now a battleground of contending discourses. Nick Ut's photograph of a naked Vietnamese child running away from her burning village has become an iconic image of the child as victim of war. International law, as a discursive formation, has also constructed its own vision of the child in the wake of napalmed children in the Vietnam War and Third World child soldiers roaming the jungles of Africa and Latin America.³ From the UN Declaration of the Rights of the Child (1959) to the Second Protocol to the Geneva Conventions (1977) and from the 1989 UN Convention on the Rights of the Child to the Optional Protocol relating to the Involvement of Children in Armed Conflict (2002), states have slowly taken steps to define the concept of the child and represent the latter as a vulnerable being who ought to be insulated from the violence.⁴

In contrast to this international legal discourse, literary texts produced during a civil war by insurgents draw a very different picture of the child. Here, children are no helpless beings, but agents who decide what is demanded of them by the situation. From Soviet Russian stories of the Civil War and Great Patriotic War⁵ to the stories about China's War of Resistance Against Japan and Civil War,⁶ one encounters children with initiative and who are active agents in the war. To this tradition of writing belong the short tales of Kris Montañez – poet, short story writer, and cultural theoretician of the national democratic movement in the Philippines. Published in 1987, the production of *Youth (Kabanbanuagan)* paralleled the process of negotiation and codification of the rights of the child from 1979 to 1989.⁷ The literary work also represented the same realities that international law was tasked to shape. One meets in the world of the tales not only children victimized by violence but also children endowed with intelligence and courage. Children playing as tricksters, helpers, and couriers roam the world of the short tales. It is a world peopled by those who could win over fortune by their impetuosity, their audacity, their ferocity, in a word, their youth.⁸

²C. Conde, 'Dispatches: Fighting over Child Soldiers in the Philippines', *Human Rights Watch*, 16 February 2016, available at www.hrw.org/news/2016/02/16/dispatches-fighting-over-child-soldiers-philippines. Conde notes the dubious record of the Philippine military in attributing child recruitment to the rebels. The Philippine Government has been struggling with the Communist New People's Army (NPA) since 1968. It is now one of the world's longest civil wars. Some of the leaders of the Communist Party of the Philippines (CPP) are currently exiled in Utrecht, The Netherlands.

³There were around a quarter of a million child soldiers in 2017 according to the World Health Organization. J. Marten, *The History of Childhood: A Very Short Introduction* (2018), at 103. This figure is far below the number of child soldiers in the American civil war or in the army of Great Britain during the First World War. David Rosen argues that the controversy is not due to the increasing number of child soldiers, but to the changing idea of childhood: D. M. Rosen, 'Child Soldiers in Historical and Comparative Perspective: Creating a Space for Data-driven Analysis', in M. A. Drumbl and J. C. Barrett (eds.), *Research Handbook on Child Soldiers* (2019), at 151–8.

⁴Mark Drumbl has identified four images of the child soldier in transnational discourses: i) The faultless victim; ii) The lost generation; iii) The hero; iv) The demon/bandit. Among the four images, it is the 'victim' that dominates international discourse and guides law and policy: M. A. Drumbl, 'The Effects of the Lubanga Case on Understanding and Preventing Child Soldiering', in T. D. Gill et al. (eds.), *Yearbook of International Humanitarian Law* (2012), at 94.

⁵See J. Golden and R. Stites (eds.), *Mass Culture in Soviet Russia: Tales, Poems, Songs, Movies, Plays and Folklore 1917-1953* (1995).

⁶See the chapter 'Little Red Devils', in E. Snow, *Red Star over China* (1968).

⁷N. Cantwell, 'The Origins, Development, and Significance of the United Nations Convention on the Rights of the Child', in H. J. Steiner and P. Alston (eds.), *International Human Rights in Context: Law, Politics, Morals* (2000), at 513; see K. Montañez, 'Mula sa Awtor', *Kabanbanuagan* (1987).

⁸See N. Machiavelli, *The Prince* (translated by H. Mansfield) (1998). Notably, the heroic images in *Youth* differ from the literary representations of African child soldiers studied in M. Kamara, 'In Search of the Lost Kingdom of Childhood', in Drumbl and Barrett, *Research Handbook on Child Soldiers*, *supra* note 3, at 36. The African works problematize the images of the child-victim and soldier-perpetrator. These two images constitute a predominant narrative and counter-narrative that permit 'gaps to open in the law'. See Rosen, *supra* note 3, at 171. In this context, the analysis of the tales in *Youth* may widen our own understanding of children in war as they focus on the child as hero/helper.

In this article, I argue that international law and the literature of the Philippine communist insurgency, the world's longest civil war, present two visions of the child. On the one hand, international law constructs a child that is individual and vulnerable, a victim of violence between the contending parties. Hence, the child is a person who needs to be insulated from the civil war. On the other hand, I read Kris Montañez's stories as revolutionary tales that present a rational child, representing a literary resolution of the dilemmas of a minor's participation in the civil war. These short narratives reveal a tension between the children's right to resist in the context of the people's war and their juridical right to be insulated from the violence. As their youthful bodies are thrown into the world of the state of exception, violence forces the minor to make the choice of active participation in the hostilities by symbolically and literally assuming the roles played by their elders in the narrative. I conclude that while this narrative resolution appears realistic, it is actually a utopian vision that is in tension with international law's own utopian vision of children. Thus, international law and the stories of youth in *Kabanbanuagan* provide a critique of each other's utopian visions.

The present study aims to apply a literary approach to international law by analysing one of the most contentious issues of the time – the question of the insurgent child. Through an analysis of short fiction written by a partisan, this article seeks to uncover an implicit critique of the dominant vision of the child as embodied in international legal texts and discourses. Literature indeed may provide a counterweight to the overwhelming amount of statist texts on which the understanding of children and their rights are predominantly based. Without doubt, a literary work from the global south's long-running civil war may contain visions that dispute the vision of international law. The textual and ideological analyses of this work may usher in a different way of thinking about the international regime of children's rights by presenting an alternative framework.⁹

In the following four sections, I shall present the arguments and conclusions of my analyses of international law and the short tales of Montañez. The next section shall discuss the changing images of children in war literature and the development of an international legal discourse which represents the image of the helpless child. This analysis of the legal form shall be followed by an analysis of the tales' representation of the image of the rational child. The fourth section relates the image of the rational child to a utopian vision of social transformation that is critical of the 'infantilization' of the global south in international legal discourse. The section ends with a reading of the tales from the viewpoint of international law's utopian vision, a reading which I consider a critique of revolutionary visions of the child. The final section concludes that while literary texts and international legal discourses critique each other's visions, their utopian imaginaries present some possibilities of a future world.

2. The changing image of the child and international law's utopian vision of the child

At the turn of the twentieth century, Ellen Key described the next 100 years as 'the Century of the Child'.¹⁰ The twentieth century, however, would end up witnessing a large-scale violence that wiped out unimaginable numbers of children. Two global wars, numerous civil wars, anti-colonial wars, and ethnic wars have not insulated children. From the infernal violence of the century sprang contradictory images of the child: The child as innocent victim and the child as an active agent. The first one is represented no less by the writings of Anne Frank,¹¹ while the second one is represented by the image of the 'little red devil' in various revolutionary cultural forms such as

⁹A. Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking about International Law* (2016); K. Hanson and C. Molina, 'Getting Tambo out of Limbo: exploring alternative legal frameworks that are more sensitive to the agency of children and young people in armed conflict', in Drumbl and Barret, *ibid.* Drumbl has argued that 'literary accounts' tend to 'unpack the subtleties of and contingencies of victim and perpetrators' from which law may learn from. Cited in Kamara, *ibid.*, at 45.

¹⁰J. H. Dekker, 'The Century of the Child Revisited', in Freeman, *supra* note 1, at 488.

¹¹*Ibid.*, at 490.

reportage, films, and literature. These two images of the child would remain relevant in international legal discourses and cultural productions.

