

**CHILDREN IN ARMED CONFLICT AND THE  
PROBLEM OF VOLUNTARY RECRUITMENT:  
A COMPARATIVE APPROACH IN SEARCH OF  
MORE EFFECTIVE PROTECTION OF CHILDREN**

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## LIST OF ABBREVIATIONS

<b>Additional Protocol I</b>	<b>Protocol of 8 June 1977 Additional Protocol to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts</b>
<b>Additional Protocol II</b>	<b>Protocol of 8 June 1977 Additional Protocol to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts</b>
<b>African Charter</b>	<b>African Charter on the Rights and Welfare of the Child (1990)</b>
<b>Committee</b>	<b>Committee on the Rights of the Child</b>
<b>CRC</b>	<b>Convention on the Rights of the Child</b>
<b>GA</b>	<b>General Assembly</b>
<b>Geneva Convention</b>	<b>Geneva Convention of 12 August 1949</b> <i>The International Journal of Children's Rights</i>
<b>ICC</b>	<b>International Criminal Court</b>
<b>ICRC</b>	<b>International Committee of the Red Cross</b>
<b>IHL</b>	<b>International Humanitarian Law</b>
<b>ILO</b>	<b>International Labour Organization</b>
<b>IPU</b>	<b>Inter-Parliamentary Union</b>
<b>NGO</b>	<b>non-governmental organisation</b>
<b>Optional Protocol</b>	<b>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000</b>
<b>UNSC</b>	<b>United Nations Security Council</b>
<b>UN</b>	<b>United Nations</b>
<b>UNICEF</b>	<b>United Nations Children's Fund</b>
<b>US</b>	<b>United States</b>
<b>USA</b>	<b>United States of America</b>

## 1 Introduction

Thousands of children<sup>1</sup> in different parts of the world are involved in armed conflict. The active participation of children in armed conflict attracts the particular attention of the international community. In fact, children are the ones most affected by armed conflict. During the 1990s an estimated number of 2 million children have been killed as a direct result of conflict situations. More than 6 million children were seriously injured or disabled and more than 20 million children have been displaced due to armed conflicts all over the world.<sup>2</sup> Currently there are more than 300,000 children involved in armed conflict<sup>3</sup>. Radhika Coomaraswamy<sup>4</sup> states that:

It has been a terrible year for children living in situations of armed conflict around the world. Ferocious conflicts in Gaza, Sri Lanka, Pakistan, the Democratic Republic of the Congo, Iraq and Afghanistan have led to high casualty rates and the displacement of a large number of people, especially children.<sup>5</sup>

The use of children in armed conflicts and hostilities violates their basic and fundamental rights.<sup>6</sup> The various impacts of war on children have shown their enormous vulnerability. Children who actively participate in armed conflict have greater risks concerning their physical and social development, and suffer from long-lasting psychological harm.<sup>7</sup> On 20 December 1993 the United Nations General Assembly passed

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<sup>1</sup>In this paper Child means below the age of 18.

<sup>2</sup>[http://www.unicef.org/protection/index\\_armedconflict.html](http://www.unicef.org/protection/index_armedconflict.html) date of use 20 Nov 2010.

<sup>3</sup>Harvey R *International Efforts to Prevent the Use of Children as Instrument of War* 1, Harvey R *Children in armed conflict: a guide to international and humanitarian and human rights law* 9.

<sup>4</sup>Radhika Coomaraswamy was appointed by UN Secretary-General Kofi Annan as Under-Secretary-General, Special Representative for Children and Armed Conflict.

<sup>5</sup>Radhika Coomaraswamy 2009 <http://www.un.org/children/conflict/pr/2009-09-15220.html> date of use 23 Nov. 09.

<sup>6</sup>UNICEF Paris Principles 2007 Principles and Guidelines on Children Associated with Armed Forces or Armed Groups 4, see also [http://www.essex.ac.uk/armedcon/story\\_id/000693.pdf](http://www.essex.ac.uk/armedcon/story_id/000693.pdf).

<sup>7</sup>Harvey R *Children in armed conflict: a guide to international and humanitarian and human rights law* 26.

Resolution 48/157 and appointed Machel G<sup>8</sup> to carry out a study on the impact of war on children. She describes in her report that:

Millions of children are caught up in conflicts in which they are not merely bystanders, but targets. Some fall victim to a general onslaught against civilians; others die as part of a calculated genocide. Still other children suffer the effects of sexual violence or the multiple deprivations of armed conflict that expose them to hunger or disease. Just as shocking, thousands of young people are cynically exploited as combatants.<sup>9</sup>

The use of children in war has many different shapes and structures. They can be soldiers participating in hostilities, but they can also be involved in other ways; for instance as messengers, porters, spies and sexual slaves. Children as young as seven years of age are reported as having been recruited for participation in hostilities.<sup>10</sup> Some children are forced to join armed forces and armed groups, others join voluntarily.<sup>11</sup> Harvey R points out other main reasons which force children to join armed conflict. They are described mainly as socio-economic, political, religious, racial, and ethnic.<sup>12</sup> The availability of small weapons which can easily be operated by children also contributes to the high number of children participating in armed conflict.<sup>13</sup> Since children to a greater extent than adults lack the basic capacity to differentiate between good and bad, they can more easily be attracted and recruited. Children, especially girls, are sexually abused, raped, assaulted and used for

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<sup>8</sup>Graca Machel former Minister of Education for Mozambique was appointed to carry out study on Impact of war on Children.

<sup>9</sup>Machel G 1996 Impact of Armed Conflict on Children: Report of the Expert of the Secretary General, submitted to General Assembly Resolution 48/157, (UN Doc.A/51/306 26 August 1996) 9.

<sup>10</sup>Harvey R *International Efforts to Prevent the Use of Children as instrument of war* 1.

<sup>11</sup>United Nations, Recruitment or using child soldiers 2009 <http://www.un.org/children/conflict/english/childsoldiers.html> date of use 23 Nov. 09.

<sup>12</sup>Harvey R *International Efforts to Prevent the Use of Children as instruments of war* 2.

