

The protection of children during armed conflict situations

by Sandra Singer

Protecting the child has been a constant concern of the international community throughout the twentieth century. However, it has especially been since 1979 (the Year of the Child) that world interest has increased.

New organizations have been created which devote all their time and effort to defending the interests of children. At both the international and regional (European) level, new legal instruments are being prepared to provide children with increased protection.

In 1984, the ICRC published a study carried out by Denise Plattner, a member of its staff (see International Review of the Red Cross, May-June 1984), and entitled "Protection of Children in International Humanitarian Law". For the first time, the many provisions contained in the Geneva Conventions of 1949 and their Additional Protocols of 1977, which provide children with extensive legal protection, were brought together and commented upon in one text. This article remains as valuable and original today as when it first appeared. What, then, would be the use of publishing a new article?

Miss Singer's study is interesting from several points of view. She has an original approach to the subject and expresses her opinion on the various draft conventions which are currently being prepared. To some extent, the author broadens the debate but never loses sight of the principal theme—the protection of children in armed conflicts. Thus, Miss Singer places the concerns of international humanitarian law in the wider context of human rights.

JOSEPH'S SEARCH

The hot sun hit Joseph's eyes. He looked around him, as he did every morning, just for a moment expecting to see... But no, he saw only the crumbling walls and shattered beams that were all that were left after the bombs had hit his home. Nothing else remained.

Joseph was hungry. He was always hungry. Finding food was Joseph's chief activity and obsession, apart from trying to find his parents.

Each morning the routine was the same. He would set off to walk almost two kilometres to the centre of the once bustling city. Here he could get clean, safe drinking water. It was the only source of safe water left in the city. Joseph would drink deeply and fill his tin pail. Then he would go to what was once the wealthy part of the city, where he would beg for food. The people living in this area still had food because they had the money to buy it. Anything could be purchased on the black market—for a price.

Joseph had no money. He had not had money since his parents and sister disappeared. Nor had he had love, companionship or security. He was totally alone.

For the past two months Joseph had gone twice weekly to the medical clinics that had been set up by the International Red Cross. He had sores all over his body and his eyes and nose were dry and itchy. A doctor at the clinic told him he was suffering from vitamin deficiency and gave him some pills to take. Each visit to the clinic took about three hours, for the line-ups were very long and the clinic was understaffed. The doctor also gave Joseph coupons for food. Every Friday Joseph would join another line-up to receive his weekly food rations.

On his way back home, Joseph would always stop to stare through the barbed wire fence that surrounded the internment camp at the city's edge, where many people were being held. He would walk round and round the fence every day in the hope of catching a glimpse of his mother and father.

Joseph walked on to his shelter. He crawled in under his makeshift roof and ate the last tin of fish that was in his weekly rations. Then he closed his eyes. He waited to hear the airplanes overhead. Joseph waited and waited... And he hated. He hated the world and he hated everyone in it and his hatred consumed him. He called out in despair and emptiness but the only reply was the echo bouncing off the shattered walls that once were his home.

Some months later Joseph was picked up by the military police in a government roundup of children and young people left homeless by the war. Along with many others he was taken by truck to a new internment camp in the hills outside the city.*

* (From: *"What's Fair. The Geneva Conventions"*. The Canadian Red Cross Society, 1985.)

I. INTRODUCTION

Children are among the most vulnerable of the victims of armed conflict situations or their aftermath. Interest has increased considerably in recent years in the protection of children. Much of this new interest is the result of media coverage of, and the resultant public interest in, events in South East Asia. The pictures of families who had set out to sea from Vietnamese ports in precarious craft over-laden with human cargo, including young children and babies in arms, and reports that perhaps 50 per cent perished at sea evoked considerable concern. Also, the invasion of Kampuchea resulted in millions of civilians fleeing to live in dangerous conditions on the Thai-Kampuchea border. Here too, large numbers of children were involved and the media often provided coverage of children fleeing with eyes large with terror or horribly maimed as a result of mines. And we know that years after these events, babies are born in refugee camps and that there are children who know only camp life, children who are still waiting to start their lives.

Whenever such desperate situations reach the attention of the public, those of us working in international agencies such as the Red Cross receive a flood of enquiries from people who want to help. Many want to adopt a child; some because they want to take the child out of a dangerous or miserable situation; others because they have not been able to adopt a child in the United Kingdom and feel that it may be easier to adopt a child from another country.¹

Such was the flood of enquiries concerning South East Asia that it became necessary for the United Nations High Commissioner for Refugees and the International Committee of the Red Cross to issue a joint statement in an effort to discourage the idea of intercountry adoption. While it may have been true that many children were living in camps without the care of parents, they may have had family who were desperately trying to find them. It was advised that these children should be given care in their own culture while careful checking was done into their background in an effort to find family.

As well, there has been considerable controversy not only about the care of unaccompanied minors in camps in South East Asia and elsewhere but their care in countries of resettlement.

¹ Enquiries also arise, of course, out of natural disasters; in fact any situation which creates child victims.

An additional factor that is causing considerable concern is the evidence that children, as well as being victims of armed conflicts, are taking up arms and are active participants in conflicts in many areas of the world. In September 1984 at the Second World Red Cross and Red Crescent Conference on Peace, it was reported that children in many countries are receiving paramilitary training and being instructed in the use of arms. Should children who hold the very future of our world in their hands be deprived of their innocence and be used as a part of the world war machinery? Surely the answer should be an emphatic "No".

Recently, there have been a considerable number of consultations held and working groups set up by non-governmental organizations (NGOs) and intergovernmental agencies on the subject of the rights, protection and assistance for the child. Studies are under way and a European as well as an International Convention on the Rights of the Child are being drafted. Much of the emphasis of the discussions is on the care of unaccompanied minors and possible guidelines for future assistance and the serious problem of the child soldier. Often discussions move into the area of the protection of children in armed conflict situations and statements are made that more legal instruments are needed.

In the following paper we shall look first at the background to provisions for the protection of the child in general and then go on to consider the development of provisions for protection in armed conflict situations. We shall consider the question of whether there is adequate protection of children in particular, by looking at the existing instruments in international humanitarian law, namely the 1949 Fourth Geneva Convention relative to the protection of civilian persons and the two Additional Protocols to the Geneva Conventions. We shall mention examples of Red Cross assistance to children in the fields of tracing and family re-union in particular, two areas which are closely allied to protection work. We shall also refer to recent meetings held on the subject of the rights and protection of the child.

II. BACKGROUND

Following the First World War, the British Save the Children and its Swedish counterpart, Rädde Barnen, drafted a Declaration on the Rights of the Child which was adopted by the League of Nations in 1924. This Geneva Declaration, as it was called, offered

special care and protection for children regardless of race and nationality.

After the Second World War this declaration was revised and in 1959 the United Nations adopted the Declaration of the Rights of the Child which expanded the previous declaration and dealt with welfare and education and the right to an upbringing in a spirit of universal brotherhood.

In 1974 the UN General Assembly adopted a Declaration on the Protection of Women and Children in Emergencies and Armed Conflict. This declaration condemns attacks and bombing on civilian populations and prohibits persecution, imprisonment, torture and all forms of degrading violence against women and children.

