

**UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD**

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE  
RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED  
CONFLICT**

**PERIODIC REPORT**

**OF THE**

**UNITED STATES OF AMERICA**

**and**

**U.S. RESPONSE TO RECOMMENDATIONS IN  
COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008**

**JANUARY 22, 2010**

PERIODIC REPORT OF THE UNITED STATES  
TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD  
and Response to Committee Recommendations

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<sup>1</sup> All annexes have been submitted to the Committee on the Rights of the Child electronically and will be available at <http://www.state.gov/g/drl/hr/treaties/>.

## Introduction

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Rights of the Child (Committee) on measures giving effect to its obligations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol) and related information of interest to the Committee pursuant to Article 8(2) thereof and ¶ 39 of the Committee's Concluding Observations.

2. The United States submitted its initial report to the Committee on June 22, 2007, U.N. Doc. CRC/C/OPAC/USA/1 (Initial Report). The United States provided additional information as requested by the Committee on May 19, 2008 (U.N. Doc. CRC/C/OPAC/USA/Q/1/)(2008 Written Replies) and made its oral presentation to the Committee on May 22, 2008. This submission supplements and updates relevant information, set forth in two parts.

3. Part I of this submission provides the Periodic Report of the United States (Periodic Report) in keeping with the Committee's Revised Guidelines Regarding Initial Reports. U.N. Doc. CRC/C/OPAC/2 (Oct. 19, 2007) (Guidelines). Part II responds to recommendations included in the Committee's Concluding Observations of June 25, 2008, following the U.S. oral presentation. U.N. Doc. CRC/C/OPAC/USA/CO/1 (Committee's Concluding Observations). The Periodic Report addresses many of the issues raised in the Committee's Concluding Observations. Therefore, to the extent issues have been addressed in the Periodic Report, the U.S. response in Part II provides a brief summary with cross-references to that document. For issues that have not been addressed in the U.S. Periodic Report, Part II provides a full response.

4. The United States has sought to respond to the Committee's requests for information as fully as possible in this submission. In this regard, the United States notes that the United States became a party to the Optional Protocol pursuant to Article 9(2), which provides that it is "open to accession by any State." Although the United States signed the Convention on the Rights of the Child (Convention) in February 1995, it has not proceeded to ratify it. Therefore, as stated in the U.S. instrument of ratification, "[t]he United States understands that the United States assumes no obligations under the Convention by becoming a party to the Protocol." As a result, neither provisions of the Convention nor interpretations of the Convention in the Committee's general comments affect the U.S. reporting requirement. The United States takes no position in this report on the Convention provisions and general comments referred to in the Guidelines and, in the spirit of cooperation, has provided as much information as possible on issues raised, not limited to those directly related to U.S. obligations under the Optional Protocol.

5. The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

## **PART I**

### **PERIODIC REPORT OF THE UNITED STATES TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT**

#### **I. GENERAL MEASURES OF IMPLEMENTATION**

6. In preparing this report, the U.S. Department of State has drawn on the expertise of the U.S. Departments of Defense, Justice, Homeland Security, the Health and Human Services, Labor, and Education as well as the U.S. Agency for International Development (USAID). The United States also held meetings with representatives of non-governmental organizations with shared interests in this field.

7. The legal and policy framework through which the United States gives effect to its undertakings has not changed dramatically since the submission of the Initial Report. The United States maintains its position with regard to the understandings contained in its instrument of ratification, set forth in Annex I to the Initial Report. The United States took no reservations in becoming a Party to the Optional Protocol.

8. As indicated in ¶ 22 of the Initial Report, the United States filed a declaration pursuant to Article 3(2) of the Optional Protocol, stating that

(A) the minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age;

(B) the United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505(a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control;

(C) each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and

(D) all persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service.

This declaration is fully consistent with the provisions of Article 3 providing for States Parties to declare a minimum age for voluntary recruitment at an age over 15. The United States has reviewed its policies governing the voluntary recruitment of 17-year olds. It has determined that the current standards are sufficient to protect 17-year-olds interested in serving and plans to

maintain 17 as the minimum age for voluntary recruitment. For further discussion of relevant safeguards, see ¶¶ 40-46.

9. As further noted in ¶ 5 of the U.S. Initial Report, prior to U.S. ratification of the Optional Protocol, U.S. federal and state law met the obligations of the United States under the Optional Protocol. Accordingly, no implementing legislation was required to bring the United States into compliance with the substantive obligations that it assumed under the Protocol at the time of ratification. Recent legislation enhancing U.S. implementation is discussed in ¶¶ 81-101.

10. The U.S. Department of Defense has primary responsibility for implementing U.S. obligations concerning recruitment and participation in direct hostilities under the Optional Protocol and coordinates compliance issues with each of the U.S. Armed Military Departments. In addition, the U.S. Departments of State, Homeland Security, and Health and Human Services work together, primarily through the asylum and refugee process, to address issues concerning children who were recruited and used by foreign countries in violation of the Optional Protocol. The Department of State is the primary agency in international cooperation and assistance efforts, working with the U.S. Agency for International Development (USAID) and the Department of Labor. Finally, the Department of Justice prosecutes violations of 18 U.S.C. § 2442, the federal criminal prohibition on the recruitment or use of certain child soldiers, discussed in ¶¶ 83 and other relevant criminal statutes discussed in ¶¶ 65-71.

11. As discussed in ¶¶ 16 and 17 of the 2008 Written Replies, the primary means of disseminating the principles and provisions of the Optional Protocol to domestic groups, including to law enforcement and the judiciary, is through relevant U.S. domestic law and policy. Recently a memorandum from the Legal Adviser of the U.S. Department of State distributed to all federal agencies by the National Security Council transmitted links to the U.S. Initial Report on the Optional Protocol, as well as the Committee's Concluding Observations, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State's Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body's concluding observations, including those for the Optional Protocol, on its website at <http://www.state.gov/g/drl/hr/treaties/index.htm>. Additionally, the United States is in the process of taking further steps to ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports. All agencies with a role in implementing the Optional Protocol have necessarily become more familiar with provisions of the Optional Protocol in the process of its implementation and in preparing the reports for this Committee. For further discussion of dissemination and training, see ¶¶ 76-79.

12. Where not otherwise specified, the term "child soldiers" refers to children recruited or used in a manner contrary to applicable international law.

## A. Data

### *1. Voluntary recruitment of seventeen-year-olds into national armed forces*

13. In Annex II to its 2008 Written Replies, the United States provided data on individuals voluntarily recruited to U.S. Armed Services, broken out by service, gender, race, and ethnicity<sup>2</sup> for fiscal years 2004 through 2007. Annex 1 to this report provides updated data for fiscal year 2008. Because data collection has changed slightly to conform to revised U. S. Office of Management and Budget guidance concerning the reporting of diversity data, comparative figures in the 2008 format are also included in Annex 1 for fiscal years 2006 and 2007. The data shows that, in the last three years, approximately 76 percent of 17-year-old recruits were male and 24 percent were female. With respect to ethnicity, approximately 11 percent identified themselves as Hispanic; as to race, approximately 80 percent identified themselves as white, 13 percent as African American, 1.3 percent as American Indian/Alaskan Native; 2.2 percent as Asian; 0.6 percent as Native Hawaiian/Pacific Islander, and 3.1 percent as Other. The data shows a total of 70,530 recruits were 17, accounting for approximately 10 percent of recruits to all services.

14. The chart below provides a comparison between these figures and estimates of U.S. demographic data for the United States as a whole provided by the U.S. Census Bureau, based on a 2006-2008 American Community Survey.<sup>3</sup> The data demonstrate that the characteristics of 17-year-old recruits correspond generally to the demographics of the United States as to race and ethnicity. As to gender, males are represented disproportionately in the recruits.

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<sup>2</sup> Information on race and ethnicity was collected pursuant to standards for maintaining, collecting, or presenting data on race and ethnicity established for the federal government by the U.S. Office of Management and Budget (OMB). OMB Statistical Policy Directive No. 15 (Dec. 15, 2000). In publishing revisions to the directive, OMB explained that "[t]he revised standards retain the concept of a minimum set of categories for Federal data on race and ethnicity and make possible at the same time the collection of data to reflect the diversity of our Nation's population." 62 Fed. Reg. 58,782 (Oct. 30, 1997). The Directive limits ethnicity data to whether or not a person identifies him or herself as Hispanic or Latino.

<sup>3</sup> The U.S. Census demographic data is available at [http://factfinder.census.gov/servlet/ACSSAFFacts?\\_submenuId=factsheet\\_1&\\_sse=on](http://factfinder.census.gov/servlet/ACSSAFFacts?_submenuId=factsheet_1&_sse=on).

Demographic Data: 2006-2008

		U.S. Census Estimates: 2006-2008	Seventeen-year-olds Voluntarily Recruited
<b>GENDER</b>			
	Male	49.3%	76%
	Female	50.7%	24%
<b>RACE</b>			
	White	74.3%	80%
	Black or African American	12.3%	13%
	American Indian and Alaska Native	0.8%	1.3%
	Native Hawaiian and Other Pacific Islander	0.1%	0.6%
	Other race	5.8%	3.1%
<b>ETHNICITY</b>			
	Hispanic or Latino (of any race)	15.1%	11%

15. The United States has no record of any 17-year-old member of the U.S. Armed Services being charged with a war crime under either the UCMJ or the U.S. war crimes statute. This is consistent with the fact that, as discussed in ¶¶ 47-51, 17-year-olds do not take direct part in hostilities.

**2. Children in asylum and refugee process**

16. Annexes 2 through 5 to this report provide relevant information available on foreign children under 18 who have sought or are seeking asylum or refugee resettlement in the United States. Although the United States does not collect data specifically on asylum-seekers or refugees who may have been recruited as child soldiers or used in hostilities, it does have information concerning children from countries identified in the UN Secretary-General's report on Children and Armed Conflict (CAAC Report) as having armed forces or groups that recruit or use children in situations of armed conflict.

17. In its 2008 Written Replies, the United States provided information for calendar years 2005-2007 on thirteen countries identified in the December 2007 CAAC Report (A/62/609-S/2007/757, Annexes I and II). The updated information in this Periodic Report includes data for the countries identified in Annexes I and II to the March 2009 CAAC Report for the reporting period September 2007 to December 2008 (A/63/785-S/2009/158 (March 26, 2009)). The 2009 CAAC Report added Iraq to the previous list. Thus, the updated information covers fourteen countries: Afghanistan, Burma (Myanmar), Burundi, Central African Republic, Chad, Colombia, Democratic Republic of the Congo, Iraq, Nepal, Philippines, Somalia, Sri Lanka, Sudan and Uganda.

18. The data provided includes children (under the age of 18) who applied for asylum to the U.S. Citizenship and Immigration Services (USCIS) in the United States or were processed overseas by USCIS or the Department of State for possible admission into the United States as a refugee. These numbers reflect children who applied for asylum or refugee status in their own right; that is, they do not include children who applied for such status as dependents on their parents' applications.



19. Annex 2 to this report provides data for calendar years 2008 and 2009 showing a total of 71 children from the relevant 14 countries filing as principal applicants for asylum in the United States. For 2005-2007 data, see Annex IV to the 2008 Written Replies at p. 32.

20. Annex 3 provides data for calendar year 2008 showing a total of 287 unaccompanied minors who were interviewed by the Department of Homeland Security for refugee status from the relevant 14 countries, of which 249 were approved. For 2005-2007 data, see Annex V to the 2008 Written Replies at p. 37.

21. Annex 4 provides a breakdown of the interviews reported in Annex 3 by gender and age. For 2007 data, see Annex VI to the 2008 Written Replies at p. 38.

22. Annex 5 provides data on children from the relevant 14 countries filing asylum claims in defensive removal proceedings. For calendar years 2008 and 2009 (through October 31, 2009), the Department of Justice's Executive Office for Immigration Review (EOIR), the agency responsible for the adjudication of such claims, encountered a total of 9 claims filed by children in their own right from four of the identified countries (Burma, Colombia, Iraq and Somalia). For calendar years 2005 through 2007, see Annex VII to the 2008 Written Replies at p. 40.

## **B. Human rights institutions**

23. Each of the agencies involved in implementing the Optional Protocol takes its human rights responsibilities seriously. While the United States does not have an independent national human rights institution as such, the United States has a mosaic of offices charged with protecting human rights domestically. These include, for example, the Civil Rights Division at the Department of the of Justice, the U.S. Commission on Civil Rights, the Equal Employment Opportunity Commission, the Office of Fair Housing and Equal Opportunity at the Department of Housing and Urban Development, and the civil rights offices of various agencies such as the Departments of Homeland Security, Health and Human Services, and Education.

24. The Civil Rights Division of the Department of Justice has responsibilities for protecting human rights of all individuals, including children, throughout the United States. The Division was established by the passage of the Civil Rights Act of 1957. Some of the major functions relevant to children are to:

- Investigate and, when warranted by the findings, initiate legal proceedings seeking injunctive and other relief in cases involving discrimination in the areas including education, public accommodations and facilities, federally funded programs, the rights of prisoners, and mentally and physically disabled persons.
- Prosecute violations of criminal statutes that prohibit specified acts of interference with federally protected rights and activities, such as conspiracies to interfere with or deny a certain individual or group of individuals the exercise of these rights.
- Prosecute child labor violations of anti-trafficking statutes, and play a strong role in identifying, protecting, and assisting victims of human trafficking.
- Implement Executive Order 12250, concerning nondiscrimination in federal programs, by studying, reviewing and approving regulatory changes proposed by all federal executive branch agencies as they pertain to civil rights.

- Serve as the principal advisor to the Attorney General on all matters pertaining to civil rights.
- Provide Department representation to, and maintain close liaison and cooperation with, officials and representatives of other divisions, federal agencies, state and municipal governments and private organizations on civil rights issues.

25. As noted above, civil rights offices of other agencies make important contributions to ensuring the protection of human rights at the federal level. One notable example is the Office for Civil Rights and Civil Liberties (CRCL) in the Department of Homeland Security. CRCL provides legal and policy advice to the Department's leadership on a wide range of civil rights and civil liberties issues. It is also charged with investigating and resolving complaints. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, it reviews and assesses information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Office provides information to the public on filing a complaint at [www.dhs.gov/xabout/structure/editorial\\_0373.shtm](http://www.dhs.gov/xabout/structure/editorial_0373.shtm).

26. Finally, the agencies that are engaged in implementing the obligations of the Optional Protocol have independent inspectors general appointed by the President, with the advice and consent of the Senate, pursuant to the Inspector General Act of 1978, as amended. The inspectors general provide another means of monitoring the programs of these agencies to ensure that they reflect all of their intended goals, including human rights issues related to the Optional Protocol.

### **C. Ombudspersons and Child Advocates**

27. A number of states of the United States have established offices of child advocates or ombudspersons, and others are considering establishing such offices to assist in providing oversight of children's services. The website of the National Conference of State Legislatures (NCSL) provides background and other information concerning children's ombudsman offices at [www.ncsl.org/IssuesResearch/HumanServices/ChildrensOmb%20udsmanOffices/tabid/16391/Default.aspx](http://www.ncsl.org/IssuesResearch/HumanServices/ChildrensOmb%20udsmanOffices/tabid/16391/Default.aspx). As explained there, the purpose of these offices is to:

- handle and investigate complaints from citizens and families related to government services for children and families -- this may include child protective services, foster care, adoption and juvenile justice services;
- provide a system accountability mechanism by recommending system-wide improvements to benefit children and families -- often in the form of annual reports to the Legislature, Governor and public. For example, Delaware's Office of the Child Advocate examines policies and procedures and evaluates the effectiveness of the child protection system, specifically the respective roles of the Division of Family Services, the Attorney General's Office, the courts, the medical community and law enforcement agencies; reviews and makes recommendations concerning investigative procedures and emergency responses;

- protect the interests and rights of children and families -- both individually and system-wide; and
- monitor programs, placements and departments responsible for providing children's services -- which may include inspecting state facilities and institutions.

