

Human Rights Without Frontiers Int'l

Avenue Winston Churchill 11/33, 1180 Brussels

Phone: 32 2 3456145 – Fax: 32 2 3437491

Email: info@hrwf.net – Website: <http://www.hrwf.org>



Prevention of Violence against Children Seminar

Middle East Technical University (METU)

Ankara (Turkey)

24 August – 4 September 2007

Legal Premises for the Protection of Children from Violence: International Law - The EU Perspective

Willy Fautré, *Human Rights Without Frontiers Int'l*

The European Union comprises 27 Member States with a global population of 494 million inhabitants. The overall EU inter-institutional architecture is very complex but its three main institutions are: the European Parliament with 785 deputies, the European Commission with 27 Commissioners and the Council of the European Union, the EU's legislative body¹.

For a long time, the EU has been producing instruments of protection of fundamental rights and has been putting in place mechanisms meant to implement human rights and mainstream them in its internal and external policies.

This study about the protection of children against violence from the EU perspective will succinctly deal with the articulation between European Law and International Law in this area, the EU's specific instruments and mechanisms pertaining to the Rights of the Child, the EU's prevention policies of violence against children.

Articulation Between International Law and European Law

Children are entitled to the full range of human rights and, as such, to the enjoyment of the general rights that protect any human being from any form of violence - death penalty, torture, inhuman or degrading treatment - as mentioned in the main

international instruments, the Universal Declaration, the International Covenant on Civil Political Rights (ICCPR) and others².

Additionally, the rights of the child are protected by specific international instruments such as

- the *United Nations Convention on the Rights of the Child* (UNCRC)³, which encompasses a wide range of civil, political, economic, social and cultural rights (1989);
- the Optional Protocols⁴ on children's involvement in armed conflicts and on child trafficking/ prostitution/ pornography (2002);
- the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999);
- and also by regional instruments.

All the EU member states have ratified the UNCRC and are therefore obliged to respect and protect the rights it guarantees.

With regard to European Law, fundamental human rights are basically guaranteed by two regional instruments: the *European Convention on Human Rights* (ECHR) adopted in Rome on 4 November 1950 and the *Charter of Fundamental Rights of the European Union* signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

Article 2 of the ECHR guarantees the right to life while its 6th Protocol prohibits death penalty. Article 3 of the ECHR protects the individual against torture, inhuman or degrading treatment and article 4 prohibits slavery and forced labor. Children are fully entitled to enjoy these protections.

As to the *Charter of Fundamental Rights of the European Union*, it reaffirms the rights as they result from the constitutional traditions and international obligations common to the EU Member States, the Treaty on European Union, the Community Treaties, the European Convention on Human Rights, the Social Charters adopted by the Community and by the Council of Europe, the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights. The Charter guarantees the right to human dignity (Article 1), the right to life (Article 2), the right to integrity of the person (Article 3) and prohibits torture, inhuman or degrading treatment or punishment (Article 4), slavery and forced labor (Article 5).

More particularly about the children's rights, the Charter says in Art. 24:

"1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to

his or her interests."

The same text was subsequently introduced in the draft of the Constitution for Europe which should be revised under the current Portuguese presidency and then be open to signature.

EU's Specific Instruments and Mechanisms Pertaining to the Rights of the Child

Since the EU has recognized that children also have specific rights, it has clearly identified the promotion of children's rights as a separate issue meriting specific attention, action and policy. In recent years, violence against children has been an increasing concern for the EU: from violence in the family and in schools to issues with a transnational dimension, including child trafficking and exploitation, child sex tourism or child pornography on the internet. Since 2003, the EU's concerns have led to a number of concrete initiatives. Three major documents have been accorded our attention here: the *EU Guidelines on children and armed conflict* (2003), the *Framework Decision on combating sexual exploitation of children and child pornography* (2003) and *Towards an EU Strategy on the Rights of the Child* (2006).

