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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Report of the Working Group on a draft convention on
the rights of the child

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

INTRODUCTION

1. The Commission on Human Rights, by resolution 1985/50 of 14 March 1985, decided to continue at its forty-second session, as a matter of the highest priority, its work on the elaboration of the draft convention on the rights of the child, with a view to completing the draft at that session for transmission, through the Economic and Social Council, to the General Assembly. By resolution 1985/42 of 30 May 1985, the Economic and Social Council authorized the open-ended working group to meet for a period of one week prior to the Commission's forty-second session, in order to facilitate completion of the work on the draft convention. At its fortieth session, the General Assembly, resolution 40/113 of 13 December 1985, requested the Commission on Human Rights to give the highest priority to, and to make every effort at its forty-second session to complete the draft convention and to submit it, through the Economic and Social Council, to the General Assembly at its forty-first session. The General Assembly also invited all Member States to offer their active contribution to the completion of the draft convention on the rights of the child at the forty-second session of the Commission.

2. The Working Group held 11 meetings from 27 to 31 January 1986, and on 11 March 1986. It adopted articles 9 bis, 12 ter, 18, 18 bis, 19, 20 and 21. In that connection, it should be recalled that the open-ended working group established prior to and during previous sessions of the Commission had adopted a number of articles. The text of the articles adopted so far may be found in annex I to this report. Annex II to this report contains proposals that have been discussed by the Working Group but remain pending for further consideration by the group. During the session, and at previous sessions, representatives of States proposed draft articles and amendments which were not discussed by the Working Group for lack of time, and which appear in annex III to this report. Annex IV to this report contains a paper relating to the draft convention which was submitted by the Permanent Representative of Bangladesh with the request that it be annexed as a document to the report of the Working Group on its current session.

ELECTIONS

3. At the first meeting of the pre-session Working Group, on 27 January 1986, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation.

PARTICIPATION

4. The meetings of the Working Group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, China, Cyprus, Ehtiopia, France, German Democratic Republic, India, Japan, Mexico, Norway, Peru, Senegal, Sri Lanka, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

5. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the Working Group: Canada, Cuba, Denmark, Finland, Holy See, Iraq, Morocco, Netherlands, New Zealand, Poland, Sweden and Switzerland.

6. The International Labour Organisation and the United Nations Children's Fund were represented at the Working Group by observers.

7. The following non-governmental organizations sent observers to the Working Group: Amnesty International, Associated Country Women of the World, Baha'i International Community, Defence for Children International Movement, Four Directions Council, Human Rights Internet, International Abolitionist Federation, International Catholic Child Bureau, International Commission of Jurists, International Committee of the Red Cross, International Council of Jewish Women, International Council of Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers, International Social Service, Rädde Barnen International, Save the Children Fund, World Association for the School as an Instrument of Peace, World Organization for Early Childhood Education and Zonta International.

DOCUMENTS

8. The Working Group had before it a number of documents including the provisional agenda prepared by the Secretary-General (E/CN.4/1986/WG.1/L.1), the report of the Working Group on a draft convention on the rights of the child to the forty-first session of the Commission on Human Rights (E/CN.4/1985/64), a compilation of proposed articles and amendments and related provisions in international instruments regarding the draft convention elaborated by the Secretariat (E/CN.4/1986/WG.1/WP.1), the report of the Working Group on Slavery on its eleventh session (E/CN.4/Sub.2/1985/25 and Corr.1), and the final report by Mr. Bouhdiba on exploitation of child labour (E/CN.4/Sub.2/479/Rev.1).

GENERAL CONSIDERATIONS

9. One new article was submitted to the Working Group by the representatives of France and the Netherlands, and another by the representatives of the Netherlands, the United Kingdom and the United States of America, for consideration by the Group at its 1987 session. The first one was a proposal for an article 18 ter which read as follows:

"The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child".

The second one was a proposal for an article 21 bis to read: "Nothing in this Convention shall be interpreted as legitimizing any alien's illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay, or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights."

10. At the first meeting of the Working Group, Mr. V. Tarzie Vittachi, Deputy Executive Director for External Relations of UNICEF, made a statement to the Group.

11. The representative of the United Kingdom said how useful he had found the paper prepared by the Secretariat (E/CN.4/1986/WG.1/WP.1) and expressed the hope that, for future meetings, the Working Group would have an annual update of that paper which provided a very helpful overview of the matters to be discussed.

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

CONSIDERATION AND ADOPTION OF ARTICLES

Article 4 bis

13. For the consideration of this article the Working Group had before it a proposal submitted by the delegation of China contained in document E/CN.4/1986/WG.1/CRP.5 which read:

"The States Parties to the present Convention shall take all effective measures to ensure that a child born out of wedlock shall enjoy the same legal rights as those enjoyed by a child born in wedlock, in particular the rights enumerated in the present Convention."

The Working Group also had before it a proposal by the representative of Austria as follows:

"1. The States Parties to the present Convention recognize that children born out of wedlock shall enjoy equal rights with children born in wedlock.

2. The States Parties to the present Convention shall take all appropriate measures including legislative and administrative measures to implement this article having regard to the relevant provisions of other international instruments. In particular, the States Parties shall ensure that the child has the right to establish maternal and paternal affiliation."

A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention, as contained in document E/CN.4/1986/WG.1/WP.1.

14. During consideration of these proposals, some delegations expressed the view that there was no need to include a specific article relating to children born out of wedlock in the Convention as the subject was already covered under article 4 adopted by the Working Group. The delegations of the Netherlands and Norway were in favour of such a provision and suggested the deletion in the proposal by China of the following words: ", in particular the rights enumerated in the present convention".

15. The representative of Finland was in favour of the proposal submitted by the representative of Austria, but suggested the second sentence of the second paragraph of the Austrian proposal be replaced by the following: "In particular, the States Parties shall take all appropriate measures to ensure the effective implementation of the child's right to have maternal and paternal affiliation evidenced or established". The representative of Austria supported the revised proposal put forward by the observer for Finland.

16. The representatives of Australia, Japan, United Kingdom and United States pointed out that the proposal submitted by the delegation of China was in conflict with their domestic laws of succession. The delegations of Algeria,

Iraq and Morocco specifically objected to the inclusion in the draft convention of a provision dealing with children born out of wedlock, while the representative of the German Democratic Republic stressed that such a provision should be included in the draft convention.

17. The representative of China felt that there should definitely be an article stating in clear terms the rights of a child born out of wedlock and suggested inserting the words "according to national laws" after the words "present Convention".

18. The observer for the Netherlands suggested that in paragraph 1 of the Austrian proposal the words "equal rights with" be replaced by "the same legal rights as". After some further debate on the question, the representative of Austria decided to withdraw his proposal while the representative of France indicated that she was in favour of a separate article on the subject being discussed by the Working Group.

19. The representative of the United Kingdom put forward the following reformulation of the article under discussion:

"The States Parties to the present Convention shall through national legislation take all effective measures to ensure that a child born out of wedlock shall enjoy the rights set out in this Convention to the same extent as a child born in wedlock".

20. The representative of Japan supported the proposal by the representative of the United Kingdom with the exception of the words "through national legislation". The representative of the United Kingdom agreed to their deletion and stated that although he had put forward the above-mentioned proposal, his preference was not to have a separate article on the question under consideration by the Working Group.

21. The Chairman decided that the Working Group had not reached a consensus on the proposal by the delegation of China.

Article 6 bis

22. Discussions held by the Working Group during its 1983 session led to the adoption of part of article 6 bis, namely paragraphs 2 and 3, which read as follows:

"1. In accordance with the obligation of States Parties under article 6, paragraph 2, applications by a child or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents."

The Polish delegation submitted article 6 bis as contained in document A/C.3/40/3, which read as follows:

"The States Parties to the present Convention, in accordance with article 12 of the International Covenant on Civil and Political Rights, shall recognize the right of the child to leave any States."

The representative of the United States submitted the following revised proposal:

"1. States Parties shall respect the right of the child and his parents to leave any country, including their own, and to return to their own country.

2. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others." (New paragraph)

Renumber existing paragraph 2 as paragraph 3, and add the following concluding sentence:

"3. States Parties shall ensure that the submission of such a request shall of itself entail no adverse consequence for the person(s) concerned, whether or not similar or related applications have been previously made and granted or denied."

