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CONVENTION ON THE RIGHTS OF THE CHILD**

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Article 18 (Parental responsibilities)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, pp. 124-125). Article VI and article VII, paragraph 2, are most closely related to the substantive concerns under present article 18.

Article VI

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Article VII

1. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.
2. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
3. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

2. Comments on article VI of the first Polish draft

Article VI of the draft convention gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

The payment of State and other assistance towards the maintenance of children of large families is desirable but it is suggested that a family should be encouraged to limit its size especially where it becomes difficult to provide adequately for these children.

(b) Bulgaria

The following is taken from document E/CN.4/1324.

Add the words: "and children from incomplete families (children of unmarried mothers, widows, divorced parents) or children who have been abandoned by their parents" to the penultimate sentence of article VI.

(c) Finland

The following is taken from document E/CN.4/1324.

"Where necessary, Governments should, by economic or other arrangements, ensure the possibilities for parents to take care of their children" (to be inserted after the first sentence);

The wording "be separated from his mother", at the end of the second sentence to be replaced by the wording "be separated from his parents";

The last sentence to be replaced by the following sentence: "Governments shall ensure the livelihood of families with children and provide the necessary family counselling and domestic services".

(d) France

The following is taken from document E/CN.4/1324/Add.1.

1. In the light of the comments made in paragraph 4 (a) above under "General Comments", the first sentence of this article should be included in a preliminary declaration or a recommendation.

2. Article VI could be improved in two other respects. While a young child should not be separated from his mother, it is equally important that his ties to his father should not be jeopardized. The article might also be completed by a special reference to the situation of children belonging to an international family that has split up. These two points might be worded as follows:

(a) Add at the end of the second sentence, after the words "A child of tender years shall not, save in exceptional circumstances, be separated from his mother", the words "but neither shall his ties with his father be jeopardized or severed".

(b) Add at the end of the third sentence the following words: "Children who belong to an international family that has split up shall, so far as possible, preserve their ties with both parents even if they are of different social origin, nationality or religion."

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6 and 7, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6 and 7, which appear elsewhere in document E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

(f) Greece

The following is taken from document E/CN.4/1324.

1. The Greek Government considers that the role of the father for the normal development of children has been so far underestimated and should be stressed in the future. It suggests the following alteration starting as from the middle of the paragraph.

“... a child of tender years shall not, save in exceptional circumstances, be separated from his parents.”

2. Because of the growing problem of child abuse (non-accidental injury) by one or both of his parents or his caretakers, the Greek Government feels that special mention should be made of the problems of these children. It suggests the following rewording:

“... society and the public authorities shall have the duty to extend particular care to children not only without a family, but also those whose families are evaluated as unable to care for the child in the present and future, regardless of support from public authorities. The child in that case deserves to grow up in an environment which can guarantee his optimal development. Payment of State and other assistance ...”

(g) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

Sentences 1 and 2 are generally acceptable. However, the phrase “separated from his mother” requires qualification. It appears to preclude the choice available to many parents at present to place “the child of tender years” in the day care or childcare situation where the quality of care is judged to be equivalent to or even better than that provided by the family and the mother. There is now a considerable body of evidence which indicates that such practices are not detrimental to the best interests of the child and may in fact be positively in the child’s best interests. Moreover there is no principle in New Zealand law whereby a child of “tender years” shall not, save in exceptional circumstances, be separated from his mother. Both parents are entitled to custody of their child and in the event of a dispute over custody, the court is bound to treat the welfare of the child as the first and paramount consideration (Guardianship Act 1968, S. 23). Thus it would be possible for a small child to be separated from his mother if the court thought this was in the best interests of the child. In addition the Family Proceedings Bill would give equal rights to parents in custody disputes, where the paramount consideration is still the welfare of the child. To that extent our law accords with the principle of article II, rather than article VI.

The last sentence of the article as stated is highly debatable. We would prefer that all children, without discrimination according to size of family, were given the same financial benefits by the State. The equalization of family circumstances would be carried out through the taxation structures of the country. We would

therefore suggest an alternative wording along the lines of: "Payment of State and other assistance towards the maintenance of all children should be of such a nature that no child is placed at a disadvantage because of the size of the family".

(h) Norway

The following is taken from document E/CN.4/1324.

1. Delete the following phrase:
"a child of tender years shall not, save in exceptional circumstances, be separated from his mother."
2. Amend the last sentence to read as follows:
"Economic support for families with children, through appropriate mechanisms, is desirable."

(i) Spain

The following is taken from document E/CN.4/1324.

1. After the words "children without a family" insert the words "arranging for them to be placed, wherever possible, in the most appropriate family environment and, with respect to those without means of support, supplying them with the necessary assistance and preventing them from being uprooted from the family environment". The words "and to those without adequate means of support" would accordingly be deleted.
2. The purpose of this is to avoid the effects of being placed in institutions and, so far as possible, to encourage acceptance in families and adoption.

(j) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(k) Sweden

The following is taken from document E/CN.4/1324.

The child's need of close contacts with both parents - and not only with the mother - is a fact which ought to be adequately reflected in the convention. Generally, the equality of children with respect to education, social and health care is a fundamental element.

(l) World Health Organization (WHO)

The following is taken from document E/CN.4/1324.

Article VI, [third] line:

We have some difficulties with the reference to "moral security" and would prefer the deletion of "moral". The provision would thus read: "... in an atmosphere of affection and security; ..."

(m) International Council of Women

The following is taken from document E/CN.4/1324.

Article VI seems to us to be ambiguously formulated. It is obviously aimed at providing the child with optimum conditions for the harmonious development of his personality but the juxtaposition, in one and the same article of the convention, of love and family allowances is not felicitous. There seems to be a problem of drafting, if not of substance.

(n) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother, although his ties with his father shall not thereby be weakened or broken, and a child belonging to a divided international family shall, so far as possible, maintain his ties with both his parents. Society and the public authorities shall have the duty to extend particular care to children without a family, to those belonging to a divided international family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

(o) International Humanist and Ethical Union

The following is taken from document E/CN.4/1324.

In the light of other world problems, especially the population problem, we doubt whether it is desirable to include in article VI the sentence "payment of State and other assistance towards the maintenance of children of large families is desirable". This, in effect, nullifies efforts to decrease population in the world. We agree that States should be encouraged to achieve an adequate standard of living for their citizens and feel that it might be better to replace the above-mentioned sentence by a sentence to that effect.

3. Comments on article VII (2) of the first Polish draft

Article VII, paragraph 2, of the draft convention gave rise to the following comments.

(a) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

1. Another paragraph should be added to article VII: "The fullest safeguarding of the interests of the child shall be the guiding principle in the legislative regulation of family relationships."
2. Paragraph 2 should become paragraph 3, and the following words should be added to it: "but also with the State and society".

(b) France

The following is taken from document E/CN.4/1324/Add.1.

1. Paragraph 2. In order to emphasize the primary responsibility of the parents, while underlining the complementary but subsidiary nature of the role played by the State and by public, semi-public and private bodies and institutions, the wording of the draft convention should be amended as follows: "The education of the child is in the first instance the responsibility of his parents. The best interests of the child shall be the guiding principle of those who are responsible for it."

(c) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6, 7 and 8, Federal Republic of Germany, under General Comments.

For paragraphs 3, 6 and 7, see section 2 (e) above. The views expressed by the Federal Republic of Germany in paragraph 8 do not concern present article 18.

(d) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

[...]

Section 2 - Acceptable.

(e) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(f) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

Paragraph 2 of the draft article should be modified as follows: “The best interests of *the overall growth and development* of the child shall be the guiding principle of those responsible for his education and guidance: that responsibility lies in the first place with his parents”, to take account of the importance of the interrelationships between the various areas of development.

(g) International Council of Women

The following is taken from document E/CN.4/1324.

1. It seems to us that paragraph 2, which is presented as a “sub-article”, does not go far enough and weakens the last preambular paragraph, “*Proclaiming* that mankind owes to the child the best it has to give”.

2. While it might be difficult to introduce such a formula into the text of a convention, we should like it to be said that every adult is responsible for the children with whom he comes into contact, in the widest sense of the word: in our opinion, no adult has the right to offend or neglect a child: the child must be respected.

4. Other relevant comments on the Polish draft

(a) Dominican Republic

The following comment on article II of the first Polish draft is taken from document E/CN.4/1324.

1. We consider it appropriate to add, after the word “dignity” at the end of the first sentence of article II, the words “Children of working mothers shall enjoy, from the time of their birth until they reach

school age, the assistance of centres or day nurseries which guarantee the care and assistance necessary for their full development during these early years of their life.”

[...]

C. First reading (1979-1988)

The text of article 18, which was based on article 8 of the revised Polish draft, was discussed and adopted by the Working Group in 1981. This article was referred to as article 8 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article VIII

- “1. The duty of bringing up the child shall lie equally with both the parents, who, in any case, should be guided by his best interests and, in keeping with their own beliefs and in compliance with the stipulations of article 7, shall prepare him for an individual life.
2. The States Parties to the present Convention shall render all necessary assistance to parents and guardians in the performance of their educational function, and shall undertake measures to organize and ensure the development of institutions of children’s care.
3. Children of working mothers shall have the right to frequent the institutions of day care of children until they have completed school age.”

2. Proposals submitted to the Working Group (1981)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Australia

For the text of these proposals, see paragraphs 83, 94, 96 and 101 in section 3 below.

(b) Cuba

For the text of this proposal, see paragraph 85 in section 3 below.

(c) France

For the text of this proposal, see paragraph 114 in section 3 below.

(d) Norway

For the text of this proposal, see paragraph 104 in section 3 below.

(e) United States of America

For the text of these proposals, see paragraphs 84, 99 and 103 in section 3 below.

(f) International Labour Organization (ILO)

For the text of this proposal, see paragraph 106 in section 3 below.

3. Discussion and adoption by the Working Group (1981)

The following is taken from paragraphs 82-115 of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

82. Article 8 of the revised Polish draft read as follows:

“1. The duty of bringing up the child shall lie equally with both the parents, who, in any case, should be guided by his best interests and, in keeping with their own beliefs and in compliance with the stipulations of article 7, shall prepare him for an individual life.

2. The States parties to the present Convention shall render all necessary assistance to parents and guardians in the performance of their educational function, and shall undertake measures to organize and ensure the development of institutions of children’s care.

3. Children of working mothers shall have the right to frequent the institutions of day care of children until they have completed school age.”

Paragraph 1

83. The representative of Australia proposed that the last three words of the paragraph be replaced by the phrase “life as an individual”.

84. The delegation of the United States proposed that paragraph 1 be replaced by the following text:

“States parties shall take all appropriate measures to ensure the recognition of the common responsibility of men and women in the upbringing and development of their children or, in the case of legal guardians, of the children legally entrusted to their care.”

85. The representative of Cuba proposed that the first line and a half of paragraph 1 should be replaced by the following: “The duty of bringing up the child shall lie with both parents, each of whom shall play an equally important role. The parents should be guided, in any case”

86. Some delegations, in particular the delegation of the Soviet Union, felt that they would prefer the statement in the revised Polish draft to the effect that the duty of bringing up the child should lie equally with both parents not to be amended. It was indicated that this idea of equal responsibility conformed to article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, which stated that States parties in particular shall ensure on a basis of equality of men and women, inter alia, the same rights and responsibilities as parents, in matters relating to their children.

87. Another representative disagreed with this interpretation, maintaining that article 16 of the Convention on the Elimination of All Forms of Discrimination against Women concerned equality of men and women only as to legal rights and responsibilities of parenthood, not the daily routine parental responsibilities. He asserted that the concept of common responsibility of men and women in the upbringing and development of children expressed in article 5 (b) of that Convention was more appropriate in this context than equality, since each family allocates parental responsibilities differently, and it is no concern of the State how this is done, except in child support or other extreme cases.

88. Following consultations, the delegation of the United States proposed the following revised text:

“Parents have the primary responsibility for the upbringing of their children. States parties shall take all appropriate measures to ensure the recognition of the common responsibility of both parents in the upbringing and development of their children or, in the case of legal guardians, of the children legally entrusted to their care.”

89. The representative of Brazil suggested the addition of the phrase “or, as the case may be, guardians” in the first line of the paragraph after the word “parents”, in order not to leave orphans unprotected. He also

proposed the insertion of the words “and development” after the word “upbringing” in the [first] line of the paragraph under discussion, and the introduction, after the first sentence of the paragraph, of the following sentence: “The best interest of the child will be their basic concern.” Besides, the representative of Brazil proposed the insertion in the [first and] second line[s] of the paragraph of the words “States parties shall make the best efforts” instead of the words “States parties shall take all appropriate measures”.

90. In addition, the delegation of Italy suggested that the words “their children” at the end of the first sentence be replaced by the words “the child”.

91. Accordingly, the first two sentences of paragraph 1, as amended, read: “Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” One of the representatives explained that the aim of the first sentence was to protect parents against excessive intervention of the State and also to indicate that parents cannot expect the State always to intervene, because the upbringing and development of their child is their primary responsibility.

92. After prolonged discussion on the questions presented by the introduction of the concept of equality into this paragraph, the representative of the Soviet Union proposed the insertion of the words “and equal” in the [second] line of the text between the words “common” and “responsibility”.

93. A proposal to delete the following words from the end of the paragraph “or, in the case of legal guardians, of the children legally entrusted to their care” was also put forward for consideration by the Working Group and received the support of some delegations.

94. The representative of Australia, after consultations, proposed the following formulation for the third sentence of paragraph 1:

“States parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.”

95. The Working Group adopted by consensus paragraph 1 as amended:

“Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.”

Paragraph 2

96. The representative of Australia proposed that paragraph 2 should be reworded to read:

“The States parties to the present Convention shall render all necessary assistance to parents and guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions for the care of children.”

97. Some delegations found both the Australian and Polish texts for this paragraph acceptable, while others only supported the Australian amendment.

98. A discussion ensued concerning the nature of the assistance to be rendered by States parties to parents and guardians in the performance of their educational function. One delegation raised the question as to how the State could be prevented from granting unwanted assistance to parents and guardians in the performance of their duties as well as from interfering in family life. That delegation agreed, however, that States should provide financial or other material assistance and counselling where appropriate.

99. After some further discussion, the representative of the United States proposed the following text for paragraph 2:

“For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States parties to the present Convention shall render appropriate assistance to parents and guardians in the

performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children.”

100. This new text was supported by the Working Group and was adopted by consensus.

Paragraph 3

101. There was a proposal by the representative of Australia to reword paragraph 3 as follows:

“Children of working mothers or of parents who both work shall have the right to attend institutions for the day care of children until they reach school age.”

102. The delegation of Poland indicated that it had considered proposing an amendment to the original version of the paragraph that would take account of children of working parents; therefore the Australian proposal was acceptable.

103. The delegation of the United States also introduced a proposal to replace paragraph 3 of the revised Polish draft by the following:

“In accordance with available resources, States parties shall ensure that children of working parents shall have access to public day care facilities for which they are eligible until they have completed their schooling.”

104. In addition, the representative of Norway proposed that the phrase “working mothers” should be replaced by “both parents working or with sole provider” and that the word “completed” in the [penultimate] line of the paragraph should be replaced by the word “reached”.

105. The delegation of Poland proposed the following text which had been elaborated after consultations:

“States parties shall ensure that children of working parents shall have the right to attend institutions for childcare for which they are eligible until they have completed their schooling.”

106. The observer from the International Labour Office drew attention to the provisions of ILO Recommendation 123 relative to childcare services, which is at present being revised by the International Labour Conference. He also presented a text which read:

“The States parties to the present Convention undertake to adopt all appropriate measures in the light, inter alia, of existing international instruments so as to ensure that services and institutions providing care (and day care) for children primarily meet the needs of children of working parents.”

107. The representative of the United Kingdom of Great Britain and Northern Ireland suggested the inclusion in the article under consideration of the idea that the State should ensure that any childcare services and facilities from which children have the right to benefit were of an adequate standard.

108. Differing views were expressed regarding the extent to which States parties to the convention should be obliged to provide institutions for the care of children of working parents. One representative drew the attention of the Working Group to the fact that there were many developing countries where the possibility of having childcare services and facilities was virtually non-existent due to scarcity of resources. Some delegations indicated that the concept that children of working parents have the right to benefit from childcare services and facilities should not be omitted from the convention under elaboration, even if in some countries there were no resources available yet to implement that right. One delegation stressed the importance of acknowledging that childcare facilities in some countries are established and maintained primarily by local communities or private entities and that the eligibility requirements of such facilities must not be undermined by the convention.

109. The Chairman announced that, after consultations, a compromise text had been elaborated which read as follows:

“States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible. These services and facilities shall conform with the standards established by competent authorities, particularly in the areas of safety and health.”

110. The representative of the United Kingdom found the new text acceptable but suggested the addition, after the word “health”, of the words “and in the number and suitability of their staff”.

111. The representative of Australia felt that only the first sentence of the above-mentioned text should be maintained as paragraph 3, and that the second sentence should be transferred to paragraph 2 of article 8.

112. The representative of Bulgaria requested the deletion of the phrase “particularly in the areas of safety and health” at the end of the paragraph.

113. After a further exchange of views, a consensus was reached to the effect that the paragraph should read:

“States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible. These services and facilities shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff.”

Paragraph 4

114. The representative of France suggested that the second sentence of paragraph 3, with a small amendment, should become a fourth paragraph which would read:

“The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff.”

Many delegations expressed support for this proposal.

115. The Working Group adopted by consensus as paragraph 4 the text that had been presented by the representative of France. Consequently, paragraph 3 of article 8, as adopted by the Working Group, read as follows:

“States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.”

4. Proposal submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session of the Working Group.

[...] we propose the addition of the following sentence after the second sentence of paragraph 1 of article 8:

“States parties shall use their best efforts to uphold the principle that both parents have equal responsibility and pursue similar objectives with a view to fostering the growth and ensuring the development of the child”.

5. Comment submitted to the Working Group (1987)

(a) Morocco

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, para. 2).

2. [...] By a note verbale of 30 January 1987, the Permanent Representative of Morocco asked that their observations on the draft convention be brought to the attention of the Working Group; those observations were contained in E/CN.4/1987/WG.1/WP.35.

The following is taken from document E/CN.4/1987/WG.1/WP.35.

[...]

ARTICLE 8: which provides for joint and similar responsibility of the two parents, runs counter to Moroccan civil law. The granting of rights to the child can in no way mean upsetting the normal rules of the civil law.

[...]

6. Proposals submitted to the Working Group (1988)

(a) Four Directions Council

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 7.

[additional paragraph 2 to article 1]

The term “parents”, where it appears in this Convention, shall include other family members who customarily share responsibility for the child’s upbringing and guidance.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 13.

[new] article 21 quater (interpretation of the term “parents”)

In this Convention, the term “parents” shall be interpreted to include, where appropriate, other family members or guardians who have de facto responsibility for the care and upbringing of the child.

7. Statement made to the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 235).

235. During its session, statements were made to the effect that the proposals relating to the following articles should be considered by the Working Group during the second reading of the draft convention. In that connection, the representative of the Four Directions Council had expressed the hope, at the last meeting of the Working Group, that articles relating to family responsibility in upbringing and guidance as well as to conservation of a country’s linguistic and cultural diversity as had been proposed by indigenous children would be taken up at the second reading.

[...]

8. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 8

1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

4. The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities particularly in the areas of safety, health, and in the number and suitability of their staff.

D. Technical review (1988)

1. Comment by the Branch for the Advancement of Women

The following general comment is taken from document E/CN.4/1989/WG.1/CRP.1, pages 7-8.

The draft convention covers most of the sensitive points closely related to women's role and discrimination against them. The draft convention no doubt reflects a concern widely expressed regarding the child, and his or her physical and mental development in a changing society where his/her rights had not been specified and the status of the family had to evolve within a general socio-economic crisis affecting equally developed and developing countries.

Among the points deserving some thought we found, along with some initial comments made early at the beginning of the discussion of the draft convention, that emphasis should be placed on the principle of "equal rights of men and women" as it appears in the second paragraph of the United Nations Charter. This suggestion finds its own justification from the impact of the effects in practice of certain legislation which does not grant both parents equal responsibility vis-à-vis the child, when the parent, by his or her behaviour implicitly rejects such responsibility. Whenever possible, legislation and practice should be confronted in the course of the final discussion of the relevant articles and paragraphs dealing with parental responsibilities and the rights of the child.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

(a) Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia

The following text is taken from document E/CN.4/1989/WG.1/WP.4.

[...]

Article 8

In paragraph 1, the word "similar" should be deleted and replaced by "complementary".

[...]

(b) Libyan Arab Jamahiriya

The following is taken from document E/CN.4/1989/WG.1/WP.3.

[...]

Article 8, paragraph 1:

The first line should read as follows: “Parents or guardians, as the case may be, have the primary responsibility ...”

(c) Norway

The following is taken from document E/CN.4/1989/WG.1/WP.3.

Article 8, paragraph 2 (amendment)

For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render [appropriate] assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of provisions for early childhood care and stimulation.

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 304 to 314).

304. The drafting group composed of Algeria, Finland, Libya and Norway submitted a proposal with regard to article 8 (E/CN.4/1989/WG.1/WP.56) which read as follows:

“1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.”

305. In introducing this proposal, the observer for Finland pointed out that its text was close to that of article 8 as adopted at first reading. In paragraph 1, the word “similar” was deleted since, in the view of the group, it was rather ambiguous. In paragraph 2, the term “institutions” which the group considered too narrow, was complemented by the words “facilities and services”. The drafting group also decided to delete paragraph 4 as adopted at first reading since, in the opinion of the group, the substance of it had been already covered by paragraph 3 of article 3 as already approved.

306. In the course of the discussion that followed, the participants supported in general the approach of the drafting group and agreed with most of its proposals.

307. The representative of Norway, being one of the authors of the text in E/CN.4/1989/WG.1/WP.56, orally proposed to revise it further by adding the words “and emotional, intellectual and social stimulation” after the words “institutions for the care” in paragraph 2 of the proposed text.

308. While some support was voiced for the proposal of Norway, the prevailing view still was that this idea had been already covered by the words “care of children” in this same paragraph as well as by the provisions of article 16 of the draft convention, and that details of this kind were therefore unnecessary. The representative of Norway then withdrew his proposal.

309. The Working Group agreed with the proposal of the Netherlands to add the word “legal” before the words “guardians” in paragraphs 1 and 2 of article 8.

310. Another oral amendment put forward by the Netherlands seeking to delete paragraph 3 of E/CN.4/1989/WG.1/WP.56 was opposed by some delegations, and the amendment was subsequently withdrawn.

311. The representative of the United States of America expressed the view that the way in which paragraph 1 had been formulated to create responsibilities for private individuals was rather strange for an international covenant which, after all, could only create binding obligations for ratifying Governments.

312. The representative of the United Kingdom suggested in this connection that the last phrase of paragraph 1 should be transferred to the very beginning of that paragraph. The Working Group agreed with this suggestion.

313. The representative of the Union of Soviet Socialist Republics orally proposed that the words “and others responsible for the child” be inserted after the word “guardians” in paragraph 2 of article 8. The observer for Australia sub-amended the proposal of the Union of Soviet Socialist Republics to read: “as well as others responsible for the child”.

314. After some discussion, the representative of the Union of Soviet Socialist Republics withdrew his amendment, and the Working Group adopted article 8 reading as follows:

“1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.”

Article 19 (Prevention of abuse and neglect)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article IX

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

2. Comments on the first Polish draft

Article IX of the draft gave rise to the following comments.

(a) Central African Empire

The following is taken from document E/CN.4/1324/Add.1.

The Government of the Central African Empire would like to suggest that, in article IX, paragraph 2, the appropriate minimum age should be fixed at 14 years.

(b) Dominican Republic

The following is taken from document E/CN.4/1324.

By way of comment only, we would draw attention to the fact that the provisions of articles IX and X of the draft have been given detailed treatment in various ILO international agreements on other questions; it might be advisable to review those agreements in case their contents should be expanded.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

- (a) It would be desirable to add, in the second sentence, after the words "He shall not be the subject of traffic" the words "or of a commercial transaction";

(b) With regard to admission to employment, the words “appropriate minimum age” in the next sentence should be replaced by the words “the requisite age”;

(c) It would be desirable for the convention to include a provision affirming the right of the child at least to be consulted when certain events affecting his personal situation are to take place. The additional article might be worded as follows: “As soon as the child is capable of understanding, his consent must be sought when decisions have to be taken that may seriously affect his personal situation, such as those relating to adoption or the granting of custody.”

(d) German Democratic Republic

The following is taken from document E/CN.4/1324.

More precise legal language should be used in article IX, paragraph 2, to formulate the impermissibility of admitting children to employment or an occupation.

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected, disturbed or ill-treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of “baby-farming”.

We attach an appendix listing the legislation and regulations covering the employment of children in New Zealand. There is no evidence that child labour is being exploited in New Zealand. The employment of children on agricultural work is allowed only during hours which do not prejudice their work at school, with a maximum of eight hours per day. The introduction of legislation prohibiting young persons (under 15) from engaging in occasional or part-time employment such as the customary fruit-picking, sale of confectionery in cinemas during intervals and milk and newspaper vending, would have neither parental nor public support in New Zealand. Given the provisions of the Education Act 1964 fixing at 15 the age at which a child may leave school, and the various Acts and Regulations (see appendix) narrowing substantially the fields in which persons under 15 may be employed, New Zealand could be considered to fulfil the general obligation under article IX, section 2.

(g) Spain

The following is taken from document E/CN.4/1324.

Add a paragraph 3 reading:

“The child shall be protected by means of adequate education against any type of manipulation, whether in regard to information, consumption, sex, etc.”

(h) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(i) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of trade or traffic, in any form.

2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

C. First reading (1979-1988)

The text of article 19 was discussed and adopted by the Working Group in 1984. This article was referred to as article 8 bis throughout the first and second readings.

1. Proposal submitted to the Working Group (1982)

(a) United States of America

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/L.41), which is reproduced in the 1982 report of the Commission on Human Rights (E/CN.4/1982/30/Add.1, part C, para. 118).

[...]

Proposal made by the representative of the United States of America which was not discussed by the Working Group for lack of time in the 1982 session:

“Article 8 bis

“1. The States Parties to the present Convention shall take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental injury or abuse, general neglect or negligent treatment, sexual abuse or exploitation, or maltreatment caused by the child’s parent(s), legal guardian(s), or any other person responsible for the child’s welfare under circumstances which indicate that the child’s welfare is harmed or threatened.

“2. Principles for dealing with the problem (e.g., mandatory reporting requirements, through investigation of reported cases, follow-up physical and mental health care, etc.)”

[...]

2. Proposals submitted to the Working Group (1983)

(a) Canada

For the text of this proposal, see paragraph 34 in section 4 below.

(b) United States of America

The following is taken from document E/CN.4/1983/WG.1/WP.3.

Article 8 bis (completion)

2. In order to guarantee the protections called for in paragraph 1 of this article, States Parties shall establish appropriate procedures for responding effectively to known or suspected cases of child abuse, neglect, exploitation or maltreatment. Such procedures should:

- (a) provide for the reporting of known and suspected cases of child abuse and neglect to the responsible authorities;
- (b) provide immunity for persons reporting cases of child abuse or neglect from prosecution arising out of such reporting;
- (c) provide that upon receipt of a report of known or suspected child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report;
- (d) provide that, upon a finding of child abuse or neglect, immediate steps will be taken to protect the health and welfare of the abused or neglected child as well as that of any other child under the same care who may be in danger of abuse or neglect;
- (e) provide for such institutional or other facilities and related multidisciplinary programmes and services as may be necessary and appropriate to assure that cases of child abuse or neglect are effectively dealt with;
- (f) provide for methods to preserve the confidentiality of records in order to protect the rights of the child and his parents and guardians;
- (g) provide for the cooperation of law enforcement officials, courts of competent jurisdiction and appropriate human services agencies;
- (h) provide for the appointment of a legal representative to represent the legal interests of the child in judicial proceedings involving an abused or neglected child; and
- (i) provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat cases of child abuse or neglect.

3. Proposals submitted to the Working Group (1984)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Ukrainian Soviet Socialist Republic

For the text of this proposal, see paragraph 47 in section 4 below.

(b) Union of Soviet Socialist Republics

For the text of this proposal, see paragraph 46 in section 4 below.

(c) United States of America

For the text of these proposals, see paragraphs 43 and 48 in section 4 below.

(d) Defence for Children International

For the text of this proposal, see paragraph 45 in section 4 below.

(e) International Federation of Women in Legal Careers

The following is taken from document E/CN.4/1984/WG.1/WP.4.

New article 13 bis

The Federation proposes that a new article concerning sources of serious damage to children's health other than disease and malnutrition, namely: domestic violence; use of drugs of whatever kind; harmful labour; traditional practices affecting health, and reading:

“The States Parties to the present Convention undertake:

1. To take legislative and other measures to prevent domestic violence against children and to ensure that children who are victims of such violence receive all the necessary care.

[...]

(f) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following is taken from the [1983] Report of informal consultations among non-governmental organizations, which was made available to the Working Group at its 1984 session.

Article dealing with intra-familial child maltreatment (article 8 bis)

1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all acts or omissions that are, or are likely to be, detrimental to the child's present or future welfare and development, including cruelty, injury, neglect, exploitation, discrimination and humiliating or degrading treatment, whether physical, psychological, emotional or sexual in nature, perpetrated by the child's parent(s), guardian or any other individual or social welfare institution responsible for the child's well-being.
2. In order to guarantee the protection called for in para. 1, States Parties shall support those responsible for the child's well-being and shall ensure and facilitate the effective prevention, identification, reporting, referral, investigation, treatment and follow-up of all such acts and omissions.

4. Discussion and adoption by the Working Group (1984)

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, paras. 34-50).

34. At the Working Group's 1983 session, the representative of Canada proposed the following text for article 8 bis:

“The States Parties to the present Convention shall take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, sexual abuse or exploitation or maltreatment while in the care of parent(s), legal guardian(s) or any other person caring for the child.”

This proposal was reintroduced and met with general support from the delegations of France, the German Democratic Republic, the Netherlands, Poland and the Ukrainian SSR for use as a basis for discussion.

35. The representative of the Defence for Children International Movement, speaking on behalf of the Informal NGO Ad Hoc Group on the drafting of the convention on the rights of the child, stated that more emphasis should be placed on the need for preventive action, and recommended a reference to “social and educational measures” in the text under consideration. This suggestion was taken up by the representative of the Netherlands who proposed the inclusion of those words after the word “administrative”, and met with the approval of several delegations.

36. The delegation of Sweden proposed that paragraph 2 of an article dealing with intra-familial child maltreatment as contained in the report of informal consultations among international non-governmental organizations on the draft convention on the rights of the child, be added to the Canadian proposal as a second sentence of the article under consideration. See paragraph 40.

37. The representative of the Islamic Republic of Iran expressed concern that there was no provision in the convention to protect children who were not in the care of their parent(s) or guardian(s), and he therefore suggested that the Working Group might wish to address itself specifically to such a situation when drafting article 8 bis.

38. The representative of Canada thought that it would be more suitable to have some other wording such as “who has the care of” instead of “caring for” between the words “person” and “the child” in the last line of the text. Both the Australian and Netherlands delegations agreed with this proposal by the representative of Canada which was later taken up by the Group.

39. After some disagreement between member delegations over whether “sexual” should modify only the word “abuse” or also “exploitation” and “maltreatment” in the [third] line of the paragraph under consideration, the representative of Finland proposed that the expression “sexual abuse or exploitation or maltreatment” be replaced by “maltreatment or exploitation, including sexual abuse”. Following the suggestion by the delegation of India to delete the comma after the word “exploitation” and its acceptance by the Working Group, the text of the paragraph under consideration was adopted.

Paragraph 2

40. Following on the Swedish proposal outlined in paragraph 36 above, most delegations agreed on the following text, contained in the aforementioned report of informal consultations among non-governmental organizations, as the basis for discussion for a second paragraph of the article under consideration:

“In order to guarantee the protection called for in paragraph 1, States Parties shall support those responsible for the child’s well-being and shall ensure and facilitate the effective prevention, identification, reporting, referral, investigation, treatment and follow-up of all such acts and omissions.”

The representatives of the German Democratic Republic and the Union of Soviet Socialist Republics, however, were of the opinion that article 8 bis should be confined to the text just adopted by the Group.

41. The Netherlands delegation proposed deleting the words “States Parties shall support those responsible for the child’s well-being”, while the United Kingdom delegation suggested the deletion of the word “ensure” in the [second] line of the new paragraph, because, in its view, States Parties would not be prepared to go that far.

42. The delegation of France which, like most delegations, was not opposed to the inclusion of a provision concerning measures to be taken by the State to guarantee the protection of the child from anything that could be detrimental to his present or future welfare and development, proposed including the phrase “and encourage cooperation among all partners concerned” at the end of such a provision. The representative of Finland supported a suggestion made by the United Kingdom delegation to delete the word “ensure” and suggested that it be replaced by the words “promote and encourage”.

43. The United States representative then introduced a proposal for a second paragraph of article 8 bis based on its 1983 proposal for paragraph 2 regarding procedures for dealing with child abuse that States could adopt as protective measures, and stated that her delegation was interested in establishing cooperation among judicial and other appropriate officials concerning measures against the maltreatment of children. The new proposal read as follows:

“Such protective measures should include, inter alia, effective procedures for prevention, identification, reporting, referral, investigation, treatment and cooperation among officials from law

enforcement and health and human services agencies, as well as for appropriate judicial involvement in the matter.”

44. The representative of the Ukrainian SSR did not support the United States proposal for focusing principally on judicial procedures and punitive measures, and indicated that, unless it was withdrawn, his delegation would table an amendment providing that protective measures were mandated to include effective procedures for the implementation of social programmes to look after children in need. But the United States representative indicated that her proposal did not deal only with judicial and punitive action, since it incorporated all the preventive measures suggested in the proposal put forward by the non-governmental organizations; she also indicated that there was nothing about punishment stated or inferred in her proposal and that it was not the case that punitive or criminal measures were stressed in procedures to prevent child abuse in the United States.

45. With regard to the courses of action introduced by the American proposal, the representative of the Defence for Children International Movement felt that cooperation between health and law enforcement agencies, as well as recourse to judicial authorities, were, when necessary and appropriate in the interests of the child, implicit in the range of services, from prevention to follow-up, that States Parties would be urged to provide under the second sentence of the non-governmental organizations’ proposal, as well as in the administrative, legal, social and educational measures they would be bound to take in accordance with the paragraph already adopted by the Group. In view of the above, he put forward the following as a revised proposal for the second paragraph of article 8 bis:

“Such protective measures shall include effective procedures for providing support to those who have care of the child, as well as for all other forms of prevention, and for identification, reporting, referral, investigation, treatment and follow-up of all instances of child maltreatment described heretofore.”

46. The representative of the Union of Soviet Socialist Republics reminded the Working Group of his proposal to the effect that the second paragraph of the article should be omitted, but, if it was not, his delegation would submit the following proposal:

“States Parties shall also promote and encourage all necessary and adequate procedures to make the measures prescribed in paragraph 1 of this article effective.”

47. The representative of the Ukrainian SSR suggested that in the amendment contained in paragraph 45 above, after the words “care of the child”, the following text should be inserted:

“in particular, the implementation of such social programmes as aid to large families and to single mothers, establishment of specialized institutions for abandoned children, boarding schools for children from unemployed and homeless families, scholarships for students from poor families.”

48. In this context, the United States representative proposed modifying the article put forward by the non-governmental organizations by deleting the word “and” before the word “follow-up” in the fourth line, placing a comma after “treatment” and adding a comma after the word “heretofore” as well as the following text:

“cooperation among all appropriate public officials and, as appropriate, for judicial involvement wherein the child’s interests will be fully represented”.

49. An impasse followed in the deliberations which was subsequently resolved through informal consultations between the Ukrainian SSR, the Union of Soviet Socialist Republics and the United States in which a compromise proposal was agreed upon and introduced to the Group by the representative of the Ukrainian SSR, as follows:

“Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have care of the child, as well as for all other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of all instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement wherein the child’s interests will be fully represented.”

50. The representative of the Netherlands found the compromise proposal agreeable, but wished to insert the word “the” in the [second] line between the words “who have” and “care of the child”. At the same time he suggested that the last phrase of the paragraph which read “wherein the child’s interests will be fully represented” be deleted. The delegation of the United Kingdom also accepted the compromise proposal but had misgivings regarding the use of the word “all” in the [third] and [fourth] lines of the text and consequently suggested their deletion. The authors of the compromise proposal agreed to the changes proposed by the delegations of the Netherlands and the United Kingdom and the text of a second paragraph was adopted.

5. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 8 bis

1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

D. Technical review (1988)

1. Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 24.

All forms of physical or mental violence, injury or abuse should be added.

2. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, pages 24-25.

Paragraph 1 of article 8 bis deals with certain measures at the national level “to protect the child from all forms of physical or mental injury or abuse”. Article 9, paragraph 1, on the other hand, deals with the right of access to information aimed, inter alia, at the promotion of the physical and mental health of the child.

These questions are of concern to the World Health Organization for “health” is defined in the second preambular paragraph of the World Health Organization Constitution, which also declares in its seventh paragraph that healthy development of the child is of basic importance. Article 2, paragraph l of the World Health Organization Constitution declares the promotion of child health and welfare as one of the functions of the Organization. In addition, article 2, paragraph m of the World Health Organization Constitution states that fostering activities in the field of mental health is one of the Organization’s functions.

3. Comment by the Branch for the Advancement of Women

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 25.

With respect to article 8 bis concerning protective measures for the child that is abused, maltreated, etc., it seems appropriate to draw your attention to the fact that recent research undertaken by the Branch for the Advancement of Women on "Violence in the family" reflected in the report to the thirty-second session of the Commission on the Status of Women and which will be included in a publication still in preparation, reveals that the abuse (physical and sexual) perpetrated by males (father, brother) against girls and young women, who, for obvious reasons do not denounce such facts, has been an expanded practice within the family. It is our suggestion that to consider the possibility of strengthening such facts by recommending the addition to the above-mentioned article of a phrase which would read "including when necessary removing a child into protective custody" so that parents are not excluded from specific sanctions as the case occurs.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 315 to 319).

315. The Working Group had before it article 8 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

316. The Chairman declared there was no major amendment proposed except for UNESCO's suggestion in E/CN.4/1989/WG.1/CRP.1 for the inclusion of the word "violence" before the word "injury" under paragraph 1; and the proposal made by the Branch for Advancement of Women in the same document for the inclusion of "including when necessary removing a child into protective custody" after the word "procedures" under paragraph 2.

317. The observer for Finland proposed the deletion of "while in the care of parent(s) ... etc." from paragraph 1.

318. The delegations of Australia and the Netherlands declared they supported the initial text.

319. The Working Group adopted article 8 bis which reads as follows:

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

Article 20 (Children deprived of a family)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

Article VI of the first Polish draft is most closely related to the substantive concerns under present article 20. The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 124).

Article VI

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

2. Comments on article VI of the first Polish draft

Article VI of the draft convention gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

The payment of State and other assistance towards the maintenance of children of large families is desirable but it is suggested that a family should be encouraged to limit its size especially where it becomes difficult to provide adequately for these children.

(b) Bulgaria

The following is taken from document E/CN.4/1324.

Add the words: "and children from incomplete families (children of unmarried mothers, widows, divorced parents) or children who have been abandoned by their parents" to the penultimate sentence of article VI.

(c) Finland

The following is taken from document E/CN.4/1324.

“Where necessary, Governments should, by economic or other arrangements, ensure the possibilities for parents to take care of their children” (to be inserted after the first sentence);

The wording “be separated from his mother”, at the end of the second sentence to be replaced by the wording “be separated from his parents”;

The last sentence to be replaced by the following sentence: “Governments shall ensure the livelihood of families with children and provide the necessary family counselling and domestic services”.

(d) France

The following is taken from document E/CN.4/1324/Add.1.

1. In the light of the comments made in paragraph 4 (a) above under “General Comments”, the first sentence of this article should be included in a preliminary declaration or a recommendation.

2. Article VI could be improved in two other respects. While a young child should not be separated from his mother, it is equally important that his ties to his father should not be jeopardized. The article might also be completed by a special reference to the situation of children belonging to an international family that has split up. These two points might be worded as follows:

(a) Add at the end of the second sentence, after the words “A child of tender years shall not, save in exceptional circumstances, be separated from his mother”, the words “but neither shall his ties with his father be jeopardized or severed”.

(b) Add at the end of the third sentence the following words: “Children who belong to an international family that has split up shall, so far as possible, preserve their ties with both parents even if they are of different social origin, nationality or religion.”

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6 and 7, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6 and 7, which appear elsewhere in E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

(f) Greece

The following is taken from document E/CN.4/1324.

1. The Greek Government considers that the role of the father for the normal development of children has been so far underestimated and should be stressed in the future. It suggests the following alteration starting as from the middle of the paragraph.

“... a child of tender years shall not, save in exceptional circumstances, be separated from his parents.”

2. Because of the growing problem of child abuse (non-accidental injury) by one or both of his parents or his caretakers, the Greek Government feels that special mention should be made of the problems of these children. It suggests the following rewording:

“... society and the public authorities shall have the duty to extend particular care to children not only without a family, but also those whose families are evaluated as unable to care for the child in the present and future, regardless of support from public authorities. The child in that case deserves to grow up in an environment which can guarantee his optimal development. Payment of State and other assistance ...”

(g) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

Sentences 1 and 2 are generally acceptable. However, the phrase “separated from his mother” requires qualification. It appears to preclude the choice available to many parents at present to place “the child of tender years” in the daycare or childcare situation where the quality of care is judged to be equivalent to or even better than that provided by the family and the mother. There is now a considerable body of evidence which indicates that such practices are not detrimental to the best interests of the child and may in fact be positively in the child’s best interests. Moreover there is no principle in New Zealand law whereby a child of “tender years” shall not, save in exceptional circumstances, be separated from his mother. Both parents are entitled to custody of their child and in the event of a dispute over custody, the court is bound to treat the welfare of the child as the first and paramount consideration (Guardianship Act 1968, S. 23). Thus it would be possible for a small child to be separated from his mother if the court thought this was in the best interests of the child. In addition the Family Proceedings Bill would give equal rights to parents in custody disputes, where the paramount consideration is still the welfare of the child. To that extent our law accords with the principle of article II, rather than article VI.

The last sentence of the article as stated is highly debatable. We would prefer that all children, without discrimination according to size of family, were given the same financial benefits by the State. The equalization of family circumstances would be carried out through the taxation structures of the country. We would therefore suggest an alternative wording along the lines of: “Payment of State and other assistance towards the maintenance of all children should be of such a nature that no child is placed at a disadvantage because of the size of the family”.

(h) Norway

The following is taken from document E/CN.4/1324.

1. Delete the following phrase:

“a child of tender years shall not, save in exceptional circumstances, be separated from his mother.”

2. Amend the last sentence to read as follows:

“Economic support for families with children, through appropriate mechanisms, is desirable.”

(i) Spain

The following is taken from document E/CN.4/1324.

1. After the words "children without a family" insert the words "arranging for them to be placed, wherever possible, in the most appropriate family environment and, with respect to those without means of support, supplying them with the necessary assistance and preventing them from being uprooted from the family environment". The words "and to those without adequate means of support" would accordingly be deleted.
2. The purpose of this is to avoid the effects of being placed in institutions and, so far as possible, to encourage acceptance in families and adoption.

(j) Suriname

The following is taken from document E/CN.4/1324.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in E/CN.4/1324, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(k) Sweden

The following is taken from document E/CN.4/1324.

The child's need of close contacts with both parents - and not only with the mother - is a fact which ought to be adequately reflected in the convention. Generally, the equality of children with respect to education, social and health care is a fundamental element.

(l) World Health Organization (WHO)

The following is taken from document E/CN.4/1324.

Article VI, [third] line:

We have some difficulties with the reference to "moral security" and would prefer the deletion of "moral". The provision would thus read: "... in an atmosphere of affection and security; ..."

(m) International Council of Women

The following is taken from document E/CN.4/1324.

Article VI seems to us to be ambiguously formulated. It is obviously aimed at providing the child with optimum conditions for the harmonious development of his personality but the juxtaposition, in one and the same article of the convention, of love and family allowances is not felicitous. There seems to be a problem of drafting, if not of substance.

(n) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother, although his ties with his father shall not thereby

be weakened or broken, and a child belonging to a divided international family shall, so far as possible, maintain his ties with both his parents. Society and the public authorities shall have the duty to extend particular care to children without a family, to those belonging to a divided international family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

(o) International Humanist and Ethical Union

The following is taken from document E/CN.4/1324.

In the light of other world problems, especially the population problem, we doubt whether it is desirable to include in article VI the sentence “payment of State and other assistance towards the maintenance of children of large families is desirable”. This, in effect, nullifies efforts to decrease population in the world. We agree that States should be encouraged to achieve an adequate standard of living for their citizens and feel that it might be better to replace the above-mentioned sentence by a sentence to that effect.

C. First reading (1979-1988)

The text of article 20, which was based on article 11 of the revised Polish draft, was discussed and adopted by the Working Group in 1982. An additional paragraph was adopted in 1987. This article was referred to as article 10 throughout the first and second readings following its adoption in 1982. The unofficial heading for this article, “special protection measures for parentless children”, was reformulated by the Committee on the Rights of the Child at its first session (1991). The reporting guidelines of the Committee (CRC/C/5) refer to the article as “children deprived of a family environment”.

1. Proposal submitted to the Working Group (1979)

(a) Norway and Sweden

The following is taken from paragraph 23 of the 1979 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1468), which is reproduced in paragraph 244 of the 1979 report of the Commission on Human Rights (E/CN.4/1347).

23. In addition, the working group had before it the following amendments which were not discussed owing to lack of time:

[...]

(d) Amendments to articles II and IX of the draft convention proposed by the representatives of Norway and Sweden which read as follows:

Article II

Add the following:

“If a child’s parents, or one of them, is imprisoned, taken into custody, exiled or deported, or by any other judicial or administrative action prevented from caring for the child, it is the duty of the State Party to secure to the child adequate care and fostering, if necessary by support to the other parent, relatives or foster-parents.”

2. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights (E/CN.4/1349), which was reissued for technical reasons.

Article 11

1. A child deprived of parental care shall be entitled to the protection and assistance provided by the State.
2. The States Parties to the present Convention shall be obliged to provide appropriate educational environment to a child who is deprived of his natural family environment or, on account of his well-being, cannot be brought up in such environment.
3. The States Parties to the present Convention shall undertake measures so as to facilitate adoption of children and create favourable conditions for establishing foster-families.

3. Proposals submitted to the Working Group (1981)

The following States submitted written proposals for consideration by the Working Group.

(a) Australia

The following is taken from paragraph 125 (b) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

[...] amend article 11 as follows:

Replace paragraph 2 with:

“The States parties to the present Convention shall provide an appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, for reasons concerning his welfare, cannot be brought up in such an environment.”

Replace paragraph 3 with:

“The States Parties to the present Convention shall take measures to facilitate adoption of children where appropriate and shall ensure favourable conditions for establishing foster-families.”

(b) Denmark

The following is taken from paragraph 125 (c) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

[...] amend article 11 as follows:

Replace paragraph 2 with:

“The States parties to the present Convention shall ensure that a child who is deprived of his natural family environment or on account of his well-being, cannot be brought up in that environment shall be provided with a guardian.”

Add to paragraph 3 the following:

“The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.”

(c) Norway

The following is taken from paragraph 125 (d) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

[...] add to article 11 a new paragraph 4 to read as follows:

“If a child’s parents, or one of them, is imprisoned, taken into custody, exiled or deported, or by any other judicial or administrative action prevented from caring for the child, it is the duty of the State party to secure to the child adequate care and fostering, if necessary by support to the other parent, relatives or foster-parents.”

4. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 10

1. A child deprived of parental care shall be entitled to the protection and assistance provided by the State.
2. The States Parties to the present Convention shall be obliged to provide appropriate educational environment to a child who is deprived of his natural family environment or, on account of his well-being, cannot be brought up in such environment.
3. The States Parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster-families.
4. The provisions of the preceding paragraphs apply accordingly if the parents or one of them cannot provide the child with appropriate care because of imprisonment or another similar judicial or administrative action.

5. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1.

1. The States parties to the present Convention shall ensure that a child who is deprived of his natural family environment, or on account of his well-being cannot be brought up in that environment, shall be provided with a guardian.
2. The States parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster-families.
3. The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.
4. *(new)* Adoption can only be decided by a competent body set up in accordance with principles of national law.
5. The provisions of the preceding paragraphs shall also apply if the parents or one of them, because of imprisonment or any other judicial decision or administrative measure, cannot provide the child with appropriate care.

6. Discussion and adoption by the Working Group (1982)

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/90/Add.7, paras. 42-63).

42. Paragraphs 1 and 2 of article 10 of the revised Polish draft read as follows:
- “1. A child deprived of parental care shall be entitled to the protection and assistance provided by the State.
 2. The States Parties to the present Convention shall be obliged to provide appropriate educational environment to a child who is deprived of his natural family environment or, on account of his well-being, cannot be brought up in such environment.”
43. The representative of Denmark reintroduced the following amendments to article 11 submitted by her delegation in 1981:
- “Replace paragraph 2 by:
- ‘The States Parties to the present Convention shall ensure that a child who is deprived of his natural family environment or on account of his well-being, cannot be brought up in that environment shall be provided with a guardian.’”
44. The representative of Norway also reintroduced the proposal submitted last year by her delegation to add to article 11 a new paragraph 4 that read as follows:
- “If a child’s parents, or one of them, is imprisoned, taken into custody, exiled or deported, or by any other judicial or administrative action prevented from caring for the child, it is the duty of the State Party to secure to the child adequate care and fostering, if necessary by support to the other parent, relatives or foster-parents.”
45. At the Working Group’s session of 1981, the representative of Australia made the following proposal to amend article 11:
- “Replace paragraph 2 by:
- ‘The States Parties to the present Convention shall provide an appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, for reasons concerning his welfare, cannot be brought up in such an environment.’”
46. The above-mentioned Australian and Norwegian proposals were reintroduced almost in their entirety at the 1982 session of the Group by Poland, as contained in document A/C.3/36/6 and noted hereunder:
- “A child deprived of parental care shall be entitled to special protection and assistance provided by the State.
- The States Parties to the present Convention shall provide appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, on account of his well-being, cannot be brought up in such an environment.
- The provisions of the preceding paragraphs apply accordingly, if the parents or one of them cannot provide the child with appropriate care because of imprisonment or another similar judicial or administrative sanction.”
47. The representative of Australia suggested the addition at the end of the Danish proposal of the following words: “or shall otherwise insure the provision of an appropriate environment for the upbringing of a child”. This proposal was supported by certain delegations.
48. Some speakers indicated their preference for the new paragraph 1, as contained in document A/C.3/36/6 proposed by Poland, as the introductory paragraph for the article under consideration by the Working Group.
49. After an exchange of views, the Working Group adopted the first paragraph of the article under discussion, which read as follows:

“A child deprived of parental care shall be entitled to special protection and assistance provided by the State.”

50. In the opinion of one speaker, the words “natural family environment”, contained in the revised Polish draft and in the Australian and Danish proposals, were too loose for use in a convention; he suggested that they should be replaced by the term “biological family”. The same speaker also referred to the word “well-being”, which appeared both in the revised Polish draft and in the new Polish proposal as well as in the Danish proposal, and suggested that it be replaced by the words “best interests”.

51. Yet another speaker expressed a preference for the formulation “natural family environment” considering that it included the “biological family”. Within this framework the delegation of India made the following proposal for paragraph 2 of the article under consideration:

“The States Parties to the present Convention shall ensure that a child deprived of his natural family environment or who for reasons of his well-being cannot be brought up in that environment shall be provided with alternative family care which would include, inter alia, foster placement, and placement in community and State childcare institutions.”

52. The representative of the United States proposed that paragraph should read:

“In cases where a child cannot be cared for by his parents or other members of his biological family, the competent authorities of States Parties shall take appropriate measures to facilitate permanent adoption of the child, including appropriate financial assistance to adopting families.”

53. Some speakers fully supported the wording suggested by the delegation of India for paragraph 2, pointing out that provision had not been made in the text for the concept of adoption. In reference to the proposal by the representative of the United States those speakers considered that it was not right to present adoption as the only solution in cases when a child cannot be cared for by his biological family. They also queried the advisability of introducing the concept of providing financial assistance to adopting families as a measure to facilitate permanent adoption of the child.

54. Following the Chairman’s request that a compromise text be elaborated after consultations, the delegations of India and the United States submitted a text that read as follows:

“The States Parties to the present Convention shall ensure that a child permanently or temporarily deprived of his normal family environment or who in his best interests cannot be allowed to remain in that environment shall be provided with alternative family care which could include, inter alia, adoption, foster placement, or placement in community or State childcare institutions.”

55. Several speakers expressed their approval in general terms of the joint proposal submitted by the delegations of India and the United States. Nevertheless, the representative of Australia said that it would be preferable to insert the word “suitable” before the words “community or State childcare institutions”, and this suggestion met with the approval of the Working Group. A further suggestion, made by the representatives of Brazil and of the Byelorussian Soviet Socialist Republic, was that the word “normal” as applied to family environment, be deleted from the text in order to avoid conceptual difficulties arising from the use of this term.

56. Some speakers called for amendments to paragraph 1 already adopted. The representative of France indicated his preference for the words “deprived of his family environment” rather than the words “deprived of parental care”. The representative of the United States suggested the addition of the words “for any reason” after the words “deprived of his family environment” proposed by the French delegation.

57. After an exchange of views, it was agreed to use the formulation “permanently or temporarily”, which appeared in paragraph 2, after the words “A child” in paragraph 1. In addition, it was proposed that the words “community or State” at the end of paragraph 2 should be deleted and that the words “childcare institutions” at the very end of the paragraph should be replaced by the words “institutions for the care of children”.

58. The Working Group adopted by consensus, in their revised versions, paragraphs 1 and 2 of the article under consideration which, it was decided should become article 10.

59. Article 10 as adopted read as follows:

“1. A child permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance provided by the State.

2. The States Parties to the present Convention shall ensure that a child who is parentless, who is temporarily or permanently deprived of his family environment, or who in his best interests cannot be brought up or be allowed to remain in that environment shall be provided with alternative family care which could include, inter alia, adoption, foster placement, or placement in suitable institutions for the care of children.”

[...]

61. The Working Group also started consideration of the question of a child who cannot be afforded adequate care by his parents because of imprisonment, exile, deportation or another similar judicial or administrative sanction.

62. A brief discussion ensued during which one speaker felt that acknowledgement must be made of the fact that imprisonment or other similar judicial or administrative sanctions are not the only reasons that would prevent children from receiving appropriate care from their parents. The same speaker maintained that focusing only on judicial or administrative sanctions as reasons for children being deprived of parental care would thus create a false emphasis.

63. The Working Group postponed its discussion of this topic to a later stage of its work.

7. Proposal submitted to the Working Group (1985)

(a) Four Directions Council

The following is taken from document E/CN.4/1985/WG.1/NGO.1, page 2.

[...]

In procedure terms, then, the “best interests of the child” rule in child custody determinations must be balanced with respect for the equality of all cultures. While it is far from perfect, such an approach to this problem deserves emulation, particularly with highly vulnerable indigenous populations. We accordingly suggest that article 10 of the draft convention be amended to include the following additional concern:

3. No separation of the child from his parents or community, or alternative family care, shall have as its objective or effect the denial of the child’s right to have, learn, or adopt the culture of his parents.

8. Proposals submitted to the Working Group (1987)

The following States submitted written proposals for consideration by the Working Group.

(a) Austria

The following is taken from document E/CN.4/1987/WG.1/WP.27.

Article 10

Add to paragraph 2 the following sentence:

“When considering the best interests of the child, particular regard shall be paid to the child’s ethnic, religious or linguistic origin.”

(b) Netherlands and United Kingdom

The following is taken from document E/CN.4/1987/WG.1/WP.24.

Article 10, new paragraph 3

Where it is necessary to provide a child with alternative family care, States Parties shall have due regard to the desirability of continuity in a child's upbringing, and shall seek so far as possible, when it is in the best interests of the child, to avoid placing the child outside his own ethnic, religious, or linguistic group.

9. Comment submitted to the Working Group (1987)

(a) Morocco

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, para. 2).

2. [...] By a note verbale of 30 January 1987, the Permanent Representative of Morocco asked that their observations on the draft convention be brought to the attention of the Working Group; those observations were contained in E/CN.4/1987/WG.1/WP.35.

The following is taken from document E/CN.4/1987/WG.1/WP.35.

ARTICLE 10 - *Paragraph 2* and ARTICLE 11: Protection of children and adoption.

Children deprived of their family environment may receive the same social protection but they do not enjoy the same rights of succession as legitimate children. Children permanently deprived of their family environment may be the subject of other appropriate measures if the law precludes their adoption.

10. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 24-27).

24. The representative of Austria proposed that an additional sentence be added to paragraph 2 of article 10 to read: "When considering the best interests of the child, particular regard shall be paid to the child's ethnic, religious or linguistic origin.". The wording "the best interest of" was subsequently amended by the delegations of Austria and the Netherlands to read instead "alternative family care for".

25. The observer for Canada was in favour of this proposal, but suggested that the word "particular" be replaced by "due". The observer for Finland supported the Canadian amendment. The representative of the United Kingdom proposed the addition of the following phrase between the words "shall be paid" and "to the child's ethnic": "the desirability of continuity in a child's upbringing and", as well as the replacement of the word "origin" by "background" at the end of the sentence. The representative of the Soviet Union proposed the addition of the following sentence: "In all cases, a decision on this issue shall be taken with due regard for the best interests of the child."

26. While the representative of Italy supported the Soviet proposal, the delegation of the Netherlands found difficulty in accepting it, but the impasse was surmounted by a compromise proposal put forward by the representative of the United States, namely to add "and the best interest of the child" after the phrase "alternative family care for the child". He explained that although those placing a child in alternative family care should consider factors of continuity in the child's upbringing and background, the best interests of the child should always be the primary concern. This proposal met with the approval of the delegations of Australia, Norway, the USSR and Yemen. The delegation of the USSR expressed its concern that the provision as a whole, and as thus far amended, could pose difficulties in situations such as war, when parentless children often cannot feasibly be returned to families of the same ethnic, religious or linguistic background also

wished to introduce the wording “where possible,” after the words “shall be paid”. This proposal was not entirely satisfactory to the Finnish delegation which suggested an amendment to read: “States Parties shall, where appropriate, have due regard to the child’s ethnic, religious or linguistic background”.

27. Following a statement by the Four Directions Council and some further exchanges of views, the delegations of Finland and the USSR withdrew their proposals, and the Working Group proceeded to adopt the following additional sentence to paragraph 2 of article 10:

“When considering alternative family care for the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious or linguistic background.”

11. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 10

1. A child permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance provided by the State.
2. The States Parties to the present Convention shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his family environment, or who in his best interests cannot be brought up or be allowed to remain in that environment shall be provided with alternative family care which could include, inter alia, adoption, foster placement, or placement in suitable institutions for the care of children. When considering alternative family care for the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious or linguistic background.

D. Technical review (1988)

1. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, pages 26-27.

Paragraph 1

In order to ensure consistency with existing standards and particularly those contained in the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally or Internationally (especially article 3) consideration might be given to prefacing this article with a new paragraph to be inserted before paragraph 1, reading as follows:

“The States Parties to the present Convention recognize that the first priority for a child is to be cared for by his or her own parents.”

Paragraph 2

The final sentence provides that:

“When considering alternative family care for the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious or linguistic background.”

The reference to “ethnic, religious or linguistic” background would seem to be inspired by article 27 of the International Covenant on Civil and Political Rights which uses those three adjectives, in that order, to define the types of minority groups to which its provisions apply. However, article 27 also recognizes, inter alia, the

rights of persons belonging to such groups “to enjoy their own culture”. Similarly, article 15, paragraph 1 (a) of the International Covenant on Economic, Social and Cultural Rights provides for “the right of everyone” “to take part in cultural life”. And, article 24 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally provides that, in cases of prospective adoption involving differing nationalities, “due regard shall be given to the child’s cultural and religious background and interests.”

The Working Group might therefore wish to consider adding the word “cultural” after the word “religious” in order to ensure consistency with existing standards. In addition, the word “or” should be changed to “and” so that consideration may be given, if appropriate, to more than one of the factors listed.

Gender neutrality

Paragraph 1. This paragraph could be reformulated as follows:

“A child permanently or temporarily deprived of his or *her* family environment...”

Paragraph 2. The middle part of the first sentence could read:

“... a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or in *whose own* best interests cannot be brought up or be allowed to remain in that environment...”

2. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 24.

24. In the last sentence of paragraph 2, it would seem that the reference to “the best interests of the child” is superfluous in light of article 3, paragraph 1, of the draft convention. The Working Group may thus consider the deletion of the reference.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

(a) Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia

The following text is taken from document E/CN.4/1989/WG.1/WP.4.

[...]

Article 10

The word “guardianship” should be inserted after the word “adoption” in the middle of paragraph 2.

(b) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 10, paragraph 2: “... placement within a substitute family, ... placement ...”

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 339 to 348).

339. The observer for Egypt introduced the proposals with regard to article 10 submitted by the drafting group on adoption and family issues, composed of Argentina, Australia, Brazil, China, France, Italy, the

Netherlands, Pakistan, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and Portugal (E/CN.4/1989/WG.1/WP.63). The proposals read as follows:

“1. A child permanently or temporarily deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment shall be entitled to special protection and assistance provided by the State.

2. The States Parties to the present Convention shall in accordance with their national laws ensure alternative care for such child.

3. Such care could include, inter alia, “kafalah”, foster placement, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”

340. In introducing this proposal, the observer for Egypt mentioned that the drafting group, which worked as an open-ended body, had tried to incorporate into the proposed text the principal features of all legal systems, including the concept of “kafalah” from Islamic law. It was indicated that the second part of the original version had been divided into two paragraphs and simplified. The expression “alternative family care” was changed to “alternative care”.

341. Many speakers expressed their appreciation for the work done by the drafting group. The representative of Iraq drew the attention of the Working Group to the El Dham system of care for children which existed in his country and which was different from all those mentioned in paragraph 3 of the article.

342. The representative of the United States of America proposed some editorial changes to the article, including the deletion of “The” before and of the words “to the present Convention” after the words “States Parties” in paragraph 2. The changes were accepted by the Working Group.

343. The representative of the Netherlands suggested that a reordering of the examples of childcare should be made in paragraph 3, so that the term “kafalah” is placed after “foster placement”. The Working Group accepted this proposal.

344. The representative of Norway proposed to use in paragraph 3 the expression “kafalah of Islamic law” which is contained in the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986. The Working Group agreed with this proposal.

345. The representative of Venezuela proposed to exchange the order of words “permanently” and “temporarily” in the first paragraph. The proposal was accepted by the Working Group.

346. The observer for the Inter-American Children’s Institute, in this connection, suggested a separate consideration by the Working Group of children temporarily or permanently deprived of their environment.

347. The representative of Venezuela proposed the insertion of the following words, after inter alia: “daily care, foster placement in its various forms, suitable institutions for the care of children, kafalah and adoption”. She stated that she was making this proposal in the light of the logical order of measures to be taken for the different degrees of family deprivation: starting with measures for children temporarily deprived of their family and ending with kafalah and adoption, for children permanently and lawfully deprived of their family environment.

348. The Working Group then adopted article 10 as proposed by the drafting group and as revised in the course of discussion. It reads as follows:

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Article 21 (Adoption)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that intercountry adoption may be considered as an alternative means of the child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

B. First Polish draft convention and comments (1978)

Although there was no reference to the issue of adoption in the first Polish draft convention, the comments received from Barbados and Colombia did raise the issue.

(a) Barbados

The following is taken from document E/CN.4/1324.

[...]

2. It has been observed that no article deals directly with the adoption of children where this is desirable in their best interest. If this is to be accepted then provision should be made whereby an adoption should not take place without the consent of the parent. However such consent may be dispensed with by a competent court if the person whose consent is to be dispensed with:

- (a) has abandoned, neglected or persistently ill-treated the infant; or
- (b) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably.

[...]

(b) Colombia

The following is taken from document E/CN.4/1324/Add.2.

Having analysed articles I to X, we find that they reproduce the content of the ten articles of the Declaration of the Rights of the Child which were adopted by the United Nations General Assembly in 1959, and to which the following might be added:

1. A child who is adopted by nationals of a country other than his country of origin shall enjoy the same rights as are accorded to children of the country in which he is adopted.
2. A child who engages in asocial behaviour shall be given special treatment in which his condition and dignity are duly respected.

C. First reading (1979-1988)

The text of article 21, which was based on article 11, paragraph 3, of the revised Polish draft, was discussed and adopted by the Working Group in 1982. Additional proposals were later submitted to the Working Group but further consideration was deferred until the second reading. This article was referred to as article 11 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 11

1. A child deprived of parental care shall be entitled to the protection and assistance provided by the State.
2. The States parties to the present Convention shall be obliged to provide appropriate educational environment to a child who is deprived of his natural family environment or, on account of his well-being, cannot be brought up in such environment.
3. The States parties to the present Convention shall undertake measures so as to facilitate adoption of children and create favourable conditions for establishing foster-families.

2. Proposals submitted to the Working Group (1981)

The following States submitted written proposals for consideration by the Working Group.

(a) Australia

The following is taken from paragraph 125 (b) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

Article 11

Replace paragraph 2 with:

“The States parties to the present Convention shall provide an appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, for reasons concerning his welfare, cannot be brought up in such an environment.”

Replace paragraph 3 with:

“The States parties to the present Convention shall take measures to facilitate adoption of children where appropriate and shall ensure favourable conditions for establishing foster-families.”

(b) Denmark

The following is taken from paragraph 125 (c) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

Replace paragraph 2 with:

“The States parties to the present Convention shall ensure that a child who is deprived of his natural family environment or on account of his well-being, cannot be brought up in that environment shall be provided with a guardian.”

Add to paragraph 3 the following:

“The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.”

3. Proposals submitted to the Working Group (1982)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Norway

For the text of this proposal, see paragraph 77 in section 4 below.

(b) United States of America

For the text of this proposal, see paragraph 88 in section 4 below.

(c) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1.

1. The States parties to the present Convention shall ensure that a child who is deprived of his natural family environment, or on account of his well-being cannot be brought up in that environment, shall be provided with a guardian.
2. The States parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster-families.
3. The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.
4. *(new)* Adoption can only be decided by a competent body set up in accordance with principles of national law.
5. The provisions of the preceding paragraphs shall also apply if the parents or one of them, because of imprisonment or any other judicial decision or administrative measure, cannot provide the child with appropriate care.

4. Discussion and adoption by the Working Group (1982)

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/30/Add.1, paras. 64-90).

64. Paragraph 3 of article 11 of the revised Polish draft read as follows:

“The States Parties to the present Convention shall undertake measures so as to facilitate adoption of children and create favourable conditions for establishing foster-families.”

65. The delegation of Denmark had submitted in 1981 the following text as an amendment to article 11 of the revised Polish draft:

“Add to paragraph 3 the following:

‘The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.’”

This proposal was reintroduced at the Group’s 1982 session.

66. At the Working Group’s 1981 session, the representative of Australia made the proposal to replace paragraph 3 of article 11 of the revised Polish draft with:

“The States Parties to the present Convention shall take measures to facilitate adoption of children where appropriate and shall ensure favourable conditions for establishing foster-families.”

67. The above-mentioned Australian proposal was reintroduced by Poland with a slight change at the Group’s 1982 session, as contained in document A/C.3/36/6 and noted hereunder:

“The States Parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster-families.”

68. Several non-governmental organizations suggested the following text, as contained in document E/CN.4/1982/WG.1/WP.1, for inclusion in article 11 of the revised Polish draft:

“Adoption can only be decided by a competent body set up in accordance with principles of national law.”

69. Several delegations supported in general the formulation of this article as contained in the revised Polish draft and in the Australian and Danish proposals. They also supported the inclusion of the paragraph suggested by non-governmental organizations.

70. After an exchange of views, the following proposals, which had been put forward for consideration by the Working Group, received the support of the delegations present: (a) the introduction in the revised Polish draft, which was almost identical to the Australian amendment, of the words “where appropriate” after the word “measures”, the deletion of the words “so as”, the insertion of the words “the process of” between the words “facilitate” and “adoption”, the replacement of the word “children” by the words “the child”, and the deletion of the rest of the sentence; (b) the replacement in the proposal of the non-governmental organizations of the words “can only” by the word “shall”, the replacement of the word “decided” by the word “authorized”, the replacement of the words “a competent body set up” by the words “competent authorities acting”, the deletion of the words “principles of”, the replacement of the word “national” by the word “applicable” and the addition of the words “and procedures” after the word “law”; and (c) the substitution in the Danish proposal of the words “shall not, however” for “will only”, and of the words “unless there has been a serious attempt to investigate and elucidate” for the words “if the competent authorities have reliable information as to”.

71. After a further exchange of views, a compromise text was elaborated which read as follows:

“The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child who is parentless or who cannot be cared for in his family environment, in order that such a child is provided with a stable family environment. Adoption shall be authorized only by competent authorities acting in accordance with applicable law and procedures. A child shall only be adopted if the competent authorities, on the basis of reliable information have determined his status concerning parents, guardians, relatives and other biological and stable social relations.”

72. A proposal to delete from the end of the first sentence the following words “who is parentless or who cannot be cared for in his family environment, in order that such a child is provided with a stable family environment” was accepted by the Working Group.

73. The delegation of the United States proposed the reformulation of the second and third sentences of paragraph 1 as follows:

“Adoption of a child shall only be authorized after the competent authorities have determined, on the basis of all pertinent and reliable evidence, that the child is legally available for adoption, and that sufficient counselling has been provided to the biological parents, if any, to enable them to reach an informed decision.”

74. Further to the Chairman’s request that another compromise text, which would take into account the new proposals put forward for consideration by the Working Group, be elaborated jointly by the delegations of Denmark and the United States, those delegations proposed the following formulation for paragraph 1:

“The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable evidence, that the adoption is permissible in view of the child’s status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have received sufficient counselling to enable them to give their informed consent to the adoption.”

75. The representative of France proposed that the word “evidence” in the second sentence of the above-mentioned paragraph 1 be replaced by the broader term “information”, and suggested that the words “the appropriate persons concerned have given their informed consent” should replace the words “the appropriate persons concerned have received sufficient counselling”, since it was more proper to place emphasis on consent rather than on counselling. The representative of Australia suggested that the phrase proposed by the French delegation should be completed by the words “to the adoption on the basis of such counselling as may be necessary”.

76. The Working Group adopted by consensus the revised version of paragraph 1 as follows:

“The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.”

77. The Working Group proceeded to consider the question of intercountry adoption. The representative of Norway submitted the following proposal for paragraph 2 of article 11 which would deal with this question:

“When intercountry adoption is considered, policy and legislation should be established to protect the children concerned. Placements should be made through authorized agencies, providing the same safeguards and standards as are applied in national adoptions. All necessary consents must be in a form which is legally valid in both countries. Legal validation of the adoption should be assured in the countries involved. The child should at all times have a name, nationality and legal guardian.”

The representative of the United States suggested that the opening phrase of the Norwegian proposal which read “When intercountry adoption is considered” should be replaced by the following “In order to ensure the existence of proper safeguards governing intercountry adoption, the States Parties to the present Convention should establish”.

78. Several delegations indicated that they were in favour of including in the convention a provision relating to intercountry adoption. During the ensuing discussion of the Norwegian proposal, some speakers drew the attention of the Working Group to the fact that a basic idea was missing, namely the idea of encouraging bilateral agreements on intercountry adoptions. It was also pointed out that the last sentence of the paragraph enunciated a general rule applicable to all children, not only to those who would be adopted, and should therefore be deleted.

79. Further to the Chairman's request that a compromise text be elaborated by the Argentine, French and Norwegian delegations, following consultations, the representative of France submitted a text that read as follows:

"The States Parties to the present Convention shall take all necessary measures to secure the best interests of the child who is the subject of intercountry adoption. Therefore States should ensure that placements are made through authorized agencies, providing the same safeguards and standards that are applied in national adoptions, and that legal validation of the adoption is assured in the countries involved. States or authorized agencies should conclude agreements to this effect."

80. It was proposed that the word "Parties" should be inserted after the word "States" in the second and third sentences of that text.

81. Some speakers questioned the need for a reference to "authorized agencies" in the text. Another speaker wondered what purpose the agreements concluded by States or authorized agencies mentioned in the last sentence of the paragraph were intended to serve. Referring to the term "national adoptions" which appeared in the second sentence of the paragraph, the same speaker suggested that reference should rather be made to "domestic adoptions". That point of view was shared by another speaker.

82. In the course of the exchange of views that ensued, the delegation of India proposed that the following words should be added to the first sentence: "and should conclude agreements for this purpose". This proposal was supported by certain other delegations.

83. The representative of the United States suggested that in the second sentence the words "competent authorities or other" should be inserted before the words "authorized agencies" and that the words "except in extraordinary circumstances the legal validity of the adoption shall be" should be inserted before the words "assured in the countries involved". Some delegations agreed that in the second sentence reference should be made only to "competent authorities" and not to "other authorized agencies". The representative of Australia proposed that the last sentence should be replaced by the following: "States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral and multilateral agreements."

84. There followed a discussion on the suitability of using the word "shall" or the word "should" in the text of the paragraph. Further, it was suggested that in the second sentence, the words "through authorized agencies" should be replaced by the words "by authorized agencies or other appropriate parties under the general supervision of competent authorities".

85. Taking into account the views expressed by members of the Group, the following text was reached as a possible compromise:

"The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made under the supervision of competent authorities providing the same safeguards and standards that are applied in domestic adoption. Except in extraordinary circumstances, the legal validity of the adoption should be assured in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements."

86. Several speakers found this version acceptable, but one speaker said he could accept only the first and fourth sentences of the text. The representative of Australia suggested that in the second sentence the words “by any appropriate party” should be inserted before the word “placements”. The representative of the United States proposed that in the third sentence the words “Except in extraordinary circumstances” should be replaced by the words “The competent authorities shall make every possible effort to ensure” and that the words “should be assured” should be deleted. The delegation of Argentina proposed as a compromise that in the second sentence the words “under the supervision of competent authorities” should be replaced by the words “by authorized agencies or appropriate persons under the adequate supervision of competent authorities”. The representative of the United States suggested the introduction, in the second sentence, of the word “exclusively” before the words “domestic adoption”. The delegation of Argentina agreed to keep the word “domestic” before the word “adoption” as long as in the Spanish version of the text the words “domestic adoption” would read “adopciones de carácter interno”. The Working Group agreed to the proposal of the Argentine delegation.

87. The Working Group adopted by consensus paragraph 2 of article 11, as revised, which read as follows:

“The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements.”

88. A lengthy debate took place on a proposal concerning confidentiality of adoption records submitted by the delegation of the United States. This proposal read as follows:

“The States Parties to the present Convention shall take all appropriate legislative and administrative measures to safeguard the confidentiality of adoption records and shall permit access to such records only by judicial order in accordance with applicable law and procedures.”

89. Although it was agreed that confidentiality in respect of family and civil status is on the whole desirable for the sake of family privacy, it was felt that the need to safeguard confidentiality of adoption records might lead to implementation difficulties in many countries. The appropriateness of mentioning confidentiality of adoption records within the framework of the convention was repeatedly questioned, several delegations expressing the opinion that this question had no direct bearing on the rights of the child.

90. The representative of the United States considered that the principle of confidentiality could be maintained. He suggested that in his proposal the words “where appropriate” should appear between the word “measures” and the words “to safeguard” that the words “all appropriate” should be deleted, that the word “judicial” should be replaced by the word “an” and that the word “order” should be followed by the words “issued by competent authorities”. Since these amendments were not accepted by the Working Group, the representative of the United States said that he would submit a revised version of his proposal. The Working Group postponed its consideration of this question.

5. Proposal submitted to the Working Group (1983)

(a) United States of America

The following is taken from document E/CN.4/1983/WG.1/ WP.4.

Article 11

“3. The States Parties to the present Convention shall take legislative and administrative measures, where appropriate, to safeguard the confidentiality of adoption records and shall permit access to such records only by an order issued by competent authorities.”

6. Proposal submitted to the Working Group (1984)

(a) International Federation of Human Rights, International Federation of Women in Legal Careers and Pax Romana

The following is taken from document E/CN.4/1984/WG.1/WP.6.

[...] article 11, paragraph 2, should be amended as follows:

“2. The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of a *decision concerning* intercountry adoption or a *decision in his own country concerning adoption by one or two foreign adoptors intending to live in another country*. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved *to the extent that the forms of adoption are admitted in the two countries*. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements *concerning mutual judicial assistance (relating in particular to the exchange of information)*.”

[...]

7. Proposal submitted to the Working Group (1985)

(a) United States of America

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, annex II).

III. Amendment to article 11 (United States of America)

New paragraph 3

The States Parties to the present Convention may take legislative and administrative measures, where appropriate, to safeguard the confidentiality of adoption records.

8. Comment submitted to the Working Group (1986)

(a) Bangladesh

The following comment regarding article 11 (present article 21) is contained in a paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft convention, see document E/CN.4/1986/39, annex IV.

Article 11

Article 11 is liable to give difficulties in Muslim countries since the understanding of Bangladesh is that adoption is not a recognized institution under Muslim law. In cases of such adoption the question of inheritance rights will give rise to complex problems in Islamic jurisdictions. A form of words may be found to protect Islamic conceptions on the subject.

Article 11 (2)

Article 11 (2) should be modified to protect orphans and other children who are adopted for reasons of proselytization. This kind of adoption has in the past created very serious problems and abuses in Bangladesh and other developing countries. The draft convention should safeguard against trafficking by foreign agencies for purposes of conversions, etc.

9. Discussion in the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, para. 12).

12. The representative of the United States withdrew the proposal put forward by her delegation in 1985 for a new paragraph in article 11 concerning legislative and administrative measures which States Parties might take to safeguard the confidentiality of adoption records. She explained to the Working Group that since the relevant provision adopted by the Group was neutral on the subject and did not require the disclosure of adoption records, the amendment had been withdrawn on the understanding that her delegation might return to it if any later amendment to the convention made it necessary.

10. Comment submitted to the Working Group (1987)

(a) Morocco

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, para. 2).

2. [...] By a note verbale of 30 January 1987, the Permanent Representative of Morocco asked that their observations on the draft convention be brought to the attention of the Working Group; those observations were contained in E/CN.4/1987/WG.1/WP.35.

The observations cited, contained in document E/CN.4/1987/WG.1/WP.35, are the following.

ARTICLE 10 - *Paragraph 2* and ARTICLE 11: Protection of children and adoption.

Children deprived of their family environment may receive the same social protection but they do not enjoy the same rights of succession as legitimate children. Children permanently deprived of their family environment may be the subject of other appropriate measures if the law precludes their adoption.

11. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 11

1. The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

2. The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions.

The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements.

D. Technical review (1988)

1. Comment by the Legal Counsel

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 27.

The expression “intercountry adoption” used in paragraph 2 of the article is not entirely clear and could be confusing.

2. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 27.

The text of this article was drafted by the Working Group in February 1982. In December 1986, almost five years later, the General Assembly, after lengthy deliberation over a number of years, adopted the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. In a number of important respects there are significant discrepancies between the two texts. Therefore, in order to ensure the consistency of the draft convention with existing standards, the Working Group might wish to undertake a reformulation of article 11.

3. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 25-28.

25. As pointed out by UNICEF (document E/CN.4/1989/WG.1/CRP.1), article 11 does not fully correspond with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by General Assembly resolution 41/85 of 3 December 1986. The Declaration, in 9 preambular and 24 operative paragraphs, is more detailed than the conventional text can or should be and the Declaration will be available for interpreting article 11. Nevertheless, the Working Group may wish to consider the following issues which come to mind when comparing the instruments.

26. Operative paragraph 3 of the Declaration reads: “The first priority for a child is to be cared for by his or her own parents.” If the amendment proposed by UNICEF with regard to paragraph 1 of article 10 is acceptable to the Working Group, the issue need not be readdressed in article 11.

27. With reference to intercountry adoption, operative paragraph 17 of the Declaration may justify the addition of a qualification to the first sentence of paragraph 2 which could read: “... *in case the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin*”.

28. Finally, in line with remarks made at the outset of the present document, it is worth noting that the word “appropriate” appears five times in this one article.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia

The following is taken from document E/CN.4/1989/WG.1/WP.4.

Article 11

Paragraphs 1 and 2 of this article should be deleted and replaced by the following paragraph:

“The States Parties to the present Convention shall endeavour, in accordance with their domestic laws and legislation, to provide an alternative family for a child who does not have a natural family.”

(b) Libyan Arab Jamahiriya

The following is taken from document E/CN.4/1989/WG.1/WP.3.

1. In its present form, article 11 of the draft convention concerning adoption constitutes a major obstacle to the convention's acceptance by the Islamic States, including the Libyan Arab Jamahiriya. This is because its present wording conflicts with one of the imperative principles of the Islamic sharia, which does not permit or recognize this relationship in the case of a Muslim, regardless of his nationality. Persons who believe in and observe the provisions of the sharia cannot engage in the prohibited practice of adoption. As everyone is aware, the Islamic sharia, while prohibiting adoption, allows full scope for the care of children whose proper upbringing is impeded by various circumstances, such as the loss of their parents, poverty, etc. In fact, the sharia strongly advocates the provision of assistance in their upbringing and education until they reach the age of maturity and makes such assistance an individual and collective responsibility.

Accordingly, the Libyan Arab Jamahiriya is proposing an amendment to remove this major obstacle to the acceptance of the convention by a large number of States. The amendment could take one of the following forms:

- (a) The deletion of both paragraphs of the article, on the understanding that this question would be regulated in bilateral or multilateral agreements among the States that recognize or permit the practice of adoption;
- (b) The inclusion of a stipulation confining the application of this article to the States that recognize or permit the practice of adoption;
- (c) The inclusion of the following phrase at the end of the article: “, without prejudice to public order.” This amendment would apply to every reference to adoption in the convention, such as article 10, paragraph 2.

(c) Mexico

The following is taken from document E/CN.4/1989/WG.1/WP.29.

Article 11, paragraph 2:

Add the following sentence at the end of the paragraph:

“It would also be advisable for the adoptive parents to undertake to recognize the original nationality of the adopted child for a period of two years following adoption and to offer facilities to enable consular officials of the country concerned to make any visits and prepare any reports that may be required.”

(d) Netherlands

The following is taken from document E/CN.4/1989/WG.1/WP.45.

Article 11, new paragraphs 2, 3, 4 and 5

2. States Parties shall take all measures to secure that intercountry adoption is only considered if the child cannot be placed in a foster or adoption family or cannot in any other suitable manner be cared for in the country of origin.
3. States Parties shall ensure that placements, as a rule, are made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption.
4. States Parties shall make every possible effort to ensure the legal validity of the adoption in the countries involved.
5. States Parties shall, where appropriate, promote those objectives by entering into bilateral or multilateral agreements.

(e) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

Article 11: The States parties to the present Convention undertake to facilitate the following basic rules and regulations as regards adoption:

- (a) The main objective of adoption is to provide a family for the minor, capable of giving him the necessary affection and security for his full development, preserving his identity and *in so far as possible* his community and ethnic social environment.
- (b) The States parties shall guarantee adopted minors the same rights and securities as natural children.
- (c) In all circumstances, the separation of the minor from his natural family shall be avoided. Only in exceptional cases, when the minor cannot be kept by his family and once the abandonment has been judicially confirmed shall adoption proceed in any of its forms, either in the institutional or traditional ones of each culture.
- (d) The granting of guardianship of a minor and the process as a whole shall be decided upon by a final judgement under the same judicial authority who shall hear the *minor's views* and take them into consideration, allow the participation of his natural parents or legally recognized family members and take into account the observations made by competent personnel on each case.
- (e) In all circumstances, the adopted minor shall have the right to know which is his natural family. This right shall be guaranteed in the judicial proceedings.
- (f) In the case of siblings, the States parties shall guarantee compulsory joint adoption. Should this not be possible, they shall look for a substitute family that shall receive all brothers and sisters in order to preserve the family bonds. The States parties undertake to respect these principles and guarantees both at the national and international level.

Only after all efforts have been made to preserve the minor's right of growing in a family environment of his own country shall the possibility arise of considering adoption by resident or non-resident aliens within the adopted child's country.

Intercountry adoptions may only take place under precise bilateral agreements in which the country of the adoptive parents guarantees supervision of the adopted minor's welfare by governmental or non-governmental agencies and in which the authorities of the child's country of origin are ensured access to said supervision.

The States parties to the present Convention shall, in case of adoption, privilege the child's permanence in his own community.

The States parties shall not favour intercountry adoption as part of their social policies.

The following related proposal concerning present article 9 (separation from parents) is also taken from document E/CN.4/1989/WG.1/WP.1.

In article 6: Include a new paragraph 2: “In case of expectant minors, the States parties shall implement compatible policies for the protection of maternity and for attaining integral assistance, keeping the mother-child bond intact, avoiding trafficking and fraudulent adoptions.”

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 16 and 349 to 376).

16. The observer for Egypt referred to the seminar on the rights of the child that had been held at Alexandria in November 1988, stating that its main recommendations were: (a) that the United Nations Working Group on the question of a convention on the rights of the child should bear in mind during the second reading the fact that articles 7 bis and 11 were incompatible with the legal systems of several countries and should take the concern of those countries into account; (b) that the Working Group should give closer attention in the draft convention to encouraging the mental and spiritual education of the child; (c) that the Egyptian Ministry of Justice should be requested to revise the country's laws - if and where necessary - to bring them into line with the future convention on the rights of the child.

[...]

349. A drafting group on adoption and family issues, composed of Argentina, Australia, Brazil, China, Egypt, France, Italy, the Netherlands, Pakistan, Portugal, Sweden, Union of Soviet Socialist Republics, and the United Kingdom of Great Britain and Northern Ireland, was established for this article. The observer for Egypt, as coordinator of the group, introduced the proposal of that group relating to article 11 (E/CN.4/1989/WG.1/WP.62). The proposal read as follows:

“States which recognize and permit the system of adoption shall for the best interest of the child:

- (a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that, in intercountry adoption, placements, to the maximum extent possible, are made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption;
- (d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements.”

350. In introducing this proposal the observer for Egypt drew the attention of the Working Group to the important changes made in the introductory part of the article which now refer explicitly only to those States Parties in which the system of adoption is recognized and permitted. The provision in the original text with an obligation “to facilitate the process of adoption” had been deleted. Subparagraphs (b), (c) and (d) specifically

related to the subject of intercountry adoption. It was also pointed out that, in view of the forthcoming international conference on adoption, the idea of promoting multilateral arrangements or agreements had been included in the article. The observer for Egypt orally revised the beginning of the introductory part of the proposed article 11 to read: "States in which the system of adoption is recognized and permitted shall ...".

351. The representative of the Netherlands orally proposed to delete the words "for the best interest of the child" from the introductory part of the article and to include into the article a new subparagraph (d) reading as follows: "ensure that in all cases of adoption the best interests of the child shall be their paramount consideration".

352. The representative of the Union of Soviet Socialist Republics proposed to insert the word "international" before the word "bilateral" in subparagraph (e).

353. The representative of Japan proposed to replace the word "only" by the words "in respect of the national law" and to replace the word "permissible" by the word "valid" in subparagraph (a).

354. The representative of France proposed to delete the word "arrangements" in subparagraph (e) of the article.

355. The observer for Canada suggested that the word "Parties" should be inserted after the word "States" in the introductory part of the article.

356. The representative of Venezuela expressed the view that intercountry adoption should be treated as an extreme and exceptional measure and not as an "alternative means of childcare," as it was put down in subparagraph (b). She stated that it would appear that this paragraph confuses two legal institutions, foster placement and adoption. She also disagreed with some other provisions contained in subparagraphs (c) and (d). In her opinion, the provision relating to "improper financial gain" in subparagraph (d) implied that a "proper" financial gain resulting from intercountry adoption was permissible. The representative of Venezuela felt that the present text of this article opened the door to trafficking in children and suggested that further consultations should be held with regard to this proposal. She further stated that her delegation was unable to join in the consensus on article 11 and formally requested the adjournment of the debate on it. This request was supported by Honduras, Brazil and Mexico.

357. The representative of the Federal Republic of Germany proposed to replace the words "an alternative means" in subparagraph (b) by the words "an exceptional means".

358. Some other delegations opposed the postponement of the consideration of article 11 and indicated that the concerns of the delegation of Venezuela had been duly taken into account by the drafting group. It was also pointed out that the questions of trafficking in children had been adequately covered in article 18 quater of this draft convention.

Introductory phrase

359. The observer for Egypt read out a text for the introductory phrase intended to meet the concerns of certain delegations. The text read as follows:

"States in which the system of adoption is recognized and permitted shall for the (best) interests of the child:"

360. The representatives of France, Norway, the United States of America and Venezuela took the view that the word "best" should be retained in the text. The representatives of France and the United States of America also took the view that the text should read "States Parties" and not just "States". The representatives of Australia and the Netherlands suggested that the word "and" should be changed to "or" because it had not been the intention of the drafting group to make permission and recognition a double requirement for the application of the article; they were of the view that it was enough for States Parties to either recognize or permit adoption. In view of the lack of opposition to the foregoing amendments and taking into account the sub-amendment of the observer for Egypt that the text should read "and/or", a consensus was reached in the

Working Group to retain “best”, to include “Parties” after “States” and that “/or” be inserted after the word “and”.

361. The representatives of the Netherlands and Venezuela expressed the desire for the text to more clearly indicate that “best interests” should refer to the child and not to his or her parents. To meet this concern the representative of the United Kingdom of Great Britain and Northern Ireland proposed the following text for adoption:

“States Parties which recognize and/or permit the system of adoption, and in the situation where adoption is seen as in the best interests of the child, shall:”

362. The observer for Finland indicated that it was not certain that the proposal of the representative of the United Kingdom of Great Britain and Northern Ireland would meet the concerns of the representatives of the Netherlands and Venezuela. The observer for Finland therefore suggested the adoption of the following text:

“States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:”

363. The observer for Finland indicated that the more simple construction of his proposal was clearer than the proposal of the United Kingdom of Great Britain and Northern Ireland and that making the best interests of the child “the” paramount consideration reflected international standards regarding child adoption. In view of the lack of opposition to this text, a consensus was formed to adopt it.

