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## Report 2002: Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

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## Report 2002: Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

*"In combat, there's nothing that can thwart his will;  
This more than a child, this man not yet,  
Is a god and a king, an un-ripened adult  
Who thinks he is immortal, lives only to kill"*<sup>1</sup>

In the past decade, 2 million children were killed in war-torn areas, over 1 million were made orphans, over 6 million have been seriously injured or permanently disabled and over 10 million have been left with severe psychological trauma.<sup>2</sup> Over 300,000 children, some as young as seven or eight, girls as well as boys, are taking part in hostilities in over 30 countries.<sup>3</sup> As a result, children are being deprived of education and health care and left with deep emotional scars and lasting trauma.

Since 1959, with the adoption of the Geneva Declaration of the Rights of the Child,<sup>4</sup> the United Nations has recognized that the world's most susceptible citizens are in need of special care. As specified in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."<sup>5</sup> In fact, at the 1990 World Summit for Children, leaders from around the world committed to take action to protect children from the atrocities of war.<sup>6</sup>

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<sup>1</sup> Isabelle Balot, *Child Soldiers at* <http://www.un.org/special-rep/children-armed-conflict/fsoldiers.htm> (last visited Jan. 31, 2002).

<sup>2</sup> Olara A. Otunnu, Special Representative to the Secretary-General for Children in Armed Conflict, *available at* <http://www.un.org/special-rep/children-armed-conflict/ffaq.htm> (Jan. 27, 2002),

<sup>3</sup> *See id.*

<sup>4</sup> *Declaration of the Rights of the Child*, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4354 (1959).

<sup>5</sup> *Declaration of the Rights of the Child*, *supra* note 4, at 1.

<sup>6</sup> *See* United Nations Special Session on Children, *The World Summit for Children*, at <http://www.unicef.org/specialsession/about/world-summit.htm> (last visited Apr. 13, 2002).

The United Nations General Assembly adopted the Convention on the Rights of the Child, which underlies the Optional Protocol focused on in this report, in 1989.<sup>7</sup> The Convention is the most widely ratified human rights treaty in history, with 191 participatory nations. Only two countries, Somalia and the United States, have not ratified the agreement. While Somalia does not have a government that has the capacity to ratify a treaty, the United States government claims it has been delayed by procedural and political constraints.<sup>8</sup>

Under the Convention, the definition of a “child” is “any person under the age of eighteen, unless under the law applicable to the child, majority is attained earlier.”<sup>9</sup> However, Article 38 lists the age of fifteen as the minimum age for recruitment and participation in hostilities. In 1989, the United Nations appointed a working group to draft an optional protocol to the Convention that would raise the minimum age for recruitment into hostilities to eighteen. Over the course of an ensuing decade, the movement to pass an optional protocol to the Convention on the Rights of the Child gained momentum through a number of resolutions, reports and players.

In 1996, Graca Machel, former education minister of Mozambique, was appointed by the Secretary-General to study how to protect children from the adverse effects of armed conflicts. In her report to the General Assembly, she stressed the urgent need to stop the use of child soldiers and further recommended the imminent need for the optional protocol.<sup>10</sup> In 1997, in response to the Machel report, the United Nations appointed Olara A. Otunnu as Special Representative for Children and Armed Conflict. Otunnu was to be a public advocate on behalf of children whose rights and welfare have been and continue to be violated in armed conflicts.<sup>11</sup>

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<sup>7</sup> *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., at art. 1, U.N. Doc. A/Res/44/25 (1989) [hereinafter “Convention”].

<sup>8</sup> See United States Fund for UNICEF, *Convention on the Rights of the Child: Frequently Asked Questions*, at <http://www.unicefusa.org/infoactiv/rights.html> (last visited Apr. 13, 2002).

<sup>9</sup> *Convention*, *supra* note 7, at art. 1.

<sup>10</sup> *Report of the Expert of the Secretary-General*, submitted pursuant to General Assembly Resolution 48/157, 51<sup>st</sup> Sess., Agenda Item 108, U.N. Doc. A/51/306 (1996).

<sup>11</sup> See U. N., *Special Representative of the Secretary General for Children and Armed Conflict: Frequently Asked Questions*, at <http://www.un.org/special-rep/children-armed-conflict/ffaq.htm> (last visited Apr. 13, 2002).

In 1998, six non-governmental organizations formed The Coalition to Stop the Use of Child Soldiers. Their cause was to set up a powerful campaign for the optional protocol.

On May 25, 2000, the concerns for those children recruited into armed combat culminated into the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.<sup>12</sup> The result was a ban on the participation in hostilities by children under the age of eighteen. The Protocol does not however, preclude the voluntary recruitment of children who are at least sixteen years of age into national armed forces.<sup>13</sup>

Article 9 of the Protocol allowed the United States to sign and ratify the Optional Protocol even though it has not yet ratified the underlying Convention on the Rights of the Child.<sup>14</sup> As of January of 2002, ninety-three countries have signed and thirteen countries have ratified the Protocol.<sup>15</sup>

In further implementing the goals and commitments of the Protocol, the United Nations Security Council passed Resolution 1314 in August of 2000.<sup>16</sup> The Resolution condemned the recruitment of children as soldiers and the killing and abuse of children in conflict. The Security Council recommended prosecution of those who recruit child soldiers, incorporation of children's interests into peace negotiations, special protection against rape and other abuses, and the training of peacekeeping forces in child protection.<sup>17</sup>

Under the auspices of the Protocol, the Security Council has also passed resolutions calling on improved reporting and monitoring of child protection. Two current peacekeeping missions, the United Nations Mission in Sierra Leone (UNAMSIL) and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), have specifications in their mandates regarding child protection and the deployment of child protection advisors. The child protection advisors ensure consistent reporting

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<sup>12</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, G.A. Res. 54-263, U.N. GAOR, 54th Sess., Agenda Item 116 (a), U.N. Doc. No A/RES/54/263 (2001) [hereinafter "Protocol"].