23. With regard to paragraph 1, the observer for Poland stated that the question of the right, as such, of parents to leave any country - including their own - and to return to it should not be part of a convention on the rights of the child. That view was shared by a number of other delegations including those of Finland, France, the German Democratic Republic and the USSR.

24. The delegation of Japan found itself in agreement with the proposal put forward by the representative of the United States, although it indicated its preference for the verb "to enter", already used in article 12 of the International Covenant on Civil and Political Rights, rather than the words "to return" in the United States proposal. The representative of the United States accepted the suggestion of the Japanese delegation for reasons of consistency with the International Covenant. However, the observer for Finland and the representative of the USSR insisted on their objection to a right which concerned parents being incorporated into a convention dealing with the rights of the child. At the same time, the delegation of Australia supported the proposal submitted by the representative of the United States with the suggestion that in paragraph 1, the phrase "the right of the child and his parents" be replaced by "the right of children and their parents".

25. The Chairman observed that the same difference in approach to article 6 bis had persisted within the Working Group for some years, indicating that one solution to the problem could be the establishment of a working party, consisting of the delegations of the United States, Finland, Poland and the USSR, to produce a new text that would be acceptable to the Group. The text in question read as follows:

"1. In accordance with the obligation of States Parties under article 6, paragraph 2, applications by a child or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents. Toward that

end, States Parties shall respect the right of the child and his parents to leave any country, including their own, and to return to their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others (and is consistent with the other rights recognized in the present Convention)."

26. The Chairman decided that paragraphs 2 and 3 of article 6 bis that had already been adopted should become paragraphs 1 and 2 respectively.

27. The representative of the USSR proposed the deletion of the phrase "States Parties shall further ensure that" at the beginning of the second sentence of the above-mentioned paragraph 1. The observer for Canada was opposed to the deletion of this phrase, while the delegation of the Netherlands stated that the sentence under discussion should remain unchanged on the assumption that it must be an obligation of a State Party to ensure that the submission of a request to enter or leave a State Party for the purpose of family reunification should of itself entail no adverse consequences for the person or persons concerned.

28. Having pointed out that the wording had been taken from paragraph 4 of article 6 that had already been adopted, the delegation of the United States said that it could agree to the deletion of the phrase under discussion if the representative of the USSR insisted, although it would prefer that no such amendment were made. The representative of the Soviet Union then requested that the Working Group should start its consideration of paragraph 2, since his decision whether or not to insist on his amendment would depend on the final wording of the second sentence of paragraph 2.

29. Some speakers questioned the need for a reference to "ordre public" placed between brackets following the words "public order" in the third sentence of paragraph 2. With reference to the term "ordre public", the representative of the United States pointed out that the term appeared in the International Covenant on Civil and Political Rights (notably in paragraph 3 of article 12, whose terminology was closely related to the text under discussion by the Group) and that it was more precise than "public order".

30. The representative of Japan proposed the replacement of the word "return" in the second sentence of paragraph 2 by the word "enter". The delegation of Cyprus expressed its preference for the word "return", finding its use more logical after the phrase "to leave any country" which preceded it. The representative of the United Kingdom indicated his support for the Japanese proposal as did the representative of Australia, who considered that the interests of children who were born abroad must be kept in mind. The latter representatives' views were shared by the delegation of Mexico. The representative of Bangladesh suggested that the two terms be combined by inserting the words "or enter" between the words "return to" and "their own country". The delegation of the United Kingdom expressed its preference for the wording suggested by the representative of Bangladesh.

31. The representative of the USSR reiterated his objection concerning the inclusion in the draft convention of the specific right of a child's parents to leave any country and to return to it and said that, in the light of the discussion which had just taken place, he needed to reflect further on the question and proposed that the discussion be postponed.

32. Noting that only one delegation was unprepared to accept Article 6 bis, the representative of the United States expressed the hope that the delegation in question would be prepared to accept the text at the Working Group's next session.

Article 9 bis

33. In 1985, the delegation of Argentina submitted a proposed new article to be incorporated in the draft convention as article 9 bis to read as follows:

"The child has the inalienable right to retain his true and genuine personal, legal and family identity.

In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular, this obligation of the State includes restoring the child to his blood relations to be brought up."

The proposal was reintroduced at the current session as originally presented. There was also a proposal from the delegation of Poland, contained in document A/C.3/40/3, that read:

"1. The States Parties undertake to guarantee to the child the right to preserve his true and genuine personal, legal and family identity.

2. If a child has been fraudulently deprived of some or all of the elements of his identity, the States Parties shall provide the child with necessary assistance and protection, with a view to speedily re-establishing his true and genuine identity."

In addition, a proposal was submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention, contained in document E/CN.4/1986/WG.1/WP.1.

34. The representative of Norway asked the delegation of Argentina whether it was necessary to have such an article in the convention, pointing out that the true and genuine personal identity of the child was embodied in articles 2, 6 and 8 which had already been adopted by the Working Group.

35. The representative of Argentina said that, while articles 2, 6 and 8 of the convention referred to the question, they did so in general terms, and that the importance of the article submitted by his delegation stemmed both from the special protection that was to be given by the State to the child as soon as possible, when the right of the child to preserve his or her true identity had been violated, and from the distinction made between the child's true and genuine identity and his or her legal one.

36. The observer for the Netherlands said he shared the opinion put forward by the Norwegian delegation, reminding the Working Group that it had previously adopted article 11 on adoption procedure. In view of the existence in the convention of articles 2, 6, 8 and 11, he wondered whether there was any need for the article under discussion, especially in view of the many family law problems concealed therein.

37. The representative of Austria expressed his agreement with the views of the delegations of Norway and the Netherlands. The representative of the

United States also shared the concerns of those delegations, while the observer for Canada held the same opinions as previous speakers indicating at the same time that identity per se, so broadly stated, had no place whatsoever in Canadian legislation.

38. The representative of Argentina insisted on the need for a specific article relating to that question in order to cover the legal void which otherwise would exist in the convention on the rights of the child. The representative of Brazil, while supporting the Argentine proposal, thought that articles 2, 6, 8 and 11 of the draft convention already dealt with some of the aspects covered by the Argentine proposal and requested the formation of a working party to redraft the article submitted by the Argentine delegation. The representative of Bangladesh supported the idea of forming a working party and considered - echoing an earlier observation by the representative of the United Kingdom - that the word "inalienable" qualifying the term "right" in the first sentence of the Argentine proposal did not have to be retained and furthermore that the word "fraudulently" at the beginning of the second paragraph could be avoided.

39. The Argentine delegation, replying to the observations made by the delegation of Bangladesh, said that the word "inalienable" was not a major concern but that the word "fraudulently" certainly was. Consequently, before joining the proposed working party, it wished to place on record its desire to retain the word "fraudulently" in the text to be produced by the aforementioned working party.

40. Further to the Chairman's suggestion that the working party should include the delegations of Argentina, the Netherlands, Norway and Poland with the assistance of the International Commission of Jurists, and that it should take into account the views exchanged during the discussion of the Argentine proposal, the representative of Argentina submitted a text that read as follows:

"1. The States Parties undertake to respect the right of the child to preserve his or her family identity without unlawful interference.

2. Where a child is illegally separated or removed from his or her lawful custodians or otherwise fraudulently or illegally deprived of some or all of the elements of this identity, the States Parties shall provide special assistance and protection, with a view to speedily re-establishing his or her rightful family identity."

41. The delegation of the Netherlands observed that the concept of family identity as such was not known in every State and, for that reason, he wished to introduce in the first paragraph after the words "family identity" the phrase "as recognized by law". The delegations of Australia and Finland expressed similar views and their desire that the representative of Argentina should clarify the meaning of the expression "family identity".

42. The representative of Argentina replied that paragraph 2 of the redrafted proposal supplied a context for the concept of "family identity", and added that he would have no objection to incorporating the proposal of the delegation of the Netherlands in paragraph 1 of the text.

43. The delegation of Norway suggested that the words "family relations" should replace "family identity", and the observer for Finland indicated that he was able to accept that proposal.

44. The representative of Austria said that he shared the doubts of previous speakers concerning the article under discussion, because the concept of "family identity" was unknown in Austrian law, and the reply by the representative of Argentina had not removed those doubts. He asked the representative of Argentina to provide the Working Group with a clear definition of the concept of "family identity".

45. The delegations of France and the United Kingdom shared the concerns voiced by other delegations. The representative of Argentina then stated that for the interpretation of "family identity" reference must be made, within the national context, to the national legislation and, within the international context, to the Protocols additional to the Geneva Conventions of 1949.