364. The text of the introductory phrase to article 11 as adopted during the second reading reads as follows:

“States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:”

Paragraph (a)

365. The representative of Japan indicated that for the reasons he had earlier explained to the Working Group he would have to reserve his Government’s right to make reservations on the paragraph if it was to be adopted as contained in document E/CN.4/1989/WG.1/WP.62.

366. Without any other comments, the paragraph was adopted as contained in E/CN.4/1989/WG.1/WP.62. The text of paragraph (a) of article 11 as adopted reads as follows:

“(a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;”

Paragraph (b)

367. The text of paragraph (b) as contained in document E/CN.4/1989/WG.1/WP.62 was adopted without comment to read as follows:

“(b) recognize that intercountry adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;”

368. Subsequent to the adoption of the paragraph the observer for Canada made a statement for the report concerning his delegation’s interpretation of the obligations raised by the paragraph. The statement reads as follows:

“It is the view of the Canadian delegation that the phrase in article 10 (2), that in any consideration of alternative family care, due regard should be paid to the desirability of continuity in a child’s

upbringing and to the child's ethnic, religious, cultural and linguistic background, should be applied equally to all instances of adoption as provided for in article 11."

369. The representative of Brazil indicated that her delegation was in agreement with the views expressed by the observer for Canada in the foregoing declaration. She also made the following declaration:

"As far as article 11 is concerned, the Brazilian delegation would like to state that in our understanding, paragraph (b) of article 11 must be interpreted in the sense that intercountry adoption will only be envisaged as an alternative means of childcare, when all other possibilities are exhausted."

Paragraph (c)

370. The observer for Egypt read out a text for paragraph (c) intended to meet the concerns of certain delegations. The text read as follows:

"(c) ensure that, in intercountry adoption, the adopted child benefits from the safeguards and standards equivalent to those existing in respect of national adoption;"

371. The representative of Norway indicated that he would have preferred the retention of the words "to the maximum extent possible" as contained in document E/CN.4/1989/WG.1/WP.62. He explained that the retention of the words were important because in reality it was not certain that States could absolutely "ensure" equivalent safeguards and standards. However, in the interest of achieving a consensus he did not insist on his suggestion.

372. The text of paragraph (c) of article 11 as adopted reads as follows:

"(c) ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;"

Paragraph (d)

373. The text of paragraph (d) as contained in document E/CN.4/1989/WG.1/WP.62 was adopted without comment to read as follows:

"(d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;"

Paragraph (e)

374. The observer for Egypt read out a text for paragraph (e) intended to meet the concerns of certain delegations. The text read as follows:

"(e) promote, where appropriate, the objectives of this article by concluding bilateral, multilateral or international arrangements or agreements and endeavour within this framework to ensure that the placement of a child in another country is carried out by competent authorities or organs."

375. The representative of Italy took the view that the word "international" was not necessary because it was "States Parties" that were being asked to act and that any arrangements or agreements they made would, by definition, be international. The representative of the Union of Soviet Socialist Republics took the view that without "international" it would not be clear that the arrangements or agreements were supposed to be international. The Acting Chairman explained that, since the paragraph was contained in a convention, the obligation to make arrangements or agreements was directed only at States Parties and that any such actions they took would, by their very nature, be international. Given the Acting Chairman's interpretation of the obligations established by the paragraph and in order to allow a consensus to be achieved, the representative of the Union of Soviet Socialist Republics did not insist on the inclusion of the word "international".

376. The text of paragraph (e) of article 11 as adopted during the second reading reads as follows:

"(e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

3. Statement made during the adoption of the report

(a) Venezuela

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 728-729).

728. The delegation of Venezuela took the view that an article such as article 21, dealing with adoption, which had only been studied in its existing form by the plenary Group for a few minutes at its last meeting without the participants being able to consult experts or theory on the subject, or their respective capitals, could only lead to serious confusion. The representative of Venezuela said that, while it was true that that article was largely based on articles 17 and 20 of the 1986 United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, her delegation did not consider that enough: recent events reported in the press and analysed by the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which clearly demonstrated the existence of a market for and traffic in children for adoption, especially intercountry adoption, in many parts of the world, had highlighted the need to combat such practices by all possible national and international forms of action. Therefore, it was a matter for concern that intercountry adoption should be established as an alternative for a child who “cannot in any suitable manner be cared for in the child’s country of origin”, as stated in article 21, paragraph (b). Adoption created ties of *patria potestas* going far beyond mere care for children which, in the case of children deprived of a family and as appropriate, was the responsibility of foster homes properly chosen by the competent authorities - in other words, the system of family placement in its various forms. The representative of Venezuela stated that the confusion in that article between two legal institutions, namely adoption and family placement, could only create problems for the children who were the potential victims of such confusion.

729. The representative of Venezuela said that her delegation also had difficulty with article 21, paragraph (d), since it was not possible to combat a market for children which obviously existed in the world and at the same time to institutionalize that market by permitting persons dealing with intercountry adoption to make “financial gain”. The Venezuelan delegation urged Governments to reflect on the implications of those two paragraphs in article 21 with a view to deleting them or devising an appropriate wording. Should that not be possible, Venezuela reserved its position concerning the paragraphs concerned.

Article 22 (Refugee children)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

B. First Polish draft convention and comments (1978)

Neither the first Polish draft nor the views received on it (see document E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 22 of the Convention. However, the following excerpt from a written statement on the draft convention was produced for the Commission on Human Rights in 1979 and made available to the Working Group at its 1980 session.

(a) Women's International Democratic Federation

The following is taken from document E/CN.4/NGO/244, page 4.

[...]

[The Women's International Democratic Federation] wishes to propose that in drafting the convention, the United Nations Declaration on the Protection of Women and Children should be taken into account. It therefore suggests the addition to the text of the convention of articles on the protection of the children of migrant workers and of the children of refugees.

[...]

C. First reading (1979-1988)

The text of article 22 was discussed and adopted by the Working Group in 1982. This article was referred to as article 11 bis throughout the first and second readings.

1. Proposal submitted to the Working Group (1981)

(a) Denmark

The following is taken from paragraph 125 (c) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

Article 11

Proposed new paragraph 4 to read:

“The refugee child, whether unaccompanied or in company with his family, guardian or relatives, needs special protection and assistance. The States parties to the present Convention undertake to assist the refugee child in every possible way and also undertake to, as soon as possible, investigate whether the child has a family or other close relations, and recognize the right of the refugee child to be reunited with his guardians or relatives. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group. The best interest of the child shall in every case be the guiding principle.”

2. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). For the text of this proposal, see paragraph 91 in section 3 below.

3. Discussion and adoption by the Working Group (1982)

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/30/Add.1, paras. 91-105).

91. The delegation of Denmark had submitted in 1981 a proposed new paragraph 4 to be incorporated to article 11 of the revised Polish draft, which was as follows:

“The refugee child, whether unaccompanied or in company with his family, guardian or relatives, needs special protection and assistance. The States Parties to the present Convention undertake to assist the refugee child in every possible way and also undertake to, as soon as possible, investigate whether the child has a family or other close relations, and recognize the right of the refugee child to be reunited with his guardians or relatives. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group. The best interest of the child shall in every case be the guiding principle.”

This proposal was reintroduced with slight amendments - namely, the inclusion of the word “parents” before the word “relatives” at the end of the second sentence of the proposed Danish text and the placement of the word “guardians” at the very end of the sentence - at the Working Group’s 1982 session. Some non-governmental organizations suggested to amend the introductory sentence of the above-mentioned provision as contained in document E/CN.4/1982/WG.1/WP.1 and noted hereunder:

“Without prejudice to the application of other relevant provisions of this Convention, the States Parties to the present Convention recognize that the refugee child, whether unaccompanied or accompanied by his family, guardian or relatives, and present in the territory of States Parties, needs special protection and assistance.”

92. Many speakers welcomed the initiative of the Danish delegation to introduce a text concerning refugee children and expressed their strong support for including a provision dealing specifically with protection and assistance to refugee children indicating at the same time that the subject of refugee children should be approached by the Working Group in a purely humanitarian spirit. Some speakers also suggested that it might be useful to appoint a working party to redraft the Danish proposal.

93. Further to the Chairman's request that a revised text be prepared by the delegations of Denmark and India and the observer of the Office of the United Nations High Commissioner for Refugees, the representative of Denmark submitted a text that read as follows:

"The States Parties to the present Convention recognize that a refugee child, whether unaccompanied or in company with his parents, guardians or relatives, needs special protection and assistance. The refugee child shall be assisted in every possible way. Every effort shall be made to trace the parents or other close relations of the unaccompanied refugee child and to ensure his reunification with his family. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group."

94. During an exchange of views, some speakers felt that the provision should contain a definition of the refugee child, that emphasis should be placed on the principle of family unity as well as on protection of two different categories of refugee children (those already accorded refugee status and those who found themselves in a transitional state), that protection should not be considered less important than assistance, that proper acknowledgement should be made of the importance of the catalytic and coordinating role in refugee protection of public and private international organizations, that States should not be obliged to bear costs of tracing family members in every case or to guarantee their admission for residence, and that assimilation of refugees into the general community should be considered as an alternative to placement within their own cultural and linguistic group. Several speakers, therefore, submitted amendments to the above-mentioned text.

95. The representative of Australia proposed the replacement in the first sentence of the words "recognize that" by the words "shall ensure that"; he also proposed that the words "needs special protection and assistance" at the end of the first sentence and the whole of the second sentence should be replaced by "receives adequate protection and assistance in the enjoyment of the rights contained in this Convention". The Australian proposal was supported by several delegations.

96. The representative of the Philippines proposed that the verb "has" in the fourth sentence should be changed to "have". The delegation of India proposed that the words "if possible" in the fourth sentence should be changed to "where appropriate", while the delegation of the United States suggested the addition of the words "and in the best interests of the child" to the words "where appropriate". The representative of the Byelorussian Soviet Socialist Republic suggested that the word "group" at the end of the fourth sentence should be replaced by the word "environment".

97. The Chairman requested that a new draft be prepared by the aforementioned working party. The draft read as follows:

"The States Parties to the present Convention shall ensure that a child who is considered a refugee under the relevant international instruments accepted by the parties concerned or under the national legislation of the State of refuge or State of residence, whether unaccompanied or in company with his parents, guardians or relatives, receives adequate protection and assistance in the enjoyment of the rights contained in the Convention. The States Parties undertake to cooperate with the Office of the United Nations High Commissioner for Refugees in the exercise of its function of ensuring protection and assistance to such a child. Every effort shall be made to trace the parents or other close relatives of the unaccompanied refugee child and to ensure his reunification with his family. In cases where no close relatives have been found, the child shall, where appropriate and in his best interests, be placed within his own cultural and linguistic environment."

The Working Group's attention was drawn to the introduction in that text of the concept of refugee as taken from article 73 of section III of Protocol I additional to the Geneva Conventions of 12 August 1949.

98. The observer of the Office of the United Nations High Commissioner for Refugees proposed the addition in the second sentence of the words "and other international organizations" after the words "United

Nations High Commissioner for Refugees”, and the delegation of Canada suggested the addition of the words “and non-governmental agencies”. The representative of the Philippines proposed that the words “where appropriate” in the fourth sentence should be replaced by the words “unless otherwise decided by competent authorities”, while the observer of the Office of the United Nations High Commissioner for Refugees also suggested the deletion of the words “and in his best interests” in the fourth sentence.

99. The Working Party, consisting of the delegations of Denmark, India and the United States and the observer of the Office of the United Nations High Commissioner for Refugees, then produced a compromise text which was presented by the Danish delegation for consideration by the Working Group. The text read as follows:

“The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who enjoys refugee status in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments. In view of the important functions performed in refugee protection and assistance matters by the Office of the United Nations High Commissioner for Refugees and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate cooperation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason, as set forth in the present Convention.”

100. The following amendments were proposed to the above-mentioned text. The representative of the Byelorussian Soviet Socialist Republic made a proposal to replace the word “seeking” in the first sentence by the word “receiving” and to replace the words “seeking refugee status or who enjoys refugee status” by the words “a refugee or who is a de facto refugee as distinct from the second category of refugee who has legal status”. The delegation of Canada proposed that the phrase “who is seeking refugee status or who enjoys” should be replaced by “whose status as a refugee is undetermined or who has”. Also in the same sentence, the observer of the Office of the United Nations High Commissioner for Refugees proposed that the word “enjoys” should be replaced by the words “has been granted”, while the delegation of Australia proposed that the phrase “enjoys refugee status” should be replaced by “has been recognized as a refugee”. The representative of France proposed the addition at the end of the first sentence of the words “to which the said States are parties”.

101. The representative of the Byelorussian Soviet Socialist Republic proposed the deletion from the second sentence of the words from “In view of ...” to the words “intergovernmental and non-governmental organizations” (the sentence would then begin with the words “The States Parties”) and the replacement of the word “these” after the words “efforts by” by the words “competent governmental and intergovernmental”, or the deletion of the words “the Office of the United Nations High Commissioner for Refugees and other”. The representative of the United States proposed either the addition in the second sentence after the words “the Office of the United Nations High Commissioner for Refugees” of the words “the International Committee of the Red Cross” or the deletion of the words “the Office of the United Nations High Commissioner for Refugees and other” and the addition after the words “non-governmental organizations” of the words “such as the Office of the United Nations High Commissioner for Refugees, the United Nations Children’s Fund and the International Committee of the Red Cross”.

102. The representative of the Union of Soviet Socialist Republics suggested the addition in the second sentence of the concept that it was first and foremost the duty of the States Parties to create favourable conditions for the repatriation of refugee children. The representative of Australia, echoing the concern of some delegations that in the application of the principle of family unity and for obvious humanitarian reasons every effort should be made to ensure the reunification of separated refugee families, proposed the insertion of the following sentence between the second and third sentence of the text: "On the basis of such information and in the child's best interests, States Parties shall endeavour to ensure reunification of the child with his family"; that proposal was withdrawn at a later state of the proceedings.

103. Discussion centred on whether the final text should mention the Office of the United Nations High Commissioner for Refugees. Many delegations spoke on the subject stressing the unique mandate and the significant work performed by the Office while some of them indicated that they would have liked to include the mention of the Office if reference to a specific agency would have been the practice followed in the elaboration of the articles of the convention already adopted by the Commission on Human Rights. Some speakers were extremely reluctant to delete the reference to the Office. The representative of the Byelorussian Soviet Socialist Republic suggested as a compromise that the reference to the Office should be deleted and that the record should clearly indicate that his proposed deletion was in no way intended to undermine or belittle the important work done by that organization. The members of the Working Group accepted the deletion under discussion in the spirit of compromise.

104. In that connection, the delegation of Senegal proposed that the reference to the Office of the United Nations High Commissioner for Refugees should be replaced by the reference to the United Nations. This proposal was accepted by the Working Group.

105. The Working Group adopted by consensus the provision under consideration as amended:

"The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are Parties. In view of the important functions performed in refugee protection and assistance matters by the United Nations and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate cooperation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason, as set forth in the present Convention."

The Working Group considered that the provision just adopted should form the subject of a separate article.

4. Comment submitted to the Working Group (1986)

(a) Bangladesh

The following comment regarding article 7 (present article 12) is contained in a paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft convention, see document E/CN.4/1986/39, annex IV.

Article 11 (bis)

This article appears to be redundant as most of the rights sought to be protected there have already been protected by existing international instruments. Thus this article may give rise to the problems of interpretation and conflict with other international instruments. It could be deleted without loss.

5. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 11 bis

The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are Parties. In view of the important functions performed in refugee protection and assistance matters by the United Nations and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate cooperation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason, as set forth in the present Convention.

D. Technical review (1988)

1. Comment by the Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 27.

It should be denoted that article 11 bis covers the right of refugee children. There does not appear to be a specific reference covering children affected by natural or man-made disasters that do not involve cross-border movements.

2. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 27.

Gender neutrality

This article could be amended so that the words "or her" are added after the word "his" in each of the three places in which it occurs.

E. Second reading (1988-1989)

1. Proposal submitted to the Working Group at second reading

(a) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 11 bis: At the end: "The same guarantees shall be granted to internally displaced children".

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 377 to 395).

377. The Working Group had before it the following text of article 11 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

“The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are Parties. In view of the important functions performed in refugee protection and assistance matters by the United Nations and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate cooperation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason, as set forth in the present Convention.”

378. The suggestions made in the course of the technical review included three gender-neutrality amendments and the deletion of the words “to the present Convention” in the first and second sentences of the article. It was also suggested that the Working Group should consider whether the word “appropriate” was to be maintained in three instances before the words “measures”, “protection” and “cooperation” in the first and second sentences.

379. The observer for UNESCO proposed orally an amendment which sought to insert, after the words “humanitarian assistance” in the first sentence, the words “and has effective access to and receives education training”.

380. Several delegations opposed this amendment on procedural grounds stating that this substantive proposal had not been tabled in due time and therefore it should not be considered by the Working Group. Some other delegations, however, argued that, in view of the importance of the matter, this amendment merits further consideration.

381. The representative of Brazil suggested that the proposal of UNESCO should be considered by the drafting group on articles 15 and 16 dealing with questions of education. The representative of Portugal opposed the inclusion of this amendment because as a right already protected by the draft convention (articles 15 and 16), it is one of the measures which should be taken into account when ensuring protection and assistance to refugees, among others mentioned by the Convention of 1951. Furthermore, she opposed the amendment because it might give the wrong impression that there was an intention to give less importance to other measures that should be considered.

382. The observer for UNESCO indicated that he would be ready to withdraw his amendment if it causes too great difficulties for the Working Group.

383. At the proposal of the Chairman, a drafting group composed of the Federal Republic of Germany, Senegal, the United States of America, the Union of Soviet Socialist Republics and Venezuela was established to elaborate proposals with regard to article 11 bis.

384. The representative of the Federal Republic of Germany introduced a proposal by the drafting group (E/CN.4/1989/WG.1/WP.58/Rev.1) which contained the text of article 11 bis reading as follows:

“1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or, with the consent of the State Party concerned, non-governmental organizations to protect and assist such a child and to trace the parents or other members of the family of an unaccompanied refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.”

385. In introducing this proposal the representative of the Federal Republic of Germany explained that the original text of this article as adopted at first reading had been split into two paragraphs. It was also indicated that the expression “close relatives” which caused difficulties to some delegations, had been replaced by the words “any other person” and “other members of the family”. In the second part of the article which became paragraph 2, the introductory part had been deleted. It was pointed out that the drafting group had introduced another substantive amendment to the text of article 11 bis by which the obligation to cooperate with non-governmental organizations was made dependent upon the consent of the State Party.

Paragraph 1

386. The Working Group then adopted paragraph 1 of article 11 bis as proposed by the drafting group to read as follows:

“1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

Paragraph 2

387. The representative of Italy proposed to add at the end of the first sentence in paragraph 2 the following: “or to help an accompanied child for the same aim”. She further indicated that the words “accompanied child” in the language of international refugee law referred to a refugee child with a disability, such child needing particular protection and humanitarian assistance.

388. Several participants, including the representatives of Sweden, Canada, Portugal, United States of America and the observer for the United Nations High Commissioner for Refugees opposed the new provision of paragraph 2 which provided for the consent of the State Party. It was pointed out that the expression “as appropriate” in this paragraph was more than adequate for this purpose.

389. The representative of India proposed to add the word “by” before the words “non-governmental organizations” in paragraph 2.

390. The representatives of China, Senegal and Turkey took the view that the reference to the consent of States Parties for cooperation with non-governmental organizations was of fundamental importance. They further indicated that they would not be able to join a consensus in support of the paragraph if that reference were to be deleted. Conversely, the representatives of Canada, Portugal and Sweden argued for

the deletion of the reference to consent. As a possible solution, the observer for Sweden, supported by the representatives of Argentina, Canada and Portugal suggested the deletion of both the reference to consent and the reference to non-governmental organizations, as this would eliminate the issue from the paragraph altogether and leave it up to States Parties to act as they choose. The representatives of China and Senegal, however, were unable to agree to this solution and the representative of Sweden, in a spirit of compromise, did not insist on his suggestion.

391. The representative of the Federal Republic of Germany indicated that he did not share the views expressed by the observer for Canada regarding the question of States Parties consenting to cooperate with non-governmental organizations. He stated that as sovereign States, States Parties should be in a position to give consent to cooperating with non-governmental organizations only if they saw it fit to do so. The representative of the Federal Republic of Germany indicated that he agreed with the concern raised by the representative of Italy about the question of family reunification, and to meet that concern he suggested the deletion of the word “unaccompanied” in order that the paragraph may cover all refugee children.

392. In an effort to break the deadlock, the representative of the United Kingdom suggested that the reference to consent be deleted and that the words “they consider” be inserted between “as” and “appropriate” on line 1 of the paragraph. He indicated that by clarifying who decided whether cooperation was appropriate it would not be necessary to mention consent expressly while at the same time meeting the concerns of States who felt that their consent was essential. The representative of the Union of Soviet Socialist Republics supported this solution for the reasons expressed by the representative of the United Kingdom. In view of the lack of opposition to the proposal made by the representative of the United Kingdom, a consensus was formed in the Working Group to insert the words “they consider” between the words “as” and “appropriate”.

393. The representative of Venezuela agreed with the representative of Senegal in proposing that the paragraph should be limited in scope to cover only non-governmental organizations in consultative status with the Economic and Social Council of the United Nations. She suggested that in so doing States Parties would be assured of cooperating with non-governmental organizations on a consistent standard. The representative of the Union of Soviet Socialist Republics also supported this proposal and further pointed out that there were some non-governmental organizations, such as terrorist organizations, with which States Parties should not be allowed to cooperate. Consensus was reached to limit the scope of the reference to non-governmental organizations in view of the strong feelings of delegations in favour of such a limitation and in spite of the fact that it was pointed out that some non-governmental organizations deliberately chose not to be associated with the United Nations system.

394. Further to the comments of the representative of the Federal Republic of Germany regarding the reference to refugee children, the representative of Italy suggested that the word “any” should replace the word “unaccompanied” in order to give the reference to refugee children as broad a scope as possible. The proposal was supported by the observer for Canada. Although the representative of China had reservations about this proposal, in a spirit of compromise, he did not insist and a consensus was reached in the Working Group in favour of adopting the proposal of the representative of Italy.

395. The text of paragraph 2 of article 11 bis was adopted to read as follows:

“2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.”

3. Statement made after the adoption of the draft convention

(a) Japan

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 22).

22. The representative of Japan expressed the reservation of his Government with regard to the legal nature of the declaration that the Chairman of the Working Group should make on article 6 bis to the effect that this article was not intended to affect the immigration laws of States Parties. Doubts were also expressed as to the consequences for the national immigration laws of some other provisions of the convention, namely of article 6, paragraphs 2 and 4, and of article 11 bis. The representative of Japan further stated that a number of other newly adopted proposals and articles of the draft convention would be *ad referendum* to his Government which will express its formal view on them at an appropriate opportunity.

4. Statement made during the adoption of the report

(a) Japan

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 722).

722. [...] As to article 22, the delegation of Japan accepted article 22 on the understanding that this provision was not intended to request the States to take further measures in addition to present procedures for the recognition of refugees in accordance with their international obligations and their national laws on refugees. [...]

Article 23 (Disabled children)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

B. First Polish draft convention and comments (1978)

Article V of the Polish draft and the views expressed on the article are reproduced below.

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 124).

Article V

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

2. Comments on the first Polish draft

Article V of the draft gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

Though generally there may be full agreement with this article, yet it is observed that the responsibility under this article should rest with the parents of the child and the public authorities.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

The words “or socially” should be deleted from article V. As it stands, the text contradicts the basic principles of the equality of children.

(c) Finland

The following is taken from document E/CN.4/1324.

The following proposal is made for amendments to draft article V:

“Handicapped children should not be separated from society: they shall be entitled, according to their capacities, to the same services and activities as other children.” (To be inserted after the proposed sentence).

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(e) Greece

The following is taken from document E/CN.4/1324.

The Greek Government suggests the following addition:

“The child who is physically, socially or mentally handicapped shall be given the special treatment, education and care required by his particular condition, within the context of his family and of the school system for normal children, if at all possible.”

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

We are in agreement with the need for a clause to cover education and special treatment for the handicapped. The Department of Social Welfare’s rehabilitation programme runs its own training and work experience units as well as encouraging the development of sheltered workshops by private organizations. The Department also works with the Labour, Education and Health Departments and the Accident Compensation Commission in providing a wide range of services under the Disabled Persons Community Welfare Act. The socially handicapped come within the Children and Young Persons Act 1974.

Article V, however, makes a specific requirement to provide special education for handicapped children which goes beyond the present permissive legislative authority for such services in Section 98 of the Education Act 1964. This section of the Act is under discussion as part of the current review of the Act.

(g) Norway

The following is taken from document E/CN.4/1324.

Amend as follows: “*Children* who are physically, mentally or socially handicapped shall be given the treatment, education and care required to *enable them to develop fully, according to their particular condition.*”

(h) Sweden

The following is taken from document E/CN.4/1324.

1. There are particular groups of children who are in need of special protection and it is desirable that the convention should cover their situation more thoroughly than in principle 5 of the 1959 Declaration.
2. The handicapped children require special support by the society in which they live, and States should be prepared to make certain undertakings in their regard. Their integration into the general educational system is one important point worthy of further examination.

(i) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

The word “emotionally” should be added as many children the world over are handicapped in this area. Article VI makes indirect reference to the basic sense of trust and security but it should be stated in a more straightforward manner.

(j) International Union of Judges

The following is taken from document E/CN.4/1324.

1. It should be expressly affirmed in article V, even though it has already been noted in certain international documents, that the mentally handicapped child must enjoy the same rights as all other persons of his country and of his age and that the treatment required by his condition must be paid for by the society in which he lives whenever his parents are unable to meet the necessary expenses.
2. Some of the principles set forth in the Declaration of the Rights of the Mentally Retarded Person adopted at Jerusalem in 1968 by the International League of Societies for the Mentally Handicapped should be added to the article concerning mentally handicapped (or retarded) children.
3. It is emphasized that the problems of maladjusted children are of fundamental importance because generally the moulding of a balanced citizen who works, abides by the laws and contributes to the advancement of the society in which he lives depends entirely on the provision of a suitable education to the child in his early years, even if he is maladjusted or handicapped.

C. First reading (1979-1988)

The text of article 23, which was based on article 12 of the revised Polish draft, was discussed and adopted by the Working Group in 1982 and 1983. This article was referred to as article 12 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 12

1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, appropriate to his condition and the circumstances of his parents or guardians, and undertake to extend adequate assistance to any such child.

2. A disabled child shall grow up and receive education in conditions possibly most similar to those provided to all other children, aiming at social integration of such a child.

2. Proposal submitted to the Working Group (1981)

(a) Australia

The following is taken from paragraph 125 (e) of the 1981 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1575), which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights (E/CN.4/1475).

[...] amend article 12 as follows:

“Replace ‘undertake to’ with ‘shall’ in paragraph 1.

Replace paragraph 2 with:

‘A disabled child shall grow up and receive education in conditions designed to achieve the fullest possible social integration of the child. The special educational needs of the disabled child shall be met free of charge and aids and appliances shall be provided to ensure equal opportunity and access to institutions.’”

3. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 12

1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, commensurate with his condition and those of his parents or guardians, and shall extend appropriate assistance to such a child.
2. A disabled child shall grow up and receive education in conditions designed to achieve his fullest possible social integration. His special educational needs shall be cared for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible.

4. Proposals submitted to the Working Group (1982)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Canada

For the text of this proposal, see paragraph 109 in section 5 below.

(b) United Kingdom of Great Britain and Northern Ireland

For the text of this proposal, see paragraph 110 in section 5 below.

(c) International Labour Organization (ILO)

For the text of this proposal, see paragraph 111 in section 5 below.

(d) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International

Federation of Women Lawyers and the World Jewish Congress). For the text of this proposal, see paragraph 112 in section 5 below.

5. Discussion and adoption by the Working Group (1982)

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/30/Add.1, paras. 106-115 and 118).

106. Article 12 of the revised Polish draft was as follows:

“1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, appropriate to his condition and the circumstances of his parents or guardians, and undertake to extend adequate assistance to any such child.

2. A disabled child shall grow up and receive education in conditions possibly most similar to those provided to all other children, aiming at social integration of such a child.”

The representative of the Union of Soviet Socialist Republics supported this draft article.

107. The representative of Australia reintroduced the following proposal submitted by his delegation the previous year:

“Replace ‘undertake to’ with ‘shall’ in paragraph 1 of article 12.

Replace paragraph 2 with:

‘A disabled child shall grow up and receive education in conditions designed to achieve the fullest possible social integration of the child. The special educational needs of the disabled child shall be met free of charge and aids and appliances shall be provided to ensure equal opportunity and access to institutions.’”

108. The Polish delegation submitted the following amended text as contained in document A/C.3/36/6:

“1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, commensurate with his condition and those of his parents or guardians, and shall extend appropriate assistance to such a child.

2. A disabled child shall grow up and receive education in conditions designed to achieve his fullest possible social integration. His special educational needs shall be cared for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible.”

The representative of the Union of Soviet Socialist Republics supported this draft article.

109. A proposal was introduced by the representative of Canada which read as follows:

“1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, and shall extend assistance, appropriate to his condition and the circumstances of his parents or guardians, which will ensure him the right to enjoy a decent life, as normal and full as possible, and which will enable him to become as self-reliant as possible.

2. The States Parties to the present Convention shall take appropriate measures to ensure that a disabled child shall grow up and receive education, health-care services and preparation for employment in conditions designed to achieve the child’s fullest possible social integration. The disabled child’s special education needs shall be provided for free of charge and, wherever possible, these needs shall be accommodated within the same educational institutions attended by other children.

3. The provisions of article 6 (2) of this Convention shall apply to the disabled child in the same way as to any other child and shall apply, in addition, to the child of disabled parents.”

110. An amendment was introduced by the delegation of the United Kingdom to include a direct reference to the families of handicapped children in the belief that it was necessary for both the family and the handicapped child to receive advice and support. This amendment read:

“1. The States Parties to the present Convention recognize the right of mentally or physically handicapped children and their families to receive practical advice and support and the provision of a wide range of services to enable them to remain together and for handicapped children to live as independent and normal a life as possible in their community.

2. A handicapped child shall grow up and receive education appropriate to his special needs in conditions and circumstances as similar as possible to those provided to all other children, aiming at education and social integration”.

111. A proposal for article 12 was also submitted by the International Labour Organization which read:

[new paragraph] “With a view to ensuring the disabled child’s preparation for employment, appropriate pre-vocational training and guidance shall be provided within and or outside the school setting.”

112. Several non-governmental organizations submitted the following text, as contained in document E/CN.4/1982/WG.1/WP.1, based on the special situation of handicapped parents who were able to continue to care for their children:

[new paragraph 3] “Particular consideration shall be given to handicapped parents who, with special training, can still continue to care for their children. In all such cases the interest of the child shall always be the guiding principle.”

113. During the discussion that ensued the representative of Australia, after withdrawing his proposal in favour of the Canadian proposal, suggested that emphasis should be placed at the beginning of the article on the right which was to be protected, the fundamental principle that the Working Group wanted to enshrine in the convention. He therefore suggested that the words “to enjoy a decent life, as normal and full as possible, and to become as self-reliant as possible, and” should be placed in the first paragraph of the Canadian proposal after the words “physically disabled child”, and the deletion at the end of the paragraph of the words “to enjoy a decent life, as normal and full as possible, and which will enable him to become as self-reliant as possible”. The sentence would therefore end with the words “such a right” instead of “the right”.

114. The delegation of Argentina suggested the insertion in the paragraph under discussion of the words “and his family” between the words “physically disabled child” and the words proposed by the representative of Australia.

115. The Polish representative, on behalf of the delegations of Australia, Canada, Poland, the United Kingdom and the United States, proposed the following text for the first sentence of paragraph 1 of article 12:

“The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure his dignity, promote his self-reliance, and facilitate his active participation in the community.”

This text was adopted by the Working Group.

[...]

118. [...]

The Working Group also had before it a proposal submitted by the delegation of China which was not discussed by the Group for lack of time, and that read as follows:

“Add the following words to article 12 [of the revised Polish draft as contained in document A/C.3/36/6]:

‘(d) preventing and prohibiting the child from using drugs.’”

6. Proposals submitted to the Working Group (1983)

The following States submitted written proposals for consideration by the Working Group.

(a) Australia

For the text of this proposal, see paragraph 71 in section 7 below.

(b) Canada

For the text of the proposal contained in E/CN.4/1983/WG.1/WP.5, see paragraph 68 in section 7 below.

The following additional proposal is taken from document E/CN.4/1983/WG.1/WP.19. For a revision of this proposal, see paragraph 73 in section 7 below.

Article 12 - paragraph 3

3. Assistance extended in accordance with paragraph 2 shall be designed to ensure that the disabled child has access to recreation opportunities and receives education, training, health care services, rehabilitation services and preparation for employment in conditions most conducive to the child's fullest possible social integration and individual, cultural and spiritual development.

(c) Islamic Republic of Iran

For the text of this proposal, see paragraph 84 in section 7 below.

(d) Norway

For the text of this proposal see paragraph 78 in section 7 below.

(e) United Kingdom of Great Britain and Northern Ireland

For the text of this proposal, see paragraph 75 in section 7 below.

(f) United States of America

For the text of this proposal, see paragraph 74 in section 7 below.

7. Discussion and adoption by the Working Group (1983)

The following is taken from the 1983 report of the Working Group to the Commission on Human Rights (E/CN.4/1983/62, paras. 58 to 86).

Main issues discussed

58. It will be recalled that paragraph 1 of article 12 was adopted by the Working Group last year. Under that paragraph, States Parties would recognize the right of a disabled child to a full and decent life. The discussions, this year, focused on the means to ensure the realization of this right and more specifically on the means of financing the services to be provided to the disabled child. It was underlined that disabled children

should not be regarded simply as a vulnerable category of children. They should rather be considered as a specific category of children which should receive special treatment. It was further observed that disabled children should not only have access to the services needed but should be given the opportunity of receiving them effectively, in the same way as other children.

59. For several representatives, responsibility for the care of disabled children rested primarily on Governments, and services should be provided free of charge. For others, parents and close relatives of the child should bear primary responsibility for the care of disabled children. While States might be called upon to provide certain basic services, they were not to be sole providers of services for disabled children. It was stated in this connection that, in some countries, private organizations played a significant role in that field. While agreeing on the need to provide all necessary services to disabled children, others noted that, in their countries, because of limited resources, it would not be possible for Governments to provide all services free of charge. The discussions on those points led to the *adoption of paragraph 2 of article 12*.

60. In order to avoid this same debate in connection with the consideration of each article of the draft convention concerning social welfare benefits, several delegations supported the idea of a heading applying to all of them which would incorporate language comparable to article 2 of the International Covenant on Economic, Social and Cultural Rights. One speaker suggested that this heading take the same general approach as ultimately utilized in article 12.

61. Several delegates supported the view that wherever assistance is extended to a disabled child, it should be provided in a manner most conducive to that child's social integration and individual development. The view was expressed that it would be opportune to insert in the draft convention a clause which would provide specifically that a disabled child should receive religious education. It was also felt that such a provision would create problems for many States. It was stated in that connection that references to "the cultural and spiritual development" of the child would be more appropriate. No agreement was reached as regards the insertion of such a clause. The discussions on these points led to the *adoption of paragraph 3 of article 12*.

62. One representative proposed that, in order to improve the treatment of disabled children in developing countries, States should promote a transfer of technology by organizing a wider exchange and dissemination of relevant information. The need for not only access to, but also dissemination of information was underlined by many representatives. Furthermore, while the need for international cooperation was generally recognized by all speakers, the view was also expressed that a provision dealing with that question should not be limited to developing countries and should concern not only Governments but also private institutions. The discussions on the above-mentioned proposal led to the *adoption of paragraph 4 of article 12*.

63. The proposal to insert a clause reasserting the principle of non-discrimination against disabled children was supported by a number of speakers.

Consideration of proposals and amendments

64. It will be recalled that paragraph 1 of article 12 was adopted last year. In that paragraph, the right of a disabled child to a full and decent life is recognized.

65. At the present session, discussions of the right of the child to special care and special services, and on the resources to be allocated for providing those services led to the adoption of paragraphs 2, 3 and 4 of article 12. A view strongly expressed was that the child should not only be guaranteed access to the services but should be placed in a position to receive them effectively.

66. The representative of Poland reintroduced in a revised form a proposal he had submitted last year. The proposal, which underlines that services should be provided free of charge reads as follows:

“The States Parties shall extend appropriate assistance to the mentally or physically disabled child and to the family with which he lives. His special educational needs shall be addressed for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible.”

67. The representative of the United States of America proposed an amendment to the text submitted by Poland as follows:

“The States Parties shall extend appropriate assistance to the mentally or physically disabled child and to the family with which he lives. His special educational needs shall be addressed and aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible.”

He further proposed that the words “in accordance with available resources” be added either to the first or to the second sentence of his amendment.

68. The representative of Canada submitted proposals for paragraphs 2, 3 and 4 of article 12, which also underlined that the services are to be provided free of charge. The proposals (E/CN.4/1983/WG.1/WP.5) read as follows:

“2. States Parties to the present Convention recognize the right of a mentally or physically disabled child to special care, and shall extend assistance, which is appropriate to the child’s condition and to the circumstances of the parents, legal guardians, or those caring for the child, to the child and the family.

3. The States Parties to the present Convention shall take appropriate measures to ensure that a disabled child shall have access to recreation opportunities, and receive education, health-care services and preparation for employment in conditions designed to achieve the child’s fullest possible social integration.

4. The disabled child’s special education needs shall be provided free of charge and in the manner most consistent with realizing the child’s fullest potential.”

69. At the urging of the Chairman, the authors of the above-mentioned proposals together submitted a new text for paragraph 2 of article 12, under which assistance to disabled children by the State would be extended, “subject to available resources”. The new proposal (E/1982/12/Add.1/part C) which was submitted by Canada, on behalf of Canada, Poland and the United States reads as follows:

“The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.”

Adoption of paragraph 2 of article 12

70. The text submitted by the representatives of Canada, Poland and the United States was adopted by the Group as paragraph 2 of article 12.

With regard to paragraphs 3 and 4 of the proposals made by Canada, the discussion focused on the nature of the services which should be provided to disabled children (paragraph 3 of the proposal) and again on the resources to be made available for the care of the disabled child. It was also suggested that references should be made to the opportunity open to disabled children for employment and vocational training. In the light of the discussions, the representative of Canada orally introduced the following proposal:

“3. Assistance extended shall be designed to ensure that the disabled child has access to and receives education, training, health-care services, rehabilitation services, and preparation for

employment, and enjoys recreation opportunities, in conditions most conducive to the child's fullest possible social integration and individual development.

4. The disabled child's special education needs and rehabilitation needs shall be provided in a manner most consistent with realizing the child's fullest potential without causing financial hardship to the child's parents or to others caring for the child."

71. The representative of Australia submitted an amendment to the proposals made by Canada (E/CN.4/1983/WG.1/WP.15) as follows:

"3. Assistance extended in accordance with paragraph 2 shall be designed to ensure that a disabled child shall have access to recreation opportunities, and receive education and training, health-care services, rehabilitation services and preparation for employment in conditions designed to achieve the child's fullest possible social integration.

4. The disabled child's special education needs shall be provided free of charge and in the manner most consistent with realizing the child's fullest potential and individual development."

72. During the discussions, it was emphasized that the child should not only have "effective access" to the services but should be placed in a position to effectively receive them. It was further proposed that the services referred to should be provided free of charge, whenever possible.

73. In the light of the discussion, the representative of Canada further revised her proposal relating to paragraph 3 (E/CN.4/1983/WG.1/WP.22) as follows:

"Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual, cultural and spiritual development."

74. The representative of the United States proposed the following text (E/CN.4/1982/WG.1/WP.16) as paragraph 3 of article 12:

"In accordance with available resources, the States Parties to the present Convention should ensure that an eligible disabled child has access to education, health care, rehabilitation services, vocational training and recreational opportunities, for which application is made, designed to achieve his fullest possible social integration and individual development, which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child."

75. The representative of the United Kingdom proposed to amend paragraph 4 of the Canadian proposal (E/CN.4/1983/WG.1/WP.24) as follows:

"States Parties shall provide that where their resources are not sufficient to enable the services to be provided free of charge (alternative: where it is not convenient to provide the services free of charge) due regard shall be had to the financial circumstances of the persons responsible for the care of the child when any charge is made for such services."

76. The observer from Algeria suggested to add to paragraph 3 a sentence referring to the right of disabled children not to suffer from any type of discrimination.

77. The proposal received wide support, but it was suggested that such a reference should be inserted later in paragraph 1 of the already adopted article 4 of the draft convention.

78. The representative of Norway proposed a new wording for paragraph 4 as follows (E/CN.4/1983/WG.1/WP.14):

“The disabled child’s special education needs shall be provided *on a basis that make these services available to the disabled child, regardless of the economic resources of his family.*”

79. One representative made his acceptance of paragraph 3 as amended conditional upon the withdrawal of the proposal for paragraph 4. Consensus was therefore not possible.

80. At this point, the representative of Canada introduced a proposal for a paragraph 4 of article 12 as follows:

“Such assistance shall whenever possible be provided without causing undue financial hardship to the child’s parents or to others caring for the child.”

Adoption of paragraph 3 of article 12

81. After a further exchange of views, consensus was reached on the following text:

“Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his cultural and spiritual development.”

82. The observer from Iran proposed an additional paragraph to article 12 under which States Parties would guarantee exchange of information on international cooperation with respect to the treatment of disabled children. The text (E/CN.4/1983/WG.1/WP.13) reads as follows:

“States Parties shall guarantee exchange of information and international cooperation in the field of medical, psychological and functional treatment of disabled children, as well as free access to medical and social rehabilitation, education and vocational services, with the aim of enabling developing countries to improve their capabilities and skills in this area.”

83. All speakers noted the importance of the proposal. Doubts were however expressed about the advisability of imposing on States the obligation to exchange information. It was stated that in view of the large amount of research work undertaken by private non-governmental scientific institutions, as well as the private ownership of and patents on much of the resulting technology and products, the text should not require access to such information without restrictions or limitations. It should simply call for the encouragement or the promotion of each cooperation and exchange.

84. In the light of the discussion the observer from Iran submitted a revised version of his proposal (E/CN.4/1983/WG.1/WP.25) as follows:

“States Parties shall promote exchange of information and international cooperation in the field of medical, psychological and functional treatment of disabled children, and of preventive medicine, as well as access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills in this area. In such exchanges, particular account shall be taken of the needs of developing countries.”

85. The discussions concentrated on the questions of dissemination of information, access to scientific information and the means of international cooperation in that field.

86. On behalf of Algeria, Iran, Netherlands, Morocco, Sweden and the United Kingdom, the observer from Algeria submitted the following text (E/CN.4/1983/WG.1/WP.28) as paragraph 4 of article 12:

“States Parties shall promote in the spirit of international cooperation the exchange of information in the field of preventive health care and of medical, psychological and functional treatment of

disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”

Adoption of paragraph 4 of article 12

With the addition of the word “appropriate” after the words “exchange of” the above text was provisionally adopted as paragraph 4 of article 12.

8. Proposal submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session of the Working Group.

Article 12 (Handicapped children)

Bearing in mind the observation of Ms. Gindy, Director of UNICEF, regarding the importance of rapid detection of handicaps in children, we would suggest that paragraph 3 of article 12 read: “Recognizing the essential needs of the handicapped child and stressing the need to take all possible preventive measures in this connection, the assistance granted (or rather the aid granted) ...”

9. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 12

1. The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure his dignity, promote his self-reliance and facilitate his active participation in the community.
2. The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

D. Technical review (1988)

1. Comment by the Legal Counsel

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 28.

The expression “decent life” used in paragraph 1 of the article seems rather a vague and colloquial term for a legal text.

2. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 28.

The general principles and objectives laid down in this article are in line with those of ILO standards having a bearing on the field concerned.

3. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 28.

This article deals with the rights of the disabled child, such as enjoyment of a decent life, special care, health-care services and rehabilitation services (paragraphs 1-3). It also deals with the exchange, on the international plane, of information in the field of preventive health care and of medical, psychological and functional treatment of disabled children (paragraph 4). All these matters are of concern to the World Health Organization and fall within its competence, either as part of its functions, or of its policies laid down in the resolutions of the World Health Assembly (see, for example, WHA29.68 and WHA34.3, *WHO Handbook of Resolutions and Decisions of the World Health Assembly and the Executive Board*, Vol. 11, p. 138).

4. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 28.

Paragraph 1

The most widely accepted human rights instruments which are of direct relevance to this provision are the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons. The importance of these instruments has consistently been reaffirmed in the context of the current United Nations Decade of Disabled Persons (1983-1992). The attention of the Working Group is therefore drawn to the fact that this paragraph omits one of the most central elements contained in those two declarations, to the effect that disabled children are, as far as possible, entitled to enjoy the same rights as other children.

Drawing upon the formulation used in article 1 of the Declaration on the Rights of Mentally Retarded Persons, the Working Group might therefore wish to consider adding another sentence to the end of paragraph 1 to the effect that:

“He or she shall enjoy, to the maximum degree of feasibility, all of the rights set forth in this Convention.”

Paragraph 2

This paragraph provides, inter alia, that:

“The States Parties...shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made...”

As far as can be ascertained, there is no precedent in any existing human rights instrument for an obligation to encourage and ensure assistance being made dependent upon the making of an application. Such a

requirement would seem to introduce a bureaucratic prerequisite which is not found in existing standards and which may be seen as an inappropriate limitation upon the enjoyment of a right. Consideration might thus be given to deletion of the words: “for which application is made and”.

Gender neutrality

Paragraph 1. This article could be reformulated as follows:

“The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure [] dignity, promote [] self-reliance, and facilitate *the child’s* active participation in the community.”

Paragraph 2. The middle part of the paragraph could read:

“...to the eligible child and those responsible for his *or her* care...”

Paragraph 3. The last phrase could read:

“...including his *or her* cultural and spiritual development.”

5. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 29.

29. With respect to the comment made by the Legal Counsel (document E/CN.4/1989/WG.1/CRP.1), the Working Group may refer to operative paragraph 3 of the Declaration on the Rights of Disabled Persons, proclaimed by the General Assembly in resolution 3447 (XXX) of 9 December 1975, and replace the wording “a full and decent life” with “*a decent life, as normal and full as possible*”.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 396 to 409).

396. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

1. (The) States Parties (to the present Convention) recognize that a mentally or physically disabled child should enjoy (a full and decent life) *a decent life as normal and full as possible*, in conditions which ensure (his) dignity, promote (his) self-reliance, and facilitate (his) *the child’s* active participation in the community. *He or she shall enjoy, to the maximum degree of feasibility, all of the rights set forth in this Convention.*

2. (The) States Parties (to the present Convention) recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his *or her* care, of assistance (for which application is made and) and which is [appropriate] to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation

services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote in the spirit of international cooperation the exchange of [appropriate] information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

397. The representatives of Italy, the Netherlands and Kuwait expressed support for the adoption of the revised text as contained in document E/CN.4/1989/WG.1/WP.2. In particular, the representative of Italy did so because she took the view that the article, as revised, would reflect existing international standards regarding disabled children as provided in the United Nations World Plan of Action for the Decade for Disabled Persons.

Paragraph 1

398. The representative of Norway expressed a preference for the text of paragraph 1 as adopted during the first reading and indicated that the sentence proposed by UNICEF for addition to the paragraph would make it repetitive. The observer for New Zealand also expressed a preference for the text as adopted during the first reading, but his main concern was that the proposed new sentence implied a limitation on the obligations of States Parties contained in the paragraph. The representative of India supported both of the foregoing opinions.

399. The observer for Sweden also agreed with the positions expressed by the representatives of Norway and New Zealand and further stated that he did not support the inclusion of the words "a decent life as normal and full as possible" in the paragraph. The observer for Canada agreed with the observer for Sweden, in particular, because he took the view that the inclusion of the word "normal" in this context would be inappropriate since it would imply that disabled children were basically abnormal. He further stated that UNICEF's intent in proposing the addition of the final sentence was already covered by article 4.

400. In view of the fact that the delegations in support of the revised text contained in document E/CN.4/1989/WG.1/WP.2 did not insist, consensus was reached on a text for the paragraph taking into account concerns raised in the foregoing debate.

401. The Working Group then proceeded to adopt paragraph 1 of article 12 which reads as follows:

"1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community."

Paragraph 2

402. The representative of the United States of America proposed the retention of the words "for which application is made and" because he felt that otherwise States Parties would be obliged to extend care to children who did not want or need it. The representatives of Australia and Norway argued that the words should not be retained.

403. The observer for Sweden agreed with the representatives of Australia and Norway and indicated that the retention of the word "appropriate" should meet the concerns of the representative of the United States of America. The representative of the Federal Republic of Germany also suggested that "appropriate" be retained. The representative of the United Kingdom suggested that the word "appropriate" be replaced by the word "available" and that the words "for which application is made and" should be deleted.

404. The representative of the United States of America took the view that the word “application” did not impose a great burden on applicants because by his understanding of the word in this context it meant a simple request. He also indicated that if the words referring to application had to be deleted then, although it changed the sense of the paragraph, he would be willing to support the suggestion by the representative of the United Kingdom. The representative of the United States of America further stated that his preference remained for the text as adopted during the first reading. The representative of India also expressed his preference for the old text and agreed that the suggestion by the representative of the United Kingdom would change the sense of the paragraph.

405. The representative of Ireland proposed that the words “and ensure” and “for which application is made and” be deleted and that the words “as necessary, facilitate” be inserted between “encourage” and “the extension”. The representatives of the United States of America and Australia supported this proposal.

406. The observer for Canada observed that in the old text the right of disabled children to care was only limited by resources but that in the proposal by the representative of Ireland the right itself was qualified. As a result of this, the observer for Canada stated that he was unable to support the proposal and that he therefore supported the old text. The observers for the Netherlands and Norway expressed similar opinions. The representative of Norway did so on the understanding that the word “application” did not imply complicated bureaucratic procedures but meant a simple request.

407. In view of the fact that the delegations in support of the revised text contained in document E/CN.4/1989/WG.1/WP.2 did not insist, consensus was reached on a text for the paragraph taking into account concerns raised in the foregoing debate.

408. The Working Group then proceeded to adopt paragraph 2 of article 12 which reads as follows:

“2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.”

Paragraphs 3 and 4

409. Paragraphs 3 and 4 were adopted without debate. The text of paragraphs 3 and 4 of article 12 as adopted during the second reading reads as follows:

“3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote in the spirit of international cooperation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”

Article 24 (Health and health services)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate prenatal and post-natal care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 124).

Article IV

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

2. Comments on the first Polish draft

Article IV of the first Polish draft gave rise to the following comments.

(a) Austria

The following is taken from document E/CN.4/1324.

The scope of article IV is not clear. There is a possible inconsistency between “the child’s” right to adequate prenatal care and the possibilities for legal abortion provided in some countries.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

The following words should be added to the last sentence of article IV: “with a gradual transition towards free medical care”.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

In the French text, it would be preferable to replace the expression “*sécurité sociale*”, which is limited in scope, by “*protection sociale*”, which has wider connotations.

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3 and 6, Federal Republic of Germany, under General Comments.

Paragraphs 3 and 6, which appear elsewhere in document E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(e) Malawi

The following is taken from document E/CN.4/1324/Add.4.

With respect to the last sentence of article IV, which states that the child shall have the right to adequate nutrition, housing, recreation and medical services, in Malawi we do not as a Government normally provide food and housing to members of the general public. This we feel is a preserve of the individuals concerned. Moreover, it would be necessary to state who would determine whether or not the food and housing provided are adequate.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

A point of some importance which this article, and indeed all the articles raise to some degree, is the definition of a child. Does the definition begin at conception, at birth, or at some point in between? Perhaps of equal importance, in view of the special protection clause (article II), is a definition of the end of childhood.

It seems that it would be very difficult to declare an across-the-board age and that the end of childhood would be related to specific issues (right to leave home, vote, drive a motor vehicle, have sexual intercourse, etc.) which would be covered by specific legislation in each country.

(g) Portugal

The following is taken from document E/CN.4/1324.

[...]

3. The competent Portuguese authorities consider that attention should be drawn to the fact that children must be the result of a choice freely exercised by their parents. The happiness and well-being of children should therefore be closely linked with family planning.

(h) Spain

The following is taken from document E/CN.4/1324.

After the words "social security", add the words "as a direct or privileged beneficiary thereof".

The purpose of this is to prevent any discrimination on grounds of lack of bonds of filiation.

(i) Sweden

The following is taken from document E/CN.4/1324.

Medical attention and care as well as a healthy physical environment are important prerequisites for the sound development of the child. These matters should be developed in a more elaborate way than in principle 4 of the 1959 Declaration. It is important, for instance, to prevent children from being subjected to practices which involve physical abuse and affect their present and future health or well-being.

(j) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

1. The importance of interrelationships between the various areas of development is not clearly indicated. In its present form, the draft fails to make it clear that (i) adequate nutrition of the child is linked with his overall development even more than with his health and that (ii) adequate nutrition of the mother is of paramount importance for the nutrition of the younger child.

2. It is, therefore, suggested to reword article IV as follows:

"The child shall enjoy the benefits of social security. He shall be entitled to *healthy growth and development*; to this end, special care and protection shall be provided both to him and to his mother, including adequate *food* and pre- and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services."

(k) World Health Organization (WHO)

The following general comment is taken from document E/CN.4/1324.

1. A convention on the rights of the child should constitute a realistic contribution to the "comprehensive care and the well-being of children all over the world". In this respect the present draft still appears to be incomplete. Although we welcome the initiative of elaborating a legally binding instrument in addition to the Declaration of the Rights of the Child, we note that the proposed convention does not contain new ideas and concepts. It appears, on the contrary, to be weaker and less explicit than the Declaration.

2. In order to be comprehensive we would like such a convention to place the child in his various contexts, such as the family, the society, the legal context, the new international economic order. We would also welcome more detailed provisions on the obligations of parents, both as individuals and as couples, of the family and the society, particularly in relation to the promotion of child growth and development in its threefold dimensions: physical, mental and emotional. Furthermore, the role of health and social services should be clearly defined.

The following specific comment is taken from document E/CN.4/1324.

Article IV, first and second lines:

We have some difficulties with the provision “he shall be entitled to grow and develop in health”, because the right to be healthy, as the provision seems to suggest, appears to be unrealistic. We assume that the authors of the draft probably envisage that the child should grow and develop in a healthy environment. If so, the sentence could be amended accordingly.

C. First reading (1979-1988)

The various paragraphs of article 24, which was based on article 13 of the revised Polish draft, were discussed and adopted by the Working Group in 1985, 1987 and 1988. This article was referred to as article 12 bis throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 13

1. It is recognized that the child shall be entitled to benefit from the highest attainable standard of health care for his physical, mental and moral development, and also, in the case of need, from medical and rehabilitation facilities.
2. The States Parties to the present Convention shall pursue full implementation of this right, and, in particular, shall:
 - (a) take measures to lower the mortality index of babies,
 - (b) provide a generally accessible system of health protection,
 - (c) develop the system of health protection so that medical assistance and care shall be open to all children,
 - (d) extend particular care to expectant mothers for a reasonable period of time before and after confinement, and guarantee working mothers a paid leave or a leave granting adequate social security benefits.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II, page 5.

Article 12

1. The States Parties to the present Convention shall ensure the child with health-care facilities and, in case of need, rehabilitation facilities of the highest attainable standard.
2. In particular, States Parties to the present Convention shall undertake measures with a view to:

- (a) lowering the infant mortality rate,
- (b) ensuring medical assistance and health care to all children,
- (c) providing expectant mothers with appropriate health-care services and ensuring working mothers a paid leave or a leave granting adequate social security benefits for a reasonable period of time, before and after confinement.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 4.

Article 13 (amendments to article 12 in A/C.3/36/6)

1. The States parties to the present Convention shall ensure *that* the child *is provided* with health-care facilities and, *where necessary*, rehabilitation facilities of the highest attainable standard.
2. In particular, States parties to the present Convention shall take *appropriate* measures with a view to:
 - (a) lowering the infant mortality rate,
 - (b) ensuring that medical assistance and health care *shall be provided* to all children,
 - (c) providing mothers *before and after birth* with appropriate health-care services and ensuring *one of the working parents* with paid leave or adequate social security benefits for a reasonable period of time, before and after confinement.

4. Proposals submitted to the Working Group (1983)

(a) Algeria

The following is taken from document E/CN.4/1983/WG.1/WP.27.

The States Parties stress the need for special protection for babies and young children as regards food, particularly in the developing countries. To this end, the States Parties shall take all necessary measures to:

- (a) actively promote and protect breastfeeding in all countries as the only natural method of feeding babies;
- (b) put an end to the practices of multinational firms aimed at the commercial promotion of breastmilk substitutes which have direct and indirect adverse effects on children, especially those in developing countries;
- (c) adopt and comply with the International Code of Marketing of Breastmilk Substitutes and draw up appropriate legislation, regulations or other national provisions on the basis of that Code;
- (d) make all possible use of scientific and technological expertise in order to produce adequate, sufficient and diversified food products of the best possible quality and make them available to children.

(b) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.26. For a revision of this proposal, see paragraph 11 in section 7 below.

1. It is recognized that the child shall be entitled to benefit from the highest attainable standard of health care for his physical, mental and social development, and also, in case of need, from medical and rehabilitation facilities.
2. The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall:
 - (a) take measures to lower the mortality index of babies;
 - (b) provide a generally accessible system of health protection;
 - (c) develop the system of health protection so that medical assistance and care shall be open to all children;
 - (d) develop preventive health-care programmes and services which will provide the necessary advice and assistance with regard to prenatal and post-natal care, environmental hazards, immunization, and sanitation, to ensure that the child is as healthy as possible;
 - (e) provide appropriate services to women in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation, and introduce maternity leave with pay or with comparable social benefits and provide special protection to women during pregnancy in types of work proved to be harmful to them.

5. Proposals submitted to the Working Group (1984)

(a) Islamic Republic of Iran

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

Article 12, paragraph 3

States Parties to the Convention, in a spirit of international cooperation, undertake to support programmes of action to be prepared periodically, in particular by the United Nations Children's Fund, the World Health Organization and the World Food Programme, in order to lower the infant mortality and to improve substantially health-care systems for the benefit of children, especially in developing countries and with particular regard to nutritional problems.

(b) International Federation of Women in Legal Careers

The following is taken from document E/CN.4/1984/WG.1/WP.4.

[...] the International Federation of Women in Legal Careers reiterates its support for the amendments to article 13 proposed by the delegations of Canada (E/CN.4/1983/WG.1/WP.26) and Algeria (E/CN.4/1983/WG.1/WP.27).

It believes, however, that:

1. Paragraph 2 (c) of the present draft article 13 should be supplemented to read: "... to all children without any form of discrimination, particularly discrimination based on sex".

[...]

2. The list of measures to protect the health of young children in general and of young children in developing countries in particular should include the four measures recently recommended by UNICEF:

The dissemination of the scientific knowledge now available concerning the advantages of breastfeeding;

Oral rehydration therapy (ORT);

Monitoring of growth by means of regular weighing;

Extension of vaccination.

3. The future convention should recommend the institution of health monitoring at school with the participation of children, their parents and school staff.

The following additional proposal is also taken from document E/CN.4/1984/WG.1/WP.4.

New article 13 bis

The Federation proposes that a new article concerning sources of serious damage to children's health other than disease and malnutrition, namely: domestic violence; use of drugs of whatever kind; harmful labour; traditional practices affecting health, and reading:

"The States Parties to the present Convention undertake:

[...]

4. To adopt clearly defined national policies for the abolition of the sexual mutilation of female babies and children, basing such policies on the intensification of health education programmes for all levels of the population and for practitioners of traditional medicine so as to inform public and practitioners alike of the multiple dangers of such practices for the children's physical and mental health."

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text, which is taken from document E/CN.4/1985/WG.1/WP.1, was available to the Working Group at its 1984 session.

1. The States Parties to the present Convention shall ensure that the child benefits from the highest attainable standard of health care, and also, in case of need, from medical and rehabilitation facilities.

2. Special attention should be given to children of developing countries and, in general, to all underprivileged children in order to allow them to enjoy, during all phases of their growth, adequate nutrition, medical care and a suitable environment.

3. The States Parties to the present Convention shall pursue full implementation of the child's right to health care and do everything in their power to diminish infant and child mortality. They shall, in particular:

(a) provide appropriate services to women in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation, and actively promote breastfeeding;

(b) provide a comprehensive health system with special emphasis on primary health care and basic services, open and accessible to all children without discrimination; develop protection and prevention measures;

(c) provide information to and training for parents in basic health care.

4. The States Parties to the present Convention shall undertake to protect children from any medical investigation or treatment detrimental to their physical or psychological development.

6. Proposals submitted to the Working Group (1985)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Canada

For the text of this proposal, see paragraph 11 in section 7 below.

(b) Senegal

For the text of these proposals, see paragraphs 25 and 34 in section 7 below.

(c) Union of Soviet Socialist Republics

For the text of this proposal, see paragraph 13 in section 7 below.

(d) United States of America

For the text of these proposals, see paragraphs 14 and 23 in section 7 below.

(e) NGO Ad Hoc Group (see annex III (B) for participating organizations)

To supplement the text proposed in section 5 (c) above, the following new paragraph 4 and amended and renumbered paragraph 5 were proposed to the Working Group at its 1985 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984)

4. The States Parties to the present Convention, recognizing that family planning plays an important role in the standard of health and quality of life, undertake to provide family planning services to their populations, including young adults. Such services shall provide all information necessary to allow the person(s) involved to make a responsible decision as to the number and spacing of children, and information concerning the problems of early childbearing.

5. The States Parties to the present Convention shall undertake to protect children from any medical investigation or treatment detrimental to their physical or psychological health and development, *and to take all appropriate and necessary measures to prevent children being subjected to traditional practices harmful to their health.*

For the text of an additional proposal, see paragraph 28 in section 7 below.

7. Discussion and adoption by the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, paras. 11 to 40).

11. There were two texts for consideration by the Working Group. The first, an original Polish proposal contained in document A/C.3/36/6, read as follows:

“The States Parties to the present Convention shall ensure the child with health-care facilities and, in case of need, rehabilitation facilities of the highest attainable standard.

In particular, States Parties to the present Convention shall undertake measures with a view to:

- (a) lowering the infant mortality rate,
- (b) ensuring medical assistance and health care to all children,
- (c) providing expectant mothers with appropriate health-care services and ensuring working mothers a paid leave or a leave granting adequate social security benefits for a reasonable period of time, before and after confinement.”

The second was the revised text of an original Canadian proposal submitted to the Working Group's session of 1983:

“The States Parties to the present Convention recognize the right of the child to the highest attainable standard of health care and, in case of need, to medical and rehabilitation facilities.

The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures to:

- (a) diminish infant and child mortality,
- (b) ensure medical assistance and health care to all children with emphasis on the development of primary health care,
- (c) ensure appropriate health-care services for expectant mothers,
- (d) ensure the provision of information to and training for parents and children in basic health care, sanitation and safety,
- (e) develop preventive health care and family planning programmes and services.”

In addition, a proposal submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention was brought to the attention of the Working Group. The Working Group agreed that the Canadian text would be used as the basis for discussion.

Paragraph 1

12. The representative of the Union of Soviet Socialist Republics proposed the addition of the words “free of charge” to the provision of medical assistance and health care, which found the support of the delegation of the German Democratic Republic. A lengthy discussion ensued as to the appropriateness of including a concept of gratuity in the paragraph under consideration. Several delegations indicated their preference for the text as it stood originally in the Canadian revised proposal.

13. In this connection, the delegation of the Union of Soviet Socialist Republics made a compromise proposal, namely to add “whenever possible” to the phrase “free of charge”. The representative of Bangladesh expressed his belief that if the expression “free of charge” were to appear in the text then there should be no addition of the phrase “whenever possible” for this would lead to a situation of uncertainty for the child in need of medical care. He also proposed the deletion of the phrase “in case of need”, it being redundant; the same opinion was voiced by the representative of Senegal.

14. The delegation of the United States of America felt that to state that in all circumstances the State should provide health care free of charge might entail a misappropriation of resources, and she suggested the insertion of the words “the enjoyment of” between “the right of the child to” and “the highest attainable standard” as well as the deletion of the word “care” from “health care”. The representative of Australia supported the earlier proposal to delete the words “in case of need”, and suggested the addition at the end of the paragraph of the following words: “and in cases of financial need these services should be provided free of charge”.

15. The observer for Poland proposed to replace the word “recognize” by the words “shall ensure”. Although this proposal was supported by some delegations, the Working Group agreed to keep the original word “recognize” in order to conform to the language of the International Covenant on Economic, Social and Cultural Rights.

16. At this stage of the debate, the delegation of the Union of Soviet Socialist Republics submitted another compromise proposal which comprised two variants of a second sentence of paragraph 1 as follows:

“The States Parties to the present Convention shall ensure the right of the child to the enjoyment of the highest attainable standard of health care and to medical and rehabilitation facilities free of charge, whenever possible.

The States Parties shall strive to ensure the provision to the child of all medical services and facilities free of charge, whenever possible.”

17. The representative of the United Kingdom suggested that in the second variant above, the phrase “the provision to the child of all medical services and facilities free of charge, whenever possible” be replaced by “that no child is deprived for financial reasons of his right of access to such health-care services.” The formulation put forward by the delegation of the United Kingdom was found to be agreeable by the representatives of the Union of Soviet Socialist Republics and the United States of America, and the Working Group agreed to the first paragraph as amended.

18. The approved text reads as follows:

“The States Parties to the present Convention recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health-care services.”

Paragraph 2

19. After an exchange of views in connection with maintaining the word “pursue” in the first line of the paragraph or replacing it by the word “ensure” in line with a proposal by the delegation of Finland, the Working Group decided not to change the introductory part of this paragraph as it appeared in the Canadian amendment, and it agreed on the introductory part as it stood.

20. The approved text reads as follows:

“The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures to:”

Subparagraph (a)

21. A brief debate ensued as to whether this subparagraph should be incorporated into the introductory part, but the proposal failed to obtain the consensus of the Working Group.

22. The approved part reads as follows:

“diminish infant and child mortality;”

Subparagraph (b)

23. The representative of the United States of America proposed the insertion of the words “the provision of necessary” between “ensure” and “medical assistance”, and “in case of need” between “health care” and “to all children”. The Working Group agreed only to the former proposal in view of earlier remarks made by the delegation of Bangladesh regarding the utilization of the phrase “in case of need” and the consensus reached by the Working Group on this question when it discussed paragraph 1.

24. The delegation of the Netherlands suggested the deletion of the phrase “with emphasis on the development of primary health care” at the end of the subparagraph under consideration.

25. The delegation of Senegal wished to retain the above-mentioned phrase for it considered that in the implementation of the measures referred to in the introductory text of paragraph 2, account should be taken of the special situation of developing countries and of their needs in order to guarantee primary health care for children. Many delegations voiced their wish to retain the phrase under discussion, and the Working Group agreed to maintain the original text.

26. The approved text reads as follows:

“ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,”

Subparagraph (c)

27. The representative of the United Kingdom suggested that the expressions “health care” and “health-care services” appearing in subparagraphs (b) and (c) should be kept uniform; this required the deletion of the word “services” which appeared in the subparagraph under consideration. The proposal was accepted.

28. The delegation of the United States of America introduced the following addition to this subparagraph: “including access to information about appropriate methods of infant feeding”, while the NGO Ad Hoc Group on the Drafting of the Convention proposed that the concept of breastfeeding be included in a separate subparagraph which would read as follows: “actively promote and protect breastfeeding”. The delegation of the United Kingdom requested that the word “protect” in the aforementioned NGO amendment be replaced by the word “endorse”. Taking into account the proposals tabled on the question of infant nutrition, the Chairman decided that this question should be the object of a separate subparagraph.

29. The Working Group agreed to subparagraph (c) as amended:

“ensure appropriate health care for expectant mothers,”

Subparagraph (d)

30. The representative of the United States of America presented a compromise proposal which read as follows: “encourage the provision of full, accurate and balanced information regarding methods of infant feeding, including the advantages of breastfeeding.” The delegation of Canada supported this amendment of the delegation of the United States of America with the proviso that the words “infant feeding” be replaced by “infant nutrition”. The delegations of Australia, Austria and the German Democratic Republic accepted the proposal of the delegation of the United States of America.

31. The observer for the United Nations Children’s Fund suggested that the words “and balanced” be deleted from the proposed text. With these amendments, the Working Group agreed to the subparagraph under consideration, which reads as follows:

“encourage the provision of full and accurate information regarding methods of infant nutrition, including the advantages of breastfeeding,”

Subparagraph (e)

32. The Working Group agreed to the text of this subparagraph with the replacement of the word “safety” by the phrase “prevention of accidents” as proposed by the representative of the United Kingdom. The approved text reads as follows:

“ensure the provision of information and training for parents and children in basic health care, sanitation and prevention of accidents,”

Subparagraph (f)

33. The observer for the Holy See suggested that the word “programmes” be replaced by the broader concept of “education”, and this proposal being found acceptable by the Working Group, it agreed to the subparagraph in question. The approved text reads as follows:

“develop preventive health care and family planning education and services.”

Paragraph 3

34. The representative of Senegal proposed the inclusion of a provision stating that States Parties to the present Convention shall pay special attention, in connection with the subject matter of the article under

discussion, to the situation of children in developing countries in particular and to all underprivileged children in general, and undertake to promote and participate in international cooperation to this end. This proposal was supported by the observer for Algeria.

35. The delegation of Finland put forward to the Group another proposal that read as follows: “States Parties to the present Convention shall, in the implementation of provisions of this article, pay special attention to underprivileged children and especially to the situation and needs of children in developing countries. For this purpose, States Parties undertake to promote and encourage international cooperation to achieve the full realization of the principles contained in this article.”

36. The ensuing discussion reflected widely divergent views on whether this idea of international cooperation should be included in the article under consideration or if it should be the subject of a general article of the convention.

37. In general, delegations agreed with the basic principle contained in both the proposals put forward by the delegations of Senegal and Finland. The Chairman requested that a single text be drafted by an informal open-ended working party, and it was so decided. The draft prepared by the ad hoc working party reads as follows: “States Parties to the present Convention undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.”

38. The Working Group agreed on paragraph 3, which reads as indicated above.

39. In the context of this article, the representative of the Netherlands drew the attention of the Working Group to the following aspect. The provisions of article 12 bis raise the question of the relationship between the right of the child on the one hand, and the responsibility of his parents/legal guardian - according to family law - on the other hand. The representative of the Netherlands suggested the inclusion of a provision along the lines of the already accepted paragraph 3 of article 7 bis as a useful way of dealing with that issue. However, since it was understood in the Working Group that the final reading of the draft convention would be an appropriate occasion for dealing with that specific issue, he did not insist at this stage of the proceedings on the proposed change.

40. The NGO Ad Hoc Group on the Drafting of the Convention proposed an additional paragraph to this article that read as follows: “The States Parties to the present Convention shall undertake to protect children from any medical investigation or treatment detrimental to their physical or psychological health and development, and to take all appropriate and necessary measures to prevent children being subjected to traditional practices harmful to their health.” The Working Group considered that it was not ready at this stage to discuss the subject matter contained in this proposal.

8. Comment submitted to the Working Group (1986)

(a) Bangladesh

The following comment concerning present article 24 is contained in a paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft convention, see document E/CN.4/1986/39, annex IV.

Articles proposed by the NGO Group

Articles sponsored by the NGO, Defence for Children International, are broadly acceptable. However, articles such as “health” “standards of living” “compulsory free education” should be made subject to a clause on the economic feasibility in particular countries. For example, it is estimated that to accommodate the school-going population in Bangladesh it would cost an amount of 200 million dollars per annum over the next

few years before we can attain the objective of free compulsory primary education. Some recognition of the economic problems faced by developing countries is essential if the draft is to enjoy the support of the vast majority of developing countries including the least developed countries. Secondly, a clause has to be introduced to safeguard the autonomy and privacy of the Islamic family from encroachment and impingement by externally applied standards.

9. Proposal submitted to the Working Group (1986)

(a) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

For the text of this proposal, see paragraph 50 in section 10 below.

10. Discussion by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 50-51).

50. The representative of Radda Barnen International, on behalf of the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child, proposed that a fifth paragraph be added to article 12, already adopted by the Working Group, to read:

“The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices.”

51. No decision was taken by the Working Group on the proposal, and the representative of Australia suggested that it be reconsidered by the Group at its forthcoming session.

11. Proposal submitted to the Working Group (1987)

(a) Senegal

For the text of these proposals, see paragraphs 31 and 37 in section 12 below.

12. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 28-39).

28. The Working Group decided to consider a proposal by the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child, which read:

“The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices.”

29. The representative of the United Kingdom said that the concept of traditional practices might possibly be interpreted more widely than the authors intended, and that the wording of the proposal should be tightened up to make it clear what was intended exactly. He also wondered whether the reference to “traditional practices harmful to the health of children” meant female circumcision. The delegation of Senegal counselled prudence when dealing with issues that entailed differences in cultural values, and emphasized the dangers of forcing practices into clandestinity if they were prohibited by State legislation.

30. The observer for Canada said that, while the comments of the representative of Senegal should be taken very seriously, she wondered whether some of his concerns and those of the United Kingdom delegation might be met by the following changes to the tabled proposal: to add “seriously” before “harmful”, “by all appropriate means” after “seek”, so as to indicate that concerns other than legislation are acceptable, and “including female circumcision” after “traditional practices” to give some clear content to the draft article. The representative of Australia supported the inclusion of such an article, and suggested the addition of the words “physical or mental” before “health of children”. He also proposed that the provision under discussion be incorporated in article 12 bis, dealing with health, of the draft convention.

31. The representative of Senegal made a new proposal which read as follows:

“The States Parties to the present Convention shall seek, as far as possible, to take effective and appropriate measures to combat traditional practices that affect the health of children.”

32. The Canadian delegation proposed to change the word “affect” to “seriously harm”, while the representative of the Netherlands felt that the obligations undertaken by States were too weak and, accordingly, the wording “seek” ought to be replaced by a more forceful language; he also expressed his wish that this new provision being considered by the Working Group be a new paragraph 3 of article 12 bis, and that the existing paragraph 3 be renumbered 4.

33. The representative of Senegal said he thought that the word “affect” should remain in the text, while the delegation of Australia considered that, for the sake of clarity, the phrase “traditional practices that affect the health of children” should read “traditional practices adversely affecting the health of children”; the representative of the Netherlands agreed with this proposal. The delegation of the United States then put forward another proposal that came at the end of the paragraph: the phrase “to combat traditional practices that affect the health of children” should be replaced by “to eliminate traditional practices which seriously and adversely affect the health of children”.

34. After some debate on the meaning of the French and English words “affectants” and “affecting” or “affect”, as qualified by the adverbs “adversely” or “seriously” proposed by the Australian and American delegations respectively, and the position of the representative of Senegal that the word “affect” should not be qualified, the delegation of France proposed that the phrase “traditional practices prejudicial to the health of children” be used, and that met with the approval of the representative of Senegal. The representative of Italy, referring to the recommendations of the 1985 Nairobi World Conference of the United Nations Decade for Women concerning this problem, noted that female circumcision was practised on children without their consent, often in unsanitary circumstances and caused great suffering. She recognized the importance of plurality of cultures but nevertheless appealed for changes in attitudes which would eliminate this problem.

35. The delegations of both the United Kingdom and the United States suggested that the concept of female circumcision be added at the end of the proposal. Their two proposals read respectively “in particular, female circumcision” and “including, for example, female circumcision”. The representative of the United States explained that the amendment was designed to ensure that the Group would explicitly address the traditional practice of greatest concern and would give greater content to the phrase “traditional practices”; in addition, he argued that adding this phrase would demonstrate that the practices to be abolished were those of a serious nature.

36. The representative of the International Movement for Fraternal Union Among Races and Peoples did not believe that a specific reference should be made to female circumcision since there were other “traditional practices” which were also harmful such as preferential care, including feeding, for male children.

37. The representative of Senegal read an amended proposal, as follows:

“The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices that affect the health of children.”

The Canadian delegation accepted the proposal put forward by the representative of Senegal, and stated that it was its understanding that the term traditional practices included all those practices outlined in the 1986 report of the Working Group on Traditional Practices affecting the Health of Women and Children (E/CN.4/1986/42). The delegations of Japan, Sweden and Venezuela associated themselves with the Canadian delegation's understanding of the term traditional practices.

38. The Netherlands delegation accepted the Senegalese proposal, provided that the United States proposal concerning the practice of female circumcision were added to it, but the representative of Senegal once again stated his objection to such a wording being introduced into the text of the provision. The Finnish delegation accepted the proposal by the delegation of Senegal, on the understanding that the interpretation of health was a very broad one.

39. The delegations of Italy, Japan, Mexico, the Netherlands, Norway and Sweden said they were able to accept the amended proposal read out by the representative of Senegal, and the Working Group proceeded to adopt it by consensus in the following form:

“The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

13. Proposals submitted to the Working Group (1988)

(a) India

The following text is adapted from document E/CN.4/1988/WG.1/WP.14.

Article 12 bis (revised)

[paragraph 2, new subparagraph (c):]

(c) combat disease and malnutrition within the framework of primary health care, through the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water;

[paragraph 2, revised subparagraph (e):]

(e) ensure that all segments of society, in particular parents and children, are informed, and supported in the use, of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and for the prevention of accidents;

(b) International Planned Parenthood Federation

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 11.

Add to article 12 bis, paragraph 2 (a) the following:

(diminish infant and child mortality...) “and adolescent childbearing”.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 11.

Present paragraph 4 becomes paragraph 6.

New paragraph 4 to read:

4. The States Parties to the present Convention shall ensure that no child be subject to any medical or scientific investigation, experimentation or treatment unless it is necessary for the

physical and psychological health of the child. The free and fully informed consent of the child shall be obtained or, when this is inappropriate, that of the parents.

New paragraph 5 to read:

5. The States Parties to the present Convention shall take all necessary measures to prohibit the marketing and distribution of chemical, pharmaceutical, nutritional and other substances and products which are likely to be consumed or used by children and which are harmful to their health.

14. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 60 to 62).

60. The working group had before it a proposal for a revision of article 12 bis submitted by India (E/CN.4/1988/WG.1/WP.14). In introducing the proposal, the representative of India stated that it was aimed at covering situations which existed, in particular, in developing countries, where almost all of the 14 million cases of premature death as a consequence of disease occurred. In countries where an important part of the population ran the risk of serious disease, due to economic and social problems, children were specially vulnerable and needed special protection. Such protection could be assured through the application of readily available technologies and low-cost measures such as oral rehydration therapy and immunization against the common childhood diseases. The proposed amendments to paragraph 2 (e) completed the already adopted provision by adding a reference to some necessary elements concerning nutrition, including breastfeeding, hygiene and environmental sanitation. The proposal to insert a new subparagraph (c) before the already adopted subparagraph (c) was aimed at the protection of the life of the child and was related to article 1 bis already adopted during the current session.

61. One representative requested that the translation into Spanish for the words “financial reasons” in paragraph 1 of article 12 bis be “*motivos economicos*”, as in working paper 1 and not “*razones financieras*” as appeared in working paper 14. The revisions to subparagraphs (d) and (e) of paragraph 2 of article 12 bis were adopted and a new subparagraph (c) was inserted in the text and the subsequent subparagraphs were relettered. Article 12 bis, as revised, reads:

“1. The States Parties to the present Convention recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health-care services.

2. The States Parties to the present Convention shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition within the framework of primary health care, through the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water;
- (d) To ensure appropriate health care for expectant mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, and supported in the use, of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care and family planning education and services.”

3. The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties to the present Convention undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.”

62. One representative commented that these rights were already guaranteed more fully in other international instruments, and that there were articles proper to the convention which had not, however, been adopted.

15. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 12 bis

1. The States Parties to the present Convention recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health-care services.

2. The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures:

(a) To diminish infant and child mortality,

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,

(c) To combat disease and malnutrition within the framework of primary health care, through the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water,

(d) To ensure appropriate health care for expectant mothers,

(e) To ensure that all segments of society, in particular parents and children, are informed, and supported in the use, of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents,

(f) To develop preventive health care and family planning education and services.

3. The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties to the present Convention undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 29.

The general principles and objectives laid down in this article are in line with those of the International Labour Organization standards having a bearing on the field concerned.

2. Comments by the World Health Organization (WHO)

The following general comment on the role of WHO is taken from document E/CN.4/1989/WG.1/CRP.1, page 9.

The draft convention is quite comprehensive and provides for a variety of rights for the child, with some detailed aspects thereof. A number of articles in the draft convention, and also some preambular paragraphs are of direct relevance to the World Health Organization's areas of competence. However, apart from general references to the specialized agencies and international cooperation (e.g. articles 12 and 24) no particular role has been given to the World Health Organization in the draft convention, nor is it mentioned by name.

The following comment on article 12 bis is taken from document E/CN.4/1989/WG.1/CRP.1, page 29.

This is clearly a World Health Organization function, beginning with the right of the child to the enjoyment of the highest attainable standard of health (paragraph 1), primary health care (paragraph 2 (b)), and ending with family planning (paragraph 2 (f)) and yet, as in article 12, there is no express reference to cooperation or collaboration with the World Health Organization, in the implementation of these rights. Specific reference might be made to cooperation with the World Health Organization in the achievement of those rights in paragraph 4 of the provision.

3. Comment by the United Nations Children's Fund (UNICEF)

The following comment is taken from document E/CN.4/1989/WG.1/CRP.1, page 30.

Paragraph 1

Whereas the draft convention refers to "the highest attainable standard of health," article 12 of the International Covenant on Economic, Social and Cultural Rights refers to "the highest attainable standard of physical and mental health". It might be assumed that the former phrase automatically encompasses both physical and mental health, but that assumption is not consistent with the wording of article 12 ter which refers specifically to "physical or mental health". Thus, for reasons of internal consistency, as well as to ensure conformity with existing standards, consideration might be given to inserting the words "physical and mental" before the word "health".

The second sentence of this paragraph provides that:

"The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health-care services."

The phrase "for financial reasons" does not occur in any existing international human rights instrument and its meaning is not entirely clear, as is confirmed by a statement made by one representative at the tenth session of the Working Group. On the assumption that the phrase is intended to place a limit on a State Party's obligations, based on the resources available to it, a more felicitous formulation, and one which would be in line with that used in the International Covenant on Economic, Social and Cultural Rights, might be:

"The States Parties shall strive to ensure, *to the maximum of their available resources*, that no child is deprived of his right of access to such health-care services."

Paragraph 2 (c)

This provision reads:

"(c) To combat disease and malnutrition within the framework of primary health care, through the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water."

The obligation "to combat disease and malnutrition" should be of a general nature and not necessarily confined to measures taken "within the framework of primary health care". Moreover, an

“emphasis on the development of primary health care” is already provided for in the preceding subparagraph.

In addition, the measures necessary to combat disease and malnutrition may be of a wide-ranging epidemiological nature which will not necessarily fall within the type of measures specified in the second part of this subparagraph.

In order to take account of these two observations, consideration might be given to the following reformulation:

“(c) To combat disease and malnutrition through, inter alia, the application of readily available technology ...”

Paragraph 3

The obligation upon States Parties is to “seek to take all effective and appropriate measures”. The use of the qualifying verb “to seek to” is highly unusual in human rights treaties since it further dilutes the nature of an already qualified obligation. Its presence is perhaps explained by the fact that the original proposal considered by the Working Group provided that the States Parties “shall seek to eradicate”. Since eradication cannot be assured, the inclusion of the verb “to seek to” was appropriate in that context.

The Working Group may thus wish to consider deleting the words “seek to”.

Gender neutrality

Paragraph 1. The second sentence could read:

“The States Parties shall strive to ensure that no child is deprived for financial reasons of the right of access to such health-care services.”

4. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 30 to 32.

30. The Working Group may, in paragraph 2 (a), wish to add the words “*stillbirth*” between “diminish” and “infant” in order to bring this provision in line with article 12, paragraph 2 (a), of the International Covenant on Economic, Social and Cultural Rights.

31. In paragraph 2 (c), it is suggested that the word “foods” be used in the singular form as is the case in article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights.

32. With regard to paragraph 2 (d), a comparison with article 12, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women shows the latter providing more extensive rights and protection to pregnant women, concerning in particular free services. The Working Group may therefore consider amending the paragraph to read: “To ensure appropriate health care, *including free services where necessary*, for expectant mothers”.

5. Other comments

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 10.

Other matters

A suggestion was made during the 1988 session of the Working Group on Slavery [of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities] that the concept of “mutilation” should be included as one of the practices that ought to be specifically forbidden and that an express prohibition of the use of children for medical experimentation should also be included in the draft convention.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following States and organizations submitted written proposals for consideration by the Working Group at second reading.

(a) Mexico

The following is taken from document E/CN.4/1989/WG.1/WP.30.

Article 12 bis, paragraph 2 (f)

Insert the words “guidance for parents”

Subparagraph (f) will thus read: “To develop preventive health care, guidance for parents and family planning education and services.”

(b) Philippines

The following is taken from document E/CN.4/1989/WG.1/WP.46.

Article 12 bis

To include a new paragraph in article 12 bis so that existing paragraph 4 should become paragraph 5. The text of new paragraph 4 reads:

4. States Parties shall ensure that a child shall not be subject to any medical or scientific experimentation or treatment unless it is with the free and informed consent of the child or where appropriate that of the child’s parents. In any case, such experimentation or treatment shall not be adverse to the child and shall be in the furtherance of child health.

(c) Venezuela

For the text of this proposal, see paragraph 410 in section 2 below.

(d) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 12 bis, paragraph 2, subparagraph d: “Ensure appropriate integral assistance ...”

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 410 to 433).

410. Venezuela submitted a proposal contained in document E/CN.4/1989/WG.1/WP.21 which reads as follows:

- “1. States Parties recognize the right of the child to the enjoyment of the highest standard of health and medical care and to the best rehabilitation facilities. The States Parties shall ensure that no child is deprived of his right of access to such health-care services.
2. The States Parties shall pursue full implementation of this right and in particular shall take appropriate measures:
 - (a) To diminish infant and child mortality,

- (b) To ensure the necessary provision of medical assistance and health care to all children with emphasis on the development of primary health care,
- (c) To combat disease and malnutrition including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,
- (d) To ensure appropriate health care for expectant mothers,
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are able to make use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents,
- (f) To develop preventive health care, guidance for parents, and family planning.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties shall ensure that a child shall not be subject to any medical or scientific experimentation or treatment unless it is with the free and informed consent of the child or where appropriate that of the child's parents. In any case, such experimentation or treatment shall not be adverse for the child and shall not affect his health in the future.

5. States Parties undertake to promote and encourage international cooperation with a view to achieving the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.”

411. The Chairman appointed a drafting group composed of Australia, Mexico, the Philippines and Venezuela which submitted a proposal (E/CN.4/1989/WG.1/WP.64) reading as follows:

“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.

2. States Parties shall pursue full implementation of this right and in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality,
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,
- (c) To combat disease and malnutrition including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,
- (d) To ensure appropriate health care for expectant mothers,
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents,
- (f) To develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties shall ensure that a child shall not be subject to any medical or scientific experimentation or treatment unless it is with the free and informed consent of the child or where appropriate that of the child's parents. In any case, such experimentation or treatment shall not be adverse to the child and shall be in the furtherance of child health.

5. States Parties undertake to promote and encourage international cooperation with a view to achieving the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries."

412. In introducing this proposal the observer for Australia orally revised the text of paragraph 1 by deleting the words "medical and rehabilitation" and by inserting the words "for the treatment of illness and rehabilitation of health" at the very end of the first sentence, as was proposed by the delegation of Venezuela. It was also mentioned that a reference to environmental pollution in subparagraph (c) of paragraph 2 was made at the proposal of the delegation of Austria. The proposal submitted by Mexico (E/CN.4/1989/WG.1/WP.30) was included in subparagraph (f) of paragraph 2. A new paragraph 4 was included in article 12 bis at the suggestion of the Philippines (E/CN.4/1989/WG.1/WP.46). It was also indicated that the word "progressively" in paragraph 4 of the article as adopted at first reading (which now becomes paragraph 5) was deleted by the drafting group.

413. In answer to the question by the representative of the United States of America about the reasons for which the words "for financial reasons" had been omitted in paragraph 1, the observer for Australia said that a provision to this effect had already been included in article 5 as adopted at second reading.

414. The observer for Sweden orally amended subparagraph (d) of paragraph 2 to read: "To ensure appropriate health care before and after delivery". This amendment was then sub-amended by the representative of the United Kingdom to read: "To ensure appropriate pre- and post-natal health care for mothers and their children". The subparagraph was further amended by the representative of the United States of America who suggested that the subparagraph should refer only to "mothers" and not to their children.

415. The Working Group then adopted paragraphs 1 to 3 of article 12 bis as proposed in E/CN.4/1989/WG.1/WP.64 and as revised.

416. With regard to paragraph 4 several oral amendments were put forward.

417. The representative of the United States of America proposed to replace the word "adverse" in the second sentence by the word "harmful" or "injurious". Subsequently, this part of the sentence was reworded to read: "... shall not have harmful consequences for the child ...".

418. The representative of Norway expressed strong support for the proposed new paragraph 4 since it would cover an important aspect of protection of the child's interests which would otherwise be left out of the draft convention.

419. The observer for the Netherlands suggested the deletion of the words "or treatment" in the first sentence and of the words "shall be in the furtherance of child health" at the end of the paragraph.

420. Instead of deleting the word "treatment" it was later proposed by Sweden to add after it the words "of an experimental nature".

421. Another suggestion relating to the end of the paragraph was to replace the words "child health" by "public health". The representative of the United Kingdom sub-amended this proposal by replacing the words "public health" by "medical knowledge". Finally, the observer for Australia proposed to revise the end of paragraph 4 to read: "... and shall be in the furtherance of the health of children and in accordance with any relevant ethical guidelines and rules".

422. It was suggested by the delegation of Portugal and subsequently seconded by several more speakers that the words “or legal guardians” should be inserted after the words “child’s parents”. That delegation also asked for some clarification on the wording of the last sentence, since it seemed important to underline that medical or scientific experimentation should be a need and a benefit for the child who was going to suffer it, and not only to promote the health of children worldwide.

423. The representative of the Union of Soviet Socialist Republics expressed the view that there should be no alternative as to whose consent was needed for the child to be subject to medical or scientific experimentation. He proposed to replace “or” by “and” so that the consent of both the child and his or her parents was to be sought.

