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## Convention on the Rights of the Child

### COMMITTEE ON THE RIGHTS OF THE CHILD

#### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

##### Initial reports of States parties due in 2005

##### UNITED STATES OF AMERICA\* \*\*

[10 May 2007]

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##### Introduction

1. The Government of the United States of America welcomes this opportunity to report to the Committee on the Rights of the Child on measures giving effect to its undertakings under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ("the Protocol"), in accordance with Article 8 thereof. The organization of this initial report

follows the General Guidelines of the Committee on the Rights of the Child regarding the form and content of initial reports to be submitted by States Parties (CRC/OPAC/1, 12 October 2001).

2. The Protocol deals reasonably with the issues of minimum ages for compulsory recruitment, voluntary recruitment, and direct participation in hostilities, while fully protecting the military recruitment and readiness requirements of States Parties that rely on national voluntary armed forces.

3. The Protocol raises the minimum age for military conscription to 18 years. The Protocol also calls for governments to set a minimum age for voluntary recruitment above the current international standard of 15 years and to report on measures to ensure that recruitment is truly voluntary. States Parties must take “all feasible measures” to ensure that members of their armed forces who are not yet 18 do not take a “direct” part in hostilities. States that become party to the Protocol also agree to “take all feasible measures to prevent” in their territory the recruitment and use of persons younger than 18 in hostilities by non-governmental armed groups, including by adopting legal measures to prohibit and criminalize such practices.

4. Another important provision of the Protocol is its promotion of international cooperation and assistance in the rehabilitation and social reintegration of children who have been victimized by armed conflict.

5. No implementing legislation is required with respect to U.S. ratification of the Protocol since current U.S. law meets the standards in the Protocol.

6. The Protocol is subject to ratification or open for accession by any State, i.e., it is not limited to States Parties to the Convention on the Rights of the Child. By ratifying the Protocol, the United States does not become party to the Convention on the Rights of the Child, or assume any rights or obligations under that Convention.

## **INFORMATION ON MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE PROTOCOL**

### **Article 1. Direct participation in hostilities**

7. The Protocol requires States Parties to “take all feasible measures” to ensure that members of their armed forces under age 18 do not take “a direct part in hostilities.” At the time the United States deposited its instrument of ratification, it expressed the following understanding of the meaning of the terms “feasible” and “direct part in hostilities”:

“With respect to Article 1, the United States understands that the term ‘feasible measures’ means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations. The United States understands the phrase ‘direct part in hostilities’ to mean immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy. The phrase “direct participation in hostilities” does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions and other supplies, or forward deployment. The United States further understands that any decision by any military commander, military personnel, or any other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of that person’s assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.”

8. This understanding is based upon the negotiating history of Article 1 of the Protocol. The language in Article 1 is drawn from Article 38 (2) of the Convention on the Rights of the Child, and Article 77 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), which both require that States Parties take all “feasible measures” to ensure that children under the age of 15 do not take a “direct part in hostilities”.

9. The terminology used in Article 1 of the Protocol recognizes that in exceptional cases it will not be “feasible” for a commander to withhold or prevent a soldier under the age of 18 from taking a part in hostilities. The term “feasible” is understood in the law of armed conflict to mean that which is “practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.” This is the definition used in Article 3 (10) of the Protocol to the 1980 Conventional Weapons Convention Concerning the Use of Mines, Booby-Traps and Other Devices (Protocol II), adopted at Geneva October 10, 1980. It is also the generally accepted meaning of the term in Protocol I to the Geneva Conventions. Indeed, a number of States (e.g., Canada, Germany, Ireland, Italy, Netherlands, and Spain) included such a definition of “feasible” in understandings that accompanied their instruments of ratification to Protocol I to the Geneva Conventions.

10. The standard set out in Article 1 also recognizes that there is no prohibition concerning indirect participation in hostilities or forward deployment. The term “direct” has been understood in the context of treaties relating to the law of armed conflict (including International Committee of the Red Cross (ICRC) commentaries on the meaning of the provisions of Protocol I to the Geneva Conventions) to mean a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place.

