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**AMERICAN BAR ASSOCIATION  
SECTION OF INTERNATIONAL LAW AND PRACTICE  
SECTION OF FAMILY LAW  
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES  
STEERING COMMITTEE ON THE UNMET LEGAL NEEDS OF CHILDREN**

**RECOMMENDATION**

**RESOLVED**, that the American Bar Association urges that the United States expeditiously ratify the Optional Protocol to the U.N. Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts.

## REPORT

### **I. Introduction**

On May 25, 2000, following six years of negotiations, the United Nations adopted an Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts. The Optional Protocol would ban the use of children under the age of 18 in armed conflicts. The Protocol does not, however, preclude voluntary recruitment of 16 and 17 year-olds into armed forces. Furthermore, an express provision of the Optional Protocol would allow the United States to sign and ratify the Optional Protocol even though the United States has not yet ratified the underlying Convention on the Rights of the Child. The American Bar Association (“ABA”) has urged U.S. ratification of the CRC and has offered suggestions for accompanying reservations, understandings and declarations.<sup>1</sup>

This report, undertaken by the International Human Rights Committee through its Subcommittee on the Rights of the Child, is intended to provide a basis for consideration and adoption of an ABA resolution supporting U.S. ratification of the Optional Protocol. This report:

- (a) describes the use of child soldiers globally;
- (b) traces the international legal context and negotiating history of the Optional Protocol, and
- (c) summarizes its principal provisions.

The ABA has long supported U.S. actions to enhance legal protections to children throughout the world. For example, the House of Delegates has called on the U.S. to ratify the Hague Convention on Civil Aspects of International Child Abduction (August 1980); the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (February 1994); and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect to Parental Responsibility and Measures for the Protection of Children (August 1997). The House has also called for the United States to work with the United Nations and the International Labor Organization to promote the abolition of the economic exploitation of persons under eighteen years of age by the adoption and enforcement of child labor law protections (August 1996) as well as the protection, within the U.S., of the legal rights of immigrant children (February 1985).

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<sup>1</sup> See ABA Recommendation and Report to the House of Delegates, adopted Feb. 1991; ABA Recommendation and Report to the House of Delegates, adopted Feb. 1994.

## **A. The Problem of Child Soldiers**

It is widely reported that some 300,000 children in over 30 countries around the world are engaged in military conflict.<sup>2</sup> More than two million children reportedly were killed in armed conflicts in the decade between 1986-1996, while four to five million have been disabled and 12 million left homeless.

Serving as frontline grunts, sexual servants, spies, and porters, child soldiers are exposed to serious injury and death, as well as disease, physical assault and rape. Because of their emotional and physical immaturity, children are easily manipulated and can be drawn into violence they can neither resist nor understand. The most vulnerable children are those who are poor, separated from their families, displaced from their homes, living in a combat zone, or with limited access to education.

Both boys and girls may be sent to the front lines of combat or into minefields ahead of other troops. Indeed, in certain countries nearly a third of the child soldiers were reported to be girls. Child soldiers have been used for suicide missions and have been forced to commit atrocities against their own family and neighbors. In some places, young soldiers have been given drugs to increase their courage and dull their sensitivity to pain. Because of their inexperience and lack of training, child soldiers suffer far higher casualty rates than adult soldiers. Those who survive may be permanently disabled, with the most common injuries being loss of hearing, loss of limbs, and blindness. Others bear psychological scars from being forced to both commit and witness horrific atrocities. The difficulty of demobilising and reintegrating child soldiers into peacetime society and values is one of the greatest challenges facing a number of post-conflict societies or those seeking to move from conflict to peace.

The use of child soldiers has been well-documented and publicized by the NGO community, particularly those coordinating efforts through the "The Coalition to Stop the Use of Child Soldiers." The practice has been especially evident in Angola, Colombia, the Democratic Republic of Congo, Liberia, Myanmar, Sierra Leone, Sri Lanka, Sudan and Uganda.

