



DISCUSSION PAPER FOR FAS DELEGATES CONCERNING THE PROTECTION OF CHILDREN IN ARMED CONFLICTS AND DISTURBANCES

1. Introduction

Members of armed forces need to be well acquainted with provisions of the Geneva Conventions and their Additional Protocols protecting children. The Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict also need to be known, despite the fact that those instruments have been less widely ratified. Obligations relating to child protection and welfare have to be emphasized in the training of armed forces in the law of armed conflict. They are therefore covered in several chapters of the new teaching file on the basis of the applicability of the Geneva Conventions and their Additional Protocols in conflict situations, and of relevant human rights instruments in situations relating to internal security operations.

The minimum age for persons recruited into armed forces or taking a direct part in hostilities is one of the issues treated differently in the various treaties. States that have ratified the Optional Protocol to the Convention on the Rights of the Child must respect the age limit it prescribes. In developing future treaties, the Advisory Service on International Humanitarian Law should follow the established policy of the Movement. For FAS delegates and instructors, however, the situation is different: if they were not to follow the rules of established international legal instruments in teaching the law of armed conflict to armed forces, they might lose the credibility it has taken them years to earn.

The plan of action concerning children in armed conflict endorsed by the Council of Delegates in 1995 was based on two commitments:

- To promote the principle of non-recruitment and non-participation in armed conflict of children under the age of 18 years.
- To take concrete action to protect and assist child victims of armed conflict.

The 26th International Conference of the Red Cross and Red Crescent held in 1995 recommended that States abstain from arming children under the age of 18 years. FAS delegates and instructors are advised to emphasize this policy. The resolution reads as follows:

- The Conference recommends that parties to a conflict refrain from arming children under the age of 18 years and take every feasible step to ensure that children under the age of 18 years do not take part in hostilities.
- The Conference encourages States, the Movement and other component entities and organizations to develop preventive measures, assess existing programmes and set up new programmes to ensure that child victims of conflict receive medical, psychological and social assistance, provided if possible by qualified personnel sensitive to the specific issues involved.

At the 27th International Conference of the Red Cross and Red Crescent held in 1999, a number of States and components of the Movement reiterated their support for the plan of action and announced a series of concrete measures.

2. Excerpts from the teaching file

2.1 In the lessons on the conduct of operations, the subject is covered as follows:

Civilians - By children we generally mean people who are not yet 18 years old. In the law of armed conflict, however, different provisions apply to those under 15 years of age and those between 15 and 18. In our discussion, “children” means those under 15 years of age. Children are entitled to special treatment and must be protected against any form of indecent assault. Every effort must be made to provide them with the special care and aid they require.

Combatants - A particularly tragic aspect of modern conflict is the active participation in hostilities of children, both boys and girls. This would seem to have less to do with cultural traditions and more to do with expediency or the shortage of soldiers — often it is simply an excuse or abuse by those in power, in other words getting a child to do an adult’s job. These child soldiers operate with little or no training and are often fed a diet of alcohol and drugs. Of course, they can be formidable and tough foes to deal with. Deal with them you must, but with due regard and some sympathy for their plight.

The law prohibits the direct participation in hostilities of children under the age of 15 years, who must not be recruited into the armed forces. In recruiting those who have reached the age of 15 years but are not yet 18 years old, priority should be given to those who are the oldest.

If children are recruited into armed forces or take a direct part in hostilities, they must, if captured, be guaranteed treatment and conditions of captivity which take their age into consideration, whether they are POWs or not. Certainly in no circumstances should the standard of treatment given to them be lower than that given to POWs. In particular, such *child soldiers* must be held separately from adults, unless in a family unit.

In the case of children aged between 15 and 18 years, the more their treatment can be assimilated to that of those under 15, the better.

In international armed conflicts, persons who were under the age of 18 years when they committed an offence punishable by the death penalty may be sentenced to death, but the sentence must not be carried out. In non-international armed conflicts, such persons may not even be sentenced to death.

GC IV, Art. 24
P I, Art. 77

Child combatants taken as POWs are entitled to POW status and must be given treatment at least as favourable as that granted to POWs. This means in particular that they may not be prosecuted for having taken part in hostilities. They must be protected against any form of indecent assault. They should be held in separate accommodation from adult POWs.