The romantic image of the child was predominant in Ellen Key's book that inaugurated studies on the pedagogy of the child. Heavily borrowing from Jean Jacques Rousseau and the Romantics, Key postulated that the child was innocent, intimate with the Divine, and living the best part of human life.¹² Both mother and child were assumed to be wrapped in holiness, a relationship that was central to Key's pedagogical utopia.¹³ These romantic images were at the core of Key's vision as a utopian thinker.¹⁴

Another vision of the child, which was predominant in the early twentieth century, was the child warrior. The most popular war image of the child could be found in Ivan Perestyani's *The Little Red Devils* (1923), a film that far surpassed the ticket sales of the movies made by Pudovkin, Eisenstein, and others in Soviet Russia.¹⁵ In this film, a trio of youngsters outwit the armies of anarchist Nestor Makhno during the Russian Civil War. The image of the little red devil was so popular at that time that more than a decade later Edgar Snow would use the same title for his chapter on Chinese child warriors in his book on the Chinese revolution, *Red Star over China* (1938). In his wanderings in the 'Red areas' of Northwest China, Snow met members of the Young Vanguards and talked to one of them:

... he was rosy-faced and had bright shining eyes. How homesick he must be, I thought. I was disillusioned. He was no mama's boy, but already a veteran Red. He told me that he was fifteen, and had joined the Reds in the South four years ago.

Four years ago! I exclaimed incredulously, "Then you must have been only eleven when you became a Red? And you made the Long March?"

"Right", he responded with comical swagger. "I have been a *hung chun* for four years".¹⁶

If the popularity of Perestyani's film and Snow's reportage on the little red devils is taken as a measure of acceptability of the image of the child warrior, it could be inferred that readers and viewers were cognizant of children's participation in the civil wars.¹⁷ Simply put, to see a child play a role in the adult world of making war was deemed acceptable. As such, the child was no vulnerable being who needed special protection.

This perception may have changed since then. The world has been made more aware of the complexity of children's participation in armed conflict through the mass media.¹⁸ Today, child soldiers are alternately represented either as innocent victims or hardened killers, the 'lost generation'.¹⁹ A regime of rights has also been ratified by the society of states, except the US, specifically to protect children. Lastly, although scholarship on children and war has tended to be more nuanced of late, the trajectory of policy recommendations has been to 'prevent youth soldiering' and protect the rights of children under the UNCRC and the optional protocol.²⁰

¹²*Ibid.*, at 480.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵See note to P. Biyakhin, 'The Little Red Devils', in Gelden and Stites, *supra* note 5, at 36.

¹⁶See Snow, *supra* note 6, at 322–3.

¹⁷See Rosen, *supra* note 3, at 153. Rosen notes the unremarkable presence of the child in nineteenth century armies.

¹⁸B. K. Barber, 'Glimpsing the Complexity of Youth and Political Violence', in B. K. Barber (ed.) *Adolescents and War: How Youth Deal with Political Violence* (2009), at 6.

¹⁹M. Wessells and K. Kostelny, 'Youth Soldiering: An Integrated Framework for Understanding Psychosocial Impact', in Barber, *ibid.*, at 106. For a discussion on the 'lost generation' see A. Dawes, 'Political Transition and Youth Violence in Post-apartheid South Africa: In Search of Understanding', in J. Hart (ed.), *Years of Conflict: Adolescence, Political Violence and Displacement* (2010), at 93–4.

²⁰See Wessells and Kostelny, *ibid.*, at 120.

This change of perception is understandable. Variable, the concept of the child is not etched in stone; malleable, it is formed like clay. Shaped by contending visions, the concept of the child is contested.²¹ Scholars have recently acknowledged that labelling the developmental stages of life is a western construct.²² The term ‘youth’, for instance, is a cultural construct that exhibits numerous variations from one culture to another.²³ More than the fact of variations, the ambiguity of the terms ‘child’ and ‘youth’ may have serious political repercussions; for example, governments may use the word ‘youth’ to make young activists liable for criminal acts, while the latter may raise the ‘child’ concept to defend themselves.²⁴ In the midst of these ambiguities and contentions, international law comes in. The UN Convention on the Rights of the Child (UNCRC) defines anyone below 18 years old as a ‘child’.²⁵ This juridical definition resolves the ambiguities of ‘child’, ‘adolescent’, and ‘youth’ altogether. Thus, the individual subject – for the ‘child’ is an individual and not a collective²⁶ – is anyone who is below 18 years of age.

While the definition may have settled the question of who is a child, the most contentious issue remains the age at which children would be allowed to participate in armed conflict. This contestation produced Article 38 of the UNCRC, which obliges state parties to ‘ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities’. The states ‘shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces’ and should give priority to recruitment of those older than 15 years of age.²⁷ This means that children who reach 15 years of age may now be recruited and allowed to participate in combat operations. The intent to limit their participation to non-combat operations was rejected at the working group level of the negotiations.²⁸

The age of *compulsory* recruitment by states set at 15 years of age in the UNCRC was later raised to 18 years of age by the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2002).²⁹ The protocol to the UNCRC, however, allowed *voluntary* recruitment by states for those 15–18 years old as agreed in the UNCRC. In contrast to the special privileges of states in voluntary recruitment, Article 4 of the Optional Protocol prohibits armed groups from recruiting or using any person below 18 years old under any circumstance.³⁰ Despite this obvious bias against ‘liberation movements’,³¹ the tendency to exclude more young people from violence remained palpable, making an observable trend which goes back to the 1977 Second Protocol to the Geneva Conventions which proscribed the recruitment of children below 15 years old.³² It further required the removal of children, with persons responsible for their safety, from the area of hostilities.³³ From these early prohibitions on the recruitment of those below 15 years old, the concept of ‘child soldiers’ emerged.

Presently, international non-state actors define the child soldier as ‘any person under 18 years of age who is a member of or attached to the armed forces or an armed group, whether or not there is armed conflict’.³⁴ Following the definition of the child under the Convention, it includes

²¹G. Hernandez, *International Law* (2019), at 389.

²²See Barber, *supra* note 18, at 6.

²³See Wessells and Kostelny, *supra* note 19, at 107.

²⁴Citing J. Boyden, in Barber, *supra* note 18, at 6.

²⁵Art. 1, UN Convention on the Rights of the Child (1989).

²⁶See Freeman, *supra* note 1, at 14.

²⁷Art. 38(2), (3) UN Convention on the Rights of the Child (1989).

²⁸See Cantwell, *supra* note 7, at 515.

²⁹Art. 1, Optional Protocol (2002).

³⁰Art. 4, *ibid.*

³¹The New People’s Army critiques the protocol’s problematic definition of the child soldiers and for its bias against liberation movements. See Conde, *supra* note 2.

³²Art. 4 (3) Protocol II to the Geneva Conventions. Art. 77 of Protocol I also states the same rule. See Hernandez, *supra* note 21, at 389.

³³Hernandez, *ibid.*

³⁴See Wessells and Kostelny, *supra* note 19, at 105.

children who are part of an army, though they may not take part in hostilities. This recruitment and use of children, in both combat and non-combat work, violates their rights, a position advocated in the Paris Principles (2007) which were formulated by various child advocate groups led by UNICEF.³⁵

As early as 1959, states already expressed their view that the ‘child, by reason of his physical and mental immaturity, needs special safeguards and care’.³⁶ Thus, ‘the child shall enjoy special protection and shall be given opportunities and facilities by law . . . the best interest of the child shall be the paramount consideration’.³⁷ The child is seen as a helpless and innocent person who needs the care and guidance of others. This is the image of the child that international law propagates. The ‘most vulnerable of the vulnerable’ as the UNHCR puts it.³⁸ It is without doubt an image of powerlessness.³⁹

Based on this assumption of helplessness and powerlessness, international law now propagates a form of collective paternalism that is lodged on the shoulders of the mother, the parents, the family, and the community at large.⁴⁰ No child below seven years of age may be separated from their mother. The child must receive education in keeping with the wishes of the parents. And in times of war, steps must be taken to facilitate the reunion of families temporarily separated. Indeed, while international law confers the rights on the individual subject, the child, the bearer of rights, is bound by legal cords to the mother, the parents, to the family – all the ideal collectives. The child is considered to be in better hands under the paternalistic care of these primary collectivities. The child forms a union with a benevolent *pater*. This approach has been endorsed by the most ardent child rights defenders as either ‘gentle paternalism’ or ‘liberal paternalism’ that ‘would bring the child to the threshold of adulthood’.⁴¹

Due to this paternalism, the exclusion of children from hostilities has always been part of all major treaties relating to war and the child. Protocol II of the Geneva Conventions excluded children below 15 years old from recruitment and prohibited them from taking part in hostilities. Such exclusion and prohibition are echoed by the UNCRC. The 2000 Protocol to the UNCRC raised the standard to 18 years old, particularly prohibiting non-state groups to recruit those below 18 years. Ultimately, the use of children in combat operations was criminalized as a war crime under Article 8(2)(e)(vii) of the Statute of the International Criminal Court. In 2012, a trial chamber of the ICC found Dyilo Lubanga guilty of conscripting and enlisting child soldiers who the decision generally portrayed as a ‘faultless passive victim’ and ‘irreparably damaged’.⁴² The reparations award was confirmed by the Appeals Chamber of the ICC in 2019.⁴³

This tendency to exclude children from the violence of war has a utopian spirit behind it. International law wants to create an imaginary world for children free of civil wars. While children are supposed to be with their parents and their communities, international law would like to believe that children may still grow up unaffected by the politics of their parents and the adults in the communities where they live. This is certainly a utopian impulse. International law, specially the UNCRC, seems to propagate a form of ‘decontextualized universalism’⁴⁴ where the immaturity of the child is universalized and the child’s development is decontextualized from

³⁵*Ibid.*

³⁶1959 UN Declaration on the Rights of the Child.

