

Protection of Children in International Humanitarian Law¹

by Denise Plattner

I. INTRODUCTION

The legal protection of children was introduced into international humanitarian law after the Second World War. Experience during that conflict had, in fact, pointed to the urgent need to draw up an instrument of public international law for protecting civilian population in wartime. The results of the ICRC's efforts in this field led to the adoption of the 1949 Fourth Geneva Convention relative to the protection of civilian persons in time of war. From that time on, children, as members of the civilian population, were entitled to benefit from the application of that Convention. Moreover, the first international humanitarian law regulations concerning armed conflicts not of an international character, contained in article 3, common to the four 1949 Geneva Conventions, were drawn up at the 1949 Diplomatic Conference. Here again, children were protected, in the same way as all "persons taking no active part in the hostilities".

Since the Second World War, the international community has witnessed the appearance of new kinds of conflicts. Methods and means of warfare have become increasingly sophisticated. Conflicts opposing regular armed forces and irregular combatants are more frequent. In modern warfare, losses are much more severe among civilians, including children. A Diplomatic Conference was held from 1974 to 1977, whose aim was to supplement and develop international humanitarian law by taking into account this evolution. At the close of this Conference in

¹ Paper read at the International Symposium "Children and War", at Siuntio Baths, Finland, 24-27 March 1983.

1977, the two Protocols additional to the Geneva Conventions were adopted. These instruments considerably improve the protection of civilian population and, consequently, that of children. The new provisions of both Protocol I, applicable during international armed conflicts, and Protocol II, relating to non-international armed conflicts, reaffirm and develop those of the Fourth Geneva Convention.²

The International Committee of the Red Cross (ICRC), which works on behalf of the victims of armed conflicts, has always been particularly sensitive to the plight of children during wartime. Since the Second World War especially, it has endeavoured to alleviate their sufferings by helping in the drafting of laws for their protection, and by undertaking operations in countries affected by conflicts.

II. THE PROTECTION OF CHILDREN IN THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

International humanitarian law provides general protection for children as persons taking no part in hostilities, and special protection as persons who are particularly vulnerable. Moreover, children taking part in hostilities are also protected. The various aspects of the legal protection of children will be examined one after the other in the following paragraphs.

A. General protection of children, as members of the civilian population

During *international armed conflicts*, children come into the category of those protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. By virtue of this, they benefit in particular from all the provisions relative to the treatment of protected persons, which state the basic principle of humane treatment, including respect of life and physical and moral integrity, and forbidding, inter alia, coercion, corporal punishments, torture, collective penalties and reprisals.

As members of the civilian population, children benefit from the rules of international humanitarian law relative to the conduct of hostilities. These rules, developing the principles for distinguishing between civilians and combatants and forbidding attacks directed against civilian popu-

² As of 31 December 1983, thirty-eight States had become parties to Protocol I and thirty-one to Protocol II.

lation, are expressed, inasmuch as they refer to international armed conflicts, in Protocol I of 1977.

In *non-international armed conflicts*, children are protected by the fundamental guarantees relating to the treatment of persons taking no active part in the hostilities, set forth in article 3 common to the four Geneva Conventions. Under this article, children have at least the right, during these conflicts which are often very cruel, to be treated humanely. There should not be any violence to their lives and persons or their dignity.

Protocol II of 1977 also codifies the principles according to which the civilian population as such, as well as individual civilians, shall not be the object of attack.

B. Special protection of children, as members of the civilian population

1. The principle

The Fourth Geneva Convention comprises a great many provisions in favour of children. They show that, already in 1949, it was felt that children should be especially protected against warfare. However, the principle on which the rules relating to children is based is not stated explicitly anywhere in that Convention.

Protocol I fills this gap, by providing, under article 77, that: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason". The principle of the special protection of children during *international armed conflicts* is thus explicitly laid down.

Protocol II made similar provision for *non-international armed conflicts*. Article 4, entitled "Fundamental guarantees", comprises a paragraph devoted exclusively to children. It stipulates that: "Children shall be provided with the care and aid they require". This article then enumerates special measures relative to children, giving substance to the general rule stated above. The structure of article 4 shows how important the authors of Protocol II considered the protection of children during non-international armed conflicts, and it enables us to maintain that the principle of special protection of children during these conflicts is thereby affirmed.

2. Special provisions for protection against the effects of hostilities

New-born babies are assimilated to the "wounded" for the purposes of Protocol I (article 8 (a)).