424. The observer for Canada pointed out the need for some reversal in the first sentence of the paragraph so that the consent of the child’s parents is sought first and only then, where appropriate, that of the child. He also drew the attention of the Working Group to the fact that in emergency cases the consent cannot be obtained immediately and described the instances when the consent of parents may not be obtained for religious or similar reasons.

425. The representative of Venezuela stated that her delegation would not be able to join in the consensus on this paragraph since the adoption of it in its present form might, in her view, open a door to abuse. She suggested that consultations on this matter should be continued with the participation of experts from the World Health Organization and that for the time being article 12 bis should be adopted without paragraph 4.

426. This view was shared by the delegation of Poland which also expressed doubts as to whether the Working Group was competent enough to express a judgement on this matter.

427. The representative of France stated that in the absence of instructions from his Government his delegation was unable to take a definite decision and, therefore, proposed to dissociate paragraph 4 from article 12 bis.

428. The representative of Ireland stated that his delegation favoured the inclusion of paragraph 4 into article 12 bis and would, therefore, support the proposal to hold further consultations.

429. The Chairman ruled that paragraph 4 was deleted from article 12 bis.

430. The representatives of Venezuela, the Philippines and the United States of America expressed their regret that consideration of paragraph 4 had been discontinued. The representative of Norway stated in this connection that his delegation strongly objected to the ruling of the Chairman.

431. The Australian delegation stated that while it would have been preferable if a special paragraph on medical experimentation had been included in article 12 bis, its absence would not leave children unprotected. Other paragraphs in this article and other articles in the convention more generally, clearly prohibited medical experimentation not in the best interests of the child.

432. The Working Group then adopted paragraph 5 of E/CN.4/1989/WG.1/WP.64 with the addition of the word “progressively” after the word “achieving”. This paragraph thus became paragraph 4 of article 12 bis.

433. Article 12 bis as adopted reads as follows:

“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. The States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.

2. States Parties shall pursue full implementation of this right and in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality,
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,
 - (c) To combat disease and malnutrition including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,
 - (d) To ensure appropriate pre- and post-natal health care for mothers,
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents,
 - (f) To develop preventive health care, guidance for parents, and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.”

Article 25 (Periodic review of placement)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

B. First Polish draft convention and comments (1978)

Neither the first Polish draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 25 of the Convention.

C. First reading (1979-1988)

The text of article 25 was discussed and adopted by the Working Group in 1986. This article was referred to as article 12 ter throughout the first and second readings.

1. Proposal submitted to the Working Group (1982)

(a) United States of America

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1982/30/Add.1, para. 60).

60. The representative of the United States requested the introduction of a new paragraph dealing with the situation of children placed under foster care, and in particular the need to ensure that the situation of such children be subject to periodic review by competent judicial or administrative authorities. Therefore, he submitted the following proposal for such a paragraph:

“The States Parties to the present Convention shall take appropriate measures to ensure that the situation of a child placed under foster care is periodically reviewed by competent judicial or administrative authorities.”

The Working Group was unable to consider this proposal for lack of time.

2. Proposal submitted to the Working Group (1985)

(a) Canada

For the text of this proposal, see paragraph 52 in section 3 below.

3. Discussion and adoption by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 52 to 64).

52. At the Working Group's 1985 session, the delegation of Canada proposed the following text for a new article:

“1. States Parties to the present Convention recognize the right of a child removed from the family environment by the State or placed with the State by the parents for the purposes of physical,

emotional or mental health-care treatment to a periodic review of the treatment provided to the child.

2. States Parties shall take appropriate measures to provide an adequate mechanism for reviewing the effectiveness of the treatment and the need for its continuation.”

That proposal was reintroduced, and the observer for Canada stated that the numbering assigned to the article by the Secretariat in its document E/CN.4/1986/WG.1/WP.1 met with the approval of the Canadian delegation.

53. The delegations of Norway and the United Kingdom expressed their support for the aforesaid article. The representative of Australia also expressed his support, but wished to strengthen the text by adding the words “protection or” between the words “health-care” and “treatment” in the latter part of paragraph 1.

54. The delegations of France, the German Democratic Republic, the Netherlands and Sweden endorsed the support already expressed by the delegations of Australia, Norway and the United Kingdom.

55. The representative of the United States suggested the introduction in paragraph 1 of the word “temporarily” between the words “child” and “removed” and the replacement of the phrase “or placed with the State by the parents” by the following: “, whether or not initiated by parental request”. The observer for Finland had serious doubts regarding the amendment proposed by the United States representative which he thought would weaken the provision of paragraph 1. The representative of the United Kingdom agreed with the observer for Finland, and further proposed the addition at the end of the paragraph of the words “and to other relevant circumstances determining his or her situation”.

56. The representative of the United States then revised her second proposal to read “or with the agreement of State authorities”. The observer for Finland suggested that the article under consideration should have a third paragraph to read: “the provisions of this article are not applicable to any placements made by the parents or legal guardians of the child”. The representative of the United Kingdom read out a revised wording for paragraph 1 worked out with the agreement of the delegation of Canada and reading:

“States Parties to the present Convention recognize the right of a child who has been placed by the competent State authorities for care, protection, or treatment of his or her physical, emotional, or mental condition to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her situation.”

57. The observer for Finland said that the revised wording of paragraph 1 met his preoccupations regarding the original text but suggested an amendment to it, namely that the phrase “placed with the competent State authorities” should read “placed by the competent authorities”. That amendment was supported by the delegation of the Netherlands.

58. The representative of the United States then proposed that the phrase “placed with the competent States authorities” be replaced by “under the care and supervision of State authorities”. That proposal was acceptable to the Canadian and United Kingdom delegations.

59. The observer for Finland reiterated his preference for the words “placed by” which he had proposed previously, and the representative of the United States agreed to amend her proposal to read “placed by State authorities”.

60. In view of the Chairman’s opinion that the article under consideration dealt only with the State of the child’s physical or mental health, the observer for Canada explained that the word “emotional”, which originally appeared in the Canadian proposal, was recognized in Canadian law and important within the Canadian system.

61. Taking into account the views expressed in the course of the discussion of paragraph 1, the representative of the United Kingdom submitted the following text for the Group’s consideration:

“States Parties to the present Convention recognize the right of a child who has been placed by the competent State authorities for care, protection, or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her situation.”

62. The observer for the Netherlands proposed adding the words “the purposes of” between the words “authorities for” and “care”, while the observer for Finland suggested the deletion of the word “State” with which the representative of the United Kingdom agreed. The observer for Canada was able to agree to the deletion of the word “State” and proposed that the word “situation” be replaced by the word “placement” at the end of the paragraph. The representative of the United States stated the understanding of her delegation that the text did not apply to placements under the juvenile justice system but only to placements outside the scope of article 19 on penal proceedings.

63. The Working Group approved the text with those amendments. The approved text read as follows:
“States Parties to the present Convention recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

64. With regard to paragraph 2 of article 12 *ter*, the Chairman was of the opinion that that paragraph appeared to play the role of a commentary. The representative of the United Kingdom agreed with the Chairman; it was already implicit in paragraph 1 that appropriate measures to implement the child's right would be adopted by States Parties to the convention and he would therefore prefer the deletion of paragraph 2. The delegation of the German Democratic Republic also took the view that there was no need to include paragraph 2 in the article under consideration. In view of those opinions, the delegation of Canada withdrew its proposal concerning paragraph 2, and the Working Group adopted article 12 *ter* with a single paragraph.

4. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

*Article 12 *ter**

States Parties to the present Convention recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

D. Technical review (1988)

1. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 31.

The present article (as well as article 13, *paragraph 1* and article 14, *paragraph 1*) deals with questions of relevance to the World Health Organization, such as the right of the child who has been placed, presumably under some sort of restriction, although the provision does not say so, for the protection, *inter alia*, of his/her physical or mental health, to periodic review, social security benefits and physical and mental development of the child.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 434 to 435).

434. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the article as adopted during the first reading which included a suggested linguistic revision. The text read as follows:

“States Parties (to the present Convention) recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

435. After brief comments by the representatives of the Union of Soviet Socialist Republics and Venezuela respectively about the translation of the word “placed”, the revised text as contained in E/CN.4/1989/WG.1/WP.2 was adopted. The text of article 12 ter as adopted during second reading reads as follows:

“States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

Article 26 (Social security)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 124).

Article IV

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate prenatal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

2. Comments on the first Polish draft

The comments concerning article IV of the draft read as follows.

(a) Austria

The following is taken from document E/CN.4/1324.

The scope of article IV is not clear. There is a possible inconsistency between “the child’s” right to adequate prenatal care and the possibilities for legal abortion provided in some countries.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

The following words should be added to the last sentence of article IV: “with a gradual transition towards free medical care”.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

In the French text, it would be preferable to replace the expression “*sécurité sociale*”, which is limited in scope, by “*protection social*”, which has wider connotations.

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3 and 6, Federal Republic of Germany, under General Comments.

Paragraphs 3 and 6, which appear elsewhere in E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(e) Malawi

The following is taken from document E/CN.4/1324/Add.4.

With respect to the last sentence of article IV, which states that the child shall have the right to adequate nutrition, housing, recreation and medical services, in Malawi we do not as a Government normally provide food and housing to members of the general public. This we feel is a preserve of the individuals concerned. Moreover, it would be necessary to state who would determine whether or not the food and housing provided are adequate.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

A point of some importance which this article, and indeed all the articles raise to some degree, is the definition of a child. Does the definition begin at conception, at birth, or at some point in between? Perhaps of equal importance, in view of the special protection clause (article II), is a definition of the end of childhood.

It seems that it would be very difficult to declare an across-the-board age and that the end of childhood would be related to specific issues (right to leave home, vote, drive a motor vehicle, have sexual intercourse, etc.) which would be covered by specific legislation in each country.

(g) Spain

The following is taken from document E/CN.4/1324.

After the words "social security", add the words "as a direct or privileged beneficiary thereof".

The purpose of this is to prevent any discrimination on grounds of lack of bonds of filiation.

(h) Sweden

The following is taken from document E/CN.4/1324.

Medical attention and care as well as a healthy physical environment are important prerequisites for the sound development of the child. These matters should be developed in a more elaborate way than in principle 4 of the 1959 Declaration. It is important, for instance, to prevent children from being subjected to practices which involve physical abuse and affect their present and future health or well-being.

(i) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

1. The importance of interrelationships between the various areas of development is not clearly indicated. In its present form, the draft fails to make it clear that (i) adequate nutrition of the child is linked

with his overall development even more than with his health and that (ii) adequate nutrition of the mother is of paramount importance for the nutrition of the younger child.

2. It is, therefore, suggested to reword article IV as follows:

“The child shall enjoy the benefits of social security. He shall be entitled to *healthy growth and development*; to this end, special care and protection shall be provided both to him and to his mother, including adequate *food* and prenatal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.”

(j) World Health Organization (WHO)

The following is taken from document E/CN.4/1324.

Article IV, [first line]:

We have some difficulties with the provision “he shall be entitled to grow and develop in health”, because the right to be healthy, as the provision seems to suggest, appears to be unrealistic. We assume that the authors of the draft probably envisage that the child should grow and develop in a healthy environment. If so, the sentence could be amended accordingly.

C. First reading (1979-1988)

The text of article 26, which was based on article 14 of the revised Polish draft, was discussed and adopted by the Working Group in 1984. This article was referred to as article 14 from 1979 to 1982 and as article 13 thereafter.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 14

The States Parties to the present Convention recognize that every child shall have the right to social security benefits, and undertake to introduce appropriate legal and organizational measures for the implementation of this right.

2. Proposal submitted to the Working Group (1981)

(a) International Labour Organization (ILO)

The following is taken from document E/CN.4/WG.1/WP.1/1, which was available to the Working Group in 1981.

[...]

Social security benefits

8. Article 14 of the revised draft convention would require recognition that every child should have “the right to social security benefits”, and introduction of legal and organizational measures for implementation of this right. Account needs to be taken of the fact that in many cases the right to social security benefits relating to children is that of a parent or other primary recipient of benefits, and not the right of the child itself. This point might be covered by replacing the words “every child shall have the right to social security benefits” in article 14 by “every child shall have the right to benefit from social security”. This would also be consistent with the wording used in article 13, paragraph 1.

3. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 13

“The States Parties to the present Convention shall ensure to every child the right to social security benefits for which he is eligible on account of the situation of his parents or legal guardians or another situation and shall take appropriate legal and administrative measures in order to guarantee the implementation of this right.”

4. Proposal submitted to the Working Group (1983)

(a) Canada

For the text of this proposal, see paragraph 82 in section 6 below.

5. Proposals submitted to the Working Group (1984)

(a) International Labour Organization (ILO)

For the text of this proposal, which was contained in document E/CN.4/1984/WG.1/WP.1, see paragraph 81 in section 6 below.

(b) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 14 (Social security)

We believe it would be useful to include in the Canadian delegation's new proposals certain provisions regarding legally permitted work by children over 15 years of age and in particular:

- (a) The need to ensure schooling or participation in training or educational programmes, account being taken of the provisions of other international instruments relating to employment;
- (b) Freedom of choice of employment, the right to remuneration commensurate with work being carried out and social protection as regards working conditions and accidents at work.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983). Some of the proposals were subsequently reproduced in document E/CN.4/1985/WG.1/WP.1.

Article dealing with social security and standard of living (currently considered as article 14 and 15)

1. The States Parties to the present Convention shall ensure to every child *from birth* the right to social security benefits for which *the child* is eligible on account of the situation of *the child's* parents or legal guardians or *any other* situation, *including that of children who are deprived of all protection*, and shall take appropriate legal and administrative measures in order to guarantee the implementation of this right.”

[...]

6. Discussion and adoption by the Working Group (1984)

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, paras. 80 to 93).

80. The representative of Poland proposed that article 13 as contained in document A/C.3/36/6 could be the basis for discussion. The revised Polish draft article read as follows:

“The States Parties to the present Convention shall ensure to every child the right to social security benefits for which he is eligible on account of the situation of his parents or legal guardians or another situation and shall take appropriate legal and administrative measures in order to guarantee the implementation of this right.”

81. The representative of the International Labour Office referred to the fact that the wording in the Polish text did not appear to reflect the true position with regard to entitlement to social security benefits; in general, the right to receive benefits was granted to the parent or guardian, by reason of his responsibility for the maintenance of the child. In these circumstances, it would appear preferable, generally speaking, to use the wording previously proposed by the delegation of Poland in article 14 of document E/CN.4/1349. The article might accordingly read:

“The States Parties to the present Convention shall ensure to every child the right to benefit from social security and shall take appropriate legal and administrative measures to guarantee the implementation of this right.”

82. A proposal submitted by the representative of Canada at the Working Group’s session of 1983 was reintroduced by the Canadian delegation and read as follows:

“1. The States Parties to the present Convention recognize the right of every child to social security, including social insurance, and undertake to introduce appropriate legislative and administrative measures for the implementation of this right.

2. Depending upon the age and maturity of the child and the nature of the social security benefit, the child may receive social security directly, or indirectly through his or her parents or those caring for the child.”

83. The representative of Canada drew the Working Group’s attention to the mandatory character of the Polish draft article as opposed to the Canadian one and from this standpoint thought that the latter could be more acceptable to countries with financial difficulties for its implementation. A similar view had been expressed earlier by the representative of the Islamic Republic of Iran, who had emphasized the role that international cooperation could play in aiding Third-World countries which had difficulty in implementing a full-scale social security system.

84. The representative of the International Labour Office suggested the inclusion in his proposal of a reference to national conditions or to national law and practice. Thus the Working Group finally decided to base its discussions on the amendment proposed by the International Labour Office which read:

“The States Parties to the present Convention shall, in a manner appropriate to national conditions, ensure to every child the right to benefit from social security and shall take appropriate legal and administrative measures to guarantee the implementation of this right.”

85. The representative of Australia proposed the deletion of the words “legal and administrative” from the International Labour Office draft and this proposal was accepted by the Working Group.

86. The Cuban delegation submitted two amendments, namely, to insert the word “increasingly” between “benefit” and “from” in the [second] line and, in the same line, to replace the word “appropriate” by the words “the necessary”. While some delegations were in favour of introducing the word “increasingly”, others made alternative suggestions such as “progressively” and “fully”. A similar proposal by the delegation of Canada to replace the words “guarantee the implementation” by “achieve the full realization” found consensus in the Working Group. Also the Cuban proposal to replace “appropriate” by “the necessary” was accepted by the Group.

87. The representative of the United States suggested that in the second line the words “ensure to” should be replaced by “recognize for” because that would imply that the right to benefit from social security was recognized as a goal or objective whose realization would be sought progressively rather than a legal right requiring immediate implementation. This amendment found the support of the Canadian delegation and was accepted by the Working Group.

88. While the United States delegation had proposed, at an earlier stage of the discussion, the introduction of the word “eligible” between the words “every” and “child” in the Polish draft article, and, at a later stage of the discussion, some delegations indicated that, in granting social security to a child, account must be taken of the financial resources of the child and the family, other delegations emphasized that the convention ought to recognize the right of every child to social security regardless of the financial circumstances of the child, his parent(s) or guardian(s).

89. A text for a second paragraph was elaborated by the delegations of Australia and the Netherlands, taking into consideration the views expressed by members of the Group. The latter delegation introduced the text as follows:

“Such benefits may be provided taking into account, as appropriate, the resources and circumstances of the persons having responsibility for the maintenance of the child.”

90. The representative of the German Democratic Republic, although in principle agreeing with this proposal, questioned the need for the words “taking into account” in the sentence. The representative of the Netherlands pointed out that the meaning of “may” in the first line of the second paragraph encompassed that of “as appropriate” in the same line and consequently could be deleted. The delegation of the United States proposed that the paragraphs should begin with the words “The benefits provided by law may be granted”, in order to take account of the domestic legal criteria of several States for extending social security benefits.

91. The representative of Finland proposed the following formula for paragraph 2: “Such benefits should be granted taking into account the national resources available and, where appropriate, the resources and circumstances of the child and of the persons having responsibility for the maintenance of the child”. Many delegations found that wording acceptable.

92. The representative of the United States wished to insert the words “should where appropriate” in the first line of the proposal of the delegations of Australia and the Netherlands. That formula was used in the following compromise text which she presented and which took into consideration the joint Australian and the Netherlands draft second paragraph: “The benefits should, where appropriate, be granted by law or other means, taking into account the national resources available and the resources and the circumstances of the child and persons having responsibility for the maintenance of the child and other relevant considerations of any application for benefits made on behalf of the child”. Her amendment was prompted by the fact that the other relevant considerations were not typically covered by the phrase “resources and circumstances of the child” in the Finnish proposal; regarding the meaning of the phrase “by law or other means” she gave as an example one offered earlier by the representative of Finland who had noted that benefits might be granted by agreement of private resources, but did not insist in having that phrase retained after the United Kingdom delegation said that it had reservations about supporting it.

93. The delegation of Australia suggested an amendment to the United States draft second paragraph, in which the word “and” between “maintenance of the child” and “other relevant” was replaced by the phrase “as well as any”, and the words “relevant considerations of any” were replaced by “consideration relevant to an”. The representative of Canada thought that the last part of the paragraph amended by the Australian delegation would be clearer if it read “benefits made by or on behalf of the child”, which emphasized that the child himself could make the application for benefits. With that amendment, the article was adopted by the Working Group.

7. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 13

1. The States Parties to the present Convention shall, in a manner appropriate to national conditions, recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization of this right.
2. The benefits should, where appropriate, be granted taking into account the national resources available and the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 31.

Regarding article 13, comments made by the International Labour Organization in 1980-1983 were taken into account and the article as it stands would provide for principles of protection consistent with those of relevant ILO standards.

2. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 32.

Paragraph 1

This provision reads:

“The States Parties to the present Convention shall, in a manner appropriate to national conditions, recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization of this right.”

The inclusion of the phrase “in a manner appropriate to national conditions” would appear to be superfluous. It does not qualify the right in question, but only the manner in which each State Party shall recognize it. As such, it is implicit in all of the provisions of the convention.

Paragraph 2

As noted above with respect to paragraph 2 of article 12, the requirement that the provision of benefits, granted pursuant to a right, be made dependent upon the making of an application would seem to introduce an inappropriate bureaucratic requirement. In many situations “informal” social security (i.e. extended family, tribe, or neighbourhood-based) systems apply, in which the concept of lodging an “application” would be quite alien.

Moreover, this qualification introduces an element which constitutes a diminution in the standard already provided for in article 9 of the International Covenant on Economic, Social and Cultural Rights. Consideration might thus be given to terminating the paragraph with the words: “...as well as any other relevant consideration”.

3. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 33.

33. In addition, in paragraph 1, the Working Group may wish to add after “social security” the words “including social insurance”, so that this provision will correspond to article 9 of the International Covenant on Economic, Social and Cultural Rights.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 436 to 452).

436. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“1. (The) States Parties (to the present Convention) shall (in a manner appropriate to national conditions) recognize for every child the right to benefit from social security, *including social insurance*, and shall take the necessary measures to achieve the full realization of this right.

2. The benefits should, where [appropriate], be granted taking into account the national resources available and the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other *relevant consideration* (consideration relevant to an application for benefits made by or on behalf of the child).”

437. The representative of Venezuela orally proposed that the first two lines of paragraph 1 of article 13 read as follows:

“States Parties shall recognize for every child, in accordance with the domestic legislation of each country, the”

and further proposed that paragraph 2 read as follows:

“2. The benefits referred to in this article shall be granted taking into account the national resources available and the economic situation of the child or of the persons responsible for his or her maintenance.”

438. The representatives of Australia, the Netherlands, Norway, the United Kingdom and the United States of America expressed support for the revised text as contained in document E/CN.4/1989/WG.1/WP.2.

439. The representative of the Union of Soviet Socialist Republics suggested that the convention would not lose much by the deletion of article 13 as contained in document E/CN.4/1989/WG.1/WP.2. He took this view because he felt that the concerns covered by article 13 were already adequately covered by articles 8 and 14 of the convention. He further stated that the article as contained in document E/CN.4/1989/WG.1/WP.2 did not take into consideration the considerable impact of private and voluntary charitable organizations. However, in view of the argument by the observer for Sweden that the revised text in E/CN.4/1989/WG.1/WP.2 was consistent with article 9 of the International Covenant on Economic, Social and Cultural Rights and the argument by the observer for the International Labour Organization that article 13 laid down, in general terms, the right of the child to benefit from social security, while articles 8 and 14 only dealt with specific aspects and did not expressly mention social security, the representative of the Union of Soviet Socialist Republics did not insist on his suggestion.

Paragraph 1

440. With regard to the proposal by the representative of Venezuela, the representative of Norway expressed a preference for the revised text as contained in E/CN.4/1989/WG.1/WP.2 because he felt that

the reference to domestic legislation contained in the Venezuelan proposal would weaken the paragraph. The representative of the Federal Republic of Germany expressed a preference for the text adopted during the first reading and indicated that since States Parties would be deciding what was “appropriate” the old wording would meet the concerns of the representative of Venezuela. The representative of Senegal expressed a desire for the text to more closely resemble article 9 of the International Covenant on Economic, Social and Cultural Rights. However, he indicated that he would otherwise be willing to support the revised text contained in E/CN.4/1989/WG.1/WP.2.

441. The observer for Kuwait supported the proposal by the representative of Venezuela. The representative of the Union of Soviet Socialist Republics indicated that the reference to domestic legislation could not be viewed as weakening the paragraph because such a view would be inconsistent with the wording of article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. The representative of Poland indicated a willingness to support the proposal by the representative of Venezuela but with the substitution of the words “the domestic legislation of the country” with the words “national considerations”.

442. The observer for Canada indicated that there was no need to have a qualifying phrase in this paragraph because the convention already contained a qualifying article in the form of article 5. He took the view that the word “resources” in that article was enough to meet the concerns of delegations who felt a need to qualify this paragraph.

443. After brief consultations, the representatives of Sweden and Venezuela proposed the addition of the words “in accordance with their national legislation” to the end of the revised text of paragraph 1. The observer for Australia expressed support for this proposal but indicated that he would rather the word “law” were used instead of “legislation” as the latter word could be construed to refer only to existing legislation. The Working Group then proceeded to adopt paragraph 1 as follows:

“1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”

Paragraph 2

444. The representative of Senegal took the view that there was no need for a paragraph 2 because it would be enough to simply set out the right to social security, as envisaged in paragraph 1, and leave it to special international instruments and States Parties to settle the modalities for the achievement of the right. He indicated that, as envisaged, paragraph 2 added nothing to paragraph 1.

445. The observer for the International Labour Organization expressed the view that the position taken by the representative of Senegal was a valid one. The representatives of Poland and the Union of Soviet Socialist Republics supported the suggestion of the representative of Senegal because they felt that the concerns covered by paragraph 2 were already adequately covered by articles 8 and 14. The representative of Norway expressed a similar opinion. He took the view that the reference in paragraph 1 to national law allowed States Parties to establish the enjoyment of the right as they saw fit.

446. The representatives of India, Ireland and the United States of America supported the retention of paragraph 2 because they felt that it clarified the otherwise inexact terms of paragraph 1. The representative of India supported the retention stating that India’s declaration to article 9 of the International Covenant on Economic, Social and Cultural Rights would also apply if paragraph 2 were adopted.

447. The representative of the Netherlands sought the retention of paragraph 2 as envisaged, in particular, so as not to create the situation in which States Parties would be obliged to grant benefits to all children, including those of wealthy parents, regardless of their financial circumstances. The representative of the United Kingdom also sought the retention of paragraph 2.

448. In view of the Working Group's inability to reach consensus, the Chairman suspended the debate on paragraph 2 and established a drafting group to try to resolve the different positions taken by delegations.

449. The representative of the Netherlands, speaking on behalf of the informal drafting group, announced the outcome of consultations held in respect to paragraph 2 of article 13. A proposal was made to delete the words "the national resources available and" since there was some repetition with article 5 as already adopted.

450. The representative of India stated that his delegation would be ready to accept this proposal with the understanding that the provision of article 5 on the availability of resources equally applied to this paragraph.

451. The representative of Venezuela orally proposed to amend paragraph 2 by inserting the word "economic" before the word "circumstances" and by replacing the words "and persons responsible" by "or persons responsible".

452. After some discussion, the representative of Venezuela withdrew her amendments and the Working Group adopted paragraph 2 of article 13 reading as follows:

"2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child."

2. Statement made during the adoption of the report

(a) Federal Republic of Germany

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 721).

721. [...] The representative of the Federal Republic of Germany further asked that the following declarations be entered in the report:

[...]

(b) Concerning article 26, paragraph 1 (the numbering follows document E/CN.4/1989/29) the Government of the Federal Republic of Germany understands that it is consistent with this provision of the convention that national law recognizes entitlement to social insurance benefits of children within the meaning of this convention only in so far as they are either insured together with one parent in their capacity as dependants or surviving dependants or insured together with another person entitled to bring up the child or if, as a result of employment or apprenticeship admissible under article 32 of this convention they have a social insurance coverage of their own.

[...]

Article 27 (Standard of living)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 124).

Article II

The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

2. Comments on the first Polish draft

Article II of the draft gave rise to the following comments.

(a) Dominican Republic

The following is taken from document E/CN.4/1324.

1. We consider it appropriate to add, after the word "dignity" at the end of the first sentence of article II, the words "Children of working mothers shall enjoy, from the time of their birth until they reach school age, the assistance of centres or day nurseries which guarantee the care and assistance necessary for their full development during these early years of their life."
2. The last part of this article could constitute a final clause for the operative part of the convention, contained in a separate article reading as follows:

"Article ...

"In order to achieve the purposes of the present Convention, the States Parties thereto shall, when enacting laws governing this subject in their respective countries, give paramount consideration to the best interests of the child".

(b) France

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 4 (a), France, under General Comments.

Paragraph 4 (a), which appears elsewhere in E/CN.4/1324/Add.1, reads as follows.

4. At this juncture, the French Government wishes to make a number of comments on the draft that has been submitted:

When drawing up the convention it would be preferable to separate the provisions that would be couched in the form of a recommendation from those that would constitute an actual commitment for States.

(a) The provisions that would constitute a recommendation, such as article II, the first sentence of article VI and article X, might be included in a preliminary declaration or a recommendation annexed to the convention;

[...]

(c) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(d) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

We accept the general intent of article II. However, we presume that key phrases such as “special protection”, “healthy and normal manner” and “the best interests of the child” will be open, through the general terms in which they are couched, to varied interpretations and will in fact be defined nationally in terms of the laws and the child-rearing practices which are adopted and acceptable in that nation.

(e) Spain

The following is taken from document E/CN.4/1324.

Between the words “normal manner” and the words “and in conditions of freedom and dignity” insert the words “avoiding anything that damages or may impair his physical or mental health, especially drugs in any of their forms”.

(f) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

There is no mention in the article of the emotional development of the child. Statements referring to his/her overall growth and development refer instead to moral and spiritual development, supposedly to cover this important area of development.

(g) United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1324.

Alongside physical, mental, moral, spiritual and social development, an explicit reference should be made to “*cultural development with due regard for national or regional realities*”.

(h) World Health Organization (WHO)

The following is taken from document E/CN.4/1324.

Article II, first line:

It is not clear against what the “special protection” is to be provided. Would it be against harmful social environment, against disease, against abuse, etc.? Perhaps this point should be clarified.

Article II, second line:

It is not clear what the term “other means” is meant to cover. Is it intended to refer to measures which are not law in the strict sense, such as administrative acts or practical measures? This needs to be clarified.

(i) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

2. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

C. First reading (1979-1988)

The text of article 27, which was based on article 15 of the revised Polish draft, was discussed and adopted by the Working Group in 1985. Further discussion took place in 1987 and an additional paragraph was adopted in 1988. This article was referred to as article 15 until 1982 and as article 14 thereafter.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 15

1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate for his healthy and normal physical, mental and moral development in every phase of the child's development.

2. The parents shall, within their financial possibilities and powers, secure conditions of living necessary for a normal growth of the child.

3. The States Parties to the present Convention shall take appropriate measures to implement this right, particularly with regard to nutrition, clothing and housing, and shall extend the necessary material assistance to parents and other persons bringing up children, with special attention paid to incomplete families and children lacking parental care.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 14

1. The States Parties to the present Convention recognize the right of every child to a standard of living which guarantees his normal physical, mental and moral development.
2. The parents shall, within their powers and financial possibilities, secure conditions of living indispensable for a normal development of the child.
3. The States Parties to the present Convention shall take appropriate measures to implement this right, particularly with regard to feeding, clothing and housing, and, within their means, shall extend the necessary material assistance to parents and other persons bringing up children, special regard to be given to incomplete families and children deprived of parental care.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 5.

[with regard to article 14 of the Polish text in A/C.3/36/6, amend paragraph 3 as follows:]

3. The States Parties to the present Convention shall take appropriate measures to implement this right, particularly with regard to feeding, clothing and housing, and, within their means, shall extend the necessary material assistance to parents and other persons bringing up children, special regard to be given to *single-parent and deprived families, whether due to the absence of one parent, to the lack of parental care, or to extreme poverty.*

4. Proposals submitted to the Working Group (1983)

(a) Algeria

The following is taken from document E/CN.4/1983/WG.1/WP.27.

Article 13, paragraph 1

Children have the right to an adequate standard of living. To this end, the States Parties shall cooperate in the economic, social, cultural, scientific and technical fields to promote economic and social progress throughout the world and particularly in the developing countries.

(b) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.26. This proposal was subsequently reproduced in annex II of the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71).

Article 15: new proposal

1. States Parties to the present Convention recognize the right of every child to a standard of living adequate to ensure healthy physical, mental and emotional growth in every phase of the child's development.

2. The parent(s) or those responsible for the child have the primary responsibility to secure, within their financial possibilities and powers, the conditions of living necessary for the healthy development of the child.

3. The States Parties to this Convention shall take appropriate measures to assist parents and others caring for children to implement this right and shall extend necessary material assistance, particularly with regard to nutrition, clothing and housing.

5. Proposals submitted to the Working Group (1984)

(a) International Social Service

The following is taken from document E/CN.4/1984/WG.1/WP.3.

ISS proposes the following addition:

“The child living apart from one or both parents has the right to appropriate support from them for his maintenance and development”.

(b) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983). Some of the proposals were subsequently reproduced in document E/CN.4/1985/WG.1/WP.1. Changes to the Polish texts contained in document A/C.3/36/6 are printed in italics.

Article dealing with social security and standard of living (currently considered as article 14 and 15)

1. The States Parties to the present Convention shall ensure to every child *from birth* the right to social security benefits for which *the child* is eligible on account of the situation of *the child's* parents or legal guardians or *any other* situation, *including that of children who are deprived of all protection*, and shall take appropriate legal and administrative measures in order to guarantee the implementation of this right.

2. The States Parties to the present Convention recognize the right of every child to a basic standard of living which guarantees *the child's* physical, mental, moral and social development.

3. The States Parties to the present Convention shall take appropriate measures to implement this right and extend the necessary material assistance to parents and other persons bringing up children, special regard to be given to *very poor or single-parent families and children deprived of parental care. Protection and adequate social benefits should be extended in particular to women before and after confinement to ensure their children's and their own well-being.*

4. *The States Parties to the present Convention shall take the necessary measures to develop the resources allocated to the launching and implementation of children's programmes at the national and international levels. Particular efforts shall be made on behalf of the poorest population of all countries.*

6. Proposals submitted to the Working Group (1985)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Cuba

For the text of this proposal, see paragraph 53 in section 7 below.

(b) United States of America

For the text of these proposals, see paragraphs 42 and 49 in section 7 below.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following was proposed to the Working Group at its 1984 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984).

Article dealing with standard of living

1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate to guarantee the child's physical, mental, moral and social development.
2. The States Parties to the present Convention shall take appropriate measures to implement this right and extend the necessary material assistance to parents and other persons bringing up children, special regard to be given to the poorest or single-parent families and children deprived of parental care. Protection and adequate social benefits should be extended in particular to women before and after confinement to ensure their children's and their own well-being.
3. When developing support services for the family, the States Parties shall include programmes that will allow the family, particularly the parents or guardians, to provide an adequate standard of living for the child.
4. The States Parties to the present Convention shall take the necessary measures to develop the resources allocated to the launching and implementation of children's programmes at the national and international levels. Particular efforts shall be made on behalf of the poorest population of all countries.
5. States Parties shall ensure that the improvement of the child's environment and access to an adequate standard of living is specifically taken into consideration in all development planning and international cooperation programmes.
6. The States Parties shall take all appropriate measures to assist the parents or others raising the child to carry out their obligations including appropriate financial support to the child. The States Parties recognize that these obligations do not cease when the child is living apart from the parents or others responsible for him/her, unless a decision to the contrary has been made by a competent body.

7. Discussion and adoption by the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, paras. 41 to 55).

41. The observer for Poland suggested that the basis for discussion of this article should be paragraph 1 of the text concerning "standard of living" prepared by the Informal NGO Ad Hoc Group on the Drafting of the Convention, and paragraphs 2 and 3 would be those introduced by the observer for Canada at the Working Group's 1984 session. This proposal met with the agreement of the Working Group. The text before the Working Group read as follows:

"The States Parties to the present Convention recognize the right of every child to a standard of living adequate to guarantee the child's physical, mental, moral and social development.

The parent(s) or those responsible for the child have the primary responsibility to secure, within their financial possibilities and powers, the conditions of living necessary for the healthy development of the child.

The States Parties to this Convention shall take appropriate measures to assist parents and others caring for children to implement this right and shall extend necessary material assistance, particularly with regard to nutrition, clothing and housing."

Paragraph 1

42. The representative of the United States of America proposed the addition of the word “shall” between “Convention” and “recognize”, and the words “in accordance with national conditions” between “recognize” and the phrase “the right of every child”; she further suggested that the words “adequate to guarantee” should be replaced by “adequate for”. The observer for the Holy See suggested the addition of the word “spiritual” between the words “mental” and “moral”.

43. The above-mentioned proposal to replace “adequate to guarantee” by “adequate for” was supported by the Working Group. But several delegations were of the opinion that the amendment of the delegation of the United States of America concerning the introduction of the phrase “in accordance with national conditions” would weaken the basic principle contained in the introductory paragraph under consideration. The representative of the United Kingdom suggested that the amendment of the United States delegation should be incorporated in paragraph 3 dealing with the implementation of the child’s right to an adequate standard of living. The representative of the United States of America accepted provisionally to withdraw her amendment on the understanding that it would be taken up later when paragraph 3 was considered by the Working Group.

44. The Working Group agreed to paragraph 1 as amended. The approved text reads as follows:

“The States Parties to the present Convention recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

45. The representative of China proposed the addition of the following text to paragraph 1: “The States Parties to the present Convention shall take measures to prevent and prohibit children from taking drugs.” He expressed a preference for its incorporation in the article under consideration, but thought that it could also constitute a separate article of the draft convention. No decision was taken on the proposal by the Working Group.

Paragraph 2

46. The representative of the Netherlands suggested that the word “those” in the first line of the paragraph should be replaced by the word “others”, while the delegation of Austria proposed that the phrase “healthy development of the child” at the end of the paragraph be replaced by the expression “child’s development”. The representative of the United States of America suggested changing the word order of the phrase “within their financial possibilities and powers” to read “within their powers and financial possibilities”. With regard to the last mentioned United States amendment, the delegation of Bangladesh suggested that the word “powers” be replaced by the word “abilities”, and to retain the expression “healthy development”. The French delegation indicated its preference for the Austrian proposal, namely the utilization of the phrase “child’s development”.

47. The delegation of the Netherlands suggested the addition of the phrase “or as the case may be legal guardians” after the phrase “others responsible for the child” at the beginning of the paragraph. The representative of Peru then suggested that the word “those” in the first line of the original version be replaced by “persons directly”, while the representative of the Ukrainian Soviet Socialist Republic proposed that it should be replaced by the phrase “persons having responsibility for the maintenance of the child”.

48. The Working Group reached agreement on the following text: “The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.”

Paragraph 3

49. The observer for Canada proposed the introduction of the phrase “and support programmes” after the words “material assistance”. The representative of the United States of America reintroduced her original amendment to paragraph 1, namely the phrase “in accordance with national conditions”, proposing that it be added after the words “appropriate measures”; she also suggested adding at the end of the paragraph the

following words: “taking into account the national resources available and the resources and circumstances of the child and persons having responsibility for the maintenance of the child, and with special regard to the children of deprived and single-parent families”.

50. The representative of the United Kingdom suggested the introduction of the phrase “within their means” after the United States amendment “in accordance with national conditions”, and in the clause proposed by the representative of the United States of America to replace the phrase “and single-parent families” by “of the care of one or both parents” as well as to delete the word “of” before the word “deprived”.

51. The Working Group considered many additional amendments before reaching a decision on the final text of paragraph 3. During the discussion, it was suggested that a compromise text should be drafted after consultations, and the Chairman therefore requested that a new draft be prepared by an informal open-ended working party.

52. The draft was introduced by the delegation of Canada and read as follows: “The States Parties to this Convention shall take appropriate measures in accordance with national conditions and within their means, to assist parents and others responsible for the child to implement this right, and shall extend necessary material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

53. The observer for Cuba suggested that the Working Group consider the following proposal: “The States Parties to the present Convention shall take action, including action at the international level, to promote an adequate standard of living for, and the all-round development of, all children.”

54. The word “this” in the first line of the above-mentioned draft was replaced by the words “the present” and the words “extend necessary” by “in case of need provide”, and subject to a change in the word order, the Working Group agreed to the draft introduced by the Canadian delegation.

55. The approved text reads as follows:

“The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

8. Comment submitted to the Working Group (1986)

(a) Bangladesh

The following comment which concerns present article 27 is contained in a paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft convention, see document E/CN.4/1986/39, annex IV.

Articles proposed by the NGO Group

Articles sponsored by the NGO, Defence for Children International, are broadly acceptable. However, articles such as “health” “standards of living” “compulsory free education” should be made subject to a clause on the economic feasibility in particular countries. For example, it is estimated that to accommodate the school-going population in Bangladesh it would cost an amount of 200 million dollars per annum over the next few years before we can attain the objective of free compulsory primary education. Some recognition of the economic problems faced by developing countries is essential if the draft is to enjoy the support of the vast majority of developing countries including the least developed countries. Secondly, a clause has to be introduced to safeguard the autonomy and privacy of the Islamic family from encroachment and impingement by externally applied standards.

9. Proposals submitted to the Working Group (1987)

The following written proposals were submitted for consideration by the Working Group.

(a) Finland

The following is taken from the annex to the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25).

Article 14

4. The States Parties to the present Convention undertake to ensure the effective recovery of maintenance from abroad to the child. To this end, States Parties shall promote the conclusion of multilateral or bilateral agreements and the making of any other arrangements relating to the recovery of maintenance.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, see paragraph 119 in section 10 below.

10. Discussion by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 119 to 129).

Article 14, new paragraph 4

119. The representative of Australia indicated his interest in a proposal put forward by the Informal NGO Ad Hoc Group for the Drafting of the Convention for an additional paragraph to article 14, which was as follows:

“The States Parties to the present Convention recognize that the responsibilities of the parents or legal guardians, including that of providing appropriate support to the child, continue even when the child is living apart from them, unless a decision to the contrary has been made by a competent body.”

120. The observer for the Netherlands pointed out that enough attention had been given in article 14, already adopted, to the question of the responsibility of the parent(s) or others responsible for the child to secure - within their abilities and financial capabilities - the living conditions necessary for the child's development. The representative of the United Kingdom supported this view - which was shared by the Canadian delegation - and observed that the problem related to the child only up to the age of 16, because in some national legislations, the child could be married at that age.

121. The representative of Venezuela attached importance to the above-mentioned proposal and suggested replacing the words “is living apart from them” with “even when the child is not under their guardianship”. The representative of China, in referring to the word “guardians”, said that according to Chinese law, the obligation to provide the child with the required assistance did not necessarily include economic maintenance.

122. The representative of France indicated that he could accept the proposal for an additional paragraph, but had two drafting problems relating to the words “legal guardians” and “responsibilities”, and consequently wished to delete the word “legal” and to put instead of the word “responsibilities” the words “rights and obligations”. The delegation of Senegal agreed with the deletion of the word “legal” and the representative of Italy said that she was unable to accept the terminology “legal guardians” and “responsibilities”. The delegation of Morocco also objected to the inclusion in the proposal of the words “legal guardians”.

123. The representative of Australia proposed adding the following sentence to paragraph 2 of article 14:

“This responsibility continues to apply even when parents are living apart from the child.”

124. The representative of Iraq said that the text submitted by the NGO Ad Hoc Group did not seem to pursue any specific aim and stated his preference for an additional sentence to paragraph 2 of article 14, which read as follows:

“This responsibility is maintained even if the child lives apart from his parents”.

125. The representative of Italy, supported by the delegation of Poland, proposed adding to paragraph 2 of article 14 the following phrase:

“, even when the child is living apart from them, unless a decision to the contrary has been made by a competent body.”

The representative of Venezuela proposed the following text:

“The States Parties to the present Convention recognize that the responsibilities of parents or tutors, in keeping with the different national legislations, continue even when the child is not under their guardianship, unless a decision to the contrary has been made by a competent body.”

126. The observer for Finland considered that the whole idea of the proposal under consideration should be stated in a completely different way and suggested that the following considerations should be included in such a provision: (1) States Parties to the present Convention should undertake efforts to ensure the recovery of maintenance from abroad; and (2) States Parties should promote bilateral, multilateral or other agreements to ensure the recovery of maintenance. His proposal was supported by the delegations of the Netherlands and Norway. The latter delegation requested that the observer for Finland prepare a new proposal.

127. The representative of the USSR said that the proposal under consideration by the Working Group had drawn the Group into a difficult field. The concept of guardianship greatly differed from country to country and, accordingly, this matter should be sorted out in the context of national legislation. Among other things, the representative of the USSR also said that the practice of concluding bilateral or multilateral agreements for maintenance should be addressed, and asked the Finnish delegation to take into account what he had just said in drafting the proposal. The representative of the United Kingdom felt a great deal of sympathy for what the representative of the USSR had said.

128. The delegation of Canada, referring to the proposal made by the delegation of Finland, proposed in its turn adding to paragraph 2 of article 14, after the word “development”, the following words: “, provided that such responsibility does not cease to exist by reason only of the fact that the person responsible for the child is living separately from the child”.

129. The Chairman said that there was no consensus and that unless the delegation of Finland found it necessary to propose a new text on the question of continuing responsibility for support, the discussion concerning that matter was terminated.

11. Proposals submitted to the Working Group (1988)

(a) Finland

The following is taken from document E/CN.4/1988/WG.1/WP.6.

Article 14 (revised proposal)

4. States Parties to the present Convention shall take all appropriate measures to secure the implementation of the right of the child recognized in this article, in particular where the child and the parents or other persons having financial responsibility for the welfare of the child live in different States. Towards this end, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other arrangements necessary for the effective recovery of maintenance for the child.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, which was reintroduced at the 1988 session in E/CN.4/1988/WG.1/WP.2, see paragraph 119 in section 10 above.

12. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 63 to 65).

63. Finland submitted a proposal (E/CN.4/1988/WG.1/WP.6) to the Working Group to insert a new paragraph (4) on the recovery of maintenance from abroad, to the text of article 14 already adopted. In introducing the proposal, the observer for Finland referred to his delegation's previous proposal concerning the same question and to a proposal submitted by an informal group of non-governmental organizations (E/CN.4/1988/WG.1/WP.2, chapter II). He explained that the welfare of the child should not be jeopardized by the fact that his parents lived in different States. In States in which the system of "advance payments" was applied, the State was entitled to recover the maintenance it had paid for the welfare of the child. The second part of the proposal aimed at promoting the accession to international agreements or the conclusion of such agreements among States for the effective recovery of maintenance for the child.

64. The general concept in the proposal was endorsed by the members of the Working Group. Some speakers suggested that a provision containing a general principle on the matter rather than a detailed description would be more appropriate.

65. One speaker expressed the view that the principle of recovery of maintenance should be a general one, involving not only parents or other persons having financial responsibility for the child who lived abroad, but also those who lived within the territory of the State and who avoided maintaining their children. The author of the proposal insisted that it was more difficult to find a solution to that problem when the persons responsible for the maintenance of the child lived abroad. The Chairman requested the two participants supporting different views on the matter to work together on a new proposal. The new proposal was adopted, and the following text was inserted as paragraph 4 of article 14:

"4. States Parties to the present Convention shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements."

13. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 14

1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties to the present Convention shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a different State from the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

D. Technical review (1988)

1. Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 32.

In paragraph 4 of article 14, the phrase “In particular, where the person having financial responsibility for the child lives in a different State from the child...” should read: “In particular, where the person having financial responsibility for the child lives in a State different from that of the child...”

2. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 32.

Paragraph 3

This provision reads:

“The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

Article 11 of the International Covenant on Economic, Social and Cultural Rights requires States Parties to “take appropriate steps to ensure the realization” of “the right of everyone to an adequate standard of living...”. This obligation is, in turn, subject to article 2 which requires a State Party “to take steps...to the maximum of its available resources...”

Thus the phrase “within their means” constitutes a diminution of the more exacting standard contained in the Covenant.

Similarly, the phrase “in accordance with national conditions” would appear to be unnecessary given the use of the word “appropriate” in describing the type of “measures” to be taken. If, however, the reference to “national conditions” is considered to import a broader qualification, then it would also bring about a diminution in the standard already provided for in the Covenant.

Consideration might thus be given to deleting the phrase “in accordance with national conditions and within their means” and adding after the words “appropriate measures” the phrase “to the maximum of their available resources”.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following States and organizations submitted written proposals for consideration by the Working Group at second reading.

(a) Senegal

The following is taken from document E/CN.4/1988/WG.1/WP.17.

Article 5 ter (article 8 ter)

“The States Parties shall grant the protection necessary to the family, the natural environment of the child and shall attend to his physical and moral health.

Accordingly, the States Parties shall provide, in case of need, appropriate assistance to the family with a view to helping it assume its responsibilities for the harmonious development of the child.”

(b) Four Directions Council

The following is taken from document E/CN.4/1988/WG.1/NGO/2.

[...]

3. Strengthening the family. Article 14 of the draft is weaker than the corresponding provision of the International Covenant on Economic, Social and Cultural Rights, which requires the “widest possible protection and assistance” for families. The welfare of the child is indisputably a product of the social, cultural and economic environment created by his or her family and immediate community. The draft convention should provide for strengthening families and communities, *at least* to the extent already required by the International Covenants. We suggest adding the following to article 14 of the draft:

In the allocation of resources for the progressive realization of economic, social and cultural rights, States parties to the present Convention shall give priority to measures for strengthening families and communities as environments for the growth and development of children.

[...]

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 453 to 457).

453. The Working Group had before it the following text of article 14 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

“1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties to the present Convention shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a different State from the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.”

454. The revisions suggested to this article in the course of the technical review (E/CN.4/1989/WG.1/WP.2) included the deletion of “The” before, and of the words “to the present Convention” after, the words “States Parties”, in paragraphs 1, 3 and 4 of the article.

455. It was proposed by UNICEF (E/CN.4/1989/WG.1/CRP.1) to insert the words “to the maximum of their available resources” after the words “appropriate measures” in paragraph 3. This proposal was not accepted by the Working Group.

456. Another suggestion endorsed subsequently by the Working Group was made by UNESCO (E/CN.4/1989/WG.1/CRP.1) to the effect that the words “in a different State from the child” in paragraph 4 be reformulated to read: “in a State different from that of the child”.

457. The Working Group then adopted article 14, as revised, reading as follows:

“1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.”

Article 28 (Education, including vocational training and guidance)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, pp. 124 to 125).

Article VII

1. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.
2. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
3. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

2. Comments on the first Polish draft

Article VII of the draft gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

Free and compulsory education should not only be in the elementary stage but rather up to a stated maximum age corresponding to the minimum age contemplated in article IX.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

1. Another paragraph should be added to article VII: "The fullest safeguarding of the interests of the child shall be the guiding principle in the legislative regulation of family relationships."
2. Paragraph 2 should become paragraph 3, and the following words should be added to it: "but also with the State and society".

(c) France

The following is taken from document E/CN.4/1324/Add.1.

1. Paragraph 2. In order to emphasize the primary responsibility of the parents, while underlining the complementary but subsidiary nature of the role played by the State and by public, semi-public and private bodies and institutions, the wording of the draft convention should be amended as follows: "The education of the child is in the first instance the responsibility of his parents. The best interests of the child shall be the guiding principle of those who are responsible for it."
2. In view of the comments made in paragraph 4 (a) above under "General Comments", this paragraph, as amended, should be placed at the beginning of the convention.
3. Paragraph 3. This paragraph can be interpreted as restricting the rights of the child, since it specifies that his play and recreation "should be directed to the same purposes as education." While educational games are to be encouraged, they should not be the only ones the child can play. For his full development, he also needs to involve himself in activities which are not necessarily part of a specific educational system. It would therefore be preferable to delete those words from the sentence.

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6, 7 and 8, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6, 7 and 8, which appear elsewhere in E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in

question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

8. The Federal Government also expresses reservations as to the comprehensiveness of the safeguards provided regarding efforts to ensure the protection of the child which have been undertaken elsewhere in the United Nations. This applies particularly to natural children whose status has long been the subject of consultations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. This question should receive special attention. Another matter that should receive special attention in this context is whether the application of the convention to natural children is also provided for in the present draft. Admittedly, article I provides that every child shall be entitled to the rights set forth in the convention, without distinction or discrimination on account of birth or status, among other factors. Furthermore, the wording of principle 1 of the Declaration of the Rights of the Child of 20 November 1959, on which article 1 of the draft convention is based, seems to have been designed to assure natural children of the same rights as those enjoyed by legitimate children. However, the other provisions of the Declaration of 20 November 1959, and consequently of the draft convention based on it, do not take account of the situation of natural children. For instance, the second part of article VII, paragraph 2, provides that responsibility for the education and guidance of the child lies in the first place with "his parents". This provision needs to be modified to cover the situation of natural children, most of whom are brought up in the family of the mother.

(e) Greece

The following is taken from document E/CN.4/1324.

It is well known that great doubts have been expressed as to the value of the current educational system in all countries. The main argument against it is that it leads to conformity and it stifles individuality. The Greek Government considers this to be true and therefore it suggests the following rewording of paragraph 1.

"The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will respect his unique individuality and promote his general culture and enable him on a basis of equal opportunity to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of the society."

(f) Malawi

The following is taken from document E/CN.4/1324/Add.4.

We have objections to this article which is in contradiction with our educational system because education in Malawi, for very good reasons, is not compulsory at any level. What would, for example, be the meaning of compulsory education in a country which has limited resources?

(g) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

Section 1 - The question of the definition of a child discussed within our comments in article IV is important in the context of this section. We believe that "the elementary stages" of childhood should be defined in the terms of a stated minimum number of years.

Section 2 - Acceptable.

Section 3 - The spirit of this section could not be disputed by educationalists. However, “play” and “recreation” are not necessarily viewed in the same positive light by many members of the community, and if the convention were adopted by New Zealand this section could give rise to considerable public debate. It should also be noted that we do not fully understand the distinction made by implication between “play” and “recreation”.

Problems also arise when consideration is given to particular words and phrases within the section. What is, for instance, meant by the phrase “full opportunity”? Does the phrase mean “easy physical access” or “plenty of time” or “provisions for various ages of children” or is it meant to envelop all of these possible readings? We are also unsure about the meaning of the phrase “the same purpose as education”. This phrase raises the question, whether the word “same” is meant to imply the same purposes of *all* aspects of education, and the question of whether education is seen to be the same activity as schooling.

In addition, this section states that “the society and the public authorities shall endeavour to promote the enjoyment” of the right of the child to have full opportunity for play and recreation. We wonder whether the department promotes such enjoyment by providing children access to schools outside normal school hours, and whether the play and recreation schemes and equipment provided by schools are sufficient to be classed as a “full opportunity”. At present, the implementation of these schemes occurs at a local level, and the question would arise if New Zealand were to adopt this particular article of whether the “public authorities” i.e. central government departments and bodies such as education boards would be willing to work through local government, and whether the local government bodies would have sufficient resources to handle this task.

(h) Norway

The following is taken from document E/CN.4/1324.

The article should read as follows:

1. Children, including children of preschool age, shall have full opportunity of play, social activities and recreation, as a means to ensure their full mental and physical development. Society and the public authorities shall endeavour to promote the enjoyment of this right.
2. Children are entitled to receive education, which shall be free and compulsory, at least in the elementary stages. The basic school shall, in understanding of and collaboration with the homes, give children an education which will promote their general culture and enable them, on a basis of equal opportunity, to develop their abilities, their individual judgement and their sense of moral and social responsibility, and to become useful and self-reliant members of society.
3. Education shall have a global perspective. It shall promote the respect for human rights and fundamental freedoms. It shall also promote understanding, tolerance and friendship among peoples, and further activities of the United Nations for the maintenance of peace.”

(i) Portugal

The following is taken from document E/CN.4/1324.

Paragraph 1 of article 7 could be amended by deleting the word “general” before the word “culture” and by adding the word “participation” after the word “responsibility”.

(j) Spain

The following is taken from document E/CN.4/1324.

1. In paragraph 1, replace the words “and to become a useful member of society” by the words “so that he will be capable, by himself and as a result of the training he has received, of coping with the necessities of life and will be a useful member of society”.

2. The purpose of this is to emphasize the instrumental role of education and to ensure the active participation of the child in the community through the exercise of his own free choice regarding the future course of his education.

(k) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(l) Sweden

The following is taken from document E/CN.4/1324.

Immigrant children encounter special problems, for instance in respect of their schooling. In many cases, it is important for these children to be taught their own language and the culture and history of their country of origin. It should be further examined what rules regarding the rights of such children could be included in the convention.

(m) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

Paragraph 2 of the draft article should be modified as follows: "The best interests of the overall growth and development of the child shall be the guiding principle of those responsible for his education and guidance: that responsibility lies in the first place with his parents", to take account of the importance of the interrelationships between the various areas of development.

(n) United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1324.

1. More explicit reference should be made to the fact that the Convention against Discrimination in Education, in article 4 (a), sets out "to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all". Article VII of the draft convention might also refer to the guiding principles of the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (part III) and, in particular, the notion of international education contained in paragraphs 5 and 6 of that text.

2. The last paragraph of article VII should be based to a greater extent on the Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It by taking up the idea of effective safeguards for free access to national and world cultures by all members of society (paragraph 4 (b)), including children, and the idea of protecting and enhancing all forms of cultural expression such as national or regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well as cultures of other social groups (paragraph 4 (g)), particularly as essential conditions for genuine cultural development of children of all human groups.

3. Emphasis should also be placed on two basic elements for the cultural development of the child: the achievement of conditions conducive to creative work and artistic expression, and the development of cultural education and artistic training in educational and training programmes aimed at multiplying opportunities for intellectual, manual or gestural creation (paragraphs 4 (k), (m) and (n)).

4. Finally, in the light of resolution 3 (XXXIII) of the Commission on Human Rights and resolution 32/123 of the General Assembly of the United Nations, the draft convention should place greater emphasis on the need for rapid and effective encouragement, at all levels of education, but also outside the education system, of knowledge of human rights by children and knowledge of the rights of the child by adults. Emphasizing that better knowledge of human rights would make a vital contribution to the maintenance or establishment of peace, to economic development and to social progress in the world, the draft convention should contain an additional article relating specifically to such instruction: "Education in human rights shall also be afforded to children and should, therefore, be given from the stage of primary school onwards and also outside the school system, in particular in the family". "The rights of the child shall also be taught at all levels of education as well as outside the school system, in professional, cultural or cooperative associations."

(o) International Council of Women

The following is taken from document E/CN.4/1324.

1. It seems to us that paragraph 2, which is presented as a "sub-article", does not go far enough and weakens the last preambular paragraph, "Proclaiming that mankind owes to the child the best it has to give".
2. While it might be difficult to introduce such a formula into the text of a convention, we should like it to be said that every adult is responsible for the children with whom he comes into contact, in the widest sense of the word: in our opinion, no adult has the right to offend or neglect a child: the child must be respected.

(p) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child is entitled to receive education, which shall be free and compulsory. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.
2. The child shall have full opportunity for play and recreation which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

(q) International Union of Judges

The following is taken from document E/CN.4/1324.

The International Union of Judges is of the opinion that certain fundamental requirements of children should be stated sufficiently clearly. The following are some of them:

1. The importance of the early years of life of every person and the absolute necessity of a suitable education, which is always the best means of developing children's physical and mental capacity.
2. The school should provide an all-round education covering both the physical and the intellectual and moral training of the child, even if he is handicapped.
3. The school should be viewed as a social institution which completes the work of the family, particularly in cases where both parents, or the person to whose care the child is committed, are in employment which keeps them away from home most of the day, and where the mother has only a few hours in the afternoon or the evening in which to tend to her child.

C. First reading (1979-1988)

The text of article 28, which was based on article 16 of the revised Polish draft, was discussed and adopted by the Working Group in 1985. This article was referred to as article 15 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 16

1. The child shall have the right to education which shall be free and compulsory, at least at elementary school level. The parents and the State shall guarantee the child ample conditions for the realization of this right.
2. The States Parties to the present Convention shall develop various forms of secondary general and vocational education systems, and shall pursue gradual introduction of free education at this level, so as to enable all children to develop their talents and interests on a basis of equal opportunity.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 15

1. The States Parties to the present Convention shall guarantee all children compulsory and free education, at least at an elementary school level.
2. The States Parties to the present Convention shall develop various forms of secondary, general and vocational education, aiming at a gradual introduction at this level of free education, so as to enable all children to develop their talents and interests in conditions of equal opportunity.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 5.

Articles 16 and 17

The sponsors recommend that articles 15 and 16 of the Polish text as contained in A/C.3/36/6 are acceptable in principle as the basis for the corresponding articles 16 and 17 of the proposed text. The NGO Group believes, however, that the text of both articles could be revised to follow more closely the spirit of article 13, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

4. Proposal submitted to the Working Group (1983)

(a) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.26. This proposal was later reproduced in the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

Article 15

1. Every child has the right to an education designed to assist the child to develop his or her talents and abilities to their fullest potential.
2. The child shall have the right to education which shall be free and compulsory, at least at elementary school level. The parents and the State shall guarantee the child adequate conditions for the realization of this right.
3. The States Parties to the present Convention shall develop various forms of secondary general and vocational education systems, and shall pursue gradual introduction of free education at this level, so as to enable all children to develop their talents and interests on a basis of equal opportunity.

5. Proposals submitted to the Working Group (1984)

(a) China

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

Article 15, paragraph 1

The States Parties to the present Convention shall take measures to guarantee all children compulsory and free education or the aforementioned education to be materialized as early as the circumstances permit.

(b) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983) and later reproduced in document E/CN.4/1985/WG.1/WP.1. Changes and additions to the Canadian proposal of 1983 (see section 4 above) are printed in italics.

1. Every child has the right to an education designed to assist the child to develop his or her talents and abilities to their fullest potential, *and to prepare the child for future life.*
2. The child shall have the right to education which shall be free and compulsory, at least at *the primary* school level. The parents and the State shall guarantee the child adequate conditions for the realization of this right.
3. The States Parties to the present Convention shall develop various forms of secondary *education systems, both general and vocational* and shall pursue gradual introduction of free education at this level, so as to enable all children to develop their talents and interests on a basis of equal opportunity.
4. *The States Parties to the present Convention shall develop educational programmes for children who are precluded from receiving formal education, or who have not received or completed their primary education.*
5. *States Parties shall make a special effort to improve the professional quality of the teaching staff and to provide them with the needed material conditions.*
6. *States Parties shall promote international cooperation in matters of education, in accordance with the provisions of existing international instruments.*

6. Proposals submitted to the Working Group (1985)

The following States and organizations submitted written proposals for consideration by the Working Group.

(a) Algeria

The following is taken from document E/CN.4/1985/WG.1/WP.30.

... By encouraging the aptitudes of all children, fostering by every appropriate means their opportunities for access to higher education, more particularly by rendering such education accessible to all, on an equal footing, in terms of each one's abilities.

For the text of two other proposals of Algeria, see paragraphs 57 and 84 in section 7 below.

(b) Cuba

For the text of this proposal, see paragraph 60 in section 7 below.

(c) Finland

For the text of this proposal, see paragraph 61 in section 7 below.

(d) Japan

For the text of this proposal, see paragraph 68 in section 7 below.

(e) Netherlands

For the text of this proposal, see paragraph 62 in section 7 below.

(f) Poland

For the text of this proposal, see paragraph 56 in section 7 below.

(g) United States of America

The following is taken from document E/CN.4/1985/WG.1/WP.12.

Proposed revision of para. 2 (Polish draft) and para. 3 (Canadian draft):

The States Parties undertake to promote the equal opportunity of all children, subject to their age and abilities, to select and pursue educational or vocational training of their choice. Toward that end, the States Parties shall, as appropriate, encourage the development of various forms of general and vocational secondary education.

(h) Four Directions Council

The following is taken from document E/CN.4/1985/WG.1/WP.3.

Paragraph 4

The use of compulsory education to deprive the child of freedom to have, learn, or adopt the culture of his parents is prohibited. The child shall have the right to education in the language of his parents, at least at the elementary school level.

(i) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following was proposed to the Working Group at its 1985 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984).

[new paragraph]

States Parties shall ensure that school discipline is administered in a manner reflective of the child's human dignity. No methods shall be used which are either physically or mentally cruel or degrading.

7. Discussion and adoption by the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, paras. 56 to 87).

56. The Working Group considered article 15 of the draft convention on the basis of a revised proposal submitted by the delegation of Poland which read as follows:

“The States Parties to the present Convention shall guarantee to every child compulsory and cost-free education, at least at an elementary school level, designed to assist the child to develop his or her talents and abilities to their fullest potential, and to prepare the child for future life.

The States Parties to the present Convention shall develop various forms of secondary, general and vocational education, with a view to introducing at this level cost-free education, so as to enable every child to develop his or her talents and interests on a basis of equal opportunity.

States Parties shall ensure that school discipline is administered in a manner reflective of the child’s human dignity. Methods which are either physically or mentally cruel or degrading shall be prohibited.”

Paragraph 1

57. The representative of Algeria felt that there was a need to include a general clause on recognition by the State of the right to education. She proposed to replace the first paragraph by the following: “The States Parties to the present Convention recognize the right of the child to education and shall ensure the equal and non-discriminatory exercise of this right. The States Parties shall ensure that all children have equal access to schooling and shall guarantee all children free and compulsory education, at least at elementary school level ...”

58. The representative of China, supported by some other delegates, pointed out the different levels of economic development of States and their impact on the provision of free education. He suggested to add the expression “as early as the circumstances permit” after the words “school level” in paragraph 1 of the article under consideration.

59. Some other representatives voiced their misgivings, in more general terms, over the words “cost-free”. They expressed the view, inter alia, that education must always be paid for by the communities, either directly through school fees or indirectly by way of taxation.

60. The representative of the Union of Soviet Socialist Republics, supported by some other representatives, strongly objected to proposals to qualify the words “cost-free” on the grounds that they would constitute a step backward, making the provision weaker than article 13 of the International Covenant on Economic, Social and Cultural Rights. The representative of Cuba, in an attempt to find a compromise, suggested to add after the first sentence of paragraph 1 a sentence reading: “This obligation may be waived only for those States Parties which are temporarily unable to comply with it because they lack the economic resources for that purpose.”

61. The representative of Finland, supported by some other representatives, proposed to restructure the whole article as follows: “The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right, they shall promote equality of opportunity of all children to education and they shall in particular:

- (a) Take all measures, subject to national resources available, to make primary education compulsory and cost-free;
- (b) Ensure that education is directed to the full development of the human personality, the talents and abilities of the child and to prepare the child for future life.”

62. The representative of the Netherlands stressed that in his view there was a need to include in the article a provision on the rights of parents and legal guardians concerning the education of the child, along the lines of paragraph 3 of article 7 bis already adopted, and also drew attention to paragraph 3 of article 13 of the International Covenant on Economic, Social and Cultural Rights. Accordingly, he proposed the following text for inclusion as a separate paragraph in the proposal by Finland: "The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child."

63. The Chairman suggested that a consolidated text be drafted by an informal open-ended working party, and it was so decided. The text prepared by the ad hoc working party was as follows: "The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:

(a) Make primary education cost-free and compulsory as early as permitted by national resources available;

(b) Develop various forms of secondary, general and vocational education, with a view to introducing at this level cost-free education, so as to enable every child to develop his or her talents and interests."

64. After a brief discussion the Working Group agreed to the introductory part of the article as follows: "The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:"

Subparagraph (a)

65. Turning to subparagraph (a), the representative of the United States stated that, inter alia, the obligation for States Parties to guarantee to every child cost-free and compulsory education as early as permitted by available national resources, was stronger than the corresponding obligation in the International Covenant on Economic, Social and Cultural Rights which provided that these goals should be achieved progressively. Therefore, the current proposal establishes a more immediate obligation than that reflected in the Covenant.

66. One suggestion was to delete the words "as early as permitted by national resources available". As a compromise the representative of Bangladesh, supported by a number of delegations, proposed reformulating the subparagraph as follows: "make primary education free and compulsory as early as possible." The Working Group agreed to such formulation.

67. The delegation of Canada stated that it would not oppose a consensus on subparagraph (a), but expressed concern at the weakening of the provisions of the draft convention by the inclusion of qualifying clauses such as "as early as permitted by available national resources". It reserved the right to return to this point at a later stage with a view to deleting all such references and including them in a general article. These views were supported by a number of other delegations.

Subparagraph (b)

68. As regards subparagraph (b), the representative of Japan suggested substituting the words "with a view to introducing at this level cost-free education" by "and shall take appropriate measures such as offering scholarship to children under financial difficulties".

69. The delegation of the United States suggested starting the subparagraph with "Encourage the development of various forms" instead of "Develop various forms ...". The representative of Bangladesh proposed deleting the word "cost" in the second line of the subparagraph. The representative of the United Kingdom expressed his preference for replacing the words "secondary, general and vocational education" by the words "secondary education, both general and vocational".

70. The delegation of Austria proposed to reformulate subparagraph (b) as follows:

“(b) Develop various forms of secondary, general and vocational education, generally available and accessible to all children by all appropriate means, and in particular by the progressive introduction of free education”.

71. In an attempt to meet the concern of various delegations, the representative of the United Kingdom proposed the reformulation of the subparagraph as follows: “Ensure the development of various forms of secondary education, both general and vocational, with a view to introducing at this level appropriate measures such as free education or scholarships to children under financial difficulties to make such education available and accessible to all.”

72. At the Chairman’s request, a consolidated text was prepared by an informal open-ended working party which read as follows: “encourage the development of various forms of secondary education systems, both general and vocational, which are generally available and accessible to all children, and take appropriate measures such as offering financial assistance to children when necessary or introducing free education.”

73. After some further discussion the Working Group agreed on the text for subparagraph (b) as follows:

“(b) Encourage the development of different forms of secondary education systems, both general and vocational, to make them available and accessible to all children, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”

74. The delegation of Japan accepted the text of subparagraph (b) on condition that it was interpreted to mean that the two measures referred to at the end of the subparagraph were optional and that States Parties were not necessarily bound to take them.

Subparagraph (c)

75. While some delegations expressed their opposition to any reference to higher education on the grounds that the convention was mainly addressing the rights of the child, other delegations emphasized that the accessibility of the child to higher education should also be taken into account in the elaboration of the convention. After some debate on the issue, the Working Group had before it a text, by Algeria and other interested delegations, for subparagraph (c) as follows: “Make higher education equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education and offering financial assistance, in case of need.”

76. In the course of the discussion, the representative of Canada, supported by Australia, stressed her preference for a wording based on article 13, 2 (c) of the International Covenant on Economic, Social and Cultural Rights, as follows:

“Make higher education equally accessible to all, on the basis of capacity, by every appropriate means”.

77. The representative of the Ukrainian Soviet Socialist Republic proposed adding to that proposal the words “and in particular by the progressive introduction of free education” or “such as the progressive introduction of free education”.

78. The Working Group agreed to the following text:

“Make higher education equally accessible to all on the basis of capacity by every appropriate means”.

Paragraph 2

79. The Working Group discussed a text for paragraph 2 on the basis of the aforementioned proposal submitted by the observer for Poland, which was as follows: “States Parties shall ensure that school discipline

is administered in a manner reflective of the child's human dignity. Methods which are either physically or mentally cruel or degrading shall be prohibited."

80. The representative of Canada suggested ending the paragraph after the word "dignity" and deleting the words "methods which are either physically or mentally cruel or degrading shall be prohibited". She further proposed to replace the word "ensure" by the word "encourage". The representative of the Ukrainian Soviet Socialist Republic supported by the representative of the Union of Soviet Socialist Republics, objected to that proposal on the grounds that, in many countries, degrading and cruel methods of discipline were still inflicted upon children. The representative of Sweden pointed out that this question was not restricted to schools, but was also relevant in other situations, which were being dealt with in other articles. Therefore the prohibition of degrading and cruel treatment of children should be dealt with in a separate paragraph or article, which could be discussed during the second reading. This proposal was supported by the representative of Finland.

81. After some debate the Working Group agreed on a text for paragraph 2 as follows: "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner reflective of the child's human dignity."

Paragraph 3

82. Turning to paragraph 3 of the article, the representative of the Netherlands reintroduced the proposal that he had earlier submitted to the Working Group and which read as follows: "The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his rights in a manner consistent with the evolving capacities of the child." The representative of the United Kingdom suggested adding the words "to education as contained in this article" after the words "exercise of his right".

83. After a brief discussion, the Working Group agreed to adopt the text with some slight revision as follows: "The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right to education in a manner consistent with the evolving capacities of the child."

Paragraph 4

84. The observer for Algeria submitted to the Working Group the following proposal: "States shall promote and expand international cooperation in matters relating to education and shall, in particular, implement the programmes of action adopted by the competent international organizations so as to meet the special needs of children in developing countries, guarantee that they have access to scientific and technical know-how and modern teaching methods and, in general, eliminate ignorance and illiteracy throughout the world."

85. The representative of France suggested the deletion of the words "and shall, in particular, implement the programmes of action adopted by the competent international organizations", as those programmes might not be binding upon States. The representative of the United States of America supported the proposal put forward by the representative of France.

86. The observer for Canada proposed adding the words "Parties to the present Convention" after the word "States" and replacing the word "expand" by the word "encourage", while the representative of the United Kingdom proposed substituting the words "so as to meet the special needs of children in developing countries, guarantee that they have access to scientific and technical know-how" by "so as to meet the special needs of children in developing countries and endeavour to provide them with access to scientific and technological knowledge".

87. After some further exchange of views, the observer for Algeria submitted an amendment taking into account the comments made by different delegations, which was as follows: "States Parties to the present

Convention shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.” The Working Group agreed to the amended text proposed by the observer for Algeria.

8. Comment submitted to the Working Group (1986)

(a) Bangladesh

The following comment, which concerns present article 28, is contained in a paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft convention, see document E/CN.4/1986/39, annex IV.

Articles proposed by the NGO Group

Articles sponsored by the NGO, Defence for Children International, are broadly acceptable. However, articles such as “health” “standards of living” “compulsory free education” should be made subject to a clause on the economic feasibility in particular countries. For example, it is estimated that to accommodate the school-going population in Bangladesh it would cost an amount of 200 million dollars per annum over the next few years before we can attain the objective of free compulsory primary education. Some recognition of the economic problems faced by developing countries is essential if the draft is to enjoy the support of the vast majority of developing countries including the least developed countries. Secondly, a clause has to be introduced to safeguard the autonomy and privacy of the Islamic family from encroachment and impingement by externally applied standards.

9. Discussion by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, para. 159).

159. The representative of the United States indicated that, as part of his Government’s general study of the draft convention, the United States administration was considering some of the existing language in article 15 on the right to education, and might introduce an amendment to that article for consideration by the Working Group at an appropriate time.

10. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 15

1. The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:

- (a) make primary education free and compulsory as early as possible,
- (b) encourage the development of different forms of secondary education systems, both general and vocational, to make them available and accessible to all children, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need,

- (c) make higher education equally accessible to all on the basis of capacity by every appropriate means.
- 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner reflective of the child's human dignity.
- 3. The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians to provide direction to the child in the exercise of his right to education in a manner consistent with the evolving capacities of the child.
- 4. States Parties to the present Convention shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

D. Technical review (1988)

1. Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 33.

Article 15, paragraph 1 (a), is weaker than the corresponding clause in the C/R (article 4 (a)) by adding "as early as possible". Furthermore, it makes no mention of early childhood care and education. The following improved wording of article 15 may, therefore, be considered:

"The States Parties to the present Convention recognize the right of the child to all forms of education and with a view to achieving the full realization of this right on the basis of equal opportunity and equal chances of success, they shall, in particular:

- (a) facilitate the provision of early childhood care and education, using all possible means, in particular for the disadvantaged child, in order to contribute to the young child's growth, development and learning and to enhance his/her later success at other levels of education.
- (b) make primary education free and compulsory."

Article 15, paragraph 1 (b), is also weaker (cf. C/R article 4 (a)) and less complete in that it enjoins the States Parties to "ENCOURAGE the development of different forms of secondary education SYSTEMS, both general and vocation ..." (emphasis added). Why "encourage" rather than "develop"? why secondary education "systems", suggesting autonomous non-articulated secondary streams? Also, "both general and vocational" excludes other "forms" and the comprehensive approach. The C/R wording is better.

Article 15, paragraph 1 (c), repeats a clause of the C/R text (article 4 (a) again) except that it should read "individual capacity".

Article 15, paragraph 2, probably should read "... in a manner consistent with the child's human dignity".

2. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 34.

The general principles and objectives laid down in this article are in line with those of ILO standards having a bearing on the field concerned.

3. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 34.

Paragraph 1

Subparagraph (a) deals with the obligation of States Parties to “make primary education free and compulsory as early as possible”. The view has been expressed that this constitutes a lower standard than that provided in article 13, paragraph 2 (a) of the International Covenant on Economic, Social and Cultural Rights which is not qualified by the words “as early as possible”. As noted in the *travaux préparatoires* however, the latter provision is subject to the general principle of progressive, rather than immediate, achievement. There is thus no diminution in standard involved.

Gender neutrality

Paragraph 3. The middle part of the paragraph could read:

“... provide direction to the child in the exercise of his or her right to education ...”

4. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 34 to 37.

34. Attention may be drawn to UNESCO’s suggestion (document E/CN.4/1989/WG.1/CRP.1) that, taking into account the stipulation in article 4 (a) of the Convention against Discrimination in Education, paragraph 1 (b) of the draft convention should preferably read: “develop different forms of secondary education, including general and vocational, ...”.

35. In accordance with article 13, paragraph 2 (c), of the International Covenant on Economic, Social and Cultural Rights, the Working Group may wish to add at the end of paragraph 1 (c) the words “in particular by the progressive introduction of free education”.

36. As to paragraph 2, attention may be drawn to UNESCO’s comment. Further, and should the Working Group wish to re-emphasize the primary responsibility of parents and guardians, the end of the paragraph could read: “... administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”.

37. For reasons explained above under articles 4 and 7 bis, the Working Group may wish to delete the word “legal” before the word “guardian” in paragraph 3.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following written proposals were submitted for consideration at the second reading.

(a) Mexico

The following is taken from document E/CN.4/1989/WG.1/WP.31.

Article 15, paragraph 1 (a)

Insert the following clause at the end of the paragraph “adopt appropriate measures to prevent school dropout and to set up in each educational establishment a library to which young persons have easy access”.

Article 15 (2)

After paragraph 2, insert a new paragraph to read as follows: “The States Parties shall establish schools equipped to provide special education for young persons who require a different kind of care and teaching technique.”

(b) Venezuela

For the text of this proposal, see paragraph 458 in section 2 below.

(c) Four Directions Council

The following is taken from document E/CN.4/1988/WG.1/NGO/2.

[...]

4. Bilingual instruction. The issue of bilingual instruction for children belonging to minorities or indigenous communities was discussed inconclusively at the 1987 and first 1988 sessions of the Working Group. As we have noted previously, the UNESCO Convention against Discrimination in Education already contains this principle. For consistency, then, a parallel provision is appropriate as an addition to draft article 15, paragraph (1):

(c) ensure to the extent possible that a child belonging to a linguistic minority or indigenous community has the opportunity to be instructed, at least at the primary level, in the mother tongue of his or her group.

(d) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 15, paragraph 4: Before the last sentence: “guaranteeing that any type of international cooperation in the field of education be programmed exclusively by the recipient countries”.

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 458 to 474).

458. Venezuela submitted the proposal contained in document E/CN.4/1989/WG.1/WP.22 which reads as follows:

“1. The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:

(a) Introduce free and compulsory primary education as early as possible, as well as overall care for the child of preschool age;

(b) Encourage the development of different forms of secondary education systems, general as well as vocational and technical; make them available and accessible to all children; and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education equally accessible to all on the basis of capacity by every appropriate means; and

(d) Inform and provide vocational guidance to the child.

2. States Parties shall take all appropriate measures to ensure that school discipline is maintained in a manner reflective of the child's human dignity.”

459. The Working Group had before it a text of article 15 as adopted during the first reading incorporating suggested revisions by UNESCO and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“1. (The) States Parties (to the present Convention) recognize the right of the child to *all forms of education* and, with a view to achieving the full realization of this right on the basis of equal opportunity *and equal chances of success*, they shall, in particular:

(a) *facilitate the provision of early childhood care and education, using all possible means, in particular for the disadvantaged child, in order to contribute to the young child’s growth, development and to enhance his or her later success at other levels of education,*

(b) make primary education free and compulsory (as early as possible),

(c) (encourage the development of) *develop* different forms of secondary education (systems) *including* general and vocational education (systems) to make them available and accessible to all children, and take [appropriate] measures such as the introduction of free education and offering financial assistance in case of need,

(d) make higher education equally accessible to all on the basis of capacity by every [appropriate] means, *in particular by the progressive introduction of free education.*

2. States Parties shall take all [appropriate] measures to ensure that school discipline is administered in a manner (reflective of) *consistent with* the child’s human dignity *and in conformity with the present Convention.*

3. (The) States Parties (to the present Convention) shall respect the rights and duties of the parents and, where applicable, (legal) guardians to provide direction to the child in the exercise of his or her right to education in a manner consistent with the evolving capacities of the child.

4. States Parties (to the present Convention) shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”

460. The Chairman established a drafting group composed of Canada, Colombia, Italy, Norway, Yugoslavia, International Labour Organization (ILO), UNESCO and non-governmental organizations which submitted to the Group the following proposal (E/CN.4/1989/WG.1/WP.61):

“1. The States Parties to the present Convention recognize the right of a child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) make primary education compulsory and available free to all;

(b) develop different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education equally accessible to all on the basis of capacity by every appropriate means, in particular by the progressive introduction of free education;

(d) make educational and vocational information and guidance available and accessible to all children;

(e) take measures to encourage regular attendance at schools and the reduction of the drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”

461. In introducing the proposal the observer for Canada indicated that the text contained in E/CN.4/1989/WG.1/WP.61 was essentially based on the text as adopted during the first reading but that it incorporated, in particular, suggestions by the representative of Venezuela and suggestions to make the text consistent with the International Covenant on Economic, Social and Cultural Rights.

462. The observer for Canada indicated that the *chapeau* to paragraph 1 was based on the one adopted during the first reading. With regard to subparagraph 1 (a), he indicated that it was based on subparagraph 1 (a) as adopted during the first reading but that it had been reworded to make it consistent with the terminology of the International Covenant on Economic, Social and Cultural Rights. He also indicated that the words “as early as possible” had been eliminated from the subparagraph because the *chapeau* to the paragraph already contained a qualifying phrase. The observer for Canada further indicated that subparagraphs 1 (d) and 1 (e) were additions to the article to take into account concerns raised by some delegations. In addition, the observer for Canada indicated that paragraphs 2 and 3 as contained in E/CN.4/1989/WG.1/WP.61 corresponded with, and were unchanged from, paragraphs 2 and 4 respectively of the text adopted during the first reading. He indicated that old paragraph 3 had been omitted because the adoption of article 5 bis of the convention met the concerns covered by that paragraph.

Paragraph 1

463. With regard to subparagraph (b), as contained in E/CN.4/1989/WG.1/WP.61, the representative of Japan suggested that the word “progressive” be inserted in line 4, just before the word “introduction”, in order to make the text more consistent with article 13 of the International Covenant on Economic, Social and Cultural Rights. The representative of the United States of America suggested that the beginning of the subparagraph as contained in document E/CN.4/1989/WG.1/WP.61 should be changed back to the way it was adopted during the first reading by replacing the word “develop” by the words “encourage the development of”. This latter proposal gained the support of the representatives of Canada, Ireland, Japan and the Netherlands. The representative of UNESCO stated that UNESCO sought the deletion of the words “and encourage the development of” because their retention would make the subparagraph weaker than international standards, notably the UNESCO convention on discrimination in education.

464. Also in connection with subparagraph (b) as contained in E/CN.4/1989/WG.1/WP.61, the observer for the Netherlands expressed concerns about the adoption of the subparagraph if the word “free” was to be construed as meaning free of cost. The representative of Japan indicated that he interpreted the reference in the subparagraph to free education as merely giving an example of how education could be made accessible to all children, and not to mean that free education was a measure which States Parties were obliged to adopt.

465. The observer for the Netherlands raised concerns regarding subparagraph (c) as contained in E/CN.4/1989/WG.1/WP.61 because although it was his country’s policy to provide financial assistance for students pursuing higher education it was not its policy to make higher education free of cost. The representative of the United Kingdom of Great Britain and Northern Ireland agreed with the position expressed by the observer for the Netherlands and therefore suggested that the words “as appropriate” be added to the end of the subparagraph. The representatives of Ireland, Japan and the United States of America expressed support for this proposal. The observer for Canada however indicated that he could not support the proposal of the United Kingdom of Great Britain and Northern Ireland because the subparagraph as contained in E/CN.4/1989/WG.1/WP.61 already contained the qualifying word “appropriate”. The representative of Venezuela suggested that the subparagraph be adopted as contained in E/CN.4/1989/WG.1/WP.61.

466. In the light of the foregoing debate the observer for the Netherlands suggested that the subparagraph be maintained as it was adopted during the first reading. The observer for Finland agreed with this position, in particular, because the reference to “progressive introduction” contained in E/CN.4/1989/WG.1/WP.61 was taken from the International Covenant on Economic, Social and Cultural Rights, a position which he felt had become outdated. The representative of Japan was also willing to support this proposal. With regard to both the old and the new texts, the representative of Portugal proposed that the word “equally” be deleted because its use in this context alone implied that other rights were not to be enjoyed equally.

467. The observer for the Netherlands welcomed the insertion of new subparagraph (e), contained in E/CN.4/1989/WG.1/WP.61, into the article. The observer for Sweden questioned whether the subparagraph as phrased would not promote the punishment of children who failed to attend school regularly. The observer for Canada indicated that the subparagraph was not meant to have such an effect, and that it was meant to promote positive measures to encourage regular attendance of schoolchildren. Nevertheless, the observer for Canada was of the view that article 18 *sixto* met the concerns raised by the observer for Sweden.

468. The representative of the United States of America indicated that since it would be inappropriate for this subparagraph to apply to tertiary education onwards he suggested that it be limited to primary and secondary education. The representative of France took the view that the subparagraph should be left as it was drafted in E/CN.4/1989/WG.1/WP.61 because even in tertiary education there were students who dropped out for the wrong reasons and young students whose self-discipline could not be taken for granted.

469. The observer for Kuwait indicated that subparagraph (e) was not necessary since the concerns it covered would be taken care of by paragraph 2 as envisaged in E/CN.4/1989/WG.1/WP.61.

470. The Working Group adopted paragraph 1 in the light of the foregoing debate. The text of paragraph 1 of article 15 as adopted during the second reading reads as follows:

“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) make primary education compulsory and available free to all;
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) make educational and vocational information and guidance available and accessible to all children;
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

Paragraphs 2 and 3

471. With regard to paragraph 2, the observer for the Netherlands asked for some clarification as to the use of the words “in conformity with the present Convention” on the last line of the paragraph.

472. The representative of Ireland took the view that he would prefer the text of article 15 to retain the text of former paragraph 3, as adopted during the first reading because it expressly mentioned parents’ rights regarding the education of their children. The observer for the Holy See also questioned the omission of that paragraph. The observer for Australia indicated that the paragraph had been omitted from the proposal contained in E/CN.4/1989/WG.1/WP.61 because the drafting group took the view that article 5 bis of the convention met the concerns covered by that former paragraph.

473. The observer for Canada explained that through the use of this phrase, the aim of the drafting group was to reiterate the protection of the child guaranteed by the provisions of the convention, in case school discipline was transformed into cruel and degrading treatment.

474. The Working Group then adopted both paragraphs 2 and 3 which read as follows:

“2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.”

3. Statement made during the adoption of the report

(a) Japan

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 722).

722. [...] As to article 28, the delegation accepted article 28 on the understanding that “primary education” in paragraph 1 (a) does not include education in kindergartens.

Article 29 (Aims of education)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

Articles VII and X of the draft were closely related to substantive concerns under present article 29. The following is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, pp. 124 and 125).

Article VII

1. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.
2. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
3. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Article X

The child shall be protected from practices which may foster racial, religious or any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

2. Comments on article VII of the first Polish draft

Article VII of the draft gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

Free and compulsory education should not only be in the elementary stage but rather up to a stated maximum age corresponding to the minimum age contemplated in article IX.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

1. Another paragraph should be added to article VII: "The fullest safeguarding of the interests of the child shall be the guiding principle in the legislative regulation of family relationships."
2. Paragraph 2 should become paragraph 3, and the following words should be added to it: "but also with the State and society".

(c) France

The following is taken from document E/CN.4/1324/Add.1.

1. Paragraph 2. In order to emphasize the primary responsibility of the parents, while underlining the complementary but subsidiary nature of the role played by the State and by public, semi-public and private bodies and institutions, the wording of the draft convention should be amended as follows: "The education of the child is in the first instance the responsibility of his parents. The best interests of the child shall be the guiding principle of those who are responsible for it."
2. In view of the comments made in paragraph 4 (a) above under "General Comments", this paragraph, as amended, should be placed at the beginning of the convention.
3. Paragraph 3. This paragraph can be interpreted as restricting the rights of the child, since it specifies that his play and recreation "should be directed to the same purposes as education". While educational games are to be encouraged, they should not be the only ones the child can play. For his full development, he also needs to involve himself in activities which are not necessarily part of a specific educational system. It would therefore be preferable to delete those words from the sentence.

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6, 7 and 8, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6, 7 and 8, which appear elsewhere in E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

8. The Federal Government also expresses reservations as to the comprehensiveness of the safeguards provided regarding efforts to ensure the protection of the child which have been undertaken elsewhere in the United Nations. This applies particularly to natural children whose status has long been the subject of consultations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. This question should receive special attention. Another matter that should receive special attention in this context is whether the application of the convention to natural children is also provided for in the present draft. Admittedly, article I provides that every child shall be entitled to the rights set forth in the convention, without distinction or discrimination on account of birth or status, among other factors. Furthermore, the wording of principle 1 of the Declaration of the Rights of the Child of 20 November 1959, on which article 1 of the draft convention is based, seems to have been designed to assure natural children of the same rights as those enjoyed by legitimate children. However, the other provisions of the Declaration of 20 November 1959, and consequently of the draft convention based on it, do not take account of the situation of natural children. For instance, the second part of article VII, paragraph 2, provides that responsibility for the education and guidance of the child lies in the first place with "his parents". This provision needs to be modified to cover the situation of natural children, most of whom are brought up in the family of the mother.

(e) Greece

The following is taken from document E/CN.4/1324.

It is well known that great doubts have been expressed as to the value of the current educational system in all countries. The main argument against it is that it leads to conformity and it stifles individuality. The Greek Government considers this to be true and therefore it suggests the following rewording of paragraph 1.

"The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will respect his unique individuality and promote his general culture and enable him on a basis of equal opportunity to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of the society."

(f) Malawi

The following is taken from document E/CN.4/1324/Add.4.

We have objections to this article which is in contradiction with our educational system because education in Malawi, for very good reasons, is not compulsory at any level. What would, for example, be the meaning of compulsory education in a country which has limited resources?

(g) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

Section 1 - The question of the definition of a child discussed within our comments in article IV is important in the context of this section. We believe that "the elementary stages" of childhood should be defined in the terms of a stated minimum number of years.

Section 2 - Acceptable.