46. The representative of Australia, indicating that the concept of "family identity" was unknown in Australian law, requested that the representative of Argentina provide the Working Group with definitions in national legislations of the term "family identity" for he still did not understand its meaning. The Chairman then suggested that, in the first paragraph, the word "family" be deleted and that between the words "identity" and "without unlawful interference" the words "nationality, name, family relations" should be inserted, the amendment being placed in brackets. The representative of Bulgaria proposed that, after the wording suggested by the Chairman, the following phrase be added: "in accordance with their legal system and judicial practice".

47. The observer for the Netherlands reiterated his previous proposal to introduce the phrase "as recognized by law" in paragraph 1 and suggested its addition after the words "family relations". He also objected to the utilization in paragraph 2 of the two words "fraudulently" and "illegally", indicating his preference for the word "fraudulently"; in addition, he proposed that, in the same paragraph, the word "special" should be replaced by "appropriate". The later proposal was supported by the delegation of the United States.

48. The delegation of Australia proposed the deletion of the word "family" before the word "identity" at the end of paragraph 2. The representative of Austria associated himself with the remarks made by the observer for the Netherlands regarding the deletion of the word "fraudulently" and the replacement of the word "special" by the word "appropriate".

49. After a further exchange of views, the Working Group approved the following text:

"1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations, as recognized by law) without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."

Article 12, paragraph 5

50. The representative of Rädde Barnen International, on behalf of the Informal NGO Ad Hoc Group on the Drafting of the Convention on the rights of the Child, proposed that a fifth paragraph be added to article 12, already adopted by the Working Group, to read:

"The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices."

51. No decision was taken by the Working Group on the proposal, and the representative of Australia suggested that it be reconsidered by the Group at its forthcoming session.

Article 12 ter

52. At the Working Group's 1985 session, the delegation of Canada proposed the following text for a new article:

"1. States Parties to the present Convention recognize the right of a child removed from the family environment by the State or placed with the State by the parents for the purposes of physical, emotional or mental health care treatment to a periodic review of the treatment provided to the child.

2. States Parties shall take appropriate measures to provide an adequate mechanism for reviewing the effectiveness of the treatment and the need for its continuation."

That proposal was reintroduced, and the observer for Canada stated that the numbering assigned to the article by the Secretariat in its document E/CN.4/1986/WG.1/WP.1 met with the approval of the Canadian delegation.

53. The delegations of Norway and the United Kingdom expressed their support for the aforesaid article. The representative of Australia also expressed his support, but wished to strengthen the text by adding the words "protection or" between the words "health care" and "treatment" in the latter part of paragraph 1.

54. The delegations of France, the German Democratic Republic, the Netherlands and Sweden endorsed the support already expressed by the delegations of Australia, Norway and the United Kingdom.

55. The representative of the United States suggested the introduction in paragraph 1 of the word "temporarily" between the words "child" and "removed" and the replacement of the phrase "or placed with the State by the parents" by the following: ", whether or not initiated by parental request". The observer for Finland had serious doubts regarding the amendment proposed by the United States representative which he thought would weaken the provision of paragraph 1. The representative of the United Kingdom agreed with the observer for Finland, and further proposed the addition at the end of the paragraph of the words "and to other relevant circumstances determining his or her situation".

56. The representative of the United States then revised her second proposal to read "or with the agreement of State authorities". The observer for Finland suggested that the article under consideration should have a third paragraph to read: "the provisions of this article are not applicable to any placements made by the parents or legal guardians of the child". The

representative of the United Kingdom read out a revised wording for paragraph 1 worked out with the agreement of the delegation of Canada and reading:

"States Parties to the present Convention recognize the right of a child who has been placed with the competent State authorities for care, protection, or treatment of his or her physical, emotional, or mental condition to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her situation."

57. The observer for Finland said that the revised wording of paragraph 1 met his preoccupations regarding the original text but suggested an amendment to it, namely that the phrase "placed with the competent State authorities" should read "placed by the competent authorities". That amendment was supported by the delegation of the Netherlands.

58. The representative of the United States then proposed that the phrase "placed with the competent State authorities" be replaced by "under the care and supervision of State authorities". That proposal was acceptable to the Canadian and United Kingdom delegations.

59. The observer for Finland reiterated his preference for the words "placed by" which he had proposed previously, and the representative of the United States agreed to amend her proposal to read "placed by State authorities".

60. In view of the Chairman's opinion that the article under consideration dealt only with the state of the child's physical or mental health, the observer for Canada explained that the word "emotional", which originally appeared in the Canadian proposal, was recognized in Canadian law and important within the Canadian system.

61. Taking into account the views expressed in the course of the discussion of paragraph 1, the representative of the United Kingdom submitted the following text for the Group's consideration:

"States Parties to the present Convention recognize the right of a child who has been placed by the competent State authorities for care, protection, or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her situation."

62. The observer for the Netherlands proposed adding the words "the purposes of" between the words "authorities for" and "care", while the observer for Finland suggested the deletion of the word "State" with which the representative of the United Kingdom agreed. The observer for Canada was able to agree to the deletion of the word "State" and proposed that the word "situation" be replaced by the word "placement" at the end of the paragraph. The representative of the United States stated the understanding of her delegation that the text did not apply to placements under the juvenile justice system but only to placements outside the scope of Article 19 on penal proceedings.

63. The Working Group approved the text with those amendments. The approved text read as follows:

"States Parties to the present Convention recognize the right of a child who has been placed by the competent authorities for the purposes

of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement."

64. With regard to paragraph 2 of article 12 ter, the Chairman was of the opinion that that paragraph appeared to play the role of a commentary. The representative of the United Kingdom agreed with the Chairman; it was already implicit in paragraph 1 that appropriate measures to implement the child's right would be adopted by States Parties to the Convention and he would therefore prefer the deletion of paragraph 2. The delegation of the German Democratic Republic also took the view that there was no need to include paragraph 2 in the article under consideration. In view of those opinions, the delegation of Canada withdrew its proposal concerning paragraph 2, and the Working Group adopted article 12 ter with a single paragraph.

Article 16 bis

65. The representative of the Four Directions Council presented a proposal for an article dealing with indigenous children's cultural and educational rights to read:

"The States Parties to the present Convention recognize the special needs of children belonging to indigenous populations, which include the right of the child:

- (a) To have, learn, and, if he chooses, adopt the culture and language of his parents;
- (b) To enjoy his family of birth and, if alternate family care or adoption is provided, to care or adopt in an otherwise suitable family or community of the same culture wherever possible;
- (c) To be educated, at least at the primary level, and to the extent practicable within national resources, in the language of his parents as well as an official language of the State."

66. The representative of Mexico supported the above-mentioned provision in principle, and expressed the hope that the proposal would be given further consideration at the Working Group's next session, when her delegation might propose some amendments, especially with reference to education.

67. The representative of Australia said that he found the proposal put forward by the representative of the Four Directions Council very interesting. However, it covered indigenous populations only and he thought it might be reworded to embrace other minorities also. He also commented that it might be premature for the Convention to purport to create indigenous rights at a time when the Sub-Commission Working Group on Indigenous Populations had still to fulfil its standard-setting mandate.

Article 18

68. There were two texts for consideration by the Working Group. The first, introduced by the observer for Poland at the Group's 1985 session and also contained in document A/C.3/40/3, read as follows:

"1. The States Parties to the present Convention recognize that the child shall not be employed in any form of work harmful to the child's health or education or which will interfere with his physical, mental or social development.

2. The States Parties to the present Convention shall prescribe a minimum age for admission to employment, with due regard to the provisions of paragraph 1 of this article and the provisions of other international instruments relating to the employment of children.

3. The States Parties to the present Convention shall ensure that persons acting contrary to the provisions of this article shall be subject to penalties established by law."

The second, submitted by the observer for Canada at the current session, was as follows:

"1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is or is likely to be harmful to the child's health or education or which will interfere with his or her physical, mental or social development.

2. The States Parties to the present Convention, having regard for the provisions of other international instruments, shall take legislative and administrative measures to ensure that the child is protected and in particular shall prescribe a minimum age or minimum ages for admission to employment.

3. The States Parties to the present Convention undertake to protect the child against all other forms of exploitation, including sexual exploitation, as well as degrading treatment and all acts violating the moral, spiritual or physical integrity of the child."