EU Guidelines on children and armed conflict

For several years, helping the child victims of wars has been a priority for the EU, not only as victims but increasingly as participants. At any given time, there are estimated to be at least 300,000 child soldiers participating in conflicts. In situations of armed conflict, children suffer disproportionately, in a variety of ways, and with long lasting effects. In the past decade alone, armed conflicts are estimated to have claimed the lives of over 2 million children and physically maimed 6 million more. The damage includes not only the obvious risks of being killed and maimed. A certain number of children are POWs, are held hostage, abducted or trafficked, fall victims of rape or other grave sexual violence. Longer term effects such as emotional scars and trauma continue after the fighting stops. In many situations, there remains a climate of impunity for those committing crimes against children, as proscribed by international humanitarian law and the Rome Statute of the International Criminal Court.

In the EU, there is currently no armed conflict. The EU's policies therefore focus on third countries and non-state actors. They aim at urging them to implement international human rights norms and standards and humanitarian law, as well as regional international human rights law instruments and to take effective measures to protect children from the effects of armed conflict, to end the use of children in armies and armed groups, and to end impunity.

In 2003, the Council of the European Union issued the *EU Guidelines on children and armed conflict*⁵ concerning the monitoring of and the reporting on the situation of children in armed conflict, the identification of alarming situations and recommendations for action.

The Guidelines provide that the EU Heads of Mission, the Heads of Mission of civilian operations, the EU Military Commanders and the EU Special Representatives must include an analysis of the effects of conflict on children. Their reports must address violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children and the measures taken to combat them by the parties in case.

This information is to be assessed by the Working Group on Human Rights (COHOM) of the European Council and completed by reports and recommendations from the UNSG (including the list of parties to armed conflict that recruit or use children as annexed to the annual report to the UN Security Council on children and armed conflict), the Special Representative of the Secretary General for Children and Armed Conflict, UNICEF, UN Special Mechanisms and human rights Treaty Bodies as well as NGOs. On this basis, the COHOM will identify emergency situations and make appropriate recommendations for EU action.

The EU's current list of priority countries now includes Afghanistan, Burma, Burundi, Colombia, Ivory Coast, the Democratic Republic of Congo, Liberia, Nepal, Philippines, Somalia, Sri Lanka, Sudan and Uganda.

In 2007, EU preventive actions include

- Concrete strategies and projects to tackle the issue in the priority countries and potential new areas of conflict;
- Continued support for international efforts and instruments to combat the use of child soldiers, such as the Paris Commitments and Principles;
- Improving UN monitoring mechanisms, including early warning systems.

The EU is also in favor of the ratification and the full implementation of the Statute of the International Criminal Court which classifies enlisting children under the age of 15 as a war crime.

Since 2003, the EU has adopted further important policy documents on children and armed conflict, such as:

- *EU Concept for Support to disarmament, demobilization and reintegration (2006)*
- *Checklist for Integration of the Protection of Children affected by Armed Conflict into ESDP Operations (2006)*

Framework Decision on combating sexual exploitation of children and child pornography

In relation to the prevention of sexual abuse and exploitation of children, the first landmark decision was taken by the Council of the European Union on 22 December 2003. This Act which comprises 13 articles is called the "*Framework Decision on combating sexual exploitation of children and child pornography*".⁶ It introduces

common European provisions to address certain issues such as the creation of offences, penalties, aggravating circumstances, jurisdiction and extradition.

The Framework Decision defines certain key terms such as "child", "child pornography", "computer system" and "legal person".

Article 1 says that

- (a) "child" shall mean any person below the age of 18 years;
- (b) "child pornography" shall mean pornographic material that visually depicts or represents:
 - (i) a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child; or
 - (ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i); or
 - (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned (i).

Article 2 sets out behavior that is punishable as "offences concerning sexual exploitation of children":

- coercing a child into prostitution or into participating in pornographic performances, or profiting from or otherwise exploiting a child for such purposes;
- engaging in sexual activities with a child, where:
 - use is made of coercion, force of threats;
 - money or other forms of remuneration or consideration are given as payment in exchange for the child engaging in sexual activities;
- abuse of trust, authority or influence over a child.

