



**Convention on the
Rights of the Child**

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**WRITTEN REPLIES FROM THE GOVERNMENT OF BELGIUM TO
THE LIST OF ISSUES (CRC/C/OPAC/BEL/Q/1) TO BE TAKEN UP
IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL
REPORT OF BELGIUM SUBMITTED UNDER ARTICLE 8 (1) OF
THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN
IN ARMED CONFLICT (CRC/C/OPAC/BEL/1)**

[Replies received on 30 March 2006]

Replies to the list of issues raised by the Committee on the Rights of the Child in connection with the initial report of Belgium relating to the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/BEL/1)

Reply to question 1

The Act of 5 August 2003 on serious violations of international humanitarian law replaces the Act of 16 June 1993 on the punishment of serious violations of international humanitarian law, incorporating its main provisions into the Criminal Code and the preliminary part of the Code of Criminal Procedure.

The Act of 5 August 2003 also introduces the following two restrictions:

- Serious violations of international humanitarian law can no longer be prosecuted in absentia;
- Serious violations of international humanitarian law can no longer be prosecuted in the absence of any link connecting them with Belgium.

Belgium retains jurisdiction over war crimes committed abroad, such as the conscription or enlistment of children under the age of 15 in the armed forces or armed groups, or making them take an active part in hostilities, in cases where:

(1) The perpetrator is a Belgian national or a person whose principal residence is in Belgium; or

(2) The crime was committed against a person who, at the time when the crime was committed, was a Belgian national or a person who had been effectively, continuously and legally living in Belgium for at least three years; or

(3) Belgium is required under a rule of customary or conventional international law to prosecute such crimes.

To date, two trials have been held in Belgium, in 2001 and 2005, pursuant to the Act of 16 June 1993 and the Act of 5 August 2003 on serious violations of international humanitarian law. The two cases involved the murder of civilians, including children. At this stage, we have no information on any other cases involving atrocities committed specifically against children.

Reply to question 2

As regards the recruitment of children under the age of 15 in the armed forces or armed groups or making them take an active part in hostilities, article 8 of the Act of 5 August 2003* introduces a new provision into the Belgian Criminal Code (art. 136 quater, para. 1, point 7) under which such acts can be prosecuted as war crimes.

* Cf. annex 1, p. 12.

Reply to question 3

As stated above, the recruitment of children for military activities abroad is covered by article 136 quater, paragraph 1, point 7, of the Belgian Criminal Code, and is considered a war crime that can be prosecuted as such in Belgium.

This provision specifically covers the conscription or enlistment of children; as the recruitment of children is punishable under Belgian law, when recruitment takes place in Belgium the Belgian courts automatically have jurisdiction in the matter regardless of whether or not the act was committed by a Belgian national.

If the child is recruited abroad by a non-Belgian national, Belgium may exercise extraterritorial jurisdiction within the limits set out above (see answer to question 1).

Reply to question 4

Asylum-seeking children who have been involved in an armed conflict, like other child asylum-seekers, receive special treatment while their application for asylum is being examined by the relevant asylum authorities.¹ The measures applicable to all child asylum-seekers are described in section A below, and the measures applicable to those involved in armed conflict are described in section B.

A. Treatment of child asylum-seekers

A.1 Specially equipped waiting rooms

There are specially equipped waiting rooms for child asylum-seekers who have to wait in the Aliens Office or the Office of the Commissioner-General for Refugees and Stateless Persons.

A.2 Special training for staff handling asylum applications from minors

The officials who interview and deal with the cases of minors in the Aliens Office and Office of the Commissioner-General for Refugees and Stateless Persons are volunteers who are regularly updated on problems specific to children (problems related to child soldiers, disappearances, etc.).

These officials also follow special courses² that take into account the fact that children belong to a vulnerable group³ and attend occasional courses on the trauma experienced by children in exile and on special techniques for interviewing children.

Circulars have been prepared by the Aliens Office and the Office of the Commissioner-General⁴ on, among other things, making allowances for children's age and maturity when interviewing them.

In the case of children who are not old enough to express themselves, information is sought from whoever is accompanying and taking care of them, such as a guardian.

