



ICRC

## ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

# Legal Protection of Children in Armed Conflict

International humanitarian law provides broad protection for children. In the event of armed conflict, either international or non-international, children benefit from the **general protection** provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Geneva Conventions of 1949 (hereafter GCIII and GCIV) and their Additional Protocols of 1977 (API and APII) lay down a series of rules according to them **special protection**. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols, the 1989 Convention on the rights of the child and its recent Optional Protocol, in particular, also set limits on children's **participation in hostilities**.

### General protection

In the event of an **international armed conflict**, children not taking part in the hostilities are protected by GCIV relative to the protection of civilians and by API. They are covered by the fundamental guarantees that these treaties provide, in particular the right to life, the prohibitions on coercion, corporal punishment, torture, collective punishment and reprisals (Art. 27-34 GCIV and Art. 75 API) and by the rules of API on the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians (Art. 48 and 51).

In the event of **non-international armed conflict**, children are also covered by the fundamental guarantees for persons not taking direct part in the hostilities (Art. 3 common to the GC and Art. 4 APII). They are further protected by the principle that «*the civilian population as such, as well as individual civilians, shall not be the object of attack*» (Art. 13 APII).

### Special protection

GCIV guarantees special care for children, but it is API that lays down the principle of special protection: «*Children shall be the object of special respect and shall be protected against any form of indecent assault. The*

*Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason*» (Art. 77). This principle also applies to non-international armed conflict (Art. 4, para. 3 APII). The provisions setting out this protection may be summarized as follows:

- evacuation, special zones – Art. 14, 17, 24 (para. 2), 49 (para. 3) and 132 (para. 2) GCIV; Art. 78 API; Art. 4 (para. 3e) APII;
- assistance and care – Art. 23, 24 (para. 1), 38 (para. 5), 50 and 89 (para. 5) GCIV; Art. 70 (para. 1) and 77 (para. 1) API; Art. 4 (para. 3) APII;
- identification, family reunification and unaccompanied children – Art. 24-26, 49 (para. 3), 50 and 82 GCIV; Art. 74, 75 (para. 5), 76 (para. 3) and 78 API; Art. 4 (para. 3b) and 6 (para. 4) APII;
- education, cultural environment – Art. 24 (para. 1), 50 and 94 GCIV; Art. 78 (para. 2) API; Art. 4 (para. 3a) APII;
- arrested, detained or interned children – Art. 51 (para. 2), 76 (para. 5), 82, 85 (para. 2), 89, 94 and 119 (para. 2) and 132 GCIV; Art. 77 (para. 3 and 4) API; Art. 4 (para. 3d) APII;
- exemption from death penalty – Art. 68 (para. 4) GCIV; Art. 77 (para. 5) API; Art. 6 (para. 4) APII.

### Participation in hostilities

#### *The 1977 Additional Protocols*

Participation by children in armed hostilities occurs too frequently. This participation may range from aiding combatants (bringing them weapons and munitions, carrying out reconnaissance missions, etc.) to the actual recruitment of children as combatants in national armed forces and other armed groups. The 1977 Additional Protocols were the first international treaties to cover such situations. Thus, API obliges States to take all feasible measures to prevent children under 15 from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages Parties to give priority in recruiting among those aged from 15 to 18 to the oldest (Art. 77). APII goes further, prohibiting both the recruitment and the participation – direct or indirect – in hostilities by children under 15 years of age (Art. 4, para. 3c).

Despite the above-mentioned rules, children who take direct part in international armed conflict are recognized as combatants and in the event of their capture are entitled to prisoner-of-war status under GCIII. The Additional Protocols provide that child combatants under 15 are entitled to privileged treatment in that they continue to benefit from the special protection accorded to children by international humanitarian law (Art. 77, para. 3 API and Art. 4, para. 3d APII).

### **The 1989 Convention on the rights of the child**

This treaty, which has been almost universally ratified, covers all the fundamental rights of the child. Article 38 extends the field of application of Art. 77 API to non-international armed conflict. Article 38 urges States Parties to take all feasible measures to ensure that those aged of less than 15 years do not take a direct part in hostilities (para. 2) and that priority be given in recruitment to the oldest of those aged between 15 and 18 (para. 3). It thus falls short of the ban on direct or indirect participation laid down by APII.