<sup>13</sup>Harvey R *International Efforts to Prevent the Use of Children* 2-3.

reproduction by their fellows.<sup>14</sup> Machel G<sup>15</sup> has noted that "It is unconscionable that we so clearly and consistently see children's rights attacked and that we fail to defend them".

Over the past few decades the global perception of children has changed. At the United Nations level there have been many attempts to tackle this problem and many achievements have been made. Since the adoption of the Geneva Conventions<sup>16</sup> on 12 August 1949 a large number of declarations, protocols and conventions relating to the rights of children have been adopted, many of them dealing with children in armed conflict, with the aim of providing more effective protection to children. Most of these documents consider children as persons under the age of 18 years. Therefore, to date the forced and compulsory recruitment of children under the age of 18 years in armed conflict is prohibited.<sup>17</sup> However, an exemption has been made for those children who voluntarily join the army. In this case the minimum age of voluntary recruitment is 16 years, rather than 18.

During the past few decades non-governmental organisations, advocacy groups and relief organisations have repeatedly expressed their concerns about the recruitment of children in armed conflicts and have attempted to exclude all children from any kind of recruitment. So far, they have not reached their goal. One of the major remaining controversies surrounding the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

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<sup>14</sup>Harvey R Children in armed conflict: *a guide to international and humanitarian and human rights law* 26.

<sup>15</sup>Machel G Impact of Armed Conflict on Children: Report of the Expert of the Secretary General, submitted to General Assembly Resolution 48/157, (UN Doc.A/51/306 26 August 1996) 73.

<sup>16</sup>Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva Convention III relative to the Treatment of Prisoners of War and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, hereafter Geneva Conventions.

<sup>17</sup>Article 2 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000.

adopted on 25 May 2000<sup>18</sup>, is the voluntary recruitment of children between 15 and 17 years and their participation in hostilities.

In this paper an attempt is made to find strong arguments for more effective protection of children from war. In the next chapter a historical overview of the international treaties concerning children in armed conflict will be presented. Chapter 3 analyses specific elements of the most controversial provisions of the Optional Protocol, namely the issues regarding "direct" and "indirect" participation of children in hostilities, the voluntary recruitment of children to armed forces and the right of children to be protected. The analysis is carried out by comparing provisions of the Optional Protocol to other international treaties, scientific articles and civil society documents. A special emphasis is hereby given to the debate on the minimum age for recruitment. Chapter 4 presents an in-depth analysis of the implementation of the Optional Protocol and its monitoring mechanism. Finally, Chapter 5 provides some conclusions.

## **2 International treaties on children in armed conflict**

### ***2.1 United Nations documents on children in armed conflict***

During the past few decades there has been an intensive debate on children in armed conflict. The efforts by the United Nations have been accompanied by activities of non-governmental organisations<sup>19</sup> and some governments. The focus of the debate was on the minimum age for recruitment and on the form of participation by children in armed conflict. Below, the contents of the most relevant documents are presented in historical order, accompanied by short comments and analyses.

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<sup>18</sup>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict adopted by United Nation General Assembly entered into force 18 January 2002, hereafter Optional Protocol.

<sup>19</sup> Hereafter NGOs.

There are two main bodies of international law dealing with protection of the child during armed conflict – international human rights law and international humanitarian law.<sup>20</sup> Since the relevant UN conventions and protocols fall under both bodies of law, they shall be briefly introduced here.

International human rights law is related to the treatment of human beings by states. It is universally valid in times of war and peace. Under human rights law the most well known document to protect children in armed conflict - the most relevant in this paper - is the Convention on the Rights of the Child 1989<sup>21</sup> and its Optional Protocol on the Involvement of Children in Armed Conflict. International humanitarian law seeks to regulate the methods and means of warfare. This body of law includes the Additional Protocol I to the Geneva Conventions of 12 August 1949, and deals with the Protection of Victims of International Armed Conflict, 8 June 1977, Additional Protocol II to the Geneva Conventions of 12 August 1949, and is related to the Protection of Victims of Non-International Armed Conflict, 8 June 1977,<sup>22</sup> which give protection to all persons affected by armed conflict and also contain provisions specifically related to children.

### *2.1.1 Additional Protocol I and II to the Geneva Conventions*

In the Additional Protocol I to the Geneva Conventions of 1977, the issue of recruitment of children in armed conflict was for the first time mentioned in a legally binding international document. The minimum age

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<sup>20</sup>International Humanitarian Law is a binding law upon states and non-governmental armed groups, hereafter IHL.

<sup>21</sup> Convention on the Rights of the Child was adopted by General Assembly of the United Nation on 20 Nov 1989, hereafter, Convention on the Rights of the Child.

<sup>22</sup>Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, hereafter Additional Protocol to Geneva Conventions.

for recruitment was set at 15 years.<sup>23</sup> However, the formulation of Article 77(2) is weak. Especially the first sentence does not clearly state that children under 15 years shall not be recruited at all. Moreover, it states that children under 15 years should not participate directly in hostilities, but it does not exclude them from indirect participation.<sup>24</sup> <sup>25</sup> In Article 77(2) it is noted that:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a "direct" part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.<sup>26</sup>

The same minimum age for recruiting children is mentioned in Article 4(3)(c) of the Additional Protocol II to the Geneva Conventions which states that:

Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.<sup>27</sup>

Though it does not differentiate between "direct" and "indirect" participation in hostilities by using stronger language, this Protocol sets a clear line excluding children below 15 years of age from any kind of participation in hostilities. Furthermore, it also prohibits the recruitment of such children.

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<sup>23</sup>Article 77(2) Additional Protocol I of the Geneva Conventions.

<sup>24</sup>Author's emphasis.

<sup>25</sup>For further elaboration compare Chapter 3.2.

<sup>26</sup>Article 77(2) Additional Protocol I of the Geneva Conventions.

<sup>27</sup>Article 4(3)(C) of the Additional Protocol II of the Geneva Conventions.

