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COMMISSION ON HUMAN RIGHTS

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Item 14 of the provisional agenda

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement submitted by the International Association
of Penal Law, a non-governmental organization in Category II
consultative status

The Secretary-General has received the following statement, which is circulated in accordance with paragraphs 29 and 30 of the Economic and Social Council resolution 1296 (XLIV).

The International Association of Penal Law would be grateful if the three resolutions annexed hereto could be circulated at the forthcoming session of the Commission on Human Rights.

Annex I

JURIDICAL ASPECTS

RESOLUTION

The participants in the International Seminar on "The Penal Protection of the Child" organized by the International Association of Penal Law, which has been held in Siracusa, at the International Institute of Higher Studies in Criminal Sciences, from 25 to 30 September 1979,

CONSIDERING the lack of historical sources regarding the extent to which penal sanctions effectively deter the ill-treatment of minors,

LOOK FORWARD to an "in depth" analysis relative to critical, historical inquiry on the results obtained up to the present by those measures in force to protect minors,

RECOGNIZING the necessity of making a distinction, with a view to defining legal responsibility, between "adults" and "minors",

TAKING IN CONSIDERATION the possible divergence between the bio-psychological conditions of the subject, seen from the point of view of his emotional behaviour and the legal determination of a fixed chronological age for responsibility,

HOPE to see an intensification of research whose aim should be the clarification of the relation between the chronological age of the subject and the optimum conditions for him to be declared legally responsible. This is also hoped for a greater individualization of the juridical alternative offered, which would take into account the conditions in which the subject's biological, psychological and intellectual development has taken place,

CONSIDERING that the abuse of power within the family constitutes one reason for the deterioration of the relation between parents and children,

CONSIDERING that even within the institutions, for example those for re-education or treatment, there exists the possible abuse of power,

REQUIRE:

- (1) a rapid revision and eventually a regulation of the law with a view to the improvement of family relation in respect of the educative functions which parents ought to have in the life of their children,
- (2) a corresponding reform to clarify, interpret and limit the power which institutions dispose in their educative function in order to assure the liberty and personality of the child.

Annex II

CRIMINOLOGICAL ASPECTS

RESOLUTION

The participants at the international seminar organized by the International Association of Penal Law on "The Penal Protection of the Child", held at the International Institute of Higher Studies in Criminal Sciences, Siracusa, from 25 to 30 September 1979,

IN VIEW OF the increasing awareness of the world-wide incidence of child abuse, there is growing need for a substantial framework to provide an adequate, global understanding of the phenomenon with a view to its correction and prevention,

RECOMMEND the following:

- (1) Each Juridical area (Country or State) should develop its own agency or structure to provide a suitable framework for dealing with the problem of child abuse, by collecting and analysing the appropriate data in order to promote effective decision-making and execution of policy. Such an agency or structure shall also be responsible for exchanging information and policy with other similar national and international agencies. This agency should be availed of all data pertinent to the incidence of child abuse by the implementation of adequate measures to insure the reporting of incidents, with due consideration to ensure the appropriateness of such information.
- (2) Such data may be encompassed within the definition of child abuse as the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of eighteen by a person or institution responsible for the child's welfare, or any public or private agency that can affect the child, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.
- (3) The standards by which an act may be considered abuse be defined according to the characteristics unique to each culture and should be flexible enough to reflect the evolving nature of cultural change. Despite such variability, however, an attempt should be made to comply with standards for basic minimum requirements for the maintenance of the physical and mental integrity of the child.
- (4) This agency shall set the standards on the basis of which the different manifestations of child abuse shall be allocated to either therapeutic, penal or other innovated categories, in order to determine the appropriate dispositions most likely for each particular type. Moreover, it shall seek to promote the utilization and/or establishment, by administrative and legislative measures, the institutions and manpower resources required to support the implementation of such recommendations.

IN VIEW OF the gross limitation of corrective penal and therapeutic measures, attention should be given to prevention by attending to the significant contributing factors in the incidence of child abuse, guided by the following categories (taking into account both the immediate precipitating and the remote predisposing factors):

- (1) The abuser - individual peculiarities such as mental illness, personality deviation, addictions, etc.
- (2) The victim - family position, sex, physical and mental peculiarities, etc.
- (3) The family-size, socio-economic status, tensions, broken homes, etc.
- (4) The socio-cultural group-values, norms, traditions, political conditions, etc.

Annex III

INTERNATIONAL ASPECTS

RESOLUTION

The participants at the international seminar organized by the International Association of Penal Law on "The Penal Protection of the Child", held at the International Institute of Higher Studies in Criminal Sciences, Siracusa, Sicily, from 25 to 30 September 1979,

CONSIDERING that their discussions have pointed to the clear need for greater concentration of efforts internationally with a view to more effective protection of children who are the potential or actual victims of maltreatment, whoever the perpetrator may be;

CONSIDERING that, during the International Year of the Child, many international and national bodies and individuals have expressed their high concern about the question of child maltreatment;

NOTING the active interest of many non-governmental organizations in this question, from a variety of disciplinary standpoints, and in particular, the existence of Defence for Children which seeks precisely to arouse international collaboration in this sphere as a means for effective action;

NOTING further the problems encountered in identifying a viable definitional basis for international measures on child maltreatment;

CONSIDERING that intergovernmental and non-governmental action is complementary and mutually beneficial in this sphere;

REFERRING to the various Declarations and Conventions adopted by the United Nations on the questions of human rights and child welfare;

CONSIDERING that the question has not yet been granted appropriate priority within the United Nations System;

HEREBY RESOLVE

TO REQUEST the United Nations to establish a structure or structures specifically designed to deal with the over-all question of child maltreatment, in particular but not necessarily only, to carry out the following tasks:

- (a) to obtain the legislative texts of all member States relating to child protection, and to provide for an annual updating of this collection;
- (b) to determine thereby some of the major elements to be found in such texts;
- (c) to organize periodic encounters with interested international non-governmental organizations to examine the implications of these and any other elements, together with any responses that be deemed appropriate;
- (d) to provide technical and material assistance to member States that express the wish to act upon recommendations made but that are not in a position to do so without such assistance;

(e) to draw up a questionnaire, to be sent every two years to all member States, requesting information on national statistics, provisions and structures concerning this sphere;

(f) to ensure that all such relevant information is made available, as appropriate, to the various bodies, agencies and organizations, both intergovernmental and non-governmental, concerned by the question;

(g) to determine any other action modalities that may seem desirable on the part of intergovernmental bodies and agencies to ensure the more effective protection of maltreated children and, as far as possible, to prevent acts of maltreatment being perpetrated.