All these behaviors have in common an element of violence that goes against the will and/or the conscience of the child and causes physical, psychological and moral damages to the child.

It is also important to underline that Article 5 (3) of the Framework Decision requests Member States to take the necessary measures to ensure that a person, who has been convicted for the offences concerning sexual exploitation of children, be temporarily or permanently prevented from exercising professional activities related to the supervision of children.

The Framework Decision entered into force on 24 January 2004. The EU Member States had to transpose the obligations contained in the Framework Decision into their national legislation and to transmit the text of their new law(s) to the General Secretariat of the Council and to the Commission no later than 20 January 2006. By 20 January 2008, the Council shall assess the extent to which the Member States have complied with the provisions of this Framework Decision on the basis of a report established using this information and a written report from the Commission.

Through this procedure, the initial act of the Council acquires a binding force in all the Member States of the EU.

Towards an EU Strategy on the Rights of the Child

On 26th January 2005, the European Commission issued a Communication on Strategic Objectives 2005-2009⁷ in which it identified children's rights as one of its main priorities⁸. In this context, the group of Commissioners on Fundamental Rights, a working group where the members of the European Commission discuss issues related to the fundamental human rights, decided in April 2005 to launch a specific initiative to mainstream children's rights into all the EU's internal and external policies. The first concrete step was to draft a proposal for an EU strategy. This included several rounds of consultations with external partners such as UNICEF, the Council of Europe and NGOs dealing with children's rights.

On 4th July 2006, the European Commission published a Communication announcing a detailed proposal for a specific EU strategy on children's rights called *Towards an EU Strategy on the Rights of the Child*. This 10-page document⁹ marked the launch of a long-term strategy to promote and safeguard children's rights and to support efforts by its member countries to do so.

The strategy is structured around seven specific goals:

- capitalizing on existing EU policies and structures;
- promoting children's rights in EU relations with partner countries;
- mainstreaming children's rights when drafting EC legislative and non-legislative actions that may affect them;
- identifying future priorities and launching a broad public consultation to develop a long-term children's rights strategy;
- improving awareness of children's rights and EU action in this field;
- training staff to increase their expertise on children's rights;
- improving cooperation and consultation between stakeholder bodies.

The Communication "*Towards an EU Strategy on the Rights of the Child*" provides that the European Commission will maximize the use of its existing policies and instruments, in particular the follow-up on trafficking in human beings, the partnership with the ILO to fight child labor and the EU Guidelines on children in armed conflicts.

The Communication also provides that the Commission will attribute one single 6-digit telephone number within the EU for child help-lines and one for child hotlines (116) dedicated to missing and sexually exploited children. The recent abduction of British girl Madeleine McCann in Portugal has led to calls for European wide data collection on missing or sexually exploited children. A recent research project has indeed found that current data collection is organized in a poor and chaotic way across the EU.

According to the Communication, a "Coordinator of the Rights of the Child" will be appointed to ensure coordination of the strategy with all services concerned of the European Commission.

In the framework of the EU enlargement process, it is also provided that one of the

criteria for membership is that the candidate country must improve the protection of the child and that the European Commission will closely monitor progress of child's rights in all the acceding and candidate countries.

Last but not least, the European Commission has planned to assess the impact of the existing EU actions concerning children's rights for the period 2007-2008, to issue a consultation document in 2008 in order to identify future actions and to collect comparable data on children's rights from 2007 on.

Policies of Prevention of Violence against Children inside and outside the EU

At the international level, the EU regularly tables resolutions on the rights of the child on multilateral human rights fora such as the UN Human Rights Council and UN General Assembly Third Committee. Such resolutions reaffirm the importance of the Convention on the Rights of the Child and its Optional Protocols. The EU also defends the full implementation of the Cairo Agenda and the Beijing Platform for Action adopted by the Fourth World Conference on Women in 1995 in their relation to young people under 18.