In addition, there were proposals by the International Labour Organisation and the Informal NGO Ad Hoc Group on the Drafting of the Convention as contained in documents E/CN.4/1984/WG.1/WP.1 and E/CN.4/1986/WG.1/WP.1, respectively. The Working Group agreed that the first two paragraphs of the Canadian text and the third paragraph of the Polish text be taken as the basis for discussion.

Paragraph 1

69. The representative of the United States suggested the deletion of the words "is or" in the third line of the paragraph, and proposed that the phrase "harmful to the child's health or education or which will interfere with his or her" in the third and fourth lines be replaced by the following: "hazardous or to interfere with the child's education, or to be harmful to his health or". The observer for Canada indicated her preference for the wording "the child's health" rather than "his health" as proposed by the delegation of the United States, while the observer for the Holy See suggested the insertion of the words "spiritual, moral" between "mental" and "or social development" at the end of the paragraph. The representative of the United States declared the understanding of her delegation that this paragraph and the article as a whole concern general measures to protect children from work which is likely to be harmful, and does not call for oversight of the particular situation of each specific child. With those amendments, the Working Group agreed to the paragraph under consideration, which read as follows:

"The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

Paragraph 2

70. The observer for Finland submitted another proposal to the Group, combining paragraphs 2 and 3 of the Canadian and Polish proposals to read:

"The States Parties to the present Convention, having regard to the provisions of paragraph 1 of this Article and of other international instruments, shall take legislative and administrative measures to ensure the protection of the child. To this end the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment or work, and (b) provide for appropriate penalties for the effective enforcement of this Article."

71. While the Working Group generally agreed with the Finnish proposal, some speakers suggested amendments to its wording. Following the Chairman's request that a compromise text be elaborated after consultations, the delegations of Finland, Canada and the United States submitted a text that read as follows:

"The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this Article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment or work; (b) provide for other appropriate regulations of the hours and conditions of employment; and (c) provide for appropriate penalties to ensure the effective enforcement of this Article."

72. In connection with letter (a), in the opinion of one speaker, the establishment of a minimum age or ages of employment should not prevent the participation of children, under the direction of their parents and so as not to interfere with their education, in culturally related family hunting, fishing or agricultural activities not regularly employing unrelated workers. Furthermore, in his understanding, that subparagraph was not intended to prohibit family subsistence activities as such.

73. Following a proposal by the representative of the United States to delete the words "or work" at the end of letter (a), many delegations expressed their support, deeming it more appropriate that only the subparagraph in question be confined only to the concept of admission to employment because it does not apply to work in or for the family. The Working Group approved paragraph 2 from the beginning of its compromise text until the end of its letter (a) as amended. The representative of Japan joined the consensus on the understanding that this paragraph allows exceptions for light work or artistic performances under the relevant provisions of other international instruments. The approved text read as follows:

"The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this Article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment;"

74. The delegation of the Netherlands thought that the word "other" in (b) was unnecessary and the Working Group agreed that (b) should read:

"(b) provide for appropriate regulation of the hours and conditions of employment; and".

75. During the exchange of views that preceded the adoption of all the above-mentioned texts of that article, the representative of the International Labour Organisation, answered a number queries, emphasizing the need to safeguard and have regard to other relevant international standards, particularly international labour conventions.

76. With regard to letter (c), the representative of the United Kingdom proposed the introduction of the words "or sanctions" therein, and the delegation of the Netherlands amended that proposal to read "or other sanctions". The Working Group adopted the amended text, which read: "(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article." The representative of the United States stated the understanding of her delegation regarding paragraph 2 that minimum ages were not necessary with respect to all types of employment, but only as required by paragraph 1.

Article 18 bis

77. The Working Group considered a text for an article 18 bis as contained in document E/CN.4/1986/WG.1/CRP.5, submitted and introduced by the delegation of China. The text read as follows:

"1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to prevent and prohibit a child from taking narcotic drugs as defined in the relevant international conventions. The competent national authorities should investigate cases of drug abuse by a child and timely medical treatment should be provided for the child so that he or she may be assured prompt rehabilitation and healthy growth.

2. The States Parties to the present Convention shall take legislative and administrative measures to prevent and prohibit trafficking in narcotic drugs by a child. The States Parties should, in accordance with their national legislation, apply sanctions, including appropriate criminal punishment, to anyone who uses or incites a child to become involved in various forms of drug trafficking."

A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1.

78. During consideration of the proposal, the observer for the Netherlands said that, while in principle he welcomed the proposal by China, he would like clarification concerning the term "narcotic drugs"; he asked whether it included all kinds of drugs. He suggested that in the first sentence of paragraph 1, the phrase "to prevent and prohibit a child from taking narcotic drugs" should read: "to protect children from the abuse of narcotic and psychotropic substances".

79. The representative of the German Democratic Republic supported the amendment submitted by the observer for the Netherlands with the proviso that the word "dangerous" be inserted between the words "abuse of" and "narcotic".

80. The representative of the United Kingdom suggested the deletion of the clause "legislative, administrative, social and educational" in the first sentence of paragraph 1. This suggestion was seconded by the Canadian delegation.

81. The representative of the United States proposed that the article under consideration should also include a reference to other drugs, such as alcohol, and objected to the word "incites" in the penultimate line of paragraph 2. The representative of Japan shared that objection.

82. After some further discussion, at the Chairman's request, a consolidated text was prepared by an informal working party - constituted by the delegations of China, Canada, the German Democratic Republic, the Netherlands and the United Kingdom - which read as follows:

"The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances."

83. The Working Group then adopted the above-mentioned text by consensus.

Article 18 quater

84. The Working Group had before it the following revised proposal by the delegation of the United States for an article 18 quater:

"1. States Parties to the present Convention recognize the rights of the child to freedom of association with others, to peaceful assembly, and to be protected by law against arbitrary or unlawful interference with his privacy, family, home or correspondence.

2. States Parties shall respect and guarantee these rights, and shall not place any restrictions on their exercise, except as provided in paragraph 3 of this article. In no case shall a child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.

3. The exercise of the right to freedom of association and the right to peaceful assembly may be subject to those restrictions provided by law which are consistent with the international obligations of a State Party and which are necessary in a democratic society in the interests of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

4. Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child."

85. While the delegations of Australia and Canada expressed their support for the inclusion of the United States proposal in the draft convention, the representative of the USSR stated that he was totally opposed to it and the representatives of Algeria, China, Iraq and Poland said that it would be difficult for them to accept the proposal.

86. The delegation of Bangladesh proposed two amendments to paragraph 1, namely, to delete the words "with others" and to replace the words "be protected" by the words "the protection".

87. The Working Group postponed consideration of this article until its next session.

Article 19

88. The Working Group had before it two texts for consideration. The first, a proposal made by Canada at the Working Group's 1985 session which read:

"1. The States Parties to the present Convention recognize the right of the child accused or found guilty of infringing the penal law to be treated in a manner consistent with the aims of child development acknowledged in article 17 of this Convention, and in particular in such a manner as to promote the full development of his or her personality, sense of dignity and worth, and respect for human rights and fundamental freedoms.

2. The States Parties to the present Convention shall pursue full implementation of this right, and in particular undertake as follows:

- (a) No child shall be arbitrarily detained or imprisoned;
- (b) Every child accused of infringing the law is entitled to have the matter determined according to law in a fair hearing within a reasonable time by an independent and impartial tribunal, in accordance with the presumption of innocence and such procedures as will take into account his or her age and the desirability of promoting his or her rehabilitation;
- (c) All children deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
 - (i) Accused children shall be separated from adults and brought as speedily as possible for adjudication;
 - (ii) The essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. They shall be segregated from adults and accorded treatment appropriate to their age and legal status.
- (d) No child shall be subjected to cruel, inhuman or degrading treatment or punishment. No child shall be sentenced to death."

The second was a proposal by Poland contained in document A/C.3/40/3, which read as follows:

"1. The States parties to the present Convention shall ensure that the child subject to penal procedures shall be treated in a manner commensurate with his phase of development, with his reformation and social rehabilitation in view.

2. The States Parties to the present Convention shall guarantee that no child shall be arbitrarily detained or imprisoned, sentenced to death, subject to cruel, inhuman or degrading treatment or punishment.

3. The States Parties to the present Convention shall provide that the child sentenced to deprivation or limitation of freedom shall serve his sentence in separation from adult offenders."

In addition, a proposal was submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1.