11. Throughout negotiations of Article 77 (2) of Protocol I to the Geneva Conventions, Article 38 (2) of the Convention on the Rights of the Child, and Article 1 of this Protocol, some delegations, as well as the ICRC, repeatedly attempted to replace “all feasible measures” with “necessary” or a variant thereof and to remove the reference to “direct.” However, other delegations, including the United States, insisted that there should be no deviation from existing treaties using the same terminology.

12. For example, during negotiation of the Convention on the Rights of the Child, the ICRC explained its position in the Working Group as follows:

“The Working Group could have taken advantage of the adoption of Article 20 [subsequently renumbered as Article 38] 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) [concerning Protocol I to the Geneva Conventions], 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.” (Written Statement of the ICRC, 22 January 1987 (E/CN.4/1987/WG.1/WP.4)).

13. Prior to U.S. ratification of the Protocol, U.S. law and practice had been to assign all recruits after basic training, including those aged 17, to a unit, but not based on whether that unit might be deployed into hostilities. Accordingly, the United States generally supported an age 17 standard for participation in hostilities. Prior to the January 2000 negotiating session of the Protocol, however, the Department of Defense reviewed its practice and decided that it could support adoption of a rule that would require that the United States take all “feasible measures” to ensure that persons under the age of 18 would not take “a direct part in hostilities.” The Department of Defense determined that it could execute its national security responsibilities under the obligation of Article 1 of the Protocol, as the terms of Article 1 (with respect to the meaning of “all feasible measures” and “take a direct part in hostilities”) are currently understood under the law of armed conflict.

14. At the final session of negotiations, just before adoption of the Protocol, the U.S. delegation made a statement regarding its understanding of Article 1 that the United Nations Working Group summarized as follows:

“As for participation in hostilities, the terms in Article 1, with their roots in international humanitarian law and the law of armed conflict, were clear, well understood and contextually relevant. The United States of America would take all steps it feasibly could to ensure that under-18-year-old service personnel did not take a direct part in hostilities. While the standard recognizes that, in exceptional cases, it might not be feasible for a commander to withhold or remove such a person from taking a direct part in hostilities, the United States believed that it was an effective, sensible and practical standard that would promote the object that all sought: protecting children and ensuring that the protocol had the widest possible adherence and support.” (Working Group on Involvement of Children in Armed Conflict, Report on Its Sixth Session, E/CN.4/2000/74, para. 131.)

15. In contrast, other delegations expressed disappointment that the Protocol did not bar “indirect” participation in hostilities and that the discretionary power granted to States through use of the term “feasible measures” weakened the Protocol. (E/CN.4/2000/74, paras. 106, 116, 121-22, 135, 143, 148, statements by the ICRC, Italy, Belgium, Ethiopia, the Russian Federation, and Portugal). The Russian delegation acknowledged that since States were not required to prohibit participation, but only called on to take “all feasible measures” to prevent such participation, the Protocol left States open to the possibility in any emergency of involving persons under 18 years of age in hostilities. (para. 131).

16. For the United States, the restriction to “take all feasible measures” to ensure that members of the U.S. Armed Forces who have not attained 18 years of age do not take “a direct part in hostilities” affects, on a year-to-year basis, approximately 1,500 17-year-old service members. Virtually all 17-year-olds who enter the U.S. Armed Forces are high school seniors and are placed in the Delayed Entry Program until after they earn a high school diploma. When they enter basic training, only about 7,500 of those entering the U.S. Armed Forces are still 17 years old. On average, initial training lasts from 4 to 6 months depending on the Service, and nearly 80 per cent of the 17-year-olds turn 18 during this period. Thus, after this training is completed, on average about 1,500 17-year-old service members will be fully trained and ready for operational assignment.

17. To implement the terms of Article 1 of the Protocol, U.S. Military Services have adopted an implementation plan. The implementation plans have been tailored to meet the unique mission requirements of each Service. The implementation plans went into effect in January 2003. The plans relate to the date (not year) of birth of the individual. Summaries of each Service implementation plan, and the U.S. Coast Guard practice, follow:

**Army.** The Army will not assign soldiers outside the United States, either on permanent or temporary duty orders, until they reach their eighteenth birth date. For those soldiers under eighteen who were already overseas at the time the implementation plan went into effect, commanders were to take all feasible measures to ensure these soldiers not take a direct part in hostilities until they reached 18 years of age.