³⁷Principle 2, *ibid.*

³⁸Cited in H. Beirens, ‘UNHCR and the Military Recruitment of Adolescents’, in Hart, *supra* note 19, at 145.

³⁹K. H. Federle, ‘Rights Flow Downhill’, in Freeman, *supra* note 1, at 450; the images of helplessness lead to an essentialized victimhood, see also Drumbl, *supra* note 4, at 94.

⁴⁰See Principle 1.7.4, Paris Principles (2007).

⁴¹Cited in M. Freeman, ‘To Take Children’s Rights Seriously’, in Freeman, *supra* note 1, at 17–18.

⁴²Hernandez, *supra* note 21, at 389, 449–50; Drumbl, *supra* note 4, at 88.

⁴³*Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, ICC-01-/04/-01-06-3466-Red, 18 July 2019.

⁴⁴See Beirens, *supra* note 38, at 146.

the realities that surround him in the communities. This weakness is compounded by the legalistic approach of UN agencies and other human rights activists which focuses on evidence gathering of certain violation of child rights and therefore of international law.⁴⁵ Thus, the reasons for child soldiering, which include state recruitment, desire for security in war torn areas, economic benefits for poor families, social mobility, and status, have been rendered irrelevant by the police approach of many child advocates.⁴⁶

In other words, international society's desire to construct its utopia through the legal approach has extricated children from their social roots. International law has constructed an abstract subject who ought to be 'protected' no matter what the context is. The only question that matters is the age and the fact of recruitment. State violence, economic deprivation, and corruption are details that no longer matter. The utopianism, thus, ends up becoming a sort of formalism.

With international law's decontextualization and abstraction of the child subject, a literary analysis of civil war narratives offers a pertinent counterpoint. Stories of children and adolescents caught in the violence of the war recontextualize the position of the child. They construct a different image of the child that serves as critique of international law's utopia.

3. The rational child in the children's tales from the Philippine communist insurgency

This section analyses the stories of Kris Montañez in order to reveal the images of the child in the war narrative. It intends to reveal a certain image of the child that stands opposed to the international legal construction of the child. Six stories shall be dissected for this purpose: 'Kape' (Coffee), 'Toto' (Toto), 'Ang Batang NPA' (NPA Boy), 'Kabanbanuangan' (Youth), 'Panti' (Panty) and 'Kung Ano ang Gagawin ng Kanyang Tatay' (On What his Father would Do). The analysis shall be divided into three parts. First, three stories will be analysed to reveal the recurring images and plotlines in the narratives. Second, another story of the child shall be interpreted to show a variation from the previous three tales. Third, the idea of a rational child as it emerges from the analyses of the tales will be discussed.

Published in 1987, a year after the Marcos dictatorship was toppled, *Youth (Kabanbanuangan)* collects the stories of Gelacio Guillermo, who used the pen name Kris Montañez in his revolutionary writings. He was the most authoritative voice in the movement's cultural sphere.⁴⁷ In fact, it was him who determined which manuscripts would be circulated by the underground movement.⁴⁸ He had earlier trained in the Iowa Creative Writing Center before becoming editor of the insurgents' literary folio at the height of the rebellion. During his editorship, he visited the guerilla zones in Central Luzon, Cagayan Province, Cordillera Region, and Negros Island in the late 70s and early 80s, collecting publishable manuscripts for the folio, in which some of the stories collected in *Youth* also appeared.⁴⁹

The story 'On What his Father would Do' first appeared in *Ulos (Torch)*, the New People's Army's literary journal, in 1982. The title itself speaks of a parent-child relationship. The word 'father' (Tatay) suggests this, for one cannot be a father without a child. This signifier 'father' is meaningful in relation to the signifier 'child', which is not in the title but is nevertheless implied by it. The father is thus present in the title, but the child is absent. Nonetheless, this binary opposition between who is present and absent shall be reversed in the narrative where the child has a pervasive presence while the father is literally absent. The father, however, exists in the narrative as a model and signifier of command. His physical absence allows the child to assume the position of the father as he would do what his father usually does to promote the insurgency.

⁴⁵*Ibid.*, at 138.

⁴⁶*Ibid.*, at 151–4.

⁴⁷See 'Introduksyon', in *Muog: Ang Naratibo ng Kanayunan sa Matagalang Digmang Bayan* (1998).

⁴⁸C. Hau, *Necessary Fictions: Philippine Literature and the Nation, 1946-1980* (2000), at 255.

⁴⁹See Montañez, *supra* note 7.

The story begins by introducing the spatio-temporal determination and the characters: One morning, Marcial was walking to the clearing to dig up root crops . . . Bravo the dog was following silently while they were treading the narrow pathway down the mountain. “You get the big root crops for the comrades.” This is the order of his father before leaving for the city. He would buy a few things needed by the comrades who were camping up the mountain. He would return tomorrow. Marcial’s father was the communications officer of the insurgents.⁵⁰

The short excerpt sketches the spatio-temporal setting. It is one particular morning near a newly-cleared farm (*kaingin*) just below a mountain (*bundok*). This space tells as much about the character as the place. Marcial is a farmer’s child. They plant root crops which they harvest for the rebels in the mountain. The mountain is a signifier here. It is like a magical place where the comrades live. ‘I wish Father would bring me there again when he goes up’, the childish wish of Marcial.⁵¹

The story begins with the departure of the child from home in order to perform a task set by an absent father. Along the way, the hero and his dog meet government troops who interrogate the child. The soldiers kick the child as they suspect him to be a courier of the rebels. They also kill the dog using Marcial’s tool for digging root crops. They take the dog for its meat. They allow Marcial to go and get them the root crops. But they threaten to burn his house in case he tells people that soldiers are hiding at the foot of the mountain. In this encounter, the hero is symbolically branded as he receives Bravo’s blood on his shirt. Nonetheless, he physically survives the confrontation with the soldiers. But a psychological dilemma thereafter confronts the child. If he does not tell the comrades that there are soldiers, they might not be able to prepare for any attack. If he tells the comrades, the soldiers might burn their house.⁵² It is at this moment that he asks the question: What would his father do? The words of his father return to his mind: ‘The letters of comrades must always reach their destination, be it day or night. The late arrival of the information is a matter of life and death. For this reason, every news should reach them as early as possible.’⁵³ These words would help the child resolve the dilemma. ‘Marcial smiled. He walked faster, up to the mountain. News cannot be late.’⁵⁴

The last three sentences of the story tell us that the hero has performed his task. Although the original task is to dig root crops, a higher task is fulfilled. It is higher in the sense that instead of root crops, Marcial would be bringing an information that is a matter of life and death for the insurgents. This resolution is exemplified by Marcial’s ‘*ascent*’. He assumes the role of his absent father and then he goes alone to the mountain where the comrades are camping. In other words, there is a double ascent of the child that takes place. First, the child ‘ascends the throne’⁵⁵ of the father, as it were. This means he now plays (unofficially) the role of communications officer of the rebels. Second, the child goes up to the utopia as symbolized by the mountain (*bundok* or *boondocks*)⁵⁶. The mountain in Montañez (an authorial pseudonym that also suggests mountain) is not just a literal mountain. It is a guerrilla zone; in a word, a community.⁵⁷

Based on the above analyses, one can summarize the actions of the child as plotted by the narrative. From the initial situation, the child hero departs from home to perform a physical task. He

⁵⁰Montañez, ‘On What his Father would Do’, *ibid.*, at 13.

⁵¹*Ibid.*

⁵²*Ibid.*, at 17.

⁵³*Ibid.*, at 18.

⁵⁴*Ibid.*

⁵⁵The folktale usually ends with ‘The hero is married and ascends the throne.’ V. Propp, *Morphology of the Folktale* (1977), at 63.

⁵⁶The ‘boondocks’ (Anglicized ‘bundok’ or mountain) were the last refuge of the anti-colonial insurgents that resisted the US recolonization of the islands in 1899.

