

German Coalition to Stop the Use of Child Soldiers



Shadow Report »Child Soldiers«

Shadow report in the context of the States Report Procedure pursuant to Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts

by Dr. Hendrik Cremer

On behalf of:



Imprint

Editors

terre des hommes
Help for children in distress
Main office
Ruppenkampstr. 11a
49084 Osnabrück
Germany
Phone 05 41/71 01-0
Fax 05 41/70 72 33
eMail info@tdh.de
Internet www.tdh.de

Kindernothilfe
Düsseldorfer Landstraße 180
47249 Duisburg
Germany
Phone 02 03/77 89-0
Info-Service-Telephone (in Germany):
01 80/33 33 300 (9 Cent per minute)
Fax: 02 03/77 89-118
eMail info@kindernothilfe.de
Internet www.kindernothilfe.org

NGO coalitions on the subject »child soldiers«

National: German Coalition to Stop the Use of Child Soldiers www.kindersoldaten.info
International: Coalition to Stop the Use of Child Soldiers www.child-soldiers.org

Author

Dr. Hendrik Cremer attained a doctorate on the legal status of unaccompanied refugee children according to the Convention on the Rights of the Child (Child Rights Convention), about which he has also written other publications and given lectures. As a lawyer, he worked particularly in the area of the German law on aliens and social law. In addition, he is concerned with the topics of protection against discrimination, the prevention of torture and the situation of undocumented foreigners. Since July 2007, Hendrik Cremer has been working for the German Institute for Human Rights in Berlin.

Table of Contents

	page
1. Preface	4
2. Summary Introduction	6
3. On the individual provisions	10
Article 1	10
Guarantee to prevent persons under the age of 18 years from a direct involvement in armed operations	
Article 3	11
Prerequisites for the recruitment of volunteers under the age of 18 years into national armed forces	
Article 4	15
Preventing and prosecuting the recruitment and deployment of persons under the age of 18 years in armed conflicts by non-government armed groups	
Article 6	17
Article 6 Paragraph 2	17
Obligation to make the Optional Protocol known to adults and children	
Article 6 Paragraph 3	17
Beneficiaries of Article 6 Paragraph 3	17
Content-related Commitments of Article 6 Paragraph 3	18
The Situation of former child soldiers in Germany	19
• The number of former child soldiers	19
• Legal residence stipulations	19
• Asylum	19
• Residence permit	20
• Exceptional leave to remain	20
• Support and accommodation in the context of the Child and Youth Welfare Service	21
• Taking children into care	21
• Appointment of a legal guardian	21
• Accommodation subsequent to being taken into care: Residential care, other types of assisted living	22
• Continued exclusion upon attaining 16 years of age	22
• Distribution in residential facilities and common housing	23
• Opportunities for therapy	24
• Remand prior to deportation	25
• Determination of age	25
Summary evaluation of the situation of former child soldiers	25
Article 7	27
International collaboration	27
German Soldiers on international missions	29
4. Summary of recommendations and conclusions	31
5. Annex: Government Report Germany and Optional Protocol	35

1. Preface

The Convention on the Rights of the Child, adopted by the United Nations in 1989, will be 18 on 20 November 2007. A history of success: It is the most widely ratified human rights treaty in history. 193 countries have pledged to implement it. The Convention has been complemented by two Optional Protocols that entered into force on 12 February 2002. One of them refers to the involvement of children in armed conflict and aims to effectively enhance their protection.

However, there is a wide gap between law and reality. This is particularly obvious when looking at the situation of child soldiers. Their rights continue to be violated in many parts of the world. The problem is most critical in Africa where an estimated 120,000 boys and girls are part of the armed forces and of armed groups; across the world there are approximately 250,000 to 300,000 child soldiers. They are forced to fight in armed conflict; they work as messengers, cooks and porters; many of them are sexually abused, tortured and murdered.

How is it possible to achieve accountability of governments and ensure their compliance? The United Nations' human rights system contains various instruments and measures to secure the compliance of member States. Yet, in the case of the Convention on the Rights of the Child, up to now there are only the country reports according to Article 44. No communication procedure has been introduced to date. The States Parties report to a special UN Committee (treaty body) submitting information on the measures they have taken to implement the Convention in their country. The UN Committee on the Rights of the Child in Geneva monitors the implementation of the Convention on the Rights of the Child and its Optional Protocols. This procedure also involves non-governmental organisations. They have the opportunity to submit a Shadow Report or supplementary report to the Committee and to participate in a hearing of the 18-strong international expert panel. The procedure ends with the Committee drafting final recommendations (Concluding Observations) after its examination of the government report. The recommendations are published on the Committee's website and constitute an important point of reference for the work of non-governmental organisations. For the following reporting cycle (for the German Federal government the third country report under the Convention is due in 2009), the Committee expects the government to make a comment and render account of the measures adopted to implement the recommendations.

The present Shadow Report refers to the initial report of the Federal Republic of Germany to the United Nations concerning the Optional Protocol on the Involvement of Children in Armed Conflicts. This report was adopted by the Federal Cabinet in late 2006 and has been presented to the UN Committee for examination. The Committee will discuss it in early 2008. Since, from the point of view of non-governmental organisations, the report has shortcomings and gaps, terre des hommes and Kindernothilfe have made up their minds to have a Shadow Report compiled. It is published on behalf of both organisations and the German branch of the Coalition to Stop the Use of Child Soldiers, an alliance of non-governmental organisations founded in 1999¹. In this context we would like to thank Dr Hendrik Cremer, who supported us with his expertise as a legal scholar. We are glad that he has contributed to our project as an author. We would also like to thank Martin Nagler, EU Eureach Officer of the Coalition to Stop the Use of Child Soldiers in Brussels, who assisted us with advice and practical help, and all others who have helped us.

¹ See www.kindersoldaten.info (website is only available in German)

The shortcomings and gaps in the report of the Federal government refer mostly to the following areas which are specified more in detail in the Shadow Report:

- Provisions in the German Conscription Act and Soldiers Act
- Provisions in the German Code of Crimes and/or International Law;
- Provisions in the German Law concerning the the treatment of former child soldiers in Germany;
- Measures in the field of international and bilateral cooperation;
- Deployment of German soldiers on international missions and encounters with child soldiers;
- Duty to make the Optional Protocol publicly known in Germany.

Germany has been a pioneer and role model in preparing the Optional Protocol. In our opinion, this commitment should also be repeated in the implementation and reporting process. We hope that this Shadow Report and the recommendations it contains will contribute to boosting the campaign to "Stop Child Soldiers" and to strengthening Germany's contribution - in Germany and abroad.

Barbara Dünnweller
Kindernothilfe

Ralf Willinger
terre des hommes

October 2007

2. Summary Introduction

Children are abused all over the world as child soldiers², in Latin America or Asia, but mostly in Africa. They are boys as well as girls, sometimes as young as six. They fight in government armies, but mainly for non-government armed groups.

Many are forcibly recruited. Others “voluntarily” follow armed groups because they see this as their only chance to survive the war and hardship in their homeland or earn a living. Another reason for it may be the desire to escape domestic abuse. Revenge can also play a role if family members were killed during a conflict.³

Children and adolescents frequently suffer heavy injuries to body and soul, even before being sent into a combat mission. Often they are abused severely during their stay in the training camp and their will and personality are systematically broken in order to make them particularly unscrupulous fighters. If they refuse to fight with a weapon, for which they are often drugged, they are brutally forced and have their life threatened. These children that are recruited, especially girls, are also frequently victims of sexual violence.

The central demand of the “Coalition to Stop the Use of Child Soldiers”⁴ reads: No one under 18 years of age is to be enlisted, recruited or used in hostilities whether by national armed forces or by armed groups that are distinct from the armed forces of a State.

This demand is based on an understanding of child protection, according to which minors are to be kept away from military structures, drills and deployments. This applies in particular to handling weapons.

A further substantial argument for a total ban of the recruitment of minors is that non-governmental armed groups should not have the opportunity to refer to the practice of national armed forces. In order to remove the basis for this argument by non-governmental armed groups, the recruitment prohibition should apply to minors in any type of armed force or group.

However, the request by the “Coalition to Stop the Use of Child Soldiers” for a “straight-18” position could not be achieved in adopting the Optional Protocol. The Optional Protocol forbids any form of recruiting of minors, including enlisting “volunteers” to non-governmental armed-groups. National armed forces may not forcibly recruit a minor, but recruiting volunteers over the age of 15 is still

² A legally binding definition of the term child soldier does not exist. The “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” from 2002, which is at the basis of this shadow report, refers to children, who were or were said to be recruited by armed forces or non-government armed groups. In more current documents like the Paris Principles from February 2007 (www.child-soldiers.org/childsoldiers/international-standards), one speaks of “children associated with armed forces or armed groups”. According to the generally accepted definition specified there, these are all “persons under 18 years, who have been or were recruited or used by armed forces or groups, no matter the function or role, including children who were used as fighters, cooks, porters, messengers, spies or for sexual purposes. It is not just children in particular who have been actively involved in combat operations.” The term “child soldier” is used in this sense in this shadow report.

³ On the question, “How voluntary is the ‘voluntary’ recruiting of children and young people?” see Brett/Specht, *Young soldiers: Why they choose to fight*, ILO/Rienner (Ed.), 2004, p. 123 f.

⁴ The Coalition to Stop the Use of Child Soldiers was formed in 1998 by leading human rights and humanitarian organizations. The International member organizations of the Steering Committee are: Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service and the Quaker United Nations Office.

possible in principle. It is up to the respective State Party to raise the age regarding voluntary recruitment into the national armed forces to 18 years.

In Germany, minors are also recruited. Volunteers with a minimum age of 17 are accepted as soldiers into the German Federal Armed Forces in order to begin military training. During this training, they also learn to handle weapons.

Germany's ratification of the Optional Protocol on 13 December 2004 would have been a good time to increase the minimum recruitment age to 18 years for the German armed forces. Other countries preceded with a good example. The Optional Protocol and the political debates that it triggered in the respective States Parties have contributed to a clear decrease in the number of States where minors are being recruited into national armed forces.⁵ Many countries in Europe and world-wide completely forego the recruitment of minors into their armed forces.

Germany rightly criticises the use of child soldiers in Africa, Asia and Latin America. The protest would gain in credibility, however, if the recruiting practice for the German armed forces clearly delineated the boundaries between minors and adults. However, there are no signals at present that would indicate a change in the legal situation towards raising the minimum age for entry into the armed forces strictly to 18 years. This holds both for the governmental level and for the members of the German *Bundestag* (lower house of the German Parliament). This is not comprehensible, given that the number of minors who begin their service with the German Federal Armed Forces annually is very small overall.

Apart from the fact that Germany's attitude to recruiting minors into its own armed forces is worthy of criticism, the question arises regarding violations of international law for failing to implement the Optional Protocol. On some points, Germany reveals clear deficits with respect to the implementation of the Optional Protocol. On other points, there is at least some doubt about whether Germany is able to fulfil its commitments to the Protocol under international law without making the appropriate legal adjustments.⁶

Effectively implementing the Optional Protocol in the German judicial system is somewhat doubtful in view of the situation of: temporary career soldiers. There are minors in the German armed forces for two different reasons. On the one hand, there are male minors, who are completing their service with the German armed forces due to the compulsory military service. On the other hand, there are minors, who have applied to be in the German armed forces and who are enlisted for a determined period of time (temporary career soldiers). The legal situation of men, who carry out their service with the armed forces in fulfilment of compulsory military service, is essentially regulated by the Conscription Act (*Wehrpflichtgesetz*).⁷ The legal status and employment contract of enlistees for a determined

⁵ See also: Review of State Party reports to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, November 2006, p. 3 ff, retrievable at www.child-soldiers.org

⁶ The fulfilment of commitments under international law does not compellingly presuppose, according to general international law, that corresponding national laws must be issued. They can be fulfilled by regulations, decrees, directives, etc. The States Parties are free in principle as to how they legally fulfil the commitments assumed under international law. Frequently, a clear legal regulation of an effective implementation of the commitments under international law would be appropriate. Moreover, there are often cases, in which the respective commitment under international law expressly requires legislative measures.

⁷ Pursuant to § 1 of the Conscription Act, compulsory military service applies to German men who have attained 18 years of age. Minor males have the opportunity of carrying out their basic military service at an earlier time in fulfilment of the compulsory military service. In such a case, they are also subject to the regulations of the Conscription Act.

period of time are however a matter for the Soldiers Act (Soldatengesetz).⁸ The latter does not contain any regulations specific to minors. Germany's report on the Optional Protocol contains no corresponding remarks on the Soldiers Act; references to the situation of enlistees for a determined period of time are few and far between.

In principle, the Optional Protocol permits the recruitment of persons under 18 years into national armed forces only with certain minimum safeguards.

Among these is included the notion that the recruitment of minors into the German armed forces may only take place if it is “genuinely voluntary”. In addition, the consent of the statutory representatives is necessary. Germany does not follow these safeguards sufficiently. Thus, the physical examination can take place as the first step to military ascertainment six months prior to the attainment of 18 years against the person's will and also without the consent of the statutory representatives. Minors who have already begun their service in the armed forces, but who have decided not to continue their service in the German Federal Armed Forces, are even liable for penalty.

As a central commitment of the Optional Protocol, the States Parties shall guarantee that members of their armed forces, who have not yet attained 18 years, will not take a direct part in hostilities. In Germany, however, there is no legal regulation effectively preventing the direct involvement of minors in hostilities.

There is also a need for action to implement the Optional Protocol within the framework of the German Criminal Code. In this case, recruiting persons under 18 years or their use in hostilities by armed groups should be made a punishable offence, independently of where the recruiting took place. So far only recruiting children under 15 years by armed groups is punishable under German law.

Germany also assumed commitments with the ratification of the Optional Protocol concerning children who fled to Germany and were exploited by armed groups or had to fight for them with a weapon. Also in this regard, clear deficits can be noted in Germany's handling of such children. The existing legal framework for these children and their real and particular psychosocial situation, reveal a substantial need for Germany to take action.

A fundamental problem exists here first in the fact that former child soldiers are routinely pushed into burdensome and by no means child-friendly asylum proceedings, although these have regularly no chance for success. Frequently, former child soldiers only are tolerated and live in fear of their deportation. The uncertain residence status of these children makes their integration more difficult and thus increases the danger of re-traumatisation.

Apart from the fact that German legal residency regulations do not contain any minor-specific provisions for former child soldiers, considerable flaws are noted concerning their support and accommodation. If they have attained 16 years of age, frequently they are excluded from Child and Youth Welfare Service and placed in adult accommodations for asylum-seekers. Child welfare criteria are thus completely disregarded. Moreover, it is not ensured that they receive sufficient psychological support. It is usually left to chance whether they receive an urgently needed therapy. Often they don't

⁸ The Soldiers Act also regulates the legal status of temporarily unlimited career soldiers (professional soldiers). Minors can apply, however, only as temporarily career soldiers. At a later time, the person in question can then enter, if applicable, into the employment contract of a temporarily unlimited career soldier.

receive any. Every now and then it happens that unaccompanied foreign minors such as former child soldiers are detained prior to deportation. The existing practice of defining the age is also problematic.

It remains an open question in Germany's report how Germany relates on the international level and particularly bilaterally to States where the Protocol is not being implemented and in particular where child soldiers are still being used. It is of interest here whether and in what respect the situation of minors in third countries plays a role for instance in the context of trade relations or the granting of credits.

In the report, it is also unclear whether there are considerations and strategies within the German Federal Armed Forces for the case of engaging child soldiers abroad, which take into consideration the children's special situation and need for protection.