Children who have not attained the age of fifteen years and mothers of children under seven come into the categories of the civilian population who can be received into the hospital or safety zones established by the parties to an *international armed conflict* in accordance with article 41 of the Fourth Geneva Convention. Likewise, children and maternity cases come into the category of civilian persons who, according to the Fourth Convention, should be evacuated from besieged or encircled areas (article 17).

Protocol I provides, yet only on the strictest of conditions, for the temporary evacuation of children, should this become necessary for compelling reasons for their safety (article 78).

In the case of *non-international armed conflicts*, Protocol II encourages the temporary evacuation of children, on certain conditions, from an area in which hostilities are taking place to a safer area within the country (article 4, 3, e).

3. *Right to care and aid*

As already mentioned, Protocol I lays down that the parties to an *international armed conflict* should provide children with care and aid.

Many of the provisions of the Fourth Geneva Convention take into account the particular needs of children.

Thus, each High Contracting Party must allow the free passage of relief intended for children under fifteen and maternity cases (article 23). An Occupying Power must facilitate the proper working of institutions devoted to the care of children in occupied territory (article 50). Parties to a conflict are bound to provide for the dependents of internees, if such dependents are without adequate means of support or are unable to earn a living (article 81). Nursing mothers and children under fifteen, interned for reasons of security by parties to a conflict, shall be given additional food, in proportion to their physiological needs (article 89).

Under Protocol I, in the distribution of relief consignments, priority shall be given to children and maternity cases, among others (article 70, 1).

Lastly, according to article 78 of this same Protocol, the temporary evacuation of children is also provided for in cases where the health or medical treatment of the children require it (article 78, 1).

As already mentioned, where *non-international armed conflicts* are concerned, Protocol II lays down the right of children to care and aid (article 4, 3).

4. *The child and his family*

In the light of the conclusions of a UNESCO study on children and warfare, the provisions of international humanitarian law which aim

at preserving family unity during armed conflicts take on a special significance. Thus, according to that study:

“When we study the nature of the psychological suffering of the child who is a victim of the war, we discover that it is not the facts of war itself—such as bombings, military operations—which have affected him emotionally; his sense of adventure, his interest for destruction and movement can accommodate itself to the worst dangers, and he is not conscious of his peril if he keeps near him his protector who, in his child’s heart, incarnates security, and if, at the same time, he can clasp in his arms some familiar object.

*It is the repercussion of events on the family affective ties and the separation with his customary framework of life which affect the child, and more than anything the abrupt separation from his mother.”*³

Protocol I states the general duty of High Contracting Parties and parties to a conflict to facilitate the reuniting of families dispersed as a result of an *international armed conflict* (article 74).

Unity of the family is taken into consideration in the various provisions relative to persons deprived of their freedom. The Fourth Geneva Convention states 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 (article 82). Internees may request that their children who are left at liberty without parental care shall be interned with them (article 82). According to Protocol I, families arrested, detained or interned shall, whenever possible, be accommodated as family units (article 75, 5).

The rules of Protocol I on arrested, detained or interned mothers having dependent infants also stem from a concern to keep mothers and children together. Their cases must be considered with the utmost priority (article 76, 2). Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on these women; if they are sentenced to death, the penalty shall not be executed (article 76, 3).

The protection of family ties was taken into consideration for the temporary evacuation of children pursuant to article 78 of Protocol I. Such evacuation is subject to very strict conditions. The consent of the parents, legal guardians or persons who by law or custom are primarily responsible for the care of the children is required (article 78, 1). In

³ Translation of: *L’Enfance, Victime de la Guerre: Une étude de la situation européenne*, par le docteur Thérèse Brosse, UNESCO 1949, Paris, pp. 11-12, quoted in the “Report on the Work of the Conference of Government Experts”, Vol. II, ICRC 1972, p. 89.

addition, all the necessary steps must be taken to keep track of children who are evacuated (article 78, 3).

In keeping with the principle of the inviolability of the child's personal status, as expressed in the Fourth Geneva Convention, it is forbidden to an Occupying Power to change the family or personal status of children (article 50).

Another aspect of the protection of the family is taken into account in article 51 of the Fourth Geneva Convention, which forbids an Occupying Power to compel protected persons under eighteen to work.

An account of all the measures provided for by international humanitarian law to preserve the ties between children and their families would be incomplete if no mention were made of either the provisions for keeping track of protected persons or of those enabling the members of their families to learn of their fate.

