

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN
IN ARMED CONFLICT, DONE AT NEW YORK ON 25 MAY 2000**

[2002] ATNIF 28

Documents tabled on 22 June 2004:

National Interest Analysis

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SUMMARY PAGE

Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, done at New York on 25 May 2000

[2002] ATNIF 28

Date of Tabling of Proposed Treaty Action

1. The NIA and text of the treaty will be tabled in Parliament on 22 June 2004.

Nature and Timing of Proposed Treaty Action

2. It is proposed that Australia take binding treaty action to ratify the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict.
3. Australia signed the Optional Protocol on 21 October 2002. Pursuant to article 10(2), the Optional Protocol would enter into force for Australia one month after the date of the deposit of our instrument of ratification with the United Nations Secretary General. Ratifying the Optional Protocol would not affect any existing treaty to which Australia is a party.
4. The Optional Protocol entered into force generally on 12 February 2002 in accordance with article 10(1) following the deposit of the tenth instrument of ratification. As at June 2004, 115 states had signed the Optional Protocol with 72 states having deposited instruments of ratification or accession (refer to Annex B).

Overview and National Interest Summary

5. The use of child soldiers in conflicts remains a serious problem; UNICEF estimates that 300,000 child soldiers are involved in more than 30 conflicts worldwide. The Optional Protocol strengthens the protections contained in the Convention on the Rights of the Child (which we have ratified). Most importantly, it obliges States Parties to take all feasible measures to ensure members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
6. It is appropriate that Australia ratify the Optional Protocol. Australia was an active participant throughout negotiation of the Protocol and the final outcome fully reflects our preferred position. Ratification will signal our strong support and continuing commitment to the promotion and protection of child rights in this area and also to the broader objectives of the Convention on the Rights of the Child. There has been abiding public interest in the Protocol as signified by correspondence the Government continues to receive from members of the public seeking to know when we will ratify this instrument.
7. The Australian Defence Force is in full compliance with the Optional Protocol and consequently no changes to Defence policy or regulations are required.

Reasons for Australia to Take the Proposed Treaty Action

8. While child soldiers are not an issue domestically, the recruitment and use of persons under 18 as soldiers remains a serious problem for the international community. UNICEF estimates that 300,000 child soldiers are involved in more than 30 conflicts worldwide. The use of child soldiers in numerous conflicts in the Asia Pacific has obvious negative implications for social cohesion, economic prospects and stability in the region. However, many states throughout the Asia Pacific have yet to ratify the Optional Protocol. Should Australia ratify the Optional Protocol, our ability to encourage states which have not yet acceded to it to become parties would be enhanced. Being in a stronger position to encourage such measures by regional states is in our interests as it can be expected to help promote regional stability.

9. Ratification of the Optional Protocol would align our international obligations with the active approach of our international development cooperation program to counter the problem of child soldiers in the Asia Pacific. In Sri Lanka, the Australian Government is funding a number of activities aimed at the reintegration and rehabilitation of child soldiers from conflict-affected areas. These activities include the provision of humanitarian assistance, counselling, training, and identifying employment opportunities. The aid program also funds assistance for displaced children in conflict affected areas in Mindanao, particularly psycho-social services.

10. Ratification of the Optional Protocol would reflect the strong protections afforded children through our law and institutions and in Australian society. Ratification would also accord with the expectations of the public following Australia's signature of the Protocol. The Government continues regularly to receive correspondence from members of the public inquiring about and encouraging ratification of this instrument.

Obligations

11. Ratifying the Optional Protocol would oblige Australia to take all feasible measures to ensure that members of our armed forces who have not attained the age of 18 years do not take a direct part in hostilities (Article 1). Australia would also be obliged to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into our armed forces (Article 2). These Articles strengthen protections provided by the Convention on the Rights of the Child, under which Australia is already obliged to prevent persons who have not attained the age of 15 years from being directly involved in hostilities, or compulsorily recruited.