Finally, Germany's report is also lacking in form. The Committee on the Rights of the Child developed guidelines for the States Parties on reporting pursuant to Article 8 of the Optional Protocol.⁹ Germany's report follows these guidelines insufficiently. As a result, it exhibits clear gaps in the reporting and is often imprecise.

⁹ See Guidelines regarding Initial Reports of States Parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict from 14 November 2001, UN Doc. CRC/OP/AC/1.

3. On the individual provisions

The following report provides information on the individual provisions of the Optional Protocol without addressing each article or each paragraph of an article of the Protocol. This is more about setting priorities. The observations are limited to those aspects where Germany has fallen short in implementing of the Optional Protocol and those where it appears at least doubtful whether Germany has thus fulfilled its commitments under international law. Thus, the deliberations in the German report will be commented upon.

Article 1

Guarantee to prevent persons under the age of 18 years from a direct involvement in armed operations

According to this article, the States Parties shall take all feasible measures to ensure that any member of their armed forces, who has not yet attained 18 years of age, will not participate directly in hostilities.

This commitment comes first in the Optional Protocol with good reason: it concerns a central provision of the Protocol. The legal regulations as well as Germany's report regarding this commitment have to be regarded as altogether insufficient.

It is communicated in the framework of the report on Article 1 that those under 18 are taken into the armed forces exclusively to begin military training and the use of weapons by volunteers under 18 is limited to training and permitted only under strict supervision. Furthermore, outside of military training, they may not carry out any functions where they might be forced to use weapons. Apart from that, an existing arrangement is referred to, according to which volunteers under the age of 18 may not participate in any deployments by the German Federal Armed Forces under any circumstances¹⁰.

This report is contradictory in itself if one considers the remarks on Article 3 Paragraph 3 c). Here it says that each military formation deploying a conscript who has not yet attained the age of 18 years is given a special instruction letter containing information from the military recruitment authority to the effect that, in accordance with the Optional Protocol, the conscript is not to be brought into operations that might foreseeably lead to armed conflicts.¹¹ According to the report it is also guaranteed by the corresponding orders that minors may, in no event, take part in hostilities.

In keeping with these observations, the Federal Ministry of Defence, which issued the directive, obviously assumes that minors may be taken into consideration for operations with the German Federal Armed Forces abroad. Otherwise it makes no sense to issue such a directive, particularly since it does not forbid the use of minors abroad. International missions by the German Federal Armed Forces regularly take place in crisis regions. How should or can it be guaranteed that minors are not used in operations, which will result in armed conflicts? How should it be prevented during international missions by the German Federal Armed Forces in particular that minors are not attacked during deployment in crisis regions and thereby forced into combat operations?

¹⁰ The corresponding directive is referred to at the end of Annex 1 of Germany's report.

¹¹ The corresponding notice is attached to the report as Annex 3.

In order to solve this contradictory legal situation, legal regulations would be helpful in both the Conscription Act and the Soldiers Act that specifically prohibit the deployment of minors abroad.

Article 3

Prerequisites for the recruitment of volunteers under the age of 18 years into national armed force

Article 3 of the Optional Protocol essentially regulates that each State Party shall make a binding declaration upon ratification of the Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces. For those States Parties, who allow the recruitment of volunteers under the age of 18, Article 3 codifies certain requirements under which the recruitment of these volunteers is permitted.

Article 3 Paragraph 2

According to Article 3 Paragraph 2 of the Optional Protocol, the State Party shall set forth the minimum age at which it will permit voluntary “recruitment” into its national armed forces.

Upon ratification of the Optional Protocol, the Federal Republic of Germany only made a declaration, according to which it regards a minimum age of 17 years as binding “for commencement of voluntary service as a soldier in its armed forces” in terms of Article 3 Paragraph 2 of the Optional Protocol. A man’s physical examination¹² as the first step to military ascertainment may take place six months prior to attaining 17 years according to § 16 Paragraph 3, Alternative 2 of the Conscription Act. It is required that the application for early military service be made with the consent of the applicant’s statutory representative.

It is doubtful whether this legal situation is consistent with the declaration submitted by Germany in accordance with Article 3 Paragraph 2 of the Optional Protocol.

If one considers the declaration submitted on its own, it seems there is no contradiction, since the examination cannot be equated with the beginning of service in the armed forces.

Germany’s declaration must be seen, however, in the context of Article 3 Paragraph 2 of the Optional Protocol. The declaration made by Germany can therefore be interpreted only in such a way that the fixed minimum age of 17 years refers to “recruitment” into service in the German armed forces.

This raises considerable doubts about whether being able to do the physical examination six months before the attainment of 17 years is consistent with this declaration. This is because the examination is to be seen as a component of recruitment into the armed forces in terms of Article 3 Paragraph 2 of the Optional Protocol since it already constitutes a close relationship to the armed forces both in the legal and in the real sense. According to § 16 Subsection 3 of the Conscription Act, various clauses of this Act already apply to minors from the date of the examination. They are subject to military monitoring starting from the time of the examination (§ 24 Conscription Act) and a personnel file is created (§ 25 Conscription Act). According to § 17 Subsection 7 of the Conscription Act interferences with the physical integrity are permitted during the examination even without the conscript’s consent, as for instance taking of blood samples from the earlobe, a finger or vein and x-rays. The decision by the

¹² With the examination, it is decided whether and if so, for which assignments a conscript can be brought in for deployment.

military recruitment authority based on the examination already substantially answers the question regarding the conscript's future assignments in the armed forces. Minors will be called “to military service in pursuance of the outcome of the physical examination”¹³.

In order to fulfil the international legal commitments made, the physical examination of a male person should in principle only be possible upon attainment of 17 years of age. § 16 Subsection 3, Alternative 2 of the Conscription Act should be altered in this regard.

The Soldiers Act does not stipulate any legally defined minimum age for beginning voluntary service in the armed forces. In this respect, Germany's report refers only to one directive communicated within the German Federal Armed Forces (Annex 1).¹⁴

A clearly stated legal regulation regarding the minimum age corresponding to the declaration made by Germany would be helpful here.

Article 3 Paragraph 3

Those States Parties permitting the recruitment of volunteers under the age of 18 into their national armed forces shall maintain certain minimum safeguards regarding their recruitment pursuant to Article 3 Paragraph 3 of the Optional Protocol.

Article 3 Paragraph 3a)

The clause requires that recruitment into the armed forces be “genuinely voluntary”.

The English version, which in contrast to the German translation of the Optional Protocol is binding¹⁵, states that the States Parties that “permit voluntary recruitment” into their national armed forces under 18 years shall maintain safeguards to ensure that “such recruitment is genuinely voluntary”. The English wording with the term “genuinely” emphasises more strongly than the German translation that voluntariness is truly guaranteed and ensured.¹⁶

With this background, there are substantial doubts as to whether the German legal situation of the minimum safeguards of Article 3 Paragraph 3a) corresponds to the Optional Protocol.

For this requirement of voluntariness to be fulfilled, an application or request for the early recruitment of persons under the age of 18 is not sufficient. This can also happen due to pressure by one or both parents.

¹³ See § 21 Subsection 1 of the Conscription Act: The provision refers to “conscripts with no prior service”. According to § 1 of the Conscription Act, all German men who have attained 18 years of age are liable for military service. In this respect, one wonders whether § 21 Subsection 1 of the Conscription Act also applies to those under 18 years of age. The law uses the term “male persons”, in the context of those underage in some places as for instance in § 16 Subsection 3 of the Conscription Act. Nevertheless, § 21 Subsection 1 of the Conscription Act applies in practice to those under 18. The author was made aware of this among other things through information via telephone from the district recruiting office in Hamburg. Apart from that, there is no other legal stipulation, which provides for the recruitment of persons under 18 deviating from § 21 Subsection 1 of the Conscription Act.

¹⁴ Germany's report refers to the corresponding directive in the context of its implementation of Article 1 of the Optional Protocol.

¹⁵ According to Article 13 Paragraph 1 of the Optional Protocol, the Optional Protocol is equally authentic in Arabic, Chinese, English, French, Russian and Spanish, but not therefore in German. The German text concerns only a non-binding translation.

¹⁶ The term “genuinely” is used in English to mean “authentically” or “seriously”. The term used in the German translation, “tatsächlich” in English usually translates as “actually”.

It would therefore be necessary for the responsible authority to seek a personal interview with the minor, where it could be critically analyzed whether this person's decision was really based on free will. Such an interview should ideally take place in the case of a conscripts at separate date before the physical examination; in the case of temporary enlistees, during the context of the application procedure. This way, the requirement of voluntariness could be better examined and would receive the appropriate significance.

The requirement of a “genuinely voluntary recruitment” into the armed forces also implies that the decision upon which it is based remains voluntary. Minors must thus have the opportunity to end their service at any time.¹⁷

In the Conscription Act, however, there is no regulation making it possible for minors to voluntarily end their service with the armed forces. In §§ 29 ff. of the Conscription Act, in which the reasons for ending military service are specified, there is no such regulation. Such a regulation is also not contained in the Soldiers Act.

In this regard, the possibility of retroactive conscientious objection to compulsory recruitment as it exists under German law, independent of age, cannot be applied. It concerns rather the possibility of the voluntary ending of military service, particularly for minors. Whether these possibly refuse military service afterwards is another question outside the scope of special child protection.

This legal situation is particularly sensitive as minors who leave the armed forces without authorization incur a penalty due to a violation of compulsory military service pursuant to the Military Penal Code (Wehrstrafgesetz).¹⁸ This Code is applicable both to underage conscripts and underage temporary career soldiers.¹⁹ Minors are thus exposed to Military Penal Code sanctions from the beginning of their service, should they wish to terminate their service with the armed forces.

¹⁷ In a literal reading of the wording of Article 3 Paragraph 3a), the standard could also possibly be interpreted to mean that it exclusively refers to the act of the initial recruitment. Such a close interpretation of Article 3 Paragraph 3a) would have however as a consequence that minors would have to remain in the armed forces, against their will if necessary, which would run completely counter to the object and purpose of the provision as well as of the supplementary protocol to prevent in principle the forced recruitment of minors.

¹⁸ Punishability is regulated in § 15 and § 16 of the Military Penal Code.

§ 15 of the Military Penal Code (absent without leave) reads:

(1) Anyone who leaves his unit or post or fails to appear and is deliberately or negligently absent longer than three full calendar days shall be punished with up to three years imprisonment.

(2) Similarly, anyone who, beyond the regional scope of this law, abandons his unit or post and deliberately or negligently fails to report to it, another unit or post of the German Federal Armed Forces or an authority of the Federal Republic of Germany within three full calendar days, will also be punished.

§ 16 of the Military Penal Code (desertion) reads:

(1) Anyone who arbitrarily leaves his unit or post or fails to appear in order to extract himself from the commitment of military service perpetually or for the time of an armed deployment or to end the military employment contract shall be punished with up to five years imprisonment.

(2) The attempt is punishable.

(3) If the offender surrenders himself within one month and is prepared to comply with the obligation of military service, then the punishment is up to three years imprisonment.

(4) The provisions regarding the attempt of participation pursuant to § 30 Subsection 1 of the Criminal Code applies to criminal offences pursuant to Subsection 1 accordingly.

¹⁹ Section 1 Paragraph 1 of the Military Penal Code reads: “This law applies to criminal offences committed by soldiers of the German Federal Armed Forces.” Anyone who is a soldier in the sense of this regulation arises again from § 1 Subsection 1 of the Soldiers Act: “A soldier is anyone in military service or fulfils voluntary commitments in a military employment contract.” In accordance with § 3 Subsection 2 of the Military Penal Code, criminal offences committed by soldiers, who are juveniles or adolescents, the provisions of Youth Court law apply. As a result, the Military Penal Code is applicable in principle also to minors.

The Conscription Act and the Soldiers Act should be supplemented by regulations, according to which it is possible for minors to terminate their service with the armed forces at any time by unilateral declaration or action. Thus it should be similarly ensured that minors are not punished under any circumstances according to the Military Penal Code due to a violation of compulsory military service.

Article 3 Paragraph 3b)

According to Article 3 Paragraph 3b) of the Optional Protocol, recruitment is only carried out with the informed consent of the person's parents or legal guardians.

According to § 5 Subsection 1a) of the Conscription Act, to which Germany's report also refers in connection with Article 3 Paragraph 3 b), the request for early military service requires the "consent of the statutory representative". Therefore, in principle the consent of only one statutory representative is sufficient, even if there are two parents.

Moreover, according to Germany's report this means that, the consent of the statutory representative is also necessary for the employment of an under age temporary career soldier. It remains open, however, out of which provision this arises. In the Soldiers Act, no such regulation can be found.

Therefore, a regulation should be included in the Soldiers Act, which complies with Article 3 Paragraph 3 (b) of the Optional Protocol.

Article 3 Paragraph 3a) and b)

As stated, Article 3 Paragraph 3a) of the Optional Protocol requires that recruitment of minors into the national armed forces be truly voluntary and Article 3 Paragraph 3b) of the Optional Protocol requires the additional consent of both parents.

According to § 16 Subsection 3, Alternative 1 of the Conscription Act, a male person may be examined six months prior to attainment of 18 years of age against his will and without the consent of the statutory representatives. Since the physical examination as described above is to be understood as the first step of "recruitment" into the German Federal Armed Forces, this legal situation cannot be consistent with Article 3 Paragraph 3a) and b) of the Optional Protocol. This all the less, as the examination pursuant to § 17 Subsection 7 of the Conscription Act allows procedures that interfere with the physical integrity, without the conscript's consent.

§ 16 Subsection 3, Alternative 1 of the Conscription Act should therefore be deleted by the legislature.

Article 3 Paragraph 3c)

According to this provision, the States Parties shall maintain safeguards, to ensure that the respective person is fully informed about the duties connected with military service, if these States Parties allow the recruitment of volunteers under 18 years.

According to Germany's State report this commitment is fulfilled since minors receive an appropriate information leaflet (Annex 2) "after" the physical examination has taken place.

It is doubtful that the Federal Republic of Germany complies with the regulation by distributing leaflets to minors that have already been examined. It is quite evident that – by its object and purpose

– the States Parties’ commitment regulated in Article 3 Paragraph 3c) of the Optional Protocol should be applied earlier in time. Accordingly, minors should have to be informed about their military commitments not only once the examination has been completed and the availability for military service is already determined.

Minors should rather be informed already during the application procedure for early recruitment about the nature of their military duties and what consequences their application can have for them. This is the only way to ensure that the minors are aware of the consequences of his/her application before the “point of no return”.

The report leaves completely unanswered whether and when minors applying to be a temporarily career soldier are informed of their military service commitments, e.g. by also receiving the information leaflet annexed to the report.

Article 4

Article 4 Paragraph 2 in connection with Art. 4 Paragraph 1

Preventing and prosecuting the recruitment and deployment of persons under the age of 18 years in armed conflicts by non-government armed groups

According to Article 4 Paragraph 2 in connection with Article 4 Paragraph 1 of the Optional Protocol, the States Parties shall take all feasible measures to prevent recruitment of persons under the age of 18 years or their use in hostilities by armed groups. This includes criminalizing such practices.

The commitment of Article 4 Paragraph 2 in connection with Article 4 Paragraph 1 of the Optional Protocol also applies to minors who may find themselves in a situation of being recruited into armed groups or used in hostilities as a consequence of measures based on the national law on aliens. In the case of such a danger, the States Parties are thereby obliged to refrain from deporting minors.²⁰ Many children flee from their home countries in Africa, Asia or Latin America when threatened with recruitment by armed groups. A provision specific to children, which recognises such a danger as an obstacle to deportation, is not part of the German Residence Act (Aufenthaltsgesetz).²¹

Such a provision should be incorporated into the German Residence Act.