According to the Fourth Geneva Convention, the parties to a conflict shall endeavour to arrange for all children under twelve to be identified, in particular by the wearing of identity discs (article 24). An Occupying Power shall facilitate the identification of children and the registration of their parentage, and set up, within its Information Bureau for protected persons, a special section responsible for identifying children whose identity is in doubt (article 50). The extreme importance of having a system for identifying children, especially infants, must be emphasized. That is the only way of preventing thousands of them from being abandoned as a result of the events of war: exodus of the population, bombings, the destruction of towns, deportations, etc.

Moreover, the Fourth Geneva Convention recognizes that all persons in the territory of a party to a conflict, or in a territory occupied by it, have the right to give news to members of their families, wherever they may be (article 25). The system set up by the Geneva Conventions and the functions assigned to the Central Tracing Agency by the Geneva Conventions⁴ permit parents to receive information on their children

⁴ The origin of the provisions on the Central Information Agency in the Geneva Conventions goes back to the very first actions of the ICRC on behalf of the victims of conflicts. But it was in 1914 that the ICRC first established an international Prisoners of War Agency which was responsible for collecting and forwarding information on prisoners (wounded, sick or deceased) and also on civilians. The Geneva Convention relative to the treatment of prisoners of war of 1929 gave legal sanction to the existence and operation of this Agency. During the Second World War, the ICRC opened the Central Prisoners of War Agency in Geneva, which, dealing also with civilians, handled a considerable work load. The 1949 Diplomatic Conference confirmed the legal basis of the Central Information Agency in the Third Geneva Convention relative to prisoners of war, and, in identical terms, in the Fourth Geneva Convention relative to civilian persons. According to the Geneva Conventions, the main tasks of the Central Information Agency are the collecting and transmitting of

who are in the power of a party to a conflict and vice versa (article 136 and ff).

With regard to *non-international armed conflicts*, Protocol II lays down that all appropriate steps shall be taken to facilitate the reuniting of families temporarily separated (article 4, 3, b). The evacuation of children is subject to “the consent of their parents or persons who by law or custom are primarily responsible for their care” (article 4, 3, e). The death penalty shall not be carried out on mothers of young children (article 6, 4).

5. *The cultural environment of the child*

While a child remains with his family, he continues to benefit from the cultural environment to which he is accustomed. By protecting a child's family, international humanitarian law is also protecting the moral values, religion, culture and traditions in which he has been brought up. If a child is orphaned or separated from his parents, his cultural environment can be affected by the conflict. It appears from the provisions of international humanitarian law relating to this category of children that the authors of the Fourth Geneva Convention and those of Protocol I subscribed to the principle that, in *international armed conflicts*, children should benefit from an environment as close as possible to that to which they are accustomed.

Thus, in the Fourth Geneva Convention, the parties to a conflict shall ensure in all circumstances that children under fifteen who are orphaned or separated from their families may continue “the exercise of their religion and their education”; as far as possible, their education shall “be entrusted to persons of a similar cultural tradition” (article 24). The reception of such children in a neutral country should comply with the same principles (article 24). The Occupying Power shall make arrangements for the maintenance and education of children who are orphaned or separated from their parents, “if possible by persons of their own nationality, language and religion” if they “cannot be adequately cared for by a near relative or friend” (article 50). In Protocol I, article 78, 2, relating to the evacuation of children, lays down 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”.

information on protected persons. The ICRC's Central Tracing Agency continues the work of the Central Prisoners of War Agency and, since 1960, has been run, under this name, as a permanent department of the ICRC.

6. *The education of children*

In addition to the provisions mentioned above on the education of children who are orphaned or separated from their families, the Fourth Geneva Convention imposes certain duties of a general nature concerning the education of children on parties to an *international armed conflict*. The Occupying Power must facilitate the proper working of all institutions devoted to the education of children (article 50). The Detaining Power shall ensure the education of interned children and young people, who shall be allowed to attend schools (article 94).

In the case of *non-international armed conflicts*, Protocol II provides that children “shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care” (article 4, 3, a).

7. *The personal rights of the child*

The Fourth Geneva Convention prohibits an Occupying Power from changing a child’s personal status (article 50). Therefore, neither his nationality nor civil status should be changed if his country is occupied during an *international armed conflict*. This provision supplements, with regard to children, the essential principles concerning respect for the human person and for family rights set down in article 27 of the same Convention. In addition, an Occupying Power must not enlist children in formations or organizations subordinate to it (article 50). This prohibition is meant to prevent a renewal of the compulsory mass enrolments which took place during the Second World War, where a great many children were automatically made members of organizations and movements devoted primarily to political ends.