### 2.1.2 *Convention on the Rights of the Child*

In the aftermath of the adoption of the Universal Declaration of Human Rights in 1948<sup>28</sup> it became clear that the special needs of children required a separate declaration in consideration of their need of protection and care. After many years of negotiations the internationally community finally passed a more effective, binding agreement, called the Convention on the Rights of the Child, in 1989. It states that:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier<sup>29</sup>

The Convention on the Rights of the Child – binding for UN member states – deals with children in armed conflict in Article 38. This Article states that:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflict which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.<sup>30</sup>

This article of the Convention on the Rights of the Child has been heavily criticised, even at the time of drafting, for three main reasons. According to Helle D the provisions in Paragraph 2 and 3 are a repetition of Article

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<sup>28</sup>On 10 December 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.

<sup>29</sup>Article 1 CRC.

<sup>30</sup>Article 38 CRC.

77(2) of the Additional Protocol I of the Geneva Conventions. Helle D criticises the text as being weaker than Article 4(3)(c) of Additional Protocol II because it does not prohibit the recruitment of children by armed groups, but only by armed forces and thereby does not prohibit the recruitment of children in non-international armed conflict.<sup>31</sup> While Article 38(2) of the Convention on the Rights of the Child was being drafted, there was also a fierce debate on the term "direct". Some delegations wanted this word removed, because it implies that "indirect" participation would not be prohibited.<sup>32</sup> However, they did not succeed. Furthermore, Article 38 does not compel an absolute obligation upon the state to make sure that children are protected from hostilities. Article 38 is probably one of the most apparent examples in which NGOs – despite being very influential during the drafting process – could not convince the delegations to set the age limit in armed conflict to 18 years.<sup>33</sup> Finally, Article 38 of the Convention on the Rights of the Child is the only article of the Convention in which the age limit was reduced from 18 to 15 years.<sup>34</sup>

### 2.1.3 *Optional Protocol to the Convention on the Rights of the Child*

After intensive negotiations the Optional Protocol to the Convention on the Rights of the Child was adopted by the General Assembly of the United Nations in 2000. It came into force in 2002.

This Optional Protocol has brought many improvements concerning the protection of children in armed conflict. With respect to the minimum age, the Optional Protocol changed direction by raising the minimum age

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<sup>31</sup>Helle D "Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child" 2000 *International Review of the Red Cross* 839 797-809 798.

<sup>32</sup>Detrick S the United Nations Convention on the Right of the Child: *A guide to the "Travaux Préparatoires"* (Martinus Nijhoff Publisher London 1992) 509.

<sup>33</sup>Cantwell N "Non-Governmental Organisations and the United Nations Convention on the Rights of the Child" 1992 *Bulletin Human Rights* 16-124 19.

<sup>34</sup>Helle D *International Review of the Red Cross* 797.

for direct participation in hostilities from 15 to 18 years. However, the word "direct" makes the clause weaker than the corresponding clause of Additional Protocol II. According to the clause, children are protected against taking direct part in hostilities, whereas Additional Protocol II protected them from any kind of participation.<sup>35</sup> The Optional Protocol states that:

States parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.<sup>36</sup>

Scientists, non-governmental organisations and other experts on the rights of children have tried to interpret this provision and its consequences on children. This will be discussed in Chapter 3.3.

The protocol does not effectively protect children from being recruited by armed forces because a differentiation between "compulsory" and "voluntary" recruitment has been introduced into the Optional Protocol. Article 2 of the Optional Protocol states, that person under the age of 18 shall not compulsorily be recruited into armed forces, implicitly allowing voluntary recruitment under the age of 18.<sup>37</sup> Article 3 of the Optional Protocol specifies a standard that was set forth in order to ensure that Article 2 is put into effect. It describes conditions that have to be fulfilled in order to ensure that persons under the age of 18 years are recruited only on a truly voluntary basis.<sup>38</sup> Chapter 3.2 offers a more thorough insight into the debate on compulsory and voluntary recruitment.

Provisions in UN treaties emerge as a consensus as a result of the drafting process. Every party has to make concessions and the final

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<sup>35</sup>Helle D *International Review of the Red Cross* 798.

<sup>36</sup>Article 1 Optional Protocol.

<sup>37</sup>Article 2 Optional Protocol.

<sup>38</sup>Article 3 Optional Protocol.

product can be seen as the lowest common denominator of the parties.<sup>39</sup> One state or a small group of states can undermine the ideas of the majority on the formulation of certain provisions.<sup>40</sup> Therefore, the provisions have to be read very carefully. The wording may sound very strong and show its weaknesses only after careful reading.

Article 4(1) of the Optional Protocol specifically deals with the recruitment of persons by armed groups. It contains very clear language for the effective protection of children from taking part in hostilities. It explicitly states that no persons under the age of 18 years should be recruited or used by armed groups in hostilities. Brett R criticises the undersigning governments for applying stronger restrictions on non-state forces than on their own state forces. She argues that it will be easier to tackle such a problem if both prohibit the recruitment and participation of children under 18 into hostilities.<sup>41</sup> The recruitment of children into armed groups is not the scope of this paper and will not be further elaborated.

## **2.2 Other relevant international treaties**

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention 182<sup>42</sup> was adopted by the International Labour Organisation in 1999. The aim of the ILO Convention 182 is to prohibit and eliminate the worst forms of child labour. Every country that ratifies ILO Convention 182 commits itself to take immediate action to contribute to this aim.

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<sup>39</sup>Breen C "The Role of NGO's in the Formulation of and Compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict" 2003 *Human Rights Quarterly* Vol.25 (453-481) 471.

<sup>40</sup>Breen C 2003 *Human Rights Quarterly* 471.

<sup>41</sup>Brett R "Child Soldier: Law, Politics and Practices" 1996 *The International Journal of Children's Rights* 127.

<sup>42</sup>Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182 hereafter, ILO Convention 182.