GC III, Art. 16
P I, Art. 77

2.2 In the lesson on internal conflicts, emphasis is placed on Article 3 common to the four Geneva Conventions and Additional Protocol II.

Children must of course be protected in any armed conflict and, as we have seen, the law does indeed provide the necessary protection. In non-international armed conflicts, children tend to be more vulnerable and are often separated from their parents or other members of their family. One tragic example was Rwanda and the subsequent exodus of the Hutu population into what was then Zaire in the mid-1990s.

The provisions on children in Additional Protocol II take this greater vulnerability into account. They stipulate that children must be provided with the care and aid they require. In particular, they must receive an education, including religious and moral education, in keeping with the wishes of their parents or guardians.

All appropriate steps must be taken to facilitate the reunification of families temporarily separated. Many will recall the efforts made by humanitarian organizations such as Save the Children, UNHCR and the ICRC on behalf of separated family members during the crises in Rwanda and Kosovo.

Where necessary, measures must be taken to remove children temporarily from the conflict area to a safer area within the country, whenever possible with the consent of their parents or guardians, and ensure that they are accompanied by persons responsible for their safety and well-being.

Children under the age of 15 years must not be recruited into the armed forces or groups or allowed to take part in hostilities. (Note that this language is stronger than that used by the rules governing international armed conflicts, which state that "all feasible measures" must be taken to ensure that children under the age of 15 years do not take part in hostilities.) If, despite this rule, children do take a direct part in hostilities and are captured, they remain fully protected by the law.

P II, Art. 4.3

2.3 In the lessons dealing with internal security operations in connection with internal disturbances, where the main international legal instruments belong not to international humanitarian law but to human rights law, the emphasis is on the latter.

Use of firearms against children. Unlawful gatherings inevitably attract children, who usually do nothing more than throw stones at the security forces. Of course they should not do this, but in real terms the threat they pose is minimal. Soldiers armed with the range of protective clothing and defensive equipment described above can stand in front of a crowd of stone-throwing children (and indeed adults) all day and probably come to no harm. If the military do not react, then the children usually soon get bored and disperse — the military will therefore have achieved their aim. Firing live ammunition at children who are throwing stones indicates a complete breakdown in the soldiers' discipline and a complete lack of command and control by their superiors. It shows they cannot distinguish a military threat from a slight inconvenience or annoyance. Such a response is therefore unnecessary and utterly disproportionate.

Special rules for the arrest of children

We have already dealt with the law applicable to children and child soldiers in armed conflict. International human rights law tends to reinforce these rules and in some areas enhances the protection given to children. It is important for soldiers to know

these rules. In armed conflicts, contact with juveniles tends to be a relatively rare occurrence. The opposite holds true for internal security operations: almost all such operations undertaken by the armed forces, in particular in response to demonstrations or riots, will bring them into contact with children. Soldiers must therefore be familiar with the applicable law.

Key law: there is an emerging consensus in international law that a child is anyone under the age of 18 years. Therefore, anyone under the age of 18 years is entitled to special protection if arrested or detained.

The Convention on the Rights of the Child defines a child as anyone below the age of 18 years unless, under national law, majority is attained earlier. **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty** define a juvenile as “every person under the age of 18”. The age of majority is determined by States, but must not deviate greatly from international norms.

The minimum age of criminal responsibility varies from country to country. You will need to seek the advice of your legal branch to know what that age is in your country.

***Convention on the Rights of the Child, Art. 1
Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11(a)***

These two instruments, together with **the International Covenant on Civil and Political Rights** and **the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)**, provide guidance for the arrest or detention of children. The important points for soldiers to know are set out below.

Children retain all the rights already covered above for adults if arrested. **In addition: Last Resort.** Arrest (and, as we will see, detention or imprisonment) of children should be avoided whenever possible and is a measure of last resort. When children are arrested and detained, their cases are to be given the highest priority and handled as fast as possible to ensure the shortest possible period of detention prior to trial.

