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COMMITTEE ON THE RIGHTS OF THE CHILD

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SUMMARY RECORD OF THE 1293rd MEETING*

Held at the Palais Wilson, Geneva,
on Friday, 18 January 2008, at 10 a.m.

Chairperson: Ms. LEE

CONTENTS

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Initial report of Germany under the Optional Protocol on the involvement of children in armed conflict

* No summary record was issued for the 1292nd meeting.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 5) (continued)

Initial report of Germany under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/DEU/1, CRC/C/OPAC/DEU/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Germany took places at the Committee table.
2. Ms. SIEFKER-EBERLE (Germany) said that Germany was very much concerned that, despite the sustained efforts of the international community, the situation of children involved in armed conflict remained very disturbing. Over the past 10 years some 2 million children had perished in armed conflict, and many more had been maimed. Germany, together with its partners in the European Union, had for years been involved in activities to improve the situation of children affected by armed conflict, including activities with United Nations agencies and mechanisms.
3. The European Union's external human rights policy included specific human rights guidelines on children and armed conflict, adopted in 2003, which called for concrete bilateral and multilateral measures. In the first half of 2007, under the German presidency of the European Union, a number of initiatives had been taken to implement those guidelines, for example through the development of local strategies addressing the situation in a number of affected countries. In addition, in order to ensure better coordination, a list had been drawn up of all projects either supported by member States or funded by the European Union. The European Union under the German presidency had also strongly supported the adoption and implementation of the Paris Principles, which set out a more coherent international approach to the problem of the involvement of children in armed conflict. The German Government was aware that its efforts would be all the more convincing if it scrupulously fulfilled its obligations under the Optional Protocol.
4. Ms. WITTLING-VOGEL (Germany) said that the German Government, with the submission of its report, had undertaken to publish and distribute the Optional Protocol and information on it more extensively. For example, it had made the Optional Protocol more easily accessible on various Government websites and had given it greater prominence in publications for children and in human rights education programmes, including those of the German Institute for Human Rights.
5. The minimum age for voluntary enlistment in the German armed forces had been set at 17 in order to make it possible for young people to join up directly after leaving school, thus avoiding protracted waiting periods during which they would be left without any productive activity. There were currently 472 soldiers aged 17; 263 were temporary career volunteers, which meant that they had enlisted for two years or longer, and 209 were basic military service conscripts, who had signed up for nine months. Soldiers under 18 were not allowed to carry weapons. They could not be deployed anywhere where there was a risk of armed conflict, and could not be used for guard duty, as that would involve carrying a weapon. They only came into contact with weapons when they were in training, and thus under supervision, and when the exercises were finished they returned their weapons. The alternative report that had been

submitted to the Committee by non-governmental organizations (NGOs) unfortunately depicted that situation in a somewhat misleading light. In any event, the author of that report had stated that he did not consider Germany to have violated its international obligations under articles 1 and 2 of the Optional Protocol. Notwithstanding implications to the contrary in the alternative report, the minimum age of 17 was established in a publicly accessible decree, which had appeared in the Federal Law Gazette.

6. Soldiers aged 17 were able to leave the military without having to justify their decision. They could do so either by making use of revocation or withdrawal mechanisms, or by attaining the status of conscientious objectors. Persons under the age of 18 could not join the military without the consent of both parents or their legal guardians.

7. In accordance with the Code of Crimes against International Law and the Rome Statute of the International Criminal Court, Germany recognized extraterritorial jurisdiction for the war crime of recruitment of children under the age of 15. Before their deployment in other countries, German soldiers were given training that addressed the legal aspects and specific problems of child soldiers in the region of deployment. They were also given further training during such deployments as the need arose. If it was expected that they would encounter child soldiers, the individual pocket cards distributed to each German soldier contained information on how to deal with them.

