On 21 January, after many years of negotiation, States agreed to a draft Optional Protocol (OP) to the UN Convention on the Rights of the Child (CRC) prohibiting the use and compulsory recruitment of persons under 18 in armed conflict. The OP still needs to be adopted by both the UN Commission on Human Rights (in the spring) and the General Assembly (in the Autumn) before it will be open for signature and ratification and can come into force. Despite some limitations discussed below, this is an important development in the protection of children in situations of armed conflict.

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The phenomenon of child soldiers

The face of warfare has changed over the latter half of the twentieth century. Interstate wars are hugely outnumbered by internal conflicts, which have proved a breeding ground for child soldiers. Over the past 40 years the number of children deployed has increased and the children used have got younger. At the present time, it is estimated that 300,000 children are being used – as soldiers, porters and for sexual purposes - in over 30 conflicts around the world. The majority of these children have been forcibly recruited. The increased use of child soldiers can be put down to a number of factors. Often in civil war both sides (but especially the rebel side) lack manpower. The vulnerability of children to recruitment is compounded by the proliferation of lighter weapons, which can be as accurate and as deadly in the hands of a 10-year-old child as in the hands of an adult. Consequently, army leaders are able to draw on under 18s to fill their ranks. Indeed, children are increasingly looked upon as a first, rather than last, resort. Many leaders recognising the capabilities of children actually prefer using them to adults, as they tend to be more obedient, do not question orders and are easier to manipulate.

In the aftermath of armed conflicts, societies are left with a younger generation that has fought and has been physically and mentally scarred. In the brutality that characterises so many internal armed conflicts child soldiers often witness and commit atrocities. These children are unable simply to re-enter society, without adequate rehabilitation and reintegration programmes. At best they may become outcasts and at worst violent criminals. In a fragile society trying to rebuild itself this poses grave problems. The OP recognises the long-term consequences of this for the prospects of durable peace, security and development (Preamble).

The current position
At present, 15 is the legal age for recruitment and direct participation in armed conflict:

This age limit was first enshrined in the 1977 Additional Protocols to the Geneva Conventions (PI A 77(2) – international conflicts, PIIA 4(3)(c) – internal conflicts);

It was reaffirmed 12 years later by Article 38 of the CRC (despite the fact that Article 1 defines children as all persons under 18);

More recently, the Statute of the International Criminal Court (ICC) lists the recruitment of under 15s to participate directly in international conflicts as a war crime (Article 8.2e/vii);

Developments

In December 1995 the 26th International Conference of the Red Cross and Red Crescent passed a recommendation whereby parties to conflict must take every feasible step to ensure that children under 18 do not participate in hostilities; and

At a regional level, The African Conference on the Use of Children as Soldiers adopted the Maputo Declaration in 1999, which set the minimum age for military recruitment at 18.

The Optional Protocol
Use and Recruitment by States

Article 1 deals with participation in hostilities. State parties shall take

‘all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities’.

This is an important breakthrough. However, the wording of the article is not as strong as it might be. In particular, it requires only that ‘all feasible measures’ are taken to ensure that under 18s are not deployed. The question of what is and is not ‘feasible’ in a particular context is likely to be controversial, and stands in need of further clarification.

Art 2 is concerned with compulsory recruitment and is worded more forcibly. It obligates State Parties to:

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

However, the OP will not prevent voluntary recruitment by States of under 18s. This disappointing omission can be attributed, in particular, to the resistance of the USA, which (along with the UK) allows voluntary enlistment at the age of 17 and routinely sends under 18s to the front line in combat. The result is a rather weak clause for voluntary recruitment. States are required to raise their recruitment age from that in A38 CRC (15) but above that will retain the freedom under the OP to set their own minimum age so long as appropriate safeguards are in place to ensure recruitment is genuinely voluntary (Article 3).

Non-State Entities
The OP is more stringent when it comes to rebel and insurgent groups. It explicitly prohibits non-state entities from recruiting and deploying persons under 18 (Article 4). State Parties will be obliged to criminalise such activities (A4(2)). Predictably, states have bound potential opponents with stronger obligations than they are prepared to accept for themselves.