***ICCPR, Art. 10.2 (b)
Convention on the Rights of the Child, Arts 37 and 40
Rules for the Protection of Juveniles Deprived of their Liberty, Rules 1 and 17
Beijing Rules, Rules 13 and 19***

Notification of next-of-kin. When a child suspected of breaking the law is arrested or apprehended, his or her parents or guardian are to be notified immediately, unless doing so would be detrimental to the interests of the child. If immediate notification is not possible, the parents or guardian are to be notified within the shortest possible time thereafter.

***Convention on the Rights of the Child, Art. 9.4
Rules for the Protection of Juveniles Deprived of their Liberty, Rule 22
Beijing Rules, Rule 10.1***

Separation from adults. Children arrested and detained pending trial must be segregated from adults, except where this would not be in the best interests of the child. For example, if the child's parents are being held then it might be in the child's best interests to be held with them rather than separately.

***ICCPR, Art. 10.2 (b)
Convention on the Rights of the Child, Art. 37 (c)
Rules for the Protection of Juveniles Deprived of their Liberty, Rule 29
Beijing Rules, Rule 13.4***

Respect for special status. Contacts between military personnel and children must be conducted in a manner which respects the legal status of the child, avoids harming children and promotes their well-being.

Beijing Rules, Rule 10.3

3. Excerpts from *To Serve and to Protect*

The protection of children both in times of conflict and of peace is clearly an issue of much greater concern to law enforcement agencies than to the military, which deals directly with children and juveniles only in exceptional cases.

It should be noted, however, that *To Serve and to Protect* was written before the Optional Protocol and before the resolution adopted at the 26th International Conference of the Red Cross and Red Crescent. It was based mainly on the Convention on the Rights of the Child and on the Beijing Rules.

Chapter 12 of *To Serve and to Protect*, which is entirely devoted to this important issue, is quoted in full below.

The Special Position of Children in Society

Introduction

Children need special care and protection and are dependent upon the aid and assistance of adults, especially in the early years of their existence. It is not enough that children are granted the same human rights and freedoms as adult persons. In many parts of the world the situation of children is critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability. Children on their own are not capable of effectively fighting such conditions or changing them for the better. The international community therefore urged governments to adopt legislation which recognizes the special position and needs of children and which creates a framework of additional protection conducive to their well-being. At the international level, the United Nations General Assembly adopted on 20 November 1989 — unanimously — the Convention on the Rights of the Child (CRC), which recognizes the need for special safeguards and care, including appropriate legal protection for children both before and after birth.

The Convention on the Rights of the Child

For the purposes of the Convention, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (CRC, Article 1).

The prime focus of the CRC is "the best interests of the child". All measures prescribed under the Convention take this principle as their starting point. The CRC leaves no doubt as to the fact that children are entitled to the same human rights and freedoms as adults. Certain fundamental rights, such as the right to life, liberty and security of person, the right to freedom of thought and of expression, and the right to peaceful assembly and association are firmly reiterated in the Convention. In addition it seeks to provide additional protection against abuse, neglect and exploitation of children (CRC, Articles 32 to 36).

The CRC also sets forth the reasons for and the conditions under which children can be lawfully deprived of their liberty, as well as the entitlements of the child who is ac-

cused of having infringed penal law (CRC, Articles 37 and 40). Those provisions will be presented in more detail below, under the headings Arrest of Juveniles and Detention of Juveniles.

The CRC is a treaty. It therefore creates legally binding obligations for member States to ensure that its provisions are fully implemented at the national level. Measures taken to this end may include (but are not limited to) the adaptation of existing legislation concerning children, or the adoption of new legislation in conformity with the provisions as they are set out in the Convention.

The Administration of Juvenile Justice

Through a number of legal instruments, the international community has acknowledged the special position of juveniles who come into contact with the law as offenders. Because of their age, juveniles are vulnerable to abuse, neglect and exploitation and need to be protected against such threats. In keeping with the objective of diverting juveniles away from the criminal justice system and redirecting them towards the community, special measures for the prevention of juvenile delinquency must be developed.

The administration of juvenile justice is not so much a different set of rights to which juveniles are entitled, as a set of provisions that aim to offer protection in addition to the rights of adult persons — which of course apply equally to juveniles.