⁵⁷In ‘Did many people attend the burial?’, the narrator ends the tale: ‘Ka Julian has no family, home, and farm to return to, but a whole guerilla front is waiting for him.’ See Montañez, *supra* note 7, at 12.

encounters government troops and experiences a form of violence. He then wrestles with a psychological dilemma and resolves it with the help of his father's words. The resolution of the dilemma is done through a double ascent of the child to the position of the father and to the mountain. This results in the survival of the hero and the outwitting of the soldiers. Thus, the narrative ends with the fulfilment of the more important task of bringing 'intelligence' which like food also sustains the lives of the insurgents.

The story titled 'Panty' follows the same plot structure. The initial situation introduces the characters: Sol and her classmates, Nana Pacing, and the Philippine Constabulary (PC). It is set in a village in the countryside where Sol and her elementary school classmates reside. 'Panty' begins with the departure of children to school. They meet Nana Pacing who is trying to cross to another village and deliver medicines to her comrades. The medicines are kept in her basket covered by vegetables. The soldiers, however, discover the medicines and they push Nana Pacing to the ground. They accuse her of smuggling medicines to the rebels as they try to trample the medicines and syringes underfoot.⁵⁸

After witnessing the violence against the elderly, Sol goes to the rescue. She suggests the way to smuggle the medicines. She and her classmates would hide the medicines in their panties and cross the checkpoint. Thus, they not only help Nana Pacing; they assume the role of the adult courier and pass through the obstacle. Indeed, Sol and the children succeed in bringing the medicines through the checkpoint under the nose of the villains. They outwit the troops and perform the task of the adult. As the narrator puts it, 'They were very late for their classes, but the medicines would reach the comrades up the mountain.'⁵⁹ The story also ends with an 'ascent' to the mountain (*bundok*).

The third story to be analysed has a provocative title 'Ang Batang NPA', the adjective being the word 'child' qualifying the noun 'NPA'. The title, which I translate as 'NPA Boy', might suggest an armed child warrior. But this is not the case. In the story, the phrase really comes from a joke which describes the child as 'NPA Boy' after performing unofficially the role of a courier. The first words of the story are indicative of the psychological conflict in the child: 'The enemy!'⁶⁰ While attending the class, the grade 2 pupil Boy sees soldiers travelling to their village. The 'comrades' are in danger, he surmises, and leaves the classroom. Though nobody had ordered it, Boy decides to inform his mother and the rebels staying in their house about the presence of the 'enemy'. On his way home, he encounters some soldiers. But he is not stopped because 'he is too young to be an NPA'.⁶¹ He therefore successfully hurdles the obstacle and arrives home safe. He thereafter informs his mother and helps in hiding the backpacks and rifles. In the meantime, the rebels move to his father's farm, thereby evading a surprise encounter with the soldiers. Thus, when the soldiers pass by their house, there is no one around.

Like the two other stories, this third story presents a child functioning as courier. He is the bearer of an information. Like Marcial and Sol, Boy is also not officially part of the rebel group. He only 'ascends' the adult role of the 'komo' or communications officer. Like Marcial, he is aware of the danger posed by the coming of the soldiers. The insurgents are staying in their house. Thus, the exclamatory first words of the story reveal the psychological effect of the soldiers' sudden appearance. While the action to assume the role of the communications officer seems a mature decision, the tale also presents the child with his intellectual limitation. During breakfast, one of the rebels tells Boy that he would become a member of the NPA when he grows up. The child retorts: 'Is there no NPA boy?' Towards the end of the story, the rebel quips that 'yes, there is an NPA boy, you'.⁶² These exchanges represent the psychological state of the child. Though he may

⁵⁸'Panty', *ibid.*, at 33. 'Namundok' (To leave the city for the mountains) suggests this utopian practice.

⁵⁹'Panty', *ibid.*, at 33–5.

⁶⁰'NPA Boy', *ibid.*, at 39.

⁶¹*Ibid.*

⁶²*Ibid.*, at 39–40.

function as a courier, there are things that he cannot yet understand. More importantly, these exchanges present the insurgents' view that children, like Boy, Sol, or Marcial, are not members of the insurgent group. They cannot be members even if they function as 'komo'.⁶³

In contrast to these stories in which the initiative to help originates in the child, the story 'Kape' (Coffee) presents the child as an ordinary helper. This very short tale tells of Aling Marta's stratagem to distract the patrolling soldiers. It begins with the soldiers waking her up to check her house for rebels. Knowing that there are comrades in the neighbourhood, she invites the soldiers to have coffee in order to distract and detain them for a while. She then orders her youngest daughter Nes to convey the information to the rebels sleeping in Ka Alex's house and, of course, to bring some coffee for the soldiers. While waiting for the coffee, Aling Marta offers the soldiers some food. 'Just eat and eat! ... Take your time, for you might not be able to chew the food properly.'⁶⁴ With the coffee delivered, Aling Marta achieves her objective of detaining the soldiers as the rebels stealthily escape.

Based on the summary, it may be noted that Aling Marta is the hero of the tale since all the pressure weighs on her shoulders. The child in this case has only a subordinate role. Unlike in the other tales, the narrative does not talk about the psychological state of the child. The child is merely ordered to perform a task. Although it is the child that brings back the coffee, it is Aling Marta who confronts the soldiers. She is the one who quickly thinks about the 'resolution'. In one sense, she is also the one who outwits the soldiers.

Nonetheless, 'Coffee' may still be considered a variation of this 'outwitting the soldiers' type of story. This type is characterized by hurdling the obstacle through a trick. 'Panty' belongs to this type. Both tales have characters that hurdle the obstacle with a trick. The former by keeping the medicine in the panties; the latter by distracting the soldiers with coffee. Both also feature child characters. Sol and Nes function as helpers of the elderly. The main difference between these two variations of the same type lies in the extent of the child's role. In 'Panty', the child has the initiative and ascends the role of the elder. In 'Coffee', the child is a mere helper and plays a subordinate role.

From the viewpoint of the 'ascent' segment, 'Panty', 'On What his Father would Do', and 'NPA Boy' are similar.⁶⁵ The children in the three stories resolve their own dilemma. They think about the proper solution. Marcial decides to inform the rebels about the presence of soldiers. This same act is almost automatic in Boy. It is Sol who thinks about hiding the medicine in her panties. In all these cases, the children are represented as a rational being who calculates things. They are a thinking subject. Based on this rationality, the children ascend the position of their elders. Indeed, the element of ascent is present in all three tales and ties them together into a group. By assuming the position of the absent/weak elder, the child becomes a completely rational agent. The child thinks and independently resolves psychological dilemmas and acts according to this rationality.

What makes this rationality possible?

An examination of the structure of the tales is in order. A critical part of the structure, which precedes the hurdling of the obstacle, is the encounter between the hero and the villain, that is, between the child and the soldiers. This encounter is violent. The violence ranges from the physical to the psychological. In 'On What his Father would Do', the killing of the child's companion dog was brutal. It was a surprise blow after caressing the dog. Blood stained the child's shirt. The brutal killing of the dog left the child alone in the world. The violence forced the child to assume the position of his father. This physical brutality is matched by the psychological threat to Marcial.

⁶³Insurgents do not welcome everyone. See Y. Guichaoua, 'Rebel Recruitment', in G. K. Brown and A. Langer (eds.), *Elgar Handbook of Civil War and Fragile States* (2012), at 182.

⁶⁴See 'Coffee', *supra* note 7, at 98.

⁶⁵In his critical work, Montañez defines stock characters in mass art as devices for rendering the forces at work in society. One of these is 'the boy who, starting out early in revolutionary work, is destined to follow the footsteps of his elders'. Cited in Hau, *supra* note 48, at 256. Marcial, Boy, and Sol belong to this type. My interpretation, however, emphasizes their immediate ascent to the adult role within the narrative.

As the soldier pointed his gun to the child, Marcial cried ‘Don’t kill me sir!’⁶⁶ It was a bluff though. The soldier laughed and threatened him not to tell anyone about their presence in the area. The same psychological intensity could be felt upon the entrance of soldiers in ‘NPA Boy’ and ‘Coffee.’ In ‘NPA Boy’, the exclamation ‘the enemies!’ captures the child’s fear aroused by the sudden entrance of soldiers to the village. ‘The comrades are in danger’, the boy thought.⁶⁷ On the other hand, Aling Marta nearly kissed the soldier who was peering into the house to check if there were strangers.⁶⁸ The subtle threat of this unwelcome presence in the countryside is more intense in ‘Panty’. The children, who kept the medicines in their underwear, were slowly walking as they pass the checkpoint. ‘After they passed, the soldier shouted suddenly. The school children were stunned. “Why, Sir?” Sol nervously asked as she turned back. “Walk faster!”’ The sense of relief was immediate.