8. There were no specific statistics on the number of former child soldiers who came to Germany. Asylum-seekers rarely stated that they fled their countries as a consequence of recruitment as child soldiers. In principle, unaccompanied minors were questioned by specially-trained staff members who were aware of the situations prevailing in the children's countries of origin. If it was found that they had been the victims of torture or other trauma, they received specialized care. The Immigration Act of 2005 recognized persecution by non-government entities as grounds for granting refugee status, and as a result the chances of being recognized as a refugee had improved significantly for former child soldiers and children who had fled compulsory recruitment. German youth welfare agencies were obliged to take unaccompanied former child soldiers into their care, and to provide them with psychological treatment when necessary.

9. Germany supported a large number of projects for reintegration and the rebuilding of the social infrastructure in conflict-affected regions, some of which were especially intended for former child soldiers.

10. Ms. SMITH (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) expressed the Committee's appreciation for Germany's contribution to the rehabilitation and reintegration of child soldiers, its support for the mandate of the Special Representative of the Secretary-General for children and armed conflict, and its efforts to promote implementation of the guidelines on children and armed conflict adopted by the General Affairs and External Relations Council of the European Union. Notwithstanding that, the report submitted by the Government did not follow the Committee's guidelines for reporting, and in fact lacked important information. The replies to the list of issues and the oral presentations had filled some of the gaps, especially in respect of the enlistment of minors.

11. While Germany was not violating the provisions of articles 1 and 2 of the Optional Protocol, the Government should still consider raising the minimum age of enlistment to 18 years, as the majority of States parties to the Optional Protocol had done. In the replies to the list of issues, the Government had interpreted article 6, paragraph 3, of the Optional Protocol, as being intended for Governments on whose territory the situation in question existed. While that was a possible interpretation, she considered that the more natural interpretation would be to consider that all countries must extend assistance to former child soldiers. She requested further information on asylum-seekers between the ages of 16 and 18. While welcoming the provisions of the law that had entered into force in 2005, she pointed out that it was often difficult to identify children who had been child soldiers. While the delegation had stated that, in principle, unaccompanied minors were questioned by staff aware of the situation in the country of origin, the Committee had heard that asylum procedures were often instituted very swiftly - within a few days, and prior to appointment of a guardian - which meant that there must be cases in which children did not dare to admit their participation in armed conflict. Noting that the Federal Office for Migration and Refugees had appointed special adjudicators to interview children up to the age of 16, and that they could also interview children of 17 and 18 when they were in especially vulnerable situations, she asked if it was true that most applicants of 17 and 18 years of age were still heard by regular adjudicators.

12. During the Committee's previous consideration of a report by Germany, young people between 16 and 18 years of age had not benefited from the rights ensured by the Youth Welfare Act. She had heard that the situation had changed. Were such minors currently given the same treatment as younger children? To what extent did former child soldiers receive treatment and care as a general policy? Were the psycho-social services sufficiently funded? Lastly, she asked whether the Government applied a criterion of double criminality when deciding whether the extraterritorial jurisdiction would apply to war crimes. If that were the case, it would weaken the extraterritorial jurisdiction in question.

13. Ms. KHATTAB, noting that the delegation had mentioned that members of the German military were trained in ways of dealing with child soldiers, asked whether they received any instruction on how to act when confronted with other children who were caught up in armed conflict. It would be of interest to the Committee to hear about the procedures for reporting on the various German international assistance to former child soldiers, and to learn how such reporting helped to shape future projects. Lastly, were there any reports of violations of human rights by German soldiers stationed in other countries?

14. Mr. PURAS referred to Germany's painful history in the twentieth century, which had led it to adopt very high ethical and moral standards with regard to the human rights of vulnerable citizens and to make every effort to educate children in the spirit of peace. In that regard, Germany might serve as an example to other countries that had also suffered from disasters in the past century.

15. Coming as he did from Eastern Europe, where in many countries bullying by military superiors had reached epidemic proportions, he would be interested to know how German soldiers under the age of 18 were protected from such psychologically harmful practices, whether any preventive measures were in place and what procedure was followed when a case of such abuse came to light.

16. Mr. CITARELLA said that although it was not a violation of the Optional Protocol for children to enlist in the armed forces as volunteers at the age of 17, he encouraged Germany to consider raising the minimum age to 18. He would also like to know whether the subjects taught to enlisted soldiers focused solely on military matters or whether other subjects were also taught.

