

**The Convention on the Rights of the Child in the 21st Century:
securing rights for children in an age of uncertainty**

4th World Congress on Family Law and Children's Rights,

20 -23 March 2005, Cape Town

March 23, 2005

**"Children in war: issues at stake and concerns with
regard to separated and unaccompanied children"**

by

Alain Aeschlimann

**Head of the Central Tracing Agency and Protection Division
International Committee of the Red Cross**

Ladies and Gentlemen,

Thank you for the opportunity to address this conference and congratulations for organising such an important event on the occasion of the fifteenth anniversary of the Convention on the Rights of the Child (CRC). It is for me a great honour to represent the International Committee of the Red Cross (ICRC) on the occasion of this fourth World Congress. We are grateful that you included the issue of children in war in the program. In recent years, this topic has been more and more discussed and put on the international agenda thanks to the tireless efforts of various organisations and personalities, one being of course the Patron of this Congress, Mrs Graça Machel.

I would like to start my speech by telling you the story of Manuel Hanga. He is a tall thin boy of 17, who was found by the ICRC in a demobilisation camp close to Huambo, in the highlands of Angola. At the age of 11, his village was attacked by the Angolan rebels. He was made prisoner and forced to serve, first as an aid to a commander, who abused him sexually, and later as a first line combatant. We interviewed him. We traced his parents. We found them after five months in a suburb of the capital city, Luanda. In his previous life, Manuel was attending school and living the life of a "normal child". After six years with the guerrillas, he was a nervous and depressed teenager who was not sure his mother would recognise him.

According to the CRC, this boy had the inherent right to life, the right to education, right to a name and nationality, the right to be with his family, the right to leisure, play and participation in cultural and artistic activities. According to the Optional Protocol to the CRC on Involvement of Children in Armed Conflicts, this boy should have never been recruited. Today, following the 1998 Rome Statute of the International Criminal Court, such recruitment is a war crime. This is not to mention what the Geneva Conventions and their Additional Protocols foresee for the case of this boy, which I will detail later.

Nevertheless, Manuel is just one out of the 40% of children in the world whose birth has not been registered. He is just one out of the hundred thousand or so children who are associated with armed forces or groups in Africa alone.

And the case of Manuel is repeating itself everyday because, as we all know, most present-day armed conflicts are characterized by widespread

contempt for basic humanitarian rules on the part of armed actors. The most vulnerable members of communities, the first of whom are children, are the first to fall victims of violence, whether they suffer the consequences of hostilities or because they are targeted as part of a deliberate strategy.

Children are killed, maimed, submitted to sexual violence or imprisoned. Quite often they may also be exposed to bombing and shelling, in constant fear for their lives, or be denied food in order to put pressure on them.

All too often, children are helpless and silent witnesses of the most terrible atrocities. They often have no choice but to flee and seek refuge elsewhere. But fleeing the fighting does not mean being out of danger's reach. They may step on a mine. And in the panicked chaos of flight, children are often separated from their relatives. Cut off from their familiar environment, children lack any certainty as to their future and that of their loved ones. They become easy prey to exploitation of all kind. Some are even submitted to slavery. Forced recruitment of children is an alarming and growing trend.

Such experiences unquestionably leave deep psychological wounds that seem incurable. Most of the time, these children's health, development and schooling are in jeopardy.

There is no doubt that humanitarian organizations must ensure that the most vulnerable children are protected. In this framework, I wish today to concentrate on the plight of unaccompanied and separated children, which is often closely related to the issue of refugee and/or displaced children. All these topics are closely interlinked as seen before as children in armed conflicts are often taken in a vicious circle of hardship. I will discuss from the legal aspect, but will also have some operational considerations.