A.3 Specific measures for unaccompanied foreign minors during the examination of their asylum application

A.3.1 The minor is assisted and represented by a guardian during the asylum process

Minors can themselves submit their asylum application to the Minors Unit of the Asylum Department at the Aliens Office. However, the unit waits until a guardian has been appointed before interviewing an unaccompanied foreign minor.⁵ Article 3, paragraph 5, of the Royal Decree of 11 July 2003⁶ provides for child asylum-seekers to be assisted during their interview by the person exercising parental authority over them, their guardian under the law of their home country or their guardian under Belgian law. The guidance given by the guardian representing and assisting the child while the latter's asylum application is being examined will be consistent with the child's evolving capacities.⁷

The Royal Decree of 11 July 2003⁸ makes similar provision for the examination of asylum applications from minors by the Office of the Commissioner-General for Refugees and Stateless Persons: it should be added that the minor may also be accompanied by a trusted individual (such as a social worker from the centre where the minor is living). Article 14 of the Royal Decree also stipulates that the official may, for the purposes of the examination and in the interests of the child, oppose the presence of family members or the trusted individual, for example if questions need to be asked about relations - possibly of a dubious nature - between the minor and the persons accompanying him or her. The official from the Office of the Commissioner-General will not, however, oppose the presence of the guardian appointed to the unaccompanied minor under Belgian law.

A.3.2 Other measures applicable during interviews with minors

During the interview, account is taken of the minor's maturity and capacity for reasoning and discernment, and any fears are considered in the light of these factors.

A special questionnaire for unaccompanied foreign minors is used when interviewing them. The examiner adapts the questions and interview techniques (e.g. the use of drawings) to the minor's age, capacity for discernment and maturity.

The new information provided and comments made during the interview by the minor, or by the person exercising parental authority or the special guardian under Belgian law, are included in the record of the interview.⁹

B. Measures applicable to child asylum-seekers involved in an armed conflict

The asylum authorities do not have specific statistics on this category of minor; in 2005 they dealt with only a few cases of child soldiers or former child soldiers, most of whom became adults while their application for asylum was being processed.

B.1 Psychological, medical and social measures

If staff from the asylum authorities observe that a child has been traumatized and is suffering from psychological problems, the child's guardian is contacted to ensure that the child receives psychological support and appropriate medical care.¹⁰

A psychological test is also sometimes requested by the interviewing official to determine whether the child can be interviewed or not. If the psychologist from the Office of the Commissioner-General for Refugees and Stateless Persons concludes that the child is not fit to be interviewed, the child's asylum application is examined on the basis of the evidence in his or her file.

Such children are taken in by centres run by the Federal Agency for the Reception of Asylum-Seekers (known as Fedasil), the International Committee of the Red Cross or local reception facilities. Most reception centres have a section especially for minors. Each centre has a team of social workers specifically to take care of minors. A doctor can also be consulted in the centre. Staff can refer the minor to a more appropriate psychological, medical or social facility, such as a hospital or child guidance clinic.

B.2 Specific criteria applicable to the examination of child soldiers or former child soldiers

The Office of the Commissioner-General for Refugees and Stateless Persons is particularly careful when examining asylum applications from child soldiers or former child soldiers. The minor's capacity to judge the acts committed is assessed on the basis of the following factors:

- Age at recruitment;
- Whether or not recruitment was voluntary;
- The consequences of a refusal to be recruited;
- Length of “service”;
- Whether there was any chance of avoiding personal involvement in atrocities;
- Forced use of drugs or medicines;
- Promotion for “good performance”;
- The child's education, background and home environment;
- The child's emotional development;
- The child's current attitude towards acts committed in the past.

As far as minors under the age of 15 are concerned, there is a presumption - one that is difficult to refute - that they did not realize what they were doing or the possible consequences of their acts (absence of responsibility). Their cases - like those of minors aged between 15 and 18 - are always dealt with on a case-by-case basis.

Since 2003, the Belgian Red Cross, in partnership with Fedasil, has been running a programme to provide psychological and social assistance to asylum-seekers, including children who have fled armed conflicts.

The latter receive ongoing care to improve their mental health and help them deal with the consequences of exile in Belgium and with the trauma related to armed conflict.

Reply to question 5

A. Defence forces

A.1 General training

The Optional Protocol as such is not the subject of a special course in the Belgian armed forces.

However, the question of protecting children in armed conflicts is addressed in the training given to all military personnel. It is brought to the attention of all categories of personnel on several occasions during basic and in-service training courses on the law of armed conflict.

The general training programme for all categories of military personnel is contained in the “Directive on teaching the law of armed conflict and the rules of engagement in the armed forces”, which describes the training of military personnel of all levels (volunteers, non-commissioned officers and officers) during basic training and in-service training.