International Instruments

The following international instruments govern the administration of juvenile justice:

- Convention on the Rights of the Child (CRC);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNRPJ);
- United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

Of the instruments mentioned above, only the CRC is a treaty. The other instruments can be considered as offering authoritative guidance, but their provisions do not constitute legally binding obligations for States — except insofar as they reiterate obligations that are part of customary international law or are codified in multilateral treaties.

Purpose and Scope of Measures

The aim of the juvenile justice system is to enhance the well-being of the juvenile and to ensure that any reaction to juvenile offenders is proportionate to the circumstances of the juvenile and the offence. Juvenile offenders should be diverted from the criminal justice system and redirected to community support services wherever possible.

The international instruments set out above are specifically designed to:

- protect the human rights of juveniles;
- protect the well-being of juveniles who come into contact with the law;

- protect juveniles against abuse, neglect and exploitation; and
- introduce special measures to prevent juvenile delinquency.

The Convention on the Rights of the Child is central to the administration of juvenile justice. It offers a wide range of measures aimed at protecting the direct interests of the child. These include measures that seek to protect children coming into conflict with the law.

The CRC requires States Parties (Articles 33 to 36) to take measures that combat abuse, neglect and exploitation of children, specifically:

- the adoption of rules to fight drug abuse by children and prevent the use of children in the trafficking of drugs (Article 33);
- protection against all forms of sexual abuse and exploitation, including unlawful sexual activity, exploitation of children in prostitution or unlawful sexual practices, and exploitative use of children in pornographic performances and materials (Article 34);
- national, bilateral and multinational measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35);
- protection against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36).

The Beijing Rules develop and extend those articles of the CRC which cover topics such as arrest, detention, investigation and prosecution, adjudication and disposition, and the institutional and non-institutional treatment of juvenile offenders.

The Riyadh Guidelines focus on the prevention of juvenile delinquency through the involvement of all parts of society and through the adoption of a child-oriented approach. They are based on the belief that the prevention of juvenile delinquency is an essential part of crime prevention in society. This instrument defines the roles of family, education, community and the mass media to this end, in addition to setting out the roles and responsibilities of social policy, legislation and juvenile justice administration, and research, policy development and coordination.

An underlying premise of the Guidelines is that youthful conduct which does not conform to overall social norms should be considered as part of the maturation process and tends to disappear spontaneously with the transition to adulthood (Article 5(e)).

The Guidelines urge States to develop and implement comprehensive plans, at every level of government, for the prevention of juvenile delinquency. They also call for close cooperation between all relevant sectors of society (including the various levels of government, the private sector, representative citizens of the community, child care agencies, law enforcement and judicial agencies) in taking action to prevent juvenile crime; specialized personnel should exist at all levels.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNRPJ) is an instrument designed to ensure that juveniles are deprived of their liberty and kept in institutions only when there is an absolute necessity to do so. Juveniles who are detained are to be treated humanely, with due regard for their status and with full respect for their human rights. Juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights. This is a further reason why their detention should remain a measure of last resort.

Rules 17 and 18 of this instrument are of particular importance to law enforcement officials, as they concern juveniles under arrest or awaiting trial. These Rules stress, once again, that pre-trial detention of juveniles should be avoided as far as possible, and limited to situations of exceptional circumstances. Where pre-trial detention is unavoidable, its duration should be kept to an absolute minimum by giving the highest priority to the most expeditious processing of such cases (Rule 17).

The rights stated in Article 7 of the Beijing Rules (the basic procedural safeguards to ensure that the right of juveniles to a fair trial is respected) are reiterated in Rule 18 of the UNRPJ. In addition, Rule 18 also sets out the detained juvenile's right to have opportunities to undertake work with remuneration, to be able to continue education and training, and to be provided with educational and recreational materials.

The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) is an instrument concerned with juvenile offenders in general and at all stages of the proceedings — irrespective of whether they are suspected, accused or sentenced. The instrument formulates basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to measures other than imprisonment. It recommends that in order to provide greater flexibility (consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society) and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures — from pre-trial to post sentencing dispositions. Non-custodial measures fit in very well with the overall objective of the juvenile justice system to divert juveniles who come into contact with the law away from the criminal justice system and to redirect them towards the community.

