

CHILDREN’S RIGHTS AND MILITARY RECRUITMENT ON HIGH
SCHOOL CAMPUSES

*Lila A. Hollman**

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* J.D. Candidate, UC Davis School of Law, 2007; B.A. Literature, UC San Diego, 2001. Many thanks to the U.C. Davis Journal of International Law and Policy and Professors Diane Marie Amann, Andrea K. Bjorklund and Jennifer M. Chacon for selecting this article for publication. Thanks to Rebecca Hardberger and Brandy Christensen for their encouragement and tireless editing, to Desiree Ewing for her help transcribing this paper from hard copy, and to Jennifer Smith and Andrea Randisi for their careful final edits.

I. INTRODUCTION

Imagine the following situation.¹ A fifteen-year old student attends a high school located in a working-class neighborhood. The student goes to a high school dance chaperoned by a military recruiter. The same recruiter shows up at school, socializes with the children at lunch and greets students in the halls. Most of the students know his name. The recruiter grew up in the same impoverished neighborhood. Now he wears a Rolex watch and drives a BMW. He tells the students that if they join the military they can be like him too.

In the United States (“U.S.”), as in other countries, the military recruits high school age children using recruiters like the one mentioned in the above hypothetical.² Those recruits become active participants in the military.³

¹ Examples of situations similar to the hypothetical are found in the following articles: Erika Hayasaki *They're Talking Up Arms*, L.A. TIMES, Apr. 5, 2005, at 1 (describing how military recruiters are instructed to become familiar with school staff and “attend faculty and parent meetings; chaperone dances; participate in Black Heritage Month and Hispanic Heritage month events; meet with the student government, newspaper editors and athletes; and lead the football team in calisthenics. It lays out a month-by-month plan to make the recruiters ‘indispensable’ on campus.” (citing the Army’s SCHOOL RECRUITING PROGRAM HANDBOOK (2004))); Charlie Savage, *Military Recruiters Target Schools Strategically*, Boston Globe, Nov. 29, 2004, at A1 (comparing military recruiting at a working-class public high school in Maryland to high school in a nearby affluent area. At the working-class school, recruiters chaperone dances, students participate in ROTC, and every prospective recruit gets multiple calls from each branch of the military. At the affluent school, military recruiters still receive significant access, but must compete with dozens of colleges for students’ attention); *NewsHour: Military Recruiting in High Schools* (PBS television broadcast Dec. 13, 2004) (conducting special report on military recruiting in high schools, John Mellow speaks with a recruiter about how No Child Left Behind Act of 2001 gives military recruiters increased access to high school students); Jim Warren, *Military Recruiters Cause Concern for Some Parents*, Lexington Herald-Leader (KY), Dec. 27, 2005 at A1 available at www.kentucky.com/mld/kentucky/news.

² 10 U.S.C § 505(a) (2006) (“The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard... of qualified...persons who are not less than seventeen years of age nor more than forty-two years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian...”); 10 U.S.C § 503(c) i-ii, (B) (2004) (providing military recruiters with access to personal student information without prior parental consent and adding provision requiring written consent to disclose student information of those who requested that their information be kept private.); No Child Left Behind Act of 2001, 107 Pub.L. No. 107-110, 115 Stat. 1425, 9528 (2002) [hereinafter NCLB] (codified at 20 U.S.C.A. §§ 6301 et seq., § 9528 codified at 20 U.S.C. § 7908 (2005)) (conditioning funding under Elementary and Secondary Education Act of 1965 on providing military equal access to high school campuses as job and college recruiters and allowing

Historically, children as young as thirteen have been recruited to the U.S. Army.⁴ Currently, military recruiters target high school students regardless of age.⁵ Today, American children younger than seventeen years of age may not enlist in the military.⁶ Additionally, children are protected by federal law and international treaties from military recruitment.⁷

The United Nations ("U.N.") adopted the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict ("Optional Protocol") to address the problem of the recruitment and service

disclosure of student information to military recruiters without prior parental consent); NAT'L ACAD. OF SCIENCES, COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., NAT'L RESEARCH COUNCIL, ATTITUDES, APTITUDES AND ASPIRATIONS OF AMERICAN YOUTH: IMPLICATIONS FOR MILITARY RECRUITMENT 219 (Paul Sackett & Anne Mavor, eds. 2003) [hereinafter COMM. ON THE YOUTH POP. AND MILITARY RECRUIT] (facilitating meeting its enlistment needs, the Department of Defense recruits high school age children by engaging in an "array of recruiting activities"); UNITED STATES ARMY OFFICE OF ARMY DEMOGRAPHICS, UNITED STATES ARMY PROFILE, FISCAL YEAR 2004 4 (2004) [hereinafter OFFICE OF ARMY DEMOGRAPHICS] (finding that persons age seventeen to twenty comprise 17% of all enlisted persons). The U.N. commissioned a report on the use of child soldiers worldwide. The report found that in the United States the military targets high school children in their junior and senior year. Junior ROTC programs reach children as young as fourteen. These programs operate at over 2,900 secondary schools and effectively serve to increase recruits. In 2002, 26,755 recruits aged seventeen joined the military services. Coalition to Stop the Use of Child Soldiers, *Global Report on Child Soldiers* 152-54 (2004) available at <http://www.child-soldiers.org/resources/global-reports>.

³ OFFICE OF ARMY DEMOGRAPHICS, *supra* note 2, at 4; Coalition To Stop The Use Of Child Soldiers, *supra* note 2 at 152-54 (finding that in 2002, 26,756 recruits ages seventeen joined the military services); *see also supra* note 2 and accompanying text (discussing how military recruiting practices and quotas target high school age youth in order to enlist seventeen-year-olds).

⁴ Comm. on Military Affairs and Justice, *The Minimum Age of Military Service in Connection with the Proposed Optional Protocol to the International Convention on the Rights of the Child*, 55 RECORD 264, 274 (2000) (citing ELEANOR C. BISHOP, PONIES, PATRIOTS AND POWDER MONKEYS: A HISTORY OF CHILDREN IN AMERICA'S ARMED FORCES 1776-1916 (1982)) [hereinafter Comm. On Military Affairs and Justice] (describing that during the U.S. Civil War young children served with American forces and afterward until 1917 boys as young as thirteen were allowed to enlist). *See generally* RACHEL BRATT & IRMA SPECHT, *YOUNG SOLDIERS: WHY THEY CHOOSE TO FIGHT* (2004) (discussing historical and cultural reasons for child participation in armed conflict worldwide).

⁵ *See supra* notes 1-3 and accompanying text.

⁶ 10 U.S.C. § 505(a).

⁷ *Id.*; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, U.N. Doc A/54/RES/263 (entered into force Feb. 12, 2002), available at <http://www.unicef.org/crc/crc.htm> [hereinafter Optional Protocol] ("State Parties shall raise in years the minimum age for the voluntary recruitment of person into their national armed forces from...[fifteen]...and recognizing that under the Convention persons under the age of 18 are entitled to special protection."); *see infra* note 20, 22 and accompanying text.

in the military of minors.⁸ The Optional Protocol's provisions govern military recruitment of high school children as well as the use of these children in hostilities.⁹ An optional protocol to a treaty "establishes additional rights and obligations" and is subject to independent ratification.¹⁰ The U.S. is party to the Optional Protocol and, as such, committed itself to curtailing the recruitment of minors into the military.¹¹ The U.S. continues to recruit minors to the military however, in contravention of the Optional Protocol.¹²

This Note argues that current U.S. military recruitment of high school students violates the Optional Protocol.¹³ Part I examines the background law of U.S. military recruitment of minors and the development of international human rights law regarding the participation of children in armed conflicts.¹⁴ Part II discusses the Optional Protocol and its provisions.¹⁵ Part III argues that the plain language and intent of the Optional Protocol prohibit military recruitment on high school campuses.¹⁶ Furthermore, the No Child Left Behind Act of 2001 ("NCLB") and the

⁸ Optional Protocol, *supra* note 7; Office of the U.N. High Commissioner for Human Rights, Ratifications and Reservations, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2005) *available at* www.ohchr.org/english/countries/ratification/11_b.htm [hereinafter Ratifications and Reservations to the Optional Protocol] (noting that the U.S. ratified the Optional Protocol in 2002). "Ratification defines the international act whereby a state indicates its consent to be bound to a treaty..." U.N. TREATY COLLECTION, TREATY REFERENCE GUIDE, (1999) *available at* <http://untreaty.un.org/English/guide.asp> [hereinafter U.N. TREATY REFERENCE GUIDE].

⁹ Optional Protocol, *supra* note 7 (providing generally for protection of high school age youth from military recruitment). Article 9 of the Optional Protocol allows countries—including the U.S.—to sign and ratify the Optional Protocol without having signed and ratified the underlying treaty. U.N. TREATY REFERENCE GUIDE, *supra* note 8.

¹⁰ U.N. TREATY REFERENCE GUIDE, *supra* note 8.

¹¹ Ratifications and Reservations to the Optional Protocol, *supra* note 8; *see also* UNICEF, Optional Protocols to the Convention on the Rights of the Child, *available at* <http://www.unicef.org/crc/crc.htm> (last visited Mar. 11, 2007).

¹² 20 U.S.C. § 7908(1), (3) (2005); 10 U.S.C. § 503(c) (2004); COMM. ON THE YOUTH POP. AND MILITARY RECRUIT. *supra* note 2, at 98, 116 (describing how each branch of the military competes for youth population with civilian employers, colleges, and other branches; as a result of the increase of college bound youth, military recruiters are facing increased difficulty in securing these recruits and utilize incentives to increase the number of new recruits).

¹³ *See infra* Part III (arguing that the U.S. violates Optional Protocol by recruiting high school students).

¹⁴ *See infra* Part I (discussing U.S. and international human rights law as it relates to children in armed conflict).

¹⁵ *See infra* Part II (discussing provisions of the Optional Protocol).

¹⁶ *See infra* Part III (arguing that the NCLB violates the terms of the Optional Protocol).

conduct of military recruiters violate key provisions of the Optional Protocol specifically designed to protect minors' rights.¹⁷ Part IV proposes an alternative to military recruitment on high school campuses.¹⁸

II. BACKGROUND OF THE LAW

International law recognizes that children have unique human rights and mandates that individual countries accord minors special protections.¹⁹ Treaty or convention adoption is one way that international law address the problem of human rights violations. The U.N. has drafted several conventions that address the unique human rights concerns of children.²⁰ Although the U.S. failed to ratify one such treaty, the Convention on the Rights of the Child, it did ratify the Optional Protocol to that Convention

¹⁷ *Id.*

¹⁸ See *infra* Part IV (suggesting model solution for military recruitment in the U.S.).