8. *Respect of preferential treatment for children*

Although the Fourth Geneva Convention does not state as a principle that special protection should be given to children, two of its provisions do stipulate that preferential treatment granted to children by national legislations shall continue during *international armed conflict*. Indeed, countries at war very often issue decrees for the benefit of those who are particularly vulnerable and who require special treatment: additional food ration cards, facilities for medical and hospital care, social assistance, protection against the effects of war, etc. Children under fifteen years and mothers of children under seven years who are nationals of the enemy are entitled to any preferential treatment which is granted to the same

categories of nationals of the State concerned (article 38). Likewise, the Occupying Power shall not hinder the continued application in favour of these persons of any preferential measures adopted prior to the occupation (article 50).

9. *Arrested, detained or interned children*

International law authorizes a party to an *international armed conflict* to take measures, with regard to protected persons, aimed at ensuring its own security. One of these measures is internment. Moreover, the Occupying Power can indict protected persons for breach of the national laws in force in the occupied territory, or for breach of its own decrees, issued to ensure its own security. A child can be interned like any other protected person. He can also be indicted, as in peacetime, for having committed a breach of the penal law in the occupied territory, or for having committed acts prejudicial to the security of the Occupying Power. Contrary to international humanitarian law (see § 3 above), he may, in fact, have been enrolled in the armed forces and captured as a fighting member of those forces. In taking into account these situations, international humanitarian law provides special provisions for children who are thus deprived of their freedom.

Under Protocol I, children who are arrested, detained or interned, must be held in quarters separate from the quarters of adults, except where families are accommodated as family units (article 77, 4).

The Fourth Convention provides for the lodging of children with their interned parents (article 82), whereas Protocol I extends such accommodation to all those who are in the power of a Party to the conflict (article 75, 5) (see § 4 above).

The Fourth Geneva Convention provides for the education of the children and young people who have been interned (see § 6), as well as special playgrounds for sports and outdoor games (article 94). Provision is made (article 89) for additional food (see § 3). The Convention also encourages the release, repatriation, return to places of residence or accommodation in a neutral country of children and mothers with infants and young children (article 132).

According to the Fourth Geneva Convention, proper regard shall be paid to the special treatment due to minors accused of offences under legislation in force before the occupation (article 76).

According to Protocol I, children under fifteen who take a direct part in hostilities and fall into the power of an adverse party shall continue to benefit from the special protection accorded by article 77 (article 77, 3) (see § 3).

Protocol II contains an identical stipulation for *non-international armed conflicts* (article 4, 3, d) (see § 3).

10. *Children and the death penalty*

The authors of the Fourth Geneva Convention and those of the Additional Protocols fixed the minimum age limit for the execution of the death penalty at eighteen years. According to the Commentary on the Fourth Convention:

*“It (article 68 (4) of the Convention) makes eighteen years the absolute age limit below which the death penalty may not be inflicted, even if all the other conditions which make that penalty applicable are present. The clause corresponds to similar provisions in the penal codes of many countries, and is based on the idea that a person who has not reached the age of eighteen years is not fully capable of sound judgment, does not always realize the significance of his actions and often acts under the influence of others, if not under constraint.”*⁵

With regard to *international armed conflicts*, Protocol I forbids the execution of the death penalty for an offence related to the armed conflict on persons who had not attained the age of eighteen years at the time the offence was committed (article 77, 5). The Fourth Geneva Convention prohibits the death penalty to be pronounced on a protected person of an occupied territory who was under eighteen years of age at the time of the offence (article 68).

In *non-international armed conflicts*, Protocol II forbids the death penalty to be pronounced on persons who were under the age of eighteen years at the time of the offence (article 6, 4).

11. *Orphaned or separated children*

The arrangements which parties to an *international armed conflict* must make for children who are orphaned or separated from their families owing to a war have already been mentioned in the paragraphs devoted to the child and his family (see § 4) and the cultural environment of the child (see § 5).

The Fourth Geneva Convention attaches special importance to the cases of children who are orphaned or separated from their families. The parties to the conflict have the duty to take the necessary measures to ensure the maintenance and education of children under fifteen who

⁵ *Commentary of the Fourth Geneva Convention*, International Committee of the Red Cross, Geneva 1958, re article 68, p. 347.

are orphaned or separated from their families as a result of the war, and to see that they are not left to their own resources (article 24). Provision is made (article 24) for the reception of such children in a neutral country. The authors of the Convention chose fifteen as the age limit because they considered that, after that age, the development of the faculties no longer required special measures to such an extent.⁶ Likewise, the Occupying Power should make arrangements for the maintenance and education of children who are orphaned or separated from their parents (article 50).