It is interesting to note that the tales achieve this psychological depth without much words. Description is reduced to the minimum level. Yet the stories are able to represent this psychological form of violence against children. Indeed, aside from the stylistic dimension, it is worth noting that in most of the stories the psychological form of violence takes a very predominant position.⁶⁹ In fact, in the four stories discussed above, there is no physical violence against any of the children. In Marcial’s case, the physical violence was indirect. The soldiers smashed the dog’s head rather than the character. In lieu of physical violence, the tales capture a more subtle form of violence inflicted on children in the protracted war. It is a violence against the mind, a violence that transforms the childish and innocent mind into maturity in order to cope with the violence.

Aside from the violence, one of the tales also shows the child as a labourer. This is an important empirical detail in Marcial’s story. The young child was tasked to uproot the biggest root crops. He was given a new tool for tilling for this purpose. This suggests that the child knows how to harvest them from underneath the soil. This belies the conventional idea of childhood as a ‘time when children play, learn’, and are cared for ‘within the settings of the family and the school’ free of ‘economic, social, and political responsibilities’.⁷⁰ Certainly, early labour is not unusual in the countryside. Children help their parents in farming and fishing. Tilling, swimming, canoeing, fishing, and crab catching are not unfamiliar skills to these children. In another story titled ‘Toto’, Celso, the son of a retiring farm labourer, also helps in planting and harvesting sugarcane in Negros Island.⁷¹ His sister Upeng also leads a women’s collective in utilizing unused land owned by the landlord.⁷²

Recent studies have considered child labour as evidence of the child’s competencies.⁷³ Based on Lev Vygotsky’s work, the idea that there is a local ‘route to maturity’ that varies from one culture to another has gained acceptance. Thus, it has been argued that caregivers in different cultures ‘provide tools for and approaches to learning and problem solving that are valued locally and meaningful to community members’.⁷⁴

Faced with violence and early labour, the child in the war-torn countryside had to cope with all the challenges of life. In Marcial’s case, he must be prepared to take the ‘adult role’ early on. He knows how to till the soil for root crops. He also experiences the violence inflicted on his dog. The encounter with the soldiers puts him in a dilemma: To inform or not to inform. In order to resolve this, Marcial ascends the role of the father. This assumption is a critical segment in the structure of

⁶⁶See Montañez, *supra* note 7, at 16.

⁶⁷*Ibid.*, at 39.

⁶⁸*Ibid.*, at 96.

⁶⁹The title story ‘Kabanbanuagan’ (Youth) is an exception. It tells of Tim, a minor and organizer who was beaten until ‘his whole body was aching’. Montañez, ‘Kabanbanuagan’, *ibid.*, at 22–3.

⁷⁰See Beirens, *supra* note 38, at 150.

⁷¹See Montañez, ‘Toto’, *supra* note 7, at 63.

⁷²*Ibid.*, at 67.

⁷³See Beirens, *supra* note 38, at 150.

⁷⁴LeVine and Rogoff as cited in Beirens, *ibid.*

the tales. At that moment of assumption, the child begins to think like an adult. He is, of course, moulded by life in the countryside. Labour has prepared him to decide and act rationally. In other words, there should not be any problem transitioning from farmer to informer. Telling the rebels about the presence of the soldiers in the area is far easier than looking for root crops.

In sum, violence and labour form the backdrop of the child's daily life in the civil war. This life experience pushes the child to embark on a forced march to maturity and rationality. In these stories, one finds a child trained in labour and thus prepared to think in a rational way and make decisions alone. This is best exemplified by the task in the story 'On What his Father would Do', which is to harvest the biggest root crops for the insurgent friends. This segment is followed by a confrontation between the child and soldiers which is characterized by both physical and psychological violence that complicate the narrative. This conflict or narrative agon is then resolved by 'the ascent' of the child to the position of the elder. This movement is symbolic not only of the assumption of the elder's position and the performance of the adult function; it is also an ascent to adult rationality. It must be emphasized here that Marcial conducts a thought experiment on what his father would do. This mode of thinking happens on two levels. The first one is to think of the thought experiment, that is, positioning himself in the father's position. The second level is to think what the father would, in the first place, think and do given the circumstances. The same kind of rationality is exemplified by Sol and Boy. Through their own rational thinking, the medicines get through the check point and the rebel squad evades the soldiers. Sol and Boy also get through the obstacle and they return to their classrooms.⁷⁵

What emerges in this hermeneutics of the tales is a rational image of a child. It is a child with his own initiative, a problem solver. The child is both helper and hero. The child is capable of helping adults and performing their roles. What emerges therefore is an intelligent agent rooted in society; an agent shaped by agricultural labour, schools, family, and the violence arising from the civil war. Though a construct, this agent is not necessarily an abstraction and decontextualized subject. It is a construct of the social environment as concretized by fictional details.

4. The clash of utopias: The utopian images of the child in international law and literature as critique

In the preceding two sections, it has been shown that both international law and civil war literature have different visions of children. International law constructs the helpless child in need of paternalistic aid from adults. In contrast, civil war literature represents a rational agent shaped by labour and violence. Thus, the legal and the literary imagine two different images of a child. In this section, I shall argue that these images are legal as well as literary utopias that critique each other's vision. I begin by stating the reason for juxtaposing the visions of literature and international law and explain how visions of utopia may underlie both literature and law. Then, I proceed to a discussion on why the literary vision of the rational agent is utopian by contextualizing it within the concept of the people's vision and its collective utopia of the boondocks. I shall then move on to explain how this vision critiques implicitly the image of the child constructed by international legal discourse. The section, in turn, reads international law's utopian vision as a counter-critique of Montañez's utopianism. It ends by concluding that the predominant images of the child in both international law and civil war literature are clashing utopias. They both aspire to transform reality while criticizing each other's vision of children.

Since this section argues that both international law and literature have opposing visions that critique each other's position, it is important to emphasize the invisible ties between Kris Montañez's short fiction and the Convention. In his preface to the tales, Montañez relates that

⁷⁵Both stories have the same ending. After the task is fulfilled, the children attend their classes. See Montañez, *supra* note 7, at 35, 41.

he went to the guerilla zones in Central Luzon in 1978, Eastern Cagayan in 1981, Cordillera in 1982, and Negros Island in 1984.⁷⁶ All of these fronts were hotbeds of the insurgency with Central Luzon being the birthplace of the Huk Rebellion in the late 1940s and the re-established New People's Army, whose founders included a veteran Huk commander.⁷⁷ Out of this immersion in the guerilla fronts came the tales on youth. 'NPA Boy' first appeared in *Ulos* in 1978. The story 'Youth' followed in April, 1982. 'Panty' and 'On What his Father would Do' saw the first light of day in September 1982. 'Coffee' was later included in the complete collection in 1987.⁷⁸ Thus, the tales were conceptualized, written, published, and collected within a ten-year period from 1978 to 1987. Unsurprisingly, the negotiation of the UN Convention on the Rights of the Child began with the establishment of an open-ended Working Group of the UN Commission on Human Rights in 1979. This meant that all the member states in the Commission could participate, including representatives of other states, international organizations and non-governmental organizations. The group met continuously until 1988 when it presented a complete draft of the Convention to the UN General Assembly.⁷⁹ The negotiation, codification, and ratification of the Convention therefore spanned the years 1979 to 1989, running parallel to the production and publication of Montañez's tales. This connection between international law and literature should not surprise anyone since the most contentious issue in the Convention is also the main subject of the stories collected in *Youth*. Both texts were certainly trying to comment on the same social reality. In fact, their visions and interpretations of the reality of the child at war not only diverge, but also contend.