**Navy.** Sailors who have not reached their eighteenth birth date will not be assigned to ships and squadrons that are scheduled to deploy at a date earlier than their eighteenth birthday.

**Air Force.** The Air Force will not assign airmen who have not reached their eighteenth birthdate to hostile fire/imminent danger areas.

**Marine Corps.** The Marine Corps has directed commanders who have operational and administrative control of Marines who have not reached their eighteenth birth date to track and manage the assignment of those Marines such that all feasible measures are taken to ensure they do not take a direct part in hostilities. This responsibility may not be delegated below the battalion or squadron commander level.

**Coast Guard.** The Coast Guard has five core missions: maritime security, maritime safety, protection of natural resources, maritime mobility, and national defense. Under Title 14 of the U.S. Code, the Coast Guard is a “military service and a branch of the armed forces of the United States at all times.” The Coast Guard exercises its duties as a military service primarily in two of its core missions: maritime security and national defense. Since its inception, the Coast Guard has participated in every major U.S. armed conflict. Coast Guard units have and continue to participate in Operations Iraqi Freedom and Enduring Freedom.

In accordance with 10 U.S.C § 505 and Coast Guard policy, a seventeen year-old may apply for entry to the Coast Guard only if that person obtains written consent from his or her custodial parent or guardian, is a legally emancipated minor, or is married. Written consent must be executed before a notary public, recruiter-in-charge, or recruiter. If not legally separated or divorced, consent must be given by both parents (or the surviving parent, if one parent is deceased). If the parents are legally separated or divorced or if one parent is missing, consent must be given by the custodial parent. If both parents are deceased or if custody was awarded to an individual other than the parents, consent must be given by the legally appointed guardian. Otherwise, all applicants must be at least eighteen years old. Waivers for minimum age are not authorized (therefore, no one under seventeen years of age may apply for entry to the Coast Guard). It should also be noted that under Coast Guard policy, recruiters must verify an applicant's documents to ensure they meet the minimum age requirements by carefully examining birth certificates.

The Coast Guard does not have a written policy establishing a rule for "all feasible measures" to ensure enlistees do not take part in armed conflict. However, it is Coast Guard practice not to assign recent, non-rate basic training graduates directly to conflict areas or to any of the Coast Guard cutters serving in those regions.

## **Article 2. Forced or compulsory recruitment**

18. Article 2 prohibits States Parties from forcibly or compulsorily recruiting into military service anyone under 18. The United States does not permit compulsory recruitment of any person under 18 for any type of military service. While inactive, the U.S. selective service system remains established in law and provides for involuntary induction at and after age 18. (The Military Selective Service Act, 50 U.S.C. App. §§ 451 et seq.) By law, the Selective Service System is an independent agency, separate from the Department of Defense.

19. The general scope of Article 2 of the Protocol is substantially identical to Article 3 of the Convention (No. 182) for Elimination of the Worst Forms of Child Labour, adopted by the International Labour Conference on June 17, 1999, which, inter alia, requires that States Parties take immediate and effective measures to secure the elimination of forced or compulsory recruitment of children under the age of 18 for use in armed conflict. ILO Convention No. 182 entered into force with respect to the United States on December 2, 2000.

## **Article 3. Voluntary recruitment**

20. Article 3 (1) obliges States Parties to raise the minimum age for voluntary recruitment into their national armed forces from 15 years, which is the minimum age provided in Article 38 (3) of the Convention on the Rights of the Child and in Article 77 (2) of Protocol I to the Geneva Conventions. The United States expressed the following understanding in order to clarify the nature of the obligation it assumed under Article 3 (1):

"The United States understands that Article 3 obliges States Parties to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of age 15."