As an impartial, neutral and independent organisation, the ICRC endeavours to protect and assist civilian and military victims of armed conflicts and internal violence, often in partnership and close co-operation with other components of the International Red Cross and Red Crescent Movement, in particular host National Red Cross or Red Crescent Societies. Consequently, our mandate covers situations of conflict and internal violence. The ICRC aims to act for the benefit of all victims on the basis of vulnerability and needs to prevent and alleviate suffering. Therefore, we do not direct all our efforts on children as a category. But what we do is to positively take into account the plight and specific needs of children in all the phases of our operations.

The ICRC, on the basis of its mandate enshrined in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, takes direct action in the field in favour of children caught in the midst of conflict. Consequently, in operational terms, this means that:

- We visit detained minors. We monitor their conditions of detention and work to improve them. In 2004 alone, the ICRC visited 3100 detained girls and boys under the age of 18 from a total of 125'000 detainees individually visited and followed up by the ICRC worldwide. With children, the priority is to ensure that they are held separately from adults and ? of course ? to ask for their release;
- We make efforts to ensure respect for the fundamental rights of the civilian population through confidential representations and dialogue with parties to conflict. This includes in particular prevention of forcible recruitment or participation of children in hostilities; representations with regard to demobilisation of child soldiers and, in some cases, accompaniment as neutral intermediary of children just demobilised by armed

groups;

- We restore links between children and their families when they have been separated. I will come back to these activities later on;
- We trace and run programs related to missing or persons unaccounted for;
- We work on mine action. A survey revealed that 20 % of the total number of mine and unexploded ordnance victims were children of 18 or younger in Bosnia Herzegovina and 50% in Afghanistan. This encompasses mine risk education and awareness with priority put on children (with posters, children magazine, puppet shows, etc.), establishment of safe play areas for children as in the Caucasus and provision of artificial limbs as in many countries;
- We provide emergency and rehabilitation medical assistance (war surgery, support to medical structures, etc.) in dozens of hospital and hundreds of other health care facilities around the world;
- We conduct primary health care activities for people who have been isolated or displaced with a priority on mother and children as well as water supply and sanitation programs for the needs of millions of people worldwide yearly;
- We provide emergency food aid and other assistance to cover basic needs, such as hygiene and household items, seeds and tools, etc. also to hundreds of thousands of persons on a monthly basis.

The Disarmament, Demobilisation and Reintegration processes, usually referred to as DDR, are extremely complex and there is no point here to enter into details. I would just like to mention that the ICRC in 2004 has been involved in registering demobilised children and re-establishing their links with their relatives in DDR processes in Liberia, Sierra Leone, Democratic Republic of Congo, Burundi, Rwanda and Angola. Last year 1'300 demobilised children have been registered, 1'200 of them were reunited with their families and some 1000 files are currently processed. Solving a case often requires a lot of efforts, patience and time.

As you know, international humanitarian law is this body of law, of customary or conventional origin, which applies in times of armed conflict. International humanitarian law on one hand protects the persons who do not or no longer take part in hostilities and, on the other hand, limits the right of the parties to a conflict to use means and methods of warfare of their choice. International humanitarian law applies in parallel to other bodies of law as human rights law or refugee law.

Guardian of international humanitarian law and mandated to work for its development, the ICRC also contributes to develop the law protecting children. The Institution has also the responsibility to spread the knowledge of such rules ? including through training and educational programmes specifically targeting armed and security forces and young audiences ?, to encourage States to comply with their treaty obligations to do likewise particularly amongst their armed forces. The ICRC is running advisory services which help and advise states in adopting domestic laws that implement international humanitarian law obligations. Among them are all the important regulations of the four 1949 Geneva Conventions and their two 1977 Additional Protocols I will refer to later and the relevant regulations of the CRC and its second Optional Protocol. The importance of national measures of implementation has already been mentioned on numerous occasions by previous speakers.

Apart from the Geneva Conventions and their Additional Protocols, the ICRC has provided input for the drafting of other treaties such as the 1989 CRC and its 2000 Optional Protocol on the Involvement of Children in Armed Conflicts; and the 1998 Statute of the International Criminal Court which I mentioned before, that makes the recruitment of children under the age of 15 years a war crime.

