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REPORT OF THE WORKING GROUP ON A DRAFT CONVENTION
ON THE RIGHTS OF THE CHILD

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

Introduction

1. By resolution 26 (XXXVII) of 10 March 1981, the Commission on Human Rights decided to continue at its thirty-eighth session as a matter of priority, its work on a draft convention on the rights of the child with a view to completing the elaboration of the convention at that session for transmission to the General Assembly through the Economic and Social Council. By decision 1981/144 of 8 May 1981, the Economic and Social Council noted resolution 26 (XXXVII) of the Commission on Human Rights, and decided to authorize a one-week session of an open-ended working group prior to the thirty-eighth session of the Commission to facilitate completion of the work on a draft convention on the rights of the child. At its thirty-sixth session, the General Assembly, by resolution 36/57 of 25 November 1981, welcomed Economic and Social Council decision 1981/144 and requested the Commission on Human Rights to give the highest priority to the question of completing the draft convention.

2. At its fourth meeting on 2 February 1982, the Commission on Human Rights by decision 101/1982 decided that a sessional open-ended Working Group should be established for the consideration of item 13 on its agenda concerning the drafting of a convention on the rights of the child.

3. The 1982 pre-sessional Working Group held 10 meetings from 25 January 1982 to 29 January 1982, at which it discussed articles 6, 9, 10 and 11 of the revised draft convention (E/CN.4/1349). The sessional Working Group had discussions on articles 6, 11 and 12 during meetings held on 2, 3, 4, 8 and 9 February 1982. At its meeting on 5 March 1982, the Working Group considered article 12 and adopted its report.

Elections

4. At the first meeting of the pre-sessional Working Group, on 25 January 1982, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation. Mr. Lopatka continued as Chairman-Rapporteur of the Working Group established by the Commission on Human Rights at its thirty-eighth session to continue the work of the pre-sessional Working Group.

Participation

5. The meetings of the pre-sessional and the sessional Working Groups, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States: Argentina, Australia, Brazil, Bulgaria, the Byelorussian SSR, Canada, China, Cuba, Denmark, France, Germany, Federal Republic of, India, Italy, Japan, Netherlands, Philippines, Poland, Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia.

The following States, non-members of the Commission on Human Rights, were represented at the meetings of the Working Group by observers: Colombia, the German Democratic Republic, Holy See, Norway, Sweden and Switzerland.

The International Labour Organisation, United Nations High Commissioner for Refugees and United Nations Children's Fund, as well as a number of non-governmental organizations, were represented at the Working Group by observers.

The Associated Country Women of the World, the International Association of Juvenile and Family Court Magistrates, the International Federation of Women in Legal Careers, the International Association of Penal Law, the International Catholic Child Bureau, the International Commission of Jurists, the International Council on Social Welfare, the International Federation of Women Lawyers, the International Union for Child Welfare, the Minority Rights Group, the World Movement of Mothers and Radda Barnen's Riksförbund sent observers to the Working Group.

Documents

6. The Working Group had before it a number of documents including the Revised Draft Convention on the Rights of the Child (E/CN.4/1349), the document submitted by Poland on the status of a Draft Convention on the Rights of the Child (A/C.5/35/6), the report of the Secretary-General on the views, observations and suggestions on the question submitted by Member States, competent specialized agencies, regional intergovernmental organizations and non-governmental organizations (E/CN.4/1324 and Corr.1 and Add.1-5), the reports of the 1979, 1980 and 1981 Working Groups (E/CN.4/L.1468, E/CN.4/L.1542 and E/CN.4/L.1575), the reports of the Working Group on Slavery on its fifth, sixth and seventh sessions (E/CN.4/Sub.2/434, E/CN.4/Sub.2/447, E/CN.4/Sub.2/486 and Corr.1), the Study on the Exploitation of Child Labour (E/CN.4/Sub.2/479), and summary records of the debates referring to child labour during the thirty-fourth session of the Sub-Commission (E/CN.4/Sub.2/SR.908-911, and 921-922). Non-governmental organizations in consultative status also submitted the following written statements: E/CN.4/NGO.230, 234, 244, 265, 276 and E/CN.4/1982/WG.1/WP.1. This latter statement was sponsored by the Afro-Asian People's Solidarity Organization, the All India Women's Conference, Arab Lawyers Union, Associated Country Women of the World, International Alliance of Women, International Association of Democratic Lawyers, International Association of Juvenile and Family Court Magistrates, International Catholic Union of the Press, International Council of Jewish Women, International Federation of Business and Professional Women, International Federation of Women Lawyers, Radda Barnen's Riksförbund, Soroptimist International (subject to reservation on article 20 of the Draft Convention proposed in E/CN.4/1982/WG.1/WP.1), Women's International League for Peace and Freedom, World Association of Girl Guides and Girl Scouts, World Confederation of Organizations of the Teaching Profession and Zonta International, in addition to the non-governmental organizations indicated in document E/CN.4/1982/WG.1/WP.1.*/