The need for particular care to the child is also recognized by the International Covenant on Civil and Political Rights (art. 23 and 24) and the International Covenant on Economic, Social and Cultural Rights (art. 10).

The view has been put forward by many, however, that the existing Declarations are of little use as they have no teeth and that what is needed is a Convention. At a NGO Forum organized in Rome by the United Nations Children's Fund in 1984, Mr. Nils Thedin, President of their Swedish Committee, stated the view that the Declarations in existence are either forgotten or neglected and that an International Convention on the Rights of the Child—including protection in external and internal armed conflicts—is of supreme importance and that NGOs must influence public opinion and bring pressure to bear on governments and international bodies for this. He stated: "In the present situation with the threat in every armed conflict of indiscriminate destruction... it is imperative to strengthen the UN and the instruments of international law."²

Mr. Thedin, in speaking of an international convention on the rights of the child, was supporting a proposal originally put forward by Poland to the UN Commission on Human Rights in 1978 in the hope that it would be adopted by the General Assembly during the Year of the Child. It was felt, however, that the terminology was not suited to a contractual instrument and that certain points needed to be more adequately covered and the Commission on Human Rights opted to set up a working group. The first meeting was held in 1979.

² Report on Child Victims of Armed Conflicts, NGO Forum, Rome, April 28, 1984, Rådä Barnen International, 1984.

Work is also presently under way for a European Convention on the Rights of the Child.

The idea of a Convention for the protection of the child is not a new one. In fact, in 1939 the International Committee of the Red Cross and the International Union for Child Welfare had drafted a Convention for the Protection of Children in Armed Conflict but work could not be continued due to the outbreak of war.

In Mr. Thedin's statement, specific attention is given to the protection of the child in external and internal armed conflicts and it is important to be aware that there already exist legal instruments in the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977 that offer precisely that.

Perhaps before we examine the present legal provisions in international humanitarian law which provide protection for children in particular, we should turn our attention for a moment to the beginnings of international humanitarian law and the International Committee of the Red Cross (ICRC).

III. THE INTERNATIONAL COMMITTEE OF THE RED CROSS, THE GENEVA CONVENTIONS OF 1949 AND THE TWO ADDITIONAL PROTOCOLS OF 1977

It could be said that the Red Cross Movement and international humanitarian law emerged hand in hand from a bloody battlefield in Lombardy in 1859. Henry Dunant, a travelling Swiss businessman in search of Napoleon, was so horrified to witness the suffering and the dearth of medical assistance to the wounded and dying on the battlefield that he wrote a report which he had printed and sent to every Head of State in Europe.

A Memory of Solferino stirred the conscience of Europe. Dunant's book was, however, not only a report of what he had witnessed. It offered positive suggestions as to how something might be done: he proposed that voluntary relief workers, who would be regarded as neutral, should be trained in peacetime so that they could assist the victims even on the battlefield.

Dunant joined four other Swiss citizens in setting up a Committee which was later to become the ICRC. At the Committee's urging, in 1864 the Swiss Government agreed to hold an international conference and from this emerged the first of the Geneva Conventions.

The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field stipulated that the wounded and the sick should be cared for without discrimination and those who cared for them should be regarded as neutral, working under a protective emblem, that of a red cross on a white ground.

Since that first Geneva Convention, armed conflicts have continued with different battlefields as well as new categories of victims emerging. In 1899 at The Hague, the principles of the 1864 Geneva Convention were adapted to war at sea. In 1906 the 1864 Convention was revised and expanded and a year later this was again adapted to naval warfare.

As the initiator and guardian of the Geneva Conventions, the ICRC endeavours to ensure that legal instruments ratified by governments to protect victims of armed conflict are as competent as the tools various governments use to produce victims. The ICRC with its headquarters in Geneva, Switzerland, is the founder of the National Red Cross and Red Crescent Societies but it should be remembered that it is a completely private and independent humanitarian body. As well as being the guardian and promoter of the Geneva Conventions and their Additional Protocols, it has a mandate to assist victims of international armed conflicts and internal disturbances.

The Law of War was founded on the principle that military operations should be limited to the armed forces and that the civilian population is entitled to general immunity. However, the First World War changed this concept: at the outbreak of the conflict borders were closed and foreigners who were therein and happened to be of the nationality of the other side were interned as enemy aliens.

Following the War, the ICRC reported to the Xth International Conference of the Red Cross held in Geneva in 1921 as follows:

“Civilians found themselves suddenly treated as criminals, taken to concentration camps or hastily improvised and quite unsuitable depots. For men, women and children, able-bodied or sick, people of all conditions, thrown together in deplorable overcrowding, and deprived of every comfort, such temporary hardship dragged on year after year, while they bore the brunt of indifference, if not of downright hatred and threats. Measures which, to begin with, might have been justified for security reasons if they had really been temporary, soon became a means of reprisals and retortion, so that the civilian in captivity was a mere pawn in the

hands of the detaining power. The states themselves seem to have made no rules governing the plight of interned civilians on their territories.”³

Even without a legal basis the ICRC was able to help some civilians and some *ad hoc* agreements were made during the conflict but these lapsed with the coming of peace. The ICRC was determined that legal provisions should be made to extend protection to civilians in time of war. Sadly, the Diplomatic Conference subsequently held in Geneva in 1929 concerned itself only with the situation of prisoners of war. The omission is explained by the ICRC as follows:

“Some notables in official positions argued that the time was ill chosen to propose that governments should draw up a law protecting civilians in time of war, and any attempt in that direction could even be considered a disservice to the cause of peace. The introduction into international law of a new chapter based on the assumption that the effects of war might extend to non-belligerents hardly seemed compatible with the efforts then being made to restrict the very concept of belligerent.”³

However, one of the final recommendations coming out of the above Conference was for a study to be made with a view to drafting an international convention for the protection of civilians in armed conflict situations and, for its part, the ICRC produced the draft. However, no urgency was felt on the part of governments for the convening of a Diplomatic Conference as no one felt that the outbreak of war was imminent.

Consequently, when the Second World War broke out in 1939, civilians, including thousands of children, had no legal protection and as the war became more widespread they were deported, arrested, put in concentration camps or subject to ‘administrative evacuation’. The ICRC had only its right of humanitarian initiative as a basis for asking the German authorities to give civilian internees humane treatment. The German authorities regarded the request as interference and the ICRC could not disregard the threats of the Germans to cease applying the 1929 Convention on the Treatment of Prisoners of War which would have ended all that the ICRC was able to do to help this category of persons.

³ The Work of the ICRC for the Benefit of Civilian Detainees in German Concentration Camps between 1939 and 1945. The International Committee of the Red Cross, Geneva 1975.

Following the war, as a result of a Diplomatic Conference held in 1949, the Four Geneva Conventions of 1949 were adopted. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War gave children legal protection during international armed conflicts. Legal provisions were also made to cover armed conflicts not of an international nature and here again protection was extended to children.

War, as we knew it until the Second World War, was usually conducted by regular armed forces who were easily distinguished from the civilian population. However, this war saw the emergence of underground and resistance fighters. In the following years, new kinds of conflicts were to appear with liberation armies and irregular combatants where it became increasingly difficult to distinguish the soldier from the civilian. Also, the weapons used became more refined. These changes were reflected in the greatly increased losses amongst the civilian population: in World War I about 5 per cent of those who died were civilians; in World War II, it was about 48 per cent; today in conflicts such as in the Lebanon, the number is as high as 90 per cent and many of these are children.