¹⁹ Following World War I, millions of children were displaced and living in deplorable conditions. In 1920, Save the Children Fund and the International Red Cross founded Save the Children International Union. The five fundamental goals of that organization became the Geneva Declaration. In 1934, the League of Nations' General Assembly reaffirmed its commitment to these goals and children's rights thus became a concept in public international law. Declaration of Geneva, Council of the League of Nations Assembly, Geneva, March 1924, reprinted in MARIA SAULLE & FLAMINIA KOJANEC EDS., *THE RIGHTS OF THE CHILD: INT'L INSTRUMENTS* 9 (1995). The U.N. International Children's Fund ("UNICEF") was initially created in 1946 as a temporary body to assist children displaced from WWII. UNICEF originated from the concern for child victims of armed conflict. Currently, UNICEF addresses children's human rights issues world-wide. GERALDINE VAN BEUREN, *THE INT'L LAW ON THE RIGHTS OF THE CHILD*, 17 (1995).

²⁰ Declaration of the Rights of the Child, G.A. Res 1386 (XIV), 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4354 (1959) (enumerating ten principles of children's human rights, including Principle 9, which asserts that no child should be "permitted to engage in an occupation that would prejudice his health or education, or interfere with his physical, mental or moral development."); Convention on the Rights of the Child, Nov. 20 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), reprinted in 28 I.L.M. 1448 (1989) [hereinafter CRC] (establishing first comprehensive, binding children's rights convention encompassing civil and political as well as economic, social and cultural rights and defining "child" in Article 1 as all persons under eighteen years old); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO: Child Labour, 87th Sess. (1999) reprinted in 38 I.L.M. 1207 (1999) [hereinafter *Convention on the Worst Forms of Child Labour*] (recognizing eighteen as the minimum age for involvement in armed conflict); Optional Protocol, *supra* note 7 (recognizing the rights of children to be free from military recruitment and use in armed conflict); see also Judith Ennew et al., *Defining Child Labor as if Human Rights Really Matter*, in CHILD LABOR AND HUMAN RIGHTS, 27, 32 (Weston ed., 2005) (describing how recent international treaties like the International Covenant on Civil and Political rights—to which the U.S. is a party—took significant steps towards "modifying human rights according to age, by defining childhood as a state requiring special protection, with rights distinct from those of adults").

relating to children in armed conflict.²¹

The Optional Protocol aims to end the military recruitment and use of minors in hostilities.²² After ratifying the Optional Protocol, Congress passed 10 U.S.C. § 505.²³ 10 U.S.C. § 505 restricts military recruitment of minors and limits their participation in active combat.²⁴ This law was Congress' attempt to comply with the Optional Protocol.²⁵ The U.S. Military continues to aggressively recruit children and send them into active military service.²⁶

A. Defining The Term "Child"

The U.S. accords persons civil and political rights at age eighteen.²⁷ When a child who is a U.S. citizen turns eighteen, s/he gains the right to vote and legal independence from her/his parents.²⁸ The U.S. military also recognizes persons as legal adults at age eighteen. U.S. law requires men to register for Selective Service, the military draft database, within thirty days of their eighteenth birthday.²⁹

Like U.S. law, international law also recognizes eighteen as the age of

²¹ Ratifications and Reservations to the Optional Protocol, *supra* note 8; Optional Protocol, *supra* note 7, at art. 9 (allowing U.S. to reserve right to recruit children aged sixteen to seventeen).

²² Optional Protocol, *supra* note 7; UNICEF, *Child Protection: Armed Conflict*, UNICEF/HQ99-0014/ Brandt (2006), available at www.unicef.org/protection/index_armedconflict.htm ("An estimated 300,000 child soldiers—boys and girls under the age of 18—are involved in more than 30 conflicts worldwide. Child soldiers are used as combatants, messengers, porters, cooks, and to provide sexual service. Some are forcibly recruited... other are driven to join by poverty, abuse and discrimination, or seek revenge for violence enacted against themselves and their families."); Coalition to Stop the Use of Child Soldiers, *supra* note 2, at 13 (finding countries used children under eighteen years of age in armed hostilities worldwide from 2001 to 2004, including: Burundi, the Democratic Republic of the Congo, Cote d'Ivoire, Guinea, Liberia, Myanmar, Rwanda, Sudan, Uganda and the U.S.).

²³ 10 U.S.C. § 505 (1996) (allowing the U.S. military to recruit seventeen-year-olds with parental consent); Ratifications and Reservations to the Optional Protocol, *supra* note 8 (noting U.S. ratification of the Optional Protocol).

²⁴ 10 U.S.C. § 505.

²⁵ Optional Protocol, *supra* note 7.

²⁶ See *supra* notes 1-2, 22 and accompanying text.

²⁷ U.S. CONST. amend. XXVI (1970) (extending the Voting Rights Act of 1965 to include a provision lowering the voting age to eighteen for federal, state, and local elections); see also Elizabeth S. Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, in *YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE* 291, 302 (Thomas Grisso & Robert G. Schwartz eds., 2003) (discussing "age boundaries" in U.S. law, which recognizes most rights at age eighteen).

²⁸ See *supra* note 27.

²⁹ 10 U.S.C. § 505 (regulating the draft and allowing for conscription at age eighteen).

majority.³⁰ International law is derived from international conventions and customs, as well as generally recognized principles of law.³¹ Recent international conventions establish eighteen as the age of majority for participation in armed conflict.³²

B. U.S. Law on Military Recruitment of Minors

Federal law governs the enlistment of all persons into the military and sets the minimum age for conscription at eighteen years.³³ No person under

³⁰ CRC, *supra* note 20, at art. 1 (defining child as “every human being below the age of eighteen years”); Optional Protocol, *supra* note 7, at Introduction (noting recommendation by the Twenty-Sixth International Conference of Red Cross and Red Crescent in December, 1995 that parties to armed conflict “take every feasible step to ensure that children below the age of 18 years do not take part in hostilities”); *id.* (discussing adoption of the International Labour Organization’s Convention No. 182 on the Prohibition for the Elimination of the Worst Forms of Child Labour unanimously adopted in 1999, which prohibits compulsory recruitment of persons under eighteen for use in armed conflict); The Comm. on Military Affairs and Justice, *The Minimum Age of Military Service in Connection with the Proposed Optional Protocol to the International Convention on the Rights of the Child*, 55 RECORD 264, 275 n. 28 (Mar.-Apr. 2000) [hereinafter *Comm. on Military Affairs and Justice*] (describing general global practice not to conscript those under age eighteen or send them into active service, “exceptions are not so extensive or of such character as to de-rail the emergence of a rule of customary international law” (citing ILENE COHN & GUY S. GOODWIN-GILL, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICT (1994) at 171)); The Secretary General, *Report of We the Children on the End-Decade Review of the Follow-up to the World Summit for Children*, U.N. GAOR, 27th Sess., Agenda Item 8, U.N. Doc. A/S-27/1 (2001) [hereinafter *We the Children*] (“We reaffirm our obligation to take action to promote and protect the rights of each child—every human being below the age of 18 years including adolescents.”); Laurie S. Wiseberg, *Nongovernmental Organizations in the Struggle Against Child Labor*, in CHILD LABOR AND HUMAN RIGHTS, *supra* note 18, at 348 (discussing global consensus that children under eighteen should not participate in military service); Wojcik et. al., *International Legal Developments in Review: 1999 Public International Law, Human Rights*, 34 INT’L. LAW. 761, 771 (Summer 2000). A series of different regional conferences in 1999 focused on the problem of child soldiers, encouraged work on the Optional Protocol, and established overwhelming support for eighteen as the age of legal responsibility to serve in the military. *Id.* The conferences included: African Coalition to Stop the Use of Child Soldiers, Maputo Declaration on the Use of Children as Soldiers; Latin American Coalition to Stop the Use of Child Soldiers, Latin America Montevideo Declaration in the Use of Children as Soldiers; Nordic Council of Ministers, Declaration by the Nordic Council Foreign Ministers Against the Use of Child Soldiers. *Id.*

³¹ Rome Statute of the Int’l Criminal Court, July 17 1998, U.N. Doc. A/CONF.183/9 (July 2002) [hereinafter Rome Statute] (as corrected by the process-verbeaux of Nov. 19, 1998 and July 12, 1999).

³² See *supra* note 30 and accompanying text (detailing recent international treaties, custom and public consensus establishing eighteen as legal age of majority as well as lawful age for participation in armed conflict).

³³ 10 U.S.C. § 505 (1996).

age seventeen may enlist in the military, even voluntarily.³⁴ If persons are seventeen years old at the time of recruitment, they must obtain parental consent to enlist.³⁵ Today the U.S. operates a voluntary force and must recruit in order to satisfy its enlistment goals.³⁶

In order to attract young recruits the military markets itself to young people as an alternative career path to higher education and employment.³⁷ Recruitment methods include: bonuses, advertising, and sending recruiters to locations where young people congregate.³⁸ Recruiters have difficult quotas to meet.³⁹ Indeed, the Department of Defense is the single largest employer in the U.S.⁴⁰ In order to buoy enlistment numbers, the military provides monetary incentives for recruiters to bring in enlistees.⁴¹

The military encourages recruiters to acquire new recruits quickly and efficiently. Each recruiter has a geographic area or “zone” in which they

³⁴ *Id.*

³⁵ *Id.*

³⁶ 10 U.S.C. § 503(a)(2) (2004) (“The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruiting programs . . . through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits”); COMM. ON THE YOUTH POP. AND MILITARY RECRUIT, *supra* note 2, at 102, 108 (maintaining voluntary military force requires the U.S. military to offer benefits to new recruits in order to remain competitive); *see supra* notes 1-2 and accompanying text.

³⁷ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT, *supra* note 2, at 116 (noting three options for youth on completion of high school: higher education, employment, or enlisting in the U.S. military; describing the techniques that the military employs to attract youth including bonuses, marketing and recruiters); Military Careers, United States Military Service Information, <http://www.careersinthemilitary.com/> (last visited Apr. 4, 2007) (advertising directed at youth highlighting career options in the military); GoArmy.com, A Parent’s Guide, <http://assets.goarmy.com/pdf/strong/parents.pdf> (advertising directed at parents of high school age children highlighting benefits of joining the army, including free money for college education under the Montgomery GI Bill).

