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COMMISSION ON HUMAN RIGHTS  
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Pre-sessional open-ended Working Group  
on the Question of a Convention on the  
Rights of the Child

30 January - 3 February 1984

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Proposals submitted by the following non-governmental organizations in consultative status: International Federation of Human Rights, International Federation of Women in Legal Careers, Pax Romana (category II)

These organizations wish to draw the attention of the Working Group to the following points:

A. INTERCOUNTRY ADOPTIONS

I. It would be useful to ask each Government about its position on the adoption of its nationals by foreigners and in particular about the institution of full adoption in international relations. We understand that certain Governments have expressed opposition to this institution, which has the effect of completely severing the child's links with his country of origin and removing all trace of such links.

The opposition of Governments should be taken into consideration by any courts having to take a decision on an adoption.

II. Full adoption in international relations raises a number of specific problems for which a unanimous and clear solution must be found, in the interests of protection of the person of the child by Governments. These problems relate to:

- (1) The conditions of abandonment;
- (2) Consent to adoption;
- (3) The capacity of any adopters for adoption;

(4) The international competence of the judge called upon to make an adoption order (adoptive's court and, where appropriate, adopter's court) and the reliability of the safeguards offered.

At present, on these various points, there are no internationally recognized principles. As a result, the adoption of foreign children gives rise, in some cases, to unlawful international traffic and abductions, which are subsequently legalized by States.

There is also a lack of judicial co-operation between States in settling these various questions and consequently the adoption of foreign children is at present determined only at the national level.

In order to take account of these observations, article 11, paragraph 2, should be amended to read as follows:

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

B. CONCEPT OF THE BEST INTERESTS OF THE CHILD (art. 3 of the draft convention)

It would appear essential to stipulate in the draft convention that the authorities which will be called upon to rule on the best interests of the child should take their decisions in the light of "all national and international elements of the personal and family situation of the child".

Because of its general nature, there is a danger that the concept of the best interests of the child as recognized in article 3 of the draft convention may induce States, when children are of dual origin, to give this concept a purely nationalist content and interpretation.

Whereas this concept of the best interests of the child should in principle bring the legislations of the various States closer together, in this instance there is a possibility that it may drive them further apart. The convention would thus be in danger of losing its universal character and its role as a reference instrument.

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