In the 1960s the ICRC felt that the protection provided by international humanitarian law must again be expanded and revised to meet these new situations and methods of warfare. However, rather than revise the existing Geneva Conventions and risk losing the protection already provided by law, it was decided to supplement them by additional protocols.

Concerning children, there were three aspects: first, as a particularly vulnerable category of person they had a right to special protection but this principle was not explicitly stated in any article. Secondly, there was the question of their use in military operations. Thirdly, some provision had to be made to take into consideration their immaturity if they did commit offences during the period of an armed conflict.

Following years of preparation and endeavour two Additional Protocols to the Geneva Conventions were adopted at a Diplomatic Conference which was held from 1974 to 1977. Protocol I covered international armed conflicts and Protocol II, non-international armed conflicts.

Hence today, protection is accorded to children during armed conflict situations, whether the situation is of an international nature or not, and whether the child is not taking part in the hostilities or is actively carrying arms.

IV. PROTECTION OF CHILDREN DURING ARMED CONFLICT SITUATIONS

The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, (hereafter referred to as IV GC) applied during international armed conflicts, accords to children as protected persons, humane treatment which includes respect of life and physical and moral integrity. Torture, coercion, corporal punishment, collective penalties and reprisals are prohibited. In non-international armed conflict situations, the right to be treated humanely is accorded to children as persons taking no part in hostilities by Article 3 common to the four Geneva Conventions.

Concerning the treatment of civilians, there were in existence rules pertaining to the conduct of war: The Hague Regulations of 1907 already contained provisions on the conduct of an Occupying Power: The Hague Conventions of 1899 and 1907 also had provisions which gave certain protection to children as members of the civilian population. Protocol I of 1977 (hereafter referred to as Prot. I) developed the concept that in international armed conflicts a distinction was to be made between combatant and civilian. Protocol II of 1977 (hereafter referred to as Prot. II) extended this principle to non-international armed conflicts, stipulating that 'civilians shall not be the object of attack'.

1. Special care

Despite the fact that provisions in IV GC grant special care to children there is no article therein which provides a basis for this.

Prot. I, art. 77, 1, develops the principle of special protection of children and states as follows: 'Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and the aid they require, whether because of their age or for any other reason'.

Protection during non-international conflicts is also provided by Prot. II, art. 4,3, which states that 'Children shall be provided with the care and aid they require'.

Prot. I, art. 8a, specifies that maternity cases⁴ and new-born babies should be classed with the wounded and sick as needing protection.

⁴ Special protection and medical care are extended to children even prior to birth but for the purposes of this paper we will give our attention to babies and children only.

The IV GC, art. 24, acknowledges that children need special care in that it stipulates that children under 15, who are orphaned or are separated from their families as a result of war, should not be left to their own resources and that their maintenance, the exercise of their religion and their education are to be facilitated in all circumstances.

Taking into account the fact that governments often grant preferential treatment to children for food, medical care and social assistance, IV GC, art. 38,5, stipulates that children under 15 who are enemy nationals are entitled to any preferential treatment provided to the nationals of the state concerned.

In occupied territories, children under 15 years, expectant mothers and mothers of children under 7 shall continue to benefit from the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation according to IV GC, art. 50. This also stipulates that the Occupying Power shall facilitate the proper working of all institutions devoted to the care and education of children.

2. The importance of the family

The Universal Declaration of Human Rights, Article 16, 3, declares 'The family is the natural and fundamental group unit of Society and is entitled to protection by Society and the State'.

The following was quoted during a seminar held in Frankfurt in March 1984 by the International Social Service: 'War acquires comparatively little significance for children so long as it only threatens their lives, disturbs their material comfort or cuts their food rations. It becomes enormously significant the moment it breaks up family life and uproots the first emotional attachments of the child within the family group'.⁵

International humanitarian law recognizes the importance of the family and strives towards maintaining the family unit during conflict situations. The IV GC, art. 82, reads 'Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the

⁵ Anna Freud and Dorothy Burlington in Zwingmann, Ch. and M. Pfister-Ammende: Uprooting and after... 1973 as reported in ISS Seminar on Unaccompanied Minor Refugees in European Resettlement Countries, Frankfurt, March 1984.

same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health... Internees may request that their children who are left at liberty without parental care shall be interned with them'.

It further specifies that, wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

IV GC, art. 49, stipulates that if an Occupying Power undertakes partial evacuation of a given area it shall ensure that members of the same family are not separated. Prot. I develops this idea further: art. 75,5 states that families arrested, detained or interned shall, wherever possible, be accommodated as family units. Also, art. 76,2 states that mothers having dependent infants who are arrested, detained or interned... shall have their cases considered with the utmost priority. This same article stipulates that mothers of dependent children should not, to the maximum extent possible, be given the death sentence. Further, art. 76,3 states that the death penalty shall not be executed on such women.

As mentioned under the heading Evacuation of Children, evacuation is to take place only under very strict conditions and with the permission of those responsible for the children (Prot. I, art. 78,1) and information is to be compiled for each child to facilitate his or her return to the family. (See Registration of Children.)

3. Family reunion

Prot. I, art. 74, stipulates efforts should be made in every possible way to facilitate the reunion of families dispersed as a result of international armed conflicts...

Concerning non-international armed conflicts, Prot. II, art. 4,3,b, also indicates that all appropriate steps shall be taken to facilitate the reuniting of families temporarily separated.

If children and their family members become separated as a result of an armed conflict situation, their reunion will very much depend on contact being retained or precise information being collected and maintained concerning their whereabouts.

3.i. *The family message*

According to IV GC, art. 25, 'All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay'. The article further provides that if the exchange of such family correspondence becomes difficult or impossible an intermediary such as the Central Tracing Agency should be consulted to ensure the fulfilment of this obligation, in particular with the co-operation of National Red Cross and Red Crescent Societies. The use of the standard message form is mentioned here, if family correspondence is to be restricted, with the compulsory use of a standard form containing space for about 25 words, although it is usually the size of the form that restricts the number of words used.

3.ii. *The Official Information Bureau (OIB)*

As stipulated by IV GC, art. 136, upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an Official Information Bureau (OIB) responsible for receiving and transmitting information in respect of the protected persons who are in its power.⁶

Concerning children in particular, IV GC, art. 50, indicates that a special section of the OIB shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particular details of their parents or other near relatives should always be recorded if available.

3. iii. *A Central Information Agency (CIA)*

As stipulated by IV GC, art. 140, a Central Agency for protected persons shall be created in a neutral country to collect all information such as that indicated under OIB.

⁶ Some governments have delegated this responsibility to their National Red Cross or Red Crescent Society (for example, Germany and Holland). In the U.K., immediately after the Second World War the British Red Cross was recognized as the National Tracing Bureau for missing persons in the U.K. and Northern Ireland although today its status is unofficial.

During the First World War, the ICRC established an International Prisoner of War Agency which collected and forwarded information on the wounded, sick or deceased persons and included civilians. The provision of this service was later included in the Geneva Conventions of 1949.