³⁸ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 116 (describing how the military competes with civilian sectors for qualified youth).

³⁹ *Id.* at 235 (describing the military recruitment process and challenges).

⁴⁰ The current size of the enlisted military force is 1.2 million and approximately 2 million new recruits are needed each year to maintain it. *Id.* at 1. Recruiting has been more difficult recently due to the healthy economy and growing number of college-bound youth. *Id.* Following the creation of the Department of Homeland Security in 2001, the Department of Defense must plan for a larger base of military personnel. *Id.*

⁴¹ 10 U.S.C. § 503(a)(2); COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 111 (describing how the military services and Department of Defense allocate resources to improve recruiting: “The largest share of the recruiting budget is for military recruiters—the recruiting sales force. In addition the Services provide targeted incentives to recruits with certain qualifications.”); U.S. Army, Recruiting Command’s Recruit the Recruiter, <http://www.usarec.army.mil/hq/recruiter/Index.htm> (last visited Apr. 4, 2007) (describing incentive program for recruiters).

operate.⁴² Area high schools define these zones.⁴³ Recruiters receive credit for each student who enlists from the high school in their zone, which causes military recruiters to target high school students.⁴⁴ High school recruits who want to join the military typically sign Delayed Entry Contracts ("DEC") that defer their actual enlistment until after they graduate from high school.⁴⁵

The DEC obligates recruits to serve in the military for a specified period of time.⁴⁶ Minors age seventeen who voluntarily enlist with the consent of their parents or guardians create a valid contract.⁴⁷ The contract is legally enforceable although contracts made by minors are ordinarily voidable at their option. Thus far, the U.S. military has not aggressively enforced these contracts when minors change their minds and decide not to serve.⁴⁸ However, the rules governing enlisted persons also bind minors who enlist in the military.⁴⁹ These rules include the power of the US government to require minors to serve in the military.⁵⁰ The rules also include those providing for military discipline and adherence to lawful orders.⁵¹ The DEC enables recruiters to enlist students who would otherwise be ineligible to commit to future military service because they are still in high school.

⁴² COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 235.

⁴³ *Id.*

⁴⁴ *Id.* at 98 (describing how each branch of armed services competes with other branches, civilian employers, and colleges to attract high school age recruits).

⁴⁵ *Id.* at 98-99 ("Most qualified applicants who accept the offer of enlistment do not begin military service immediately... they enter the delayed entry program."); Coalition to Stop the Use of Child Soldiers, *supra* note 2, at 253 (explaining that most new recruits enter military services through the Delayed Entry Program, delaying training for up to one year thus allowing students to enlist while still in school).

⁴⁶ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* 2, at 100 (describing operation of the Delayed Entry Program).

⁴⁷ 6 C.J.S. *Armed Services* § 64.

⁴⁸ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 100 (describing how in practice military rarely enforces DEC's during peacetime and times of voluntary enlistment); *id.* (stating that 10 to 20 percent of recruits who enter Deferred Enlistment Programs do not enter the service); Coalition to Stop the Use of Child Soldiers, *supra* note 2 at 253 ("In 2002, between 13 and 21 percent of those who had signed up to enter the armed forces through the Delayed Entry Program asked to be released from their contracts. They are currently allowed to do so without prejudice, punishment or requirement to fulfill reserve obligations.").

⁴⁹ *United States v. Williams*, 302 U.S. 46, 48 (1937) (holding power of U.S. to require military service of minors may supersede parents rights over children); 6 C.J.S. *Armed Services* § 64.

⁵⁰ *Williams*, 302 U.S. at 48.

⁵¹ See *supra* note 47 and accompanying text; COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 101 (describing obligations of enlistees pursuant to the enlistment contract).

Recent legislation gives military recruiters greater access to high school students for recruiting purposes. Congress enacted the NCLB in 2002.⁵² The NCLB gives the military access to high school students equivalent to that given private sector employers and college recruiters.⁵³ Further, the Act requires high schools that receive NCLB funds to release the personal information of their students to military recruiters without obtaining prior parental consent.⁵⁴ To prevent this disclosure, parents must notify the school of their desire to keep their children's personal information private.⁵⁵ The Pentagon works with a private marketing firm to compile this information on high school students for military recruiting purposes.⁵⁶ The NCLB and the policies that result from it represent a radical change in U.S. law.⁵⁷

⁵² NCLB, *supra* note 2.

⁵³ 20 U.S.C. § 7908 (a)(3) (2005) (allowing recruiters increased access to high school students); 10 U.S.C. § 503 (c)(1)(A) (2004) (allowing military recruiters increased access to high schools students as provided by 20 U.S.C. § 7908); *see also* Anita Ramasastry, *No Child Left Unrecruited? The Problem with the New "Opt-Out" System for Providing High School Students Names to Military Recruiters*, FINDLAW'S WRIT, Dec 4, 2002, <http://writ.news.findlaw.com/ramasastry/20021204.html> (describing how NCLB authorizes disclosure of personal student data which, previously, had been protected pursuant to the Family Educational Rights and Privacy Act and discussing how NCLB was portrayed as an educational measure, but it "had another, much less publicized aspect: It sought to ensure that no child is left behind when it comes to military recruitment. . .").

⁵⁴ 20 U.S.C. § 7908 at (a)(1)-(2) ("Each Local educational agency receiving assistance under this Act [20 U.S.C.S. §§ 6301 et seq.] shall provide, on request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.").

⁵⁵ *Id.*

⁵⁶ Privacy Act of 1974, 70 Fed. Reg. 29486-01 (May 23, 2005), 2005 WL 1198619 (creating "joint Advertising and Market Research Database to collect information on persons including high school students, aged 16-18; the purpose of the database is to provide information to the armed services to assist them in their "direct marketing recruiting efforts"); *id.* (authorizing government to collect information including social security numbers, e-mail addresses, grade-point averages, ethnicity and lists of subjects students study at school); *see also* Jonathan Krim, *Pentagon Creating Student Database, Recruiting Tool for Military Raises Privacy Concerns*, WASH. POST, June 23, 2005, at A01; John J. Lumpkin, *Teen Database Worries Critics*, CBSNews.com (June 23, 2005), available at <http://www.cbsnews.com/stories/2005/06/23/national/main703698.shtml>.

⁵⁷ The NCLB creates an exception to the Family Educational and Privacy Rights Act of 1975 for military recruiters, allowing them to access high school students' personal information without prior consent. 20 U.S.C. § 7908 (2005). Prior to 2002, the Family Educational and Privacy Rights Act of 1975 protected students' primary and secondary school information from disclosure to third parties without prior parental consent. 20 U.S.C. § 1232g (2002) [hereinafter FERPA]. *See generally* U.S. Department of Education, *Policy Guidance-Access to High School Students and Information on Students by Military Recruiters*, Oct. 9, 2002 at <http://www.ed.gov/print/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html> (describing change in law with advent of NCLB); Ramasastry, *supra* note 53 (describing federal privacy legislation prior to NCLB only allowed innocuous disclosures of student information, but

C. *The Evolution of International Human Rights Law Governing the Participation of Children in Armed Conflict.*

The international community recognized the need for comprehensive international human rights law following the atrocities of World War II.⁵⁸ The U.N. General Assembly adopted the Universal Declaration of Human Rights in 1948 ("Universal Declaration").⁵⁹ The Universal Declaration was the U.N.'s first effort at codifying human rights standards and recognizing the inalienability of human rights.⁶⁰ Although the Universal Declaration did not legally bind its parties, it set the framework for the discussion of human rights for the rest of the century.⁶¹ The Universal Declaration led to the adoption of two binding conventions, which codified the principles expressed in the Universal Declaration: The International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").⁶² Both conventions set the framework for recognition of children's unique human rights needs.⁶³

Children have unique human rights needs because they lack full civil and political rights. The U.S. began to develop the framework for recognizing children's civil and political rights during the first part of the nineteenth century.⁶⁴ These rights developed through the efforts of organizations committed to helping poor children, social movements to end child labor, and policies aimed at reforming the juvenile justice system.⁶⁵ Children's rights expanded through the political and social movements for

"directory information . . . has never been released to military recruiters without parental consent until now.").

⁵⁸ The development of political rights—albeit limited to certain classes of citizens—has a long history in the western world. Broadly inclusive human rights law, however, did not come about until after World War II. BEVERLY C. EDMONDS & WILLIAM R. FERNEKES, *CHILDREN'S RIGHTS* 2-8 (1996).

⁵⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III) U.N. GAOR 3d Sess., 183rd plen. mtg (Dec. 10 1948) (48 votes in favor, none opposed, and 8 abstentions) [hereinafter Universal Declaration]. See generally EDMONDS & FERNEKES, *supra* note 58.

⁶⁰ Universal Declaration, *supra* note 59.

⁶¹ U.N. Office of the High Commissioner for Human Rights, Dec.1997, <http://www.unhchr.ch/udhr/miscinfo/carta.htm> (last visited Apr. 4, 2007).

⁶² International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, *entered into force* 23 Mar. 1976 [the provisions of article 41 (Human Rights Committee) entered into force 28 Mar. 1979]; International Covenant on Economic, Social and Cultural Rights (New York, 16 Dec. 1966) 993 U.N.T.S. 3, *entered into force* 3 Jan. 1976.

⁶³ Ennew et al., *Defining Child Labor as if Human Rights Really Matter*, in *CHILD LABOR AND HUMAN RIGHTS*, *supra* note 20, at 32 (discussing how provisions of ICCPR and ICESCR supported recognition of need for special protections for children).

⁶⁴ EDMOND & FERNEKES, *supra* note 58, at 3-4.

⁶⁵ *Id.*

participatory education and civil rights during the second half of the twentieth century.⁶⁶ Beginning in the early 1990s, a growing movement in the U.S. supports the application of international legal standards and international human rights instruments to U.S. children.⁶⁷

The concept of children's rights changed because of modern studies in child development. Modern studies find that children's cognitive decision-making abilities are similar to those of adults by about age fourteen.⁶⁸ As a result, modern human rights instruments like the Convention on the Rights of the Child accord children both protection and political rights.⁶⁹ Studies also find, however, that while cognitive competence may be present by mid-adolescence, adolescents demonstrate immature judgment.⁷⁰

This immaturity of judgment may be the result of adolescents' greater

⁶⁶ *Id.* at 4.

