

THE DRAFT OPTIONAL PROTOCOL

ISSUE:

Optional Protocol on Children in Armed Conflict

BACKGROUND:

A working group of the UN Commission on Human Rights has met four times since 1994 to draft an Optional Protocol to the Convention on the Rights of the Child. The fourth session of this working group has taken place on February 2-10, 1998.

The Convention on the Rights of the Child provides that States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen do not take a direct part in hostilities (combat) and that States parties shall refrain from recruiting into their armed forces any person who has not attained the age of fifteen (article 38(2) and (3)).

The main objectives of the Optional Protocol are to raise the age for participation in hostilities and the age of recruitment. Another objective is to prevent the recruitment and use of children by non-governmental armed groups.

In the negotiations, there are three principal outstanding issues: 1) the minimum age for participation in hostilities; 2) the minimum age for voluntary recruitment; and 3) whether there should be any exceptions to the minimum age for recruitment. The Working Group has agreed, *ad referendum*, that the minimum age for compulsory recruitment (conscription) should be 18. There is also broad support for a provision that would require parties to the Optional Protocol to take all feasible measures to prevent the recruitment of persons under the age of 18 by non-governmental armed groups.

Working groups of the Commission on Human Rights work on the basis of consensus. It has become clear that it will not be possible to reach a consensus that will satisfy many States participants seeking to preserve the status quo applicable to their armed forces on one or more of the above issues.

CURRENT SITUATION:

Canada supports 18 as the minimum age of involvement in hostilities. The Department of National Defence has confirmed that it was prepared to put policies in place that will preclude placing individuals under the age of 18 in direct or indirect support of hostilities.

On the age of recruitment, current Canadian legislation allow recruitment of persons aged 17 and 16 under certain conditions. Canada has been very involved in the drafting and supportive the early conclusion of a good optional protocol.