



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
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**

Initial reports of States parties due in 2004

AUSTRIA*

[23 June 2004]

* Related appendices are available for consultation in the files of the secretariat in the language of submission only.

I. INTRODUCTION

1. Austria ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 1 February 2002. It entered into force in respect of Austria on 12 February 2002. This is Austria's first report pursuant to article 8, paragraph 1, of the Optional Protocol.
2. The Austrian National Defence Act was amended prior to the ratification of the Optional Protocol to explicitly prohibit the direct participation of persons under 18 years of age in direct hostilities. The amendment came into effect on 1 January 2001.¹
3. During the parliamentary debates on the Optional Protocol, it was welcomed as an important instrument for the protection and promotion of the rights of the child. It was thus unanimously approved by all parties in the parliamentary process.
4. Neither incidents of hostilities nor armed conflicts took place in Austria in the last decades. Detailed statistical information or relevant research on children in armed conflict are therefore not available. The relevant legal provisions are attached in annex 1.
5. Relevant government and non-governmental agencies were consulted on the preparation of the present report.

II. INFORMATION RELATING TO ARTICLES 1-7 OF THE OPTIONAL PROTOCOL

6. For the purposes of articles 1-3 of the Optional Protocol, two Austrian laws are applicable:
 - (a) The National Defence Act, which regulates compulsory and voluntary recruitment in the Austrian armed forces (*Bundesheer*) for the purpose of Defence of the Austrian territory;
 - (b) The Act on Dispatching of Soldiers for Assistance Abroad² regulates recruitment for deployments outside Austria, which is voluntary only.

Article 1

Legislative measures to prohibit the involvement of persons who have not attained the age of 18 in direct hostilities

7. It is recalled that, upon ratification of the Convention, Austria entered the following declaration: "Austria will not make any use of the possibility provided for in article 38, paragraph 2, to determine an age limit of 15 years for taking part in hostilities as this rule is incompatible with article 3, paragraph 1, which determines that the best interests of the child shall be a primary consideration."
8. Section 41, paragraph 2, of the National Defence Act³ states that the direct participation of soldiers who have not attained the age of 18 years in hostilities shall not be admissible.⁴

9. With respect to the meaning of “direct participation”: the wording of the relevant part of section 41, paragraph 2, of the National Defence Act (in German: “*Eine unmittelbare Teilnahme von Soldaten, die das 18. Lebensjahr noch nicht vollendet haben, an Feindseligkeiten im Rahmen eines Einsatzes ist nicht zulässig.*”) mirrors closely the respective wording of article 1 of the Optional Protocol “... ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”. The term “direct participation in hostilities” is interpreted in a restrictive manner and does not include acts such as gathering and transmission of military information, transportation of arms and munitions, provision of supplies, etc. In practice, no specific questions as to the meaning of this provision have arisen so far.

10. Section 2, paragraph 2, of the Act on Dispatching of Soldiers for Assistance Abroad provides that a voluntary request for deployment abroad may not be lodged prior to the completion of the 18th year of age.⁵

11. No one serving in the Austrian armed forces, irrespective of age, was taken prisoner. Austrian soldiers are not taking part in direct hostilities as they are only deployed in peacekeeping missions.

Article 2

Compulsory recruitment

12. Pursuant to section 18, paragraph 4, of the National Defence Act, male Austrian nationals of the calendar year in which they complete their eighteenth year of age are, as a rule, called up for registration (*Stellung*).⁶ During registration a commission, consisting of an officer, a physician and a psychologist, decides on the fitness for service of the person concerned on the basis of medical and psychological examinations.

13. Upon registration, the following documents have to be presented:

- A proof of identity, e.g. passport, a national ID card (*Personalausweis*) or driver’s licence;
- Certificate of citizenship;
- Birth certificate;
- Proof of registered residence (*Meldezettel*);
- Social security card; and
- If applicable, a certificate of marriage.