28. Approximately 29 states currently have either an ombudsman or an office of the child advocate with duties and purposes related to the welfare of children and others are in the process of creating such offices. Some of the offices are independent and autonomous while others operate within state government divisions of children and family services.

29. The following states have child advocate offices that are independent and autonomous: Connecticut Office of the Child Advocate ([www.ct.gov/oca/site/default.asp](http://www.ct.gov/oca/site/default.asp)); Delaware (<http://courts.delaware.gov/childadvocate/>); Georgia Office of the Child Advocate (see <http://gachildadvocate.org/02/ca/home/0,2697,84387339,00.html>); Massachusetts Office of the Child Advocate ([www.mass.gov/childadvocate](http://www.mass.gov/childadvocate)); Michigan Office of Children's Ombudsman ([www.michigan.gov/oco](http://www.michigan.gov/oco)); Missouri Office of Child Advocate ([www.oca.mo.gov](http://www.oca.mo.gov)); (New Jersey Office of the Child Advocate ([www.state.nj.us/childadvocate](http://www.state.nj.us/childadvocate)); Rhode Island Office of the Child Advocate: ([www.child-advocate.ri.gov/index.php](http://www.child-advocate.ri.gov/index.php)); Tennessee Commission on Children and Youth ([www.tn.gov/tccy/ombuds.shtml](http://www.tn.gov/tccy/ombuds.shtml)) and Washington Office of Family and Children's Ombudsman ([www.governor.wa.gov/ofco](http://www.governor.wa.gov/ofco)).

30. Legislation in some states provides for especially comprehensive services including, among other things, the ability to initiate litigation against a state agency on behalf of children; inspect, monitor and review foster homes, group homes, juvenile detention centers, residential treatment centers and other state facilities; develop and provide quality training to other state officials, law enforcement officers, the medical community, family court personnel, educators, day care providers, and others on the various standards, criteria and investigative technology; and recommend legislation.

## **II. PREVENTION (arts. 1, 2, 4; para. 2, and art.6; para.2)**

### **A. No Compulsory Recruitment in United States**

31. No compulsory recruitment is currently authorized in the United States. The U.S. Selective Service Act, originally enacted in 1948, was amended to preclude all conscription as of July 1, 1973. 50 U.S.C. app. § 467(c). As the U.S. Supreme Court noted in 1981, "any actual conscription would require further congressional action." *Rostker v. Goldberg*, 453 U.S. 57, 60 n.1 (1981). The United States has long limited compulsory recruitment to individuals over 18 into its Armed Services, consistent with Article 2 of the Optional Protocol. 50 U.S.C. app. § 454.

32. Section 3 of the Selective Service Act, 50 U.S.C. App. § 453, nevertheless empowers the President, by proclamation, to require the registration of every male citizen and male resident alien between the ages of 18 and 26. Registration under § 3 was discontinued in 1975 but was reactivated in July 1980 to facilitate any eventual conscription if it became necessary. Presidential Proclamation No. 4771, July 2, 1980. The registration requirement for men 18 to 26 remains in effect today.

33. As explained in ¶ 4 of the 2008 Written Replies, in the view of the United States, Article 2 of the Optional Protocol applies in cases of a state of emergency or armed conflict and would be applicable to any decision by the United States to authorize conscription. By law, any conscription would only apply to those over 18 and would therefore be consistent with the Optional Protocol.

## **B. Safeguards related to voluntary recruitment of seventeen-year-olds**

34. As set forth in ¶ 8, pursuant to Article 3 of the Optional Protocol, the United States filed a declaration with its instrument of ratification with the United Nations establishing 17 as the age for voluntary recruitment into the U.S. armed forces. The declaration, attached to the Initial Report as Annex II, enumerated the general safeguards for such voluntary enlistment. These include written parental consent, a comprehensive briefing and enlistment contract that together specify the duties involved in military service, and reliable proof of age. In fact, the U.S. Senate had conditioned its advice and consent to ratification of the Optional Protocol on the filing of such a declaration. 148 Cong. Rec. S5717 (June 18, 2002).

35. U.S. law establishes that the Secretary of Defense may only accept original enlistments in the Regular Army, Navy, Air Force, Marine Corps or Coast Guard of “qualified, effective, and able-bodied persons who are not less than seventeen years of age . . . .” 10 U.S.C. § 505. Section 505, which also applies to reserve units, provides further that “no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.” To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

36. As explained in the Initial Report, the required briefing for all seventeen-year-old recruits is outlined in Military Entrance Processing Command (MEPCOM) Regulation 601-23, which also includes a list of questions that each applicant must be asked (e.g., do you understand that you are joining the Army for 6 years?). The briefing also defines fraudulent enlistments and associated penalties.

37. In order to verify a 17-year-old recruit's age, the recruiter is required to obtain an original or certified copy of the recruit's birth certificate issued by an official government agency. Parental consent is also required for 17-year-old recruits, and the parents' signatures to the consent must be witnessed and verified by at least two separate sources. Other documents required for enlistment include an original Social Security card and official education credentials. Additionally, an individual who wants to serve must complete a thorough application process. This process occurs over a period of days to weeks and includes the initiation of a security clearance. The interested individual must undergo a thorough medical examination, following medical standards outlined in Department of Defense (DOD) Instruction 6130.4, January 18, 2005, available at [www.dtic.mil/whs/directives/corres/html/613004.htm](http://www.dtic.mil/whs/directives/corres/html/613004.htm), and an interview by a representative of the Military Entrance Processing Command (MEPCOM). MEPCOM is part of the Department of Defense but separate from the Military Service that is attempting to recruit the individual. This interview verifies that the service is truly voluntary and explains the process and commitment in detail. It is only after the successful completion of all of these steps that the individual is allowed to take the oath of enlistment.

38. The possible length of active service varies by Service and by the terms of the agreement signed by the recruit. The shortest term is 2 years of active service, and the longest is

6 years. For the initial enlistment, all recruits must serve a total of eight years (combined active and reserve service), unless discharged sooner or otherwise extended by the appropriate authority. Any part of that service not served on active duty must be served in the Reserve component of the service in which the individual is enlisted. The conditions for early discharge also vary depending on the Service but generally relate to undisclosed medical conditions or other circumstances incompatible with military service.

39. The Military Services use the following primary active-duty enlistment incentives: enlistment bonuses, education benefits through the GI Bill, College Funds (additional incentives that increase the GI Bill benefits), and an education loan repayment program.

40. Every effort is made to ensure that applicants are aware of all aspects involved in a military career. A number of documents providing all necessary information to the recruit are made available. The most important is the enlistment contract itself, which highlights the terms of military service, available at [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0004.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0004.pdf). There are many additional sources officially sponsored by the Department of Defense as well as other organizations. The government-sponsored resources include [www.Todaysmilitary.com](http://www.Todaysmilitary.com), [www.Goarmy.com](http://www.Goarmy.com), [www.navy.com](http://www.navy.com), [www.marines.com](http://www.marines.com), [www.airforce.com](http://www.airforce.com), and [www.nationalguard.com](http://www.nationalguard.com).

41. Once an applicant decides that he or she wants to pursue a military career, he or she can sign a contract, but the individual is free to opt out at any point before beginning basic training.

42. Then Deputy Assistant Secretary of Defense Sandra L. Hodgkinson explained the importance of recruiting consistent with U.S. obligations under the Optional Protocol in her statement to the Committee on May 22, 2008, as follows:

“Since 1973, the U.S. military has been an all-volunteer force. To recruit a professional force, our highly-trained recruiters serve as military ambassadors in their communities, and their integrity and demeanor are of great importance to the Department of Defense. Through clear rules, recruiter training, and rigorous oversight mechanisms, we have been successful in implementing our obligations under the Optional Protocol. . . .

In addition to the thorough training recruiters receive, the military services maintain vigilant oversight of recruiter conduct and discipline, and sanction those few who fail to maintain standards of professionalism.”

43. Recruiters are trained to abide by strict standards of conduct and are trained in their roles and responsibilities, which prohibit the use of coercive measures or deception. In addition, recruiters are expected to remain professional at all times and should prevent any appearance of recruiter impropriety in the recruiting process. Recruiters are prohibited from having personal or intimate relationships with potential applicants; they are prohibited from falsifying enlistment documents, concealing or intentionally omitting disqualifying information, or encouraging applicants to conceal or omit disqualifying information; and they are prohibited from making false promises or coercing applicants.

44. All applicants to the military are given a card or other document with their rights as applicants, including a free telephone number to call with any complaints about the recruitment procedure. Complaints can be made anonymously.

45. Military recruiters are subject to frequent and periodic reviews of their conduct, which they are required to pass. Individual recruiters who violate professional standards are held

accountable under the Uniform Code of Military Justice, as codified in Chapter 47 in title 10 of the United States Code. Article 134, UCMJ (10 U.S.C. § 934) establishes jurisdiction over “all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty.” In addition, Article 133, UCMJ (10 U.S.C. § 933) provides jurisdiction over officers if, under the circumstances, the acts or omissions complained of constitute “conduct unbecoming an officer and a gentleman” (or gentlewoman).

46. The Initial Report ¶¶ 20-25 and the 2008 Written Replies ¶¶ 10-13 provide further information on safeguards applicable to recruiting of seventeen-year-olds, including training and supervision of recruiters and the requirement for semi-annual reporting of “recruiter irregularities.” The number of recruiter irregularities is always small. Since 2006 DOD has prepared annual Recruiter Irregularity Reports in response to a directive to report on “those willful and unwillful acts of omission and improprieties that are perpetrated by a recruiter, or alleged to be perpetrated by a recruiter, to facilitate the recruiting process of any applicant.” It is to be noted that in the most recent report, covering fiscal year 2008, there were just over 500 substantiated claims against recruiters – a rate of less than 2/10<sup>th</sup> of one percent of accessions. While any infraction is unacceptable, 500 claims was the result of more than 23,000 recruiters working to access nearly 325,000 new recruits, and interviewing countless potential recruits. The 2008 report is attached to this report as Annex 6. The 2006 Recruiter Irregularity Report was provided in Annex 3 to the 2008 Written Replies.

### **C. No direct participation in hostilities**

47. Article 1 requires that States Parties 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.” As discussed in its Initial Report, the United States included an understanding in its instrument of ratification on implementation of this obligation as follows:

The United States understands that, with respect to Article 1 of the Protocol—

(A) the term “feasible measures” means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;

(B) the phrase “direct part in hostilities” —

(i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and

(ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and

(C) any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably

available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.

The full text of the instrument of ratification is attached as Annex 1 to the Initial Report.

48. Paragraphs 8-15 of the Initial Report demonstrated that this understanding was based on the negotiating history of Article 1 of the Optional Protocol. During the early stages of negotiations of the Optional Protocol, the United States had generally supported an age 17 standard for direct participation in hostilities because U.S. law and practice were to assign all recruits after basic training, including those aged 17, to a unit, whether or not that unit might be deployed into hostilities. Prior to the January 2000 negotiating session of the Protocol, however, the Department of Defense reviewed its practice and determined that it could execute its national security responsibilities under the obligation of Article 1 of the Protocol, as the terms of Article 1 (with respect to the meaning of ‘all feasible measures’ and ‘take a direct part in hostilities’) are described in the relevant understanding in the U.S. instrument of ratification.

49. To implement the obligations under Article 1 on direct participation in hostilities, each of the U.S. Military Services adopted an implementation plan, as explained in ¶ 17 of the Initial Report. Annex III to the Initial Report provided the implementation plans for each service as approved by the Under Secretary of Defense on January 5, 2003. In ¶¶ 5-7 of its 2008 Written Replies, the United States provided further detailed information on the implementation plans. In fact, the military departments’ policy and procedures go further than the obligations of the Optional Protocol by not assigning service members to units scheduled to deploy operationally to an area of conflict/hostilities until the service member’s eighteenth birthday.

50. As then Deputy Assistant Secretary of Defense Sandra Hodgkinson stated in the U.S. oral presentation to the Committee on May 22, 2008, the Department of Defense has conducted internal reviews of the more than 1.7 million service members who have deployed in support of on-going operations. While there have been 17-year old service members deployed to “hazardous duty pay” or “imminent danger pay” areas, the reviews of data from 2003 to present did not uncover any service member under the age of 18 who had engaged directly in hostilities as the United States understands that term.

51. The Department of Defense policy and practice on the assignment of military members under the age of 18 continues to be consistent with U.S. obligations under the Optional Protocol. In fiscal year 2008, the most recent period for which the United States has data on this issue, internal reviews revealed that Military Departments deployed six military members under the age of 18; however, none of the military members were deployed to the combat zones in Afghanistan or Iraq, or otherwise took direct part in hostilities before turning 18.

- Navy: No sailors under the age of 18 participated in hostilities of any kind. Navy policy is that no sailor under the age of 18 will be assigned to a deploying operational unit. However, if the operational unit is deployed on short notice, the Commander will assess whether the member is directly involved in causing harm to the enemy. Navy deployed two sailors under the age of 18 during FY08; however, neither was deployed to Afghanistan or Iraq. One sailor (previously reported as deployed in the 2008 Written Replies) was 39 days short of his 18<sup>th</sup> birthday when deployed on November 5, 2007, and turned 18 while on deployment. This sailor was in Kuwait. Another sailor was deployed on the USS Roosevelt 41 days short of his 18<sup>th</sup> birthday and turned 18 while underway.

- Army: No soldiers under the age of 18 participated in hostilities of any kind. Army had four soldiers under the age of 18 deployed with operational units to Kuwait during FY08; however, none were deployed to Afghanistan or Iraq. To reinforce the Army policy, all soldiers under the age of 18 deployed in error were returned to the United States shortly after arriving in Kuwait.
- Air Force and Marine Corps: No deployments of military members under the age of 18.

#### **D. Schools operated by or under control of armed forces.**

52. The only educational institutions operated by or under the control of U.S. armed forces are the U.S. Military Academy (West Point), the U.S. Naval Academy, the Air Force Academy, and the Coast Guard Academy. Seventeen is the minimum age for admission to these academies, which provide college level education. *See* 10 U.S.C. § 4346(a) (U.S. Military Academy); § 6958 (U.S. Naval Academy); § 9346 (Air Force Academy). Because entrants into the academies generally have a high school diploma, the number of those under 18 at the time they register in the academy is small.

53. The seventeen-year-old requirement is consistent with the U.S. declaration establishing 17 as the minimum age for voluntary enlistment. The United States notes that, in any event, Article 3(5) of the Optional Protocol provides explicitly that the requirement to raise the age for voluntary recruitment to an age over 15 does not apply to any schools operated by or under the control of the armed forces of the States Parties.

54. Cadets attending the U.S. Military Academy, U.S. Air Force Academy or U.S. Coast Guard Academy and midshipmen attending the U.S. Naval Academy are considered members of their respective military services. *See, e.g.*, 10 U.S.C. § 971(c). Each cadet and midshipman is required to sign an agreement that he or she will complete the course of instruction at the Academy and that, upon graduation from the Academy, the cadet or midshipman will accept an appointment, if tendered, as a commissioned officer in the respective military service and serve for five years. A 17-year-old cadet may sign the agreement only with the consent of a parent or guardian. *See* 10 U.S.C. § 4348(Army), 10 U.S.C. § 6959 (Navy), 10 U.S.C. § 9348 (Air Force) and 14 U.S.C. § 182 (Coast Guard).