Moreover, the question arises whether there is any knowledge that – in particular foreign – minors in Germany are enlisted or even kidnapped in order to be used afterwards as child soldiers in military conflicts and/or civil wars in their home country. Germany’s report does not give any evidence in this regard nor about any precautions taken to prevent such a practice. The practical relevance of § 234 of the Criminal Code (Strafgesetzbuch) in this regard is left unclear. According to this provision it is under certain conditions a punishable offence to convey another person to a military or military-like organisation abroad.

For the German legislature, the commitment to tighten the criminal provisions arises from Article 4 Paragraph 2, Clause 2 in connection with Article 4 Paragraph 1 of the Optional Protocol.

²⁰ See Committee on the Rights of the Child, General Comment No. 6 (2005), CRC/GC/2005/6, of 1 September 2005, p. 17 f.

²¹ In all other respects, see the remarks to Article 6 Paragraph 3 of the Optional Protocol in this report regarding the legal residence situation of children who, according to the Optional Protocol, are favoured and under special protection.

According to the present German Code of Crimes against International Law (Völkerstrafgesetzbuch), pursuant to § 8 Subsection 1 Number 5 on War Crimes, conscripting or enlisting children under the age of 15 into armed forces or armed groups or using them to participate actively in hostilities in connection with an international or domestic armed conflict is a punishable offence. This crime is also punishable according to § 1 of the German Code of Crimes against International Law if it was committed abroad and has no connection to Germany. It is to be punished with imprisonment of no less than three years.

These regulations are based on the Rome Statute of the International Criminal Court in The Hague, which contains corresponding regulations in Article 8.

Neither the German Code of Crimes against International Law nor the Rome Statute of the International Criminal Court contains any criminal sanctioning regarding the recruitment and use of minors over the age of 15 years by armed groups.

Also according to Article 38 of the Convention on the Rights of the Child, the States Parties are only obliged to ensure that persons who have not yet attained the age of 15 years do not participate directly in hostilities. Furthermore, Article 38 of the Convention only forbids the States Parties to draft persons who have not yet attained 15 years of age into their armed forces. These regulations, contrary to Article 1 of the Convention, according to which the protection of the Convention extends in principle to persons who have not yet attained 18 years, prompted the creation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.

Article 4 Paragraph 2 of the Optional Protocol therefore provides for a clear tightening of national commitments, in which those responsible in armed groups for recruiting minors or using them in hostilities will also be held criminally responsible.

The German Code of Crimes against International Law should therefore be tightened, making it a punishable offence for anyone to draft minors into armed groups or use them in hostilities, independently of whether the crime was committed abroad and independently of whether it was committed by a German.

It would also be desirable if the Federal Government would advocate internationally for the Rome Statute of the International Criminal Court in The Hague to be altered in correspondence with the commitments of Article 4 Paragraph 2 of the Optional Protocol.

Also of interest is whether there are considerations and strategies on the part of the Federal Government or the Federal Prosecutor's Office to more effectively pursue war criminals who have recruited child soldiers; this may be with regard to those who initiate war, that preside over armed groups or even (former) heads of government of African countries or other regions, who must answer for the use of child soldiers.

Article 6

Article 6 Paragraph 2

Obligation to make the Optional Protocol known to adults and children

According to Article 6 Paragraph 2 of the Optional Protocol, States Parties are obliged to make the principles and provisions of the Protocol widely known and promoted by appropriate means to adults as well as to children.

Germany does not deal with this commitment in its report. It is therefore unknown whether or in what respect appropriate measures have been taken. So far it appears that no special publication of the Protocol's contents has taken place either for children or parents. On the contrary: minors in particular are canvassed for the German armed forces. Thus, the German Federal Armed Forces advertise comprehensively in schools, trade schools, at public stands in city centres, at fairs and on the Internet. The advertising is aimed directly at young people.²²

The contents of the Optional Protocol should be publicised by Germany among children and adults. Suitable means could be information via the Internet, the media or informational meetings, for example at schools.

Article 6 Paragraph 3

According to Article 6 Paragraph 3 of the Optional Protocol, the States Parties shall take all feasible measures to ensure that persons within their jurisdiction that have been recruited or used in hostilities contrary to the Optional Protocol are demobilized or otherwise released from military service. When necessary, the States Parties shall accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

The Federal Republic of Germany seems to misconceive the meaning of Article 6 Paragraph 3 of the Optional Protocol, given that it makes no mention in its report of the commitments standardised there, but generally proceeds from the notion that German law corresponds to the regulations of the Optional Protocol.

This is, however, not the case. Article 6 Paragraph 3 of the Optional Protocol has substantial meaning for former child soldiers, who flee to Germany and whose particular problems are dealt with only insufficiently in the German legal system. Why former child soldiers are beneficiaries of Article 6 Paragraph 3 of the Optional Protocol and which commitments arise from it for Germany, will be described in more detail in the following sections.

Beneficiaries of Article 6 Paragraph 3

Beneficiaries of Article 6 Paragraph 3 of the Optional Protocol are persons who were recruited or used in hostilities contrary to the Optional Protocol:

²² In the Bundestag printed paper 16/4768 of May 21, 2007, there is an informative overview of the German Federal Armed Forces advertising.

In accordance with Article 1 of the Optional Protocol, it includes persons who participated directly in hostilities as a member of a national armed force of a State Party, without having attained 18 years of age. It also includes persons who, before attaining 18 years of age, were recruited into the national armed forces of a State Party. This is the case if they were recruited contrary to the safeguards of Article 3 Paragraph 3 of the Optional Protocol. According to Article 4 Paragraph 1 minors are included, that were recruited by non-state armed groups or used in hostilities.

It must be stressed that children who were recruited by national armed forces or non-state armed groups without having been used in hostilities are covered both in the case of a violation of Article 4 Paragraph 1 Alternative 1 as well as in the case of a violation of Article 3 Paragraph 3 of the Optional Protocol. This is significant in cases, where children were not (yet) forced to fight with a weapon but were already under the control of armed forces or non-state armed groups. This can concern in particular young children and those who have not been long in an armed force, rebel or other armed group or participated only occasionally. Supporting tasks are assigned to them, like activities such as porter, kitchen help or farm worker. They have to wash vehicles or clean rifles. Also espionage and reconnaissance (e.g. of mine fields) are often duties for children in armed forces or non-state armed groups. Girls in particular are also frequently victims of considerable sexual abuse.²³

The protection guaranteed by Article 6 Paragraph 3, Clause 2 of the Optional Protocol refers to all persons who participated directly in hostilities and/or were recruited by national armed forces or non-state armed groups contrary to the Protocol and who had not yet attained 18 years of age.

At the same time it is not crucial for the protection according to Article 6 Paragraph 3, Clause 2 of the Optional Protocol where children were recruited and subsequently demobilized from the national armed forces or non-state armed groups. A possible restriction cannot be inferred in the wording of Article 6 Paragraph 3; in addition, this would run contrary to the object and purpose of the provision and the Optional Protocol in general. Germany obviously misjudges this aspect in particular.

Content-related Commitments of Article 6 Paragraph 3

Article 6 Paragraph 3, Clause 2 of the Optional Protocol has to be viewed in the context of Article 39 of the Convention on the Rights of the Child.²⁴ Thus, the aspect of the physical and psychological recovery and reintegration in Article 39, Clause 2 of the Convention is concretised in Article 6 Paragraph 3, Clause 2 of the Optional Protocol. “According this clause, the a recovery and reintegration should take place in an environment which fosters the health, self-respect and dignity of the child. The aspect of psychological recovery and reintegration presupposes in principle that a qualified psychosocial counsel is available and that psychological support is developed that adequately takes the cultural and gender specific circumstances into account.”²⁵ A comprehensive and age-based system of psychological support is necessary.

In the following sections, the situation of former child soldiers in Germany will be outlined in order to give a subsequent summary evaluation of their situation regarding the requirements of Article 6 Paragraph 3, Clause 2.

²³ Paris Principles and Guidelines on children associated with armed forces or armed groups, February 2007 (<http://www.childsoldiers.org/childsoldiers/internationalstandard>), p. 7.

²⁴ In Art. 39 Clause 1 of the Convention, it says: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: ... armed conflicts.”

²⁵ See Committee on the Rights of the Child, General Comment No. 6 (2005), CRC/GC/2005/6, from 1 September 2005, p. 15 ff.

The Situation of former child soldiers in Germany

- **The number of former child soldiers**

Former child soldiers are part of refugee children taking refuge in Germany with a special flight-specific background. They usually enter unaccompanied, i.e. they are without their parents or another person having the care or custody of the child. However, there are no reliable data as to their number. Therefore, only rough estimates can be made regarding the current number of former child soldiers living in Germany. It is assumed that the number of minors is between 300 to 500.²⁶

- **Legal residence stipulations**

Former child soldiers regularly have obtained no residence permit (visa), prior to entry, but instead enter without permission.²⁷ The unapproved entry results in them being required to leave the country by virtue of the law in force.²⁸

- **Asylum**

It is frequently the practice that unaccompanied refugee children like former child soldiers apply for asylum. This can take place for instance during the initial contact with the Foreign Resident Authority (Ausländerbehörde) or also by means of the often officially appointed legal guardians. If they apply for asylum, their stay is approved for the duration of implementing the asylum procedures.²⁹ According to the Asylum Procedure Act³⁰ (Asylverfahrensgesetz) as well as the Residence Act³¹ this renders unaccompanied minors who have attained 16 years of age, as authorized to act, i.e., they are treated as adults in the asylum procedure. These regulations are rightfully criticised³² by refugee organisations and child rights organisations – also bearing in mind the Convention on the Rights of the Child. As a result, these minors are able to file an application for asylum themselves, which is even often suggested to them.

The minors subsequently go through a complicated and burdensome asylum procedure even when this has little chance for success or is actually hopeless.³³ Even less so given that child-specific reasons for

²⁶ See Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and the German Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 5. This study in German is the original. Beyond that, there is the project study, “Former Child Soldiers as Refugees in Germany” in English as a revised and partly shortened version, edited by the Quaker United Nations Office - Geneva.

²⁷ See Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study, “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 9 f.

²⁸ Section 58 Subsection 2, Num. 1 of the Residence Act.

²⁹ See § 55 Subsection 1 of the Asylum Procedure Act.

³⁰ Section 12 of the Asylum Procedure Act.

³¹ Section 80 of the Residence Act.

³² On the criticism – even about other regulations of the German Asylum Procedure and Residence Acts regarding unaccompanied minors see for example: Statement by UNHCR on the hearing of the Interior Committee of the German *Bundestag* on the law to implement residence and asylum guidelines of the European Union on 21 May 2007, Interior Committee A-Drs. 16(4)209 G, p. 46 ff.

³³ Cremer, Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes (The unaccompanied child’s claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 41, with further evidence.

the flight such as the recruitment of minors or the murder of parents are in practice not recognised as relevant reasons to be granted asylum.³⁴

Furthermore, the complicated procedural and participation regulations in the German Asylum Procedure Act cause both legal and real problems for former child soldiers, placing excessive demands on them in a thoroughly complicated procedure. Often the minors do not know or understand about the matters involved in the asylum procedure. The children are confused by the asylum procedure and do not understand what is required of them. Their substantial psychological and at times also physical problems make an asylum procedure all the more difficult.³⁵

- **Residence permit**

In particular the inefficacy of the asylum procedure has as a consequence that many times requests are made for the issue of a residence permit rather than applications for asylum. Former child soldiers have, however, almost no chance of obtaining a residence permit which grants them the right to a medium or long-term stay in order for them to be able to close an important chapter in their lives. Although they suffered serious trauma, residence permits in order to deal with the trauma are regularly denied. The same applies to completing their education.

Apart from the fact that the Residence Act basically contains no exceptions for (unaccompanied) children like former child soldiers in the regulations regarding legal residence, existing possibilities for issuing (even limited) residence permits, in particular pursuant to § 25 of the Residence Act, are applied restrictively by the Foreign Resident Authorities.³⁶ Often a substantial commitment by the respective legal guardian and/or a appointed attorney is necessary to obtain an exceptional residence permit. Even the changes to the Residence Act soon entering into force will bring no improvements in this regard.³⁷

- **Exceptional leave to remain**

Most former child soldiers receive an exceptional leave to remain after refusal of their request for asylum or issuance of a residence permit in accordance with § 60a of the Residence Act. An exceptional leave to remain is given in accordance with § 60a Subsection 2 of the Residence Act if a deportation for legal or actual reasons is impossible and no residence permit is issued. The exceptional leave to remain is a very weak legal position. It is not a permit justifying a legal stay; the person with leave remains under the enforceable requirement to depart the country.³⁸ Merely the mandatory implementation of this requirement to depart in the form of deportation does not have to happen. The

³⁴ See Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 3.

³⁵ See Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 3 and p. 44.

³⁶ In particular § 25 of the Residence Act was originally created by the legislature with the aim of terminating the practice of “sequential exceptional leaves to remain” (“Kettenduldungen”). Therefore, a positive exercise of discretion should be required particularly for minors and foreigners who have been staying in Germany a long time. See in addition *Bundestag* printed paper 15/420, p. 80. Concerning the practice of Foreign Resident Authorities, these use the field of application of § 25 of the Residence Act – contrary to the intention of the law – but very restrictively, so that frequently the “sequential exceptional leaves to remain” never cease. This concerns also unaccompanied children such as former child soldiers.

³⁷ A minimum percentage of unaccompanied refugee children like former child soldiers may possibly profit from a qualifying date in the new § 104a of the Residence Act.

³⁸ Section 60a Subsection 3 of the Residence Act.

exceptional leave to remain has a time limit and is a formal suspension of the deportation.³⁹ Exceptional leaves are often limited to a few months or weeks.

- **Support and accommodation in the context of the Child and Youth Welfare Service**

Concerning the support and accommodation of former child soldiers, in the past they were usually excluded from the Child and Youth Welfare Service pursuant to the Child and Youth Services Act (KJHG), which is codified in the Eighth Book of the Code of Social Law (SGB VIII), if they had attained 16 years of age. Minors were placed in accommodations for adults according to the Asylum Procedure Act or the Residence Act since priority was granted to these provisions over the Child and Youth Welfare Service.⁴⁰

- **Taking children into care**

On 1 October 2005 some changes to the Child and Youth Services Act entered into force concerning unaccompanied minors thus including former child soldiers coming to Germany. This means that § 42 of the Child and Youth Services Act now expressly states:

“(1) The Youth Welfare Office is justified and obliged to take a child or a young person into care if

1. ...
2. ...
3. a foreign child or youth comes to Germany unaccompanied and is staying in the country with neither a parent nor a legal guardian.”

Thus it was clearly regulated that youths and minors up to the age of 18 years are within the remit of the protective area of foster care. A youth is someone who is 14 but not yet 18 years old, according to § 7 Subsection 1 Num. 2 of the Child and Youth Services Act.

Pursuant to § 42 Subsection 1, Clause 2 of the Child and Youth Services Act, taking into care includes provisionally accommodating a child or youth in a suitable facility or other type of living. It is a temporary protective instrument for children and youths in crisis. The Youth Welfare Office is obliged to advise minors in crisis situations and point out possibilities for assistance and support.⁴¹ The function of the counselling is above all to provide the child or youth with intensive pedagogical assistance in order to clarify the causes of the present situation and develop approaches to solving the problem. Among the possibilities for assistance and support is examining what the Child and Youth Services Act can suitably offer subsequent to the minor being taken into care.

