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on the Question of a Convention on the
Rights of the Child

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Written statement submitted by the International Committee of
the Red Cross, a non-governmental organization in consultative
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STATEMENT ON THE DRAFT CONVENTION ON THE RIGHTS OF THE CHILD,
PROTECTION IN ARMED CONFLICTS (ARTICLE 20)

After long debate, the following text was adopted by the open-ended
Working Group which preceded the Forty-Second Session of the Commission on
Human Rights (1986).

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 that 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."

It is above all paragraphs 2 and 3 of Article 20 which give rise to comment.

1. Paragraph 2

Paragraph 2 speaks of taking part in hostilities (first sentence) and recruitment (second sentence).

1.1. As far as taking part in hostilities is concerned, this provision might, it is true, appear to extend somewhat the protection afforded by the 1977 Protocols. Indeed, Article 20, paragraph 2, prescribes that the "States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct act in hostilities ...". The term "child" must be interpreted in accordance with Article 1 of the Draft Convention which

gives the following definition: "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". Although in most industrialized countries this age is 18 years or even older, it is to be feared that in other parts of the world, in fact those parts where armed conflicts most often take place, the age of majority is reached earlier. In Islamic countries, the age of majority is reached by boys between 12 and 15 years of age and by girls at 17 years of age. 1/ The law in force in Angola since 9 February 1982 fixes the age at 14 years. 2/ In this connection, the International Union for Child Welfare (IUCW) declared during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977): "In a number of developing countries, especially in Africa, children of 14 are already adults. 3/..." This is one of the reasons for which the age of 15 years was maintained in the 1977 Protocols, which represents some progress while remaining realistic.

The Working Group could have taken advantage of the adoption of Article 20 to improve protection by prescribing that the States Party to the present Convention take all "necessary" measures instead of "all feasible" measures. In other words, the text which was finally approved means that voluntary participation by children is not totally prohibited. During the Diplomatic Conference (1974-1977), the ICRC had proposed the words "necessary measures" but this was, unfortunately, not accepted. Protocol I, Article 77, speaks of "feasible measures".

Likewise, the Working Group could have strengthened protection by removing the word "direct". The ICRC suggested this too during the Diplomatic Conference but the proposal was not approved. This being the case, it can reasonably be inferred from the present Article 20 of the Draft Convention that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.

By contrast, Protocol II, Article 4, paragraph 3, goes further, dispensing with terms such as "feasible measures" and "direct". 4/

In other words, the first sentence of the second paragraph in Article 20 does nothing to improve the protection of children over that provided by the Protocols.

1.2. As for the question of recruitment (second sentence of the second paragraph), one can only conclude that it does not go as far as Protocol I. In fact, Protocol I, Article 77, paragraph 2, adds: "... 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". This was a compromise on the part of the Diplomatic Conference (1974-1977). Indeed, one delegation had proposed an amendment in which the minimum recruiting age would be raised from 15 to 18 years. The majority was opposed to extending the ban on recruitment beyond 15 years of age but, in recognition of this proposal, the provision was made that in recruiting persons between the ages of 15 and 18, those oldest would be recruited first. 5/

2. Paragraph 3

But it is paragraph 3 which presents the greatest risk of weakening international humanitarian law.

In using the wording "... States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict", the authors of Article 20 failed to incorporate the rule prohibiting attacks on civilians and therefore, obviously, on children. Certainly one of the fundamental rules of international humanitarian law applicable in armed conflicts is the one stating that the parties to the conflict shall, at all times, distinguish between the civilian population and the combatants in such a way that the population and civilian objects are spared. Neither the civilian population as such nor individual civilians may be the object of attack. Attacks may only be made on military objectives.^{6/} This principle conveys the humanitarian rules applicable in any of the situations normally faced by armed forces. They are set forth in more detail in treaties such as the Regulations of the Hague of 1907 and the Geneva Conventions of 1949. The two Additional protocols of 1977 reaffirm and develop these rules. Within the meaning of these instruments, the prohibition of attacks on the civilian population is an inviolable principle (Protocol I, Article 51, paragraph 2). The right to care and assistance is also absolute. Article 23 of the Fourth Convention, for example, prescribes that "each High Contracting Party shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases". Several other provisions in the Fourth Geneva Convention and Protocol I prescribe similar assistance.