Literary and legal texts, of course, have often represented and embodied certain visions, particularly visions of utopia. The word 'utopia' was a neologism that has been traced to Thomas More's literary work which depicts an island society where life was better than life in the writer's contemporary England. It is based on the Greek '*topos*' which means 'place', and the prefix 'ou', which means 'no'. Hence, the word 'utopia' now suggests a 'non-existent good place'.⁸⁰ This has led one scholar to describe utopia as 'social dreaming'.⁸¹

Such social dreams are expressed in both literary and legal texts. Literary critic Frederic Jameson, for instance, has explored the idea of utopia in many of his works from *Marxism and Form* (1971) to *Archaeologies of the Future* (2005).⁸² In *The Political Unconscious: Narrative as a Socially Symbolic Act*, Jameson proposes that narrative has to be seen in the Straussian sense of a symbolic or 'imaginary resolution of a real contradiction'.⁸³ One may recall that Levi-Strauss noted in his anthropological studies that the so-called 'primitive' society of the Caduveo Indians was being torn apart by social hierarchy and so they had to imagine the solutions to their society's problems. Since the Indians were 'unable to ... live this solution ... they began to *dream*, to project it into the imaginary ...'.⁸⁴ This means that exploration of the utopian thought or solution is preliminarily done in the realm of the imaginary – the work of art. Literary texts therefore may be decoded as a product of an ideological act with the function of 'inventing' imaginary solutions to 'irresolvable social contradictions'.⁸⁵ For Jameson, these

⁷⁶*Ibid.*, at vii.

⁷⁷This old rebellion is analysed in B. J. T. Kerkvliet, *The Huk Rebellion: A Study of Peasant Revolt in the Philippines* (2014).

⁷⁸See Montañez, *supra* note 7, at ii.

⁷⁹See Cantwell, *supra* note 7, at 515.

⁸⁰L. T. Sargent, *Utopianism: A Very Short Introduction* (2010), at 2.

⁸¹*Ibid.*

⁸²*Ibid.*

⁸³F. Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act* (1983), 62.

⁸⁴Levi-Strauss, cited in Jameson, *ibid.*, at 64 (emphasis added).

⁸⁵*Ibid.*, at 64.

imaginary solutions are, of course, also expressions of the ‘unity of a collectivity’.⁸⁶ The concept of utopia thus combines the objective of transcending the present conditions and the expression of this transcendence through a collective’s vision.⁸⁷

Legal texts may also be analysed for the social dreams that they contain.⁸⁸ As Robert Gordon writes, laws ‘sketch pictures of widely shared, wistful, inchoate visions of an ideal’.⁸⁹ If literature is a symbolic reconciliation of insurmountable social contradictions,⁹⁰ the legal order ‘substitutes as harmonious abstract world for the concrete alienation that characterizes their [people’s] lived experience’.⁹¹ In this legal imaginary, the harsh reality of life is reified into a better world of human community. As Peter Gabel has argued, the legal imaginary ‘allows us to experience, however dimly, a feeling of *collective* spontaneity free of interpersonal domination’.⁹² It allows us to ‘imagine a world in which people have “moral obligations” to one another’ and in which people can experience ‘a feeling of reciprocal recognition and commitment’.⁹³ Hence, people’s belief in law springs from a ‘desire to believe that the abstract is concrete, that the imaginary is real’.⁹⁴ From this viewpoint, the judicial ideologist is a peddler of imaginary worlds⁹⁵ where one may find collective unity and reciprocity.

Such visions of the ideal and yearnings for ‘an experience’ of ‘a feeling of collective spontaneity free of interpersonal domination’ substitute a ‘harmonious abstract world’ for one’s alienated experience. For instance, as Gabel explains, ‘God’s harshest commands, as they were embodied in the politico-legal ideology of feudalism, allowed people to experience a feeling of genuine love through the *image* of possible salvation’.⁹⁶ Such substitution of a harmonious world is utopian not because the picture of harmony and equality is false. Rather, such picture of a harmonious world is a ‘representation’ of one’s ‘imaginary relationship to his real conditions of existence’.⁹⁷ It is the real conditions of existence that the law would like to transcend. Moreover, such ‘representation’ or ‘image’ is utopian for it emanates from hegemonic groups and is also an affirmation of collective solidarity.⁹⁸

These characteristics of transcendence and collective solidarity are certainly found in international legal texts. Treaties that create regimes also express ‘collective solidarity’ as they come closest to ‘legislation by the whole community of States’ and have ‘powerful law-creating effect’.⁹⁹ They aim to transcend a particular problematic condition of existence and thus also create their own versions of ‘images’ of possible salvation. International human rights, for example, follow

⁸⁶*Ibid.*, at 281.

⁸⁷This mode of dreaming has been observed in narratives where the child is a dominant character, especially in folktales. Little Red Riding Hood, Hansel, and Gretel, and many more come to mind. Folk tales allow writers to express their visions of the ideal world. M. Warner, *Fairy Tale: A Very Short Introduction* (2018), at 75–85. Roman Jakobson also writes, ‘A [fairy] tale fulfils the role of a social utopia’. R. Jakobson, ‘On Russian Fairy Tales’, in *Russian Fairy Tales* (1945), at 650. This affinity between utopia, on one hand, and children’s tales and revolutionary writings, on the other, makes the utility of the notion of utopia in the analysis of Kris Montañez’s short fiction appropriate. *Youth*, which collects stories about children in the Philippine internal war, does have strong links to both folktales and revolutionary literary tradition. Aside from the child hero, the stories in *Youth* exhibit a familiar plot, similar motifs, and a ‘heroic optimism’ that make for happy endings – all general markers of a folktale.

⁸⁸See E. Pashukanis, ‘Law and Marxism’, in M. Freeman (ed.), *Lloyd’s Introduction to Jurisprudence* (2014), at 1010.

⁸⁹R. Gordon, ‘Law and Ideology’, in *ibid.*, at 1034.

⁹⁰Jameson, *supra* note 83, at 64.

⁹¹P. Gabel, ‘Reification in Legal Reasoning’, in Freeman, *supra* note 88, at 1043.

⁹²*Ibid.*, at 1049.

⁹³*Ibid.*

⁹⁴*Ibid.*

⁹⁵Gabel describes him as ‘a social theorist of the imaginary’. *Ibid.*

⁹⁶*Ibid.*

⁹⁷L. Althusser, *On Ideology* (2020), at 36.

⁹⁸Jameson argues that all ideological visions are utopian since they are expressions of the unity of a collectivity. It follows that even conservative or statist texts may be considered utopian. See Jameson, *supra* note 83, at 276, 279, 281.

⁹⁹J. Crawford, *Brownlie’s Principles of Public International Law* (2019), at 29.

narratives of human development.¹⁰⁰ International environmental law is driven by images of averting catastrophes such as climate change and environmental degradation. As discussed above, the child's rights regime, which has one of the highest number of state signatories, is certainly no exception. Like children's tales, it also constructs a certain image of the child and expresses visions of an ideal world. The international law of the child also 'sketch(es) pictures of widely shared, wistful, inchoate visions of an ideal.' It offers, too, 'an image of possible salvation'.

In the following paragraphs, I turn to explain why the image of the rational child is utopian and stands opposed to international law's utopian vision of the child. At first glance, the child as rational agent is a product of realistic depiction of the world. The details of labour, violence, and family relations provide a rational explanation of the actions of the character. The absence of magic deprives the world of the child of the element of the extra-rational explanation. Only social forces and situations form the personality of the child. In other words, in Montañez's fiction one sees the rootedness of the fictional construct in its social milieu.

This rootedness in social realism may discourage one to read the tales as utopian. But a closer look would reveal that social rootedness is the nexus that connects the rational child and the vision of utopia. The social world of the children depicted in the tales does not only explain their rationality; it also provides the most powerful reason for social transformation. In the tales, to read the social is but to read the people's war in the process of being made. If the novel form can portray the world of the people's war,¹⁰¹ with the multiple threads and broad sweep that its narrative structure allows, then short fiction also does take part in the 'war of representations' of the civil war due to its narrative intensity and concentration that it distinctly enables as a form. Through a short tale, one sees a snapshot of the people at war in the Philippine countryside.

Historically, the people's war combines the military strategies of 'guerilla warfare' and 'protracted war' that 'depended on the support of the people in the countryside'.¹⁰² In Mao's metaphorical language, the 'people are the sea that the revolutionary swims in'.¹⁰³ Indeed, the people's war is the mobilization of the people for the purpose of defeating the enemy.¹⁰⁴ From the people, come soldiers, intelligence, food, housing, etc. A people's war is characterized by a collective act in the form of class struggle.¹⁰⁵

Read in the context of the people's war, the child-hero forms part of this collective struggle to transform the world by defeating the enemy in the countryside. The child becomes a participant in a special form of '*a levée en masse*'. Although such a category does not exist in the law of civil war, the people's war approximates it. A people's war and *levée en masse* are analogous for their being a total war where everyone is involved to a greater or lesser degree. In the law of war, the *levée en masse* describes the spontaneous taking up of arms by civilians to defend the country. Its doctrinal origins go back to the American and French revolutionary wars where a high degree of civilian participation was first observed.¹⁰⁶ This should not be surprising since revolutionary warfare has always triumphed with the help of civilians. Michael Walzer confirms this when he wrote that one of the signs that an anti-insurgency campaign is lost is when it becomes a war against its own people. Such a war with a terrible cost becomes morally unwinnable.¹⁰⁷

Based on the exegesis above, the rebellion's *levée en masse* against government troops provides the rational child a role in the collective struggle for the transformation of the social world. As the stories above show, the children – Marcial, Sol, and Boy – provide critical information and smuggle medicines that allow the insurgents to survive. They unite with unarmed women like Aling

¹⁰⁰J. R. Slaughter, *Human Rights, Inc: The World Novel, Narrative Form, and International Law* (2012).