17. Mr. KOTRANE said that on the whole, the State party was in full compliance with the Optional Protocol. In fact, when Germany had ratified the Convention on the Rights of the Child, it had made a declaration regretting that the Convention had set the minimum age for enlistment in the armed forces at 15. In paragraph 54 (c) of its concluding observations on Germany's second periodic report (CRC/C/15/Add.226), the Committee had expressed concern that the recruitment of children as soldiers was not accepted as a child-specific persecution in the asylum procedure. He asked whether there were any new developments in that regard and would also like to know whether a non-German national residing in Germany could be prosecuted for the recruitment of child soldiers in another country.

18. Mr. FILALI asked whether German legislation defined and took into account the concept of "direct hostilities". When was it considered that direct hostilities were taking place? Was a child found to have supplied information regarded as being involved in direct hostilities? He also enquired whether, upon completing their basic training, soldiers under the age of 18 had to turn in all their weapons, or only their firearms. For example, did they also have to turn in their knives?

19. He would like to learn more about the contents of the pocket cards to which the delegation had referred and about how German soldiers were taught to react when confronted by armed child soldiers. Were child soldiers regarded as combatants? Could they be potential targets? Were they treated as enemies? Were child soldiers taken prisoner in the same conditions as adult prisoners?

20. Ms. ORTIZ asked how many children who had come to Germany from areas of armed conflict and were seeking asylum had been identified and what method was used to do so. It would also be interesting to hear about how the officials in the migration and refugee services were trained. How many officials had been trained, and who provided the training? She also enquired whether the members of the armed forces received any training to familiarize them with the Convention and the Optional Protocol. Was there any assessment made of the troops working in the field? What experience did those troops have in their contacts with children and teenagers in military areas? She would also like to know whether German legislation banned the sale of weapons to countries that used child soldiers, and whether the delegation had any information regarding a recently publicized allegation by a German soldier that local Afghan children were used to verify whether fields were mined.

21. Mr. POLLAR asked about Germany's involvement in peace negotiations with organizations believed to be holding children in their ranks, for example in the peace talks in southern Sudan, where one of the sides was thought to be holding some 20,000 children as combatants, some no older than 10 or 11 years of age. He would like to know whether Germany took part in such talks, whether directly or through the European Union, and if so, what its position was in that regard. He also asked whether the interviews of children fleeing war zones who were seeking asylum in Germany were gender-sensitive and took into consideration the

particular needs of girls. It would be useful to learn whether children between 16 and 18 years of age benefited from the protection of the Youth Welfare Act, regardless of whether it had been ascertained that they had been recruited as child soldiers.

22. Ms. VUCKOVIC-SAHOVIC, noting that there had been instances of German army instructors having been prosecuted for degrading treatment of subordinates, asked whether the delegation was aware of any cases of torture or degrading treatment or punishment of soldiers under the age of 18, whether any such cases had come before the courts and, if so, whether they were heard in regular courts or in juvenile courts. In her view, the text drafted to inform minors about voluntary service in the armed forces was not child-friendly and was at variance with the message contained in article 29 of the Convention, on the aims of education.

23. She was concerned that some children who had gone to Germany to flee armed conflicts were being returned despite the risk that they might be subjected to degrading treatment. In Serbia, for example, many Romas who had been expelled during the conflict in Kosovo had fled to Germany and were currently being returned to Serbia, rather than to their place of origin. In terms of international cooperation, she asked to what extent Germany was assisting with the rehabilitation and reintegration of children who had fled military conflicts and whether it was working to promote a culture of peace in the countries concerned.

24. Ms. AL-THANI asked whether German troops deployed abroad were trained to deal with children who were victims of violence, and in particular cases of sexual violence committed against girls during armed conflicts.