7. As in 1981, the basic working document for the discussions in the Working Group was the revised draft convention submitted by Poland (E/CN.4/1349). It will be recalled that the preamble as well as articles 1 to 5 and 7 and 8 as adopted, were annexed to the report of the Working Group of 1981 (E/CN.4/L.1575).

Consideration and adoption of articles

8. The Working Group adopted paragraphs 1 and 2 of article 6, paragraphs 1 and 2 of article 10, paragraphs 1 and 2 of article 11, article 11 bis and the first sentence of paragraph 1 of article 12.

*/. The suggestions contained in this document not all having been considered at the meetings covered by this report, the organizations concerned expressed their wish to have the document E/CN.4/1982/WG.1/WP.1 before the Working Group at its future meetings.

Article 6

9. Article 6 of the revised Polish draft read as follows:

"The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent state organ is authorized, in accordance with national law, to decide in this matter."

10. Article 10 of the revised Polish draft read as follows:

"A child of pre-school age shall not be separated from his parents, with the exception for cases when such separation is necessary for the child's benefit."

11. At the Working Group's session of 1981, the delegation of the United States proposed that the original wording of articles 6 and 10 of the revised draft convention, be replaced by an amended text which read as follows:

"1. States Parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse 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. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

"2. In cases where both parents lawfully reside in one State party and their child lawfully resides in another State party, the States parties concerned shall deal with applications for family reunification in a positive, humane and expeditious manner. States parties shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered ~~xxx~~ at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts.

"3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State party and the child lawfully resides in another State party."

"4. If the parents of a child lawfully reside in different States parties, States parties shall ensure that the child's preference as to which parent he shall reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

This proposal, which was reintroduced at the 1982 session of the Group, was the subject of some further amendments by its sponsor.

12. At the Working Group's session of 1981, the representative of Australia proposed to replace the aforementioned text of article 10 by the following:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such separation is necessary for the child's welfare."

This proposal was reintroduced at the 1982 session of the Group by several non-governmental organizations as contained in document E/CN.4/1982/WG.1/WP.1.

13. Several non-governmental organizations suggested the following paragraph, as contained in document E/CN.4/1982/WG.1/WP.1, to replace paragraph 3 of the amendment to articles 6 and 10 originally submitted by the representative of the United States at the Working Group's session in 1981:

"Where a child is placed in the custody of one parent because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody or the child is unlawfully held by one parent because of the non-execution of an order of the court of competent jurisdiction, the States parties shall endeavour to resolve the issue by bilateral agreements or multilateral arrangements reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child being the guiding principle."

14. The Minority Rights Group, a non-governmental organization proposed the following text in substitution for the proposed new paragraph 3 mentioned above:

"The States Parties shall endeavour, by new or updated bilateral agreements or multilateral arrangements, reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child concerned being the guiding principle, to resolve the issues arising:

- (i) When a child has been placed in the custody of one parent or in joint custody because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody;
- (ii) When a child is unlawfully held and hidden by one parent because of the non-execution or later breach of an order of the court of competent jurisdiction; or
- (iii) When, there being no order of a court of competent jurisdiction as to custody, one parent assumes control over the child contrary to the wish of the parent normally exercising it; and exercises that control in a country other than that in which the latter parent resides."

The main intention of this proposal was to extend the endeavours which States would undertake to make to children who are in effect kidnapped across international frontiers by a parent, particularly those kidnapped in circumstances where no court order on custody exists; these cases are numerous and may in fact be more numerous than those to which an order of custody applies.

15. Some speakers drew attention to the situation of children of parents separated by divorce or for other reasons who are not of the same nationality or who may reside in countries other than the country of residence of the child, and to the need of a child in such a situation to retain his links with both his parents. Accordingly, the representative of France made the following proposal: "The child of a separated international family shall, as far as possible, retain his links with both his parents." The French proposal was supported by several delegations, but it was thought that it dealt more properly with paragraph 2 of the article under discussion and it would be very appropriate if it were the first sentence of paragraph 2. At a later stage in the proceedings, the representative of France submitted a new draft to replace his earlier proposal as mentioned above. The text read as follows:

"The child of parents with different nationalities, who are separated, shall, save in exceptional circumstances, be entitled to maintain personal relations with both parents."

