REVISITING THE OPTIONAL INVOLVEMENT OF CHILDREN

"... the situation in war zones remains grave and precarious for millions of children who continue to be the main victims of today’s warfare. Their suffering bears many faces: children are being maimed, killed, orphaned, subjected to systematic sexual violence, uprooted from home and country, deprived of education and health care, and exploited as combatants…"2

I was afraid that first time. The section leader ordered us to take cover and open fire. There were seven of us, and seven or 10 of the enemy. I was afraid to look, so I put my face in the ground and shot my gun up at the sky. I was afraid their bullets would hit my head. I fired two magazines, about forty rounds. I was afraid that if I didn’t fire the section leader would punish me.

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The use of children as soldiers is most serious in Africa and Asia, though governments and armed groups in several countries in the Americas, Europe and Middle East have also used and recruited children. There has been widespread and substantial child participation in armed conflicts across Asia and the Pacific with Afghanistan, Myanmar, Sri Lanka and, in the past, Cambodia, having been the worst affected countries by armed conflicts. Children are also used as soldiers in ongoing lower-intensity conflicts across India, Nepal, the Philippines, Indonesia, and in the past, Papua New Guinea and Solomon Islands.8 It is estimated that about one of four child soldiers are in Asia.

International instruments protecting children in armed conflict

Before the Optional Protocol was adopted in 2000, various international instruments have been enacted to address the involvement of children in armed conflict and the prevention of its occurrence:

• 1977 Geneva Protocols I & II Additional to the Geneva Conventions of 12 August 1949, which relates to the protection of victims of international and local armed conflicts. The two protocols set the minimum age for recruitment and participation in hostilities at 15 years of age;

• 1989 Convention on the Rights of the Child, which defines children as persons under 18 years of age. However, the Convention retained 15 years of age set by Protocols I & II as the minimum age for recruitment and direct participation, which makes its Article 38(2) and (3) the only provisions not applicable to children under
The Optional Protocol on the involvement of children in armed conflict

The Optional Protocol was adopted by a consensus of the United Nations General Assembly on 25 May 2000. It came about after years of advocacy by child rights organizations seeking to raise the standard of recruitment and participation from 15 to 18 years of age in a new international instrument. The Optional Protocol entered into force on 12 February 2002. In Southeast Asia, only two countries have ratified the Optional Protocol, Vietnam and the Philippines.

State obligations

The Convention on the Rights of the Child and other legal instruments set 15 years as the minimum age for direct participation of children in hostilities and recruitment in government armed forces, with State Parties required to give priority to those who are oldest. The Optional Protocol raises from 15 to 18 years the minimum age for direct participation and for compulsory recruitment by government forces. As to voluntary recruitment, State Parties are called upon to raise the minimum age to 15 years for voluntary recruitment and to maintain safeguards to ensure that the recruitment is genuinely voluntary.

However, even if the Optional Protocol prescribes safeguards to ensure that voluntary recruitment is genuinely “voluntary,” such may present challenges in terms of implementation. First, in countries where there are no reliable or exhaustive birth registration systems, it may be difficult to verify the age of those who volunteer. Also, [it is difficult to determine] when is the child’s willingness to join an armed group deemed to be genuine? Volunteers maybe pressured to join by “…lack of food, the need for physical protection, poverty or revenge.”

“I was not forced to become a porter, but my family was told that if they refused I would be sent to the frontline.”

- Interview with a child soldier in Cambodia who joined when he was 10 years old

Schools operated by or under the control of government armed forces are also exempt from the requirement to raise the minimum age for recruitment and participation in hostilities. It entered into force in November 1999. In a meeting in Singapore on 2 August 2001, the ASEAN Ministers Responsible for Social Welfare issued the Declaration on the Commitments for Children in ASEAN whereby they agreed to “protect children from armed conflict, victimisation or deprivation of a childhood rooted in peace and joy.” Although a nonbinding instrument, the declaration recognizes the negative effects of armed conflict on children in the region.

The African Charter on the Rights and Welfare of the Child was the first regional binding agreement to establish 18 as the minimum age for recruitment and participation under 15 years of age to participate actively in international and non-international conflicts as a war crime; and

1999 International Labour Organization Convention No. 182 concerning the prohibition and immediate action for the elimination of worst forms of child labor, which include forced and compulsory recruitment of children under 18 years of age for use in armed conflicts.