14. Pursuant to section 24, paragraph 1, of the National Defence Act, a person may be called up for military service either by a recruitment order or by a general notification of the Federal Minister for Defence classified as an “ordinance” (*Verordnung*). The recruitment order may be issued no earlier than six months after the first decision on fitness for active service.⁷

15. According to section 9, paragraph 1, of the National Defence Act, only persons who have turned 18 years and are fit for military service shall be recruited (on a compulsory basis) into the armed forces⁸ (“physical integration into the armed forces” as to the Guidelines regarding initial reports of States parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict).⁹

16. There are no legal provisions enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency).

Article 3

Paragraph 1

17. The declaration made by Austria upon ratification of the Optional Protocol reads as follows:

“Under Austrian law the minimum age for the voluntary recruitment of Austrian citizens into the Austrian army (*Bundesheer*) is 17 years. According to paragraph 15, in conjunction with paragraph 65 (c) of the Austrian National Defence Act 1990 (*Wehrgesetz* 1990), the explicit consent of parents or other legal guardians is required for the voluntary recruitment of a person between 17 and 18 years. The provisions of the Austrian National Defence Act 1990, together with the subjective legal remedies guaranteed by the Austrian Federal Constitution, ensure that legal protection in the context of such a decision is afforded to volunteers under the age of 18. A further guarantee derives from the strict application of the principles of rule of law, good governance and effective legal protection.”

18. Owing to subsequent amendments the references to “paragraphs 15 and 65 (c)” in the Declaration presently refer to sections 9, paragraph 2, and 57 of the National Defence Act as amended.¹⁰

19. Section 9, paragraph 2, of the National Defence Act provides that persons who have attained the age of 17 but not yet 18 may do their military service earlier

(a) On the basis of a voluntary application with the explicit consent of their parents or other legal guardians;

(b) Following the registration procedure described in paragraphs 11 and 12 above;
and

(c) After ensuring that volunteers are knowledgeable about their duties as recruits.

20. Volunteers under 18 years are only recruited for the purposes of training. Deployment for under-18-year-old recruits outside Austria is not admissible.

21. Since the 2003 amendment to the National Defence Act women may volunteer for military training for a period of 12 months, voluntary armed manoeuvres (for training purposes) and functional services (to fulfil other military tasks in the interest of fast, economical, cost-effective and purposeful discharge of duties). Women are excluded from involvement in armed conflicts and not liable to do military service.

22. Currently (as of June 2004) 273 male recruits are enlisted on a voluntary basis. Two female recruits under 18 are currently in training.

23. Given that all male Austrian nationals are liable for military service, the statistical information on recruits reflects, in most cases, the statistical information of the general average of the Austrian (male) population. The origin of volunteers from rural/urban areas cannot be inferred from the registered residence (*Hauptwohnsitz*) as young recruits often change their residence after leaving their parents' home. Detailed statistics on volunteers under 18 by region, rural/urban areas are only available as regards the number of recruits in the federal states (*Bundesländer*). This data is attached in annex 3. Statistics on social origin is not available as data on school education and professional training of the recruits are only collected once employment is taken up with the armed forces. Regarding data on ethnic origin, only Austrian male citizens are liable for military service. Data on recruits who are members of ethnic minorities with Austrian nationality are not collected separately.

Paragraphs 2-4

Declaration on minimum age for voluntary recruitment

24. The Austrian Declaration (see paragraph 17 above) reflects existing Austrian legislation before and after ratification as well as well-established practice considered useful for the further careers of the persons concerned.

25. No systematic or comprehensive debate took place in Austria prior to the adoption of the declaration given that the existing Austrian legislation reflected a general consensus on the minimum age.

26. The possibility to register voluntarily from age 17 serves to enable under-18-years-olds who have completed their secondary education to do their compulsory military service before starting to work or study at university or college. This is closely connected to the fact that children who complete their sixth year of age in September through December of any given year may start primary school in that year and that school years end in June. After 12 years of education, which is the standard for many types of secondary and vocational education, statistically, a significant portion of the school leavers are under 18.