21. Article 3 (1) states that in raising the age for voluntary recruitment States Parties shall "take account" of the "principles" contained in Article 38 (3) of the Convention on the Rights of the Child and recognize that persons under the age of 18 are entitled to special protection. In this regard, Article 38 (3) states that "[i]n recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest." This provision is compatible with the longstanding U.S. practice of permitting 17-year-olds, but not those who are younger, to volunteer for service in the Armed Forces. The Department of Defense goal is that at least 90 per cent of new recruits should have high school diplomas, but many enlistment contracts are signed with high school seniors who may be as young as 17. While waiting for graduation, these individuals are placed in the Delayed Entry Program. Most of these individuals turn 18 before graduating from high school and shipping to basic training. Of the nearly 175,000 new enlistees each year, only about 7,500 (just over 4 per cent) are 17 when they ship to basic training, and nearly all of those (80 per cent) will turn 18 while in training. At no time since 1982 has the percentage of 17-year-old recruits into the Armed Forces exceeded 8 per cent. Qualified 17-year-olds will remain an integral part of the U.S. military's recruiting efforts into the foreseeable future, but it is not expected that their numbers will fluctuate significantly, or dominate the Armed Forces' recruiting pool. No one under age 17 is eligible for recruitment, including for participation in the Delayed Entry Program.

22. Article 3 (2) provides that each State Party effects the increase in minimum age by depositing a binding declaration to that effect upon ratification, and by providing a description of the safeguards it maintains to ensure that such recruitment is not forced or coerced. The United States submitted the following declaration in conjunction with the deposit of its instrument of ratification of the Protocol:

"Pursuant to Article 3 (2) of the Protocol, the United States declares that the minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age. The United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505 (a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control. ... Moreover, each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service. All persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into the military service."

23. The "comprehensive briefing" referred to in the U.S. declaration cited above is conducted through the Military Entrance Processing Command (MEPCOM), which gives each applicant a briefing that outlines applicable regulations based on Title 10 of the U.S. Code, and the enlistment form (DD Form 4). This briefing is outlined in the MEPCOM Regulation 601-23, which also includes a list of questions that each applicant must be asked (e.g., do you understand that you are joining the Army for 6 years?). The briefing

also defines fraudulent enlistments and associated penalties.

24. The MEPCOM also has programs that check to ensure that the date of birth entered by a recruiter falls into the age window outlined by Title 10, MEPCOM regulations, and other joint military service regulations. Additionally, each recruiter is required to obtain an original (or certified) government document that states the individual's age. Typically, this is an original birth certificate. If the individual is 17 years old, the recruiter is required to witness both parents' signatures. If a parent is divorced, then only one signature, i.e., of a custodial parent, is required provided the custodial parent can produce the original (raised seal) divorce decree.

25. Article 3 (3) further describes safeguards that States are required to maintain, including ensuring that such recruitment is genuinely voluntary; requiring the informed consent of the person's parents or legal guardians; fully informing such recruits of the duties involved in military service; and requiring reliable proof of age prior to acceptance into national military service. U.S. law and policy, described above, meets these requirements.

26. Article 3 (5) provides that military schools are exempt from the requirements of this article. By its terms, this exemption extends to military schools, regardless of whether or not individuals attending these facilities are members of the armed forces. In this regard, U.S. law specifies a minimum age of 17 for admission to military academies. (See, e.g., 10 U.S.C. § 4346.)

#### **Article 4. Non-governmental actors**

27. Article 4 (1) provides that armed groups, distinct from the armed forces of a State, "should" not recruit or use in hostilities persons under the age of 18. Article 4 (2) requires that States Parties take "all feasible measures" to prevent in their territory the recruitment and use in hostilities of persons under the age of 18 by "armed groups, distinct from the armed forces of a State," including by the enactment of legislation to ensure that such recruitment and use is punishable as a criminal offense under their national laws. Additionally, Article 4 (3) provides that "the application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict".

28. In order to clarify the nature of the obligation assumed under Article 4, the United States submitted the following understanding with its instrument of ratification of the Protocol:

"The United States understands that the term 'armed groups' in Article 4 of the Protocol means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups."