25. Ms. AIDOO said that she appreciated the support which Germany was giving through bilateral cooperation to many children affected by armed conflicts, both child soldiers and others. She wondered whether, given the experience which Germany had acquired and its commitment to the Optional Protocol, it had been able to put in place adequate measures to identify those children seeking asylum in Germany who might have been recruited as soldiers and been involved in hostilities. Noting that the Federal Office for Migration and Refugees employed experts to interview asylum-seeking children, she asked whether they were sufficient in number and whether they had special training in the Optional Protocol and an awareness of children's rights in general.

26. Mr. PURAS said that in the field of child psychiatry, where Germany had always played a leading role, even persons who were 19 or 20 years of age might be regarded as children. Thus, childhood sometimes continued beyond the age of 18: all the more reason for the Government to consider increasing the minimum age for voluntary military service.

27. The CHAIRPERSON asked whether non-governmental organizations (NGOs) or representatives of civil society had been involved in drafting the country report.

The meeting was suspended at 11.10 a.m. and resumed at 11.35 a.m.

28. Ms. SIEFKER-EBERLE (Germany), beginning with the last question asked by the Chairperson, said that Germany had not involved NGOs and civil society in the drafting of the country report, although it had done so for other reports. However, following the submission of the report, the Government had established contacts with representatives of civil society and,

through the intermediary of the German Institute for Human Rights, had met with NGOs, which had then drawn up their alternative report. In general, after the concluding observations of a treaty body were made available, the Institute for Human Rights held a final discussion involving representatives of the Government, the German states and NGOs, and such a meeting always took place following the presentation of the country report to the Committee on the Rights of the Child. Her Government was working on a procedure for involving NGOs in the drafting of country reports in the future.

29. With regard to the question by the Country Rapporteur on whether Germany might consider increasing the minimum age of military service to 18, she said that there had been a protracted discussion in the country on the subject, but it had ultimately been decided to leave unchanged the legal situation which had obtained when Germany had ratified the Optional Protocol. Currently, there were no plans to change the minimum age of 17.

30. Referring to the interpretation of article 6 (3), second sentence, of the Optional Protocol, she said that Germany was committed to providing care and support for former child soldiers arriving in Germany through the competent authorities. She had no specific information about a ban on the export of weapons to regions where child soldiers were present. In principle, Germany did not export weapons to crisis regions, including those where there might be child soldiers. A number of ministries were involved in deciding whether weapons should be exported, based on the situation in individual countries.

31. Mr. HEISS (Germany) said that no youngsters under 18 were recruited into the Bundeswehr (the German army) without the approval of their parents, whether they wished to join as short-term volunteers or to undertake military service. Children learned to use a basic hand weapon but did not receive any specialized training in weaponry. In addition, the Bundeswehr provided non-military, vocational training for boys and girls.

32. Predeployment training included information on the region of deployment, as well as cultural and historical information relevant to the problems of child soldiers. When the army encountered child soldiers or other children in the region of deployment, its priority was to guarantee the children's safety and provide medical assistance if necessary. Military force was used against child soldiers only as a last resort and if the level of threat was sufficiently high. If child soldiers could be disarmed, they were then assessed to determine whether they were in need of immediate psychological or medical treatment. They would then be handed over to NGOs or reunited with their families wherever possible. The same procedure would be followed if the army encountered children who were victims of sexual abuse.

33. In order to protect underage soldiers from abuse by their seniors, the Bundeswehr had a complaints mechanism in place, as well as a parliamentary commission that was an independent body competent to deal with complaints. Underage soldiers in predeployment training were given "pocket cards", to be carried with them at all times, explaining the basic principles of deployment, including how to deal with child soldiers.

34. Ms. SMITH (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) said it was unclear whether the under-18s recruited to the armed forces and those recruited to military service formed a single group and received the same education.

35. Mr. HEISS (Germany) replied that soldiers under the age of 18 were in the same group as those over 18 and received the same training.

36. Mr. FILALI said he would be glad to know what the status of an arrested child soldier was and what measures would be taken following his or her arrest.

37. Mr. HEISS (Germany) said that the Bundeswehr did not capture child soldiers. Rather, its policy was to disarm them and hand them over to NGOs. They did not have the status of prisoners of war or enemy combatants.