Conclusion

New instruments must not be allowed to undermine rights already acquired and weaken the special protection which has already been given to children in the Geneva Conventions of 1949 and their Additional Protocols of 1977. That is what is in danger of happening if, at its second reading, the wording of Article 20 is not changed.

It should be noted that the Twenty-Fifth International Conference of the Red Cross adopted in October 1986 a resolution (Protection of children in armed conflicts) which "stresses that the protection accorded by the new Convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols".

In addition, the provisions contained in Article 20 must not convey the impression of addressing the entire question, and it must not be forgotten that there are some 25 Articles covering this area which are in force in international humanitarian law.

In order to preserve the essential gains which have been made in international humanitarian law, we feel it important that the safeguard clause in Article 21 of the Draft Convention on the rights of the child 7/ not be modified.

A more appropriate wording of Article 20 could read as follows:

"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 in order that children who have not attained the age of fifteen years do not take part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

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."

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PROTECTION OF CHILDREN IN ARMED CONFLICTS

The Twenty-fifth International Conference of the Red Cross,

Recalling Resolution XIII of the Sixteenth International Conference of the Red Cross concerning the protection of women and children in armed conflicts,

Having taken note of the Final Document of the Second World Red Cross and Red Crescent Conference on Peace in Åland and Stockholm in 1984, and of the recommendations of the Red Cross and Red Crescent Symposium, held in San Remo in 1985, on the protection of children,

Deeply concerned that in many parts of the world children continue to take a direct part in hostilities and are recruited into the armed forces,

Recalling that, in conflicts where weapons are used indiscriminately, a significant proportion of victims are innocent civilians and especially children,

Noting that children are especially vulnerable when they are separated from their families,

Recognizing that children who have been trained to hate and have participated in atrocities of war are often mentally and morally crippled for life,

Stressing that the Geneva Conventions of 1949 and the two Additional Protocols of 1977 accord to children special protection and treatment,

1. Requests governments and the International Red Cross and Red Crescent Movement to disseminate widely the provisions of international humanitarian law protecting children in armed conflicts, as well as publications concerning this question,

2. Recalls that in accordance with Article 77 of Additional Protocol I to the Geneva Conventions "the Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest",

3. Recalls also that, according to the Geneva Conventions and the two Additional Protocols, children under the age of 15 years who have taken direct part in hostilities and fall into the power of an adverse Party, continue to benefit from special protection, whether or not they are prisoners of war,

4. Expresses its deep concern that children under the age of 15 years are trained for military combat and recommends that in all circumstances children should be educated to respect humanitarian principles,

5. Recommends that, according to the Geneva Conventions and the two Additional Protocols, all necessary measures are taken to preserve the unity of the family and to facilitate the re-uniting of families,

6. Invites governments and the Movement to do their utmost to ensure that children who have taken part, directly or indirectly, in hostilities are systematically rehabilitated to normal life,

7. Expresses its support for the work of the United Nations Commission on Human Rights regarding the drafting of a Convention on the Rights of the Child and stresses that the protection accorded by the new Convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols.

Notes

1/ Quoted by Philippe Saunier in his study on children in armed conflicts, University of Nice, February 1986, p.18.

2/ Quoted by the same author, p.19.

3/ Quoted in "New Rules for victims of armed conflicts. Commentary on the two 1977 Protocols additional to the Geneva Conventions of 1949" by M. Botha, X.J. Partsch, W.A. Solf, The Hague/Boston/London, 1982.

4/ Protocol II, Article 4, paragraph 3 (c): "children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities",

5/ See Official Records III, page 301, C/ON/III/325.

6/ Twentieth International Conference of the Red Cross, Vienna 1965, Basic rules of the Geneva Conventions and their Additional Protocols, [CICR, September 1988], p.7.

7/ "Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party, or

(b) Any other international convention, treaty or agreement in force for that State."