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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 conflicts

Initial reports of States parties due in 2005

FRANCE * **

[26 September 2006]

Introduction

1. France signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (hereinafter referred to as "the Protocol") on 6 September 2000 and ratified it on 5 February 2003. In accordance with article 10 of the Protocol, it entered into force on 5 March 2003.

2. In this initial report, France presents to the Committee on the Rights of the Child the measures it has taken to give effect to the provisions of the Protocol, as required under article 8, paragraph 1, of the Protocol. This report has been prepared in the light of the guidelines regarding initial reports to be submitted by States parties in accordance with article 8, paragraph 1, of the Protocol. Any further information with respect to the implementation of the Protocol will be included in the periodic reports that must be submitted every five years pursuant to article 8, paragraph 2, of the Protocol.

3. The present report is based on contributions by the Ministries of Defence and Foreign Affairs. Observations made by the National Consultative Commission on Human Rights have also been taken into account.

Article 1 - Direct participation in hostilities

4. Under article 20, paragraph 4, Act No. 2005-270 of 24 March 2005, the Members of the Armed Forces (General Regulations) Act, no one who is not at least 17 years of age may become a member of the armed forces. In fact, no minor below the age of 18 participates in operations abroad, both because of the length of the probationary period (six months) and because of the initial training given (four to seven months minimum depending on the area of training).

5. The concept of direct or active participation in hostilities is not the subject of a detailed definition, whether in treaty law or in French domestic law. Thus the concept is only mentioned in article 3 common to the Geneva Conventions of 12 August 1949. In French law, it is referred to in the Criminal Code, part VI, article 436-1, under which participation in mercenary activity is illegal. Nevertheless, this legal concept is not subject to particular debate. As part of work by the International Committee of the Red Cross and the T.M.C. Asser law institute in the Netherlands, French experts are actively involved in the international process of drafting guiding principles in this field. Two seminars were organized in 2004 and 2005, and the work of this group is expected to continue in 2006.

Article 2 - Compulsory recruitment

6. Act No. 97-1019 of 28 October 1997 on national service reform brought conscription in France to an end. Article 1 of the Act added a new article L. 112-2 to the National Service Code, which suspends conscription "for all French persons born after 31 December 1978 and those within the same group on the register". This article specifies, however, that conscription "shall be reinstated at any moment by law, when the conditions for the defence of the nation or the objectives laid down for the armed forces so require".

7. Minors cannot in any event be affected by any reinstatement of national service. The currently suspended article L. 3 of the National Service Code provides that "male French citizens must perform their national service between the ages of 18 and 50".

Article 3 - Voluntary recruitment

Minimum age

8. At the time of ratification of the Protocol, France deposited a binding declaration stating that “France declares that it recruits only volunteers aged at least 17 who have been informed of the rights and duties involved in military service, and that the enlistment of recruits under the age of 18 is valid only with the consent of their legal representatives”. The general staff and the legal services of the Ministry of Defence jointly drew up this binding declaration, which lists the protective measures France has taken in relation to the recruitment of minors for military service, whether French or of other nationality (Foreign Legion).

9. Accordingly, under article 20, paragraph 4, of the Members of the Armed Forces (General Regulations) Act, “no one who is not at least 17 years of age may become a member of the armed forces - 16 years of age in order to receive general and vocational training as a volunteer in the armed forces or as a pupil in a military school”. Persons aged under 16 cannot, under any circumstances, take part in activities other than those which form part of general and vocational training.

10. In accordance with article 83, paragraph 1, of the Act, persons wishing to serve in the Foreign Legion are eligible only if they are aged at least 17.

Safeguards relating to voluntary recruitment other than to the Foreign Legion

11. In accordance with article 3, paragraph 3, of the Protocol, French legislation provides for a specific voluntary recruitment procedure for under-age members of the armed forces. It is necessary to ensure not only that unemancipated minors actually desire to be recruited, but also that their legal representatives consent (article 20 of the Act).

Specific safeguards relating to voluntary recruitment to the Foreign Legion

12. Regarding members of the armed forces of other nationalities, article 83, paragraph 2, of the Act provides that unemancipated minors must, in principle, give evidence of their identity and the consent of their legal representative.

13. The military authorities can accept the enlistment of a candidate in the absence of the necessary supporting documents only in exceptional cases and after detailed administrative inquiry into the candidate’s background, in collaboration with the authorities of the country of origin.

14. Everything is done to verify the age of the candidates during the phase prior to the conclusion of a recruitment contract, which is known as the “selection and recruitment phase”. The need for written parental authorization for the recruitment of any minor facilitates verification. Moreover, interviews offer an opportunity to investigate the identity and past of the candidates and thus confirm their real age.

15. Where the candidates do not have the necessary supporting documents, they must in practice provide information which can be verified. Their files are then subjected to detailed scrutiny so that the candidates can be identified without risk of error or confusion. Precise knowledge of the identity of each candidate is the foundation for all recruitment.