89. The representative of the Netherlands, supported by the representatives of Austria and the United States, expressed the view that the Canadian proposal might be used as the basis for discussion. The representative of the USSR said that both the Canadian and the Polish proposals could be acceptable as a basis for discussion. However, he felt that it would be wiser to wait for the revised text, which the observer for Canada, in her introductory statement, had informed the Working Group would be submitted shortly by her delegation, in order to continue the debate.

90. Accordingly, the delegation of Canada presented the following revised text upon which much of the discussion focused:

"1. States Parties to the present Convention recognize the right of children accused or found guilty of infringing the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, 1/ and which takes into account their age and the desirability of promoting their rehabilitation. 2/

2. States Parties shall pursue full implementation of this right, and in particular shall take appropriate measures to ensure that:

(a) No child is arbitrarily detained or imprisoned, 3/

(b) Every child accused of infringing the law is entitled:

(i) to be informed promptly of the charges against him or her in a language that he or she can understand, 4/

(ii) to be presumed innocent until proved guilty according to law, 5/

(iii) to have the matter determined according to law in a fair hearing within a reasonable time by an independent and impartial tribunal, 6/

(iv) to legal assistance in the preparation and presentation of his or her defence, 7/

(v) if found guilty and sentenced, to have his or her conviction and sentence reviewed by a higher tribunal according to law. 8/

(c) An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. 9/ A variety of dispositions shall be available to the competent authorities to ensure that each child is dealt with in a manner appropriate to his or her particular circumstances, and that no child is unnecessarily institutionalized. 10/

(d) All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person:

(i) Accused children shall be separated from adults and brought as speedily as possible for adjudication, 11/

(ii) Children found guilty of infringing the penal law shall be separated from adults and accorded treatment appropriate to their age and legal status. 12/

(e) No child shall be sentenced to death. 13/ No child shall be subject to cruel, inhuman or degrading treatment or punishment, 14/ nor to a disposition out of proportion to the circumstances of both the offender and the offence. 15/

1/ Polish draft convention on the rights of the child, article 16, A/C.3/36/6.

2/ International Covenant on Civil and Political Rights ("ICCPR"), article 14 (4).

3/ ICCPR, article 9; Universal Declaration of Human Rights ("UDHR"), article 9.

4/ ICCPR, article 14 (3) (a).

5/ ICCPR, article 14 (2)

6/ ICCPR, article 14 (1); UDHR, Articles 10 and 11.

7/ ICCPR, article 14 (3) (a).

8/ ICCPR, article 14 (5).

9/ ICCPR, article 10 (3).

10/ Draft standard minimum rules for the administration of juvenile justice, article 18.

11/ ICCPR, article 10 (2).

12/ ICCPR, article 10 (3).

13/ ICCPR, article 6 (5).

14/ ICCPR, article 7; UDHR, Article 5.

15/ Draft standard minimum rules for the administration of juvenile justice, articles 4.2 and 17.1 (a)."

91. During the consideration of the revised text, the representative of Iraq stressed his preference for the initial proposal by Canada which he suggested might be merged with the Polish proposal. The representative of Austria stated that in drafting the article under consideration by the Working Group, care should be taken not to include the provisions of other existing international human rights instruments already applicable to children. The representative of the United Kingdom argued that a categorical prohibition of separating young children from adults may not always be beneficial to the child and indicated that, in drafting the relevant part of the article, the Working Group should take into account what was most beneficial to the child.

92. After some debate the Chairman suggested that an informal working party, composed of the delegations of Canada, Poland and Austria and interested non-governmental organizations, such as the International Commission of Jurists, should hold consultations with a view to formulating a redrafted proposal that attempted to consolidate many delegations' views. The Chairman also considered that paragraph 1 of the revised Canadian proposal could serve

as basis for discussion of the first paragraph of the article to be adopted by the Working Group, while for its second paragraph the Group might take as the basis for discussion the compromise text prepared by the informal working party.

93. The proposal formulated by the informal working party read as follows:

"1. States Parties to the present Convention recognize the right of children accused or found guilty of infringing the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular ensure that:

- (a) As a minimum, the child has, in every appropriate respect, the same legal rights as an adult accused or found guilty of infringing the penal law;
- (b) Detention awaiting trial shall be used only as a measure of last resort, for the shortest possible period of time;
- (c) Legal assistance is provided in the preparation of the child's defence;
- (d) Ensure that no child is arbitrarily detained or imprisoned or subjected to torture or to cruel, inhuman or degrading treatment or punishment;
- (e) An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation including offering programmes of education and vocational training. A variety of dispositions shall be available to the competent authorities to ensure that each child is dealt with in a manner appropriate to his or her particular circumstances, and that no child is unnecessarily institutionalized.

3. Penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities.

4. The following sentences shall not be imposed for crimes committed by persons below eighteen years of age:

- (a) Capital punishment;
- (b) Life imprisonment."

Paragraph 1

94. The representative of Venezuela expressed her preference for the expression "child subject to penal procedure" in the proposal by Poland rather than "children accused or found guilty of infringing the penal law".

95. The representative of the United States of America did not agree with the term "found guilty" and suggested replacing it by the words "subject to penal

or juvenile justice proceedings". She also stated the understanding of her delegation that this article covers both adult criminal proceedings or juvenile justice proceedings when a child has committed what would be a criminal offence if committed by an adult. In this connection, the representative of Japan felt some hesitation about the expression "subject to juvenile justice proceedings" since it will cover family court proceedings in his country, and reserved his position until paragraph 2 was drafted. The observer for the Netherlands opposed this wording and suggested replacing it by the words "children who are accused of or recognized as having infringed the penal law". The representative of the United States accepted the Netherlands' proposal.

96. The representative of Venezuela proposed replacing the words "found guilty of infringing" by the words "recognized as having infringed". The Working Group adopted the following text for paragraph 1 by consensus:

"1. States parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation."

Paragraphs 2, 3 and 4

97. The observer for Canada suggested the insertion, in paragraph 2 (a) of the word "fundamental" between the words "same" and "legal", and of the words "and protections" between "rights" and "as an adult accused", and the addition at the end of the subparagraph of the following phrase: "including the right to legal assistance in the preparation and presentation of the child's defence."

98. With regard to paragraph 2 (c), the representative of Venezuela proposed inserting the word "qualified" between the words "legal" and "assistance". In addition, the observer for Amnesty International proposed beginning the subparagraph with the phrase "From the moment of being taken into custody" and replacing the word "is" by the word "shall". While recognizing the need for legal aid, the representative of the United Kingdom was uneasy with the notion of "legal assistance" as, for example, social workers might not necessarily be legally qualified to appear in juvenile justice proceedings.

99. After a further exchange of views, the Chairman requested that a new text for the outstanding parts of article 19 be elaborated - taking into account the views expressed by the members of the Group - by an informal drafting party. Accordingly, the observer for Canada submitted the following text:

2. To this end, and having regard to the relevant provisions of international instruments, and the principle that penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities, the States parties shall, in particular, ensure that:

- (a) No child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (b) Capital punishment or life imprisonment is not imposed for crimes committed by persons below eighteen years of age;
- (c) Children accused of infringing the penal law:

- (i) Are informed promptly of the charges against them and, as of the time of being accused, are provided with legal assistance in the preparation and presentation of their defence;
- (ii) Are presumed innocent until proven guilty according to law;
- (iii) Have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal; and
- (iv) If found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence (as well as in a manner commensurate with his phase of development). No child shall be unnecessarily institutionalized.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

- (a) Be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so;
- (b) Be brought as speedily as possible for adjudication;
- (c) Have the right to maintain contact with their family through correspondence and visits."

Paragraph 2

100. The representative of the United Kingdom suggested amending the first three sentences of paragraph 2 to read: "To this end, and having regard to the relevant provisions of international instruments, and the principle that penal law and the penitentiary system shall only be used in cases where child welfare procedures and facilities are considered inadequate ...".

101. The observer for Canada could not accept the amendment proposed by the United Kingdom, as criteria for determining the child's welfare were unclear. In support of this argument the delegation of Australia reiterated its suggestion that paragraph 2 as proposed by the Canadian delegation be maintained.

102. After some discussion, the representative of the United Kingdom withdrew his amendment and the Working Group then agreed to delete the words "and the principle that penal law and the penitentiary system shall not be used as a substitute for child welfare procedures and facilities" as well as to add the words "to the present Convention" after "the States Parties". The text adopted by the Working Group read as follows:

"2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:"

Subparagraph (a)

103. The Working Group adopted subparagraph (a) without any change, as follows: "No child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment,"

Subparagraph (b)

104. As regards subparagraph (b), the representative of Japan expressed his concern over the term "or life imprisonment", indicating that his delegation could not go along with the prohibition of life imprisonment, and proposed its deletion. With a view to accommodating that proposal, the representative of Canada suggested adding the words "without possibility of release" after the words "life imprisonment".