Article 3(a) of the ILO Convention 182<sup>43</sup> lists the forced and compulsory recruitment of children for use in armed conflict among the worst forms of child labour. In addition, it clarifies that child labour is:

Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>44</sup>

It can be argued that the participation of child soldiers in armed conflict by its nature cause harm to the child and can therefore be categorised as one of the worst forms of child labour. Although the term "voluntary" is not mentioned, the fact that the work is harmful to the child puts it in the category "worst forms of child labour", regardless of the manner of recruitment.

The African Charter on the Rights and Welfare of the Child,<sup>45</sup> which entered into force in November 1999, was the first regional treaty to set 18 as the minimum age for all recruitment and participation in hostilities. Article 22(2) of the African Charter<sup>46</sup> is probably the most distinct manifestation of rejection of any form of recruitment of children in any international legal document. It thereby sets the highest standard regarding the minimum age for recruitment and participation in hostilities.<sup>47</sup>

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<sup>43</sup>Article 3(a) of ILO Convention 182 All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

<sup>44</sup>Article 3(d) of the ILO Convention 182.

<sup>45</sup>The African Charter on the Welfare of the Child 1999, 45 out of 53 African states has ratified the Charter to date hereafter, African Charter.

<sup>46</sup>Article 22(2) of the ILO Convention 182 States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

<sup>47</sup>Chirwa D "The merits and demerits of the African Charter on the Rights and Welfare of the Child" 2002 *The International Journal of Children's Rights* 10: 2002 (157-177) 168.

### **3 Analysis of selected provisions of the Optional Protocol**

Despite the improvement that has been made in the field of protecting children from participating in armed conflict and hostilities, the use of children in wars is still ongoing.

As Chapter 2 reveals, the Optional Protocol permits children under the age of 18 to be recruited to armed forces. One of the main controversial issues is "voluntary" recruitment, which came into play during the *travaux préparatoires* of the Optional Protocol to the Convention on the Rights of the Child. This will be further elaborated here.

Another important issue, which has not yet been resolved and is subject to intense political debate, is the question of whether children should be allowed to participate in hostilities. The brief reflection of the United Nations international treaties process<sup>48</sup> reveals that the issue of "direct" and "indirect" participation has been discussed for a long time and is yet to be resolved. In order to discuss the issue of minimum age for participation in armed conflict and recruitment to armed forces,<sup>49</sup> the relevant elements of the Optional Protocol will be compared with other international documents on the same problem.

#### **3.1 Children's rights to protection**

Children are the most vulnerable members of our society. Since they are still in the beginning of the life-long learning process, children have

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<sup>48</sup> As discussed in Chapter 2 above.

<sup>49</sup> Adam V Child Soldier: Global Report 2008 *Coalition to Stop the Use of Child Soldiers* 16, states who used child soldiers in armed conflict between 2004 and 2007: Chad, Democratic Republic of Congo, Israel, Myanmar, Somalia, Sudan & Southern Sudan, Uganda, Yemen. Additionally, the United Kingdom deployed under-18s to Iraq where they were exposed to risk of hostilities, see also [http://www.childsoldiersglobalreport.org/files/country\\_pdfs/FINAL\\_2008\\_Global\\_Report.pdf](http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf).

lesser capacities to take care of themselves, to defend themselves, to assess the consequences of their decisions and to differentiate between right and wrong.<sup>50</sup> Children have less experience than adults since they have had less time to learn. From this we can derive the need for children to be protected from violence, exploitation and also from making decisions the consequences of which they cannot assess due to a lack of experience.

For this reason, protection rights are manifested in a number of United Nations treaties as well as national legislations. Probably all societies in the world recognise the need of children to be protected. Two examples of widespread protective measures shall be given here. First, since alcohol has more detrimental effects on the health of a child than on that of an adult and since children have lesser capacities to assess the risks of alcohol abuse, many countries have age limits for the consumption of alcohol. Another example is films and other media that are supposedly harmful to children because they contain violent or pornographic scenes, which can harm the moral development of children. Many societies have formulated policies aimed at protecting children from such media. The same applies for harmful drugs.

In contrast to the examples above, where children are prohibited from consuming certain goods even if they would like to; such provisions are missing in the Optional Protocol. Instead, children can join the army on the basis of voluntariness. It is a point worthy of debate; why should children be protected from alcohol and horror films, but not from war?<sup>51</sup>

An example for the effective protection from war of all children under the age of 18 is provided by the Draft-Declaration of Amsterdam.<sup>52</sup> It clearly

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<sup>50</sup>Author's emphasis.

<sup>51</sup>Author's emphasis.

<sup>52</sup>The Draft-Declaration of Amsterdam was adopted at a conference on the Rights of the Children in Armed Conflict held in Amsterdam in 1994. Those

states that children should not be recruited in armed forces or armed groups and should not be permitted to participate in hostilities. Children who voluntarily present themselves for recruitment should not be accepted.<sup>53</sup> Another example is the Palermo Protocol,<sup>54</sup> which deals with child trafficking. It applies to all persons under the age of 18 and declares consent by those persons irrelevant. It thereby provides effective protection to children by explicitly ignoring the consent of a child.

At the UN level, protection rights have been manifested in many different topics. Article 32(1) Convention on the Rights of the Child states that:

States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>55</sup>

It is also mentioned in the preamble of the Declaration on the Rights of the Child 1959<sup>56</sup> that:

The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.<sup>57</sup>

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who drafted this Declaration intended it to be ultimately adopted by the UN, but have still not been adopted at the time of writing.

<sup>53</sup>Veerman E Practice and Implementation Declarations and Recommendations on the Rights of the Children in Armed Conflict, *The International Journal of Children's Rights* 2: 1994 415.

<sup>54</sup>Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Trans-national Organized Crime was adopted in United Nations by General Assembly, Resolution 55/25 in 2000 known as Palermo Protocol.

<sup>55</sup>Article 32(1) CRC.

<sup>56</sup>The Declaration on the Rights of the Child was drafted by the UN Commission on Human Rights and adopted by the General Assembly of the United Nations on 20 November 1959 hereafter, Declaration on the Rights of the Child.

<sup>57</sup>Preamble of the Declaration on the Rights of the Child.