C. Children taking part in hostilities

Both Protocols include provisions relating to a new problem, that of children taking part in hostilities. This is one of the consequences of the evolution in the nature of conflicts, namely the fact that civilians and combatants are often mixed. Children's involvement in hostilities, which can extend from indirectly helping combatants to actually taking part in fighting, or even being enlisted in the armed forces, should be considered within this context. To categorically prevent children from taking part in hostilities would have been neither realistic, nor even possible. However, the Protocols aim at excluding their doing so as far as possible, especially by forbidding the recruitment of young people under fifteen (article 77, 2 of Protocol I and article 4, 3, c of Protocol II). Moreover, Protocol I encourages the parties to a conflict, if they recruit persons between the ages of fifteen and eighteen years, to enlist the oldest first (article 77, 2).

If, despite the provisions of the Protocols, children who have not attained the age of fifteen years take a direct part in hostilities and are captured, they shall continue to benefit from the special protection afforded by the Protocols (article 77, 3 of Protocol I and article 4, 3, d of Protocol II).

III. ICRC ACTION IN FAVOUR OF CHILD VICTIMS OF ARMED CONFLICTS

The ICRC has always been active in promoting the legal protection of children. As long ago as 1939, the ICRC and the International Union for Child Welfare prepared a draft Convention for the protection of the child. It did not materialize owing to the outbreak of the Second

⁶ *Ibid.*, re article 24, p. 186.

World War. During the Diplomatic Conferences in 1949 and from 1974 to 1977, the ICRC initiated and developed the legal protection of children.

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 eighteen 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.

There is one sphere in which the ICRC has made and continues to make a vitally important contribution on behalf of children: the tracing of missing persons, the exchanging of family messages and the reuniting of families separated by the fighting. For over a century, the ICRC's Central Tracing Agency has been gathering and transmitting information on missing persons, captives, refugees, persons released from detention or repatriated, and informing their families. When normal channels of communication are disrupted, it forwards family messages. In the discharge of these tasks, ICRC delegates give priority to the tracing of missing children, putting them in touch, and reuniting them with their families. A task accomplished in recent years by the ICRC's Central Tracing Agency on behalf of children separated from their parents through war was the identifying of unaccompanied Khmer children placed in refugee camps in Thailand as a result of the Kampuchea conflict. In this way, in 1980, about 3,500 cases of unaccompanied minors were registered by the ICRC, in co-operation with the Office of the United Nations High Commissioner for Refugees and various voluntary agencies, with the aim of reuniting them with their families.

With regard to assistance, children benefit by the relief actions which the ICRC undertakes on behalf of civilian populations affected by conflicts. In some cases the main beneficiaries of ICRC assistance programmes are children and adolescents. Such was the case, for example, in Zambia, during the Rhodesia/Zimbabwe conflict, where 18,000 of the 29,000 refugees from Rhodesia/Zimbabwe, were young people under sixteen, and 300 were young mothers with babies. Until the end of the

conflict in 1980, the ICRC supplied these persons with a considerable amount of medical and material aid.

It also happens that the ICRC carries out a special operation for children. The assistance programme for orphanages, which the ICRC undertook in Kampuchea in 1981, is a case in point.

The ICRC endeavours to protect all the victims of armed conflicts, and, by virtue of this, children are included in the actions which the ICRC undertakes during these conflicts. This means that children will be visited by the ICRC if they are being held by a party to a conflict and be included in the ICRC's actions or interventions on behalf of the victims of armed conflicts. The ICRC can also take special measures of protection for children. For example, on the day following the ICRC's first visit to Al Ansar Camp in south Lebanon, where mainly Palestinian prisoners were detained, 212 children under sixteen were released under the auspices of the ICRC. ICRC delegates took charge of the children and ensured their return to their families in the various regions of the Lebanon (September-October 1982).

IV. CONCLUSION

Numerous provisions of international humanitarian law establish and develop the principle of special protection for children in time of armed conflict. Whether for victims of armed conflict, or specifically for children as such; whether it involves promotion of respect for international humanitarian law or the daily tasks of its delegates, the ICRC's work undoubtedly gives effect to the principle that child victims of war must be protected. Indeed such protection is part and parcel of the protection of civilians against the effects of hostilities. It is within this scope that the protection of children should first be situated.

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