The French representative indicated that:

(a) the Convention on the rights of the child would in the future serve as a bench-mark for co-operation agreements between States. In view of its importance, the French representative believed that the Convention would benefit if it were completed by including a clause concerning a matter which had not so far been dealt with, namely the situation of children of separated parents of different nationalities;

(b) experience had shown that private family disputes which gave rise to the abduction of children across frontiers occurred more and more frequently and that no country could consider itself exempt. In France, for example, the Ministry of Justice had estimated that there were 1,000 cases of abduction per year involving no fewer than 41 States. It was a situation which gravely affected society;

(c) the Convention, which constituted a basic text at the international level, must by its very nature be universal. Preventive measures should be taken to impede that its provisions be interpreted from a nationalistic point of view. It was absolutely necessary that the child's interests should be evaluated on the basis of all the elements of his family background, whether such elements were national or international. Experience had shown that the nationalistic approach to the child's interests had in most cases resulted in making a legal orphan of a child with a foreign father or mother;

(d) the Convention should not take second place to the existing conventions which have confirmed at the multilateral level the principle of the maintenance of relations between the child and both his parents of different nationalities. The conventions, which had already been ratified by many countries, were the European Convention of Luxembourg of 20 May 1980 on the recognition and enforcement of decisions relating to children's custody and the restoration of custody rights, and The Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

16. In connection with a child's place of residence, it was said that the Convention also should address itself to certain subjects, namely, the right of the child to liberty of movement and freedom of residence within any State party together with the right to leave any State - including his own - and to enter his own State, the right of the child to seek asylum from persecution without fear of retaliation, and the right of the child and his parents to be free from arbitrary or unlawful interference with their privacy, family, home or correspondence.

17. Some delegations strongly opposed any distinction whatsoever of children by age, stating that the essential point was that separation of a child from his parents should not occur under any circumstances, while other delegations continued to find some value in distinguishing the position regarding pre-school children, and considered that the same kind of protection cannot be awarded to very young and much older children.

18. In keeping with the view expressed by his delegation at the Group's 1981 session that the idea contained in article 10 was reflected in paragraph 1 of the United States text for article 6 (set forth in paragraph 11 above) the representative of the United States proposed the merger of these two texts. This suggestion was favourably received by some delegations.

19. In addition, it was repeatedly emphasized by some delegations that the separation of a child from his parents should preferably be of a temporary or provisional nature, that the separation period should be made as short as possible under national legislation, and that a child should be returned to his parents as soon as circumstances changed favourably making the separation no longer necessary.

20. The representative of the United States proposed that after the words "competent authorities" in the first sentence of paragraph 1 of the United States text for article 6, the words "subject to judicial review" should be inserted. He also suggested that the Group should consider using, throughout the Convention, the term "best interests of the child" rather than the term "welfare of the child". Also, he proposed that the concept of "neglect" of the child should be introduced into the Convention and hence suggested the incorporation of the words "or neglect" after the word "abuse" in the first sentence of paragraph 1 of article 6, and the deletion of the word "maltreatment". Further, he proposed the introduction, at the end of the first sentence of the same paragraph, of a new example concerning the child's place of residence to read "or one where there is a disagreement between parent(s) and child as to the child's place of residence". The use of the term "parent(s)" resulted from a suggestion by the representative of Norway that cases of single parents must be covered.

21. The representative of Norway suggested the deletion of the word "involuntarily" from the first sentence of paragraph 1 of article 6 and the insertion of the words "against their will" after the word "parents" in the same sentence. Further, she proposed that any reference to the age of children should be removed completely from the texts under discussion. This proposal was supported by several delegations.

22. The delegation of France suggested that the words "in accordance with applicable law and procedures" should replace the words "in accordance with procedures and criteria specified by domestic law" in the first sentence of paragraph 1 of article 6. This proposal was supported by various delegations.

23. Some speakers questioned the appropriateness of having the letter "s" in the word "parents" between brackets, as in the proposal of the delegation of the United States in paragraph 20, noting that the Convention was intended, as far as possible, to cover regular situations where a child has both his parents.