Section 3 - The spirit of this section could not be disputed by educationalists. However, “play” and “recreation” are not necessarily viewed in the same positive light by many members of the community, and if the convention were adopted by New Zealand this section could give rise to considerable public debate. It should also be noted that we do not fully understand the distinction made by implication between “play” and “recreation”.

Problems also arise when consideration is given to particular words and phrases within the section. What is, for instance, meant by the phrase “full opportunity”? Does the phrase mean “easy physical access” or “plenty of time” or “provisions for various ages of children” or is it meant to envelop all of these possible readings? We are also unsure about the meaning of the phrase “the same purpose as education”. This phrase raises the question, whether the word “same” is meant to imply the same purposes of all aspects of education, and the question of whether education is seen to be the same activity as schooling.

In addition, this section states that “the society and the public authorities shall endeavour to promote the enjoyment” of the right of the child to have full opportunity for play and recreation. We wonder whether the department promotes such enjoyment by providing children access to schools outside normal school hours, and whether the play and recreation schemes and equipment provided by schools are sufficient to be classed as a “full opportunity”. At present, the implementation of these schemes occurs at a local level, and the question would arise if New Zealand were to adopt this particular article of whether the “public authorities” i.e. central government departments and bodies such as education boards would be willing to work through local government, and whether the local government bodies would have sufficient resources to handle this task.

(h) Norway

The following is taken from document E/CN.4/1324.

The article should read as follows:

- “1. Children, including children of preschool age, shall have full opportunity of play, social activities and recreation, as a means to ensure their full mental and physical development. Society and the public authorities shall endeavour to promote the enjoyment of this right.
2. Children are entitled to receive education, which shall be free and compulsory, at least in the elementary stages. The basic school shall, in understanding of and collaboration with the homes, give children an education which will promote their general culture and enable them, on a basis of equal opportunity, to develop their abilities, their individual judgement and their sense of moral and social responsibility, and to become useful and self-reliant members of society.
3. Education shall have a global perspective. It shall promote the respect for human rights and fundamental freedoms. It shall also promote understanding, tolerance and friendship among peoples, and further activities of the United Nations for the maintenance of peace.”

(i) Portugal

The following is taken from document E/CN.4/1324.

Paragraph 1 of article 7 could be amended by deleting the word “general” before the word “culture” and by adding the word “participation” after the word “responsibility”.

(j) Spain

The following is taken from document E/CN.4/1324.

1. In paragraph 1, replace the words “and to become a useful member of society” by the words “so that he will be capable, by himself and as a result of the training he has received, of coping with the necessities of life and will be a useful member of society”.
2. The purpose of this is to emphasize the instrumental role of education and to ensure the active participation of the child in the community through the exercise of his own free choice regarding the future course of his education.

(k) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph 3] and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(l) Sweden

The following is taken from document E/CN.4/1324.

Immigrant children encounter special problems, for instance in respect of their schooling. In many cases, it is important for these children to be taught their own language and the culture and history of their country of origin. It should be further examined what rules regarding the rights of such children could be included in the convention.

(m) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

Paragraph 2 of the draft article should be modified as follows: “The best interests of *the overall growth and development* of the child shall be the guiding principle of those responsible for his education and guidance: that responsibility lies in the first place with his parents”, to take account of the importance of the interrelationships between the various areas of development.

(n) United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1324.

1. More explicit reference should be made to the fact that the Convention against Discrimination in Education, in article 4 (a), sets out “*to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all*”. Article VII of the draft convention might also refer to the guiding principles of the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (part III) and, in particular, the notion of international education contained in paragraphs 5 and 6 of that text.
2. The last paragraph of article VII should be based to a greater extent on the Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It by taking up the idea of effective safeguards for free access to national and world cultures by all members of society (paragraph 4 (b)), including children, and the idea of protecting and enhancing all forms of cultural expression such as national or regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well

as cultures of other social groups (paragraph 4 (g)), particularly as essential conditions for genuine cultural development of children of all human groups.

3. Emphasis should also be placed on two basic elements for the cultural development of the child: the achievement of conditions conducive to creative work and artistic expression, and the development of cultural education and artistic training in educational and training programmes aimed at multiplying opportunities for intellectual, manual or gestural creation (paragraphs 4 (k), (m) and (n)).

4. Finally, in the light of resolution 3 (XXXIII) of the Commission on Human Rights and resolution 32/123 of the General Assembly of the United Nations, the draft convention should place greater emphasis on the need for rapid and effective encouragement, at all levels of education, but also outside the education system, of knowledge of human rights by children and knowledge of the rights of the child by adults. Emphasizing that better knowledge of human rights would make a vital contribution to the maintenance or establishment of peace, to economic development and to social progress in the world, the draft convention should contain an additional article relating specifically to such instruction: "Education in human rights shall also be afforded to children and should, therefore, be given from the stage of primary school onwards and also outside the school system, in particular in the family". "The rights of the child shall also be taught at all levels of education as well as outside the school system, in professional, cultural or cooperative associations."

(o) International Council of Women

The following is taken from document E/CN.4/1324.

1. It seems to us that paragraph 2, which is presented as a "sub-article", does not go far enough and weakens the last preambular paragraph, "*Proclaiming* that mankind owes to the child the best it has to give".

2. While it might be difficult to introduce such a formula into the text of a convention, we should like it to be said that every adult is responsible for the children with whom he comes into contact, in the widest sense of the word: in our opinion, no adult has the right to offend or neglect a child: the child must be respected.

(p) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child is entitled to receive education, which shall be free and compulsory. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.

2. The child shall have full opportunity for play and recreation which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

(q) International Union of Judges

The following is taken from document E/CN.4/1324.

The International Union of Judges is of the opinion that certain fundamental requirements of children should be stated sufficiently clearly. The following are some of them:

1. The importance of the early years of life of every person and the absolute necessity of a suitable education, which is always the best means of developing children's physical and mental capacity.

2. The school should provide an all-round education covering both the physical and the intellectual and moral training of the child, even if he is handicapped.

3. The school should be viewed as a social institution which completes the work of the family, particularly in cases where both parents, or the person to whose care the child is committed, are in employment which keeps them away from home most of the day, and where the mother has only a few hours in the afternoon or the evening in which to tend to her child.

3. Comments on article X of the first Polish draft

The following comments were made on article X of the draft.

(a) Dominican Republic

The following is taken from document E/CN.4/1324.

See Dominican Republic, under Specific Comments, article IX.

The specific comments referred to, which also appear in document E/CN.4/1324, are reproduced below.

By way of comment only, we would draw attention to the fact that the provisions of articles IX and X of the draft have been given detailed treatment in various ILO international agreements on other questions; it might be advisable to revise those agreements in case their contents should be expanded.

(b) France

The following is taken from document E/CN.4/1324/Add.1.

1. In our view, this article should not form part of the convention itself but should be incorporated into the preliminary declaration which we would like to see included in a text preceding the articles of the convention.

2. For earlier comments, see paragraph 4 (a), France, under General Comments.

Subparagraph 4 (a), which also appears in document E/CN.4/1324/Add.1, is reproduced below.

The provisions that would constitute a recommendation, such as article II, the first sentence of article VI and article X, might be included in a preliminary declaration or a recommendation annexed to the convention[.]

(c) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 6 and 7, Federal Republic of Germany, under General Comments.

Paragraphs 6 and 7, which also appear in document E/CN.4/1324, are reproduced below.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more

appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

(d) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

The New Zealand Human Rights Commission has recommended that discrimination on the grounds of sex be specifically stated in the first sentence of article X. Practices fostering discrimination on the basis of sex are often unrecognized and it is necessary to emphasize that sex is as much a ground for discrimination as race and religion so that sex discrimination can be recognized and steps taken towards its elimination.

The present first sentence is also impracticable because of the use of the word “may” and we believe that this word should be omitted. The question also arises that if the practices referred to in the first sentence were to occur in the home of the parents of the child who would decide that the child should be protected, and how the protection would be given? In New Zealand if a child is physically ill-treated the Department of Social Welfare can remove the child from the detrimental environment. We wonder if this is the sort of protection envisaged by the authors of the article.

Clearly, this article has implications for school and classroom practices. For example, in the light of the terms of the article the withdrawal of children from religious instruction could be construed as fostering discrimination. The article’s practicability depends on what are seen to be desirable and practised values in the society. Some of the New Zealand curriculum is orientated towards the stated terms, and many schools would say they are meeting them. However, it is important to recognize the school is only one educational force in society and that the influence of the home, mass media, the peer group and other models can overwhelm the force of the school.

Finally while we recognize the claims of customary international legal usage, we would prefer that the use of “his” throughout the text of the draft convention be replaced by “the child”, or by the plural “children”. It would be unwise for a convention of this type to be open to criticisms of perpetuating sex-role stereotyping.

(e) International Council of Women

The following is taken from document E/CN.4/1324.

We would like this article to follow immediately after article I, of which it is the continuation.

(f) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

The child shall be protected from practices which may foster racial, religious or any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. The child of a divided international family shall preserve his ties with both his parents even if they are of different religions, and in no case shall religion be taken into consideration for the purposes of the devolution of the right of custody.

C. First reading (1979-1988)

The text of article 29, which was based on article 17 of the revised Polish draft, was discussed and adopted by the Working Group in 1985. An additional subparagraph was adopted in 1987. This article was referred to as article 16 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 17

1. The States Parties to the present Convention recognize that the bringing up and education of the child should promote the full development of his personality, his respect for human rights and fundamental freedoms.
2. The child shall be prepared for an individual life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups and educated in harmony with the principles of peace proclaimed by the United Nations.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 16

1. The States Parties to the present Convention recognize that raising up and educating the child should promote development of his personality and intensify his respect for human rights and fundamental freedoms.
2. The States Parties to the present Convention shall ensure that the child be prepared for independent life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups and educated in harmony with the principles of peace established by the United Nations.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 5.

Articles 16 and 17

The Sponsors recommend that articles 15 and 16 of the Polish text as contained in A/C.3/36/6 are acceptable in principle as the basis for the corresponding articles 16 and 17 of the proposed text. The NGO Group believes, however, that the text of both articles could be revised to follow more closely the spirit of article 13, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

4. Proposal submitted to the Working Group (1983)

(a) Baha'i International Community

The following is taken from document E/CN.4/1983/WG.1/WP.2. This proposal was later revised and submitted to the Working Group in 1985 (see sect. 7, para. 89, below).

Article 17

1. In addition to academic education, the child shall be entitled to receive guidance, training and education designed to promote his social, spiritual and moral development and well-being.

2. The fundamental objectives of such guidance, training and education shall be:
 - (a) to promote the harmonious development of the personality of the child;
 - (b) to promote the realization of the full potential of the child;
 - (c) to protect the child by developing his ability to resist outside influences or pressures likely to lead him into lawlessness or delinquency, or into practices injurious to his physical or mental health or to his social, spiritual or moral well-being;
 - (d) to prepare the child to exercise the rights and undertake the responsibilities of adult life in a manner consistent both with his own well-being and with the well-being of others;
 - (e) to foster in the child a respect for human rights and fundamental freedoms;
 - (f) to nurture in the child an attitude of understanding, respect and friendship towards all people, regardless of race, sex, class, colour, nationality, ethnic origin, religion or belief;
 - (g) to foster in the child an awareness of and a desire to promote the principles of universal peace and brotherhood proclaimed in the Charter of the United Nations.

3. The States Parties to the present Convention, bearing in mind that, in accordance with article 8, the primary responsibility for the upbringing and development of the child rests with his parents or guardians, shall use their best efforts to:
 - (a) raise the level of public awareness of the importance of the social, spiritual and moral education of the child, particularly during his early years;
 - (b) promote recognition and understanding by all those concerned with the upbringing of the child, most particularly his parents or guardians, of their indispensable role, and the primary importance of their example, in the social, spiritual and moral development of the child;
 - (c) encourage schools to develop guidelines and courses of instruction designed to foster the social, spiritual and moral development of the child.

5. Proposals submitted to the Working Group (1984)

(a) China

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

Amendment to article 16, paragraph 2

“In the second line of paragraph 2 delete ‘free.’”

(b) Canada

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

1. The States Parties to the present Convention recognize that the bringing up and education of the child should promote the full development of his personality, his respect for human rights and fundamental freedoms.

2. The child should be prepared for an individual life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups.

3. The States Parties to the present Convention undertake to ensure that the child is educated in harmony with the principles of peace proclaimed by the United Nations.

4. In accordance with paragraphs 1, 2 and 3 of this article, the States Parties to this Convention undertake to protect the child from conscription or from use in military combat.

(c) NGO Ad Hoc Group (*see annex III (B) for participating organizations*)

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983) and later reproduced in document E/CN.4/1985/WG.1/WP.1. Changes and additions to the Polish proposal contained in document A/C.3/36/6, part II (see section 2 above) are printed in italics.

Article 16

1. The States Parties to the present Convention recognize that *an integral aspect of the upbringing and education of the child is the promotion of an awareness of respect for human rights and fundamental freedoms.*

2. The States Parties to the present Convention shall ensure that the child be prepared for *responsible* life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups and *be* educated in harmony with *Nature and in keeping with* the principles of peace established by the United Nations.

(d) World Association for the School as an Instrument of Peace

The following is taken from document E/CN.4/1983/NGO/43, which was available to the Working Group at its 1984 session and was later reproduced in document E/CN.4/1985/WG.1/WP.1. Changes and additions to the Baha'i Community proposal contained in document E/CN.4/1983/WG.1/WP.2 (see section 4 above) are in italics.

2. The fundamental objectives of such guidance, training and education shall be:

[...]

(c) to foster in *him*, *through education relating to human rights*, a respect for *such* rights and fundamental freedoms;

[...]

(e) to prepare the child to *acquire an awareness of his rights and duties so as to enable him to assume his* responsibilities *as an adult* in a manner consistent both with his own well-being and with the well-being of others;

(f) to nurture in the child an attitude of understanding, respect, *tolerance* and friendship towards all people, regardless of race, sex, class, colour, nationality, ethnic origin, religion or belief;

(g) *as a result, to develop an attitude of peace, public-spiritedness and universal brotherhood as proclaimed in the Charter of the United Nations, and the commitment to attain those goals.*

6. Proposals submitted to the Working Group (1985)

The following written proposals were submitted for consideration.

(a) Algeria

The following is taken from document E/CN.4/1985/WG.1/WP.31.

Article 16

2. At the end of the last sentence, add:

“and in the respect of the rights of peoples”.

The following additional proposal is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, annex II).

Article 16, new paragraph 3

Children should be educated in a social climate imbued with the national values and the cultural identity of the children, with respect for civilizations different from their own and for the rights of peoples. In no case may children of countries still under colonial domination and foreign occupation or racist regimes be deprived of their cultural and national identity.

(b) Canada

For the text of this revised proposal, see paragraph 88 in section 7 below.

(c) Netherlands

For the text of this proposal, see paragraph 90 in section 7 below.

(d) United States of America

The following is taken from document E/CN.4/1985/WG.1/WP.13.

Article 15, paragraph 3

The States Parties to this Convention recognize that the goals of education should include the development of the child's talents and abilities to their fullest potential and of his respect for human rights and fundamental freedoms, in order to prepare him for a full individual life in a free society, in the spirit of understanding, tolerance and friendship among peoples, ethnic and religious groups.

(e) Baha'i International Community

For the text of this revised proposal, see paragraph 89 in section 7 below.

7. Discussion and adoption by the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, paras. 88 to 104).

88. The representative of Canada submitted the following revised text upon which much of the discussion focused:

“The States Parties to the present Convention recognize that:

1. The education and upbringing of the child should promote the development of the child's personality, talents and abilities to their fullest potential and to foster respect for human rights and fundamental freedoms.
2. The child should be prepared for responsible life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups.
3. The child should be educated in harmony with nature and in keeping with the principles of the United Nations.”

89. The representative of the Baha'i International Community presented a proposal which was as follows:

- “1. In addition to academic education, the child shall be entitled to receive guidance, training and education designed to promote his social, spiritual and moral development and well-being.
 2. The fundamental objectives of such guidance, training and education shall be:
 - (a) To promote the harmonious development of the personality of the child and the realization of his full potential;
 - (b) To protect the child by developing his ability to resist outside influences or pressures likely to lead him into lawlessness or delinquency, or into practices injurious to his physical or mental health or to his social, spiritual or moral well-being;
 - (c) To prepare the child to exercise the rights and undertake the responsibilities of adult life in a manner consistent both with his own well-being and with the well-being of others;
 - (d) To foster in the child a respect for human rights and fundamental freedoms and an attitude of understanding, respect and friendship towards all people, regardless of race, sex, class, colour, nationality, ethnic origin, religion or belief;
 - (e) To foster in the child an awareness of and a desire to promote the principles of universal peace and brotherhood proclaimed in the Charter of the United Nations.
 3. The States Parties to the present Convention, bearing in mind that, in accordance with article 8, the primary responsibility for the upbringing and development of the child rests with his parents or guardians, shall use their best efforts to:
 - (a) Raise the level of public awareness of the importance of the social, spiritual and moral education of the child, particularly during his early years;
 - (b) Promote recognition and understanding by all those concerned with the upbringing of the child, most particularly his parents or guardians, of their indispensable role, and the primary importance of their example, in the social, spiritual and moral development of the child;
 - (c) Encourage schools to develop guidelines and courses of instruction designed to foster the social, spiritual and moral development of the child.”
90. The representative of the Netherlands submitted the following proposal for inclusion in article 16:
- “No part of this article of the present Convention shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”
91. Upon the proposal of the representative of Finland, the Canadian text was restructured as follows:
- “The States Parties to the present Convention agree that the education and upbringing of the child shall be directed to:
- (a) the promotion of the development of the child’s personality, talents and abilities to their fullest potential and the fostering of respect for human rights and fundamental freedoms,
 - (b) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups,
 - (c) the education of the child in harmony with nature and in keeping with the principles of the United Nations.”

Paragraph 1

92. Regarding the introductory part of this paragraph, the representative of the United States of America supported by the representative of the Netherlands felt that the term “upbringing” was too broad and ill-defined, while the representative of the Ukrainian Soviet Socialist Republic, supported by the representative of the German Democratic Republic, objected to its deletion. Since the problem appeared to be mainly a question of linguistics, the representative of the Ukrainian Soviet Socialist Republic, supported by some other delegations, proposed that it be reconsidered during the second reading of the text.

93. After some discussion, the Working Group agreed on the introductory part of this paragraph as follows:

“The States Parties to the present Convention agree that the education of the child shall be directed to:”

Subparagraph (a)

94. As concerns this subparagraph, the representative of China proposed adding the word “physical” before “abilities”. Other representatives expressed their preference for keeping the word “abilities” without qualification, as in their view this word encompassed the notion of mental as well as physical abilities and they preferred this broader concept.

95. The observer for the Informal NGO Ad Hoc Group on the Drafting of the Convention proposed adding the words “to prepare the child for future life” between the words “potential” and “and to foster”. Some delegations expressed their opposition to such a proposal.

96. The observer for Algeria, supported by the representatives of the German Democratic Republic and the Ukrainian Soviet Socialist Republic, proposed inserting the words “and peoples” between the words “human” and “rights”. She stressed that it was necessary for children to be acquainted in their education with the diversity of civilizations and cultures of other nations and with the concepts of peoples’ rights and self-determination. The delegations of Australia, Canada, France and the United States of America objected to any such references in the subparagraph under consideration. The representative of the Federal Republic of Germany suggested adding instead the words “including the right to self-determination” at the end of the subparagraph, but this suggestion did not meet with the support of other delegations. The Chairman proposed to insert the word “all” before “human rights”. The Working Group agreed to that proposal.

97. The approved text reads as follows:

“(a) the promotion of the development of the child’s personality, talents and mental and physical abilities to their fullest potential and the fostering of respect for all human rights and fundamental freedoms;”

Subparagraph (b)

98. Turning to subparagraph (b), the representative of the German Democratic Republic, supported by the delegations of Canada and the Ukrainian Soviet Socialist Republic, suggested inserting the word “peace” between the words “understanding” and “tolerance”, along the lines of article 13 of the International Covenant on Economic, Social and Cultural Rights.

99. After some debate, the Working Group agreed on a text for subparagraph (b) as follows:

“the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance and friendship among all peoples;”

Subparagraph (c)

100. The representative of the Ukrainian Soviet Socialist Republic, supported by the delegations of Canada and the Union of Soviet Socialist Republics, proposed adding the word “Charter” after “United Nations”, while

some delegations felt that principles embodied in various other instruments of the United Nations should also be taken into account.

101. In the light of various suggestions - inter alia, a suggestion put forward by the observer for Canada to replace the words "in harmony with nature" by the words "respect for the environment" - the representative of the United Kingdom proposed reformulating the subparagraph as follows:

"the development of respect for the natural environment and for the principles of the Charter of the United Nations".

The Working Group agreed to the above-mentioned text.

Paragraph 2

102. The proposal by the representative of the Netherlands for an additional paragraph, endorsed by the representative of the Federal Republic of Germany, did not meet with the approval of some delegates who felt that the paragraph was not directly concerned with the protection of the rights of the child. The representative of Austria suggested deleting the words "of the present Convention" in the first sentence, and the Chairman suggested adding the words "of paragraph 1" before "of this article" and replacing the words "this article" by "paragraph 1". The representative of the Netherlands agreed with those suggestions.

103. After some discussion, the Working Group agreed on the following text:

"No part of paragraph 1 of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

104. The observer for Algeria made a proposal for a third paragraph to this article.

8. Proposals submitted to the Working Group (1987)

The following written proposals were submitted for consideration.

(a) Algeria

For the text of this proposal, see paragraph 44 in section 9 below.

(b) Union of Soviet Socialist Republics

The following is taken from the annex to the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25).

Article 16, paragraph 1, new subparagraph (e)

"Education in the spirit of the inadmissibility of propaganda of war and of any advocacy of national or racial hatred that constitutes incitement to discrimination, hostility or violence;"

9. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 40 to 53).

Article 16, additional subparagraph (d) to paragraph 1

40. At the Working Group's 1985 session, the delegation of Algeria proposed the following text for a new paragraph 3 to article 16:

“Children should be educated in a social climate imbued with the national values and the cultural identity of the children, with respect for civilizations different from their own and for the rights of peoples. In no case may children of countries still under colonial domination and foreign occupation or racist regimes be deprived of their cultural and national identity.”

41. That proposal was supported by the representatives of Argentina, China and Venezuela. The delegations of the Netherlands and the United Kingdom, although they had no problems with the second sentence of the proposal, requested clarification of the first sentence and, in particular, of the concept of cultural identity embodied in it. The observer for Canada thought that the emphasis on national values could clash with article 16 bis that attempted to maintain heritage of children of ethnic minorities; she also sought clarification of the way in which that proposal fitted in with article 16, paragraph 1, subparagraph (b).

42. The observer for Canada further noted that she found the term “the child’s cultural identity and national values” ambiguous as to whether it was the child’s, the State’s or the parents’ identity and national values that were to be considered, and said that in a multicultural State that was not easily answered. She also sought clarification of what “rights of peoples” were referred to, other than the “right to self-determination” which, as one of the fundamental rights expressed in the International Covenant on Civil and Political Rights, was already encompassed by the reference to “all human rights and fundamental freedoms” in article 16, paragraph 1, subparagraph (a).

43. The representative of France stated that the drafting of the proposal posed certain problems, in particular its reference to a social climate. He thought it would be preferable to say that children should be educated with respect for their cultural identity, national values and civilizations different from their own, and for the rights of peoples. The representative of the USSR considered the ideas of which the proposal was imbued as being very important and suggested that, in the first sentence of the proposal, the word “identity” be replaced by the word “traditions”, and that in the second sentence “their cultural and national identity” should read “their own culture and national traditions”.

44. The Chairman asked the delegation of Algeria to give the Working Group an amended version of its proposal, which then read thus:

“Children should be educated with respect for their cultural identity, for their national values, for civilizations different from their own and for the right of peoples. In no case may they be deprived thereof by colonial domination or foreign occupation.”

45. The representatives of Argentina, China, Cyprus, Iraq and Venezuela supported the amended proposal put forward by the delegation of Algeria. The representative of the United States thought that it was unclear that the proposal advanced the spirit of the convention on the rights of the child, while the representative of Austria had some difficulties with the concept of rights of peoples and would therefore prefer not to have it included in the text of the provision. An exchange of views followed touching upon, among other things, the imprecision of the wording and whether the proposal did not repeat or contradict the (adopted) provisions of article 16 or certain other provisions of the draft convention.

46. The representative of Cyprus declared that in no case might the child be deprived of the education referred to in the first sentence of the Algerian proposal, when his or her country was still under colonial domination or foreign occupation. He also suggested the replacement of “the rights of peoples” by “the human rights and fundamental freedoms”, a suggestion which was endorsed by the Canadian delegation.

47. The delegation of Senegal proposed that the words “with respect” at the beginning of the first sentence should be replaced by “within a framework of respect”. Since he found the language of the proposal still ambiguous, the representative of Australia proposed as a possible solution the insertion immediately after the words “cultural identity” of the following: “and values, the values of the nation in which they live, for civilizations different from their own”.

48. The representative of Cyprus then proposed that the part of the Australian amendment reading “... the values of the nation in which they live” should read instead “the values of the nation to which they belong”, but the Canadian delegation indicated its preference for the terms “country/nation in which a child lives”. The delegation of the United Kingdom said it would prefer to insert the word “own” between the words “respect for their” and “cultural identity”.

49. Taking into account the views expressed by the Group in the course of the discussion, the representative of Australia read out the following text:

“The education of children should take place in a framework of respect for the child’s own cultural identity and values, for the national values of the country in which the child is living, for civilizations different from its own, and for human rights and fundamental freedoms. In no case may they be deprived of this by colonial domination or foreign occupation.”

50. The representative of Australia pointed out the ambiguity of the word “this” in the second sentence of the proposal he had just read. The Chairman proposed - in order to remove the ambiguity - that the word “this” be replaced by the words “such an education”, a proposal which met with the support of the representative of the United Kingdom.

51. The delegation of the United States indicated that it was unable to join a consensus on the second sentence of the Algerian proposal, since the rights enumerated in the convention were for children living in States with various political systems, and not only in those under “colonial domination or foreign occupation”. Moreover, the proposed language was superfluous from a legal point of view, because the States Parties, by ratifying or acceding to the convention, were already agreeing not to deprive children of the rights contained therein.

52. With regard to the first sentence, the representative of the Netherlands suggested that the proposal under consideration by the Working Group should be subparagraph (d) of paragraph 1 of article 16, and that it should start with the words “The development”, instead of “The education of children should take place in a framework”. The delegations of Australia and the USSR fully accepted the proposal put forward by the representative of the Netherlands.

53. The representative of Algeria stated that she could accept the adoption of the first sentence provided that the second sentence was adopted, dealing with the education of children living under foreign occupation or colonial domination. The Working Group then proceeded to adopt the first sentence of the proposal under its consideration, namely:

“The development of respect for the child’s own cultural identity and values, for the national values of the country in which the child is living, for civilizations different from its own, and for human rights and fundamental freedoms.”

The Chairman stated that the discussion on the proposal put forward by the delegation of Algeria was terminated.

10. Proposal submitted to the Working Group (1988)

(a) Four Directions Council and South American Indian Council

The following is taken from document E/CN.4/1988/WG.1/WP.4.

Addition of a new subparagraph to article 16 (1):

(e) The conservation of the country’s existing linguistic and cultural diversity.

11. Discussion by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 235).

235. During its session, statements were made to the effect that the proposals relating to the following articles should be considered by the Working Group during the second reading of the draft convention. In that connection, the representative of the Four Directions Council had expressed the hope, at the last meeting of the Working Group, that articles relating to family responsibility in upbringing and guidance as well as to conservation of a country's linguistic and cultural diversity as had been proposed by indigenous children would be taken up at the second reading.

[...]

2. *Article 16, paragraph 1, new subparagraph (e), (Cultural, religious and linguistic rights, proposal from the USSR, E/CN.4/1988/WG.1/WP.2, chapter II)*

“Education in the spirit of the inadmissibility of propaganda of war and of any advocacy of national or racial hatred that constitutes incitement to discrimination, hostility or violence;”

12. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 16

1. The States Parties to the present Convention agree that the education of the child shall be directed to:
 - (a) The promotion of the development of the child's personality, talents and mental and physical abilities to their fullest potential and the fostering of respect for all human rights and fundamental freedoms.
 - (b) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance and friendship among all peoples, ethnic and religious groups.
 - (c) The development of respect for the natural environment and for the principles of the Charter of the United Nations.
 - (d) The development of respect for the child's own cultural identity and values, for the national values of the country in which the child is living, for civilizations different from its own, and for human rights and fundamental freedoms.
2. No part of paragraph 1 of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 34.

The general principles and objectives laid down in this article are in line with those of ILO standards having a bearing on the field concerned.

2. Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 34.

In paragraphs (a) and (d) there are two repetitive references to the respect for human rights and fundamental freedoms. In paragraph (c) the conjunction of respect “for the natural environment” and “for the principles of the Charter of the United Nations” is not at all logical. It would be preferable to include reference to the principles of the United Nations Charter separately.

Although article 15 of the draft convention deals *in very general terms*, with the right of the child to education, it could have been appropriate, in article 11 *bis*, when considering the case of refugee children as a specific target group, to underline the right to education and not to stop at protection and humanitarian assistance. This need has been felt and duly reflected with another target group (handicapped children) in article 12.3 where mention is made of effective access to education.

In this article, mention could be made of the need to encourage and facilitate educational and cultural exchanges of all types (e.g. correspondence, artefacts, visits) between children of different countries with a view to promoting international understanding and peace.

Article 16 might better read:

“(a) The development of the child’s personality, talents, and mental and physical abilities to their fullest potential;

“(b) The development of the child’s cultural identity and values and respect for the values of others, for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

“(c) The preparation of the child for responsible life in a free society, in the spirit of peace, tolerance, equality of sexes, and friendship among all peoples, ethnic and religious groups, and with respect for the natural environment.”

3. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 35.

Paragraph 1 (a) of the present article (as well as *article 18, paragraph 1*) deals with issues that are, or could be, relevant to the World Health Organization such as the development of physical and mental abilities of the child and his protection from exploitation and work that is likely to be hazardous or harmful to his health or physical or mental development.

4. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 35.

Gender neutrality

Paragraph 1 (d). The penultimate phrase could read:

“... for civilizations different from *the child’s own* ...”

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 475 to 491).

475. The Working Group had before it the proposal of the drafting group composed of Canada, Colombia, Italy, Norway, Yugoslavia, the ILO and UNESCO (E/CN.4/1989/WG.1/WP.60) which read as follows:

- “1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child’s personality, talents, and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, religious and indigenous groups;
 - (e) The development of respect for the natural environment.

2. No part of this article or article 15 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

476. On behalf of the drafting group, the observer for Canada explained that, in drafting the proposal, their objective was to remain faithful to the first text as much as possible, without, however, neglecting the relevant provisions of the International Covenant on Economic, Social and Cultural Rights as well as the suggestions made in the Technical Review. He added that, consequently, the *chapeau* remained similar to the first draft; subparagraph (a) was inspired by article 13 of the International Covenant on Economic, Social and Cultural Rights; subparagraph (b) contained elements from article 13 as well as the United Nations Charter; subparagraph (c) reflected old paragraph 2 with the addition of the words “... the development of respect for the child’s parents”; subparagraph (d) reflected old paragraph (b) with the addition of the words “understanding” and “equality of sexes”; subparagraph (e) resulted from a separation from old (c); and that paragraph 2 related to the protection for the establishment of private schools, in conformity with the remarks made by some delegations.

477. Following this statement the *chapeau*, subparagraph (a) and subparagraph (b) were adopted.

478. With regard to subparagraph (c) the observer for Canada read the new text including an amendment proposed by Yugoslavia:

- “(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, *the country from which he or she originates*, and for civilizations different from his or her own.”

479. This proposal raised doubts among certain delegations (Argentina, the Federal Republic of Germany and the United States of America) who expressed their concern over the inclusion of a concept which, according to them, was already covered in subparagraph (c) through a different wording and that furthermore, a differential education such as the one proposed by this amendment could create certain problems.

480. The delegate of the United Kingdom proposed the inclusion of the words “and/or” before the new phrase and the use of the word “may” before the verb “originate” in order to create more flexibility with regard to the curriculum that is to be applied to the child.

481. The delegate of Ireland proposed the following alternative:
"... for the child's parents, for the cultural identity, language and values of the child's society or country of origin, for the national values ..."
482. The representative of India endorsed this proposal.
483. Following the statement made by the delegate of Yugoslavia on the flexible approach she would adopt towards any one of these proposals, subparagraph (c) was adopted to read as follows:
"(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;"
484. With regard to subparagraph (d), the delegate of the United States of America declared that he would prefer a different wording in the last two lines of the subparagraph and formulated his proposal as follows:
"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all members of the human race, without discrimination."
485. While the inclusion of the word "understanding" drew unanimous support, the change proposed for the last two lines raised some doubts among the delegations of Yugoslavia, the Federal Republic of Germany and Italy, whereas the Holy See, Venezuela and Argentina stated that they could go along with the new text.
486. In order to reach a compromise, the observer for Australia proposed that after the words "all peoples" the following phrase be added:
"... without discrimination on the basis of ethnicity, religion, or indigenous origins;"
487. As this proposal did not meet with a consensus, it was proposed that the reference to indigenous was not necessary and could be deleted since such persons were already covered by the term ethnic groups. The observer for Canada stated that in his and other countries, indigenous persons were not considered to be members of ethnic groups and therefore a specific reference was necessary. The observer for Canada then proposed that after the words "all peoples," be added:
"... ethnic, national and religious groups and persons of indigenous origin;"
488. The Working Group, given the absence of any objection to the Canadian proposal, adopted subparagraph (d) and proceeded to also adopt subparagraph (e) as follows:
"(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) the development of respect for the natural environment."
489. With regard to paragraph 2 of article 16, the observer for the Netherlands proposed the inclusion of a reference to article 15 in the beginning of the paragraph, along with the reference made to paragraph 1 of article 16.
490. Paragraph 2 was adopted to read as follows:
"2. No part of this article or article 15 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

491. Following the adoption of paragraph 2, the observer for the Netherlands expressed his concern over the absence of a reference in both articles 15 and 16, to article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights concerning the freedom of the parents to choose the school of their children. The delegations of Italy, the Holy See, Ireland, United States of America and Canada joined him in this concern.

Article 30 (Children belonging to a minority or an indigenous group)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

B. First Polish draft convention and comments (1978)

Neither the first Polish draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 30 of the Convention.

C. First reading (1979-1988)

The text of article 30 was discussed and adopted by the Working Group in 1987. This article was referred to as article 16 bis throughout the first and second readings.

1. Proposal submitted to the Working Group (1983)

(a) Algeria

The following is taken from document E/CN.4/1983/WG.1/WR.27.

Article 5, paragraph 2

The States Parties shall help alien children residing in their territory to retain their cultural identity and shall provide facilities for such children to learn their own language and become imbued with their national culture and the history of their country of origin.

2. Proposal submitted to the Working Group (1985)

(a) Four Directions Council

The following is taken from document E/CN.4/1985/WG.1/NGO/1.

As an organization of indigenous peoples, we take particular interest in the protection of our children's cultural freedom. The draft convention already wisely provides for the child's right to religious choice (article 7 bis). We urge the Working Group to address the larger problem of which religious choice is a part.

[...]

We therefore also suggest that article 16 of the convention, as proposed by the Government of Canada, be amended by the addition of the following subsection before it is adopted:

4. The use of compulsory education to deprive the child of freedom to have, learn, or adopt the culture of his parents is prohibited. The child shall have the right to education in the language of his parents, at least at the elementary school level.

[...]

3. Proposal submitted to the Working Group (1986)

(a) Four Directions Council

For the text of this proposal, see paragraph 65 in section 4 below.

4. Discussion by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 65 to 67).

65. The representative of the Four Directions Council presented a proposal for an article dealing with indigenous children's cultural and educational rights to read:

“The States Parties to the present Convention recognize the special needs of children belonging to indigenous populations, which include the right of the child:

- (a) To have, learn, and, if he chooses, adopt the culture and language of his parents;
- (b) To enjoy his family of birth and, if alternate family care or adoption is provided, to care or adopt in an otherwise suitable family or community of the same culture wherever possible;
- (c) To be educated, at least at the primary level, and to the extent practicable within national resources, in the language of his parents as well as an official language of the State.”

66. The representative of Mexico supported the above-mentioned provision in principle, and expressed the hope that the proposal would be given further consideration at the Working Group's next session, when her delegation might propose some amendments, especially with reference to education.

67. The representative of Australia said that he found the proposal put forward by the representative of the Four Directions Council very interesting. However, it covered indigenous populations only and he thought it might be reworded to embrace other minorities also. He also commented that it might be premature for the convention to purport to create indigenous rights at a time when the Sub-Commission Working Group on Indigenous Populations had still to fulfil its standard-setting mandate.

5. Proposal submitted to the Working Group (1987)

(a) Norway

For the text of this proposal, see paragraph 54 in section 6 below.

6. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 54 to 70).

54. For the consideration of this article, the Working Group had before it a proposal submitted by the delegation of Norway, which read:

“In those States in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such a population shall not be denied the right, in community with other members of its minority or indigenous population, to enjoy its own culture, to profess and practise its own religion, or to use and to be trained in its own language.”

The representative of Australia expressed his wish that a proposal by the Four Directions Council also be taken into consideration by the Group. That proposal read:

“The State Parties to the present Convention recognize the special needs of children belonging to indigenous populations, which include the right of the child:

- (a) To have, learn, and, if he chooses, adopt the culture and language of his parents;
- (b) To enjoy his family of birth and, if alternate family care or adoption is provided, to care or adopt in an otherwise suitable family or community of the same culture wherever possible;
- (c) To be educated, at least at the primary level, and to the extent practicable within national resources, in the language of his parents as well as an official language of the State.”

55. The delegation of Norway felt that the rights being proposed should be extended to include children belonging to both indigenous and minority groups, while the representative of Italy emphasized the need, in those countries with ethnic minorities, to respect their culture and the use of their own language inside their group. The observer for Finland stressed the importance for a child to enjoy the right of education in its own language, expressing his wish that such a principle appear in the draft convention.

56. The Chairman believed that the two proposals resembled one another: the Norwegian proposal being the broader one and the Four Directions Council proposal the richer one. He suggested that those proposals be combined at a later stage by a working party consisting of Australia, Norway and the Four Directions Council. The representative of Venezuela said that the subject of that provision was of interest to her, in particular subparagraph (b) relating to cultural factors in foster care and adoption, since it addressed a legitimate need of children belonging to groups different from the majority. She requested therefore that it be specifically considered by the working party.

57. The delegations of Australia, Austria, the German Democratic Republic, the Netherlands, Poland and Sweden expressed their preference for the Norwegian proposal, which was more general and closer to existing law. The observer for Canada noted that the matter of minorities and indigenous populations was of great interest to her delegation and that there was considerable activity on those issues in her country. She called the attention of the Working Group to the fact that there were two working groups of the Commission already examining these questions: one on indigenous populations and the other on minorities, and it might be more appropriate therefore to use the Norwegian proposal, which was based on article 27 of the International Covenant on Civil and Political Rights, and not stray too far from already approved texts and impinge upon discussions going on elsewhere.

58. The delegations of India, Japan, Mexico and the United States expressed concern over the provisions in both proposals which seemed to impose a duty on States to educate children in indigenous or minority languages. The delegation of Norway consequently agreed to delete the words “and to be trained in” from its proposal.

59. The representative of the United States indicated his preference for the phrase “members of its minority or indigenous population” to read instead “members of their group”. The delegation of the United Kingdom supported that proposal, but suggested that the word “its” be used instead of “their”, which in its turn found the support of the representatives of Italy and Japan. The delegation of the Netherlands also approved the British proposal and, in connection with the phrase reading “a child belonging to such a population”, stated its preference for “a child belonging to such minorities or populations”.

60. With regard to subparagraph (b) of the proposal submitted by the Four Directions Council, the delegations of Austria and Canada considered that the questions of adoption and education should not be dealt with within the framework of article 16 bis but should be considered during the second reading

of the draft convention (Austrian delegation) or in the context of other articles (Canadian delegation). The representative of Venezuela was unable to agree with the positions adopted by the Austrian and Canadian delegations.

61. Following the Chairman's request that a compromise text be elaborated by a working party consisting of Australia, Norway and the Four Directions Council, which was joined by Finland, the representatives of Norway and the Four Directions Council submitted a text that read as follows:

“1. The States Parties to the present Convention shall take all appropriate measures to preserve and enhance the linguistic, cultural and religious heritage of children belonging to indigenous populations or ethnic, linguistic or religious minorities.

2. In particular States Parties shall, where the best interests of the child render foster care or adoption necessary, avoid where possible the removal of children from their own group or community.”

62. The delegations of the Netherlands, the United Kingdom and the United States indicated their preference for having as paragraph 1 the original Norwegian proposal, as already amended by the Working Group, and paragraph 2 contained in the joint proposal.

63. The representative of Austria was in favour of the original Norwegian proposal, and, concerning paragraph 2 of the joint proposal, considered that in the second reading of the draft convention it might be transferred to provisions dealing with adoption and foster care. The representatives of Argentina and France likewise stated their preference for the original Norwegian proposal.

64. The observer for Canada suggested that paragraph 2 of the joint proposal should be considered in connection with the article dealing with adoption. As currently worded, however, it suggested greater rights for the children of minorities and indigenous populations than for the children of a majority. With respect to paragraph 1, she said that, while she could accept it, the comments of other delegations suggested that it might be difficult for the Group to adopt wording that departed too much from article 27 of the International Covenant on Civil and Political Rights.

65. The representative of Venezuela reiterated her belief that paragraph 2 of the joint Norwegian-Four Directions Council proposal should be retained in article 16 bis. The delegation of the United Kingdom, feeling that the tone of paragraph 2 of the aforementioned joint proposal was too negative, suggested an alternative formula for paragraph 2 which read: “States Parties to the present Convention shall, as far as possible and where it is in the best interests of the child, seek to ensure that placements are found within the child's ethnic, religious or linguistic community,” and proposed that this should be an additional paragraph to article 10 of the draft convention.

66. The delegation of the Netherlands thought that the British proposal went too far, but the delegations of Austria and Venezuela accepted its basic idea concerning the incorporation into article 10 of the draft convention of a provision entailing adoption and foster care. The delegation of Norway, as a co-sponsor, indicated its readiness to have paragraph 2 moved to article 10. The representative of the Four Directions Council fully accepted the British proposal provided the words “is in” were replaced by the phrase “it does not otherwise conflict with”; a proposal that met with some reservations on the part of the delegation of the Netherlands.

67. The representative of Brazil proposed that the first word “The” of paragraph 1 of the proposal submitted by Norway and the Four Directions Council be replaced by: “Recognizing the special needs of children belonging to ethnic, religious or linguistic communities,”. The delegation of the United Kingdom said that it did not agree with the amendments put forward by the representatives of Brazil and the Four Directions Council.

68. After some further exchange of views, the Chairman considered that the Working Group's preference was for the original Norwegian proposal. The representative of Norway then read out his original proposal as amended, namely:

“In those States in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such minorities or populations shall not be denied the right, in community with other members of its group, to enjoy its own culture, to profess and practise its own religion, or to use its own language.”

69. The delegations of Australia, Canada, the German Democratic Republic, India, Mexico and the United States accepted the text as read out by the representative of Norway, and the Working Group proceeded to adopt it by consensus as article 16 bis.

70. The delegation of the United States joined the consensus on the basis of its understanding that future States parties would be expressing a general intention not to interfere with the existing rights of minorities or indigenous populations to enjoy their culture, practise their religion, or use their own language among themselves, and would not be undertaking to provide State resources toward these ends.

7. Statement before the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 235).

235. During its session, statements were made to the effect that the proposals relating to the following articles should be considered by the Working Group during the second reading of the draft convention. In that connection, the representative of the Four Directions Council had expressed the hope, at the last meeting of the Working Group, that articles relating to family responsibility in upbringing and guidance as well as to conservation of a country's linguistic and cultural diversity as had been proposed by indigenous children would be taken up at the second reading.

8. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 16 bis

In those States in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such minorities or populations shall not be denied the right, in community with other members of its group, to enjoy its own culture, to profess and practise its own religion, or to use its own language.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 35.

The general principles and objectives laid down in this article are in line with those of ILO standards having a bearing on the field concerned.

2. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 35.

The present formulation of this article represents an adaptation, for the purposes of the draft convention, of article 27 of the International Covenant on Civil and Political Rights. If its focus was exclusively on the rights

of persons belonging to certain minority groups (as is the case with article 27) and if the intention was not to reflect in any way the significantly higher standards that are gradually emerging in the context of the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, then the present formulation would be adequate. However, article 16 bis covers not only children belonging to minorities but also children belonging to indigenous populations. With respect to the latter, it is already widely accepted that special measures of protection are appropriate. In addition, current standard-setting activities in both the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the International Labour Conference point to general recognition of even more favourable standards for members of indigenous populations. For those reasons, the Working Group may wish to consider adapting the existing wording so as to more accurately reflect the existing standards which are applicable to both groups. This could be achieved by using the following wording (which also takes account of the need for gender-neutral language and the inappropriateness of the word “its” to refer to a child):

“A child belonging to an ethnic, religious or linguistic minority, or to an indigenous population, shall have the right, in community with other members of the group, to enjoy the culture, to profess and practise the religion and to use the language of that group”.

Gender neutrality

In order to render this article gender-neutral, the formulation proposed above (substituting the word “the” for “its” and adding the phrase “of that group”) or, alternatively, “his or her” could be used each time in place of “its”.

3. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 38.

38. In connection with this article, the Working Group may wish to note the preference of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Working Group on Indigenous Populations for the term “indigenous peoples”. (See Sub-Commission resolution 1988/18.)

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following written proposals were submitted for consideration at second reading.

(a) Yugoslavia

For the text of this proposal, see paragraph 493 in section 2 below.

(b) Four Directions Council

The following is taken from document E/CN.4/1989/WG.1/NGO/2, page 3.

[...]

5. *Terminology for “indigenous”.* Consistent with terminology employed by ECOSOC in its resolution 1988/35 of 27 May 1988, and the Sub-Commission’s decision, by its resolution 1988/18 of 1 September 1988, to revise the title of the relevant item of its agenda, the terms “indigenous peoples”, or “communities” should be used in the final draft of the convention. We also agree with the proposal made by UNICEF, in E/CN.4/1989/WG.1/CRP.1, to revise the wording of article 16 bis for greater clarity.

(c) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 16 bis: “indigenous populations exist, a child belonging to such minorities or populations shall be respected ...”

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 492 to 502).

492. The Working Group had before it the text of the article as adopted at first reading as well as the revisions suggested in the technical review (E/CN.4/1989/WG.1/WP.2) which read as follows:

“(In those States in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such minorities or populations shall not be denied the right, in community with other members of its group, to enjoy its own culture, to profess and practise its own religion, or to use its own language.) A child belonging to an ethnic, religious or linguistic minority, or to an indigenous population, shall have the right, in community with other members of the group, to enjoy the culture, to profess and practise the religion and to use the language of that group.”

493. The Working Group also had before it a proposal by the representative of Yugoslavia (E/CN.4/1989/WG.1/WP.47) reading as follows:

“A child belonging to an ethnic, national, religious or linguistic minority, or to an indigenous population, shall have the right, in community with other members of the group, to enjoy the culture, to profess and practise its own religion, or to use and to be trained in the language of that group.”

494. In discussing this draft article, several delegates expressed their preferences for the text as adopted at first reading and it was decided to set up a drafting group on this article.

495. The representative of France, speaking on behalf of the drafting group composed of Brazil, France, Italy, Norway, Senegal and Yugoslavia, informed the Working Group that no consensus had been achieved on various proposals submitted with regard to article 16 bis. In these circumstances it was suggested that the Working Group should go back to the text of article 16 bis as adopted at first reading with a view to approving it without any substantive changes.

496. The representative of Yugoslavia pointed out that the amendments submitted by her delegation (E/CN.4/1989/WG.1/WP.47) on which the opinions divided in the drafting group had been based on the proposals of UNICEF (E/CN.4/1989/WG.1/CRP.1). In the opinion of the representative of Yugoslavia, the UNICEF proposals should be the basis of discussions in the Working Group in connection with article 16 bis.

497. Many participants indicated their general support for the text of article 16 bis as adopted at first reading. On the other hand, a view was expressed that article 16 bis and the amendments thereto contradicted a non-discrimination clause contained in article 4 as already adopted, and therefore felt the entire article should be deleted from the text of the draft convention.

498. Several participants stated they had difficulties with regard to the proposed inclusion into the convention of the concept of a “national minority”. Some other speakers voiced their support for it and argued that this concept was not entirely new for international instruments since it had been already included in the Final Act of the Conference on Security and Cooperation in Europe.

499. Some delegations expressed the view that the expression “indigenous populations” should be replaced by some other wording, as had been already done earlier in article 9. A representative of one non-governmental organization made a statement on the negative implications that the word “populations” would have for the indigenous people.

500. Suggestions were also made that the language of article 16 bis should be made more positive, and to this effect the words "... a child ... shall not be denied the right ..." should be changed to "a child ... shall have the right ...".

501. After some discussion, during which a consensus was not achieved, it was proposed that the entire article be deleted. The observer for Canada, supported by several other delegations, argued for the retention of this article. After further discussion, a revised text of article 16 bis was read out by the Chairman and then adopted by the Working Group to read as follows:

"In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

502. Venezuela requested the deletion of this article and explained that its purpose was unquestionably to include such a provision in order to ensure as far as possible that children belonging to these minorities were guaranteed the rights stipulated therein. However, Venezuela believed that the fact of having a separate and special provision concerning "the minorities" implied that the children who belong to them are different from the other children of the world, particularly since article 4 of the draft contains the basic rules to enable States to respect and apply the rights established in the convention, without any kind of distinction. Quite simply this provision is considered to be discriminatory.

3. Statement made during the adoption of the report

(a) Venezuela

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 730).

730. The delegation of Venezuela stated that, as already announced during the discussion on article 30, Venezuela also had difficulty with that text, which referred to ethnic, religious or linguistic minorities. There was no doubt that the purpose of including such a provision had been to ensure to the fullest possible extent that children belonging to those minorities were guaranteed the rights stipulated in the convention. However, the Venezuelan delegation believed that the fact of including a separate or special provision on "minorities" gave the impression that children belonging to them were different from other children in their own country or elsewhere in the world, particularly as article 2 of the draft convention contained basic rules for ensuring that States respected and applied the rights set forth in the convention without discrimination of any kind. In the view of the Venezuelan delegation, the provision concerned was likely to give rise to discriminatory situations.

Article 31 (Leisure, recreation and cultural activities)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

Although article IV of the first Polish draft convention stated that “[t]he child shall have the right to adequate nutritional, housing, recreation and medical services”, it was article VII that dealt most closely with the concerns addressed under present article 31. The following is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, pp. 124 and 125).

Article VII

1. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.
2. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.
3. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

2. Comments on the first Polish draft

Article VII of the draft gave rise to the following comments.

(a) Barbados

The following is taken from document E/CN.4/1324.

Free and compulsory education should not only be in the elementary stage but rather up to a stated maximum age corresponding to the minimum age contemplated in article IX.

(b) Bulgaria

The following is taken from document E/CN.4/1324/Add.1.

1. Another paragraph should be added to article VII: “The fullest safeguarding of the interests of the child shall be the guiding principle in the legislative regulation of family relationships.”
2. Paragraph 2 should become paragraph 3, and the following words should be added to it: “but also with the State and society”.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

1. Paragraph 2. In order to emphasize the primary responsibility of the parents, while underlining the complementary but subsidiary nature of the role played by the State and by public, semi-public and private bodies and institutions, the wording of the draft convention should be amended as follows: "The education of the child is in the first instance the responsibility of his parents. the best interests of the child shall be the guiding principle of those who are responsible for it."
2. In view of the comments made in paragraph 4 (a) above under "General Comments", this paragraph, as amended, should be placed at the beginning of the convention.
3. Paragraph 3. This paragraph can be interpreted as restricting the rights of the child, since it specifies that his play and recreation "should be directed to the same purposes as education". While educational games are to be encouraged, they should not be the only ones the child can play. For his full development, he also needs to involve himself in activities which are not necessarily part of a specific educational system. It would therefore be preferable to delete those words from the sentence.

(d) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6, 7 and 8, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6, 7 and 8, which appear elsewhere in document E/CN.4/1324, read as follows.

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents), should be grouped together in a separate section as rights of the individual.

[...]

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

8. The Federal Government also expresses reservations as to the comprehensiveness of the safeguards provided regarding efforts to ensure the protection of the child which have been undertaken elsewhere in the United Nations. This applies particularly to natural children whose status has long been the subject of consultations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. This question should receive special attention. Another matter that should receive special attention in this context is whether the application of the convention to natural children is also provided for in the present draft. Admittedly, article I provides that every child shall be entitled to the rights set forth in the convention, without distinction or discrimination on account of birth or status, among other factors. Furthermore, the wording of principle 1 of the Declaration of the Rights of the Child of 20 November 1959, on which article 1 of the draft convention is based, seems to have been

designed to assure natural children of the same rights as those enjoyed by legitimate children. However, the other provisions of the Declaration of 20 November 1959, and consequently of the draft convention based on it, do not take account of the situation of natural children. For instance, the second part of article VII, paragraph 2, provides that responsibility for the education and guidance of the child lies in the first place with “his parents”. This provision needs to be modified to cover the situation of natural children, most of whom are brought up in the family of the mother.

(e) Greece

The following is taken from document E/CN.4/1324.

It is well known that great doubts have been expressed as to the value of the current educational system in all countries. The main argument against it is that it leads to conformity and it stifles individuality. The Greek Government considers this to be true and therefore it suggests the following rewording of paragraph 1.

“The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will respect his unique individuality and promote his general culture and enable him on a basis of equal opportunity to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of the society.”

(f) Malawi

The following is taken from document E/CN.4/1324/Add.4.

We have objections to this article which is in contradiction with our educational system because education in Malawi, for very good reasons, is not compulsory at any level. What would, for example, be the meaning of compulsory education in a country which has limited resources?

(g) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

Section 1 - The question of the definition of a child discussed within our comments in article IV is important in the context of this section. We believe that “the elementary stages” of childhood should be defined in the terms of a stated minimum number of years.

Section 2 - Acceptable.

Section 3 - The spirit of this section could not be disputed by educationalists. However, “play” and “recreation” are not necessarily viewed in the same positive light by many members of the community, and if the convention were adopted by New Zealand this section could give rise to considerable public debate. It should also be noted that we do not fully understand the distinction made by implication between “play” and “recreation”.

Problems also arise when consideration is given to particular words and phrases within the section. What is, for instance, meant by the phrase “full opportunity”? Does the phrase mean “easy physical access” or “plenty of time” or “provisions for various ages of children” or is it meant to envelop all of these possible readings? We are also unsure about the meaning of the phrase “the same purpose as education”. This phrase raises the question, whether the word “same” is meant to imply the same purposes of all aspects of education, and the question of whether education is seen to be the same activity as schooling.

In addition, this section states that “the society and the public authorities shall endeavour to promote the enjoyment” of the right of the child to have full opportunity for play and recreation. We wonder whether the department promotes such enjoyment by providing children access to schools outside normal school hours, and whether the play and recreation schemes and equipment provided by schools are sufficient to be classed as a “full opportunity”. At present, the implementation of these schemes occurs at a local level,

and the question would arise if New Zealand were to adopt this particular article of whether the “public authorities” i.e. central government departments and bodies such as education boards would be willing to work through local government, and whether the local government bodies would have sufficient resources to handle this task.

(h) Norway

The following is taken from document E/CN.4/1324.

The article should read as follows:

1. Children, including children of preschool age, shall have full opportunity of play, social activities and recreation, as a means to ensure their full mental and physical development. Society and the public authorities shall endeavour to promote the enjoyment of this right.
2. Children are entitled to receive education, which shall be free and compulsory, at least in the elementary stages. The basic school shall, in understanding of and collaboration with the homes, give children an education which will promote their general culture and enable them, on a basis of equal opportunity, to develop their abilities, their individual judgement and their sense of moral and social responsibility, and to become useful and self-reliant members of society.
3. Education shall have a global perspective. It shall promote the respect for human rights and fundamental freedoms. It shall also promote understanding, tolerance and friendship among peoples, and further activities of the United Nations for the maintenance of peace.”

(i) Portugal

The following is taken from document E/CN.4/1324.

Paragraph 1 of article 7 could be amended by deleting the word “general” before the word “culture” and by adding the word “participation” after the word “responsibility”.

(j) Spain

The following is taken from document E/CN.4/1324.

1. In paragraph 1, replace the words “and to become a useful member of society” by the words “so that he will be capable, by himself and as a result of the training he has received, of coping with the necessities of life and will be a useful member of society”.
2. The purpose of this is to emphasize the instrumental role of education and to ensure the active participation of the child in the community through the exercise of his own free choice regarding the future course of his education.

(k) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(l) Sweden

The following is taken from document E/CN.4/1324.

Immigrant children encounter special problems, for instance in respect of their schooling. In many cases, it is important for these children to be taught their own language and the culture and history of their country of origin. It should be further examined what rules regarding the rights of such children could be included in the convention.

(m) Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1324.

Paragraph 2 of the draft article should be modified as follows: “The best interests of *the overall growth and development* of the child shall be the guiding principle of those responsible for his education and guidance: that responsibility lies in the first place with his parents”, to take account of the importance of the interrelationships between the various areas of development.

(n) United Nations Educational, Scientific and Cultural Organizations (UNESCO)

The following is taken from document E/CN.4/1324.

1. More explicit reference should be made to the fact that the Convention against Discrimination in Education, in article 4 (a), sets out “*to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all*”. Article VII of the draft convention might also refer to the guiding principles of the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (part III) and, in particular, the notion of international education contained in paragraphs 5 and 6 of that text.

2. The last paragraph of article VII should be based to a greater extent on the Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It by taking up the idea of effective safeguards for free access to national and world cultures by all members of society (paragraph 4 (b)), including children, and the idea of protecting and enhancing all forms of cultural expression such as national or regional languages, dialects, folk arts and traditions both past and present, and rural cultures as well as cultures of other social groups (paragraph 4 (g)), particularly as essential conditions for genuine cultural development of children of all human groups.

3. Emphasis should also be placed on two basic elements for the cultural development of the child: the achievement of conditions conducive to creative work and artistic expression, and the development of cultural education and artistic training in educational and training programmes aimed at multiplying opportunities for intellectual, manual or gestural creation (paragraphs 4 (k), (m) and (n)).

4. Finally, in the light of resolution 3 (XXXIII) of the Commission on Human Rights and resolution 32/123 of the General Assembly of the United Nations, the draft convention should place greater emphasis on the need for rapid and effective encouragement, at all levels of education, but also outside the education system, of knowledge of human rights by children and knowledge of the rights of the child by adults. Emphasizing that better knowledge of human rights would make a vital contribution to the maintenance or establishment of peace, to economic development and to social progress in the world, the draft convention should contain an additional article relating specifically to such instruction: “Education in human rights shall also be afforded to children and should, therefore, be given from the stage of primary school onwards and also outside the school system, in particular in the family”. “The rights of the child shall also be taught at all levels of education as well as outside the school system, in professional, cultural or cooperative associations.”

(o) International Council of Women

The following is taken from document E/CN.4/1324.

1. It seems to us that paragraph 2, which is presented as a “sub-article”, does not go far enough and weakens the last preambular paragraph, “*Proclaiming* that mankind owes to the child the best it has to give”.

2. While it might be difficult to introduce such a formula into the text of a convention, we should like it to be said that every adult is responsible for the children with whom he comes into contact, in the widest sense of the word: in our opinion, no adult has the right to offend or neglect a child: the child must be respected.

(p) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child is entitled to receive education, which shall be free and compulsory. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement and his sense of moral and social responsibility, and to become a useful member of society.

2. The child shall have full opportunity for play and recreation which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

(q) International Union of Judges

The following is taken from document E/CN.4/1324.

The International Union of Judges is of the opinion that certain fundamental requirements of children should be stated sufficiently clearly. The following are some of them:

1. The importance of the early years of life of every person and the absolute necessity of a suitable education, which is always the best means of developing children’s physical and mental capacity.

2. The school should provide an all-round education covering both the physical and the intellectual and moral training of the child, even if he is handicapped.

3. The school should be viewed as a social institution which completes the work of the family, particularly in cases where both parents, or the person to whose care the child is committed, are in employment which keeps them away from home most of the day, and where the mother has only a few hours in the afternoon or the evening in which to tend to her child.

C. First reading (1979-1988)

The text of article 31, which was based on article 18 of the revised Polish draft, was discussed and adopted by the Working Group in 1985. This article was referred to as article 17 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 18

The child shall have full opportunity for recreation and amusement appropriate to his age. The parents and other persons responsible for the care of the child, educational institutions and State organs shall be obliged to implement this right.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 17

The States Parties to the present Convention undertake to ensure to all children opportunities for leisure and recreation commensurate with their age. Parents and other persons responsible for children, educational institutions and State organs shall supervise the practical implementation of the foregoing provision.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 5.

The Polish text of article 17 in A/C.3/36/6 provides an acceptable basis for article 18, amended as follows:

“The States Parties to the present Convention undertake to *promote measures ensuring that* all children *are provided with* opportunities for leisure and recreation commensurate with their age, *and to encourage* parents and other persons responsible for children, educational institutions and State organs to supervise the practical implementation of this provision.”

4. Proposal submitted to the Working Group (1983)

(a) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.26. The proposal was subsequently reproduced in annex II to the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71).

Article 18: New proposal

1. Every child has the right to rest and leisure, to engage in play and recreation and to freely participate in cultural life and the arts.
2. Parents, States Parties, educational institutions and others caring for children shall take steps to implement this right, including making reasonable limitations on school and working hours.

5. Proposals submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, page 5, which appeared after the 1983 session of the Working Group.

Article 18 (Recreational possibilities)

We would suggest that provision should be included in this article for a reasonable period of time to be set aside for recreational activities, for an area to be reserved for sports and, if necessary, for green spaces to be created for the health of young children.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983) and later reproduced in document E/CN.4/1985/WG.1/WP.1, page 10. Changes and additions to the Polish proposal contained in A/C.3/36/6, part II (see section 2 above) are printed in italics.

The States Parties to the present Convention undertake to *promote measures ensuring that all children are provided with opportunities for leisure and recreation commensurate with their age, aptitude and any special needs they may have. They shall encourage* parents and other persons responsible for children, educational institutions and State organs to supervise the practical implementation of *this provision.*

6. Proposals submitted to the Working Group (1985)

(a) United States of America

The following is taken from document E/CN.4/1985/WG.1/WP.25.

1. The States Parties to the present Convention recognize the importance of recreational and cultural activity to the well-being and balanced development of the child.
2. The States Parties to the present Convention shall respect the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following was proposed to the Working Group at its 1985 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984). Changes and additions to the previous proposal of the NGO Ad Hoc Group are printed in italics.

The States Parties to the present Convention *shall recognize the child's right to play, leisure and recreation, and shall promote measures to ensure that all children, irrespective of socio-economic status, are provided with opportunities for leisure and recreation commensurate with their age, aptitude and any special needs they may have. They shall encourage parents and other persons responsible for the child to subscribe to such measures and shall ensure that housing and town planning authorities, and other State organs, implement these provisions accordingly.*

7. Discussion and adoption by the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, paras. 105 to 109).

105. The consideration of this article was based on paragraph 1 of the text introduced by the delegation of Canada at the Working Group's 1984 session and paragraph 2 of a proposal put forward at the current session by the representative of the United States of America. The resulting text read as follows:

"Every child has the right to rest and leisure, to engage in play and recreation and to freely participate in cultural life and the arts.

The States Parties to the present Convention shall respect the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity."

Paragraph 1

106. The observer for Cuba proposed the addition of the words “appropriate to the age of the child” after the words “play and recreation” and “social activities” after the words “cultural life”. The representative of the United Kingdom suggested replacing the word “recreation” by “recreational activities”, while the representative of France proposed replacing the introductory words “Every child has the right” by the following phrase: “States Parties to the present Convention recognize the right of the child”.

107. The observer for Canada, taking into account the various proposals put forward for consideration by the Working Group, read out the following amended version to paragraph 1:

“States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.”

The Working Group agreed to the above-mentioned text.

Paragraph 2

108. The representative of the United States of America proposed the addition of the words “and promote” after “shall respect” at the beginning of the paragraph. The Working Group agreed to the second paragraph as amended. The approved text reads as follows:

“The States Parties to the present Convention shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”

109. The representative of the Federal Republic of Germany, while stressing the importance of leisure and recreation for the child’s development, expressed doubts with regard to the advisability of proclaiming a universal right in this respect; he indicated his preference for dealing with the issue in the context of the provision against economic and social exploitation. The representative of Japan also expressed doubts concerning the advisability of proclaiming a universal right in this respect and, while supporting the text of article 17 agreed to by the Working Group, reserved the right to make a reservation clause to this article. The observer for the Holy See voiced a reservation on the grounds that the article just approved by the Working Group did not reflect a relationship between the right of the child to rest and leisure and the right of parents, in particular, to oversee and control the rest and leisure activities of their children, for a child could not be considered out of the context of his family environment.

8. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 17

1. States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties to the present Convention shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

D. Technical review (1988)

1. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 36.

In order to achieve a more precise and clearly defined “division of labour” between the two paragraphs, consideration could be given to:

- (1) deleting the words “to participate freely in cultural life and the arts” from paragraph 1, on the basis that that issue is already fully dealt with in paragraph 2;
- (2) adding, at the end of paragraph 1, the words “and shall encourage the provision of appropriate and equal opportunities for those purposes”; and
- (3) deleting the words “recreational and leisure” from the end of paragraph 2, on the basis that such issues are better dealt with in paragraph 1.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 503 to 506).

503. The Working Group had before it the following text of article 17 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

“1. States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. The States Parties to the present Convention shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”

504. The proposed technical revisions included the deletion of the words “to the present Convention” in both paragraphs of the article.

505. It was proposed in the technical revision (E/CN.4/1989/WG.1/CRP.1) to substitute the words “to participate freely in cultural life and the arts” by the phrase reading: “shall encourage the provision of appropriate and equal opportunities for these purposes” in paragraph 1 and to delete the words “recreational and leisure” and to add “and” before “artistic” at the end of paragraph 2.

506. After some discussion the proposed substantive changes were not accepted and the Working Group then adopted article 17, as revised, which reads as follows:

“1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.”

Article 32 (Economic exploitation, including child labour)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admissions to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article IX

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

2. Comments on the first Polish draft

Article IX of the draft gave rise to the following comments.

(a) Central African Empire

The following is taken from document E/CN.4/1324/Add.1.

The Government of the Central African Empire would like to suggest that, in article IX, paragraph 2, the appropriate minimum age should be fixed at 14 years.

(b) Dominican Republic

The following is taken from document E/CN.4/1324.

By way of comment only, we would draw attention to the fact that the provisions of articles IX and X of the draft have been given detailed treatment in various ILO international agreements on other questions; it might be advisable to review those agreements in case their contents should be expanded.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

(a) It would be desirable to add, in the second sentence, after the words “He shall not be the subject of traffic” the words “or of a commercial transaction”;

(b) With regard to admission to employment, the words “appropriate minimum age” in the next sentence should be replaced by the words “the requisite age”;

(c) It would be desirable for the convention to include a provision affirming the right of the child at least to be consulted when certain events affecting his personal situation are to take place. The additional article might be worded as follows: “As soon as the child is capable of understanding, his consent must be sought when decisions have to be taken that may seriously affect his personal situation, such as those relating to adoption or the granting of custody.”

(d) German Democratic Republic

The following is taken from document E/CN.4/1324.

More precise legal language should be used in article IX, paragraph 2, to formulate the impermissibility of admitting children to employment or an occupation.

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in document E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected, disturbed or ill-treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of “baby-farming”.

We attach an appendix listing the legislation and regulations covering the employment of children in New Zealand. There is no evidence that child labour is being exploited in New Zealand. The employment of children on agricultural work is allowed only during hours which do not prejudice their work at school, with a maximum of eight hours per day. The introduction of legislation prohibiting young persons (under 15) from engaging in occasional or part-time employment such as the customary fruit-picking, sale of confectionery in cinemas during intervals and milk and newspaper vending, would have neither parental nor public support in New Zealand. Given the provisions of the Education Act 1964 fixing at 15 the age at which a child may leave school, and the various Acts and Regulations (see appendix) narrowing substantially the fields in which persons under 15 may be employed, New Zealand could be considered to fulfil the general obligation under article IX, section 2.

The appendix, also contained in document E/CN.4/1324/Add.5, reads as follows.

EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

1. *Education Act 1964*

All persons between six and 15 years are to be enrolled on a school roll - a child of 14 can be exempted by the Director-General of Education from obligation to enrol at school under certain circumstances (S.109).

2. *Factories Act 1946*

(a) Section 37 - No boy or girl under 15 years can be employed in a factory.

(b) Section 38 (2) - No woman (female irrespective of age), boy (male under 16 years), youth (male over 16 but under 18) can be employed in any process -

(i) making white lead;

(ii) melting, casting, pasting, burning of lead or any material containing lead or any work involving use or movement of or contact with any oxide of lead.

(c) Section 38 (3) - No boy or girl (under 16 years) can be employed in any room where dry grinding in the metal trade is carried on.

(Note: Section 38 (5) 1972 Am'd Governor-General can extend to cover any process where undesirable that persons under 16 years be employed.)

(d) Section 19 (2) - No person under 16 years can be employed in a factory between 6 p.m. and 7 a.m. or on a Sunday or Holiday.

3. *Machinery Act 1950*

Section 12 (1) - No person under 15 years to be employed in working or assisting at or with machinery.

(2) - No person under 18 years can be employed cleaning, etc. of machinery.

(3) - No person under 18 years can be left in charge of or control of stated machinery.

4. *Shops and Offices Act 1955*

Section 13 (1) - No person under 16 years can (a) be employed in connection with business of a shop or (b) delivery of milk or newspapers - before 7 a.m.

BUT this hour becomes 6 a.m. where the worker (i) is not less than 14 years and is employed on delivery of milk, (ii) not less than 12 years on delivery of newspapers.

(2) - No person under 18 years can be employed in a shop after 10.30 p.m.

5. *Coal Mines Act 1925*

No female and no boy shall be employed in any capacity in or about any mine (section 66).

(Note: By section 2 "boy" means a male person under the age of 14 years.)

No youth shall be employed at any time as lander or banksman at the top of any shaft in a mine, or no head banksman at the surface of any mine where coal is raised by mechanical dip haulage, or as an onsetter at an entrance to the shaft, and no youth under the age of sixteen years shall be employed underground in any mine (section 67).

(Note: By section 2 "youth" means a male person not under the age 14 years and under the age of 18 years.)

6. *Mining Act 1971*

No person under 15 years of age shall be employed in any capacity in or about a mine, no woman or girl shall be employed below ground in a mine except to do occasionally any class of work that she usually does above ground and a person under 16 shall not be employed below ground in any mine nor be employed on any dredge, etc. (S.179).

7. *Petroleum Regulations 1939*

Section 14 (1) - No person under the age of eighteen years ... shall be employed in the drilling of any well.

(2) - Nothing in this regulation shall apply to persons engaged solely in clerical employment or to persons engaged solely as nurses or charwomen.

8. *Sale of Liquor Act 1962*

No person under the age of 20 years (other than the wife of the licensee) shall be employed by the licensee in any capacity in any bar in any hotel or tavern or tourist house premises at any time while the bar is open for the sale of liquor (S.191). Exceptions are when the person is engaged on meal preparation or service or any person 18 or over performing in any musical entertainment and not involved in sale or service of liquor.

9. *General Harbour (Ship Cargo and Dock) Safety Regulations 1968*

No person under eighteen years of age ... shall be employed as a driver of a crane or winch, whether driven by mechanical power or otherwise, or to give signals to a driver or to attend to cargo falls on winch-ends or winch bodies (Regulation 29).

10. *Transport Act 1962*

[...] No person shall employ or permit any other person to drive a motor vehicle on any road unless the person so employed is the holder of a motor driver's licence (Section 25 (b)).

A motor driver's licence shall not be issued to any person who is under the age of 15 years (section 26 (4)).

11. *Infants Act 1908*

Section 29 - Any person who causes or procures:

(a) Any child being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or

(b) Any child, being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine in the evening and six in the morning; or

(c) Any child under the age of ten years to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale - is liable on conviction in a summary way, at the discretion of the Court, to a fine not exceeding \$50 or alternatively, or in default of payment of the said fine, or in addition thereto, to imprisonment for any term not exceeding three months.

12. *Boilers, Lifts and Cranes Act 1950*

No boiler, steam engine or crane shall be left in charge of a male under 18 or female under 20.

No lift (other than automatically controlled passenger lifts) shall be left in charge of a male attendant under 18 or a female attendant under 20. An attendant shall mean a person who has been specially employed to operate the lift (S.30).

13. *Agricultural Workers Act 1977*

No child under the age of 15 shall be employed on agricultural work during such times as the child is required to attend school pursuant to S.109 of the Education Act 1964 or be required to lift any weights or perform any task likely to be injurious to his health or work for more than 8 hours in any one day on agricultural work (section 57).

(g) Spain

The following is taken from document E/CN.4/1324.

Add a paragraph 3 reading: "The child shall be protected by means of adequate education against any type of manipulation, whether in regard to information, consumption, sex, etc."

(h) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(i) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of trade or traffic, in any form.

2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

C. First reading (1979-1988)

The text of article 32, which was based on article 19 of the revised Polish draft, was discussed and adopted by the Working Group in 1986. This article was referred to as article 18 throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 19

1. The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form.

2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to his health or his moral development, or in work dangerous to his life or which would interfere with his normal growth, and undertake to subject to legal punishment persons violating this law.

3. The States Parties to the present Convention shall comply with the law prohibiting the employment of children before the age of fifteen years.

2. Proposal submitted to the Working Group (1981)

(a) International Labour Organization (ILO)

The following is taken from document E/CN.4/WG.1/WP.1/1.

1. When invited to comment on the draft convention on the rights of the child annexed to resolution 20 (XXXIV) adopted by the Commission on Human Rights in 1978, the ILO indicated that the provisions of that draft were in no way incompatible with those of ILO Convention and Recommendations regarding the protection of the child (see E/CN.4/1324, p. 20).

2. At the thirty-sixth session of the Commission on Human Rights, the working group considering this question decided to take as the basis for its work a revised draft convention set out in document E/CN.4/1349. This draft contains more detailed provisions than the original draft. The International Labour Office wishes to draw attention to certain questions arising out of the proposed provisions concerning the employment of children and social security benefits.

Employment of children

3. The revised draft, in article 19, maintains the general principle that children shall not be employed in harmful, unhealthy or dangerous work. The original draft required the establishment of a minimum age for employment, but without specifying the age to be fixed. In contrast, the revised draft would require the prohibition of the employment of children before the age of 15 years.

4. In this connection, attention is drawn to the standards on minimum age for admission to employment adopted by the ILO in 1973. The Minimum Age Convention, 1973 (No. 138) makes provision for the pursuit of a national policy aimed at the abolition of child labour and the progressive raising of the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention distinguishes between different kinds of work:

(a) For the employment in general, it requires the establishment of a minimum age not less than 15 years or the age of completion of compulsory schooling, if higher. Countries whose economy and educational facilities are insufficiently developed may initially fix a minimum age of 14 years.

(b) For employment dangerous to health, safety or morals, a minimum age of at least 18 years (or, in certain conditions, 16 years) is required.

(c) For light work, under specified conditions, employment may be permitted as from 13 years (or, in the case of countries which have established a general minimum age of 14 years, as from 12 years).

5. Convention No. 138 also makes provision for certain other elements of flexibility. Countries whose economy and administrative facilities are insufficiently developed may initially limit the scope of application of the Convention. Ratifying States may also exclude limited categories of employment or work in respect of which special and substantial problems of application arise. The Convention contains further provisions regarding work in pursuance of education or training and participation in artistic performances.

6. The Minimum Age Recommendation, 1973 (No. 146), amongst other things, advocates the progressive raising of the general minimum age to 16 years.

7. While the above-mentioned ILO standards would not stand in the way of the specification in the proposed United Nations convention of a minimum age of 15 years they give rise to the question whether such a standard might not prove unduly rigid, since it would not distinguish between different types of work, would not relate the minimum age to the school-leaving age, would not make special allowance for the problems of less developed countries nor for work in connection with education or training, and would not contemplate a progressive raising of the minimum age. Having regard to the general nature of the provisions of the proposed convention, it would be inappropriate to include in it detailed clauses on these various aspects. These considerations might however be covered by rewording of article 19, paragraph 3, of the draft convention on the following lines:

“The States Parties to the present Convention shall prescribe a minimum age or minimum ages for admission to employment or work, with due regard to the provisions of paragraph 2 of this article,

the need to safeguard school attendance and participation in vocational education and training programmes, and the provisions of other international instruments relating to the employment of children.”

3. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 18

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of his dignity. The child shall not be subject of traffic in any form.
2. The States Parties to the present Convention shall ensure that the child be not employed in any form at work harmful to his health or development nor dangerous to his life, and they undertake to sue persons acting to the contrary.
3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the ILO Convention No. 5 of 13 June 1921.

4. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, pages 5-6.

The Polish text of article 18 in A/C.3/36/6 also seems acceptable, with certain suggested amendments, as follows.

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of dignity. The child shall not be *exposed to abuse or exploitation* in any form.
2. The States Parties to the present Convention shall ensure that the child *shall* not be employed in any form in work harmful to his health or development nor dangerous to his life, and they undertake, *where necessary, to introduce appropriate legislation making it a punishable offence for persons to act to the contrary of this provision.*
3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the *relevant ILO instruments.*

5. Proposal submitted to the Working Group (1983)

(a) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.26.

Article 19

1. Every child shall be protected from all forms of discrimination and from economic and social exploitation.

2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to the child's health or education or which will interfere with his or her physical, mental or social development.

3. States Parties to the present Convention shall take legislative and administrative measures to ensure that the child is protected and that the provisions of paragraph 2 of this article are adhered to.

6. Proposals submitted to the Working Group (1984)

(a) International Labour Organization (ILO)

The following is taken from document E/CN.4/1984/WG.1/WP.1.

1. The ILO previously submitted comments on certain provisions of the draft convention submitted by the Government of Poland set out in document E/CN.4/1349. These comments were reproduced in document E/CN.4/WG.1/WP.1/1 of 4 November 1980.

2. Since then alternative formulations for the draft convention have been suggested by the Government of Poland, as set out in document A/C.3/36/6 of 7 October 1981. The ILO wishes to submit the following comments in relation to certain provisions contained in that text.

[...]

Employment of children (document A/C.3/36/6 - article 18)

4. In the ILO's previous comments, attention was drawn to the provisions of the Minimum Age Convention, 1973 (No. 138), a comprehensive instrument representing the latest position of the International Labour Conference on the question of the employment of children. The Convention makes provision for the pursuit of a national policy aimed at the abolition of child labour and the progressive raising of the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. It establishes different age levels for admission to employment in general, for employment dangerous to health, safety or morals, and for light work under specified conditions, and introduces various other elements of flexibility in regulating these matters.

5. Article 18, paragraph 3 of the draft set out in document A/C.3/36/6 would require the States Parties to prohibit the employment of children below the age of 14 years, in accordance with ILO Convention No. 5 of 1921.

6. This wording would give rise to a number of difficulties.

7. To begin with, ILO Convention No. 5 concerned only employment in industrial undertakings and is therefore insufficient in scope to cover the general problem of the employment of children which it is sought to deal with in the relevant article of the draft convention on the rights of the child.

8. Furthermore, ILO Convention No. 5 has been revised by the Minimum Age Convention, 1973 (No. 138), which is general in scope and - as indicated in its preamble - was intended to replace earlier conventions on minimum age for employment applicable to limited economic sectors.

9. Lastly, Convention No. 138 does not set a single minimum age, but distinguishes between different types of work. Even as regards the ages for admission to employment in general, the Convention distinguishes between countries whose economy and educational facilities are insufficiently developed (which may initially establish a minimum of 14 years) and other countries, where the limit must not be less than 15 years or the age of completion of compulsory schooling, if higher. The minimum age for dangerous work has generally to be not less than 18 years.

10. In these circumstances, in order to ensure consistency with the existing international standards, it would appear desirable to draft article 18, paragraph 3 of the proposed convention in more general terms. In

the previous comments of the ILO, it was suggested that consideration might be given to a provision on the following lines:

“The States Parties to the present Convention shall prescribe a minimum age or minimum ages for admission to employment or work, with due regard to the provisions of paragraph 2 of this article, the need to safeguard school attendance and participation in vocational education and training programmes, and the provisions of other international instruments relating to the employment of children.”

11. Some modification also appears desirable in the provisions of article 18, paragraph 2 of the proposed draft. The words “and they undertake to sue persons acting to the contrary” are presumably intended to ensure that persons employing children illegally will be subject to penalties (as is provided, for example, in article 10, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights in similar circumstances). These penalty provisions should moreover apply also to contraventions of the protection laid down in paragraphs 1 and 3 of the same article.

12. It is accordingly suggested that the words “and they undertake to sue persons acting to the contrary” might be deleted from article 18, paragraph 2; instead an additional paragraph 4 might be inserted, on the following lines:

“Persons acting contrary to the provisions of this article shall be subject to penalties established by law.”

(b) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 14 (Social security)

We believe it would be useful to include in the Canadian delegation’s new proposals certain provisions regarding legally permitted work by children over 15 years of age and in particular:

- (a) The need to ensure schooling or participation in training or educational programmes, account being taken of the provisions of other international instruments relating to employment;
- (b) Freedom of choice of employment, the right to remuneration commensurate with work being carried out and social protection as regards working conditions and accidents at work.

(c) International Federation of Women in Legal Careers

The following is taken from document E/CN.4/1984/WG.1/WP.4, page 2.

New article 13 bis

The Federation proposes that a new article concerning sources of serious damage to children’s health other than disease and malnutrition, namely: domestic violence; use of drugs of whatever kind; harmful labour; traditional practices affecting health, and reading:

“The States Parties to the present Convention undertake:

[...]

- 3. to prohibit, under penalty of punishment, all forms of employment and all occupations that are detrimental to children’s health or hinder their physical or mental development and to adopt social, administrative and judicial measures for their detection;

[...]

(d) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text, which is reproduced in document E/CN.4/1985/WG.1/WP.1, pages 10-12, was available to the Working Group at its 1984 session.

Article dealing with extra-familial maltreatment and exploitation

1. The States Parties to the present Convention undertake to protect the child against all forms of neglect, abuse, social and economic exploitation, degradation and all acts violating the moral, spiritual or physical integrity of the child.
2. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the traffic of children in any form.
3. The State Parties to the present Convention shall ensure that the child shall not be engaged in any occupation or employment harmful to the child's health or morals, or dangerous to life, or likely to interfere with the child's development, and that contravention of this shall be punishable by law.
4. The States Parties to the present Convention shall take all appropriate measures to ensure compliance with the international labour standards concerning minimum age and conditions of employment.

7. Discussion at the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, para. 110).

110. There was a preliminary discussion of article 18. The Chairman concluded that, given the number of queries and reservations concerning the substance and scope of the proposed article, the Polish delegation should redraft the article to be included in the report of the Working Group.

8. Modified proposal submitted by Poland (1986)

The following text, which is taken from document A/C.3/40/3, paragraph 12, was also included in annex II, page 3, to the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64).

Article 18

1. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to the child's health or education or which will interfere with his physical, mental or social development.
2. The States Parties to the present Convention shall prescribe a minimum age for admission to employment, with due regard to the provisions of paragraph 1 of this article and the provisions of other international instruments relating to the employment of children.
3. The States Parties to the present Convention shall ensure that persons acting contrary to the provisions of this article shall be subject to penalties established by law.

9. Proposals submitted to the Working Group (1986)

(a) Canada

For the text of this proposal, see paragraph 68 in section 10 below.

(b) Finland

For the text of this proposal, see paragraph 70 in section 10 below.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text is taken from document E/CN.4/1986/WG.1/WP.1, pages 47-48, which was taken from the Informal consultations among non-governmental organizations, Report on conclusions, December 1985.

[Proposed amendments, [in italics], to article 18 submitted by Poland, by the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child - Report on the conclusions regarding substantive draft articles of the draft convention on the rights of the child, page 1]

1. The States Parties to the present Convention recognize that the child shall not be *engaged in any occupation or employment* harmful to the child's health or education or which *is likely to interfere with the child's* physical, mental, social development *or moral well-being, and shall take all appropriate legal, administrative and social measures to this end.*
2. The States Parties to the present Convention shall prescribe a minimum age *or minimum ages* for admission to employment, with due regard to the provisions of paragraph 1 of this article and the provisions of other international instruments to the employment *of the child.*
3. The States Parties to the present Convention shall ensure that persons acting contrary to the provisions of this article shall be subject to penalties established by law.

10. Discussion and adoption by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 68 to 76).

68. There were two texts for consideration by the Working Group. The first, introduced by the observer for Poland at the Group's 1985 session and also contained in document A/C.3/40/3, read as follows:

- "1. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to the child's health or education or which will interfere with his physical, mental or social development.
2. The States Parties to the present Convention shall prescribe a minimum age for admission to employment, with due regard to the provisions of paragraph 1 of this article and the provisions of other international instruments relating to the employment of children.
3. The States Parties to the present Convention shall ensure that persons acting contrary to the provisions of this article shall be subject to penalties established by law."

The second, submitted by the observer for Canada at the current session, was as follows:

- "1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is or is likely to be harmful to the child's health or education or which will interfere with his or her physical, mental or social development.
2. The States Parties to the present Convention, having regard for the provisions of other international instruments, shall take legislative and administrative measures to ensure that the child is protected and in particular shall prescribe a minimum age or minimum ages for admission to employment.
3. The States Parties to the present Convention undertake to protect the child against all other forms of exploitation, including sexual exploitation, as well as degrading treatment and all acts violating the moral, spiritual or physical integrity of the child."

In addition, there were proposals by the International Labour Organization and the Informal NGO Ad Hoc Group on the Drafting of the Convention as contained in documents E/CN.4/1984/WG.1/WP.1 and E/

CN.4/1986/WG.1/WP.1, respectively. The Working Group agreed that the first two paragraphs of the Canadian text and the third paragraph of the Polish text be taken as the basis for discussion.

Paragraph 1

69. The representative of the United States suggested the deletion of the words “is or” in the [second] line of the paragraph, and proposed that the phrase “harmful to the child’s health or education or which will interfere with his or her” in the [third line] be replaced by the following: “hazardous or to interfere with the child’s education, or to be harmful to his health or”. The observer for Canada indicated her preference for the wording “the child’s health” rather than “his health” as proposed by the delegation of the United States, while the observer for the Holy See suggested the insertion of the words “spiritual, moral” between “mental” and “or social development” at the end of the paragraph. The representative of the United States declared the understanding of her delegation that this paragraph and the article as a whole concern general measures to protect children from work which is likely to be harmful, and does not call for oversight of the particular situation of each specific child. With those amendments, the Working Group agreed to the paragraph under consideration, which read as follows:

“The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”

Paragraph 2

70. The observer for Finland submitted another proposal to the Group, combining paragraphs 2 and 3 of the Canadian and Polish proposals to read:

“The States Parties to the present Convention, having regard to the provisions of paragraph 1 of this article and of other international instruments, shall take legislative and administrative measures to ensure the protection of the child. To this end the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment or work, and (b) provide for appropriate penalties for the effective enforcement of this article.”

71. While the Working Group generally agreed with the Finnish proposal, some speakers suggested amendments to its wording. Following the Chairman’s request that a compromise text be elaborated after consultations, the delegations of Finland, Canada and the United States submitted a text that read as follows:

“The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment or work, (b) provide for other appropriate regulations of the hours and conditions of employment, and (c) provide for appropriate penalties to ensure the effective enforcement of this article.”

72. In connection with letter (a), in the opinion of one speaker, the establishment of a minimum age or ages of employment should not prevent the participation of children, under the direction of their parents and so as not to interfere with their education, in culturally related family hunting, fishing or agricultural activities not regularly employing unrelated workers. Furthermore, in his understanding, that subparagraph was not intended to prohibit family subsistence activities as such.

73. Following a proposal by the representative of the United States to delete the words “or work” at the end of letter (a), many delegations expressed their support, deeming it more appropriate that only the subparagraph in question be confined only to the concept of admission to employment because it does not apply to work in or for the family. The Working Group approved paragraph 2 from the beginning of its

compromise text until the end of its letter (a) as amended. The representative of Japan joined the consensus on the understanding that this paragraph allows exceptions for light work or artistic performances under the relevant provisions of other international instruments. The approved text read as follows:

“The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment;”

74. The delegation of the Netherlands thought that the word “other” in (b) was unnecessary and the Working Group agreed that (b) should read:

“(b) provide for appropriate regulation of the hours and conditions of employment, and”.

75. During the exchange of views that preceded the adoption of all the above-mentioned texts of that article, the representative of the International Labour Organization answered a number of queries, emphasizing the need to safeguard and have regard to other relevant international standards, particularly international labour conventions.

76. With regard to letter (c), the representative of the United Kingdom proposed the introduction of the words “or sanctions” therein, and the delegation of the Netherlands amended that proposal to read “or other sanctions”. The Working Group adopted the amended text, which read: “(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.” The representative of the United States stated the understanding of her delegation regarding paragraph 2 that minimum ages were not necessary with respect to all types of employment, but only as required by paragraph 1.

11. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18

1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment; and
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 37.

Regarding article 18, comments made by the ILO in 1980-1983 were taken into account and the article as it stands would provide for principles of protection consistent with those of relevant ILO standards.

2. Comment by the Food and Agriculture Organization of the United Nations (FAO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 37.

See above General Comments on Food.

The general comments, which appear on pages 8-9 of document E/CN.4/1989/WG.1/CRP.1, read as follows.

Food

The document appears to fulfil General Assembly resolution 41/120 which calls for consistency between standards being developed in new international instruments and those already existing.

The Food and Agriculture Organization's development policy lays stress on the continuing ever-growing importance of the small farmer and the family as a production unit in the world's food supply. This policy implicitly recognizes the importance of all family inputs into production. It may be necessary to include certain caveats included in the FAO's policy statements regarding productive activity by children on small family farm enterprises.

The convention should include provisions to prevent discrimination against female children as far as food and education are concerned.