## **B. International Legal Context and Brief Negotiating History of the Optional Protocol**

The Convention on the Rights of the Child ("CRC") was adopted by the U.N. General Assembly in 1989,<sup>3</sup> and all countries except the United States and Somalia are now parties to it.<sup>4</sup>

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<sup>2</sup> The exact number, ages and distribution of child soldiers are extremely difficult to calculate because of efforts to hide child soldiers, because many youth lie about their true age, because armed opposition groups do not operate under public scrutiny, and because the location and intensity of armed conflicts is constantly changing. See, e.g., Alison Dundes Renteln, *The Child Soldier: The Challenge of Enforcing International Standards*, 21 WHITTIER L. REV. 191, 191 (1999).

<sup>3</sup> G.A. Res. 44/25, U.N. GAOR, 44th Sess., Annex, Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990). The text of the Convention is reprinted in many sources. See, e.g., FRANK NEWMAN AND DAVID WEISSBRODT, *SELECTED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND BIBLIOGRAPHY FOR RESEARCH ON INTERNATIONAL HUMAN RIGHTS LAW* 80 (1996).

<sup>4</sup> The United States signed, but did not ratify, the Convention on the Rights of the Child.

Under the CRC, the general definition of a child is any person under the age of 18.<sup>5</sup> However, Article 38, governing children and armed conflict, uses 15 as the minimum age for recruitment and participation in hostilities.<sup>6</sup> This is the only explicit departure from the general definition of a child based on the 18-year minimum age.<sup>7</sup>

Other international legal instruments reflect the view that 18 should be the minimum age for involvement in military conflict. The African Charter on the Rights and Welfare of the Child<sup>8</sup> adopted shortly after the CRC defines a child as being up to 18 years (without exception),<sup>9</sup> and Article 22(2) provides: “States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and shall refrain, in particular from recruiting any child.” In December, 1995, the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent passed a recommendation whereby parties to armed conflict must take every feasible step to ensure that children under 18 do not participate in hostilities.

More recently, the new International Labor Organization (“ILO”) Worst Forms of Child Labor Convention (No. 182), adopted unanimously by the 174 members of the ILO,<sup>10</sup> requires

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<sup>5</sup> Article 1 defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

<sup>6</sup> Article 38 provides in part:

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

Article 38(2) and (3) derive from Article 77(2) of Additional Protocol I of 1977 to the four Geneva Conventions of 1949. It provides that “The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among persons who have attained the age of 15 years but who have not attained the age of 18 years, the Parties to the conflict shall endeavor to give priority to those who are oldest.” Additional Protocol II (applicable in non-international armed conflicts) has a similar but not identical provision. Article 4(3)(c) states: “children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”

<sup>7</sup> The 18-year minimum age is specifically restated for the prohibition on the death penalty, as well as for life imprisonment without the possibility of release. CRC, Article 37(a).

<sup>8</sup> African Charter on the Rights and Welfare of the Child, O.A.V. Doc. CAB/LEG/24.9/49 (1990). As of 1999, 13 countries had ratified this Charter and ten others made commitments to ratify. The Charter will enter into effect when 15 countries ratify it. See HUMAN RIGHTS WATCH, WORLD REPORT 2000 462 (1999).

<sup>9</sup> The African Charter is “the only regional treaty that sets eighteen as the minimum age for recruitment and participation in armed conflict.” See HUMAN RIGHTS WATCH, WORLD REPORT 2000 462 (1999).

<sup>10</sup> On June 17, 1999, delegates to the 87th International Labor Conference voted unanimously to approve the Convention on the Worst Forms of Child Labor (No. 182). President Clinton addressed the ILO Conference, endorsed the new convention, and submitted it to the United States Congress for its advice and consent. See Andrew J. Samet, *Child Labor and the New Millennium*, 21 WHITTIER L. REV. 69, 69 (1999); see also Angela R. Broughton,

each ratifying Member to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency; defines a “child” as all persons under the age of 18, and “the worst forms of child labor” as, *inter alia*, “forced or compulsory recruitment of children for use in armed conflict.” and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”<sup>11</sup>

Several years after the CRC’s adoption, the anomaly between its general definition of a child as under 18 and the age 15 minimum for armed conflict, led the U.N. Commission on Human Rights to establish an open-ended inter-sessional working group to elaborate, as a matter of priority, a draft optional protocol (“OP”) to the CRC that would raise the minimum age for recruitment and participation in hostilities to 18. The first meeting of the Working Group was held in 1994, and sessions have been held in January or February of each year since then.