⁶⁷ *Id.* at 5 (describing "fifth generation of children's advocates" who "support the application of international legal standards for children"). See generally DEPT. OF ECON. AND SOCIAL AFFAIRS DIVISION FOR THE ADVANCEMENT OF WOMEN, BRINGING INT'L HUMAN RIGHTS LAW HOME, JUDICIAL COLLOQUIUM ON THE DOMESTIC APPLICATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AND THE CONVENTION ON THE RIGHTS OF THE CHILD 148-150 (U.N. 2000) (describing how best interests of child analysis applies to domestic family law and should not overlook fact that conventions like CRC establish children as legal persons with needs whose requirements may differ or conflict with their parents).

⁶⁸ Stephen Billick, *Developmental competency*, 14 BULLETIN OF THE AMERICAN ACADEMY OF PSYCHIATRY, at 301 (1986); Gary B. Melton, *Toward Personhood for Adolescence: Autonomy and Privacy as Values in Public Policy*, 38 AMERICAN PSYCHOLOGIST, at 99 (1983); see also Burns H. Weston & Mark B. Teerink, *Rethinking Child Labor: A Multi-dimensional Human Rights Problem*, in Child Labor and Human Rights *supra* note 30, at 9 (describing children's capabilities by citing examples of workplace organization by working children). *Contra*, Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE *supra* note 27 at 302 ("[T]his scientific evidence indicates that adolescents are more competent as decision makers than has been presumed under paternalistic legal policies, but the research does not demonstrate that youthful cognitive decision-making capacity is like that of adults.").

⁶⁹ CRC, *supra* note 20; EDMONDS & FERNEKES *supra* note 58, at 1-6 (tracing development of children's rights to modern idea that children are capable of participation in civil and political life); EUGEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD 11-20 (2d ed., 1997) (describing how the realization of "adultcenterism" and advancements in the field of human development helped lead to recognition that children should not only be awarded special protections due to their vulnerability but also should be given greater agency or decision-making power).

⁷⁰ Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE, *supra* note 27, at 303 (describing factors influential in adolescent decision making: "[p]sychosocial and experiential factors such as conformity and compliance in relation to peers, attitude toward and perception of risk, and time perspective . . ." which would impact judgment rather than reasoning and understanding.).

susceptibility to peer influence and their increased tendency to engage in risky behavior.⁷¹ Research shows that adolescents differ from adults in their perception of and attitude toward risk.⁷² They are more likely to take risks with regard to health and safety than adults.⁷³ U.S. and international law recognize that governments should give children special protections because of their immaturity.⁷⁴

D. The Convention on the Rights of the Child: The First Comprehensive Children's Rights Instrument

During the last half of the twentieth century, the international community ratified several international treaties that protect children's unique human rights.⁷⁵ Children are especially vulnerable to human rights violations including sexual exploitation, hazardous employment, and military recruitment.⁷⁶ To address these issues, the U.N. drafted the Convention on the Rights of the Child (CRC).⁷⁷ The CRC came into force in 1990.⁷⁸

The CRC articulates a comprehensive list of children's rights that include civil and political rights, as well as economic, social, and cultural rights.⁷⁹ Prior to the CRC, no international convention addressed the unique human rights concerns of the world's children. The CRC is also

⁷¹ *Id.* at 304-05 (assessing maturity of judgment and psychosocial factors in adolescent decision making).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *supra* note 20 and accompanying text (describing various international human rights treaties that accord children unique protections).

⁷⁵ See *supra* note 20 and accompanying text. See generally About Convention on the Rights of the Child, UNICEF, Oct. 14, 2005, www.unicef.org/crc/introduction.htm.

⁷⁶ EDMONDS & FERKENES, *supra* note 58, at 8-12 (describing recognition of children's vulnerability as impetus for drafting the CRC); VAN BUEREN, *supra* note 19, at 1-6 (recognizing that children deserve special considerations because they are particularly vulnerable to human rights abuses). See generally REVISITING CHILDREN'S RIGHTS, 10 YEARS AFTER THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD (Deirdre Fottrell ed., 2000).

⁷⁷ CRC, *supra* note 20.

⁷⁸ *Id.*

⁷⁹ CRC, *supra* note 20; VAN BEUREN, *supra* note 19, at 13 (discussing rights implicated by the enactment of CRC and noting that to effectively guarantee rights to children under CRC countries party to the treaty must adopt punitive measures for offenders); Jaap E. Doek, *The Protection of Children's Rights and the U.N. Convention on the Rights of the Child: Achievements and Challenges*, 22 ST. LOUIS U. PUB. L. REV. 235 (2003) (declaring the CRC as the most important instrument for the protection of children's rights under international law).

groundbreaking in that every nation—save two—ratified it.⁸⁰ Although the United States is not a party to the CRC, it ratified the Optional Protocol to the CRC, which establishes the right of children to protection from military recruitment and service.⁸¹ As such, the U.S. is bound by the terms of the Optional Protocol.⁸²

III. THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

After the adoption of the CRC, many states, supported by a substantial number of non-governmental organizations, lobbied to increase the minimum age provisions for military recruitment from fifteen to eighteen.⁸³ This movement reflected the spirit of the CRC, which aimed to protect all children from military exploitation.⁸⁴ In response, the U.N. drafted the Optional Protocol to the CRC to raise the international age minimum to

⁸⁰ CRC, *supra* note 20; *see supra* note 30 (detailing history of the CRC and establishing its near universal ratification); *see also* Cynthia Price Cohen, *Jurisprudence of the Committee on the Rights of the Child: A Guide for Research and Analysis*, 19 MICH. J. INT'L L., 633 (Spring 1998); Doek, *supra* note 79 (discussing the unanimous adoption of the CRC by the General Assembly of the U.N.).

⁸¹ Optional Protocol, *supra* note 7, at arts. 1-2 (raising the minimum age for recruitment and participation in hostilities to eighteen); Office of the U.N. High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, 9 June 2004 [hereinafter Status of Ratifications of the Principal International Human Rights Treaties] (explaining that the United States signed CRC on February 16, 1995 but did not ratify it); U.N. TREATY REFERENCE GUIDE, *supra* note 8 (defining “signature subject to ratification, acceptance or approval” as qualifying the signatory state to continue to ratification, acceptance or approval by the method prescribed in that state and creat[ing] a good faith obligation not to frustrate the objectives of the treaty).

⁸² U.S. CONST. art. VI (establishing that U.S. treaty obligations are equivalent to federal law; stating, “This Constitution, and the laws of the United States which shall be made in pursuance thereof. . . and all treaties made. . . under the Authority of the United States, shall be the supreme law of the Land. . . Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the contrary notwithstanding”) (emphasis added); *see also* FRANCISCO FORREST MARTIN, CHALLENGING HUMAN RIGHTS VIOLATIONS USING INTERNATIONAL LAW IN U.S. COURTS 9 (2001) (describing U.S. obligations pursuant to international conventions and stating that treaties are the “supreme law of the land”).

⁸³ Doek, *supra* note 79, at 240 (explaining that one of the most heavily debated provisions during the drafting of the CRC was Article 38, which established fifteen as the minimum age for soldiering: “A number of States felt very strongly—supported by many, if not all, NGO’s—that Article 38’s minimum age for recruiting children to become soldiers at 15 years-old was much too low.”); Comm. On Military Affairs and Justice, *supra* note 4, at 270; *see also supra* note 30 and accompanying text.

⁸⁴ CRC, *supra* note 20, at 1, 38 (defining “child” as any person younger than eighteen and recognizing the right of children to special protection from hazardous or otherwise unsafe activities including soldiering).

eighteen for participation and recruitment to all military services.⁸⁵

In 2002, the U.N. officially adopted the Optional Protocol, and began lobbying for countries to ratify it.⁸⁶ As of September 2005, 101 countries are parties to the Optional Protocol.⁸⁷ Those countries recognize eighteen as the preferred minimum age at which the military may lawfully recruit individuals.⁸⁸ Between 2001 and 2004, however, underage soldiers were involved in hostilities worldwide.⁸⁹ Many of the soldiers involved in these conflicts came from countries where underage recruitment still exists, such as Liberia, Sudan, and the U.S.⁹⁰ International commitment to the Optional Protocol exemplifies the growing consensus that military recruitment of children under eighteen is unlawful.⁹¹

A. Terms of the Optional Protocol

The Optional Protocol is the international instrument that sets out the law governing children's participation in warfare.⁹² The Optional Protocol requires that parties take all "feasible measures" to prevent members of their armed forces who are under eighteen years old from participating in hostilities.⁹³ The process of drafting and adopting the Optional Protocol was arduous because some of the more powerful countries wanted to continue recruiting children to the military.

The U.N. proposed the Optional Protocol in order to enforce eighteen as the minimum age for participation in all military activities.⁹⁴ The U.S. and a

⁸⁵ Optional Protocol, *supra* note 7, at introduction (intending to "strengthen the implementation of rights recognized in the CRC" and comprehensively address the problem of military recruitment of children); Comm. on Military Affairs and Justice, *supra* note 4.

⁸⁶ Optional Protocol, *supra* note 7.

⁸⁷ Status of Ratifications of the Principal International Human Rights Treaties, *supra* note 81.

⁸⁸ *Id.*; Optional Protocol, *supra* note 7 and accompanying text.

⁸⁹ Coalition to Stop the Use of Child Soldiers, *supra* note 2 at 13.

⁹⁰ *See Id.*

⁹¹ Status of Ratifications of the Principal International Human Rights Treaties, *supra* note 81; *see supra* note 30 and accompanying text.

⁹² Optional Protocol, *supra* note 7.

⁹³ *Id.* at art. 1; Ratifications and Reservations to the Optional Protocol *supra* note 8. "Feasible measures" means "those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations." Direct participation in hostilities means that children should not take part in "immediate and actual action on the battlefields" that is likely to cause harm to the enemy. It does not include: indirect participation such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment. *Id.* at (2)(A)-(B).