**Demobilisation of Child Soldiers**
Importantly the OP recognises the vital need for proper rehabilitation and social reintegration for child soldiers (A 7). This is not just an obligation for the State involved in the armed conflict. The OP specifies that State Parties "shall cooperate in [this] ... through technical cooperation and financial assistance". (A7(1))

**The Optional Protocol in reality**

**Application**
A positive aspect of the Optional Protocol is that, as with the CRC, it will apply to all levels of conflict. This contrasts with existing humanitarian law, which only applies when the conflict has reached a specified level i.e. the provisions in Protocol II (internal conflicts) only apply when the armed opposition "exercise[s] such control over a part of its territory as to enable them to carry out sustained and concerted military operations..." Therefore the OP not only increases the protection in terms of recruitment for children but also applies when Protocol II cannot protect them.

**Ratification**
However, the OP is optional: states are under no obligation to sign and ratify it. It is imperative, therefore that there is international pressure to encourage ratification. On an optimistic note, children’s rights instruments have a history of fast ratification. The CRC came into force a record 9 months after it was open for signature and now has 191 ratifications. It may be that the international momentum that has driven the rise of children’s rights over the past decade or so will not only carry the OP into force sooner rather than later and but will also attract a large number of signatories. A special clause has been inserted to allow State Parties to the CRC, who have not ratified to proceed with signing and ratifying the OP (A9(1)). This was included for the benefit of the USA, which is the only country to have signed but not ratified the CRC. This is unprecedented in the development of international human rights instruments. It is therefore hoped that the USA, having succeeded in weakening the OP to accommodate its domestic policy, will sign and ratify quickly.

**Implementation**
Under A 6(1) OP State Parties will have an obligation to take measures to ensure effective implementation of its provisions. Unfortunately, the only monitoring mechanism is the examination by the Committee on the Rights of the Child reports that States are obliged to submit detailing the measures that have been taken for implementation (Article 8). The experience of country reports to the Committee under Article 44 of the CRC shows that a reporting obligation is not necessarily a guarantee of full implementation of children’s rights.

**The Realities of War**
The provisions of the Optional Protocol alone are not strong enough to prevent the recruitment of children. The reporting obligation is insufficient to ensure implementation and compliance. The harsh reality is that the priority for any armed group is victory. On occasion, armed groups and States have accepted obligations not to recruit and use children. But civil wars are particularly brutal and such
obligations are often among their casualties. If victory or survival are at stake, then rebel leaders are likely to add one more grave breach to their list of war crimes rather than to honour an obligation they have under international law. However, for those armed forces who are trying to maintain a positive public image the OP will help to expose those leaders who try to disguise the fact that they are recruiting and deploying child soldiers. At the moment, aided by poor birth registration, commanders can easily pass off a 12 year-old as a 15-year-old. However, they will find it more difficult to convince those monitoring the situation that those children are 18. In this way the OP will serve to give a greater protection to very young children.

The Role of NGOs
NGOs played a crucial role in the drafting and acceptance of the Optional Protocol. Now NGOs have a vital role to play in encouraging ratification, advising on implementation, encouraging and monitoring compliance and exposing erring States. An important move, to strengthen the OP, would now be to have the use (and recruitment) of child soldiers under 18 recognised as a war crime under the Statute of the ICC.

World-wide NGOs must push for the establishment of proper recruitment procedures and the provision of appropriate documentation for children, which shows their age in accordance with A7 CRC. Dissemination by NGOs of children’s rights both to children themselves and their families can also help prevent unlawful recruitment. The role of NGOs in the UK must now be to lobby the Government to sign and ratify the Optional Protocol; stop the practice of sending under 18s to situations of armed conflict; and, ultimately, to end their voluntary recruitment altogether.

Conclusion
While excessive optimism would be misplaced, the OP is an important development. States will find it difficult to ignore its provisions, and especially so if mass ratification combines with international lobbying. This Protocol is not the end of the road, but it is an important step along the way and will prove a powerful tool for advocacy and persuasion.

In the words of the UN Special Representative for Children in Armed Conflict, Olara Otunnu, the OP can achieve three things

“The first is the mobilisation of a major movement of international pressure to lean on parties in conflict that are currently abusing children as combatants. Secondly, it is important to address the political, social and economic factors that create the environment that facilitates the exploitation of children in this way. Thirdly, it will enable us to mobilise necessary resources and capacity to pursue more effective programmes of demobilisation, disarmament and social rehabilitation of children forced to participate in war.”

Undoubtedly, this instrument has been weakened by compromise in some of its key provisions. This said, any move to eliminate the use of child soldiers and promote their demobilisation and reintegration must be welcomed. Ultimately it must be recognised that the recruitment to armed forces, and deployment in conflict, of under 18s is simply unacceptable and that those states and non-state entities that recruit and deploy them should face serious consequences.