In the present text, there are only two marginal references to the right to food (article 12 *bis* (c) and article 14 (3)).

The convention on the rights of the child offers an excellent opportunity to implement one of the recommendations proposed by Mr. Asbjorn Eide in his "Report on the Right to Adequate Food as a Human Right". He suggests that it is not sufficient to recognize the right to food, but consideration should also be given to the identification of its corresponding obligations.

There should be a full article on the right to food as one of the fundamental rights of the child. This article could be included in the convention after article 1 (*bis*) (right to life, child's survival and development) or before article 12 *bis* (health and access to care).

Three aspects should be considered in the definition of the child's right to food. The State Parties should:

- (a) Recognize the children's right to food and the significance of food culture as part of a wider cultural identity (national obligation to respect the right to food).
- (b) Prevent distortion of positive nutritional aspects of existing food patterns and develop national legislation and administrative mechanisms and procedures to protect and facilitate a valid food procurement for all children (national obligation to protect the right to food).
- (c) Incorporate nutritional considerations into relevant development activities and formulate and execute policies, plans and programmes to facilitate and assist children in obtaining viable food procurement (national obligation to fulfil the right to food).

Among the many rights referred to in the draft the ones related to what might be called "*Basic needs*" or "*Material conditions of life*" seem to have been given little stress or have not been considered at all.

The right to eat enough, both in quantity and quality from early life (perhaps even from the mother's womb) has never had enough support. In many countries some specific points are presently being discussed, such as:

- (a) The right to be breastfed from birth.
- (b) The right to a suitable diet (breastfeeding plus weaning foods) from the third month of age.
- (c) The right to clean, nutritious food and water.

- (d) The right to live free of insects, parasites and heavy contamination.

Perhaps food and health should come first because without these many of the other rights would be worthless.

3. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 37.

Paragraph 2

In order to achieve internal consistency with other provisions of the draft convention (such as article 8 *bis*) and in view of the wide range of measures required to be taken by States Parties to the International Labour Organization's Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138), consideration could be given to extending the list of measures to include: "... legislative, administrative, social and educational measures ...".

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 507 to 512).

507. The Working Group had before it the following text of article 18 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment;
and
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article."

508. The proposed technical revisions included the deletion of the words "to the present Convention" in both paragraphs of the article. It was also proposed (E/CN.4/1989/WG.1/CRP.1) to add the words "social and educational" before the word "measures" in the introductory part of paragraph 2. The latter proposal was subsequently accepted by the Working Group.

509. The representative of Japan proposed to delete the word "spiritual" in paragraph 1 in view of the principle of separation of religion from politics. After some discussion, the representative of Japan stated that he would be ready to withdraw his amendment; however, he reserved the position of his Government.

510. The delegation of India pointed out that its Government fully supports the right of the child to be protected from economic exploitation or from performance of work which is hazardous or interferes with the child's education. However, given the present state of economic development and social conditions

obtaining in India, children are often required to work even at the cost of their education. Such a position also obtains in many other developing countries. The Government of India enacted the Child Labour Act in 1986 and followed this up with the National Policy on Child Labour in 1987. The National Policy on Child Labour aims to focus the programmes of the Government for creating socio-economic conditions in which the compulsion to send children to work diminishes and children are encouraged to attend schools rather than take up wage employment. A number of specific programmes are being undertaken in India in areas of child labour concentration towards this aim.

511. The representative of the United Kingdom indicated that paragraph 2 (b) of article 18 presented problems for his delegation. The United Kingdom will enter a reservation in regard to this paragraph at the time of ratification of the convention.

512. The Working Group then adopted article 18 as revised. It reads as follows:

“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment;
- and
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.”

2. Statement made during the adoption of the report

(a) Federal Republic of Germany

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 721).

721. [...] The representative of the Federal Republic of Germany further asked that the following declarations be entered in the report:

[...]

(c) Concerning article 32, paragraph 2, the Government of the Federal Republic of Germany understands that the provisions of the international conventions mentioned in this paragraph relate only to such provisions as are binding upon the respective contracting parties of this convention.

(d) Concerning article 32, paragraph 2 *lita* the Government of the Federal Republic of Germany understands that within the framework of this provision it is admissible to provide in their national legislation [that] children having not yet attained the stipulated minimum age can be given specified easy work to the extent that such work does not meet the criteria stated in paragraph 1 of this article.

Article 33 (Drug abuse)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

B. First Polish draft convention and comments (1978)

Neither the first Polish draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 33 of the Convention.

C. First reading (1979-1988)

The text of article 33 was discussed and adopted by the Working Group in 1986. This article was referred to as article 18 bis throughout the first and second readings.

1. Proposal submitted to the Working Group (1982)

(a) China

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights (E/CN.4/1983/30/Add.1, para. 118).

118. [...]

The Working Group also had before it a proposal submitted by the delegation of *China* which was not discussed by the Group for lack of time, and that read as follows:

“Add the following words to article 12 [of the revised Polish draft as contained in document A/C.3/36/6]:

‘(d) preventing and prohibiting the child from using drugs.’”

Article 12 of the revised Polish draft, as contained in document A/C.3/36/6, reads as follows.

1. The States Parties to the present Convention shall ensure the child with health-care facilities and, in case of need, rehabilitation facilities of the highest attainable standard.
2. In particular, States Parties to the present Convention shall undertake measures with a view to:
 - (a) lowering the infant mortality rate,
 - (b) ensuring medical assistance and health care to all children,
 - (c) providing expectant mothers with appropriate health-care services and ensuring working mothers a paid leave or a leave granting adequate social security benefits for a reasonable period of time, before and after confinement.

2. Proposal submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers

The following is taken from document E/CN.4/1984/WG.1/WP.4.

New article 13 bis

The Federation proposes that a new article concerning sources of serious damage to children's health other than disease and malnutrition, namely: domestic violence; use of drugs of whatever kind; harmful labour; traditional practices affecting health, and reading:

"The States Parties to the present Convention undertake:

[...]

3. To take all necessary scientific, technical, educational and remedial measures for the national and international combating of drug abuse and, in particular, the use by children of drugs of whatever kind;

[...]

3. Proposal submitted to the Working Group (1985)

(a) China

The following is taken from annex II to the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64).

New article

The States Parties to the present Convention shall take measures to prevent and prohibit children from taking drugs.

4. Proposals submitted to the Working Group (1986)

(a) China

For the text of this proposal, see paragraph 77 in section 5 below.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following is taken from document E/CN.4/1986/WG.1/WP.1, page 31.

The States Parties to the present Convention shall take all necessary national and international measures of a scientific, technical, educational, remedial and curative nature to protect children from the abuse of narcotic and psychotropic substances as defined in international treaties, and shall combat all forms of distribution to children, and the use of children in the trafficking of such substances.

5. Discussion and adoption by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 77 to 83).

77. The Working Group considered a text for an article 18 bis as contained in document/E/CN.4/1986/WG.1/CRP.5, submitted and introduced by the delegation of China. The text read as follows:

"1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to prevent and prohibit a child from taking narcotic drugs as defined in the relevant international conventions. The competent national authorities should investigate cases of drug abuse by a child and timely medical treatment should be provided for the child so that he or she may be assured prompt rehabilitation and healthy growth.

2. The States Parties to the present Convention shall take legislative and administrative measures to prevent and prohibit trafficking in narcotic drugs by a child. The States Parties should,

in accordance with their national legislation, apply sanctions, including appropriate criminal punishment, to anyone who uses or incites a child to become involved in various forms of drug trafficking.”

A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1.

78. During consideration of the proposal, the observer for the Netherlands said that, while in principle he welcomed the proposal by China, he would like clarification concerning the term “narcotic drugs”, he asked whether it included all kinds of drugs. He suggested that in the first sentence of paragraph 1, the phrase “to prevent and prohibit a child from taking narcotic drugs” should read: “to protect children from the abuse of narcotic and psychotropic substances”.

79. The representative of the German Democratic Republic supported the amendment submitted by the observer for the Netherlands with the proviso that the word “dangerous” be inserted between the words “abuse of” and “narcotic”.

80. The representative of the United Kingdom suggested the deletion of the clause “legislative, administrative, social and educational” in the first sentence of paragraph 1. This suggestion was seconded by the Canadian delegation.

81. The representative of the United States proposed that the article under consideration should also include a reference to other drugs, such as alcohol, and objected to the word “incites” in the penultimate line of paragraph 2. The representative of Japan shared that objection.

82. After some further discussion, at the Chairman’s request, a consolidated text was prepared by an informal working party - constituted by the delegations of China, Canada, the German Democratic Republic, the Netherlands and the United Kingdom - which read as follows:

“The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.”

83. The Working Group then adopted the above-mentioned text by consensus.

6. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18 bis

The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.

D. Technical review (1988)

1. Comment by the Narcotic Drugs Division

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 37.

Since the international treaties in question refer, in the English text, not to “narcotic and psychotropic substances” but rather to “narcotic drugs and psychotropic substances” it would be preferable to follow the latter usage. Likewise, the consecrated expression in those treaties would require the use of the adjective

“illicit” rather than “illegal”. Thus, reference should be made to “illicit use” and “illicit production and trafficking”.

2. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 37.

This provision is of relevance to the World Health Organization, in that it aims at protecting the child from illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, i.e. the “Single Convention of Narcotic Drugs”, 1961, and the “Convention of Psychotropic Substances”, 1971. The World Health Organization has an important role to play in the operation of these two Conventions.

3. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 38.

Given the importance of administrative measures in the area dealt with by this article, consideration might be given to adding the word “administrative” to the type of appropriate measures to be taken.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 513 to 516).

513. The Working Group had before it the following text of article 18 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

“The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.”

514. The proposed technical revisions included the deletion of the words “to the present Convention” (E/CN.4/1989/WG.1/CRP.1). An amendment was also submitted which sought to insert the word “administrative” before the word “social”. This proposal was accepted by the Working Group.

515. The Working Group also accepted the amendments submitted by the Narcotic Drugs Division (E/CN.4/1989/WG.1/CRP.1). It was proposed to replace the words “illegal” in the text by the word “illicit” and to insert the word “drugs” after the word “narcotic”.

516. The Working Group then adopted article 18 bis, as revised, to read as follows:

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

Article 34 (Sexual exploitation and sexual abuse)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article IX

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

2. Comments on the first Polish draft

Article IX of the draft gave rise to the following comments.

(a) Central African Empire

The following is taken from document E/CN.4/1324/Add.1.

The Government of the Central African Empire would like to suggest that, in article IX, paragraph 2, the appropriate minimum age should be fixed at 14 years.

(b) Dominican Republic

The following is taken from document E/CN.4/1324.

By way of comment only, we would draw attention to the fact that the provisions of articles IX and X of the draft have been given detailed treatment in various ILO international agreements on other questions; it might be advisable to review those agreements in case their contents should be expanded.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

- (a) It would be desirable to add, in the second sentence, after the words "He shall not be the subject of traffic" the words "or of a commercial transaction";
- (b) With regard to admission to employment, the words "appropriate minimum age" in the next sentence should be replaced by the words "the requisite age";

(c) It would be desirable for the convention to include a provision affirming the right of the child at least to be consulted when certain events affecting his personal situation are to take place. The additional article might be worded as follows: "As soon as the child is capable of understanding, his consent must be sought when decisions have to be taken that may seriously affect his personal situation, such as those relating to adoption or the granting of custody."

(d) German Democratic Republic

The following is taken from document E/CN.4/1324.

More precise legal language should be used in article IX, paragraph 2, to formulate the impermissibility of admitting children to employment or an occupation.

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in document E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected, disturbed or ill-treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of "baby-farming".

[...]

(g) Spain

The following is taken from document E/CN.4/1324.

Add a paragraph 3 reading: "The child shall be protected by means of adequate education against any type of manipulation, whether in regard to information, consumption, sex, etc."

(h) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(i) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of trade or traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

C. First reading (1979-1988)

The text of article 34, which was based on article 19 of the revised Polish draft, was discussed and adopted by the Working Group in 1987. This article was referred to as article 18 ter throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 19

1. The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form.
2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to his health or his moral development, or in work dangerous to his life or which would interfere with his normal growth, and undertake to subject to legal punishment persons violating this law.
3. The States Parties to the present Convention shall comply with the law prohibiting the employment of children before the age of fifteen years.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 18

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of his dignity. The child shall not be subject of traffic in any form.
2. The States Parties to the present Convention shall ensure that the child be not employed in any form at work harmful to his health or development nor dangerous to his life, and they undertake to sue persons acting to the contrary.
3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the ILO Convention No. 5 of 13 June 1921.

3. Proposal submitted to the Working Group (1983)

(a) Canada

The following is taken from document E/CN.4/1983/WG.1/WP.9.

Article 8 bis

The States Parties to the present Convention shall take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, sexual abuse or exploitation or maltreatment while in the care of parent(s), legal guardian(s) or any other person caring for the child.

4. Proposals submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 19 (Exploitation of children)

In view of the disturbing incidence of assaults on the person, both physical and mental, we would suggest that the first two paragraphs of article 19 read:

- “1. Taking account of the law as set forth in the Slavery Convention of 1926 and the Protocol thereto, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, it is essential that the child should be protected from any form of discrimination or exploitation of his person, whether physical, intellectual or moral.
2. States Parties shall undertake to sanction all such practices as exploitation by prostitution, the sale of children for the purposes of prostitution or forced labour, slavery, pornography, rape, mutilation or the administration of drugs or toxic substances.”

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text, which is reproduced in document E/CN.4/1985/WG.1/WP.1, pages 10-12, was available to the Working Group at its 1984 session.

Article dealing with extra-familial maltreatment and exploitation

1. The States Parties to the present Convention undertake to protect the child against all forms of neglect, abuse, social and economic exploitation, degradation and all acts violating the moral, spiritual or physical integrity of the child.
2. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the traffic of children in any form.
3. The State Parties to the present Convention shall ensure that the child shall not be engaged in any occupation or employment harmful to the child's health or morals, or dangerous to life, or likely to interfere with the child's development, and that contravention of this shall be punishable by law.
4. The States Parties to the present Convention shall take all appropriate measures to ensure compliance with the international labour standards concerning minimum age and conditions of employment.

5. Proposals submitted to the Working Group (1986)

(a) France and Netherlands

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, annex III).

Article 18 ter

The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.

(b) International Abolitionist Federation

For a detailed overview of relevant international standards in this area, see document E/CN.4/1986/WG.1/WP.2.

6. Proposals submitted to the Working Group (1987)

The following written proposals were submitted to the Working Group at its 1987 session.

(a) Canada and the United States of America

For the text of this proposal, see paragraph 74 in section 7 below.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, see paragraph 71 in section 7 below.

7. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 71 to 79 and 84 to 89).

71. At its 1987 session the Working Group had before it the following proposals in this connection:

Article 18 ter (Protection from sexual exploitation)

A submission by the delegations of France and the Netherlands.

“The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.”

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

“The States Parties to the present Convention shall ensure that the child is protected from all forms of sexual exploitation. To this end, they agree to take all legislative, administrative, social and educational measures to prevent, in particular:

- (i) child prostitution, and
- (ii) the use of children in pornographic performances and materials. Such measures shall provide for appropriate sanctions or penalties to be applied to persons who by any means cause the child to engage in the above practices.”

Article 18 quinto (Prevention of sale or traffic of children)

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

“The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

72. The delegations of Mexico, Senegal, Venezuela, the ILO and the Informal NGO Ad Hoc Group expressed the view that there was a need for two separate articles, one protecting the child from sexual exploitation and another protecting the child specifically from sale or traffic. The problem of the sale or traffic of children was wider in scope than that of sexual exploitation and children were subjected to sale or traffic for many reasons: economic exploitation, sexual exploitation and sexual abuse, as well as for reasons of adoption or labour. Traffic or sale of children had international ramifications and required bilateral and multilateral measures for the protection of the child.

73. The Chairman, supported by the delegations of Australia and the United States, proposed one article with two subparagraphs, one dealing with sexual exploitation and degrading treatment and the other with sale and traffic of children. Attention was called to article 8 bis which contained measures protecting the child against maltreatment, including sexual abuse by those having care of the child.

74. The following revised version of article 18 ter was submitted by the delegations of Canada and the United States:

- “1. States Parties undertake to protect the child against exploitation, including sexual exploitation and sexual abuse.
2. To this end, States Parties shall, in particular,
 - (a) prohibit
 - (i) abduction of children and selling or trafficking in children;
 - (ii) the use and participation of children for the purpose of prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.”

In this regard, the representative of France was of the view that article 18 ter as originally proposed by the delegations of France and the Netherlands was wider in scope; the main purpose of that proposal was to protect the child against all abuses of the child’s moral, spiritual, mental and physical integrity. He suggested that that proposal be retained and that specific paragraphs on exploitation for sexual or pornographic purposes or for the purpose of prostitution be added. Several delegations (Mexico, Senegal, the USSR and Venezuela) continued to support a separate article on trafficking for other than sexual purposes. The representative of the USSR pointed to the already adopted article on economic exploitation (article 18) and supported the French and Dutch proposal. The representative of Norway proposed that a specific reference be made to the commercial distribution and sale of child pornography which was an important aspect of sexual exploitation. The representative of the United Kingdom found that the terms “degrading treatment” and “acts prejudicial to the moral, spiritual, mental or physical integrity of the child” were too vague and more precise meanings would have to be given to them.

75. The representative of Senegal proposed adding article 18 quinto as a third paragraph to the revised article 18 ter and to reformulate the whole provision as follows:

- “1. States Parties undertake to protect the child against sexual exploitation and sexual abuse.
2. To this end, States Parties shall in particular,
 - (a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.
3. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

The observer for Finland expressed his preference for the original proposal for article 18 ter which was wider in scope.

76. The Chairman, in light of the debate made the following proposal for article 18 ter:

- “1. States Parties undertake to protect the child against all forms of social exploitation.
2. To this end, States Parties shall in particular,
 - (a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.

3. The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

77. The delegation of Brazil also made the following proposal:

“1. States Parties undertake to protect the child against all forms of social exploitation, including sexual exploitation and sexual abuse.

2. To this end, States Parties shall in particular,

(a) prohibit, including for purposes of prostitution, pornography and any other unlawful sexual activity;

(i) the abduction of children and selling or trafficking in children;

(ii) the use and participation of children in any such form of social exploitation.

(b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.”

The representative of France pointed to the vagueness of the words “social exploitation”. It was too restrictive, wider protection had to be given to the child. He proposed the following revision of paragraph 1 of the Chairman’s draft:

“The States Parties to this Convention shall take all appropriate measures to protect the child against all forms of social exploitation as well as all forms of degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.”

Paragraphs 2 and 3 would remain unchanged.

78. The representative of Venezuela stated that there should be a logical progression in the consideration of forms of exploitation: economic exploitation was dealt with already in article 18, and article 18 bis dealt with protection from narcotic and psychotropic substances, article 18 ter should deal with protection from sexual exploitation, 18 quater with prohibition of the sale or traffic of children and 18 quinto with protection against all other forms of exploitation.

79. As the Working Group reached no consensus on this article, the Chairman invited the delegations of Brazil, France, the Netherlands, the United States and Venezuela to hold informal consultations with a view to working out a common text. Following these consultations three draft articles (articles A, B and C) were submitted. The Chairman suggested that the Working Group begin its discussion with draft article B (future 18 quater).

[...]

Article 18 ter (draft article A)

84. The text of this draft article read as follows:

“1. The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular prohibit:

(a) the abduction or sale of children and trafficking in children;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials.

2. States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures, including penalties or other sanctions, to ensure the effective enforcement of this article.”

85. The representative of Norway expressed doubts about the use of the term “exploitative use” in the text and proposed the deletion of the words “exploitative” in subparagraphs (b) and (c), and suggested the use of the words “child prostitution” to be utilized instead. He further underlined the need to combat the use of children in pornographic performances and materials, the printing and sale of pornographic photography and materials having become an industry. He proposed the inclusion of a new subparagraph (d) reading “the distribution and sale of child pornography”. The representative of China proposed the deletion of the word “unlawful” from subparagraph (b) since there could be no exploitative use of children in sexual practices which was not unlawful.

86. The observer for the Netherlands was of the view that the words “exploitative use” and “unlawful” were necessary since the draft convention was dealing with persons up to 18 years of age; not all sexual practices were unlawful. He added that the matters dealt with in subparagraph (a) had already been covered in article B and that that subparagraph should be deleted as well as paragraph 2. Further, he proposed that the words “take all appropriate national, bilateral and multilateral measures” be introduced in the second sentence of the article under consideration and that the word “prohibit” be changed to “prevent”. The observer for Canada agreed with the text of the second sentence but did not wish to delete subparagraph (a). The representatives of Australia (the Australian delegation had supported the Dutch proposal) and the United Kingdom raised the problem of sexual majority, which in their countries was fixed at the age of 16 years. Attention was drawn to the already adopted article 1 which included persons up to the age of 18 in the protection afforded by the convention; the draft convention could not declare unlawful sexual practices between husband and wife under the age of 18.

87. The delegations of Japan and the United States agreed that subparagraph (a) was superfluous. The representatives of the United States proposed the following language for a new subparagraph (a):

“the inducement or coercion of a child to engage in any unlawful sexual activity.”

He explained that this language would provide content to the term “sexual abuse”, a serious problem that the draft convention needed to address separately from “sexual exploitation”, which had a more commercial connotation. The delegation of Yemen agreed with the deletion of subparagraph (a) and proposed subparagraph (b) to read as follows: “all forms of using of children in sexual practices”. This proposal did not meet with the agreement of the Dutch delegation. The representative of Australia supported the proposal submitted by the United States delegation, expressed his disagreement with the use of the word “exploitative”, and made a proposal for subparagraph (b) to read “the use of children in prostitution”. The delegation of China and the USSR also found it difficult to accept the inclusion of the word “unlawful”. The representative of the USSR said that one could hardly imagine that children’s sexual practices could be lawful. He therefore proposed the deletion of the word “unlawful” from the text proposed by the delegation of the United States. He was further of the view that the draft convention should be firm with respect to the prohibition of the exploitation of children in the production of pornographic materials, and strongly favoured the inclusion of a subparagraph (d) on this issue as proposed by the delegation of Norway.

88. The delegations of France and the Netherlands were of the view that the purpose of article A was not to regulate the sexual life of children but rather to combat the sexual exploitation of children on the basis of concrete examples. Therefore the word “exploitative” was indispensable. The observer for the Netherlands proposed that, in subparagraph (b), the phrase “other unlawful sexual practices” should read instead “sexual practices that are prejudicial to the child”. With respect to the proposal to add a subparagraph (d), he noted, along with other delegations that the problem of distribution and sale of child pornographic materials was already dealt with under subparagraph (c). The representative of the USSR, in view of the explanation given concerning the age of a child under the draft convention agreed to the inclusion of the word “unlawful”.

89. There was a further exchange of views within the Working Group. Towards the end of the debate, the representative of Norway, with regard to the proposed inclusion of subparagraph (d) stated that it was their view that the “distribution and sale of child pornography” should be covered by the convention. It was

evident, however, that while no delegation had opposed the substance of the proposal, a majority were of the view that the prevention of those activities was already covered in the text of the article. In light of that, and in a spirit of compromise, the Norwegian delegation was ready to withdraw their proposal. The Working Group proceeded to adopt the following text:

“The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.”

Since the members of the Working Group were ready to join the consensus on the article under discussion, the delegation of China did not insist on deletion of the word “unlawful” on the basis of the understanding that exploitative use of children in sexual practices is not lawful no matter what form it takes.

8. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18 ter

The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

D. Technical review (1988)

1. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 39.

39. In reviewing the standards laid down in this article, concern was expressed that the use of the terms “unlawful” and “exploitative” gave rise to the impression that the draft convention could permit certain lawful and non-exploitative practices of the type mentioned. The Working Group may wish to consider if this matter would require clarification.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 517 to 519).

517. The Working Group had before it the following text of article 18 ter as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

“The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.”

518. The proposed technical revision included the deletion of the words “to the present Convention” in the introductory part of the article. It was also suggested to consider whether the word “appropriate” should be maintained there.

519. The Working Group adopted article 18 ter, as revised, to read as follows:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.”

Article 35 (Sale, trafficking and abduction)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article IX

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

2. Comments on the first Polish draft

Article IX, paragraph 1, of the draft gave rise to the following comments.

(a) France

The following is taken from document E/CN.4/1324/Add.1.

- (a) It would be desirable to add, in the second sentence, after the words "He shall not be the subject of traffic" the words "or of a commercial transaction";

[...]

(b) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in document E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(c) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected,

disturbed or ill-treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of “baby-farming”.

[...]

(d) Spain

The following is taken from document E/CN.4/1324.

Add a paragraph 3 reading: “The child shall be protected by means of adequate education against any type of manipulation, whether in regard to information, consumption, sex, etc.”

(e) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(f) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of trade or traffic, in any form.

[...]

C. First reading (1979-1988)

The text of article 35, which was based on article 19 of the revised Polish draft, was discussed and adopted by the Working Group in 1987. This article was referred to as article 18 quater throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 19

1. The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form.

2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to his health or his moral development, or in work dangerous to his life or which would interfere with his normal growth, and undertake to subject to legal punishment persons violating this law.

3. The States Parties to the present Convention shall comply with the law prohibiting the employment of children before the age of fifteen years.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 18

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of his dignity. The child shall not be subject of traffic in any form.
2. The States Parties to the present Convention shall ensure that the child be not employed in any form at work harmful to his health or development nor dangerous to his life, and they undertake to sue persons acting to the contrary.
3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the ILO Convention No. 5 of 13 June 1921.

3. Proposals submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 19 (Exploitation of children)

In view of the disturbing incidence of assaults on the person, both physical and mental, we would suggest that the first two paragraphs of article 19 read:

- “1. Taking account of the law as set forth in the Slavery Convention of 1926 and the Protocol thereto, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, it is essential that the child should be protected from any form of discrimination or exploitation of his person, whether physical, intellectual or moral.
2. States Parties shall undertake to sanction all such practices as exploitation by prostitution, the sale of children for the purposes of prostitution or forced labour, slavery, pornography, rape, mutilation or the administration of drugs or toxic substances.”

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text, which is reproduced in document E/CN.4/1985/WG.1/WP.1, pages 10-12, was available to the Working Group at its 1984 session.

Article dealing with extra-familial maltreatment and exploitation

1. The States Parties to the present Convention undertake to protect the child against all forms of neglect, abuse, social and economic exploitation, degradation and all acts violating the moral, spiritual or physical integrity of the child.
2. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the traffic of children in any form.
3. The State Parties to the present Convention shall ensure that the child shall not be engaged in any occupation or employment harmful to the child's health or morals, or dangerous to life, or likely to interfere with the child's development, and that contravention of this shall be punishable by law.
4. The States Parties to the present Convention shall take all appropriate measures to ensure compliance with the international labour standards concerning minimum age and conditions of employment.

4. Proposals submitted to the Working Group (1987)

The following written proposals were submitted to the Working Group at its 1987 session.

(a) Canada and the United States of America

For the text of this proposal, see paragraph 74 in section 5 below.

(b) Venezuela

The following is taken from document E/CN.4/1987/WG.1/WP.18.

Article 18 quinto

The States parties shall ensure protection of the child against any other form of exploitation, degrading treatment or commerce, and to this end shall take such national, bilateral and multilateral measures as may be necessary to prevent the sale or traffic of children in any form and for any cause.

5. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 71 to 83).

71. At its 1987 session the Working Group had before it the following proposals in this connection:

Article 18 ter (Protection from sexual exploitation)

A submission by the delegations of France and the Netherlands.

“The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.”

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

“The States Parties to the present Convention shall ensure that the child is protected from all forms of sexual exploitation. To this end, they agree to take all legislative, administrative, social and educational measures to prevent, in particular:

- (i) child prostitution, and
- (ii) the use of children in pornographic performances and materials. Such measures shall provide for appropriate sanctions or penalties to be applied to persons who by any means cause the child to engage in the above practices.”

Article 18 quinto (Prevention of sale or traffic of children)

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

“The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

72. The delegations of Mexico, Senegal, Venezuela, the ILO and the Informal NGO Ad Hoc Group expressed the view that there was a need for two separate articles, one protecting the child from sexual exploitation and another protecting the child specifically from sale or traffic. The problem of the sale or traffic of children was wider in scope than that of sexual exploitation and children were subjected to sale or traffic for many reasons: economic exploitation, sexual exploitation and sexual abuse, as well as for reasons of adoption or labour. Traffic or sale of children had international ramifications and required bilateral and multilateral measures for the protection of the child.

73. The Chairman, supported by the delegations of Australia and the United States, proposed one article with two subparagraphs, one dealing with sexual exploitation and degrading treatment and the other with sale and traffic of children. Attention was called to article 8 bis which contained measures protecting the child against maltreatment, including sexual abuse by those having care of the child.

74. The following revised version of article 18 ter was submitted by the delegations of Canada and the United States:

- “1. States Parties undertake to protect the child against exploitation, including sexual exploitation and sexual abuse.
2. To this end, States Parties shall, in particular,
 - (a) prohibit
 - (i) abduction of children and selling or trafficking in children;
 - (ii) the use and participation of children for the purpose of prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.”

In this regard, the representative of France was of the view that article 18 ter as originally proposed by the delegations of France and the Netherlands was wider in scope; the main purpose of that proposal was to protect the child against all abuses of the child's moral, spiritual, mental and physical integrity. He suggested that that proposal be retained and that specific paragraphs on exploitation for sexual or pornographic purposes or for the purpose of prostitution be added. Several delegations (Mexico, Senegal, the USSR and Venezuela) continued to support a separate article on trafficking for other than sexual purposes. The representative of the USSR pointed to the already adopted article on economic exploitation (article 18) and supported the French and Dutch proposal. The representative of Norway proposed that a specific reference be made to the commercial distribution and sale of child pornography which was an important aspect of sexual exploitation. The representative of the United Kingdom found that the terms “degrading treatment” and “acts prejudicial to the moral, spiritual, mental or physical integrity of the child” were too vague and more precise meanings would have to be given to them.

75. The representative of Senegal proposed adding article 18 quinto as a third paragraph to the revised article 18 ter and to reformulate the whole provision as follows:

- “1. States Parties undertake to protect the child against sexual exploitation and sexual abuse.
2. To this end, States Parties shall in particular,
 - (a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.
3. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

The observer for Finland expressed his preference for the original proposal for article 18 ter which was wider in scope.

76. The Chairman, in light of the debate made the following proposal for article 18 ter:

- “1. States Parties undertake to protect the child against all forms of social exploitation.
2. To this end, States Parties shall in particular,

- (a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.
3. The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”
77. The delegation of Brazil also made the following proposal:
- “1. States Parties undertake to protect the child against all forms of social exploitation, including sexual exploitation and sexual abuse.
 - 2. To this end, States Parties shall in particular,
 - (a) prohibit, including for purposes of prostitution, pornography and any other unlawful sexual activity;
 - (i) the abduction of children and selling or trafficking in children;
 - (ii) the use and participation of children in any such form of social exploitation.
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.”

The representative of France pointed to the vagueness of the words “social exploitation”. It was too restrictive, wider protection had to be given to the child. He proposed the following revision of paragraph 1 of the Chairman’s draft:

“The States Parties to this Convention shall take all appropriate measures to protect the child against all forms of social exploitation as well as all forms of degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.”

Paragraphs 2 and 3 would remain unchanged.

78. The representative of Venezuela stated that there should be a logical progression in the consideration of forms of exploitation: economic exploitation was dealt with already in article 18, and article 18 bis dealt with protection from narcotic and psychotropic substances, article 18 ter should deal with protection from sexual exploitation, 18 quater with prohibition of the sale or traffic of children and 18 quinto with protection against all other forms of exploitation.

79. As the Working Group reached no consensus on this article, the Chairman invited the delegations of Brazil, France, the Netherlands, the United States and Venezuela to hold informal consultations with a view to working out a common text. Following these consultations three draft articles (articles A, B and C) were submitted. The Chairman suggested that the Working Group begin its discussion with draft article B (future 18 quater).

Article 18 quater (draft article B)

80. The text of this draft article read as follows:

“The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale or traffic of children in any form or for any purpose.”

The delegations of Austria and Finland referred to the inclusion of the word “abduction” in addition to the reference to sale or traffic of children. The term “abduction” was a broad notion, and dealt with delicate and controversial matters and difficulties would arise with regard to the use of penalties and sanctions to prohibit child abduction. The word abduction had already a specific meaning in international treaties, and the term would not be appropriate in the context of the draft articles being discussed.

81. The representative of Venezuela felt that attention should be paid to the phenomenon of child disappearance. She was of the view that the already adopted article 6 ter referred to the abduction of the child by one parent and she emphasized that the proposed article B was aimed at covering all kinds of child abduction, in any forms and for any purposes dealing with profit. The representatives of the United States and the International Commission of Jurists pointed out that already adopted article 6 ter only applied to international abduction and not to abduction within one country. The observer for the Netherlands stated that he hesitated to keep the word “abduction” which was not qualified for the problem of abductions within a family. He further stated that more experience was needed in implementing international instruments on child abduction. He proposed to leave it in article B, with the understanding that one might go back to the already adopted article 6 ter, if necessary.

82. With regard to the words “in any form or for any purpose”, the representative of the United Kingdom was of the view that these words did not add any new element and proposed that article B be ended with the word “children”, and that the word “abduction” be retained. The representative of the United States agreed that article B should end with the word “children”. It was proposed that the wording would be inverted to read “for any purpose or in any form”. The observer for the Netherlands proposed to retain provisionally the words “national, bilateral and multilateral” in article B and that at the second reading, to consider those words in relation to article 5.

83. The Working Group then adopted the following article 18 quater as follows:

“The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.”

6. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18 quater

The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale or traffic in children for any purpose or in any form.

D. Technical review (1988)

There were no specific comments concerning present article 35 of the Convention.

E. Second reading (1988-1989)

1. Proposal submitted to the Working Group at second reading

(a) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

Article 18 quater

The States parties to the present Convention shall enact laws to prevent the abduction, sale or traffic of children in any form from the time of conception up to the age of 18 and /or of human organs and shall take all appropriate national, bilateral and multilateral measures to avoid and penalize these actions.

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 520 to 522).

520. The Working Group had before it the following text of article 18 quater as adopted at first reading:
“The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.”
521. The proposed technical revision sought to delete the words “to the present Convention”. It was also suggested to consider whether the word “appropriate” should be maintained in the text.
522. The Working Group adopted article 18 quater, as revised, to read as follows:
“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.”

Article 36 (Other forms of exploitation)

A. Final text adopted by the General Assembly (1989)

The following text is the one approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article IX

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

2. Comments on the first Polish draft

Article IX of the draft gave rise to the following comments.

(a) Central African Empire

The following is taken from document E/CN.4/1324/Add.1.

The Government of the Central African Empire would like to suggest that, in article IX, paragraph 2, the appropriate minimum age should be fixed at 14 years.

(b) Dominican Republic

The following is taken from document E/CN.4/1324.

By way of comment only, we would draw attention to the fact that the provisions of articles IX and X of the draft have been given detailed treatment in various ILO international agreements on other questions; it might be advisable to review those agreements in case their contents should be expanded.

(c) France

The following is taken from document E/CN.4/1324/Add.1.

- (a) It would be desirable to add, in the second sentence, after the words "He shall not be the subject of traffic" the words "or of a commercial transaction";
- (b) With regard to admission to employment, the words "appropriate minimum age" in the next sentence should be replaced by the words "the requisite age";
- (c) It would be desirable for the convention to include a provision affirming the right of the child at least to be consulted when certain events affecting his personal situation are to take place. The additional article might be worded as follows: "As soon as the child is capable of understanding, his consent must be sought when decisions have to be taken that may seriously affect his personal situation, such as those relating to adoption or the granting of custody."

(d) German Democratic Republic

The following is taken from document E/CN.4/1324.

More precise legal language should be used in article IX, paragraph 2, to formulate the impermissibility of admitting children to employment or an occupation.

(e) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

See paragraph 6, Federal Republic of Germany, under General Comments.

Paragraph 6, which appears elsewhere in document E/CN.4/1324, reads as follows.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

(f) New Zealand

The following is taken from document E/CN.4/1324/Add.5.

As well as the general provisions afforded by criminal law, there are detailed provisions in the Children and Young Persons Act 1974 about the care, protection and control of children who are deprived, neglected, disturbed or ill-treated. Furthermore, the provisions of the Adoption Act 1955 prevent any possibility of "baby-farming".

[...]

(g) Spain

The following is taken from document E/CN.4/1324.

Add a paragraph 3 reading: "The child shall be protected by means of adequate education against any type of manipulation, whether in regard to information, consumption, sex, etc."

(h) Suriname

The following is taken from document E/CN.4/1324/Add.1.

See paragraph 2, Suriname, under General Comments.

Paragraph 2, which appears elsewhere in document E/CN.4/1324/Add.1, reads as follows.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above-mentioned draft convention.

(i) Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of trade or traffic, in any form.

2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

C. First reading (1979-1988)

The text of article 35, which was based on article 19 of the revised Polish draft, was discussed and adopted by the Working Group in 1987. This article was referred to as article 18 *quinto* throughout the first and second readings.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 19

1. The child shall be protected against all forms of discrimination, social exploitation and degradation of his dignity. He shall not be the subject of traffic and exploitation in any form.
2. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to his health or his moral development, or in work dangerous to his life or which would interfere with his normal growth, and undertake to subject to legal punishment persons violating this law.
3. The States Parties to the present Convention shall comply with the law prohibiting the employment of children before the age of fifteen years.

2. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 18

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of his dignity. The child shall not be subject of traffic in any form.
2. The States Parties to the present Convention shall ensure that the child be not employed in any form at work harmful to his health or development nor dangerous to his life, and they undertake to sue persons acting to the contrary.
3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the ILO Convention No. 5 of 13 June 1921.

3. Proposals submitted to the Working Group (1984)

(a) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 19 (Exploitation of children)

In view of the disturbing incidence of assaults on the person, both physical and mental, we would suggest that the first two paragraphs of article 19 read:

- “1. Taking account of the law as set forth in the Slavery Convention of 1926 and the Protocol thereto, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, it is essential that the child should be protected from any form of discrimination or exploitation of his person, whether physical, intellectual or moral.

2. States Parties shall undertake to sanction all such practices as exploitation by prostitution, the sale of children for the purposes of prostitution or forced labour, slavery, pornography, rape, mutilation or the administration of drugs or toxic substances.”

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following text, which is reproduced in document E/CN.4/1985/WG.1/WP.1, pages 10-12, was available to the Working Group at its 1984 session.

Article dealing with extra-familial maltreatment and exploitation

1. The States Parties to the present Convention undertake to protect the child against all forms of neglect, abuse, social and economic exploitation, degradation and all acts violating the moral, spiritual or physical integrity of the child.
2. The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the traffic of children in any form.
3. The State Parties to the present Convention shall ensure that the child shall not be engaged in any occupation or employment harmful to the child's health or morals, or dangerous to life, or likely to interfere with the child's development, and that contravention of this shall be punishable by law.
4. The States Parties to the present Convention shall take all appropriate measures to ensure compliance with the international labour standards concerning minimum age and conditions of employment.

4. Proposals submitted to the Working Group (1987)

The following States and organizations submitted written proposals to the Working Group at its 1987 session.

(a) Canada and the United States of America

The following is taken from document E/CN.4/1987/WG.1/WP.16.

1. States Parties undertake to protect the child against exploitation, including sexual exploitation and sexual abuse.
2. To this end, States Parties shall, in particular,
 - (a) prohibit
 - (i) abduction of children and selling or trafficking in children;
 - (ii) the use and participation of children for the purpose of prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.”

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, see paragraph 71 in section 5 below.

5. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 71 to 73, 78 to 79 and 90 to 95).

71. [...]

Article 18 quinto (Prevention of sale or traffic of children)

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

“The States Parties to the present Convention shall take all national, bilateral and multilateral measures to prevent the sale or traffic of children in any form.”

72. The delegations of Mexico, Senegal, Venezuela, the ILO and the Informal NGO Ad Hoc Group expressed the view that there was a need for two separate articles, one protecting the child from sexual exploitation and another protecting the child specifically from sale or traffic. The problem of the sale or traffic of children was wider in scope than that of sexual exploitation and children were subjected to sale or traffic for many reasons: economic exploitation, sexual exploitation and sexual abuse, as well as for reasons of adoption or labour. Traffic or sale of children had international ramifications and required bilateral and multilateral measures for the protection of the child.

73. The Chairman, supported by the delegations of Australia and the United States, proposed one article with two subparagraphs, one dealing with sexual exploitation and degrading treatment and the other with sale and traffic of children. Attention was called to article 8 bis which contained measures protecting the child against maltreatment, including sexual abuse by those having care of the child.

[...]

78. The representative of Venezuela stated that there should be a logical progression in the consideration of forms of exploitation: economic exploitation was dealt with already in article 18, and article 18 bis dealt with protection from narcotic and psychotropic substances, article 18 ter should deal with protection from sexual exploitation, 18 quater with prohibition of the sale or traffic of children and 18 quinto with protection against all other forms of exploitation.

79. As the Working Group reached no consensus on this article, the Chairman invited the delegations of Brazil, France, the Netherlands, the United States and Venezuela to hold informal consultations with a view to working out a common text. Following these consultations three draft articles (articles A, B and C) were submitted. The Chairman suggested that the Working Group begin its discussion with draft article B (future 18 quater).

[...]

Article 18 quinto (draft article C)

90. The text of this draft article C read as follows:

“The States Parties to the present Convention shall protect the child against all other forms of exploitation as well as all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.”

In introducing draft article C, the representative of France deleted the words “as well as all degrading treatment” because the matter was already covered by article 19, paragraph 2 (a), under which States Parties would be obliged to protect the child from all degrading treatment whether the child was in custody or not. During the debate, some delegations hesitated on the necessity of having such a text as proposed in article C. The representative of the United States explained that his delegation had joined with the delegations of France, the Netherlands and Venezuela in proposing article C in its original form only to ensure that the proposal would be discussed by the Working Group. He indicated that he was willing to join a consensus on the language: “all other forms of exploitation” despite the breadth of that language, in order to ensure that children received full protection from exploitation. However, he could not agree to the additional language regarding protection of the “moral, spiritual, mental or physical integrity” of the child because that language had no substantive legal meaning in the United States and several other legal systems, and therefore could not be enforced.

91. The observer for Canada remarked that article 10 of the International Covenant on Economic, Social and Cultural Rights dealt with economic and social exploitation. She was of the view that if the draft

convention contained articles explicitly dealing with economic and sexual exploitation but not one on social exploitation, it would be a step backwards with regard to the Covenant. She suggested one article dealing with all forms of social exploitation. The representative of France was of the view that article C was necessary. The already adopted article 18 on economic exploitation specifically mentioned qualifications relating to the moral, mental, spiritual and physical development of the child. It was necessary to preserve the physical integrity of the child, even when no economic exploitation was involved. The observer for the Netherlands pointed out the necessity to protect children against all other forms of exploitation. He therefore proposed the following text:

“The States Parties to the present Convention shall protect the child against all other forms of exploitation.”

92. The representative of France, supported by the representative of Brazil, proposed the addition of the words “prejudicial to the moral, spiritual, mental or physical integrity of the child”. As there was no consensus, the Chairman suggested the following draft:

“The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to the child”.

The Chairman’s proposed text was approved by the delegations of Finland, the Netherlands and the United States. Other delegations were of the view that simple reference to the concept of exploitation was not sufficient, and stressed the need to have an article dealing with the integrity of the child in every aspect: moral, spiritual, mental and physical. The representative of France stated that the concept of exploitation had to be qualified by its context: economic, drug abuse, sexual, and by its effects: prejudicial to the moral, spiritual, mental and physical integrity of the child; it was more than prejudicial to the physical integrity of the child. The delegations of Italy and the Holy See agreed that protection should be given against all forms of exploitation of the child. The observer for Finland remarked that there were some forms of exploitation which were not prohibited and indicated that he found difficulty with the wording suggested by the representative of France because the notion of integrity was not clear. He proposed the prohibition of all forms of exploitation without any listing. The representative of France proposed the use of the words “all the forms of exploitation that may be prejudicial to any aspect of the child’s integrity”, which met with the support of the delegations of the Holy See and Italy.

93. The representative of the United States was still of the view that it was difficult to create legal enforcement obligations upon States about the general aspect of the integrity of the child, and that the concept of a child’s integrity was not a familiar one. The words “prejudicial to any aspect of the child’s integrity” were not familiar to the legislation of his country. The delegations of Australia and Finland said that they could accept the proposal by the French delegation, provided that the words “that may be” were deleted from it. The representative of the Informal NGO Ad Hoc Group mentioned that the proclamation of Teheran (International Conference on Human Rights, Teheran, 13 May 1968) had used the terms “physical, mental, social and spiritual welfare”. The representative of the United States noted further that the notion of the welfare of the child was included in other human rights instruments; he proposed, accordingly, the use of the words “prejudicial to any aspect of the child’s welfare”, instead of the word “integrity”. The observer for the Holy See agreed with the proposal to replace the word “integrity” by the word “welfare”.

94. The representative of the USSR observed that exploitation was harmful to the interests of the child, and that the selection of terms such as moral, spiritual, mental or physical did not cover all aspects of the interests of the child which needed to be protected from exploitation. The child was brought up in a society; being an active member of the society, he had a wide range of social interests that needed to be promoted. Therefore, he indicated his preference for a general, overall, approach and a broad wording that would allow for protection from any kind of exploitation. The representative of the United States of America repeated his proposal to the effect of using the words: “prejudicial to any aspect of the child’s welfare”, which met with the support of the delegations of France and the USSR.

95. The Working Group then adopted the following text:
“The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”

6. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18 quinto

The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

D. Technical review (1988)

There were no specific comments on present article 36 of the Convention.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 523 to 525).

523. The Working Group had before it the following text of article 18 quinto as adopted at first reading:
“The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”
524. It was proposed in the course of the technical revision *8a* to delete the words “to the present Convention”.
525. The Working Group adopted article 18 quinto, as revised, to read as follows:
“States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”

Article 37 (Children deprived of their liberty) and article 40 (Administration of juvenile justice)

A. Final texts adopted by the General Assembly (1989)

The following texts are those approved by the General Assembly in its resolution 44/25 of 20 November 1989.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not

to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

B. First Polish draft convention and comments (1978)

Although there was no reference to the issues of deprivation of liberty or the administration of justice in the first Polish draft convention, those issues were raised in the comments received on the draft from Colombia.

(a) Colombia

The following is taken from document E/CN.4/1324/Add.2.

Having analysed articles I to X, we find that they reproduce the content of the ten articles of the Declaration of the Rights of the Child which were adopted by the United Nations General Assembly in 1959, and to which the following might be added:

[...]

- 2. A child who engages in asocial behaviour shall be given special treatment in which his condition and dignity are duly respected.

C. First reading (1979-1988)

A single article, which was based on article 20 of the revised Polish draft and covered both present articles 37 and 40 of the Convention, was discussed and adopted by the Working Group in 1986. This article was referred to as article 19 throughout the first reading.

The substance of present articles 37 and 40 was also discussed under a single article (article 19) during the first part of the second reading. The Working Group subsequently decided to divide article 19 into two articles, 19 and 19 bis, which became articles 37 and 40 respectively.

1. Proposal submitted to the Working Group (1979)

(a) Norway and Sweden

The following is taken from paragraph 23 (d) of the 1979 report of the Working Group to the Commission on Human Rights (E/CN.4/L.1468), which is reproduced in paragraph 244 of the 1979 report of the Commission on Human Rights (E/CN.4/1347).

Article IX

Add the following:

“A child may never, under any circumstances be subject to torture or cruel, inhuman or degrading treatment, or threats thereof, for the purpose of obtaining from the child, the parents or any other person, information, confessions or acts, or for any other purpose.”

2. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 20

1. The child undergoing penal procedure shall have the right to special treatment and privileges.
2. The child shall not be liable to capital punishment. Any other punishment shall be adequate to the particular phase of his development.
3. The penitentiary system shall be aimed at re-education and re-socialization of the sentenced child. It should enable the child to serve the sentence of deprivation or limitation of freedom in a special manner, and in particular, in separation from adult offenders.

3. Modified proposal submitted by Poland (1982)

The following text is taken from document A/C.3/36/6, part II.

Article 19

1. The child undergoing penal procedure shall have the right to special treatment and privileges.
2. The child shall not be liable to capital punishment. Any other punishment shall be adequate to the subsequent phase of his development.
3. The penitentiary system shall be aimed at re-education and re-socialization of the sentenced child. It shall enable the child to serve the sentence of deprivation or limitation of freedom *under special circumstances* and, in particular, in separation from adult offenders.

4. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 6.

It is considered that the text of the Polish proposal in A/C.3/36/6 provides an acceptable basis, with the following suggested amendments:

“1. A child accused of committing a criminal offence shall have the rights to special treatment and privileges.

“2. In accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights, a child shall not be liable to capital punishment. Any other punishments shall be appropriate to the stage of the child’s development.

“3. Such punishment shall be aimed at re-education and social reintegration of the convicted child. Where the child is sentenced to a period of deprivation of liberty, the child shall be kept apart from adult offenders and shall receive the care and assistance necessary, commensurate with the child’s age.”

5. Proposals submitted to the Working Group (1984)

(a) Canada

For the text of this proposal, which was resubmitted to the Working Group in 1985, see paragraph 88 under section 9 below.

(b) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session.

Article 20 (Criminal proceedings)

We would like the following sentence added to this article:

“The personnel responsible for the re-education of juvenile offenders shall receive social and humanitarian educational training which will facilitate the reintegration of children into society”.

(c) International Social Service (ISS)

The following is taken from document E/CN.4/1984/WG.1/WP.3.

Article 20

[...]

ISS proposes the addition of a paragraph dealing with the problem of unaccompanied minors sentenced or detained in a foreign country, and suggests the following draft text:

“The States Parties to the present Convention will facilitate the transfer of each foreign minor sentenced on their territory to the State of his parents or guardians, to serve his correctional sentence there.”

(d) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following was proposed to the Working Group at its 1984 session (see Report of informal consultations among non-governmental organizations, December 1983) and was subsequently reproduced in document E/CN.4/1985/WG.1/WP.1, pages 12-14.

1. A child in a penal institution or undergoing penal procedures shall have his /her rights guaranteed and be entitled to special treatment.

2. Capital punishment shall not be imposed for acts committed by persons under the age of 18.

3. Torture or other forms of cruel, inhuman or degrading punishment, including the imposition of solitary confinement or corporal punishment, shall be prohibited.

4. The States Parties to the present Convention undertake to ensure that as a rule sentences of imprisonment shall not be imposed on children, and furthermore recognize that in all circumstances where

corrective measures are imposed, rehabilitation, including education and vocational training, shall be the primary consideration and shall take precedence over punishment.

5. Facilities shall be provided to ensure the effective separation of children from adult offenders, and shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's needs and age.

6. Proposal submitted to the Working Group (1985)

(a) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following proposals were made available to the Working Group at its 1985 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984).

Article dealing with the administration of justice

1. (a) All penal proceedings involving children, including supervision of the execution of sentences, shall be entrusted to a specialized and appropriately trained judicial authority.

(b) This judicial authority shall benefit from the support of qualified and specialized staff at all stages of the proceedings.

2. All proceedings shall be conducted in accordance with internationally and nationally recognized norms of due process of law.

3. The States Parties shall ensure that no special class of penal offences exists for children; behaviour not considered to be an offence when engaged in by an adult shall not be considered as such when engaged in by a child.

4. In cases where a child and an adult have jointly committed an offence, they shall be subject to separate procedures.

5. The States Parties to the present Convention shall facilitate the transfer of each foreign child sentenced on their territory to the State where the child's parents or others responsible for the care of the child are living, in accordance with the safeguards and provisions of the Model Agreement on the Transfer of Prisoners, subject to the consent of the child and, save in exceptional circumstances, that of the child's parents or of others responsible for his/her care. The States Parties shall, in addition, ensure that all concerned are informed of their rights in this respect at an early stage in the proceedings.

Article dealing with penal questions

1. When a child is found to have committed an offence, priority shall be given to educational measures rather than to punishment. Rehabilitation including education and vocational training shall be the primary consideration in all cases.

2. Capital punishment and sentences of life imprisonment shall not be imposed for acts committed by persons under the age of 18.

3. Torture or other forms of cruel, inhuman or degrading punishment, including the imposition of solitary confinement or corporal punishment, shall be prohibited.

4. (a) If, taking into account the age of the child and the seriousness of the facts, detention or placement in a closed institution is determined to be absolutely necessary, this shall be imposed for a fixed maximum period which shall be as brief as possible.

(b) Facilities shall be provided to ensure the effective separation of children from adult offenders, and shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's age and needs.

5. All children deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person.
6. Children shall have the right to visits from their family or legal guardians.

The following related proposal concerning present article 28 (education) was also submitted to the Working Group at its 1985 session (see Informal consultations among non-governmental organizations, Report on conclusions, December 1984).

[new paragraph]

States Parties shall ensure that school discipline is administered in a manner reflective of the child's human dignity. No methods shall be used which are either physically or mentally cruel or degrading.

7. Modified proposal submitted by Poland (1986)

The following text is taken from document A/C.3/40/3, paragraph 12.

Article 19

1. The States Parties to the present Convention shall ensure that the child subject to penal procedures shall be treated in a manner commensurate with his phase of development, with his reformation and social rehabilitation in view.
2. The States Parties to the present Convention shall guarantee that no child shall be arbitrarily detained or imprisoned, sentenced to death, subject to cruel, inhuman or degrading treatment or punishment.
3. The States Parties to the present Convention shall provide that the child sentenced to deprivation or limitation of freedom shall serve his sentence in separation from adult offenders.

8. Proposals submitted to the Working Group (1986)

(a) Canada

For the text of this proposal, see paragraph 90 in section 9 below.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following proposal, which was contained in Informal consultations among non-governmental organizations, Report on conclusions, December 1985, is taken from document E/CN.4/1986/WG.1/WP.1, pages 53-54.

Draft article 19

19A. GENERAL PRINCIPLES GOVERNING THE SYSTEM OF THE ADMINISTRATION OF JUSTICE

1. The child shall benefit from all rights and guarantees applicable to judicial and penal procedures and administration, as contained in all other international or regional instruments. All proceedings, including those during the investigation phase, shall be conducted in accordance with internationally and nationally recognized norms of due process of law. All proceedings shall be appropriate to the stage of the child's development, and in no case shall the age of the child serve as a basis for derogations from the recognized norms of due process of law.
2. No child shall be placed in penal facilities unless charged with a criminal offence. Penal law and facilities shall not be used as a substitute for child welfare procedures and facilities.
3. The States Parties to the present Convention shall ensure that no special class of penal offences exists for children; behaviour not considered to be an offence when engaged in by an adult shall not be considered as such when engaged in by a child.

4. All children deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person.

5. Torture or other forms of cruel, inhuman or degrading treatment or punishment, including the imposition of solitary confinement and corporal punishment, shall be prohibited.

6. The child shall have the right of access to legal counsel from the moment of being taken into custody.

19B. PENAL PROCEDURE

1. (a) All penal proceedings involving children, including supervision of the execution of sentences, shall be entrusted to a specialized and appropriately trained judicial authority.

(b) This judicial authority shall be given the support of qualified and specialized staff at all stages of the proceedings.

2. Detention awaiting trial shall be used only as a measure of last resort, for the shortest possible period of time which shall not exceed the prescribed penalty for the offence and in no case exceed three months. Whenever possible, it shall be replaced by alternative measures such as close supervision, protective care, placement with a family or in an educational setting or home.

3. In cases where a child and an adult have jointly committed an offence, they shall be subject to separate procedures.

19C. SENTENCING

1. When a child is found to have committed an offence, priority shall be given to educational rather than to punitive measures. Rehabilitation, including education and vocational training, shall be the primary consideration in all cases and shall aim at social integration.

2. As far as possible, these measures shall be applied by leaving the child in his/her normal environment and, if necessary, with the assistance of qualified and specialized persons.

3. Capital punishment shall not, in any circumstances, be imposed for acts committed by persons under the age of 18.

4. Sentences of life imprisonment shall not, in any circumstances, be imposed for acts committed by persons under the age of 18.

5. If, taking into account the age of the child and the seriousness of the facts, detention or placement in a closed institution is determined to be absolutely necessary, this shall be imposed only for a fixed maximum period which shall be as brief as possible.

6. The States Parties to the present Convention shall facilitate the transfer of each foreign child sentenced on their territory to the State where the child's parents or others responsible for the care of the child are living, in accordance with the safeguards and provisions of the Model Agreement on the Transfer of Prisoners, subject to the consent of the child and, save in exceptional circumstances, that of the child's parents or of others responsible for his/her care. The States Parties shall, in addition, ensure that all concerned are informed of their rights in this respect at an early stage in the proceedings.

7. Provision shall be made for periodic review of sentences, conditions of placement, and for a procedure for challenging the treatment accorded to children in these circumstances.

19D. TREATMENT IN CUSTODY

1. Facilities shall be provided to ensure the effective separation of children from adult offenders. They shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's age and needs.

2. While in custody, children shall receive all individual assistance of a social, educational (including vocational training), psychological, medical and physical nature that they may require in view of their age and personality. Efforts shall be made to ensure that children are not educationally disadvantaged on release from custody.
3. Children deprived of their freedom shall have the right to correspond with their family or legal guardians, and to receive regular visits from them.
4. The rights and guarantees contained in paragraphs 1-3 of the present article apply equally to children in detention awaiting trial.

9. Discussion and adoption by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 88-123).

88. The Working Group had before it two texts for consideration. The first, a proposal made by Canada at the Working Group's 1985 session which read:

- “1. The States Parties to the present Convention recognize the right of the child accused or found guilty of infringing the penal law to be treated in a manner consistent with the aims of child development acknowledged in article 17 of this Convention, and in particular in such a manner as to promote the full development of his or her personality, sense of dignity and worth, and respect for human rights and fundamental freedoms.
2. The States Parties to the present Convention shall pursue full implementation of this right, and in particular undertake as follows:
 - (a) No child shall be arbitrarily detained or imprisoned;
 - (b) Every child accused of infringing the law is entitled to have the matter determined according to law in a fair hearing within a reasonable time by an independent and impartial tribunal, in accordance with the presumption of innocence and such procedures as will take into account his or her age and the desirability of promoting his or her rehabilitation;
 - (c) All children deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
 - (i) Accused children shall be separated from adults and brought as speedily as possible for adjudication,
 - (ii) The essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. They shall be segregated from adults and accorded treatment appropriate to their age and legal status.
 - (d) No child shall be subjected to cruel, inhuman or degrading treatment or punishment. No child shall be sentenced to death.”

The second was a proposal by Poland contained in document A/C.3/40/3, which read as follows:

- “1. The States Parties to the present Convention shall ensure that the child subject to penal procedures shall be treated in a manner commensurate with his phase of development, with his reformation and social rehabilitation in view.
2. The States Parties to the present Convention shall guarantee that no child shall be arbitrarily detained or imprisoned, sentenced to death, subject to cruel, inhuman or degrading treatment or punishment.

3. The States Parties to the present Convention shall provide that the child sentenced to deprivation or limitation of freedom shall serve his sentence in separation from adult offenders.”

In addition, a proposal was submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WR.1.

89. The representative of the Netherlands, supported by the representatives of Austria and the United States, expressed the view that the Canadian proposal might be used as the basis for discussion. The representative of the USSR said that both the Canadian and the Polish proposals could be acceptable as a basis for discussion. However, he felt that it would be wiser to wait for the revised text, which the observer for Canada, in her introductory statement, had informed the Working Group would be submitted shortly by her delegation, in order to continue the debate.

90. Accordingly, the delegation of Canada presented the following revised text upon which much of the discussion focused:

“1. States Parties to the present Convention recognize the right of children accused or found guilty of infringing the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others,¹ and which takes into account their age and the desirability of promoting their rehabilitation.²

2. States Parties shall pursue full implementation of this right, and in particular shall take appropriate measures to ensure that:

- (a) No child is arbitrarily detained or imprisoned,³
- (b) Every child accused of infringing the law is entitled:
 - (i) to be informed promptly of the charges against him or her in a language that he or she can understand,⁴
 - (ii) to be presumed innocent until proved guilty according to law,⁵
 - (iii) to have the matter determined according to law in a fair hearing within a reasonable time by an independent and impartial tribunal,⁶
 - (iv) to legal assistance in the preparation and presentation of his or her defence,⁷
 - (v) if found guilty and sentenced, to have his or her conviction and sentence reviewed by a higher tribunal according to law.⁸

(c) An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation.⁹ A variety of dispositions shall be available to the competent authorities to ensure that each child is dealt with in a manner appropriate to his or her particular circumstances, and that no child is unnecessarily institutionalized.¹⁰

¹ Polish draft convention on the rights of the child, article 16, A/C.3/36/6.

² International Covenant on Civil and Political Rights (“ICCPR”), article 14 (4).

³ ICCPR, article 9, Universal Declaration of Human Rights (“UDHR”), article 9.

⁴ ICCPR, article 14 (3) (a).

⁵ ICCPR, article 14 (2).

⁶ ICCPR, article 14 (1), UDHR, articles 10 and 11.

⁷ ICCPR, article 14 (3) (a).

⁸ ICCPR, article 14 (5).

⁹ ICCPR, article 10 (3).

¹⁰ Draft standard minimum rules for the administration of juvenile justice, article 18.

(d) All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person:

(i) Accused children shall be separated from adults and brought as speedily as possible for adjudication,¹¹

(ii) Children found guilty of infringing the penal law shall be separated from adults and accorded treatment appropriate to their age and legal status.¹²

(e) No child shall be sentenced to death,¹³ No child shall be subject to cruel, inhuman or degrading treatment or punishment,¹⁴ nor to a disposition out of proportion to the circumstances of both the offender and the offence.¹⁵

91. During the consideration of the revised text, the representative of Iraq stressed his preference for the initial proposal by Canada which he suggested might be merged with the Polish proposal. The representative of Austria stated that in drafting the article under consideration by the Working Group, care should be taken not to include the provisions of other existing international human rights instruments already applicable to children. The representative of the United Kingdom argued that a categorical prohibition of separating young children from adults may not always be beneficial to the child and indicated that, in drafting the relevant part of the article, the Working Group should take into account what was most beneficial to the child.

92. After some debate the Chairman suggested that an informal working party, composed of the delegations of Canada, Poland and Austria and interested non-governmental organizations, such as the International Commission of Jurists, should hold consultations with a view to formulating a redrafted proposal that attempted to consolidate many delegations' views. The Chairman also considered that paragraph 1 of the revised Canadian proposal could serve as a basis for discussion of the first paragraph of the article to be adopted by the Working Group, while for its second paragraph the Group might take as the basis for discussion the compromise text prepared by the informal working party.

93. The proposal formulated by the informal working party read as follows:

"1. States Parties to the present Convention recognize the right of children accused or found guilty of infringing the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular ensure that:

(a) As a minimum, the child has, in every appropriate respect, the same legal rights as an adult accused or found guilty of infringing the penal law,

(b) Detention awaiting trial shall be used only as a measure of last resort, for the shortest possible period of time,

(c) Legal assistance is provided in the preparation of the child's defence,

(d) Ensure that no child is arbitrarily detained or imprisoned or subjected to torture or to cruel, inhuman or degrading treatment or punishment,

(e) An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation including offering programmes

¹¹ ICCPR, article 10 (2).

¹² ICCPR, article 10 (3).

¹³ ICCPR, article 6 (5).

¹⁴ ICCPR, article 7, UDHR, article 5.

¹⁵ Draft standard minimum rules for the administration of juvenile justice, articles 4.2 and 17.1 (a)."

of education and vocational training. A variety of dispositions shall be available to the competent authorities to ensure that each child is dealt with in a manner appropriate to his or her particular circumstances, and that no child is unnecessarily institutionalized.

3. Penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities.
4. The following sentences shall not be imposed for crimes committed by persons below eighteen years of age:
 - (a) Capital punishment,
 - (b) Life imprisonment.”

Paragraph 1

94. The representative of Venezuela expressed her preference for the expression “child subject to penal procedure” in the proposal by Poland rather than “children accused or found guilty of infringing the penal law”.

95. The representative of the United States of America did not agree with the term “found guilty” and suggested replacing it by the words “subject to penal or juvenile justice proceedings”. She also stated the understanding of her delegation that this article covers both adult criminal proceedings or juvenile justice proceedings when a child has committed what would be a criminal offence if committed by an adult. In this connection, the representative of Japan felt some hesitation about the expression “subject to juvenile justice proceedings” since it will cover family court proceedings in his country, and reserved his position until paragraph 2 was drafted. The observer for the Netherlands opposed this wording and suggested replacing it by the words “children who are accused of or recognized as having infringed the penal law”. The representative of the United States accepted the Netherlands’ proposal.

96. The representative of Venezuela proposed replacing the words “found guilty of infringing” by the words “recognized as having infringed”. The Working Group adopted the following text for paragraph 1 by consensus:

“1. States Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.”

Paragraphs 2, 3 and 4

97. The observer for Canada suggested the insertion, in paragraph 2 (a) of the word “fundamental” between the words “same” and “legal”, and of the words “and protections” between “rights” and “as an adult accused”, and the addition at the end of the subparagraph of the following phrase: “including the right to legal assistance in the preparation and presentation of the child’s defence.”.

98. With regard to paragraph 2 (c), the representative of Venezuela proposed inserting the word “qualified” between the words “legal” and “assistance”. In addition, the observer for Amnesty International proposed beginning the subparagraph with the phrase “From the moment of being taken into custody” and replacing the word “is” by the word “shall”. While recognizing the need for legal aid, the representative of the United Kingdom was uneasy with the notion of “legal assistance” as, for example, social workers might not necessarily be legally qualified to appear in juvenile justice proceedings.

99. After a further exchange of views, the Chairman requested that a new text for the outstanding parts of article 19 be elaborated - taking into account the views expressed by the members of the Group - by an informal drafting party. Accordingly, the observer for Canada submitted the following text:

“2. To this end, and having regard to the relevant provisions of international instruments, and the principle that penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities, the States Parties shall, in particular, ensure that:

- (a) No child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment,
- (b) Capital punishment or life imprisonment is not imposed for crimes committed by persons below eighteen years of age,
- (c) Children accused of infringing the penal law:
 - (i) Are informed promptly of the charges against them and, as of the time of being accused, are provided with legal assistance in the preparation and presentation of their defence,
 - (ii) Are presumed innocent until proven guilty according to law,
 - (iii) Have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal, and
 - (iv) If found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence (as well as in a manner commensurate with his phase of development). No child shall be unnecessarily institutionalized.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

- (a) Be separated from adults accused or convicted of having committed an offence unless it is considered in the child’s best interest not to do so,
- (b) Be brought as speedily as possible for adjudication,
- (c) Have the right to maintain contact with their family through correspondence and visits.”

Paragraph 2

100. The representative of the United Kingdom suggested amending the first three sentences of paragraph 2 to read: “To this end, and having regard to the relevant provisions of international instruments, and the principle that penal law and the penitentiary system shall only be used in cases where child welfare procedures and facilities are considered inadequate ...”.

101. The observer for Canada could not accept the amendment proposed by the United Kingdom, as criteria for determining the child’s welfare were unclear. In support of this argument the delegation of Australia reiterated its suggestion that paragraph 2 as proposed by the Canadian delegation be maintained.

102. After some discussion, the representative of the United Kingdom withdrew his amendment and the Working Group then agreed to delete the words “and the principle that penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities” as well as to add the words “to the present Convention” after “the States Parties”. The text adopted by the Working Group read as follows:

“2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:”

Subparagraph (a)

103. The Working Group adopted subparagraph (a) without any change, as follows: “No child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment.”

Subparagraph (b)

104. As regards subparagraph (b), the representative of Japan expressed his concern over the term “or life imprisonment”, indicating that his delegation could not go along with the prohibition of life imprisonment, and proposed its deletion. With a view to accommodating that proposal, the representative of Canada suggested adding the words “without possibility of release” after the words “life imprisonment”.

105. The representative of the United States voiced her delegation’s disagreement with the whole of subparagraph (b); she felt that the reference to “persons below eighteen years of age” was too arbitrary and proposed its deletion. The observers for Amnesty International and the International Commission of Jurists did not agree with that proposal and suggested that subparagraph (b) should stand as it was originally formulated. They stressed that 18 years was the age accepted in various international instruments, including the International Covenants and General Assembly resolutions. The representative of the United States said that her Government did not consider subparagraph (b) as drafted to be an appropriate general rule but that she would not insist on her amendment and block consensus, provided it was understood that the United States maintained its right to make a reservation on this point and that it was implicitly understood that a child committing an offence which, if committed by an adult, would be criminal could be treated as an adult.

106. After a further exchange of views, the Working Group adopted subparagraph (b) as follows: “Capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below eighteen years of age.”

107. The representative of the United Kingdom and the United States placed on record their reservation regarding subparagraph (b) to which they wished to return at a later stage.

Subparagraph (c)

108. The observer for the Netherlands expressed his preference for the wording of the International Covenant on Civil and Political Rights where the term “charged with criminal offences” was used and accordingly suggested replacing the word “accused” by the word “charged”. The representative of Canada explained that the informal drafting working party had proposed the term “accused” for the sake of consistency with the remaining part of the text where the word “accused” was being used.

109. The observer for Finland shared the hesitations of the delegation of the Netherlands and proposed that the phrase “children awaiting penal procedures” be used. However, the representative of the United Kingdom indicated his preference for maintaining the word “accused” in the text.

110. The following text was adopted by the Working Group: “(c) Children accused of infringing the penal law”.

111. With reference to subparagraph (c) (i) the representative of Finland expressed his preference for the expression “appropriate assistance” instead of “legal assistance”. The representative of the Netherlands suggested inserting the words “or other appropriate” between the words “legal” and “assistance” and adding the phrase “in any case where the interests of justice so require” after the word “assistance”. Along these lines, the representative of Austria proposed that the phrase should be amended to read “are provided with legal or other appropriate assistance in the preparation and presentation of their defence where their interests so require”.

112. The observer for the Netherlands suggested modifying the Austrian delegation's amendment by replacing the words "their interests" by "the interests of justice". The representative of the United Kingdom indicated his preference for the phrase "are provided with appropriate assistance" rather than "are provided with legal or other appropriate assistance". The representative of the United States suggested replacing the words "are provided with" by the word "have", while the representative of the United Kingdom proposed the words "have access to" rather than the words "are provided with".

113. After an additional exchange of views and following a suggestion by the delegation of Australia, the Working Group agreed to invert the order of subparagraphs (c) (i) and (c) (ii) and to adopt them as follows:

- (i) Are presumed innocent until proven guilty according to law,
- (ii) Are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence."

114. The Working Group also adopted subparagraphs (c) (iii) and (c) (iv) as they stood (see paragraph 99).

Paragraph 3

115. The representative of the United States suggested that the last sentence of paragraph 3 be deleted and that after the words "and the offence" the following should be added: "and that children are not unnecessarily institutionalized."

116. The delegation of Australia proposed replacing the word "institutionalized" at the end of the paragraph by the words "confined to gaol", while the observer for the Netherlands suggested replacing "institutionalized" by "put in an institution". The proposal put forward by the observer for the Netherlands was accepted by the delegations of Australia and Canada. The observer for Canada suggested adding the words "and alternatives to institutional care" after the words "vocational training".

117. After a brief discussion, the Working Group agreed to delete both the words "as well as in a manner commensurate with his phase of development", and the last sentence of the paragraph. The Working Group thus adopted paragraph 3 as follows:

"An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence."

Paragraph 4

118. The Working Group adopted the following text as it stood: "All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:"

119. Turning to subparagraphs (a) and (b), the representative of the United States suggested replacing the words "unless it is considered in the child's best interest not to do so" by the phrase "or unless it has been determined appropriate that the child be treated as an adult". The representative of Austria suggested keeping the text as it stood and the delegations of Bangladesh and Japan shared his opinion. The representative of Algeria stated that if the United States amendment were to be retained, the purpose of the convention would be defeated.

120. The observer for the Netherlands proposed amending the United States proposal by the following: "unless, taking into account the personality of the child, this would be inappropriate ...". The Chairman proposed adding the words "or in the interests of justice" after the words "child's best interest". The representative of France expressed her preference for maintaining the text as it stood.

121. The observer for the Netherlands proposed the addition at the end of subparagraph (b) of the following phrase: “, or it is unnecessary for the protection of the child, and”.

122. Regarding subparagraph (c) the observer for the Netherlands also suggested including the words “according to the law” at the end of the sentence, but the observer for Canada proposed adding instead the phrase “, save in exceptional circumstances”. The delegation of the Netherlands withdrew its proposal in favour of the Canadian amendment, which was also supported by the Australian delegation.

123. After some consultation, the Working Group agreed to reverse the order of subparagraphs (a) and (b) and adopted subparagraphs (a), (b) and (c) as amended:

- “(a) Be brought as speedily as possible for adjudication,
- (b) Be separated from adults accused or convicted of having committed an offence unless it is considered in the child’s best interest not to do so, or it is unnecessary for the protection of the child, and
- (c) Have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances.”

10. Proposal submitted to the Working Group (1988)

(a) World Federation of Methodist Women

The following is taken from document E/CN.4/1988/WG.1/WP.27.

Add article 19 [2] (c) (ii)

“This assistance shall also be available for children who are detained following a trial.”

11. Discussion in the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 223).

A. Proposals deferred to the second reading

223. The representative of Venezuela supported a proposal submitted by the World Federation of Methodist Women (E/CN.4/1988/WG.1/WP.27) on assistance to children in detention following trial. It was suggested that the proposal be amended to read: “This assistance shall also be available to children throughout any period of detention”. The proposal was supported by some, while others wondered whether such a provision was really needed. Most of the participants preferred not to discuss an article adopted long ago and suggested that the proposal be taken up at the second reading of the draft convention, by which time an appropriate formulation could be found.

12. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 19

1. States Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:

- (a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;
- (c) children accused of infringing the penal law
 - (i) are presumed innocent until proven guilty according to law;
 - (ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;
 - (iii) have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal and
 - (iv) if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

- (a) be brought as speedily as possible for adjudication;
- (b) be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so, or it is unnecessary for the protection of the child; and
- (c) have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances.

D. Technical review (1988)

1. Comment by the Social Development Division, Centre for Social Development and Humanitarian Affairs

The following is taken from document E/CN.4/1989/WG.1/CRP.1, pages 38-39.

Paragraph 1 does not make any reference to the fact that children, in principle, should neither be considered criminally responsible, nor be incarcerated. In this respect, your attention is drawn to "Beijing Rule" 4. Accordingly, and with due respect to national laws, it should be clearly stated that there should be no criminal responsibility of children until they reach a certain age.

Paragraph 2 should also state clearly that the detention of children is a measure of last resort, to be limited to the minimum necessary period, with full regard to the individual needs and characteristics, in accordance with "Beijing Rule" 19. Therefore, in *subparagraph (b)*, the possibility of life imprisonment for children should be excluded *tout court* and without exceptions whatsoever. In *subparagraph (c)*, children in conflict with the law seem to be treated like "small adults". On the contrary, children and juveniles should be fully entitled to benefit from all the basic procedural safeguards and rights listed in "Beijing Rules" 7 and 8.

Paragraph 3 could be better placed at the beginning of article 19, followed by the reformulated *paragraphs 1 and 2*. In its final revision, it should be considered that, in accordance with the prevailing contemporary notion of juvenile justice, the aim of the processing of young offenders should not be penal or reformatory but it should be oriented toward individual development, growth and social integration. In this perspective, *paragraph 3* should emphasize more the importance and preferability of the alternative measures to detention.

As regards *paragraph 4, subparagraph (b)*, the need for separation between adults and children within the framework of a juvenile justice system should be expressed more strongly. *Subparagraph (c)* seems to be too restrictive of the rights of the children in conflict with the law in comparison to the “Standard Minimum Rules for the Treatment of Prisoners”, particularly Rules 8 (d) and 37, and the “Beijing Rules” 13.4 and 26.3.

The above comments are made taking into account that the main objective of the draft convention is the *protection* of children, defined in article 1 as “every human being below the age of 18”. Accordingly, article 19 should constitute an improvement of existing standards in order to fully protect the rights of children facing deprivation of liberty.

2. Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 39.

Paragraph 1

The view has been expressed that the existing formulation may not adequately cover the situation of children who have been arrested, but not charged with any offence. It would seem, however, that such children could be considered to be “accused” (although not formally charged) and thus to be covered by the present wording. An alternative approach would be to refer to “children who are accused, recognized as having infringed the penal law, or are otherwise in police custody”.

Paragraph 2

In order to bring this paragraph more fully into conformity with the relevant provisions of the International Covenant on Civil and Political Rights (article 15, paragraph 1), consideration might be given to adding a new paragraph 2 (b) (bis) which would read:

“No child shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed or which would not be a crime if committed by an adult”.

Subparagraph (c) (ii) could also be amended in order to ensure that the parents or guardians of the child are also informed of charges brought against the child. The first part of the subparagraph could thus read:

“are, along with their parents or guardians, informed promptly ...”

3. Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 40-41.

40. In examining article 19, the Working Group may want to refer extensively to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), recommended for adoption by the Seventh United Nations Congress on Prevention of Crime and the Treatment of Offenders held at Milan in 1985 and adopted by the General Assembly in resolution 40/33 of 29 November 1985.

41. In addition, the Working Group may wish to compare the provisions of paragraph 2 with articles 7, 9 and 14 of the International Covenant on Civil and Political Rights, especially concerning certain omissions. Although, it could be argued that the reference to “the relevant provisions of international instruments” at

the beginning of paragraph 2 already addresses this question, the Working Group may wish to consider the following items:

- to refer in paragraph 2 (a) to the child's right to liberty and security of person;
- to change the wording in paragraph 2 (a) to read "... torture *and other* cruel ..." which corresponds to the title of and usage in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- to add in paragraph 2 (c) a reference to equality before courts and tribunals which is the starting point of article 14, paragraph 1, of the International Covenant on Civil and Political Rights;
- to add after the word "promptly" in paragraph 2 (c) (ii) the words "*and in detail in a language he or she understands of the nature and cause of ...*" so that this paragraph corresponds to article 14, paragraph 3 (a), of the International Covenant on Civil and Political Rights;
- to change the words "within a reasonable time" to read "*without undue delay*", again following the example set by article 14, paragraph 3 (c), rather than article 9, paragraph 3, so as to strengthen the time requirement when children are involved, as is the case in article 19, paragraph 4 (a), of the draft convention;
- to delete in paragraph 4 (b) the two qualifications, beginning with the word "unless", so as to bring the paragraph in line with article 10, paragraphs 2 (b) and 3, of the International Covenant on Civil and Political Rights.

4. Background note submitted by the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs

By a letter dated 16 November 1988, the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs, submitted the following background note relating to article 19 of the draft convention. In addition, the following other documents were submitted for the information of the Working Group and were available for consultation in the Secretariat: General Assembly resolution 40/33 and annex containing the text of the Beijing Rules; the report of the Interregional Preparatory Meeting of Experts on topic 4 of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders entitled "Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions" (A/CONF.144/IPM.3), which contains two new draft instruments in the juvenile justice field which were subsequently considered and adopted by the Eighth Congress in 1990; and the report of the Secretary-General on the implementation of General Assembly resolution 40/33 which was considered by the Committee on Crime Prevention and Control at its tenth session, convened in Vienna, on 22-31 August 1988 (E/AC.57/1988/11). The following briefing note is taken from document E/CN.4/1989/WG.1/CRP.1/Add.2.

Article 19: Juvenile Justice Administration

The treatment of offenders has been an integral part of the United Nations programme in the field of crime prevention and criminal justice since its establishment in 1948 and has been on the agenda of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders since 1955. In fact, the First United Nations Congress, in 1955, adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners, approved two years later by the Economic and Social Council (resolution 663 CI (XXIV)) and subsequently followed by a series of resolutions, in subsequent years, calling for their effective implementation and monitoring thereof. The Standard Minimum Rules recognize that young offenders constitute a special category with requirements different from those for adults (e.g., Rule 8 (d)).

Juvenile delinquency has also been a question of great concern for Governments, practitioners and specialists, as far back as the First United Nations Congress. It was considered by all successive Congresses, in an attempt on the part of the international community to find approaches and strategies to deal more appropriately and effectively with the phenomenon. Thus, every five years, experts and Government officials at the congresses

examined the various problems and prospects of juvenile delinquency and juvenile justice, while consistently recognizing that intervention in respect of young persons in conflict with the law requires constant review and assessment.

In 1960, the Second United Nations Congress introduced a set of recommendations to deal with the prevention and treatment of juvenile delinquency (A/CONF.17/20, annex I). Noteworthy in that connection was the following recommendation:

“... The meaning of the term juvenile delinquency should be restricted as far as possible to violations of the criminal law ... Specific offences which would penalize small irregularities or maladjusted behaviour of minors, but for which adults would not be prosecuted, should not be created ... Diversified methods of prevention and treatment are required ... Special attention should be devoted to the preparations for release and for social readaptation of minors placed in correctional institutions.”

Juvenile delinquency was placed under the wider concept of juvenile justice at the Sixth United Nations Congress in 1980, under the item on “Juvenile justice: before and after the onset of delinquency”, resulting in a recommendation to the Seventh Congress to consider the adoption of standard minimum rules for juvenile justice administration.

The Sixth Congress envisaged the rules as an important international instrument and as an ideal model for Member States for the fair and humane treatment and disposition of young persons in conflict with the law and for the protection of their rights in diverse national settings and legal structures. As directed by the Sixth Congress, four basic principles were to be reflected in the elaboration of the new Rules: (a) the responsibility of the community of nations, both individually and collectively, to ensure opportunities for a meaningful life for the young, as fully participating members of society; (b) the provision of carefully defined legal protections; (c) the use of detention only as a last resort, with special arrangements and procedures for confinement, always taking into account varying needs particular to age; and (d) the use of institutionalization only after adjudication for very serious offences.

The draft rules submitted to the Seventh Congress in 1985 sought to keep a balance between potentially conflicting interests - protecting society from juvenile crime and ensuring that the rights of victims of such crimes are not disregarded, on the one hand, and avoiding harm to young offenders and protecting their rights, on the other - in the fair disposition of juvenile cases, particularly those involving serious violations of law.

One of the major achievements of the Seventh Congress was the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, designated the “Beijing Rules”, subsequently adopted by the General Assembly in its resolution 40/33. Thus, the Seventh Congress established a set of universally accepted principles regarding the treatment and handling of juveniles in conflict with the law, based on a separate juvenile justice system with its own distinct procedures, measures and approaches (Rule 2.3).

This international instrument represents the latest stage in the progressive evolution of knowledge, thought and action, under the aegis of the United Nations congresses. The “Beijing Rules” represent minimum conditions which are accepted as suitable by the United Nations for the consideration and handling of young persons in conflict with the law under any system. The Rules contain thirty articles with related commentaries, and are divided into six parts, covering the whole range of juvenile justice processes: (I) General Principles; (II) Investigation and Prosecution; (III) Adjudication and Disposition; (IV) Non-institutional Treatment; (V) Institutional Treatment; and (VI) Research, Planning, Policy Formulation and Evaluation.

The “Beijing Rules” are highly regarded by the international community as an effective technical tool by which to promote and protect children’s rights within the context of juvenile justice systems, while at the same time making a significant contribution to the prevention of juvenile delinquency. In fact, many countries are following the philosophical orientation and approach of the Rules, which are inspiring major

innovation and reform, as evidenced in the reports provided by Governments and reflected in the recent report of the Secretary-General to the Committee on Crime Prevention and Control at its tenth session (E/AC.57/1988/11).

Unfortunately, neither the United Nations Committee on Crime Prevention and Control nor the Crime Prevention and Criminal Justice Branch, during the previous years, have had the opportunity to contribute directly to the elaboration of the new draft convention on the rights of the child. Therefore, to attempt to reflect in article 19 of the draft convention the whole thrust and spirit of the “Beijing Rules” at this late stage, no doubt, is a very difficult task.

Nevertheless, in response to a request from the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch, in its letter of 27 July 1988, provided some basic technical comments (attached). On the basis of those comments, the Branch was requested by the United Nations Children’s Fund (UNICEF) (letter dated 1 November 1988) to draft a proposal for the reformulation of article 19. This proposal could read as follows:

PROPOSAL (A) - Article 19

1. The essential aim of juvenile justice in dealing with children in conflict with the law shall be assisting them to develop a sense of responsibility and to assume a constructive role in society. A variety of dispositions, including educational and vocational training programmes and alternatives to institutional custody, shall be made available and, in principle, shall be preferred to situations entailing deprivation of liberty to ensure that children are dealt with in a manner appropriate to their well-being and which is proportionate to the circumstances of both the offender and of the offence. (Original paragraph 3.)
2. States Parties recognize the right of children not to be considered criminally responsible before reaching a certain age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth. They also recognize the right of children who are accused or recognized as being in conflict with the penal law to be treated in a manner which is consistent with promoting their sense of dignity, worth and personal development, safeguarding their well-being and with respect for individual rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. (Original paragraph 1.)
3. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular ensure that:
 - (a) The deprivation of a child’s liberty shall always be a disposition of last resort and for the minimum necessary period;
 - (b) No child is arbitrarily detained, held in custody, imprisoned or subjected to torture, cruel, inhuman or degrading treatment, punishment or correction;
 - (c) The death penalty or a term of life imprisonment is not imposed for crimes committed by children below 18 years of age;
 - (d) Children accused of infringing the penal law shall be guaranteed all appropriate legal safeguards at all stages of proceedings. Accordingly, children:
 - (i) are presumed innocent until proven guilty according to law;
 - (ii) are informed promptly of the charges against them, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;
 - (iii) have the right to the presence of a parent/guardian;

- (iv) have the matter determined according to law in a just and fair trial/hearing within a reasonable period of time by an independent and impartial tribunal;
 - (v) if found guilty are entitled to have the conviction and sentence reviewed by a higher tribunal according to law; and
 - (vi) have their right to privacy respected at all stages. (Original paragraph 2.)
4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:
- (a) be brought as speedily as possible for adjudication;
 - (b) be detained separately from adults in a separate facility or in a separate part of a facility also holding adults;
 - (c) have the right to maintain contact with their family through correspondence and visits;
 - (d) while in custody, they shall receive care, protection and all necessary individual assistance - social, medical, educational, vocational, psychological and physical - that they may require in view of their age, sex and personality; and
 - (e) detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or community service. (Original paragraph 4.)

The above draft represents only a minimalistic approach in that it attempts to touch as little as possible on the existing text, aligning it, even if in a very limited way, with the basic thrust of the provisions contained in the “Beijing Rules”.

However, in the current policy perspective, even in the form proposed above, the reformulated article 19 might still fall below existing and emerging standards, and thus will not provide an international yardstick which should be used to promote and protect children’s rights in the administration of juvenile justice.

Therefore, a further attempt has been made to reformulate article 19, in order to reflect more adequately and fully the principles embodied in the “Beijing Rules”. In this effort, due account has been taken of the impact of the Rules on justice systems achieved worldwide. Due regard has also been given to two emerging and complementary international instruments in the juvenile justice field, namely, the draft Guidelines for the Prevention of Juvenile Delinquency and the draft Standard Minimum Rules for Juveniles Deprived of their Liberty, as unanimously agreed upon by the interregional preparatory meeting on topic 4 of the Eighth United Nations Congress on “Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions” (A/CONF.144/IPM.3) and as endorsed by the Committee on Crime Prevention and Control at its tenth session in August 1988.

Accordingly, and with a view toward reflecting a progressive and enlightened approach to current policies and practices in respect of juvenile justice, ranging from social risk intervention and early delinquency prevention to child detention, young offender treatment and after-care, the following new draft might be considered:

PROPOSAL (B) - ARTICLE 19

1. It is recognized by the Parties of this Convention that children are highly vulnerable to victimization and involvement in irregular situations which might lead to their coming into conflict with the penal law. The meaning of the terms “delinquency” and “offence” as applied to children should be restricted to violations of criminal law. Specific offences which would penalize irregular behaviour of children for which adults would not be penalized should not be created and should be

avoided. Similarly, the parameters, level and scope of official intervention into the lives of children shall be limited. Every effort shall be made so that irregular conduct of children which does not inflict serious harm to them or to others or pose danger to society shall neither be misinterpreted as an offence nor shall there be a disproportionate reaction to that conduct.

2. A wide range and variety of community dispositions shall be made available to avoid submitting children to legal processes and to reduce the detrimental consequences of incarceration. If and when official intervention is warranted, it should take place within the framework of a separate juvenile justice system, the administration, laws, procedures, personnel and services of which shall not only be specialized but also attuned to the specific needs, problems and circumstances of children. Such systems should be geared toward humane and fair treatment and handling of children who come into conflict with the law, bearing mind that special consideration shall be accorded to them because of their age and stage of psycho-social and physical development, while at the same time affording the full rights, guarantees and benefits equal to those of adults, in the context of a progressive contemporary notion of juvenile justice and delinquency prevention and in accordance with existing international standards and norms in the juvenile justice field.

3. States Parties recognize the right of children who are accused or recognized as being in conflict with the penal law not to be considered criminally responsible before reaching a specific age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth.

4. States Parties also recognize the right of children to be treated in a manner which is consistent with promoting personal development, safeguarding their well-being and with respect for individual worth, dignity, rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. Special consideration shall also be given to the situation of children "at social risk" who are not necessarily in conflict with the law but who may be brought before the law by reason of being abused, abandoned, neglected, homeless, objects of sale, traffic and prostitution, and for being in other marginal circumstances.

5. The juvenile justice system (institutions and personnel entrusted with the functions of the administration of juvenile justice) shall ensure that any action related to a child who is alleged or has been found to have committed an offence be always in proportion to the circumstances of both the child and the offence, with emphasis on the rights and well-being of the child. Accordingly, children in conflict with the penal law shall be assisted to develop a sense of responsibility to assume a constructive role in society.

6. Toward this end, and having regard to the provisions of relevant international instruments governing the protection of the child the States Parties to the present Convention shall ensure that:

- (a) No child is arbitrarily detained, held in custody or imprisoned;
- (b) No child is subjected to torture, cruel, inhumane or degrading treatment, punishment or correction at any stage of justice administration;
- (c) The death penalty or a term of life imprisonment is not imposed for offences committed by children below 18 years of age;
- (d) Children accused of infringing the penal law shall be guaranteed all appropriate legal safeguards, at all stages of proceedings. Accordingly, children have the right to:
 - (i) be presumed innocent until proven guilty, according to the law;

- (ii) be informed promptly of the charges against them, as of the time of being accused;
- (iii) have legal and other appropriate assistance in the preparation and presentation of their defence;
- (iv) have the presence of a parent/guardian;
- (v) have the matter determined, according to law, in a just and fair hearing/trial, within a reasonable period of time, and as expeditiously as possible, by an independent and impartial juvenile court authority;
- (vi) when found guilty, be entitled to appeal conviction and sentence to a higher court, according to law; and
- (vii) have their privacy fully respected, at all stages, and no information that may produce negative consequences shall be released or published.