In 1996, the (Machel) UN Study on the Impact of Armed Conflict on Children underscored the depth of the problem and spurred the negotiations.<sup>12</sup> It recommended that the minimum age for recruitment and for participation in hostilities should be set at 18 years, and that the U.N. Secretary General should appoint a Special Representative to follow up on the Study. In 1997, the Secretary General appointed Olara Otunnu for a three-year term as his Special Representative for Children and Armed Conflict.

Further impetus to the talks occurred in September 1999, when the U.N. Secretary General presented to the Security Council his Report on Protection of Civilians in Armed Conflict<sup>13</sup> which recommended that the Security Council “urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18, and accelerate the drafting of an optional protocol on the situation of children in armed conflict to the Convention on the Rights of the Child for consideration by the General Assembly.”<sup>14</sup>

Throughout the negotiations, the fundamental obstacle to achieving a consensus was opposition by the United States (supported by the UK and a handful of other countries) to an age 18 minimum for military service. The United States currently accepts 17-year-old volunteers into its armed forces with parental permission. In recent years, it has deployed 17 year-old troops to conflicts in Somalia, Bosnia and the Gulf war. In the negotiations, the United States adhered to its policy in the face of a general consensus to the contrary, notwithstanding that fewer than 3,000 members of its 1.3 million active duty force are minors.

In January 2000, facing both international and domestic pressure, the United States changed its position and agreed to back 18 as the minimum age for direct participation in armed

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Donald C. Dowling, Jr., David Larson, Holly M. Robbins, and James M. Zimmerman, *International Employment*, 33 INT’L LAW. 291, 309 (1999).

<sup>11</sup> ILO Convention No 182, Article 3(a) and (d).

<sup>12</sup> UN Document A/51/306 (26 Aug. 1996).

<sup>13</sup> S/1999/957.

<sup>14</sup> Note also that in August 1999, the U.N. Security Council passed Resolution 1261 (1999), strongly condemning the targeting of children in situations of armed conflict.

conflict and forced recruitment. The United States adhered, however, to its longstanding policy allowing 17 year-olds to voluntarily enlist. This shift broke the impasse and on January 21, 2000, at the U.N. working group's sixth working session, a consensus was finally achieved requiring 18 as minimum age for involvement in military conflict, while allowing voluntary recruitment of 16 and 17-year olds, subject to certain safeguards.

In announcing U.S. support for the Protocol several days later, President Clinton stated it "deals in a realistic and reasonable way with the issue of minimum ages for conscription, voluntary recruitment, and participation in hostilities by national armed forces."

The U.N. Human Rights Commission approved the Protocol without any significant changes on April 26, 2000. The U.N. Economic and Social Council approved the Protocol on May 10, 2000 and the U.N. General Assembly approved it on May 25, 2000. The Protocol was then opened for early signature and ratification or accession at two U.N. special sessions in June 2000, and the Millenium Summit of the Millenium Assembly in September 2000. The Protocol will go into force three months after the tenth ratification.

The principal provisions of the Protocol are discussed below.

### **C. Principal Provisions of Optional Protocol**

The Protocol extends the age 18 minimum to both direct participation in armed conflict and conscription, i.e., forced recruitment. Article 1 of the Protocol states that Governments "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 provides that Governments "shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces." Article 4(1) forbids rebel or other non-governmental armed groups "under any circumstances" from recruiting persons under the age of 18 years or using them in hostilities. Under Article 4(2), Governments are required to take all feasible measures to prevent the recruitment and use of children by such groups, including the criminalization of such practices.

The Protocol departs from the age 18 minimum, however, with respect to voluntary recruitment into a nation's armed forces. Under Article 3, Governments must raise their minimum age for voluntary recruitment beyond the current minimum of 15 set forth under Article 38(3) of the CRC, and must deposit a "binding declaration" upon ratification of or accession to the Protocol stating the minimum age they will respect.<sup>15</sup> (In practice, this means the minimum age for voluntary recruitment is 16.) Governments recruiting under persons under the age of 18 years must maintain a series of safeguards, ensuring that such recruitment is genuinely voluntary; is done with the informed consent of the person's parents or legal guardians; that recruits are fully informed of the duties involved in military service; and that proof of age is established.