The Tokyo Rules set out precisely which custodial measures are allowed, the conditions and legal safeguards for their application, and the rules for their effective monitoring and supervision. Non-custodial measures must of course be properly incorporated into national legislation as a precondition for their lawful application.

Implications for Law Enforcement Practice

It has been recognized — in all countries and all societies — that a juvenile offender is a special type of offender requiring special protection and treatment. This fact has been acknowledged at the international level through the development of international instruments specifically designed to protect the rights and interests of the juvenile offender.

As law enforcement officials are the first point of contact with the juvenile justice system, it is most important for them to act in an informed and appropriate manner so as to protect and further the well-being of the juvenile offender.

The Beijing Rules are very explicit as to the specialization required within law enforcement agencies in relation to juveniles. Rule 1.6 states that juvenile justice services must be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes. Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. Law enforcement units specialized in all aspects of juvenile delinquency would therefore be indispensable, not only for the implementation of specific principles contained in the Beijing Rules, but also more generally to improve the prevention and control of juvenile crime and the handling of juvenile offenders.

The diversion of juveniles away from the criminal justice system and their redirection towards the community requires a type of attitude and action from law enforcement officials that is distinct from those actions and attitudes which are appropriate for adult offenders. The establishment and maintenance of a working relationship with community groups, child care agencies and officials within the judiciary assigned to juvenile justice necessitate special knowledge and skills on the part of law enforcement officials. To view juvenile delinquency as a transitional problem that may occur on the way from childhood to adulthood, and for which guidance, understanding and preventive support measures are therefore more suitable, calls for greater insight than is offered during the average basic law enforcement training.

The successful application of non-custodial measures also calls for a thorough understanding of the person of the juvenile, as well as a capacity to apply such measures in close cooperation and coordination with other key agencies in order to ensure the successful reformation and rehabilitation of the juvenile offender. The main objective here is to prevent recidivism rather than to inflict punishment for an offence committed. Such approaches require law enforcement officials to have a broad and thorough understanding not only of the rights and the special position of juveniles, but also of the special position and rights of victims of juvenile crime as well as the needs for protection and satisfaction of society. There will be a multitude of interests that need equal protection and to which the particular interests of the juvenile offender cannot be made subordinate — or given priority over them — without thorough justification.

Arrest of Juveniles

General Principles

The Convention on the Rights of the Child (CRC) defines a "child" as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier (Article 1).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) define a "juvenile" as a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult (Rule 2.2 (a)). Under those Rules, a "juvenile offender" is a child or young person who is alleged to have committed or who has been found to have committed an offence (Rule 2.2(c)).

The instruments mentioned above do not rule decisively on the minimum age of criminal responsibility — leaving a decision on this matter to be made at the national level. However, the Beijing Rules do state that such age should not be fixed at too low a level — taking into account emotional, mental and intellectual maturity (Rule 4).

In the commentary to this Rule, it is acknowledged that: "The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour."

As stated previously, the main objective of the administration of juvenile justice is to divert the juvenile offender away from the criminal justice system and to redirect him or her towards society. The rules relating to arrest (and detention) of juveniles reflect this general objective.

The CRC contains a number of very explicit provisions relevant to the arrest of juveniles:

- no child shall be deprived of his or her liberty unlawfully or arbitrarily;
- the arrest, detention or imprisonment of a child or young person shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty (Article 37).

Rights on Arrest and Following Arrest

Whenever a person is arrested it must be for the alleged commission of an offence or by the action of an authority (Body of Principles, Principle 36.2).

At the time of the arrest anyone who is arrested shall be informed of the reasons for his arrest and shall be promptly informed of any charges brought against him (ICCPR, Article 9.2; Body of Principles, Principle 10).

The arrested person is to be brought promptly before a judge or other officer authorized by law to exercise judicial power who will decide on the lawfulness and the necessity of the arrest (ICCPR, Article 9.3; Body of Principles, Principles 11 and 37).

Similar provisions on arrest and detention are repeated in the ACHR (Article 7) and in the ECHR (Article 5). The ACHPR does not contain any such provisions. There is no clear definition as to what is meant with "promptly". In many States the maximum period allowed before an arrested person has to be presented to a judge or similar authority is limited to 48 hours. In some other States this period is limited to 24 hours. This period of 48 or 24 hours is more commonly referred to and known as police custody. It is the period that precedes what is known as pre-trial detention.