Today it continues to centralize such information under the name of the Central Tracing Agency.

The IV GC, art 26, stipulates that “Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible...”⁷

3.iv. *Registration of children*

The IVth GC, art 50, indicates that the Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It also stipulates that “their personal status may not in any case be changed nor may they be enlisted in formations or organizations subordinate to it.”

The IV GC, art 24, stipulates that children under 12 shall be identified by the wearing of identity discs or by some other means.

As stipulated in Prot. I, art. 78,3, a form of registration is to be completed concerning evacuated children by those arranging the evacuation and, as appropriate, the authorities of the receiving country to facilitate the child’s return. It is stipulated that each card shall bear, whenever possible and ‘whenever it involves no risk of harm to the child’,⁸ the following information:

- (a) surname(s) of the child;
- (b) the child’s first name(s);
- (c) the child’s sex;
- (d) the place and date of birth (or, if that date is not known, the approximate age);
- (e) the father’s full name;
- (f) the mother’s full name and her maiden name;

⁷ Such work continues long after the end of the conflict. Over 20% of the work of the Central Tracing Agency of the ICRC still pertains to persons—many of them children—separated as a result of the Second World War.

⁸ There has been some concern expressed about the possibility of including details on the child’s card which might endanger him or her if it fell into the hands of those who might discriminate in the treatment of civilians.

- (g) the child's next-of-kin;
- (h) the child's nationality;
- (i) the child's native language, and any other language he speaks;
- (j) the address of the child's family;
- (k) any identification number for the child;
- (l) the child's state of health;
- (m) the child's blood group;
- (n) any distinguishing features;
- (o) the date on which and the place where the child was found;
- (p) the date on which and the place from where the child left the country;
- (q) the child's religion, if any;
- (r) the child's present address in the receiving country;
- (s) should the child die before his return, the date, place and circumstances of death and place of interment.

4. Secure areas during conflict

Parties to the conflict may establish in their own area or in occupied areas hospitals and safety zones and localities to protect, among others, children under 15, expectant mothers and mothers of children under 7 according to the IV GC, art. 14.

It is also specified in art. 15 that civilian persons (including children) taking no part in hostilities could be protected from the effects of war in neutralized zones agreed in areas of fighting.

5. Evacuation

Children and maternity cases are mentioned as those who should be removed from besieged or encircled areas according to IV GC, art. 17.

Prot. I, art. 78,1, elaborates on the subject of evacuation of children and specifies that this is to be seen as a temporary measure only. It reads: 'No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in

occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required...'

As explained by the representative of the ICRC at the meeting of the drafting committee when this article was drawn up...

"The guiding principle was that evacuation must remain the exception. There were two essential conditions. In the first place, evacuation should be justified by the children's state of health. That meant that the medical attention needed to cure the child or help its convalescence could not be provided in the child's own country. As far as possible, children should not be removed unnecessarily from their natural environment, since even though it might be beneficial medically it often had undesirable psychological effects. The second condition was the consent of the parents or guardian—although if the parents or guardian have disappeared or could not be reached, that condition would no longer apply and should not prevent an evacuation that was warranted under the first condition."⁹

Questions do arise about the guardianship of children after evacuation to another country. To cite an example, the situation of Polish children deported to Russia in 1939 (or born there) who went into Persia in 1942 at the time of the formation of the Polish Second Corps. They then either tagged along with the Second Command or were put into refugee camps in places such as India, East Africa or Lebanon before being brought to the United Kingdom.

In 1948 the Polish Government asked for a list of the names of children under 17 for subsequent interview and suggested that the Polish Consul in London should become the official guardian of all orphans. The Polish Government claimed that 2,000 children had been deprived of parental care and that the British were denationalizing children and preventing the reunion of families. The British Government, while admitting that the children concerned were Polish, balked at complying with the Polish Government's request as they did not want to anger Poles in the UK. On the other hand, they did not want to cause further agitation on the Warsaw side.

⁹ Protection of War Victims, Protocol I to the 1949 Geneva Conventions by H.S. Levie, Oceana Publishers, 1979, Vol. IV.

In the United Kingdom it would seem that a legal precedent was set by the Guardianship Refugee Children Act of 1944 which devolved on the Government the responsibility for appointing guardianship, ensuring their good conduct and appointing replacements if necessary. This was to define the legal status of some 11,000 Jewish children who had entered the UK from 1936 onwards and is not in force following the expiration of the 1939 Emergency Powers Defence Act. It would seem that the legal status *vis à vis* the guardianship of unaccompanied minors entering the UK today as a result of conflict situations is not so clear.

Prot. II, art. 4,3,e, covering non-international conflicts also stipulates that children may be evacuated to a safer area and specifies 'whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, ... and ensure that they are accompanied by persons responsible for their safety and well-being.'

6. Relief

The IV GC, art. 23, specifies that consignments of medical and hospital supplies should be allowed free passage to civilians—even if they are the enemy—also, the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.

Prot. I, art. 70,1, stipulates that children and maternity cases should be given priority in distribution of relief consignments.

Concerning children whose parents are interned, IV GC, art. 81, provides that the children should not be left without support. It specifies that 'The Detaining Power shall provide for the support of those dependent on the internees, if such dependants are without adequate means of support or are unable to earn a living.'

Also, nursing mothers and children under 15 years of age shall be given additional food, in proportion to their physiological needs, IV GC, art. 89.

7. Medical attention

Prot. 1, art. 78,1, provides for the temporary evacuation of children where health or medical attention is needed.

8. Protection of education, culture and traditions

According to the IV GC, art. 50, the Occupying Power must facilitate the proper working of all institutions devoted to children's education. It further stipulates that arrangements should be made for maintenance and education of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a relative or friend... 'if possible by persons of their nationality, language and religion.'

Also, concerning children and young people interned, art. 94 indicates that they shall be allowed to attend schools either in the place they are interned or outside. As has already been stated, international humanitarian law strives to protect family unity and in doing this the child's culture and traditions are also protected. However, a child without the benefit of his parents can have his cultural environment threatened. This possibility has also been foreseen.

The IV GC, art. 24, indicates that concerning children under 15 who are orphaned or are separated from their families as a result of the war... their maintenance, the exercise of their religion and their education are facilitated in all circumstances. It is suggested that their education be entrusted to persons of a similar cultural tradition.

In Iraq last year Defence for Children International launched with the permission of the Iraqi authorities an education programme in a camp for Iranian POWs who are reported to be as young as 14 or 15. Teachers are recruited from other Iranian POWs and some Farsi-speaking Iraqis. Subjects such as Mathematics, English, Art and Weaving are taught.

In non-international conflicts, Prot. II, art. 4,3a, indicates that children 'shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or... of those responsible for their care.'

Further Prot. I, art. 78.2, which covers the evacuation of children indicates that 'each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.'

9. Protection of the child's nationality

During the Second World War children were taken from their mothers to be provided with other parents and given another nationality. The IV GC, art. 50, states that all necessary steps must be taken 'to facilitate the identification of children and the registration of their parentage' and that the Occupying Power 'may not, in any case, change their personal status...'.¹⁰

10. Detention or internment of children

International humanitarian law provides special protection for children deprived of their freedom. Children can be interned for security reasons or for breaking the penal code.