¹⁰¹See N. Tadiar, *Things Fall Away: Philippine Historical Experience and the Makings of Globalization* (2009), at 345.

¹⁰²G. Kai, 'People's War', in C. Sorece, I. Franceschini and N. Loubre (eds.), *The Afterlives of Chinese Communism* (2018), at 175.

¹⁰³*Ibid.*

¹⁰⁴R. K. Schoppa, 'From Empire to People's Republic', in W. A. Joseph (ed.), *Politics in China: An Introduction* (2019), at 72.

¹⁰⁵*Ibid.*, at 72–3, citing Ch'en Yungfa, *Making Revolution: The Communist Movement in Eastern and Central China* (1986).

¹⁰⁶See Hernandez, *supra* note 21, at 388.

¹⁰⁷M. Walzer, *Just and Unjust Wars* (1977), at 196.

Marta and Nana Pacing in building the political ‘enclaves’ that allow insurgents to move freely in the countryside. The children therefore become part of the water that allows the fish to breathe and to swim away from danger. Together with the women and insurgents, the children join a collective ‘utopian practice’ of community construction.

The rational child’s association with the ‘*bundok*’ (mountain) supports the interpretation that the child forms part of this mode of utopian practice. Marcial walks faster to the mountain.¹⁰⁸ Tim escapes from captivity and flees to the mountains.¹⁰⁹ The medicine smuggled by Sol would reach the comrades on the mountains.¹¹⁰ The mountain is without doubt an image of mystery. They were (and remain) ‘centers of pilgrimages’ of religious sects and secret societies.¹¹¹ In colonial times, the mountain or boondocks were the refuge of the outlaws, insurgents, and religious visionaries who were more often one and the same person.¹¹² Maoist theory, which teaches the encirclement of the city by the countryside, clothes the image of the boondocks with political realism. The rebels must establish their power where the enemy has barely any presence. The mountain therefore stands as both a symbol of rebel power and an enigma to the enemy.

More importantly, the mountain is a place where comrades stay. The persecuted finds home in the mountains.¹¹³ There is a community to welcome him there. As the narrator in one of the tales puts it, ‘For Ka Julian, there is no longer a family, a home, and a farm to return to, but a whole guerilla zone is waiting for him’.¹¹⁴ Thus, the escaping Tim saw ‘in front of him . . . the mountain range where the red warriors were camping’.¹¹⁵ He ran faster as the light of the oil lamps of the guerilla zone appeared closer to him. This community on the mountain is a refuge of the persecuted and the orphaned which replaces the family, the village, and the state. In a word, it is the new collective utopia.

Thus, one finds that the image of the child in the civil war fictions forms part of a collective vision of a utopia. The children are actors in the collective struggle for the formation of a new community. They clear the pathway to the mountain and are intimately tied to the mountain. They are bound to the collective utopia and form as a constituent part of this utopian vision. It is in this context that one could argue about the existence of a utopian element in the tales. The function of the agent is to bring the new collective into existence. But the rational agent itself forms part of and is constituted by fiction’s utopian imaginary.

This utopian vision may in turn be read as a critique of the dominant image of the child in international legal discourse. It may be recalled that the image is characterized by powerlessness, by vulnerability, by a lack of mental capacity, not to mention legal capacity. Children are also an abstract subject of rights extricated from their social environment. And this decontextualization is compounded by a legalistic approach to children’s rights which merely focuses on whether there is a violation of international legal rules that regulate recruitment.

In contrast to the international legal discourse, the tales’ narrative structure eschews a purely legal approach to the issue of the child. Though violence against children in the form of threats, detention, and physical injuries is part of the sequence, this merely provides an obstacle to the fulfilment of the objective of the hero. The violence is not seen legally. It is not surprising that no legal claims are raised on behalf of the child in all the tales. Violence is instead considered a social detail in the narrative of the child. Through this segment of violence, the tales return the details of social life to the story of the child. Other details, such as children’s social relation

¹⁰⁸See Montañez, *supra* note 7, at 18.

¹⁰⁹*Ibid.*, at 31.

¹¹⁰*Ibid.*, at 35.

¹¹¹R. C. Iletto, *Pasyon and Revolution: Popular Movements in the Philippines, 1840-1910* (1979), at 210.

¹¹²*Ibid.*

¹¹³Ka Bernie, an organizer who survived a massacre finds refuge with the rebels in the tale ‘Youth’. See Montañez, *supra* note 7, at 72.

¹¹⁴*Ibid.*, at 12.

¹¹⁵*Ibid.*, at 31.

to their parents, classmates, neighbours, the rebels, recreate the social world. Also included in this reconstruction is the child's relation to production. In short, the tales re-contextualize the child and position the latter within a social milieu. Through this positioning, one finds the child and their elders working together to transform the world. What one finds is not an abstract picture of the child. International law's abstract subject of rights, a subject who, in fact, cannot exercise those rights without legal capacity, is avoided.

It may be recalled that while international law has conferred legal rights on the child, this new subject of legal rights, remains crippled by lack of legal capacity in the sense that he or she cannot exercise those rights in the courts of law without the help of the adult subjects with full legal capacity. It follows that this new legal subject of children's rights remains powerless and vulnerable despite the conferment of rights. It may be argued that the abstraction of this new legal subject is but a veil of the child's powerlessness and vulnerability. Thus, the abstract subject of rights ironically emerges together with the image of powerlessness.

To this abstract picture of the child, the tales contrast a different image. It is a child moving in social life. It is a being that reacts to the concrete challenges of life. Concretized in their social milieu, children decide and act according to a certain rationality. The child decides between two choices: To inform or not to inform.¹¹⁶ They find a way to smuggle medicines.¹¹⁷ They run instinctively when they see the danger of roving soldiers.¹¹⁸ Seen from the totality of the fictional social world, the child is a rational agent who would help realize a new collectivity.

This ability to act for the realization of the utopia distinguishes Montañez's idea of the child from that of international law's. For the former, children are constructing a new collectivity and a new world. The child is not only an agent of action, but also of change. In solidarity with the adults, the child attempts to make the utopia of the boondocks a possibility and a reality. International law's child, in contrast, is not a maker of utopia. The utopia is made for the child. The adults, through their paternalistic care, create a world devoid of dangers. The children should be with their parents, in schools, and away from the war. They can neither take part in the production as farmhands or labourers nor can they participate as war combatants. In other words, children are treated as if they were already in utopia. They no longer need to act; the adults would act¹¹⁹ for them, legally, politically, economically.

From a certain viewpoint, the image of the rational child may be considered a critique that attempts to penetrate and shake the foundations of the theory of children's rights founded on legal capacity.¹²⁰ It must be recalled that the law, as Bruce Hafen has argued, 'has long assumed the necessity of competency'.¹²¹ This assumption has stood side by side with a contradictory assumption of children: 'To be a child is to be at risk, dependent, and without capacity and authority to decide and to do what is "best" for oneself'.¹²² Thus, to extend rights to the incompetent runs counter to the notion of right as power to obligate.¹²³ The incompetent child has no capacity to sue another. With these assumptions, claiming rights is virtually a nullity.

The image of a rational child totally negates the assumption of international law that children cannot decide on their own. It negates the idea of adults as the best executors of the will and rights of the child. It negates the idea of powerlessness of the child as propagated by international law. It negates the 'infantilizing'¹²⁴ effect of international legal discourse. In a way, the image of a rational child may be considered the global south's answer to what Vanessa Pupavac calls 'the

¹¹⁶*Ibid.*, at 17.

¹¹⁷*Ibid.*, at 34.

¹¹⁸*Ibid.*, at 39.

¹¹⁹J. Goldstein as cited in Federle, *supra* note 39, at 453.

¹²⁰*Ibid.*, at 454.

¹²¹*Ibid.*

¹²²*Ibid.*

¹²³*Ibid.*, at 453.