7. States Parties recognize that all forms of deprivation of liberty are detrimental to child growth and development. In principle, children should not be deprived of their liberty. Incarceration should always be a disposition of last resort and for the absolute minimum period necessary, with full protection of their rights and well-being. Moreover, all children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person and, in particular, shall: (a) be brought as speedily as possible for adjudication by a competent authority; (b) be provided with decent accommodation and healthy facilities; (c) be detained separately from adults, in a separate facility or part of a facility; (d) while in custody, receive care, protection and all necessary individual assistance - medical, physical, psychological, social, educational, vocational - that may be required in view of their age, sex and personality; and (e) maintain frequent contacts with their family and the community through correspondence and visits and engage in meaningful activity, including educational and vocational training and constructive use of leisure time.

A range of community-based alternatives to institutional custody, especially pending trial, shall be made available and shall be preferred to deprivation of liberty, e.g. close supervision, placement with a family, community service.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following written proposals were submitted for consideration at second reading.

(a) India

The following is taken from document E/CN.4/1989/WG.1/WP.15.

Article 19 (ii) (b)

In article 19 (ii) (b) the words "persons below 18 years of age" [should] be deleted and replaced by "a child".

The reformulated article 19 (ii) (b) would read as follows:

"Capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by a child."

(b) Mexico

The following is taken from document E/CN.4/1989/WG.1/WP.32.

Article 19, paragraph 1:

After paragraph 1 add another paragraph reading: “States Parties recognize that when children are accused or recognized as having infringed the penal law, their cases shall be examined by a Board for the Protection of Minors”.

Article 19, paragraph 2 (c) (i):

Add at the end of this subparagraph the words “except where such a presumption does not exist in national law”, so that the whole of the subparagraph reads “are presumed innocent until proven guilty according to the law, except where such a presumption does not exist in national law”.

Article 19, paragraph 2 (c) (ii):

Add after the words “are informed promptly”, the phrase “or their legal guardian are informed promptly when local legislation so stipulates”. Add after the phrase “as of the time of being accused” the words “they or their legal guardian”.

Accordingly, paragraph 2 (c) (ii) would read: “are informed promptly, or their legal guardians are informed promptly when local legislation so stipulates, of the charges against them and, as of time of being accused, they or their legal guardian have appropriate assistance in the preparation and presentation of their defence”.

Article 19, paragraph 2 (c) (iii):

Delete the phrase “by an independent and impartial tribunal”.

Article 19, paragraph 2 (c) (iv):

Add at the end: “except where the conviction is pronounced by a body that is not vested with authority in criminal affairs but relates to social re-education or rehabilitation”.

The text will thus read: “if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to the law, except where the conviction is pronounced by a body that is not vested with authority in criminal affairs but relates to social re-education or rehabilitation”.

Article 19, paragraph 2 (c) (v):

After paragraph 2 (c) (iv) add a new subparagraph (v) stating: “Under the final ruling issued, are entitled to be placed in an open, semi-open or closed institution. Open institutions shall be those which maintain a constant 24-hour system of freedom to enter and leave the institution; semi-open institutions shall be those which close their doors and only allow a minor to go out for a specific purpose, for a limited period with flexible human controls and make it easier for him to go out to visit his relatives; closed institutions shall be those with material and human means of security and do not allow the minor to go out without the authorization of the director or superiors”.

Article 19, paragraph 4 (a):

The paragraph should read as follows: “issue a ruling as speedily as possible”.

Article 19, paragraph 4, a new subparagraph between (a) and (b):

After subparagraph (a) insert another subparagraph reading: “have the right for a Board for the Protection of Minors to determine in each case, in its judgement, the measures of assistance, protection or treatment necessary for them to be better trained in the future”.

Article 19, paragraph 4 (c):

Add a subparagraph (d) reading: “have the right to be granted under a final ruling, when the family environment is made up of hard-working persons with no vices and no delinquency, to return to their home on full release or under the rules of release with assistance. The assistance shall entail systematic observation of the minors’

living conditions and counselling for them and anyone taking care of them, as well as referring the latter to persons or institutions able to help them or guide them in solving their problems”.

(c) Venezuela

For the text of these proposals, see paragraph 535 in section 2 below.

(d) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 19, paragraph 1: “... which takes into account their context, their age ...”.

2. Discussion and adoption at second reading

The substance of articles 37 and 40 was discussed under article 19 during the first reading and initially during the second reading. The Working Group decided later on at second reading to divide article 19 into articles 19 and 19 bis, which became articles 37 and 40 respectively. The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 533 to 599).

533. The Working Group had before it a text of the article as adopted during the first reading (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“1. States Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:

- (a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;
- (c) children accused of infringing the penal law:
 - (i) are presumed innocent until proven guilty according to law;
 - (ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;
 - (iii) have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal; and
 - (iv) if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

- (a) be brought as speedily as possible for adjudication;
- (b) be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so, or it is unnecessary for the protection of the child; and
- (c) have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances."

534. The Working Group also had before it a text of the article as adopted during the first reading including suggested revisions proposed by the Crime, Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna (E/CN.4/1989/WG.1/WP.2). The text read as follows:

"1. It is recognized by States Parties that children are highly vulnerable to victimization and involvement in irregular situations which might lead to their coming into conflict with the penal law. The meaning of the terms "delinquency" and "offence" as applied to children should be restricted to violations of criminal law. Specific offences which would penalize irregular behaviour of children for which adults would not be penalized should not be created and should be avoided. Similarly, the parameters, level and scope of official intervention into the lives of children shall be limited. Every effort shall be made so that irregular conduct of children which does not inflict serious harm to them or to others or pose danger to society shall neither be misinterpreted as an offence nor shall there be a disproportionate reaction to that conduct.

2. A wide range and variety of community dispositions shall be made available to avoid submitting children to legal processes and to reduce the detrimental consequences of incarceration. If and when official intervention is warranted, it should take place within the framework of a separate juvenile justice system, the administration, laws, procedures, personnel and services of which shall not only be specialized but also attuned to the specific needs, problems and circumstances of children. Such systems should be geared toward humane and fair treatment and handling of children who come into conflict with the law, bearing in mind that special consideration shall be accorded to them because of their age and stage of psycho-social and physical development, while at the same time affording the full rights, guarantees and benefits equal to those of adults, in the context of a progressive contemporary notion of juvenile justice and delinquency prevention and in accordance with existing international standards and norms in the juvenile justice field.

3. States Parties recognize the right of children who are accused or recognized as being in conflict with the penal law not to be considered criminally responsible before reaching a specific age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth.

4. States Parties also recognize the right of such children to be treated in a manner which is consistent with promoting personal development, safeguarding their well-being and with respect for individual worth, dignity, rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. In this respect, special consideration shall be given to the situation of children "at social risk" who are not necessarily in conflict with the law but who may be abused, abandoned, neglected, homeless, objects of sale, traffic and prostitution, and/or being in other marginal circumstances.

5. The juvenile justice system (institutions and personnel entrusted with the functions of the administration of juvenile justice) shall ensure that any action related to a child who is alleged or has been found to have committed an offence is in proportion to the circumstances of both the child and the offence, [w]ith emphasis on the rights and well-being of the child. Accordingly, children in conflict with the penal law shall be assisted to develop a sense of responsibility to assume a constructive role in society.

6. Toward this end, and having regard to the provisions of relevant international instruments governing the protection of the child, States Parties shall ensure that:

- (a) No child is arbitrarily detained, held in custody or imprisoned;
- (b) No child is subjected to torture, cruel, inhumane or degrading treatment, punishment or correction at any stage of justice administration;
- (c) The death penalty or a term of life imprisonment is not imposed for offences committed by children below 18 years of age;
- (d) children accused of infringing the penal law shall be guaranteed all [appropriate] legal safeguards, at all stages of proceedings. Accordingly, children have the right to:
 - (i) be presumed innocent until proven guilty, according to the law;
 - (ii) be informed promptly of the charges against them, as of the time of being accused;
 - (iii) have legal and other [appropriate] assistance in the preparation and presentation of their defence;
 - (iv) have the presence of a parent/guardian;
 - (v) have the matter determined, according to law, in a just and fair hearing/trial, within a reasonable period of time, and as expeditiously as possible, by an independent and impartial juvenile court authority;
 - (vi) when found guilty, be entitled to appeal conviction and sentence to a higher court, according to the law; and
 - (vii) have their privacy fully respected, at all stages, and no information that may produce negative consequences be released or published.

7. States Parties recognize that all forms of deprivation of liberty are detrimental to child growth and development. In principle, children should not be deprived of their liberty. Incarceration should always be a disposition of last resort and for the absolute minimum period necessary, with full protection of their rights and well-being. Moreover, all children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person and, in particular, shall:

- (a) be brought as speedily as possible for adjudication by a competent authority;
- (b) be provided with decent accommodation and healthy facilities;
- (c) be detained separately from adults, in a separate facility or part of a facility;
- (d) while in custody, receive care, protection and all necessary individual assistance - medical, physical, psychological, social, educational, vocational - that may be required in view of their age, sex and personality; and

(e) maintain frequent contacts with their family and the community through correspondence and visits and engage in meaningful activity, including educational and vocational training and constructive use of leisure time. A range of community-based alternatives to institutional custody, especially pending trial, shall be made available and, in principle, shall be preferred to deprivation of liberty, e.g., close supervision, placement with a family, and community service.”

535. The Working Group also had before it the proposal of Venezuela contained in document E/CN.4/1988/WG.1/WP.11 which reads as follows:

Article 19

“1. The States Parties to the present Convention recognized the right of minors recognized as having infringed the law to be treated in a manner which is consistent with the sense of dignity and worth and with intensifying their respect for the human rights and fundamental freedoms of others and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:

(a) No child is detained or imprisoned or subjected to torture or cruel, inhuman or degrading treatment or punishment;

(b) Every child is protected by laws, provisions and special courts;

(c) He is not considered guilty so that he does not suffer penalties for the breaches of the law he commits, but must in such cases be subjected to re-educational procedures, measures and treatment;

(d) All the judicial or administrative proceedings or acts or proceedings or acts of any other nature having to do with minors are free of charge;

(e) He is not deprived of his liberty without the accomplishment of the legal formalities.

3. Offending children who commit any act punishable by criminal law shall be placed at the disposal of the competent authority, which shall take measures that include:

(a) Investigating the child’s situation;

(b) Ensuring that the measures are carried out within the family environment or within the community of which the child is a member;

(c) Placing the child under the care of its parents, tutors, guardians or responsible relatives; probation and aid in institutions for reform and care.”

It also had before it the proposals of Venezuela contained in document E/CN.4/1988/WG.1/WP.49 which read as follows:

Article 19 bis

“The States Parties shall ensure appropriate monitoring of children who have been subjected to a measure restricting their liberty such as supervised freedom, family placement, committal to open or closed institutions or other, until they are duly reintegrated in their family and community.”

Article 19 ter

“The States Parties to the present Convention shall ensure that it is prohibited to publish, by press, radio, television or any other medium, names, photographs and other means of identifying persons under 18 years of age who are in the circumstances described in articles 10 and 18.”

536. After a general debate in which it became obvious that there was a total lack of consensus, the Chairman appointed an open-ended drafting group composed of the following countries, (Argentina, Canada, China, Cuba, India, Mexico, Portugal, United States of America and Union of Soviet Socialist Republics) to coordinate with Venezuela. After an initial meeting of this drafting group in which most of the participants in the Working Group took part, Venezuela requested that the representative of Portugal should join her in the coordination exercise and elected a group of friends of the coordinator, consisting of Canada, Spain, Portugal, Senegal, Venezuela, a representative of the non-governmental organizations and other interested delegations that wished to participate. The coordinators of the Group were able to submit the proposal contained in document E/CN.4/1989/WG.1/WP.67/Rev.1 which reads as follows:

- “1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment [without possibility of release] shall be imposed for offences committed by persons below 18 years of age.
2. No child shall be deprived of his or her liberty unlawfully or arbitrarily. Deprivation of liberty shall be used only as a measure of last resort and for the shortest possible period of time.
3. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his/her family through correspondence and visits.
4. All children deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of their liberty before a court (or other competent, independent and impartial authority) and to a prompt decision on any such action.”

537. In introducing the proposal contained in working paper E/CN.4/1989/WG.1/WP.67/Rev.1, the representative of Portugal indicated that the drafting group had endeavoured to draw up a text consistent with the instruments adopted in this field by the United Nations, dividing the various independent situations which required protection into two articles. The new article 19 therefore covered situations such as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the death penalty or life imprisonment. It also studied the deprivation of liberty, viewed so as to reflect the comments formulated by the Human Rights Committee and to show the respect due to human dignity, recognition of the needs of children and the concern to assure them legal or other assistance. Aware of the initiatives taken in the United Nations in the area of juvenile justice, the drafting group had incorporated some of these ideas in article 19 bis, using non-imperative language, however, so as to enable States to achieve a balance between the desirability and the advisability of introducing these measures into their legal systems. With the intention that the child should grow up in an atmosphere of love and understanding, the solutions proposed were sometimes less formal than those provided in other instruments, while taking account of the respect due to human rights and legal guarantees, a concern reflected in the provision concerning attendance, at a hearing, of the parents or the legal representatives of the child. The coordinators of the Working Group requested the delegation of Canada to introduce the paragraphs of this proposal to the Working Group.

Article 19 (37)

Introductory phrase

538. The representative of Argentina suggested that, as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1, the text for article 19 would need some form of introductory phrase. He suggested that the words “States Parties shall ensure:” should be considered by the Working Group as a *chapeau* for the article. In view of the lack of opposition to this phrase, a consensus was formed to adopt the proposal by the representative of Argentina.

539. The text of the *chapeau* adopted for article 19 during the second reading reads as follows:

“States Parties shall ensure that:”

Paragraph 1

540. The representative of the German Democratic Republic proposed that the two sentences constituting paragraph 1 (E/CN.4/1989/WG.1/WP.67/Rev.1) should be divided into two separate paragraphs. She was supported by the representatives of Italy and the Union of Soviet Socialist Republics in saying that, as it stood, paragraph 1 lacked homogeneity because it dealt both with manifest illegalities, torture, etc., as well as with punishment pursuant to due process of law. However, the representative of the Federal Republic of Germany was of the view that the imposition of capital punishment on children was “inhuman ... treatment or punishment” and therefore that the paragraph was sufficiently homogeneous to be left as it stood. The representatives of Canada and Senegal supported the representative of the Federal Republic of Germany in calling for the paragraph to be left undivided. In a spirit of compromise and in order to allow the Working Group to arrive at a consensus the representative of the German Democratic Republic did not insist on her proposal. A consensus was therefore formed to keep the structure of the paragraph as it was originally proposed in document E/CN.4/1989/WG.1/WP.67/Rev.1.

541. The representatives of Austria, the Federal Republic of Germany, Senegal and Venezuela suggested that the words “without possibility of release” be deleted. Conversely, the representatives of China, India, Japan, Norway, the Union of Soviet Socialist Republics and the United States of America argued for the retention of the words. In particular, the representatives of India and Norway indicated that they could not join a consensus to delete the words because such a move would have the effect of profoundly changing the text as adopted at first reading, a text which both their respective Governments approved.

542. In order to achieve a consensus, the representatives of China, the Federal Republic of Germany, the Netherlands and Venezuela suggested that the whole reference to life imprisonment and the question of release could be omitted from the paragraph. However, the representative of Senegal was of the view that it was important to retain the reference because if it was not included in the text judges would be at liberty to use life imprisonment as a substitute for capital punishment.

543. In a spirit of compromise and in order not to block a consensus, the delegations which had argued for the deletion of the words “without possibility of release” did not insist on their proposal. A consensus was therefore formed to retain the words.

544. In joining the consensus the representative of the United States of America reserved the right of his country to enter reservations on this article if ever the United States of America decided to ratify the convention.

545. The text of paragraph 1 of article 19 as adopted during the second reading reads as follows:

“1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.”

Paragraph 2

546. In introducing the paragraph, the observer for Canada indicated that it largely reflected both the International Covenant on Civil and Political Rights and the Beijing Rules. The representatives of the Netherlands and the United Kingdom of Great Britain and Northern Ireland indicated that they could support a consensus in favour of the text of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1 but that in doing so they reserved the right of their respective Governments to enter reservations on the article if ever they decided to ratify the convention.

547. The representative of Italy indicated that, as the paragraph stood, there was no link between the first and the second sentence. In order to remedy this, she suggested the addition of the words “except on such grounds and in accordance with such procedure as are established by law” to the end of the first sentence. Although this proposal was supported by the representative of Senegal, the representative of Italy did not insist on her proposal.

548. In view of the lack of opposition, a consensus was formed in the Working Group to adopt the first sentence of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1. The text of the first sentence of paragraph 2 of article 19 as adopted during the second reading reads as follows:

“No child shall be deprived of his or her liberty unlawfully or arbitrarily.”

549. With regard to the second sentence of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1, the representatives of Kuwait and the Union of Soviet Socialist Republics expressed their concerns that the Working Group would be deciding on detailed measures of juvenile punishment without the necessary expertise to do so. In particular, the representative of the Union of Soviet Socialist Republics questioned whether it was the consensus view of experts on juvenile punishment that deprivation of liberty should be only “for the shortest possible period of time”. The representative of the Federal Republic of Germany indicated that he could not join a consensus in support of a sentence containing this phrase because the legislation of the Federal Republic of Germany did not insist that custodial sentences for juveniles should be only “for the shortest possible period of time”. The representative of Italy also indicated that she could not join a consensus in support of the second sentence as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1.

550. As a possible compromise, the representative of Italy suggested the deletion of the second sentence with the paragraph remaining only with the first, already adopted, sentence. The representative of Senegal took the view that the second sentence was important in order to encourage judges to consider the use of other educational or correctional measures than deprivation of liberty and to ensure that, if at all, custodial measures would only be used as a measure of last resort. In a spirit of compromise the representative of Italy did not insist on her proposal.

551. As an alternative proposal to achieve a compromise, the representative of Norway suggested the deletion of the words “and for the shortest possible period of time”. The representative of Mexico supported this proposal. The representative of the Union of Soviet Socialist Republics also supported this proposal and further suggested that the broad notion of “deprivation of liberty” be replaced by the more precise words “imprisonment, arrest and detention” and that the text should indicate that the measures should be “in conformity with the law”. The representative of Libya supported the proposal by Norway as amended by the representative of the Union of Soviet Socialist Republics. The representative of the United Kingdom of Great Britain and Northern Ireland suggested that, taking into account the foregoing attempts to arrive at a compromise text, the text of the second sentence of paragraph 2 could read as follows:

“Imprisonment, arrest and detention shall be used only in conformity with law and shall be used as a measure of last resort.”

552. With regard to that text the representative of the United Kingdom of Great Britain and Northern Ireland indicated that he had reservations about the Working Group joining together in one sentence the concept of arrest, a static event occurring at a particular moment, with the concepts of imprisonment and detention, events which were ongoing in time. However, in a spirit of compromise, the representative of the United Kingdom of Great Britain and Northern Ireland indicated that he would be willing to join a consensus in favour of the adoption of the text he had read out.

553. Also with regard to the text of the United Kingdom of Great Britain and Northern Ireland, and in connection with the proposal made by the representative of the Union of Soviet Socialist Republics, the representative of France questioned why the phrase “in conformity with the law” should be included in the

second sentence. He was of the view that the word “unlawfully” which was contained in the first sentence adequately met any concerns which the phrase was intended to cover. The representative of Mexico expressed general reservations about the need to formulate a second sentence for paragraph 2 since the question of imprisonment would be more thoroughly covered in article 19 bis.

554. In light of the discussion regarding paragraphs 1 and 2 of the draft, the delegate of the Federal Republic of Germany declared that, given the totally new versions of articles 19 and 19 bis tabled before the Working Group, it seemed necessary that these articles be examined by criminal justice specialists in the respective capitals of the participating countries. He added that, consequently, he could only join a formal consensus for the time being, withholding his consensus on the substance. He also asked for a clarification on the text to be used as a basis for deliberations, citing article 19 as adopted at first reading, article 19 including suggested revisions contained in document E/CN.4/1989/WG.1/WP.2, and article 19 as proposed in document E/CN.4/1989/WG.1/WP.67/Rev.1.

555. Many delegations agreed on the use of the proposal tabled in document E/CN.4/1989/WG.1/WP.67/Rev.1, and some of them pointed out that, since the Beijing Rules had been taken as a model, the version could not necessarily be considered as totally new.

556. With regard to paragraph 2, the discussion focused on the second sentence and some delegations including the Union of Soviet Socialist Republics, Senegal, the United States of America and the German Democratic Republic expressed their preference for a more specific language instead of a general reference such as “deprivation of liberty”, since this term could also cover educational and other types of deprivation of liberty applied to minors besides detention, arrest, or imprisonment.

557. The observer for Canada proposed the following sentence:

“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort.”

558. The delegation of Senegal proposed the following text:

“The imprisonment, arrest or detention of a child should only be a measure of last resort. States shall endeavour to apply the shortest possible penalty.”

559. Some delegations objected to the concept of “shortest possible penalty”, taking into consideration the rehabilitation process that could should last for some period. However, given the general consensus, they did not object to its inclusion.

560. The observer for Canada then read out the following version of the second sentence: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;”. The Working Group adopted this version.

Paragraph 3

561. With regard to paragraph 3 the observer for Canada explained that there was virtually no new language included, except for the words “... in a manner which takes into account the needs of persons of their age.”, based on article 14, paragraph 4, of the International Covenant on Civil and Political Rights. He pointed out that the rest of the paragraph stemmed from previous paragraph 4 of article 19.

562. The observer for the Netherlands suggested that the words “save in exceptional circumstances” be added at the end of paragraph 3 which was then adopted by the Working Group to read as follows:

“3. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”

Paragraph 4

563. With regard to paragraph 4 it was generally agreed that the words “every child” should be used at the beginning and that the brackets around the words “or other competent independent and impartial authority” be removed to correspond with relevant provisions of the International Covenant on Civil and Political Rights. The paragraph was then adopted by the Working Group to read as follows:

“4. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.”

Article 40 (Article 19 bis)

564. The Working Group had before it a text for a new article 19 bis submitted by the same drafting group which had been set up to consider article 19. The text of the proposal (E/CN.4/1989/WG.1/WP.67/Rev.1) read as follows:

“1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed.

(b) Every child has, in every case, at least the following guarantees:

(i) to be presumed innocent until proven guilty according to law;

(ii) to be informed promptly of the charges against him/her, directly and if appropriate through his/her parents or legal guardian, and to have legal and other appropriate assistance in the preparation and presentation of his/her defence;

(iii) to have the matter determined without delay by a judicial body in a fair hearing according to law, in the presence of legal counsel and his or her parents or legal guardians, unless it is considered not to be in the best interest of the child, in particular taking into account his/her age or situation;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his/her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

- (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

565. In introducing the proposed article, the representative of Portugal indicated that, taking into account reservations felt by some participants in the Working Group, certain provisions had deliberately not been drafted in the imperative. She explained that this was done in order to give States Parties the option of whether to adopt the measures contained therein or not.

Paragraph 1

566. With regard to paragraph 1, the observer for Canada, who again acted on behalf of the drafting group to introduce the specific provisions of article 19 bis, stated that the present wording was the same as the previous version adopted in first reading, except for two sentences that had been added as follows:

- (a) “...or recognized as having infringed the penal law.”
- (b) “...and the desirability of the child’s assuming a constructive role in society”.

567. The delegation of the German Democratic Republic expressed doubts about the last phrase of the paragraph, stating that the formulation was a repetition of article 14 of the International Covenant on Civil and Political Rights and that the concept of “rehabilitation” was not properly covered by it.

568. Some delegations, including those of Venezuela, Norway, Senegal, Italy and the United Kingdom of Great Britain and Northern Ireland pointed out that given various legislations, the word “rehabilitation” might cause certain problems. The representative of Italy proposed that instead of the word “rehabilitation” the Working Group should consider using the word “reintegration” or the words “social reintegration”.

569. Upon these remarks, the word “reintegration” was retained and the Working Group adopted paragraph 1 to read as follows:

- “1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

Paragraph 2

570. With regard to paragraph 2, the *chapeau* and subparagraph (a) were adopted without discussion to read as follows:

- “2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed.”

571. Following a readjustment to the *chapeau* of subparagraph (b) requested by the delegation of the Union of Soviet Socialist Republics on the use of the words “in every case” which they judged inappropriate given the possible variety of cases, the *chapeau* was adopted to read as follows:

“(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:”

572. Point (i) of subparagraph (b) was also adopted without discussion to read as follows:

“(i) to be presumed innocent until proven guilty according to law;”

573. As far as point (ii) was concerned, the discussion clustered around two issues; namely the child being directly informed of the charges brought against him or her, and the type of legal assistance he or she would be provided with.

574. The first point was raised by the delegate of the Union of Soviet Socialist Republics who declared that accusations could not be brought against the child through representatives and that it would pose serious problems. The delegation of the German Democratic Republic expressed the same concern.

575. The representative of the United States of America pointed out that with the use of the word “and”, it was already implied that direct information of the child was the first priority and that indirect information came in addition.

576. The delegations of Senegal, Mexico, Italy, Venezuela and Honduras stressed the fact that parents and/or legal guardians should be informed of the charges brought against the child.

577. As to legal assistance, some delegations including those of the Federal Republic of Germany and the Netherlands pointed out that, given their respective legal systems, the use of the broad term “legal assistance” could raise a problem since, in cases of minor infringement of law, the defence of the child could be assured by non-lawyers. Japan also pointed out that, under its juvenile procedures, the presence of legal counsel is not necessarily required. In this regard, the delegate of the Federal Republic of Germany suggested the replacement of the word “and” by the word “or” following the word “legal”. He otherwise wanted the report to reflect his insistence on underlining the possibility of non-legal assistance.

578. The observer for the Netherlands suggested that the paragraph be completed with the words “...if the interests of justice so require.” Some delegations expressed their concern over this proposal which could, according to them, limit the guarantees and the best interest of the child. Upon these remarks, the delegation of the Netherlands proposed that the paragraph be split into two parts and the issue of legal assistance be split into two parts, and the issue of legal assistance be dealt with separately from the first part. The delegation of the Federal Republic of Germany declared it could go along with this proposal, suggesting some slight changes.

579. Finally the observer for Canada read a proposed compromise text:

“(ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;”

580. The Working Group adopted this version.

581. The delegation of Mexico declared for the record that it considered legal assistance as granted to the parents or legal guardians of the child, since, according to Mexican law, a child did not have the right to testify before a court.

582. As to point (iii), the observer for Canada declared that it was based on the former version of article 19, paragraph 2, subparagraph (c) and that the only addition consisted in the words “without delay” stemming from former paragraph 4.

583. Some delegations identified two problems concerning this paragraph namely the term “legal counsel” and the term “judicial body”.

584. The delegates of the Federal Republic of Germany, the German Democratic Republic, Italy and Bulgaria agreed that given their respective legal systems, the term “judicial body” was too broad in its significance and that more specific language was needed.

585. The delegate of Japan pointed out that in his country all hearings were not public - such as those held in family courts - and that consequently, the term "fair hearing" raised a problem in case it meant public trial. As to the presence of legal counsel, the same delegation expressed the same concern he raised in relation to poverty. Besides these reservations, he also declared that the principle of public hearing seemed incompatible with the concept of privacy formulated under point (vii).

586. Finally, the same delegations declared that they would understand "legal counsel" in a broader sense so that it should also cover non-legal assistance, as mentioned before.

587. Upon these remarks, the observer for Canada read the following compromise text:

"(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians."

588. The Working Group adopted this version of point (iii).

589. Point (iv), which, according to the Canadian delegation, duplicated article 14, paragraph 3, subparagraphs (g) and (e) of the International Covenant on Civil and Political Rights, was adopted by the Working Group, without any discussion to read as follows:

"(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;"

590. Point (v) which, according to the same delegation, was a repetition of former article 19, paragraph 2 (c), clause 4, with the addition for consistency with point (iii) of the following:

"...by a *higher competent, independent and impartial [authority] or judicial body.*"

591. The text of point (v) was adopted to read as follows:

"(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;"

592. Point (vi), which the observer for Canada stated was a duplication of article 14, paragraph 2 (f) of the International Covenant on Civil and Political Rights was adopted to read as follows:

"(vi) to have the free assistance of an interpreter if the child can not understand or speak the language used;"

593. The delegations of Japan, the Federal Republic of Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland made reservations on the concept of "free assistance" to the accused, since their respective legal systems had a different approach to the question.

594. Point (vii) was adopted to read as follows:

"(vii) to have his or her privacy fully respected at all stages of the proceedings."

595. The representatives of the United States of America, the Federal Republic of Germany and Japan made reservations on this point, given their differing national legislations with regard to the concept of privacy.

Paragraphs 3 and 4

596. Paragraphs 3 and 4 of the proposal submitted by the drafting group were introduced by the observer for Canada.

597. The observer for the Netherlands proposed to replace the word “including” in paragraph 4 by the words “such as”. The Working Group accepted this proposal.

598. After having made some editorial changes as suggested by the representative of the United Kingdom of Great Britain and Northern Ireland, the Working Group adopted paragraphs 3 and 4 of article 19 bis reading as follows:

“3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

599. Upon the adoption of articles 19 and 19 bis the representative of India stated that his delegation reserved the right to the further scrutiny and examination of the articles by the Indian Government.

3. Statement made during the adoption of the report

(a) Japan

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 723-724).

723. As to article 37, subparagraph (c), the representative of Japan said that, according to article 81 of the Japanese Criminal Procedure Law, the court is allowed to restrict the contact of the child deprived of his or her liberty with his or her family, in case the court shall have reason to believe that the child may escape, or destroy evidence. The Japanese delegation understood that situations such as the possibility of escape or the possibility of the destruction of evidence fell within the “exceptional circumstances” in the end of that subparagraph. Concerning the “right to prompt access to legal and other appropriate assistance” of subparagraph (d), the delegation accepts that subparagraph on the understanding that it confirmed the right to assistance of defence counsel for the child placed under physical restraint and that it did not oblige the State to assign a defence counsel on behalf of the child when the child is unable to secure it.

724. As to article 40, the Japanese delegation understood that “every child alleged as or accused of having infringed the penal law” in 2 (b) (ii) means such child who is deprived of his or her liberty in the criminal procedure. Concerning 2 (b) (iv) of the same article, his delegation understood that in Japan that provision of 2 (b) (iv) is applicable only to the criminal procedure at the criminal court and not to the procedure at the family court which has for [that] purpose protective measures for the wholesome rearing of juveniles. Concerning 2 (b) (vi), his delegation understood that this provision was intended to guarantee that the defendant who could not understand the language used in the court exercise sufficient defensive activities in the court, and therefore it is not prohibited that the whole or part of the costs be charged to the accused when he is found guilty.

Article 38 (Children in armed conflicts)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

Article VIII of the Polish draft appears to be related to the substantive concerns covered under present article 38. The following text of article VIII is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article VIII

The child shall in all circumstances be among the first to receive protection and relief.

2. Comments on the first Polish draft

Article VIII of the draft gave rise to the following comments.

(a) Austria

The following is taken from document E/CN.4/1324, page 42.

The purpose of article VIII is not clear. Does it mean that in case of danger children are to be rescued before adults? A more detailed wording of this article would be desirable.

(b) Federal Republic of Germany

The following is taken from document E/CN.4/1324, page 42.

See paragraph 7, Federal Republic of Germany, under General Comments.

Paragraph 7, which appears on page 11 of document E/CN.4/1324, reads as follows. The text in brackets appears in the French original but was omitted in the English translation.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can

more appropriately be made the subject of a recommendation to be incorporated in the preamble to the convention.

(c) International Committee of the Red Cross (ICRC)

The following comment on article I of the Polish draft, taken from document E/CN.4/1324, page 27, addresses substantive concerns under present article 38.

1. In analysing the draft convention on the rights of the child, ICRC must consider the relationship between the draft and the provisions of the Geneva instruments concerning protection of the child.
2. An examination of article I of the draft shows that its material scope has not been defined. The article provides that the convention shall apply to every child “without any exception whatsoever”. In the absence of any clarification, it could be inferred from this that the material scope is very broad and that the draft is to be applied in times of peace as well as in times of armed conflict.
3. Only article VIII stipulates that “the child shall *in all circumstances* be among the first to receive protection and relief”. It seems to us that the words “in all circumstances” apply to all the provisions and have been inserted in this article only to emphasize the fact that the child must *always* be among the first to receive protection and relief. Moreover, consideration of the provisions themselves shows that they are very general in nature and capable of being observed at all times. The provisions attempt not so much to grant the child specific rights connected with a particular situation, but to deal with general questions so as to guarantee the child a harmonious background for his physical and mental development.
4. The personal scope of the draft has been defined, for the convention is to apply to children (article I). The notion of “child” has not, however, been made clear. The concept varies from one culture to another. This silence seems wise and will facilitate universal application of the convention irrespective of local peculiarities.
5. The context of the Geneva Convention and the Additional Protocols is much more precise. Their scope has been strictly defined - they apply in situations of armed conflict. The notion of “child” has not been defined for the purpose of the Conventions and the Protocols as a whole. An age-limit of either 15 or 18 years has, however, often been added. The provisions relating to the protection of children therefore have a specific character. They define the rights of the child in precise and practical terms.
6. We are confronted, on the one hand, by a draft convention characterized by the general and global nature of both its scope and its provisions and, on the other, by the provisions of the Geneva instruments, which are more precise and which apply only in times of armed conflict. The two texts are not incompatible. It is necessary to point out, however, that the protection accorded by existing law must not be reduced by the draft convention. We considered whether it was necessary to express this idea by means of a reservation upholding existing law. This does not seem to be the case, since the provisions of positive law, which go further than the proposed law, must be regarded as *leges speciales*. This is particularly true of the 1949 Geneva Conventions and the Protocols additional thereto which, as *leges speciales* for situations of armed conflict, will remain fully in force. If, however, there was any doubt on this point, a clause should be formulated and inserted in the draft.
7. In order to avoid any ambiguity, we propose that the material scope of the draft should be clarified by the addition of the words “in all circumstances” after the words “shall be entitled” in article I.

C. First reading (1979-1988)

The text of article 38, which was not based on any article of the revised Polish draft, was discussed and adopted by the Working Group in 1986. Additional proposals were submitted to the Working Group in 1987 and 1988 with the

result that the article was reconsidered in 1988 and a new sentence was added to paragraph 2 at that time. This article was referred to as article 20 throughout the first and second readings.

1. Revised Polish draft (1979)

The revised draft did not contain an article relating to children in armed conflicts.

2. Proposal submitted to the Working Group (1980)

(a) Friends World Committee for Consultation (Quakers)

The following text, taken from document E/CN.4/NGO/265, was made available to the Working Group at its 1980 session.

The Friends World Committee for Consultation at its last triennial meeting in Switzerland considered and endorsed the following resolution of the Switzerland Yearly Meeting of Friends:

In this International Year of the Child, we wish to go on record against the practices of training children to kill and maim other human beings. We regret that the United Nations Declaration on the Rights of the Child offers no protection even against the use of children in open fighting. We encourage the United Nations and the international organizations to press for measures against the participation of children in military training and action.

We believe that it would be valuable for the convention on the rights of the child, now under discussion by the United Nations Commission on Human Rights, to include a provision comparable to the provision set forth in the protocols adopted by the International Diplomatic Conference on Humanitarian Law in 1977:

“(The Parties to the conflict) shall take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular they shall refrain from recruiting them into the armed forces.”

3. Proposal submitted to the Working Group (1981)

(a) Friends World Committee for Consultation (Quakers)

The following text, taken from document E/CN.4/NGO/295, was made available to the Working Group at its 1981 session.

We have been informed within the past year about children of ten countries who have been taking part in civil wars, in resistance movements, in wars of liberation from colonial powers, and in international conflicts. In a considerable number of additional countries, young people under 15 are reported to be involved in paramilitary or military training. We regret these practices, and we continue to alert our members and the public about the problems and to improve the situation in specific instances.

We regret that the United Nations Declaration on the Rights of the Child does not include a stand in principle against training children to kill and cripple other human beings and using them in open warfare.

We urge that the convention on the rights of the child, now being prepared by the Commission on Human Rights, should include a provision encouraging Governments to take measures to ensure that children do not take a direct part in hostilities and that children are not recruited into the armed forces.

4. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal for a new article

(Submitted by the following non-governmental organizations in consultative status: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child

Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers, World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, paragraph 13.

1. Without prejudice to the application of other relevant articles of the present Convention, States parties to an armed conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities, and in particular, they shall refrain from recruiting them into their armed forces. [In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States parties to the armed conflict shall endeavour to give priority to those who are the oldest.]*

2. If, in exceptional cases, despite the provisions of paragraph 1, children who have attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this provision, whether or not such children are prisoners of war.

3. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.

* Friends World Committee for Consultation wishes to dissociate itself from this last sentence.

5. Proposal submitted to the Working Group (1983)

(a) Algeria

The following is taken from document E/CN.4/1983/WG.1/WP.27.

1. The States Parties to the Convention have the right and the duty individually and collectively to eliminate colonialism, apartheid, racial discrimination, neocolonialism and all forms of foreign aggression, occupation and domination and their economic, social and cultural consequences, as a necessary prerequisite for the harmonious development of children and their families.

2. Children should be protected in all circumstances and especially during armed conflicts against attacks, acts of violence, bombardments and other inhuman practices which impair their moral and physical integrity.

6. Proposals submitted to the Working Group (1984)

(a) Canada

The following proposal concerning present article 29 (aims of education) is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

1. The States Parties to the present Convention recognize that the bringing up and education of the child should promote the full development of his personality, his respect for human rights and fundamental freedoms.

2. The child should be prepared for an individual life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups.

3. The States Parties to the present Convention undertake to ensure that the child is educated in harmony with the principles of peace proclaimed by the United Nations.

4. In accordance with paragraphs 1, 2 and 3 of this article, the States Parties to this Convention undertake to protect the child from conscription or from use in military combat.

(b) Islamic Republic of Iran

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).

(a) The States Parties to the present Convention, guided by the principles of international customary law and Geneva law, shall refrain from committing a military attack and bombardment of undefended cities and the civilian population, inflicting incalculable suffering, especially on children who are the most vulnerable members of the population.

(b) The use of chemical and bacteriological weapons in the course of armed conflict constitutes one of the most flagrant violations of the Geneva Protocol of 1925, and the principles of international humanitarian law and inflicts heavy losses on civilian populations including defenceless children, such acts constitute a crime against humanity.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following proposal, made available to the Working Group at its 1984 session in the Report on informal consultations among international non-governmental organizations (December 1983), is taken from document E/CN.4/1985/WG.1/WP.1.

1. The States Parties to the present Convention shall refrain from recruiting children into the armed forces and shall take all measures to ensure that children do not take part in hostilities.

2. Recognizing the special vulnerability of children, the States Parties to the present Convention shall, in cases of internal and international armed conflicts, take special measures to prevent all children from being subjected to any form of physical or psychological violation and to ensure that they are always among the first to receive protection and care.

7. Proposals submitted to the Working Group (1985)

(a) Netherlands, Belgium, Sweden, Finland, Peru and Senegal

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, annex II).

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.

2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following proposal, made available to the Working Group at its 1985 session in the Report on informal consultations among international non-governmental organizations (December 1984), is taken from document E/CN.4/1986/WG.1/WP.1, page 58. Paragraphs 1 and 2 of the proposed new article were submitted to the Working Group in 1984 (see section 6 above).

1. The States Parties to the present Convention shall refrain from recruiting children into the armed forces and shall take all measures to ensure that children do not take part in hostilities.

2. Recognizing the special vulnerability of children, the States Parties to the present Convention shall, in cases of internal and international armed conflicts, take special measures to prevent all children from being subjected to any form of physical or psychological violation and to ensure that they are always among the first to receive protection and care.

3. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts and which are relevant to children in this situation.

8. Discussion in the Working Group (1985)

The following is taken from the 1985 report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64, para. 9).

9. [...] The representative of the Netherlands also drew the Working Group's attention to a proposed article relating to children in armed conflicts submitted by the delegations of the Netherlands, Belgium, Finland, Peru, Senegal and Sweden, in order that Governments might review this proposal for discussion at the Group's next session.

9. Modified proposal submitted by Poland (1986)

The following text is taken from document A/C.3/40/3, paragraph 12.

Article 20

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to the child.

2. In order to implement these obligations, the States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.

10. Proposal submitted to the Working Group (1986)

(a) Iraq

For the text of this proposal, see paragraph 124 in section 11 below.

11. Discussion in the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 124-145).

124. In 1985, the delegations of Belgium, Finland, the Netherlands, Peru, Senegal and Sweden had submitted a proposed new article to be incorporated in the draft convention as article 20 and that read as follows:

“1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.

2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.”

A proposal submitted by the delegation of the Islamic Republic of Iran in 1984 read as follows:

“(a) The States Parties to the present Convention, guided by the principles of international customary law and Geneva law, shall refrain from committing a military attack and bombardment of undefended cities and the civilian population, inflicting incalculable suffering, especially on children who are the most vulnerable members of the population.

(b) The use of chemical and bacteriological weapons in the course of armed conflict constitutes one of the most flagrant violations of the Geneva Protocol of 1925, and the principles of international humanitarian law and inflicts heavy losses on civilian populations including defenceless children, such acts constitute a crime against humanity.”

In addition, the delegation of Iraq submitted the following proposal in 1985:

“1. Special respect must be shown for children. Their protection must be ensured and the parties to the conflict must provide them with the care and assistance that they need by virtue of their age.

2. On the occurrence of an armed conflict, the parties involved therein must take every possible measure to ensure that children do not participate directly in hostilities and are not sent to combat areas. The said parties shall, in particular, refrain from mobilizing these young persons in their armed forces.

3. If, in exceptional circumstances and notwithstanding the provisions contained in the preceding paragraph, children participate directly in hostilities and are captured by the adversary, they shall continue to enjoy the special protection to which they are entitled under this article.

4. In the event of children being captured, detained or interned for reasons connected with an armed conflict, they must be confined in places separate from those assigned to adults.”

The delegation of Poland submitted a proposal in document A/C.3/40/3 that read:

“1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to the child.

2. In order to implement these obligations, the States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.”

All those proposals were reintroduced at the Working Group’s current session as originally submitted. A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1 [see section 7 above].

125. The proposal by the delegation of Poland was taken as the basis for discussion. The observer for the International Committee of the Red Cross made a statement.

Paragraph 1

126. The representative of the United States expressed the view that the phrase “rule of international humanitarian law applicable in armed conflicts” was ambiguous; she therefore proposed inserting the words “to them” after the word “applicable” to make clear that States are not obliged to respect “rules of law” contained in treaties to which they are not a Party, unless such “rules” are binding as customary international law.

127. While understanding the concern of the representative of the United States, the representative of France suggested adding the phrase “as defined by the international conventions regularly approved and

ratified by States” after the words “armed conflicts”. The observer for the Netherlands, supported by the observers for Finland and Canada, voiced his concern over the proposal by the French delegation. They stated their preference for leaving the text as it stood. In a spirit of compromise, the observer for Finland suggested inserting the words “the relevant” before the words “rules of international humanitarian law” and ending the paragraph after the words “armed conflicts”.

128. The representative of France further revised her proposal and suggested adding the phrase “as they arise from custom and conventions applicable to States in case of armed conflicts” after the words “humanitarian law”. The delegations of Austria and Japan indicated their preference for keeping the text as it stood in the original version. The delegations of the Netherlands, Norway and Poland, while also expressing their preference for the original proposal, stated that they would support the proposal by the United States for the reasons put forward by that delegation.

129. The Working Group then proceeded to adopt paragraph 1 of article 20 as follows:

“The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”

Paragraph 2

130. The representative of the United Kingdom proposed replacing the word “recruiting” by the word “conscripting” and suggested adding the words “under the age of fifteen” after the word “children” in the third line of the paragraph. The observer for the Netherlands did not agree with the inclusion of the word “conscripting” and the representative of the United Kingdom therefore proposed adding the word “compulsory” after the word “recruiting”.

131. The delegations of Bangladesh and Canada stressed the importance of qualifying the definition of children by making a reference to the age of 15. The observer for the International Committee of the Red Cross drew the attention of the Working Group to the Additional Protocols of 1977 to the Geneva Conventions of 1949 which set the age below which children may not be recruited into the armed forces at 15. In this connection, the representative of Canada, supported by the representative of Norway, suggested adding the words “who have not attained the age of fifteen years” after the word “children”. The representative of the United Kingdom then withdrew his amendment reading “under the age of fifteen” in favour of the Canadian amendment.

132. The representative of Venezuela proposed inserting the words “and using” after the word “recruiting”, and replacing the words “take part” by the words “participate in any way”; she disagreed with the proposed reference to a minimum age of fifteen years, expressing her preference for a minimum age of eighteen years.

133. The observer for Finland proposed reformulating the paragraph as follows:

“In conformity with the relevant rules of international humanitarian law, States Parties to the present Convention shall take all feasible measures to ensure that no child takes part in any way in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into the armed forces.”

134. The Finnish proposal was supported by the delegation of the Netherlands. The observer for Finland, after listening to a statement by the delegation of Japan, proposed that the phrase “In conformity with the relevant rules of international humanitarian law”, be deleted. The representative of the USSR stated that, if the age of 15 years were to be maintained in the provision, it could create problems in the second reading, particularly because there was no reference in the draft convention to a minimum age for employment of children.

135. The Chairman then decided to invite the delegations of Finland, the USSR, the United Kingdom and Venezuela to hold informal consultations with a view to drafting a new text for paragraph 2.

136. As a result of these consultations, the representative of the USSR introduced the following revised text for paragraph 2:

“States Parties to the present Convention shall take all feasible measures to ensure that no child takes direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces.”

137. During the debate, the representative of Algeria expressed her disagreement with the proposed age-limit, and indicated her wish that the age of 18 years, which appeared in article 1 of the draft convention, be maintained in the text under discussion. The delegations of the Netherlands and the United Kingdom stressed that the text should remain as proposed by the informal drafting party.

138. The representative of the United States suggested that the phrase “takes direct part in hostilities” should read “takes a direct part in hostilities”. The suggestion was accepted by the representatives of France and the United Kingdom.

139. The representative of Algeria introduced an amendment to paragraph 2 which consisted in inserting the words “against his or her will” after the words “a direct part”. Many delegations objected to such an amendment, the general feeling being that it would be contrary to the spirit of the convention. The representative of Algeria placed on record her reservation regarding this provision and her wish to return to it at a later stage.

140. After a further exchange of views, the Working Group adopted paragraph 2 as follows:

“States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces.”

Paragraph 3

141. The observer for Sweden introduced a text for an additional paragraph 3 which read: “In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take any necessary measures to ensure protection and care of children.”

142. The observer for the Netherlands indicated his agreement with the aforementioned paragraph. The representative of the United States also expressed her support for the paragraph and proposed adding the following words: “and shall refrain from making children the object of armed attack”.

143. The Chairman requested the observer for Sweden, in consultation with the delegations of Australia, the Netherlands and the United States, together with the International Committee of the Red Cross, to submit a revised text to the Working Group.

144. The observer for Sweden submitted the revised proposal which read:

“In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by a conflict.”

145. The representative of the German Democratic Republic proposed deleting the word “a” at the end of the paragraph and replacing it with the words “an armed”. With this amendment and the introduction of the words “to this Convention” after the words “States Parties”, the Working Group adopted paragraph 3 as follows, with the general understanding that it includes a prohibition on making civilian children the object of armed attack.

“In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

12. Proposals submitted to the Working Group (1987)

(a) International Committee of the Red Cross (ICRC)

The following text from document E/CN.4/1987/WG.1/WP.4 was also reproduced in part in document E/CN.4/1988/WG.1/WP.2, page 17.

[...]

It is above all paragraphs 2 and 3 of article 20 which give rise to comment.

1. Paragraph 2

Paragraph 2 speaks of taking part in hostilities (first sentence) and recruitment (second sentence).

1.1. As far as taking part in hostilities is concerned, this provision might, it is true, appear to extend somewhat the protection afforded by the 1977 Protocols. Indeed, article 20, paragraph 2, prescribes that the “States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct [part] hostilities ...”. The term “child” must be interpreted in accordance with article 1 of the draft convention which gives the following definition: “According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier”. Although in most industrialized countries this age is 18 years or even older, it is to be feared that in other parts of the world, in fact those parts where armed conflicts most often take place, the age of majority is reached earlier. In Islamic countries, the age of majority is reached by boys between 12 and 15 years of age and by girls at 17 years of age.¹⁶ The law in force in Angola since 9 February 1982 fixes the age at 14 years.¹⁷ In this connection, the International Union for Child Welfare (IUCW) declared during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977): “In a number of developing countries, especially in Africa, children of 14 are already adults.¹⁸...” This is one of the reasons for which the age of 15 years was maintained in the 1977 Protocols, which represents some progress while remaining realistic.

The Working Group could have taken advantage of the adoption of article 20 to improve protection by prescribing that the States Party to the present Convention take all “necessary” measures instead of “all feasible” measures. In other words, the text which was finally approved means that voluntary participation by children is not totally prohibited. During the Diplomatic Conference (1974-1977), the ICRC had proposed the words “necessary measures” but this was, unfortunately, not accepted. Protocol I, article 77, speaks of “feasible measures”.

Likewise, the Working Group could have strengthened protection by removing the word “direct”. The ICRC suggested this too during the Diplomatic Conference but the proposal was not approved. This being the case, it can reasonably be inferred from the present article 20 of the draft convention that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.

By contrast, Protocol II, article 4, paragraph 3, goes further, dispensing with terms such as “feasible measures” and “direct”.¹⁹

In other words, the first sentence of the second paragraph in article 20 does nothing to improve the protection of children over that provided by the Protocols.

¹⁶ Quoted by Philippe Saunier in his study on children in armed conflicts, University of Nice, February 1986, p. 18.

¹⁷ Quoted by the same author, p. 19.

¹⁸ Quoted in “New Rules for victims of armed conflicts. Commentary on the two 1977 Protocols additional to the Geneva Conventions of 1949” by M. Bothe, K. J. Partsch, W. A. Solf, The Hague/Boston/London, 1982.

¹⁹ Protocol II, article 4, paragraph 3 (c): “children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.

1.2. As for the question of recruitment (second sentence of the second paragraph), one can only conclude that it does not go as far as Protocol I. In fact, Protocol I, article 77, paragraph 2, adds: "... In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict shall endeavour to give priority to those who are oldest". This was a compromise on the part of the Diplomatic Conference (1974-1977); indeed, one delegation had proposed an amendment in which the minimum recruiting age would be raised from 15 to 18 years. The majority was opposed to extending the ban on recruitment beyond 15 years of age but, in recognition of this proposal, the provision was made that in recruiting persons between the ages of 15 and 18, those oldest would be recruited first.²⁰

2. Paragraph 3

But it is paragraph 3 which presents the greatest risk of weakening international humanitarian law.

In using the wording "... States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict", the authors of article 20 failed to incorporate the rule prohibiting attacks on civilians and therefore, obviously, on children. Certainly one of the fundamental rules of international humanitarian law applicable in armed conflicts is the one stating that the parties to the conflict shall, at all times, distinguish between the civilian population and the combatants in such a way that the population and civilian objects are spared. Neither the civilian population as such nor individual civilians may be the object of attack. Attacks may only be made on military objectives.²¹ This principle conveys the humanitarian rules applicable in any of the situations normally faced by armed forces. They are set forth in more detail in treaties such as the Regulations of the Hague of 1907 and the Geneva Conventions of 1949. The two Additional Protocols of 1977 reaffirm and develop these rules. Within the meaning of these instruments, the prohibition of attacks on the civilian population is an inviolable principle (Protocol I, article 51, paragraph 2). The right to care and assistance is also absolute. Article 23 of the Fourth Convention, for example, prescribes that "each High Contracting Party shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases". Several other provisions in the Fourth Geneva Convention and Protocol I prescribe similar assistance.

Conclusion

New instruments must not be allowed to undermine rights already acquired and weaken the special protection which has already been given to children in the Geneva Conventions of 1949 and their Additional Protocols of 1977. That is what is in danger of happening if, at its second reading, the wording of article 20 is not changed.

It should be noted that the Twenty-Fifth International Conference of the Red Cross adopted in October 1986 a resolution (Protection of children in armed conflicts) which "stresses that the protection accorded by the new convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols".

In addition, the provisions contained in article 20 must not convey the impression of addressing the entire question, and it must not be forgotten that there are some 25 articles covering this area which are in force in international humanitarian law.

In order to preserve the essential gains which have been made in international humanitarian law, we feel it important that the safeguard clause in article 21 of the draft convention on the rights of the child²² not be modified.

A more appropriate wording of article 20 could read as follows:

²⁰ See Official Records III, page 301, CDDH/III/325.

²¹ Twentieth International Conference of the Red Cross, Vienna 1965. Basic rules of the Geneva Conventions and their Additional Protocols, ICRC, September 1983, p. 7.

²² "Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party, or

(b) Any other international convention, treaty or agreement in force for that State."

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties to the present Convention shall take all necessary measures in order that children who have not attained the age of fifteen years do not take part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

(b) Rädna Barnen

The following is taken from document E/CN.4/1987/WG.1/WP.3.

Paragraph 1

This sentence refers to the international humanitarian law which is relevant. Though the expression “ensure respect” could have been more specific, this paragraph as a whole is not objectionable.

Paragraph 2

This text is no improvement as compared to the stipulations in the Additional Protocols (1977) to the Geneva Conventions. This in itself is disappointing as, during the decade since protocols were agreed, the real situation in this area has deteriorated seriously. In recent years a large number of children have been pushed into taking part in warfare itself, even in combative roles. Stricter rules in this field are required.

The formulation “all feasible measures” is weak and seems to indicate that, for instance, so-called voluntary participation by children is not totally prohibited. Better would be: “necessary measures.” The intention of the word “direct” could be inferred to mean that indirect participation, such as transport of weapons and munition would be allowed for minors.

However, the specification of the age below 15 means an indirect recognition that minors of 15, 16 and 17 years of age can be enlisted. This is a serious shortcoming, not least against the background of the misuse of boys of 15 and 16 in some countries. Therefore, the most relevant aspect is not covered. On the contrary, the text means a direct acceptance of recruitment of such young people.

The Red Cross Protocols at least address the problem. They state in an addition (Protocol I, article 77, paragraph 2): “In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict shall endeavour to give priority to those who are oldest.” The idea was that among the persons between 15 and 18 efforts shall be made to avoid recruiting the youngest. This was of course a compromise formulation. During the so-called Diplomatic Conference when this was discussed there were those who argued that the age should be 18 - full stop. This is the decent position.

The draft article 20 therefore represents a weakening of the humanitarian law which in turn also is unsatisfactory.

A possible solution would be to omit any reference to a specific age. In fact no other article refers to an age in that manner. The implication of simply stating that no child should be recruited would in reality be an aged limit of 18 for many countries but there are also countries with a more narrow (younger) definition of “child”. Article 1 of the draft convention says: “According to the present Convention a child is every human

being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.” This drawback, however, seems less serious than the one reflected in the present draft.

It has been argued that there is a distinction between the two bits of paragraph 2, in article 20. In relation to hostilities there is a reference to “child”, in relation to recruitment to the armed forces the age-limit is introduced. This could be interpreted to mean that though a 15-year-old could be enlisted to the army he could not be allowed to take part in hostilities. This is logical, but the problem is that this is a too fine point to be understood - or at least work - in practice. In situations of war all soldiers will be used.

Paragraph 3

This paragraph is weaker than international humanitarian law. It does not reflect the absolute prohibition against attacks on civilians including children. Attacks can only be made on military objectives. This is in fact one of the most fundamental principles of the Geneva Conventions. The formulation in article 20 makes this aspect relative; its use of “all feasible measures” in this context is most unfortunate.

Conclusion

The shortcomings in this text are serious. As the subject area is of such a fundamental importance, it is necessary to reopen the discussion on this very point before the draft is given its final form.

It is proposed that the revised article be given the following formulation:

1. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties to the present Convention shall take all necessary measures to ensure that no child takes part in hostilities and they shall refrain from recruiting any child into their armed forces.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties to this Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

13. Discussion in the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 160-165).

160. The delegations of both Sweden and Switzerland urged the Working Group to reopen the discussion on article 20 - adopted by the Group in 1986 - dealing with the protection and care of children affected by an armed conflict, in order to ensure better protection for them.

161. The delegation of Switzerland - which was the first to address the Working Group on the question - drew the Group's attention to resolution IX on protection of children in armed conflicts adopted by the Twenty-fifth International Conference of the Red Cross in October 1986, in operative paragraph 7 of which the Conference expressed its support for the work being done by the Commission regarding the drafting of a convention on the rights of the child, and stressed “That the protection accorded by the new convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols”.

162. The observer for Switzerland thought that article 20 failed to preserve the essential headway that had been made in international humanitarian law, and indicated that what was at stake was safeguarding the essential achievements of the various provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977, which applied to children in armed conflicts. He appealed to the Working Group not to allow those existing rights to be weakened and the special protection given to children under armed

conflicts by the Geneva Conventions and their Additional Protocols to be lessened. Accordingly, he suggested that the Working Group should reconsider the question at its next session, or at the latest during the second reading of the draft convention.

163. The Chairman reminded the observer for Switzerland that article 20 had been adopted the previous year with the participation of the delegations of Switzerland and of the International Committee of the Red Cross, and regretted that the ideas currently being expressed by the observer for Switzerland had not been put forward on the occasion of the adoption of that article by the Working Group.

164. The observer for Sweden said that her delegation had some questions concerning certain articles that had been adopted such as numbers 2, 4, 19 and especially article 20 which, she hoped, would be dealt with during the second reading of the draft convention. With respect to article 20, she regarded it as being only a first step in the work on the protection of children in times of war, and therefore thought that it would be of great value to take a new look at the article during the next session of the Working Group or, at the latest, during the second reading of the draft convention, with particular reference to paragraph 2 concerning recruitment into the armed forces. The Chairman reminded the observer for Sweden, also, that her delegation had been present the previous year during the discussion of article 20 by the Group.

165. The observer for the Netherlands was in agreement with the remarks made by the previous speakers to the effect that article 20 should be reviewed at a later stage, for the protection given to children in armed conflicts should at least be the same as that which they enjoyed under the Geneva Conventions and their Additional Protocols. He also pointed out the links that existed between article 1 and article 20 of the draft convention, and suggested that the Working Group should also review article 1. The representative of Venezuela agreed with the remarks on article 20 that had been made by previous speakers.

14. Proposals submitted to the Working Group (1988)

(a) Netherlands

The following is taken from document E/CN.4/1988/WG.1/WP.26.

New second paragraph

2. The States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 16 years into their armed forces.

(b) Sweden

The following is taken from document E/CN.4/1988/WG.1/WP.19.

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all necessary measures to ensure that persons who have not attained the age of eighteen years do not take part in hostilities and they shall refrain from recruiting into their armed forces persons below the age of fifteen years. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to the present Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

(c) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, which was reproduced in document E/CN.4/1988/WG.1/WP.2, page 17, see the proposal by Rädde Barnen in 1987, section 12 above.

15. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 71-79 and 223).

Article 20, additional sentence to paragraph 2 (Armed conflicts)

71. With regard to article 20, two proposed amendments to the text already adopted were submitted to the Working Group by Sweden and the Netherlands (E/CN.4/1988/WG.1/WP.2, E/CN.4/1988/WG.1/WP.19 and E/CN.4/1988/WG.1/WP.26 respectively).

72. The observer for Sweden introduced his proposal and stated that since the adoption of article 20 in 1986, the General Assembly had drawn up guidelines for the development of international instruments in the field of human rights in resolution 41/120. By that resolution, the Assembly had urged Member States, when developing new international human rights standards, to give due consideration to the established international legal framework, so as to ensure that such standards were consistent with existing provisions of human rights law. Article 20, as adopted in 1986, undermined existing standards of international humanitarian law, in particular, the Geneva Conventions of 1949 and the two Additional Protocols thereto, and resolution IX adopted by the 25th International Conference of the Red Cross (23-31 October 1986) had stressed that the protection accorded by the new convention on the rights of the child should be at least the same as that accorded by the Geneva Convention and the two Additional Protocols. The Swedish proposal did not indicate a revision of article 20 but only some amendments that would bring the text into line with the above-mentioned international humanitarian instruments. The following amendments were proposed: in paragraphs 2 and 3, to replace the words “feasible measures” by “necessary measures”; in paragraph 2, to replace the word “child” in the second line by “persons who have not attained the age of 18 years”; in the same line, to delete the word “direct”. Concerning recruitment into the armed forces, it was proposed to insert as the last sentence a text based on article 77, paragraph 2, of Additional Protocol I to the Geneva Conventions which read: “In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest”.

73. The observer for the Netherlands withdrew his proposal (E/CN.4/1988/WG.1/WP.26) and stated that he supported the proposal submitted by Sweden.

74. Numerous members and observers spoke on this matter and voiced their support to the spirit of the proposal, indicating that it involved a considerable improvement on article 20 as adopted, because it complied with General Assembly resolution 41/120. It was pointed out, however, that the expression “necessary measures” and the deletion of the word “direct” in the phrase “take direct part in hostilities” would be an improvement on the standard in the Additional Protocols to the Geneva Conventions. Another observer strongly supported the proposal and stated that the proposed amendments to paragraph 2 of article 20 would improve the protection of the child in armed conflicts, which was necessary if there was a will to provide special protection for children. The representative of the International Committee of the Red Cross supported the proposal and stressed the need to include those standards in the convention on the rights of the child thereby strengthening the position of the Red Cross when carrying out its humanitarian activities in armed conflicts. The representative of the High Commissioner for Refugees also supported this proposal as strengthening the protections afforded to refugee children.

75. One participant stated that article 20 as adopted was the result of a compromise and that the necessary revision should be done in connection with the revision of article 1, giving priority to the latter.

The group should not limit itself to revision of the concept of recruitment and recruitment age, because the real problem was the militarization of children in official, private or informal armies. Children should be assured a “different” protection, not the same protection as adults. One participant shared the view that it was premature to take decisions on the age of recruitment until a satisfactory definition had been achieved in article 1. Another pointed out an inconsistency in paragraph 2 of article 20 in which two definitions of “child” were contained, one of them contradicting that in article 1.

76. The proposed text met with objections from some participants, who stated that some norms in their national legislation prevented them from supporting it. However, they were ready to take the question to their Governments and to study all the information that the International Committee of the Red Cross or other organizations wished to provide. On that basis, some participants stated that they would prefer to reopen the debate on article 20 at second reading and not during this session.

77. The observer for Egypt expressed the view that his delegation would like to include in article 20 a differentiation between voluntary recruitment by military schools and obligatory recruitment.

78. The Chairman of the working group drew the attention of participants to the fact that two different items were dealt with in the discussion: the first involved amendments to the existing text, which improved international standards, the second was the insertion in paragraph 2 of a new text, which was taken from article 77 of the Additional Protocol I to the Geneva Conventions. The Chairman’s point was taken by some participants, who suggested the insertion of the new text based on Additional Protocol I in paragraph 2 of article 20, and leaving the amendments to the existing text for the second reading of the convention. That suggestion was agreed to by all the participants and the new text, to be added to paragraph 2, was adopted to read as follows:

“In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.”

79. The observers for Sweden and the Netherlands stated that they had joined the consensus on the understanding that the other parts of the text would be reviewed at second reading of the convention (see below paragraph 223).

[...]

PROPOSALS DISCUSSED, BUT NOT ADOPTED, BY THE WORKING GROUP:

223. The parts of the proposal submitted by the representative of Sweden (E/CN.4/1988/WG.1/WP.19) which were not adopted during the current session (see above paragraphs 71 and 79) were also deferred to second reading as follows:

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all necessary measures to ensure that persons who have not attained the age of eighteen years do not take part in hostilities and they shall refrain from recruiting into their armed forces persons below the age of fifteen years.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to the present Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.”

16. Text as adopted at first reading

The following text is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 20

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

D. Technical review (1988)

1. Comment by the Office of the United Nations High Commissioner for Refugees (UNHCR)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 39.

As UNHCR pointed out during the last session of the Working Group, draft article 20 provides a lower standard of protection to children in armed conflicts than that which currently exists in international humanitarian law. In line with General Assembly resolution 41/120, we would hope that the standard set by article 20 would be raised to meet or surpass current norms. This would be in keeping with resolution 41/120 and the thrust of the Working Group's efforts concerning the draft convention as a whole and in line with articles 55 (c) and 56 of the Charter of the United Nations which enjoin United Nations Member States to take joint and separate action to achieve universal respect for, and observance of, human rights and fundamental freedoms for all.

2. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 40.

Paragraph 1. The view has been expressed that the present formulation of this paragraph, by virtue of the phrase "applicable to them", might be read to cover only those States which have specifically undertaken relevant humanitarian law treaty obligations. This would, however, be an incorrect interpretation. The existing language clearly applies equally to the customary law obligations of all States, as confirmed by the *travaux préparatoires*. Thus, no change is suggested.

Paragraph 2. Since the provisions of this paragraph draw heavily upon those contained in existing international humanitarian law treaties, it is particularly important to ensure that any deviation therefrom does not result in a diminished level of protection, thus contravening General Assembly resolution 41/120.

One issue which has been raised is whether the use of the qualifier "feasible" before the word "measures" does not unduly dilute the level of obligation assumed by States Parties. The phrase is taken directly from article 77, paragraph 2, of the First Additional Protocol to the Geneva Conventions of 12 August 1949. It may be noted, however, that article 4, paragraph 3 (c), of the Second Additional Protocol, which contains a comparable provision, is cast in the form of an unqualified obligation on the part of States Parties. Moreover, article 4 is entitled "Fundamental guarantees", thus appearing to underline its importance. Consideration might thus be given to either deletion of the qualifier (so that the paragraph would read "States Parties ... shall [] ensure...") or to replacement of the word "feasible" by "necessary" or "possible".

Another issue relates to the absence of any specific minimum age in the first part of paragraph 2, which reads: “States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities ...” Read in conjunction with article 1 of the draft convention, this provision would enable a State Party, under whose law a child attains the age of majority at 14 years or younger, to avoid taking any measures to ensure that a 14-year-old child takes no direct part in hostilities.

That situation would, however, be in conflict with, and thus represent a diminution in, the level of protection granted in article 77, paragraph 2, of the First Additional Protocol to the Geneva Conventions, which applies to all “children who have not attained the age of fifteen years”. One solution would be to specify that age as applying to the first part of article 20, *paragraph 2*. On its own, however, such a solution would reduce the level of protection currently provided by the draft convention to children in States where the age of majority is above fifteen years. A better solution, which ensures no reduction in the present level of protection and no lowering of the standard contained in the First Additional Protocol, would be to add a new sentence after the word “hostilities” to the effect that:

“This provision shall apply to every child who has not attained the age of 15 years and to any other child below the age of 18 years who, under the law of his *or her* State, has not attained the age of majority.”

The remaining part of paragraph 2 could then be placed in a new paragraph 2 bis which would begin:

“States Parties to the present Convention shall refrain from recruiting any child ...”

The division of the existing paragraph 2 into two separate paragraphs would also seem to be warranted given the significantly different nature of the two issues dealt with: non-participation in hostilities, and non-recruitment into the armed forces.

Paragraph 3: This paragraph provides that:

“States Parties ... shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

Limiting the measures which are required to be taken to those which are considered to be “feasible” would seem to constitute a very significant diminution of the level of protection already provided by a wide range of existing treaty provisions, including in particular the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

In this connection, it is appropriate to recall the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in which the General Assembly solemnly proclaimed, *inter alia*, that:

“All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children.”

In order to avoid any diminution of existing standards, consideration might be given to replacing the word “feasible” by “necessary” or shortening the phrase to read: “States Parties ... shall [] ensure...”

3. Comment by the International Committee of the Red Cross (ICRC)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 41.

As you know, article 20 of the said draft convention on children in armed conflicts is of particular interest to the ICRC. This provision, as adopted during the first reading, falls short of the norms set by international humanitarian law currently in force. We are enclosing a critical study of article 20 as it compares with international humanitarian law, which was published in the Norwegian review, “Mennesker og Rettigheter” in 1986.

We are also sending you several texts presenting the ICRC's position in this matter.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

The following written proposals were submitted at second reading.

(a) Federal Republic of Germany

The following is taken from document E/CN.4/1989/WG.1/WP.51.

Reformulate the second paragraph as follows:

2. States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting *any person who has not attained the age of 18 years* into their armed forces. *A reservation as to this age is permitted. A State Party which has made a reservation to this effect shall, nevertheless, refrain from recruiting any child who has not attained the age of 15 years into its armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the State Party concerned shall endeavour to give priority to those who are oldest.*

(b) India

The following is taken from document E/CN.4/1989/WG.1/WP.16.

Article 20 (2)

In view of the fact that article 1 provides the uniform age-limit of 18 years for the child, an age-limit of 15 years in this paragraph would not be harmonious with the rest of the convention. Accordingly, it is proposed that this paragraph ends with the words "a direct part in hostilities" and that the rest of paragraph may be deleted.

(c) Sweden

For the text of this proposal, which was reproduced in document E/CN.4/1989/WG.1/WP.50, see the proposal submitted by Sweden to the Working Group in 1988, section 14 above. The only change in 1988 was the deletion of the words "to the present Convention" in paragraphs 1, 2 and 3.

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 600-622).

600. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF (E/CN.4/1989/WG.1/WP.2). The text read as follows:

"1. (The) States Parties (to the present Convention) undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties (to the present Convention) shall take all *necessary* (feasible) measures to ensure that no child takes a direct part in hostilities. *This provision shall apply to every child who has not attained the age of 15 years and to any other child below the age of 18 years who, under the law of his or her State, has not attained the age of majority.*

2 bis. States Parties (and they) shall refrain (in particular) from recruiting any child who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, (the) States Parties (to the present Convention) shall endeavour to give priority to those who are oldest.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties (to this Convention) shall take all *necessary* (feasible) measures to ensure protection and care of children who are affected by an armed conflict.”

601. The Working Group also had before it a proposal for the article made by a drafting group consisting of Angola, Australia, Austria, France, India, Italy, Mozambique, the Netherlands, Norway, Sweden, the United States of America, UNHCR, ICRC, Friends World Committee for Consultation (Quakers) and Rädta Barnen (E/CN.4/1989/WG.1/WP.65). The text read as follows:

“1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. [States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities. *With respect to persons who have attained majority before the age of 18 years, States Parties shall endeavour to prevent them from taking a direct part in hostilities. Persons who have not attained the age of 15 years shall not be allowed to take part in hostilities.*]

2. [States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.]

3. States Parties shall refrain from recruiting any *person* who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all [feasible] [necessary] measures to ensure protection and care of children who are affected by armed conflict.”

602. In introducing the proposal contained in E/CN.4/1989/WG.1/WP.65 the observer for Sweden indicated that the group had reached a consensus on the text for paragraphs 1 and 3 but that, as the brackets indicated, no consensus had been reached on paragraph 2 or paragraph 4. With regard to paragraph 2 he indicated that the first version of that paragraph reflected the view of several members of the drafting group that the provision adopted in the first reading regarding participating in hostilities had to be supplemented, in order not to fall below existing standards, by an absolute bar against the involvement of children below the age of 15 years in hostilities, whether they had attained majority or not. Those delegations also felt that, although paragraph 3 made clear that persons from the age of 15 years could be recruited into armed forces and therefore could not realistically in every case be protected from participation in hostilities, States Parties should at least endeavour to prevent persons between 15 and 18 years of age from taking a direct part in hostilities. With regard to paragraph 4, consistent with the desire not to undermine existing standards regarding children involved in armed conflicts, several delegates supported the adoption of the word “necessary” because they took the view that that word was more in line with the absolute nature of current international standards concerning civilians in armed conflicts than the word “feasible”, which had been adopted during the first reading.

603. The representative of the United States of America stated that his country had no desire to see children involved in armed conflict and that it was for this reason that the United States joined consensus on article 20 during the first reading. He further indicated that since the article had been the subject of lengthy debates and a consensus arrived at as recently as 1986, his delegation would be willing to join a consensus in

favour of keeping the article as it was then adopted. In addition, he stated that this text reaffirmed existing international humanitarian law on the protection of children in armed conflict, in particular, by adhering to the language of article 77 of Protocol I to the Geneva Conventions of 1949. He stated that that language was the result of lengthy debates in the Diplomatic Conference convened during the last decade to draft the Protocols and that his Government did not believe that the Working Group was an appropriate forum to revise existing international law in this area. However, the representative of the United States of America indicated that, if at all the first reading text should be altered, it should be to replace the word “child” with the words “persons who have not attained the age of 15 years”, thereby prohibiting the sending, by States Parties, of very young “majors” to participate directly in armed conflicts. He explained that the 15-year age-limit reflected existing international law, whereas the formulation in the first proposal for the paragraph sought to alter the Law of War established in Protocol I in ways that the Diplomatic Conference concluded were unreasonable. With regard to paragraph 4, the representative of the United States of America expressed strong opposition to the proposal contained in E/CN.4/1989/WG.1/WP.65 to replace the word “feasible” with the word “necessary” because the latter would represent a standard which would be impossible for any State Party to implement. He further stated that his Government felt that it was more important for the convention to enforce existing standards rather than to create new ones which would not be observed.

604. Pursuant to the two introductory statements a lengthy debate was carried out regarding which text should be adopted for article 20. During the course of this debate a number of participants in the Working Group took the view that in order to ensure the maximum protection for children in the drafting of the present convention, the Working Group should not feel constrained by existing international standards. It was, however, the opinion of the representatives of the Union of Soviet Socialist Republics and the United States of America that neither was the Working Group mandated to review existing standards in international law nor was it an appropriate forum in which to do so.

605. The representatives of the Federal Republic of Germany and the United States of America were of the opinion that if no consensus text for article 20 could be reached then the whole article should be deleted. Numerous delegations spoke in support of the retention of the article and, in particular, the representatives of Austria, India, the Netherlands and New Zealand suggested that if no consensus could be reached then it would be necessary to adopt a text with brackets or alternative wording, to be settled by the Commission on Human Rights when it reviewed the text of the convention. In this connection, the Chairman suggested that it would be preferable for the Working Group to adopt a minimum text with a consensus rather than to transmit a text without consensus and with brackets to the Commission on Human Rights. Another solution put forward to solve a possible deadlock was that the article should be adopted only with whichever paragraphs on which a consensus could be reached.

Paragraph 1

606. Paragraph 1 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

“1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”

Paragraph 2

607. With regard to the two versions of paragraph 2 contained in E/CN.4/1989/WG.1/WP.65 there was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Colombia, Finland, France, the German Democratic Republic, the Holy See, India, Italy, Mexico, Mozambique, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the Union of Soviet Socialist Republics, the United Kingdom, Venezuela and the International Committee of the Red Cross in favour of the first version. The representatives of the Netherlands and New Zealand indicated that they would have preferred the paragraph to extend to children of up to 16 years of age but that they were willing to compromise and

accept a ban extending only to children of up to 15 years of age. Further to this the representative of Colombia raised the question of why, if the Working Group was willing to recognize rights generally for children of up to 18 years of age, the Working Group was not willing to protect children in times of armed conflict up to the same age-limit. The representatives of India and the United Kingdom indicated that, in spite of slight hesitations, they would support a consensus in favour of the first version of the paragraph. The representative of the United Kingdom indicated that his hesitation was based on the fact that the army of the United Kingdom contained children below the age of 18 years and that it would be difficult in times of hostilities to observe the express terms of the paragraph. Both the representatives of India and the United Kingdom indicated that if the first version of the paragraph was adopted they would wish to make reservations as to the extent to which their respective Governments would be in a position to observe it.

608. The representatives of the Union of Soviet Socialist Republics and the United States of America indicated their support for the adoption of the second version of the paragraph, and the representative of the United States of America stated his unwillingness to join a consensus in support of the first version of the paragraph.

609. In an effort to reach a compromise solution, the representative of the Union of Soviet Socialist Republics suggested that the concerns of the proponents of the first version could be met even if paragraphs 2 and 3 were deleted and the words "in particular the provisions of article 77 of the first additional Protocol to the Geneva Conventions" were added to the end of paragraph 1. Although the representative of the German Democratic Republic supported the text of the first version of paragraph 2 he indicated that if no consensus could be reached on either text, the proposal of the representative of the Union of Soviet Socialist Republics would be acceptable to him, but with the modification that neither version of paragraph 2 should be included. The observer for Sweden indicated that he could not support this solution, as it did not take into account the second additional Protocol to the Geneva Conventions, and in the interests of a compromise the representative of the Union of Soviet Socialist Republics withdrew his proposal for the addition to paragraph 1. Also in an attempt to find a compromise solution the observer for Sweden proposed a third possible text for paragraph 2 reading as follows:

"(a) States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities.

(b) No person below the age of 15 years may be exempted from the protection provided for in this paragraph on the grounds that he or she has attained majority."

610. Pursuant to the foregoing debate, the Chairman noted that some participants in the Working Group were unable to support the first version of the paragraph and observed that the Working Group could not agree on a compromise text to bridge the gap between the two versions contained in E/CN.4/1989/WG.1/WP.65. In view of these facts, he stated that since no participants in the Working Group had expressed opposition to the standards contained in the text of the second version of the paragraph, it was his suggestion that the Working Group should adopt that second version as it was the maximum level of protection on which a consensus could be reached. Participants in the Working Group did not express any opposition to the solution to the deadlock proposed by the Chairman. Therefore, the text of the second version of paragraph 2 contained in E/CN.4/1989/WG.1/WP.65 was adopted.

611. The text of paragraph 2 of article 20 was adopted to read as follows:

"2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."

612. Following the adoption of the paragraph, the representatives of Australia, Austria, Belgium, Finland, Italy, the Netherlands, New Zealand, Sweden, Switzerland and Venezuela stated that they could not join the consensus on paragraph 2. It was stated that the formulation was now deficient in that, although consistent with Protocol I of the 1977 Geneva Protocols, it failed to extend to children in internal conflicts a level of

protection equal to that recognized in Protocol II of the 1977 Geneva Protocols. Article 20 might thus be said to undermine existing standards of humanitarian law.

613. At this point, the representative of Norway asked the Chairman if consensus on paragraph 2 had been broken. In response, the Chairman confirmed that the consensus on paragraph 2 had not been broken.

614. The representatives of France and Italy made statements to be reflected in the report indicating that it was the policy of their respective Governments not to allow children below the age of 18 years to take part in hostilities.

615. The observer for the Netherlands made a statement for the report indicating that it was regrettable that the Chairman had allowed paragraph 2 to be adopted in the light of such extensive opposition to the chosen text.

616. The representative of Italy regretted that she had been called out of the room to receive her Government's instructions at the time paragraph 2 was adopted. She further indicated that had she been present in the room she would have strongly opposed the text that was finally adopted.

Paragraph 3

617. The text of paragraph 3 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

“3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.”

Paragraph 4

618. There was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Finland, the German Democratic Republic, the Holy See, Italy, Mexico, Mozambique, the Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Venezuela and the International Committee of the Red Cross to adopt paragraph 4 with the word “necessary” rather than “feasible”, which had been adopted during the first reading. This group of participants took this position because they felt that the word “necessary” more accurately reflected the absolute nature of protection which international instruments accorded civilians in times of armed conflict. In a spirit of compromise, the representatives of Austria, the Holy See, Mexico, the Netherlands and Spain were of the view that if “necessary” could not be adopted, they could support a consensus in favour of the adoption of the word “feasible”. The representative of the United States of America indicated a strong preference for the word “feasible” as had been adopted during the first reading in old paragraph 3.

619. In an effort to reach a compromise the representative of the United Kingdom suggested that the word “practicable” could be adopted as an alternative to either “necessary” or “feasible”. This proposal was supported by the representatives of India, the Union of Soviet Socialist Republics and the United States of America. However, in view of the concern of the observer for Australia that the word would mean that States Parties would do “only what they were able to do” the representative of the United Kingdom did not insist on his proposal. As a further alternative, the observer for Australia suggested the use of the word “possible” but the representative of the United States of America felt unable to join a consensus in support of this word. In a spirit of compromise the observer for Australia did not insist on his proposal.

620. Pursuant to the foregoing debate the Chairman noted that there was opposition in the Working Group to the adoption of the word “necessary” and observed that the Working Group could not agree on a compromise word as an alternative to “necessary” or “feasible”. Taking into account the fact that no participants in the Working Group had expressed opposition to the adoption of the word “feasible” and

the fact that some delegations had indicated that they were willing to support a consensus in favour of the word, the Chairman suggested that it might be a solution for the Working Group to adopt that word. No participants in the Working Group objected to the solution put forward by the Chairman.

621. The text of paragraph 4 of article 20 was adopted to read as follows:

“4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

622. After the adoption of article 20, the observer for Sweden requested the Secretariat to provide a transcript of the debate on that article as it was likely that the question would be subject to further deliberations. At the end of the afternoon meeting of 9 December 1988, the Chairman stated that concern had been expressed regarding the text adopted for article 20 on children in armed conflict. He stated that the text was not yet definitive because States could reopen issues they were concerned about when the Commission on Human Rights and the General Assembly considered the draft convention. He further indicated that the Working Group was an auxiliary body of experts mandated to draft the convention and that organs such as the Commission on Human Rights and the General Assembly, empowered to take political decisions, would decide on the final text of the convention.

3. Statements made during the adoption of the report

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 725 and 732-735).

725. The delegation of Portugal emphasized the importance it attached to the fact that, after lengthy analysis and exchanges of experience, it had been possible to complete a standard-setting exercise in the United Nations. A range of children's rights had been gathered together in a single text so as to ensure the protection of children in various fields and their active participation in society. It was in that spirit that Portugal viewed the convention and participated in the Working Group, taking into consideration, inter alia, two criteria for action: firstly, an openness to consensus; and, secondly, the need to take account of the provisions of other international instruments concerning human rights, particularly those adopted by the United Nations. There would certainly be articles where a different wording could have been desired and others where it would have been desirable to go further - that was the price that inevitably had to be paid to obtain a convention of universal scope. However, there were other instances where the draft convention did not measure up to the level of protection ensured by other legal instruments adopted by the international community. That was the case of article 38, and Portugal deeply regretted the fact. The delegation of Portugal added that, for the purpose of implementing that article, Portugal would also take account of article 41 of the draft convention, which invited States to take into consideration more favourable provisions applicable in their country.

[...]

732. During the meeting at which the report of the Working Group was adopted, with regard to the first sentence of paragraph 612 above, the representatives of Argentina, Bahrain, Egypt, the Federal Republic of Germany, Ireland, Morocco, Pakistan, Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America declared that paragraph 2 of article 20 had been adopted by consensus in the Working Group in the same manner as all other provisions in the draft convention. Other representatives confirmed that they had not been able to join the consensus on that paragraph.

733. The observer for Austria stated that the wording of paragraphs 612, 613 and 732 as adopted fairly reflected the unsatisfactory situation they were confronted with before and after the “adoption” of article 38

(former article 20) during the Group's session of December 1988. The Austrian delegation therefore reserved its position on the consequences of what was stated in the report.

734. The observer for Switzerland stated that his delegation had joined the consensus on paragraphs 612, 613 and 732 of the report relating to the adoption of article 38 (former article 20) of the convention. His delegation, however, referred to the speed and confusion which characterized the meeting during which article 38 (former article 20) was adopted and asked that the transcript of that meeting be annexed to the report.

735. The Chairman, in light of the discussion concerning the Swiss proposal, stated that the transcript would be made available at the Secretariat upon request.

Article 39 (Physical and psychological recovery and social reintegration)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

B. First Polish draft convention and comments (1978)

Neither the first draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 39 of the Convention.

C. First reading (1979-1988)

The text of article 39 was discussed and adopted by the Working Group in 1988. This article was referred to as article 18 sixto throughout the first and second readings.

1. Proposal submitted to the Working Group (1987)

(a) Norway

For the text of this proposal, see paragraph 157 in section 2 below.

2. Discussion in the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 157-158). The proposal referred to in paragraph 158 had been made in informal consultations rather than in a formal submission.

New unnumbered article, rehabilitation of exploited children

157. The delegation of Norway submitted the following draft article concerning the rehabilitation of children victims of exploitation, to follow the articles on exploitation already adopted by the Working Group:

“The States Parties to the present Convention shall take all appropriate measures to facilitate the physical, psychological and social rehabilitation of children who have been victims of exploitation or abuse of any kind.”

158. This draft article, which originated in a proposal by the Informal NGO Ad Hoc Group on the Drafting of the Convention, was supported by the representative of Venezuela who expressed the hope that it would be considered by the Group.

3. Proposals submitted to the Working Group (1988)

(a) Norway

For the text of this proposal, see paragraph 66 in section 4 below.

(b) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following is taken from document E/CN.4/1988/WG.1/WP.2.

New unnumbered article (Rehabilitation of exploited children)

The States Parties to the present Convention shall take all appropriate legal, administrative and other measures to ensure the physical, psychological and social rehabilitation of any child victim of: exploitation and abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; armed conflicts, international disturbances and natural disasters. Such rehabilitation shall take place in an environment which fosters the self-respect and dignity of the child.

4. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 66-70).

66. A proposal submitted by Norway (E/CN.4/1988/WG.1/WP.29) was introduced by the representative of that country, who explained that the proposal was based on the text of one submitted to the working group at its previous session by the NGO Ad Hoc Group (E/CN.4/1988/WG.1/WP.2, chap. IV). That proposal had been elaborated upon in consultation with other delegations and the NGO Ad Hoc Group, and read as follows:

“The States Parties to the present Convention shall take all appropriate legal, administrative and other measures to ensure the physical, psychological and social rehabilitation of any child victim of: all forms of exploitation and abuse, or any other form of cruel or inhuman treatment. Such rehabilitation shall take place in an environment which fosters the self-respect and dignity of the child.”

67. The members of the working group expressed their support for the proposal and the discussion focused on how to reflect the idea more precisely and how to cover all the concerns involved in the proposal. Some speakers stated that the words “any form” should replace “all forms” and that the word “neglect” should be inserted before the word “exploitation”. The terms “legal, administrative and other” seemed to be superfluous, since “all measures” sufficed to cover any of the measures that could be taken. It was also necessary to insert the word “health” before “self-respect”, and the word “torture” before “or any other form of cruel, inhuman or degrading treatment”.

68. The use of the expression “rehabilitation” was discussed at length. Some speakers stated that the word, in their respective languages, was linked to a very precise and restrictive idea and that it would not be understood if it were to be applied to the concepts involved in the proposal. Others were in favour of using that word, because it had been used in international meetings in relation to problems affecting disadvantaged children or adults, as well as in international instruments, such as the Convention against Torture (article 14). One member proposed using the word “*réadaptation*” in French, and another suggested the word “*readaptación*” in Spanish. It was suggested that the Spanish words “*recuperación y reintegración*” would be more appropriate. An English-speaking member found that those words were also appropriate in English and suggested “physical and psychological recovery and social reintegration”. Some speakers insisted that the word “rehabilitation” was the most appropriate one, but they withdrew their proposal in order to join the consensus on “recovery and reintegration”. The observer for Canada requested that his position in favour of the word “rehabilitation” should be reflected in the final report. The representative of France requested that the words should be translated into French as “*réadaptation physique et psychologique et réinsertion sociale*”.

69. One speaker wondered whether the second sentence was in fact needed, but the author of the proposal stressed that, if the second sentence were eliminated, it could be understood that any kind of medical

treatment or mechanisms for social adjustment would be acceptable in the context of the convention, which was not the idea of the members of the group.

70. The group finally reached a consensus and adopted the following text:

“The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

5. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 18 sixto

The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

D. Technical review (1988)

1. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 38.

This article deals with the physical and psychological recovery and integration of a child victim of, inter alia, neglect, torture or abuse, and requires recovery and integration to take place in an environment which fosters the health, self-respect and dignity of the child. Fostering the health of the child, under such circumstances, could be of concern to the World Health Organization.

E. Second reading (1988-1989)

1. Proposal submitted to the Working Group at second reading

(a) Norway

The following is taken from document E/CN.4/1989/WG.1/WP.48.

“The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; [armed conflicts]. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 526 to 532).

526. The Working Group had before it a text of the article as adopted during the first reading incorporating some suggested linguistic revisions (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“(The) States Parties (to the present Convention) shall take all [appropriate] measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

527. The Working Group also had before it a proposal (E/CN.4/1989/WG.1/WP.57) submitted by a drafting group consisting of Argentina, Finland, Norway, Senegal and the United Kingdom of Great Britain and Northern Ireland. The text read as follows:

“States Parties shall take all measures to enable physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment; punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

528. In introducing the proposal the representative of Norway indicated that the two differences between the proposal contained in document E/CN.4/1989/WG.1/WP.57 and the article as adopted during first reading were that the proposal envisaged covering an aspect of armed conflicts which the convention would otherwise have left uncovered and that the word “enable” had replaced the word “ensure” because the group felt that States could not be made to guarantee the recovery and reintegration of children.

529. The representative of Argentina suggested that the words “or imprisonment” be inserted after the word “punishment” in the proposal contained in E/CN.4/1989/WG.1/WP.[57]. The representatives of Canada and Venezuela were willing to support the proposal on the basis that the reference to imprisonment referred only to improper detention rather than imprisonment pursuant to the due process of law. However, the representatives of Norway and the Inter-American Organization took the view that the words “any other form of cruel, inhuman or degrading treatment or punishment” should meet the concerns raised by the representative of Argentina. Pursuant to the foregoing debate the representative of Argentina indicated that he would not insist on the adoption of his proposal.

530. The representatives for Australia, Norway and Sweden agreed with the reference to the proposal contained in E/CN.4/1989/WG.1/WP.57 that the word “or” should replace the semi-colon between the words “treatment” and “punishment”. They suggested that the semi-colon should be placed between “punishment” and “or armed conflicts”.