The IV GC, art. 76, indicates that proper regard shall be paid to the special treatment of minors who are detained in the occupied country.

The IV GC, art. 89, concerns food rations during detention and indicates that interned children shall receive extra food.

It is also indicated that there should be enough open space for exercise and art. 94 requires that special playgrounds be reserved for children and young people in all places of internment. As mentioned above, this article also pronounces on education.

Concerning accommodation, the IV GC, art. 82, indicates that interned children should be accommodated with their interned parents. As already mentioned under the section on the importance of the family, Prot. I, art. 75,5, indicates that, where families are detained or interned, they should be held in the same place and accommodated in family units. Prot. I, art. 77,4, stipulates that when children are not held with family members they must be held in quarters separate from adults.

With regard to enlistment for work, the IV GC, art. 51, states that protected persons may not be compelled to work unless over the age of 18.

¹⁰ Perhaps it might be mentioned here that, under Art. II, e, the UN Convention for the Prevention and Punishment of Genocide of December 9, 1948, it is prohibited to forcibly transfer children of one national, ethnical, racial or religious group to another group with the intent to destroy that group. The International Tracing Service in Arolsen, West Germany, holds a Children's Archives and continues to receive a few enquiries concerning "Lebensborn".

According to international humanitarian law children under 15 should not be enlisted in the armed forces. However, if contrary to this they are captured, according to Prot. I, art. 77,3, they shall continue to benefit from the special protection of children as indicated under art. 77.

For non-international conflict situations, Prot. II, art. 4,3,d, contains the same provisions.

11. Release from detention

The IV GC, art. 132, indicates that attempts should be made during the conflict to release and repatriate or return to their homes or accommodate in a neutral country young children and mothers with infants.

12. Children and the death penalty

The IV GC, art. 68, pronounces on certain offences and the death sentence. However, it ends by stipulating 'in any case, the death penalty may not be pronounced on a protected person who was under 18 years of age at the time of the offence.'

Similarly, Prot. I, art 77,5, prohibits execution of the death penalty for an offence related to the armed conflict on persons who were under 18 at the time of the offence.

In non-international armed conflicts, Prot. II, art. 6,4, states that the death penalty is not to be pronounced on those under 18 at the time of the offence.

13. The child soldier

As has been mentioned previously, in today's armed conflicts it is often impossible to distinguish between the normal civilian population and those who are fighting. Children's involvement in armed conflict can extend from indirect help to actually taking up arms as part of regular or volunteer forces. Since this problem has not been settled by the IV GC of 1949, it was found necessary to introduce additional protection to cover those who were either directly or indirectly involved in the fighting. Prot. I, art. 77,2,

states "The Parties to the conflict shall take all feasible measures" ¹¹ in order that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces." When the draft of Protocol I was being introduced, Mr. Surbeck of the ICRC spoke as follows: "Too frequently children were used as fighting or auxiliary troops by a Party to the conflict. Only too happy to make themselves useful, and feeling that by doing so they were behaving like adults, children asked for nothing better. To take advantage of such feeling was particularly odious, for although children taking such action ran precisely the same risks as adult combatants, unlike adults they did not always understand very clearly what awaited them for participating directly or indirectly in hostilities".¹²

In non-international armed conflicts, Prot II, art. 4,3,c, similarly prohibits recruitment of those under 15.

Considering the possibility of children taking up arms, the legal provisions of the Additional Protocols are realistic: Prot. I, art. 77,3, stipulates that, if art. 77,2 mentioned above is contravened, and children under 15 do take part in the conflict and fall into the hands of the enemy, they shall still benefit from the protection accorded by Article 77 whether or not they are prisoners of war. Again in non-international armed conflicts, Prot. II, art. 4,3,d, makes a similar pronouncement.

Concerning the status of children actively participating in the conflict, the following statement was made in a background paper presented at the Symposium on Children and Armed Conflicts held in Amman in November 1984: "It appears that international humanitarian law does not confer on children under 15 captured in battle the status and consequent protection of prisoner of war... since the same law prohibits the use of children under 15 in armed combat they are automatically assimilated with the non-combatant civilian population and are at the mercy of circumstances... they are unprotected as prisoners of war and as civilians".

This statement confuses the issue. Children under 15, even those who are recruited in the armed forces, are to be considered as civilians. Perhaps the confusion arises because Art. 77,3 does not exclude the possibility of considering them as POWs.

¹¹ The wording "all feasible measures" acknowledged that, particularly in occupied territories and in wars of national liberation, a total ban on the voluntary participation of children under 15 would not be realistic.

¹² Protection of War Victims, Protocol I to the 1949 Geneva Conventions by H. S. Levie, Oceana Publishers, 1979, Vol. IV.

In the case of such children being captured, the ICRC would ask that, if they are considered as POWs, they should be given special treatment as merited by their age and that, if they are not considered as POWs, they should be treated as protected, civilian persons and again should be given special treatment.

The other possibility is that the captured child under 15 was not actually recruited into the armed forces but took up arms voluntarily. In this case the child should be treated as a protected civilian person, taking into account extenuating circumstances which exclude culpability in particular because of age or 'absence de discernement.'

V. RED CROSS ASSISTANCE TO CHILDREN IN ARMED CONFLICT SITUATIONS

The ICRC's humanitarian work on behalf of children is carried out particularly in time of war, civil war or internal strife but it has a long history of taking the initiative which comes within its role as a specifically neutral and independent institution and intermediary devoted to the prevention and elimination of human suffering.

As Denise Plattner in her paper *Protection of Children in International Humanitarian Law* explains, ICRC action in favour of child victims of armed conflict often had to take place with no legal basis:

'In accordance with its tradition as a humanitarian organization, and with its mandate, the ICRC did not await the legal provisions for protecting children in armed conflicts before undertaking operations for the protection of children. Throughout conflicts the ICRC's initiatives preceded the legal protection of children and endeavoured to complete or compensate for it, when the machinery for applying international law was wanting.

'During the Second World War, amongst so much horror and in spite of the difficulties it encountered in its work for civilians, due especially to a lack of legal grounds, the ICRC was able to organize certain actions such as the placing of young people under 18 in special camps, the organization of radio broadcasts to facilitate the re-uniting of children and parents and the creation of children's homes in countries ravaged by the war.'¹³

¹³ *Protection of Children in International Humanitarian Law*, paper read at the International Symposium "Children and War" at Siuntio Baths, Finland, March 1983, *International Review of the Red Cross*, May-June 1984.

Miss Plattner goes on to mention other Red Cross activities vital to the well-being of children: the tracing of missing persons, the exchange of family messages and the re-uniting of families separated by the conflict. The work is carried out by the Central Tracing Agency of the ICRC, often with the help of National Red Cross and Red Crescent Societies.

H.G. Beckh in his article 'The Reuniting of Families in Europe During and After the Second World War' states that government decrees in Europe after the War uprooted and scattered millions of people and that more than a million found themselves separated from their families. Writing of the importance of family reunion he states: 'Not only did the Second World War lay waste large areas and virtually destroy economic life; it also left in its wake bitterness and hatred together with fundamental ideological differences. Even the first attempts at re-uniting families demonstrated their pacifying effects. Such reunited families completely forgot the hardships of the wartime and post-war periods and once more looked to the future, starting with the re-building of their lives'.¹⁴

Such work was based on the ICRC's right of humanitarian initiative and one of the first tasks was "the reunion of children up to the age of 16 (and often older) with their parents, or if they were dead, with the nearest relatives."