### **Optional Protocol to the Convention on the rights of the child**

The Optional Protocol on the involvement of children in armed conflict, adopted on 25 May 2000, generally strengthens protection for children in armed conflict:

- the States Parties must take all feasible measures to ensure that members of their armed forces who have not reached the age of 18 years do not take direct part in hostilities (Art. 1);
- compulsory recruitment into the armed forces of persons under 18 years of age is prohibited (Art. 2);
- the States Parties shall raise the minimum age for voluntary recruitment from 15 years. This rule does not apply to military academies (Art. 3);
- armed groups distinct from the national armed forces should not, under any circumstances, recruit (whether on a compulsory or voluntary basis) or use in hostilities persons under the age of 18 years, and the States Parties must take legal measures to prohibit and criminalize such practices (Art. 4).

### **Statute of the International Criminal Court (ICC)**

The Statute, adopted in Rome on 17 July 1998, includes in its list of war crimes within the Court's jurisdiction the active involvement in hostilities of children under 15 or their recruitment into national armed forces during an international armed conflict (Art. 8, para. 2b [xxvi]) or into the national armed forces or other armed groups during a non-international armed conflict (Art. 8, para. 2e[vii]).

According to the principle of complementarity, the Court has jurisdiction in situations where a State

is unable or unwilling to prosecute. In order to take advantage of this principle and to ensure repression at the national level, States should adopt legislation enabling them to prosecute the perpetrators of such crimes.

### **National implementation**

Despite the rules laid down by international law, thousands of children are nevertheless taking an active part in hostilities and are themselves the innocent victims of those events.

States have the primary responsibility to put an end to this situation. They are therefore urged to ratify the treaties protecting children in armed conflict and to take national measures adapted to their legal systems in order to implement these treaties. Whether in legislative or other form, these measures are intended to enable States to respect and to ensure respect for the rules laid down by the treaties.

It is suggested that priority be granted to implementation of the following rules.

### **Participation in hostilities**

- A State bound by the **Optional Protocol** to the Convention on the rights of the child should take legislative measures prohibiting and punishing both compulsory recruitment into the armed forces of children under 18 years of age (Art. 2 and 6) and compulsory or voluntary recruitment – and any use of – children under 18 by armed groups distinct from the national armed forces (Art. 4).
- States Party to the **Convention on the rights of the child** (Art. 38, para. 3) or to **API** (Art. 77, para. 2) should take legislative measures prohibiting the conscription or enlistment in its armed forces of children under 15, and measures ensuring that priority in recruitment be given to the oldest among those aged between 15 and 18.
- States Party to **APII** shall take legislative measures prohibiting the recruitment of children under 15 and any participation by them in internal conflicts (Art. 4, para. 3c).
- In order to take advantage of the principle of complementarity, States party to the **ICC Statute** should ensure that their national criminal legislation makes it

possible to prosecute persons who have recruited children under 15 years of age or who have used children as active participants in hostilities (Art. 8, para. 2[b, xxvi, and e, vii]).

### **Detention and internment**

- States party to the 1977 **Additional Protocols** should take legislative or other measures to ensure that any child under 15 years of age who is arrested, detained or interned for reasons relating to conflict enjoys the special protection provided by international humanitarian law (Art. 77, para. 3 API and Art. 4, para. 3d APII).

### **Death penalty**

- The States party to **GCIV** (Art. 68, para. 4) and the **Additional Protocols** (Art. 77, para. 5 API and Art. 6, para. 4 APII) should take legislative measures under penal and military law to prohibit the pronouncement or execution of a death sentence against anyone aged less than 18 years at the time of the offence, when the offence is related to an armed conflict.

### **Dissemination**

A large-scale effort to promote knowledge of and compliance with international humanitarian law is required in order to ensure true respect for children. States are legally obliged to engage in dissemination activities (Art. 47, 48, 127 and 144 of, respectively, GC I, GC II, GC III and GC IV; Art. 83 API; Art. 19 APII; and Art. 6 of the Optional Protocol of 2000).

Thus, States should include the concept of child-specific protection in peacetime training and exercises at all levels of the armed and national security forces.

Likewise, consideration should be given to introducing this subject into the curriculum of universities and specialized institutions, and to organizing campaigns to raise awareness among the general public, in particular among children and adolescents.