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<sup>15</sup> This requirement 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.

With respect to implementation of the Protocol, Governments are required by Article 6 to “take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement” of the Protocol, and must take “all feasible measures to ensure” demobilization of children recruited or used in violation of the Protocol, and “when necessary,” provide appropriate rehabilitation and reintegration assistance.

Article 9 provides that all governments can sign and ratify the Protocol, regardless of whether or not they have ratified the underlying CRC. This provision was taken at the behest of the United States, which has signed but not yet ratified the CRC.

Each government is responsible for ensuring that the Protocol is enforced within its jurisdiction. At the international level, Article 8 of the Protocol requires Governments to submit a report to the Committee on the Rights of the Child within two years of ratifying the protocol, providing comprehensive information on the measures it has taken to implement the protocol. Thereafter, follow-up reports are made every five years.

#### **D. Conclusion**

We support U.S. ratification of the Protocol for the following reasons. First, it would demonstrate a U.S. commitment to addressing the global abuse of children as soldiers. Second, U.S. implementation of the Protocol would be relatively uncomplicated. No changes are required to U.S. law, and the small number of seventeen year-olds in U.S. active duty armed forces makes the 18-year deployment minimum a realistic policy. In addition, as discussed above, special language was included in the Protocol specifically to allow the United States to ratify the instrument even though it is not a party to the CRC.

Respectfully submitted,

Rona Mears  
Chair, Section of International Law and Practice  
July 2000

## **Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

### The States Parties to the present Protocol

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.

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.

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.

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.

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

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.

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 also the unanimous adoption in June 1999, of the ILO Convention 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 of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation.

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 also of the necessity to take 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 implementation of this protocol, as well as 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 information and education programmes concerning the implementation of the Protocol.

Have agreed as follows:

#### **Article 1**

State 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**

State 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 the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in Article 38.3 of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognize 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 which 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 which permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

such recruitment is genuinely voluntary;

such recruitment is done with the informed consent of the person's parents or legal guardians;

such persons are fully informed of the duties involved in such military service, and

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 which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 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, 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. State 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 to preclude provisions in the law of a State Party or in international instruments and international humanitarian law which 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.

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 among concerned States parties and other 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 General Assembly rules.

#### **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 State Parties to the Protocol shall submit a report every five years.

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

### **Article 9**

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

2. The present Protocol is subject to ratification or open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

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

### **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 which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. 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 which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in

any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at 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 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.

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

## GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations

Submitting Entity:

Section of International Law and Practice

Submitted By:

Rona R. Mears, Chair of the Section of International Law and Practice

1. Summary of Recommendation.

The recommendation urges U.S. ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

2. Approval by Submitting Entity.

This recommendation was approved by the Council of the Section of International Law and Practice at its meeting on April 15, 2000, pursuant to a resolution that would provide for further Section consideration in the event of any significant changes to the language of the Optional Protocol undertaken in the course of further U.N. consideration and approval, which changes did not occur.

3. Has this or a similar recommendation been submitted to the House or Board previously?

This recommendation has not previously been submitted to the House or Board.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The Association policies that are particularly relevant to the recommendation are (1) ABA Recommendation and Report to the House of Delegates, adopted Feb. 1991, urging U.S. ratification of the Convention on the Rights of the Child ("CRC"); and (2) ABA Recommendation and Report to the House of Delegates, adopted Feb. 1994, offerings suggestions

for accompanying reservations, understandings and declarations to U.S. ratification of the CRC.

The CRC has not yet been ratified by the United States. In urging U.S. ratification of the optional protocol, the recommendation reflects an opportunity for the United States to support an international consensus against the use of child soldiers, an issue addressed by the CRC, notwithstanding its failure to ratify the CRC to date. In this respect, the recommendation furthers the aims of the previous ABA policies regarding the CRC.