Due to numerous obstacles, the actual work could only commence two years after cessation of hostilities. Thanks very much to Red Cross requests for the consideration of humanitarian aspects, it was agreed that the family reunion programme should also include Germans and 'ethnic Germans'. After the War, as well as the normal residents in West Germany, there were 9.1 million Germans and 'ethnic Germans' who had been uprooted from their homes following government decisions.

The ICRC working with the German Red Cross compiled information cards and lists of children who had been evacuated to the East and lists of their relatives who remained in Germany. Children's transports had to be arranged and the necessary exit and entry permissions obtained, steps which were made more difficult by the confused legal situation, laws of occupation and different interpretations of sovereignty.

¹⁴ The Reuniting of Families in Europe During and After the Second World War, International Review of the Red Cross, May-June 1980.

TRACING OF THE NAMELESS — THE WEST GERMAN RED CROSS

At the end of the Second World War one out of every four Germans was either looking for a relative or being sought. In the years after the War literally millions of tracing enquiries were made and over a quarter of a million children had been found without identification or parents. Some parents were killed during bombings; others had become separated from their children during evacuation or during the long trek to West Germany from the East. The German Red Cross set up a special Children's Tracing Service and introduced special techniques for tracing the nameless, for a baby or a small child cannot provide his name or date or place of birth. Information cards were compiled and lists made up giving approximate age, hair and eye colouring and any identifying marks. Clothing, a blanket or a toy were also described in case it could help in the identification. Much of the work was done through the press or radio with very good results. Later, one of the most successful ideas was a poster with the picture of the lost child, now an adult, along with a description of colouring etc., and the date and the place where the child was found. The idea was that the lost child as an adult may resemble his lost relatives and perhaps be recognized. Thousands of these posters were printed by the German Red Cross and put up in public places such as post offices, city halls and train stations. This method was used until a few years ago when it was decided that as many as possible had been found by this means. Of the 294,354 enquiries from or concerning children all except 3,271 were solved.

As a result of their experiences during the Second World War, the German Red Cross is as deeply aware as any National Red Cross or Red Crescent Society of the need for and the benefits of the Red Cross Tracing Service. Consequently they were in a position to offer their experience and expertise in this activity to help the Malaysian Red Crescent Society with the tracing of the Vietnamese boat people arriving in South East Asia in 1979.

ACTIVITIES OF THE HUNGARIAN RED CROSS ON BEHALF OF UNACCOMPANIED CHILDREN

After the Second World War, due to the change of frontiers many children of Hungarian origin were living in Romania, Czechoslovakia and Yugoslavia in areas with a Hungarian population,

where their parents had sent them for safety. Similarly some children from these areas were found to be living in Hungary without their parents.

Once postal communications were resumed many parents could be in touch with their children but the work of the repatriation of these children was to be a major task during the late forties and early fifties for the Hungarian Red Cross co-operating with sister Red Cross Societies in Romania, Czechoslovakia and Yugoslavia and the competent authorities.

The work involved considerable administrative tasks and documentation: registration of data supplied on the basis of parents' requests, followed by requests for birth certificates and for authorization from the authorities for the children's return. In some cases the child had to be traced first.

Similarly, for those children going to their parents in other countries, lists were compiled, passports obtained and handovers arranged. The children were accompanied to the country concerned and handed to representatives of the Red Cross Society in this country in the presence of a doctor before being reunited with their parents.

The Hungarian Red Cross describes the work as follows:

'Many years passed before this work was complete, less for administrative than for sentimental reasons. Owing to the long separation from their parents, some children preferred to stay in their accustomed environment and only reluctantly accepted their repatriation—the result of their changed circumstances—after countless doubts and hesitations.'¹⁵

In the early fifties there were many unaccompanied Greek refugee children in Hungary. The Hungarian Red Cross was involved in finding homes for them and then, with the help of other Red Cross Societies' tracing services, endeavouring to find their families so that arrangements could be made to reunite them. Again this work continued for many years because of the difficulties in tracing the parents.

Following the events of 1956 when tens of thousands of people left the country the workload of the Hungarian Red Cross Tracing Service increased considerably. As well as adults, many children

¹⁵ "Activities of the Hungarian Red Cross on behalf of Unaccompanied Children." Background paper presented by the Hungarian Red Cross Society at a Central Tracing Agency Technical Seminar, Geneva, 4-10 November 1982.

had set out without their parents' knowledge and, for the parents, the Red Cross represented their sole hope of seeing them again.

Concerning the repatriation of unaccompanied minor children (those under 18) the parents made a statement requesting repatriation as the children had left without knowledge or consent. The Yugoslav Red Cross agreed that they would return children under 14 years of age. Most of them were children from villages near the border; there were even small children of 6 years old who, following the older ones, had crossed the border as if they were merely going for a walk.

Some parents had left the country without their children, leaving them with other relatives, friends and neighbours or, according to the Hungarian Red Cross, even left alone in an empty apartment. After some time they asked for these children to be allowed to join them. While the Hungarian Red Cross advised the guardians on the procedure to be followed, it was not unusual for the guardians to feel that the children should remain in Hungary.

Unfortunately a fairly large number of children had to be cared for by the State and the Hungarian Red Cross took charge of them in order to facilitate their reunion with the parents abroad. According to the Hungarian Red Cross a minority of these family reunions were not successful as some children were unable to forgive their parents for having deserted them and were disappointed by their long awaited reunion. Some of them after awhile opted to return to Hungary.

Certainly the British Red Cross continues to receive enquiries via the Hungarian Red Cross from anxious, now elderly, parents wishing for news of their children who left suddenly nearly 30 years ago. In many cases it is obvious that they have not settled happily in Great Britain or put down roots and yet they seem to have no strong desire to return to their roots or even to keep in touch with parents to reassure them that they are well.

THE GREEK RED CROSS TRACING WORK: AN EXAMPLE OF FAMILY REUNION

It is sometimes asked how a child of a certain age can forget his or her own name and a case related by the Greek Red Cross illustrates just this:

Some time ago a man approached the Greek Red Cross to find his sister born in 1911/12 in a village in Turkey. In 1924 following the catastrophe in Asia Minor she was taken from the village by another brother and his wife to go to Greece. Unfortunately the brother died and it seems her sister-in-law handed her to a Turk and nothing more was heard of her.

Following a radio broadcast by the Greek Red Cross providing the details of the sought person and her family background she came forward.

It seems the child was taken to the Near East Agency. She did not know her date of birth. She knew her parents were dead but she did not remember them or, for that matter, even her family name. The Agency registered her as Panayotidou (daughter of Panayotis). They planned to send her to the United States with other Greek children but for some reason she was given to a Greek family. She acted as nanny to their children and remained with them for 35 years.

Finally, ten years ago she had come to Greece with her husband. It was only as a result of the radio broadcast by the Greek Red Cross giving the sought person's details and story that she heard and remembered her name!

THE BRITISH RED CROSS AND TRACING

Tracing those missing as a result of the upheavals of armed conflict situations is an activity that continues long after the actual conflict is over.