24. Delegations having found the first lines of paragraph 1 of article 6 up to the words "welfare of the child", as amended, acceptable, the Working Group adopted them by consensus. They read:

"States Parties shall ensure that a child shall not be separated from his 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."

25. The representative of the United States submitted the following revised text to replace the original wording of the amendment to articles 6 and 10 presented by his delegation at the Working Group's session of 1981 and reintroduced by him at the beginning of the Group's 1982 session.

"1. States Parties shall ensure that a child shall not be separated from his 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 in a particular case, such as one involving abuse or neglect of the child by the parents, one where the parents are living separately and a decision must be made as to the child's place of residence, or one where there is a disagreement between parent(s) and child as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

"2. In cases where both parents lawfully reside in one State party and their child lawfully resides in another State party or where the parents of a child lawfully reside in different States parties, the States parties concerned shall deal with applications for family reunification or contacts on the basis of family ties in a positive, humane and expeditious manner. States parties shall make no distinction as to country of origin or destination in dealing with such applications, shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts.

"3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State party and the child lawfully resides in another State party, as well as in cases where parents who are nationals of different States parties apply to transfer the permanent residence of their children and themselves to a Member State in which either one is normally a resident.

"4. If the parents of a child lawfully reside in different States Parties, States Parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

26. A discussion ensued as to whether the examples listed in the second half of the first sentence of the above-mentioned proposal were called for. One delegation expressed its preference for not having any listing of examples whatsoever while another, in supporting this viewpoint, stated that it was impossible to present an exhaustive list of examples and objected in particular to the addition of any example to those already existing in the text submitted by the representative of the United States at the Group's session of 1981.

27. The representative of the United States agreed to delete the third example contained in the first sentence of its proposal which read "or one where there is a disagreement between parent(s) and child as to the child's place of residence". Further, he suggested that the sentence containing the examples in his proposal should start with the phrase "Such a determination may be necessary".

28. The Working Group then adopted by consensus the following text:

"Such a 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."

29. The representative of Poland proposed that the opening sentence of article 6 contained in document A/C.3/36/6 of 7 October 1981 which read as follows: "The States parties to the present Convention shall recognize the right of the child to have his residence to be determined by his parents", should also be the opening sentence of the paragraph under consideration by the Group. In this connection, the delegation of the United States suggested that the sentence be amended to read: "The States parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s) except as provided herein".

30. The text originally proposed by the representative of Poland, as amended by the representative of the United States, was supported by the Working Group and was adopted by consensus. The Chairman decided that that text should become paragraph 1 of article 6.

31. The Working Group then adopted the last two sentences of paragraph 1 in the United States text for article 6, and placed them at the end of paragraph 2 of article 6. These sentences read as follows:

"Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination."

32. The delegation of France requested that at the end of the French version of paragraph 2 the following clause be added: "sous reserve de cas prevu par le paragraphe 3".

33. Paragraphs 1 and 2 of article 6, as adopted by the Working Group, read as follows:

"1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

"2. States Parties shall ensure that a child shall not be separated from his 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 a 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. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination."

Article 9

34. Article 9 of the revised Polish draft read as follows:

"Parents, guardians, State organs and social organizations shall protect the child against any harmful influence that mass media, and in particular the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his mental and moral development."

35. The representative of Australia submitted a revised proposal as noted hereunder:

"States Parties shall encourage mass media agencies to develop special programmes for the benefit of children and to design guidelines, consistent with the right to freedom of expression, to protect the child from written, printed or recorded material injurious to his physical or mental health and development, bearing in mind also that in accordance with article 8, the primary responsibility for such protection rests with the parents or guardians of the child."

36. The representative of the Union of Soviet Socialist Republics and a number of other delegations supported draft article 9 proposed by Poland; however, some delegations objected to that draft article. Then, the representative of the Union of Soviet Socialist Republics proposed as a compromise the following text for article 9 as contained in document A/C.3/36/6.

"1. The States Parties to the present Convention shall encourage opinion-making quarters to disseminate information which promotes the upbringing of children in the spirit of the principles as laid down in article 16.

"2. The States Parties shall also encourage parents and guardians to provide their children with appropriate protection if, on account of its contents, the disseminated information might negatively affect the physical and moral development of the child."