55. Each of the services provides by regulation that a cadet leaving the academy before completing his or her first two years of training does not incur any active duty obligation. *See, e.g.*, Department of Defense Directive 1332.23 at 6.1.1.

56. Each of the academies offers four-year college degrees. In August 2009 Forbes magazine issued its annual rating of the best U.S. colleges, compiled by Forbes and the Center for College Affordability and Productivity. The report ranks 600 undergraduate institutions based on the quality of the education they provide, the experience of the students and how much they achieve. The U.S. Military Academy (West Point) ranked #1, the Air Force Academy #7, and the Naval Academy #30. *See* [www.forbes.com/2009/08/02/colleges-university-ratings-opinions-colleges-09-intro.html](http://www.forbes.com/2009/08/02/colleges-university-ratings-opinions-colleges-09-intro.html). Also in August 2009 U.S. News and World Report ranked the U.S. Coast Guard Academy #2 in the category of Best Baccalaureate Colleges in the 11 most northeastern states of the United States for the third consecutive year. *See* <http://colleges.usnews.rankingsandreviews.com/best-colleges/bacc-north>.



57. Further, the Military Academy, for instance, is accredited by the Middle States Commission on Higher Education, which is the accreditation-granting unit of the Middle States Association of Colleges and Schools. As explained on its website, the Commission is a “voluntary, non-governmental, membership association that is dedicated to quality assurance and improvement through accreditation via peer evaluation. Middle States accreditation instills public confidence in institutional mission, goals, performance, and resources through its rigorous accreditation standards and their enforcement.” *See [www.msche.org/](http://www.msche.org/).*

58. The Military Academy's curriculum has two primary structural features. The first is a solid core of twenty-six courses that the Academy considers essential to the broad base of knowledge necessary for all graduates. This core curriculum, when combined with physical education training and military science, constitutes the Military Academy's "professional major." The second structural feature is the opportunity to specialize and explore an area in depth through the selection of an academic major. This portion of the curriculum is supported by not less than ten courses.

59. The curriculum of each of the academies stresses the development of ethical character. The website of the Naval Academy states, for example:

“Moral and ethical development is a fundamental element of all aspects of the Naval Academy experience. As future officers in the Navy or Marine Corps, midshipmen will someday be responsible for the priceless lives of many men and women and multi-million dollar equipment. From Plebe Summer through graduation, the Naval Academy's Officer Development Program is a four-year integrated continuum that focuses on the attributes of integrity, honor, and mutual respect. One of the goals of this program is to develop midshipmen who possess a clearer sense of their own moral beliefs and the ability to articulate them. Honor is emphasized through the Honor Concept of the Brigade of Midshipmen. These Naval Academy "words to live by" are based on the moral values of respect for human dignity, respect for honesty and respect for the property of others. Brigade Honor Committees composed of elected upper-class midshipmen are responsible for the education and training of the Honor Concept. Midshipmen found in violation of the Honor Concept by their peers may be separated from the Naval Academy.”

*See [www.usna.edu/about.htm](http://www.usna.edu/about.htm).*

60. All Coast Guard cadets must take classes within the Department of Humanities. Courses dedicated to the topic of human rights for Coast Guard cadets are normally taught in the law section, which offers courses in international law. The U.S. Coast Guard Academy also has a relationship with the Carr Center for Human Rights Policy at Harvard, which provides guest speakers and visits coordinated by the Department of Humanities. Furthermore, cadets studying international law study law of war at the Institute for International Humanitarian Law (IHL) in San Remo, Italy and a select few attend the annual competition on IHL among military academies from all over the world.

61. Oversight to ensure that discipline is administered in a manner consistent with the dignity of the cadets and midshipmen is enforced by existing prohibitions against maltreatment contained in Article 93 of the UCMJ as well as in relevant regulations.

62. Independent complaint mechanisms are in place through the chain of command, and under Article 138 of the UCMJ. Under Article 138, UCMJ, a cadet or midshipman (or any other

member of the armed forces) who is refused redress by his commanding officer may have his or her complaint forwarded to the officer exercising general court-martial jurisdiction who must examine the complaint and take proper measures for redressing the wrong complained of, followed by a report to the Secretary of Defense.

#### **E. Armed groups distinct from the armed forces of a State**

63. Article 4 of the Optional Protocol provides that "[a]rmed 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" and that 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." As explained in ¶¶ 27-29 of its Initial Report, the United States included an understanding with its instrument of ratification that "armed groups," in Article 4 of the Optional Protocol, "means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups." In answer to a question concerning recruitment where the government is not involved during the Senate's consideration of the treaty, then Ambassador Michael Southwick explained:

"It is what happens in the Sierra Leones of the world, the Angolas of the world, the Ugandas of the world. And in those situations, you have what are called non-state actors who recruit children, and this is what has been a big phenomenon over the last 10 years, especially in Africa. . . . I am talking about these armed groups that you see in developing countries sometimes. . . ."S. Exec. Rept. 107-4 (June 12, 2002) at 53-54.

64. U.S. law criminalizes insurgent activities by non-governmental actors against the United States, irrespective of age. *See* 18 U.S.C. § 2381 -2390. U.S. criminal law also prohibits the formation of, or participation in, insurgent groups within the United States that have the intent of engaging in armed conflict with foreign powers with whom the United States is at peace. *See* 18 U.S.C. § 960. Furthermore, as discussed in ¶ 83-88, the Child Soldiers Accountability Act of 2008 (CSAA) prohibits knowingly recruiting, enlisting, or conscripting children under the age of 15 or using them to participate actively in hostilities. For purposes of the CSAA, "armed group" is defined to mean "any army, militia, or other military organization, whether or not it is state-sponsored." Although targeted at use of child soldiers outside the United States, the provision could also apply if such an offense occurred within the United States.

65. As noted in ¶ 1 of the 2008 Written Replies, forced recruitment by non-governmental armed groups could violate any number of other state and federal laws, particularly those dealing with abduction or forced labor. For instance, providing or obtaining a person, including a child, for forced labor is specifically prohibited by 18 U.S.C. § 1589, passed as part of the Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386. As amended in 2008, § 1589 criminalizes such action when a person "knowingly provides or obtains the labor or services of a person" by means of (1) force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) serious harm or threats of serious harm to that person or another person; (3) the abuse or threatened abuse of law or legal process; or (4) any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

66. Section 1589(d) provides a penalty of fines and/or imprisonment up to 20 years, or up to life imprisonment if death results from the violation or if it includes kidnapping, attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill. These penalties also apply to anyone who knowingly benefits, financially or by receiving anything of value, from participation in a venture engaged in these activities, knowing or in reckless disregard of the fact that the venture was so engaged.

67. In addition, § 1590, as amended, prohibits anyone from “knowingly recruit[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing] by any means, any person for labor or services in violation of this chapter” (including peonage, slavery, involuntary servitude, forced labor, and trafficking). Section 1590 provides for the same penalties as under § 1589 and imposes these penalties as well on anyone who obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of § 1590.

68. Other provisions of the U.S. Code provide criminal penalties for peonage, enticement into slavery, involuntary servitude and sex trafficking, and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor. 18 U.S.C. §§ 1581, 1583, 1584, 1591, and 1592.

69. Attempts to commit such crimes are punished under 18 U.S.C. § 1594 in the same manner as a completed action. Section 1594 also requires the court to order forfeiture of assets related to commission or attempted commission of the offense. 18 USC § 1593 provides for mandatory restitution of “the full amount of the victim’s losses” for any offense committed under §§ 1581- 1591 (peonage and slavery).

70. Furthermore, the provisions of 18 U.S.C. § 241, the federal civil rights conspiracy statute, prohibit conspiracies to violate the Thirteenth Amendment. The Thirteenth Amendment prohibits slavery and involuntary servitude and has been interpreted broadly. “The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States.” *Pollock v. Williams*, 322 U.S. 14, 17 (1944).

71. In addition to more specific statutes, the federal kidnapping statute criminalizes kidnapping persons, including minors, across state lines. 18 U.S.C. § 1201. Similar statutes exist in every state for kidnapping within the state. Where other aspects of articles of the Optional Protocol are met, these statutes could also be relied on in prosecuting offenders for crimes that would constitute violations of the Optional Protocol. Section 1201 provides for imprisonment up to life and, if the death of any person results, capital punishment or life imprisonment.

## **F. Children especially vulnerable to practices contrary to the Optional Protocol**

72. The United States has reviewed its data on enlistments and can report that it shows no evidence that economic and social status of individuals makes them more or less likely to enlist at any age, and in particular no evidence that it could lead to practices, i.e., enlistment or deployment, contrary to the Optional Protocol. Indeed, any enlistment or deployment contrary to the Optional Protocol would also be contrary to strictly enforced U.S. laws, regulations, and procedures, as discussed in this report. The table in ¶ 14 provides data showing that those who enlist at age seventeen are representative of U.S. society on the basis of race and ethnicity.

73. The Department of Defense (DOD) releases an annual Population Report providing extensive information about applicants and members of the armed services. Among other things,

the demographic data for the enlisted services as a whole show that individuals who are economically disadvantaged are actually underrepresented in the U.S. military. Data showing racial and ethnic distinctions confirms that on this measure the enlisted services are consistent with those of comparable age in the general population. There is no basis to suggest that the military attracts children who are especially vulnerable to practices contrary to the Optional Protocol due to their economic and social status. Population Report 2007 is available at [www.defenselink.mil/prhome/PopRep2007](http://www.defenselink.mil/prhome/PopRep2007). The 2008 report was due to be published in early 2010.

74. The U.S. Agency for International Development, Department of Labor and Department of State have funded projects in foreign countries aimed at protecting particularly vulnerable children, as discussed in Section V.

### **G. Measures taken to prevent attacks on civilian objects protected under international humanitarian law and other international instruments**

75. In response to the Committee's Guidelines, the United States can confirm that U.S. Armed Forces recognize and comply with the U.S. obligation under the laws of war to take all feasible measures to avoid or minimize damages to civilian objects, including schools and hospitals, in armed conflict. The United States strongly supported the UN Security Council Presidential Statement of April 29, 2009, which included a statement urging parties to armed conflicts to “refrain from actions that impede children’s access to education, in particular attacks or threats of attack on school children or teachers as such, the use of schools for military operations, and attacks on schools that are prohibited by applicable international law.” For further discussion of U.S. engagement in UN efforts related to child soldiers, see ¶¶ 165-170.

### **H. Public Awareness and Training**

76. As explained in ¶ 11, the U.S. government is disseminating the text of the Optional Protocol and related material widely at all levels of government and to the public.

77. A number of U.S. agencies provide training and public awareness on the Optional Protocol, including the following:

- As discussed in ¶ 126, U.S. Citizenship and Immigration Services covers the Optional Protocol in training of its asylum officers.
- The Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office) and the Bureau for International Narcotics and Law Enforcement Affairs brief American police, correction officers, border patrol officers, judges, and prosecutors preparing to serve on peacekeeping missions in foreign countries. These briefings include basic awareness about human trafficking, U.S. laws and policies, resources, and relevant international treaty obligations, including those in the Optional Protocol.
- All Department of Defense (DOD) military members and civilian employees are required to take a general awareness trafficking in persons training module available since 2005, provided via the military services’ knowledge-on-line systems. Consistent with the Committee's recommendation, DOD is adding training on the Optional Protocol to the existing trafficking training modules. This training will

be required of all Military and Civilian personnel annually. Overseas Combatant Commands provide theater/country specific training.

- As discussed in ¶ 89, the Child Soldiers Prevention Act of 2008 (CSPA) requires instruction on matters related to child soldiers and the substance of the legislation as part of the standard training program provided to chiefs of mission, deputy chiefs of mission, and other foreign service officers who are or will be involved in the assessment of child soldier use or the drafting of the annual Human Rights Report. In 2009, the Department of State disseminated information throughout the Department, including to U.S. embassies overseas, regarding the requirements under the CSPA. In addition, the Department of State updated its Human Rights Report reporting instructions, provided training specific to these provisions to editors and drafters of the Human Rights Report (discussed in ¶¶ 95-100), and hosted a panel for Department employees and interagency partners during DRL's annual Human Rights and Labor Officers' Conference in July 2009. The Optional Protocol is included in these training sessions.
- In September 2008, the Department of State's Bureau of Democracy, Human Rights, and Labor (DRL) co-hosted a Policy Forum on Children in Armed Conflict with the U.S. Institute of Peace. The purpose of this Policy Forum was to contribute to a deeper understanding of the problem of child soldiering, and the emerging global trends and its implications for policy and programming, as well as to develop a common understanding of the best policies and practices to effectively address the problem and improve the programs currently in place.

78. The United States also funds projects in foreign countries that include important public awareness components; *see* Section V of this Report.

79. Finally, as noted in the 2008 Written Replies, the United States has a vibrant, sophisticated and active civil society. Although the U.S Government does not monitor the training and dissemination of the Optional Protocol by civil society groups, there are many organizations and institutions of civil society that are vigorously engaged on issues relevant to the Optional Protocol.

### **III. PROHIBITION AND RELATED MATTERS (art. 1, 2, 4, paras. 1 and 2)**

#### **A. Regulations and criminal legislation covering and defining acts in Articles 1 and 2**

80. As indicated in ¶ 9, at the time the United States ratified the Optional Protocol, it determined that its existing laws and policies were adequate to implement its obligations.

81. In 2008 the United States augmented that legal framework through enactment of two new statutes: the Child Soldiers Accountability Act of 2008, Public Law No. 110-340, enacted October 3, 2008, and the Child Soldiers Prevention Act of 2008, enacted as Title IV of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law No. 110-457, December 23, 2008.

82. In a statement released September 17, 2008, the Special Representative of the UN Secretary General for Children and Armed Conflict Radhika Coomaraswamy welcomed the new U.S. legislation, stating that "the global fight against impunity for the recruitment and use of child soldiers will be strongly enhanced by the implementation of both acts." *See*

[www.un.org/apps/news/story.asp?NewsID=28094&Cr=children&Cr1=armed+conflict&Kw1=COOMARASWAMY&Kw2=&Kw3=](http://www.un.org/apps/news/story.asp?NewsID=28094&Cr=children&Cr1=armed+conflict&Kw1=COOMARASWAMY&Kw2=&Kw3=)

83. The Child Soldiers Accountability Act of 2008 (CSAA) created both criminal and immigration sanctions for persons recruiting or using child soldiers under the age of 15. As Senator Dick Durbin noted: “The use of children as combatants is one of the most despicable human rights violations in the world today and affects the lives of hundreds of thousands of boys and girls who are used as combatants, porters, human mine detectors and sex slaves. The power to prosecute and punish those who violate the law will send a clear signal that the U.S. will in no way tolerate this abhorrent practice.”

84. The Act amended the U.S. criminal code to add a provision that prohibits knowingly “recruit[ing], enlist[ing], or conscript[ing] a person to serve while such person is under 15 years of age in an armed force or group” or “us[ing] a person under 15 years of age to participate actively in hostilities,” knowing the person is under 15 years of age. 18 U.S.C. § 2442. Whoever violates, or attempts or conspires to violate, this prohibition is subject to a fine or imprisonment of up to 20 years or both and, if death of any person results, may be fined and imprisoned up to life. Section 2442 provides jurisdiction over the offense if (i) the alleged offender is a U.S. national or lawful permanent resident; (ii) the alleged offender is a stateless person whose habitual residence is the United States; (iii) the alleged offender is present in the United States, irrespective of nationality; or (iv) the offense occurs in whole or in part within the United States.