18 years of age;

• 1998 Rome State of the International Criminal Court, which identifies the recruitment of children under 15 years of age to participate actively in international and non-international conflicts as a war crime; and

• 1999 International Labour Organization Convention No. 182 concerning the prohibition and immediate action for the elimination of worst forms of child labor, which include forced and compulsory recruitment of children under 18 years of age for use in armed conflicts.
age requirement for voluntary recruitment. The “below 18” age for voluntary recruitment and the exemption made for military schools were included at the request of States who argue that the military training provides the volunteers opportunity to acquire knowledge and skills and provides them with access to education. However, child rights advocates continue to vigorously lobby for a straight-18 position, a prohibition on all forms of recruitment and participation of children under 18.12

The Optional Protocol also requires State Parties to undertake the following positive steps, which require resources and political will to implement:

• Take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of its provisions;
• Make the principles and provisions of the present Protocol widely known and promoted to adults and children alike;
• Take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service;
• Cooperate in its implementation, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the Protocol, including through technical cooperation and financial assistance;
• Provide, if in a position to do so, such assistance through existing multilateral, bilateral or other programs; and
• Submit within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement its provisions.

Non-state armed groups

Even if only States can become parties to it, the Optional Protocol included a provision prohibiting non-state armed groups from recruiting, whether voluntarily or by force, and using children under 18 years of age as soldiers. One of the strengths of the Optional Protocol is that it applies to non-state armed groups, whether or not they are actively engaged in an armed conflict.13 Even if there is no armed conflict, recruitment of children is still prohibited.

One fear caused by the different standards imposed by the Optional Protocol on states and non-state armed groups with respect to voluntary recruitment is that it may undermine the Optional Protocol’s intent.14 The double standard may serve as a limiting factor when child rights advocates use the Optional Protocol as a tool to engage and dialogue with non-state armed groups for the purposes of obtaining declarations or commitments. Another challenge is the ability and capacity of States to implement this prohibition in case a law has been adopted at the domestic level, i.e. criminalizing recruitment and use of child soldiers by non-state armed groups in situations wherein there is an active armed conflict.

Ratification Status

In spite of the universal ratification of the Convention on the Rights of the Child, only 70 State Parties have ratified the Optional Protocol as of June 17, 2004.15 Countries that have not yet signed or ratified the Protocol include those that are already in violation of the Optional Protocol: countries whose armed forces are known to recruit and use child soldiers in the armed conflict, i.e. Myanmar. Both state and non-state armed groups across the world continuously and consistently defy the provisions of the Protocol.

For example, the 2002 Human Rights Watch report estimated that children might account for 35 to 45 percent of new recruits into the national army, and 70,000 or more of Myanmar’s estimated 350,000 soldiers.16 Children, some as young as eleven, were forcibly recruited, brutalized and kept in forced military training, used in forced labor by the army and forced to participate in armed conflict. They were also used to commit human rights abuses against civilians and other child recruits.17

In the Philippines, there are reports that some members of Citizen Armed Force Geographical Units (CAFGUs) and Civilian Volunteer Organizations (CVOs) are also recruiting children. Military records show that from January 1997 to June 2003, a total of 122 boys and 50 girls were captured while working with the New People’s Army as “combatants, courier, guide, medics or spies.”

Some countries, which have already signed the Optional Protocol expressed support to the “straight 18 ban” position of the Coalition on both compulsory and voluntary recruitment. However, even after a reasonable lapse of time from the date of signing the Optional Protocol, these countries have not yet undertaken the necessary steps for its ratification. For other countries, the Optional Protocol is simply not a matter of national priority at this point. Considering the continuous violation of the rights of children who are recruited and used in armed conflicts around the world and the urgent need to protect their rights and to further prevent their recruitment and use as soldiers, all governments are strongly urged to sign and ratify the Optional Protocol to the Convention on the Rights of the Child concerning children and armed conflict. Governments are urged to do so without reservations and specifying at least 18 as the minimum age for all forms of military recruitment, whether compulsory or voluntary. ■

(Footnotes)

7. Not his real name.
9. Association of Southeast Asian Nations
15. State Parties to the Optional Protocol: Afghanistan; Andorra; Argentina; Austria; Azerbaijan; Bangladesh; Belgium; Belize; Bosnia and Herzegovina; Brazil; Bulgaria; Canada; Cape Verde; Chad; Chile; Costa Rica; Croatia; Czech Republic; Democratic Republic of Congo; Denmark; Dominica; El Salvador; Finland; France; Greece; Guatemala; Holy See; Honduras; Iceland; Ireland; Italy; Jamaica; Kazakhstan; Kenya; Kyrgyzstan; Lesotho; Lithuania; Mali; Malta; Mexico; Monaco; Morocco;Namibia; New Zealand; Norway; Panama; Paraguay; Peru; Philippines; Portugal; Qatar; Romania; Rwanda; Senegal; Serbia and Montenegro; Sierra Leone; Spain; Sri Lanka; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; The Former Yugoslav Republic of Macedonia; Tunisia; Uganda; United Kingdom of Great Britain and Northern Ireland; United States of America; Uruguay; Venezuela; and Vietnam.
16. Human Rights Watch, My Gun was As Tall As Me: Child Soldiers in Burma, October 2002.