¹²⁴I borrow here Jason Hart's term 'infantilising adolescents'. See J. Hart, 'Introduction', in Hart, *supra* note 19, at 3.

infantilization of the South'. In her reading of the UNCRC, she argued that that the Convention's provisions universalize the Western model of childhood which 'emphasize(s) the role of individual causations and professional interventions and de-emphasize the influence of the wider social, economic, political and cultural circumstances'. As a result, developing societies are 'judged as having violated their children because the lives of children do not conform to the image of childhood held in the West'. Thus, the 'experience of childhood in developing countries is outlawed'.¹²⁵

The image of the rational child as represented in the tales defies this construction of childhood. Steeled by labour and violence, the insurgent children climb out of the cradle and walk away. They serve as a foil to international law's infant. They resist the baby-sitters and reject their utopia. They rise in rebellion against the Western model of childhood and remain an outlaw in the boondocks.

Nonetheless, by saying that the rational child critiques the assumption of international law, it is by no means argued that children shall have no rights. On the contrary, it is the idea of a rational child that is compatible with the very notion of rights. A rational child, who can decide on what is good for her, can exercise those rights conferred upon her. Legal capacity, in fact, would arise from this rationality. Thus, it can no longer be argued that children should have rights because of their incompetency.¹²⁶ Rather, children should have rights because they are rational¹²⁷ and they can act according to their interests.

With this critique of the foundational logic of rights, a purely legal reading of the stories would be too superficial. It would be easy, for instance, to criticize the rebellion for 'using' children as couriers. The rebels, according to this line of thought, tolerate the position of the child as a 'helper' of the rebellion. Though children in the tales were not actively recruited, the rebels would still violate the rights of children for allowing them to play secondary roles.¹²⁸

Indeed, a legalistic approach to the tales risks smuggling in the assumption that the child is bereft of any agency. Only a dogmatic legal approach would critique the decisions of Marcial, Sol, and Boy to perform the adult role of communications officer. Thus, to read the rational children's decision to act and function as helper as a form of 'use of children' would need the presumption that children cannot decide on their own. This mode of reading children's tales would be a step closer to the challenged model of 'coercion'.¹²⁹ Children take part in the rebellion only because they were coerced. This proposition is no longer unchallenged.

Notwithstanding the problematic assumption underlying international law, it offers another utopia as an alternative to the collective of the boondocks. It is in proposing this alternative that international legal discourse poses a real challenge to the vision of Montañez's fiction. International law envisions a world where children are not in war zones; where children are not required to do productive labour; where children are only playing and studying in schools and in their homes; where adults would decide for these care-free children; where adults would guide children until they reach maturity; where politics of a society would not seep into the family and transform children into political animals.

This vision of children and their world is without doubt utopian. It is aspirational. It envisions a political order that completely contradicts the reality in which the child in war-torn countries currently survives. In a sense, this imaginary order is a 'protest(s) against a state of things which the experience of (their) authors taught them to condemn'.¹³⁰

But while this is utopian, it challenges the utopianism represented in the civil war tales of Montañez. Primarily, international law challenges the latter's tolerance for total war. Second, it

¹²⁵V. Pupavac, 'The Infantilization of the South and the UN Convention on the Rights of the Child', in H. Steiner and P. Alston (eds.), *International Human Rights in Context: Law, Politics, Morals* (2000), at 518.

¹²⁶See Federle, *supra* note 39, at 463.

¹²⁷Rationalism was also a main line of modern utopian thought. See E. H. Carr, *The Twenty Years Crisis, 1919-1939* (1939), at 23.

¹²⁸See Paris Principles which state '... recruitment and use of children violate their rights ... and causes them ... harm'.

¹²⁹See Guichaoua, *supra* note 63, at 178.

¹³⁰Lord Acton on Plato, Plotinus, and More as cited in Carr, *supra* note 127, at 6.

denounces the involvement of the child in the struggle to transform the world. Third, it offers a very different image of a vulnerable child. Fourth, it envisions a form of paternalistic community. Finally, it relies on the legal means of transforming reality. In contrast, civil war narratives support a people's war. Second, it views the child as a participant and agent in the transformation of reality. Third, it presents a rational child rather than a helpless child. Fourth, it envisions a class-based collectivity. Finally, it relies on the political and revolutionary means of transforming reality.

Hence, what we have is a clash of utopias. The imaginaries of international law and literature do contend. At this moment, we still cannot determine which of the two utopias would succeed in transforming the conditions of children, particularly those in war-torn areas. Nonetheless, the mere fact that both imaginaries exhibit the utopian impulse should not be a reason to discount and dismiss them. Utopias transform reality when they are practiced. The idea of freedom was the ascendant bourgeoisie's utopia and was made into flesh by the bourgeois revolutions.¹³¹ The ideas of a socialist state and state ownership of the means of production were dismissed as wild dreams until the Bolsheviks made them a reality and used them to produce extensive industrialization.¹³² The idea of 'collective security' was considered utopian in the interwar years.¹³³ Now, it is a cornerstone of the United Nations system through the Security Council.¹³⁴ Indeed, 'theory, as it develops out of practice and develops into practice, plays its own transforming role'.¹³⁵

5. Conclusion

This article has examined a critical intersection between civil war literature and international law: The insurgent child. The image of the child soldier has recently become a bone of contention among states, rebel groups, and child rights advocates. With the codification of the rights of the child under the UN Convention on the Rights of the Child, the war for representation of the idea of the child has reached a new level. International law's inclusion of employment of child soldiers as a war crime is certainly a turning point.¹³⁶ While all these legal developments were crystalizing, literature was being written to represent the insurgent child. It is, therefore, not coincidental that the writing and publication of the tales of Kris Montañez paralleled the time of negotiations for the Convention. Both texts were trying to resolve a burning issue of the day.

The images of the child, as this study reveals, are contradictory as they contend against each other. One of these images is the romantic idea of the child as innocent and helpless which was propagated by early child rights advocates. These images, consequently, became the foundational logic of international law. The other image is the revolutionary 'little red devil' prevalent in early communist literature in Soviet Russia and China. In this study, it has been shown that international law has adopted the romanticized idea of the child. Thus, it presents the child as powerless and devoid of agency. Only a form of paternalism may protect the child from dangers and guide the latter through maturity. On the other hand, the narratives of civil war represent a different image of the child. The analysis of the tales from *Youth* has revealed the child as both hero and helper. The child is a rational subject and an agent of change. The child ascends the position of the adult and performs the adult role in the construction of the utopia.

These contradictory images of the child have been described in this study as utopias. They both envision imaginary collectivities. International law, as argued earlier, imagines a union of the adult and the child, the powerful and the powerless, the capacitated and the incapacitated. Through this union, the helpless and powerless child would be positioned in a decontextualized world. Civil war

¹³¹K. Mannheim, *Ideology and Utopia* (1936), at 203.

¹³²S. A. Smith, *Russia in Revolution: An Empire in Crisis 1890-1928* (2017), at 391.

¹³³See Carr, *supra* note 127, at 11.

¹³⁴C. Gray, 'The Use of Force and the International Legal Order', in M. Evans (ed.), *International Law* (2018), at 601.

¹³⁵See Carr, *supra* note 127, at 13.

¹³⁶See the case of *Prosecutor v. Thomas Lubanga Dyilo*, 14 March 2012, Case No. ICC-01/04-01/06.

narrative, on the other hand, imagines the world of people's war. The rational child grows up in this world of collective struggle and is an active agent of transformation. The child leads the way to the utopia of the boondocks.

As contradictory and contending utopias, they not only denounce the present world, but also critique each other's visions. Thus, on the one hand, the tales present the rational child as answer to international law's powerless child. On the other hand, international law imagines a violence-free world as opposed to the idealized world of people's war. On the one hand, the tales represent a child transforming the world and moving closer to a new community in the boondocks. On the other hand, international law is representing a utopian world made entirely by adults for children.

Contradictory as they are, the utopian imaginaries of literature and international law provide us with visions of the future. They both aspire for a better world for the child. Based on this common dream, international lawyers, child advocates, and insurgents could harness these contending visions to achieve a more nuanced approach to the issue of child soldiers. International judges, for instance, may focus on children's resilience and need not subscribe to the master code of a helpless child. Advocates may also contextualize the position of children in insurgencies and push for comprehensive reforms. Finally, governments and insurgents may develop child-sensitive policies that insulate children from retaliatory violence. Guided by utopian images, the practices of international and domestic actors may yet alter the normal course of historical events. Indeed, it is not daydreaming to believe that the utopias of today would be the realities of tomorrow.¹³⁷

¹³⁷See Manheim, *supra* note 131, at 203.