85. For purposes of the Act, “armed force or group” is defined to mean “any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association.” “Participate actively in hostilities” is defined to mean taking part in—

- (A) combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or
- (B) direct support functions related to combat, including transporting supplies or providing other services.”

86. Prosecution of the offense is generally subject to a ten year statute of limitations. Depending on the circumstances of the recruitment, however, the period of limitations may be further extended. For instance, 18 U.S.C. § 3283, “Offenses against Children,” provides that no statute of limitations shall preclude prosecution during the life of the child, or for ten years after the offense, whichever is longer, for “an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years.”

87. In addition, the CSAA amended the Immigration and Nationality Act to add grounds of inadmissibility (8 U.S.C. § 1182(a)(3)(G)) and deportability (8 U.S.C. § 1227 (a)(4)(F)) for “[a]ny alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18 . . . .”

88. There have been no prosecutions under this statute in the short period since its enactment.

89. Also enacted in 2008, the Child Soldiers Prevention Act of 2008 (CSPA), effective June 20, 2009, prohibits specific types of military assistance (Foreign Military Financing, International Military Education and Training, and Excess Defense Articles Programs) and licenses for direct commercial sales of military equipment to governments that are identified by

the Secretary of State as having “governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers.” 22 U.S.C. § 2370c-1.

90. For purposes of the CSPA, “child soldier” is defined to mean

- “(i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;
- (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;
- (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or
- (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state;”

and includes any person described in clauses (ii), (iii), or (iv) who is “serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or sex slave.” 22 U.S.C. § 2370c.

91. The CSPA requires that the Secretary of State include a list of the foreign governments identified as having violated the standards of the Act and subject to sanctions in the annual Trafficking in Persons report prepared under 22 U.S.C. § 7107(b) and discussed in ¶ 101 and formally notify the governments so identified. The first list will be included in the 2010 report. The President may waive the prohibitions as to a country if he determines such waiver is in the national interest of the United States. The President may also provide certain assistance to governments to support and encourage improved performance in this area. Specifically, the President may provide otherwise prohibited international military education, training, and nonlethal supplies assistance to a country for no more than five years if he certifies that the government of such country is taking reasonable steps to implement effective measures to demobilize child soldiers in its forces or in government-supported paramilitaries and to provide demobilization, rehabilitation, and reintegration assistance to the former child soldiers; and that the assistance provided will go to programs that will directly support professionalization of the military. In addition, the President may reinstate assistance that would otherwise be prohibited if he certifies that a government identified by the Secretary has implemented measures that include an action plan and actual steps to come into compliance with the standards set forth in the CSPA and implemented policies and mechanisms to prohibit and prevent future government or government-supported use of child soldiers and to ensure that no children are recruited, conscripted, or otherwise compelled to serve as child soldiers.

92. The CSPA further requires U.S. missions abroad to thoroughly investigate reports of the use of child soldiers and include in the annual U.S. Human Rights Reports, in addition to information on child soldiers already required, a description of the use of child soldiers in each foreign country. The description is to include trends toward improvement in each country or the continued or increased tolerance of such practices and the role of the government of each country engaging in or tolerating the use of child soldiers. 22 U.S.C. § 2370c-2. For further discussion of the annual Human Rights Reports, see ¶¶ 95-100.

93. Finally, the CSPA requires, as part of the standard training program provided to chiefs of mission, deputy chiefs of mission, and other foreign service officers who are or will be involved in the assessment of child soldier use or the drafting of the annual Human Rights

Report, instruction on matters related to child soldiers and the substance of the Act. This training is being carried out, as noted in ¶ 77.

94. In addition, the United States integrates human rights considerations, including the use of child soldiers, as part of the standard review for provision of international security assistance. Specifically, 22 U.S.C. § 2304 prohibits provision of security assistance to any country the government of which engages in a “consistent pattern of gross violations of internationally recognized human rights,” except in specified extraordinary circumstances, and specifically requires the Secretary to prepare a report on human rights, including use of child soldiers, in presenting the Department’s appropriations requests for each fiscal year.

95. In compliance with this requirement (and a similar requirement in 22 U.S.C. § 2151n(d)(11)), the Department of State annually submits the *Country Reports on Human Rights Practices* (Human Rights Reports) to the U.S. Congress. Copies of the reports released for calendar years 1999 through 2009 are available at [www.state.gov/g/drl/rls/hrrpt](http://www.state.gov/g/drl/rls/hrrpt).

96. The Human Rights Reports are a key component of the integration of human rights into U.S. foreign policy. U.S. law, 22 U.S.C. § 2304(a)(1), provides that the United States

“shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.”

97. Section 2304(b) requires Human Rights Reports to address:

- “(i) wherever applicable, a description of the nature and extent of the compulsory recruitment and conscription of individuals under the age of 18 by armed forces of the government of the country, government-supported paramilitaries, or other armed groups, the participation of such individuals in such groups, and the nature and extent that such individuals take a direct part in hostilities,
- (ii) what steps, if any, taken by the government of the country to eliminate such practices, and
- (iii) such other information related to the use by such government of individuals under the age of 18 as soldiers, as determined to be appropriate by the Secretary of State. . . .”

Under the CSPA, the reports will also address trends toward improvement in each country of the status of child soldiers or the continued or increased tolerance of such practices; and the role of the government of such country in engaging in or tolerating the use of child soldiers.

98. Section 2304(b) also requires consideration to be given to “(1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and (2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of internationally recognized human rights.”



99. The reports are used as a resource for shaping policy, conducting diplomacy, and making assistance, training, and other resource allocations. They also serve as a basis for the U.S. government's cooperation with private groups to promote the observance of internationally recognized human rights. The Overview to the 2008 Human Rights Report, released February 25, 2009, described the extensive efforts employed in preparing the reports each year:

“Our overseas U.S. missions, which prepared the initial drafts of the reports, gathered information throughout the year from a variety of sources across the political spectrum. These sources included government officials, jurists, the armed forces, journalists, human rights monitors, academics, and labor activists. . . .

[In reviewing and finalizing the reports], the Bureau of Democracy, Human Rights and Labor, in cooperation with other Department of State offices drew on their own sources of information. These included reports provided by U.S. and other human rights groups, foreign government officials, representatives from the United Nations and other international and regional organizations and institutions, experts from academia, and the media. Officers also consulted with experts on worker rights, refugee issues, military and police topics, women's issues, and legal matters. The guiding principle was to ensure that all information was assessed objectively, thoroughly, and fairly.”

100. The 2008 Human Rights Reports, released February 25, 2009, draw attention to the problem of child soldiering in countries throughout the world, including information on the illegal recruitment and use by both State and non-State actors. The report provides information on the recruitment and use of child soldiers by government and rebel groups in, among others, Chad, the Democratic Republic of the Congo, and the Sudan; insurgent groups in Afghanistan and Sri Lanka, and guerillas and paramilitary groups in Colombia.

101. Section 110 of the Trafficking Victims Protection Act (TVPA) of 2000 also restricts certain non-humanitarian and non-trade-related foreign assistance to a country that, according to the State Department's annual Trafficking in Persons Report, does not fully comply and is not making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking in persons as outlined in the TVPA, subject to a Presidential waiver. The United States considers unlawful child soldiering to be a unique and severe manifestation of trafficking in persons where it involves the unlawful recruitment of children through force, fraud or coercion for labor or sexual exploitation in conflict areas. For FY 2009, sanctions were imposed on Burma in part because of “reports that some children have been involuntarily conscripted into the Burmese Army for the purpose of forced labor.” Presidential Determination 2009-5, October 17, 2008. For FY 2010, the use of child soldiers was cited in imposing sanctions on Chad and Sudan as well as Burma. Presidential Determination 2009-29, September 29, 2009, available at [www.state.gov/g/tip/rls/other/2009/129276.htm](http://www.state.gov/g/tip/rls/other/2009/129276.htm).

102. The United States does not believe there are any legislative provisions that significantly impede its implementation of the obligations it assumed under the Optional Protocol.

## **B. Status of specific treaties**

103. The United States became a party to International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) on December 2, 2000.

104. Additional Protocol II to the 1949 Geneva Conventions (1977) remains before the U.S. Senate pending its advice and consent to ratification. The United States has taken no steps to ratify Additional Protocol I.

105. The United States is examining its policies concerning the International Criminal Court but does not currently have plans to pursue becoming a State Party to the Rome Statute of the International Criminal Court.

## **C. Criminal liability of legal persons such as private military and security companies**

106. U.S. law does not specifically address the liability of corporations. Nevertheless, in appropriate cases corporations have been held criminally liable for the acts of its employees or agents if the employees' or agents' acts (1) lie within the scope of employment and (2) are motivated at least in part by an intent to benefit the corporation (see *United States v. Sun Diamond*, 138 F.3d 961, 970 (D.C. Cir. 1998)). Liability has in appropriate cases been imputed to the corporation even though the employee's conduct was not within the employee's actual authority (provided it was within his "apparent authority") and even though it may have been contrary to the corporation's stated policies (see *United States v. Hilton Hotels, Inc.*, 467 F.2d 1000, 1004 (9th Cir. 1972)). Thus, when appropriate, corporations could be held criminally responsible for violations of criminal laws by its employees and agents when these conditions are met.

107. As indicated in ¶ 15 of the 2008 Written Replies, private security companies contracted by the Departments of State and Defense to protect U.S. government personnel or others in areas of ongoing combat operations are not part of the U.S. Armed Forces and are not authorized to engage or participate in offensive combat operations. Nonetheless, at a minimum these armed contractor personnel must be at least 21 years old, and properly vetted, a fact that is verified by the Departments as part of a mandatory resume review and certification process. Such private security companies are also required by their contract to comply with all applicable law and government regulations.

## **D. Jurisdiction over offenses**

108. Although the Optional Protocol imposes no obligation to criminalize violations of State Party obligations set forth in Articles 1 and 2, and the requirement under Article 4 applies only if feasible, the United States has extensive jurisdiction under its recently enacted criminal statute over the recruiting or use of child soldiers under the age of 15, 18 U.S.C. § 2442, as discussed in ¶¶ 83-85.

109. Furthermore, members of the U.S. military are subject to prosecution in state or federal civilian courts for violations of relevant state and federal laws, including those covering

offenses under the Optional Protocol, as discussed in paragraph 60 of Part IV of the Manual for Courts-Martial of the United States,<sup>4</sup> or tried by a U.S. military court-martial. Under the Uniform Code of Military Justice (UCMJ), jurisdiction exists for any person who, at the time of the offense, is subject to Article 2 of the UCMJ, regardless of where the offense is committed (within the United States or overseas) and whether the person is on or off duty, and whether or not the offense is committed on or off a military installation. *See* Rule for Courts-Martial (R.C.M.) 201, MCM at II-9. Article 2 includes, among others, active duty personnel, cadets, aviation cadets, and midshipmen, certain retired personnel, and members of Reserve components not on active duty under some circumstances.

110. As explained in ¶ 2 of the 2008 Written Replies, the U.S. war crimes statute (18 U.S.C. § 2441) establishes extraterritorial jurisdiction over various war crimes if the perpetrator or the victim of the crime is a U.S. national or a member of the U.S. Armed Forces. The statute incorporates or refers to specific provisions of the four Geneva Conventions of 12 August 1949, the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land, and the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II). Although it does not incorporate or refer to the Optional Protocol, depending upon the circumstances, the manner in which children are recruited, used, or treated in hostilities could constitute prohibited conduct under the statute.

111. The United States has not exercised its jurisdiction over unlawful child recruitment as a war crime as a violation of any of these laws.

## **E. Extradition and mutual legal assistance**

112. Under U.S. law, with very limited statutory exceptions, an extradition treaty is required for extradition from the United States. 18 U.S.C. §§ 3181-3196. The two exceptions to the requirement for a treaty are set forth in 18 U.S.C. § 3181(b), providing for extradition of non-U.S. nationals to stand trial for violent crimes committed against U.S. nationals abroad, and 18 U.S.C. § 3181 note, providing for extradition to the International Criminal Tribunals established by the United Nations Security Council with respect to Rwanda and the former Yugoslavia.

113. The United States has entered into nine extradition treaties since becoming a State Party to the Protocol, for a total of more than 120 extradition treaties currently in force; additional treaties may come into force for the United States in the near future. All such treaties incorporate the concept of dual criminality, which requires that, for an offense to be extraditable, it must be punishable under the laws of both States, usually for a minimum period of more than one year or a more severe penalty. In the United States, the offenses covered by the Protocol satisfy this standard and are therefore extraditable if they also meet the standard under the Requested State's laws.

114. The administration of international extradition requests by the United States is carried out by the U.S. federal government on behalf of federal, state, and local prosecuting authorities. Where another country requests an extradition from the United States, the United

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<sup>4</sup> The Manual for Courts-Martial (MCM) of the United States implements by Presidential Executive Order the Uniform Code of Military Justice (UCMJ; chapter 47 of title 10, United States Code). The MCM consists of its Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures, with supplementary materials. The MCM is available at [www.jag.navy.mil/documents/MCM2008.pdf](http://www.jag.navy.mil/documents/MCM2008.pdf).

States represents the requesting country before a U.S. judge or magistrate. Extradition proceedings in the United States are neither wholly criminal nor wholly civil although they are informed by principles from both. At its core, the extradition hearing in the United States is designed to determine whether there is “probable cause” to believe a crime was committed and whether the offense was committed by the defendant. Extradition treaties also provide rules with respect to, among other things, when a fugitive can be arrested prior to receipt of a full extradition request (“provisional arrest”) and the grounds on which extradition may be denied or postponed.

115. United States law and policy do not provide for refusal of extradition on the basis of nationality.

116. International cooperation with the United States regarding exchange of information and evidence may be conducted in a number of ways, including through mutual legal assistance treaties, letters rogatory or letters of request, executive agreements, and multilateral instruments. In addition, a number of less formal mechanisms for exchange of information and evidence exist.

117. With respect to formal means of sharing and exchanging evidence and information, particularly where compulsory process is required, an efficient process is through modern Mutual Legal Assistance Treaties (MLATs). The United States has MLATs with more than 50 countries and could offer assistance to and request assistance from those countries to the extent provided for under each MLAT. Pursuant to U.S. MLATs, treaty partners have an international legal obligation to provide assistance, and Central Authorities in the Executive Branch of each government are designated to make and receive requests under the treaty. While MLATs may differ in scope, these treaties in general encompass a wide range of legal assistance – even at the early stages of an investigation – in order to prevent, investigate and prosecute offenses. Often, except with respect to the most intrusive forms of cooperation such as search and seizure, U.S. MLATs do not require dual criminality of offenses before assistance can be granted.

118. Executive agreements are similar to mutual legal assistance treaties, although they are usually more limited in scope than MLATs, may provide for limited forms of mutual legal assistance, or may be confined to specific subjects. Certain multilateral treaties also provide an alternative means of providing mutual legal assistance among those countries that have ratified them for the offenses covered.

119. If no formal mutual legal assistance treaty exists between particular countries (and no other formal arrangement applies), a request may be made through the use of letters rogatory or, in a limited number of countries, in a manner prescribed by the domestic law of the country from which the assistance is sought. In some States, a “letter of request” can be used, which – unlike a letter rogatory – does not require approval by a judge of the Requesting State. In each case, the requested court has no obligation to provide the assistance; it is solely a matter of judicial discretion and comity. In the United States, in the absence of a treaty, 28 U.S.C. § 1782 permits a U.S. district judge to order the production of evidence for a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.