Such a positive approach to the protection of children was later enshrined in the preamble of the Convention on the Rights of the Child which states that children should be brought up in a spirit of peace, dignity, tolerance, freedom, equality and solidarity, as well as in an atmosphere of happiness, love and understanding.<sup>58</sup>

While these are very strong and supportive statements, it is questionable whether the concrete provisions of the Optional Protocol reflect them. Chapter 3.2 and 3.3 will analyse specific elements of the provisions in an attempt to ascertain whether they provide effective protection measures for children.

### **3.2 *Compulsory versus voluntary recruitment***

As briefly described in chapter 2.1.3, Article 2 of the Optional Protocol prohibits the compulsory recruitment of all persons under the age of 18 years. The raising of the minimum age for compulsory recruitment from 15 to 18 years is an enormous improvement, which was given by Article 38(3) of Convention on the Rights of the Child. Article 3(1) of the Optional Protocol<sup>59</sup> permits voluntary recruitment for children of at least 16 years of age. This can also be seen as a clear improvement as compared to Article 38(3) Convention on the Rights of the Child, which set the age limit for voluntary recruitment at 15 years of age.<sup>60</sup>

Despite the progress made, the recruitment of children is still permitted under the Optional Protocol, namely the voluntary recruitment of children

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<sup>58</sup>Preamble of the CRC.

<sup>59</sup>Article 3(1) of the Optional Protocol, States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognising that under the Convention persons under 18 are entitled to special protection.

<sup>60</sup>Helle D *International Review of the Red Cross* 798

of 16 and 17 years of age. Article 3(3) of the Optional Protocol<sup>61</sup> obliges state parties to take certain safeguard measures to ensure that such recruitment is truly voluntary, that it is done with the informed consent of the parents or legal guardians, that the children under-18 are fully informed about the nature of military duties and that they can provide reliable proof of their age. When a state ratifies or accedes to the Optional Protocol, a binding declaration must be submitted specifying the safeguards taken and the minimum age at which the state will permit voluntary recruitment into the national armed forces.<sup>62</sup>

The effective implementation of these safeguards has been doubted by many scholars. Harvey R states that it is debatable whether the deployment of children who willingly present themselves to armed forces can be considered as voluntary.<sup>63</sup> According to Helle D Article 3 of the Optional Protocol weakens the full text arguing that the voluntariness of recruitment cannot be safeguarded.<sup>64</sup> Machel G points out that children who present themselves to the army in many cases do not do so truly voluntarily. Instead, they are driven by certain forces:

... youth also present themselves for service. It is misleading, however, to consider this voluntary. While young people may appear to choose military service, the choice is not exercised freely. They may be driven by any of several forces, including cultural, social, economic or political pressures. Once recruited, they take on support functions and fighting roles that entail great risk and hardship<sup>65</sup>

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<sup>61</sup>Article 3(3) State Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that: (a) Such recruitment is genuinely voluntary; (b) Such recruitment is done with the informed consent of the person's parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military service.

<sup>62</sup>UNICEF A guide to the Optional Protocol on the involvement of children in armed conflict *Coalition to Stop the use of Child Soldiers* 2003 18.

<sup>63</sup>Harvey R *International Efforts to Prevent the Use of Children* 3.

<sup>64</sup>Helle D *International Review of the Red Cross* 799.

<sup>65</sup>Machel G *Impact of war on Children A critical review of progress made and obstacles encountered in increasing protection for war affected Children* (International Conference on War Affected Children Canada 2000) 9.

More concretely, children volunteering for the army may do so due to poverty, lack of food and shelter, lack of physical protection or vengeance.<sup>66</sup> Other reasons, such as prestige, the search for an individual, separate identity or the lack of other job opportunities may also play a role.<sup>67</sup> In 2005, when the number of children joining the army and general recruitment fell short, the United States of America raised enlistment bonuses up to USD 14,000 and reduced minimum educational standards.<sup>68</sup> The payment of such large amounts is very likely to attract many children who would otherwise have opted for different careers. It would be worthwhile to find out whether the decision a child makes in such a situation is truly voluntary.

Another safeguard requires that children who are recruited on a voluntary basis are informed about the nature of military duties. Reports from various countries show that the duty of the state to inform those under 18 is used to advertise the military service instead of providing objective information. Recruitment practices in the United Kingdom are described as overzealous and as leading to many army drop outs.<sup>69</sup> The same source says some recruitment procedures and material is sometimes misleading to the recruits. As a consequence, some recruits were put into divisions for which they were not suited or had little interest, but where shortages existed.<sup>70</sup>

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<sup>66</sup>UNICEF: A guide to the Optional Protocol on the involvement of children in armed conflict *Coalition to Stop the use of Child Soldiers* 2003 18.

<sup>67</sup>Author's emphasis.

<sup>68</sup><http://www.stripes.com/article.asp?section=104&article=44138> date of use 13 March 2010, see also Child Soldier: Global Report 2008 p359.

<sup>69</sup>Adam V Child Soldier: Global Report 2008 *Coalition to Stop the Use of Child Soldiers* 354

<sup>70</sup><http://www.mod.uk/NR/rdonlyres/E82B3EE1-182B-47F6-8693-05AF88E6CF63/0/MODBettertrainingfull.pdf>, ALI, "Bettertraining" www.mod.uk March 2007 14.

Finally, the safeguards demand a reliable proof of age.<sup>71</sup> Taking into account that in many developing countries, especially in war-affected states, the infrastructure is lacking or damaged, reliable birth registration systems do not exist.<sup>72</sup> Thus, the minimum age of 16 years cannot be guaranteed.

In summary, it is questionable whether these safeguards serve as an effective instrument to guarantee that recruitment is voluntary, that children base their decision on objective information and finally, that children are really 16 years or above.