It is worth stressing that the Geneva Conventions and their Protocols are applicable to regular armed forces as well as to non-state armed groups taking part in conflict. The majority of the regulations of the four Geneva Conventions and Additional Protocol I apply in situations of international conflict; Art 3 common to the four Geneva Conventions and Additional Protocol II in cases of internal conflict. The Additional Protocols of 1977 were the first instruments to address the participation of children in hostilities, the minimum age which was set at this time was 15 and the recruitment of under 15 was totally prohibited.

Let me make a short parenthesis on this issue of recruitment. The prohibition I just mentioned is truly absolute in cases of internal armed conflict and covers direct or indirect participation in hostilities, i.e. by gathering information or transmitting orders. This obligation is stricter than that applicable in situations of international conflict that only prohibits direct participation.

Despite the efforts of a number of stakeholders to have the age below which children should not participate in hostilities raised from fifteen to eighteen years, Article 38 of the CRC does not constitute an advance, and on the contrary a set back with regard to non international armed conflicts. As a matter of fact, it merely prohibits the direct participation in hostilities of children less than fifteen years of age. However, a specific reference in this Convention to the rules of international humanitarian law relevant to the protection of the child and the *lex specialis* character of international humanitarian law ensure that Additional Protocol II remains applicable in doubtful cases.

Finally, the Optional Protocol to the CRC raised to 18 years the minimum age for direct participation in hostilities and compulsory recruitment. We hope that national laws and further development of international law (one case in point being the 1999 ILO Convention Nr 182) will also raise to 18 years both the voluntary enlistment and the indirect participation in hostilities, as the Optional Protocol does with regard to non-state armed groups.

To complete the picture, I have also to mention that the various components of the International Red Cross and Red Crescent Movement, which are in addition to the ICRC the numerous National Red Cross and Red Crescent Societies and their International Federation, are involved in different programmes for children affected by armed conflict. The Movement adopted in 1995 a Plan of Action to help child victims of armed conflict renewed in 1999. The International Conference of the Red Cross and Red Crescent then endorsed the Plan of Action and adopted in 1995, 1999 and 2003 several resolutions related to children affected by conflict; the Movement committed itself mainly:

- To promote the principle of non-recruitment and non-participation in armed conflict of persons under the age of 18 years;
- To take concrete action to protect and assist child victims of conflict, including by setting up rehabilitation and reinsertion programmes.

The Geneva Conventions and their Additional Protocols set out detailed measures to meet the specific needs created by armed conflicts and offer the best possible protection for all victims of war. They protect the civilian population as a whole ? without favouring one category over another. That is, ladies and Gentlemen, what we call general protection. In addition, humanitarian law pays heed to the specific needs of different categories. Indeed, children affected by armed conflict enjoy what we call a special protection. More than 25 articles in the four Geneva Conventions and their Additional Protocols refer specifically to children.

Now, let us go into some details. As for the general protection, international humanitarian law provides in particular for:

- The duty to treat with humanity and dignity the persons not or no longer taking part in hostilities. Are in particular prohibited acts such as: violence to life and person; the taking of hostages; outrages upon personal dignity as rape, enforced prostitution and any form of indecent assault; the passing of sentences without respect for the fundamental judicial guarantees; collective punishments.
- The protection of the civilian population against the dangers arising from military operations, in particular direct attacks or acts or threats of violence intended to spread terror;
- The prohibition of starvation of civilians and attack or destruction of objects indispensable to the survival of the civilian population (such as foodstuffs, crops, livestock, drinking water installations);
- The limitation of forced movement of civilians only to situations when it is required for the security of the civilians involved or for imperative military reasons. When such is the case, all possible measures must be taken in order that the civilian population may be received under satisfactory conditions.
- The unity of the family;
- The exchange of family news;
- The care due to wounded and sick and to other vulnerable categories of persons, including children, and priority given to them when distributing humanitarian aid;
- The search for missing and persons unaccounted for.