120. The United States has no record of any instances of requests for extradition or mutual legal assistance involving issues related to child soldiers.

#### **IV. PROTECTION, RECOVERY AND REINTEGRATION (art. 6, para.3)**

121. The obligations of Article 6(3), addressed in Section IV of the Committee Guidelines, require States Parties to 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 and, when necessary, accorded appropriate assistance for physical and psychological recovery and other social reintegration.” As indicated in ¶ 32 of the U.S. Initial Report, the U.S. military does not recruit or use children in hostilities contrary to the Protocol, nor do we allow armed groups to do so. Therefore, the United States has not had reason to take such measures.

122. As discussed in ¶¶ 21-27 of the 2008 Written Replies, however, some children who were recruited or used in situations of armed conflict in foreign countries in violation of other States Parties' obligations under the Optional Protocol may be eligible for asylum or refugee admission based on their shared past experience as child soldiers.

123. Children who are arriving or physically present in the United States who have previously been recruited or used in hostilities may be eligible for asylum under U.S. law if they have suffered persecution or have a well-founded fear of persecution on account of a protected characteristic (race, religion, nationality, membership in a particular social group or political opinion) consistent with the 1951 Convention relating to the Status of Refugees, made applicable to the United States through accession to its 1967 Protocol. Where individuals are targeted for forced recruitment because they are viewed as desirable combatants, however, generally there is no nexus between the forced recruitment and a protected characteristic. See *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

124. Even where the harm a child suffers is recognized as persecution, every asylum applicant must also meet all other requirements of the asylum law, and assessment of these requirements must be made on a case-by-case basis. As discussed in ¶¶ 23-27 of the U.S. 2008 Written Replies, children, like adults, who have been recruited or used in situations of armed conflict may be inadmissible to the United States for reasons related to national security and terrorism-related activities. Immigration and Nationality Act (INA) § 212(d)(3)(B)(i). Because most armed resistance organizations would meet the definition of a “terrorist organization” under the INA, a child’s association with, or activities on behalf of, these organizations may affect that child’s eligibility for asylum or refugee admission although certain discretionary exemption authority may apply. Recruitment of children by a State, on the other hand, would not likely implicate the terrorism-related grounds of inadmissibility. Additionally, where an applicant for asylum or refugee admission, whether a child or an adult, ordered, incited, assisted, or otherwise participated in the persecution of any person, that applicant may be barred from a grant of asylum or refugee admission.

125. The best interests of the child principle does not play a direct role in determining substantive eligibility under the U.S. refugee definition; nonetheless, it is a useful measure for determining appropriate interview procedures for child asylum seekers.

126. U.S. Citizenship and Immigration Services (USCIS) Asylum Division includes in its training material for asylum officers a discussion of relevant international instruments, including the Optional Protocol, to be considered, as applicable, in adjudicating a child’s asylum claim. Asylum Officer Basic Training Course: Guidelines for Children's Asylum claims, available at [www.uscis.gov/files/article/AOBTC\\_Lesson\\_29\\_Guidelines\\_for\\_Childrens\\_Asylum\\_Claims.pdf](http://www.uscis.gov/files/article/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims.pdf). The Guidelines specifically draw attention to the forcible recruitment of children to participate in military combat in some countries in violation of international law.

127. Procedures for the consideration of asylum claims are designed to ensure that all asylum applicants have their cases heard within a reasonable period of time. The majority of asylum applications adjudicated by the USCIS Asylum Division are completed within 60 days of

filing the application. The United States believes that appropriate measures are in place to ensure that those asylum-seeking children who may have been unlawfully recruited or used in hostilities will be identified at an early stage and, if eligible, be granted asylum.

128. The U.S. Department of Health and Human Services Office of Refugee Resettlement's Unaccompanied Refugee Minors (URM) program provides foster care and supportive services to unaccompanied refugee children resettling in the United States, as well as those with final grants of asylum. Services provided are designed to address children's past experience of conflict. For example, training and post-placement support for foster parents addresses migration from conflict-torn regions, trauma, and social integration needs. Preservation of ethnic and religious heritage is a component of case planning, pursuant to regulation, as is health screening and treatment. Case plans also address mental health needs as necessary, as a matter of Office of Refugee Resettlement policy. Children who are found to have been recruited or used in hostilities would receive child-specific counseling to promote their recovery, for example, and may receive specialized placement, according to their needs. Depending on location, the state, the county or a private agency accepts custody or guardianship for unaccompanied refugee children before they turn 18 years old. Social integration is promoted through cultural orientation, English language training, education, and participation in activities designed to support acquisition of skills for independent living and self-sufficiency.

## **V. INTERNATIONAL ASSISTANCE AND COOPERATION (art. 7, para. 1)**

### **A. Assistance in foreign countries**

129. As explained in the U.S. Initial Report, the United States has contributed and continues to contribute substantial resources to international programs aimed at preventing the recruitment of children and at reintegrating child ex-combatants into society. In its programmatic commitments, the United States applies a definition of child ex-combatants that covers any child unlawfully used or recruited by fighting forces in any capacity, whether or not he or she ever bore arms, rather than singling out for separate services former child combatants. It also espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants. *See* Initial Report at ¶¶ 34-36.

130. The United States is engaged on a number of fronts in providing international assistance and strengthening international cooperation in preventing activities contrary to the Protocol and in the recovery and reintegration of child victims. Examples of projects funded by the U.S. Agency for International Development and the Department of State are provided here.

#### ***1. U.S. Agency for International Development (USAID)***

##### **Colombia**

131. Since 2001 USAID has provided a total of \$13,800,000 to support the reintegration of former child combatants in Colombia. The program was implemented by the Colombian Government's Institute for Child Welfare and the International Organization for Migration (IOM). In addition to services, the reintegration program established the status of former child combatants as protected victims of war. Increasing emphasis was given to socio-economic reintegration and to the prevention of recruitment, particularly among Afro-Colombian and indigenous populations, who are particularly at risk. In addition, public awareness has been raised through social communication strategies that include radio programming, television,

public forums, conferences and even comic books that discuss recruitment and the role of community participation and commitment towards prevention.

132. Programming costs have been shared among the Government of Colombia, USAID, and other bilateral donors. There are now three reception centers, seven specialized attention centers, one youth house, and four regional networks of home-placement options. As of December 2008, the program had benefited 4,079 ex-combatant youth and has accomplished the following results: 787 youths reunited with their families; 4,471 received vocational training and income generation assistance; 1,702 employment opportunities were created and 3,734 scholarships for superior education were provided. Nine Reference and Opportunity Centers currently serve some 1,710 beneficiaries.

133. With \$800,000 of funding from USAID's Displaced Children and Orphans Fund (DCOF), the IOM supported 3,843 Afro-Colombian children in 2008. The project sought to prevent recruitment among children and youth by increasing access to educational, vocational training, citizen participation and strengthening community and cultural ties. The two main program components include: 1) Reintegration, e.g., reception, evaluation, job skills training, education, health, culture and recreation, and 2) recruitment prevention including legal framework and support to Afro-Colombian and indigenous groups.

134. Beginning in December 2008, USAID undertook the final phase of the Support to Ex-combatant Children Program. The key goals of this \$8,000,000 program are to provide assistance to underage ex-combatants, conduct prevention training in 150 priority municipalities, and increase the capacity of the Government of Colombia (GOC) so as to enable it to assume complete managerial and financial responsibility for the program beginning in 2011. To assist in this effort, the GOC and IOM have identified the crucial need to develop a comprehensive prevention program in the Pacific strip, including the Departments of Nariño, Cauca, Valle, Chocó, and Tolima. Accordingly, DCOF will provide \$2,000,000 for prevention activities with Afro-Colombian and indigenous populations through 2011.

135. This new project has three areas of activity:

1) Support for participatory and developmental activities for 10,000 children and youth:

The program will promote the active participation of Afro-Colombian and indigenous children and youth in developing recruitment prevention plans with their own communities and community leaders. Ten thousand children and youth will benefit from access to increased educational and economic opportunities, as well as cultural and sports initiatives that will strengthen the protective factors of their community and schools. The project will support a Children and Youth Clubs strategy, which implements pedagogical methodologies that promote better use of free time; provide academic reinforcement and develop leadership and citizenship skills. The project will promote positive social roles based on indigenous and Afro-Colombian traditions and culture. It will address the economic vulnerability for recruitment of its at-risk population through vocational and jobs skills training and support to individual and family productive projects;

2) Strengthen cultural, family and community ties as protective factors:

To foster a protective environment for at-risk, indigenous and Afro-Colombian children and youth, the project will strengthen community social and economic support networks by supporting initiatives that promote ethnic identity, values and traditions. Food insecurity is an important risk factor for recruitment by illegal armed groups (IAG) in the Colombian context, and the project will improve food security in target at-risk

communities through activities that integrate traditional agricultural production practices with animal husbandry, micro-enterprise, health, education, improved local governance, and sustainable environment practices. It will also design and implement a radio campaign to provide indigenous and Afro-Colombian authorities, families and teachers with training in children's legal rights, access to health, education and other institutional services; and

3) Support key Government of Colombia (GOC) agencies and public policies that directly support Afro-Colombian and Indigenous communities:

The project will provide technical assistance to public institutions at the local level in target communities. By helping mayors and city councils meet their responsibilities under local law, the project encourages effective public policies, establishes local working groups and increases public investment in recruitment prevention. Technical assistance will also be provided to monitor and evaluate the implementation of the National Plan for the Prevention of Children and Youth Recruitment in target areas. Training workshops will take place with the participation of approximately 200 civil servants and decision makers. Radio outreach activities will generate dialogue on recruitment risks and threats and concerns of children/youth, parents, organizations and local authorities. The dialogue can result in concrete interventions that create skills and foster networks to help the community protect its children against unlawful recruitment by IAG.

136. The anticipated results include benefiting 10,000 children from recruitment prevention activities, training 200 civil servants in child recruitment prevention, and involving 100 youth leaders in social policy committees. It will also strengthen key Colombian institutions by providing support to 80 youth clubs, 40 technical agricultural institutes, implementing 40 maps of vulnerability risk and opportunity, and conducting 5 radio outreach campaigns.

#### Democratic Republic of Congo (DRC)

137. For the period January 1, 2008 through December 31, 2009, USAID provided \$891,000 in funding to a project in the DRC to be implemented by the UN Children's Fund (UNICEF) and Cooperazione Internazionale (COOPI). The goal of the project is to ensure the safe reintegration of 800 abductees and other survivors of sexual violence, including child victims of sexual exploitation and forced recruitment (often 14 years and under) into their families and communities in Ituri District, northeast DRC, and to prevent further abduction, sexual violence and recruitment. In calendar year 2008, a total of 1,905 (1,039 girls; 866 boys) vulnerable children (including children separated from armed forces and groups, violence and sexual exploitation) were identified through the project. Funding was provided by USAID's Victims of Torture Fund and the Displaced Children and Orphans Fund.

138. The project seeks to withdraw children as soon as possible from situations of vulnerability. By placing these children in interim-care centers, they receive appropriate medical and psychosocial care, along with a package of educational, recreational and vocational training activities. Durable family reunification is the aim after family tracing and mediation.

139. The project also aims to contribute to prevent further abduction, recruitment and sexual exploitation of children through the sensitization of local communities and authorities. The project will also provide children with vocational training, education and income generating activities as an alternative to affiliation with armed groups and sex work.



140. Specific project activities in 2008 included the following:

- Identification of child victims of abduction, recruitment, sexual violence and exploitation;
- Advocacy for the release of children who are still present in armed groups and forces;
- Verification, certification and separation of children from armed groups and forces;
- Medical screening and provision of medical and psycho-social assistance to children newly separated from armed forces and groups, as well as other victims of sexual violence and exploitation;
- Maintenance of a data base on children separated from armed forces and groups to facilitate tracking of children through the DDR process;
- Family tracing and reunification of children, as well as mediation and follow-up to ensure that the reunification is durable;
- Support for the socio-economic reintegration of children formerly associated with armed groups and forces, and others victims of abduction and gender-based violence, through vocational training and income-generating activities, in collaboration with community-based organizations;
- Support for children formerly associated with an armed force or group and child survivors of sexual violence to return to school;
- Community support groups to facilitate reintegration of survivors and to change community attitudes that enable sexual violence and violence against children;
- Reinforcement of local partners' capacities in the provision of assistance to women and child victims of abduction, gender-based violence and recruitment, by improving their skills in investigation, listening and reporting; and
- Awareness raising activities within communities and with local authorities on child protection and the prevention of child recruitment and sexual violence, including new initiatives like radio programs and street theater using the methodology of the Theater of the Oppressed.

141. Among the children identified by COOPI and its partners as having been associated with an armed force or group, 109 children who were living in extremely difficult circumstances and in urgent need of protection were admitted to one of two transit centers in Bunia and Kpandroma or placed with one of 15 foster families. In addition, 4,176 vulnerable children were provided with reintegration support to improve their economic potential while reducing their vulnerability.

142. 236 children were reunited with their families. Medical screening was conducted for 1,639 children, and 666 were treated in clinics in Bunia and Kpandroma. A total of 738 girls were referred to MSF hospital and to Rwankole (MEDAIR) Bunia for gynecological treatment related to sexual abuse (including 8 cases of fistula). Psychosocial support was provided for 1,988 children.

143. Prevention activities included awareness sessions held by the leaders of 22 NGOs and 27 local committees for 30,218 participants. These included discussions and debates, cultural activities, parades, and community days. Students participated in 353 radio programs.

144. The development of local children's clubs funded by the project has proved effective in providing psychosocial support and helping to de-stigmatize former child soldiers.

145. The project also funded “Child protection for children associated with armed groups and other vulnerable children” by Dr. Ian Clifton-Everest. A market study and an evaluation of income generating activities were also conducted in order to develop more targeted approaches in the program.

#### Sri Lanka

146. USAID has provided \$250,000 to UNICEF Sri Lanka for the period February 2009-January 2010 to support a project to prevent recruitment and reintegrate former child soldiers in Sri Lanka. The geographic focus of the project is three conflict-affected districts in the east: Ampara, Trincomalee and Batticaloa. The beneficiaries are expected to include some 700 children (boys and girls) affected by armed conflict, including child victims of the conflict and children recruited by armed groups or at risk of recruitment. UNICEF has projected that this will include approximately 200 boys and girls who will benefit from reintegration assistance and 500 boys and girls who have been victims of the conflict and will benefit from recruitment prevention activities in their communities.

147. The first objective of the project is to develop a flexible and appropriate mechanism at district and national levels to release children from different armed groups. The Commission General for Rehabilitation has increased capacity to support the release, rehabilitation, and reintegration of children leaving the armed groups. Proposed activities include supporting the Rehabilitation Commissioner to reinforce policies and procedures for children who want to surrender, supporting the roll out and enforcement of the new emergency regulation, advocacy meetings with State and non-state actors, and facilitation of an official release and demobilization process.

148. The second objective is to provide released children from the TMVP (Tamil Makkal Viduthalai Pulikal) and other affected children in communities in the east with protective care and link them to reintegration services. Proposed activities include providing, reinforcing, and coordinating reintegration support, including follow-up, psychosocial support, access to school, vocational training, and livelihood support. Children at risk of recruitment or re-recruitment with special protection needs are to be provided access to protective services at the district level. Accommodation/rehabilitation centers are planned in Trincomalee and Batticaloa.