37. In the view of some representatives, the mass media does far more good than harm and therefore the article should be phrased in positive terms, rather than in terms seeking to protect children from the mass media. These representatives urged deletion of the article unless it could be reformulated in such a way as to take a positive approach to the question, acknowledging the need for reciprocity in the free flow of information across international borders and the importance of guaranteeing children access to information from a diversity of sources. In addition, the educational role of the mass media and the dangers of government

censorship were emphasized. The attention of the Group was also drawn to the problems of child neglect and abuse, as well as of negligence and cruelty to children. It was stressed that such problems should be dealt with in the elaboration of the Convention. Other speakers stressed the idea that the States Parties to the Convention should have the obligation to protect children against any harmful influence that the contents of mass media may exert on their mental and moral development.

33. It was further stated that the article under consideration should be formulated in a more positive way and that the right of the child to protection from exploitation and abuse should be dealt with by the Group later on.

39. One representative, while acknowledging the educational role of the mass media, emphasized the fact that information must not exert a negative influence on the child, and pointed out that the question of protecting the child from the harmful influences of the mass media in such matters as apartheid, racist theories and ideologies and the like deserved special treatment by the Working Group. He also suggested that the Group should prepare a separate article concerning child abuse.

40. The observer of the Holy See again proposed that the words "spiritual and social" should be introduced between the words "moral" and "development" in the revised Polish draft of article 9.

41. The Working Group postponed to its next session consideration of article 9.

Article 10

42. Paragraphs 1 and 2 of article 11 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 child care 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 child care 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 child care 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 "child care 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."

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.

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 sanction 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.

Article 11

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/VP.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 or 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."

86. 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.

Article 11 bis

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 co-ordinating role in refugee protection of public and private international organizations, that States should not be obligated 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 co-operate 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 co-operation 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 why 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 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 stage 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 co-operation 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.

Article 12

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 (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 Organisation which read:

"With a view to ensuring the disabled child's preparation for employment, appropriate prevocational 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/UG.1/UP.1, based on the special situation of handicapped parents who were able to continue to care for their children:

"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.

116. At its final meeting on 5 March 1982, the Working Group adopted its report by consensus.

117. At the close of its series of meetings, the Working Group expressed the view that its work constituted an important contribution to the next phase of the elaboration of the draft Convention on the rights of the child. The representative of the Union of Soviet Socialist Republics, supported by the representative of the Byelorussian SSR, stated that the report of the Chairman-Rapporteur did not fully reflect the situation that had prevailed in the Working Group with respect to those members who had favoured the elaboration of the draft Convention and those who had done everything in order to hamper the work and even to prevent the elaboration of this important international instrument. The other delegations disagreed with this statement.

Other provisions of the draft Convention

118. In addition to the proposed amendments to the draft Convention set forth in paragraphs 25, 60 and 83 above, the Working Group had before it the following proposal submitted by the representative of the United States which was not discussed by the Group for lack of time, to add the following articles:

"Article 6 bis

"1. The States Parties to the present Convention shall ensure that the child and his parents enjoy the right to liberty of movement and freedom to choose a residence within the territory of any State Party where they are lawfully present.

"2. The States Parties to the present Convention shall accord to the child and his parents the right to leave any State, including their own, and the right to enter their own State.

"Article 6 ter

"The States Parties to the present Convention shall ensure that the child and his parents are not subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.

"Article 7 bis

"1. The States Parties to the present Convention shall ensure that the child has the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

"2. The States Parties to the present Convention shall ensure that no child is subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

"3. The States Parties to the present Convention shall ensure that the child's freedom to manifest his 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.

"4. The States Parties to the present Convention shall ensure that the child has:

(a) the freedom to worship or assemble with others in connection with his religion or belief;

(b) the freedom to make, to acquire and to use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(c) the freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of his religion or belief; and

(d) the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

"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, thorough investigation of reported cases, follow-up physical and mental health care, etc.)."

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.'"

AnnexDraft Convention on the Rights of the ChildThe States Parties to the 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 have, 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 had proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the basic unit 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, as indicated in the Declaration on the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Recognizing that the child, for the full and harmonious development of his personality, should grow up in family environment, in an atmosphere of happiness, love and understanding.

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration on the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in the articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes of specialized agencies and international organizations concerned with the welfare of children.

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 and brotherhood,

Have agreed as follows:

Article 1

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.

Article 2

1. The child shall have the right from his birth to a name and to acquire a nationality.
2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration.
2. In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.
3. The States Parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures.
4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or practices, property, educational attainment, birth, or any other basis whatever.

2. States Parties to the present Convention 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 other family members.

Article 5

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

Article 6 */

1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his 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 a 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. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

Article 7

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

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 child care 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.

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.

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 inter-country 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.

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 co-operation 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.

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.