Additionally, the special protection related to children includes:

- The emphasis on the interest of the child who shall be provided with the care and aid he or she requires;
- The right of children to receive an education and benefit from the establishment of a cultural environment;
- Detailed regulations with regard to arrest, detention or internment;
- Special measures for children under 15 who are orphaned or separated from their families;
- The facilitating of reunifications of separated families;
- Ensuring acceptable conditions before arranging evacuation of children to a foreign country (we will see later that evacuation is a last resort solution).

Ladies and Gentlemen,

As you are aware of, there is a huge gap between what the law says and the reality on the ground I mentioned in the beginning. In the whole, even if there may be discrepancies or disagreement on interpretation of some concepts and regulations, the legal framework has to be considered as adequate: there is no major shortcoming. The problems lie in the fulfilment of the obligation by States and parties to a conflict to respect and ensure respect of the law, in political will and in effectiveness. The establishment of the International Special Tribunals and the International Criminal Court are undoubtedly a positive step to strengthen accountability

, but it is definitely not enough yet.

As you may know, the ICRC has been entrusted with special responsibilities in restoring family links through its mandate to run the Central Tracing Agency, which has a basis in the Geneva Conventions and which works in very close co-operation with the tracing services of the national Red Cross and Red Crescent Societies. This unique worldwide network may cooperate with authorities and other actors, in particular child protection agencies, in the best interests of the child.

Restoring family links is carried out through:

- Facilitating communication through the exchange of family news, the so called Red Cross Messages (in 2004 some 1'350'000);
- Tracing for missing and persons unaccounted for (in 2004, some 18'600 new cases were proceeded, that brought the number of open cases to 66'000);
- Preparing and organising family reunifications (in 2004, 2'800 reunions took place).

With regard to children, these activities are of course closely linked to reintegration programs which are carried out either by the ICRC or other Red Cross and Red Crescent Movement components or often by other more long-term specialised organisations. Such programs may also include support such as: establishment of transit centres for non-accompanied children waiting for reunion; running of child advocacy and rehabilitation program for demobilised children; assistance kits to children registered for reunion or when reunion takes place or when staying in quartering areas; follow up activities after family reunification, psycho-social support, etc..

Tracing and reunification programs must happen in the shortest time possible. Collecting and centralising data are key elements in the process. To this aim, the ICRC established a major database at the beginning of the 90's, which is regularly upgraded.

One of the major tasks is done on behalf of unaccompanied and separated children. In 2004, the ICRC followed the cases of 6'300 unaccompanied or separated children. It registered 4'500 newly separated children and carried out the reunification of 2'600 children with their families.

Africa is our main theatre of operations. Following the 1994 genocide in Rwanda, the ICRC processed in its database the identities of some 85'000 unaccompanied children. All of them had been registered by our staff or partner organisations. Out of this number, 70'700 family reunifications took place, either organised by the ICRC (for about one third) or by partner organisations that benefited from our centralised data.

For processing cases, new methods were tested and developed:

- the establishment of gazettes with list and/or pictures of children,
- placing of posters of pictures of children at strategic places,
- use of radio, mobile or satellite phones and sometimes web sites, a last case in point being the Tsunami disaster.

It is clear that all these activities require long-term commitment ? often for years. A major challenge is related to cross border activities as in West Africa or Sudan.

At this stage, it is worth reiterating some definitions which help to comprehend the groups of children we are referring to:

• A separated child is a child under the age of 18 or the legal age of majority who has been separated from both parents but may be accompanied by

other adult relatives.

- An unaccompanied child is a child under the age of 18 or the legal age of majority who has been separated from both parents and is not being cared for by an adult responsible for doing so by law or customs.
- Orphans are children whose both parents are known to be dead.