29. Consistent with Article 4, U.S. law already prohibits insurgent activities by nongovernmental actors against the United States, irrespective of age. (See 18 U.S.C. § 2381, et seq.) U.S. law also prohibits the formation within the United States of insurgent groups, again irrespective of age, which have the intent of engaging in armed conflict with foreign powers. (See 18 U.S.C. § 960.)

#### **Article 5. Savings clause**

30. Article 5 is a savings clause. The article states that nothing in the Protocol is to be construed as precluding provisions in the law of a State Party, international instruments or international humanitarian law that might provide more favorable treatment with respect to the rights of children.

#### **Article 6. National implementation**

31. Article 6 obliges States Parties to ensure effective implementation and enforcement of obligations accepted under the Protocol within their respective jurisdictions; to ensure wide dissemination of the Protocol; to take all feasible measures to demobilize children employed in contravention of the terms of the Protocol; and "when necessary" accord to such children "appropriate assistance" for their physical and psychological recovery, and their social reintegration.

32. As a matter of good administration, the Department of Defense issued an internal directive providing guidance to its components on the Protocol's requirements. It will not be necessary for the United States to demobilize or provide appropriate assistance to U.S. children, since the United States does not utilize children in contravention of the terms of the Protocol.

#### **Article 7. International cooperation and assistance**

33. Article 7 (1) obliges States Parties to undertake to cooperate in the implementation of the Protocol, including in the prevention of any act contrary to the Protocol and in the demobilization, rehabilitation, and social reintegration of persons who are victims of acts contrary to the Protocol through, inter alia, technical cooperation and financial assistance. Article 7 (2) specifies that States Parties "in a position to do so" shall provide financial, technical or other assistance through existing multilateral, bilateral or other programs.

34. The United States has contributed substantial resources to international programs aimed at preventing the recruitment of children and reintegrating child ex-combatants into society and is committed to continue to develop rehabilitation approaches that are effective in addressing this serious and difficult problem. The United States applies a definition of child ex-combatants in keeping with the Cape Town Principles of 1997, which cover any child associated with fighting forces in any capacity, whether or not he or she ever bore arms. In this regard, United States programming adopts a broad approach by seeking to include all children affected by armed conflict rather than singling out for separate services former child combatants. It also espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants. United States programming aimed at assisting children affected by war addresses the disarmament, demobilization, rehabilitation and integration into civilian society of former child combatants; the prevention of recruitment of children; and the recovery and rehabilitation of children affected by armed conflict, including activities to identify separated children, protect them from harm, provide appropriate interim care, carry out tracing for family reunification, arrange alternate care for children who cannot be reunited, reform their legal protections and

facilitate community reintegration. The Protocol serves as a means for encouraging such programs and constitutes an important tool for increasing assistance to children who are affected by armed conflict.

35. Through the United States Agency for International Development (USAID), the United States has contributed over \$10 million over the past several years toward the demobilization of child combatants and reintegration into their communities. A few noteworthy accomplishments sponsored by USAID in conjunction with implementing partners include the following:

**In Angola**, enhanced child protection and psycho-social services, increased access to basic services and livelihood opportunities, and integrated lessons learned into national policies and legislation for children. Supported the development and implementation of an innovative methodology and program for training parents, teachers and other child caretakers to identify and address emotional and psychological problems caused by conflict-related stress and trauma.

**In Afghanistan**, conducted a program to provide emotional support for war-affected children, including child ex-combatants, through non-formal education activities, opportunities to play, training in vocational skills, and psychosocial recovery and well-being. Such programs seek to instill a sense of security, encourage positive social interactions, enable children to participate in the recovery and development of their community, provide opportunities for emotional expression, teach non-violent approaches to conflict resolution, sensitize communities to the needs and legal rights of children, and facilitate the social integration and protection of all children, including those who have participated in or been affected by armed conflict.