⁹⁴ Optional Protocol, *supra* note 7 and accompanying text.

few other countries lobbied for a final version of the Optional Protocol that would allow states party to the agreement to determine their own minimum age for recruitment.⁹⁵ The U.N. remained firm and eighteen remains the minimum age for conscription and participation in hostilities.⁹⁶ Countries are allowed to recruit volunteers younger than eighteen, however, due to the lobbying efforts of the U.S.⁹⁷ The Optional Protocol provides that the minimum age for these voluntary recruits may not be less than sixteen years old.⁹⁸ In addition, the Optional Protocol requires the military to obtain parental consent prior to communicating with underage recruits.⁹⁹

The Optional Protocol allows state parties to set their own minimum age by submitting a binding declaration.¹⁰⁰ As a result, the U.S. may continue recruiting seventeen year-olds to military service without violating the terms of the Optional protocol.¹⁰¹ Most other countries that ratified the Optional Protocol, however, adopted its recommended position that eighteen be the minimum age for recruitment and participation in all military

⁹⁵ Wojcik et al., *supra* note 30, at 771 (describing U.S. participation in working group drafting the Optional Protocol during which the U.S. and several other governments opposed any restriction on use of minors who volunteer for military service despite the Optional Protocol's call for "government measures and international assistance to demobilize and rehabilitate former child soldiers, and to reintegrate them into society"); Comm. On Military Affairs and Justice, *supra* note 4, at 274

⁹⁶ Optional Protocol, *supra* note 7, at art. 1.

⁹⁷ *Id.* at art. 3(2) (providing that states party to the treaty may deposit a binding declaration, setting the minimum age for voluntary recruitment into national armed forces and describing the safeguards it has adopted to ensure that such recruitment is not forced or coerced); see Comm. on Military Affairs and Justice *supra* note 4, at 274 (describing how U.S. government, in particular Department of Defense, "vigorously resisted [any] increase in the ages for recruiting and participation in hostilities" and commenting on U.S. practice of declining to cooperate in "consensus driven process to adopt a blanket age18 protocol, where even a minority position can be a blocking one.").

⁹⁸ Optional Protocol, *supra* note 7, at arts. 1-2 (allowing state parties to reserve the right to recruit persons under eighteen but not younger than sixteen).

⁹⁹ Ratifications and Reservations to the Optional Protocol, *supra* note 8, at (B).

¹⁰⁰ Optional Protocol, *supra* note 7. "[D]eclarations merely clarify the state's position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit corresponding instrument or at the time of signature." U.N. TREATY REFERENCE GUIDE, *supra* note 8.

¹⁰¹ Optional Protocol, *supra* note 7, at art. 3(2). Ratifications and Reservations to the Optional Protocol *supra* note 8, at (A), (2)(B) (expressing its understanding of its obligation pursuant to Article 1 of the Optional Protocol to take all "feasible measures" to prevent minor children from taking part in "direct hostilities," the U.S. still set seventeen as the minimum age for recruitment into the armed forces); Wojcik et al., *supra* note 30, at 771 ("Ultimately, the protocol that was negotiated in January 2000 reflected ...basic disagreement. It set eighteen as the minimum age for conscription and for direct participation in armed conflict, but allowed voluntary recruitment of sixteen and seventeen year-olds.").

services.¹⁰² As of 2004, of the seventy-seven countries that ratified the Optional Protocol, fifty-four had taken the “straight-eighteen” position.¹⁰³

For countries that allow voluntary recruitment of sixteen and seventeen year-olds, the Optional Protocol sets out stringent requirements to protect minors' interests. These special protections include a requirement of parental consent for all underage military recruitment.¹⁰⁴ Further, recruitment must be genuinely voluntary and the military must fully inform individuals about the duties involved in the armed service.¹⁰⁵ The Optional Protocol reflects a concerted effort by the international community to restrict and eventually eliminate under-eighteen service in the military.¹⁰⁶

B. U.S. Ratification and Implementation of the Optional Protocol

The U.S. Senate ratified the Optional Protocol in 2002.¹⁰⁷ By becoming a party to the Optional Protocol, the U.S. agreed to incorporate its terms into its military recruiting scheme. Pursuant to the Optional Protocol's terms, Congress advised both the Army and the Navy to cease sending seventeen year-old minors into active combat.¹⁰⁸

In an effort to comply with the Optional Protocol, the U.S. passed 10 U.S.C. § 505, which requires that the military accept recruits only age seventeen and above.¹⁰⁹ The U.S. is still obliged by the terms of the treaty not to send such underage recruits into hostilities. Following ratification of the Optional Protocol by the U.S., the State Department advised the Army and Navy not to deploy soldiers under eighteen.¹¹⁰ The U.S. Marine Corps

¹⁰² Ratifications and Reservations to the Optional Protocol, *supra* note 8.

¹⁰³ Coalition to Stop the Use of Child Soldiers, *supra* note 2. Countries that take the “straight –eighteen” position do not accept voluntary recruits below that age. *See id.*

¹⁰⁴ Optional Protocol, *supra* note 7, at art. 3(3).

¹⁰⁵ *Id.* (stating that parties permitting voluntary recruitment into their national armed forces under the age of 18 years shall maintain certain safeguards to ensure, as a minimum, that “(a) Such recruitment is genuinely voluntary; (b) Such recruitment is carried out with the informed consent of the person’s parents or legal guardians; (c) Such persons are fully informed of the duties involve in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military service.”).

¹⁰⁶ *Id.*; *see supra* note 30 and accompanying text.

¹⁰⁷ Ratifications and Reservations to the Optional Protocol, *supra* note 8. Currently, no formal enforcement mechanism exists that can hold the United States to the terms of the Optional Protocol. The Rome Statute establishing the International Criminal Court defines all recruitment of children under ages fifteen and minors' participation in hostilities as a war crime, but does not address the age group from fifteen to seventeen. The U.S. is not a party to the Rome Statute. Rome Statute, *supra* note 31.

¹⁰⁸ Coalition to Stop the Use of Child Soldiers, *supra* note 2, 152-153.

¹⁰⁹ 10. U.S.C. § 505 (2006).

¹¹⁰ Coalition to Stop the Use of Child Soldiers, *supra* note 2, at 153 *available at*

and the Air Force were not advised to take steps to limit the use of soldiers under the age of eighteen in hostilities.¹¹¹ Contrary to the Optional Protocol's provisions protecting children under eighteen from active service in the military, at least sixty-two U.S. soldiers aged seventeen served in Afghanistan and Iraq in 2003 and 2004.¹¹²

IV. ANALYSIS

The tenor of military recruitment—the risks involved to young recruits, and the pressures and incentive for recruiters—changed dramatically since 2001. The United States is fighting two wars and stations soldiers throughout the world in an increasingly hostile climate.¹¹³ Between March

<http://www.child-soldiers.org/resources/global-reports> (advising assignment authorities in the Army not to “assign or deploy” persons under eighteen years of age “outside the continental US, Puerto Rico or territories or possessions of the United States... They were to “arrange for return by April 30, 2003 of any soldiers under the age of 18 ... Field commanders were reminded of the policy in February 2004 ... The Director of Military Personnel Policy for the U.S. Army stated in a letter to Human Rights Watch that ‘A total of 62 soldiers were 17 years old upon arrival to both Afghanistan and Iraq during 2003 and 2004. These 62 soldiers served in all capacities in the Army.’” (citing Sean J. Byrne, US Army, letter to HRW, April 2, 2004)); *Id.* (beginning in Feb. 2001, members of the navy who were not yet eighteen years old could be assigned to operational units as long as those assignments did not place them in actual combat; beginning in Feb. 2003 the policy was changed and members under eighteen were not to receive orders that required reporting to an “operational command’ including in a commissioned vessel or deployable squadron. Commanders were instructed to use training to ensure that recruits were 18 before they were assigned a permanent duty or to assign them to shore duty.” (citing Chief of Naval Operations, *Implementation Plans for Age 18 Standard for Participation in Combat*, Feb. 10, 2001 and Navy Personnel Command, *First-Term Personnel Assignment Policy*, 28 February 2003)); *Id.* (informing Human Rights Watch that U.S. Navy has no record of persons under eighteen years old serving in Iraq in 2003 or 2004 (citing Communication from Department of the Navy, Navy Personnel Command, to HRW, May 21, 2004)).

¹¹¹ Coalition to Stop the Use of Child Soldiers, *supra* note 2, at 153 (instructing commanders to “weigh the mission requirements against the practicability of diverting 17-year-old Marines from combat...” and that “...taking all feasible measure to ensure Marines under 18 years of age do not take part in hostilities should not be allowed to unduly interfere with the commander’s primary responsibility of mission accomplishment.” (citing Commandant of the Marine Corps, US Marine Corps, *17 Year Old Marines in Combat*, Jan. 23, 2003)).

¹¹² *Id.* at 152.

¹¹³ United States Department of Defense, <http://www.defenselink.mil/> (search for “Afghanistan”) (last visited Mar. 13, 2007) (describing United States’ involvement in Afghanistan since 2001); The White House: In Focus: Iraq, <http://www.whitehouse.gov/infocus/iraq/> (last visited Mar. 13, 2007) (describing United States involvement in Iraq since 2003); see also Robert Baer, *Is a U.S.-Iran War Inevitable?*, TIME, March 29, 2007, <http://www.time.com/time/world/article/0,8599,1604546,00.html>. See generally, A YEAR AFTER IRAQ WAR: MISTRUST OF AMERICA IN EUROPE EVEN HIGHER, MUSLIM ANGER

19, 2003 and March 24, 2007, 974 of the 3,228 military personnel killed in Operation Iraqi Freedom were under the age of twenty-two.¹¹⁴ Between October 7, 2001 and March 24, 2007, 72 of the 369 military personnel killed in Operation Enduring Freedom (including in Afghanistan) were under the age of twenty-two.¹¹⁵ Seventeen-year-old enlistees from the U.S. continue to take part in direct hostilities in violation of the terms of the Optional Protocol.¹¹⁶ Furthermore, the U.S. military recruits on high school campuses exposing children as young as fifteen to military recruitment in violation of the terms of the Optional Protocol.¹¹⁷

Recruiting on high school campuses violates the provisions of the Optional Protocol for the following three reasons. First, the U.S. military's practice of recruiting children under seventeen on high school campuses contradicts the plain language and intent of the Optional Protocol.¹¹⁸ Second, the military's current methods of recruiting seventeen-year-olds does not comport with the standards of parental consent required by the Optional Protocol.¹¹⁹ Third, the U.S. military fails to recognize that children younger than eighteen are not prepared for recruitment or service. Furthermore, the disproportionate representation of low-income persons in the military suggests that the military targets these recruits.¹²⁰ Such targeting of child recruits violates the goal of the Optional Protocol to "recognize the special needs" of children.¹²¹

PERSISTS (The Pew Research Center for the People and the Press, ed., 2004) available at <http://people-press.org/reports/display.php3?ReportID=206> (last visited Mar. 13, 2007); *Survey Shows U.S. Standing Around World at New Low*, INT'L. HERALD TRIB., March 6, 2007, <http://www.iht.com/articles/ap/2007/03/06/america/NA-GEN-US-Image.php>.