38. Mr. STRAFNER (Germany) said that any abusive treatment of underage soldiers within the armed forces would lead to disciplinary consequences before local criminal courts or at the regional youth protection chamber. Pursuant to the Code of Crimes against International Law and in accordance with the Rome Statute, Germany exerted extraterritorial jurisdiction over the war crime of recruiting children under 15, even if the offence was committed abroad and had no connection with Germany. That meant that cases in which no German national was involved - neither as victim nor as perpetrator - were subject to prosecution as well. A foreigner who had committed a crime abroad and was currently in German territory could also be prosecuted under German law. The public prosecutor had contacts with the International Criminal Court and war crimes units in other States in order to facilitate prosecutions at the international level, although they were preferably dealt with at the national level.

39. In reply to a question by Ms. Smith as to whether the principle of double criminality was applied in cases involving child soldiers, he said that the principle did not apply to children under the age of 15. For children aged 15-17, there was a double criminality requirement, which meant that a crime was subject to criminal jurisdiction in Germany either if it constituted a punishable offence at the place of commission, or if there was no prosecuting authority where the offence had occurred.

40. Mr. KOTRANE wished to know whether the same legal provisions applied to foreigners residing in Germany. Generally speaking, foreigners were more likely than German nationals to commit such crimes outside Germany. He asked whether any legal proceedings had been brought in such cases.

41. Mr. FILALI wondered whether soldiers guilty of offences such as abuse had to be prosecuted in the place of commission before they could be prosecuted under German jurisdiction.

42. Mr. STRAFNER (Germany) said that foreigners residing in Germany could be prosecuted under German law. There were currently no criminal investigations taking place under the provisions of the Code of Crimes against International Law, although a certain number of issues were under observation. In cases where neither victim nor perpetrator were German or bore any relation to Germany, individuals who had committed crimes abroad could be prosecuted only under the Rome Statute.

43. Mr. POLLAR asked what action would be taken by Germany in specific cases, such as if a rebel leader who recruited children as soldiers entered Germany.

44. Ms. ORTIZ asked what measures were in place within the armed forces to ensure that troops did not leave women pregnant without taking responsibility for paternity.
45. Mr. HEISS (Germany) said that German soldiers were not allowed to leave their military compounds unless it was for professional purposes. If they did venture out, it would be in a supervised group, which excluded the possibility of such cases.
46. Mr. STRAFNER (Germany), responding to the question by Mr. Pollar, said that, if the public prosecutor held information about such an individual, and if there was evidence suitable for use in court, appropriate action would be taken if the person entered Germany, although the resources of the prosecution offices to deal with such cases were limited.
47. Mr. BEHRENS (Germany) said that human rights education started in primary school and children were taught to interact peacefully. The German Institute for Human Rights provided educational material to schools and reported a high level of interest in such resources. The Council of Europe had also produced a handbook on human rights education, which had been translated into German and was available online or in printed copy. Furthermore, social science, history and ethics lessons contained an element of human rights and sought to promote peaceful thinking.
48. The CHAIRPERSON, referring to peace education at primary school level, asked whether it was confined to teaching about human rights in general or whether it included raising awareness of the Convention on the Rights of the Child.
49. Mr. BEHRENS (Germany) said that it was an early introduction to human rights education, teaching children to adhere to the principles of democracy and human rights, to express their own opinions and to deal with each other on the basis of those principles.
50. Ms. ORTIZ asked what kind of training those involved in implementing the Optional Protocol received and how Germany guaranteed the provision of such training throughout its regions.
51. Mr. BEHRENS (Germany) said that, while there was no national curriculum as such, appropriate training was provided by individual professional institutions. For example the Federal Academy of Judges offered training to judges on the rights of the child, including the Optional Protocol.

The meeting was suspended at 12.20 p.m. and resumed at 12.30 p.m.