The British Red Cross Society receives some 3,000 enquiries a year concerning the health, welfare and whereabouts of individuals separated by conflict or other urgent situations. The Society has long recognized the welfare benefits to the community of this humanitarian service. Whilst over 30 per cent of the work pertains to the present conflict between Iran and Iraq, 25 per cent still pertains to those separated as a result of the Second World War. Many of the enquiries received concern children who were sent out of Europe during the events leading up to the war or who arrived as unaccompanied minors from displaced persons' camps just after.

Case histories relate distressing details of children who were separated from parents either intentionally for their own safety or otherwise. Parents were deported or sent to forced labour; children

were left in the care of other relatives and new boundaries were drawn to separate them. Children produced by soldiers of occupation, then soldiers of liberation, or as a result of liaisons in camps were often given up by the mothers in the hope of giving the child a better life.

Many of these children, now adults, have no information whatsoever of their past and some have been unable to lead satisfactory lives due to an undeniable urge to know of their origins. Some enquirers had thought it was impossible to find family—indeed, it often is—others were afraid to make enquiries. Some now have produced children of their own and this seems to strengthen the desire to find out about their background and to find family.

At the Rådda Barnen Seminar on Care and Protection of Unaccompanied Children in Emergencies in Norway in June 1985, it was advocated that the child should be provided with his or her history as soon as possible along with some welfare guidance. It was also stressed that documentation must be preserved for a long period.

Certainly the experience of the British Red Cross Society would support the importance of these suggestions. Prof. Ron Baker, who was himself a child refugee from Germany, spoke recently at an informal meeting held by the British Red Cross, June 1985, on the subject of Refugees, Roots and Mental Health.

Prof. Baker said that people need to put the fragments of their lives together and records of all kinds—documents, birth certificates, photographs, newspaper cuttings, family and friends' testaments—are all a necessary part of this process. Appropriate records enable the 'survivor' to go back to origins and roots and to reconnect with family, culture, religion, etc. Records should never be destroyed; they should be treasured and made available as a service and it is Prof. Baker's conviction that this safeguards the mental health of the individual concerned.

As much information as possible should be given to children as soon as possible concerning their backgrounds and advice should be sought from the Red Cross concerning the possibility of tracing any family members.

As mentioned above, Prof. Baker has personal experience regarding the importance of records. He had been adopted in the U.K. believing his parents had died. Years later, through the Red Cross, came the news that his mother had survived which was soon followed by his mother, a complete stranger.

Last year a young Vietnamese who arrived in the U.K. on the baby airlift in 1975 received with mixed feelings the news from the British Red Cross that his mother was still alive. It would have been less traumatic if tracing could have been conducted earlier but no request for tracing had ever been made on the boy's behalf.

Tracing is a first step towards family reunion. As the ICRC and the UN High Commissioner for Refugees have stressed, all efforts should be made to trace parents before children are sent as unaccompanied minors to third countries for resettlement. However, once the child has been received for resettlement—as it seems that repatriation of children in any number is not a solution in most situations—those responsible for the child's welfare must consider whether the priority will be to leave no channel of enquiry unexplored in an effort to find family or to concentrate all efforts on helping the child to make new beginnings, perhaps ignoring the past. A balance between the two must be found.

VI. CURRENT WORK CONCERNING THE CARE AND PROTECTION OF CHILDREN

Numerous symposia, workshops and seminars have been held by intergovernmental organizations and NGOs and the fact that they are so well attended reflects the interest in this important subject. As already mentioned, a major study is under way and both a UN and a European Convention on the Rights of the Child are being drafted. Although much of the emphasis has been on the care of children and the protection of their best interests and, in particular, on the necessity of establishing principles and guidelines for the future care of unaccompanied minors, in almost every meeting the subject of the child in an armed conflict situation is raised.

An International Convention on the Rights of the Child

Earlier this year, at its 41st session the UN Commission on Human Rights adopted the report by the working group on progress on a draft convention regarding the rights of the child. By this last session the working group had drafted 17 articles. During this

session new articles were put forward by Delegates of States, including two concerning protection of children during armed conflict situations, but these have yet to be considered by the working group.

One of the two articles, put forward by the Netherlands, Belgium, Sweden, Finland, Peru and Senegal, runs as follows:

“1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.

“2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.”

The meetings of the working group are open to all members of the Commission on Human Rights and the ICRC is one of the organizations that joins in as an observer. Although there is considerable interest and support from NGOs for this group there has been some concern expressed about the low number of representatives of Member States attending.

The Islamic Republic of Iran has also submitted a proposal for a new article which mentions children and armed conflict situations ... and refers to military attacks on the civilian population and the use of chemical and bacteriological weapons. (These areas are also covered by international humanitarian law.)¹⁶

Article 11 *bis* of the draft convention is also of interest as it states that “Parties to the Convention should provide appropriate co-operation in any efforts by UN and other competent inter-governmental and non-governmental organizations to protect and assist a child (who is seeking refugee status) and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.”

¹⁶ The working group which preceded the 42nd session of the UN Commission on Human Rights (3 February-14 March 1986) adopted Article 20 on children in armed conflicts.

A European Convention on the Rights of the Child

Work is under way by the International Union for Child Welfare for a European Convention on the Protection of the Rights of the Child which in its present draft consists of some 59 articles.

Article 42 specifies that there should be respect for the 1949 Geneva Conventions and their Additional Protocols in armed conflict situations and that the necessary administrative and legislative measures should be taken in peacetime.

Again the ICRC participates as an observer and has been able to make suggestions for the possible wording of any article that specifies on armed conflict situations so that it does not weaken or confuse existing legal provisions.

The care of unaccompanied children in war, natural disasters and refugee situations

An independent study is presently being conducted by Mr. Everett Ressler, Dr. Neil Boothby and Mr. Daniel Steinbock for the care of unaccompanied children in war, natural disasters and refugee situations.

The study arose from concern for—and attempts to establish principles and guidelines for—the care and placement of unaccompanied children in emergency situations.

At a seminar titled 'Care and Protection of Unaccompanied Children in Emergencies' which was held by Rødde Barnen in June 1985 in Oslo, the study conducted by Mr. Ressler and others was discussed. Representatives of 35 NGOs and UN agencies attended and it was agreed that the problem of unaccompanied minors in emergencies is a major challenge to government and relief agencies and the study should provide valuable direction for future work and should include activities to promote wider international recognition of principles and guidelines. *Concerning better protection and care of the child it was suggested that what is required is not so much legal statutes as more discussion of principles and guidelines.*

Concern was expressed about the poor geographical representation at meetings and working groups. A caution was also given against over-professionalization of the task and the emphasis on a dominantly European view of children and their problems. It must be remembered that while organizations can advocate and advise it is only governments that have the ability to determine what happens within their borders.

International Symposium On The Protection of Children

A background paper presented at a symposium held by the Independent Commission on International Humanitarian Issues in Amman, Jordan, in November 1984 discussed the recruitment of the child soldier. It was pointed out that the issue is not merely recruitment of children to fight but the impact of armed activities and violence on younger people. It was felt that, although existing international instruments in the field of humanitarian law contain specific and detailed stipulations to limit the impact of armed conflict situations on children, the problem is their implementation.