27. Some Austrian children's rights NGOs advocate for a higher minimum age for voluntary recruitment.

Paragraph 3

28. For the registration/recruitment procedure see paragraphs 12, 13, and 19 above.
29. Like every person starting his/her service, a volunteer undergoes a medical examination when actually joining the armed forces so as to check his/her fitness for service.
30. The effective minimum service time is eight months, i.e. six months' military training and two months' armed manoeuvres (for training purposes). Recruits may serve these eight months without interruption, or first seven months and the remaining month in field exercises within two years.
31. Recruits are discharged if a medical examination shows that s/he is physically or psychologically unfit for military service.
32. The rules governing military justice or discipline apply equally to recruits irrespective of their age. There are no military courts in Austria.
33. Pursuant to section 4 of the National Defence Act, a complaint commission in military matters has been established. The commission is composed of members nominated by the National Parliament as well as of the parties represented in Parliament in proportion to the number of their seats. The commission may receive complaints, inter alia from volunteers and other recruits. The commission may also conduct ex officio investigations into presumed shortcomings, deficiencies or abuses in the military realm.
34. During the reporting period, February 2002 to April 2004, no recruits under 18 years of age were on trial or in detention.
35. The minimum and maximum sanctions foreseen in case of desertion are governed by the Military Penal Code. The general penal provisions governed by the (civil) Penal Code and (civil) Penal Procedure Code, including all norms relating to juveniles governed by the Juvenile Court Act (*Jugendgerichtsgesetz*), as well as the special sentencing regime for juveniles (see below, paragraph 37), are applicable as long as the Military Penal Code does not provide for special rules.
36. Section 9 of the Military Penal Code makes it punishable to desert from the armed forces while in active service. The minimum sentence is six months and the maximum five years of imprisonment. For first offenders who turn themselves in voluntarily within six weeks, the maximum sentence is six months' imprisonment or a fine of up to 360 daily rates;¹¹ in case of absence of more than eight days, a sentence of up to one year's imprisonment is imposed.
37. For juvenile offenders the sentences are reduced to half; minimum sentences are not applicable.¹²
38. The armed forces do not use any incentives to encourage volunteers to join the ranks. There are no recruitment offices in Austria.

39. The Austrian armed forces provide comprehensive general information about their activities, the registration procedure and other issues concerning compulsory military service or the substitute civilian service. The Ministry of Defence operates an Internet web site providing information on careers and compulsory military service in the armed forces. Specific information is made available to parents or legal guardians upon request.

Paragraph 5

Military schools

40. The Austrian armed forces do not operate schools.

41. However, the so-called *Militärrealgymnasium* in Wiener Neustadt offers students from age 14 a higher secondary education with a specialization in natural sciences and a military-led boarding school.¹³ The school is supervised by the general school authorities in all relevant aspects. The boarding school is governed by internal rules (*Hausordnung*) under the supervision of the Federal Ministry of Defence.

42. The school concludes with a school-leaving examination (“*Matura*”) after four years, which entitles students to attend university. In addition, but not exclusively, the school aims to prepare students for a military career (military officers). Students of the *Militärrealgymnasium* are not members of the Austrian armed forces; they have the right to leave school at any time and not to pursue a military career.

43. The proportion between academic education and military training in the curriculum is 4 (academic):1 (military training). Currently (as of May 2004), there are 8 military and 40 civil staff; 170 students, among them 16 girls, attend the school.

44. The school curriculum includes the main features of international humanitarian law.

45. The general (civil) rules governing school discipline apply. Teaching staff are forbidden to resort to disciplinary means which violate the human dignity of pupils, such as corporal punishment, abusive remarks or collective punishment pursuant to section 47, paragraph 3, of the School Education Act (*Schulunterrichtsgesetz*).¹⁴

Article 4

Armed groups and legislative provisions

46. No armed groups have operated on/from the territory of Austria for decades.

47. Austrian law prohibits and criminalizes the recruitment and use of persons of any age in hostilities by armed groups that are distinct from the Austrian armed forces. Pursuant to section 279 of the Austrian Penal Code, a person who sets up an armed group, arms or leads it, recruits members for an armed group or trains them in a military way, provides for weapons, means of transportation, telecommunication facilities or money or assists an armed group in another relevant way, is to be sentenced to imprisonment for up to three years.¹⁵ There has been no conviction pursuant to this provision since 1999.