12. Ratifying the Optional Protocol would also strengthen Australia's obligation under the Convention to refrain from voluntarily recruiting persons who have not attained the age of 15 years into our armed forces. States ratifying the Protocol are obliged to raise the minimum age for voluntary recruitment above that set in the Convention (Article 3(1)) and to deposit a binding declaration upon ratification specifying the minimum age for voluntary recruitment (in Australia, 16 years of age), and describing safeguards adopted to ensure such recruitment is not forced or coerced (Article 3(2)). The Optional Protocol does not specify a minimum age for voluntary recruitment, which reflects the fact that the negotiation of this Article was highly contentious.

13. Should we ratify the Protocol and still permit voluntary recruitment into our armed forces of persons under the age of 18 years, the Protocol would also oblige Australia to maintain safeguards to ensure, as a minimum, that such recruitment is genuinely voluntary, such recruitment is done with the informed consent of the person's parents or guardians, such persons

are fully informed of the duties involved in such military service, and such persons provide reliable proof of age prior to acceptance into the armed forces (Article 3(3)).

14. The Optional Protocol also addresses the involvement of children in armed groups which are distinct from those of the State. Although the Protocol cannot place obligations directly upon such groups, it does provide that they should not recruit or use in hostilities persons under the age of 18 years (Article 4(1)). Ratifying the Protocol would oblige Australia, however, to take all feasible measures to prevent such recruitment or use, including the adoption of legal measures necessary to prohibit and criminalise such practices (Article 4(2)).

15. Should Australia ratify the Protocol, we would be obliged to take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of its provisions (Article 6(1)), and to make its principles and provisions widely known and promoted to adults and children alike (Article 6(2)). We would also be obliged to take all feasible measures to demobilise or otherwise release from service persons recruited or used in hostilities contrary to the Protocol (Article 6(3)).

16. To allow the Committee on the Rights of the Child to monitor the implementation of the Protocol, should Australia ratify, we would be obliged to submit within two years after the Protocol's entry into force for Australia comprehensive information to the Committee on the measures we had taken to implement the Protocol's provisions (Article 8(1)). Thereafter, we would keep the Committee informed of any further measures taken through the reports we are required to submit to the Committee every five years under the Convention on the Rights of the Child (Article 8(2)).

17. Importantly, the Optional Protocol is intended to establish minimum safeguards to prevent the involvement of children in armed conflict. It does not, of course, preclude provisions in our law which are more conducive to the realisation of the rights of the child (Article 5).

Implementation

18. On 28 June 2002, the Chief of the Defence Force and the Secretary of the Department of Defence jointly signed Defence Instructions (General) PERS 33-4 (the Defence Instruction). The purpose of the Defence Instruction was to give effect to the provisions of the Optional Protocol, which Australia subsequently signed, regarding the ADF's minimum voluntary recruitment age and the conditions that are to apply to members of the ADF that are under 18 years of age.

19. The minimum age for service in the ADF is 16 years of age; however, candidates under 17 years of age must have approval from the single Service Career Management Agency and must reach 17 years of age prior to completion of training in a designated military school. Defence Interviewers endeavour to ensure that these candidates have the maturity to cope with separation from family and the psychological rigours of military training.

20. In addition to the changes brought about by the Defence Instruction, there remains the need for one amendment to the Commonwealth Criminal Code. Section 268.88 of the Criminal Code refers to the war crime of using, conscripting or enlisting children in an armed conflict. However, this section is only concerned with persons under 15 years of age. The Criminal Code does not therefore fully accord with article 4 of the Optional Protocol requiring states to adopt legal measures to prohibit the recruitment or use in hostilities of children under 18 years of age by armed groups that are distinct from the armed forces of a State. There is no other provision in

Commonwealth law that accords with article 4 of the Optional Protocol. Therefore, section 268.88 of the Criminal Code needs to be amended.

21. The majority of the subject matter of the Optional Protocol is something over which the Commonwealth has traditionally exercised jurisdiction. While some parts of the Optional Protocol deal with matters that may fall within both Commonwealth and State/Territory legislative competence, the Attorney-General's Department has assessed that no State/Territory legislation is necessary for Australia to give effect to this instrument.

Costs

22. Ratification of the Optional Protocol will have no financial implications at the Commonwealth or State/Territory levels. Australia would have to submit a report on our compliance to the Committee on the Rights of the Child (under Article 8 of the Optional Protocol) within two years of the Protocol entering into force for Australia. Costs associated with presenting the report before the Committee in Geneva can be covered by existing resources.