**In Colombia**, promoted successful reintegration of child ex-combatants into society through (1) the establishment of safe houses/centers around the country where groups of 20 to 25 ex-combatants live, study, and receive needed counseling, and (2) the creation of a network of registered NGOs to provide confidential support upon “graduation” from the centers. Simultaneously supported consolidation of the legal framework for the protection of child ex-combatants and provided relevant training to judges, public defenders, human rights ombudsman representatives, and local, regional, and national authorities. Helped develop protocols, guidelines, manuals, and an information management system to monitor and evaluate the program. Supported development and implementation of a national strategy to prevent child recruitment focused on high-risk indigenous and Afro-Colombian youth based on community strengthening, including community income-generation and social infrastructure projects.

**In Liberia**, provided education and skills training to child ex-combatants and facilitated their reunification with families and reintegration into communities. An estimated 2,728 children benefited.

**In Sierra Leone**, facilitated the disarmament and demobilization of 2,000 child ex-combatants. Cared for 2,000 children in interim care centers. Reunited 1,200 children with their families and assisted with their reintegration (school or skills training). Supported 93 small-scale reintegration projects in communities to which children were returning (skills training workshops, vegetable gardening, sports clubs, cultural performance groups, etc.). These projects directly benefited 510 children, who actively participated in the program, and indirectly helped 4,500.

**In southern Sudan**, facilitated the demobilization of nearly 85 percent of the estimated 31,000 child soldiers.

**In Uganda**, assisted formerly abducted children, former child soldiers, child mothers, and internally displaced families with family reunification and community reintegration, returning to normal daily life, psychosocial recovery from their experiences as well as providing educational and skills training opportunities and HIV/AIDS awareness education.

36. Since 2001, the U.S. Department of Labor (USDOL) has provided approximately \$24 million towards preventing the recruitment of child combatants and promoting the economic reintegration of former child soldiers and war-affected youth. A few noteworthy achievements supported by USDOL in conjunction with implementing partners include the following:

**In Angola**, launched a three-year, \$4 million program in 2005 to provide literacy, life skills, and primary school equivalency education to 24,025 youth, including war-affected children.

**In Afghanistan**, enrolled nearly 3,400 underage former soldiers in community-based reintegration programs combining informal education, skills training, and psycho-social support.

**In Burundi**, developed programs to assist former child soldiers with accessing vocational training and community support and creating micro-enterprises and cooperatives.

**In Colombia**, launched programs to reintegrate into society former child soldiers, to raise awareness of the worst forms of child labor, including unlawful child soldiering, among workers, employers, communities, and government officials, and to facilitate training and job placement for vulnerable youth.

**In the Democratic Republic of the Congo**, supported programs to provide child ex-combatants with formal and informal vocational training, “catch-up” education, and assistance in identifying formal employment opportunities and developing micro-enterprises.

**In Liberia and Sierra Leone**, launched a four-year, \$6 million program in 2005 to raise awareness of child rights among communities, parents, and government officials and to provide vulnerable children, including former child soldiers, with formal/non-formal education programs and vocational training.

**In Sri Lanka**, provided 342 former child soldiers and war-affected youth with employment-related vocational skills training, life-skills courses, and toolkits.

**In Uganda**, provided formerly abducted children and child mothers with courses in vocational training, basic education, and life-skills. Designed radio programs on the importance of education, children’s rights, and the roles of parents and the community in

education.

**In Burundi, Democratic Republic of the Congo, Rwanda, the Philippines, and Uganda,** conducted research projects on the nature and extent of child soldiering.

## **Article 8. Reporting**

37. Article 8 provides that States Parties shall 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 the provisions of the Protocol.

38. Initial U.S. reporting under Article 8 is limited to reporting on the measures the United States has taken to implement the provisions of the Protocol. The United States has no obligation to comply with any additional reporting requirements contained in Article 44 of the Convention on the Rights of the Child, nor is the Committee on the Rights of the Child competent to request information from the United States on any matter other than implementation of the Protocol.

39. Article 8 (2) also creates separate supplemental reporting requirements for States Parties to the Convention on the Rights of the Child (i.e., to include reports on implementation of the Protocol within supplemental reports submitted under the Convention on the Rights of the Child) and for States that are not parties to the Convention on the Rights of the Child (i.e., to submit supplemental reports on any further information with respect to implementation of the Protocol every five years). Additionally, Article 8 (3) draws from Article 44 (4) of the Convention on the Rights of the Child when it permits the Committee on the Rights of the Child to request further information relevant to the implementation of the Protocol.