¹¹⁴ U.S. Department of Defense, *Personnel and Procurement Statistics*, <http://siadapp.dior.whs.mil/personnel/CASUALTY/castop.htm> (select "Operation Iraqi Freedom - Military Deaths - All (Demographics)").

¹¹⁵ *Id.* (select "Operation Enduring Freedom – Military Deaths (Demographics)").

¹¹⁶ Optional Protocol, *supra* note 7, at art. 3; Coalition to Stop the Use of Child Soldiers, *supra* note 2, 152-54; *see supra* notes 1-3 and accompanying text (describing recruitment and participation of underage U.S. persons in hostilities).

¹¹⁷ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 98; *see also supra* notes 1-3 and accompanying text.

¹¹⁸ Optional Protocol, *supra* note 7, at art. 3.

¹¹⁹ *Id.* at arts. (3)(3)(a)(b).

¹²⁰ Executive summary of the 2003 Population Representation in the Military Services, Office of the Under Secretary of Defense, Personnel and Readiness (showing overrepresentation of lower-income enlistees); David M. Halbfinger & Steven A. Holmes, *A Nation at War: The Troop; Military Mirrors Working Class America*, N.Y. TIMES, Mar. 30, 2003 at A1; James Brooke, *On Farthest U.S. Shores, Iraq is a Way to a Dream*, N.Y. TIMES, July 31, 2005 at A18; Cynthia Tucker, *Military Doesn't Fly Flag of Affluence*, ALBANY TIMES UNION, Jan. 27, 2004, at A7.

¹²¹ Optional Protocol, *supra* note 7, at Introduction ("Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to

A. *Allowing Military Recruiting on High School Campuses Violates the Plain Language and Intent of the Optional Protocol.*

The Optional Protocol aims to increase the minimum age for participation in all military service from fifteen to eighteen.¹²² The language of the Optional Protocol clearly reflects the international consensus that eighteen is the minimum age for such service.¹²³ The first two articles of the Optional Protocol designate eighteen as the minimum age for direct service in hostilities and for conscription.¹²⁴ Article 3 permits countries to reserve the right to recruit minors with parental consent.¹²⁵

When the United States adopted the Optional Protocol, it submitted a binding declaration enabling seventeen-year-olds to enlist voluntarily pursuant to the terms of the Optional Protocol.¹²⁶ The U.S. provision states: “The minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is seventeen years of age.”¹²⁷ This provision allows the military to continue enlisting seventeen-year-old high school students through Deferred Enlistment Contracts. Contrary to its obligations pursuant to the Optional Protocol, the U.S. military targets high school children for recruitment.

Military recruiters visit high school campuses in an attempt to market military service to high school age children.¹²⁸ Military recruitment on high school campuses exposes children as young as fifteen to military recruiters.¹²⁹ The Optional Protocol states that if countries like the U.S. choose to recruit sixteen and seventeen-year-old minors to the military as voluntary recruits; they must protect the child recruits by providing special safeguards.¹³⁰ The safeguards set out in the Optional Protocol include parental consent for all military recruitment.¹³¹ By exposing children

the present Protocol owing to their economic or social status or gender...”).

¹²² *Id.*

¹²³ *Id.* at art. 1, 2; CRC, *supra* note 20, at art. 1 (defining children as all persons under eighteen years of age); *see supra* note 30 and accompanying text (describing international consensus that eighteen is the minimum age for recruiting to military and use in hostilities).

¹²⁴ Optional Protocol, *supra* note 7, at art. 1, 2 (requiring that persons under eighteen years of age not take direct part in the hostilities and that persons under eighteen years of age not be compulsorily recruited to the armed forces).

¹²⁵ Optional Protocol, *supra* note 7, at art. 3(3); *see supra* note 97 and accompanying text (describing that parties to Optional Protocol can submit binding declaration stating minimum age for voluntary recruitment).

¹²⁶ Ratifications and Reservations, *supra* note 8.

¹²⁷ *Id.*

¹²⁸ 20 U.S.C. § 7908 (2005).

¹²⁹ *See supra* notes 1- 3 and accompanying text.

¹³⁰ Optional Protocol, *supra* note 7, at art. 3(3).

¹³¹ *Id.* at art. 3(3).

younger than age seventeen to military recruiters, the U.S. violates the Optional Protocol and domestic law. By recruiting children age seventeen without receiving permission from parents, the U.S. also violates the terms of the Optional Protocol.¹³²

Critics claim that in order to meet recruiting quotas, the military must recruit on high school campuses.¹³³ They argue that U.S. high school students ordinarily decide their career paths in the year or two prior to high school graduation.¹³⁴ The Committee on Military Affairs and Justice ("the Committee") argues this position in its report assessing the effect of the Optional Protocol.¹³⁵ The report states that preventing the military from recruiting during this time in a young person's life could negatively impact the number of new recruits.¹³⁶ The Committee argues that denying the military access to high school-age recruits would aggravate serious recruiting problems faced by the armed forces.¹³⁷ Indeed, statistics show that despite the overall low number of active military service people age seventeen, that number is a result of extensive recruiting in the age group sixteen to eighteen.¹³⁸

The U.S. Department of Defense argues that in addition to decreasing the overall recruitment pool, the Optional Protocol provision unnecessarily restricts minors from active service.¹³⁹ This restriction would mean that when the military assigns a minor recruit to a team, he or she must stay behind when the team is sent into active duty.¹⁴⁰ This could, the Department of Defense argues, damage the effectiveness of those teams.¹⁴¹ The Department of Defense maintains that the military should enlist, retain, and assign minors to active combat, just as it would any other recruit.¹⁴²

¹³² The Optional Protocol and the terms of the U.S.' ratification require parental consent before U.S. military recruitment of any underage person including seventeen year-olds. Optional Protocol, *supra* note 7; Ratifications and Reservations to the Optional Protocol, *supra* note 8.

¹³³ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2; Comm. on Military Affairs and Justice, *supra* note 4.

¹³⁴ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 98, 116, 117-36, and 136-48 (discussing competing civilian opportunities such as higher education and employment).

¹³⁵ See Comm. on Military Affairs and Justice, *supra* note 4, at 278.

¹³⁶ *Id.*

¹³⁷ Comm. on Military Affairs and Justice, *supra* note 4, at 278.

¹³⁸ *Id.*

¹³⁹ Comm. on Military Affairs and Justice, *supra* note 4, at 281; COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2.

¹⁴⁰ Comm. on Military Affairs and Justice, *supra* note 4, at 281.

¹⁴¹ *Id.*

¹⁴² *Id.*

The critics' arguments fail because they contravene the plain language of U.S. law and the Optional Protocol.¹⁴³ Both 10 U.S.C § 505 and the Optional Protocol prohibit the recruitment and enlistment of children under age seventeen.¹⁴⁴ Furthermore, the military may not recruit children who are seventeen without prior parental consent.¹⁴⁵ The military's current practice of high school recruitment does not meet either requirement of the Optional Protocol because it targets all high school students regardless of age.¹⁴⁶ The relatively small percentage of minor enlistees reveals that accommodating these laws should not pose a hardship to the military.¹⁴⁷ Further, non-combat positions are available for seventeen-year-old enlistees, allowing the military to abide by the provisions of 10 U.S.C § 505 and the Optional Protocol.¹⁴⁸

The government's argument that the military would not be able to meet its recruitment needs without recruiting on high school campuses lacks support.¹⁴⁹ The U.S. is not the only country to face recruiting challenges while maintaining a system of voluntary enlistment. Other countries with similarly modern militaries fulfill the Optional Protocol's requirements without using high school recruiting.¹⁵⁰ For example, the European Parliament recommended that all European Union members adopt the minimum age of eighteen for all military recruitment.¹⁵¹ The U.S., however, has yet to make changes to its recruiting methods to effectively protect high school age children from military recruiters on high school campuses.¹⁵²

B. No Child Left Behind Act Violates the Parental Consent Provision of the Optional Protocol

In addition to exposing seventeen-year-olds to military recruiters without parental consent, schools disclose high school students' personal information for military recruiting purposes.¹⁵³ Under the Family

¹⁴³ 10 U.S.C. 505 (2006) (setting the minimum age for military recruitment at seventeen); Optional Protocol, *supra* note 7, at art. 3(3) (listing safeguards countries party to the protocol must enact in order to recruit minors).

¹⁴⁴ 10 U.S.C. § 505.

¹⁴⁵ *Id.*; Optional Protocol, *supra* note 7, at art. 3(3).

¹⁴⁶ *See supra* notes 1-3 and accompanying text.

¹⁴⁷ OFFICE OF ARMY DEMOGRAPHICS, *supra* note 2, at 4.

¹⁴⁸ *See supra* note 139.

¹⁴⁹ *See supra* note 143.

¹⁵⁰ Rangel Calls for Mandatory Military Service, CNN.COM (Dec. 30, 2002) <http://archives.cnn.com/2002/ALLPOLITICS/12/29/mandatory.military/index.html>.

¹⁵¹ *Id.*

¹⁵² *See supra* notes 1-3 and accompanying text.

¹⁵³ 20 U.S.C. § 7908 (2005).

Educational Rights and Privacy Law of 1975, schools cannot disclose students' private information without explicit parental consent.¹⁵⁴ The NCLB, however, specifically exempts schools from this requirement when military recruiters request students' private information.¹⁵⁵ Because the military uses students' personal information for recruiting purposes, the Optional Protocol applies to bar such disclosure.¹⁵⁶

The Optional Protocol requires countries that permit voluntary recruitment of minors into their national armed forces to abide by special provisions.¹⁵⁷ These special provisions require that the military recruitment be "genuinely voluntary" and "carried out with the informed consent of the person's parents or legal guardians."¹⁵⁸ Currently, under the NCLB parents must take action or "opt-out" to avoid disclosure of their children's personal information.¹⁵⁹ This differs from informed consent, whereby parents are required to have knowledge about the recruitment and consent to it in advance.¹⁶⁰ Therefore, the NCLB contravenes the plain language of the Optional Protocol and the U.S. declaration.¹⁶¹ Parental consent (informed parental consent) is a pre-requisite to any military recruitment of minors.¹⁶²

The NCLB, provides the military with the same access to high school students as provided to other "post-secondary educational institutions or to prospective employers."¹⁶³ As a result, military recruiters may target seventeen-year-old students without parental consent.¹⁶⁴ Furthermore, because the military instructs recruiters to become "indispensable" to students and staff on campus, even younger students may be subject to recruitment.¹⁶⁵ This type of military recruiting—including recruiting seventeen-year-olds without parental consent—violates the safeguards set out in the Optional Protocol.¹⁶⁶

¹⁵⁴ 20 U.S.C. § 1232g (2002).