Consultation

23. Ratification of the Optional Protocol will have little if any impact upon States and Territories. Pursuant to section 114 of the Constitution, States are prohibited from raising military forces. The Optional Protocol has been on the agenda of both the Standing Committee of Attorneys-General and the Standing Committee on Treaties for some time which has alerted States and Territories to this issue. On 28 May 2004, the Assistant Secretary of the International Organisations Branch of the Department of Foreign Affairs and Trade wrote to the Standing Committee on Treaties representatives informing them of the Commonwealth's plan to ratify the Optional Protocol (please see Annex A, Consultations).

Regulation Impact Statement

24. The Office of Regulation Review has been consulted and confirmed that a Regulation Impact Statement is not required to support this NIA.

Future Treaty Action

25. Any State Party may propose an amendment to the Optional Protocol. If, within four months of a State Party communicating its proposed amendment to the United Nations Secretary General, at least one third of the States Parties favour a conference of States Parties to consider the amendment, such a conference shall be convened. Any amendment adopted by a majority of States Parties at the conference would then be submitted to the United Nations General Assembly for approval (Article 12(1)). The amendment would not enter into force until it had been approved by the General Assembly and accepted by a two-thirds majority of States Parties (Article 12(2)). Even then, the amendment would only be binding upon those States Parties which had accepted it (Article 12(3)). Any amendment to the Optional Protocol would be subject to Australia's treaty making process.

Withdrawal or Denunciation

26. Any State Party may denounce the Optional Protocol by giving written notification to the United Nations Secretary General. Such denunciation would take effect one year after the date of receipt of the notification by the Secretary General, unless that State Party is engaged in

armed conflict at that time, in which case the denunciation would take effect at the conclusion of that armed conflict (Article 11). Withdrawal by Australia from the Optional Protocol would be subject to our treaty making process.

Contact details

Human Rights and Indigenous Issues Section
International Organisations and Legal Division
Department of Foreign Affairs and Trade

ANNEX A

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

Consultations

Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, done at New York on 25 May 2000

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ANNEX B

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

**Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in
Armed Conflict, done at New York on 25 May 2000**

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Currently, there are 115 signatories and 72 parties to the Optional protocol

Participant	Signature	Ratification, Accession (a)
Afghanistan		24 Sep 2003 a
Andorra	7 Sep 2000	30 Apr 2001
Argentina	15 Jun 2000	10 Sep 2002
Armenia	24 Sep 2003	
Australia	21 Oct 2002	
Austria	6 Sep 2000	1 Feb 2002
Azerbaijan	8 Sep 2000	3 Jul 2002
Bangladesh	6 Sep 2000	6 Sep 2000
Belgium	6 Sep 2000	6 May 2002
Belize	6 Sep 2000	1 Dec 2003
Benin	22 Feb 2001	
Bosnia and Herzegovina	7 Sep 2000	10 Oct 2003
Botswana	24 Sep 2003	
Brazil	6 Sep 2000	27 Jan 2004
Bulgaria	8 Jun 2001	12 Feb 2002
Burkina Faso	16 Nov 2001	
Burundi	13 Nov 2001	
Cambodia	27 Jun 2000	
Cameroon	5 Oct 2001	
Canada	5 Jun 2000	7 Jul 2000
Cape Verde		10 May 2002 a
Chad	3 May 2002	28 Aug 2002
Chile	15 Nov 2001	31 Jul 2003
China	15 Mar 2001	
Colombia	6 Sep 2000	

