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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children in armed
conflicts

Third session
Geneva, 20-31 January 1997

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Government of
Switzerland and by the Committee on the Rights of the Child.

Switzerland

[Original: French]
[29 November 1996]

1. In conformity with its humanitarian tradition and as a depositary of the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, Switzerland has always devoted the greatest attention to the fate of war victims. Children are particularly exposed to the consequences of armed conflicts. First, they are very vulnerable victims, and secondly they are involved in fighting in several parts of the world. In both cases, war has devastating effects. For this reason, Switzerland is committed to ensuring that children enjoy specific protection in armed conflicts.

2. In order to reduce the suffering inflicted on children by war, their involvement in armed conflicts may be excluded. The adoption of a protocol on this question would mark a decisive contribution to this end. The draft in course of preparation raises a crucial question, namely that of the age-limit. In accordance with article 1 of the Convention on the Rights of the Child, any human being below the age of 18 years is in principle deemed to be a child. This age-limit is generally used to determine entry into adult life, it being recognized that children under the age of 18 need special protection to enable their personalities to develop fully and harmoniously. There is no reason for lowering the limit for this protection precisely in a sphere in which the rights of the child are exposed to grave danger. The involvement of children under 18 in armed conflicts affects them in the most serious manner at a decisive phase of their development. Moreover, because of their lack of experience and maturity, child soldiers represent a specific risk for their adversaries and for the civilian population. For this reason, Switzerland considers that the optional protocol should fill a gap left in the Convention and set the age-limit for the involvement of children in hostilities (art. 1 of the draft) and in recruitment (art. 2 of the draft) at 18 years.

3. Switzerland considers that no distinction should be drawn between "direct involvement" and "indirect involvement" (through the performance of auxiliary services) or between the compulsory or voluntary nature of recruitment. The optional protocol must send a clear signal with a view to the enhanced protection of the rights of the child. It must therefore take a substantial step forward in relation to article 38 of the 1989 Convention.

4. The negotiations in the Working Group have shown that the age-limit of 18 creates difficulties for various States as regards voluntary recruitment in military colleges or academies. In the opinion of Switzerland, the ways and means of resolving this question should be studied without calling into question the principle of the 18-year age-limit.

Committee on the Rights of the Child

[Original: English]
[20 December 1996]

The Committee has reiterated its views on this draft optional protocol on several previous occasions. It has in fact submitted a preliminary draft text which has constituted the basis for the drafting process of the working group, and since the inception of the latter it has reaffirmed, orally and in writing, its position in relation to the different draft provisions under discussion. The most recent contribution of the Committee is to be found in document E/CN.4/1996/102, paragraphs 35 to 47.

Reaffirming all its previous statements, the Committee would like at the present moment to stress the following:

1. The involvement in hostilities of persons below the age of 18 is harmful for them physically and psychologically and affects the full enjoyment of their fundamental rights. For this reason, persons below 18 should never be allowed to be involved in hostilities, either directly or indirectly, and a clear message to that end should be incorporated into the optional protocol.
2. States should not recruit into their armed forces persons below the age of 18, and the same principle should apply to voluntary enlistment. In fact, wherever situations of voluntary enlistment have made it possible for persons below the age of 18 to participate directly or indirectly in hostilities, reality shows that emergency situations often pave the way for the instrumentalization of children and lead to great risks for their lives.
3. Even in those situations where voluntary enlistment would be allowed, the training of such persons should incorporate and pay special attention to education on humanitarian and human rights, in the light of the Convention on the Rights of the Child and in particular of its articles 28, 29 and 42.
4. The same protection measures should be ensured to children below 18 in situations of enrolment or enlistment by non-governmental armed groups.
5. The aim of the optional protocol is to allow States parties to the Convention on the Rights of the Child which are in a position to do so, to clearly commit themselves not to recruit or to allow the participation of children below 18 years in hostilities. For this reason and in the light of its optional nature, the optional protocol should not admit any reservations.