40. The Protocol grants the Committee on the Rights of the Child no authority other than receiving reports and requesting additional information as set forth above. During the negotiations, States rejected proposals that would have permitted the Committee, *inter alia*, to hold hearings, initiate confidential inquiries, conduct country visits, and transmit findings to the State Party concerned.

41. This report is submitted in accordance with U.S. obligations under Article 8 of the Protocol.

## **Article 9. Signature and ratification**

42. Article 9 provides that the Protocol is subject to ratification or open for accession by any State, i.e., it is not limited to parties to the Convention on the Rights of the Child. During the negotiations of the Protocol, the United Nations Legal Counsel provided a legal opinion which confirmed that under the rules of the law of treaties there was no legal impediment to an instrument which is entitled "optional protocol" being open to participation by States that had not also established, or which did not also establish, their consent to be bound by the convention to which that instrument was said to be an optional protocol. The United Nations opined that:

"there is no necessary legal impediment to an instrument which is entitled 'optional protocol' being open to participation by States which have not also established, or which do not also establish, their consent to be bound by the convention, to which that instrument is said to be an 'optional protocol'".

(UN Office of Legal Affairs, 18 January 2000. See, also, report of the Working Group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict on its sixth session, E/CN.4/2000/74, para 82.)

43. Consistent with the fact that the Protocol is an independent international agreement, the following understanding was attached to the U.S. instrument of ratification:

"The United States understands that the Protocol constitutes an independent multilateral treaty, and that the United States does not assume any obligations under the Convention on the Rights of the Child by becoming a party to the Protocol."

## **Article 10. Instrument of ratification**

44. The United States deposited its instrument of ratification of the Protocol on December 23, 2002. The Protocol entered into force with respect to the United States on January 23, 2003.

## **Article 11. Denunciation**

45. The United States has taken no steps to denounce the Protocol.

## **Article 12. Amendments**

46. The United States has proposed no amendments to the Protocol.

## **Annex I**

### **U.S. Instrument of Ratification**

GEORGE W. BUSH President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, was adopted by the United Nations General Assembly on May 25, 2000 and signed on behalf of the United States on July 5, 2000; and

The Senate of the United States of America by its resolution of June 18, 2002, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Optional Protocol, subject to the following understandings:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD. - The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) IMPLEMENTATION OF OBLIGATION NOT TO PERMIT CHILDREN TO TAKE DIRECT PART IN HOSTILITIES. - The United States understands that, with respect to Article 1 of the Protocol -

(A) The term "feasible measures" means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;

(B) The phrase "direct part in hostilities" -

Means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and

Does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and

(C) Any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.

(3) MINIMUM AGE FOR VOLUNTARY RECRUITMENT. - The United States understands that Article 3 of the Protocol obligates States Parties to the Protocol to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of 15 years of age.

(4) ARMED GROUPS. - The United States understands that the term "armed groups" in Article 4 of the Protocol means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups.

(5) NO BASIS FOR JURISDICTION BY ANY INTERNATIONAL TRIBUNAL. - The United States understands that nothing in the Protocol establishes a basis for jurisdiction by any international tribunal, including the International Criminal Court.

NOW, THEREFORE, I, George W. Bush, President of the United States of America, ratify and confirm the said Optional Protocol, subject to the above understandings.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this fourteenth day of September in the year of our Lord two thousand two and of the Independence of the United States of America the two hundred twenty-seventh.

By the President:

Secretary of State

## **Annex II**

### **U.S. Declaration under Article 3 (2)**

The Government of the United States of America declares, pursuant to Article 3 (2) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict that -

(A) The minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age;

(B) The United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505 (a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control;

(C) Each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and

(D) All persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service.



## **Annex III**

### **U.S. Military Service Plans**

[May be consulted in the files of the secretariat.]

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