105. The representative of the United States voiced her delegation's disagreement with the whole of subparagraph (b); she felt that the reference to "persons below eighteen years of age" was too arbitrary and proposed its deletion. The observers for Amnesty International and the International Commission of Jurists did not agree with that proposal and suggested that subparagraph (b) should stand as it was originally formulated. They stressed that 18 years was the age accepted in various international instruments, including the International Covenants and General Assembly resolutions. The representative of the United States said that her government did not consider subparagraph (b) as drafted to be an appropriate general rule but that she would not insist on her amendment and block consensus, provided it was understood that the United States maintained its right to make a reservation on this point and that it was implicitly understood that a child committing an offence which, if committed by an adult, would be criminal could be treated as an adult.

106. After a further exchange of views, the Working Group adopted subparagraph (b) as follows: "Capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below eighteen years of age,"

107. The representative of the United Kingdom and the United States placed on record their reservation regarding subparagraph (b) to which they wished to return at a later stage.

Subparagraph (c)

108. The observer for the Netherlands expressed his preference for the wording of the International Covenant on Civil and Political Rights where the term "charged with criminal offences" was used and accordingly suggested replacing the word "accused" by the word "charged". The representative of Canada explained that the informal drafting working party had proposed the term "accused" for the sake of consistency with the remaining part of the text where the word "accused" was being used.

109. The observer for Finland shared the hesitations of the delegation of the Netherlands and proposed that the phrase "children awaiting penal procedures" be used. However, the representative of the United Kingdom indicated his preference for maintaining the word "accused" in the text.

110. The following text was adopted by the Working Group: "(c) Children accused of infringing the penal law".

111. With reference to subparagraph (c)(i) the representative of Finland expressed his preference for the expression "appropriate assistance" instead of "legal assistance". The representative of the Netherlands suggested inserting the words "or other appropriate" between the words "legal" and "assistance" and adding the phrase "in any case where the interests of justice so require" after the word "assistance". Along these lines, the representative of Austria proposed that the phrase should be amended to read "are provided with legal or other appropriate assistance in the preparation and presentation of their defence where their interests so require".

112. The observer for the Netherlands suggested modifying the Austrian delegation's amendment by replacing the words "their interests" by "the interests of justice". The representative of the United Kingdom indicated his preference for the phrase "are provided with appropriate assistance" rather than "are provided with legal or other appropriate assistance". The representative of the United States suggested replacing the words "are provided with" by the word "have", while the representative of the United Kingdom proposed the words "have access to" rather than the words "are provided with".

113. After an additional exchange of views and following a suggestion by the delegation of Australia, the Working Group agreed to invert the order of subparagraphs (c)(i) and (c)(ii) and to adopt them as follows:

- "(i) Are presumed innocent until proven guilty according to law;
- (ii) Are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence,".

114. The Working Group also adopted subparagraphs (c)(iii) and (c)(iv) as they stood (see para. 99).

Paragraph 3

115. The representative of the United States suggested that the last sentence of paragraph 3 be deleted and that after the words "and the offence" the following should be added: "and that children are not unnecessarily institutionalized."

116. The delegation of Australia proposed replacing the word "institutionalized" at the end of the paragraph by the words "confined to gaol", while the observer for the Netherlands suggested replacing "institutionalized" by "put in an institution". The proposal put forward by the observer for the Netherlands was accepted by the delegations of Australia and Canada. The observer for Canada suggested adding the words "and alternatives to institutional care" after the words "vocational training".

117. After a brief discussion, the Working Group agreed to delete both the words "as well as in a manner commensurate with his phase of development", and the last sentence of the paragraph. The Working Group thus adopted paragraph 3 as follows:

"An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational

training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence."

Paragraph 4

118. The Working Group adopted the following text as it stood: "All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:".

119. Turning to subparagraphs (a) and (b), the representative of the United States suggested replacing the words "unless it is considered in the child's best interest not to do so" by the phrase "or unless it has been determined appropriate that the child be treated as an adult". The representative of Austria suggested keeping the text as it stood and the delegations of Bangladesh and Japan shared his opinion. The representative of Algeria stated that if the United States amendment were to be retained, the purpose of the Convention would be defeated.

120. The observer for the Netherlands proposed amending the United States proposal by the following: "unless, taking into account the personality of the child, this would be inappropriate ...". The Chairman proposed adding the words "or in the interests of justice" after the words "child's best interest". The representative of France expressed her preference for maintaining the text as it stood.

121. The observer for the Netherlands proposed the addition at the end of subparagraph (b) of the following phrase: ", or it is unnecessary for the protection of the child, and".

122. Regarding subparagraph (c) the observer for the Netherlands also suggested including the words "according to the law" at the end of the sentence, but the observer for Canada proposed adding instead the phrase ", save in exceptional circumstances". The delegation of the Netherlands withdrew its proposal in favour of the Canadian amendment, which was also supported by the Australian delegation.

123. After some consultation, the Working Group agreed to reverse the order of subparagraphs (a) and (b) and adopted subparagraphs (a), (b) and (c) as amended:

- "(a) Be brought as speedily as possible for adjudication.
- (b) Be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so, or it is unnecessary for the protection of the child, and
- (c) Have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances."

Article 20

124. In 1985, the delegations of Belgium, Finland, the Netherlands, Peru, Senegal and Sweden had submitted a proposed new article to be incorporated in the draft convention as article 20 and that read as follows:

"1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.

2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities."

A proposal submitted by the delegation of the Islamic Republic of Iran in 1984 read as follows:

"(a) The States parties to the present Convention, guided by the principles of international customary law and Geneva law, shall refrain from committing a military attack and bombardment of undefended cities and the civilian population, inflicting incalculable suffering, especially on children who are the most vulnerable members of the population.

(b) The use of chemical and bacteriological weapons in the course of armed conflict constitutes one of the most flagrant violations of the Geneva Protocol of 1925, and the principles of international humanitarian law and inflicts heavy losses on civilian populations including defenceless children, such acts constitute a crime against humanity."

In addition, the delegation of Iraq submitted the following proposal in 1985:

"1. Special respect must be shown for children. Their protection must be ensured and the parties to the conflict must provide them with the care and assistance that they need by virtue of their age.

2. On the occurrence of an armed conflict, the parties involved therein must take every possible measure to ensure that children do not participate directly in hostilities and are not sent to combat areas. The said parties shall, in particular, refrain from mobilizing these young persons in their armed forces.

3. If, in exceptional circumstances and notwithstanding the provisions contained in the preceding paragraph, children participate directly in hostilities and are captured by the adversary, they shall continue to enjoy the special protection to which they are entitled under this article.

4. In the event of children being captured, detained or interned for reasons connected with an armed conflict, they must be confined in places separate from those assigned to adults."

The delegation of Poland submitted a proposal in document A/C.3/40/3 that read:

"1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to the child.

2. In order to implement these obligations, the States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting

children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities."

All those proposals were reintroduced at the Working Group's current session as originally submitted. A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1.

125. The proposal by the delegation of Poland was taken as the basis for discussion. The observer for the International Committee of the Red Cross made a statement.

Paragraph 1

126. The representative of the United States expressed the view that the phrase "rule of international humanitarian law applicable in armed conflicts" was ambiguous; she therefore proposed inserting the words "to them" after the word "applicable" to make clear that States are not obliged to respect "rules of law" contained in treaties to which they are not a Party, unless such "rules" are binding as customary international law.

127. While understanding the concern of the representative of the United States, the representative of France suggested adding the phrase "as defined by the international conventions regularly approved and ratified by States" after the words "armed conflicts". The observer for the Netherlands, supported by the observers for Finland and Canada, voiced his concern over the proposal by the French delegation. They stated their preference for leaving the text as it stood. In a spirit of compromise, the observer for Finland suggested inserting the words "the relevant" before the words "rules of international humanitarian law" and ending the paragraph after the words "armed conflicts".

128. The representative of France further revised her proposal and suggested adding the phrase "as they arise from custom and conventions applicable to States in case of armed conflicts" after the words "humanitarian law". The delegations of Austria and Japan indicated their preference for keeping the text as it stood in the original version. The delegations of the Netherlands, Norway and Poland, while also expressing their preference for the original proposal, stated that they would support the proposal by the United States for the reasons put forward by that delegation.