16. In the case of real or serious doubts about the age of a candidate, even when all other conditions for recruitment have been fulfilled, the application is deferred. This procedure allows the candidate to reapply for recruitment at a later date.

17. Finally, the consequences of a fraudulent declaration at the time of recruitment act as deterrents. When minors misrepresent their age in order to be recruited, and, as a result, bypass the necessary parental authorization, they risk automatic termination of their contracts. It is then impossible for them to undergo the recruitment process again.

18. The Foreign Legion, when accepting the recruitment of a candidate, “accepts his or her past”. Through their statements, candidates must supply established and reliable information, which is systematically checked by the Foreign Legion’s Statistics and Protection Division. The moral responsibility borne by the Foreign Legion requires that candidates who volunteer to serve France show complete transparency as to their identity and their past.

19. For information purposes, the Foreign Legion does not currently number any minors within its ranks, despite the possibility of recruitment from the age of 17. Furthermore, the recruitment of under-age candidates is an altogether marginal phenomenon within Foreign Legion recruitment. Around 7,500 candidates on average apply for recruitment each year to fill the 1,000 posts available. The recruitment of minors accounts for at most only two to four enlistments a year.

Military schools

20. Several schools that fall directly under the Ministry of Defence provide secondary education to minors; however, such schools are not considered to be military schools, insofar as they do not provide military training. The Air Force Technical Training School is a military school that accepts minors who wish to become air force NCO technicians. The school is open to pupils from the age of 15, but they can sign up for military recruitment only from their sixteenth birthday, for the purpose of receiving general and vocational training, in accordance with the provisions of the Members of the Armed Forces (General Regulations) Act. For information purposes, 177 under-age members of the armed forces were recruited to the School in 2005. This figure is identical to that of 2004.

Article 4 - Armed groups distinct from the armed forces

21. The French Government does not have any particular information to convey regarding article 4 of the Protocol, as there are no active armed groups distinct from the national army in France.

22. Because of its deep involvement in the campaign against the recruitment of child soldiers, the Government keeps a close watch on the possible recruitment of minors by foreign armed groups on French territory.

Article 5 - Other international instruments and international humanitarian law

23. France is a party to other international instruments regarding the involvement of children in armed conflicts: the Geneva Conventions of 12 August 1949 and the additional protocols thereto of 8 June 1977 relating to the protection of victims of international (Protocol I) and noninternational (Protocol II) armed conflicts, ratified respectively on 28 June 1951 (the Conventions), 11 April 2001 (Protocol I) and 24 February 1984 (Protocol II); International Labour Organization Convention No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified by France on 11 September 2001; and the Rome Statute of the International Criminal Court, adopted on 17 July 1998 and ratified by France on 9 June 2000.

Article 6 - Effective implementation and enforcement of the provisions of the Optional Protocol

24. Pursuant to article 55 of the Constitution of 4 October 1958, the Protocol is applicable in French domestic law and takes precedence over Acts of Parliament. Act No. 2002-271 of 26 February 2002 authorized its ratification (*Journal officiel de la République française* of 27 February 2002) and decree No. 2003-373 of 15 April 2003 (published in the *Journal officiel* of 24 April 2003) approved its publication (article 1 of the decree) and entrusted its enforcement to the Prime Minister and the Minister for Foreign Affairs (article 2 of the decree). The instruments of ratification having been deposited on 5 February 2003, the Protocol entered into force in France one month later, on 5 March 2003, in accordance with article 10 of the Protocol.

25. In order for a treaty provision to be invoked in a domestic court, the provision must be recognized as being directly applicable (or "self-executory"). In view of the recent entry into force of the Protocol, French courts have not yet had occasion to rule on the direct effect of its provisions. They will not fail to do so as soon as the matter is referred to them, as occurred with the Convention on the Rights of the Child. The Court of Cassation, which had traditionally refused to acknowledge that the Convention on the Rights of the Child was directly applicable in domestic law, has recently markedly changed its position. In two ground-breaking decisions dated 18 May 2005, which have since been confirmed (see, among others, the judgements of the first civil division dated 14 June 2005, 13 July 2005 and 22 November 2005), it recognized the direct applicability of articles 3-1 and 12-2 of the New York Convention. The Council of State had adopted a more qualified position by declaring certain articles to be directly applicable, according to whether or not the provisions of the Convention were self-executory. There is considerable case law on this point. To date, the Council of State has acknowledged that articles 3-1, 10-2, 16 and 37 (b) and (c) of the Convention have a direct impact on individuals.

Article 7 - Financial assistance and technical cooperation among States

26. France is involved in assistance and cooperation on the issue of children in armed conflicts both at the United Nations and within the European Union.