Costa Rica	7 Sep 2000	24 Jan 2003
Croatia	8 May 2002	1 Nov 2002
Cuba	13 Oct 2000	
Czech Republic	6 Sep 2000	30 Nov 2001
Democratic Republic of the Congo	8 Sep 2000	11 Nov 2001
Denmark	7 Sep 2000	27 Aug 2002
Dominica		20 Sep 2002 a
Dominican Republic	9 May 2002	
Ecuador	6 Sep 2000	
El Salvador	18 Sep 2000	18 Apr 2002
Estonia	24 Sep 2003	
Finland	7 Sep 2000	10 Apr 2002
France	6 Sep 2000	5 Feb 2003
Gabon	8 Sep 2000	
Gambia	21 Dec 2000	
Germany	6 Sep 2000	
Ghana	24 Sep 2003	
Greece	7 Sep 2000	22 Oct 2003
Guatemala	7 Sep 2000	9 May 2002
Guinea-Bissau	8 Sep 2000	
Haiti	15 Aug 2002	
Holy See	10 Oct 2000	24 Oct 2001
Honduras		14 Aug 2002 a
Hungary	11 Mar 2002	
Iceland	7 Sep 2000	1 Oct 2001
Indonesia	24 Sep 2001	
Ireland	7 Sep 2000	18 Nov 2002
Israel	14 Nov 2001	
Italy	6 Sep 2000	9 May 2002
Jamaica	8 Sep 2000	9 May 2002
Japan	10 May 2002	
Jordan	6 Sep 2000	
Kazakhstan	6 Sep 2000	10 Apr 2003
Kenya	8 Sep 2000	28 Jan 2002
Kyrgyzstan		13 Aug 2003 a
Latvia	1 Feb 2002	
Lebanon	11 Feb 2002	
Lesotho	6 Sep 2000	24 Sep 2003

Liechtenstein	8 Sep 2000	
Lithuania	13 Feb 2002	20 Feb 2003
Luxembourg	8 Sep 2000	
Madagascar	7 Sep 2000	
Malawi	7 Sep 2000	
Maldives	10 May 2002	
Mali	8 Sep 2000	16 May 2002
Malta	7 Sep 2000	9 May 2002
Mauritius	11 Nov 2001	
Mexico	7 Sep 2000	15 Mar 2002
Micronesia (Federated States of)	8 May 2002	
Monaco	26 Jun 2000	13 Nov 2001
Mongolia	12 Nov 2001	
Morocco	8 Sep 2000	22 May 2002
Namibia	8 Sep 2000	16 Apr 2002
Nauru	8 Sep 2000	
Nepal	8 Sep 2000	
Netherlands	7 Sep 2000	
New Zealand	7 Sep 2000	12 Nov 2001
Nigeria	8 Sep 2000	
Norway	13 Jun 2000	23 Sep 2003
Pakistan	26 Sep 2001	
Panama	31 Oct 2000	8 Aug 2001
Paraguay	13 Sep 2000	27 Sep 2002
Peru	1 Nov 2000	8 May 2002
Philippines	8 Sep 2000	26 Aug 2003
Poland	13 Feb 2002	
Portugal	6 Sep 2000	19 Aug 2003
Qatar		25 Jul 2002 a
Republic of Korea	6 Sep 2000	
Republic of Moldova	8 Feb 2002	7 Apr 2004
Romania	6 Sep 2000	10 Nov 2001
Russian Federation	15 Feb 2001	
Rwanda		23 Apr 2002 a
San Marino	5 Jun 2000	
Senegal	8 Sep 2000	3 Mar 2004
Serbia and Montenegro	8 Oct 2001	31 Jan 2003
Seychelles	23 Jan 2001	

Sierra Leone	8 Sep 2000	15 May 2002
Singapore	7 Sep 2000	
Slovakia	30 Nov 2001	
Slovenia	8 Sep 2000	
South Africa	8 Feb 2002	
Spain	6 Sep 2000	8 Mar 2002
Sri Lanka	21 Aug 2000	8 Sep 2000
Sudan	9 May 2002	
Suriname	10 May 2002	
Sweden	8 Jun 2000	20 Feb 2003
Switzerland	7 Sep 2000	26 Jun 2002
Syrian Arab Republic		17 Oct 2003 a
Tajikistan		5 Aug 2002 a
The Former Yugoslav Republic of Macedonia	17 Jul 2001	12 Jan 2004
Togo	15 Nov 2001	
Tunisia	22 Apr 2002	2 Jan 2003
Turkey	8 Sep 2000	4 May 2004
Uganda		6 May 2002 a
Ukraine	7 Sep 2000	
United Kingdom of Great Britain and Northern Ireland	7 Sep 2000	24 Jun 2003
United States of America	5 Jul 2000	23 Dec 2002
Uruguay	7 Sep 2000	9 Sep 2003
Venezuela	7 Sep 2000	23 Sep 2003
Viet Nam	8 Sep 2000	20 Dec 2001