During the period of being in care, the Youth Welfare Office is authorized to take all legal actions necessary to the best interests of the minor. In practice, various facilities were developed with design and educational concepts in mind in order to comply with crisis-, gender- and age-specific requirements.

³⁹ The exceptional leave to remain is also limited to the region of the respective State in the Federal Republic, further conditions and constraints can be decreed (§ 61 Subsection 1 of the Residence Act).

⁴⁰ See also Peter, JAmT (Youth Welfare Office) 02/2006, p. 61

⁴¹ Section 42 Subsection 2 of the Child and Youth Services Act.

Special facilities for unaccompanied minors,⁴² in which former child soldiers are also accommodated, were created, usually in large cities in Federal States with higher entry numbers. These are called clearing houses or initial reception centres. The care and accommodation situation in facilities created especially for unaccompanied children vary greatly between the Federal States and local authorities. Essential characteristics in this regard are the equipment, ratio of staff to residents, the composition of the origin of the children, whether native speaking helpers work at the facility and the pedagogical concepts.⁴³

- **Appointment of a legal guardian**

Apart from the change to § 42 Subsection 1 of the Child and Youth Services Act, another change in § 42 Subsection 3 Clause 4 of this Act entered into force, which concerns an expressly custodial duty to act on the part of the Youth Welfare Office, also concerning former child soldiers. Accordingly, in the case of an unaccompanied minor entering Germany, “the appointment of a legal guardian or caretaker” must be arranged immediately. The legal guardian or caretaker has the right and duty to care for, educate and keep watch over the child. In addition, they have to see to it that accommodation subsequent to being taken into care is provided for and make the necessary applications.⁴⁴

- **Accommodation subsequent to being taken into care: Residential care, other types of assisted living**

Educational assistance comes into consideration for former child soldiers as part of the care accommodation pursuant to §§ 27 ff of the Child and Youth Services Act. Entitlement to educational assistance exists if the appropriate education to the minor’s best interests is not ensured and the provision of aid in the form of educational assistance for the development of the beneficiary is suitable and necessary.⁴⁵ A crucial criterion for selecting assistance on an individual basis is determined by § 27 Subsection 2 of the Child and Youth Services Act: the educational requirements. The minor’s closer social environment is to be considered in the process.

For former child soldiers assistance in a home or other type of residence should be taken into particular consideration according to § 27 in connection with § 34 of the Youth Services Act. Provision of education and therapy are also included here. In practice, residences and group homes have been developed and built especially for unaccompanied refugee children, among whom former child soldiers are also accommodated.

As in the case of being taken into care, the care and accommodation situation for minors varies substantially among the Federal States, large cities and local authorities. Main characteristics here are the respective degree of support, the mixture of the children’s origin, the pedagogical concept of the facilities and employee qualifications.

- **Continued exclusion upon attaining 16 years of age**

It was expected that the practice in handling minors who had reached 16 years of age would change following the change in the law regarding foster care pursuant to § 42 of the Child and Youth Services

⁴²On the educational guidelines and other standards for facilities that care for unaccompanied children, see Riedelsheimer/Wiesinger, (Ed.), *Der erste Augenblick entscheidet* (The first moment decides), Karlsruhe 2004, p. 15 ff.

⁴³ See in addition Cremer, *Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes* (The unaccompanied child’s claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 56, fn. 272.

⁴⁴ Peter JAmt (Youth Welfare Office), 02/2006, p. 65

⁴⁵ §Section 27 Subsection 1 of the Child and Youth Services Act.

Act. However, to a large extent this did not occur. There are differences among the individual Federal States, but most States have some sort of initial reception centre and reallocation according to the Asylum Procedure Act. In some States, practically nothing has changed.

The authorities have different reasons and/or arguments for this. For instance it is argued that the minor's previously mentioned capacity to act in asylum and residence permit procedures results in the minor's obligation to live in asylum-seeker accommodations.⁴⁶ According to § 47 Subsection 1 of the Asylum Procedure Act, foreigners applying for asylum are committed in principle to living in a residential facility. This living obligation is regularly applied in practice in the case of former child soldiers reaching the age of 16. Due to § 15a of the Residence Act, the same applies to minors applying for an exceptional leave to remain or a residence permit after entering Germany.⁴⁷

Moreover, the Youth Welfare Offices and the frequently overstrained public guardians do not meet the demands of their mandate as per the Child and Youth Services Act or reject the minors' need for education and thus the need for accommodation pursuant to the Child and Youth Services Act. The background for this is that the Child and Youth Services are often unwilling or unable to accommodate former child soldiers appropriately. Appropriate facilities and qualified personnel are not in place to face this special challenge. In other cases, the Foreign Resident Authorities simply prevail over the Youth Welfare Offices and allocate the minors to asylum-seeker accommodations. The way these minors are handled can be classified overall almost as arbitrary.

- **Distribution in residential facilities and common housing**

Unaccompanied minors like former child soldiers therefore continue to be excluded by Child and Youth Services if they have attained 16 years upon their arrival or if their age is estimated to be about that.⁴⁸ The minors are treated like adult asylum-seekers and are placed in housing for asylum-seekers according to §§ 46 ff of the Asylum Procedure Act.

That means that the minors are first allocated to residential facilities. § 46 of the Asylum Procedure Act concretises the respective Federal States' duty to receive asylum seekers. The allocation procedure of § 46 of the Asylum Procedure Act is carried out with the help of a computer programme and ignores personal circumstances. If the obligation of a minor to live in a residential facility ends, then the allocation to the district of another Foreign Resident Authority or to another Federal State takes place. This is the case in particular if the asylum procedure cannot be definitively concluded in the short term. The minors are then usually accommodated in common housing.⁴⁹ Special consideration of the minors' personal circumstances when allocating common housing is not provided for in §§ 50, 51 of the Asylum Procedure Act.

The Asylum Procedure Act gives no minimum standard regarding size, equipment or other conditions of residential facilities and common housing. The socio-educational support of minors receives no

⁴⁶ See Peter, JAmt (Youth Welfare Office), 02/2006, p. 64.

⁴⁷ Pursuant to § 15a of the Residence Act, foreigners entering without permission are to be placed in residential facilities in the Federal States. Foreigners are obligated to live in the respective residential facility, however, until the suspension of the deportation or up to the issuance of a residence permit at the latest (Subsection 4). The regulation of § 15a of the Residence Act is a way of distributing asylum-seekers very similar to the Asylum Procedure Act, in part it refers to the provisions of the Asylum Procedure Act.

⁴⁸ On the problem of age determination, see further below in this report.

⁴⁹ Section 53 of the Asylum Procedure Act stipulates that asylum seekers should generally be accommodated in common housing.

attention under the law. Rather, the Asylum Procedure Act suspends the requirement for an operating permit regarding the accommodation of minors in residential facilities⁵⁰ and common housing⁵¹ pursuant to § 45 of the Child and Youth Services Act. In order to operate a Child and Youth Welfare Services facility, § 45 of the Act requires an inspection assuring that the support of the children or youths is taking place using suitable personnel and that their best interests in the facility is assured.⁵²

Former child soldiers who have attained 16 years upon their arrival are therefore left to their own devices in initial reception centres and then in common housing with no special educational support. Aspects of child welfare are ignored. The youths are instead exposed to substantial physical and psychological dangers. Their security is also often not safeguarded. Girls particularly are exposed to increased danger of harassment and sexual assaults in these accommodations.⁵³ Accommodation in adult residences also increases the danger of turning unaccompanied youths to a “criminal career”.⁵⁴ Some minors elude allocation and accommodation and go into hiding.⁵⁵

- **Opportunities for therapy**

The few former child soldiers that fled and ended up in Germany went through a bad time. Most, if not almost all, of these children have suffered serious traumas.

The problem in practice is identifying them as former child soldiers at all. Once they have been identified, it is recommendable that they be placed in therapy. However, there are insufficient provisions and facilities for this. Where they exist, the waiting periods are often long. Also, the quality of the therapy can represent a problem, which may be compounded by language difficulties. Interpreters are available only in a few facilities.

Many children do not get a place in therapy. If the children are allocated to rural areas due to asylum regulations, the necessary infrastructure and an awareness of the problem are often missing. There is no qualified personnel that can perform therapy on minors. Facilities for therapy are lacking and the practice-based psychologists are not suitably trained to carry out the appropriate therapy. In this regard, given that the treatment centres for torture victims are in large cities, for example Nuremberg, Munich, Düsseldorf or Berlin, it would be most appropriate for them to deal with the special problems of former child soldiers.

Some former child soldiers receive a place and can begin therapy. However, it is a basic requirement to the therapeutic work that the person who has been traumatised has a certain social and emotional

⁵⁰ Section 44 Subsection 3 of the Asylum Procedure Act.

⁵¹ Section 53 Subsection 3 of the Asylum Procedure Act.

⁵² See §§ 45 ff of the Child and Youth Services Act, in particular § 45 Subsection 2, Clause 2.

⁵³ Some Federal states have acted accordingly and house unaccompanied girls under 18 in principle in Child and Youth Services facilities.

⁵⁴ See Cremer, *Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes* (The unaccompanied child's claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 74, for further evidence.

⁵⁵ See Cremer, *Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes* (The unaccompanied child's claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 75.

stability. Emotional stabilisation is a difficult and complex process because with former child soldiers, their trust in the world, people in general and in themselves is heavily shaken.⁵⁶

This basic requirement for therapeutic treatment often does not exist, however. The success of therapy is torpedoed by different factors. The basic psychosocial conditions of former child soldiers are frequently so bad that they can cause a re-traumatisation. Among these, for instance, is the uncertain residence status including the threat of deportation, inappropriate living conditions, such as adult housing for asylum-seekers, and other disadvantages compared with German children of the same age in the area of school, education and work. The threat of deportation causes the risk of suicidal tendencies.⁵⁷

- **Remand prior to deportation**

It can also happen that former child soldiers are taken into detention prior to deportation if they are apprehended by the police upon their arrival in Germany. It happens again and again that minors are taken into custody pending deportation in Germany – even for months at a time.⁵⁸

- **Determination of age**

The question as to whether former child soldiers are subject to special protection from Child and Youth Welfare Services basically depends on their age. The minors often do not have, however, any documentation that states their age. In practice, it often comes down to estimations, which are frequently made through a visual inspection by officials from the Foreign Resident Authorities. A further practice consists of consulting x-rays of the minor's teeth or wrist bone to discover the age.⁵⁹ These measures have been criticised sharply by many child and refugee organisations, also with regard to Germany's obligations under international law relating to the Convention on the Rights of the Child. This in particular because these methods mean interfering with the minors' physical integrity and are also scientifically disputed. If age determinations by officials from the Foreign Resident Authorities are made by visual inspection only, both the procedure and the lack of objectivity have to be criticised.

- **Summary evaluation of the situation of former child soldiers**

As already described, the States Parties shall ensure that minors who have been recruited by armed groups or used in hostilities, are provided with all⁶⁰ the necessary and appropriate assistance for their physical and psychological recovery and their social reintegration as per Article 6, Paragraph 3, Clause 2 of the Optional Protocol.⁶¹

⁵⁶ Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 17.

⁵⁷ See Ludwig, in: terre of the hommes, Federal Republic of Germany e.V. and Association for Unaccompanied Minor Refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 19.

⁵⁸ See also Peter, The rights of refugee children, Karlsruhe 2001, p. 194; Cremer, Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes (The unaccompanied child's claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 54.

⁵⁹ On the practice of the determination of age of unaccompanied minors, see Peter, Das Recht der Flüchtlingskinder (The rights of refugee children), Karlsruhe 2001, p. 77 ff; idem, ZAR 2005, p. 11 f.

⁶⁰ Emphasis by the author.

⁶¹ See also more exactly above: “Content-related commitments of Article 6 Subsection 3”.

These commitments can only be implemented insufficiently in the context of the existing regulations on legal residence. The entry and residence regulations of German Federal residence and asylum law do not contain child and youth specific protection provisions, even as exceptional provisions. Adults and minors are placed on an equal footing and the special needs for assistance and protection of former child soldiers are not acknowledged. With little or no chance of obtaining special residence permits, former child soldiers are pushed into asylum procedures which don't do justice to their special situation. Asylum procedures – usually with a negative outcome – also involve enormous psychological burdens.

The same applies to the exceptional leave to remain. Living with this status of only suspended deportation means constant fear of deportation. The threat is permanent and if it does not become reality immediately it will at an uncertain point in time in the future. Many minors live with this status for many years.

The basic conditions of legal residence for former child soldiers therefore form no basis for their psychological recovery, much less their social integration. To the contrary, it increases the danger of re-traumatisation and (of further) psychological disturbances.⁶² Their situation is almost inevitably shaped by disorientation, which becomes obvious for instance in the dropout rate from school or training. Some minors become immersed in illegality or go to another exile country because they can no longer bear the status of uncertain residence.⁶³

The specifications of Article 6, Paragraph 3 of the Optional Protocol are clearly not compatible with excluding a former child soldier from Child and Youth Welfare Services and placing him in accommodations for adult asylum-seekers. Moreover, Germany is not fulfilling its commitments with respect to the lack of possibilities for therapy as necessary and suitable measures in the context of the psychological recovery of these minors.

Former child soldiers are not even protected from being taken into detention prior to deportation if they are apprehended by German police upon their arrival. It happens again and again that minors are remanded into custody in Germany – even for months – prior to deportation.

The regulations regarding legal residence should be supplemented by minor-specific regulations regarding former child soldiers. For this, a regulation should be added that recognises the danger of being recruited as a minor by an armed group or used in hostilities as an impediment to deportation. Furthermore, the German Residence Act should be supplemented by minor-specific regulations, which focus on unaccompanied children like former child soldiers and facilitate the issuance of residence permits.

In addition, in procedures to obtain asylum or other residence permits, consideration should be given to their special situation; these procedures should become altogether more child-friendly. In

⁶² Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for unaccompanied minor refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 17. See also Angenendt, Kinder auf der Flucht, Studie im Auftrag des Deutschen Komitees für UNICEF (Children on the run, a study on behalf of the German committee for UNICEF), Opladen 2000, p. 13 and p. 101.

⁶³ See Ludwig, in: terre des hommes, Federal Republic of Germany e.V. and Association for unaccompanied minor refugees e. V. (Ed.), Project study “Ehemalige Kindersoldaten als Flüchtlinge in Deutschland” (Former child soldiers as refugees in Germany), Osnabrück 2003, p. 17.

accordance with the Convention on the Rights of the Child minors should not be treated as adults in procedural matters.

It must also be ensured that former child soldiers are accommodated in the context of Child and Youth Welfare Services. How these commitments are fulfilled is left up to Germany. It would make sense that meaningful legal regulations stop the placement of minors according to the Asylum Procedure Act or the Residence Act. Similarly, procedural instructions should be issued by the responsible authorities at the level of the Federal States, according to which minors would be housed by Child and Youth Welfare Services.

Supplementary advanced training seminars are recommended to better sensitise those concerned regarding former child soldiers and make them more aware of their responsibilities; these would include the employees at Child and Youth Welfare Services facilities and youth authorities.

For effective legal representation, qualified legal guardians should be appointed who have the relevant experience to meet the special needs and the cultural background of the countries of origin of former child soldiers.