129. The Working Group then proceeded to adopt paragraph 1 of article 20 as follows:

"The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child."

Paragraph 2

130. The representative of the United Kingdom proposed replacing the word "recruiting" by the word "conscripting" and suggested adding the words "under the age of fifteen" after the word "children" in the third line of the paragraph. The observer for the Netherlands did not agree with the inclusion of the word "conscripting" and the representative of the United Kingdom therefore proposed adding the word "compulsory" after the word "recruiting".

131. The delegations of Bangladesh and Canada stressed the importance of qualifying the definition of children by making a reference to the age of 15.

The observer for the International Committee of the Red Cross drew the attention of the Working Group to the Additional Protocols of 1977 to the Geneva Conventions of 1949 which set the age below which children may not be recruited into the armed forces at 15. In this connection, the representative of Canada, supported by the representative of Norway, suggested adding the words "who have not attained the age of fifteen years" after the word "children". The representative of the United Kingdom then withdrew his amendment reading "under the age of fifteen" in favour of the Canadian amendment.

132. The representative of Venezuela proposed inserting the words "and using" after the word "recruiting", and replacing the words "take part" by the words "participate in any way"; she disagreed with the proposed reference to a minimum age of fifteen years, expressing her preference for a minimum age of eighteen years.

133. The observer for Finland proposed reformulating the paragraph as follows:

"In conformity with the relevant rules of international humanitarian law, States Parties to the present Convention shall take all feasible measures to ensure that no child takes part in any way in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into the armed forces."

134. The Finnish proposal was supported by the delegation of the Netherlands. The observer for Finland, after listening to a statement by the delegation of Japan, proposed that the phrase "In conformity with the relevant rules of international humanitarian law", be deleted. The representative of the USSR stated that, if the age of 15 years were to be maintained in the provision, it could create problems in the second reading, particularly because there was no reference in the draft convention to a minimum age for employment of children.

135. The Chairman then decided to invite the delegations of Finland, the USSR, the United Kingdom and Venezuela to hold informal consultations with a view to drafting a new text for paragraph 2.

136. As a result of these consultations, the representative of the USSR introduced the following revised text for paragraph 2:

"States Parties to the present Convention shall take all feasible measures to ensure that no child takes direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces."

137. During the debate, the representative of Algeria expressed her disagreement with the proposed age limit, and indicated her wish that the age of 18 years, which appeared in article 1 of the draft Convention, be maintained in the text under discussion. The delegations of the Netherlands and the United Kingdom stressed that the text should remain as proposed by the informal drafting party.

138. The representative of the United States suggested that the phrase "takes direct part in hostilities" should read "takes a direct part in hostilities". The suggestion was accepted by the representatives of France and the United Kingdom.

139. The representative of Algeria introduced an amendment to paragraph 2 which consisted in inserting the words "against his or her will" after the words "a direct part". Many delegations objected to such an amendment, the general feeling being that it would be contrary to the spirit of the Convention. The representative of Algeria placed on record her reservation regarding this provision and her wish to return to it at a later stage.

140. After a further exchange of views, the Working Group adopted paragraph 2 as follows:

"States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces."

Paragraph 3

141. The observer for Sweden introduced a text for an additional paragraph 3 which read: "In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties shall take any necessary measures to ensure protection and care of children."

142. The observer for the Netherlands indicated his agreement with the aforementioned paragraph. The representative of the United States also expressed her support for the paragraph and proposed adding the following words: "and shall refrain from making children the object of armed attack".

143. The Chairman requested the observer for Sweden, in consultation with the delegations of Australia, the Netherlands and the United States, together with the International Committee of the Red Cross, to submit a revised text to the Working Group.

144. The observer for Sweden submitted the revised proposal which read:

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by a conflict."

145. The representative of the German Democratic Republic proposed deleting the word "a" at the end of the paragraph and replacing it with the words "an armed". With this amendment and the introduction of the words "to this Convention" after the words "States Parties", the Working Group adopted paragraph 3 as follows, with the general understanding that it includes a prohibition on making civilian children the object of armed attack.

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

Article 21

146. In 1984, the delegation of Canada submitted a proposed new article to read:

"Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The legislation of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State."

That proposal, which was also contained in document A/C.3/40/3 submitted by Poland to the General Assembly at its fortieth session, was reintroduced and generally supported by the members of the Working Group.

147. The representative of Austria proposed that the words "instrument or" be inserted in subparagraph (b), between the words "international" and "convention". The delegation of Canada supported by the representative of the German Democratic Republic expressed its preference for retaining the subparagraph as submitted.

148. The representative of the United States, while supporting the article under consideration by the Working Group, felt that a third subparagraph should be included to read: "Other applicable law". The observer for the Netherlands suggested that, in subparagraph (a), the words "or laws" be added between the words "legislation" and "of a State party", and in subparagraph (b) that the words "customary law" be introduced between the words "international" and "convention".

149. The representatives of Austria and the United States decided not to insist on their respective amendments which they accordingly withdrew.

150. The observer for Canada, supported by the delegations of the Netherlands and the United Kingdom, proposed that the word "laws", in subparagraph (a), be replaced by the singular.

151. After a further exchange of views, the Working Group adopted the following text:

"Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party; or
- (b) Any other international convention, treaty or agreement in force for that State."

Annex I

TEXT OF THE DRAFT CONVENTION ON THE RIGHTS OF THE CHILD
ADOPTED BY THE WORKING GROUP

PREAMBLE

The 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 has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the 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 of 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 a 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 of 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 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 parent's

or legal guardian's 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.

3. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances.

4. Where such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 6 bis

1. In accordance with the obligation of States Parties under article 6, paragraph 2, applications by a child or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents.

Article 6 ter

1. The States Parties to the present Convention shall take appropriate measures to combat the illicit transfer and non-return of children abroad.

2. To this end, the States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, as well as the introduction of periodic consultations between the competent national authorities.

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 7 bis

1. The States Parties to the present Convention shall respect the right of the child to freedom of thought, conscience and religion.

2. This right shall include in particular the freedom to have or to adopt a religion or whatsoever belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health and morals, and the right to have access to education in the matter of religion or belief.

3. The States Parties shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child.

4. The States Parties shall equally respect the liberty of the child and his parents and, where applicable, legal guardians, to ensure the religious and moral education of the child in conformity with convictions of their choice.

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 8 bis

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

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

Article 9

The States Parties to the present Convention recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, including those aimed at the promoting of his social, spiritual and moral well-being and physical and mental health. To this end, the States Parties shall:

(a) Encourage the mass media agencies to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 16;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the mass media agencies to have particular regard to the linguistic needs of the child who belongs to a minority group or an indigenous population;

(d) Encourage the development of appropriate guidelines for the protection of the child from information and material potentially injurious to his well-being bearing in mind the provisions of article 8.

Article 9 bis */

1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations as recognized by law) without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

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 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

*/ Adopted by the Working Group in 1986.

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

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

2. The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his cultural and spiritual development.

4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of

rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 12 bis

1. The States Parties to the present Convention recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health care services.

2. The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures to:

(a) diminish infant and child mortality,

(b) ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,

(c) ensure appropriate health care for expectant mothers,

(d) encourage the provision of full and accurate information regarding methods of infant nutrition, including the advantages of breast-feeding,

(e) ensure the provision of information and training for parents and children in basic health care, sanitation and prevention of accidents,

(f) develop preventive health care and family planning education and services.

3. States Parties to the present Convention undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

Article 12 ter */

States Parties to the present Convention recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

*/ Ibid.

Article 13

1. The States Parties to the present Convention shall, in a manner appropriate to national conditions, recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization of this right.

2. The benefits should, where appropriate, be granted taking into account the national resources available and the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 14

1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Article 15

1. The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:

(a) make primary education free and compulsory as early as possible,

(b) encourage the development of different forms of secondary education systems, both general and vocational, to make them available and accessible to all children, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need,

(c) make higher education equally accessible to all on the basis of capacity by every appropriate means.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner reflective of the child's human dignity.

3. The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians to provide direction to the child in the exercise of his right to education in a manner consistent with the evolving capacities of the child.

4. States Parties to the present Convention shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 16

1. The States Parties to the present Convention agree that the education of the child shall be directed to:

(a) The promotion of the development of the child's personality, talents and mental and physical abilities to their fullest potential and the fostering of respect for all human rights and fundamental freedoms.