5. What urgency exists which requires action at this meeting of the House?

The Optional Protocol was approved by the UN General Assembly on May 25, 2000. It is anticipated that the Administration will seek to ratify the Protocol at the earliest opportunity. Therefore, if the ABA is to register its support for U.S. ratification in any meaningful and timely way, such support would need to be registered at this annual meeting.

6. Status of Legislation. (If applicable.)

None.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

Following approval by the Section on International Law and Practice on April 15, 2000, the attached recommendation and report has been referred for consideration and possible co-sponsorship to the Section on Individual Rights and Responsibilities (April 18, 2000); the Young Lawyers Division and the Steering Committee on the Unmet Legal Needs of

Children (April 20, 2000); and the Section on Family Law (April 21, 2000). On May 12, 2000, the recommendation and report also was referred to the Commission on Domestic Violence; the Commission on Opportunities for Minorities in the Profession; and the Commission on Women in the Profession. Prior to Section on International Law and Practice approval, an earlier draft of the recommendation and report was transmitted to the ABA Center on Children and the Law. The Center offered helpful language to the report which has been incorporated in the current text. An earlier draft of the recommendation and report was also provided to the Standing Committee on Law and National Security, and the current version was sent on June 2, 2000. On June 3, 2000, the Standing Committee on Law and National Security voted not to co-sponsor the recommendation.

Currently, in addition to the International Section of Law and Practice, co-sponsoring entities are the Section on Individual Rights and Responsibilities, the Steering Committee on the Unmet Legal Needs of Children.

10. Contact Person. (Prior to the meeting.)

The principal contact persons in the Section of International Law and Practice are the following Co-Chairs of the Subcommittee on the Rights of the Child:

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11. Contact Person. (Who will present the report to the House.)

(Section Delegates in the House.)

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12. Contact Person Regarding Amendments to This Recommendations.

No proposed amendments have been received. The person to contact concerning proposed amendments is: Cris R. Revaz, Co-Chair, ABA Subcommittee on the Rights of the Child. His address is as follows:

Cris R. Revaz  
Hale and Dorr, LLP  
1455 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

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## EXECUTIVE SUMMARY

### **1. Summary of the recommendation.**

The recommendation supports U.S. ratification of an optional protocol to the U.N. Convention on the Rights of the Involvement of Children in Armed Conflict.

### **2. Summary of the issue which the recommendation addresses.**

The Protocol requires governments to ensure that children under age 18 do not directly participate in hostilities and are not involuntarily recruited into armed service. The minimum age for voluntary recruitment is 16, but governments recruiting children under the age of 18 must maintain a series of safeguards, ensuring that such recruitment is genuinely voluntary; is done with the informed consent of the person's parents or legal guardians; that recruits are fully informed of the duties involved in military service; and that proof of age is established. Governments must demobilize children recruited or used in violation of the protocol, and provide appropriate rehabilitation and reintegration assistance. All governments can sign and ratify the protocol, regardless of whether or not they have ratified the underlying Convention on the Rights of the Child.

### **3. An explanation of how the proposed policy position will address the issue.**

The proposed policy recommendation addresses the issue by urging U.S. ratification. By lending our support for the international effort to which the United States is prepared to commit through this Protocol, we seek to positively impact the prospects for U.S. ratification and demonstrate the resolve of the American legal community against the use of child soldiers in armed conflicts around the world.

### **4. A summary of any minority views or opposition which have been identified.**

There is currently little significant credible opposition to the proposal, except from the United Kingdom and a few other countries that use children under the age of 18 in armed conflicts. Previously, the greatest opposition came from the United States, which resisted a change to its practice of using 17-year olds in armed conflict, until a compromise was reached allowing for the voluntary recruitment of 17-year-olds, while banning children under the age of 18 from participating in direct hostilities or being involuntarily recruited. (The United States supports the Protocol in its present form.)

Some political opposition might arise because the United States signed but has not yet ratified the underlying Convention on the Rights of the Child. The Protocol, however, expressly allows for signatory states who have not yet ratified the Convention to become parties to the Protocol. There is, consequently, no legal impediment to U.S. ratification of the Protocol.