Possibilities for former child soldiers to be provided with therapy should be further developed. The competent national authorities should make sufficient means available so that comprehensive and age-appropriate possibilities for therapy can be created. It would make sense here to strengthen the existing psychosocial centres for refugees and torture victims, which are particularly qualified due to their many years of experience. Attention should be paid to the fact that the possibilities for therapy must fulfil the special needs of former child soldiers on an individual basis.

It should be further guaranteed that former child soldiers are not remanded into custody prior to deportation. How these commitments are fulfilled is left up to Germany. Here, a supplementary regulation in the Residence Act appears to be most reasonable, according to which the measure of detention of minors prior to deportation is categorically forbidden.

Age estimates of former child soldiers should not be conducted by officials from the Foreign Resident Authority and interfering with the minors' physical integrity should be stopped. The determination of age should rather be conducted by competent specialists with the necessary qualifications. A substantial criterion for age determination should be the maturity of the person.⁶⁴

Article 7 of the Optional Protocol

International collaboration

Article 7 of the Optional Protocol commits the States Parties to international cooperation for implementing the Protocol. This includes technical aid and financial support.

The primary intention of the standard is to make it compulsory for the developed States Parties to support the so-called developing countries in the context of international cooperation.

⁶⁴ For the determination of age of unaccompanied refugee children see UNHCR (Ed.), Guidelines Unaccompanied Children, Geneva 1994, p. 5.

It cannot be denied that Germany renders technical and financial aid on an international level, which benefits the reintegration of child soldiers. However, the remarks in the Federal Republic's report are very imprecise and not sufficiently transparent. This also concerns the general remarks at the beginning of the report. Here it remains an open question as to how many peace experts actually carry out trauma work and social reintegration of child soldiers in the context of the civil peace service and whether they are trained for this in particular.

Specific to Article 7 of the Optional Protocol, this means among other things that at the beginning of 2006, in the context of bilateral national development co-operation, different multi-year projects were being implemented in Angola, Burundi, the Democratic Republic of Congo, Liberia, Rwanda and Sierra Leone with a total allocation of approximately 83 million Euro, with the reintegration of ex-combatants, particularly child soldiers, having been one of the primary goals.

It is not clear from these data, which projects with which exact objective are concerned, who is responsible for implementing the projects and where the funds go exactly and for how long they last in each case. Precise data to which extent the projects actually benefit former child soldiers are lacking.. In particular, there are no figures about how many child soldiers have actually been demobilised so far in the respective projects and how many have been admitted to reintegration programmes. Furthermore, throughout the process, no statements have been made about the success or failure of the projects.

As demanded by the German Co-ordination against the Use of Child Soldiers, an alliance of German aid and development organisations, in February 2007, Germany should support suitable programmes for child soldiers with increased financing and greater reliability. These programmes should be in accordance with the “Paris Principles and Guidelines” and the proven methods described in them.⁶⁵ The alliance criticises that household restrictions and short planning cycles lead to gaps in providing former child soldiers with help and endanger successful projects already underway.

A further commitment in the context of Article 7 lies in the fact that the States Parties of the Optional Protocol should co-operate in preventing violations of the Protocol. On the international level, Germany surely plays an important role, in creating protective mechanisms against the use of child soldiers. The report deals with this in its general remarks at the beginning.

However, it remains unclear how Germany acts on an international and in particular on a bilateral level in relation to States, where the Protocol has not been implemented and where child soldiers are continued to be used. It is of interest here whether and in what respect the situation of minors in other countries plays a role for instance in the context of trade relations or the granting of credits.

Furthermore, the report does not state how exactly the German government opposes the use of child soldiers on a multilateral level and contributes to their demobilisation and reintegration. For instance, how exactly Germany implements the European Union guidelines on children and armed conflicts, which entered into effect in December 2003. In 2005, the EU itself stated in an evaluation on the implementation of the guidelines that this has remained far below potential and that efforts would have to be doubled. Conclusions about Germany from this evaluation are not addressed in the report. A

⁶⁵ The Paris Principles and Guidelines can be found at http://www.child-soldiers.org/childsoldiers/international_standard. They were agreed upon at the conference, “Free children from war” in Paris on 5 and 6 February 2007 and signed by 60 countries, including Germany.

missing institutionalisation of the topic can be regarded as a substantial cause for the non-implementation.

German Soldiers on international missions

As previously mentioned, pursuant to Article 6, Paragraph 3 Clause 1 of the Optional Protocol, the States Parties shall take all feasible measures that “persons within their jurisdiction” who were recruited or used in hostilities contrary to the present Protocol are demobilised or otherwise released from service. The commitments therefore bind all national bodies that exercise nationally attributable jurisdiction. Therefore, this concerns national jurisdiction when exercised abroad. National commitments are in principle not territorially limited to Germany.⁶⁶

Consequently, this commitment may concern German armed forces on international missions since they also exercise⁶⁷ this nationally attributable⁶⁸ jurisdiction. How these commitments can be justified in detail in the context of international missions, when they are based on UN Security Council resolutions, should not be dogmatically explored in detail in this report. To that extent, the general reference is sufficient that naturally the UN is also bound by human rights. The same applies to NATO armed forces or armed forces acting on behalf of the European Union.

Links to the Optional Protocol commitments on international missions by the German armed forces can also result from Article 7 of the Optional Protocol, in particular if an assignment abroad occurs in a country, which is also a State Party of the Optional Protocol (e.g. the Democratic Republic of Congo or Afghanistan). Article 7 of the Optional Protocol implements and follows the Protocol in the context of the States Parties’ international cooperation on the topic.

From the binding nature of the Protocol for the German armed forces, the question arises as to whether and in what respect there are special concepts, strategies or anything similar within the armed forces for the case that German soldiers discover child soldiers during deployment in crisis areas. Thus, it remains unclear to what extent the Optional Protocol is made known particularly among those German soldiers deployed abroad. Also, Germany’s report does not explain whether there is, for example, special training in the armed forces when encountering child soldiers and/or special instructions about how the soldiers should react in such a case in order to avoid combat if possible and disarm the children.

Also unanswered is how the case of disarming and/or subduing children should be avoided. Are there considerations about how to determine if the combatant is a minor? Can it happen that minors are taken prisoner? Are there instructions about this within the armed forces?

⁶⁶ See in addition Cremer, *Der Anspruch des unbegleiteten Kindes auf Betreuung und Unterbringung nach Art. 20 des Übereinkommens über die Rechte des Kindes* (The unaccompanied child’s claim for support and accommodation pursuant to Art. 20 of the Convention on the Rights of the Child), Baden-Baden 2006, p. 113, with reference to Art. 2 of the Convention on the Rights of the Child and Art. 1 of the European Convention on Human Rights.

⁶⁷ For more exact information on the not uncontroversial question of the binding character of the human rights treaty system on international missions of armed and police forces: Schäfer, *MenschenRechtsZentrum der Universität Potsdam* (Human Rights Centre of the University of Potsdam) (Ed.) in co-operation with: *Deutsches Institut für Menschenrechte* (German Institute for Human Rights), *Zum Verhältnis Menschenrechte und humanitäres Völkerrecht* (On the relationship of human rights and humanitarian international law), Potsdam 2006, p. 19 ff, with reference to an International Court of Justice appraisal from 9 July 2004, which confirms the binding nature of human rights treaties such as the Convention on the Rights of the Child for the States Parties with military action in a foreign territory.

⁶⁸ According to the principle of responsibility based on international law, countries are responsible for all actions and omissions attributable to them, which violate standards of international law.

For all these cases and questions, considerations and strategies would be desirable within the German Federal Armed Forces, paying attention to the special situation of child soldiers and their need for protection.

4. Summary of recommendations and conclusions

I. Conscription Act and Soldiers Act

The Soldiers Act should be supplemented by minor-specific regulations taking the Optional Protocol into consideration.

- **Art. 1/see page 11**

Legal regulations should be created both in the Conscription Act and in the Soldiers Act expressly forbidding the deployment of a minor abroad.

- **Art. 3 (2)/see page 12**

A man's physical examination should in principle only be possible as the first step of recruitment upon attainment of 17 years. § 16 Subsection 3, Alternative 2 of the Conscription Act should be changed to that effect.

- **Art. 3 (2)/see page 12**

The Soldiers Act should be supplemented by the regulation that temporary career soldiers may only begin their voluntary service with the armed forces upon attainment of 17 years of age.

- **Art. 3 (3a)/see page 12 f.**

In order to comply with the requirement of a genuinely voluntary recruitment of minors into the German armed forces, regulations should be created, according to which it is analyzed critically whether the minor's decision to serve in the German Federal Armed Forces is really based on free will. This should be done by the responsible authority, for example in a personal interview.

- **Art. 3 (3a)/see page 14**

The Conscription Act and the Soldiers Act should be supplemented by regulations, according to which it is possible for minors to terminate their service with the armed forces at any time by unilateral declaration or action. Thus it should be likewise ensured that minors are not punished under any circumstances according to the Military Penal Code because of a violation of compulsory military service.

- **Art. 3 (3b)/see page 14**

In the Conscription Act as well as in the Soldiers Act, there should be a regulation, according to which the consent of both parents is required if minors want to voluntarily begin their service with the German Federal Armed Forces.

- **Art. 3 (3a and b)/see page 14**

§ 16 Subsection 3, Alternative 1 of the Conscription Act, according to which a male person may be examined against his will and without the consent of his parents, six months prior to attaining 18 years of age, should be deleted by the legislature.

- **Art. 3 (3c)/see page 15**

Additionally, minors should already be made aware during the application procedure for early recruitment what is the nature of their military obligations and what consequences their application can have for them. This is the only way to ensure that the minors are aware of the consequences of his/her application before the “point of no return”.

II. German Code of Crimes/ Rome Statute of the International Criminal Court

- **Art. 4/see page 16**

The German Code of Crimes against International Law should be tightened, so that it is a punishable offence for anyone to draft minors into armed groups or use them in hostilities, independently of whether the crime was committed abroad and independently of whether it was committed by a German.

- **Art. 4/see page 16**

Furthermore, it would be desirable if the Federal Government would advocate internationally for the Rome Statute of the International Criminal Court in The Hague to be altered in correspondence with the commitments of Article 4, Paragraph 2 of the Optional Protocol.

- **Art. 4/see page 16**

Also of interest is whether there are considerations and strategies on the part of the Federal Government or the Federal Prosecutor’s Office to more effectively pursue war criminals who have recruited child soldiers; this may be with regard to those who initiate war, that preside over armed groups or even (former) heads of government of African countries or other regions, who must answer for the use of child soldiers.

III. Publication of Optional Protocol

- **Art. 6 (2)/see page 17**

The contents of the Optional Protocol should be publicised by Germany among children and adults. Suitable means could be information via the Internet, the media or informational meetings, for example at schools.

IV. Former Child Soldiers in Germany

- **Art. 6 (3)/see page 26**

The German regulations regarding legal residence should be supplemented by minor-specific regulations regarding former child soldiers. In addition, a regulation should be added that recognises the danger of being recruited as a minor by an armed group or used in hostilities and makes this an impediment to deportation. Furthermore, the German Residence Act should be supplemented by minor-specific regulations, which focus on unaccompanied children like former child soldiers and facilitate the issuance of residence permits.

- **Art. 6 (3)/see page 26**

In addition, in procedures to obtain asylum or other residence permits, consideration should be given to their special situation; these procedures should become altogether more child-friendly. In accordance with the Convention on the Rights of the Child persons under 18 years of age should not be treated as adults in procedural matters.

- **Art. 6 (3)/see page 27**

It must also be ensured that former child soldiers are accommodated in the context of Child and Youth Welfare Services. How these commitments are fulfilled is left up to Germany. It would make sense that meaningful legal regulations stop the placement of minors according to the Asylum Procedure Act or the Residence Act. Similarly, procedural instructions should be issued by the responsible authorities at the level of the Federal States, according to which minors would be housed by Child and Youth Welfare Services. Supplementary advanced training seminars are recommended to better sensitise those concerned regarding former child soldiers and make them more aware of their responsibilities; these would include the employees at Child and Youth Welfare Services facilities and youth authorities.

- **Art. 6 (3)/see page 27**

For effective legal representation, qualified legal guardians should be appointed, who have the relevant experience to meet the special needs and the cultural background of the countries of origin of former child soldiers.

- **Art. 6 (3)/see page 27**

Possibilities for former child soldiers to be provided with therapy should be further developed. The competent national authorities should make sufficient means available so that comprehensive and age-appropriate possibilities for therapy can be created. It would make sense here to strengthen the existing psychosocial centres for refugees and torture victims, which are particularly qualified due to their many years of experience. Attention should be paid to the fact that the possibilities for therapy must fulfil the special needs of former child soldiers on an individual basis.

- **Art. 6 (3)/see page 27**

It should be further guaranteed that former child soldiers are not remanded into custody prior to deportation. How these commitments are fulfilled is left up to Germany. Here a supplementary regulation in the Residence Act appears to be the most reasonable, according to which the measure of detention of minors prior to deportation is categorically forbidden.

- **Art. 6 (3)/see page 27**

Age estimates of former child soldiers should not be conducted by officials of the Foreign Resident Authority, and interfering with the minors' physical integrity should be stopped. The determination of age should rather be conducted by competent specialists with the necessary qualifications. A substantial criterion for age determination should be the maturity of the respective person.

V. International Cooperation

- **Art. 7/see page 28**

Germany should support suitable prevention, demobilisation and reintegration programmes with better financing and greater reliability. These programmes should be in accordance with the “Paris Principles and Guidelines” and the proven methods described in them.

- **Art. 7/see page 28**

It remains unclear how Germany acts on an international and in particular on a bilaterally in relation to states where the Protocol is not being implemented and in particular child soldiers are still being used. This should play a role in the context of trade relations or the granting of credits.

VI. EU-Guidelines

- **Art. 7/see page 28**

Germany’s report does not explain whether and to what extent there are special concepts, strategies or anything similar within the armed forces for the case that German soldiers discover child soldiers during deployment in crisis areas. It also remains unclear to what extent the Optional Protocol is made known particularly among the German soldiers deployed abroad or if there are special training courses in the armed forces for encountering child soldiers and/or special instructions about how the soldiers should react in such a case in order to avoid combat if possible and disarm the children.

VII. German Soldiers on International Missions

- **Art. 7/see page 29**

The question arises as to whether and in what respect there are special concepts, strategies or anything similar within the armed forces for the case that German soldiers discover child soldiers during deployment in crisis areas. Thus, it remains unclear to what extent the Optional Protocol is made known particularly among those German soldiers deployed abroad. Also, Germany’s report does not explain whether there is, for example, special training in the armed forces when encountering child soldiers and/or special instructions about how the soldiers should react in such a case in order to avoid combat if possible and disarm the children.

- **Art. 7/see page 29**

Also unanswered is how the case of disarming and/or subduing children should be avoided. Are there considerations about how to determine if the combatant is a minor? Can it happen that minors are taken prisoner? Are there instructions about this within the armed forces? For all these cases and questions, considerations and strategies within the German Federal Armed Forces would be desirable, paying attention to the special situation of child soldiers and need for protection.

5. Annex

- Report by the Federal Republic of Germany pursuant to Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

**Report by the Federal Republic of Germany
pursuant to Article 8 of the Optional Protocol to the
Convention on the Rights of the Child on the
involvement of children in armed conflict**

The fight against recruitment of child soldiers is an important concern within the Federal Government's international human rights policy. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict plays a crucial role therein. Germany took an active part in negotiating the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Hence the Federal Republic of Germany already signed the Optional Protocol in the year 2000, and it was ratified in 2004.