Activities within the framework of the United Nations Security Council

27. On numerous occasions since 1999 France has campaigned for the United Nations Security Council to put the issue of children in armed conflicts on its agenda. The Council has adopted six resolutions in this field relative to the recruitment of child soldiers: a call for the demobilization of children, the creation of a "blacklist" of parties to armed conflicts which recruit or use child soldiers, laying of the groundwork for targeted sanctions, the creation of a monitoring mechanism, the immediate implementation of the monitoring mechanism and the creation of a working group.

28. In view of this commitment on the issue, the French Ambassador and Permanent Representative to the United Nations was appointed by his peers to chair the Security Council Working Group on Children and Armed Conflict, focusing in particular on the 13 key countries on the Secretary-General's "blacklist". Since November 2005, four meetings have taken place, most recently on 26 June 2006. This working group will make recommendations on the mandate of peacekeeping operations and on measures to facilitate the implementation of resolution 1612 adopted on 26 July 2005. The French Minister for Foreign Affairs will chair the next meeting of the working group in July 2006.

29. In support of the Security Council resolutions, our country also contributed 20,000 euros in 2005 towards an evaluation of the network of child protection advisers by the Department of Peacekeeping Operations. It has also contributed 30,000 euros in 2005 and 50,000 euros in 2006 to the non-governmental organizations' Coalition to Stop the Use of Child Soldiers.

Activities within the framework of UNICEF

30. Compliance with the Protocol also results from close cooperation with UNICEF and other United Nations bodies.

31. In 2006 the French contribution to UNICEF was 13.8 million euros. France specifically supports the UNICEF Innocenti Research Centre, which works on best practices in the reintegration of children associated with armed conflict, in particular young girls, and is preparing a guide to the participation and protection of child victims or witnesses in international legal mechanisms in association with the International Criminal Court.

32. Along with UNICEF, our country is taking an active part in organizing a conference on the Cape Town Principles in Paris on 23 and 24 November 2006. These principles, adopted in 1997 by a group of experts, are still the standard in the field of child protection through disarmament, demobilization and reintegration. However, they need to be brought up to date, and might be developed by broadening the scope of criteria governing planning and intervention, enhancing measures for preventing recruitment, improving activities for reintegration into the family and the community, reinforcing witness protection, as well as preventing and campaigning against gender-based violence.

33. Child protection is also a national priority, as is shown, for example, by Ministry of Foreign Affairs project No. 2000-149, the Priority Solidarity Fund, which had funding of 2.28 million euros for the period between April 2003 and January 2006. One of the project components, on children and armed conflicts, involved raising media awareness of children's rights, promoting education for peace and the incorporation of the fundamental principles of children's rights into academic and vocational training curricula, and organizing regional consultations on operational strategies to combat children's rights violations during armed conflicts in the Congo, Guinea-Bissau, Liberia, the Democratic Republic of the Congo and Sierra Leone.

Activities in the context of the European Union

34. France is also actively involved in the European Union Plan of Action on children in armed conflict.

35. On 8 December 2003, following consultation with the Special Rapporteur, UNICEF and non-governmental organizations, the Council of the European Union adopted a set of guidelines on children and armed conflict. These demonstrate the commitment of the European Union to equip itself with a broad range of instruments for the promotion of child protection: political measures, as well as integration of the issue of children in armed conflicts in all external relations and crisis management, including in peacekeeping operations. This issue is also covered as part of humanitarian programmes carried out by the Humanitarian Aid Office of the European Commission, which provided funding of 37 million euros for projects concerning children in 2004, disarmament programmes covering small arms and light weapons and anti-personnel mines, outreach programmes for displaced persons, and programmes of cooperation, including the European Initiative for Democracy and Human Rights.

36. On 9 December 2004, the guidelines resulted in the adoption of a European Union Plan of Action on children in armed conflict, which is designed to give them more practical application. For example, the Plan aims to promote better coordination in the cooperative activities of the member States and the Commission in the countries concerned, in programmes on disarmament, rehabilitation and reintegration. Member States are invited to coordinate their efforts under the leadership of "lead nations" in one of the following five fields: education, prevention of recruitment and demobilization, prevention of sexual violence, humanitarian aid and protection. As part of the initiative, in 2005 the European Union took steps to raise awareness in Côte d'Ivoire, Burundi, the Sudan and Liberia. European Union embassies in Nepal have also proposed a local EU plan of action.

37. The European Union has also implemented a number of political, diplomatic and financial initiatives:

Setting up a system of reporting by European Union heads of mission in the affected countries, drawing on the list of countries in which parties to armed conflicts have been criticized by the Security Council for recruiting and employing children;

Recommending steps in pursuance of the reports, such as increasing funding for relevant initiatives and programmes. The Special Representatives of the European Union have received instructions to bear the problem in mind, for example, in Africa's Great Lakes region;

Cooperating with UNICEF on a training programme for European Union staff on children's rights;

Taking children's rights into account in training activities relating to European Union security and defence policy and crisis management.

Annex

Act No. 2005-270 of 24 March 2005, the Members of the Armed Forces (General Regulations) Act.