The range and complexity of situations in which children become separated or unaccompanied, and the diverse needs of the children themselves, mean that no single organisation can hope to solve the problem alone. Complementary skills and mandates must be brought together to respond to this issue. As mentioned above, close inter-agency collaboration in the 1990's led to the reunification of tens of thousands of Rwandan children with their families. The crisis in the Great Lakes Region also showed that some organisations sometimes ignored the law and international standard and practices. All this led to the formation of an Inter-agency Working Group on Unaccompanied and Separated Children in 1995. It brought together key organisations with field experience on children as UNHCR, UNICEF, the International Rescue Committee, Save the Children/UK, World Vision International and ourselves, the ICRC. This group developed the Inter-agency Guiding Principles on Unaccompanied and Separated Children, for the purpose of guiding future action for national, international and non-governmental organisations. These principles also provide a framework for governments in their efforts to meet their obligations, and for donors in making decisions on funding. Recently fully endorsed, the Guiding Principles have been published in January 2004.

These Guiding Principles are anchored in a protection framework in keeping with the provisions of the CRC and its two Optional Protocols, the four Geneva Conventions and their two Additional Protocols, and the Convention relating to the Status of Refugees and its Protocol. The principles of respect of family unity and the best interests of the child are repeatedly emphasised. The Guiding Principles address all stages of an emergency and its possible impact on children: from preventing separations through family tracing and reunification, and the provision of interim care and long-term solutions.

The Guiding Principles insist that both families and the relevant authorities should be made aware of the ways to prevent separation, which are always feasible, even in the most acute emergencies. Also, organisations working with and for children must ensure that their actions do not inadvertently cause separation, especially when families entrust them with their children.

The case of evacuation of children without family members should be a last resort, ideally based on the informed consent of the parents and should follow strict conditions, precautions and procedures.

All children must be legally registered as soon as possible after birth, since a birth certificate offers some degree of legal protection, is often needed to access a number of services and can help a lot the efforts to reunite separated children with their families.

The Guiding Principles stipulate that the unaccompanied and separated children must be assisted in reuniting as quickly as possible with their parents, or legal or customary caregivers. Identification, registration and documentation through interviews with the children and other persons who can provide information, if possible immediately after separation, are a matter of priority. Tracing for family members must also be carried-out as soon as possible and in a proactive way. Family reunification must only take place after verifying that it is in the best interests of the child. To facilitate all the process, organisations involved should share

information within and between countries.

The Guiding Principles also tackle issues such as: ways of conducting assessments, coordination, confidentiality, assistance, community-based care, placement with foster parents and the last resort use of institutions for separated children and follow-up after either family reunification or placement.

Finally, the Guiding Principles also deal with conditions for adoption. This aspect was recently highlighted in the aftermath of the Tsunami disaster. The Guiding Principles, indeed, are not restricted to armed conflict areas; they also concern natural disasters.

Ladies and Gentlemen,

As a conclusion we can say without any doubt that much has been done to reinforce the legal protection of the children and to work for improving their situation and welfare. But if some dramatic contexts for children drastically improved, it is not enough. Globally speaking, the situation of children is worsening. The vicious spiral of violence in today's armed conflicts and large-scale violations of humanitarian law and human rights law, in which children are probably the most affected, continues. In addition, HIV/AIDS pandemic, and demographic and economic pressure on families and communities have finally diminished protection and worsened neglect and emotional suffering for children.

Governments need to develop new policies and adapt existing ones in order to meet the challenges of rapidly increasing numbers of orphans and to ensure effective protection of the rights of child. Emphasis has to be put on respect of existing law, domestic implementation measures and accountability.

Promoting knowledge of international humanitarian law and other international legal instruments and standards relevant to the rights of children helps to prevent violations. These efforts should be further developed and systematically strengthened.

Adequate efforts and resources have to be invested in conflict prevention. Once the conflict has broken out, peace can only prevail again when the plight of the children affected by conflict has been properly addressed and their reintegration into society been ensured.

A child traumatised by war is for decades a wounded adult: let us work together to ensure that the existing law which protects children is respected.

I thank you for your attention!