<sup>13</sup> *Id.*, at art. 3.

<sup>14</sup> See UNICEF, *Optional Protocols to the Convention on the Rights of the Child*, available at <http://www.unicef.org/crc/crc.htm> (last visited Apr. 13, 2002).

<sup>15</sup> See *Protocol*, *supra* note 12.

<sup>16</sup> U.N. SCOR 1314, 4185<sup>th</sup> mtg., U.N. Doc. S/Res/1314 (2000).

<sup>17</sup> *Id.*

on the conduct of parties who have made commitments to the Special Representative of the Secretary-General for Children and Armed Conflict.<sup>18</sup>

While the Security Council has passed measures that specifically address children in war-torn areas, there is concern over the narrow scope of such measures. For example, the Security Council passed Resolution 1315 to establish a Special Court for Sierra Leone.<sup>19</sup> In connection with child soldiers, the draft statute of the Special Court specified that only the "abduction or forced recruitment" of children under the age of fifteen into armed conflict, rather than all recruitment, was covered by the court's jurisdiction. However, this weakens the standard set by the Optional Protocol, which bans the participation in hostilities by children under the age of eighteen.<sup>20</sup> This provision also weakened the standard set by the International Criminal Court in 1998, which identified the recruitment of children under the age of fifteen and their use in hostilities as a war crime.<sup>21</sup> In addition, the United Nations Secretary General left open the question of whether child soldiers between ages fifteen and eighteen should themselves be prosecuted under the statute, prompting outrage from various human rights groups.<sup>22</sup>

Nonetheless there have been developments in other areas of the Protocol. In September of 2000, representatives from 132 governments, youth, NGOs and international organizations, including UNICEF, participated in the first International Conference on War-Effected Children, held in Canada. The conference resulted in a ministerial declaration entitled "Agenda for War-Effected Chil-

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<sup>18</sup> *Children and Armed Conflict: Report of the Secretary-General to the General Assembly and Security Council*, U.N. GAOR 56<sup>th</sup> Sess., U.N. Doc. A/56/342 - S/2001/852 (2001).

<sup>19</sup> U.N. SCOR 1315, 4186<sup>th</sup> mtg., U.N. Doc. S/Res/1315 (2000).

<sup>20</sup> *Protocol*, *supra* note 12, at art. 4.

<sup>21</sup> Rome Statute of the International Criminal Court, *Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II Finalized Draft Text of the Elements of Crimes, Art. 8(2)(b)(xxvi)*, 28 January 2002 available at [http://www.un.org/law/icc/statute/elements/English/1\\_add2e.do](http://www.un.org/law/icc/statute/elements/English/1_add2e.do).

<sup>22</sup> Press Release, International Secretariat of Amnesty International, The Special Court for Sierra Leone (Oct. 20, 2000), available at <http://www.essex.ac.uk/armedcon/Issues/text2000/juvenile/001.htm> ("This restriction to abduction and forced recruitment undermines international standards, including the United Nations Convention on the Rights of the Child, the Additional Protocols to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court, which specify that any recruitment of children under the age of 15 is a crime.") (last visited Apr. 13, 2002).

dren." It called for increased efforts to protect children in conflict situations, end immunity for those violating international human rights and humanitarian law, and reinforce humanitarian assistance for children affected by war.<sup>23</sup>

In November of 2001, the Security Council passed Resolution 1379 which requested the agencies, funds and programs of the United Nations to coordinate their support and assistance to parties involved in armed conflict. Resolution 1379 further encouraged international financial institutions and regional financial and development institutions to devote help to rehabilitation programs conducted by those that have taken effective measures to protect children in armed conflict.<sup>24</sup> Finally, the 2001 Report of the United Nations High Commission for Human Rights called for the international community's continuing need to attend to preventing the recruitment of child soldiers.<sup>25</sup>

The U.N. General Assembly will come together for the Special Session on Children, which has been scheduled for May 8–10, 2002 in New York City. The Session aims to bring together government leaders, Heads of State, NGOs, children's advocates and young people themselves to review the progress of the goals made at the 1990 World Summit for Children.<sup>26</sup> In fact, the Optional Protocol is one of the core treaties that States are expected to ratify during the Special Session.

The Special Session reflects the international community's prolific efforts in protecting the world's most vulnerable citizens. Much remains to be done, however, considering that every day children continue to be abducted to serve as soldiers, spies, messengers, servants and sexual slaves with armed forces and groups. While numerous resolutions and studies have been passed and conducted, the question remains whether the efforts will amount to a pragmatic implementation of solutions to stop recruitment and begin the healing process.

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<sup>23</sup> See generally Government of Canada, International Conference on War Affected Children, 28 January 2002, available at [www.waraffectedchildren.gc.ca/menu-e.asp](http://www.waraffectedchildren.gc.ca/menu-e.asp) (last visited Apr. 13, 2002).

<sup>24</sup> U.N. SCOR 1379, 4423<sup>rd</sup> mtg., U.N. Doc. S/Res/1379 (2001).

<sup>25</sup> G.A. Res. 56-36, U.N. GAOR, Supp. No. 36, U.N. Doc. A/56/36 (2001).

<sup>26</sup> See U.N. General Assembly Special Session on Children, available at <http://www.unicef.org/specialsession> (Jan. 28, 2002).