With respect to the arrest of juvenile offenders law enforcement officials are required to observe a number of additional provisions, inter alia:

- the parents or guardians of juveniles arrested shall be notified of that fact immediately (Beijing Rules, Rule 10.1);
- a judge or other competent authority shall consider, without delay, the issue of release (Beijing Rules, Rule 10.2);
- juveniles under detention — following arrest — shall be kept separate from adults in detention (Beijing Rules, Rule 13.4).

The following provisions apply equally to arrested adult offenders and juvenile offenders:

"A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial." (Body of Principles, Principle 38)

"Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights." (Body of Principles, Principle 13)

The presumption of innocence as well as the provisions relating to the right to a fair trial are equally applicable to juvenile offenders. There is no need to repeat those provisions in greater detail here.

Detention of Juveniles

General Principles

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." (CRC, Article 37(b))

"Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication." (ICCPR, Article 10.2 (b))

Juvenile detainees are entitled to all the rights of adult detainees, which are set out in full in the chapter Detention. In recognition of their particular vulnerabilities, there are a number of additional provisions to give juveniles in detention the protection they need.

Whereas adult detainees charged with a criminal offence are entitled to be tried without undue delay (ICCPR, Article 14.3 (c)), Article 10.2(b) of that same instrument actually establishes a more definite time frame for juveniles by means of the formulation "brought as speedily as possible for adjudication". The objective of this provision is to ensure that periods spent by juveniles remanded in custody and pre-trial detention are as short as possible. It should be noted that the term "adjudication" is not to be understood in the formal sense of a judgment by a criminal court; rather, it also covers decisions by special, non-judicial organs empowered to deal with crimes committed by juveniles.

Specific Protection

The additional protection for juveniles deprived of their liberty is codified in the Convention on the Rights of the Child; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Article 37 of the Convention on the Rights of the Child (CRC) is of particular relevance to the treatment of juvenile detainees. Under this provision of the Convention (which legally binds all States parties to it) it is stated that:

- torture and ill-treatment of juveniles is prohibited (along with capital punishment and life sentences);
- unlawful or arbitrary deprivation of a juvenile's liberty is prohibited;
- juveniles deprived of their liberty are to be treated with humanity, with respect for their human dignity and in a manner that takes into account the special needs of persons of their age;
- juvenile detainees are to be kept separated from adult detainees;
- juveniles have the right to maintain contact with their family, to gain prompt access to legal assistance, and to challenge the legality of their detention through a court or other competent authority.

The provisions set out in the CRC are largely reiterated and expanded in the other two instruments mentioned above. The Beijing Rules focus particularly on the procedural rights to which juveniles are entitled throughout arrest and pre-trial detention and at all stages of the proceedings. These include (Rule 7):

- the presumption of innocence;

- the right to be notified of charges;
- the right not to be compelled to testify or confess guilt;
- the right to counsel;
- the right to the presence of a parent or guardian;
- the right to confront and cross-examine witnesses;
- the right to appeal to a higher authority.

The same provisions can be found in Article 40.2(b) of the CRC, which, being a treaty, creates legally binding obligations for States Parties to adopt conforming legislation.

The Beijing Rules stipulate that the privacy of the juvenile is to be respected at all times in order to avoid harm caused by undue publicity or the process of labelling, and that in principle no information that could lead to the identification of the juvenile may be published (Rule 8). They also focus on diversion — emphasizing thereby that consideration should be given to dealing with juveniles without resorting to formal trial. Law enforcement agencies must be empowered to dispose of juvenile cases and are required to do so, where possible, without recourse to formal procedures (Rule 11).

Specialization within law enforcement agencies, with regard to juveniles, is recommended through the establishment of special units or departments and through the additional training of those law enforcement officials who are required to deal with juvenile offenders (Rule 12).

Use of Force and Firearms Against Juveniles

Neither the Basic Principles on the Use of Force and Firearms nor the Code of Conduct for Law Enforcement Officials (or any of the other international instruments for that matter) provide guidance on the use of such measures against children. It is safe to conclude that the same rules and provisions applicable to adults apply equally to children or young persons. The chapter on the Use of Force and Firearms provides a clear and detailed overview of those rules.