Manuals are provided for each category of personnel and level of training, and can be obtained by each unit.

Volunteers

During basic training, volunteer candidates follow a four-hour course on the law of armed conflict that includes two hours of teaching on the humanitarian rules for combatants. The instructor deals with the protection of various categories of person (civilians, prisoners of war, the wounded and medical personnel).

Non-commissioned officers

Non-commissioned officer candidates

Non-commissioned officer candidates receive the same basic training in the law of armed conflict, with an additional hour of teaching on their duties and responsibilities as leaders, especially as regards breaches of the law of armed conflict (murder, rape, torture, etc.).

Elite non-commissioned officer candidates (warrant officers)

The same concepts are covered eight years later on a course for non-commissioned officers aspiring to promotion to the rank of warrant officer (“Prevention and punishment of breaches of the law of armed conflict”).

Officers

Officer candidates

Officer candidates receive 11 hours of training in the law of armed conflict.

In addition to basic training in the humanitarian rules for combatants, they receive an hour's training on their responsibilities as leaders in this area ("Prevention and punishment of breaches of the law of armed conflict").

Technical course for staff officers

As part of their in-service training, officers follow a technical course for staff officers.

Six hours of the course are devoted to the law of armed conflict. Part of the course is spent on revision of the concepts studied earlier (by officer candidates) as they apply to a higher level of command.

Senior officer candidates

The course for senior officer candidates (followed by those wishing to be promoted to the rank of major) devotes 12 hours to the law of armed conflict. One hour is spent on revision of the basic rules of humanitarian law, including the protection of persons (civilians, the wounded, prisoners of war and medical personnel). A further hour is spent on responsibilities and the punishment of serious breaches of the law of armed conflict.

Higher course for staff officers

This course is intended for selected officers of the rank of major or lieutenant colonel. It includes 12 hours on the law of armed conflict, including the same in-depth revision as in the course for senior officer candidates, especially with regard to the punishment of violations and the responsibilities of military leaders in this respect.

During basic training, each soldier is given a card on humanitarian rules for combatants as an aide-memoire.

Before they leave on an operation, military personnel are reminded of the rules of the law of armed conflict and the rules of engagement and conduct applicable to each mission.

The texts of all the conventions on the law of armed conflict ratified by Belgium are circulated within the armed forces.

A.2 Training for advisers on the law of armed conflict

The Belgian armed forces have introduced advisers on the law of armed conflict (CDCAs) in military units and headquarters. These advisers are responsible for advising commanders during operations.

Their training lasts five weeks.

During their training, they first learn the basics of public international law, international criminal law and Belgian criminal law. They are then given in-depth training in all the rules of the law of armed conflict.

Although it is not a subject in its own right, the protection of children caught up in armed conflicts is, of course, addressed in the advisers' training.

There is a military commission on the law of armed conflict within the defence forces which is responsible, together with the Office on the Law of Armed Conflict and Rules of Engagement (DCA-ROE) of the defence staff, for disseminating information within the defence forces.

B. Belgian Red Cross campaign

The Belgian Red Cross conducts campaigns to publicize international humanitarian law, including the rules governing the status of children involved in armed conflicts.

The campaigns are aimed at adults and schoolchildren in Belgium's French Community.

B.1 Campaign aimed at adults

Given its expertise on the subject, the Belgian Red Cross is regularly invited to give talks on child soldiers.

The target audiences are usually:

- University students;
- Lawyers and judges;
- Advisers on the law of armed conflict from the Belgian armed forces; and
- The general public.

In 2004 and 2005, the Belgian Red Cross was involved in several courses, seminars and conferences aimed at these different audiences.

Its presentations covered several issues: the definition of a child soldier; the protection afforded to children by international humanitarian law (the 1949 Geneva Conventions and their additional protocols) and international human rights conventions (such as the Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict); and the criminal responsibility of child soldiers and recruiters.

B.2 Dissemination of humanitarian norms in the education system in Belgium's French Community

Since 1998, a programme called "Damage limitation" has been teaching pupils in upper primary school about the consequences of armed conflict and encouraging them to be civic-minded, show solidarity and adopt humanitarian values.

The programme is specifically aimed at teaching children and teenagers about the protection they enjoy as vulnerable persons under international humanitarian law.