149. The third objective is to strengthen community-based protection networks for prevention of child rights violations, and making referrals to appropriate services and authorities. Proposed activities include mobilization of community groups for prevention and protection, and support for children and youth clubs.

#### Uganda

150. From mid-1999 through August 2007, USAID supported four projects in northern Uganda and to a lesser extent in western Uganda that addressed needs among children who had been abducted and used by insurgent groups and managed to escape. These projects also provided some assistance to other war-affected children. The activities included operating reception centers for former abductees, addressing psychosocial needs, arranging family reunification, and supporting educational access for children. The funding provided by USAID's Displaced Children and Orphans Fund (COF) totaled \$4,200,000. The principle implementing agencies included Associazione Volontari per il Servizio Internazion (AVSI), Redd Barnett, and the International Rescue Committee.

151. The situation has changed significantly in northern Uganda and many of those who have lived for years in camps for the displaced are moving out and beginning to re-establish themselves. Continuing its support in northern Uganda, \$3,700,000 has been provided to support a portion of the Stability Peace and Reconciliation in Northern Uganda Project (SPRING) with the aim of benefitting vulnerable children, including former abductees. The project is being implemented by the Emerging Markets Group with support from AVSI for the period December 14, 2007-December 13, 2010. Its objectives include peace-building and reconciliation, economic security and social inclusion, and access to justice. SPRING's key implementation tool is the Stability Fund. A small grants program that provides funding for community-led development activities focused on social inclusion and economic security. Specifically, it aims to enable 95% of children 7-18 years to go to school and 80% of children in its targeted households to have at least two meals per day. The project plans to include former child combatants, other conflict-affected children, orphans, and children with disabilities. The intention is to include these children without singling them out while simultaneously collecting data such that the beneficiaries can be disaggregated so as to better understand these vulnerable groups of children.

### Sierra Leone

152. A project funded in Sierra Leone since 2002 continues to analyze data comparing children who were demobilized and stayed for a time in one of the interim care centers operated by the International Rescue Committee with a group of children that had not been part of any fighting force and with self-reintegrated former child soldiers. The Displaced Children and Orphans Fund provided \$69,000 to support this research.

### Washington Network on Children and Armed Conflict (WNCAC)

153. USAID's DCOF and Search for Common Ground jointly convene quarterly WNCAC meetings, which began in July 2004. WNCAC is an interdisciplinary and open community of practitioners and scholars that shares information on the myriad issues affecting children in conflict. The group seeks to connect diverse actors from different sectors to promote information exchange on programming and policy issues, developments in the field, resources, and good practices.

154. Former child soldiers were a focus of several meetings during 2008, including: (1) December 12, 2008, "Child Soldiers & Small Arms"; (2) September 26, 2008, "Theories of Youth Violence & Mobilization Strategies"; and (3) June 9, 2008, "Women and girls affected by war in northern Uganda."

## ***2. Department of State***

### Uganda

155. In 2006 the Department of State Office to Combat and Monitor Trafficking in Persons (TIP Office) provided \$160,000 in funding to a two-year International Rescue Committee (IRC) program to provide for the reintegration of formerly abducted children and young adults used in armed conflict in the Kitgum and Pader regions in Uganda. Through this project, two Reception Centers provided services to formerly abducted children and young adults including emergency care during the transition phase, assistance in tracing and informing the children's families, reuniting the children with family and community, and providing follow-up support.

156. Results reported by the IRC indicate that the flow of returnees has been slower than hoped for, due to delays in the peace agreement and the release of abductees by the Lord's Resistance Army. The IRC partners have followed the improved procedure for integrating 40+ formerly abducted children and young adults and they continue to facilitate successful reintegration. Some challenges have been reported, including the stigmatization of returnees, both boys and especially girls, which has interfered with community acceptance of some children.

#### Chad

157. The TIP Office provided \$210,000 in funding for a one-year UNICEF program, which ends in May 2010. Under the terms of a previously signed agreement, UNICEF will work with the Government of Chad to prevent the recruitment of children into armed forces. UNICEF will also assist the government with a national program to release children from armed groups, offer them support, and then reintegrate them into their communities. There will be increased work at the community level with local and religious leaders to ensure the successful reintegration of these children. UNICEF will work closely with a local NGO, the Chadian League of Human Rights (LTDH), to ensure training of army officers, help prevent recruitment, and convey the message that these children are victims entitled to community support. Finally, UNICEF will increase its trafficking in persons partnerships with both local and international organizations.

#### Burundi and Democratic Republic of Congo

158. Finally, the TIP Office recently provided \$900,000 to the Heartland Alliance for Human Needs and Human Rights, which includes a component to provide services to children who are forced participants in armed conflict. Heartland Alliance's Great Lakes Regional Anti-Trafficking Protection Partnership (GRAPP) is a three-year project to provide protection, recovery and reintegration services to victims of trafficking in Burundi and the South Kivu Province in the Democratic Republic of Congo (DRC). This project will significantly expand trafficking victim identification in both Burundi and the South Kivu Province; it will provide victims with access to emergency shelter; it will provide high-quality mental health and medical services; it will support economic reintegration through vocational skills building; and it will support victim repatriation and reintegration. Over three years, this project will screen at least 500 suspected trafficking victims in the region. It is expected that at least 200 identified victims will receive a comprehensive service package including protection assistance, counseling, medical care, repatriation assistance and economic empowerment services. GRAPP will link to other projects to combat trafficking in both Burundi and the DRC, filling critical gaps in the provision of victim services in the region.

159. From 2008-2009, the Department of State's Bureau of Democracy, Human Rights and Labor (DRL) funded a project in Burundi to reintegrate former child soldiers. The principal goal of this project was to foster a multi-disciplinary approach to reintegrating child soldiers, particularly girl soldiers subjected to sexual exploitation, by promoting collaboration between justice sector actors, defense lawyers and paralegals, and NGOs that provide services to former child soldiers.

160. DRL currently funds a project in Burundi, implemented from 2008 through 2011, to assist in the reintegration of former female child soldiers. The goals of this project are to offer

comprehensive care to these former child soldiers; train mental health, legal, and medical professionals to work with highly traumatized individuals; and build a support network to foster the reintegration of children, adolescents, and young adults into Burundian society.

### Sri Lanka

161. DRL also currently funds a project in Sri Lanka, implemented from 2009 through 2012, to focus on enhancing livelihood opportunities for former child soldiers in Sri Lanka. The goal of this project is to offer counseling specific to the needs of former child soldiers and residential vocational training for them in the areas of tailoring, catering, carpentry, and electrical wiring, as well as training in life skills and literacy and languages.

## **B. Small arms and light weapons**

162. The United States recognizes that the proliferation of illicit conventional weapons, including small arms and light weapons (SA/LW), in regions of the world suffering from political instability and violent conflict in places like Afghanistan, Liberia, Sierra Leone, Sudan, and Colombia, has contributed significantly to the deaths and displacement of thousands of innocent civilians, many of them children.

163. The United States is involved in multilateral and bilateral efforts specifically addressing small arms and light weapons. On December 3, 2007, for instance, the Department of State announced that the United States and the Caribbean Community (CARICOM) countries had “pledged to enhance regional cooperation to prevent, combat, and eradicate the illicit trafficking in small arms and light weapons in the region.” The press statement on that date explained that “[i]llicit trafficking in small arms and light weapons poses a serious threat to the security of the Western Hemisphere because this thriving black market provides weapons to terrorist groups, drug traffickers, gangs, and other criminal organizations.” See <http://2001-2009.state.gov/r/pa/prs/ps/2007/dec/96143.htm>. The United States annually observes International Small Arms Destruction Day, initiated by the United Nations in 2001, as part of its ongoing efforts to reduce armed violence and support the rule of law around the world. In its 2009 announcement commemorating the day, the Department of State provided the following information on its efforts in this area:

“Since 2001, the U.S. Department of State’s Bureau of Political-Military Affairs has invested over \$110 million dollars to help destroy over 1.3 million small arms and 50,000 tons of ammunition and other conventional weapons around the world, plus over 30,000 at-risk man-portable air-defense systems (MANPADS) that might have posed a threat to global aviation when in the hands of terrorists or insurgents.

The United States takes this opportunity to call for all States to continue implementing relevant UN and regional instruments on the illicit trade in SA/LW such as, amongst others: the UN Program of Action on the Illicit Trade in Small Arms and Light Weapons in All its Aspects; The International Instrument on Tracing of SA/LW; and recommendations made by the UN Group of Governmental Experts to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.”

164. The Child Soldiers Prevention Act of 2008, discussed in ¶¶ 89-94, would prohibit the trade and export of small arms and light weapons as well as military assistance to governments where children are involved in armed conflict where the requirements of the statute are met.

### **C. Engagement in UN efforts related to child soldiers**

165. Following release of a statement by the President of the Security Council on behalf of the Security Council on children and armed conflict on April 29, 2009, Ambassador Susan Rice, U.S. Permanent Representative to the United Nations, stressed U.S. support for efforts to protect children from harm in combat zones, as excerpted below. The full text of Ambassador Rice's statement is available at [www.usunnewyork.usmission.gov/press\\_releases/20090429\\_081.html](http://www.usunnewyork.usmission.gov/press_releases/20090429_081.html).

“Madame President, the situations in Sudan, Sri Lanka, the DRC, and elsewhere remind us how much more still remains to be done. One worthwhile step would be expanding the list of triggers for the monitoring and reporting mechanism authorized by Security Council Resolution 1612 to include rape and sexual violence against children, as well as killing and maiming. As the Secretary-General's report shows, the rate of such crimes against children in combat zones has increased alarmingly.

The United States fully supports such an expansion of these triggers. We applaud the Security Council for soon endorsing today's Presidential Statement pointing toward the same goal and we look forward to the Council's further action on this matter.

Finally, the Secretary-General's report reminds us that some governments and militias are repeat offenders—entities that persist in illegally recruiting and using child soldiers in defiance of the will of the international community.

Where armies and militias that depend on children to fill their ranks do not change their ways, this Council has the authority and the responsibility to consider taking appropriate measures.

The U.S. is determined to do its part. Our support for international organizations such as UNHCR, UNICEF and the ICRC helps meet the needs of refugees and others whose lives have been uprooted by conflict, including the youngest victims of war.

We are also working with our NGO partners to provide education and other programs to meet the needs of children and adolescents in conflict zones and give them hope for a better future.

Madame Minister, the Security Council and the international community have made noteworthy progress together, but we must not stop now.

We share the responsibility to protect all of the world's children and provide them with a future of promise and opportunity, not one of war and abuse. We have heard the moving stories of such former child soldiers as young Grace [Akallo]—who was here today—Ishmael Beah, and Emmanuel Jal. Let their escapes from terror and despair become the rule for children in armed conflict, not remarkable exceptions. Let their survival and success motivate us all—and spur us to do more.”

166. The United States strongly supported and vigorously advocated for the subsequent adoption of Security Council Resolution 1882, “Children and Armed Conflict,” on August 4,

2009, which “[s]trongly condemn[ed] all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access by parties to armed conflict and all other violations of international law committed against children in situations of armed conflict.” Among other things, Resolution 1882 expanded the criteria for listing parties in the annexes to the annual Secretary General’s report beyond the unlawful recruitment and use of child soldiers to include rape and sexual violence against children and killing and maiming of children in combat zones in violation of applicable international law, as urged in Ambassador Rice’s statement.

167. The United States also supported the adoption in June 2009 of the Child Protection Policy Directive by the UN Department of Peacekeeping Operations (DPKO) to mainstream child protection into peacekeeping missions, including the appointment of child protection advisors where appropriate. The United States has advocated for several UN peacekeeping mandates to include the appointment of such advisors, e.g., the UN Mission in the Democratic Republic of Congo (MONUC). Under the policy, welcomed by the Security Council in Resolution 1882, DPKO “shall ensure that the protection of children affected by armed conflict is systematically addressed throughout the stages of mission planning, mission design, and mandate implementation.” “[R]ecruitment and use of children by armed forces and groups” is specifically identified as one of the violations committed against children which is to be considered.

168. The United States is an active participant in the UN Security Council Working Group on Children and Armed Conflict established pursuant to Security Council Resolution 1612. It participates in negotiations regarding country conflict situations that include countries identified in the annexes of the Secretary-General’s annual report on Children in Armed Conflict as having armed forces or groups that recruit or use child soldiers in situations of armed conflict. Based on the adoption of Resolution 1882, the annexes of future reports will also include countries and parties to conflict verifiably engaged in rape and sexual violence and/or killing and maiming of children in armed conflict in violation of applicable international law. The resulting conclusions documents include recommendations for actions by parties to armed conflict to address issues related to children and armed conflict.

169. The United States has engaged directly with the Office of the Special Representative of the Secretary-General for Children in Armed Conflict and other U.S. agencies to coordinate efforts on child soldier issues. This has included facilitating two visits to Washington, D.C. by the Special Representative.

170. In response to the Committee's Guidelines, the United States can state that the Secretary-General has never identified any situation in the United States in the annexes of his annual report on Children and Armed Conflict in accordance with the monitoring and reporting mechanism established in Security Council Resolution 1612 (2005). The Special Representative of the Secretary General on Children and Armed Conflict welcomed recent U.S. legislation. *See* ¶ 83.

## **VI. OTHER LEGAL PROVISIONS (art. 5)**

171. The United States recognizes that the Optional Protocol is only one of a number of important treaties contributing to the realization of the rights of the child. As to child soldiers, ILO Convention No. 182; the Optional Protocol on Sale of Children, Child Pornography, and

Child Prostitution; and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children reinforce the goals of the Optional Protocol on Children in Armed Conflict. The United States is party to all of these treaties.

172. The Optional Protocol is enforced in U.S. courts through its domestic law. As this report has demonstrated, U.S. domestic law is fully consistent with U.S. obligations under the Optional Protocol.

173. As to ratification of other treaties identified by the Committee, see ¶¶ 103-105.



## Part II

### **United States Response to Specific Recommendations by the Committee on the Rights of the Child Optional Protocol on the Involvement of Children in Armed Conflict**

In its Concluding Observations regarding the Initial Report of the United States on the Optional Protocol on the Involvement of Children in Armed Conflict, the Committee on the Rights of the Child (Committee) requested that the United States provide responses to its specific recommendations. U.N. Doc. CRC/C/OPAC/USA/CO/1 (Committee's Concluding Observations). The Committee's specific recommendations and the U.S. responses to them are provided below.

As a preliminary matter, the United States appreciates the ongoing dialogue with the Committee on the issues identified in the Committee's Concluding Observations. Many of these issues are also covered in the Committee's Revised Guidelines Regarding Initial Reports, CRC/C/OPAC/22, which guided U.S. preparation of its Periodic Report, included as Part I of this submission. Rather than repeating material provided in the Periodic Report in those instances, the United States has provided a brief response here, with cross-references to further information on the relevant topic in the Periodic Report. For issues not addressed in the Periodic Report, Part II provides a full response.

#### **Committee Recommendation ¶ 7:**

**“7. The Committee recommends that the State party review with a view to withdrawing its understandings of the provisions of the Optional Protocol in the interest of improving the protection of children in situations of armed conflict.”**

#### **U.S. Response to ¶ 7:**

A copy of the U.S. understandings included in its instrument of ratification is attached to the Initial Report as Annex I. The United States maintains its position with regard to the understandings contained in its instrument of ratification and believes that it has a clear record of implementing its obligations under the Optional Protocol to protect children in situations of armed conflict. For further discussion of the U.S. understandings, see the U.S. Periodic Report at ¶¶ 47-48 and 63, as well as ¶ 8 concerning the U.S. declaration.

