



Convention on the Rights of the Child

Distr.
GENERAL

CRC/C/SR.1082
16 January 2006

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-first session

SUMMARY RECORD OF THE 1082nd MEETING (CHAMBER A)

Held at the Palais Wilson, Geneva,
on Monday, 9 January 2006, at 3 p.m.

Chairperson: Mr. DOEK

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GE.06-40037 (E) 130106 160106

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES

Initial report of Switzerland under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CHE/1)

1. At the invitation of the Chairperson, Mr. Cottier, Mr. Vigny and Mr. Wehrenberg (Switzerland) took places at the Committee table.
2. Mr. VIGNY (Switzerland), introducing the initial report of Switzerland under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CHE/1), said that, in the declaration under article 3 of that instrument that it made at the time of ratification, Switzerland had committed itself to a minimum age of 18 years for voluntary enlistment. The recruitment of children had been forbidden in Switzerland since 1 May 2002. Switzerland had not made any reservation to the Optional Protocol, and only two years had elapsed between the signing of that instrument and its entry into force.
3. With regard to the implementation of article 1 of the Optional Protocol, he said that the minimum age for compulsory or voluntary enlistment had been set at 18, and the age of recruits was carefully checked. Switzerland had a militia army, and all Swiss men were required to perform military service; Swiss women could volunteer to do so. The obligation to perform military service did not take effect until the start of the year in which the person concerned reached the age of 19. Swiss law made no provision for lowering the age of conscription in exceptional circumstances.
4. With regard to the implementation of article 4 of the Optional Protocol, his delegation had no knowledge of any armed groups operating on Swiss territory or of any enlistment of children. A number of legal provisions were applicable pursuant to article 4, paragraph 2. The enlistment of children in Switzerland for a foreign State, party or other organization was liable to punishment under article 271 of the Criminal Code. The Second Protocol Additional to the Geneva Conventions would be applicable if children under the age of 15 were recruited and used in hostilities in Switzerland by armed Swiss groups. However, the authorities had never encountered any case of such recruitment or other similar acts by armed groups, and Switzerland had no information or indication that armed groups or foreign States were recruiting children in Swiss territory in violation of article 271.
5. Articles 11, 41 and 67 of the Constitution as well as the Civil and Criminal codes contained provisions for the protection of children and adolescents. Detailed information on the subject was provided in paragraphs 38 to 41 of the initial report (CRC/C/OPAC/CHE/1).
6. With regard to measures to implement article 6 of the Optional Protocol, he said that all Swiss legislation was consistent with the obligations set out in the Optional Protocol. Shortly before Switzerland had ratified the Optional Protocol, an in-depth reform of the army had taken place, and the minimum age of voluntary enlistment had been raised to 18 years. The Agency for Cooperation and Development of the Federal Department of Foreign Affairs provided strategic and financial support to several multilateral and non-governmental organizations (NGOs) that worked in the area of development and protection of children and, with Agency

support, participated in efforts to combat the recruitment of child soldiers in armed conflicts, either directly (programmes targeting child soldiers) or indirectly (prevention; well-being and development of the child). The Confederation also gave financial assistance to children's NGOs that organized activities, meetings and events highlighting children's aspirations and rights.

7. At international level, Switzerland conducted a number of initiatives to promote the implementation of the Optional Protocol. It had called on States to ratify the Optional Protocol without reservations, both in the context of its bilateral relations and in multilateral bodies such as the United Nations General Assembly, the Commission on Human Rights and the Organization for Security and Cooperation in Europe, and it advocated a rights-based approach.

8. Switzerland also cooperated with several bodies, including the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, on programmes to raise States' and populations' awareness of the problem of child soldiers in conflict areas.

9. Mr. COTTIER (Switzerland) said that, under customary international law, the enlistment of children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities constituted a war crime. That had been recognized in article 8, paragraph 2 (b) (xxvi) and (e) (vii), of the Rome Statute of the International Criminal Court and in article 4 (c) of the Statute of the Special Court for Sierra Leone. However, there were differences of opinion as to whether or not such acts committed against children over the age of 15 years constituted war crimes under customary international law.

10. Switzerland had for several decades recognized universal jurisdiction for war crimes. Articles 2, 9, 108 and 109 of the Military Criminal Code gave military courts universal jurisdiction to try such cases. Since the 1990s, the military courts had recognized that such jurisdiction included violations of international humanitarian law committed in cases of internal or international armed conflict. Thus, the recruitment, enlistment or use of child soldiers in hostilities could be prosecuted in Switzerland even if the acts had been committed during an internal armed conflict in another country.

11. The amendment to the Military Criminal Code of 19 December 2003 had modified the conditions under which the military courts could exercise universal jurisdiction. As from 1 June 2004, universal jurisdiction could be exercised only if the suspected perpetrators were in Switzerland, had a close link to Switzerland and could not be extradited or handed over to an international criminal court. The requirement of a close link had been added chiefly to limit the possibilities for criminal prosecution and to ensure that Switzerland was not flooded with complaints, as had happened in Belgium.