It tries to show the harm caused to children by conflicts, giving specific examples (child soldiers, light weapons, anti-personnel landmines, etc.).

The programme, which is run in the French Community in Belgium and in the Democratic Republic of the Congo, has the support of the Belgian Department of Development Cooperation.

C. Dissemination within the education system

C.1 Secondary education

Teaching and education policy is the responsibility of the Communities, which are autonomous public bodies with various important powers within the federal Belgian State.

This constitutional arrangement means that diverse approaches can be found in the regulations governing, and the implementation of, dissemination programmes in secondary schools.

For example, the French Community has introduced the concepts of human rights and humanitarian law into a special programme for the secondary schools under its control called “Democracy and barbarity”.

The Belgian Red Cross cooperates in disseminating the rules of humanitarian law in secondary schools, including through a programme to raise awareness among pupils in the third cycle of secondary education (higher-level humanities).

Under the principle of educational freedom, as enshrined in the Constitution and observed at various levels (in public and private schools), the school authorities are responsible for defining curriculum content.

Special lessons on human rights and/or international humanitarian law are included in general courses on history, geography, literature, philosophy, etc.

C.2 Universities

As pointed out above, university education is the responsibility of the Communities. Issues related to human rights and international humanitarian law are covered in the general education provided by academic institutions and university faculties, notably in the fields of law, political science, sociology and communication science.

In addition to their traditional academic courses, several Belgian universities organize summer schools on human rights and international humanitarian law for experts, local students and foreigners.

The Belgian Red Cross has prepared an ongoing training programme in humanitarian law for trainees for the judiciary, and the Ministry of Foreign Affairs provides courses in this subject for consular officials. These activities are in line with the commitments entered into by Belgium at the 28th International Conference of the Red Cross and Red Crescent in December 2003.

Reply to question 6

Career officer candidates and non-commissioned officer candidates do not swear an oath upon recruitment but at the end of the four-year training period.

Candidates acquire military status when they sign their enlistment papers, which contain the following declaration:

“I recognize [not applicable to a person who already has military status] that:

- I have been informed that I am subject to military laws and that, pursuant to this declaration, I have acquired military status;
- I have received a copy of the military laws in question.”

Candidates for a career as a non-commissioned officer must have reached the age of 16 before they can become a military candidate.

Notes

¹ The Minors Unit of the Asylum Department at the Aliens Office examines asylum applications from minors in Belgian territory. Asylum applications submitted by minors at the border are examined by staff from the Zaventem Unit, which has been alerted to the problems specific to minors. Asylum applications from minors are examined at the Office of the Commissioner-General for Refugees and Stateless Persons by a “minors coordinator” and officials specialized in interviewing minors.

² A course on interviewing asylum-seekers and intercultural communication is part of the training, as is a briefing on the specific needs of vulnerable groups and training in the problems facing unaccompanied foreign minors and in interview techniques. Officials also follow the courses provided for in article 13 of the Royal Decree of 11 July 2003, which establishes certain procedures to be followed by the department of the Aliens Office responsible for examining asylum applications on the basis of the Act of 15 December 1980 on access to Belgian territory, residence, settlement and removal of foreigners (*Moniteur belge* of 27 January 2004). These courses cover the implementation of the 1951 Convention relating to the Status of Refugees and the human rights conventions that are binding on Belgium, as well as other sources of legal protection.

³ In accordance with article 11 of the Royal Decree of 11 July 2003 cited in footnote 2.

⁴ Circular of 4 May 2005 on minors under supervision, adopted by the Office of the Commissioner-General for Refugees and Stateless Persons. This circular replaces that of 29 October 2002, except for the general rules on the treatment of asylum applications from minors.

⁵ In accordance with article 9, paragraph 2, of part XIII, chapter 6, “Guardianship of unaccompanied foreign minors”, of the Programme Act of 24 December 2002.

⁶ Royal Decree of 11 July 2003, cited in footnote 2.

⁷ Convention on the Rights of the Child, art. 5.

⁸ Royal Decree of 11 July 2003, setting out the procedures and functioning of the Office of the Commissioner-General for Refugees and Stateless Persons (*Moniteur belge* of 27 January 2004).

⁹ In accordance with article 16 of the Royal Decree of 11 July 2003 cited above.

¹⁰ Article 10, paragraph 1, subparagraph 2, of part XIII, chapter 6, “Guardianship of unaccompanied foreign minors”, of the Programme Act of 24 December 2002.