### **3.3 Direct versus indirect participation**

As outlined in Chapter 2.1.3 the Optional Protocol prohibits the direct participation of persons under the age of 18 in hostilities. This is a clear improvement on Article 1 of the Optional Protocol. However, the definition of "direct" and "indirect" has been subject to intensive research and public debate, yet still remains unclear. Which functions in hostilities are direct and which ones are indirect? Does indirect participation imply that the functions carried out are not dangerous or have no detrimental effects on the development of a child? The UN, scientists and civil society organisations have tried to find answers to these questions.

The Commentary on Additional Protocol I addresses this issue and tries to create a balance between a very narrow and a very broad interpretation. It argues that restricting the term to pure combat would be too narrow, while broadening it to the whole war or conflict would not be

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<sup>71</sup>Article 3(3) Optional Protocol.

<sup>72</sup>UNICEF: *A guide to the Optional Protocol on the involvement of children in armed conflict* 2003 18; see also Helle D *International Review of the Red Cross* 800.

legitimate either.<sup>73</sup> According to the Commentary on Additional Protocol I the balance would be as follows:

Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place.<sup>74</sup>

This definition would mean that a person must represent a direct and immediate danger to the opponent.<sup>75</sup> However, a number of scholars and civil society organisations disagree with this definition. Some of them argue that it neither embraces the complexity of conflict and war, nor takes account of the manifold ways children and other persons are deployed.<sup>76</sup>

Machel G points out that child soldiers can be involved in many different ways. They can be combatants but can also have any kind of direct support function or can be victims of sexual abuse.<sup>77</sup> In all these capacities children are endangered.

The Preparatory Committee for the Establishment of an International Criminal Court<sup>78</sup> also dealt with the question of direct participation in

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<sup>73</sup>Sandoz Y, Swinarski and Zimmermann B *Commentary on Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*: (Committee on the Red Cross 1987) s1679 516.

<sup>74</sup>Sandoz Y, Swinarski and Zimmermann B *Commentary on Additional Protocols* s1679 516.

<sup>75</sup>Quéguiner J International Humanitarian Law Research Initiative Reaffirmation and Development of IHL: *Direct Participation in Hostilities under International Humanitarian Law: Working Paper* 2003 3.

<sup>76</sup>Quéguiner J International Humanitarian Law Research Initiative Reaffirmation and Development of IHL: *Direct Participation in Hostilities under International Humanitarian Law: Working Paper* 2003 3.

<sup>77</sup>Machel G The Impact of War on Children: A Review of Progress Since the 1996 United Nations Report on the "Impact of Armed Conflict on Children" ed 2001 7, Child soldiers are used for sexual services, as combatants, as forced wives, messengers, porters, or cooks.

<sup>78</sup>During the March-April 1998 session of the Preparatory Committee for the Establishment of an International Criminal Court, a proposal was developed

armed conflict. It defines direct participation quite broadly by including all activities near or at the frontline.

However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology [of direct participation].<sup>79</sup>

The Cape Town Principles<sup>80</sup> were adopted at an international symposium on child soldiers held in South Africa in 1997. The aim of this symposium was to enlarge the scope of protection, to prevent children from recruitment and to raise the minimum age of recruitment to 18 years. They also provide a very broad definition of the term child soldier:

'Child soldier' in this document is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.<sup>81</sup>

This definition does not distinguish between direct and indirect participation. It shows very clearly that all children participating in any capacity or function in an armed conflict –directly or indirectly – are child soldiers. It has been widely accepted by child protection agencies, non-

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which aimed to prohibit "recruiting children under the age of fifteen years into armed forces or using them to participate in hostilities.

<sup>79</sup>Draft Statute of the International Criminal Court, Addendum, Part One, UN Doc.A/CONF.183/2/Add.1 April 1998 21, The words 'using' and 'participate' were explained in a footnote to provide guidance in interpreting of the scope of this provision.

<sup>80</sup>Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa definitions 1997, hereafter Cape Town Principles.

<sup>81</sup>Definition of Child Soldier in Cape Town Principles 1997.

governmental organisations, the World Bank and United Nations agencies, including UNICEF.

Fiona Ang states that indirect participation can be as dangerous as direct participation.<sup>82</sup> In addition, she points to another important aspect related to the participation of children in armed conflict and wars. Indirect participation of children can cause a risk to other children because the fact that children are involved in armed conflict may lead to the suspicion that all children are soldiers. Therefore, children should not participate in hostilities at all.<sup>83</sup>

In conclusion, the large number of approaches used to describe the functions enclosed by the term "direct" and "indirect" participation in hostilities reflect the intensive work that has been done on this issue. It also demonstrates the enormous interest of governments, researchers and civil society in this topic. Most definitions are very broad and try to encompass the large number of activities children may be involved in during armed conflicts. From the discussion above, it seems that the way children participate in armed conflict makes no difference. Whether they participate in a direct or indirect manner, children can be exposed to mortal danger and to other situations which may be harmful for their mental and physical development. In addition, the participation of children in armed conflict can be a threat to all children.<sup>84</sup>

Finally, it would be worthwhile to examine whether a reference to the Cape Town Principles, especially to the definition of "child soldier", in future protocols to the Convention on the Rights of the Child could limit

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<sup>82</sup>Fiona Ang *A Commentary on the United Nations Convention on the Rights of the Child: Article 38: Children in Armed Conflict* (ed 2005) 37.

<sup>83</sup>Fiona Ang *A Commentary on the United Nations Convention on the Rights of the Child* 37.

<sup>84</sup>Marchel G Impact of Armed Conflict on Children: Report of the Expert of the Secretary General, submitted to General Assembly Resolution 48/157, (UN Doc.A/51/306 26 August 1996) 13.

the deployment of children in armed conflict. It also seems that the term "direct" should be deleted without replacement.

#### 4 Implementation and monitoring

United Nations treaties are important tools in the fight against the involvement of children in armed conflict. The rights of children manifested in human rights law and humanitarian law in the past few decades demonstrate the progress made in the realisation of these rights. Nevertheless children are not fully protected from deployment as child soldiers in one form or another. Despite the ratification of the Optional Protocol by 132 countries to date,<sup>85</sup> the use of children in hostilities is still practiced by at least 86 states.<sup>86</sup> Some states<sup>87</sup> have raised the age of voluntary recruitment to 18. But at least 63 countries still allow voluntary recruitment under 18 years and 26 of them are reported as practicing it.<sup>88</sup> Interestingly, in many countries the age for voluntary recruitment is below the voting age.<sup>89</sup> It seems that young people are expected to attain maturity for conflict situations and war earlier than for electing political decision-makers.