#### **Committee Recommendation ¶ 9:**

**“9. The Committee encourages the State Party to provide training on the Optional Protocol to all members of its armed forces, in particular those involved in international operations, including on the obligations in articles 6, paragraph 3, and 7.”**

#### **U.S. Response to ¶ 9:**

As noted in ¶ 121 of the Periodic Report, the obligations of article 6 (3) do not apply to the United States because the United States does not recruit or use persons in hostilities in

contravention of its obligations under the Optional Protocol. Nevertheless, as indicated in ¶ 77 of the Periodic Report, the Department of Defense and other agencies have incorporated training on the Optional Protocol into annual training for military and civilian personnel. Paragraphs 122-128 of the Periodic Report set forth actions taken by the United States with regard to children in U.S. asylum and refugee programs who were recruited or used in situations of armed conflict in foreign countries in violation of other States Parties' obligations under the Optional Protocol. As to article 7, ¶¶ 129-161 of the Periodic Report demonstrate that the United States is actively involved in international cooperation and assistance in preventing activities contrary to the Protocol and in the rehabilitation and social reintegration of persons in foreign countries who are victims of acts contrary to the Protocol.

**Committee Recommendation ¶ 10:**

**“10. The Committee recommends that further training on the provisions of the Optional Protocol be provided for professionals dealing with children, in particular teachers, migration authorities, police, lawyers, judges, military judges, medical professionals, social workers and journalists.”**

**U.S. Response to ¶ 10:**

As explained in ¶ 11, the U.S. government is disseminating the text of the Optional Protocol and related material widely at all levels of government and to the public. Within the U.S. government, the Department of Homeland Security provides training on the Optional Protocol to its asylum officers. Training provided by the Departments of State, Defense, and Homeland Security is discussed in ¶¶ 77-79 and 126 of the U.S. Periodic Report. See also training included in international assistance and coordination in ¶¶ 129-161 of the U.S. Periodic Report.

**Committee Recommendation ¶ 12:**

**“12. The Committee recommends that the State party ensure that disaggregated data, by sex and ethnicity, is available on voluntary recruits under the age of 18. Furthermore, the Committee recommends the State party to establish a central data collection system in order to identify and register all children present within its jurisdiction who may have been recruited or used in hostilities. In particular, the Committee recommends the State party to ensure that data is available regarding refugee and asylum-seeking children who have been victims of such practices.”**

**U.S. Response to ¶ 12:**

Updated disaggregated data on voluntary recruits under the age of 18 is provided in ¶¶ 13-14 and Annex 1 to the U.S. Periodic Report.

As noted above, the United States does not recruit or use persons in hostilities in contravention of its obligations under the Optional Protocol. It does not have a central data collection system for the purpose of identifying and registering all children present within its jurisdiction who may have been recruited or used in hostilities in foreign countries. Given the

shared responsibilities between U.S. federal and state governments, such information would be extremely difficult to obtain. However, updated information available on refugee and asylum applications of children from countries with groups identified in the annexes to the UN Secretary-General's 2009 report on Children and Armed Conflict is provided in ¶¶ 19-22 and Annexes 2-5.

**Committee Recommendation ¶ 14:**

**“14. The Committee recommends the State party ensure that its policy and practice on deployment is consistent with the provisions of the Optional Protocol.”**

**U.S. Response to ¶ 14:**

U.S. policy and practice on the assignment of military members under the age of 18 continues to be consistent with U.S. obligations under the Optional Protocol to “take all feasible measures” to ensure that members of their armed forces under age 18 do not take “a direct part in hostilities.” As discussed in ¶¶ 47-51 of the U.S. Periodic Report, each of the services promulgated plans to implement this obligation in January 2003. Those plans are attached to the Initial Report as Annex III. In fact, the military departments’ policy and procedures go further than the obligations of the Optional Protocol by not assigning service members to units scheduled to deploy operationally to an area of conflict/hostilities until the service member’s eighteenth birthday. Although a few individuals were deployed overseas before reaching their eighteenth birthday, contrary to established policy due to administrative error, none of these individuals took direct part in hostilities and most were returned to the United States.

**Committee Recommendation ¶ 16:**

**“ 16. The Committee encourages the State party to review and raise the minimum age for recruitment into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard.”**

**U.S. Response to ¶ 16:**

Consistent with the requirement in Article 3(1) of the Optional Protocol to raise the minimum age for voluntary recruitment above age 15, the United States has established 17 as the minimum age for voluntary recruitment into its armed forces and filed a declaration to that effect pursuant to Article 3(2) with its instrument of ratification. The United States has reviewed its policies and has confirmed that adequate safeguards are in place to protect 17-year-olds interested in serving. It has no plans to raise the age of voluntary recruitment to 18. For further discussion of safeguards, see ¶ 8 and ¶¶ 34-46 of the U.S. Periodic Report.

**Committee Recommendation ¶ 17:**

**"17. The Committee recommends that the State party ensure that recruitment does not occur in a manner which specifically targets racial and ethnic minorities and children of low-income families and other vulnerable socio-economic groups. The Committee underlines the importance that voluntary recruits under the age of 18 are adequately**

**informed of their rights, including the possibility of withdrawing from enlistment through the Delayed Entry Program (DEP).”**

**U.S. Response to ¶ 17:**

As discussed in the Periodic Report in ¶¶ 14 and 72-73 and Annex 1, U.S. recruitment efforts result in a military force that is representative of the United States as a whole. Economically disadvantaged individuals are actually underrepresented in our military, and race and ethnicity data show our recruits are on par with youth of comparable age in the general population.

As indicated in ¶ 41, all seventeen-year-olds have the ability to withdraw from enlistment at any time prior to beginning basic training. The U.S. military is an all-volunteer force. It would be inconsistent with that concept to order or force unwilling individuals to fulfil their contractual agreement to enter active duty, including those in the Delayed Entry Program (DEP).<sup>5</sup>

**Committee Recommendation ¶ 18:**

**“18. The Committee furthermore recommends that the content of recruitment campaigns be closely monitored and that any reported irregularity or misconduct by recruiters should be investigated and, when required, sanctioned. In order to reduce the risk of recruiter misconduct, the Committee recommends the State party to carefully consider the impact quotas for voluntary recruits have on the behaviour of recruiters. Finally, the Committee recommends the State party to amend the No Child Left Behind Act (20 U.S.C., sect. 7908) in order to ensure that it is not used for recruitment purposes in a manner that violates the children’s right to privacy or the rights of parents and legal guardians. The Committee also recommends the State party to ensure that all parents are adequately informed about the recruitment process and aware of their right to request that schools withhold information from recruiters unless the parents’ prior consent has been obtained.”**

**U.S. Response to ¶ 18:**

As demonstrated in ¶¶ 34-46 of the U.S. Periodic Report, the United States takes its responsibilities in adhering to recruitment requirements seriously. Recruiting is the heart of the U.S. military services since it became an all-volunteer force in 1973. Individual recruiters who violate professional standards are held accountable under the Uniform Code of Military Justice. The 2008 Military Recruiter Irregularity Report in Annex 6 illustrates the extremely low incidence of misconduct--less than .2%-- discussed in ¶ 46 of the Periodic Report.

The United States has considered the possible impact of the quotas on the behavior of recruiters and believes that the recruiting standards in place and the potential individual liability of recruiters for violations provide adequate safeguards.

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<sup>5</sup> The DEP is a program under which an individual may enlist in a reserve or inactive component of a Military Service and specify a future reporting date for entry on active duty in the active component. This future date generally coincides with availability of training spaces and with personal plans such as high school graduation.

The United States confirms that the No Child Left Behind Act, 20 U.S.C. § 7908, authorizes military recruiters access to the names, addresses, and telephone listings of secondary school students attending schools in local educational agencies (LEAs) receiving financial assistance under the Elementary and Secondary Education Act. *See also* 10 U.S.C. § 503. These statutes also authorize military recruiters to have the same access to secondary school students as LEAs provide to other prospective employers, as well as colleges and universities.

At the same time, the scope of the statutes is limited and well-defined in restricting and protecting access to information by military recruiters. In addition to limiting the kind of information available to military recruiters, a parent or student may request that a student's name, address, and telephone listing in secondary school are not disclosed without prior parental consent.

LEAs are required to notify parents annually that the school routinely discloses this information to military recruiters upon request, unless a parent requests not to have this information disclosed without his or her written consent. The notification must advise the parent how to opt out of the disclosure of this information and the method and timeline within which to do so.

In 2002, after the legislation went into effect, the Secretaries of Education and Defense jointly issued a letter and guidance notifying all states of these provisions, available at [www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02c.html](http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02c.html). The letter and enclosed guidance described the law's restrictions and protections, including the requirement for LEAs to notify parents of their right to indicate that this information should not be disclosed without their consent. *See* [www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html](http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html). The 2002 guidance also included a model notice that could be used by LEAs or schools to notify parents of their option to choose not to have this information disclosed. The Deputy Secretary of Education and the Under Secretary of Defense jointly sent a letter to all chief state school officers in 2003 to clarify these provisions, again noting the importance of the fact that parents may opt out of schools providing information about their children to military recruiters, available at [www.ed.gov/policy/gen/guid/fpco/pdf/ht070203.pdf](http://www.ed.gov/policy/gen/guid/fpco/pdf/ht070203.pdf).

In 2004 and again in 2006, the National Forum on Education Statistics, a cooperative federal-state-local body sponsored by the National Center for Education Statistics, published a resource document for schools about the privacy of student information, the *Forum Guide to the Privacy of Student Information: A Resource for Schools*. The publication discusses a number of issues relating to the privacy of student information, including what information would be provided to military recruiters and the fact that parents have the right to notify a school not to disclose information that otherwise would be provided to military recruiters. *See* <http://nces.ed.gov/pubs2006/2006805.pdf>

The Department of Education's Family Policy Compliance Office (FPCO) is the cognizant office for these student privacy and access provisions. FPCO annually notifies LEAs of their responsibilities with regard to ensuring parental rights under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). In that yearly letter, FPCO also reminds LEAs about the requirement to provide student contact information to military recruiters only on those students whose parents have not opted out. *See* [www.ed.gov/policy/gen/guid/fpco/pdf/pprasuper.pdf](http://www.ed.gov/policy/gen/guid/fpco/pdf/pprasuper.pdf). A model notice concerning disclosure of directory information under FERPA and provision of student contact information under the military recruiters provision is included in this annual letter. This notice also informs parents of their right to opt out. *See* [www.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html](http://www.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html).

FPCO also routinely responds to requests for guidance from school officials, as well as parents, about these requirements. Should problems arise involving military recruiters, FPCO notifies appropriate officials in the Department of Defense. However, FPCO rarely receives complaints about these provisions or their implementation.

#### **Committee Recommendation ¶ 20:**

**“20. The Committee recommends the State party ensure that any military training for children take into account human rights principles and that the educational content be periodically monitored by the federal Department of Education. The State party should seek to avoid military-type training for young children.”**

#### **U.S. Response to ¶ 20:**

In its observations, the Committee referred specifically to the Junior Reserve Officers’ Training Corps (JROTC), and suggested that it was offered to children as young as 11. As the Committee recognizes, the existence of the JROTC program does not constitute recruitment into U.S. national armed forces and does not violate any obligations under the Optional Protocol. The United States also notes that references to JROTC courses for children below high school age are not accurate. Where courses similar to JROTC exist for pre-high school students, they have been created by local education authorities and are not affiliated with the U.S. military.

Pursuant to 10 U.S.C. § 2031, JROTC programs are established at public and private secondary educational institutions that apply for a unit and meet criteria set forth in the statute. The school bears half the cost of the program’s implementation, with the military providing the rest of the funding, most of which goes to pay salaries of military retirees running the program in the school. The military retirees are qualified by the military to instruct; however, because the instructors are hired by the local school, the school has control over the program’s execution.

By law, JROTC’s purpose is to “instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.” See [www.usarmyjrotc.com/jrotc/dt/2\\_History/history.html](http://www.usarmyjrotc.com/jrotc/dt/2_History/history.html). As explained in a history of the program available on the U.S. Army website,

“The JROTC Program has changed greatly over the years. Once looked upon primarily as a source of enlisted recruits and officer candidates, it became a citizenship program devoted to the moral, physical and educational uplift of American youth. Although the program retained its military structure and the resultant ability to infuse in its student cadets a sense of discipline and order, it shed most of its early military content.

The study of ethics, citizenship, communications, leadership, life skills and other subjects designed to prepare young men and women to take their place in adult society, evolved as the core of the program. More recently, an improved student-centered curriculum focusing on character building and civic responsibility is being presented in every JROTC classroom.”

*Id.*

Students in JROTC are not members of or otherwise affiliated with any U.S. military service. High school graduates who have participated in JROTC can choose to voluntarily enlist

at age 17 or older, as can any other individual, and with all of the safeguards provided for the recruitment of anyone who is 17. Although their JROTC experience may give them certain benefits in recruit training, those benefits are only available if they have graduated from high school, consistent with the program goal of promoting completion of secondary school education.

**Committee Recommendation ¶ 22:**

**“22. In order to strengthen protection measures for the prevention of the recruitment of children and their use in hostilities, the Committee recommends that the State party:**

- (a) Ensure that violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly criminalized in the State party’s legislation. In this regard, the State party is recommended to expedite the enactment of the Child Soldier Accountability Act of 2007;**
- (b) Consider establishing extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State Party;**
- (c) Ensure that military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol.”**

**U.S. Response to ¶ 22:**

As discussed in ¶¶ 83-88 of the Periodic Report, in 2008 the United States enacted the Child Soldier Accountability Act, creating both criminal and immigration sanctions for persons recruiting or using child soldiers under the age of 15. The Act provides jurisdiction over the offense if (i) the alleged offender is a U.S. national or lawful permanent resident; (ii) the alleged offender is a stateless person whose habitual residence is the United States; (iii) the alleged offender is present in the United States, irrespective of nationality; or (iv) the offense occurs in whole or in part within the United States. U.S. law does not generally provide jurisdiction over offenses occurring outside U.S. territory against U.S. nationals and the Act does not do so.

All military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol.

**Committee Recommendation ¶ 23:**

**“23. The Committee recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further improve the protection of children’s rights.”**

**U.S. Response to ¶ 23:**

The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

**Committee Recommendation Paragraph 24:**

**"24. Furthermore, the Committee recommends that the State Party consider ratifying the following international instruments, already widely supported in the international community:**

- (a) The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;**
- (b) The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977;**
- (c) The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997."**

**U.S. Response to ¶ 24:**

As indicated in ¶ 104 of the Periodic Report, Additional Protocol II to the 1949 Geneva Conventions (1977) remains before the U.S. Senate pending its advice and consent to ratification. The United States has taken no steps to ratify Additional Protocol I.

The United States has no plans to become party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, but is a party to Amended Protocol II of the Convention on Certain Conventional Weapons, which regulates the employment of anti-personnel land mines.

**Committee Recommendation ¶ 25:**

**"25. The Committee, consistent with its practice in this regard, invites the State party to reconsider its position in relation to the Rome Statute of the International Criminal Court, 2001."**

**U.S. Response to ¶ 25:**

As indicated in ¶ 105 of the U.S. Periodic Report, the United States is examining its policies concerning the International Criminal Court but does not currently have plans to pursue becoming a State Party to the Rome Statute of the International Criminal Court.