It was suggested that there should be adequate dissemination of knowledge of the related humanitarian principles at all levels in such a manner that all those concerned would put them into practice internationally. Likewise it was also pointed out that there was a need to campaign and put pressure on governments to safeguard and uphold the principles of international humanitarian law and to react to transgressions among their own agents.

Concerning evacuation of children, it was stated that the long-term interests of the child have not always been considered as the main concern has been the removal of the child from danger. The welfare aspects are often considered later. In the baby lift for example, following the fall of Saigon it was commented 'it has been clearly shown that in many cases family tracing procedures have been minimal, in the haste of protecting the child's interests'. Although as we have seen there are very strict conditions concerning the evacuation of children in international humanitarian law, these actions (removal) were not taken by governments but rather by private agencies which in their views had the best interests of the children concerned in mind. Governments, in granting such children entry permission, give tacit approval to such action.

From the working groups of this meeting in Amman came some recommendations that could be steps towards providing further protection to children in armed conflict situations.

First of all it was suggested that 'we should seek to build a new consensus against war itself'... 'a world conference of religious and other thinkers, representing the span of religious and political philosophies, should be called'.

It was acknowledged that some immediate progress in protection of civilians and children would be achieved if existing international humanitarian laws were respected.

Further suggestions were as follows:

- Human rights should be introduced into education curricula;
- Governments should include in training programmes for armed forces and agencies involved in national defence and civil protection their duties under international humanitarian law;
- Public awareness and public commitment to existing international law governing the protection of children in armed conflicts should be promoted. This also involves reporting by journalists who should tell 'not just who is winning or losing but also who is suffering and highlight specific humanitarian abuses';
- Action-oriented research should be conducted to assist field workers in developing the most effective on-the-spot programmes to meet the needs of children involved in armed conflicts with special attention to children who are in camps, displaced or otherwise uprooted from a family setting.

SUMMARY

We have looked at the protection offered to children in conflict situations by the Fourth Geneva Convention of 1949 and the Additional Protocols of 1977. The principle that children are particularly vulnerable and in need of special protection has been developed in these provisions.

When the idea of a Convention on the Rights of the Child was first put forward there were debates about whether this was the best way to proceed. The International Union for Child Welfare expressed reservations about the Polish draft proposal stressing the legal difference between a Declaration and a Convention. Although a Convention is theoretically stronger than a Declaration because it is legally binding, experience has shown that a Declaration adopted unanimously has a greater moral impact than a Convention only ratified by a few countries.

Evi Underhill in a paper (undated) "Comments on the Draft Convention on the Rights of the Child" posed not only the question whether Conventions are necessary but also whether they are effective or implemented and if they correspond to the large variety of national customs, political, economic and legal structures.

Certainly, concern has been expressed about the lack of geographical representation of Member States attending the working

group which is drafting the Convention on the Rights of the Child. In the meantime some NGOs are urging that the drafting process should be speeded up.

While it is perfectly feasible that the drafting process could be completed more quickly there is a danger that the product will be over-sophisticated in its stipulations and that many countries would not be able to meet the standards requested. Also, unless more governments participate, some may feel that the draft Convention is not acceptable or even relevant to them.

The first proposal for a Convention on the Rights of the Child did not concern itself with the protection of the child in an armed conflict situation. Now, as has already been mentioned, both the United Nations and the European draft conventions have articles covering conflict situations.

The ICRC view is that the problem of protection of children in time of armed conflict is not a question of the need to introduce new legal instruments.

We must be careful not to weaken the existing protection which consists of nearly 30 articles. The proceedings of the Geneva Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts which drafted the 1977 Protocols additional to the 1949 Geneva Conventions continued from 1974 to 1977.

While the danger of non-ratification and non-implementation of new Conventions is a real danger, it should be recalled that 163 States are parties to the Geneva Conventions (more than the UN Charter!), 57 to Protocol I and 50 to Protocol II.¹⁷

What is needed is not more laws to protect the child in armed conflict situations. What is needed is dissemination and implementation of existing international humanitarian law. What is needed is more comprehension even by those in NGOs who are declaring that there is not enough protection and who are attempting to redraft those laws that are already in force.

However there seems to be considerable support for the idea of a Convention on the Child which includes mention of protection in the situation of armed conflict and, as mentioned previously, the present drafts of both the European and UN Conventions include articles on this area.

As stated by Mr. Nigel Cantwell reporting on the informal consultations among international non-governmental organizations

¹⁷ As of 28 February 1986.

on this subject at the NGO Forum which took place in Rome in 1984, "it is not sufficient to justify the omission of the problem of children in armed conflicts on the ground that this sphere is covered elsewhere—more especially in the 1977 Protocols additional to the Geneva Conventions. Indeed, the majority of rights to be granted within the framework of the Draft Convention already figure in other international legal instruments. But to omit them in the Draft Convention on the Rights of the Child would be failing to reaffirm belief in and support for them as rights to which the child is entitled!"

Mr. Michel Veuthey of the ICRC speaking at the same meeting on one of the major concerns, the child soldier: "In too many conflicts children are not only victims but also the protagonists in the conflicts, where they regard themselves, voluntarily or not, as committed fighters. This phenomenon of combatant children... must be stopped before it is too late.

"The countries that have signed the Geneva Conventions of 1949 and the Additional Protocols of 1977 must respect the provisions forbidding children under 15 years to enlist.

"NGOs can remind the governments of their obligations under the treaties already ratified or of their duty to ratify the treaties. NGOs can also influence public opinion.

"This is not only a question which concerns the countries involved in these conflicts, it is even more a universal collective responsibility to ensure respect for the fundamental rights of children to peace. It is also a contribution to the survival of children and to peace in the world."

Sandra Singer

Director

*International Tracing and Welfare
the British Red Cross Society*

**PROVISIONS OF INTERNATIONAL
HUMANITARIAN LAW
ACCORDING SPECIAL PROTECTION TO CHILDREN**

**1. Geneva Convention Relative to the Protection
of Civilian Persons in Time of War of August 12, 1949**

- Article 14:* Hospital and safety zones and localities
- Article 17:* Evacuation
- Article 23:* Consignment of medical supplies, food and clothing
- Article 24:* Measures relating to child welfare
- Article 25:* Family news
- Article 26:* Dispersed families
- Article 38:* Non-repatriated persons
- Article 49:* Deportations, transfers, evacuations
- Article 50:* Children
- Article 51:* Enlistment. Labour
- Article 68:* Penalties. Death penalty
- Article 76:* Treatment of detainees
- Article 81:* Maintenance
- Article 82:* Grouping of internees
- Article 89:* Food
- Article 94:* Recreation, study, sports and games
- Article 132:* During hostilities or occupation

**2. Protocols additional to the Geneva Conventions
of 12 August 1949**

PROTOCOL I OF 8 JUNE 1977

- Article 8:* Terminology
- Article 70:* Relief actions
- Article 74:* Reunion of dispersed families
- Article 75/5:* Fundamental guarantees
- Article 77:* Protection of children
- Article 78:* Evacuation of children

PROTOCOL II OF 8 JUNE 1977

- Article 4/3:* Fundamental guarantees
 - Article 6/4:* Penal prosecutions
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