All these political initiatives contribute to curb and to prevent further violence against children but despite the countries' commitments, children's rights are still far from being generally respected and complementary measures need to be taken. That is why the EU has developed various concrete policies and programs to improve the situation of children inside its borders and also outside. Two examples will illustrate these two aspects.

Prevention of sexual abuse and exploitation of children inside the EU

The Commission is supporting efforts to create an international Child Pornography On-line Image Database which would be an effective tool for law enforcement in identifying victims and offenders of child sexual exploitation on-line around the world.

One important study financed by the Daphne Program looked at the effectiveness of collecting and using personal information on child sex offenders as a means of protecting children from possible re-offences. The study concluded that at European level this could only be effective if there was a harmonized system across Europe that allowed police forces in the various countries to share information and cooperate. At the time of the report, Europol had not yet become active in this area but subsequently, such cooperation has been facilitated through this agency and sex offenders registers are becoming more common.

The Commission also provides funding under the program Safer Internet Plus (2005-2008) for the European network of hotlines allowing users to report illegal content on the Internet, including child pornography. Furthermore, the Commission is considering to take initiatives in cooperation with payment providers and the financial sector in order to prevent commercial websites involving the sexual exploitation of children from receiving payments. Measures are expected to be announced by the end

of 2007.¹⁰

Interestingly, a member of the European Parliament raised the issue of child sex abuse by Catholic clergy and pointed at the Roman Catholic Church document 'Crimen Sollicitationis' on the fight across Europe against this phenomenon and at the reluctance of the Church to disclose information on child abuse incidents, to secure and give evidence to the police and law enforcement forces. In this matter, the Commission unfortunately used delaying tactics. While recalling that the Holy See is a signatory to the UN Convention on the Rights of the Child since April 1990 and is therefore bound by the clauses of that instrument, it cautiously answered that "issues such as failure to protect children from sexual exploitation could most efficiently be tackled through a dialogue directly with the governments concerned. The need and adequacy of addressing such issues with a specific country and/or institution should be decided upon on a case by case basis."¹¹ This timid and diplomatic answer is however totally inconsistent with the general policy of the EU to go beyond the "dialogue procedure."

Prevention of various forms of violence against children outside the EU

In relations with third countries, the EU has a variety of tools for action at its disposal:

- Monitoring and early warning systems and preventive approaches;
- D marches through its Special Representatives and Heads of Mission to urge relevant countries to take effective measures and also non-state actors where relevant;
- Political and human rights dialogues between the EU and third countries;
- Peace negotiations and peace agreements;
- Advocating an impunity-free environment and the exclusion of crimes committed against children from all amnesties;
- Multi-lateral cooperation by funding projects relating to children and armed conflict in several fields: post-conflict phases of reconstruction, rehabilitation, reintegration, and so on.

In this regard, some parliamentary questions answered by the Commission highlight the wide range of tools used by the EU to curb and prevent acts of violence against children.

Violence against street children

In 2007, a written parliamentary question was asked by MEP Robert Kilroy-Silk (NI)¹² to the Commission about violence against street children in Guatemala. In her answer¹³, Ms Ferrero-Waldner said on behalf of the Commission that the EU Heads of Missions had undertaken a number of d marches to impress upon the political authorities the need to step up their efforts in handling the situation and to establish an impunity-free environment which should make it possible to prosecute those responsible for violence against street children.

Moreover, the Commission's *Country Strategy Paper for Guatemala* for the period 2007-2013 emphasizes human and social development of youth. Considering that, as a result of existing structural economic and social deficiencies, young people have

limited economic prospects and thus become highly vulnerable, the EU strategy underscores the importance of implementing pro-youth policies as a prevention tool of violence against street children.

As part of its strategy, the EU is funding social development projects of NGOs related to youth, including violence against children. For example, in the framework of the *Program of Decentralized Cooperation Actions in Developing Countries*, support is offered to the project "*Systems of Protection for Children in Risk and in Vulnerability by Promoting Political Advocacy*", implemented by a local NGO. In addition, the European Initiative for Democracy and Human Rights (EIDHR) funds the project "*Strategies of Information, Consciousness and Prevention of Trade and Trafficking of Persons of Minor Age*,"¹⁴ implemented by the NGO Casa Allianca which aims notably at raising awareness of children and adolescents.