The number of conflicts in which children were directly involved decreased between 2004 and 2007. This gives rise to the assumption that the situation of children has improved in recent years. However, it is probably not due to policies changed to end the use and involvement of children as child soldiers in conflicts.<sup>90</sup> Rather it may be a result of the

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<sup>85</sup>[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-11-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-11-b&chapter=4&lang=en) visited at 16 March 2010.

<sup>86</sup>Adam V Child Soldier: Global Report 2008 12, it also includes the recruitment by armed groups, force recruitment by governments, groups associated with armed forces and spies.

<sup>87</sup>Adam V Child Soldier: Global Report 2008 19, E.g. Chile, Italy, Jordan, the Maldives, Sierra Leone, Slovenia and South Korea also in Nepal, a law that permitted recruitment of under-18s was declared null and void by the Supreme Court.

<sup>88</sup>Adam V Child Soldier: Global Report 2008 16.

<sup>89</sup>Adam V Child Soldier: Global Report 2008.

<sup>90</sup>Adam V Child Soldier: Global Report 2008 12.

number of conflicts that ended during this period. It is very likely that as new conflicts arise, so shall the use of children in hostilities again increase.<sup>91</sup>

Does this mean that the achievements of the UN process have no value? Will they fail to improve the situation of the many children being used as combatants, spies and sexual slaves or exploited in other forms in armed conflict? In order to find answers to these questions a closer look at the implementation procedure and the enforcement mechanisms follows.

Following the adoption and signature of international treaties, United Nations member states must ratify them. Since the ratification process usually entails legislative procedures involving the parliament, the ratification rate can be seen as an indicator for the acceptance of a treaty.<sup>92</sup> The Convention on the Rights of the Child, boasting 193 ratifications,<sup>93</sup> is the most widely ratified international human rights instrument. It may therefore be assumed that it enjoys very high acceptance among the states. In contrast, the ratification process of the Optional Protocol was rather slow. In 2004, only 54 states had ratified it. To date it has attracted 132 ratifications. However, the fact that fewer countries have ratified the Optional Protocol than the Convention on the Rights of the Child is most likely also partially due to the shorter amount of time the Protocol has been in existence.<sup>94</sup> In addition, ratification by a state does not mean that it agrees with all elements of a treaty. A state is

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<sup>91</sup>The Central African Republic, Chad, Iraq, Somalia and Sudan (Darfur) are all cases in point.

<sup>92</sup>Author's emphasis.

<sup>93</sup>United Nations Treaty Collection: Status of ratification <http://treaties.un.org> date of use 15 March 2010.

<sup>94</sup>Harvey R *International Efforts to Prevent the Use of Children* 11.

permitted to reject single provisions of the Optional Protocol.<sup>95</sup> While this can facilitate treaty negotiations,<sup>96</sup> it also weakens the treaty itself.

The United Kingdom, for instance, has exercised its right to make a reservation on a provision that it does not support. In its declaration, made together with signature of the treaty and reaffirmed at the time of ratification, it explains that the state "would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities" in case of genuine military need or in urgent situations. An urgent situation means that it was either not practicable to take out the children or that it would "undermine the operational effectiveness" of the unit they are deployed in.<sup>97</sup> Such reservations clearly undermine the objectives of the Convention on the Rights of the Child and the Optional Protocol and weaken the effort to protect children from participation in armed conflict.<sup>98</sup> NGOs suggested that reservations to the Optional Protocol should not be permitted, because the protocol itself was optional.<sup>99</sup>

While ratification of an international treaty can give some indication of acceptance of its content, true commitment to its goals may be better demonstrated by implementation into national legislation, by means of which it benefits the children it aims to protect.

However, implementation of an international treaty may not occur without any control or monitoring mechanisms. The Committee on the

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<sup>95</sup>William A "Reservations to the Convention on the Rights of the Child" 1996 *Human Rights Quarterly* 18.2 (472-491) 472.

<sup>96</sup>William A 1996 *Human Rights Quarterly* 472.

<sup>97</sup>[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en) visited on 17 March 2010, UK makes reservation to Optional Protocol.

<sup>98</sup>William A 1996 *Human Rights Quarterly* 472.

<sup>99</sup>Comments on the Report of the Working Group, a Friends World Committee for the Consultation (Quakers), UN ESCOR, 6<sup>th</sup> Session. UN Doc. E/CN.4/2000/WG.13/2, 1998 10, see also, Breen C 2003 *Human Rights Quarterly* 475.

Rights of the Child,<sup>100</sup> established through Article 43(1) of the Convention on the Rights of the Child<sup>101</sup> was given the responsibility of monitoring the implementation of the Convention on the Rights of the Child and the Optional Protocol.<sup>102</sup> The Committee is one crucial international instrument for child protection. It has 18 members who are elected by the states parties. Elections take place every 2 years. The committee meets three times in a year and reviews reports, which must be submitted by the states two years after ratification and are subsequently included in the periodic state report on the Convention on the Rights of the Child, which is submitted every five years.<sup>103</sup> After receiving a report, government delegations are invited to present the report and answer questions from the Committee. The Committee then makes suggestions and gives recommendations to the governments on further measures to be taken in order to achieve the objectives of the Convention on the Rights of the Child and its Optional Protocol. During the drafting process, some delegations suggested that the Committee should carry out monitoring through enquiries comprised of hearings and country visits, arguing that this would allow for a more thorough insight into the situation. Although this idea was supported by many delegations, it was not put forward in the final document.<sup>104</sup>

Since the commentaries on the state reports are published and therefore accessible to the general public,<sup>105</sup> they could in many cases create an incentive for states to comply with their international obligations. They can also serve other actors, such as civil society organisations, in their lobby and advocacy work. At least in democratic states, the regular reports can serve as a kind of internal policy monitoring mechanism and be used as a basis for the formulation of specific policies on this issue.<sup>106</sup>

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<sup>100</sup>The Committee on the Rights of the Child, hereafter the Committee.