48. In addition, section 280 of the Code makes it a crime to collect and possess weaponry, munitions and other warfare material in order to provide a greater number of persons with equipment for armed combat. There has been no conviction pursuant to this provision since 1999.

49. Moreover, the Austrian Penal Code covers treason and other attacks against the Austrian State, and contains provisions, inter alia, with respect to treason, acts against foreign Governments, criminalizing the undertaking of activities in Austria aimed at changing the constitutional order of a foreign State or at separating territories belonging to a foreign State, as well as prohibiting the support of parties in armed conflict (in which Austria is not taking part) from Austrian territory. Since 1999 there has been one conviction regarding the commission of treason against the Austrian State, in 2002. There has been no conviction regarding the commission of treason against foreign Governments since 1999.

Article 5

Ratification of other relevant international instruments and other multilateral activities

50. Austria has ratified the following international conventions:

- The Geneva Conventions of 1949 and the Additional Protocols thereto of 1977. The Geneva Conventions were promulgated in the Austrian *Federal Law Gazette*, vol. I, No. 155/1953; the Additional Protocols in the *Federal Law Gazette*, vol. I, No. 527/1982;
- The Rome Statute of the International Criminal Court on 28 December 2000, implemented by the Act on Cooperation with the International Criminal Court, *Federal Law Gazette*, vol. I, No. 135/2002;
- International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), *Federal Law Gazette*, vol. III, No. 41/2002.

51. Austria has taken inspiration from the global goal to “bridge the gap” and has made children in armed conflict a priority in Austrian human rights policy. Consequently, Austria’s presidency of the Human Security Network from 2002 to 2003 had children in armed conflict as a central focus. Under Austria’s leadership, this network of 13 Foreign Ministers from all five continents elaborated and subsequently endorsed a Support Strategy on Children Affected by Armed Conflict at their meeting in May 2003 in Graz. The strategy identifies a set of operative principles, including strengthening monitoring, reporting and training, and an alarm function in cases of child rights violations.

52. The Human Security Network also developed as a corollary to the Support Strategy a Child Rights Training Curriculum that serves as a comprehensive checklist containing relevant principles, guidelines and references, as well as exemplary training modules so as to be adaptable to specific situations on the ground and to the target groups to be trained. This programme has been made available to the United Nations Secretary-General and other organizations and NGOs.

The training-curriculum can be downloaded from the web site of the Austrian Ministry for Foreign Affairs.¹⁶ A French translation, sponsored by the Government of Canada, is forthcoming.

53. Austria has carried forward this cross-regional political commitment and successfully stimulated debate within the European Union that ultimately led to the adoption of the EU Guidelines on Children Affected by Armed Conflict.¹⁷ The implementation of these Guidelines and their immediate, effective and sustained mainstreaming throughout all relevant EU policies and actions is now a priority of all members of the European Union.

54. Austria has been a long-standing partner of UNICEF on the multilateral level and is a member of the UNICEF Administrative Council from 2004 to 2006. Austrian priorities, such as children in armed conflicts or the implementation of the resolutions of the World Summit for Children, will be put on the agenda. Austria currently funds a Junior Professional Officer working in the child protection unit of UNICEF.

Article 6

Paragraphs 1 and 2

Implementation and enforcement of the Optional Protocol

55. The Austrian National Defence Act 1990 was amended in 2001 to provide full compliance with the Optional Protocol in respect of article 1.

56. Austria has not entered any reservations to the Optional Protocol.

57. The Austrian Ministry of Defence is responsible for managing the recruitment and selection of service personnel in conjunction with the armed forces. Members of the armed forces responsible for recruitment are required by law to comply with the National Defence Act. They may face disciplinary action and under certain circumstances penal sanctions for abuse of authority for any failure in complying with the Act.