Child soldiers

In answer¹⁵ to a written question asked by MEP Emilio Menendez del Valle (PSE)¹⁶, to the Commission, Ms Ferrero-Waldner reminded that the Commission supported the drafting of the *Paris Principles* (Guidelines to protect children from unlawful recruitment or used by armed forces or armed groups) on which the *Paris Commitments* are based. This support is channeled through humanitarian operations, development cooperation or actions under the European Initiative for Democracy and Human Rights (EIDHR). In addition, the Commission has mandated its Delegations in the relevant countries to promote the implementation of the Paris Commitments and Principles.

In the case of abduction of child soldiers by the Karuna rebel group in Sri Lanka with the complicity of certain elements of government security forces, the EU Presidency circulated a public declaration urging the Sri Lankan Government to investigate the allegations denounced by Human Rights Watch, to prosecute the responsible officers and to prevent such practices. This issue was also repeatedly raised by the Commission in the framework of the regular political dialogue with the Government of Sri Lanka.

For the period 2007-2013, the European Commission has earmarked an amount of 6.8 million € for the protection of children's rights in armed conflicts in the framework of the European Initiative for Democracy and Human Rights.

Conclusions

It is only in the last few years that the European Union has become fully aware of the urgent necessity to elaborate specific regional instruments and to put in place specific mechanisms pertaining to the rights of the child and to the protection of children from violence.

The EU is particularly active in various major fields: children in armed conflicts, child trafficking, child labor, sexual abuse and exploitation of children, child sex tourism or child pornography on the internet, violence at home and in schools, and so on.

Assessments of the concerned policies still need to be made but through the mainstreaming of the child's rights in its internal and external policies, the EU has become a major actor in the field of children's rights and for the protection of the child from violence within its borders and in third countries.

¹ The Council of the European Union is the Union's legislative body; for a wide range of Community issues, it exercises that legislative power in co-decision with the European Parliament. The Council is composed of one representative at ministerial level from each Member State. Council members are politically accountable to their national parliaments <http://www.consilium.europa.eu/council-eu>.

² See *Legal Premises for the Protection of Children from Violence: International Law* (Workshop 1) by Prof. Yevgeniya Dodina, (National Academy of Law in Odessa, Ukraine)

³ UN Convention on the Rights of the Child of 20 November 1989. Full text available at <http://www.unicef.org/crc/crc.htm>

⁴ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ; UN Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ; Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

⁵ See full text at <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf>

⁶ Council Framework Decision 2004/68/JHA. Entry into force: 20 January 2004. Deadline for transposition in the Member States: 20 January 2006. Official Journal: OJ L 13 of 20 January 2004, p. 13.

⁷ Strategic Objectives 2005-2009. Europe 2010 : A Partnership for European Renewal, Prosperity, Solidarity and Security – COM(2005) 12, 26.01.2005.

⁸ Quotation: “A particular priority must be effective protection of the rights of children, both against economic exploitation and all forms of abuse, with the Union acting as a beacon to the rest of the world.”

⁹ See full text at http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0367en01.pdf

¹⁰ Source: Child abuse and nursery schools, Answer E-0916/07EN given by Mr Frattini on behalf of the Commission (16.04.2007) to the Written Parliamentary Question E-0916/07 by MEP Cristiana Muscardini (UEN) and Roberta Angelilli (UEN) to the Commission.

¹¹ See Written Parliamentary Question P-4347/06 « Disclosure of information concerning child sex abuse” asked by MRP James Allister (NI) and the Answer of Commissioner Ferrero-Waldner P-4347/06 of 5 December 2006.

¹² Written Question E-1622/07.

¹³ Answer E-1622/07 (01.06.2007)

¹⁴ Ref. : DDH/2006/127-548.

¹⁵ Answer E-0759/07EN (19.04.2007)

¹⁶ Written Question E-0759/07