Both in the United Nations and in the EU context as well as bilaterally, the Federal Government firmly supports an improvement in the protection of children in armed conflicts, including implementation of the Optional Protocol and its application if possible on a worldwide basis.

Hence Germany is involved, together with its EU partners, in the rigorous application of the EU Guidelines on Children and Armed Conflict of December 2003. In the wake of a review of this Guideline in December 2005, the EU adopted Council conclusions with recommendations of a more extensive nature, and in April 2006 it also adopted an implementation strategy for the application of these recommendations. Their implementation will be a main focus of attention when Germany holds the EU Council Presidency during the first six months of the year 2007.

In May 2006 the EU states adopted a new batch of measures for bringing the subject of "protection of children in armed conflicts" into ESDP operations.

In July 2006 Germany gave its support – together with its EU partners – to a declaration by the President of the Security Council of the United Nations on the subject of "Children and Armed Conflict", which, amongst other things, contains an appeal to the international community of states to make a common effort to bring about a distinct improvement in the protection of children in conflict situations of this kind.

Germany is also one of those states that has been giving financial and political support, from the very outset, to the Office of the Special Representative for Children and Armed Conflict, which was established in 1996.

On the national level, the Federal Government is promoting institutions and aid programmes for demobilisation and rehabilitation of former child soldiers as well as for prevention of contraventions of the Optional Protocol, inter alia through the regular voluntary German contribution and also through the funding of UNICEF projects, as well as through projects for the promotion of human rights. Germany is also making a contribution to rehabilitation and social reintegration of child soldiers, using the instrument of the Civil Peace Service with a number of peace specialists e.g. working in the field of trauma treatment.

Pursuant to Article 8 of the Optional Protocol each State Party is required, within two years following entry into force, to submit a report to the United Nations Committee on the Rights of the Child, providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol.

The Optional Protocol came into force for the Federal Republic of Germany on 13 January 2005. The report pursuant to Article 8 of the Optional Protocol has to be submitted, in other words, by 13 January 2007.

Re the individual provisions

Article 1

On deposit of the instrument of ratification Germany made the following declaration:

“The Federal Republic of Germany hereby declares that it regards a minimum age of 17 years as binding for commencement of voluntary service as a soldier in its armed forces within the meaning of Article 3 paragraph 2 of the Optional Protocol. Persons under 18 years of age are recruited to the armed forces solely for the purpose of beginning military training.

Protection of volunteers under the age of 18 years, within the context of their decision to enter the armed forces is ensured, inter alia, by virtue of the consent that has to be given by their statutory representatives and by the mandatory requirement of presentation of their identity card or passport as reliable proof of their age.“

This means that volunteers under the age of 18 years are not allowed to perform any functions outside military training, being functions where they could be forced to use arms. In particular, they are not allowed to be deployed for armed guard duty. The use of arms by volunteers is to be confined in the case of volunteers under the age of 18 years solely to training and is to be placed under strict supervision.

In a letter dated 9 September 2004 from the State Secretary in the Federal Ministry of Defence (Annex 1) this directive was notified to the Bundeswehr (Federal Armed Forces) via the Director of the Armed Forces Staff.

Reference is also made in this letter to the existing directive by virtue of which volunteers under 18 years of age are under no circumstances allowed to be involved in Bundeswehr (Federal Armed Forces) operations.

Article 2

Pursuant to section 1 subsection (1) of the Conscription Act all men are liable to military service upon attainment of the age of 18 years. However, the Conscription Act gives young men with German nationality the opportunity, on attaining the age of 17

years, to make an application for early recruitment to basic military service (sec. 5 [1a]). The consent of the conscript's statutory representative is needed for this. The same requirement applies when a 17-year-old is commissioned with the service status of temporary-career volunteer.

The first step of so-called military ascertainment is the pre-induction examination. This examination will decide whether, and if so, for which tours of duty a conscript can be brought in for deployment in the armed forces. Pursuant to section 16 subsection (3) of the Conscription Act the pre-induction examination takes place at the earliest six months before attainment of the age of 18 years; so far as an application has been made, with the consent of the applicant's statutory representative, for early recruitment to basic military service, this examination may take place even six months before the applicant has attained the age of 17 years.

Article 3

Since on principle it is permissible in Germany to recruit volunteers for service in the armed forces as soon as they have attained the age of 17 years, it is mandatory to apply the safeguards pursuant to Article 3 paragraph 3 of the Optional Protocol. This happens in Germany as follows:

Re letters (a) and (b):

Pursuant to section 5 subsection (1a) of the Conscription Act the military recruitment authorities (i.e. authorities entrusted, inter alia, with the pre-induction examination, recruitment to military service and monitoring, of persons liable to military service) are under an obligation to restrict conscription - for the purpose of undergoing basic military service – only to such persons under the age of 18 years who have already attained the age of 17 years and who have also made the relevant application with the consent of their statutory representative. This restriction has been made the focus of attention in a directive issued by the Federal Ministry of Defence to all military recruitment authorities. There is general awareness of this restriction on the part of the military recruitment authorities. The application and the statutory representative's declaration of consent are placed on record in the personnel files.

Re letter (c):

When the pre-induction examination has taken place and availability for military service has been ascertained, applicants who are still minors will be given an instruction sheet by the military recruitment authority (Annex 2), giving them comprehensive information on the duties involved in military service. In particular, their attention is drawn to the fact that the use of arms is confined solely to training and that there is no question of their being placed on armed guard duty.

In addition to this, each military formation deploying a conscript who has not yet attained the age of 18 years is given a special instruction letter containing information from the military recruitment authority to the effect that, in accordance with the Optional Protocol, the conscript is not to be brought into operations that might foreseeably lead to armed conflicts (Annex 3). Corresponding orders ensure that minors will, in no event, take part in hostilities.

Re letter (d):

Through a directive issued by the Federal Ministry of Defence it is ensured that, at the pre-induction examination, a person liable to military service has to present proof of his identity by producing an identity card or a passport. This ensures that reliable proof of age is provided before commencement of service.

Article 4 to 6

The situation described in Article 4 does not exist in the Federal Republic of Germany.

Seeing that German law already corresponds to the provisions of the Optional Protocol, implementation has been confined to the directives, enclosed in the Annex, where explicit reference is made to the optional Protocol.

Article 7

The Federal Republic of Germany is cooperating bilaterally and, within the framework of international organisations, with other State Parties in order to achieve the objectives laid down in Article 7. In doing so, Germany provides technical support and, to a

considerable extent, financial assistance. Hence, within the framework of bilateral state development cooperation with the countries of Angola, Burundi, DR Congo, Liberia, Rwanda and Sierra Leone, there were projects worth about 83 million euro in the first quarter of 2006 designed to reintegrate ex-combatants, above all child soldiers. Further resources amounting to about 1.4 million euro have been committed for the care of child soldiers through Civil Peace Service programmes in Uganda, Sierra Leone and the DR Congo.

Furthermore, former child soldiers are profiting from the various bilateral development cooperation programmes generally dedicated to the prevention of violence and conflict relating to children and juveniles.

Annex 1

Office of State Secretary Biederbick

Berlin, 9 September 2004

Director

Armed Forces Staff 16 September 2004

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opies:

Director-General Law

Director-General WV

Office of Parliamentary State Secretary Kolbow

**SUBJECT: Optional Protocol to the Convention on the Rights of the Child
on the involvement of children in armed conflict**

The Act passed by the *Bundestag* in respect of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict will soon be entering into force.


In this Act consent is given to the Optional Protocol on condition that the Federal Republic of Germany shall, on depositing the instrument of ratification, make the declaration, for which provision is made in the Protocol by Article 3 para. 2, to the effect that commencement of voluntary service as a soldier in the armed forces of the Federal Republic of Germany is permissible as soon as a person has attained the age of 17 years.

This means that it remains possible for a person to enter the *Bundeswehr* (Federal Armed Forces) voluntarily as a soldier at the age of 17 years, for the purpose of beginning military training. Juveniles are able to undergo military service immediately after they have finished their (school) education without waiting periods occurring and needing to be bridged.

In this connection, State Secretary Biederbick requests addressees to ensure that in future soldiers who are minors do not perform any functions on their own responsibility and outside military training, being functions where they could be forced to use arms. In particular, they are not to be placed on armed guard duty. In the case of soldiers who are still minors, the use of arms is to be confined solely to training and is to be placed under strict supervision.

The directive issued by State Secretary Biederbick, by virtue of which soldiers who are minors shall under no circumstances be made to take part in *Bundeswehr* operations shall remain in force without limitation.

For the Federal Ministry of Defence



Conradi

District Military Recruitment Office

Information for minors on basic military service and voluntary service in the armed forces

You want to undergo military service or voluntary service in the armed forces before you have attained the age of 18 years. This leaflet is designed to inform you and your parents or, as the case may be, the persons legally responsible for your education on the special protection to which you are subject, as a soldier who is still a minor, and to give you a concise but not complete statement of your rights and duties.

Soldiers who have not yet attained the age of 18 years are subject to special protection. In the case of such soldiers the use of arms is solely confined to training and under strict supervision. You do not take part in operations that might foreseeably lead to armed conflicts. You are not allowed to perform any functions on your own responsibility and outside military training, being functions where you could be forced to use arms; in particular, you will not be placed on armed guard duty.

On principle, soldiers have the same civil rights as other citizens do. However, some of these rights – as the following sections of the Soldiers Act (the “SA”) will show – are restricted because of the special status involved in being a soldier, and for the purpose of securing life in the military community and fulfilment of the mandate entrusted to soldiers (e.g. ban on political activity in barracks, ban on wearing uniform at political events).

Section 7 SA – Basic duty of a soldier

As a soldier you under a duty of loyal service to the Federal Republic of Germany as well as courageous defence of the rights and liberty of the German people. This core statement constitutes, so to speak, the fundamental description of the task you perform as a soldier. All other duties are derived therefrom and ultimately serve the purpose of performance of this task. In your day-to-day service, the duty of “loyal service” covers such obvious things as treating equipment and materials in a responsible way, as much as it covers being willing to show courageous commitment to others and their rights.

Section 8 SA – Commitment to the democratic basic order

It is necessary that you regard the democratic basic order of our country as being right and valuable, and that you are committed to its preservation. The democratic basic order constitutes, so to speak, the collection of the highest principles of the Federal Republic of Germany and finds expression in our constitution – the Basic Law. It means, amongst other things, that there is respect for human rights, that the people can elect their respective representatives in general, direct, free, equal and secret elections and that every form of violence and arbitrary regime is ruled out.

Section 10 SA – Duties of a superior

Soldiers exercising the function of a superior must always set an example in their attitude and in the performance of their duties. They are responsible for their subordinates and must exercise care in respect of them: orders which a superior is required to enforce, if need be also with the use of reasonable means, may only be given for the purposes of performance of duties and in accordance with the laws in force and with service provisions. If a superior contravenes these principles, the subordinate need not – and in certain cases, is not allowed to - carry out the consequently unlawful order.

Section 11 SA - Obedience

The duty of obedience means that lawful and binding orders are to be carried out to the best of one's ability, in full, conscientiously and without delay.

Section 12 SA - Comradeship

In the absence of sustained comradeship soldiers will not meet the high requirements posed by their duties. The duty to conduct oneself in a comradely manner constitutes more than being willing to contribute to a good working atmosphere; rather, it specifies the clear rules of conduct that are required for joint fulfilment of demanding tasks also under circumstances where there is a high degree of physical and mental strain. Comradeship embodies the duty to respect the dignity, the honour and the rights of one's fellow-soldier; to come to his or her assistance in an emergency and in the face of danger; and to show mutual respect and consideration. The special relationship of trust existing between soldiers comes from this source, and this relationship means that a soldier can rely on one's fellow-soldier in every situation and that one is not left "on one's own".

Section 13 SA - Truth / Section 14 SA - Secrecy

Explicit adoption of these duties in the Soldiers Act makes it clear that, in case of doubt, the safety of many fellow-soldiers will depend on an individual soldier telling the truth, or also on his or her maintaining the relevant secrecy.

Section 15 SA – Political activity

While on duty a soldier is not allowed to become politically active. This means, in particular, that a soldier is not allowed to promote a political group by making speeches, distributing writings or working in a political organisation as a representative. Such conduct would seriously disrupt comradeship and therefore also joint duty.

Section 17 SA – Conduct on duty and off duty

A soldier is required to behave on duty and off duty in such a manner as to do justice to the reputation of the *Bundeswehr* (Federal Armed Forces). The population expect a soldier not only to behave in accordance with generally accepted manners but also to set an example in his or her behaviour and outward appearance.

I / We have taken note of this information.

Date name, signature of the applicant
representative

name, signature of the statutory

Annex 3

Military Administration

District Military Recruitment Office @location@

@military formation@

@street, number@

@postal code@ @location@

Personal number:

@pn@

File number:

@file number@

Clerk:

@form of address clerk@

Tel. no:

@tel. no. of clerk@

Information on the use of soldiers under the age of 18 years

Mr. @surname,@first name,@pn@ was enlisted by me on @date@ as an early temporary-career volunteer for undergoing basic military service.

He will attain the age of 18 years only on @date@.

Until that date he shall not be allowed, in accordance both with the “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” and with the consequent obligations of the Federal Republic of Germany under international law, to be brought into operations that might foreseeably lead to armed conflicts.

I request compliance herewith.

For the Federal Ministry of Defence

@name of the signatory@

Gesetz
zu dem Fakultativprotokoll vom 25. Mai 2000
zum Übereinkommen über die Rechte des Kindes
betreffend die Beteiligung von Kindern an bewaffneten Konflikten

Vom 16. September 2004

Der Bundestag hat das folgende Gesetz beschlossen:

Artikel 1

Dem in New York am 6. September 2000 von der Bundesrepublik Deutschland unterzeichneten Fakultativprotokoll vom 25. Mai 2000 zum Übereinkommen über die Rechte des Kindes betreffend die Beteiligung von Kindern an bewaffneten Konflikten wird mit der Maßgabe zugestimmt, dass die Bundesrepublik Deutschland bei der Hinterlegung der Ratifikationsurkunde die in Artikel 3 Abs. 2 des Fakultativprotokolls vorgesehene Erklärung dahingehend abgibt, dass der Beginn des freiwilligen Dienstes als Soldatin oder Soldat in den Streitkräften der Bundesrepublik Deutschland vom vollendeten 17. Lebensjahr an zulässig ist. Das Fakultativprotokoll wird nachstehend mit einer amtlichen deutschen Übersetzung veröffentlicht.

Artikel 2

(1) Dieses Gesetz tritt am Tag nach seiner Verkündung in Kraft.

(2) Der Tag, an dem das Fakultativprotokoll nach seinem Artikel 10 Abs. 2 für die Bundesrepublik Deutschland in Kraft tritt, ist im Bundesgesetzblatt bekannt zu geben.

Die verfassungsmäßigen Rechte des Bundesrates sind gewahrt.

Das vorstehende Gesetz wird hiermit ausgefertigt. Es ist im Bundesgesetzblatt zu verkünden.