<sup>101</sup> Article 43(1) CRC.

<sup>102</sup> Article 8 Optional Protocol.

<sup>103</sup> Article 44(b) CRC.

<sup>104</sup> Brett R 1996 *The International Journal of Children's Rights* 128.

<sup>105</sup> Article 44(6) CRC.

<sup>106</sup> Van Bueren G in Boezaart T *Introduction to Child Law in South Africa* (ed 2000) 212.

Nevertheless, a reporting system is not a guarantee for effective implementation<sup>107</sup> and does not allow penalties for states that do not comply.

The work of the Inter-Parliamentary Union<sup>108</sup> could be an important supplement to this process. The Inter-Parliamentary Union is the international organisation of Parliaments<sup>109</sup> and supports *inter alia* the efforts of the United Nations, whose objectives it shares, and with whom it works in close co-operation. The IPU facilitates contacts and exchange of experiences among parliaments and parliamentarians world-wide. It publishes reports and handbooks for parliamentarians on specific topics, many related to human rights issues, and supports members of parliament in policy formulation.

Nevertheless, the state reporting mechanism has often been criticised for being less effective than a petitioning system through which individuals can submit complaints on the infringement of children's rights.<sup>110</sup> It has been argued that the petitioning system would offer more direct, effective and more rapid remedy than the reporting system.<sup>111</sup> When the Convention on the Rights of the Child was drafted, an individual complaint system was discussed but not manifested in the final text. The opponents of this idea argued that such a system would transform the implementation mechanism, which is based on co-operation, into one based on confrontation. Van Bueren G, one of the co-drafters of the Convention on the Rights of the Child, notes that the success of the European Court of Human Rights verifies the success of such a system. Expecting many petitions, opponents also argued that such a system would overburden the Committee.<sup>112</sup> Van Bueren G notes

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<sup>107</sup>Harvey R *International Efforts to Prevent the Use of Children* 12.

<sup>108</sup>Inter-Parliamentary Union, hereafter IPU.

<sup>109</sup><http://www.ipu.org/english/home.htm> date of use 16 March 2010.

<sup>110</sup>Van Bueren G in Boezaart T *Introduction to Child Law in South Africa* 210.

<sup>111</sup>Van Bueren G in Boezaart T *Introduction to Child Law in South Africa* 210.

<sup>112</sup>Van Bueren G in Boezaart T *Introduction to Child Law in South Africa* 210.

that this argument cannot justify the omission of such a mechanism.<sup>113</sup> A high number of complaints may also demonstrate the necessity of a petitioning system.<sup>114</sup>

## 5 Conclusion

This analysis of the United Nations treaties shows that provisions regarding children in armed conflict have improved since the Geneva Conventions and their Additional Protocols were adopted in 1949. The preamble of the Convention on the Rights of the Child demonstrates that the special needs of children and the right of children to be protected are recognised. However, a closer look at the provisions shows some weaknesses. More effective protection is necessary as the analysis of relevant documents, scientific articles and civil society declarations reveals.

Study of the provisions in the Optional Protocol illustrates very clearly that the safeguards of Article 3 Optional Protocol cannot guarantee that children below the age of 18 are recruited by state forces on a truly voluntary basis. Furthermore, the provision that children should not participate directly in hostilities cannot protect children from being exposed to harmful and life-threatening situations. According to the literature studied, the complexity of war makes it difficult to differentiate between direct and indirect participation. Moreover, the deployment of children in indirect functions can harbour the same risks as in direct functions. Thus, direct and indirect participation of children in hostilities can be harmful. From these results it can be derived that the provisions of the Optional Protocol cannot prevent the involuntary recruitment of children to become child soldiers working in harmful, dangerous and life-

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<sup>113</sup>Van Bueren G in Boezaart T *Introduction to Child Law in South Africa* 210.

<sup>114</sup>Author's emphasis.

threatening situations. This is not in line with the principles of the Convention on the Rights of the Child itself and it contradicts ILO Convention 182 on the worst forms of child labour.

There are several international documents that can serve as exemplary models for providing more effective protection of children. For instance, the African Charter sets a clear limit of 18 years of age for recruitment into armed forces. Also, the Cape Town Principles, which explicitly say that no person under the age of 18 should be recruited to armed forces. It also defines the term "child soldier". UN agencies such as UNICEF, the World Bank and other institutions refer to this definition in their work. It may be worthwhile to study whether the rules for children in armed conflict could be improved in the future by referring to this definition.

The effectiveness of protection does not only depend on the provisions in the Optional Protocol alone, but also on the implementation of the treaty into national law. Looking at the steps which states must undertake after signing the treaty, it becomes clear that every step is crucial in the realisation of effective protection to children. First of all, ratification can weaken the treaty, because states may make reservations on certain provisions. Secondly, implementation is not the logical consequence of ratification. Therefore, a good monitoring mechanism is crucial. The mechanism in place – a reporting system – cannot guarantee the full and effective implementation by states that have signed the Optional Protocol. A petitioning system was not implemented due to a lack of political will. The reporting system cannot penalise states in case of non-compliance, hindering victims' attempts to obtain justice. The reporting system can merely serve as incentive to states to take action in order to prevent their exposure as a bad example on international level. All in all, the reporting system is a first step in the right direction, but it needs to be improved in order to contribute to a more effective protection of children from war.

Overall, the analysis shows that there are still many obstacles to overcome in the effective protection of children from armed conflict and war. However, the United Nations process is lengthy and gradual. Effective treaties and implementation instruments require the commitment of all UN member states to end the involvement of children in the conflicts of adults. Civil society and all people in the world are called upon to engage themselves in the realisation of children's rights. We must bear in mind that the investment in children is the best way to a better future.

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