(b) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance and friendship among all peoples, ethnic and religious groups.

(c) The development of respect for the natural environment and for the principles of the Charter of the United Nations.

2. No part of paragraph 1 of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 17

1. States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. The States Parties to the present Convention shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 18 */

1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

*/ Ibid.

2. The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular:

(a) provide for a minimum age or minimum ages for admission to employment;

(b) provide for appropriate regulation of the hours and conditions of employment; and

(c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

Article 18 bis */

The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.

Article 19 */

1. States Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:

(a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;

(b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;

(c) children accused of infringing the penal law

(i) are presumed innocent until proven guilty according to law;

(ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;

*/ Ibid.

(iii) have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal and

(iv) if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

(a) be brought as speedily as possible for adjudication;

(b) be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so, or it is unnecessary for the protection of the child; and

(c) have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances.

Article 20 */

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 15 years into their armed forces.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 21 */

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party; or

(b) Any other international convention, treaty or agreement in force for that State.

*/ Ibid.

Annex II

PROPOSALS BY DELEGATIONS OF STATES (CONSIDERED BUT NOT YET ADOPTED
BY THE WORKING GROUP AT ITS 1986 SESSION)

Article 6 bis

(Proposal by a working party consisting of the delegations of the
United States, Finland, Poland and the
Union of Soviet Socialist Republics)

Second sentence of paragraph 1

States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Second and third sentences of paragraph 2

Toward that end, States Parties shall respect the right of the child and his parents to leave any country, including their own, and to return to their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others (and is consistent with the other rights recognized in the present Convention).

Article 18 quater

(Proposal by the United States of America)

1. States Parties to the present Convention recognize the rights of the child to freedom of association with others, to peaceful assembly, and to be protected by law against arbitrary or unlawful interference with his privacy, family, home or correspondence.
2. States Parties shall respect and guarantee these rights, and shall not place any restrictions on their exercise, except as provided in paragraph 3 of this article. In no case shall a child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.
3. The exercise of the right to freedom of association and the right to peaceful assembly may be subject to those restrictions provided by law which are consistent with the international obligations of a State Party and which are necessary in a democratic society in the interests of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
4. Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child.

Annex III

PROPOSALS BY DELEGATIONS OF STATES (NOT YET CONSIDERED BY
THE WORKING GROUP AT ITS 1986 SESSION)

Article 18 ter

(Proposal by France and the Netherlands)

The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child.

Article 21 bis

(Proposal by the Netherlands, United Kingdom and United States of America)

Nothing in this Convention shall be interpreted as legitimizing any alien's illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay, or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.

Article 22

(Proposal by Poland)

The States Parties to the present Convention every three years shall submit reports on the implementation of the present Convention to the Economic and Social Council through the Secretary-General of the United Nations.

Article 23

(Proposal by Canada)

1. The reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council.
2. To assist it in its task, the Economic and Social Council shall establish a Group of Experts entrusted with the responsibility of examining the reports submitted by the States Parties before they are considered by the Economic and Social Council. The Group of Experts shall also prepare appropriate comments on every report for transmission, through the Economic and Social Council, to the State Party concerned.
3. The members of the Group of Experts shall be elected by the Economic and Social Council from a list of candidates nominated by States Parties.

4. The Economic and Social Council shall decide on the size of the Group of Experts, its geographic composition and the periodicity of its meeting.

5. The Economic and Social Council may bring its observations and suggestions on the implementation of this Convention to the attention of the General Assembly of the United Nations.

(Proposal by Poland)

1. Reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the State Party concerned and of the General Assembly of the United Nations. The Council may also request a State Party to submit additional reports on specific issues relating to this Convention.

2. To assist it in its task, the Economic and Social Council shall establish a Group of Governmental Experts entrusted with the responsibility of examining the reports submitted by States Parties.

3. The Economic and Social Council shall decide on the size of the Governmental Group of Experts, its equitable geographical composition and the periodicity of its meetings.

Article 24

(Proposal by Poland)

The present Convention shall be open for signature by all States.

Article 25

(Proposal by Poland)

The present Convention shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

(Proposal by Poland)

The present Convention shall remain open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

(Proposal by Poland)

1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 28

(Proposal by Poland)

As depository of the present Convention, the Secretary-General of the United Nations shall inform all States of:

(a) Signatures, ratifications and accessions under articles 24, 25 and 26;

(b) The date of the entry into force of the present Convention under article 27.

Article 29

(Proposal by Poland)

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

Annex IVPaper submitted by the Permanent Representative of Bangladesh

The Permanent Representative of Bangladesh to the United Nations Office in Geneva has submitted the following paper in connection with the draft convention on the rights of the child with the request that it be annexed to the report.

General:

While Bangladesh fully supports the successive General Assembly resolutions calling for the early settling of the Draft Convention on the Rights of the Child, she believes with other States that such a Convention would only be effective if it is broadly acceptable to the largest number of States. It is, therefore, considered that maximum opportunity to consult with all States and to afford them an opportunity to comment on the Working Group draft in its entirety before submission to the Commission on Human Rights is essential to attract such broad support.

These considerations are re-inforced by the very nature of the subject, viz., the rights of the child. Conceptions of the rights of the child are heavily conditioned by conceptions of family law in differing legal systems. Moreover, the conception of the family itself varies in various legal systems and in different cultures. The Muslim countries representing one of the most important legal systems obtaining in the modern world, viz., Islamic Law have their own conceptions of the nuclear family, the extended family and the rights of the child within the framework of those conceptions. It is considered essential that the Draft Convention should be acceptable to the Islamic countries who constitute one of the largest groups of States in the international community. These States also account for a very large and significant number of children in the world population.

In addition, it is felt that since the vast majority of the world's children are actually resident in developing countries including the Islamic countries, it would help to attract broad support in the developing countries, if the standards imposed for the treatment of children are not so onerous that even their attempted application becomes meaningless and indeed absurd. Standards developed in market economies or in centrally planned economies do not correspond to the existing realities in the developing countries including the realities in Bangladesh.

Comments on particular Articles:Preamble:

In the preamble Bangladesh is not in favour of specific references to international instruments such as Universal Declaration of Human Rights etc. since the Convention itself will be the operative instrument in this area. References to such declarations may give rise to conflicting legal interpretations since some countries that may become parties to the Draft Convention may not be parties to, e.g., the international covenants.

Article 2:

Paragraph 2 of Article 2 as it stands will create serious and complex problems with regard to nationality and the status of children. If the Article 2 (2) in its present form is adopted in the final text, it is the view of Bangladesh that this will lead to far-reaching legal reservations by a large number of States including Bangladesh.

Article 3 (2)

The mandatory nature of Article 3 (2) requires to be modified by substituting the word "shall" after the words "an opportunity" in line 2 by "should".

Article 4 (1)

Article 4 (1) is very broadly framed and may not be entirely necessary. The principle of non-discrimination is already enshrined in Article 4 (2). We feel that a single provision embodying the principle of non-discrimination would meet the case.

Article 7

Article 7 is an Article which it will be difficult to implement since it has not been sufficiently crystalized into recognizable legal categories.

Article 7 (bis)

Article 7 (bis) appears to run counter to the traditions of the major religious systems of the world and in particular to Islam. It appears to infringe upon the sanctioned practice of a child being reared in the religion of his parents. We believe that the Article as presently drafted will give rise to considerable difficulties in application and appears also to be in conflict with Article 8.

Article 11

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

Article 11 (2)

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

Article 11 (bis)

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

Articles proposed by the NGO Group

Articles sponsored by the NGO, Defence of Children International, are broadly acceptable. However, such Articles as "health" "standards of living" "compulsory free education" should be made subject to a clause on the economic feasibility in particular countries. For example, it is estimated that to accommodate the school-going population in Bangladesh it would cost an amount of 200 million dollars per annum over the next few years before we can attain the objective of free compulsory primary education. Some recognition of the economic problems faced by developing countries is essential if the draft is to enjoy the support of the vast majority of developing countries including the least developed countries. Secondly, a clause has to be introduced to safeguard the autonomy and privacy of the Islamic family from encroachment and impingement by externally applied standards.

Remaining Articles

Bangladesh reserves the right to provide additional comments on further developments in the Working Group. It hopes to provide its comments on the remaining Articles of the Draft Convention for consideration by the Working Group in the future.