Berlin, den 16. September 2004

Der Bundespräsident
Horst Köhler

Der Bundeskanzler
Gerhard Schröder

Die Bundesministerin der Justiz
Brigitte Zypries

Der Bundesminister des Auswärtigen
J. Fischer

Der Bundesminister der Verteidigung
Peter Struck

**Fakultativprotokoll
zum Übereinkommen über die Rechte des Kindes
betreffend die Beteiligung von Kindern an bewaffneten Konflikten**

**Optional Protocol
to the Convention on the Rights of the Child
on the involvement of children in armed conflict**

**Protocole facultatif
à la Convention relative aux droits de l'enfant,
concernant l'implication d'enfants dans les conflits armés**

(Übersetzung)

The States Parties to the present Protocol,

Les États Parties au présent Protocole,

Die Vertragsstaaten dieses Protokolls –

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Encouragés par l'appui considérable recueilli par la Convention relative aux droits de l'enfant, qui dénote une volonté générale d'œuvrer pour la promotion et la protection des droits de l'enfant,

ermutigt durch die überwältigende Unterstützung für das Übereinkommen über die Rechte des Kindes, in der die allgemeine Entschlossenheit zum Ausdruck kommt, auf die Förderung und den Schutz der Rechte des Kindes hinzuwirken,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Réaffirmant que les droits des enfants doivent être spécialement protégés et demandant à ce que la situation des enfants, sans distinction, soit sans cesse améliorée et qu'ils puissent s'épanouir et être éduqués dans des conditions de paix et de sécurité,

erneut bekräftigend, dass die Rechte des Kindes eines besonderen Schutzes bedürfen, und dazu aufrufend, die Situation der Kinder ohne jeden Unterschied stetig zu verbessern und ihre Entwicklung und Erziehung in Frieden und Sicherheit zu ermöglichen,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Troublés par les effets préjudiciables et étendus des conflits armés sur les enfants et leurs répercussions à long terme sur le maintien d'une paix, d'une sécurité et d'un développement durables,

beunruhigt über die schädlichen und weitreichenden Auswirkungen bewaffneter Konflikte auf Kinder und über die langfristigen Folgen, die diese auf die Erhaltung des Friedens sowie auf die dauerhafte Sicherheit und Entwicklung haben,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Condamnant le fait que des enfants soient pris pour cible dans des situations de conflit armé ainsi que les attaques directes de lieux protégés par le droit international, notamment des endroits où se trouvent généralement de nombreux enfants, comme les écoles et les hôpitaux,

unter Verurteilung der Tatsache, dass Kinder in bewaffneten Konflikten zu Zielen werden und völkerrechtlich geschützte Objekte, darunter Örtlichkeiten, an denen sich gewöhnlich eine bedeutende Zahl von Kindern aufhält, wie Schulen und Krankenhäuser, direkt angegriffen werden,

Noting the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Prenant acte de l'adoption du Statut de la Cour pénale internationale, qui inclut en particulier parmi les crimes de guerre, dans les conflits armés tant internationaux que non internationaux, le fait de procéder à la conscription ou à l'enrôlement d'enfants de moins de 15 ans dans les forces armées nationales ou de les faire participer activement à des hostilités,

unter Hinweis auf die Annahme des Statuts des Internationalen Strafgerichtshofs, insbesondere auf die Einstufung der Zwangsverpflichtung oder Eingliederung von Kindern unter 15 Jahren oder ihrer Verwendung zur aktiven Teilnahme an Feindseligkeiten sowohl in internationalen als auch in nicht internationalen bewaffneten Konflikten als Kriegsverbrechen,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Considérant par conséquent que, pour renforcer davantage les droits reconnus dans la Convention relative aux droits de l'enfant, il importe d'accroître la protection des enfants contre toute implication dans les conflits armés,

daher in der Erwägung, dass zur wirksameren Durchsetzung der im Übereinkommen über die Rechte des Kindes anerkannten Rechte die Notwendigkeit besteht, den Schutz von Kindern vor einer Beteiligung an bewaffneten Konflikten zu verbessern,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth international Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Notant que l'article premier de la Convention relative aux droits de l'enfant spécifie qu'au sens de ladite Convention, un enfant s'entend de tout être humain âgé de moins de 18 ans, sauf si la majorité est atteinte plus tôt en vertu de la législation qui lui est applicable,

Convaincus que l'adoption d'un protocole facultatif se rapportant à la Convention, qui relèverait l'âge minimum de l'enrôlement éventuel dans les forces armées et de la participation aux hostilités, contribuera effectivement à la mise en œuvre du principe selon lequel l'intérêt supérieur de l'enfant doit être une considération primordiale dans toutes les décisions le concernant,

Notant que la vingt-sixième Conférence internationale de la Croix-Rouge et du Croissant-Rouge tenue en décembre 1995 a recommandé, notamment, que les parties à un conflit prennent toutes les mesures possibles pour éviter que des enfants de moins de 18 ans ne prennent part aux hostilités,

Se félicitant de l'adoption par consensus, en juin 1999, de la Convention No 182 (1999) de l'Organisation internationale du Travail concernant l'interdiction des pires formes de travail des enfants et l'action immédiate en vue de leur élimination, qui interdit l'enrôlement forcé ou obligatoire des enfants en vue de leur utilisation dans des conflits armés,

Condamnant avec une profonde inquiétude l'enrôlement, l'entraînement et l'utilisation – en deçà et au-delà des frontières nationales – d'enfants dans les hostilités par des groupes armés distincts des forces armées d'un État, et reconnaissant la responsabilité des personnes qui recrutent, forment et utilisent des enfants à cet égard,

Rappelant l'obligation pour toute partie à un conflit armé de se conformer aux dispositions du droit international humanitaire,

Soulignant que le présent Protocole est sans préjudice des buts et principes énoncés dans la Charte des Nations Unies, notamment à l'Article 51, et des normes pertinentes du droit humanitaire,

Tenant compte du fait que des conditions de paix et de sécurité fondées sur le respect intégral des buts et principes de la Charte des Nations Unies et le respect des instruments relatifs aux droits de l'homme applicables sont essentiels à la pleine protection des enfants, en particulier pendant les conflits armés et sous une occupation étrangère,

unter Hinweis darauf, dass in Artikel 1 des Übereinkommens über die Rechte des Kindes festgelegt ist, dass im Sinne des Übereinkommens ein Kind jeder Mensch ist, der das 18. Lebensjahr noch nicht vollendet hat, soweit die Volljährigkeit nach dem auf das Kind anzuwendenden Recht nicht früher eintritt,

in der Überzeugung, dass ein Fakultativprotokoll zum Übereinkommen, mit dem die Altersgrenze für eine mögliche Einziehung von Personen zu den Streitkräften und ihre Teilnahme an Feindseligkeiten angehoben wird, wirksam zur Umsetzung des Grundsatzes beitragen wird, dass bei allen Maßnahmen, die Kinder betreffen, das Wohl des Kindes ein vorrangig zu berücksichtigender Gesichtspunkt ist,

unter Hinweis darauf, dass die 26. Internationale Konferenz des Roten Kreuzes und des Roten Halbmonds im Dezember 1995 unter anderem die Empfehlung abgegeben hat, dass die an einem Konflikt beteiligten Parteien alle durchführbaren Maßnahmen treffen, um sicherzustellen, dass Kinder unter 18 Jahren nicht an Feindseligkeiten teilnehmen,

erfreut darüber, dass im Juni 1999 das Übereinkommen Nr. 182 der Internationalen Arbeitsorganisation über das Verbot und unverzügliche Maßnahmen zur Beseitigung der schlimmsten Formen der Kinderarbeit einstimmig angenommen wurde, das unter anderem die zwangsweise und die im Rahmen der Wehrpflicht erfolgende Einziehung von Kindern zum Einsatz in bewaffneten Konflikten verbietet,

mit größter Beunruhigung verurteilend, dass bewaffnete Gruppen, die sich von den Streitkräften eines Staates unterscheiden, Kinder einziehen, ausbilden und innerhalb der nationalen Grenzen sowie grenzüberschreitend in Feindseligkeiten einsetzen, und im Bewusstsein der Verantwortung derjenigen, die Kinder in diesem Sinne einziehen, ausbilden und einsetzen,

unter Hinweis darauf, dass jede an einem bewaffneten Konflikt beteiligte Partei verpflichtet ist, die Bestimmungen des humanitären Völkerrechts einzuhalten,

unter Hinweis darauf, dass dieses Protokoll die in der Charta der Vereinten Nationen verankerten Ziele und Grundsätze, einschließlich des Artikels 51, sowie die einschlägigen Normen des humanitären Rechts unberührt lässt,

in dem Bewusstsein, dass Frieden und Sicherheit auf der Grundlage der uneingeschränkten Achtung der in der Charta der Vereinten Nationen enthaltenen Ziele und Grundsätze sowie der Einhaltung der anwendbaren Übereinkünfte auf dem Gebiet der Menschenrechte unabdingbar für den umfassenden Schutz von Kindern sind, insbesondere in bewaffneten Konflikten oder während fremder Besetzung,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

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.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. 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 recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

Conscients des besoins particuliers des enfants qui, en raison de leur situation économique et sociale ou de leur sexe, sont particulièrement vulnérables à l'enrôlement ou à l'utilisation dans des hostilités en violation du présent Protocole,

Conscients également de la nécessité de prendre en considération les causes économiques, sociales et politiques profondes de la participation des enfants aux conflits armés,

Convaincus de la nécessité de renforcer la coopération internationale pour assurer la réadaptation physique et psychosociale et la réinsertion sociale des enfants qui sont victimes de conflits armés,

Encourageant la participation des communautés et, en particulier, des enfants et des enfants victimes, à la diffusion de l'information et aux programmes d'éducation concernant l'application du présent Protocole,

Sont convenus de ce qui suit:

Article premier

Les États Parties prennent toutes les mesures possibles dans la pratique pour veiller à ce que les membres de leurs forces armées qui n'ont pas atteint l'âge de 18 ans ne participent pas directement aux hostilités.

Article 2

Les États Parties veillent à ce que les personnes n'ayant pas atteint l'âge de 18 ans ne fassent pas l'objet d'un enrôlement obligatoire dans leurs forces armées.

Article 3

1. Les États Parties relèvent en années l'âge minimum de l'engagement volontaire dans leurs forces armées nationales par rapport à celui fixé au paragraphe 3 de l'article 38 de la Convention relative aux droits de l'enfant, en tenant compte des principes inscrits dans ledit article et en reconnaissant qu'en vertu de la Convention, les personnes âgées de moins de 18 ans ont droit à une protection spéciale.

2. Chaque État Partie dépose, lors de la ratification du présent Protocole ou de l'adhésion à cet instrument, une déclaration contraignante indiquant l'âge minimum à partir duquel il autorise l'engagement volontaire dans ses forces armées nationales et décrivant les garanties qu'il a prévues pour veiller à ce que cet engagement ne soit pas contracté de force ou sous la contrainte.

3. Les États Parties qui autorisent l'engagement volontaire dans leurs forces armées nationales avant l'âge de 18 ans mettent en place des garanties assurantes, au minimum, que:

in Anerkennung der besonderen Bedürfnisse jener Kinder, die auf Grund ihrer wirtschaftlichen oder sozialen Stellung oder ihres Geschlechts besonders gefährdet sind, im Widerspruch zu diesem Protokoll eingezogen oder in Feindseligkeiten eingesetzt zu werden,

eingedenk der Notwendigkeit, die wirtschaftlichen, sozialen und politischen Ursachen zu berücksichtigen, die der Beteiligung von Kindern an bewaffneten Konflikten zugrunde liegen,

überzeugt von der Notwendigkeit, die internationale Zusammenarbeit bei der Durchführung dieses Protokolls sowie die physische und psychosoziale Rehabilitation und die soziale Wiedereingliederung von Kindern, die Opfer bewaffneter Konflikte geworden sind, zu verstärken,

dazu anregend, dass die Gemeinschaft, insbesondere Kinder und kindliche Opfer, an der Verbreitung von Informations- und Aufklärungsprogrammen betreffend die Durchführung des Protokolls mitwirken –

haben Folgendes vereinbart:

Artikel 1

Die Vertragsstaaten treffen alle durchführbaren Maßnahmen um sicherzustellen, dass Angehörige ihrer Streitkräfte, die das 18. Lebensjahr noch nicht vollendet haben, nicht unmittelbar an Feindseligkeiten teilnehmen.

Artikel 2

Die Vertragsstaaten stellen sicher, dass Personen, die das 18. Lebensjahr noch nicht vollendet haben, nicht obligatorisch zu ihren Streitkräften eingezogen werden.

Artikel 3

(1) Die Vertragsstaaten heben das in Artikel 38 Absatz 3 des Übereinkommens über die Rechte des Kindes festgelegte Mindestalter für die Einziehung von Freiwilligen zu ihren nationalen Streitkräften in Lebensjahren an; sie berücksichtigen dabei die in jenem Artikel enthaltenen Grundsätze und anerkennen, dass nach dem Übereinkommen Personen unter 18 Jahren Anspruch auf besonderen Schutz haben.

(2) Jeder Vertragsstaat hinterlegt bei der Ratifikation dieses Protokolls oder dem Beitritt dazu eine verbindliche Erklärung, in der das Mindestalter festgelegt ist, ab dem er die Einziehung von Freiwilligen zu seinen nationalen Streitkräften gestattet, sowie eine Beschreibung der von ihm getroffenen Schutzmaßnahmen, mit denen er sicherstellt, dass eine solche Einziehung nicht gewaltsam oder zwangsweise erfolgt.

(3) Vertragsstaaten, welche die Einziehung von Freiwilligen unter 18 Jahren zu ihren nationalen Streitkräften gestatten, treffen Schutzmaßnahmen, durch die mindestens gewährleistet wird, dass

- (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.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

- a) Cet engagement soit effectivement volontaire;
- b) Cet engagement ait lieu avec le consentement, en connaissance de cause, des parents ou gardiens légaux de l'intéressé;
- c) Les personnes engagées soient pleinement informées des devoirs qui s'attachent au service militaire national;
- d) Ces personnes fournissent une preuve fiable de leur âge avant d'être admises audit service.

4. Tout État Partie peut, à tout moment, renforcer sa déclaration par voie de notification à cet effet adressée au Secrétaire général de l'Organisation des Nations Unies, qui en informe tous les autres États Parties. Cette notification prend effet à la date à laquelle elle est reçue par le Secrétaire général.

5. L'obligation de relever l'âge minimum de l'engagement volontaire visée au paragraphe 1 du présent article ne s'applique pas aux établissements scolaires placés sous l'administration ou le contrôle des forces armées des États Parties, conformément aux articles 28 et 29 de la Convention relative aux droits de l'enfant.

Article 4

1. Les groupes armés qui sont distincts des forces armées d'un État ne devraient en aucune circonstance enrôler ni utiliser dans les hostilités des personnes âgées de moins de 18 ans.

2. Les États Parties prennent toutes les mesures possibles dans la pratique pour empêcher l'enrôlement et l'utilisation de ces personnes, notamment les mesures d'ordre juridique nécessaires pour interdire et sanctionner pénalement ces pratiques.

3. L'application du présent article du Protocole est sans effet sur le statut juridique de toute partie à un conflit armé.

Article 5

Aucune disposition du présent Protocole ne peut être interprétée comme empêchant l'application de dispositions de la législation d'un État Partie, d'instruments internationaux et du droit international humanitaire plus propices à la réalisation des droits de l'enfant.

Article 6

1. Chaque État Partie prend toutes les mesures – d'ordre juridique, administratif et autre – voulues pour assurer l'application et le respect effectifs des dispositions du présent Protocole dans les limites de sa compétence.

2. Les États Parties s'engagent à faire largement connaître les principes et dispositions du présent Protocole, aux adultes comme aux enfants, à l'aide de moyens appropriés.

- a) die Einziehung tatsächlich freiwillig erfolgt;
- b) die Einziehung mit der in Kenntnis der Sachlage abgegebenen Zustimmung der Eltern oder des Vormunds der Person erfolgt;
- c) die Person über die mit dem Militärdienst verbundenen Pflichten umfassend aufgeklärt wird;
- d) die Person vor Aufnahme in den staatlichen Militärdienst einen verlässlichen Altersnachweis erbringt.

