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STATEMENT ON THE DRAFT CONVENTION ON THE RIGHTS OF THE CHILD:
PROTECTION IN ARMED CONFLICTS (ARTICLE 20)

Children are badly abused in armed conflicts. Warfare of today tends to be more indiscriminate than conflicts in earlier times. The overwhelming majority of victims nowadays are civilians, among them a large number of defenceless minors.

The absolute prohibition in the Geneva Convention of any attack against civilians is not respected. In fact, it happens that civilians, including children, are targeted by military forces with the purpose of terrorizing the population.

However, children are not only victimized as all of the civilian population. All too often in too many countries, children are enlisted to the armed forces. This problem is dealt with by the two Additional Protocols (1977) to the Geneva Conventions: persons below the age of 15 shall not be recruited to the armed forces. The Protocol also says that among those above that age, older minors should be enlisted first.

Not even that regulation is respected by all governments and parties to conflicts today.

Young boys have recently been sent to clear up the minefields with their own bodies. This is nothing but outright murder, a flagrant violation of humanitarian principles.

Within the United Nations a work is in progress for the formulation of an International Convention for the Rights of the Child. One important aspect of this project is, of course, the protection of children in times of war.

Unfortunately, the formulations agreed so far do not provide further protection for the minors; on the contrary they represent steps backwards.

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There is no recognition in that text of the absolute ban against targeting civilians. There is no indication that the drafting age ought to be higher than 15.

The discussion on the draft United Nations Convention should therefore be reopened on these aspects. The only decent position is that NO CHILD be drafted for military combat service. Those who, because of their age, are not otherwise recognized as fully responsible citizens should not be sent to the battlefields and be exposed to the risk of being killed.

We therefore urge the participants in the United Nations Human Rights Commission working group on the draft Convention on the Rights of the Child to reopen the discussion on the protection of children in times of war and ascertain a better protection.

ANNEX

ANALYSIS OF ARTICLE 20 IN THE DRAFT UNITED NATIONS
CONVENTION FOR THE RIGHTS OF THE CHILD

Article 20 as adopted on 11 March 1986 on the forty-second session of the Commission on Human Rights.

1. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 15 years into their armed forces.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Paragraph 1

This sentence refers to the international humanitarian law which is relevant. Though the expression "ensure respect" could have been more specific, this paragraph as a whole is not objectionable.

Paragraph 2

This text is no improvement as compared to the stipulations in the Additional Protocols (1977) to the Geneva Conventions. This in itself is disappointing as, during the decade since protocols were agreed, the real situation in this area has deteriorated seriously. In recent years a large number of children have been pushed into taking part in warfare itself, even in combative roles. Stricter rules in this field are required.

The formulation "all feasible measures" is weak and seems to indicate that, for instance, so-called voluntary participation by children is not totally prohibited. Better would be: "necessary measures". The intention of the word "direct" could be inferred to mean that indirect participation, such as transport of weapons and munition would be allowed for minors.

However, the specification of the age below 15 means an indirect recognition that minors of 15, 16 and 17 years of age can be enlisted. This is a serious shortcoming, not least against the background of the misuse of boys of 15 and 16 in some countries. Therefore, the most relevant aspect is not covered. On the contrary, the text means a direct acceptance of recruitment of such young people.

The Red Cross Protocols at least address the problem. They state in an addition (Protocol I, article 77, paragraph 2): "In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict shall endeavour to give priority to those who are oldest." The idea was that among the persons between

15 and 18 efforts shall be made to avoid recruiting the youngest. This was of course a compromise formulation. During the so-called Diplomatic Conference when this was discussed there were those who argued that the age should be 18 - full stop. This is the decent position.

The draft article 20 therefore represents a weakening of the humanitarian law which in turn also is unsatisfactory.

A possible solution would be to omit any reference to a specific age. In fact no other article refers to an age in that manner. The implication of simply stating that no child should be recruited would in reality be an age limit of 18 for many countries but there are also countries with a more narrow (younger) definition of "child". Article 1 of the Draft Convention says: "According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier." This drawback, however, seems less serious than the one reflected in the present draft.

It has been argued that there is a distinction between the two bits of paragraph 2, in article 20. In relation to hostilities there is a reference to "child", in relation to recruitment to the armed forces the age limit is introduced. This could be interpreted to mean that though a 15 year old could be enlisted to the army he could not be allowed to take part in hostilities. This is logical, but the problem is that this is a too fine point to be understood - or at least work - in practice. In situations of war all soldiers will be used.

Paragraph 3

This paragraph is weaker than international humanitarian law. It does not reflect the absolute prohibition against attacks on civilians including children. Attacks can only be made on military objectives. This is in fact one of the most fundamental principles of the Geneva Conventions. The formulation in article 20 makes this aspect relative; its use of "all feasible measures" in this context is most unfortunate.

Conclusion

The shortcomings in this text are serious. As the subject area is of such a fundamental importance, it is necessary to reopen the discussion on this very point before the draft is given its final form.

It is proposed that the revised article be given the following formulations:

1. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties to the present Convention shall take all necessary measures to ensure that no child takes part in hostilities and they shall refrain from recruiting any child into their armed forces.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties to this Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

P.8. It should be noted that the XIVth International Conference of the Red Cross in October 1986 adopted a resolution the implementation of which necessitates a reopening of the discussion about article 20. The conference stressed that the protection accorded by the new Convention should be at least the same as the one provided by the existing international humanitarian law standards.