12. The term "close link" covered the following categories of persons: persons whose domicile or centre of livelihood was in Switzerland; persons, such as refugees or asylum-seekers, who wished to remain in Switzerland for other reasons; persons residing in Switzerland for in-hospital medical treatment; persons with close family members (father, mother, spouse or children) in Switzerland, provided that they maintained regular contact with them; and persons who owned real estate in Switzerland. Persons who had a bank account in Switzerland, who were visiting or passing through Switzerland, or who were residing in Switzerland for a short period and intended to leave were not regarded as having a close link.

13. The decision whether or not the criterion of close link applied was a matter for the judicial authorities and must be in conformity with international law.

14. Drafting had begun on legislation to include the crimes recognized under articles 6 to 8 of the Rome Statute in the Swiss Criminal Code and Military Criminal Code and to establish universal jurisdiction for those crimes. Following the amendment of December 2003, a consultation process had begun in Swiss society on a draft bill that also provided for the crime of genocide and crimes against humanity. The draft bill explicitly stated that conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities constituted a war crime. In accordance with the views expressed in the consultation process, the federal administration would consider what form the exercise of universal jurisdiction should take and what conditions and procedures should be applicable.

15. Mr. KOTRANE said that the requirement that the alleged perpetrator should have a “close link” to Switzerland for the prosecution of war crimes, including the recruitment of children under the age of 15, was rather vague and should be more clearly defined. Article 299 of the Criminal Code appeared to be principally concerned with issues relating to the sovereignty of foreign States, while the main concern of legislation to eliminate the recruitment of child soldiers should be the protection of children’s lives.

16. Mr. KRAPPMANN requested clarification on the nature of the “short pre-military training courses” and the “Swiss recruit training school” mentioned in paragraphs 22 and 32 of the report. He asked whether former child combatants of foreign origin residing in Switzerland had access to post-trauma counselling and other psychological assistance. He also wished to know whether peace education was included in Swiss school curricula.

17. Mr. SIDDIQUI said that he would welcome information on the State party’s cooperation activities to reduce the involvement of children in armed conflict in countries other than Burundi and the Democratic Republic of the Congo.

18. Ms. ORTIZ asked whether the State party considered involvement in armed conflict as a criterion for granting asylum to foreign minors.

19. Ms. OUEDRAOGO asked why military service in Switzerland was compulsory for men, while Swiss women were recruited only on a voluntary basis. She asked whether the State party’s activities to promote the implementation of the Optional Protocol worldwide included cooperation with NGOs and Governments. While support for awareness-raising campaigns was certainly useful, she urged the State party to step up its support of demobilization, rehabilitation and reinsertion programmes for former child combatants.

20. Ms. LEE asked the delegation to describe the role played by the Child Rights Network Switzerland in the preparation of the report.

21. The CHAIRPERSON said that the State party might wish to include persons who had a bank account in Switzerland among those considered to have a “close link” with that country. He asked whether Swiss courts had jurisdiction over the unlawful recruitment of minors abroad in cases where either the alleged victim or the alleged perpetrator were Swiss nationals. He wished to know whether the State party would consider making the recruitment of children between 15 and 18 years of age a punishable offence in its domestic legislation.

The meeting was suspended at 3.50 p.m. and resumed at 4.05 p.m.

22. Mr. VIGNY (Switzerland) said that the best interest of the child was a primary consideration in all court proceedings involving minors, including those relating to article 299 of the Criminal Code. Peace education was not taught as a separate module but was part of general human rights education in schools.

23. Switzerland’s activities relating to child soldiers in Burundi and the Democratic Republic of the Congo had been mentioned as an example. Comprehensive information on Switzerland’s international cooperation in that area could be obtained from the Agency for Development and Cooperation. Former child soldiers of foreign origin residing in Switzerland were entitled to protection under Swiss law. Moreover, child soldiers whose parents had been granted refugee status could enter Switzerland in the context of family reunification.

24. While military service for women in Switzerland was not obligatory, Swiss women who wished to join the armed forces were free to do so. There was no gender bias in the recruitment process or within the armed forces.

25. Switzerland’s extensive cooperation with other Governments in the implementation of the Optional Protocol included its participation in the Special Court for Sierra Leone.

26. His delegation had taken note of the suggestion to step up Switzerland’s support of demobilization, rehabilitation and reinsertion programmes for former child soldiers and would communicate the Committee’s concern to the competent authorities.

27. Mr. COTTIER (Switzerland) said that the possible redefinition or abolition of the “close link” requirement for Military Criminal Court proceedings in respect of war crimes would be re-examined at the federal level in consultation with all stakeholders.

28. The promotion of sporting activities for young people fell to the Federal Office for Sport, which was attached to the Federal Department of Defence, Civil Protection and Sports. While in the past, the army had provided some of the equipment used for those activities, at present there was a clear separation between the two departments. Except for the provision of equipment such as tents, there was no link between the armed forces and the Swiss Scouts. Although the military financed training courses for young pilots, there was no obligation for trainees to join the armed forces on completion of such courses. The term “short pre-military training courses” referred to in paragraph 22 of the report was no longer in use.