However, in view of the vulnerable position of the child — and the requirements for special protection and treatment — it is reasonable to conclude that utmost restraint must be exercised in the use of force and firearms against children. Because of their young age and their immaturity children are very unlikely to pose the kind of threat which would justify the use of such extreme measures. At the same time the impact of their use against children is likely to be more severe than in the case of adult, mature persons. Law enforcement officials therefore must be urged to seriously weigh such consequences against the importance of the legitimate objective to be achieved. They must also be encouraged to search for adequate alternatives to the use of force and firearms against persons, especially children.

The Position of Children in Situations of Armed Conflict

Undoubtedly situations of armed conflict will have an especially devastating effect on children. The separation of families, the orphaning of children, the recruitment of child soldiers and the death or injury of child civilians are but a few gruesome examples of likely consequences of war for children. It is difficult to gauge what the effects of war on the future psychological and physical development of children who have been exposed to armed conflict situations will be. Recent history provides enough

vivid examples for us to begin to understand the terrible effects of war on children. They will always require special protection and treatment in situations of armed conflict.

Protective Measures

Article 38 of the Convention on the Rights of the Child urges States Parties to respect the rules of humanitarian law which are applicable to them in situations of armed conflict and relevant to the child. It furthermore enjoins States Parties to take all feasible means to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. Nor may States Parties recruit persons younger than 15 years of age into their armed forces. If they recruit persons between the age of fifteen and eighteen, they are to give preference to those who are oldest. Finally, States Parties must take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Situations of recognized non-international armed conflict are governed by Article 3 common to the four Geneva Conventions of 1949, and in cases of high-intensity non-international armed conflict also by Additional Protocol II of 1977. The latter, in Article 4, provides fundamental guarantees for the humane treatment of persons not or no longer taking part in hostilities. Article 4.3 (a) to (e) states the special measures which are applicable or relevant to children, concerning:

- education (a);
- reunion of temporarily separated families (b);
- minimum age for participation in hostilities or recruitment into the armed forces (c);
- protection of captured child combatants under the age of fifteen (d);
- temporary displacement of children for reasons related to the armed conflict (e).

With regard to international armed conflict (to which the four Geneva Conventions of 1949 and their Additional Protocol I of 1977 apply) similar provisions can be found in Articles 77 and 78 of Additional Protocol I. According to Article 24 of the Fourth Geneva Convention of 1949, States party to the conflict must take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances.

If arrested, detained or interned for reasons related to the armed conflict, children must be held in quarters separate from the quarters of adults, except where families are accommodated as family units (Additional Protocol I, Article 77.4).

Unless there are imperative reasons for doing so, no Party to the conflict may arrange for the evacuation of children, other than its own nationals, to a foreign country. When an evacuation does occur, all necessary steps must be taken to facilitate the return of the children to their families and their country (Additional Protocol I, Article 78).

4. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. New York, 25 May 2000

Since the Optional Protocol's entry into force on 12 February 2002, its rules have supplemented existing provisions of international humanitarian law and generally strengthened protection for children in armed conflict. For example:

- the States Parties must take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities (Article 1);
- the States Parties must ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces (Article 2);
- the States Parties must raise the minimum age for the voluntary recruitment of persons into their national armed forces from 15 years. This rule does not apply to military academies (Article 3);
- armed groups distinct from the armed forces of a State should not, under any circumstances, recruit (whether on a compulsory or voluntary basis) or use in hostilities persons under the age of 18 years. States Parties must adopt legal measures to prohibit and criminalize such practices (Article 4).

5. Conclusion

Although our teaching materials for armed forces and law enforcement officials need to be updated in accordance with the ongoing development of international legal instruments and new conference resolutions, in particular those of the International Conferences of the Red Cross and Red Crescent, they offer a sound background for instructors.

Of course, presentations and discussions will need to be adapted to the particular audience by taking into account the situation, legislation and manuals in use in the country where they are to take place. Instructors are therefore advised to consult local specialists and perhaps share the presentation with them.

Whenever feasible, however, the instructor should stress the subject's ongoing development and, as an ICRC representative, emphasize and promote the Movement's policy.