¹⁵⁵ 20 U.S.C. § 7908.

¹⁵⁶ Optional Protocol, *supra* note 7, at art. 3(3)(b).

¹⁵⁷ *Id.*

¹⁵⁸ Optional Protocol, *supra* note 7, at art. 3(3)(a)-(b).

¹⁵⁹ 20 U.S.C. § 7908.

¹⁶⁰ Optional Protocol, *supra* note 7, at art. 3(3)(b) (requiring that all military recruitment of underage persons be carried out with the informed consent of the person's parents or legal guardians).

¹⁶¹ *Id.*

¹⁶² Optional Protocol, *supra* note 7, at art. 3(1)-(2).

¹⁶³ 20 U.S.C. § 7908.

¹⁶⁴ *See supra* notes 1-3 and accompanying text.

¹⁶⁵ Allowing the military similar access to high school students as job or college recruiters necessarily influences students younger than the seventeen-year-old age minimum that 10 U.S.C. § 505 and the Optional Protocol prescribe.

¹⁶⁶ Optional Protocol, *supra* note 7, at art. 3(3).

Minors are especially vulnerable to undue influence and evidence immature judgment with regard to involvement in risky behavior.¹⁶⁷ The U.S. ought to enforce the requirement of parental consent, as stated in the Optional Protocol and domestic law, in order to safeguard adolescents who need special protection due to their vulnerability.¹⁶⁸ Stories of adventure and excitement may easily entice adolescents.¹⁶⁹ For example, a military recruiter addressing students in San Diego described the military in an overly simplistic manner that seemed to glorify dangerous activities. He told them, "I mean, where else can you get paid to jump out of airplanes, shoot cool guns, blow stuff up, and travel seeing all kinds of different countries?"¹⁷⁰ International conventions recognize that minors are particularly vulnerable to this sort of military recruitment.¹⁷¹ Parental consent helps protect minors so that parents may assist their child in making more mature, informed decisions.

Opponents and NCLB supporters would argue that disclosure of high school students' information without parental consent serves the same function as the Selective Service Act.¹⁷² The Selective Service Act already allows the government to create a database containing eighteen-year-olds' personal information for the purpose of military preparedness.¹⁷³ Eighteen-year-old males register under the Selective Service Act with full knowledge of their obligation under the law and for what purpose the government collects their information. Thus, the Selective Service Act requires that adults disclose personal information. This is different from the NCLB, which allows the military to gather minors' personal information without their knowledge or that of their parents and without consent.¹⁷⁴

NCLB supporters fail to recognize the fundamental difference between the Selective Service Act and NCLB. The Selective Service Act requires that all male persons over the age of eighteen register their personal information with a military database.¹⁷⁵ Eighteen-year-old males register because of a legal obligation to do so and they are informed of the purpose

¹⁶⁷ See *supra* notes 70-74 and accompanying text.

¹⁶⁸ Optional Protocol, *supra* note 7, at art. 3(3)(b) (stating requirement of informed consent: "[S]uch recruitment. . . [should be] carried out with the informed consent of the person parents or legal guardians.>").

¹⁶⁹ See *supra* notes 1-3, 70-73 and accompanying text.

¹⁷⁰ *News Hour with Jim Lehrer, High School Recruiting*, (PBS television broadcast, Dec. 1, 2004).

¹⁷¹ Optional Protocol, *supra* note 7; CRC, *supra* note 20.

¹⁷² Military Selective Service Act, 50 U.S.C.A. App. 453 (2002) (requiring males to register with the Selective Service upon reaching the age of eighteen).

¹⁷³ *Id.* at 460.

¹⁷⁴ 20 U.S.C. § 7908 (2005).

¹⁷⁵ 50 U.S.C.A. § 453.

for which the government collects their information.¹⁷⁶ Both U.S. and international law consider people over eighteen to be legally independent.¹⁷⁷ Thus, the Selective Service Act, which regulates the conduct of adults, is very different from NCLB and its related laws, which target high school-age children for military recruiting.¹⁷⁸

The NCLB requires schools to disclose the personal information of high school students to military recruiters without parental consent.¹⁷⁹ Parents play a key role in influencing young adults' decision making.¹⁸⁰ It is impossible for parents to take responsibility for their children when the NCLB provides a method to circumvent their consent.¹⁸¹

The NCLB theoretically gives parents the opportunity to opt out, but this opportunity does not equate with informed consent.¹⁸² The opt-out right is contingent on schools notifying parents in a timely manner and effectively instructing parents on how to opt out.¹⁸³ Many parents never receive such notice or instruction.¹⁸⁴ Many parents who successfully opted out did not have much assistance from the government or schools.¹⁸⁵ This clearly undermines the purpose of the Optional Protocol to make it more difficult—not less—for military recruiters to target minors.¹⁸⁶

C. Under-18 Youth Are Not Psychologically Prepared to Serve in the U.S. Military: Military Recruitment Violates Children's Human Rights.

Teenagers in high school prepare for employment and college admission. Most teenagers do not consider post-high school opportunities until well into their junior or senior year. As a result of military recruiting on high school campuses, a child's first independent decision may be whether to go into the military.¹⁸⁷ Exposing children to military recruiters when such recruitment may mean placing the minor in a life-threatening

¹⁷⁶ *Id.*

¹⁷⁷ *See supra* notes 27, 29-30 and accompanying text.

¹⁷⁸ NCLB *supra* note 2; 10 U.S.C. §§ 503, 505; 20 U.S.C. § 7908.

¹⁷⁹ 20 U.S.C. § 7908(a)(1).

¹⁸⁰ *See generally* SUZANNE D. DIXON & MARIN T. STEIN, ENCOUNTERS WITH CHILDREN, PEDIATRIC BEHAVIOR AND DEVELOPMENT (4th ed., 2006) (describing developmental stages of humans and discussing decision-making abilities during adolescence).

¹⁸¹ 20 U.S.C. § 7908.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*; *see also* Ramasastry, *supra* note 53 and accompanying text.

¹⁸⁵ *Id.*

¹⁸⁶ Optional Protocol, *supra* note 7, at 3(3).

¹⁸⁷ *See supra* notes 1-3 and accompanying text (discussing U.S. military practice of actively targeting high school students for recruitment).

situation does not comport with the best interests of the child.¹⁸⁸ Furthermore, such recruitment violates the internationally recognized right of children to survival and development as articulated in the CRC.¹⁸⁹ After September 11, 2001 and the enactment of the NCLB, the risk is great that young military recruits will be sent into active combat.¹⁹⁰ Given the life-threatening nature of the opportunity and the harmful psychological impact of modern warfare, military recruiters are distinguishable from job and college recruiters.¹⁹¹

Employers and college recruiters ask young high school students to make relatively innocuous decisions. These recruiters do not have a special interest in new recruits. In contrast, with the U.S. engaged in long-term warfare, recruiters have a special interest in enlisting more soldiers.¹⁹² The U.S. occupation of Iraq exacerbates the need for more recruits. Modern military combat also places serious strain on the mental health of combatants.

Soldiers returning from military service in Afghanistan and Iraq show signs of serious mental disturbance.¹⁹³ Some soldiers have committed

¹⁸⁸ CRC, *supra* note 20, at art. 3 (“In all actions concerning children . . . the best interests of the child shall be a primary consideration.”); *see also* note 76-80 (discussing that the CRC reflects international consensus on child rights).

¹⁸⁹ CRC, *supra* note 20, at art. 6 (“States parties recognize that every child has the inherent right to life.” And, “[s]tates parties shall ensure to the maximum extent possible the survival and development of the child.”).

¹⁹⁰ 20 U.S.C. § 7908 (2005) (allowing for United States to continue recruiting on high school campuses and giving them much greater access to students); *Id.* (providing access to student recruiting information notwithstanding section 20 U.S.C. § 1232g(a)(5)(B), which requires parental consent before private student information can be released to third parties); Ratifications and Reservations to the Optional Protocol, *supra* note 8. (demonstrating that U.S. reserved right to recruit persons under eighteen).

¹⁹¹ *See infra* note 193 (detailing harmful psychological impact of warfare, particularly as resulting from service in the Iraq War).

¹⁹² COMM. ON THE YOUTH POP. AND MILITARY RECRUIT, *supra* note 2, at 1-2.

¹⁹³ Charles W. Hoge, M.D., et al., *Combat Duty in Iraq and Afghanistan, Mental Health Problems and Barriers to Care*, NEW ENG. J. MED., July 1, 2004, at 13, available at <http://content.nejm.org/cgi/content/full/351/1/13> (finding a high rate of mental health disturbance in soldiers returning from active duty in Iraq and Afghanistan; this is the only comprehensive study—as of early 2006—on the mental health affects of these wars on military personnel);

Many studies indicate that more frequent and more intense involvement in combat operations increases the risk of developing chronic [Post Traumatic Stress Disorder] PTSD and associated mental health problems. Initial evidence indicates that combat operations in Iraq are very intense. Soldiers in Iraq are at risk for being killed or wounded themselves, are likely to have witnessed the suffering of others, and may have participated in killing or wounding others as part of combat operations. . . 94% of soldiers in Iraq reported receiving small-

violent crimes upon their return.¹⁹⁴ Many seek psychological services to cope with the trauma of battle and being a part of an occupying force.¹⁹⁵ The CRC recognizes children's right to rehabilitation from the adverse effects of warfare.¹⁹⁶ Although the CRC is not binding on the U.S., it raises the issue of rehabilitation of military personnel. The serious health consequences of military service today are not apparent, especially to high school students.¹⁹⁷ High school age children often focus on short-term goals as opposed to long-term consequences making them especially vulnerable to recruitment.¹⁹⁸

Military recruiting on high school campuses is inconsistent with the other "age boundaries" present in U.S. law.¹⁹⁹ High school students cannot vote but can be aggressively recruited into the military.²⁰⁰ This fact raises the question of whether it is just to accord responsibility for the defense of the nation to minors without according them civil and political rights. Nevertheless, the U.S. military's policy is to recruit by targeting high school

arms fire. In addition, 68% of soldiers in Iraq reported knowing someone who was seriously injured or killed, 68% reported seeing dead or seriously injured Americans, and 51% reported handling or uncovering human remains. The majority, 77% of soldiers deployed to Iraq reported shooting or directing fire at the enemy, 48% reported being responsible for the death of an enemy combatant, and 28% reported being responsible for the death of a non-combatant. An additional set of unique stressors stems from the fact that much of the conflict in Iraq, particularly since the end of formal combat operations, has involved guerilla warfare and terrorist actions from ambiguous and unknown civilian threats. In this context, there is no safe place and no safe role. Soldiers are required to maintain an unprecedented degree of vigilance.