**Committee Recommendation ¶ 27:**

**"27. The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving to the United States of America who may have been recruited or used in hostilities abroad by taking, inter alia, the following measures:**

- (a) Identify at the earliest possible stage those refugee and asylum-seeking children who may have been recruited or used in hostilities abroad;**
- (b) Recognize the recruitment and use of children in hostilities as a form of persecution on the grounds of which refugee status may be granted;**



- (c) Improve the access to information, including help lines, for children who may have been recruited or used in hostilities, reinforce the legal advisory services available for them and ensure that all children under 18 years are assigned a guardian in a timely manner;**
- (d) Carefully assess the situation of these children and provide them with immediate, culturally and child sensitive multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol;**
- (e) Ensure the availability of specially trained staff within the migration authorities and that the best interests of the child and the principle of non-refoulement are primary considerations taken into account in the decision making process regarding repatriation of such children;**
- (f) Include information on measures adopted in this regard in its next report.”**

**U.S. Response to ¶ 27:**

As discussed in ¶¶ 122-124 of the U.S. Periodic Report, the United States believes that appropriate measures are in place to ensure that children seeking asylum or refugee admission who may have been recruited or used in hostilities will be identified at an early stage and, if eligible, be granted asylum or admission. Consistent with the 1951 Refugee Convention, made applicable to the United States through accession to its 1967 Protocol (Refugee Protocol), refugee and asylum-seeking children who have previously been recruited or used in hostilities may be eligible for asylum if they have suffered persecution or have a well-founded fear of persecution on account of a protected characteristic (race, religion, nationality, membership in a particular social group, or political opinion) and are not otherwise barred from a grant of asylum.

Those involved in the asylum process are especially trained in dealing with children and in recognizing issues such as the recruitment and use of children as soldiers. See ¶¶ 126-128 of the Periodic Report.

As indicated in ¶ 125 of the Periodic Report, the best interests of the child principle does not play a direct role in determining substantive eligibility under the U.S. refugee definition; nonetheless, it is a useful measure for determining appropriate interview procedures for child asylum seekers.

The United States abides by its non-refoulement obligations under the Refugee Protocol for children who meet the criteria for protection as refugees and the Convention Against Torture where applicable.

**Committee Recommendation ¶ 30(a):**

**"30. The Committee recommends that the State party:**

**(a) Ensure that children are only detained as a measure of last resort and that the overall number of children in detention is reduced. If in doubt regarding the age, young persons should be presumed to be children;"**

**U.S. Response to ¶ 30(a):**

Consistent with its efforts to address the use of children in armed conflict, the U.S. Department of Defense has gone beyond the requirement of the Protocol to ensure that our military personnel recognize the special needs of juveniles captured on the battlefield and held in

detention. In the armed conflict in which they are currently engaged, U.S. forces capture and detain individuals who are a part of, or who substantially support, Taliban, al Qaida, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces. Although age is not a determining factor in whether or not the United States detains an individual under the law of armed conflict, the United States goes to great lengths to attend to the special needs of juveniles while they are in detention.

In a conflict where terrorists recruit and exploit children to send them into harm's way deliberately, which often leads to their death, the detention of juveniles becomes an unavoidable necessity and burden. Indeed, the principal rationale for detaining combatants under the law of armed conflict is to protect them and to save lives by preventing them from returning to the fight. These actions show the underlying logic and need for the detention of combatants, even those who may be under the age of 18. Under these circumstances, in detaining juvenile combatants, the United States seeks to restore some hope for their future and to prepare them for reintegration into society.

The United States has gone to great lengths to reduce the number of juveniles held in detention. In Iraq, the United States is releasing or turning over to the custody of the Government of Iraq for prosecution detainees, including juveniles, consistent with the Agreement between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq. As of December 31, 2009, the United States holds fewer than five detainees under the age of 18 in Iraq and Afghanistan. At Guantanamo, only one detainee who was under 18 at the time of capture (Omar Khadr, who was captured engaging in hostilities against U.S. Forces) remains in U.S. custody.

#### **Committee Recommendation ¶ 30(b):**

**“(b) Guarantee that children, even if suspected of having committed war crimes, are detained in adequate conditions in accordance with their age and vulnerability. The detention of children at Guantánamo Bay should be prevented;”**

#### **U.S. Response to ¶ 30(b):**

The Department of Defense recognizes the often difficult and unfortunate circumstances of young detainees. It has procedures in place to evaluate detainees medically, to determine their ages, and to provide for detention facilities and treatment appropriate for their ages. Young detainees are attended to by military personnel who are committed to providing them with safe and humane care and custody, and by medical professionals who recognize that, as juveniles, such detainees may require special physical and psychological care. In all cases, juvenile detainees are afforded regular exercise; access to mental health and medical services, including dental care; and contact with their families, when possible.

As the Committee is aware, President Obama issued an executive order mandating the closure of the detention facility at Guantanamo Bay. The review of each detainee at Guantanamo continues and the one remaining individual who was captured when he was under the age of 18, Omar Khadr, will have his case reviewed by the interagency panel and his

disposition decided, consistent with the interests of U.S. national security and the interests of justice.

**Committee Recommendation ¶ 30(c):**

**“(c) Inform parents or close relatives where the child is detained;”**

**U.S. Response to ¶ 30(c):**

The United States recognizes the unique role of the International Committee of the Red Cross (ICRC) under the Geneva Conventions in support of the protection of detainees during armed conflict. The ICRC has regular, private access to all detainees interned by the Department of Defense at Guantanamo and at the Theater Internment Facilities in Iraq and Afghanistan, and it assists the United States with facilitating contact with families, whenever possible.

The United States allows, and encourages, family contact and communication with detainees, wherever possible. In Iraq and Afghanistan, families are invited to visit family members who are in detention, and many have done so. Additionally, the ICRC delivers mail to detainees in U.S. custody, and it has partnered with the United States to facilitate telephone calls between family members and detainees at Guantanamo, as well as to increase family access at the Theater Internment Facility in Afghanistan. With the ICRC’s help, the United States has also instituted a program of video-teleconferences between detainees and family members who cannot travel to Afghanistan.

**Committee Recommendation ¶ 30(d):**

**“(d) Provide adequate free and independent legal advisory assistance for all children;”**

**U.S. Response to ¶ 30(d):**

As the committee is aware, the United States and its coalition partners are engaged in a war against al-Qaida, the Taliban, and associated forces. The U.S. Supreme Court, in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), affirmed that the detention of belligerents is a “fundamental and accepted [] incident to war,” and concluded that the United States is therefore authorized to hold detainees for the duration of the relevant conflict. This is consistent with the Geneva Conventions. The principal rationale for detention during wartime is to maintain security and to prevent combatants from returning to the battlefield to re-engage in hostilities.

Nevertheless, the United States has instituted enhanced screening procedures at the Theater Internment Facility in Afghanistan for reviewing the status of detainees. These enhanced procedures significantly improve the Department of Defense’s ability to assess the facts supporting the detention of each detainee as an unprivileged enemy belligerent, the threat each detainee represents, and each detainee’s potential for rehabilitation and reconciliation. The modified procedures also enhance each detainee’s ability to challenge his or her detention. These procedures allow for a personal representative who “shall act in the best interests of the detainee” and have access to all reasonably available information (including classified information) relevant to the proceedings.

**Committee Recommendation ¶ 30(e):**

**“(e) Guarantee children a periodic and impartial review of their detention and conduct such reviews at greater frequency for children than adults;”**

**U.S. Response to ¶ 30(e):**

All detainees, regardless of age, are advised of the reason for their detention and undergo periodic reviews. As noted above, in September 2009, the Department of Defense began implementing new detainee review procedures in Afghanistan that significantly improve the U.S. ability to assess each detainee's status, threat, and potential for reconciliation and reintegration. The new review procedures include features that enhance each detainee's ability to challenge his or her detention, including the appointment of a personal representative who will act in the detainee's best interests, and more extensive procedures to allow the detainee to present reasonably available witnesses and documentation relevant to the determination of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary. The new process better enables U.S. forces to determine which detainees must be held, and those who may be transitioned back into Afghan society, and better aligns detainee operations with the broader counterinsurgency strategy.

**Committee Recommendation ¶ 30(f):**

**“(f) Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated in an impartial manner and those responsible for such acts should be brought to justice;”**

**U.S. Response to ¶ 30(f):**

As noted above, the United States recognizes the unique role of the ICRC under the Geneva Conventions in support of the protection of detainees during armed conflict. The ICRC has regular, private access to all detainees interned by the Department of Defense at Guantanamo and at the Theater Internment Facilities in Iraq and Afghanistan, and it assists the United States with facilitating contact with families, whenever possible. The U.S. relationship with the ICRC is a productive one, based on confidentiality. The United States values the ICRC's input and addresses all of its concerns in a constructive, on-going dialogue at all levels of military command and civilian leadership. The United States strictly prohibits the abuse of detainees in its custody. Torture and cruel, inhuman and degrading treatment or punishment are prohibited by U.S. law and policy. The United States meets or exceeds the requirements of Common Article 3 of the Geneva Conventions in the treatment of all detainees in its custody. All credible allegations of abuse are thoroughly investigated, and those who are determined to have violated these treatment standards have been, and will continue to be, held accountable.

**Committee Recommendation ¶ 30(g):**

**“(g) Conduct investigations of accusations against detained children in a prompt and impartial manner, in accordance with minimum fair trial standards. The conduct of criminal proceedings against children within the military justice system should be avoided;”**

**U.S. Response to ¶ 30(g):**

As the Committee is aware, the United States is currently undergoing a comprehensive review of its detention policies. President Obama has noted that military commissions have a long history in the United States and that they are an appropriate venue for trying detainees for violations of the laws of war. They allow for the protection of sensitive sources and methods of intelligence-gathering; for the safety and security of participants; and for the presentation of evidence gathered from the battlefield that cannot always be effectively presented in federal courts. In the Military Commissions Act of 2009, Congress revised the procedures for military commissions to ensure that they are fair, legitimate, and effective. The decision to use criminal proceedings or military commissions will be made on a case-by-case basis. In the cases of individuals detained at Guantanamo, there is a presumption that such detainees, where feasible, will be tried in federal criminal proceedings. The United States is currently considering U.S. military prosecution of only one case involving acts committed by a person under the age of 18, that of Omar Khadr.

In this context, it should be noted that it is not unprecedented for juveniles to face prosecution for criminal acts committed during armed conflict. The Geneva Conventions and the Additional Protocols to them contemplate the prosecution of individuals under the age of 18 for violations of the law of armed conflict. Article 77 of Additional Protocol I and Article 6 of Additional Protocol II to the Geneva Conventions prohibit the application of the death penalty to those under 18 at the time the offense was committed, thereby indicating that prosecutions not resulting in the imposition of death are not prohibited. Similar approaches are taken by international tribunals established by the United Nations. The International Criminal Tribunals for Rwanda and the former Yugoslavia have no express age restrictions on prosecutions, and the Special Court for Sierra Leone expressly provides for prosecution of juveniles who are 15 to 17 years old. At the same time, the United States is mindful that due consideration should be given to the age of the accused at the time of the alleged offense and shares the Committee’s concern regarding appropriate treatment for juveniles whom terrorists have unlawfully recruited and endangered.

**Committee Recommendation ¶ 30(h):**

**“(h) Provide physical and physiological recovery measures, including educational programmes and sports and leisure activities, as well as measures for all detained children’s social reintegration.”**

**U.S. Response to ¶ 30(h):**

The United States has completed its new Theater Internment Facility (TIF) in Afghanistan, where all detainees will have greater access to recreation, vocational, and

educational programs, as well as enhanced family visitation programs. Building on lessons learned in its Iraq detention operations, the United States is developing programs for engaging the detainee population in Afghanistan, to encourage and better facilitate their eventual reintegration into Afghan society. The goal of these programs is to assist the detainees with becoming productive Afghan citizens who will contribute to the rebuilding of their nation when they are eventually released.

The new TIF has more space for recreation, greater access to fresh air and natural light, and educational and vocational programs that will contribute to the detainees' rehabilitation and reintegration into society upon their release. Reconciliation programs take into account the specific needs of juvenile detainees.

Further discussion of these issues is available in ¶¶ 28-70 of the 2008 Written Replies.

### **Committee Recommendation ¶ 32:**

**“32. The Committee recommends that the State party continue and strengthen its financial support for multilateral and bilateral activities to address the rights of children involved in armed conflict, in particular through promotion of preventive measures, as well as of physical and psychological recovery and social reintegration of child victims of acts contrary to the Optional Protocol.”**

### **U.S. Response to ¶ 32:**

The United States agrees with the Committee that multilateral and bilateral assistance to prevent the recruitment and use of children as soldiers and to promote physical and psychological recovery and social reintegration of child victims is essential to making real progress on these fronts. As explained in ¶ 129 of the Periodic Report, the United States has contributed and continues to contribute substantial resources to international programs aimed at preventing the recruitment of children and at reintegrating child ex-combatants into society. The United States applies a definition of child ex-combatants in its programmatic commitments that covers any child unlawfully used or recruited by fighting forces in any capacity, whether or not he or she ever bore arms. In this regard, U.S. programming adopts a broad approach by seeking to include all children affected by armed conflict rather than singling out for separate services former child combatants. It also espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants. Examples of such U.S. foreign assistance and other international efforts are set forth in ¶¶ 131-161 of the U.S. Periodic Report.

### **Committee Recommendations ¶¶ 34 and 36:**

**“34. The Committee recommends the State party to include a specific prohibition in legislation with respect to the sale of arms when the final destination (end use) is a country where children are known to be, or may potentially be, recruited or used in hostilities.**

**“36. The Committee recommends that the State party abolish Foreign Military Financing, when the final destination is a country where children are known to be—or may potentially be—recruited or used in hostilities, without the possibility of issuing waivers. In**

**the interest of strengthening measures to prevent the recruitment or use of children in hostilities, the committee recommends that the State party adopt the draft Child Soldiers Prevention Act of 2007.”**

**U.S. Response to ¶¶ 34 and 36:**

The Child Soldiers Prevention Act of 2008 was enacted on December 23, 2008. The Act defines child soldiers for the purpose of the legislation and prohibits specific types of military assistance (Foreign Military Financing, International Military Education and Training, and Excess Defense Articles Programs) and licenses for direct commercial sales of military equipment to governments that are identified by the Secretary of State as having “governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers.” See ¶¶ 89-93 of the Periodic Report.

**Committee Recommendations ¶¶ 37 and 38:**

**“37. The committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of Government Departments, the congress and to State authorities, for appropriate consideration and further action.**

**“38. The Committee recommends that the initial report submitted by the State party and concluding observations adopted by the Committee be made widely available to the public at large in order to generate debate and awareness of the Optional protocol, its implementation and monitoring.”**

**U.S. Response to ¶¶ 37 and 38:**

As discussed in ¶ 11 of the Periodic Report, recently the National Security Council distributed to all U.S. federal agencies a memorandum from the Legal Adviser of the Department of State transmitting links to the U.S. Initial Report on the Optional Protocol, as well as the Committee's Concluding Observations, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State's Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body's concluding observations, including those for the Optional Protocol, on its website at [www.state.gov/g/drl/hr/treaties/index.htm](http://www.state.gov/g/drl/hr/treaties/index.htm). Additionally, the United States is in the process of taking further steps to ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports. All agencies with a role in implementing the Optional Protocol have necessarily become more familiar with all aspects of the Optional Protocol in the process of its implementation and in preparing the reports for this Committee. As noted in the report, the United States government is fully in compliance with its obligations under the Optional Protocol,

and it is pleased to widely disseminate and to take under consideration the Committee's observations and recommendations.