531. The representative of the United States of America proposed with reference to the proposal contained in E/CN.4/1989/WG.1/WP.57 to replace the word “enable” with “promote” because the latter implied more of an ongoing obligation. He also suggested that the word “appropriate” be inserted in between “all” and “measures” because, without the qualifying word, the obligation placed on States would be unduly strong. The representative of the Federal Republic of Germany supported both of these amendments to the proposal (E/CN.4/1989/WG.1/WP.[57]). The representative of Norway supported the inclusion of the word “appropriate” and the representative of the United Kingdom of Great Britain and Northern Ireland supported the insertion of the word “promote”. Although the observer for Sweden voiced concern regarding the substitution of the word “enable” by the word “promote” and indicated that he would have preferred the use of the word “rehabilitation” instead of “recovery”, in the interests of arriving at a consensus he did not insist on his reservations.

532. In the light of the foregoing debate, the text of article 18 sixto as adopted during the second reading reads as follows:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

Article 41 (Respect for higher standards)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

B. First Polish draft convention and comments (1978)

Neither the first draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 41 of the Convention.

C. First reading (1979-1988)

The text of article 41 was discussed and adopted by the Working Group in 1986. This article was referred to as article 21 throughout the first and second readings.

1. Proposals submitted to the Working Group (1983)

(a) Poland

For the text of this proposal, see paragraph 15 in section 2 below.

(b) Union of Soviet Socialist Republics

For the text of this proposal, see paragraph 17 in section 2 below.

2. Discussion in the Working Group (1983)

The following is taken from the 1983 report of the Working Group to the Commission on Human Rights (E/CN.4/1983/62, paras. 14-17).

14. It should be noted that in the course of the discussions, some speakers raised the question of the inclusion in the draft convention of a clause relating to the applicability of other international instruments, in particular, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In the view of some representatives, references to the Covenants could be the object of a final clause.

15. A number of proposals have been made concerning the inclusion in the draft convention of a saving clause dealing with the question of the applicability of other international human rights instruments. The representative of Poland proposed as article 19 (b) (E/CN.4/1983/WG.1/WP.10), the following text:

“This Convention shall not have the effect of diminishing the rights which the child may enjoy by virtue of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”

Several delegations supported the Polish proposal.

16. The representative of the United States suggested the inclusion of an article which would be formulated along the lines of article 23 of the Convention on the Elimination of All Forms of Discrimination against Women to the effect that:

“Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) in the legislation of a State Party; or
- (b) in any other international convention, treaty or agreement in force for that State.”

17. Mention should further be made of the proposal made by the USSR (in relation to paragraph 1 of article 6 bis) (E/CN.4/1983/WG.1/WP.7), which reads as follows:

“The States Parties to the present Convention recognize that the child should enjoy all the basic human rights in the spirit of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights”.

3. Proposal submitted to the Working Group (1984)

(a) Canada

For the text of this proposal, see paragraph 146 in section 5 below.

4. Modified proposal submitted by Poland (1986)

The following text is taken from document A/C.3/40/3, paragraph 12.

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The legislation of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State.

5. Discussion and adoption by the Working Group (1986)

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39, paras. 146-151).

146. In 1984, the delegation of Canada submitted a proposed new article to read:

“Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The legislation of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State.”

That proposal, which was also contained in document A/C.3/40/3 submitted by Poland to the General Assembly at its fortieth session, was reintroduced and generally supported by the members of the Working Group.

147. The representative of Austria proposed that the words “instrument or” be inserted in subparagraph (b), between the words “international” and “convention”. The delegation of Canada supported by the representative of the German Democratic Republic expressed its preference for retaining the subparagraph as submitted.

148. The representative of the United States, while supporting the article under consideration by the Working Group, felt that a third subparagraph should be included to read: “Other applicable law”. The observer for the Netherlands suggested that, in subparagraph (a), the words “or laws” be added between the words

“legislation” and “of a State Party”, and in subparagraph (b) that the words “customary law” be introduced between the words “international” and “convention”.

149. The representatives of Austria and the United States decided not to insist on their respective amendments which they accordingly withdrew.

150. The observer for Canada, supported by the delegations of the Netherlands and the United Kingdom, proposed that the word “laws”, in subparagraph (a), be replaced by the singular.

151. After a further exchange of views, the Working Group adopted the following text:

“Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State.”

6. Proposal submitted to the Working Group (1987)

(a) Finland

For the text of this proposal, see paragraph 130 in section 7 below.

7. Discussion in the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 130-132).

130. The Working Group had before it the following proposal, put forward by the delegation of Finland, for a paragraph 2 to article 21:

“Nothing in the present Convention may be interpreted as implying for any State Party to the present Convention any right to impose any restriction upon or derogation from any of the fundamental human rights recognized or existing in that State Party by virtue of law, conventions, treaties, agreements, regulations or customs on the pretext that the present Convention does not recognize such rights or that it recognizes them to a lesser extent (or that such restrictions or derogations would be necessary for the realization of the rights of the child).”

131. The observer for Finland orally amended the proposal by deleting the words in parenthesis “or that such restrictions or derogations would be necessary for the realization of the rights of the child”, at the end of the paragraph.

132. Following a brief exchange of views between the delegations of Finland and the United States as to the reasoning behind and justification for such a provision, no decision was taken by the Working Group on the proposal, and the observer for Finland suggested that it be considered at second reading of the draft convention.

8. Proposals submitted to the Working Group (1988)

(a) Finland

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 235).

“Nothing in the present Convention may be interpreted as implying for any State Party to the present Convention any right to impose any restriction upon or derogation from any of the fundamental human

rights recognized or existing in that State Party by virtue of law, conventions, treaties, agreements, regulations or customs on the pretext that the present Convention does not recognize such rights or that it recognizes them to a lesser extent.”

(b) Federal Republic of Germany

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, para. 235).

“Nothing in this Convention shall affect the right and the duty of parents and, where applicable, legal guardians, to take such measures as are required for the upbringing and well-being of the child.”

9. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 21

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State.

D. Technical review (1988)

1. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 42.

In connection with comments concerning article 7 ter, it is arguable whether the saving clause in article 21 of the draft convention would be adequate to ensure the trade union rights of young workers. This clause refers to “provisions that are more conducive to the realization of the *rights of the child*” that may be contained either in the law of a State Party or in an international instrument in force for that State. A State Party to the future convention and to both Covenants and to Convention No. 87 might argue that as a “child”, a worker under 18 might have restrictions imposed by law on his/her right to form and join trade unions. To prevent any possible litigations of this kind, it would be well to consider an appropriate addition to the present text of article 21 with a view to safeguarding the rights of the child as a worker.

The need for safeguarding the rights of the child as workers leads to a wider consideration: that of the need for a general saving clause in respect of other rights of the child as an individual human being. This appears necessary since the draft convention addresses a variety of human rights as directed towards the child, but does not cover all human rights pertaining to every human being, irrespective of age or other distinction or status.

It may be noted that a general saving clause regarding “fundamental human rights” was proposed by Finland at the 1987 session of the Working Group (see paragraphs 130-132 of its report E/CN.4/1987/25) with the suggestion that it be considered at second reading of the draft convention. In the view of the International Labour Organization, it appears desirable to include an appropriate additional paragraph to article 21 to provide that nothing in this Convention shall be deemed to affect any human rights which are laid down in international instruments or in national law that are in force and to which the child is otherwise entitled in his/her capacity and activities as a human being and as an individual person.

Such a saving clause would ensure coherence not only of principles (this is taken care of by the preamble of the present draft recalling that childhood is entitled to special care and assistance) but also of law between the future convention and other major texts of human rights.

2. Comment by the United Nations Children's Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 42.

As this article is presently formulated, it could be claimed that a provision of the convention which is less conducive to the realization of the rights of the child than a rule of customary international law should nevertheless take precedence over the latter. In order to avoid such a possibility, the Working Group might wish to consider adding the following provision:

“(c) customary international law”.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

(a) Finland

The following is taken from document E/CN.4/1989/WG.1/WP.53.

Article 21

2. Nothing in the present Convention may be interpreted as implying for any State Party to the present Convention any right to impose any restriction upon or derogation from any of the [fundamental] human rights recognized or existing in that State Party by virtue of law, conventions, treaties, agreements, regulations or customs on the pretext that the present Convention does not recognize such rights or that it recognizes them to a lesser extent.”

Note: Our delegation proposes that a new paragraph 2 be added to the present article 21. The proposed paragraph 2 is consistent with article 5 of the Covenant on Economic, Social and Cultural Rights (1966) as well as with article 5 of the Covenant on Civil and Political Rights (1966).

(b) Federal Republic of Germany

The following is taken from document E/CN.4/1989/WG.1/WP.52.

Reformulate article 21 as follows:

1. The scope of general human rights as enshrined in the law of a State Party or in any other international instrument shall not be affected by the provisions of this Convention which such rights only ensure for children.

2. States Parties shall ensure that any other human right which is not provided for in this Convention but is recognized by the State Party concerned apply to children as far as possible.

3. Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in the law of a State Party or in any other international instrument.

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 623 to 636).

623. The Working Group had before it a text of article 21 as it had been adopted during the first reading incorporating a suggested revision by UNICEF (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) the law of a State Party; (or)
- (b) any other international convention, treaty or agreement in force for that State; *or*
- (c) *customary international law.*”

624. The Working Group also had before it a proposed text for article 21 submitted by a drafting group consisting of Brazil, Canada, Finland, the German Democratic Republic, the Federal Republic of Germany, the Netherlands and the ILO (E/CN.4/1989/WG.1/WP.59). The text read as follows:

“Nothing in this Convention shall affect the obligation of a State Party:

- (a) to apply to the child any human right or any rule relating to the protection of the child to which that State Party is bound by its national law, by custom or by any international instrument, irrespective of such right or protection being recognized in this Convention as a right of the child,
- (b) to apply any other provision that is more conducive to the realization of the rights or protection of the child and that may be contained in the law or custom of the State Party or in any international instrument by which that State Party is bound.”

625. The representative of the Federal Republic of Germany, in introducing the proposal contained in E/CN.4/1989/WG.1/WP.59, indicated that the main concern of the drafting group was to ensure that the present convention would not derogate from the existing human rights obligations undertaken by States Parties. He further indicated that the words “irrespective of such right or protection being recognized in this Convention” in paragraph (a) of the proposal was to meet possible questions as to why certain rights accruing to children were not included in the convention. The representative of the Federal Republic of Germany also stated that the group had not included a reference to customary international law in its proposal because few such laws referred to children and therefore may cause confusion if mentioned.

626. Participants in the Working Group debated the proposal contained in E/CN.4/1989/WG.1/WP.59 during the course of which a number of delegations voiced reservations about the proposal.

627. The representatives of Italy, Portugal and the United States of America questioned the omission from the proposal contained in document E/CN.4/1989/WG.1/WP.59 of a direct reference to customary law because, especially in the field of humanitarian law, they felt it was directly relevant to children. The representative of Italy further pointed out that in not providing for customary international law the convention would be excluding the applicability of such law which may develop in future years. The representative of Argentina argued that such a reference would not be necessary because his delegation took the view that if customary international law did exist it only existed in special cases and not in the field of children’s rights.

628. The representatives of Poland, Portugal and Sweden also questioned why the proposal contained in document E/CN.4/1989/WG.1/WP.59 only spoke in terms of the protection of the child and not in terms of the rights of the child. The observer for Australia also questioned the use of the word “rule” in the proposal. He took the view, as did the representatives of Norway and Sweden, that as submitted the proposal could absolve States Parties from applying the obligations of the convention simply by acting in accordance with their domestic legislation, even if such legislation was not of as high a standard as the convention provided. A number of delegations felt that the text of the proposal was not adequately clear for effective implementation.

629. The representative of Argentina expressed the view that although the language of the proposal contained in document E/CN.4/1989/WG.1/WP.59 was cumbersome it was more legally precise than the text as adopted during the first reading. The representative of the ILO also made the point that the reference in the text adopted during the first reading to “more conducive” raised the question of who would be the arbiter of such a decision and on what criteria the decision would be based.

630. In order to meet some of the concerns raised regarding the proposal contained in document E/CN.4/1989/WG.1/WP.59 the observer for Finland suggested that in line [2] of paragraph (a) the words “by its national law, by custom or” be deleted and that in line[s] [2-3] of the same paragraph the word “any” be deleted and the word “instrument” be replaced by the word “law”. He indicated that in simplifying its terms the text of the proposal became clearer and that, in having a reference to “international law”, States would have the option of interpreting the phrase to include customary international law or not. Also with a view to meeting the concerns raised regarding the proposal contained in document E/CN.4/1989/WG.1/WP.59 the observer for Canada suggested that the text of article 5 (2) of the International Covenant on Economic, Social and Cultural Rights be substituted for paragraph (a). Both representatives felt it important to retain paragraph (b) as it was. The representative of the International Labour Organization agreed that a safeguard clause such as article 5 (2) of the Covenant would be a satisfactory alternative, should the proposal of the drafting group not be acceptable.

631. There was a consensus in the Working Group that the aim of article 21 was to ensure that the convention established a minimum standard of rights to be enjoyed by children. However, in view of the fact that the Working Group could not arrive at a consensus in support of the proposal contained in document E/CN.4/1989/WG.1/WP.59 and because the drafting group which submitted it did not insist on its adoption, the Chairman suggested that consideration of article 21 should continue based on the text adopted during the first reading.

632. With regard to the text adopted during the first reading the representative of France wished to see the article remain as it was. The representatives of India, Italy, Poland, Portugal and the United States of America however expressed a preference for the text including the suggested revision by UNICEF, as contained in document E/CN.4/1989/WG.1/WP.2.

633. The representative of the Union of Soviet Socialist Republics proposed that the words “or protection” be inserted after the word “rights” in the *chapeau* to the article, that paragraph (b) be redrafted to read “any other provisions of international law in force for that State” and that the suggested revision proposed by UNICEF be omitted. He indicated that this proposal would allow States to interpret international law as covering customary international law if they took the view that it did do so. The representative of Senegal also proposed that article 21 be basically left unchanged from the text adopted during the first reading but with a new paragraph reading “international law applicable to that State”. He took the view that it was desirable to avoid a listing or definition of international law for the same reason as the representative of the Union of Soviet Socialist Republics.

634. The representatives of Italy, Portugal and Sweden questioned the inclusion of the words “or protection” in the proposal of the representative of the Union of Soviet Socialist Republics. They took the view that the word “rights” alone covered any idea of “protection” and avoided possible misinterpretation. The representative of Portugal questioned the inclusion of the words “provisions of” in paragraph (b) of the proposal by the representative of the Union of Soviet Socialist Republics since the word “provisions” already existed in the introductory phrase to the article.

635. On the basis that the representative of the Union of Soviet Socialist Republics was willing to accept the amendments to his proposal and on the basis that “international law” was to be given the broad interpretation as covering customary international law, consensus was reached on a text for article 21.

636. The text of article 21 was adopted to read as follows:

“Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) the law of a State Party; or
- (b) international law in force for that State.”

Article 42 (Promotion of rights and dissemination of information)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

B. First Polish draft convention and comments (1978)

Neither the first draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 42 of the Convention.

C. First reading (1979-1988)

The text of article 42 was discussed and adopted by the Working Group in 1987. This article was referred to as article 21 ter throughout the first and second readings.

1. Proposal submitted to the Working Group (1987)

(a) NGO Ad Hoc Group (see annex III (B) for participating organizations)

For the text of this proposal, see paragraph 96 in section 2 below.

2. Discussion and adoption by the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 96 to 99).

96. The Working Group considered a text, which was supported by the delegation of Norway, for an article 21 ter submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention. The text read as follows:

“The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike, using forms, terminology and language (including local languages) accessible to them.”

97. The representative of Norway proposed that, in the above-mentioned text, the phrase “, using forms, terminology and language (including local languages) accessible to them.” should be deleted. The proposal was accepted.

98. The representative of Australia strongly supported the incorporation of such a provision into the draft convention, and was joined in this opinion by the delegations of Austria and Canada. These delegations, together with the representatives of the Netherlands and the United States, agreed with the representative of Norway, however, that the provision should end with the words “to adults and children alike”.

99. The Working Group proceeded to adopt by consensus the following provision:

“The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

3. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 21 ter

The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

D. Technical review (1988)

No comments were received concerning present article 42.

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 637 to 639).

637. The Working Group had before it a text of the article as adopted during the first reading including suggested linguistic revisions (E/CN.4/1989/WG.1/WP.2). The text read as follows:

“(The) States Parties (to the present Convention) undertake to make the principles and provisions of the Convention widely known, by [appropriate] and active means, to adults and children alike.”

638. After brief comments by participants in the Working Group to retain the word “appropriate”, the Working Group adopted the article with suggested revisions.

639. The text of article 21 ter was adopted to read as follows:

“States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

Implementation provisions: article 43 (Establishment of the Committee), article 44 (Reports from States Parties) and article 45 (International cooperation and technical assistance)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten¹ experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

¹ This number was increased to 18 by General Assembly resolution 50/155 of 21 December 1995.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general

recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

B. First Polish draft convention and comments (1978)

The first Polish draft convention submitted in draft resolution E/CN.4/L.1366 contained the following draft article.

Article XI

The States Parties agree to report on the status of the implementation of this Convention to the Economic and Social Council through the Secretary-General of the United Nations one year after ratification of the Convention and thereafter once every five years.

The only changes to the text of the draft convention in the final version of the draft resolution (E/CN.4/L.1366/Rev.2) consisted in the amendment of article XI and the addition of a new article XII (see section 1 below).

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, p. 125).

Article XI

The States Parties undertake to submit to the Economic and Social Council, through the Secretary-General, periodic reports on the implementation of this Convention. These reports shall be submitted initially one year after the entry into force of the Convention for the State concerned, and thereafter every five years.

Article XII

The reports submitted by the States Parties under article XI shall be considered by the Economic and Social Council, which may make general observations and bring them to the attention of the General Assembly.

2. Comments on the first Polish draft

Articles XI and XII of the draft gave rise to the following comments.

(a) Austria

The following is taken from document E/CN.4/1324.

The Austrian Federal Government does not favour a periodic reporting system of the kind envisaged in articles XI and XII. The results likely to be achieved do not seem to warrant the workload such a system would entail both nationally and in connection with the discussion of such reports in international organizations. As a compromise solution, one report, to be filed about three years after the entry into force of the convention, could be envisaged.

(b) Barbados

The following is taken from document E/CN.4/1324.

Regarding article XI, it is recommended that in view of the fact that there was a United Nations declaration on the rights of the child in 1959, all signatories to the suggested convention be asked to submit a preconvention statement on the present situation of their services for children prior to the ratification of the convention.

(c) Colombia

The following is taken from document E/CN.4/1324/Add.2.

In addition, we submit a few suggestions which might be taken into account in the convention:

1. A permanent United Nations agency should be created to monitor implementation of the rights of the child by Member States.

[...]

(d) Cyprus

The following is taken from document E/CN.4/1324.

1. At the end of article XI, add a new paragraph to read as follows:
“Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Convention.”
2. Article XII should be reformulated as follows:
“The reports submitted by the States Parties under article XI shall be considered by the Economic and Social Council, which may make general observations, suggestions and recommendations and bring them to the attention of the General Assembly.”

(e) Malawi

The following is taken from document E/CN.4/1324/Add.4.

Article XI obliges States Parties to this convention to submit periodic reports to the United Nations Economic and Social Council on the implementation of the convention. We feel it might be necessary to clarify the nature of the reports so that at least some States Parties can determine beforehand whether or not they have the necessary capabilities for the production of such reports.

In conclusion, we would have preferred if the convention left matters of interpretation to Municipal Law and if the convention avoided to encroach upon areas which are matters of Municipal Law.

(f) Norway

The following is taken from document E/CN.4/1324.

Add as new article XI:

“The States Parties undertake to establish or designate the administrative organs to be responsible for the protection and promotion of the rights of children.”

Articles XI and XII

Observations:

1. A well-functioning reporting system is of the greatest importance for the effective implementation of a convention of this kind. The reporting system, and in particular the choice of the organ responsible for the examination of the reports, should therefore be given very careful consideration.
2. Obviously, the Economic and Social Council must be closely associated with the promotion and follow-up of the provisions contained in the convention. It is well-known, however, that the workload of the Council is already much too heavy. It must be expected to increase further when the important task of examining reports submitted by States in accordance with article 16 of the International Covenant on Economic, Social and Cultural Rights is fully assumed.
3. The question will therefore have to be asked whether the Economic and Social Council is left with sufficient capacity for a serious consideration of national reports on the rights of children. In the view of the Norwegian authorities, it would be desirable to discuss thoroughly whether this task should not be given to another United Nations body. The Sub-Commission on Prevention of Discrimination and Protection of Minorities appears to be well suited for this purpose.

(g) International Council of Women

The following is taken from document E/CN.4/1324.

We hope that every State Party will be requested to submit regular annual reports on the implementation of the convention.

(h) International Federation of Women Lawyers

The following is taken from document E/CN.4/1324.

We believe that the provisions for implementation embodied in article XI of the draft convention are inadequate and that this most important matter requires further careful study.

(i) International Union for Child Welfare

The following is taken from document E/CN.4/1324.

We are somewhat disturbed by the apparent inadequacies of implementation contained in article XI of the draft convention as no organ seems to have been set up which would be responsible for the study of the reports. In addition, we do not think that a report every five years would be a sufficient safeguard for an effective implementation of the convention. The latest report published by the ILO on their Convention on the minimum age of employment (No. 138, 1973) showing that over 50 million children under the age of 12 are fully employed, either in factories or on the land, also seems to point to the inadequacy of an implementation of a convention by way of reports.

(j) Women's International Democratic Federation

The following is taken from document E/CN.4/1324.

[...]

4. WIDF ventures to make one suggestion regarding this excellent text, namely to include in it an additional article whereby Governments would undertake to implement measures to ensure that their military budgets are smaller than the budgets for health, education and social infrastructure (day-care centres, kindergartens, schools, etc.) and would be requested to submit periodic reports on the progress achieved in that direction.

(k) World Jewish Congress

The following is taken from document E/CN.4/1324.

We believe that draft article XI is not satisfactory as regards implementation, since there is no provision for a special body charged with this responsibility.

C. First reading (1979-1988)

The substance of article 43, which was based on article 21 of the revised Polish draft, was referred to as article 21 in 1979, article 20 in 1981 and article 22 thereafter. The substance of article 44, which was also based on article 21 of the revised Polish draft, was referred to as article 22 in 1979, article 21 in 1981 and article 23 thereafter. Article 45 was referred to as article 24 throughout the first and second readings. The text of all three articles was adopted by the Working Group in 1988. It should be noted that the final text of article 43, in particular the provisions concerning funding for the Committee, was not decided upon until it was adopted by vote in the Third Committee of the General Assembly in 1989.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 21

The States Parties to the present Convention shall submit periodical reports on the implementation of this Convention to the Economic and Social Council through the Secretary-General of the United Nations. The first such report shall be submitted three years after its entry into force, and thereafter every five years.

Article 22

The reports submitted by the States Parties to the present Convention under article 21 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the General Assembly of the United Nations.

2. Modified proposal submitted by Poland

The following text is taken from document A/C.3/36/6, part II.

Article 20

The States Parties to the present Convention every three years shall submit periodical reports on the implementation of the present Convention to the Economic and Social Council through the Secretary-General of the United Nations.

Article 21

The reports submitted by the States Parties to the present Convention under article 20 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the General Assembly of the United Nations.

3. Proposal submitted to the Working Group (1982)

(a) Joint NGO proposal

(Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress). The following is taken from document E/CN.4/1982/WG.1/WP.1, page 7.

15. As regards the proposal contained in articles 20 and 21 of the Polish text in A/C.3/36/6, the sponsors are of the view that the wording suggested does not sufficiently satisfy the implementation requirements of a convention of this character. They accordingly suggest that a Committee on the Rights of the Child should be specifically constituted for [the] purposes of the present convention, reflecting the implementation machinery contained in articles 28 to 40 inclusive of the International Covenant on Civil and Political Rights, whose wording should accordingly be adapted mutatis mutandis.

4. Proposals submitted to the Working Group (1984)

(a) Canada

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II, p. 4). The proposal was resubmitted without change in 1985 (see E/CN.4/1985/64, annex II, p. 5) and in 1986 (see E/CN.4/1986/36, annex III, pp. 1-2).

Article 22

1. The reports submitted by the States Parties to the present Convention under article 21 shall be considered by the Economic and Social Council.
2. To assist it in its task, the Economic and Social Council shall establish a Group of Experts entrusted with the responsibility of examining the reports submitted by the States Parties before they are considered by the Economic and Social Council; the Group of Experts shall also prepare appropriate comments on every report for transmission, through the Economic and Social Council, to the State Party concerned.
3. The members of the Group of Experts shall be elected by the Economic and Social Council from a list of candidates nominated by States Parties.
4. The Economic and Social Council shall decide on the size of the Group of Experts, its geographic composition and the periodicity of its meeting.
5. The Economic and Social Council may bring its observations and suggestions on the implementation of this Convention to the attention of the General Assembly of the United Nations.

(b) International Federation of Women in Legal Careers and the International Abolitionist Federation

The following is taken from document E/CN.4/1983/NGO/33, which appeared after the 1983 session of the Working Group.

Article 21 (Periodic reports)

We believe that such reports should be submitted at least every two years if they are to have a real influence on the position of children.

Lastly, we would echo the proposal already made in document E/CN.4/1982/L.41² recommending the establishment of a Committee on the Rights of the Child which would be responsible for settling disputes between States and, as ombudsman, for receiving and considering communications from persons or groups of persons representing children who are victims of violations of the rights set forth in the convention.

5. Modified proposal submitted by Poland (1986)

The following text is taken from A/C.3/40/3, paragraph 12.

Article 22

The States Parties to the present Convention every three years shall submit reports on the implementation of the present Convention to the Economic and Social Council through the Secretary-General of the United Nations.

Article 23

1. Reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the State Party concerned and of the General Assembly of the United Nations. The Council may also request a State Party to submit additional reports on specific issues relating to this Convention.
2. To assist it in its task, the Economic and Social Council shall establish a Group of Governmental Experts entrusted with the responsibility of examining the reports submitted by States Parties.
3. The Economic and Social Council shall decide on the size of the Governmental Group of Experts, its equitable geographical composition and the periodicity of its meetings.

² E/CN.4/1982/L.41, the report of the Working Group submitted to the Commission on Human Rights, contains no reference to a Committee on the Rights of the Child, which had been proposed by the NGO sponsors listed in document E/CN.4/1982/WG.1/WP.1 (see section 3 above).

6. Proposals submitted to the Working Group (1987)

(a) Canada

The following is taken from document E/CN.4/1987/WG.1/WP.13.

Article 22

1. There shall be established a Group of Experts consisting of 10 members of high moral standing and competence in the fields covered by the Convention.
2. The experts shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation to the different forms of civilization as well as the principal legal system.
3. The members of the Group shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. Elections of the members of the Group shall be held at a meeting of the States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Group shall be those who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.
6. The members of the Group shall be elected for a term of four years. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to.
7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Group, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the States Parties.
8. States Parties shall be responsible for the expenses of the members of the Group while they are in performance of the duties of the Group.

For the text of the Canadian proposal concerning article 23 (present article 44), which was taken from document E/CN.4/1987/WG.1/WP.29, see paragraph 141 in section 7 below.

(b) Poland

For the text of this revised proposal, see paragraph 139 in section 7 below.

(c) Sweden

The following is taken from document E/CN.4/1987/WG.1/WP.15.

Article 22

1. Within six months after entry into force of the Convention a Committee of Experts shall be established to examine the progress made by States Parties in achieving the realization of the obligations undertaken by States Parties in the present Convention.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention and who shall serve in their personal capacity. The experts shall be

elected by the States Parties from a list of persons nominated by them, consideration being given to the representation to the different forms of civilization as well as the principal legal system.

3. Elections of the members of the Committee shall be held every second year at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

4. The members of the Committee shall be elected for a term of four years. However, the term of five of the members elected at the first election shall expire at the end of two years. Immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting at which the election takes place.

5. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

6. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

7. The Committee shall establish its own rules of procedure.

8. The Secretary-General of the United Nations shall provide the necessary staff and facilities for elections to and the effective performance of the functions of the Committee.

9. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

For the text of the Swedish proposal concerning article 23 (present article 44), which was taken from document E/CN.4/1987/WG.1/WP.7, see paragraph 140 in section 7 below.

(d) Four Directions Council

The following is taken from document E/CN.4/1987/WG.1/WP.15.

Article 23

1. The reports submitted under article 22 shall be considered by the Economic and Social Council.

2. To assist it in its task, the Economic and Social Council shall first transmit the reports of States Parties to its Committee on the Implementation of the Covenant on Economic, Social and Cultural Rights, for examination in conjunction, where appropriate, with States Parties' periodic reports under that Covenant. The Committee shall prepare appropriate comments on each report for transmission, through the Economic and Social Council, to the State Party concerned.

3. In its examination of reports, the Committee may avail itself of relevant written information submitted to it by the specialized agencies, other relevant United Nations bodies, and non-governmental organizations.

(e) International Movement A.T.D. Fourth World

The following is taken from document E/CN.4/1987/WG.1/WP.5.

Article 22, paragraph 2

2. The periodic reports on the implementation of the present Convention shall pay special attention to the least protected children.

(f) NGO Ad Hoc Group (see annex III (B) for participating organizations)

The following is taken from document E/CN.4/1987/WG.1/WP.2, page 18.

(a) *Establishment of a Committee*

For the purposes of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Rights of the Child (hereinafter referred to as the Committee). The Committee shall be composed of experts of high moral standing and competence in the fields covered by the Convention. They shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

(b) *Reporting obligations of States Parties*

1. The States Parties to the present Convention undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein, including information about the competent national body or bodies responsible for the implementation of these rights, the progress made in the enjoyment of those rights, and assistance they may require from the international community:

(i) within one year of the entry into force of the present Convention for the States Parties concerned;

(ii) thereafter as the Committee may decide, but no less frequently than every five years.

The Committee may request further information from States Parties.

2. All reports shall be submitted to the Secretary-General of the United Nations who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Convention.

(c) *Procedures of the Committee*

1. The Committee shall adopt its own rules of procedures.

2. The Committee shall be able to seek and receive reliably attested information from any source.

3. The Committee may, when it considers it appropriate, initiate a study on specific issues relating to one or more articles of the Convention and their implementation.

4. The Committee shall develop a procedure for handling situations of serious and repeated violations of the provisions of the Convention.

5. At the request of a State Party, the Committee shall, if it considers it appropriate, appoint an individual, group or body to assist the State Party in resolving, through enquiry and/or action, a concern expressed by that State Party regarding implementation, within its territory, of one or more provisions of this Convention.

6. The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(d) *Reports by the Committee to the General Assembly*

The Committee shall study the reports submitted by the States Parties and shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities. It may make suggestions, recommendations and general comments based on the examination of the reports and information received, and these shall be communicated to the States Parties concerned and shall be included in its annual report together with observations, if any, from the States Parties. The Committee's report shall

also refer to measures taken by the international community to respond to requests for assistance by States Parties. The Secretary-General of the United Nations shall bring the Committee's report to the attention of the Commission on Human Rights.

(e) *Secretariat of the Committee*

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

(f) *International cooperation*

1. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by this Convention, the Committee shall transmit to the United Nations Children's Fund (UNICEF), as the designated lead agency on children, the reports of the States Parties, drawing UNICEF's attention to requests for technical assistance, as well as the Committee's suggestions, recommendations and general comments on States Parties' reports along with States Parties' observations.

2. UNICEF shall collaborate with the specialized agencies and organs of the United Nations and non-governmental organizations to establish and carry out programmes of action to further the implementation of the rights guaranteed by the Convention, giving special attention to requests for assistance submitted by States.

3. The specialized agencies shall keep UNICEF fully informed of measures they have taken either in response to States Parties' requests or within their programmes of action to further the full realization of rights guaranteed by the Convention, and shall bear in mind the importance of responding to States Parties' requests.

4. The States Parties to the present Convention agree that international action for the achievement of the rights recognized in the present Convention includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

5. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

7. Discussion in the Working Group (1987)

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, paras. 139 to 156).

139. For the consideration of these articles, the Working Group had before it a revised proposal for article 22 submitted by the observer for Poland, which read:

"1. The States Parties to the present Convention undertake to submit, at least every four years, reports on the implementation of the present Convention to the Secretary-General of the United Nations.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency, it will not be necessary for any State Party to reproduce that information, but a precise reference will suffice.

4. The first such report will be submitted within one year after the entry into force of the present Convention for the State concerned.”

The Working Group also had before it the following proposal by Poland for article 23.

“1. Reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the State Party concerned and of the General Assembly of the United Nations. The Council may also request a State Party to submit additional reports on specific issues relating to this Convention.

2. To assist it in its task, the Economic and Social Council shall establish a Group of Governmental Experts entrusted with the responsibility of examining the reports submitted by States Parties.

3. The Economic and Social Council shall decide on the size of the Governmental Group of Experts, its equitable geographical composition and the periodicity of its meetings.”

140. The representative of Sweden tabled two proposals: one together with the delegation of Canada for article 22 concerning the establishment of an implementation body, and another for article 23 regarding the reporting system. Those proposals were as follows:

Article 22

“1. Within six months after entry into force of the Convention a Committee of Experts shall be established to examine the progress made by States Parties in achieving the realization of the obligations undertaken by States Parties in the present Convention.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation to the different forms of civilization as well as the principal legal system.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election shall be held no later than six months after the date of entry into force of the present Convention and thereafter every second year. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the term of five of the members elected at the first election shall expire at the end of two years. Immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting at which the election takes place.

6. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another

expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for elections to and the effective performance of the functions of the Committee.

10. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.”

141. The observer for Canada submitted the following revised proposal for article 23:

“1. States Parties to the present Convention undertake to submit to the Group of Experts reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights;

(a) within three years of the entry into force of the Convention for the States Parties concerned;

(b) thereafter every five years.

2. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present [Convention], it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

3. Reports made under this article may indicate factors and difficulties affecting the degree of fulfilment of the obligations under the present Convention.

4. The Group of Experts shall study the reports submitted by the States Parties and shall submit its report and such general comments as it may consider appropriate through the Economic and Social Council to the General Assembly.

5. Copies of the report and comments of the Group of Experts shall be sent to the States Parties and to any specialized agencies having competence in a manner referred to in a report.

6. The States Parties may submit to the Group of Experts observations on any comments that may be made in accordance with paragraph 4.

7. Specialized agencies may submit observations or comments made in a report that they receive in accordance with paragraph 5.

8. The Group of Experts may invite specialized agencies to assist in the implementation of the Convention and, for that purpose, may

(a) invite specialized agencies to submit reports on matters within their jurisdiction;

(b) to participate as observers, if they agree, in meetings of the Group of Experts considering matters within the jurisdiction.”

142. The representative of the United States submitted for consideration by the Group a proposal for an article 23 bis to read:

“1. Where a State Party is constituted as a federal State, the national Government of such State Party shall undertake appropriate measures to implement the provisions of this Convention in so far as it exercises legislative and judicial jurisdiction over the subject matter thereof. In so far as the subject matter of the provisions of this Convention falls within the jurisdiction of the constituent units of the federal State, the national Government shall take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfilment of this Convention.”

143. In addition, proposals were submitted by the Informal NGO Ad Hoc Group for the Drafting of the Convention and by the Four Directions Council, as contained in documents E/CN.4/1987/WG.1/WP.2 and E/CN.4/1987/WG.1/WP.15, respectively.

144. The representative of Sweden reminded the Working Group, *inter alia*, of the enormous strain affecting the reporting system of international human rights instruments in recent years, as well as of the problems facing some committees charged with the control of their implementation, which had a significant backlog in their consideration of country reports. In order not to add to the burden of both the reporting States and the implementation bodies, her delegation was proposing a reporting system which, although similar in some respects to what was contained in already existing international instruments, had some new elements to offer which, in her view, would help to facilitate the implementation process of the draft convention and make it more efficient. One of those elements was the introduction of reporting by stages, whereby reporting States would be able to concentrate on a certain number of articles at a time and be able therefore to submit more concise and succinct reports.

145. The observer for Canada noted that the main issues to be addressed in the implementation provisions were the establishment of a committee - with its corresponding composition, elections and mandate - the periodicity and content of reports of the States Parties and the role of the specialized agencies. Regarding the composition of the Committee, she considered it important that the one to be established should be a committee of experts serving in their personal capacities. While fully appreciating the concerns with respect to the increasing burden of reports, she said that ways might be considered to lessen that burden, provided the monitoring of the convention was not weakened thereby. The observer for Canada also thought that the question of the number of States Parties necessary for the convention to enter into force might be left to be considered under the final clauses of the draft convention.

146. The delegation of Denmark supported the Swedish proposal regarding the reporting system, and the representative of the Netherlands favoured the establishment of a separate committee or group of experts. The delegation of Belgium expressed its concern at the proliferation of committees and would be more inclined to entrust the task of monitoring the implementation of the convention to existing committees. The representative of Belgium, supported by the representative of Australia, considered that the Committees charged with monitoring compliance with the Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights could look at the relevant country reports, according to whether the reports touched upon economic, social and cultural rights or civil and political ones.

147. The Belgian delegation also accepted - as did the representative of Italy - the proposal submitted by the International Movement ATD Fourth World that the following paragraph 2 be added to the proposal for article 22 originally made by the delegation of Poland. "The periodic reports on the implementation of the present Convention shall pay special attention to the least protected children". The delegation of the Holy See joined those of Belgium and Italy in their support for the proposal submitted by that non-governmental organization.

148. The delegation of Venezuela expressed its preference for a monitoring committee consisting of specialists of the highest level, all the expenditure involved being covered from United Nations financial resources, and not by contributions from States Parties. The delegation of the United Kingdom stated its preference for a committee consisting of experts - not more than 15 in number - in the field of children's rights; with reference to the financial implications of monitoring compliance with the future convention, it indicated its preferences in the following order: (1) voluntary funding, (2) assessed funding by States Parties, and (3) assessed funding by the United Nations regular budget.

149. The representatives of Austria and Norway said that they would like to see a separate independent committee established under the convention and, in order not to be overloaded, States Parties might submit reports in stages; the representative of Norway also thought it necessary that close consideration be given to the role of the specialized agencies.

150. The representative of Argentina referred to two proposals, namely the one put forward by the Canadian and Swedish delegations and that submitted by the delegation of Poland. He considered that the proposal presented by the Polish delegation was closer to the current situation in establishing a group of governmental experts to assist the Economic and Social Council in its task of considering the reports

submitted by the States Parties, while the Canadian-Swedish proposal was geared more towards the future when some States would have ratified the convention and then a committee of experts, such as the one proposed by Canada and Sweden, would be more appropriate.

151. The delegation of Japan expressed its preference for a separate Committee, and indicated that the frequency of submitting reports should not be so often as every three or four years and the expenses incurred by that Committee should be paid from the financial resources of the United Nations.

152. The United States delegation joined the delegations of Sweden and the United Kingdom in supporting a staggered system of reporting to whatever Committee or Group of Experts was established under the convention. He emphasized that the United Nations specialized agencies should provide factual and technical assistance to the Committee, but should not become involved in judging or monitoring the implementation of the convention or condition their assistance to States on their implementation of the convention. The representative of Sweden agreed with the comments by the delegation of the United States relating to the specialized agencies. Finally, the representative of the United States stated his understanding that his country would only support the funding of the Committee and its activities by States Parties and not from the general funds of the United Nations. In that regard, he indicated that the most appropriate funding mechanism for implementation of the convention was that contained in article 18 (5) of the convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the human rights convention most recently considered and approved by the Commission on Human Rights.

153. The representative of France said that he was in favour of a monitoring mechanism, provided it was not too burdensome, and suggested that the States Parties might submit periodic reports every five years. He indicated his preference - considering the proliferation of monitoring organs - for the committees controlling the implementation of the two Covenants being those that would control the implementation of the new convention.

154. In view of the concern of the members of the Working Group about the proliferation of committees and budget restrictions, the representative of Senegal expressed the opinion that inspiration might be drawn from monitoring mechanisms set up by other bodies. In that connection, he referred to the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers and its methods of work, which would, in his delegation's view, answer the need for effectiveness. Such a committee might be composed of experts from the World Health Organization and the United Nations Children's Fund, as well as of legal advisers and other experts, as required. His delegation also considered that any implementation mechanism to be set up should take account of the specific features of the particular category of subjects to be protected by the convention. In its view, the rights of the child required more extensive knowledge of the nature and of all aspects of the problems of children in general.

155. The Chairman suggested the formation of a working party consisting of the delegations of Canada, Poland, Sweden and the Informal NGO Ad Hoc Group on the Drafting of the Convention, to furnish the Working Group with a composite text on the implementation provisions, taking into account the views expressed by the Group during the discussion of the question. The consolidated text for article 22 was as follows:

“1. For the purpose of [monitoring the implementation of the provisions of the present Convention] [examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention] there shall be established a Committee on the Rights of the Child (hereinafter referred to as the Committee).

2. The Committee shall consist of [10-12-15] experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation to the different forms of civilization as well as the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. The term of [] of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these [] members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.] or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

The following three articles may be merged into one article:

5. The Committee may invite the specialized agencies of the United Nations to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities.

6. The Committee may make arrangements with the specialized agencies of the United Nations and with non-governmental organizations in consultative status with the Economic and Social Council in order to receive their views on the implementation of the Convention in areas falling within the scope of their respective activities.

7. The specialized agencies of the United Nations and other international organizations may submit reports to the Committee on the implementation of the present Convention in areas falling within the scope of their activities.

8. States Parties may submit to the Committee their own comments to any observations concerning them by the Committee or by agencies or non-governmental organizations mentioned in paragraph [].

9. Reports on the activities of the Committee shall be submitted to the General Assembly [annually] [biennially]. They shall include any observations made under paragraphs [] and 6 and any comments under paragraph [].

10. The States Parties shall keep their reports widely available to the public.

[11. The Committee may, when it considers it appropriate, initiate a study on specific issues relating to one or more articles of the Convention and their implementation.

12. At the request of a State Party, the Committee shall, if it considers it appropriate, appoint an individual, group or body to assist the State Party in resolving, through inquiry and/or action, a concern expressed by that State Party regarding implementation, within its territory, of one or more provisions of this Convention.]”

The Working Party regretted that it did not have time to consider the following proposals on international cooperation:

“[1. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by this Convention, the Committee shall transmit to the United Nations Children’s Fund (UNICEF), as the designated lead agency on children, the reports of the States Parties, drawing UNICEF’s attention to requests for technical assistance, as well as the Committee’s suggestions, recommendations and general comments on States Parties’ reports along with States Parties’ observations.

2. UNICEF shall collaborate with the specialized agencies and organs of the United Nations and non-governmental organizations to establish and carry out programmes of action to further the implementation of the rights guaranteed by the Convention, giving special attention to requests for assistance submitted by States.

3. The specialized agencies shall keep UNICEF fully informed of measures they have taken either in response to States Parties’ requests or within their programmes of action to further the full realization of rights guaranteed by the Convention, and shall bear in mind the importance of responding to States Parties’ requests.

4. The States Parties to the present Convention agree that international action for the achievement of the rights recognized in the present Convention includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

5. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.]”

156. On the issue of financing the implementation of the convention, the delegation of the United States proposed the following text, as an alternative to the provisions on funding set forth in the joint Canadian, Polish, Swedish and non-governmental organizations proposed in article 22:

“[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 of this article.]”

8. Proposals submitted to the Working Group (1988)

The following States and organizations submitted written proposals to the Working Group.

(a) Australia

The following is taken from document E/CN.4/1988/WG.1/WP.21.

Article 23 (new paragraph 5)

5. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b), repeat basic information previously provided and may concentrate on those changes (including legal, administrative and in practice) that relate to the implementation of the Convention in that State, as well as responding to any questions the Committee may have raised when considering previous reports from that State Party.

(b) Canada

The following is taken from document E/CN.4/1988/WG.1/WP.11.

Article 23 (paragraph 11)

The Committee may request approval from the General Assembly for the Secretary-General to undertake on its behalf a study or studies on specific issues relating to one or more articles of the Convention and their implementation, or on issues relating to, but not specifically provided for, in the Convention. On the basis of such studies, the Committee may formulate recommendations to the international community on how the implementation of the present Convention may be improved.

(c) Italy

The following is taken from document E/CN.4/1988/WG.1/WP.9.

Article 23 (new paragraph)

The reports shall make express reference to the measures undertaken by the States parties in order to ensure the exercise of the rights enounced by the present Convention to children who are in a situation of special need.

(d) Venezuela

The following is taken from document E/CN.4/1988/WG.1/WP.7.

Article 22 (2) Last sentence

The reports (of the States Parties) may indicate the concerns of their respective Governments, in the sphere of the protection due to children, in regard to situations not provided for in this Convention.

(e) Yemen

The following is taken from document E/CN.4/1988/WG.1/WP.5.

Article 23

At the request of a State Party, the Committee may assist in the evaluation, within that country, of issues relating to the implementation of the present Convention, including constructive approaches to its realization.

(f) International Labour Organization (ILO)

The following is taken from document E/CN.4/1988/WG.1/WP.12.

Article 23 (5)

5. (a) The specialized agencies and organs of the United Nations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate and activities.

(b) The Committee may make further arrangements with the specialized agencies and organs of the United Nations and with non-governmental organizations in consultative status with the Economic and Social Council in order to receive their views on their implementation of the Convention in areas falling within the scope of their respective activities.

(c) The specialized agencies and organs of the United Nations and other international organizations may submit reports to the Committee on the implementation of the present Convention in areas falling within the scope of their activities.

(d) States Parties may submit to the Committee their own comments to any observations concerning them by the Committee or by agencies or non-governmental organizations mentioned in subparagraph (b).

(e) In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by this Convention, the Committee shall transmit to the United Nations Children's Fund (UNICEF), [as the designated lead agency on children,] and to other concerned specialized agencies and organs of the United Nations as appropriate the reports of the States Parties, drawing their attention to requests for technical assistance, as well as the Committee's suggestions, recommendations and general comments on States Parties' reports along with States Parties' observations.

(f) UNICEF shall collaborate with the specialized agencies and organs of the United Nations and, as appropriate, non-governmental organizations in carrying out programmes of action to further the implementation of the rights guaranteed by the Convention, in response to the requests for assistance submitted by States.

(g) The States Parties to the present Convention agreed that international action for the achievement of the rights recognized in the present Convention includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

(h) Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

(g) NGO Ad Hoc Group *(see annex III (B) for participating organizations)*

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 21.

Article 22

1. For the purpose of monitoring the implementation of the provisions of the present Convention and the progress made by States Parties in achieving the realization of the obligations undertaken, there shall be established a Committee on the Rights of the Child, hereinafter referred to as the Committee.

[...]

6. The members of the Committee shall be elected for a term of six years. The term of one third of the members elected at the first election shall expire at the end of two years, due account being taken of maintaining equitable geographical distribution within the membership; immediately after the first election, the names of these [] members shall be chosen by lot by the Chairman of the meeting.

[...]

11. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.

The following is taken from document E/CN.4/1988 WG.1/WP.2, pages 23-24.

Article 23

1. States Parties to the present Convention undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, reports on the compliance with their obligations under the present Convention, including information about the competent national body or bodies responsible for the implementation of those rights and assistance they may require from the international community:

[...]

(b) thereafter, after having submitted an initial report covering all their substantive obligations under the Convention, every four years or at such intervals as the Committee may decide. Such reports shall be submitted in stages to be established by the Committee within nine months after the entry into force of the Convention.

The Committee may request further information from States Parties and shall prepare such observations as it may deem appropriate for transmission to the States Parties concerned.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention, and shall make reference to the situation of the most disadvantaged children and to measures being taken to guarantee to them the rights contained in this Convention.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Convention, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

4. The Committee may decide that a State Party which has completed a full reporting cycle covering all its substantive obligations under the Convention may limit its further reporting to legal and administrative changes and changes in practice affecting its obligations, and to such questions relating to the obligations of the State Party concerned which may have been indicated by the Committee, as well as to continuing factors and difficulties, if any, affecting implementation of the Convention.

[...]

9. Reports on the activities of the Committee shall be submitted to the General Assembly annually. They shall include any observations made under paragraphs [] and 6 and any comments under paragraph [].

[...]

11. The Committee may, when it considers it appropriate, initiate a study on specific issues relating to one or more articles of the Convention and their implementation.

12. At the request of a State Party, the Committee shall, if it considers it appropriate, appoint an individual, group or body to assist the State Party in resolving, through inquiry and/or action, a concern expressed by that State Party regarding implementation, within its territory, of one or more provisions of this Convention.

13. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by this Convention, the Committee shall transmit to the United Nations Children's Fund (UNICEF), as the designated lead agency on children, and to other concerned specialized agencies and organs of the United Nations as appropriate the reports of the States Parties, drawing UNICEF's attention to requests for technical assistance, as well as the Committee's suggestions, recommendations and general comments on States Parties' reports along with States Parties' observations.

14. UNICEF shall collaborate with the specialized agencies and organs of the United Nations and, as appropriate, non-governmental organizations in carrying out programmes of action to further the implementation of the rights guaranteed by the Convention, in response to the requests for assistance submitted by States.

15. The States Parties to the present Convention agree that international action for the achievement of the rights recognized in the present Convention includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

16. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

9. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 80 to 208).

Article 22 (Establishment of the Committee)

80. The Working Group had before it a proposal submitted by Canada, Poland, Sweden and the NGO Ad Hoc Group (E/CN.4/1988/WG.1/WP.2, chapter V).

81. In introducing the proposal, the observer for Canada stated that the Working Group had to decide whether a committee on the rights of the child should be established and to what purpose. If the Working Group decided that a committee should be established, it also had to decide on the mode of election of its members and the terms for which they would be elected, the frequency and duration of its meetings and other aspects relating to its operation. In particular, the Working Group had to take decisions concerning the financing of the committee's operation.

82. Article 22 was first considered in general. During the discussion, one participant suggested that the Working Group might examine the possibility of the States Parties submitting their reports to the Secretary-General or of a committee established under another human rights international convention undertaking the supervision of compliance with the obligations of the States Parties under the present convention. One representative expressed her belief that neither in the United Nations system nor among the non-governmental international organizations was there at present a legal entity which had an overall view of the rights of the child: it therefore believed that if it proved possible to establish a committee of specialists in this branch of the law, with expert knowledge of the serious problems that affect childhood today and with moral and legal authority to approach any governmental or private international agency to draw attention to the shortcomings in respect of children in the area of their different specialities (health, development, employment, prevention of crime, treatment of children who infringe the law, etc.), such a committee could be of considerable benefit to children and young people, in other words, minors.

83. The members agreed, after considerable discussion, that a committee on the rights of the child was needed and decided to discuss each of the paragraphs to be included in article 22.

Paragraph 1

84. Paragraph 1 of article 22 of the proposal by Canada, Poland and Sweden was taken as a basis for the discussion. All the participants agreed that the second text in square brackets should be adopted, because it reflected the idea of a dynamic process that the members had in mind for the implementation of the convention. They also agreed that the phrase "thereinafter referred to as the committee" should be deleted.

85. One representative suggested that, in view of the current lack of an overall vision of the rights of the child at the present time, the committee should be empowered, on the assumption that it has such a vision, to promote studies on topics it considers to be of special importance at a given time. Another participant suggested including among the faculties of the committee that of preparing studies on the situation of the rights of the child, as established in the convention, in countries which were not States Parties. Other participants dismissed the idea indicating that a convention was applicable only in States having ratified it. They further expressed the view that other bodies of the United Nations system normally undertook such studies in the area of their speciality.

86. Another participant hesitated to accept the proposal which, it felt, lacked precision concerning the kinds of information the committee would examine and the sources of that information. Therefore, it proposed the following text:

“For the purpose of studying the reports submitted by the States Parties, there shall be established a Committee on the rights of the child.”

87. Several delegations disagreed with that proposal on the basis that it only partially covered the purposes of the committee. It was then suggested that the words “through the study of reports submitted in accordance with article 23” should be added to the proposal of Canada, Poland and Sweden after the word “examining”.

88. Some participants considered that proposal restrictive and voiced their preference for the formulation contained in article 28, paragraph 1, of the International Covenant on Civil and Political Rights, while others suggested redrafting the paragraph on the basis of the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 17) and the International Convention on the Elimination of All Forms of Racial Discrimination (article 8).

89. The proposal formulated by one of the participants to add, at the end of the sentence after “Committee on the rights of the child”, the phrase “which shall carry out the functions hereinafter provided” was widely supported and finally adopted.

Paragraph 2

90. In discussing paragraph 2, most of the participants stated that, for financial or economic reasons, they supported the view that the committee should consist of no more than 10 members. Some preferred 12 members because it would better meet the need for equitable geographical distribution. One speaker suggested that the number of members should be proportionate to the number of States having ratified the convention, so that it would become higher as more States become parties to the convention. Finally, it was agreed that the committee should consist of 10 members.

91. In relation to the second sentence of the paragraph, some participants proposed deletion of the words “and to the representation of the different forms of civilization as well as the principal legal systems” on the grounds that the concepts involved were not sufficiently defined. However, some speakers said that the concept was sufficiently defined, and that it had already been used in other international instruments. One participant stated that the reference to “legal systems” could be interpreted to mean that only experts in law would be qualified to be members of the committee. Another supported that view, indicating that the experts elected to the committee should have specific competence in the field of the child and not necessarily be specialists in law. Another stated that the first part of the paragraph covered the question of the competence of the experts. In accepting that that was in fact so, both participants agreed to maintain the phrase “as well as the principal legal systems”. Paragraph 2 was adopted.

Paragraphs 3, 4 and 5

92. Paragraphs 3, 4 and 5 of the proposal were adopted without discussion.

Paragraph 6

93. In the course of the discussion, participants expressed their general support for the election of the members of the committee for a term of four years and for the renewal of half of the members elected after two years.

94. One participant accepted a suggestion from a non-governmental organization which proposed inserting the sentence "They shall be eligible for re-election if renominated." after the first sentence. The proposal was supported by others and paragraph 6 of the proposal by Canada, Poland and Sweden was adopted with that amendment.

Paragraphs 7 and 8

95. Paragraphs 7 and 8 were adopted without comments.

Paragraph 9

96. During the discussion, one participant suggested including the possibility of re-electing the officers to the committee, but most expressed the view that the question should be decided by the committee itself, when establishing its rules of procedure. Paragraph 9 was therefore adopted without amendments.

Paragraph 10

97. The question of the duration and frequency of the meetings of the committee gave rise to a discussion during which several proposals were made. The Chairman of the Working Group opened the discussion by proposing the adoption of a text similar to article 20 of the Convention on the Elimination of All Forms of Discrimination against Women. The attention of the group was drawn to Economic and Social Council resolution 1985/17, paragraph (d), which provided sufficient flexibility concerning the location and timing of meetings.

98. Several participants drew attention to the financial implications of the decision to be taken on that question, since financial restrictions would certainly affect the frequency and duration of the meetings, as well as the workload of the committee. Consequently, it would be premature to take a decision on those questions. The General Assembly would decide when and where the committee would meet.

99. One participant expressed the view that the Working Group could not dictate the responsibilities of the States Parties; the decision should be left to them, if they were to be responsible for the expenses of the committee, and to the General Assembly if the United Nations was to be responsible for such expenses.

100. One participant suggested that the decision should be left to the first meeting of the committee, as established in article 18 of the Convention against Torture. At that time, the committee would be aware of the financial implications. Another considered that it would not be wise to leave the decision to the first meeting of the committee, at which only 15 States Parties would be represented, since the decision would affect other countries which were not at the time States Parties to the convention.

101. Several participants stressed the need for a formulation that would assure a minimum frequency in the meetings so that the committee would be able to accomplish its role and functions. If the convention did not contain a clause establishing at least one annual meeting, the scope of the convention would be jeopardized. A certain flexibility allowing for adjustment of the frequency and duration of the meetings to the workload and to financial restrictions was also needed.

102. Some participants suggested that the review of the frequency and duration of the meetings by the committee or the meeting of the States Parties would provide further flexibility. However, as a decision had not been taken on who would finance the operation of the committee, it did not seem appropriate that only a few countries should decide on the budget if the United Nations was to finance the operation. One participant suggested the inclusion, in brackets, of two possibilities [the meeting of the States Parties] and [the General Assembly].

103. The Chairman then proposed the adoption, as the first sentence of paragraph 10 of the article, of the text of article 20, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women, concerning the venue of the meetings of the committee, which had not given rise to any comments, and the text was adopted. The Chairman requested a new proposal for a second sentence, based on the previous discussion.

104. Poland proposed the following text (E/CN.4/1988/WG.1/WP.16):

“The Committee shall normally meet annually in order to consider the reports submitted in accordance with [] of the present Convention. The duration of the meetings of the Committee shall be determined and reviewed, if necessary, by the meeting of the States Parties to the present Convention.”

105. In introducing the proposal, the observer for Poland suggested that the participants might also discuss a second alternative, which was to add, at the end of the sentence, the words “subject to the approval of the General Assembly”.

106. Several participants expressed the concern that the words “to consider the reports submitted in accordance with [] of the present Convention” narrowed the scope of the activities of the committee, since it had to perform different tasks not mentioned in the formulation, while one preferred to maintain that text. The following amendment was proposed: “in order to fulfil (or undertake) its responsibilities”.

107. Some participants stated that the current discussion was a repetition of that on the first paragraph of article 22 and proposed deleting the phrase after the word “annually”. That proposal was adopted by consensus.

108. Concerning the third sentence of paragraph 10 of the article, the participants agreed that the proposal, including the oral amendment made by Poland, satisfied the concern of most delegations. One delegation stated its concern that the proposal for determining the duration of meetings of the Committee was inflexible, but that consensus on the proposal should not be impeded. An amendment was needed in the last line, which should read “a meeting of the States Parties”. The third sentence of paragraph 10 of article 22, as amended, was adopted.

Paragraph 10 bis

109. Paragraph 10 bis was adopted without comment.

Paragraph 11

110. In the course of the discussion on paragraph 11, many participants strongly favoured the first alternative of the proposal submitted by Canada, Poland and Sweden, fearing that many countries would not ratify the convention if they had to meet the expenses of the committee. In addition, the successful implementation of the convention would not be assured, as had been the case for other international instruments, if States Parties had to cover such expenses. Developing countries were not in a position to afford the increasing expenses in view of their obligations related to their external debt. Therefore, only the financing of the committee by the United Nations would assure the accomplishment of the purposes of the convention. The delegation of Colombia stated that its country would not be in a position to bear the costs incurred by the committee in carrying out its duties and, consequently, it was in agreement that the United Nations should assume that responsibility. Some participants drew attention to the problems confronting the Committee on the Elimination of Racial Discrimination, precisely because States Parties were unable to pay their contribution and the harm that did to the cause of human rights. They also drew attention to the minimal percentage of its budget that the United Nations assigned to human rights.

111. Some participants definitely opposed that view on the ground that the United Nations budget was already overstrained and could not absorb any additional burden. The principle of the responsibility of the States Parties for the expenses of the operation of a convention had been established under several

international instruments: under the Convention against Torture, such a principle had recently been adopted.

112. Since a consensus could not be reached, one participant proposed that both proposals should be maintained in square brackets and that the question should be discussed at a later stage.

113. The text of article 22, as adopted by the Working Group, reads as follows:

“1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the rights of the child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10 bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations of any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 of this article.]”

Article 23 (Reports from States Parties)

114. The Working Group had before it a proposal submitted by Canada, Poland and Sweden (E/CN.4/1988/WG.1/WP.2, chapter V). In introducing article 23, the observer for Canada said that much of the language of the proposal had been taken from other international instruments and raised the question whether mention of specialized agencies and non-governmental organizations should be included in that article.

115. At the suggestion of the Chairman, the discussion on article 23 was continued on a paragraph-by-paragraph basis.

Paragraph 1

116. With reference to paragraph 1, all participants expressed the view that the wording contained in the first square brackets “[Committee, through the Secretary-General of the United Nations]” was better than the wording in the second square brackets “[Secretary-General of the United Nations for consideration of the Committee]”.

117. Some participants expressed their preference for the wording contained in the third text in square brackets “[on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights]”, rather than the fourth text in square brackets of the paragraph “[on the compliance with their obligations under the present Convention]”. The phrasing contained in the third text was based on article 18 of the Convention on the Elimination of All Forms of Discrimination against Women and also appeared in several other international instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

118. Several speakers were of the view that the fourth text within square brackets provided a more dynamic and comprehensive idea of the substance of the reports. It was suggested that the wording should be changed to read “on their compliance with the obligations under the present Convention”.

119. Some speakers proposed amendments combining both texts. The formulations proposed were: (a) “measures taken in their compliance with the obligations” and (b) “on their compliance with the obligations under the present Convention, including information about the measures they have adopted which give effect to the rights recognized therein, and on progress made in the enjoyment of these rights”.

120. Some participants suggested that Governments should also be requested to report about their future programmes in relation to their obligations under the convention. Others opposed that suggestion on the grounds that it was not appropriate to include too many details and in particular that the Committee should not be burdened with reports on intentions.

121. Some French-speaking participants hesitated to support the formula in the fourth square brackets because when translated into French it was vague and did not give an accurate idea of the content of the report as envisaged by the authors of the proposal. They requested the adoption of the phrase in the third square brackets, which was clearer in French.

122. The phrases contained in the fifth square brackets “[including information about the competent national body or bodies responsible for the implementation of those rights]” and the sixth square brackets “[and assistance they may require from the international community]” were generally considered superfluous because those questions were addressed in other articles of the convention. Furthermore, the Committee would later establish its own rules, where it seemed more appropriate to include such details. However, one participant stated that the reference to national bodies was a useful one, because it might encourage the action of those institutions, which participated in the implementation of the convention at the national level.

123. With regard to paragraph 1 (a) of the proposal, it was pointed out that the text should refer to “the State Party” and not to “the States Parties” concerned, because the entry into force of the convention would take place for each State individually.

124. With regard to subparagraph (b), some speakers emphasized the importance of the reporting obligation as the sole means of ensuring compliance with the convention, but also pointed to the difficulties encountered by States when they had to prepare reports too frequently leaving them no time to implement their plans and make progress. Most participants preferred the establishment of a specific reporting period in the convention and considered that the five-year cycle was the most appropriate.

125. Some speakers supported the second alternative of the proposal, because a reporting system in stages would enable the Committee to focus on certain aspects and it would also lighten the burden of the States Parties. They agreed, however, that reports should be submitted every five years and proposed amending the second alternative accordingly.

126. In connection with the second paragraph of the second alternative, one speaker said that it should be in paragraph 4, among the faculties of the committee and not among the obligations of the States Parties. Some participants wished to maintain the paragraph, agreeing that it might be placed among the attributions of the Committee.

127. It was finally agreed that the first alternative should be adopted, without the phrase in square brackets and that the last sentence of the first paragraph as well as the second paragraph in the second alternative would be discussed at a later stage. The text was adopted as paragraph 1 of article 23.

Paragraph 2

128. The discussion on the first sentence of paragraph 2 of the proposal by Canada, Poland and Sweden focused on which of the two formulations in square brackets was more appropriate. One speaker preferred the first option [may], while many agreed that the second option [shall] with the addition of the words [if any], based on article 40 of the International Covenant on Civil and Political Rights, was the most appropriate.

129. India, Poland and Norway put forward a proposal to include a second sentence in paragraph 2 to read:

“Reports shall also contain sufficient information on social, economic and institutional aspects, as well as on assistance required from the international community, to provide the Committee with a comprehensive understanding of the operation of the Convention in that country.”

130. One of the authors of the proposal explained that the phrase “as well as on assistance required from the international community” had been included in accordance with a proposal submitted by UNICEF and the non-governmental organizations (E/CN.4/1988/WG.1/WP.2, chap. V).

131. One speaker proposed adding the phrase “and on national institutions responsible for the implementation of those rights.” after the words “institutional aspects”.

132. Some participants hesitated to support the proposal because it contained too many details and words not clearly defined, such as “aspects” and “assistance”, which were rather vague in that context. Furthermore, that wording gave the impression that the Working Group was trying to take the place of the Committee, which was the appropriate organ to establish guidelines for the reports of States Parties. The first sentence of the paragraph was already sufficiently clear and complete.

133. The authors of the proposal insisted that at least the last phrase “to provide the Committee with a comprehensive understanding of the operation of the Convention in that country” should be included in order to indicate precisely the content desired while maintaining a broad scope for the reports.

134. One speaker suggested replacing the word “operations” by the word “implementation”, which seemed to be more comprehensive.

135. It was agreed that the addition would complete the concept of the content of the report, and the second sentence was adopted, as amended.

136. With regard to the question of the rights of disadvantaged children, raised in the second sentence of the draft proposal of Canada, Poland and Sweden, some speakers stated that children should all be given equal attention and such a sentence was therefore superfluous. Others supported the reference to disadvantaged children on the ground that it was sometimes necessary to apply unequal measures to obtain equal rights. One participant said that, in particular situations, some children might constitute a category of “children with special needs”, e.g. in circumstances of natural disaster or social problems, which should be covered by the convention. There were also certain groups of children who were in a marginal, specially disadvantaged situation, who needed increased attention.

137. The following proposal (E/CN.4/1988/WG.1/WP.9) was submitted by the Italian delegation:

“The reports shall make express reference to the measures undertaken by the States Parties in order to ensure the exercise of the rights announced by the present Convention to children who are in a situation of special need.”

138. One speaker considered that the concept of “children in special need” was not sufficiently defined and asked whether children who were the victims of violence, apartheid or colonial domination were included in that category or whether it only included handicapped children or refugees. Another participant stated that a very great number of children in developing countries could be included in that category; however, all children had the same rights.

139. Some speakers said that, although they shared the concern of the author of the proposal, the question was already covered by other articles of the convention and the current discussion should concentrate on the reporting system dealt with in article 23, and not on substantive matters. Furthermore, they were not convinced that positive discrimination would bring about the desired results.

140. Since there was no consensus, the representative of Italy withdrew her proposal and stated that it would be submitted for inclusion in the preambular part of the convention.

141. One representative expressed the view that the relationship between the committee and the State Party should be understood, not as the present relationship in certain committees which seemed to be that of a court and a defendant, but as a dialogue in which the State could explain its major concerns and the committee could pass on with its more overall, in the sense of universal, knowledge of the different situations that confront children. In this regard, the same speaker suggested that the reports of States Parties should also contain information on situations not covered by the convention, thus providing an opportunity to report on new problems or developments which had become a matter of concern for the States Parties.

142. In that regard, a proposal which was intended for paragraph 2 of article 23 (E/CN.4/1988/WG.1/WP.7) was submitted to the Working Group by Venezuela. It read as follows:

“Reports from the States Parties may indicate the Government’s concern in areas where children require protection in situations not covered by this Convention.”

143. The proposal was supported by several speakers on the ground that a number of rights might not be covered by the convention, in particular in situations emerging from new developments in science and technology, as well as in fields that might have been overlooked by the members of the Working Group.

144. Other speakers felt that part of article 23, as already adopted, covered the point made in the proposal, because the States Parties had the possibility of reporting on those questions if they wished. Furthermore, if the Working Group adopted paragraph 11 of the proposal submitted by Canada, Poland and Sweden, the Committee would be able to undertake studies that might deal with the new concerns. The Committee had a specific task, which was to supervise the fulfilment by the States Parties of their obligations under the convention. New concerns of the States Parties could also be covered by article 4 of the convention, which was very broad and in which all violations of the rights of the child could be included.

145. Some speakers expressed their concern that the convention failed to address certain points which might become a problem in future years. However, it did not seem appropriate to cover that point within the context of the reporting system and it was suggested that the matter should be discussed subsequently.

146. Observing that a consensus on that point was not possible, the Chairman suggested that the proposal should be studied further.

147. Several participants were of the view that if a committee on the rights of the child were established, its costs should be defrayed by the United Nations, its terms of reference should be original, and it should be representative of all the regions and ambitious in its objectives. In other words, it should provide the best possible guarantee of all the rights of the child. In any event, it should not confine itself to what other committees did, particularly at a time when the work of other committees was under discussion in New York. The Working Group should make an effort to assign functions to the Committee that were consonant with the expectations aroused by the possible adoption of a convention on the rights of the child. In view of the importance of this implementation machinery and in order to be able to study it better in the light of the discussions that had taken place, the representative of Venezuela stated that she had decided to enter a general reservation on this implementation machinery in its entirety in order to have time for reflection.

Paragraph 3

148. The discussion on paragraph 3 of the proposal submitted by Canada, Poland and Sweden focused on whether such a provision was needed. Some speakers considered it necessary as a way of reducing the burden of States Parties. One participant stated that the clause did not add anything new because it was the practice of Governments to refer to previous reports when they wished to do so.

149. Another speaker expressed the view that the question should be considered by the committee when it elaborated its rules of procedure.

150. In general, the group agreed that it was not necessary to include that text in the convention. However, the committee should consider including such a clause in its guidelines for the reports of the States Parties.

151. In discussing paragraph 4 of the proposal by Canada, Poland and Sweden, several speakers expressed their support for the idea contained in the proposal but suggested different wording and drew attention to the difficult task involved in reporting on changes affecting the obligations of States Parties under a convention which covered so many different aspects. The Chairman then asked the group to draft a new proposal to facilitate the discussion.

152. The observer for Australia submitted the following proposal (E/CN.4/1988/WG.1/WR.21):

“A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b), repeat basic information previously provided and may concentrate on those changes (including legal, administrative and in practice) that relate to the implementation of the Convention in that State, as well as responding to any questions the Committee may have raised when considering previous reports from that State Party.”

153. The author of the proposal explained that it was aimed at reducing the work of the Committee and States Parties by avoiding unnecessary repetition in reports. If the committee could focus on the most significant aspects of the convention’s implementation in a country, it would be a much more effective mechanism.

154. Some participants stated that the five-year reporting cycle was long enough to justify a new comprehensive report and that the text under discussion would limit the possibilities for the States Parties to make their activities known in the context of the implementation of the convention.

155. The Chairman of the Working Group proposed that the group adopt the first part of the text, which had not given rise to discussion, with a full stop after the word “provided”. His proposal was adopted by consensus. The text was adopted as paragraph 3 of article 23.

Paragraph 4

156. During the discussion on paragraphs 1 and 2 of the convention, several speakers had expressed the view that the committee should be able to request the States Parties to provide information on aspects of the implementation of the convention on which they had provided insufficient information or none at all in their reports to the Committee.

157. The observer for Egypt said that a provision on that point should be included among the faculties of the Committee and not among the obligations of the States Parties. A discussion took place based on the last sentence of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, which reads: “The Committee may request further information from the States Parties.”

158. One participant proposed adding the following sentence: “The Committee may require further information from the reporting countries” to the preceding paragraph. Another proposed including after the words “further information”, the phrase “relevant to the implementation of this Convention”.

159. The following text was then adopted:

“The Committee may request from the States Parties further information relevant to the implementation of this Convention.”

160. At a later stage, it was decided to include that text as paragraph 4.

Paragraph 5

161. The discussion on paragraph 5 was based on paragraph 9 of the proposal by Canada, Poland and Sweden. All participants agreed that the Committee should submit its reports to the General Assembly biennially. One indicated that those reports should be submitted through the Economic and Social Council.

162. The Chairman proposed the following text, as paragraph 5 of article 23:

“The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, every two years, reports on its activities.”

163. The paragraph was adopted by consensus.

Paragraph 6

164. The discussion on paragraph 6 was based on paragraph 10 of the proposal by Canada, Poland and Sweden. The importance of the availability to the public of the reports of States Parties was stressed by the authors, who indicated that it was a way to increase public awareness and also part of the educational process related to the rights enshrined in the convention. A discussion took place on the precise wording of the text and the Chairman proposed the following:

“The States Parties shall make their reports widely available to the public in their own countries.”

165. That text was adopted as paragraph 6 of article 23.

166. The text of article 23 as adopted reads as follows:

“1. State Parties to the present Convention undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned,

(b) thereafter every five years.”

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in that country.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 (b) repeat basic information previously provided.

4. The Committee may request from the State Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. The States Parties shall make their reports widely available to the public in their own countries.”

Article 24 (Methods of work of the Committee)

167. The working group had before it in this regard a proposal submitted by Canada, Poland and Sweden and a proposal submitted by the informal non-governmental organization drafting group (E/CN.4/1988/WG.1/WP.2, chapter V). Following a general discussion, inter alia, on the part specialized agencies, UNICEF and other organs could play in the implementation of the convention, the Chairman drew attention to a consolidated proposal (E/CN.4/1988/WG.1/WP.12) and suggested that the discussion should focus on that proposal.

168. In this regard, one speaker stated that there was no text of the proposal in Spanish and it was impossible to proceed any further. Attention was drawn to the translation of the original proposal by non-governmental organizations in E/CN.4/1988/WG.1/WP.2, some clauses of which were similar to those of the revised proposal. The text of the proposal was then read at dictation speed so that members might take note of the translations provided by the interpreters.

169. Several participants, among them UNICEF, UNHCR and non-governmental organizations, gave their general support to that proposal, which they considered incorporated a dynamic approach and innovative mechanisms and agreed with the mention of UNICEF as the designated lead agency on children. The important

role which the specialized agencies and organs of the United Nations could play in the implementation of the convention and the assistance which the non-governmental organizations could provide was generally recognized. Several speakers mentioned the technical assistance that such organizations could provide and the importance of their participation and assistance for the compliance of the convention.

170. However, many governmental representatives stated that the main responsibility for implementation of the convention lay with the States Parties. A convention represented an agreement first among States, which took on certain obligations and only the States Parties were entitled to control compliance with the convention. Some speakers expressed their doubts as to whether specialized agencies should have the right to be present during the examination of reports. The specialized agencies and organs of the United Nations, as well as the non-governmental organizations should be able to participate in the implementation of the convention and they could therefore agree to authorize the Committee to invite them to be present should the Committee consider it appropriate.

171. Several governmental representatives expressed doubt as to the inclusion of the acronym "UNICEF" in the text of the convention, but said that if there would be a consensus to its inclusion they would not object. Two representatives stated that they hesitated to accept the inclusion of the mention of UNICEF in the text, because its name and mandate could be changed by the General Assembly. Other speakers stated that UNICEF was an organ specialized in assistance to children; however, other specialized agencies had also played an important role in areas connected with the rights of the child; UNICEF was not particularly specialized in legal matters, a field in which some international, regional, national, intergovernmental and non-governmental organizations had traditionally worked. One participant expressed reluctance at drawing UNICEF into the role of dealing with complaints against States Parties or becoming an organ charged with judging matters relating to the convention. It was suggested that the mention of UNICEF should be replaced by the words "concerned agencies and organs of the United Nations".

172. Finally, the text of the proposal (E/CN.4/1988/WG.1/WP.12) was found to be too long and complicated. The Chairman therefore proposed the formation of a drafting group to prepare a new proposal based on the discussion.

173. The drafting group composed of Brazil, the German Democratic Republic, India, the Netherlands, Norway, the United Kingdom and UNICEF submitted a consolidated proposal (E/CN.4/1988/WP.1/WP.15) which read as follows:

"In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The Committee may invite UNICEF, other organs of the United Nations, the specialized agencies and such other organizations or bodies as it may consider appropriate, to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates and to submit reports on their own activities in areas covered by the Convention.

(b) The Committee shall transmit to such of the bodies mentioned in paragraph (a) as it may consider appropriate, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance."

174. In introducing the new proposal on behalf of the drafting group, the representative of Norway stated that two main principles had been taken into account: (a) the need to stress international cooperation in the implementation of the convention, and (b) the importance of the specialized agencies and organs of the United Nations, as well as the non-governmental organizations, which were able to assist, within the fields of their specific competence, in the implementation of the convention. The new text was more precise and the drafting group had kept close to the wording in other international instruments. The preambular part of the consolidated proposal was adopted.

175. Some non-governmental representatives observed that the proposal did not provide for the specialized agencies and organs of the United Nations to be present during consideration of the reports of States Parties. One of the authors of the proposal explained that such a provision had deliberately been left aside because it could give the impression that those agencies and organs would have a judicial role.

176. Other participants proposed deleting the words “and such other organizations and bodies as it may consider appropriate” on the ground that it did not seem appropriate to include in the convention mention of organizations which could not be properly identified.

177. Other speakers opposed that proposal on the ground that it was important to recognize in the convention the essential role of the non-governmental organizations in its implementation. Only organizations or bodies with the necessary competence to make a contribution would be invited. In that connection, the importance of technical assistance was again stressed by some participants.

178. One speaker objected to the idea that the organizations or bodies mentioned in the first part of the sentence could submit reports to the committee on their activities. One of the authors of the proposal explained that the reason why they should submit such reports was that the committee would then have a way of monitoring the convention in a comprehensive way and he stated that his own delegation and others were aware that the convention would never be successfully implemented without the cooperation of the non-governmental organizations. One speaker proposed adding the words “competent” or “relevant” before “organizations or bodies”.

179. The Chairman drew the attention of the group to the fact that three different issues were under discussion: (a) the organizations that would be present during consideration of reports, (b) the organizations that would provide advice, and (c) the organizations that would submit reports.

Article 24 (a)

180. Reference was made by several speakers to article 22 of the Convention on the Elimination of All Forms of Discrimination against Women and the possibility of adopting that text with certain amendments was discussed.

181. In an effort to clarify the ideas previously discussed, the representative of the Union of Soviet Socialist Republics drafted the following text to complement article 22 of the above-mentioned Convention:

“The Committee may invite the specialized agencies, as well as UNICEF and other competent bodies, as it may consider appropriate, to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates.”

182. Some speakers observed that the text did not contain a reference to non-governmental organizations and proposed adding “governmental and non-governmental organizations”. That idea did not satisfy some participants who considered that its formulation was more restrictive than the text of the proposal, because the words “competent bodies” were very comprehensive, and included non-governmental organizations. The author of the proposal stated that to enumerate all the types of governmental, non-governmental and intergovernmental organizations and bodies that might eventually be involved would be too long. The proposal provided a general and flexible formula.

183. The representative of the Union of Soviet Socialist Republics stated that the wording “UNICEF, other organs of the UN, the specialized agencies and such other organizations or bodies” was not only too broad and uncertain but also inconsistent with articles 7, 8 and 71 of the United Nations Charter and other United Nations documents, in particular, Economic and Social Council resolution 1296 (XLIV) on the status of the non-governmental organizations. With this in mind, he voiced an opinion that these flaws of the proposal under discussion could be eliminated if the Committee would be entitled to seek the advice of “specialized agencies, UNICEF and other competent bodies”.

184. Two speakers expressed reservations about the inclusion of a specific reference to UNICEF. They stated that this did not mean in any sense that their Governments did not give due confidence to the United Nations Children's Fund whose work in the area of its mandate was fully recognized. One delegation which stated that it was in agreement with the general proposal, proposed that square brackets be placed only around the word "UNICEF" until instructions had been received from its Government. Another stated that it had not expected that the mention of UNICEF would provoke any kind of problem, as UNICEF had been recognized by the United Nations as a point of convergence for all matters in the field of the child and had played an important role in developing countries, where it had saved the lives of many children. Subsequently, the speaker concerned indicated his willingness to withdraw his proposal regarding the brackets provided that UNICEF make it clear that the clause would not be interpreted in any way as affecting the mandate of UNICEF or the authority of its Executive Board and the General Assembly to set general UNICEF policy and to determine its budget; the representative of UNICEF provided the requested assurances and the delegation which had proposed the square brackets around the acronym "UNICEF" withdrew its proposal.

185. Another representative requested that the record state clearly that the words "other competent bodies" were to be interpreted in their widest sense to include intergovernmental and non-governmental bodies. It was agreed that the record would reflect the inclusion within the terms "other competent bodies" of intergovernmental and non-governmental bodies.

186. One representative asked that the words "as well as" be withdrawn. Another expressed support for the words but said that if their withdrawal would lead to adoption by consensus he would agree. It was so decided.

187. The Working Group thus adopted the following text: the text of the first sentence of article 22 of the Convention on the Elimination of All Forms of Discrimination against Women, with the addition of "and UNICEF" in the first line after "The specialized agencies" and the replacement of the last word of the sentence, "activities", by "mandate", was adopted as the first sentence of article 24, paragraph (a). The proposal by the representative of the USSR, with the elimination of the words "as well as", was also adopted as the second sentence of that paragraph. As the third sentence of that paragraph, the Working Group adopted the second sentence of article 22 of the Convention on the Elimination of All Forms of Discrimination against Women, with the addition of the words "and UNICEF" after "specialized agencies". (See paragraph 205 below.)

188. The representative of Venezuela stated that she reserved her delegation's position until the Spanish text was available, first, for reasons of principle and, second, because she did not understand the decision taken.

Article 24 (b)

189. The discussion on paragraph (b) of the consolidated proposal (E/CN.4/1988/WG.1/WP.15) continued on the basis of the following consolidated text introduced by Canada:

"The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions on these requests or indications.

190. This proposal satisfied all the participants, although one stated that it probably dealt with questions that had to do with the procedures of the committee and suggested deleting the phrase after the word "assistance". Another proposed adding "if any" after "observations and suggestions". All agreed to that amendment. The observer for Zimbabwe proposed that the words "as it may consider appropriate" be deleted from the text on the grounds that all reports requesting assistance should automatically be transmitted. She did not insist on her proposal but requested that the report reflect her point that the Committee should decide on the appropriate agency, but should transmit all reports in which technical assistance was requested.

191. The representative of Venezuela stated that in a text which had obvious legal implications, she would not be able to join the consensus if she did not have a Spanish text.

192. The text, as amended, was adopted as paragraph (b) of article 24. (See paragraph 205 below.)

Article 24 (c) and (d)

193. In discussing article 23, it had been suggested that the question of how to deal with new problems or developments which had become a matter of concern and were not covered by the convention should be dealt with elsewhere. In that connection, the observer for Canada submitted the following proposal (E/CN.4/1988/WG.1/WP.11):

“The Committee may request approval from the General Assembly for the Secretary-General to undertake on its behalf a study or studies on specific issues relating to one or more articles of the Convention and their implementation, or on issues relating to, but not specifically provided for, in the Convention. On the basis of such studies, the Committee may formulate recommendations to the international community on how the implementation of the present Convention may be improved.”

194. In introducing his proposal, the observer for Canada stated that the concept of studies should not interfere with the reporting cycle of the States Parties. According to the proposal, the committee would not have the authority or the resources to initiate studies. It would have to submit proposals to the General Assembly, which will take the decisions on those studies. That provision would enable the committee to make recommendations on new developments that could affect the rights of the child in the future, taking into account that realities changed. It would also enhance the participation of States Parties, specialized agencies and non-governmental organizations, which would transmit their concerns to the committee. The proposal relied on a precise precedent in the International Covenant on Economic, Social and Cultural Rights.

195. The idea that the Committee would undertake studies was generally supported by the group, although several issues were brought up in connection with the proposal. One participant stated that if the committee was formed by qualified experts, it would not need to request outside experts or organizations to undertake studies, so that no expenses would be incurred. That was the case for the Human Rights Committee of the International Covenant on Civil and Political Rights, which prepared studies on its articles, which were transmitted to the General Assembly.

196. Another speaker voiced the view that the studies should be requested by the Secretary-General to specialized institutions with a recognized level of knowledge in the matter and not the Secretariat of the United Nations. According to some speakers, both views were compatible, since the studies could be requested of specialized agencies or organs of the United Nations, as well as of competent non-governmental organizations. However, it was necessary to stress the role of the United Nations in the implementation of the convention and therefore the decision on the areas where a study should be carried out should be taken by the General Assembly, upon a recommendation from the Committee.

197. The following consolidated proposal for paragraphs (c) and (d) of article 24 was then submitted by Canada, Portugal, Senegal and Venezuela (see E/CN.4/1988/WG.1/WP.23):

“(c) The Committee may recommend to the General Assembly that the Secretary-General undertake on its behalf studies on specific issues relating to one or more articles of the Convention and their implementation, or on issues relating to, but not specifically provided for, in the Convention.”

“(d) The Committee may make suggestions and general recommendations based on the examination of the reports and other information as well as on the studies undertaken at its request.”

198. In discussing paragraph (c), some speakers found that the wording “issues relating to the Convention” was not precise enough, because it could be understood as implying any legal study on the convention or a variety of studies that were not those that the group had in mind. One speaker proposed changing the wording to “issues relating to the rights of the child”. The group considered that the new formulation reflected the idea of the kind of studies to be undertaken and it was also more comprehensive, since issues not specifically provided for in the convention were encompassed.

199. The representative of Venezuela stated that she preferred the first formulation in which the idea of issues not specifically provided for in the convention was explicit. However, she joined the consensus on paragraph (c), requesting that her delegation’s point be reflected in the report. Paragraph (c), as amended, was adopted.

200. Paragraph (d) of the proposal was considered too vague, because it did not specify to whom the recommendations would be addressed or on what “other information” the recommendations would be based.

201. All participants agreed that the recommendations should be reported to the General Assembly. They also agreed to take the words of the last sentence of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination: “Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.”

202. The group further agreed to insert in the text the fact that the recommendations “shall be transmitted to any State Party concerned.”

203. In discussing the question of the information on which the recommendations should be based, the Chairman drew the attention of the group to the contents of articles already adopted, which established the following categories of information: (a) reports by States Parties; (b) experts’ advice; (c) reports by specialized agencies and UNICEF; (d) studies undertaken by the Secretary-General at the request of the committee.

204. Some speakers expressed the view that a flexible and comprehensive implementation of the convention required that all those categories be included, but the committee should also have the faculty of commenting on information not included in the categories of the convention. One speaker objected to that view on the grounds that a vague formulation might induce comment on unreliable information and stated that it was necessary to establish the type of information on which the recommendations would be based. The following text was then suggested: “information received pursuant to articles 23 and 24”. One participant stated that that formulation did not cover all his delegation’s concerns. However, as it covered the most important, he joined the consensus and paragraph (d) of article 24, as amended, was adopted.

205. The text of article 24, as adopted by the Working Group reads as follows:

“In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies and UNICEF shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies and UNICEF to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee’s observations and suggestions, if any, on these requests or indications.

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.”

206. Later during the session, in the course of the 20th meeting, the representative of Venezuela stated that “at this hour (5:00 p.m.) and this stage in the work of this Working Group, when you reopen consideration of article 24, which had not achieved a consensus, my delegation, through you, Mr. Chairman, wishes to inform the other members of the Working Group that we are not able to join in any possible consensus on the current drafting of paragraphs (a) and (b) of article 24. Because of the importance of this article and the precedent which the current text establishes, we request that it should remain between square brackets in the document which the Working Group submits to the Commission on Human Rights.”

207. Several speakers stated that it was their understanding that those paragraphs, as well as articles 22, 23 and 24, had already been adopted and, as was usual, not without many sacrifices in order to adhere to the consensus among participants who had made reservations when they deemed it appropriate. It was felt that it would be very regrettable if a consensus reached after a long discussion was later questioned since all participants had had the opportunity to express their respective opinions. All the articles of the draft convention reflected compromises; delegations had given priority to the rights of the child and had made sacrifices in order to accomplish their task; if the discussion on the articles already adopted were to be reopened, the opportunity to complete the first draft would be lost and it could take a long time for the convention to come into force. The representative of Venezuela insisted on her request and referred to the square brackets which appeared in paragraphs 11 and 12 of article 22.

208. Several speakers stated that they could not support the proposal to put square brackets around paragraphs (a) and (b) as they had been thoroughly discussed and adopted. The Chairman stated that it did not appear that the Working Group was in agreement with the proposal, but that Venezuela’s request would be included in the report and could be brought up during the second reading. The representative of Venezuela did not withdraw her request.

10. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 22

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties

inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10 bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 of this article.]

Article 23

1. States Parties to the present Convention undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in that country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) repeat basic information previously provided.
4. The Committee may request from the States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 24

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

- (a) The specialized agencies and UNICEF shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies and UNICEF to submit reports on the implementation of the Convention in areas falling within the scope of their activities.
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

D. Technical review (1988)

1. Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 43.

Article 23

Paragraph 2 "in fine" of article 23 should read "the implementation of the Convention in *the* country concerned".

2. Comment by the International Labour Organization (ILO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 43.

Article 24

The draft articles on supervision include provisions which would appear to ensure appropriate international cooperation and the contribution of specialized agencies (article 24): (a) Representation, advice and reports;

(b) transmission of reports on conventions; (c) studies on specific issues.

Administrative and financial implications of meetings of States parties and the Committee

With regard to the system of States parties meeting the expenses of supervision, it is recalled that ILO supervision operates on the principle of participation and contribution to expenses by the whole membership. It would appear desirable that the principle should apply to instruments on human rights such as the draft convention on the rights of the child. Such an approach would appear consistent with the aims set by the world community in adopting the instruments in question.

3. Comment by the World Health Organization (WHO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 43.

Article 24

This article provides in its paragraph (a) for the presentation of the World Health Organization, as one of the specialized agencies, at the consideration of the implementation of those provisions of the draft convention falling within its competence by the Committee on the Rights of the Child, to be established under article 22, *paragraph 1* of the draft convention. The World Health Organization may also be called upon by the Committee to provide expert advice on the implementation of those provisions. The Committee may also transmit to the World Health Organization under article 24, *paragraph (b)*, reports from the parties to the convention that contain a request, or indicate a need, for technical assistance. This is very useful, indeed, and the World Health Organization may be able to make some useful contributions under article 24.

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 9.

Health: Role of WHO

The draft convention is quite comprehensive and provides for a variety of rights for the child, with some detailed aspects thereof. A number of articles in the draft convention and also some preambular paragraphs are of direct relevance to the World Health Organization's areas of competence. However, apart from general references to the specialized agencies and international cooperation (e.g. article 12 and 24) no particular role has been given to the World Health Organization in the draft convention. Nor is it mentioned by name.

4. Comment by the Office of the United Nations High Commissioner for Refugees (UNHCR)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 43.

Article 24

As currently drafted, paragraph (a) of the proposed article 24 implies that the UNHCR could be invited by the Committee on the Rights of the Child to provide expert advice. It could not, however, be invited to submit reports nor would it be entitled to be represented at the consideration of the implementation of such provisions of the Convention as fall within its mandate. This results from the fact that with respect to these two matters, the proposed paragraph speaks in terms of "specialized agencies and UNICEF". As you are aware, according to United Nations terminology, UNHCR is not a specialized agency but rather an organ of the United Nations. Given the fact that more than half the world's refugees are children, UNHCR's interest in the work of the Committee is self-evident. It is also highly possible that the Committee may at some point wish UNHCR to report on the situation of refugee children. It would, therefore, appear advisable to modify the wording of paragraph (a) of article 24 slightly. This could be done, for example, by replacing the phrase "the specialized agencies and UNICEF" throughout the paragraph with the phrase "the specialized agencies, UNICEF and other United Nations organs".