(4) Jeder Vertragsstaat kann seine Erklärung jederzeit verschärfen, indem er eine entsprechende Notifikation an den Generalsekretär der Vereinten Nationen richtet, der alle Vertragsstaaten davon in Kenntnis setzt. Die Notifikation wird mit dem Tag ihres Eingangs beim Generalsekretär wirksam.

(5) Die in Absatz 1 vorgesehene Verpflichtung zur Anhebung des Mindestalters gilt nicht für Schulen im Sinne der Artikel 28 und 29 des Übereinkommens über die Rechte des Kindes, die von den Streitkräften der Vertragsstaaten betrieben werden oder ihrer Aufsicht unterstehen.

Artikel 4

(1) Bewaffnete Gruppen, die sich von den Streitkräften eines Staates unterscheiden, sollen unter keinen Umständen Personen unter 18 Jahren einziehen oder in Feindseligkeiten einsetzen.

(2) Die Vertragsstaaten treffen alle durchführbaren Maßnahmen, um eine solche Einziehung und einen solchen Einsatz zu verhindern, einschließlich der notwendigen rechtlichen Maßnahmen für ein Verbot und eine strafrechtliche Ahndung eines solchen Vorgehens.

(3) Die Anwendung dieses Artikels berührt nicht die Rechtsstellung einer an einem bewaffneten Konflikt beteiligten Partei.

Artikel 5

Dieses Protokoll ist nicht so auszulegen, als schlosse es Bestimmungen im Recht eines Vertragsstaats oder in internationalen Übereinkünften und im humanitären Völkerrecht aus, die zur Verwirklichung der Rechte des Kindes besser geeignet sind.

Artikel 6

(1) Jeder Vertragsstaat trifft alle erforderlichen rechtlichen, verwaltungsbezogenen und sonstigen Maßnahmen, um die wirksame Durchführung und Durchsetzung der Bestimmungen dieses Protokolls innerhalb seines Hoheitsbereichs sicherzustellen.

(2) Die Vertragsstaaten verpflichten sich, die Grundsätze und Bestimmungen dieses Protokolls durch geeignete Maßnahmen bei Erwachsenen und auch bei Kindern allgemein bekannt zu machen und zu fördern.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or acces-

3. Les États Parties prennent toutes les mesures possibles dans la pratique pour veiller à ce que les personnes relevant de leur compétence qui sont enrôlées ou utilisées dans des hostilités en violation du présent Protocole soient démobilisées ou de quelque autre manière libérées des obligations militaires. Si nécessaire, les États Parties accordent à ces personnes toute l'assistance appropriée en vue de leur réadaptation physique et psychologique et de leur réinsertion sociale.

Article 7

1. Les États Parties coopèrent à l'application du présent Protocole, notamment pour la prévention de toute activité contraire à ce dernier et pour la réadaptation et la réinsertion sociale des personnes qui sont victimes d'actes contraires au présent Protocole, y compris par une coopération technique et une assistance financière. Cette assistance et cette coopération se feront en consultation avec les États Parties concernés et les organisations internationales compétentes.

2. Les États Parties qui sont en mesure de le faire fournissent cette assistance par l'entremise des programmes multilatéraux, bilatéraux ou autres déjà en place ou, le cas échéant, dans le cadre d'un fonds de contributions volontaires constitué conformément aux règles établies par l'Assemblée générale.

Article 8

1. Chaque État Partie présente, dans les deux années qui suivent l'entrée en vigueur du présent Protocole en ce qui le concerne, un rapport au Comité des droits de l'enfant contenant des renseignements détaillés sur les mesures qu'il a prises pour donner effet aux dispositions du présent Protocole, notamment celles concernant la participation et l'enrôlement.

2. Après la présentation du rapport détaillé, chaque État Partie inclut dans les rapports qu'il présente au Comité des droits de l'enfant conformément à l'article 44 de la Convention tout complément d'information concernant l'application du présent Protocole. Les autres États Parties au Protocole présentent un rapport tous les cinq ans.

3. Le Comité des droits de l'enfant peut demander aux États Parties un complément d'information concernant l'application du présent Protocole.

Article 9

1. Le présent Protocole est ouvert à la signature de tout État qui est Partie à la Convention ou qui l'a signée.

2. Le présent Protocole est soumis à la ratification et est ouvert à l'adhésion de tout État. Les instruments de ratification ou

(3) Die Vertragsstaaten treffen alle durchführbaren Maßnahmen um sicherzustellen, dass ihrer Hoheitsgewalt unterstehende Personen, die im Widerspruch zu diesem Protokoll eingezogen oder in Feindseligkeiten eingesetzt worden sind, demobilisiert oder auf andere Weise aus dem Militärdienst entlassen werden. Die Vertragsstaaten gewähren diesen Personen erforderlichenfalls jede geeignete Unterstützung zu ihrer physischen und psychischen Genesung und ihrer sozialen Wiedereingliederung.

Artikel 7

(1) Die Vertragsstaaten arbeiten bei der Durchführung dieses Protokolls zusammen, so bei der Verhütung von Verstößen gegen das Protokoll sowie bei der Rehabilitation und sozialen Wiedereingliederung von Personen, die Opfer von Verstößen gegen das Protokoll geworden sind, einschließlich technischer Zusammenarbeit und finanzieller Unterstützung. Diese Unterstützung und Zusammenarbeit erfolgt in Absprache zwischen den betreffenden Vertragsstaaten und den zuständigen internationalen Organisationen.

(2) Vertragsstaaten, die hierzu in der Lage sind, leisten diese Unterstützung im Rahmen bestehender mehrseitiger, zweiseitiger oder sonstiger Programme oder, unter anderem, durch einen in Übereinstimmung mit den Regeln der Generalversammlung eingerichteten freiwilligen Fonds.

Artikel 8

(1) Jeder Vertragsstaat legt dem Ausschuss für die Rechte des Kindes innerhalb von zwei Jahren nach dem Inkrafttreten des Protokolls für den betreffenden Vertragsstaat einen Bericht mit umfassenden Angaben über die Maßnahmen vor, die er zur Durchführung der Bestimmungen des Protokolls, einschließlich derjenigen betreffend Teilnahme und Einziehung, ergriffen hat.

(2) Nach Abgabe des umfassenden Berichts nimmt jeder Vertragsstaat in die Berichte, die er dem Ausschuss für die Rechte des Kindes nach Artikel 44 des Übereinkommens vorlegt, alle weiteren Angaben in Bezug auf die Durchführung des Protokolls auf. Die anderen Vertragsstaaten des Protokolls legen alle fünf Jahre einen Bericht vor.

(3) Der Ausschuss für die Rechte des Kindes kann die Vertragsstaaten um weitere Angaben über die Durchführung des Protokolls ersuchen.

Artikel 9

(1) Dieses Protokoll liegt für alle Staaten, die Vertragsparteien des Übereinkommens sind oder es unterzeichnet haben, zur Unterzeichnung auf.

(2) Dieses Protokoll bedarf der Ratifikation und steht allen Staaten zum Beitritt offen. Die Ratifikations- oder Beitrittsur-

sion shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and

d'adhésion sont déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

3. Le Secrétaire général, en sa qualité de dépositaire de la Convention et du Protocole, informe tous les États Parties à la Convention et tous les États qui ont signé la Convention du dépôt de chaque déclaration en vertu de l'article 3.

Article 10

1. Le présent Protocole entrera en vigueur trois mois après la date de dépôt du dixième instrument de ratification ou d'adhésion.

2. Pour chacun des États qui ratifieront le présent Protocole ou qui y adhéreront après son entrée en vigueur, ledit Protocole entrera en vigueur un mois après la date du dépôt par cet État de son instrument de ratification ou d'adhésion.

Article 11

1. Tout État Partie peut, à tout moment, dénoncer le présent Protocole par voie de notification écrite adressée au Secrétaire général de l'Organisation des Nations Unies, qui en informera les autres États Parties à la Convention et tous les États qui ont signé la Convention. La dénonciation prendra effet un an après la date à laquelle le Secrétaire général en aura reçu notification. Toutefois, si à l'expiration de ce délai d'un an, l'État Partie auteur de la dénonciation est engagé dans un conflit armé, celle-ci ne prendra pas effet avant la fin dudit conflit.

2. Cette dénonciation ne saurait dégager l'État Partie de ses obligations en vertu du présent Protocole à raison de tout acte accompli avant la date à laquelle la dénonciation prend effet, pas plus qu'elle ne compromet en quelque manière que ce soit la poursuite de l'examen de toute question dont le Comité serait saisi avant la date de prise d'effet de la dénonciation.

Article 12

1. Tout État Partie peut proposer un amendement et en déposer le texte auprès du Secrétaire général de l'Organisation des Nations Unies. Celui-ci communique alors la proposition d'amendement aux États Parties, en leur demandant de lui faire savoir s'ils sont favorables à la convocation d'une conférence des États Parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les quatre mois qui suivent la date de cette communication, un tiers au moins des États Parties se prononcent en faveur de la convocation d'une telle conférence, le Secrétaire général convoque la Conférence sous les auspices de l'Organisation des Nations Unies. Tout

kunden werden beim Generalsekretär der Vereinten Nationen hinterlegt.

(3) Der Generalsekretär unterrichtet in seiner Eigenschaft als Verwahrer des Übereinkommens und des Protokolls alle Vertragsstaaten des Übereinkommens sowie alle Staaten, die das Übereinkommen unterzeichnet haben, über jede gemäß Artikel 3 hinterlegte Erklärungsurkunde.

Artikel 10

(1) Dieses Protokoll tritt drei Monate nach Hinterlegung der zehnten Ratifikations- oder Beitrittsurkunde in Kraft.

(2) Für jeden Staat, der dieses Protokoll nach seinem Inkrafttreten ratifiziert oder ihm beitrifft, tritt es einen Monat nach Hinterlegung seiner eigenen Ratifikations- oder Beitrittsurkunde in Kraft.

Artikel 11

(1) Jeder Vertragsstaat kann dieses Protokoll jederzeit durch eine an den Generalsekretär der Vereinten Nationen gerichtete schriftliche Notifikation kündigen; der Generalsekretär unterrichtet sodann die übrigen Vertragsstaaten des Übereinkommens und alle Staaten, die das Übereinkommen unterzeichnet haben. Die Kündigung wird ein Jahr nach Eingang der Notifikation beim Generalsekretär wirksam. Ist jedoch bei Ablauf dieses Jahres der kündigende Vertragsstaat in einen bewaffneten Konflikt verwickelt, so wird die Kündigung erst nach Ende des bewaffneten Konflikts wirksam.

(2) Die Kündigung enthebt den Vertragsstaat in Bezug auf Handlungen, die sich vor dem Wirksamwerden der Kündigung ereignet haben, nicht seiner Verpflichtungen aus diesem Protokoll. Die Kündigung berührt auch nicht die weitere Prüfung einer Angelegenheit, mit welcher der Ausschuss bereits vor dem Wirksamwerden der Kündigung befasst war.

Artikel 12

(1) Jeder Vertragsstaat kann eine Änderung vorschlagen und sie beim Generalsekretär der Vereinten Nationen einreichen. Der Generalsekretär übermittelt sodann den Änderungsvorschlag den Vertragsstaaten mit der Aufforderung, ihm mitzuteilen, ob sie eine Konferenz der Vertragsstaaten zur Beratung und Abstimmung über den Vorschlag befürworten. Befürwortet innerhalb von vier Monaten nach dem Datum der Übermittlung wenigstens ein Drittel der Vertragsstaaten eine solche Konferenz, so beruft der Generalsekretär die Konferenz unter der Schirmherrschaft der Vereinten Nationen ein. Jede Änderung, die von der Mehrheit der auf der Kon-

voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

amendement adopté par la majorité des États Parties présents et votants à la conférence est soumis à l'Assemblée générale pour approbation.

2. Tout amendement adopté conformément aux dispositions du paragraphe 1 du présent article entre en vigueur lorsqu'il a été approuvé par l'Assemblée générale des Nations Unies et accepté par une majorité des deux tiers des États Parties.

3. Lorsqu'un amendement entre en vigueur, il a force obligatoire pour les États Parties qui l'ont accepté, les autres États Parties demeurant liés par les dispositions du présent Protocole et par tous amendements antérieurs acceptés par eux.

Article 13

1. Le présent Protocole, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé aux archives de l'Organisation des Nations Unies.

2. Le Secrétaire général de l'Organisation des Nations Unies fera parvenir une copie certifiée conforme du présent Protocole à tous les États Parties à la Convention et à tous les États qui ont signé la Convention.

ferenz anwesenden und abstimmenden Vertragsstaaten angenommen wird, wird der Generalversammlung zur Billigung vorgelegt.

(2) Eine nach Absatz 1 angenommene Änderung tritt in Kraft, wenn sie von der Generalversammlung gebilligt und von einer Zweidrittelmehrheit der Vertragsstaaten angenommen worden ist.

(3) Tritt eine Änderung in Kraft, so ist sie für die Vertragsstaaten, die sie angenommen haben, verbindlich, während für die anderen Vertragsstaaten weiterhin die Bestimmungen dieses Protokolls und alle früher von ihnen angenommenen Änderungen gelten.

Artikel 13

(1) Dieses Protokoll, dessen arabischer, chinesischer, englischer, französischer, russischer und spanischer Wortlaut gleichermaßen verbindlich ist, wird im Archiv der Vereinten Nationen hinterlegt.

(2) Der Generalsekretär der Vereinten Nationen übermittelt allen Vertragsstaaten des Übereinkommens sowie allen Staaten, die das Übereinkommen unterzeichnet haben, beglaubigte Abschriften dieses Protokolls.

Kindernothilfe: Commitment for the Rights of the Child

Kindernothilfe is one of the largest Christian organisations in Europe for children's aid. The organisation supports more than 300.000 children and young people in 27 countries in Asia, Africa, Latin America and Eastern Europe. Kindernothilfe aims to give needy children in the poorest countries of the world a chance to a good start in life.

Kindernothilfe orients its actions according to the UN Convention on the Rights of the Child. It strengthens boys and girls in their rights and empowers them to play an active role in demanding for their rights. A wide variety of measures, projects and programs are supported by the organisation, e.g. children affected by war and conflict: emergency aid with food and medical aid, therapy centres for former female child soldiers, support for war orphans and the reintegration of children in schools and professional trainings.

On the political level Kindernothilfe is committed for the implementation of the rights of the child and demands e.g. an individual complaints procedure to the UN Convention on the Rights of the Child. Kindernothilfe is advocating on national and international levels by joining alliances, cooperating with networks, e.g. as a member of the German action group landmine.de or the German Coordination Child Soldiers.

Kindernothilfe is a registered charitable organisation. More than 90 percent of the work is financed through donations from 100.000 people who support Kindernothilfe. Every year since 1992 Kindernothilfe has received the DZI seal of approval. This is awarded by German Central Institute for Social Affairs (DZI) to charity organisations that uses the money in a reliable, transparent and responsible manner.

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terre des hommes Deutschland e.V. is independent of state, church and political parties and supports about 500 projects in 25 countries for children in distress. Our aim is a »terre des hommes«, an »earth of humanity«. We help children living on the streets, abandoned and working children, take care of victims of war and violence and see to the education of children. We campaign for the preservation of cultural and biological diversity and for just politics towards the so-called developing countries.

Our local project partners build schools and child protection centres, organize irrigation projects and take care of ill and war injured children.

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