Brett T. Litz, *U.S. Department of Veterans Affairs, A Brief Primer on the Mental Health Impact of the Wars in Afghanistan and Iraq*, April 7, 2005, http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_iraq_afghanistan_lay_audien.html?opm=1&tr=rr140&srt=d&echorr=true.

¹⁹⁴ Nick Bryant, *Murders Shake U.S. Military*, BBC WORLD NEWS EDITION, Aug. 17, 2002, http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondant/2197592.stm (returning from active duty in Afghanistan, four young men, part of elite fighting force, murdered their wives a Fort Bragg, North Carolina).

¹⁹⁵ For a description of the serious mental health issues arising for U.S. and other military personnel deployed overseas, see generally Hoge, *Combat Duty in Iraq and Afghanistan, Mental Health Problems and Barriers to Care*, *supra* note 193; Litz, *U.S. Department of Veterans Affairs, A Brief Primer on the Mental Health Impact of the Wars in Afghanistan and Iraq*, *supra* note 193.

¹⁹⁶ CRC, *supra* note 20.

¹⁹⁷ DIXON & STEIN, *supra* note 180 (discussing general development of children and adolescents and their perceptions of reality).

¹⁹⁸ *Id.*; see notes 70-74 and accompanying text.

¹⁹⁹ Scott, *Criminal Responsibility in Adolescence: Lessons from Developmental Psychology*, in *YOUTH ON TRIAL*, *supra* note 27, at 302.

²⁰⁰ U.S. CONST. amend XXVI, *supra* note 27 and accompanying text.

students.²⁰¹ There are incentives to both the recruiters and the recruits to boost youth enlistment.²⁰²

Recruiters offer young people monetary and educational benefits to entice them into the service. The military offers young recruits the benefit of a college education as well as other incentives if they choose to serve.²⁰³ Because the military must compete with the private sector for young, smart recruits, it sets up benefit packages and conducts intelligent marketing campaigns.²⁰⁴ Websites sell the benefits of military service to young people.

The military markets the service to young people using the latest technology. The army's website offers state-of-the-art graphics highlighting information on the benefits of military service. There is a link to a website devoted to "future soldiers." This website details the training program, encourages future soldiers to refer others to the program.²⁰⁵ The website includes the option to enter a live chat room with a recruiter. There is a special section of the website reserved for parents of future soldiers, which addresses their potential questions about military service.²⁰⁶ The military's maintenance of a separate section of their website for future soldiers and their parents supports the assertion that the military specifically targets minors for recruitment. It shows that the military relies on technology to attract teenagers as well as parental encouragement to secure these young recruits. The military does not need to organize around recruiting minors in order to provide adequately for national security.

According to the Committee on Youth Population and Military Recruitment, the military *should* target older recruits.²⁰⁷ Studies show that Americans in their early twenties are more likely to shift employment frequently or hold part-time jobs.²⁰⁸ This propensity makes twenty-somethings ideal military recruits. The nature of military service offers variety in deployment, the opportunity to travel, and different skill-building opportunities.²⁰⁹ High school students are more vulnerable to military

²⁰¹ 20 U.S.C. § 7908 (2005); *see supra* notes 107-109 and accompanying text (demonstrating that U.S. reserved right to recruit persons under eighteen); *see also supra* notes 1-3 and accompanying text (demonstrating U.S. military recruitment practice on high school campuses).

²⁰² *See supra* notes 36-41 (discussing incentives offered to young military recruits including education benefits under the Montgomery GI Bill).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ United States Army Recruiting Command, Future Soldiers Training Program, Feb. 13, 2007, <http://www.futuresoldiers.com/>.

²⁰⁶ *Id.*

²⁰⁷ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

recruitment.²¹⁰ Older twenty-something recruits on the other hand, are developmentally, psychologically and socially more capable of making informed decisions.²¹¹ Furthermore, the disproportionate enlistment of low-income high school youth suggests another problem.²¹²

The Optional Protocol provides special protections to all minors.²¹³ The Optional Protocol recognizes “the special needs of... children who are particularly vulnerable to recruitment or use in hostilities...owing to their economic or social status...”²¹⁴ Low-income children are especially vulnerable to military recruiting tactics and are disproportionately represented in the military.²¹⁵

The military can be an easy way out for teenagers in difficult economic circumstances, but it may not be the only way.²¹⁶ Aggressive military recruiting on high school campuses frustrates children's efforts to explore other options. The language of the Optional Protocol clearly protects those children within the class who are even more vulnerable to military recruitment due to their financial and social position.²¹⁷

V. MODEL SOLUTION

The best alternative to our present system of military recruitment that still meets enlistment needs is a national service program.²¹⁸ Upon reaching age eighteen, a national service program would provide all U.S. citizens with the choice of military or public service.²¹⁹ A national service program would provide good career and educational opportunities for all youth,

²¹⁰ DIXON & STEIN, *supra* note 180; *see also supra* notes 1-2, 70-74 and accompanying text.

²¹¹ COMM. ON THE YOUTH POP. AND MILITARY RECRUIT., *supra* note 2, at 149; DIXON & STEIN, *supra* note 180.

²¹² *See supra* note 120.

²¹³ Optional Protocol, *supra* note 7, at introduction.

²¹⁴ *Id.*

²¹⁵ *See supra* notes 1-2, 212.

²¹⁶ *Id.*

²¹⁷ Optional Protocol, *supra* note 7, at introduction.

²¹⁸ Tom W. Smith, *The Polls—A Report, National Service*, 54 THE PUBLIC OPINION QUARTERLY, No. 2, 273 (Summer, 1990) (discussing results from polls conducted by the Gallup Organization amongst others documenting public interest in a national service program). For an example of a proposed national service program see Universal National Service Act of 2003, H.R. 163, 108th Congress (2003), *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR00163:AAAL&summ2=m&> (providing that all young persons in the United States, including women, perform a period of military or civilian service in furtherance of the national defense, homeland security, and other purposes in the national interest).

²¹⁹ Smith, *The Polls—A Report, National Service*, at 275.

including at-risk youth.²²⁰ It would help to deconstruct social stratification based on economic, racial, and ethnic lines.²²¹

Representative Charles Rangel (D-N.Y.) introduced the Universal National Service Act in 2003 as a response to the problem of disproportionate representation of lower income groups in the military.²²² This Act sought to address the overrepresentation of certain groups in the military by requiring either military or civilian service from all young people.²²³ Such a service builds civic values, boosts needed services and provides the function of a social equalizer.

National service programs operate in many countries, including: Denmark, Finland, Germany, Israel, Mexico, Norway, Sweden and Switzerland, amongst others.²²⁴ In Denmark, for example, all able-bodied men serve in the military for four months following matriculation from high school.²²⁵ A similar program could work in the United States. A national service program would give both male and female students a choice of service opportunities. At age eighteen, students would have the opportunity to either enlist in one of the branches of the armed services or volunteer for a national service program. Military enlistees would gain the benefits of the GI Bill, which provides educational incentives upon completion of military service.²²⁶ Eighteen-year-olds who choose to go to the national service corps instead could receive educational benefits and pay or an education stipend upon completion of the program. The service period for such programs in other countries ranges from one to three years. Such programs would provide substantial benefits to the country.

The programs would enable teens from a variety of backgrounds and regions to form connections leading to the creation of a more unified national identity.²²⁷ Additionally, the services both groups would provide would be vital to the country. The Military service program would fulfill the interest in national security. The youth corps could provide a variety of

²²⁰ *Id.* at 273 (providing youths with a national service option could “help youths, partly an economic program to reduce youth unemployment and teach job skills, and partly a ... program to teach self-discipline and responsibility”).

²²¹ *Id.* (National service has the potential to “engender[] a sense of community among ... youth”).

²²² Universal National Service Act of 2003.

²²³ *Id.*

²²⁴ Central Intelligence Agency, *The World Fact Book*, <https://www.cia.gov/cia/publications/factbook/index.html> (select country) (last visited March 5, 2007).

²²⁵ DENMARK CONSTIT. art. 81 (creating a mandatory national military service program upon graduation from secondary school with alternative of civilian volunteer service).

²²⁶ *See supra* notes 36-38 (discussing incentives offered to young military recruits including education benefits under the Montgomery GI Bill).

²²⁷ Smith, *The Polls—A Report, National Service*, at 273-76.

needed services like human resources and teaching assistance, as well as hard labor, like road clearing and emergency relief. A mandatory service program in the U.S. would instill values of honor and service in its young citizens. It would also address some of the nation's most important domestic and foreign-relations concerns.

VI. CONCLUSION

The U.S. military's practice of recruiting children on high school campuses violates the plain language and intent of the Optional Protocol.²²⁸ Furthermore, the military's current methods of recruiting seventeen-year-olds to the military do not comport with the standards of informed consent required by the Optional Protocol.²²⁹ The disproportionate representation of low-income persons in the military suggests that the military targets these recruits in violation of the Optional Protocol's protection of special groups.²³⁰

Children in the U.S. are particularly vulnerable to abuse and coercion. Furthermore, children's basic rights—accepted as fundamental by nearly every nation—are not accepted as such by the U.S.²³¹ The fundamental rights that U.S. children effectively lack include the right to survival and development.²³² If the U.S. were to take these rights and others contained in the CRC and the Optional Protocol seriously, it would prohibit all military recruitment on high school campuses. The U.S. falls short by its failure to recognize children's rights in a meaningful way.²³³ By fulfilling its own treaty obligations under the Optional Protocol, the U.S. could again fulfill its role as an exemplar of human rights to the world. The first step is to ban military recruitment on high school campuses.

²²⁸ Optional Protocol, *supra* note 7, at art. 3.

²²⁹ *Id.* at art. 3(3)(a)-(b).

²³⁰ *Id.* at Introduction.

²³¹ CRC, *supra* note 20.

²³² *Id.* at art. 6 (declaring that children have a right to survival and development).

²³³ CRC, *supra* note 20 and accompanying text.