5. Comment by the Legal Counsel

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 7.

Article on settlement of disputes

The draft convention should include an article on the settlement of disputes. Such a provision would be very useful, for such a new subject as this one.

E. Second reading (1988-1989)

1. Proposals submitted to the Working Group at second reading

(a) Netherlands

The following is taken from document E/CN.4/1989/WG.1/WP.54.

Article 22, new paragraph 11

11. The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

(b) Latin American meeting

The following is taken from document E/CN.4/1989/WG.1/WP.1.

In article 22, paragraph 3:

"... their own nationals, taking into account the opinion of public and private organizations related to childhood".

In article 22, paragraph 11:

It is suggested that the first draft proposal be adopted.

In article 23, paragraph 5:

"... on their activities; these reports shall also be submitted to the United Nations Commission on Human Rights who shall proceed accordingly".

2. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 640 to 666).

Article 43 (Article 22)

640. The Working Group had before it article 22 as adopted in first reading, without any suggested revisions (E/CN.4/1989/WG.1/WP.2):

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10 bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 of this article.]”

641. As the first six paragraphs raised no discussion or objection, the Working Group adopted paragraphs 1, 2, 3, 4, 5 and 6.

642. With regard to paragraph 7, the delegate of Argentina stated that the wording was too broad and suggested more specific reference(s) to a member's incapacity to perform the duties of the Committee besides death or resignation. He reminded the Working Group that the status of a member could be for example jeopardized within his or her own country and that possibility too should be covered by a more adequate language in the paragraph.

643. In agreeing with this statement, the representative of Portugal proposed the inclusion, after the word "resigns", of the phrase "or manifests his or her impossibility to..."; or as a second alternative, the deletion of the phrase "or for any other cause can no longer perform the duties of the Committee". In that case, the paragraph would read: "If a member of the Committee dies or resigns, the State Party which nominated the member shall appoint ...".

644. The delegate of India suggested the deletion of the word "can" and the addition, after the words "no longer", of the verb "wishes". The phrase would thus read: "If a member of the Committee dies or resigns or for any other cause no longer wishes to perform ...".

645. The observer for Canada then proposed the addition, after the word "resigns", of the phrase "or if he or she or a member of his or her family indicates that he or she can no longer perform the duties of the Committee...".

646. The representative of the United Kingdom drew the Working Group's attention to two problems:

- confirming reasons for non-attendance would be impracticable and the fact of non-attendance at a given number of meetings might be considered as, in itself, justification for seeking a replacement;
- even though each member was to be considered in his/her personal capacity for the election, this was not the case for the replacement and that a fair method would be to replace the former member by the one who got the second highest voting rate in the secret ballot.

647. The delegate of the Union of Soviet Socialist Republics expressed his disagreement with the proposals and statements made so far, pointing out that an exhaustive list of impossibilities of attendance could not be practically included in the article, and that the "second best" policy proposed by the United Kingdom was against the principle of equitable geographical distribution. The representatives of Poland and Senegal also stressed the importance of this principle and stated that the words "subject to the approval of the Committee" provided a good solution for replacement and would thus permit the members to abide by this principle while proceeding with the substitution of a member.

648. Some delegations expressed their wish to not reopen the discussion on matters over which a difficult consensus had been reached and urged the Working Group to proceed with adoption.

649. The Working Group adopted paragraph 7 with the addition of the word "declares" after the words "resigns or", according to the proposal made by the representative of Portugal. The delegation of Senegal asked that its doubts and concerns about this paragraph be reflected in the report.

650. Paragraphs 8, 9, 10 and 10 bis were adopted without any discussion.

651. With regard to paragraphs 11 and 12, it was explained that they were presented in square brackets because consensus could not be reached over the financial matters which were left to the competence of the Commission on Human Rights.

652. The representative of Sweden stated that his delegation wished to withdraw the proposal for alternative 2 of paragraph 11 in order not to complicate the debate on the paragraph. He further indicated his delegation's support for the first alternative of paragraph 11. The representatives of Finland, the Federal Republic of Germany, Norway and the United States of America took the view that both alternatives should be left in the text for decision by the Commission on Human Rights. The representative of Norway stated that the Working Group had adopted both alternatives during the first reading.

653. A proposal for amendment to paragraph 11 submitted by the observer for the Netherlands (E/CN.4/1989/WG.1/WP.54) read as follows:

“11. The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee’s responsibilities.”

654. With regard to this proposal, some delegations stated that the matter was already covered by article 11 and preferred not to retain it.

655. Following the foregoing debate, the Working Group decided to adopt paragraphs 11 and 12 as had been adopted during the first reading replacing the reference to paragraph 10 in the last line of paragraph 12 by a reference to paragraph 10 bis, upon the proposal made by the delegation of the United States of America.

656. Article 22 was adopted by the Working Group to read as follows:

“1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he/she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10 bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

12. [States Parties shall be responsible for expenses incurred in connection with the holding of meetings of States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 bis of this article.]”

Article 23 (Article 44)

657. The Working Group had before it article 23 as adopted at first reading as well as the suggested revisions contained in E/CN.4/1989/WG.2/WP.2 which read as follows:

“1. States Parties (to the present Convention) undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) within two years of the entry into force of the Convention for the State Party concerned,
- (b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in (that) *the country concerned*.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 (b) repeat basic information previously provided.

4. The Committee may request from (the) States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. (The) States Parties shall make their reports widely available to the public in their own countries.”

658. The representative of Venezuela stated that, although the question of scientific experimentation was not explicitly dealt with by the convention, it was a matter in which States Parties should inform the Committee under paragraph 4.

659. The Working Group adopted paragraphs 1, 2, 3, 4, 5 and 6 with the suggested revisions to read as follows:

“1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned,

(b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 (b) repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.”

Article 45 (Article 24)

660. The Working Group had before it article 24 as adopted at first reading and the suggested revisions contained in E/CN.4/1989/WG.1/WP.2 which read as follows:

“In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, (and) UNICEF *and other United Nations organs* shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider [appropriate] to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, (and) UNICEF *and other United Nations organs* to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider [appropriate], to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee’s observations and suggestions, if any, on these requests or indications.

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions

and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.”

661. The delegation of Venezuela requested the deletion of the first sentence of paragraph (a) of the article which reads as follows:

“The specialized agencies, UNICEF and other United Nations organs *shall be entitled* to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate.”

The Venezuelan delegation stated that the justification for this proposal appears in paragraphs 24 to 188 of the report of the Working Group of January 1988, document E/CN.4/1989/28, from which it is clear that the proposal concerning this sentence had been rejected by the majority of governmental representatives present in the room during discussion. In particular, paragraphs 172, 173, 174 and 175.

662. The Chairman ruled that the proposal had been tabled too late and that the Working Group had already proceeded to the second reading.

663. Many delegations expressed their wish to focus on the revised text as contained in E/CN.4/1989/WG.1/WP.2 instead of reopening discussion.

664. The delegate of the United States of America declared that he agreed with the additions suggested by the UNHCR in the first sentence, that the second sentence should remain unchanged, but proposed for the third sentence the inclusion of the words “and other competent bodies as it may deem appropriate” instead of the reference to “other UN organs”, in order to allow the non-governmental organizations to submit reports along with the intergovernmental organizations. The representatives of Norway, Ireland, the United Kingdom and Sweden expressed their support for this proposal whereas the delegations of Italy, Australia, Portugal, the Federal Republic of Germany, Egypt, Morocco and the Union of Soviet Socialist Republics stated their preference for the text as contained in E/CN.4/1989/WG.1/WP.2. Some of these delegations expressed their concern over the inclusion of additional groups to the process of submission of reports. In particular, the representative of Italy strongly supported the inclusion of the words “and other United Nations organs”.

665. The Working Group adopted subparagraph (a) with the suggestions contained in E/CN.4/1989/WG.1/WP.2. Subparagraphs (b), (c) and (d) were adopted without any discussion or objection.

666. Article 24 as adopted by the Working Group reads as follows:

“In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee’s observations and suggestions, if any, on these requests or indications.

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.”

F. Consideration by the Commission on Human Rights, the Economic and Social Council, and the General Assembly

The text of these articles as adopted by the Working Group at second reading was adopted along with that of the other articles of the convention by the Commission on Human Rights by resolution 1989/57 of 8 March 1989 and by the Economic and Social Council by resolution 1989/79 of 24 May 1989. The final text of article 43 was adopted by the Third Committee of the General Assembly and the text of the convention as a whole was adopted by the General Assembly by resolution 44/25 of 20 November 1989.

Final clauses and reordering of the articles: articles 46-54 (signature, ratification, accession, entry into force, amendments, reservations, denunciations)

A. Final text adopted by the General Assembly (1989)

The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

B. First Polish draft convention and comments (1978)

1. The first Polish draft

The following text is taken from the 1978 report of the Commission on Human Rights (E/CN.4/1292, pp. 125 to 127).

Article XIII

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

Article XIV

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article XV

1. The present Convention shall enter into force six months after the date of the deposit with the Secretary-General of the United Nations of the fifteenth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the fifteenth instrument of ratification or instrument of accession, the Convention shall enter into force six months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article XVI

Any State Party may denounce the present Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article XVII

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article XVIII

The Secretary-General of the United Nations shall inform all States of the following particulars:

- (a) Signatures, ratifications and accessions under articles XIII and XIV;
- (b) The date of entry into force of the present Convention under article XV;
- (c) Denunciations under article XVI;
- (d) Notifications under article XVII.

Article XIX

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

2. Comments on the first Polish draft

Articles XIII to XIX of the draft gave rise to the following comments.

(a) Dominican Republic

The following is taken from document E/CN.4/1324.

1. Articles XVI et seq. should be arranged differently so that the order would be, first, the provisions relating to signature, then the provisions relating to ratification of the Convention and finally, in a separate article, the provisions relating to accession.
2. Denunciation, forming the subject of the closing article, should be dealt with later, after the aforementioned provisions. The provisions relating to entry into force should also be set out in the article on the matter.

(b) Morocco

The following is taken from document E/CN.4/1324/Add.1.

The Moroccan Government has an objection to make to article XIX, which refers to the five languages in which the convention is to be drawn up without mentioning Arabic. Since Arabic is one of the official languages of the United Nations, it seems logical that the convention should also be published in Arabic.

(c) Zambia

The following is taken from document E/CN.4/1324.

Article XVI is endorsed on the understanding that States have ratified the convention independently and voluntarily and, therefore, can similarly denounce it provided they have good and plausible reasons for doing so.

C. First reading (1979-1988)

The final clauses of the convention were discussed and adopted by the Working Group in 1988.

1. Revised Polish draft (1979)

The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.

Article 23

The present Convention is open for signature by all States until...

Article 24

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the ... day after the deposit by such State of its instrument of ratification or accession.

Article 27

As depository of the present Convention the Secretary-General of the United Nations shall inform all States:

- (a) of signatures, ratifications and accessions under articles 23, 24 and 25;
- (b) of the date of the entry into force of the present Convention under article 26.

Article 28

1. The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

2. **Modified proposal submitted by Poland (1982)**

The following text is taken from document A/C.3/36/6, part II.

Article 22

The present Convention is open for signature by all States.

Article 23

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 24

The present Convention shall remain open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession.
3. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the ... day after the deposit by such State of its instrument of ratification or accession.

Article 26

As depository of the present Convention the Secretary-General of the United Nations shall inform all States:

- (a) of signatures, ratifications and accessions under articles 22, 23 and 24;
- (b) of the date of the entry into force of the present Convention under article 25.

Article 27

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

3. Modified proposal submitted by Poland (1986)

The following text, which is taken from document A/C.3/40/3, paragraph 12, was subsequently annexed to the 1986 and 1987 reports of the Working Group to the Commission on Human Rights.

Article 24

The present Convention shall be open for signature by all States.

Article 25

The present Convention shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

The present Convention shall remain open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 28

As depository of the present Convention, the Secretary-General of the United Nations shall inform all States:

- (a) of signatures, ratifications and accessions under articles 24, 25 and 26;
- (b) of the date of the entry into force of the present Convention under article 27.

Article 29

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

4. Comments submitted to the Working Group (1987)

(a) Office of Legal Affairs

The following comments on the proposals contained in document A/C.3/40/3 (see section 3 above), which were submitted by the Office of Legal Affairs at the request of the Centre for Human Rights, are taken from document

E/CN.4/1987/WG.1/WP.2, pages 29-30. These comments were later reproduced in document E/CN.4/1988/WG.1/WP.2.

1. *Article 24*

- (i) Some recent conventions have also included the phrase “by all States and Namibia, represented by the United Nations Council for Namibia”
- (ii) The designation of a time frame and place for signature is advisable, e.g.:

“This Convention will remain open for signature until [date] at United Nations Headquarters in New York.”

2. *Article 25*

- (i) “The present Convention is subject to ratification [acceptance or approval] *by the signatories.*”

The rest of the article is not needed (see below).

3. *Article 26*

“The present Convention *is open at any time* to accession by all States.”

4. *Article 27 (2)*

As presently worded, the provision is impractical. Assuming a sixteenth State would deposit its instrument the day after the deposit of the fifteenth one, how could the convention enter into force for that State 30 days later, while the convention would only enter into force for the fifteen first States six months later... Furthermore, the situation would continue for five more months.

If the provision of 27 (1) is to be maintained, then 27 (2) should be reworded and that part of the phrase that reads “after the deposit of the fifteenth instrument of ratification or accession “ would have to be replaced by:

“after the entry into force of the Convention”.

Alternatively the time frame for entry into force could be made identical for paras. (1) and (2).

5. *Article 28*

It would be sufficient to include an article (preferably prior to article 25) designating the Secretary-General as depositary as follows:

“The Secretary-General of the United Nations is designated as depositary of the present Convention.”

Since the practice of the Secretary-General as depositary of international agreements generally conforms to the established custom reflected in article 77 of the Vienna Convention on the Law of Treaties, it is not necessary to specify the traditional functions of the depositary here or in article 29.

General observations

The absence of any provisions relating to the procedure for amendment, submission of reservations, settlement of disputes or denunciations is noted. Should you wish to include these we would be happy to provide assistance. (See, for example, provisions in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.)

5. Proposal submitted to the Working Group (1987)

(a) Sweden

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25, annex).

Article 30

- “1. Reservations shall not be permitted except to article [1, 2, 5, 9, 11, 12, 12 bis, 13, 14, 15, 16, and 17.]³ Such reservations must not be incompatible with the object and purpose of this Convention.
2. No reservation to a provision of this Convention shall affect any obligation undertaken in another international treaty in effect for the concerned State Party.”

6. Discussion and adoption by the Working Group (1988)

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights (E/CN.4/1988/28, paras. 209-221 and 236). It should be noted that the original report contains a mistake in paragraph numbering.

209. In considering the final clauses, the Working Group had before it draft articles 24 to 29 and the comments and general observations thereon submitted by the Office of Legal Affairs (E/CN.4/1988/WG.1/WP.2, chapter VI).

Article 25 (Signature/ratification)

210. The Chairman proposed that the text of article 25 of the Convention on the Elimination of All Forms of Discrimination against Women be adopted without any changes as article 25 of the convention. It was so agreed and article 25 reads as follows:

- “1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.”

Article 26 (Amendments)

211. The observer for Finland proposed the insertion of a revision clause similar to the one contained in article 29 of the International Covenant on Economic, Social and Cultural Rights. He was of the view that, since the triangular relationship between the State, parents and the child was constantly changing, a mechanism whereby States Parties could revise the draft convention was necessary.

212. The Working Group, for this purpose, considered the approaches adopted in different human rights instruments, for example, the Convention on the Elimination of All Forms of Discrimination against Women (article 26) and articles 29 of the Convention against Torture and the International Covenant on Economic, Social and Cultural Rights.

213. Several speakers indicated their preference for the text in article 29 of the International Covenant on Economic, Social and Cultural Rights. Suggestions for amendments were made and agreed upon and the Working Group adopted article 26 to read as follows:

- “1. Any State Party to the present Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of

³ The articles listed correspond to the following present articles of the Convention: article 1 - 1 (definition of the child); article 2 - 7 (name and nationality); article 5 - 5 (parental guidance); article 9 - 17 (mass media); article 12 - 23 (disabled children); article 12 bis - 24 (health and health services); article 13 - 26 (social security); article 14 - 27 (standard of living); article 15 - 28 (education); article 16 - 29 (aims of education); and article 17 - 31 (leisure, recreation and cultural activities).

the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to this Convention.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.”

Article 27 (Entry into force)

214. The discussion referred mainly to the number of ratifications or accessions required for the entry into force of the draft convention. Some felt that the draft convention should set a high threshold, as had been done in the International Convention on the Elimination of All Forms of Racial Discrimination which required a minimum of 27 ratifications or accessions, so as to give to the draft convention a large basis as well as an equitable source of financing. Others, being of the view that a high threshold was neither necessary nor desirable, proposed that 15 ratifications or accessions should suffice for the draft convention to enter into force. The Working Group then reached a consensus on 20 ratifications or accessions, as required by the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture. Article 27 was adopted to read as follows:

“1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.”

Article 28 (Reservations)

215. Sweden submitted a proposal for the inclusion of a provision under which States Parties could make reservations (E/CN.4/1988/WG.1/WP.2).

216. In so doing, the observer for Sweden expressed the view that it was of the utmost importance that the draft convention should not be undermined by States Parties making reservations but should lead to the improvement of national laws to comply with international standards. However, in order to reach a consensus, Sweden withdrew its proposal and suggested that the Working Group consider the text of article 28 of the Convention on the Elimination of All Forms of Discrimination against Women. Another delegation expressed the view that the rights of the child were conceived differently depending on the legal system, values and beliefs of the country concerned. The implementation of child’s rights should not shatter the family nor the values of the family. Therefore, reservations should be allowed so that certain countries could overcome constitutional and legislative obstacles. It was, however, pointed out that, as the concept of the family differed so widely, the draft convention would be weakened if it was to be opened to such reservations.

217. Most of the participants supported the idea behind the Swedish proposal and stressed the need for having such a clause which would enable States Parties to make reservations that were not incompatible with the object and purpose of the draft convention. They indicated their preference for the text of article 28 of the Convention on the Elimination of All Forms of Discrimination against Women.

218. The Working Group decided to adopt the text of article 28 of the Convention on the Elimination of All Forms of Discrimination against Women without any changes as article 28 of the convention to read as follows:

“1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.”

“2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.”

“3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.”

Article 29 (Denunciation)

219. The Chairman-Rapporteur proposed that an article on denunciation be inserted in the draft convention and suggested that article 31 of the Convention against Torture could be used as a basis for discussion. It was proposed that only paragraph 1 of article 31 of the Convention against Torture would be sufficient, and the Working Group adopted draft article 29 to read as follows:

“A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.”

Article 30 (Notifications to the Secretary-General)

220. The Chairman proposed the adoption of the text of article 32 of the Convention against Torture omitting, however, any reference to various articles. This was accepted by the Working Group and the text of article 30 as adopted reads as follows:

“The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions;
- (b) The date of entry into force of this Convention and the date of the entry into force of any amendments;
- (c) Denunciations.”

Article 31 (Authentic texts)

221. The Chairman proposed that the Working Group adopt the text of article 33 of the Convention against Torture as draft article 31 of the draft convention. This was agreed to and the article as adopted reads as follows:

“1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.”

[...]

Numbering of the articles of the convention

236. At the request of the Chairman, the representative of Norway submitted a proposal for the renumbering of the articles of the draft convention (E/CN.4/1988/WG.1/WP.30). Some speakers stated that they hesitated to renumber the articles at that stage, because the work had not arrived at a point where a final renumbering could be done. In the meantime, it was better to keep the old numbering of the articles for easy reference of the members during the second reading. Otherwise, it would not facilitate the discussion. The Chairman of the Working Group stated that he thought it would be useful to make some progress in the renumbering, but he agreed to postpone the question until the second reading.

7. Text as adopted at first reading

The following is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. Any State Party to the present Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to this Convention.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) signatures, ratifications and accessions;
- (b) the date of entry into force of this Convention and the date of the entry into force of any amendments;
- (c) denunciations.

Article 31

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

D. Technical review (1988)

1. The final clauses

(a) Comment by the Legal Counsel

The following general comments are taken from document E/CN.4/1989/WG.1/CRP.1, page 44.

Final clauses

Article 25 as presently drafted deals with four subjects: signature, depositary, ratification and accession. We believe that each subject justifies a separate article and should be in the following sequence: signature, ratification, accession, ...

With respect to the provision dealing with signature, the place and duration for signature should be clearly stated. This is to distinguish it from other stages, e.g. accession.

A deletion of your article 28, *paragraph 2*, is suggested. The way that is worded is likely to create more disputes among the parties.

The last sentence of your article 28, *paragraph 3*, is not precise; it could mean the date on which the notification is received by a State Party. We suggest that it should be the date on which the notification is received by the Secretary-General. There would be one uniform date for the entry into force of withdrawal of reservation.

Notwithstanding our comments in paragraphs 3 and 4 above, consideration should be given to whether it is really necessary to have a reservation clause. If it is decided to maintain such a clause, we suggest that you may wish to consider the text along the lines of article 28 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Regarding your article 30, normally, when the Secretary-General is designated as the depositary, he fulfils this function on the basis of article 77 of the 1969 Vienna Convention on the Law of Treaties, which is more than what is listed in your article 30. Accordingly, article 30 would not serve a useful purpose. On the contrary, it arguably detracts from other functions entrusted to him. More recent United Nations treaties thus do not list the depositary functions. It suffices to have one article which states that the Secretary[-General] of the United Nations is designated as the depositary. He would then fulfil all that is required of him as the depositary.

The following specific comments are taken from document E/CN.4/1989/WG.1/CRP.1, pages 45-47.

Article 25 (Signature-ratification)

The present article should be amended to read as follows:

“Signature

“The present Convention shall be open for signature by all States until ... at United Nations Headquarters in New York.”;

or, if the convention is to be open for signature elsewhere as well:

“The present Convention shall be open for signature by all States until ... at ..., and subsequently, until ..., at United Nations Headquarters in New York.”

Article 26 (Amendments)

The present article should be amended to read as follows:

“Ratification

The present Convention is subject to ratification, the instruments of ratification shall be deposited with the Secretary-General of the United Nations.”

Article 27 (Entry into force)

The present article should be amended to read as follows:

“Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.”

Article 28 (Reservations)

A deletion of your article 28, *paragraph 2*, is suggested. The way that is worded is likely to create more disputes among the parties.

The present article should be amended to read as follows:

“Entry into force

“1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

“2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.”

Article 29 (Denunciation)

The present article should be amended as follows:

(Present article 26)

Article 30 (Notifications to the Secretary-General)

The present article should be amended as follows:

“Reservations

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.”

Article 31 (Authentic texts)

The present article should be amended as follows:

“Denunciation”.

(Present article 30).

ADDITIONS TO FINAL CLAUSES: Suggestions by the Legal Counsel

The following articles should be added as follows:

Article 32

“Depositary

“The Secretary-General of the United Nations is designated as the depositary of the present Convention.”

Article 33

“Authentic texts

“The original of the present Convention, of which the Arabic, Chinese, English, French and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at ... the ... day of ... 198... in the name of ...”

(b) Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 45.

Article 25 (Signature-ratification)

In order to avoid unnecessary repetition, paragraph 2 of article 25 could be deleted. In fact, paragraph 3 of the same article as well as article 31 designate the Secretary-General of the United Nations as depositary of the Convention.

2. The organization of the text of the draft convention and the order of the articles

(a) Comment by the Legal Counsel

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 6.

Consideration should be given to an eventual division of the draft convention into parts or sections (like the two Covenants).

e.g.: Articles 1-19: Substantive provisions
 Articles 22-24: Deal with the establishment, reports and methods of work of the Committee on the Rights of the Child.
 Articles 25-31: Final provisions

Consequently, the various parts or sections of the draft convention should be given separate titles (as in the supplementary Convention on the Abolition of Slavery). The same should be done for various articles (as in the Convention relating to Stateless Persons).

This would give greater clarity to the text and facilitate ease of reference.

(b) Comment by the United Nations Educational, Scientific and Cultural Organization (UNESCO)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 6.

This draft still needs considerable work, and not only in respect of education. There is too much repetition, hidden to some extent by the lack of logical sequencing and linking of items dealing with the same or similar matters. For example:

Article 9 bis seems to belong with article 2;

Article 5 belongs with article 20;

Article 8 bis belongs with article 18 ter;

Article 17 belongs with article 7a; etc.

(c) Comment by the United Nations Children’s Fund (UNICEF)

The following is taken from document E/CN.4/1989/WG.1/CRP.1, page 6.

In order to conform to the general practice with respect to international human rights treaties, consideration might be given to the following reordering of the first few articles:

- Article 7 Definition of the child
- Article 4 Obligations clause dealing with non-discrimination
- Article 5 General obligations clause
- Article 5 bis General qualifications clause
- Article 1 bis And so on - substantive rights provisions

(d) Additional comments and clarifications by the Secretariat

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 42-43.

42. The attention of the Working Group is drawn to the suggested reordering of the articles made by UNESCO and UNICEF in document E/CN.4/1989/WG.1/CRP.1. On a few other occasions, in the same document, organizations have pointed out special connections between certain articles. In addition, reference is made to a proposal for the renumbering of articles, submitted by Norway and contained in document E/CN.4/1988/WG.1/WP.30.

43. Upon reviewing the draft convention and the above-mentioned comments, while seeking only minimum changes, the Working Group may wish to consider the following reordering⁴ of the articles:

	New	Old
1	1	(Child - age)
2	4	(Non-discrimination)
3	3	(Best interest of child; primary consideration)
4	5	(Implementation by States of rights recognized)
5	5 bis	(Parental direction and guidance)
6	1 bis	(Right to life, child’s survival and development)
7	2	(Right to name and nationality)
8	9 bis	(Preservation of identity)
9	6	(Parental care/non-separation from parents)
10	6 bis	(Family reunification/contact with parents)
11	6 ter	(Illicit transfer and non-return of children)
12	7a	(Freedom of expression and information)
13	9	(Mass media)
14	7 bis	(Freedom of thought, conscience and religion)

⁴ It should be noted that article 7 (Child’s right to express opinions) was mistakenly omitted from the list; that “denunciation” should have been old number 29 and not 30; and that “depository” should have been old number 31 and not 25.

15	7 ter	(Freedom of association and freedom of peaceful assembly)
16	7 quater	(Privacy, honour and reputation)
17	8	(Parental/guardian responsibility in upbringing)
18	8 bis	(Prevention of abuse by those having care)
19	10	(Special protection for parentless children)
20	11	(Adoption)
21	11 bis	(Refugee child)
22	12	(Disabled child)
23	12 bis	(Health and access to health care)
24	12 ter	(Periodic review of placed children)
25	13	(Social security)
26	14	(Standard of living)
27	15	(Education)
28	16	(Objectives of education)
29	16 bis	(Cultural, religious and linguistic rights)
30	17	(Rest, leisure, participation in cultural and artistic life)
31	18	(Protection from economic exploitation)
32	18 bis	(Protection from narcotic and psychotropic substances)
33	18 ter	(Protection from sexual exploitation)
34	18 quater	(Prevention of abduction, sale or traffic in children)
35	18 quinto	(Protection from all other forms of exploitation)
36	18 sexto	(Physical and psychological recovery and social reintegration)
37	19	(Treatment in penal matters)
38	20	(Armed conflicts)
39	21	(Other more favourable provisions)
40	21 ter	(Dissemination of the principles and provisions of the Convention)
41	22	(Establishment of the Committee)
42	23	(Reports from States Parties)
43	24	(Methods of work of the Committee)
44	25	(Signature)
45	25	(Ratification)
46	25	(Accession)
47	27	(Entry into force)
48	28	(Reservations)
49	26	(Amendments)
50	30	(Denunciation)
51	25	(Depositary)
52	31	(Authentic texts)

E. Second reading (1988-1989)

1. Discussion and adoption at second reading

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 667 to 694).

Articles 46, 47 and 48 (Articles 25, 25 bis and 25 ter)

667. In connection with its consideration of articles 25 to 31, the Working Group had before it the proposals for the final clauses contained in E/CN.4/1989/WG.1/WP.66 submitted by Poland at the request of the Chairman which read as follows:

“Article 25, Signature

The present Convention shall be open for signature by all States *until ... at United Nations Headquarters in New York.*

Deleted - see below article 30 revised.

Article 25 bis, Ratification

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 25 ter, Accession

The present Convention shall *remain open* for (be open to) accession by *any* (all) State(s). *The instruments of accession shall be deposited* (Accession shall be effected by the deposit of an instrument of accession) with the Secretary-General of the United Nations.”

668. The observer for Poland explained that since article 25 was dealing with four different matters, they had, in accordance with the suggestion made by the Legal Counsel and UNESCO, separated the article into different articles as 25, 25 bis, 25 ter and that the paragraph dealing with the depositary was moved under new article 30. The Polish delegate also added that the elimination of the titles would be preferable since no other article in the convention had a title. Finally, he pointed out that the addition of the phrase “until ... at United Nations Headquarters in New York” as suggested by the Legal Counsel was not necessary.

669. The delegate of Morocco stated that, taking into consideration the variety of rights covered by the convention, the harmonization of the final clauses could be made on the basis of the two Covenants and more specifically, on the basis of article 43, paragraph 1, of the International Covenant on Civil and Political Rights and article 26 of the International Covenant on Economic, Social and Cultural Rights regarding signature and accession. This proposal was endorsed by the delegation of Senegal.

670. The representative of the Legal Counsel explained that their suggestion had to be understood in the light of the Vienna Convention on the Law of Treaties, which was a development that came after the Covenants, but that the Working Group was free to choose its approach to the final clauses.

671. The delegate of Italy drew the Working Group’s attention to the difference between the Vienna Convention - which was a codification of international law - and the present convention which exclusively concerned human rights. She has remarked that the Vienna Convention is not only a codification of the international customary law, but it indicates also the progressive development of international law. The rules of this last category (progressive development of international law) do not oblige all the States of the world, but only those who have ratified the Convention or adhered to it. Some rules, regarding for instance the admission and the reservation can be considered as indicating the progressive development of international law. Therefore, she added her preference for the approach proposed in E/CN.4/1989/WG.1/WP.66.

672. The Working Group adopted article 25 without the phrase “until ... at United Nations Headquarters in New York”.

673. The Working Group then adopted articles 25, 25 bis and 25 ter as proposed in document E/CN.4/1989/WG.1/WP.66 to read as follows:

“Article 25, Signature

The present Convention shall be open for signature by all States.

Article 25 bis, Ratification

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 25 ter, Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.”

Article 50 (Article 26)

674. The Working Group had before it the text of article 26 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article ..., Amendments

“1. Any State Party to the present Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to (the) States Parties (to the present Convention) with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of (the) States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of (the) States Parties (to this Convention).

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.”

675. The Working Group accepted the proposed revisions and adopted article 26, as revised, reading as follows:

“1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.”

Article 49 (Article 27)

676. The Working Group had before it the text of article 27 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article ..., Entry into force

“1. The present Convention shall enter into force on the thirtieth day *following* (after) the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying (the present Convention) or acceding to *the Convention* (it) after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the (date of the) deposit *by such State* of its (own) instrument of ratification or accession.”

677. The Working Group accepted the proposed revisions and adopted article 27, as revised, reading as follows:

“1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.”

Article 51 (Article 28)

678. The Working Group had before it the text of article 28 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article ..., Reservations

“1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

(2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.)

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States (thereof). Such notification shall take effect on the date on which it is received *by the Secretary-General*.”

679. With regard to the proposed deletion of paragraph 2, the representative of the Legal Counsel explained that a similar formulation had been already included into article 19 of the Vienna Convention on the Law of Treaties and it was therefore deemed unnecessary to repeat it in the present draft.

680. In the discussion that followed the observer for Turkey expressed the view that the subject of paragraph 2 went beyond the framework of this convention, the role of which should not be to rewrite the law of treaties. He therefore favoured the deletion of paragraph 2.

681. Some other delegations opposed the deletion of paragraph 2 and argued that this important provision of the convention should be maintained. The representative of Italy indicated in this connection that not all the States had ratified the Vienna Convention and therefore its application was not yet universal; besides, emerging new States would not be bound by its provisions. Paragraph 2 was subsequently retained.

682. The Working Group then adopted article 28, as revised, reading as follows:

“1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.”

Article 52 (Article 29)

683. The Working Group had before it the text of article 29 as adopted at first reading (E/CN.4/1989/WG.1/WP.2).

684. No revisions or amendments were proposed and the Working Group therefore adopted article 29 to read as follows:

“A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.”

Article 30 (Article 53)

685. The Working Group had before it the following text of article 30 as adopted at first reading:

“The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions;
- (b) The date of entry into force of this Convention and the date of the entry into force of any amendments;
- (c) Denunciations.”

686. The Working Group also had before it the text of article 30 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made by the Legal Counsel and UNESCO during the technical review, read as follows:

“Article ..., Depositary

The Secretary-General of the United Nations is designated as the depositary of the present Convention.”

687. The observer for Poland, who introduced these proposals, explained that a description of the functions of depositary was not necessary in this text since the Secretary-General was under obligation to perform such functions as specifically provided for in article 77 of the Vienna Convention on the Law of Treaties.

688. The Working Group accepted the proposed change and adopted article 30, as revised, reading as follows:

“The Secretary-General of the United Nations is designated as the depositary of the present Convention.”

Article 54 (Article 31)

689. The Working Group had before it the following text of article 31 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.”

690. The Working Group also had before it the text of article 31 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made by the Legal Counsel during the technical review, read as follows:

Article ..., Authentic texts

“1. (This Convention,) *The original of the present Convention*, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

(2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.)

2. *In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.*

3. *Done at ... this ... day of ... 19... in the name of*”

691. The Working Group accepted the proposed revisions and, after having made some editorial changes, adopted article 31, as revised, to read as follows:

“The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at ... this ... day of ... 19..”

Reordering of the articles

692. The Working Group had before it a proposal submitted by the Norwegian delegation on the reordering of articles of the draft convention (E/CN.4/1989/WG.1/WP.69) which read as follows:

“Proposal for reordering of articles

PREAMBLE

PART I

New	Old	
1	1	(Child - age)
2	4	(Non-discrimination)
3	3	(Best interest of child)
4	5	(Implementation of rights recognized)
5	5 bis	(Parental guidance)
6	1 bis	(Right to life)
7	2	(Right to name and nationality)
8	9 bis	(Preservation of identity)
9	6	(Parental care/non-separation from parents)
10	6 bis	(Family reunification)
11	6 ter	(Illicit transfer and non-return)
12	7	(Child's right to express opinions)
13	7a	(Freedom of expression and information)
14	7 bis	(Freedom of thought, conscience and religion)
15	7 ter	(Freedom of association and freedom of peaceful assembly)
16	7 quater	(Privacy, honour and reputation)
17	9	(Mass media)
18	8	(Upbringing and child-rearing)
19	8 bis	(Prevention of abuse)

2. Statement made during the adoption of the report

(a) Portugal

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, para. 726).

726. Lastly, the delegation of Portugal expressed certain misgivings about the statements made by some delegations concerning the content of several provisions of the text, at the very moment when the Working Group was completing the preparation of the draft convention. The delegation of Portugal said it was sure that, at the time of ratifying that convention and in the event that the formulation of reservations proved justified, those delegations would take into account the applicable principles of international law, and in particular article 51 of the draft convention.



Other Issues and Matters

Part four

Articles discussed but not adopted

A. Children born out of wedlock

1. Comment on the first Polish draft (1978)

(a) Federal Republic of Germany

The following is taken from document E/CN.4/1324.

8. The Federal Government also expresses reservations as to the comprehensiveness of the safeguards provided regarding efforts to ensure the protection of the child which have been undertaken elsewhere in the United Nations. This applies particularly to natural children whose status has long been the subject of consultations within the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights. This question should receive special attention. Another matter that should receive special attention in this context is whether the application of the convention to natural children is also provided for in the present draft. Admittedly, article I provides that every child shall be entitled to the rights set forth in the convention, without distinction or discrimination on account of birth or status, among other factors. Furthermore, the wording of principle 1 of the Declaration of the Rights of the Child of 20 November 1959, on which article 1 of the draft convention is based, seems to have been designed to assure natural children of the same rights as those enjoyed by legitimate children. However, the other provisions of the Declaration of 20 November 1959, and consequently of the draft convention based on it, do not take account of the situation of natural children. For instance, the second part of article VII, paragraph 2, provides that responsibility for the education and guidance of the child lies in the first place with "his parents". This provision needs to be modified to cover the situation of natural children, most of whom are brought up in the family of the mother.

2. Proposal submitted to the Working Group (1984)

(a) China

The following is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71).

1. New article

The States Parties to the present Convention should protect the interests of the children born out of wedlock and ensure to them the rights as enjoyed by those born in lawful wedlock.

3. Proposals submitted to the Working Group (1986)

(a) Austria

For the text of this proposal, see paragraph 13 in the following section.

(b) China

For the text of this proposal, see paragraph 13 in the following section.

(c) NGO Ad Hoc Group

For the text of this proposal, see paragraph 13 in the following section.

4. Discussion in the Working Group (1986)

The following is taken from document E/CN.4/1986/39.

Article 4 bis

13. For the consideration of this article the Working Group had before it a proposal submitted by the delegation of China contained in document E/CN.4/1986/WG.1/CRP.5 which read:

“The States Parties to the present Convention shall take all effective measures to ensure that a child born out of wedlock shall enjoy the same legal rights as those enjoyed by a child born in wedlock, in particular the rights enumerated in the present Convention.”

The Working Group also had before it a proposal by the representative of Austria as follows:

“1. The States Parties to the present Convention recognize that children born out of wedlock shall enjoy equal rights with children born in wedlock.

“2. The States Parties to the present Convention shall take all appropriate measures including legislative and administrative measures to implement this article having regard to the relevant provisions of other international instruments. In particular, the States Parties shall ensure that the child has the right to establish maternal and paternal affiliation.”

A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention, as contained in document E/CN.4/1986/WG.1/WP.1:

1. The States Parties to the present Convention shall protect the interests of children born out of wedlock, in particular by ensuring that they shall enjoy the same legal rights as all other children.

2. The States Parties to the present Convention shall ensure that all children have the right to legal recognition of both maternity and paternity, and undertake to facilitate the processes for the determination and acknowledgement thereof.

14. During consideration of these proposals, some delegations expressed the view that there was no need to include a specific article relating to children born out of wedlock in the convention as the subject was already covered under article 4 adopted by the Working Group. The delegations of the Netherlands and Norway were in favour of such a provision and suggested the deletion in the proposal by China of the following words: “in particular the rights enumerated in the present Convention”.

15. The representative of Finland was in favour of the proposal submitted by the representative of Austria, but suggested the second sentence of the second paragraph of the Austrian proposal be replaced by the following: “In particular, the States Parties shall take all appropriate measures to ensure the effective implementation of the child’s right to have maternal and paternal affiliation evidenced or established”. The representative of Austria supported the revised proposal put forward by the observer for Finland.

16. The representatives of Australia, Japan, United Kingdom and United States pointed out that the proposal submitted by the delegation of China was in conflict with their domestic laws of succession. The delegations of Algeria, Iraq and Morocco specifically objected to the inclusion in the draft convention of a provision dealing with children born out of wedlock, while the representative of the German Democratic Republic stressed that such a provision should be included in the draft convention.

17. The representative of China felt that there should definitely be an article stating in clear terms the rights of a child born out of wedlock and suggested inserting the words “according to national laws” after the words “present Convention”.

18. The observer for the Netherlands suggested that in paragraph 1 of the Austrian proposal the words “equal rights with” be replaced by “the same legal rights as”. After some further debate on the question, the representative of Austria decided to withdraw his proposal while the representative of France indicated that she was in favour of a separate article on the subject being discussed by the Working Group.

19. The representative of the United Kingdom put forward the following reformulation of the article under discussion:

“The States Parties to the present Convention shall through national legislation take all effective measures to ensure that a child born out of wedlock shall enjoy the rights set out in this Convention to the same extent as a child born in wedlock”.

20. The representative of Japan supported the proposal by the representative of the United Kingdom with the exception of the words “through national legislation”. The representative of the United Kingdom agreed to their deletion and stated that although he had put forward the above-mentioned proposal, his preference was not to have a separate article on the question under consideration by the Working Group.

21. The Chairman decided that the Working Group had not reached a consensus on the proposal by the delegation of China.

5. Proposal submitted to the Working Group (1988)

(a) Federal Republic of Germany

The following is taken from document E/CN.4/1988/WG.1/WP.3.

Article 4 bis (Children born out of wedlock)

The States Parties to the present Convention undertake to ensure the conformity of their law with the following provisions:

1. Maternal affiliation of every child born out of wedlock shall be based solely on the fact of birth of the child.
2. Paternal affiliation of every child born out of wedlock may be evidenced or established by voluntary recognition or judicial decision.
3. The voluntary recognition of paternity may not be opposed or contested in so far as the internal law provides for these procedures unless the person seeking to recognize or having recognized the child is not the biological father.
4. In actions relating to paternal affiliation scientific evidence which may help to establish or disprove paternity shall be admissible.
5. (a) The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock.
(b) Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father or mother, this obligation shall also apply for the benefit of a child born out of wedlock.
6. (a) Where the affiliation of a child born out of wedlock has been established as regards both parents, parental authority may not be attributed to the father alone.
(b) There shall be no power to transfer parental authority; cases of transfer shall be governed by internal law.
7. Where the father or mother of a child born out of wedlock does not have parental authority over or the custody of the child, that person may obtain the right of access to the child in appropriate cases.
8. A child born out of wedlock shall have the same right of succession in the estate of its father and its mother, and of a member of its father's or mother's family, as if it had been born in wedlock.
9. The marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.

6. Discussion in the Working Group (1988)

The following is taken from document E/CN.4/1988/28.

Article 4 bis (Children born out of wedlock)

226. The Working Group had before it a proposal submitted by the Federal Republic of Germany (E/CN.4/1988/WG.1/WP.3). In introducing the proposal, the representative of the Federal Republic of Germany stated that the convention would not serve its purposes if it did not cover the situation of children born out of wedlock, who suffered a kind of discrimination. His delegation's proposal reproduced the terms of the European Convention on the matter. He recognized that the proposal could be objected to because national legislation in many countries was not in agreement with it, but he thought that the points proposed were minimal.

227. One speaker stated that an article reading, "Children born out of wedlock shall have the same rights as children born in wedlock." should be included.

228. Several speakers stated that the question of children born out of wedlock had been discussed at previous sessions of the Working Group, in which it had been evident that it was impossible to reach a consensus. A much shorter draft than the one proposed by the Federal Republic of Germany had been suggested but consensus thereon had not been reached. It was therefore impossible to insert such a detailed proposal at the current stage. Furthermore, in the discussion on that question in 1986, it had been made very clear that the problem was indeed covered by article 4 which established the principle of non-discrimination on the basis of birth.

229. The question, according to some speakers, caused many problems. Although the principle of recognizing children born out of wedlock was a good one, there were many countries in which it had not been incorporated in the legislation and customs and culture were in contradiction with it.

230. The representative of the Federal Republic of Germany stated that his proposal was aimed at extending the benefits of a convention, which was supposed to protect one of the weakest parts of society, to a portion of it which was even weaker, but having heard the various speakers he would withdraw his proposal.

B. Illegal alien entry

1. Revised Polish draft (1979)

The following is taken from document E/CN.4/1349.

Article 5

The States Parties to the present Convention recognize the right of alien children staying in their territories to enjoy the rights provided for in this Convention.

2. Proposal submitted to the Working Group (1986)

(a) Netherlands, United Kingdom and United States of America

The following is taken from document E/CN.4/1986/39.

Article 21 bis

Nothing in this Convention shall be interpreted as legitimizing any alien's illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay, or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.

3. Discussion in the Working Group (1987)

The following is taken from document E/CN.4/1987/25.

E. *Article 21 bis*

133. The Working Group had before it a proposal for an article 21 bis which was submitted at its 1986 session by the delegations of the Netherlands, the United Kingdom and the United States, and which read as follows:

“Nothing in this Convention shall be interpreted as legitimizing any alien’s illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay, or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.”

134. The representative of the United Kingdom stated that his delegation would continue to have difficulties with some of the articles already adopted unless such a provision as the above-mentioned one concerning aliens would now be included in the draft convention. For example, paragraphs 1 and 2 of article 2 caused difficulties in relation to his country’s nationality law, paragraph 1 of article 6 was not compatible with United Kingdom immigration legislation, and articles 3, paragraph 1, 4, paragraph 1, 6, paragraphs 2 and 3, 6 bis, paragraphs 2 and 3, and 8, paragraphs 1 and 2, all posed problems as well in relation to United Kingdom immigration law. Certain of those provisions were difficult or even impossible to reconcile with his country’s law and practice, in common with other States, British legislation did not allow unrestricted entry into the country.

135. The representative of Senegal questioned the appropriateness of such a proposal, and his doubts were shared by the delegations of Algeria, Argentina, Mexico and Venezuela. The representative of Venezuela referred in particular to the question of adoption and said that if she had the certainty that in cases of adoption such a provision would not hurt the child, she would accept it, but as it stood she was not in a position to do so. In addition, the observer for Finland voiced his doubts as to the relevance, importance and significance of the whole proposal.

136. The representative of the United States indicated that, while his preference was for the full text, as originally submitted, in a spirit of compromise he proposed to shorten the proposal in the following way

“Nothing in this Convention shall be interpreted as legitimizing any alien’s illegal entry into and presence in a State.”

This proposal was supported by the representative of the United Kingdom.

137. This abridged version did not meet with the full approval of the delegations of Canada and the Netherlands, while the observer for Finland objected to the inclusion of the proposed article either in its full or abridged version. However, the delegation of the Netherlands held the opinion that the provision under consideration by the Working Group was very relevant to several articles of the draft convention.

138. The Chairman proposed to put an end to the discussion for lack of a consensus and indicated that if the co-authors of the proposal would elaborate a more acceptable text, in that case the Working Group would resume its discussion on the subject. At a later meeting and in connection with the adoption by the Group of article 6 bis, the representative of the United Kingdom and on behalf of the United States and the Netherlands, stated that they would be presenting a revised proposal for article 21 bis to the next session of the Working Group. The delegations of the Netherlands, the United Kingdom and the United States considered that an article on the lines of article 21 bis was essential to a balanced convention, and this view was supported by the delegation of the Federal Republic of Germany.

4. Proposal submitted to the Working Group at second reading (1989)

(a) Federal Republic of Germany and Japan

The following is taken from document E/CN.4/1989/WG.1/WP.20.

Add the following paragraph 5 to article 6:

5. Nothing in this Convention shall affect in any way the legal provisions of States Parties concerning the immigration and the residence of foreign nationals.

C. General applicability of all human rights to children

1. Proposal submitted to the Working Group at second reading (1989)

(a) Federal Republic of Germany

For the text of this proposal, see paragraph 695 in the following section.

2. Discussion at second reading (1989)

The following is taken from document E/CN.4/1989/48.

Article 2

695. In connection with the discussion of article 2, the delegation of the Federal Republic of Germany submitted the following proposal (E/CN.4/1989/WG.1/WP.5):

Article 2 (new):

Replace article 2 by the following

“Article 2 (new):

1. The States Parties shall ensure:
 - (a) that all human rights recognized by them also apply to children,
 - (b) that general human rights as enshrined in the International Covenant on Civil and Political Rights even apply to children, if a State Party to the present Convention is not a Party to the Covenant.
2. In order to take into account the evolving capacities of the child to take decisions under his own responsibility, provision may be made for the child to exercise some of his rights to be specified under the law of his State as if he had attained the age of majority; in this case, State Parties shall ensure that the legal effects of the decision taken by the child are recognized, except the child acted before having attained the minimum age prescribed under the law of his State.”

696. The delegate of the Federal Republic of Germany pointed out that many rights which under the International Covenants already apply to children, were included again specifically for children in the draft convention, but on the other hand, not all the rights guaranteed by the Covenants appeared in the draft convention, for example, the right of self-determination, the equal rights of men and women, the ban on slavery, the right of a person arrested or detained to be brought promptly before a judge, even though they also should apply to children. The delegate said that this selective double regulation of rights would create problems and even contradictions with the Covenants and that a general clause ensuring the application of general human rights to children, should be substituted for the present article 2.

697. The observer for Australia stated that the proposal of the Federal Republic of Germany to replace article 2 was totally new, bringing into question the whole approach to the convention to existing rights. It may well have been a better way to proceed had it been introduced eight years before, but that had not happened and now its acceptance would only serve to delay adoption of the convention.

698. The delegate of India stated that the proposal of the Federal Republic of Germany to replace article 2 with a new article covered entirely new areas, and he expressed his opposition to consider such a proposal at this late stage.

699. The delegation of Portugal pointed out that the proposal of the Federal Republic of Germany referred solely to the Covenant on Civil and Political Rights, while other important conventions, including the Covenant on Economic, Social and Cultural Rights and the Geneva Conventions and Protocols, had been omitted. Moreover, the representative of Portugal pointed out that it seemed unlikely that a State which is not a party to the Covenant on Civil and Political Rights would be open to the idea of feeling bound by its provisions.

700. The delegate of Poland said that it was too late to adopt the proposal of the Federal Republic of Germany and pointed out the problem that would be posed by the countries which were not parties to the Covenant on Civil and Political Rights. He added that despite repetitions between the draft convention and the Covenant, the former was an independent instrument and that work on this convention should continue.

701. Noting the importance of the issue raised by the Federal Republic of Germany, the delegate of Ireland, reminded the Working Group that article 21 of the draft convention allowed the application of the highest human rights standards enshrined in other international instruments and suggested that article 21 might be moved forward to follow article 1 bis.

702. The observer for Finland drew the Working Group's attention to the issue raised under the present article 21 and stated that this had already been addressed by Finland and the ILO in E/CN.4/1989/WG.1/CRP.1, and proposed the inclusion of these two suggestions in article 21.

703. The representative of the Federal Republic of Germany withdrew his proposals relating to article 2 (E/CN.4/1989/WG.1/WP.5).

D. Duties of the child

1. Proposal submitted to the Working Group at second reading (1989)

(a) Senegal

For the text of this proposal, see paragraph 704 in the following section.

2. Discussion at second reading (1989)

The following is taken from document E/CN.4/1989/48.

Article 5

704. In connection with its discussion of article 5, the representative of Senegal submitted a proposal (E/CN.4/1989/WG.1/WP.17, paras. 5 and 6) which sought to insert two new articles reading as follows:

“Article 5 ter (article 8 ter)

The States Parties shall grant the protection necessary to the family, the natural environment of the child and shall attend to his physical and moral health.

Accordingly, the States Parties shall provide, in case of need, appropriate assistance to the family with a view to helping it to assume its responsibilities for the harmonious development of the child.

“Article 5 quater (article 8 quater)

The child has the duty to respect his parents and to give them assistance, in case of need.”

705. In introducing his proposals the representative of Senegal indicated that he did not insist on consideration by the Working Group of article 5 ter which was thus withdrawn, but he would maintain his proposal with regard to a new article 5 quater which thus becomes article 5 ter.

706. Some participants said that, although they shared the concern of the author of the proposal, they still were hesitant to support it because the duty to respect parents was, in their view, more a moral obligation than a legal one. It was also pointed out that in practical terms it would be hardly possible for the States Parties to report on their compliance with such a provision of the convention.

707. Some other delegations, however, voiced their support for the inclusion of this article or at least of this idea into the future convention. It was argued that in quite a number of international instruments the rights were accompanied by corresponding duties, and in this convention certain duties might also be laid down.

708. The representative of Ireland orally proposed to change the second part of the article to read: "...and to accord them appropriate assistance". The observer for Egypt suggested that after the word "assistance" the words "if they are capable of doing so" be added.

709. The observer for Canada expressed the view that consideration of the proposal of Senegal would be more appropriate within the framework of issues under article 16 which related to the objectives of education of the child.

710. The representative of Senegal agreed with this idea and indicated that he would be prepared to discuss his proposal under article 16.

711. The Chairman announced that Senegal was thus included as a member in the Working Group on education issues.

E. Children of migrant workers

1. Revised Polish draft (1979)

The following is taken from document E/CN.4/1349.

Article 5

The States Parties to the present Convention recognize the right of alien children staying in their territories to enjoy the rights provided for in this Convention.

2. Proposal submitted to the Working Group (1982)

Document E/CN.4/1982/WG.1/WP.1, which contained this proposal, was not issued.

3. Proposal submitted to the Working Group (1984)

(a) International Social Service

The following is taken from document E/CN.4/1984/WG.1/WP.3.

Without prejudice to the application of other relevant provisions of this Convention, the States Parties to the Convention recognize that the children of migrant workers present in their territory need special protection and assistance, and they further recognize the right of the children of migrant workers to be reunited with their parents or parent.

4. Proposal submitted to the Working Group at second reading (1989)

(a) Yugoslavia

For the text of this proposal, see paragraph 712 in the following section.

5. Discussion at second reading (1989)

The following is taken from document E/CN.4/1989/48.

Article 11

712. The Working Group had before it a proposal submitted by Yugoslavia for an article 11 ter (E/CN.4/1989/WG.1/WP.44). The text of the proposed article read as follows:

“Article 11 ter (new paragraph)

States of employment, parties to this Convention shall ensure respect for cultural identity of children of migrant workers and in cooperation with States of origin shall undertake appropriate measures to help them to use and to be trained in their mother tongue and to maintain cultural links with their country of origin. States of origin and States of employment will undertake appropriate measures to facilitate reintegration of children of migrant workers in the school and social system of the State of origin upon their return there.”

713. The proposal was introduced by the representative of Yugoslavia who indicated that the inclusion of a specific reference to the children of migrant workers would make the convention more comprehensive in its scope.

714. The representatives of Argentina, Egypt, Mexico, Morocco and Turkey were in favour of the adoption of the proposed article as contained in E/CN.4/1989/WG.1/WP.44.

715. In the ensuing debate, a number of delegations expressed the view that although the issue of the children of migrant workers was an important one, there were however a number of reasons why the proposed article should not be incorporated in the convention.

716. Some delegations took the view that the children of migrant workers were adequately protected by the existing article 16 of the present convention. Others took the view that because the General Assembly had set up a Working Group to draft a convention on migrant workers, and since that Working Group had adopted article 45, which met the specific concerns of the Yugoslavian proposal, they felt it better to leave the issue to that other Working Group. Other reasons given for opposition to the proposal were that the definition of the terms “migrant workers”, “State of employment” and “State of origin” were not clear and that the adoption of the proposed article would impose great burdens on States to which it applied. Another reason voiced for the opposition to the proposal was that in singling out a particular group of immigrants for special promotion there would be a greater chance that others, not so protected may be discriminated against. Representatives particularly emphasized that, because they had not been given enough time to obtain government instructions on the fundamental issues covered by the proposal, such as immigration and social policy, they would not be able to support the proposal. It was further pointed out by some representatives that since the second reading was essentially to polish the text of the convention and to settle any anomalies, the introduction of the proposal for a new article was inappropriate.

717. The representative of Mexico stated that the fact that the General Assembly had established a Working Group to draft a convention on migrant workers did not prevent the present Working Group from including an article on this issue in the present convention. The representative of Egypt indicated that the question raised in the proposal was so important that even if the proposal were not adopted its contents should be reflected elsewhere in the convention. The representative of Yugoslavia agreed with the observer for Mexico and further stated that in agreeing to the adoption of this proposal at that stage States would not necessarily be inextricably bound to its inclusion in the convention. The representative of Yugoslavia however indicated that she would not insist on the adoption of the proposal, but would leave its fate to the good judgement of the Chairman.

718. In view of the fact that the concerns raised by the proposal were already covered by article 16 of the present convention and would also be covered by the Working Group established by the General Assembly to draft a convention on migrant workers, the Chairman decided to adjourn the discussion of the proposal.

F. Implementation in federal States

1. Proposal submitted to the Working Group (1987)

(a) United States of America

The following is taken from document E/CN.4/1987/WG.1/WP.10.

Article 23 bis

1. Where a State Party is constituted as a federal State, the national Government of such State Party shall undertake appropriate measures to implement the provisions of this Convention in so far as it exercises legislative and judicial jurisdiction over the subject matter thereof.

2. In so far as the subject matter of the provisions of this Convention falls within the jurisdiction of the constituent units of the federal State, the national Government shall take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfilment of this Convention.

2. Proposal submitted to the Working Group (1988)

(a) United States of America

The proposal contained in document E/CN.4/1987/WG.1/WP.10 was resubmitted in document E/CN.4/1988/WG.1/WP.17, cited in the following section.

3. Discussion in the Working Group (1988)

The following is taken from document E/CN.4/1988/28.

Article 23 bis (Federal States)

231. The representative of the United States of America, in introducing a proposal (E/CN.4/1988/WG.1/WP.17) for a provision concerning the obligation of federal or non-unitary States emphasized that the proposal was made in order to assist implementation of the convention in a federal structure and would not affect implementation in unitary States.

232. On the basis that the proposal could enable some federal States to become parties to the convention, which was one of the main purposes of such an instrument, a number of speakers said that they did not oppose its inclusion, but indicated that the central Government had a primary responsibility for implementation.

233. Other speakers stated that federal clauses might establish a difference between federal States and the others, which was not considered appropriate, especially for human rights instruments. They objected in particular to the wording used in the proposal which did not reflect the consensus developed in the world on the language to be used in federal clauses. Some words of the proposal concerning the obligation of the central or national Governments to implement the convention were considered vague (e.g. "suitable measures" or "appropriate measures") and unacceptable, in particular in the context of a human rights instrument. The wording of the proposal, if adopted, would considerably narrow the application of the convention in federal States. It was suggested that, as the federal States had organized their internal relations in different ways, they might study the possibility of making reservations.

234. The representative of the United States of America said that in view of the complexity of the question, he would withdraw the proposal. This might be a matter for a reservation upon consideration of ratification.

Articles proposed but not discussed

A. Interpretation of the term “parents”

1. Proposal submitted to the Working Group (1988)

(a) NGO Ad Hoc Group

The following is taken from document E/CN.4/1988/WG.1/WP.2, page 13.

In this Convention, the term “parents” shall be interpreted to include, where appropriate, other family members or guardians who have de facto responsibility for the care and upbringing of the child.

B. Article on the settlement of disputes

1. Technical review (1988)

The following is taken from document E/CN.4/1989/WG.1/CRP.1.

Comment by the Legal Counsel (para. 5)

The draft convention should include an article on the settlement of disputes. Such a provision would be very useful, for such a new subject as this one.

C. The right to food

1. Technical review (1988)

The following is taken from document E/CN.4/1989/WG.1/CRP.1.

Comment by FAO (pages 1-4)

The document appears to fulfil General Assembly resolution 4/120 which calls for consistency between standards being developed in new international instruments and those already existing.

The Food and Agriculture Organization’s development policy lays stress on the continuing ever-growing importance of the small farmer and the family as a production unit in the world’s food supply. This policy implicitly recognizes the importance of all family inputs into production. It may be necessary to include certain caveats included in the FAO’s policy statements regarding productive activity by children on small family farm enterprises.

The convention should include provisions to prevent discrimination against female children as far as food and education are concerned.

In the present text, there are only two marginal references to the right to food (article 12 bis and article 14 (3)).

The convention on the rights of the child offers an excellent opportunity to implement one of the recommendations proposed by Mr. Asbjorn Eide in his “Report on the Right to Adequate Food as a Human Right”. He suggests that it is not sufficient to recognize the right to food, but consideration should also be given to the identification of its corresponding obligations.

There should be a full article on the right to food as one of the fundamental rights of the child. This article could be included in the convention after article 1 bis (right to life, child’s survival and development) or before article 12 bis (health and access to care).

Three aspects should be considered in the definition of the child's right to food. The State Parties should:

- (a) Recognize the children's right to food and the significance of food culture as part of a wider cultural identity (national obligation to respect the right to food).
- (b) Prevent distortion of positive nutritional aspects of existing food patterns and develop national legislation and administrative mechanisms and procedures to protect and facilitate a valid food procurement for all children (national obligation to protect the right to food).
- (c) Incorporate nutritional considerations into relevant development activities and formulate and execute policies, plans and programmes to facilitate and assist children in obtaining viable food procurement (national obligation to fulfil the right to food).

Among the many rights referred to in the draft the ones related to what might be called "Basic needs" or "Material conditions of life" seem to have been given little stress or have not been considered at all.

The right to eat enough, both in quantity and quality from early life (perhaps even from the mother's womb) has never had enough support. In many countries some specific points are presently being discussed, such as:

- (a) The right to be breastfed from birth.
- (b) The right to a suitable diet (breastfeeding plus weaning foods) from the third month of age.
- (c) The right to clean, nutritious food and water.
- (d) The right to live free of insects, parasites and heavy contamination.

Perhaps food and health should come first because without these many of the other rights would be worthless.

D. Genetic engineering

1. Comments on the first Polish draft (1978)

(a) Colombia

The following is taken from document E/CN.4/1324/Add.2.

[...]

The item concerning the convention should include as a topic of discussion the development of new scientific methods for the fertilization and preservation of human reproductive cells and experiments concerning their genetic structure.

[...]

2. Proposal submitted to the Commission on Human Rights following the second reading (1989)

(a) World Association of Children's Friends

The following is taken from document E/CN.4/1989/NGO/15.

Written statement by the World Association of Children's Friends, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[4 January 1989]

Our Association ventures to express its fears to you, the persons who will be representing your Governments in the Commission on Human Rights:

By your positions on the text of a preliminary draft for an international convention elaborated by the Working Group chaired by Professor Lopatka, you will be establishing the status of children for many decades to come. However, the binding provisions of this draft gloss over the situation of a child who has been conceived but has not yet been born. Hence, if you go no further, 30 years after the United Nations Declaration in 1959 (resolution 1386 (XIV)), the convention will take no account of all the consequences of the scientific discoveries that have taken place in genetics in the meanwhile.

Admittedly, the Working Group finally agreed to reproduce in the preamble the formulation contained in preambular paragraph 3 of the 1959 Declaration, namely legal protection for the child, before as well as after birth. Our Association cannot fail to welcome this, since it was compelled for five years to press for this point to be restored in the draft. However, such an addition will be of no value unless it is reflected in the main body of the international instrument itself.

A preamble simply helps to explain the premises for the operative part of a text, but is itself devoid of any binding force. Thirty years ago, your predecessors fully realized this, since they stated in principle 4 that the child was entitled to “adequate prenatal ... care.” Indeed, at that time, it was enough to keep the embryo, then the foetus, in good health. This is no longer true, for increasingly audacious scientific discoveries have drastically altered the basic rules set out in civil codes (the legal order of generations, for example) and thus, for relatively few results, they seriously undermine the family, the fundamental institution in human organization.

One argument we encounter is that, after the present convention, another one could be adopted so that such a serious problem as genetic engineering will be suitably regulated. But how many years will it take to work out a convention? And by that time, so many of the manipulations of genetic engineering will already have become commonplace. Unfortunately, they could include many which are extremely regrettable yet, by that time, impossible to reject at the political level because the public will regard them as established rights.

However, it is our intention to ask you today only to introduce into the text a small number of prohibitions, minimum rules so to speak, simply for reasons of common sense.

We have not devised them ourselves: they are, word for word, those which the members of the Parliamentary Assembly of the Council of Europe regarded as fundamental in Recommendation 1046, of September 1986. We feel that reading them will be enough to convince you that none of these prohibitions is excessive, but together they clearly mark the proper bounds.

Article 1 of the draft

“According to the present Convention a child is every human being who has not attained his majority, which is established under the law of his State”.

Addition proposed by the Association:

“The present Convention also ensures, pursuant to article 21 quater (or any other), protection of a child, conceived but not yet born, against genetic experiments or engineering contrary to his physical, moral or mental integrity, or his health”.

Article 21 quater (or any other)

“The States Parties to the present Convention shall take all measures to forbid:

The creation of identical human beings by cloning or any other method, whether for race selection purposes or not;

The implantation of a human embryo in the uterus of another animal or the reverse;

The fusion of human gametes with those of another animal;
The creation of embryos from the sperm of different individuals;
The fusion of embryos or any other operation which might produce chimeras;
Ectogenesis;
The creation of children from people of the same sex;
Choice of sex by genetic manipulation for non-therapeutic purposes;
The creation of identical twins;
Research and experimentation on embryos, whether viable or not.”

Other matters

A. The title of the Convention

1. Discussion in the Working Group (1979)

The following is taken from document E/CN.4/L.1468, paragraph 9.

9. A number of representatives expressed a preference for the title as contained in the draft convention while others felt that the convention should deal with children as a group and that this aspect ought to be emphasized by using the term “children” throughout the convention, so there would be no discrimination between sexes. The Working Group decided to adopt the present title of the draft convention on the understanding that it might later decide to change it.

2. Discussion in the Working Group (1980)

The following is taken from document E/CN.4/L.1542, paragraph 4.

4. In the course of the general discussion at that meeting, some representatives suggested that the term “child” should be clearly defined, and perhaps replaced by a more precise term with greater juridical significance, such as “minor”, before proceeding with the adoption of further paragraphs. It was also pointed out that, at the previous session, the Working Group had adopted the title of the convention on the understanding that it might later decide to change it. However, other representatives expressed support for the idea of proceeding with the discussion and formulation of the rest of the preamble immediately. It was therefore decided to postpone the discussion of the definition until the Working Group considered article 1 of the draft convention.

3. Discussion at second reading (1989)

The following is taken from document E/CN.4/1989/48, paragraphs 25 to 27.

25. The representative of Senegal expressed the doubt whether the present title which read “A draft convention on the rights of the child” faithfully reflected all those concerns which the delegations had when elaborating this draft. He consequently proposed the following new title: “A draft convention on the protection of the child”.

26. Several representatives (Netherlands, Norway and Argentina) indicated their preference for retaining the title as it stood since the proposed new wording for the title was, in their view, too restrictive.

27. The representative of Senegal did not insist on his proposal and the Working Group, after having debated the word “draft”, agreed to adopt the title reading: “convention on the rights of the child”.

B. The ordering of the articles

1. Proposal submitted to the Working Group (1988)

(a) Norway

The following is taken from document E/CN.4/1988/WG.1/WP.30.

Renumbered	Subject matter discussed as article	Article
Preamble		
1	Child - Age	1
2	Right to Life, Survival	1 bis

3	Right to Name and Nationality	2
4	Best Interests of Child; Primary Consideration	3
5	Non-Discrimination	4
6	Implementation by States of Rights	5
7	Evolving Capacities of Child	5 bis
8	Parental Care	6
9	Family Reunification	6 bis
10	Right to Express Opinion	7
11	Freedom of Expression	7a
12	Freedom of Thought, Conscience, etc.	7 bis
13	Freedom of Association	7 ter
14	Non-Interference of Privacy, etc.	7 quater
15	Parent's Responsibility in Upbringing	8
16	Prevention of Abuse by Those Having Care	8 bis
17	Mass Media	9
18	Preservation of identity	9 bis
19	Special Protection for Parentless Children	10
20	Adoption	11
21	Disabled Child	12
22	Standard of Health	12 bis
23	Periodic Review of Placed Children	12 ter
24	Social Security	16
25	Standard of Living	14
26	Education	15
27	Objectives of Education	16
28	Cultural, Religious, Linguistic Rights	16 bis
29	Rest, Leisure, etc.	17
30	Protection from Economic Exploitation	18
31	Protection from Narcotics	18 bis
32	Prevention from Sexual Exploitation	18 ter
33	Prevention from Abduction, etc.	18 quater
34	Prevention from All Other Forms of Exploitation	18 quinto
35	Rehabilitation after Exploitation	18 sexto
36	Treatment in Penal Matters	19
37	Armed Conflicts	20
38	Other, More Favourable Provisions	21
39	Dissemination of the Principles of the Convention	21 ter
40	Implementation - Committee	22
41	Implementation - Report	23
42	Implementation - International Cooperation	24
43	Signature - Ratification	25
44	Amendments	26

2. Discussion in the Working Group (1988)

The following is taken from document E/CN.4/1988/28, paragraph 236.

236. At the request of the Chairman, the representative of Norway submitted a proposal for the renumbering of the articles of the draft convention (E/CN.4/1988/WG.1/WP.30). Some speakers said that they hesitated to renumber the articles at that stage, because the work had not arrived at a point where a final renumbering could be done. In the meantime, it was better to keep the old numbering of the articles for easy reference of the members during the second reading. Otherwise, it would be necessary to refer to the new and old numbers, which would not facilitate the discussion. The Chairman of the Working Group stated that he thought it would be useful to make some progress in the renumbering, but he agreed to postpone the question until the second reading.

3. Technical review (1988)

The following is taken from document E/CN.4/1989/WG.1/CRP.1.

B. Organization of the text of the convention and the order of articles

Comment by the Legal Counsel (para. 3)

Consideration should be given to an eventual division of the draft convention into parts or sections (like the two Covenants).

e.g. Articles 1-19: Substantive provisions.

Articles 22-24: Deal with the establishment, reports and methods of work of the Committee on the Rights of the Child.

Articles 25-31: Final provisions.

Consequently, the various parts or sections of the draft convention should be given separate titles (as in the supplementary Convention on the Abolition of Slavery). The same should be done for various articles (as in the Convention relating to Stateless Persons).

This would give greater clarity to the text and facilitate ease of reference.

Comment by UNESCO (page 1)

This draft text still needs considerable work, and not only in respect of education. There is too much repetition, hidden to some extent by the lack of logical sequencing and linking of items dealing with the same or similar matters. For example:

Article 9 bis seems to belong with article 2;

Article 5 belongs with article 20;

Article 8 bis belongs with article 18 ter;

Article 17 belongs with article 7a; etc.

Comment by UNICEF (page 8)

In order to conform to the general practice with respect to international human rights treaties, consideration might be given to the following reordering of the first few articles

Article 1 - Definition of the child

Article 4 - Obligations clause dealing with non-discrimination

Article 5 - General obligations clause

Article 5 bis - General qualification clause

Article 1 bis - And so on - substantive rights provisions

4. Additional comments and clarifications by the Secretariat (1989)

The following is taken from document E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 42 to 43.

The attention of the Working Group is drawn to the suggested reordering of the articles made by UNESCO and UNICEF in document E/CN.4/1989/WG.1/CRP.1. On a few other occasions, in the same document, organizations have pointed out special connections between certain articles. In addition, reference is made to a proposal for the renumbering of articles, submitted by Norway and contained in document E/CN.4/1988/WG.1/WP.30.

Upon reviewing the draft convention and the above-mentioned comments, while seeking only minimum changes, the Working Group may wish to consider the following reordering of the articles:

New	Old	
1	1	(Child - age)*
2	4	(Non-discrimination)
3	3	(Best interest of child; primary consideration)
4	5	(Implementation by States of rights recognized)
5	5 bis	(Parental direction and guidance)
6	1 bis	(Right to life, child's survival and development)
7	2	(Right to name and nationality)
8	9 bis	(Preservation of identity)
9	6	(Parental care /non-separation from parents)
10	6 bis	(Family reunification /contact with parents)
11	6 ter	(Illicit transfer and non-return of children)
12	7a	(Freedom of expression and information)
13	9	(Mass media)
14	7 bis	(Freedom of thought, conscience and religion)
15	7 ter	(Freedom of association and freedom of peaceful assembly)
16	7 quater	(Privacy, honour, reputation)
17	8	(Parent /guardian responsibility in upbringing)
18	8 bis	(Prevention of abuse by those having care)
19	10	(Special protection for parentless children)
20	11	(Adoption)
21	11 bis	(Refugee child)
22	12	(Disabled child)
23	12 bis	(Health and access to care)
24	12 ter	(Periodic review of placed children)
25	13	(Social security)
26	14	(Standard of living)
27	15	(Education)
28	16	(Objectives of education)
29	16 bis	(Cultural, religious and linguistic rights)
30	17	(Rest, leisure, participation in cultural and artistic life)
31	18	(Protection from economic exploitation)
32	18 bis	(Protection from narcotic and psychotropic substances)
33	18 ter	(Protection from sexual exploitation)
34	18 quater	(Prevention of abduction, sale or traffic in children)
35	18 quinto	(Protection from all other forms of exploitation)
36	18 sixt	(Physical and psychological recovery and social reintegration)
37	19	(Treatment in penal matters)

* Parenthetical references to the subject of each article are for ease of reference only; such references are not part of the texts as adopted.

38	20	(Armed conflicts)
39	21	(Other more favourable provisions)
40	21 ter	(Dissemination of the principles and provisions of the Convention)
41	22	(Establishment of the committee)
42	23	(Reports from States parties)
43	24	(Methods of work of the committee)
44	25	(Signature)
45	25	(Ratification)
46	25	(Accession)
47	27	(Entry into force)
48	28	(Reservations)
49	26	(Amendments)
50	29	(Denunciation)
51	30	(Depositary)
52	31	(Authentic texts)

(Editor's note: former article 7 corresponding to present article 12 (child's right to express opinions) was mistakenly omitted from the above listing appearing in document E/CN.4/1989/WG.1/CRP.1/Add.1.)

5. Proposal submitted at second reading (1989)

(a) Norway (Coordinator)

See paragraph 692 below.

6. Discussion and adoption at second reading (1989)

The following is taken from the 1989 report of the Working Group to the Commission on Human Rights (E/CN.4/1989/48, paras. 692 to 694).

692. The Working Group had before it a proposal submitted by the Norwegian delegation on the reordering of articles of the draft convention (E/CN.4/1989/WG.1/WP.69) which read as follows:

“Proposal for reordering of articles

PREAMBLE

Part I

New	Old	
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1	1	(Child - age)*
2	4	(Non-discrimination)
3	3	(Best interest of child)
4	5	(Implementation of rights recognized)
5	5 bis	(Parental guidance)
6	1 bis	(Right to life)
7	2	(Right to name and nationality)
8	9 bis	(Preservation of identity)
9	6	(Parental care /non-separation from parents)
10	6 bis	(Family reunification)
11	6 ter	(Illicit transfer and non-return)
12	7	(Child's right to express opinions)
13	7 a	(Freedom of expression and information)
14	7 bis	(Freedom of thought, conscience and religion)

* Parenthetical references to the subject of each article are for ease of reference only; such references are not part of the texts as adopted.

15	7 ter	(Freedom of association)
16	7 quater	(Privacy, honour, reputation)
17	9	(Mass media)
18	8	(Upbringing and child-rearing)
19	8 bis	(Prevention of abuse)
20	10	(Parentless children)
21	11	(Adoption)
22	11 bis	(Refugee child)
23	12	(Disabled child)
24	12 bis	(Health)
25	12 ter	(Periodic review of placed children)
26	13	(Social security)
27	14	(Standard of living)
28	15	(Education)
29	16	(Objectives of education)
30	16 bis	(Cultural, religious and linguistic rights)
31	17	(Rest and leisure)
32	18	(Protection from economic exploitation)
33	18 bis	(Protection from narcotic and psychotropic substances)
34	18 ter	(Protection from sexual exploitation)
35	18 quater	(Prevention of abduction, sale and traffic)
36	18 quinto	(Protection from all other forms of exploitation)
37	19	(Torture / capital punishment)
38	20	(Armed conflicts)
39	18 sexto	(Recovery and reintegration)
40	19 bis	(Treatment in penal matters)
41	21	(Other more favourable provisions)
Part II		
42	21 ter	(Dissemination of the principles and provisions of the Convention)
43	22	(Establishment of the Committee)
44	23	(Reports from States parties)
45	24	(Methods of work of the Committee)
Part III		
46	25.1	(Signature)
47	25.3	(Ratification)
48	25.4	(Accession)
49	27	(Entry into force)
50	26	(Amendments)
51	28	(Reservations)
52	29	(Denunciation)
53	30	(Depositary)
54	31	(Authentic texts)

693. In introducing this proposal, the Norwegian delegation indicated that the suggested reordering of articles was based on the proposals submitted earlier (E/CN.4/1989/WG.1/CRP.1/Add.1).

694. The Working Group agreed with the Norwegian proposals and the articles were reordered accordingly, with the necessary modifications in the use of the term “States parties to the present Convention”.

C. Amendments and protocols adopted by the General Assembly

1. **General Assembly resolution 50/155 on the “Conference of States Parties to the Convention on the Rights of the Child” adopted on 21 December 1995**

The General Assembly,

Recognizing the importance of the Committee on the Rights of the Child and the valuable contribution of its members to the evaluation and monitoring of the implementation of the Convention on the Rights of the Child by its States parties,

Noting with satisfaction that there are now 182 States parties to the Convention on the Rights of the Child, a figure approaching universal ratification,

Noting that the amendment to article 43, paragraph 2, of the Convention was adopted by the Conference of States Parties to the Convention,

1. *Approves* the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”;
2. *Urges* States parties to take appropriate measures so that acceptance by a two-thirds majority of the States parties can be reached as soon as possible in order for the amendment to enter into force.

97th plenary meeting

21 December 1995

2. **General Assembly resolution 54/263 on the “Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography” adopted on 25 May 2000**

The Optional Protocols were discussed at the fifty-fourth session of the General Assembly as agenda item 116 (a). The following is taken from resolution 54/263 (reissued for technical reasons).*

The General Assembly,

Recalling all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional Working Groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

1. *Adopts and opens for signature, ratification and accession* the two optional protocols to the convention on the rights of the child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;
2. *Invites* all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;
3. *Decides* that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled “World Summit for Social Development and beyond: achieving social development for all in a globalizing world”, to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;
4. *Requests* the Secretary-General to include information on the status of the two optional protocols in his report to the General Assembly on the status of the Convention on the Rights of the Child.

97th plenary meeting

25 May 2000

Annexes I and II to resolution 54/263 contain the optional protocols on children in armed conflict and on the sale of children, child prostitution and child pornography, which are reproduced below in annex II, A and B.

Annex I

Convention on the Rights of the Child as adopted on 20 November 1989

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entered into force on 2 September 1990, in accordance with article 49.

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”;

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

- (c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate prenatal and post-natal care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents, and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
 4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admissions to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Annex II

A. Optional Protocol on the involvement of children in armed conflict

Adopted and opened for signature, ratification and accession by General Assembly resolution 54/263 of 25 May 2000. Entered into force on 12 February 2002 in accordance with article 10.

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child of the child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain 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 involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the present Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports [it] submit[s] to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

B. Optional Protocol on the sale of children, child prostitution and child pornography

Adopted and opened for signature, ratification and accession by General Assembly resolution 54/263 of 25 May 2000. Entered into force on 18 January 2002 in accordance with article 14.

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2:
 - (i) [O]ffering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports [it] submit[s] to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Annex III

A. Participants in the Working Group by year

The meetings of the Working Group were open to all members of the Commission on Human Rights, as well as to non-members represented by observers (as it was an open-ended group, members and non-members enjoyed the same rights in the drafting process). The following list is compiled from the annual reports of the Working Group. The first two annual reports (E/CN.4/L.1468 and E/CN.4/L.1542) do not indicate the participants of the Working Group. States represented by observers are marked with an asterisk, intergovernmental and non-governmental organizations (represented by observers) are listed separately.

1. 1981

Argentina, Australia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Denmark, Egypt*, France, Federal Republic of Germany, Holy See*, India, Ireland*, Italy*, Netherlands, Norway*, Pakistan, Philippines, Poland, Portugal, Turkey*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Zaire.

International Labour Organization.

International Catholic Child Bureau, International Association of Penal Law, International Union for Child Welfare, World Association for the School as an Instrument of Peace.

2. 1982

Argentina, Australia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Colombia*, Cuba, Denmark, France, Federal Republic of Germany, German Democratic Republic*, Holy See*, India, Italy, Japan, Netherlands, Norway*, Philippines, Poland, Senegal, Sweden*, Switzerland*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

International Labour Organization, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund.

Associated Country Women of the World, International Association of Juvenile and Family Court Magistrates, International Federation of Women in Legal Careers, International Association of Penal Law, International Catholic Child Bureau, International Commission of Jurists, International Council on Social Welfare, International Federation of Women Lawyers, International Union for Child Welfare, Minority Rights Group, World Movement of Mothers, Rädde Barnens Rikförbund.

3. 1983

Algeria*, Argentina, Australia, Bangladesh, Belgium*, Brazil, Canada, China, Costa Rica, Cuba, Denmark*, Finland, France, Federal Republic of Germany, Holy See*, India, Islamic Republic of Iran*, Italy, Japan, Morocco*, Netherlands, Nicaragua, Norway*, Pakistan, Peru*, Poland, Senegal, Sweden*, Switzerland*, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela*, Yugoslavia.

Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund.

Amnesty International, Anti-Slavery Society, Associated Country Women of the World, Baha'i International Community, International Association of Juvenile and Family Court Magistrates, International Catholic Child Bureau, International Commission of Jurists, International Federation of Women in Legal Careers, International Union for Child Welfare, Minority Rights Group, Rädde Barnens Sweden, Zonta International.

4. 1984

Argentina, Australia*, Brazil, Bulgaria, Canada, China, Cuba, Cyprus, Denmark*, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece*, Holy See*, India, Islamic Republic of Iran*, Italy, Japan, Lebanon*, Morocco*, Netherlands, Norway*, Poland*, Peru*, Spain, Sweden*, Switzerland*, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela*.

International Labour Organization, United Nations Children's Fund.

Amnesty International, Baha'i International Community, Defence for Children International Movement, Four Directions Council, Friends World Committee for Consultation, Human Rights Internet, International Abolitionist Federation, International Association of Juvenile and Family Court Magistrates, International Catholic Child Bureau, International Commission of Jurists, International Committee of the Red Cross, International Council of Jewish Women, International Council of Women, International Federation of Women in Legal Careers, International Social Service, International Union for Child Welfare, Rädda Barnen International, Zonta International.

5. 1985

Algeria*, Argentina, Australia, Austria, Bangladesh, Belgium*, Bolivia*, Brazil, Bulgaria, Canada*, China, Cuba*, Denmark*, Egypt*, Finland, France, Gabon*, Federal Republic of Germany, German Democratic Republic, Guinea*, Haiti*, Holy See*, India, Iraq*, Italy*, Japan, Liberia, Mexico, Morocco*, Netherlands, New Zealand*, Nicaragua, Norway*, Pakistan*, Panama*, Peru, Poland*, Senegal, Spain, Sri Lanka, Sweden*, Switzerland*, Turkey*, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

International Labour Organization, United Nations Children's Fund.

Amnesty International, Baha'i International Community, Defence for Children International Movement, Four Directions Council, Friends World Committee for Consultation, Human Rights Internet, International Abolitionist Federation, International Association of Juvenile and Family Court Magistrates, International Catholic Child Bureau, International Commission of Jurists, International Committee of the Red Cross, International Council of Jewish Women, International Council of Women, International Federation of Women in Legal Careers, International Social Service, International Union for Child Welfare, Rädda Barnen International, Zonta International.

6. 1986

Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada*, China, Cuba*, Cyprus, Denmark*, Ethiopia, Finland*, France, German Democratic Republic, Holy See*, India, Iraq*, Japan, Mexico, Morocco*, Netherlands*, New Zealand*, Norway, Peru, Poland*, Senegal, Sri Lanka, Sweden*, Switzerland*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

International Labour Organization, United Nations Children's Fund.

Amnesty International, Associated Country Women of the World, Baha'i International Community, Defence for Children International Movement, Four Directions Council, Human Rights Internet, International Abolitionist Federation, International Catholic Child Bureau, International Commission of Jurists, International Committee of the Red Cross, International Council of Jewish Women, International Council of Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers, International Social Service, Rädda Barnen International, Save the Children Fund, World Association for the School as an Instrument of Peace, World Organization for Early Childhood Education, Zonta International.

7. 1987

Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada*, China, Colombia, Cyprus, Denmark*, Finland*, France, Federal Republic of Germany, German Democratic Republic, Holy See*, India, Islamic Republic of Iran*,

Iraq, Italy, Japan, Mexico, Morocco*, Netherlands*, New Zealand*, Norway, Pakistan, Peru, Poland*, Senegal, Sweden*, Switzerland*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yemen Arab Republic*, Yugoslavia.

International Labour Organization, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund.

Amnesty International, Anti-Slavery Society for the Protection of Human Rights, Associated Country Women of the World, Baha'i International Community, Defence for Children International Movement, Four Directions Council, Human Rights Internet, International Abolitionist Federation, International Association of Democratic Lawyers, International Association of Juvenile and Family Court Magistrates, International Catholic Child Bureau, International Commission of Jurists, International Committee of the Red Cross, International Council of Jewish Women, International Council of Women, International Council on Social Welfare, International Federation of Women in Legal Careers, International Federation of Women Lawyers, International Movement ATD Fourth World, International Movement for Fraternal Union among Races and Peoples, Radda Barnen International, Save the Children Fund, World Association for the School as an Instrument of Peace, World Organization for Early Childhood Education, Zonta International.

8. 1988

Algeria, Argentina, Australia*, Austria*, Bangladesh, Belgium, Brazil, Bulgaria, Canada*, China, Colombia, Cuba*, Cyprus, Czechoslovakia*, Denmark, Egypt*, Finland*, France, Federal Republic of Germany, German Democratic Republic, Holy See*, India, Iraq, Italy, Japan, Jordan*, Kenya*, Mexico, Morocco*, Netherlands*, New Zealand*, Nigeria, Norway, Pakistan, Peru, Philippines, Poland*, Portugal, Senegal, Spain, Sweden*, Switzerland*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yemen*, Yugoslavia, Zimbabwe*.

International Labour Organization, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund, Inter-American Children's Institute of the Organization of American States.

Amnesty International, Associated Country Women of the World, Baha'i International Community, Caritas Internationalis, Defence for Children International Movement, Friends World Committee for Consultation, Human Rights Internet, Indian Council of South America, International Abolitionist Federation, International Association of Democratic Lawyers, International Association of Juvenile and Family Court Magistrates, International Association of Penal Law, International Catholic Child Bureau, International Committee of the Red Cross, International Council of Jewish Women, International Council on Social Welfare, International Federation of Human Rights, International Federation of Women in Legal Careers, International Movement ATD Fourth World, International Right to Life Federation. Radda Barnen International, Save the Children Alliance, Save the Children Fund (UK), World Association for the School as an Instrument of Peace, World Federation of Democratic Youth, World Federation of Methodist Women, Zonta International.

9. 1989

Algeria, Angola*, Argentina, Australia*, Austria*, Bahrain*, Bangladesh, Belgium, Bhutan*, Brazil, Bulgaria, Canada*, China, Colombia, Cuba*, Cyprus, Czechoslovakia*, Denmark*, Egypt*, Ethiopia, Finland*, France, Federal Republic of Germany, German Democratic Republic, Holy See*, Honduras*, India, Iraq, Ireland, Italy, Japan, Jordan*, Kuwait*, Lebanon*, Libyan Arab Jamahiriya*, Malta*, Mexico, Morocco*, Mozambique, Nepal*, Netherlands*, New Zealand*, Nicaragua, Norway, Oman*, Pakistan, Panama*, Peru, Philippines, Poland*, Portugal, Romania*, Senegal, Spain, Sweden*, Switzerland*, Tunisia*, Turkey*, Ukrainian Soviet Socialist Republic*, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yemen*, Yugoslavia.

Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat, International Labour Organization, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Inter-American Children's Institute of the Organization of American States, League of Arab States.

Amnesty International, Associated Country Women of the World, Baha'i International Community, Co-ordinating Board of Jewish Organizations, Defence for Children International Movement, Foster Parents Plan International, Grand Council of the Crees of Quebec, Human Rights Internet, Indian Council of South America, International Association of Juvenile and Family Court Magistrates, International Association of Penal Law, International Catholic Child Bureau, International Committee of the Red Cross, International Council of Jewish Women, International Council on Jewish Social and Welfare Organizations, International Council of Women, International Federation of Women in Legal Careers, International Movement ATD Fourth World, Inter-Parliamentary Union, International Right to Life Federation, International Social Service, Rädda Barnen International, Save the Children Fund (UK), World Association of Girl Guides and Girl Scouts, World Association for the School as an Instrument of Peace, World Council of Indigenous Peoples, World Federation of Methodist Women, World Jewish Congress, Zonta International.

B. The NGO Ad Hoc Group

In January 1983, three NGOs – Defence for Children International, International Catholic Child Bureau and Rädda Barnen International – learning of the drafting of a convention on the rights of the child in Geneva decided to set up the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child. From an initial 20 NGOs, the Group developed over the years into a wide network of interested NGOs. Defence for Children International offered to provide its secretariat and Canon Joseph Moerman agreed to chair it.

The NGO Ad Hoc Group met regularly to consider proposals made by Governments and to draft its own. The Group also lobbied Government delegates in Geneva and officials in State capitals to promote its proposals. During the negotiations at the United Nations, it met every morning to discuss its strategy. At lunchtime the morning session was discussed and contributions to the afternoon session were planned.

The intense activity of the NGOs during the drafting process set a precedent at the United Nations. Their grass-roots knowledge and experience of children's situations and human rights enabled them to make proposals and open a dialogue with Government representatives and United Nations agencies. At least 13 of their proposals, either individual paragraphs or entire articles, are now part of the Convention.

Rädda Barnen International also regularly invited Government delegates, officials from United Nations bodies and NGOs to a traditional evening of Swedish pea soup to iron out differences and agree on the best way to move forward.

Since the adoption and entry into force of the Convention, NGOs have continued to be very active and have become real watchdogs. They have, among other things, monitored the implementation of the Convention in individual countries and submitted reports to the Committee on the Rights of the Child.

The organizations listed below participated consistently in the NGO Ad Hoc Group on the drafting of the convention on the rights of the child, which was active in the drafting process from 1983 to 1989. The individual participating organizations did not necessarily subscribe to every provision contained in the various proposals submitted by the NGO Ad Hoc Group.

Amnesty International

Anti-Slavery Society for the Protection of Human Rights

Associated Country Women of the World

Baha'i International Community

Defence for Children International (Secretariat for the NGO Ad Hoc Group)

Friends World Committee for Consultation

Human Rights Internet

International Abolitionist Federation

International Association of Democratic Lawyers

International Association of Juvenile and Family Court Magistrates

International Association of Penal Law

International Catholic Child Bureau
International Commission of Jurists
International Council of Jewish Women
International Council on Social Welfare
International Federation of Business and Professional Women
International Federation of Social Workers
International Federation of Women in Legal Careers
International Federation of Women Lawyers
International Movement of ATD Fourth World
International Social Service
Rädda Barnen International
Rädda Barnen Sweden
Save the Children Alliance
World Association for the School as an Instrument of Peace
World Association of Girl Guides and Girl Scouts
World Organization for Early Childhood Education
Zonta International