52. Ms. SAUMWEBER-MEYER (Germany), referring to the German asylum process, reported that in 2007, 180 under-16s had filed applications and 18 had been granted asylum. In 2006, out of 186 under-16 unaccompanied minors filing applications, 13.3 per cent had been granted asylum. From 2008, statistics would be gathered for 16 and 17 year olds as well, even though they were considered to have reached majority. In 2007, excluding those of unidentified nationality, the countries of origin of most unaccompanied minors were Iraq, Ethiopia, Eritrea, Guinea, Afghanistan, Pakistan, Serbia, the Russian Federation and Sri Lanka. With regard to

the research methods employed to gather statistics, Germany was cooperating closely with the United Nations High Commissioner for Refugees (UNHCR) and NGOs. Former child soldiers were found to have come from Guinea, Sierra Leone, Sri Lanka, Somalia, Uganda, Senegal and Angola.

53. Turning to the training of immigration officers, she said that the Federal Office for Migration and Refugees had 22 offices throughout Germany, with 150 Special Commissioners who had received training in areas such as gender-specific violations, female genital mutilation and torture. Ten years previously, at a time when asylum applications had been more numerous, the staff had consisted of more than 450 officers. Currently, 32 Special Commissioners were specialized in issues involving unaccompanied minors, 45 in gender-specific violations and 49 in torture victims.

54. In reply to a question, she specified that “under age” referred to under-16 year olds. As for interview procedures, she said that a two-day training course had been held in 2005, entitled “Unaccompanied minors and asylum procedures” given by Federal Office staff and external lecturers from the Youth Welfare Office, UNHCR and NGOs, such as the Federal Association for Unaccompanied Minors. The training had been held in Nuremburg, where a fine arts institute carried out art therapy work with refugees.

55. The CHAIRPERSON asked if trained professionals who conducted interviews were aware of the Optional Protocol and general comment No. 6 (2005) “Treatment of Unaccompanied and Separated Children Outside their Country of Origin”, which might prove a useful tool for use in interviews.

56. Ms. SAUMWEBER-MEYER (Germany) said that, although those texts had not yet featured in training, they could complement training on international and European asylum regulations in the second half of 2008. Further topics in 2008 would include basic psychological training on therapies and on what questions to ask when dealing with asylum applications; harmonized instructions on international provisions for the 22 decentralized offices; and child welfare and the protection of minors. Visits to youth service providers were also planned to try to increase cooperation between the Federal Office and other government agencies and NGOs. With regard to how 16 and 17 year olds were dealt with, she said that a Special Commissioner usually interviewed them on their own but that they were allowed to have a guardian present and that sometimes UNHCR representatives took part in interviews. However, a change in procedure was under consideration because Germany currently received fewer asylum applications.

57. Ms. SMITH (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) welcomed Germany’s progress in international cooperation. However, the Committee wished to see the minimum age of voluntary recruitment into the German armed forces raised from 17 to 18. Of greatest concern was that 16 and 17 year olds were being treated as adults in the asylum process, even though they were children according to the Convention. Also not enough was being done to raise awareness of the Protocol, especially among professionals involved with children. Lastly, she requested an English translation of part 2 of German legislation on article 7, adding that the Committee understood the difficulties faced in identifying former child soldiers.

58. Ms. SCHINDEL (Germany) said that the change introduced in article 42 of the German Social Code in 2005 had substantially affected 16- and 17-year-old unaccompanied minors, since it meant that all unaccompanied minors under 18 could to be taken into care by the Youth Welfare Services and that a guardian would need to be appointed. There were specific youth welfare institutions with officers who were skilled in establishing age and who specialized in the problems of refugees.

59. Ms. WITTLING-VOGEL (Germany) said that the discussions had provided a positive learning experience for everyone and the success of the Committee's work was reflected in the fact that one of their experts intended to act upon what she had learned immediately by incorporating appropriate changes in training programmes at the Federal Office for Migration and Refugees.

60. The CHAIRPERSON, expressing appreciation for the high standard of the German delegation and the very useful, fruitful and constructive dialogue, wished Germany good luck in fulfilling its obligations under the Optional Protocol. In particular, she urged Germany to make every effort to disseminate information on the discussions to the public, to regional ministers and to the children themselves.

The meeting rose at 1 p.m.