29. The Federal Act on Assistance to Victims of Offences provided for counselling, legal services and compensation to victims, including emergency medical and psychological treatment. Free emergency treatment was also available to refugees who had been victims of torture, and to child soldiers from other countries.

30. Article 9 of the Military Criminal Code, which contained the “close link” criteria, applied only to foreigners and only in cases in which the alleged perpetrators could not be extradited or prosecuted by an international criminal tribunal. In cases in which the alleged victim or perpetrator was Swiss, other legal norms would apply. For example, the Swiss courts would be competent under article 183 of the Criminal Code, which concerned kidnapping, to prosecute persons who had allegedly recruited a child of Swiss nationality to participate actively in hostilities abroad.

31. In its deliberations on legislative proposals to implement the Rome Statute, the federal administration was considering whether to raise - from 15 to 18 years - the minimum age below which it would consider the conscription or enlistment of children into armed forces, or using them to participate actively in hostilities, as war crimes over which it would exercise universal jurisdiction. That subject had been intensely debated within the administration, and opinions remained divided. It was not clear whether the conscription or enlistment of children below the age of 18 was generally recognized under international customary law as a war crime. He would welcome the Committee’s views on the matter.

32. Switzerland’s initial report on the Optional Protocol had been prepared in consultation with the organization Child Rights Network Switzerland.

33. Ms. ORTIZ asked whether Switzerland had a procedure for identifying child asylum-seekers who had been involved in armed conflicts and whether such children received special assistance.

34. Mr. KOTRANE wished to know whether the legislative proposals currently being considered would contain specific provisions to punish persons who recruited or used in hostilities children below the age of 18, as required under article 4 of the Optional Protocol.

35. The CHAIRPERSON said that the recruitment of children between the ages of 15 and 18 was not currently considered to be a war crime under international customary law. However, that did not prevent a State party to the Convention and the Optional Protocol from criminalizing such an act in its domestic legislation. If children between the ages of 15 and 18 had been recruited in Swiss territory, an international warrant for the arrest of the perpetrator could then be issued, regardless of the nationality of the minors involved. Given the vulnerability of child asylum-seekers, there was good reason to strengthen the legal protection of children in Switzerland.

36. Mr. VIGNY (Switzerland) said that no special procedure existed to identify child asylum-seekers who had been involved in internal or international armed conflicts. However, he could suggest to the federal departments of Foreign Affairs; Justice and Police; and Defence, Civil Protection and Sports that such a procedure should be established.

37. Mr. COTTIER (Switzerland) said that, under the Military Criminal Code, the recruitment of children under the age of 15 in armed forces or using them to participate in hostilities was considered a war crime. In order to implement the Rome Statute and to incorporate the crimes recognized in articles 6, 7 and 8 of the Statute into the Military Criminal Code, the federal administration had deemed it necessary to make explicit reference to the relevant crimes in the preliminary draft of the bill. Those crimes included the conscription or enlistment of children under the age of 15 and using them to participate actively in hostilities. In that connection, he wished to know whether, under international customary law, it was necessary for the conscription or enlistment of children under the age of 15 to have taken place in the context of an ongoing armed conflict in order to be considered a war crime.

38. The CHAIRPERSON said that the recruitment of children under the age of 15 into armed forces was a violation of article 38 of the Convention on the Rights of the Child, regardless of whether such recruitment took place in the context of an ongoing armed conflict. In drafting legislation to implement the Rome Statute, it was therefore advisable not to introduce a condition that recruitment had to be linked to an ongoing armed conflict.

39. Mr. KOTRANE said that the prohibition of the recruitment of children under the age of 15 by the Optional Protocol meant that States were expected not only to prohibit but also to punish such recruitment. He asked whether the federal administration had considered criminalizing the recruitment of children under 15, provided that the criteria relating to the perpetrator's links to Switzerland had been met.

40. Mr. VIGNY (Switzerland) said that he would transmit the Committee's questions, comments and suggestions to the competent authorities in Bern. The Committee's valuable input would be taken into account in finalizing legislation to implement the Rome Statute. In that connection, he asked what were the specific obligations of States parties under article 4, paragraph 2, and article 6, paragraph 1, of the Optional Protocol with regard to the criminal prosecution of acts prohibited by the Protocol on the basis of the principle of universal jurisdiction.

41. The CHAIRPERSON said that States parties could strengthen the protection that they offered to children under the age of 18 if they exercised extraterritorial jurisdiction in cases in which not only perpetrators but also victims had close links to the State party. States parties could strengthen the protection that they afforded children between the ages of 15 and 18 by considering the recruitment of such children to be a crime under their domestic legislation. In cases in which an alleged perpetrator fled the country, States parties could issue an international warrant for his or her arrest.

The meeting rose at 4.55 p.m.