58. For the complaint commission in military matters see paragraph 33 above.

59. The Federal Ministry for Education, Science and Culture is responsible for the relevant provisions of the Optional Protocol concerning schools in Austria.

60. Austrian civil society has been invited to participate actively in the comprehensive process of elaborating a National Action Plan for the implementation of the Convention on the Rights of the Child, including the Optional Protocol.¹⁸ This process has started in 2003 and brought together some 100 experts from governmental and non-governmental organizations. This ongoing process is intended as a dynamic forum for the continuous improvement of the implementation of the Convention. In addition to the experts meeting, a wide range of child participation projects have been carried out. Internet forums for discussion and information have been created. A database documenting the measures relating to child rights undertaken by ministries has been set up.

61. Training courses for soldiers in deployment abroad contain international law, including the rights of the child. The specific content of training for soldiers posted abroad on a peacekeeping mission depends also on the place of deployment. For instance, two members of the Austrian armed forces were deployed to a mission in the Democratic Republic of the Congo. They received a tailor-made training programme which took into account the special circumstances of the situation, including the situation of child soldiers, in the country.

62. During and after the national parliamentary process for ratification, the Optional Protocol was widely disseminated and discussed.

63. The Ministry for Foreign Affairs has worked actively at the international level to promote the ratification of the Optional Protocol and in particular has contributed within the framework of the European Union to the development of the EU Guidelines on Children Affected by Armed Conflict (see paragraph 53 above).

64. For Austria's commitment in the framework of the Human Security Network to bring about concrete added value for the protection of children in armed conflict, see paragraphs 51 and 52 above.

Article 7

Technical cooperation and financial assistance

65. The primary aims of Austria's development cooperation are poverty reduction, preventing conflict and securing peace, and environmental protection. Austria's endeavours are primarily concentrated on underprivileged groups in the least developed countries of Africa, Asia and Latin America. The Cooperation with Eastern Europe (*Ostzusammenarbeit*) with 19 countries focuses on South-East Europe and include several reconstruction programmes.

66. Section 1, paragraph 4, of the Development Cooperation Act sets out the principle, among others, that measures shall take into consideration, in a suitable manner, to meet the needs of children.¹⁹

67. The triennial programme 2004-2006 of Austrian development cooperation policy sets out as two main priorities human rights training and the protection of children in armed conflict.

68. Austrian development cooperation has conducted several reintegration and demobilization programmes (for a list of projects see annex 2).

Notes

¹ *Federal Law Gazette*, vol. I, No. 140/2000.

² *Bundesgesetz über die Entsendung von Soldaten zur Hilfeleistung in das Ausland* (*Auslandseinsatzgesetz* 2001), *Federal Law Gazette*, vol. I, No. 55/2001 (last amendment *Federal Law Gazette*, vol. I, No. 137/2003).

³ *Federal Law Gazette*, vol. I, No. 146/2001 as amended by *Federal Law Gazette*, vol. I, No. 137/2003.

⁴ The relevant provision is attached in annex 1.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ CRC/OP/AC/1, 12 October 2001.

¹⁰ The relevant provisions are attached in annex 1.

¹¹ The specific amount of the fine is composed of a given fine per day or daily rate (*Tagessatz*) which is to be determined according to the delinquent's personal situation and according to his income or financial capacity.

¹² For more details on the administration of juvenile justice, see Austria's second periodic report to the Committee on the Rights of the Child.

¹³ See, for further information, albeit in German only, at <http://www.milrg.at/> (as accessed in June 2004).

¹⁴ The relevant provision is attached in annex 1.

¹⁵ Ibid.

¹⁶ http://www.bmaa.gv.at/view.php3?f_id=49&LNG=en&version (as accessed in June 2004).

¹⁷ See http://europa.eu.int/comm/external_relations/human_rights/child/ (as accessed in June 2004).

¹⁸ See <http://www.yap.at/>; <http://www.kinderhabenrechte.at/>.

¹⁹ The relevant provisions concerning Austria's development cooperation policy are attached in annex 1.
